

REMARKS

By

The Honorable F. Philip Carbullido

Chief Justice of Guam

State of the Judiciary Address

Tuesday, May 1, 2007

10:00 a.m.

Judicial Center Atrium

It is with great honor and humility that I stand here before you this morning for my final State of the Judiciary Address for this term as Chief Justice. Through the years since our Supreme Court was established, you have seen my predecessors stand before you on this very podium and present to you the challenges that the Judiciary was then enduring – challenges they described as a divided judiciary, a broken branch.

Judicial Independence

In all of my addresses -- beginning with my investiture and throughout my term as Chief Justice -- one theme remained at the forefront: Judicial Independence.

Our independence as a judiciary is key to fulfilling our paramount duty: To defend and uphold the Constitution and assure that the rule of law prevails.

Protecting each person's human, civil and legal rights; protecting the weak from the strong; providing a structured forum for dispute resolution -- these are the duties we as a judiciary owe to the people we serve.

I am proud to say the Judiciary of Guam has fulfilled its responsibilities as your third branch of government.

Threats to Judicial Independence

Yet despite the progress made toward becoming a unified and independent judiciary – through the Frank G. Lujan Court Reorganization Act and the local and federal Judicial Empowerment Acts – here we are at the end of my term as Chief Justice, and the topic of judicial independence re-emerges as the most significant issue facing this branch.

The reality, ladies and gentlemen, is that our judicial independence is threatened. When those who serve in this branch, and those who are served by this branch, are in fear of suffering the consequences of the political budgetary decisions of those in the other branches of government, judicial independence is threatened.

The U.S. Constitution and the Organic Act of Guam create our democracy, composed of three independent and co-equal branches, each branch serving as a check on the power of the other branches. Our courts of justice are critical to preserving the balance of powers among branches in our democracy.

Unlike the other two branches, the Judicial branch does not represent popular majorities. Courts were simply never meant to cater to political will or reflect popular opinion.

Despite the pride we feel as a Judiciary in realizing Organic Act co-equality and independence, the Judicial branch does not control the power of its own purse. We must appeal and plead, every year, to the executive and legislative branches for the funding necessary to sustain our existence. In other words, the Organic Act amendment alone cannot assure adequate funding. Without the support of the Legislative and Executive branches, the Judiciary has no true independence.

Thus, while access to our courts of justice is American democracy at work, when our judicial independence is threatened, our system of democracy is vulnerable. For a judiciary that lives in fear of the other branches – for whatever reason – is not a judiciary that can dispense justice.

The Government's Financial Crisis

But this, unfortunately, is the situation today. We are not oblivious to the financial problems suffered by the government. We recognize them as real and we recognize that we must *all* to some extent share in the burden. But the simple fact is that it costs the General Fund a small amount – less than 5% of the government's budget -- to fund the entire Judicial branch, the branch most critical to justice on our island. Yet we have trouble securing even *this* five percent.

The Judiciary's Budget – the Facts

With an initial budget cut in the amount of \$900,000, and an additional shortage of \$2.5 million in allotments halfway into the fiscal year, the fact is that our current budget has already been cut by about 17%. We thank Senator Espaldon for rejecting the Public Auditor's call for further cuts to the Judiciary's budget, and we thank the senators who supported the Espaldon amendment.

The Consequences of Under-funding the Judiciary

So what does inadequate funding to the judiciary mean for you, the member of the public seeking justice through these doors? It means that access to justice is threatened because this

branch is subjected to a disproportionately high percentage of the cuts. The public must understand that we – your third branch – require the support from our sister branches of government.

Public Safety and the Courts

The public must also understand that unreasonable cost reductions will eventually affect public safety. As anyone who watches television knows, an individual placed into custody has a right to see a judge regarding bail. We are facing a situation where the courts may not be able to promptly see arrestees, and otherwise dangerous individuals may be released. The cut in funding diminishes the rights not only of the accused, but also the right of the public to a safe and secure community. Other such consequences will fall onto the shoulders of the most vulnerable members of our community: children, victims, and families. Cutting our budget will reflect some savings on the books. But that savings will be an illusion. Shrinkage of our court services will expand the need for funding prisons, health and social services, and law enforcement. This, I assure you, will result in greater costs to the government.

