

2011 State of the Judiciary Address
By Chief Justice F. Philip Carbullido
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Introduction

I am honored to appear before you this morning to deliver my first State of the Judiciary Address since resuming the role of Chief Justice earlier this year. As I prepared my remarks, I found myself reflecting quite seriously on the nature of these addresses. It has become a tradition with Justices across the country to use this opportunity to present bold initiatives and grand proposals. Indeed, in the past, other Chief Justices, myself included, have often used this occasion to pronounce upon the Big. Big plans. Big projects. Big vision. In many ways, however, we find ourselves in an arrestingly new historical moment.

The changes slated for our island, both promising and perilous, are almost so big that what they may actually warrant is a counterintuitive return to the Small – a humbler, less glamorous return to the details. The grim economic realities gripping every branch of our government – and the Judiciary certainly has not been spared in this regard – require us to pay attention to some deceptively simple “stuff” such as living within our means, conducting sensible cost-benefit analyses, and finding ways to provide core services to all of our people, for whom access to justice is a non-negotiable mandate – even though, at times, it is an under-funded one.

As we begin our journey back to the humbler aspects of governance, it might be useful to pause and regain some perspective. In these times, as we lurch from crisis to crisis, rushing to put out the most immediate and imminent of the fires before us, we often lose perspective. Of course I can only speak for the Judiciary, the branch I represent. As I reflected on the Judiciary’s place in our tripartite government, I found myself reciting over and over in my mind the basic principles I learned in junior high school civics classes. *We the People. Representative democracy. Three separate but co-equal branches.*

So, while it may seem rather basic, particularly to the esteemed lawmakers in the room, I would like to begin today with a little civics lesson. It is my thinking that this small digression will help frame the issues I will discuss in turn, relative to the responsiveness, challenges, and needs of our judicial branch.

In the United States, the government gets its power to govern from the people. The idea of self-government is enshrined in the first three words of the U.S. Constitution itself: *We The People*. In our democratic system of governance, in order to check against unrestrained power by any one person or institution, the power of governance is shared among three branches—the legislative, the executive, and the judicial. Here in Guam, our senators, the legislative branch, make the laws. This branch is generally understood to be the servant of the common good; that is, its business is the public health, safety, and welfare of the community as a whole. Our governor, who represents the executive

branch, enforces those laws. The executive branch is essentially charged with carrying out the legislative will.

And then there is our branch, the judicial branch. We are given the equally important task of interpreting and applying those laws. Specifically, we ensure that our laws are neither inorganic nor unconstitutional. The judicial branch's distinct role is to protect the rights of the individual and to ensure that justice is dispensed in disputes among individuals, between individuals and their government, and between the branches of government.

These three branches are said to be separate and independent, yet co-equal. In reality, however, inter-branch relations are not as horizontal as a good civics student might think. Despite the wisdom of tripartite government in theory, in practice, the Judiciary is not always dealt with as a truly independent and co-equal branch. Rather, the judicial branch frequently finds itself, as it does now, at the mercy of the other branches, at least with respect to the vital issue of funding. If the legislature has the power of the purse, and the governor the power of the pocket, then where does that leave the Judiciary?

From an institutional perspective, I think we all recognize that the Judiciary is inherently dependent first on the legislature to appropriate the funding, and second on the governor to dole it out. The Judiciary is the only branch with no authority to influence what resources we have to carry out our responsibilities. We have no power to introduce legislation, no voice in the debates, no vote in committees or final passage, no line-item authority, no discretionary veto power of any kind. Our system of government assigns those responsibilities to the other branches.

During my past term as Chief Justice, I spoke at length about the importance of judicial independence. At the risk of sounding overzealous on this issue, I must note again the adverse effects that an under-funded Judiciary has on public safety and the administration of justice, including the shifting of increased economic costs to the individuals served by the courts. Beyond this, I feel compelled to point out that an independent and co-equal judiciary is not only the promise of the democratic enterprise; it is the pudding, too.

Budgets, Priorities, Leadership

The Judiciary has entered this time of financial crisis already lean. From a substantially reduced budget, we are still only averaging less than 80% of the cash allotments that are due to us. Despite the passage of a public law which was intended to guarantee the payment to the Judiciary of a percentage of its cash allotments based on revenue collected by the Government of Guam, the Judiciary's shortfalls continue. Based on this public law, the Judiciary should be receiving 100% of its cash allotments, and certainly not less than 80%.

