

**2014 State of the Judiciary Address**  
**Delivered By**  
**The Honorable Robert J. Torres**  
**Chief Justice of Guam**  
**May 1, 2014**

**Introductory Thoughts**

On behalf of my colleagues on the bench and all our court employees, I would like to extend un Dangkolu na Si Yu'os Ma'ase to the Legislature – not only for hosting this event, but for allowing me to deliver my address in the evening, which enabled more of our court employees to attend, and which will hopefully allow more of the people of Guam to tune in and listen.

To Speaker Judith Won Pat, Vice Speaker and retired Chief Justice B.J. Cruz, our oversight chairman, Senator Frank Aguon, and all the senators, I would like to express at the outset that our work together has brought real advances to the delivery of justice. And I want to especially thank you for your unanimous support for Bill 244, now Public Law 32-147, which lapsed into law this week and appropriates funds to help stabilize Judiciary revenues after implementation of the COPPS Act. Our dialogue really matters, and we function best as a government when we communicate closely with each other and apply ourselves cooperatively to the tasks at hand.

It has been nearly six years since I stood before you during my first term as chief justice. In the time since, your support of our branch has helped bring many positive changes to our justice system. We now have a computerized case management system that has revolutionized access to court files, therapeutic courts that have allowed countless people struggling with addiction and mental health issues to return to law abiding and healthier lives, and a Northern Court Satellite that provides convenience and increased access to court users. These changes, and many others like them, have reshaped our Judiciary in a manner that has served our island well. And we couldn't have made any of them without your cooperation. Si Yu'os Ma'ase.

The State of the Judiciary Address presents a welcome opportunity to highlight both the achievements of our branch and the challenges it faces. In recent years, the addresses have tended to focus on the financial constraints of our branch, and the need for additional resources

to fulfill our constitutional mandates. But while I cannot avoid the topic of money altogether – we are, after all, in the midst of our budget season – I’d like instead to spend most of my time tonight focusing on how we are seizing opportunities to improve the way we do business.

But before I get in to that, I just want to take a moment to specially recognize someone in our audience . . . an esteemed lawyer who has been in the active practice of law for more than 60 years . . . who served as Senator in the Third and Fourth Guam Legislatures, and who led this branch as Speaker in the Ninth and Tenth Guam Legislatures. Ladies and Gentlemen, the 2014 recipient of the Hustisia Award, Attorney Joaquin C. Arriola.

### **Individualized Justice**

The core mission of our branch is to administer justice. We do this, primarily, by adjudicating cases in a way that is fair, impartial, transparent, prompt, and respectful of the participants. But our role is not confined to deciding cases. Over the years, we have been given additional duties as well. We now play a role in addressing the problems that underlie those disputes, and in helping to alleviate their human impact. So whether it's supervising defendants on probation so they stay off drugs, or providing counseling for victims, or offering litigants the opportunity to resolve their disagreements through alternative dispute resolution, or giving juvenile and adult drug offenders a chance to get their lives in order, the Judiciary is continually being asked to do much beyond simply deciding cases.

There is a common thread running through these broadened expectations: that our citizens want to be treated fairly and they want a justice system that works for them. I am proud of our Judiciary and the efforts we have made, together with our community partners, to optimize the way our court functions. And with an increased future focus on individualized justice, we will accomplish even more.

Our criminal justice system is inundated with repeat offenders. Imagine that one in every 25 people in Guam is on community supervision. All you need to do is look at the headlines on any given day to see that crime is on the rise – murder, stabbings, criminal sexual conduct, burglaries, armed robberies, home invasions. Of equal concern is the cyclical life of crime, as

evidenced by the overcrowding of Guam's only prison, the growing number of defendants on pretrial status, and the increase in the number of juvenile offenders who become career adult criminals. It is an alarming reality. And it has become clear that traditional approaches of criminal justice are just not enough.

Our goal has to be to treat the source of what leads people into the justice system rather than to just punish the criminal conduct, but that is not as easy as it might sound. Not all people and all cases are alike. The approach of "individualized justice" demands a concerted and committed effort, and requires more time spent by our judges in the courtroom, by our counselors, and by our probation officers. Yet the bottom line reveals that focusing on the individual produces superior results and will make our island safer.

When United States Attorney General Eric Holder issued the new Department of Justice Policy on Charging and Sentencing, he commented that equal justice depends on individualized justice, and smart law enforcement demands it. Decisions regarding charging, plea agreements, and advocacy at sentencing must be made on the merits of each case, taking into account an individualized assessment of the defendant's conduct and criminal history, the circumstances relating to commission of the offense, the impact of the crime on victims, as well as the needs of the communities we serve, and our resources and priorities.