We are not alone. Judiciaries nationwide have struggled in this battle. We do not want to close our courtrooms, permanently or even temporarily, and we do not want cases against criminals to be dismissed because of violation of speedy trial rights.

“We must do everything in our power to make sure our judges, our court personnel and our courts are safe. Under-funding threatens the independence and safety of our courts.” These few words just spoken are not my own...but how true they are. In fact, these are the remarks of the American Bar Association past-president Robert Gray regarding the threat of budget cuts on California’s judiciary.

Economic Recovery and the Courts

An under-funded judiciary will also ultimately compromise any economic recovery we all hope for. In fact, it is well known that investors are attracted to jurisdictions that provide a stable judicial climate. An unstable judiciary will repel the very investors we hope to attract.

Without the proper resources and tools, it will be more challenging to meet the time standards for the resolution of civil cases. Court services, such as processing child support orders, restitution payments, and looking after the rehabilitation of our recovering criminals, may also be impeded.

The Interest of our Public Servants

We must also not forget the interests of your public servants. The job of the many people in this building is to stay the course and remain loyal to the rule of law despite, to borrow an expression, impending climate change. Our court employees take great pride in their work. They perform their duties day after day, and they do so responsibly, with the highest integrity.

Threats of furloughs, shortened work weeks, salary cuts

Despite their resourcefulness and their successes, a few weeks ago, along with the rest of the government workforce, the dedicated employees in this building woke up to news of potential furloughs...shortened work weeks...salary cuts.

How could this have happened? You just don't wake up one morning to find out we don't have enough money to run our government.

Regardless, I am convinced that there are more practical and effective ways to address our budgetary shortfalls than across-the-board cuts without feedback from affected government entities. I hope that our leaders recall that similar government actions of the past have proven to be nothing more than a way to disrupt government services, yielding only short-lived revenue savings.

Sustainability and Moving Forward

From the successes of the judicial employees that I will shortly describe, you will see how critical it is to keep them competitively paid. We must not seek temporary gains and band-aid solutions, but permanent repair and sustainability. We want to move forward and build upon our own momentum. We cannot afford to go backwards.

In short, just as this Judiciary needed to be fully independent of the Executive and Legislative branches by following the rule of law, by the same token we cannot be held hostage by the same branches through a lack of adequate funding.

Keeping Justice Accessible: Making the Tough Decisions

I have no doubt that we in the Judiciary have been a responsible government partner in these times of economic challenge. We have made the hard decisions while continuing to meet increasing demands for responsible public service. Now we are asking our partners in democracy to do *your* respective parts. Maintaining confidence in the judiciary depends on all branches of government working together with a common purpose. Today, I invite the other branches to make the hard decisions, to help our people, to maintain our independence, to keep justice accessible.

We ask that those with the power of the purse recognize how critical it is to our well-being as a community that Guam has a viable, sustainable judicial system. Courthouses are meant to be safe harbors – individuals, organizations, and businesses all come through these doors and look to us as a means to ensure security in their rights.

Former U.S. Solicitor General, Theodore Olson, commented that: “[I]n this country we accept the decisions of judges, even when we disagree on the merits, because the process itself is vastly more important than any individual decision. Our courts are essential to an orderly, lawful

society. And a robust, productive economy depends upon a consistent, predictable, evenhanded, and respected rule of law.”

The True State of the Judiciary

So today, I come before you to once again report on the state of our judiciary. To be quite honest, it has been somewhat of a challenge to come up with a meaningful phrase to describe the state of affairs in this branch.

Let there be no mistake: There is no one in this courthouse prouder than I am today of the work of our Judiciary employees. In a few moments, I will share with you the highlights of our accomplishments in the past year. I will also share with you our plans for the future of this branch. You will see how we have continued – to this day – to practice good governance and to do so efficiently. So in *that* sense, I am proud to report that the state of the Judiciary is sound, that our court services have greatly improved, and that we have stable plans for a bright future.