Since early in 2009, the Judiciary implemented a broad range of austerity measures to help stop the financial hemorrhaging – from implementing a freeze on hiring to program budget cuts to more stringent approvals of requests for even the most basic office

supplies. These measures have already affected employee morale and increased the amount of time it takes to process cases and do the work that is necessary to the administration of justice.

Notwithstanding, I have been informed that, even if we receive 100% of our allotments for the remainder of the fiscal year (which in itself is a big “IF”), we will still be around half a million dollars in the red. This puts us in the unenviable position of deciding whether we prioritize payment of our law enforcement third increment pay adjustment, or whether we resort to 32-hour work weeks for all our employees. Unless something significant happens in the coming weeks, these measures will be implemented as early as July in an effort to diffuse the negative impacts as much as possible.

These are sobering times. For the past year or more, talk of an economic recession and government downsizing has been the dark cloud looming over every public entity, every private business, every household. There are government agencies mandated to provide services but barely making payroll. There are departments failing to pay required deductions – a practice that is questionable; a practice that we in the Judiciary do not have the luxury of entertaining given our elementary mandate to uphold the law.

This recession has touched every corner of private and public life, demanding us all to refocus on core needs and responsibilities. Times like these make our job all the more difficult and render the tough choices all the more consequential. The cruel irony is that in tough economic times, while government copes with budgetary cuts and even plans certain shutdowns, we in the Judiciary face an ever-increasing workload. Crimes, injunctions, foreclosures and civil cases increase in harsh economic times. Therefore, further reducing services cannot be the answer. For no matter how much we are called upon to sacrifice internally, nothing compares to the harmful impact the current situation has and will continue to have on our citizens’ access to justice.

Budgets are about priorities, and leadership is about making the hard decisions in prioritizing the non-negotiables, no matter what the political fallout may be. For the legislature to be able to make fact-based and reasoned decisions about what resources will be given to us in the coming fiscal year, we have the responsibility to be forthright about how we are using the resources we have, what we need, what we can function without, and what we honestly cannot. As the head of the judicial branch, it is my responsibility to report to our policymakers and to the people of Guam on the state of your Judiciary.

Challenged, Yet Responsive

Today, I report to you that the State of the Judiciary is challenged, yet responsive. Our challenge, simply, is to maintain our operations with fewer and fewer resources at our disposal. But we are not just idling by, overcome by this challenge. We are responding to them with focus and resolve: by being innovative in hard times, by living within our means, by our self-imposed austerity measures, by returning to the details, by getting back to basics and providing our community with a justice system that works.

What I mean by “justice that works” is a justice system that is operational, a system that is effective and efficient, a system that is both adjudicatory and therapeutic, a system that is collaborative with other entities and involved in our community, and a system that is accessible to all.

Despite these financially trying times, the Judiciary is arguably better placed to continue to thrive because we are forward-looking. Indeed, what sets the Judiciary apart from other entities is our strategic planning. Our strategic planning helps us to better deal with the increasing demands for court services, always keeping in mind our core mandate to provide quality and accessible justice to all our residents, businesses, and patrons. Even though it sometimes feels like we are jumping over one hurdle after another, we remain resolute in our commitment to continue to provide these services to the public. We continue to set the bar high in being responsive and providing quality service in the face of economic hardship.

We do this by adjudicating cases in a fair, impartial, prompt, and respectful manner. I would like to take this time to thank our judges for their continuing efforts to comply with our case time standards. You can see the numbers in the Annual Report before you. We have made great strides in providing litigants with timely resolutions of their cases, although we recognize that there is certainly room for continued improvement.

In fulfilling our mandate, we in the Judiciary also address the issues that underlie litigation and disputes in hopes of alleviating their human impact. Whether we are supervising defendants on probation so they stay off drugs, providing support to children whose parents are going through a divorce, representing defenseless wards, or creating a safe environment for dispute resolution, our employees carry out our daily mission with integrity and commitment.

Indeed, our employees are our greatest strength. An organization will go only as far as the people who are driving it. I want to recognize all of the Judiciary’s employees – from the basement to the third floor, from the Annex, to the Law Library, to the Northern Court Satellite. Despite these trying times, our employees continue to improve the services we offer and to place value on public service. To all our judicial employees—*un dankulo na si Yu’os ma’ase!*

In an effort to keep our employees more accountable and productive, we are revising our employee evaluation system. We are considering adopting an evaluation system that is goal oriented. With a system that is more tailored to the work of the courts and to the individual being evaluated, we will be better able to fairly and justifiably reward dedicated employees, as well as identify areas in need of improvement.