One of the weaknesses in Guam's criminal justice system has been reliance on outdated assessment tools to evaluate individuals. With advances in sociology and criminology, it is possible to assess the risk involved with criminal offenders with far more precision. Some offenders are so risky that a prison cell is the only right sentence, while others may respond well to local alternatives. Making sound decisions based on these risk assessments and evidence-based practices makes all the difference for public safety, recidivism rates, employability of offenders, and the dollars spent on the correctional system.

The Judiciary has taken some proactive steps to improve our assessment and sentencing practices and management of offenders, using evidence-based sentencing principles. We recently sponsored training and technical assistance to improve sex offender sentencing and management

with help from the Bureau of Justice Assistance and the Center for Sex Offender Management. Three experts came to Guam to collaborate with members of the Judiciary and local stakeholders from the Department of Corrections, Parole Board, Department of Public Health and Social Services, the Guam Behavioral Health and Wellness Center, Office of the Attorney General, Department of Youth Affairs, Public Defender Services Corporation, and the Guam Bar Association.

We also obtained grant money to send a four-member team to an evidence-based sentencing workshop entitled Smarter Sentencing to Reduce Recidivism, which was sponsored by the National Center for State Court's Center for Sentencing Initiatives.

While a good number of those confined at DOC are violent offenders and should be incarcerated to protect the public and deter others from committing similar crimes, there are those whose crimes may not warrant lengthy incarceration, especially given our resources and priorities. Judiciary staff and stakeholders must look at utilizing new, more reliable tools to help evaluate who needs to go to prison and who probably does not. Our judges recognize the importance of their gate-keeping function, and they need these risk assessment tools to improve their sentencing practices, understanding its impact on public safety.

Aside from sentencing considerations, risk assessment and evidence-based data are critical to establishing proper probation, parole, and pretrial conditions. The traditional methods of supervision and standard conditions of probation and parole are often unrealistic, deplete resources, and waste manpower hours that could otherwise be spent on high-risk offenders.

As part of our effort to advance the concept of individualized justice and improve sentencing, the Judiciary applied for a community supervision grant to transform the criminal justice system's response to recidivism. By using data for evidence-based sentencing to determine risk levels of probationers and parolees, and by implementing best practices in the treatment and education of these individuals, we will better reform the offender, and better serve our network of stakeholders and the community as a whole. We are very hopeful that this program will soon receive a notice of funding. The broader benefits to be realized from its implementation will be

real and tangible: lowered recidivism which will relieve all affected agencies and our community from the dangers and the costs of repeat criminal offenses.

Judges can and should use their power to sentence juvenile and adult offenders in a way that significantly reduces the likelihood that they will again cause harm. This power, the power “to fix people rather than fill prisons,” is a concept that is catching fire in criminal justice systems throughout the country, and it is my goal to see this concept grow in our local courts.

### **Juvenile Justice Reform**

The realm of juvenile justice, specifically, presents us with arguably the greatest opportunity to really change lives and reverse the increasing crime rate in our island home. We stand at a crossroads in juvenile justice history, and the Judiciary wants to proceed with reform in our heart. What does a judge do with a chronic runaway girl who comes before her with untreated mental health problems and a history of being sexually exploited? What does a judge do with the boy who is repeatedly charged with shoplifting, but comes from a dysfunctional family? Most juvenile judges say they do not want to send these children to DYA. Yet, due to the lack of community resources and concerns for the children’s safety, they often feel they have no alternative. It is indeed shameful that, without available resources, detention becomes a default. As the saying goes, sometimes the hammer is the only tool in the toolbox, and that is unfortunate – particularly when young lives are at stake.

The research shows that our reliance on incarceration for young people does not reduce their likelihood of reoffending. Indeed, it may just do the opposite, exposing low-risk youth to violence and abuse, and putting some on the path to adult criminality. I believe that the percentage of adult offenders with prior juvenile records is further proof that the current practices simply do not work.

At the same time, we have evidence of what does work: community-based programs that offer mental health and substance abuse treatment, anger management programs, family counseling, education and employment programs, and probation supervision. Our juvenile courts can

succeed in handling troubled youth who have not yet committed serious crimes when we make sure these resources are available, and when we can intervene before it's too late.