But we cannot simply proclaim our stability, our progress, and our strength, and ignore the very real, very imminent threats to our independence. Because no matter what we do within our *own* branch -- without meaningful recognition of our independence by the executive and legislative branches - - - the state of our judiciary will always remain fragile.

Progress Through Teamwork – 2006 Highlights of Accomplishments

But our work must go on. The continuity of Guam’s stable and progressive judiciary is due in large part to the employees of this branch. I am *proud* of our judicial branch employees – their hard work has shown that they regard public service as *honorable* service. Despite the reality of furloughs, a shortened work week, and the threat to our quality of life, they continue to contribute to this organization, and push as a unified branch -- as a unified team.

Indeed, I am convinced that one of the keys to our success as a judiciary is our shared vision for achieving accountability, as well as the team approach that we apply to the work of the courts. As John Donne wrote that no man is an island, so too in the judiciary, is no man an island.

The Judiciary is not just courts and judges. The Judiciary involves ministerial staff, human resources specialists, procurement specialists, accountants and technicians, computer experts, not to mention our security arm, the Marshals Division.

We also embrace a vast network of service providers, from Probation Officers to Psychologists. All of these professionals this past year have contributed to the creation of a new Mental Health Court, dedicated to that segment of our population requiring judicial intervention into mental health issues. The formation of this new court will assist in the running of our other specialty courts such as Drug Court and Family Violence Court, and all forms of restorative justice to which this judiciary has committed. I am proud of our many new therapeutic courts, which treat individuals and families for their problems rather than taking a purely punitive approach to illegal conduct.

Our service providers have brought to our community the Pacific Drug Summit and the Domestic Violence Workshop. Our court programs staff was successful in securing federal funding for domestic violence, child victims, drug court, and sex offender registry programs. These are more examples of progress through teamwork are products of collaboration by Probation, Marshals, and Client Services.

I am also proud to inform you that the Office of the Public Guardian, under the leadership of John Weisenberger, is the recipient of the National Association of Social Worker Guam Chapter's 2007 award for exemplary service in the community.

I must also recognize our information technology personnel, as well as our financial management and procurement and maintenance personnel. This year, we have seen advancements in technology responsible for significant savings for the judiciary and law enforcement. For instance, most initial criminal appearances are now conducted by video teleconferencing, reducing transportation and security costs.

Our procurement and maintenance staff have also recently completed a comprehensive audit of the Judiciary's equipment so that every physical asset of the Judiciary is now accounted for.

But the teamwork does not stop there. To the often invisible heroes found in our human resources division, and to our clerks and other courts and ministerial staff: I am proud of your cohesiveness and resourcefulness. There has been a complete overhaul of outdated policies and job classifications affecting court personnel. There is also visible progress in the team approach practiced by these divisions. There were over ten thousand cases filed in court and eight thousand jury related functions required of these divisions last year. Our court staff never flinched in the face of this challenge to expeditiously process the flood of daily documents.

Additionally, another goal of our judiciary is to make our laws and our justice system more accessible and user-friendly both to legal professionals and to the public citizen. We are proud to announce that, in addition to our local laws and rules, our Supreme Court opinions are also now searchable online, at no charge to the public.

Another example of our accountability is found in an Administrative Rule promulgated last September requiring trial judges to rule on motions in ninety days or less, to dispose of felony cases within one year, and other important and responsible deadlines. You, are invited to view this Order imposing deadlines on the guamcourts.org website.

You should also know that individual members of the Guam Bar Association are working countless volunteer hours on judicial committees with justices, judges and court staff. We have revamped and updated the Rules of Evidence, the Rules of Appellate Procedure, and the Rules of Attorney Admissions. We are also creating plain-English civil jury instructions, and are in the process of updating our Rules of Civil Procedure and local Rules of Court. Some of these rules have not been updated in nearly 30 years. The work of these committees present dramatic changes in how law will be practiced in all our courts, increasing efficiency and reducing costs to litigants.

Another change I am very proud of is the adoption of the Rules of Judicial Disciplinary Enforcement. Unlike in the past, complaints against judges are no longer heard behind closed doors. Members of the bar and public are now part of the hearing process.