The bulk of our workforce falls under our Courts and Ministerial division. These individuals are the first point of contact most patrons have with the Judiciary. The Superior Court Clerk’s office, which oversees this division, handled nearly 10,000 case filings in 2010. The challenge of keeping complete files with now two courthouses was

realized last year with ease, due to the professionalism of the staff of both the Hagåtña Judicial Center and the Northern Court Satellite. Judiciary clerks also successfully staffed Magistrate Judge Tolentino's court as he rose to the challenge of being the resident judicial officer of NCS. At the same time, this division organized and executed over 100 jury trials and over 40,000 hearings. The statistics are staggering; the performance praiseworthy.

2010 also marked the first year that the Judiciary undertook regulation of private process servers. Private process servers were previously licensed only on an *ad hoc* basis. This has been replaced by a uniform curriculum and training for this important court-related task. This is justice that is operational.

Sorely Needed Upgrades

But perhaps the most significant development to report today with regard to our increased effectiveness and efficiency is the new Case Management System that will soon be implemented. This is a sorely needed upgrade. Finding the right computer system capable of updating our archaic green-screen-based system is the 21st century equivalent of finding a needle in a haystack. However, with the assistance of the National Center for State Courts, we have chosen a vendor and signed a contract. We expect part of the new case management system to be functioning by the end of this year.

The new CMS will result in a streamlined system linking the Supreme Court, Superior Court, marshals, probation, and other divisions. Also, because the Guam Police Department, the Attorney General's Office, and hopefully with your help the Public Defender's Office, will likely all be on the same system, this will make it easier for networking and information sharing where appropriate. And with the reduction in paper consumption and storage space, the new CMS will also serve our continued practice of "going green." But best of all is that the Judiciary's entire CMS purchase, which will result in greater service to the people, will be funded almost entirely by federal funds.

I want to thank our Deputy Administrator of the Courts Mr. Robert Cruz and our Procurement and Facilities Management Administrator Mr. Ray Taimanglo for moving forward with this upgrade. But anyone who has had a hand whatsoever in procuring the resources and coordinating the plan to find a suitable vendor for the new CMS knows that we in the Judiciary owe an enormous thanks to former Chief Justice Robert J. Torres for his tireless efforts toward this end.

Justice Torres played a visionary and integral role in the CMS project, from its inception to this day. The new CMS is one piece of a larger vision to make justice more accessible and affordable for all our citizens, whether they enter the justice system with or without a lawyer. The mission remains the same: meaningful and timely access to court services. Justice Torres's forward-looking approach to the work of our courts, and especially his commitment to overseeing the daunting task of implementing the CMS overhaul, has left the Judiciary better poised to succeed, even in the face of undeniable challenges.

Please join me in applauding Justice Torres and thanking him for his leadership.

Hand-in-hand with our CMS upgrade is the improvements made by our Management Information Systems division. One notable improvement deals with inter-agency communications, thanks in part to the Criminal Justice Automation Committee, chaired by Justice Torres. By the end of 2011, the current Criminal Justice Information System will be enhanced to integrate criminal databases of the Judiciary, Attorney General, Department of Corrections, Guam Police Department, and Department of Revenue and Taxation. Ultimately, our local system will stand alongside the federal criminal integration center, and our Federal Fusion Center. I am proud of the Judiciary's leadership in this respect, which has brought about these improvements in communications for law enforcement purposes.

Adjudicative and Therapeutic Services

When everyday citizens think of our courts, they probably conjure up the classic images of the courtroom: black-robed judges, suited attorneys, and defendants anxiously awaiting verdicts. In short, crime and punishment. However, the Judiciary is not simply adjudicative in function. Indeed, courts across the country, ours included, have evolved over time to include many more functions outside formal adjudication. We are also tasked with addressing the underlying problems that lead people to court in the first place – addiction, drug abuse, family violence, mental health. One of the most challenging missions of the Judiciary is to provide therapeutic services to defendants, as well as family members and victims. Many people cannot find the therapeutic support needed to heal themselves and their families when something goes so terribly wrong that they end up in court. There are few resources on-island to assist individuals when they face the trauma of family violence, drug addiction, income loss, or other life crises.

