

REMARKS
by
The Honorable F. Philip Carbullido

Justice
Supreme Court of Guam

State of the Judiciary Address
Wednesday, May 1, 2002
Justice Monessa G. Lujan Appellate Courtroom
Hagåtña, Guam

JUDICIAL EMPLOYEES, CHIEF JUSTICE SIGUENZA, JUSTICE TYDINGCO-GATEWOOD, RETIRED JUSTICES, GOVERNOR GUTIERREZ, FIRST LADY GERI GUTIERREZ, LT. GOVERNOR BORDALLO, SPEAKER UNPINGCO, SENATORS OF THE 26TH GUAM LEGISLATURE, PRESIDING JUDGE LAMORENA, JUDGES OF THE SUPERIOR COURT, MAYOR'S COUNCIL PRESIDENT ROBERT LIZAMA, MAYORS, ARCHBISHOP APURON, GUAM BAR PRESIDENT JAY ARRIOLA, MEMBERS OF THE BAR, FRIENDS OF THE COURT AND FAMILY:

ON BEHALF OF THE ISLAND'S JUDICIARY, I WANT TO THANK AND WELCOME ALL OF YOU FOR TAKING TIME OUT TO BE HERE. I WANT TO ESPECIALLY RECOGNIZE THE STUDENT REPRESENTATIVES FROM EACH OF OUR HIGH SCHOOLS, WHO WERE SELECTED TO ATTEND OUR STATE OF JUDICIARY ADDRESS. [PLEASE STAND AND BE RECOGNIZED / APPLAUSE] I ALSO WANT TO CONGRATULATE THE WINNERS OF OUR LAW DAY ESSAY CONTEST.

I AM NOT SURE, HOWEVER, IF I SHOULD EXTEND THE SAME COURTESY AND GRATITUDE TO CHIEF JUSTICE SIGUENZA, CONSIDERING THAT HE HAS TASKED ME WITH THE UNENVIABLE DUTY OF DELIVERING THIS ADDRESS.

AT FIRST, I WAS HESITANT, SINCE HE IS, AFTER ALL, THE CHIEF JUSTICE, AND IT NORMALLY FALLS UPON HIM TO DELIVER THIS ANNUAL ADDRESS. HOWEVER, HE INFORMED TO ME THAT HE IS IN THE MIDST OF A PERSONAL AND PROFESSIONAL TRANSITION, AND WOULD LIKE TO PASS THE MANTLE OF LEADERSHIP. WHEN I SUGGESTED THAT HE SHOULD TAKE THE OPPORTUNITY TO GIVE A FINAL AND FAREWELL ADDRESS, HE, IN HIS UNIQUE STYLE, KINDLY, AND FLATLY DECLINED.

BUT CHIEF JUSTICE SIGUENZA DID OFFER A SIMPLE REMINDER - THAT THIS IS BEST RESERVED FOR SIMPLY ADDRESSING THE ISSUES FACING THE JUDICIAL BRANCH.

GIVEN THAT, MR. CHIEF JUSTICE, IN THIS ADDRESS, I WILL GIVE AN ACCOUNT TO THE PUBLIC ON THE STATE AND CONDITION OF OUR JUDICIARY. AND I WILL REPORT ON THE SUPREME COURT'S EFFORTS TO IMPROVE THE ADMINISTRATION OF JUSTICE, BY FOSTERING JUDICIAL UNIFICATION, AND ESTABLISHING JUDICIAL INDEPENDENCE.

FOR THE PAST 6 YEARS, THE JUDICIARY HAS BEEN IN A STATE OF FLUX. THE BRANCH HAS BEEN ENTANGLED IN A SERIES OF EVENTS, INVOLVING BOTH LEGISLATION AND LITIGATION.