These are just a few of the highlights of our accomplishments this past year. The Annual Report is available for a more detailed account of the hard work of our employees.

Our teamwork has also expanded beyond our courthouse doors. We have seen the birth of a project long-coming, the new forensic sciences laboratory. We recently selected the architectural and engineering design team, and plans are expected within four months. Construction should begin ninety days thereafter. Completion of the crime lab is right around the corner.

We have also embarked on other community based projects together with the Guam Chamber of Commerce, the Guam bar and the Guam National Guard, to name a few of our community partners. The Guam Chamber of Commerce has fully supported and contributed to the success of our drug courts. We thank them for their support, and for recognizing and honoring Presiding Judge Lamorena and Judge Barrett-Anderson for their pioneering work in establishing drug courts on Guam.

Many of our goals towards efficiency and accountability have been reached because of our commitment to progress through teamwork, as these examples have shown. At this time I wish to recognize our Administrator of the Courts, Mr. Perry Taitano, who has worked with us every step of the way, and who has been especially instrumental in moving the Judiciary forward.

Judicial Leadership

We also continue to achieve progress through judicial leadership. Our judiciary has taken the lead in regional training and education for fellow judges and justices, as well as court personnel and service providers. These efforts are in place to help Pacific judiciaries better address the growing concerns of our region.

For example, a problem that confronts every member of the Judiciary on Guam and in the region is the trauma of domestic violence. I would estimate that over 50% of the resources of the Judiciary is consumed by the after-effects of domestic violence. For this reason, our immediate attention will be directed to training opportunities for our judicial family both on Guam and in the region.

I am proud to announce that Guam has been selected to host a Domestic Violence Workshop this coming August. Over 25 judges in the region will attend this workshop from Palau, the FSM, the Marshall Islands, CNMI, and American Samoa. More importantly, no local funds will be used in hosting this important conference. The Department of Justice and the Task Force on Domestic Violence against Women have offered in partnership with the Guam Judiciary to put on the workshop with a nationally acclaimed faculty, with the generous assistance of the Pacific Judicial Council, which I chair.

I am also pleased to announce that Guam will host the biennial Pacific Judicial Conference in November of this year. This Conference will be primarily funded by the Department of the Interior, and again we will receive the support of the Pacific Judicial Council. My esteemed colleague, Justice Robert Torres, will chair the conference which will have an ethical component as well. This is the second opportunity we will have to take the lead in regional training. An estimated 75-80 judges from Micronesia will take part in this important conference.

Finally, I am pleased to announce that Former Associate Justice Frances M. Tydingco-Gatewood, now Chief Judge of the District Court of Guam and Judge Anita Sukola, have just presented to the Governor and the Judiciary a Blueprint for Action resulting from the 2006 Drug Summit, funded by the Office of the Governor and the Judiciary. This Blueprint consists of a list of suggestions to strengthen our battle against drugs on Guam, and to stop the growth of Guam as a transshipment port for drugs in the region. I thank Governor Camacho for his leadership and support in the success of the Drug Summit.

I am gratified by the measures implemented by the Judiciary, in spite of an unstable climate. They constitute a record of achievement, for which I am very proud.

Justice With a Vision: the Strategic Plan for the Judiciary of Guam

In prior years, I shared with you our vision and efforts for unification. We have unified, but we must continue to improve. I am pleased to announce this year that we have not only talked of the future, but we have mapped it. The Long Range Strategic Plan, which you have before you, is a culmination of the Judiciary's unification efforts. It is the collective realization of the aspirations, goals, and plans of our own employees. It starts today and will carry us through the coming years. It is a true product of our teamwork.

You will see how our past efforts to improve efficiency, accountability, and transparency have been affirmed. You will see that we have designed a way to meet the future needs of our public, a way to stay competitive, and a way to bring our standard of public service on par with even the most respected judiciaries in the nation. That is where we want to be, and where we should be – moving ahead, not moving backwards. We invite you to read through our strategic plan, and we ask that you assist us in our journey.

And so, ladies and gentlemen, despite the threats to our judicial independence, thanks to our “progress through teamwork,” our judicial leadership, as well as the implementation of our strategic plan, I am proud to report that we have done well to set the course for this judiciary for years to come. But these efforts must continue. The collaboration and cooperation -- not just within our judiciary, but among our fellow branches – must continue.