Because our cases rarely involve a single harm or problem, the Judiciary has had to create services to assist individuals affected by various sorts of judicial involvement. Often, these services are fashioned out of the imaginations and hearts of the professionals at the Client Services and Family Counseling Division. This division is composed of highly trained counselors who are dedicated to helping perpetrators and their families. Between Client Services and Probation, the Judiciary provides daily assistance to drug addicts and theft victims alike, through a complex array of services such as individual and family counseling, group counseling, couples/conciliation, and in-house consultation.

In addition to these, the Judiciary obtained a federal grant last year to enhance Guam's Domestic Violence Court under Presiding Judge Alberto Lamorena. With this, the Judiciary now has created a position for a family violence coordinator whose sole mission is to improve court functions and services for victims of domestic violence and their families.

In 2010, the Judiciary also expanded its therapeutic reach by adding yet another specialty court, known as the DWI Court, for offenses involving Driving While Intoxicated. This court is intended to address the severe backlog in the prosecution of these cases. Under

this new docket, DWI cases will be more effectively and expeditiously prosecuted. Consequences for the crime will be more immediate and, therefore, a violator will be more apt to associate the intoxicated driving with the punishment, creating a deterrent effect and preventing recidivism. This pilot treatment court, which is the result of the vision of Presiding Judge Lamorena and is presided over by Judge Elizabeth Barrett-Anderson, will continue throughout 2011. Already, the benefits of the program are evident from only the first few months of operation. Of notable significance is that cases are now coming to resolution within 90-120 days of arraignment instead of dragging on for months, and sometimes years.

We are also committed to being a cooperative community partner. In addition to providing the basic monitoring services for defendants on probation, our Probation Services Division provides an invaluable service to the community through its Alternative Sentencing Office and the community service workers who participate in the program. Non-profit organizations as well as government agencies participate in the program, engaging these workers in island beautification events, beach cleanups, sporting events and community activities. Lt. Governor Tenorio knows firsthand the value of this program since he uses these workers for his Beautification Task Force. Last year, the Probation Office supervised nearly 3,000 offender participants, which translates into almost 300,000 hours of community service work – with the dollar equivalent of over 1.5 million dollars.

Throughout all this, two of the Judiciary satellite offices continue to provide quiet but critical services to the people of Guam: This past year, the Office of the Compiler of Laws created more forms to enhance the utility of the kiosks for self-represented litigants. And the Office of the Public Guardian continues to step up and take over when no one else can, providing life skills for referred individuals, as well as advice and assistance to private guardians or those seeking appointment. The Public Guardian with her staff of four is now overseeing a record number of wards.

These are the kinds of services that are invisible to the average citizen. But the simple act of making justice more accessible for a self-represented litigant, or providing guardian services when needed, make daily life easier for all of Guam. Our promise of justice includes these hidden heroes, who provide services that enhance the quality of life for all our residents.

The Judiciary also plays a vital role in promoting the understanding of our legal system by continuing to implement law-related education programs for our youth. This year, the Judiciary in partnership with the Department of Education will implement a bullying prevention program to address one of the most serious problems in our island's schools and communities. I want to thank Joleen Respicio for her passion and energy in initiating and leading this program. The Judiciary is also committed to educating our community by providing outreach programs held during Law Week and throughout the year. Our hope is that the more the community understands about the work we do and the services we provide, the more they will respect the rule of law.

And we are not just partners with the community in terms of education and outreach. We are partners as well in undertaking the austerity measures that our fiscal circumstances require. When our entire island is coping with a depressed economy, there are certain things that we should all be doing – especially those of us who must account to the taxpayers for how we spend their money. And even in the best of economies, any step toward a more eco-friendly operation is a step in the right direction. Whether our goal is austerity, going green, or a combination of both, the Judiciary continues to implement practices that are less wasteful of our limited resources, be they financial or environmental.

In 2010, we underwent an Energy Audit Report of the Judiciary Facilities, resulting in the initiation of many energy-efficient projects, such as new energy-saving light fixtures. Our elevators will be modernized and our air conditioning system will continue to be environmentally friendly and operate at a controlled temperature setting to reduce energy costs. And court-wide, we continue to function on a paper-on-demand basis. Once the new Case Management System is in place, e-filing will be a more user-friendly, reliable, and attractive option for attorneys and self-represented litigants. Less paper to buy; less storage space; less waste.