IN 1993, THE GUAM LEGISLATURE PASSED THE FRANK G. LUJAN MEMORIAL ACT, AN INFORMED BODY OF LEGISLATION WHICH WAS THE PRODUCT OF NEARLY TWO DECADES OF THOUGHT AND EXPERIENCE BY WISE LAWMAKERS, PRACTITIONERS, AND THE PUBLIC. THIS ACT CREATED THE GUAM SUPREME COURT AND ESTABLISHED THE COURT AS THE ADMINISTRATIVE

HEAD OF THE ENTIRE JUDICIAL BRANCH. IN 1998, THE 24th GUAM LEGISLATURE INCLUDED A RIDER TO PUBLIC LAW 24-139, COMMONLY REFERRED TO AS THE "GARBAGE BILL." THE GARBAGE BILL STRIPPED THE SUPREME COURT OF ITS POWERS AS ADMINISTRATIVE HEAD, AND ALTERED THE COMPOSITION OF THE JUDICIAL COUNCIL.

SENATOR BEN PANGELINAN CHALLENGED THE GARBAGE BILL, ARGUING THAT THE BILL WAS NOT VALIDLY ENACTED, AND WAS THEREFORE OF NO LEGAL EFFECT. THE GUAM SUPREME COURT AGREED AND THE NINTH CIRCUIT COURT OF APPEALS AFFIRMED THIS COURT'S HOLDING THIS PAST JANUARY.

THE NINTH CIRCUIT'S DECISION RESTORES MOST OF THE PROVISIONS OF THE FRANK G. LUJAN MEMORIAL ACT; AS A RESULT, THE LANDSCAPE OF THE JUDICIARY IS ALMOST BACK TO WHERE IT ONCE WAS. AFTER SIX YEARS OF EXTERNAL POLITICAL AND LEGAL ACTIVITY, I MUST ACKNOWLEDGE THAT THE JUDICIARY IS STARTING FROM SQUARE ONE.

CHIEF JUSTICE SIGUENZA REPORTED IN 1998 THAT **"THIS BRANCH IS BROKEN."** ONE YEAR LATER, THEN-CHIEF JUSTICE BENJAMIN J.F. CRUZ SAID THAT **"THINGS HAVE GONE FROM BAD TO WORSE."** WITH GUARDED OPTIMISM, I SAY TODAY TO THE PUBLIC THAT DESPITE PAST OBSTACLES, **THE JUDICIARY IS IN A STATE OF RECOVERY.**

SINCE RECEIVING THE MANDATE FROM THE NINTH CIRCUIT COURT, WE, THE JUSTICES, JUDGES, AND COURT EMPLOYEES HAVE EMBARKED ON A MISSION TO UNIFY THE JUDICIARY. *SOME MAY ASK WHY THE SUPREME COURT HAS DEDICATED MUCH TIME AND EFFORT IN PURSUIT OF UNIFICATION.*

THE REASONS ARE SIMPLE AND LOGICAL. WE BELIEVE THAT UNIFICATION OF THE BRANCH IS NECESSARY TO RESCUE OUR COURT SYSTEM FROM IMMERSION IN POLITICS. WE BELIEVE THAT UNIFICATION OF THE BRANCH IS NECESSARY TO UPDATE AND ENSURE PROCEDURAL UNIFORMITY. WE BELIEVE THAT UNIFICATION OF THE BRANCH IS NECESSARY TO ENCOURAGE BETTER MANAGEMENT OF THE COURTS. IN SHORT, UNIFICATION WILL PROMOTE A MORE EFFICIENT AND UNIFORM ADMINISTRATION OF JUSTICE.

PRAGMATICALLY SPEAKING, AS COMPETITION FOR LIMITED FINANCIAL RESOURCES INTENSIFIES, WE BELIEVE THAT NOW IS THE TIME FOR THE ISLAND'S COURTS TO REVIEW OPERATIONS AND CURTAIL DUPLICATION AND WASTE.

MORE IMPORTANTLY, WITH THE RECENT COMPLETION OF THE LARGEST CIVIL CASE IN OUR ISLAND'S HISTORY, TO THE MANY CASES HEARD ON A DAILY BASIS, WE BELIEVE THAT IT IS IMPERATIVE THAT ISLAND RESIDENTS AND POTENTIAL INVESTORS HAVE FULL FAITH AND CONFIDENCE IN A COURT SYSTEM THAT IS NOT SUBJECT TO POLITICAL MANEUVERING.