I will soon be leading a Guam team, which will participate in a Juvenile Justice Reform Summit developed by an advisory committee of national leaders in state courts and funded by the MacArthur Foundation. The summit will consist of a dynamic mixture of sessions designed to enable participants to share ideas and devise specific plans for improving the handling of juvenile cases in our respective jurisdictions.

Our court shares in the national goal of developing successful, practical, and feasible models of system-wide reform – a reform effort that will strengthen the juvenile justice system by focusing on a variety of ways to reduce reliance on detention. Next week, we will also be hosting the Pacific Judicial Council Juvenile Justice Conference. Judicial officers and staff from Guam and throughout the Pacific, including our special guest, Chief Justice Maria Lourdes Sereno of the Philippines, will take part in this four-day conference. A distinguished panel of speakers will touch on important topics related to dealing with youth in the justice system, ranging from the science of the juvenile brain, to cultural diversity issues, to best practices, to counseling strategies for juvenile offenders.

Additionally, we plan to play an expanded and leading role in the Law Revision Commission on Juvenile Justice. The Commission reviews statutes, policies, and procedures that relate to juvenile justice, and includes representatives from the Department of Youth Affairs, Department of Education, Guam Legislature, Guam Police Department, Department of Public Health and Social Services, and Guam Behavioral Health and Wellness Center. The Commission will need to embrace the changing philosophy in juvenile justice reform, which focuses on rehabilitation rather than punishment, to ensure that the changes it makes and the legislation it recommends are both meaningful and practical. I am personally committed to making a difference in juvenile justice reform and to making sure the Commission's valuable work succeeds. Quite simply, our island's future, through the lives of our children, hangs in the balance.

### **Expanded Duties and Services**

In keeping with the goal of restorative justice, the Judiciary is in the planning stages of a new specialty court, the Veterans Treatment Court, or VTC, which focuses on rehabilitation and treatment, rather than incarceration. Created specifically to help veterans who have been charged with a criminal offense, the VTC recognizes that this discrete group of offenders is special – they are our active duty and citizen soldiers who, having returned from deployment in Iraq, Afghanistan, and other combat theaters, struggle with post-traumatic stress, brain trauma, anxiety, depression, chemical dependency, and unemployment as they re-acclimate to civilian life – sometimes with great difficulty. Eligible veterans who meet certain clinical and legal criteria will receive services and intensive supervision through a collaborative effort that involves prosecutors, defense attorneys, treatment providers, veterans benefit service providers, and court staff, as well as peer mentors who share similar military service experiences.

We are once again celebrating Law Week, and this year’s theme is “American Democracy and the Rule of Law: Why Every Vote Matters.” The right to vote has indisputably been recognized as an absolute and fundamental right – a right that those in our armed forces are willing to pay the ultimate price to defend. But even though they may survive the perils of war, they often return carrying an unimaginable burden that can manifest in criminal behavior.

Recently, Guam welcomed home more than 600 of our soldiers. These sons and daughters of Guam make immeasurable sacrifices in defending our freedom, and it is necessary that we recognize the impact of war on the physical and mental health of these special citizens and, through restorative justice, provide them with the treatment and assistance they deserve.

We are working in conjunction with the Veterans Affairs Community Based Outpatient Clinic, the Guam Vet Center, Veterans Affairs Office, Guam Behavioral Health and Wellness Center, Veterans Affairs Benefits Office, and the Legislature, with the goal of establishing the VTC by early 2015. I am very proud that, in this small way, the Judiciary can give back to those who have given so much.

## **Serving the Underprivileged**

Yet with everything we already do to help serve some of the most vulnerable in our community, there is still a “justice gap” that we alone cannot fill – and in that gap are those who may have minor legal issues, but who cannot qualify for legal assistance or afford to hire a lawyer.

The idea of finding ways for non-lawyers to help pro se litigants is one that has only begun to emerge in the United States. I’ve heard it analogized to going to the clinic and being seen by a nurse practitioner or physician assistant for minor, run-of-the-mill ailments instead of incurring the time and expense of seeing a doctor. This arrangement has taken hold elsewhere in the common-law world, with great positive effects.

Consequently, the Judiciary, in conjunction with the Guam Bar Association, would like to collaborate with the University of Guam and the Guam Community College to explore establishing a framework for the certification, licensing, and regulation of Limited License Legal Technicians to engage in very discrete, limited scope activities involving small claims, family law, and real estate related problems. Clearly, there are many tasks that only a lawyer is authorized, and should be authorized, to do. There is no substitute for legal representation, and Limited License Legal Technicians are not lawyers and would be prohibited from engaging in most activities that lawyers have been trained to provide.