While these may seem like small and inconsequential undertakings, they are part of what I as Chief Justice am trying to instill in this branch, something I spoke about at the start of this address; that is, a return to the “small,” to the deceptively simple “stuff” of living within our means and conserving resources anywhere and everywhere we can. To go about our business any other way – especially when our governmental resources are on the brink of depletion – would be irresponsible.

But in the end, saying that our economy is in a slump is like saying that the sky is blue: it is merely stating the obvious. We know that there will not be enough funds to pay for all of GovGuam’s needs, and we are realistic about the fact that funds will be given according to what those in power see as priorities. We know the Judiciary’s priorities may never be fully shared by the governor or the senators. For as long as there is something out there that our elected leaders find more important or more pressing – and there is good reason to believe there always will be – the Judiciary, to put it bluntly, will continue to be short-changed.

We understand we have a problem. So what do we do? Perhaps it is time to consider other options.

An Alternative Funding Structure

I spoke earlier in my mini civics lesson about the three separate but co-equal branches of government that is the promise of American democracy. But such was not always the case with Guam. The Organic Act of Guam, which serves as our constitutional document, did not always provide for a judicial branch. Indeed, while the Organic Act established the legislative and executive branches, it vested the Legislature with the power to both create and abolish the judicial branch.

In 2002, I delivered the State of the Judiciary Address on behalf of my colleague, former Chief Justice Peter C. Siguenza. In that address, I conveyed the dangers of the system as it was, which left the Judiciary vulnerable to the political whims of elected leaders. The amendment we proposed to Congress established Guam's Judiciary as an independent, co-equal branch of government. The proposal was met with mixed reviews, to say the least. It was criticized by many, staunchly opposed by some, even laughed at by others. Few believed we would succeed in our efforts. But in the end, the United States Congress heard us and amended the Organic Act.

I share this today not to tout this successful endeavor but to suggest that maybe it is time to provide within our de facto constitution, the Guam Organic Act, a reliable funding structure for the Judiciary. I have tried in the past to compare the services the Judiciary provides to basic essential infrastructure, like power, water, and roads, in an effort to emphasize that the Judiciary is similarly essential to maintaining law and order in our island – and should be prioritized accordingly. Unfortunately, analogies are not enough. And I cannot begin to describe the danger that a gaunt Judiciary portends. Where justice fails, so too does governance and the democratic enterprise. We cannot allow that to happen. This is why I am proposing an amendment to the Organic Act. It is my deep conviction as a jurist that this is not a step in *defiance* of government, but rather, it is a step in *defense* of it.

I am not naïve. I know that this is not something that can happen overnight. Indeed, this may not even happen during my judicial career. But we need to recognize it as an option and engage in serious discussion, or even debate, about its viability as an alternative to the status quo.

Conclusion

Ladies and gentlemen: While I am proud of the positive contributions made by the Judiciary in spite of our financial challenges, I cannot help but see a situation for what it is. These are serious times and if we are going to survive them – and by *we* I mean all of us – we are going to have to be attentive guardians of our individual branches. I trust that the Judiciary's self-imposed austerity measures, as well as our consideration for possible shortened work weeks in the near future, convey how serious your third branch of government is in being a watchful keeper of its own corner.

Moreover, I hope these examples illustrate our commitment as a co-equal partner to share in the responsibility of dealing with the current economic situation. Be assured that we recognize the enormous task our elected leaders face in trying to allocate GovGuam's frighteningly limited finances. We are hopeful, however, that the measures we have taken thus far not only demonstrate that we are partners with you in this crisis, but also convince you that we need your support to prioritize the Judiciary on equal footing with the operations of the legislature and the office of the governor.

Finally, I must also emphasize that the steps we have taken thus far to meet that responsibility cannot be sustained without dramatic consequences to our mission and, most importantly, to our citizens.

I would like to close with a quote from the current Chief Justice of Utah. Speaking of the cardinal role courts play in a democratic society, she said:

Courts are not perfect; they are human institutions subject to the frailties of all such institutions. But in our constitutional democracy Americans have placed in them our best hopes for preserving a system of justice and the rule of law. One needs only to try to imagine life in their absence . . . to understand how much we depend on them to preserve peace, order, safety, and the rights our constitutions and laws guarantee.

Our people too have placed in the Judiciary their best hopes for justice. We *owe* them a justice system that works. To make good on this debt, we must bring to the challenges at hand all the seriousness we have to bear. That – and a willingness to forsake, at least for a while, the big for the small . . . the dream for the details . . . the glamour for the grit.

Si Yu'os Ma'ase.