IN OUR QUEST TO ACHIEVE THESE ENDS, THE SUPREME COURT HAS ALREADY TAKEN ACTION AND PLANS TO CONTINUE TO IMPLEMENT EFFORTS WHICH WILL CERTAINLY PRODUCE TANGIBLE RESULTS TOWARDS OUR GOAL OF UNIFICATION.

WE HAVE STARTED OUT BY ESTABLISHING A UNIFIED JUDICIARY COMMITTEE, WHICH WAS CONVENED LAST MONTH. PRESIDING JUDGE LAMORENA, JUDGE MARAMAN, AND THE SUPERIOR COURT ADMINISTRATOR HAVE JOINED THE SUPREME COURT JUSTICES AND EXECUTIVE OFFICER IN PARTICIPATING IN THIS GOVERNING BODY. I WOULD LIKE TO PERSONALLY THANK PRESIDING JUDGE LAMORENA FOR AGREEING TO ESTABLISH THE LINES OF COMMUNICATION FOR OUR COURTS TO WORK TOGETHER.

THE UNIFIED JUDICIARY COMMITTEE OR UJC IS TASKED WITH FORMULATING POLICIES AND RULES FOR THE OPERATIONS OF THE ENTIRE JUDICIAL BRANCH. WITH THIS DUTY IN MIND, THE UJC HAS REACTIVATED SEVERAL COMMITTEES WHICH WILL SERVE TO IMPROVE THE ADMINISTRATION OF JUSTICE AND DELIVERY OF SERVICES TO CLIENTS AND ATTORNEYS.

AT THE UJC'S FIRST MEETING, GUAM BAR PRESIDENT JAY ARRIOLA AND HIS LEGAL COLLEAGUES POINTED OUT THAT LOCAL ATTORNEYS CONTINUE TO REPRESENT INDIGENT DEFENDANTS, WITHOUT BEING COMPENSATED. THE LOCAL BAR EXPRESSED THAT IF THEY ARE NOT COMPENSATED FOR THEIR WORK AS ADVOCATES FOR INDIGENT DEFENDANTS, LOCAL ATTORNEYS MAY SOON BE FORCED TO WITHDRAW FROM THESE CASES ON THE BASIS OF FINANCIAL HARDSHIP. THIS GROUND FOR WITHDRAWAL IS SANCTIONED BY THE RULES OF PROFESSIONAL RESPONSIBILITY, BUT HAS AN OBVIOUS NEGATIVE EFFECT ON THE CONSTITUTIONAL RIGHTS OF INDIVIDUAL DEFENDANTS. AS A RESULT OF THESE CONCERNS, THE UJC HAS RECONVENED THE COMMITTEE ON INDIGENT DEFENSE, WHICH IS CO-CHAIRLED BY JUSTICE FRANCES TYDINGCO-GATEWOOD AND JUDGE MICHAEL BORDALLO. THE COMMITTEE WAS CONVENED FOR THE FIRST TIME IN SEVERAL YEARS, ON APRIL 9TH, FOR THE PURPOSE OF ADDRESSING PAYMENTS AND PROCEDURES FOR CONSTITUTIONALLY GRANTED COURT-APPOINTED REPRESENTATION.

THE PROBLEMS FACING COURT-APPOINTED ATTORNEYS ARE TWO-FOLD: FIRST, THERE IS A SUBSTANTIAL AMOUNT OF COMPENSATION THAT REMAINS OUTSTANDING. SECOND, WE EXPECT DECLINING RESOURCES TO THREATEN PAYMENTS THAT WILL BECOME DUE IN THE FUTURE. ONE OPTION TO ADDRESS THE FUNDING SHORTFALL WOULD BE TO UTILIZE A PORTION OF THE MONIES DEPOSITED INTO THE JUDICIAL BUILDING FUND. THIS OPTION WOULD, HOWEVER, REQUIRE AN AMENDMENT TO THE LEGISLATION GOVERNING USE OF THE FUND. THE COMMITTEE ON INDIGENT DEFENSE WILL CONTINUE TO MEET ON A REGULAR BASIS TO FORMULATE ALTERNATIVE PLANS TO ADDRESS THIS PROBLEM, TO DETERMINE THE FEASIBILITY OF OPTIONS, AND TO WORK ACTIVELY TO IMPLEMENT THE MOST VIABLE SOLUTION.