Nevertheless, we must acknowledge that there is a vast pool of people with certain legal problems who need assistance. Legal offices, such as Guam Legal Services – especially with their recent budget cuts – simply do not have the ability to serve the majority of those who need but cannot afford legal help.

The establishment of a Limited License Legal Technician program holds the promise of narrowing the justice gap for low and moderate income people who have relatively uncomplicated small claims, family law, and real estate issues. In these cases, some level of individualized advice, support, and guidance would facilitate a timely and effective outcome.

### **Language Access**

Another critical part of access to justice is ensuring that the needs of individuals with limited English skills are met. Legal proceedings, with their technical language and complex processes, are confusing enough, even when English is your primary language. But imagine walking into a high stakes situation where you speak little or no English. These people come before our courts as victims, witnesses, defendants, and parents of juveniles. Not only is it important that they be heard, but it is equally important that judges, attorneys, and jurors understand the testimony and arguments of non-English speakers so that justice can be served. As Guam's population increases in both number and ethnic diversity, the need for interpreters is exploding. Our response to this need has been the creation of the Court Interpreter Registry Program.

With a full-time staffer dedicated to coordinating requests for interpreters, scheduling appearances, and overseeing the program, the registry of interpreters now includes 38 contracted interpreters in 15 languages and dialects, including American Sign Language.

Those operating our Court Interpreter Registry Program have been working with other agencies to expand and develop our pool of interpreters, and we plan to develop an interpreter certification program in collaboration with GCC to begin this summer or fall. The trained interpreters would not only service the legal needs of the Judiciary, but are going to be available to all agencies in need of interpreter services.

### **Maximizing Use of Technology**

If there is an area where the Judiciary has proven itself capable of identifying an opportunity or a problem, devising a plan to address it, and executing on the plan, it is technology.

In December 2013, the Judiciary launched E-Payments. Now, traffic and parking citations can be paid online, as can court-ordered fines and fees in criminal cases involving DUI offenses. This year, the E-Payments function will be expanded to allow for online payment of court and traffic clearances, Guam bar dues for attorneys, and bar exam application fees. Later this year, we will launch a new E-Filing and electronic public access system, with implementation beginning in the Supreme Court, followed by the Superior Court. These online

services will offer convenience to our clientele and are part of our ongoing efforts to increase access to justice.

But there are even more money-saving and productivity-increasing technology projects on the horizon. In the coming weeks, the court calendars posted outside each courtroom will no longer be printed on paper. Attorneys and court patrons will have the benefit of viewing digital court calendars on monitors that will be placed outside the courtrooms as well as by the Clerk's Office. This is a change that will not only save time and money, but just as importantly, the environment.

For years, we have facilitated video conferencing with the DOC, and authorized video and telephonic appearances for court hearings when appropriate. But we can further capitalize on this type of technology. Our videoconferencing subcommittee is finalizing amendments to the current rules, so that we can expand the use of videoconferencing for courtroom proceedings when the personal presence of a party or witness is not essential to a fair disposition of the issues at hand. This will mean fewer detainees being transported to the court, increased courtroom safety, and lower travel and court costs for parties faced with the task of producing off- island experts or witnesses.

And in response not just to the need for a more convenient process, but also to alleviate overcrowded parking lots, we continue to streamline and modernize our jury service and selection process, such as by maximizing use of online jury questionnaires and bar codes for juror identification. Our goal is to make the overall jury process less burdensome and time-consuming.

### **Security and Safety**

With the expanded use of technology in the court system and our innovations for the future, however, comes the dark side of technology – a world where cybercriminals grow more savvy and sophisticated. These cybercriminals are seeking to disrupt court operations and steal court patrons' personal and financial information. These ever evolving cyber security threats require continual investment in software maintenance, vendor support, and network security design to

protect our judicial data. The cost to secure our system and data remains a challenge because previous levels of federal resources are no longer available, leaving us vulnerable to potential targeted cybercrime if we don't plan and stay ahead of it.

Security and safety are important, not just for our systems and data, but also for all who work in and visit our courthouse. Courts are seen as important symbolic targets for those wishing to wreak havoc or express discontent. Each day, disgruntled and even law-breaking citizens walk through our doors. At any given time, people who are charged with violent crimes or who are engaged in intensely emotional situations are gathered together in one location. Courthouse violence, like cybercrime, is a recurring story on many news outlets. And like cyber security, courthouse security is a continuing challenge. Thankfully, there have been no tragic endings or major security breaches at our court so far, though we have had a couple close calls.