Our island and our Judiciary face difficult financial times. Guided by our Strategic Plan and united by our common goal of ensuring quality justice, we are confident that we can turn even this challenge into an opportunity.

Working Together – We Cannot Escape History

Abraham Lincoln, a man of the law and one of our greatest leaders, warned in his state of the union address before Congress: We cannot escape history. We will be remembered in spite of ourselves. The trial through which we pass will light us down in honor or dishonor to the latest generation. President Lincoln and a unified Congress did not fail the American people. They weathered their own storm. They preserved the union. And they did it together. Let the same be said of us as we pass through our own trials. Let us work together in an accountable and transparent fashion for our island of Guam and her people. Let us not as a government further fail our people and erode public trust during these difficult times. I am confident that our concerted commitment to making the necessary, hard decisions will mean the difference between a bleak outlook and a bright future -- not just for this judiciary, but for Guam.

The judicial branch of government wishes to remain a steady ship in this storm, not adrift on the waves of socio-political and economic upheaval. All in all, even amidst this upheaval, we have done well. Today, the judiciary is stronger and more hopeful than the one that I inherited.

Leaving a Solid Foundation

I hope, and I truly believe, that building upon the foundation left by my predecessors, I will leave my successor as Chief Justice with a judiciary in a far better state than I found it. I leave, as well, a solid foundation for progress on a range of issues that are vital to the well-being of our people.

I am honored to have been at the helm for so many important changes in the Judiciary. I am most proud to have served as the shepherd of the process of administratively integrating the trial courts with the appellate court. Any process that challenges the status quo is a challenge to those both new to the process and those being asked to change. There were many dedicated individuals who first accommodated, then supported, then invested in, and eventually took ownership of the integration, and they have my deepest respect. This report will be my last, but for the Judiciary there will be many more to come through my successors.

Democracy and our Pledge to Deliver Quality Justice

Having integrated Guam's judiciary into a unified entity -- the legacy I am most proud of leaving-- I also look forward to carrying out the Strategic Plan.

We can all be confident that after only a few years as an independent and co-equal branch of Government, we have built a strong foundation. And with the support of our sister branches of government, we will continue our pledge to deliver swift and efficient justice for all.

The goal of every person in this building is to ensure that all persons of any ethnic background, with any challenge or impairment of God or man, may walk through these doors, and have the

same rules apply to them as would apply to the most elite members of our society. My mission in my tenure as Chief Justice is to enable every person in this courthouse to build on and protect that goal. I am confident that in 2007, we will guard this with our hearts and minds. We, with your partnership, will preserve our independence. We will embrace democracy.

Indeed, this gathering symbolizes the constitutional foundation that makes continued progress possible -- synchronizing the skills of three independent branches of Government. It is only as the temporary representatives and servants of the people that we meet here. We bring no hereditary status or gift of infallibility, and none follows us from this place.

I pray that this 21st century will bring to all our future generations a greater measure of individual dignity, opportunity, and justice. The state of the Judiciary is but a measurement of the many elements of which it is composed – a branch of diversity, a unification of varying interests, an intellectual collaboration of common convictions, and a justice system of immutable ideals.

Sharing in our Successes

It is not easy to end these remarks. In these halls of justice, along with some of you, I have experienced many highlights not only of my career, but of my life. I want to acknowledge the contributions of my predecessors, each of whom has shaped this 3rd co-equal and independent branch of government...our unified judiciary. It was here that I stood with my colleagues-Retired Chief Justices Peter Siguenza and B.J. Cruz, Justices Janet Healy Weeks and Frances Tydingco-Gatewood, Justice Robert Torres and the late Justice Monessa G. Lujan, who continues to inspire us by her work, may she rest in peace. I close not only with thanks and recognition to them, but to the superior court judges, honorable men and women of this court working in the trenches day-to-day dispensing justice.

It has been a most profound privilege to serve you, and to work *with* you, as your Chief Justice. Thank you for according me the honor of this position, and for being here today to share in our successes.