IN ADDITION TO THE COMMITTEE ON INDIGENT DEFENSE, THE UJC PLANS TO RECONVENE OTHER COMMITTEES SUCH AS THE COMMITTEE ON PROPOSED CRIMINAL JURY INSTRUCTIONS, THE COMMITTEE ON COURT CALENDARING, THE COMMITTEE ON CIVIL PROCEDURE AND APPELLATE RULE REVISIONS, THE JUDICIAL ETHICS COMMITTEE, AND THE COMMITTEE ON PUBLIC TRUST AND CONFIDENCE IN THE JUDICIARY.

EACH COMMITTEE EXISTED AND DEVELOPED WORK PRODUCT PRIOR TO BEING DERAILED BY LEGISLATION THAT ADVERSELY AFFECTED THE JUDICIARY. DESPITE THIS SETBACK, WE AT THE SUPREME COURT ARE VERY PLEASED TO BE AT THE FOREFRONT IN THE REVITALIZATION OF THESE COMMITTEES. WE ARE CONFIDENT THAT THEY WILL SOON RESUME IMPLEMENTING MANY OF THE IDEAS THAT HAVE BEEN GENERATED TO RESOLVE ISSUES CHALLENGING THE ENTIRE JUDICIAL SYSTEM.

IN ADDITION TO ITS DUTY TO DEVISE POLICIES AND RULES FOR THE JUDICIAL BRANCH, THE UJC IS EMPOWERED TO REVIEW THE BUDGET FOR THE ENTIRE BRANCH. THE UJC RECENTLY PASSED A RESOLUTION CALLING FOR BOTH THE SUPERIOR AND SUPREME COURTS TO JOINTLY SUBMIT THEIR BUDGET PROPOSALS FOR FISCAL YEAR 2003. REST ASSURED, WHEN THE PROPOSED BUDGETS ARE OFFICIALLY SUBMITTED, THE UJC WILL SCRUTINIZE THEM. WE WILL ENSURE THAT THEY REPRESENT THE MOST EFFICIENT MANNER OF SPENDING, CONSIDERING *BOTH* OPERATIONAL REQUIREMENTS AND FISCAL REALTIES. THE UJC WILL CONTINUE TO ENSURE

ACCOUNTABILITY FOR LEGISLATIVE APPROPRIATIONS. WITH REGARD TO THE BUDGET PROCESS, I WILL SAY THAT THE SUPERIOR COURT JUDGES SHOULD HAVE MORE INPUT IN THE PREPARATION OF THE SUPERIOR COURT BUDGET AND SHOULD BE ALLOWED TO HIRE THEIR OWN STAFF AND OPERATE THEIR OWN BUDGET. SUCH A PROPOSAL WILL INSURE EXPENDITURES WHICH ACCURATELY REFLECT THE INDIVIDUAL JUDGE'S CASELOAD AND RESOURCE REQUIREMENTS.

IN ADDITION TO PURSUING THE GOALS OF THE UJC, I MUST NOTE THAT THE COMPOSITION OF THE JUDICIAL COUNCIL HAS BEEN RESTORED AS A RESULT OF THE RECENT NINTH CIRCUIT DECISION. NOW THAT THE SUPREME COURT JUSTICES SIT ON THE COUNCIL, WE WILL ACTIVELY DO OUR PART TO ADDRESS THE COUNCIL'S RESPONSIBILITIES OVER THE JUDICIAL BUILDING FUND AND PERSONNEL ADMINISTRATION.