But we cannot afford to wait until tragedy strikes. We must ensure that we are adequately equipped to address the critical challenges we face in keeping our courthouses safe for the hundreds of people who come through our doors every day – attorneys, jurors, court employees, litigants, and members of the public. And the fact of the matter is, our facilities are aging. Next year, our main courthouse will turn 25 years old, and the buildings that house our Probation Division and the Office of the Public Guardian will turn 45. We will soon be competing for federal grant monies to repair the roof of our main courthouse, replace automatic transfer switches for generators and battery backups, and reinforce our facility.

To repair our old courthouse building, we are submitting a nomination to place the Former Island Court building on the Guam Register of Historic Places. We also recently applied for a technical assistance grant for courthouse security assessments to cover three aspects of security: architectural elements, equipment and technology, and personnel concerns. So I assure you, we are continually trying to get ahead of any potential threat by looking at alternative ways to meet our structural and security needs.

## **Budget**

As I said when I began this address, I wanted to focus on the advances the Judiciary has made in improving the way we do the business of administering justice – and I hope you have a better appreciation of our efforts. And while I did not want to focus on our financial constraints or the state of our island economy, it is an inescapable fact that our budget is ultimately what makes it possible for us to do the work we do. Now, I understand that there may be a bit of debate among our two sister branches as to the current financial condition of the government coffers, and I'll refrain from commenting on that specifically. However, in the spirit of the budget season, it is my responsibility as the head of this branch to remind you of the critical function of our courts, and the importance of funding the Judiciary.

You've heard it before – from my predecessors and even from me – that our courts are not just another agency line item in the GovGuam budget. We are the third branch of government, and the last refuge of democracy. I will not belabor this point much further, but will simply say this: Justice is something that should never be rationed. The costs of attempting to do so will be far higher in the long run than any savings that can be realized now.

Today, we submitted our budget request to the Legislature. You will see that our request has increased by \$3.9 Million. I assure you that this increase is not based on some wish list or “pie in the sky” hope. Indeed, nearly 60% of the additional funds we are requesting are needed to cover costs of our mandated personnel pay increases resulting from COPPS Act and Competitive Wage Act implementation. Much of the remaining increase is attributed to our need to reinforce our security – both physical security and the security of our electronic data. Federal and JBF funds that we previously utilized to fund our critical technical infrastructure needs are either no longer available or are now inadequate. Indeed, JBF revenues have decreased by more than 20% over the past three years, due to a marked reduction in the number of traffic citations issued.

I prevail upon the Legislature to provide us with the funding necessary to both pay our mandated obligations and to continue the reforms and improvements that we have begun. I assure you that as a continuing result of these reforms, our communities will be safer, the lives of juveniles and other offenders in our specialty courts will be turned around, and tax dollars will be saved by

helping to reduce recidivism, with even more savings in the future by implementing smarter sentencing tools. That is reform we should all get behind.

### **Concluding Thoughts**

Tonight, I have touched on a number of initiatives and activities that are underway in our judicial system, which reflect our continued commitment to providing a high level of judicial services for the people of our island. The role of the Judiciary has evolved substantially over the years – from simply deciding cases, to helping address the underlying problems and alleviate the impacts of those problems. We have embraced that broader role, and I believe that we are doing it well. In the midst of these changes, I ask you to reflect on the values of our system of government and the critical role the Judiciary plays in the lives of every citizen.

The people of Guam can truly be proud of the Judiciary’s ability to adapt and modernize. And this is just the beginning. The innovations and reforms we undertake – through individualized justice and risk assessments, therapeutic courts, juvenile justice reform, and heightened security practices – will shape the future of our island. The “state of the judiciary” is motivated and optimistic about the future, and we look forward to a productive and meaningful working relationship with the legislative and executive branches as we prepare to meet the changes we must all face together in the years ahead. Governor, Senators, ladies and gentleman . . . the people of Guam are better served when we come to the table and share ideas and concerns with as much information and as many perspectives as possible. We must recognize the need for the branches to work together to produce the well-functioning government that our people deserve. The genius of our form of government is that individually none of us could begin to achieve what, together, we can and will accomplish. To that end, I pledge my cooperation to make sure that the Guam we leave to our children and grandchildren is safer, better, and fairer for all.

Si Yu’os Ma’ase put i atension-miyu.