THE JUDICIAL BUILDING FUND WAS CREATED AS A RESULT OF AN \$11 MILLION DOLLAR LOAN THAT WAS TAKEN OUT IN 1989 FOR THE CONSTRUCTION OF THE JUDICIAL BUILDING CENTER. THE JUDICIAL COUNCIL IS AUTHORIZED TO USE THE MONIES DEPOSITED ANNUALLY INTO THE FUND TO PAY THE BALANCE OF THE LOAN AND FOR OTHER PURPOSES RELATED TO THE BUILDING. THUS FAR, WE HAVE REVIEWED THE DATA AND INFORMATION RELATING TO THE JUDICIAL BUILDING FUND, AND HAVE FORMULATED SEVERAL SOUND IDEAS IN REFERENCE TO THE CONCERNS ADVANCED BY SENATOR EDDIE CALVO, THE ADMINISTRATION, AND POLICE DEPARTMENT OFFICIALS REGARDING THE UTILIZATION OF MONIES COLLECTED FROM FEES AND FINES.

PRESENTLY, THE COURT HAS A LOAN BALANCE OF APPROXIMATELY \$6.5 MILLION DOLLARS FROM THE ORIGINAL \$11 MILLION DOLLAR LOAN. AS A FORTY-YEAR LOAN WITH A FIXED INTEREST RATE OF 7.75%, IF WE CONTINUE MAKING THE MINIMUM REQUIRED PAYMENTS ANNUALLY, WHICH APPROXIMATES \$1 MILLION DOLLARS PER YEAR. WE HAVE CALCULATED AN AMORTIZED BILL OF \$45 MILLION DOLLARS.

OUR RESEARCH INDICATES THAT THE FEES AND FINES COLLECTED HAVE HISTORICALLY AVERAGED TWO TO TWO AND ONE HALF MILLION DOLLARS ANNUALLY. BANK STATEMENTS INDICATE THAT AS OF FEBRUARY OF THIS YEAR, THERE IS A BALANCE OF AROUND \$4 MILLION DOLLARS. THIS IS AFTER A CASH PAYDOWN OF \$3 MILLION DOLLARS ON THE LOAN AT THE END OF FISCAL YEAR 2000.

WITH THESE FIGURES IN HAND, WE PROPOSE TWO OPTIONS FOR CONSIDERATION.

THE FIRST OPTION IS TO ACCELERATE REDUCTION OF THE LOAN BALANCE UNDER ITS CURRENT TERMS. UNDER THIS OPTION, THE LOAN CAN BE PAID OFF IN TWO TO THREE YEARS, INSTEAD OF ANOTHER TWENTY SEVEN. THEREAFTER, THE ANNUAL REVENUE STREAM OF APPROXIMATELY \$2.5 MILLION DOLLARS CAN BE EAR-MARKED FOR THE JUDICIARY. THE JUDICIAL BRANCH WILL THEN BE LESS RELIANT ON THE GENERAL FUND.

THE SECOND OPTION WE PROPOSE IS TO RE-NEGOTIATE THE EXISTING LOAN AT THE CURRENT MARKET INTEREST RATE. IF DONE, THE ANNUAL DEBT SERVICE WILL BE REDUCED FROM NEARLY \$1 MILLION DOLLARS TO ABOUT \$400,000 DOLLARS. THIS WILL RESULT IN A SAVINGS OF ABOUT \$600,000 DOLLARS PER YEAR. IF YOU ADD THE \$4 MILLION DOLLARS CURRENTLY IN THE FUND TO THE ANNUAL REVENUE STREAM OF APPROXIMATELY \$2.5 MILLION DOLLARS AND SUBTRACT THE REDUCED ANNUAL DEBT SERVICE OF \$400,000 DOLLARS, THIS GIVES YOU A CASH AVAILABILITY OF APPROXIMATELY \$6.1 MILLION DOLLARS. THIS SUM CAN BE DIRECTLY APPROPRIATED TO THE JUDICIARY, THEREBY FREEING UP THE SAME AMOUNT FROM THE GENERAL FUND. THIS \$6.1 MILLION DOLLAR SAVINGS CAN THEN BE APPROPRIATED BY THE

LEGISLATURE TO THE GUAM POLICE DEPARTMENT OR FOR OTHER HEALTH AND SAFETY PURPOSES. THE IMPLEMENTATION OF ANY OF THESE PLANS WILL ALSO FREE UP FUNDS FOR JUDICIALLY MANDATED PROGRAMS SUCH AS REHABILITATION, APPOINTED COUNSEL FEES, OR PUBLIC SAFETY PROGRAMS. AS THIS ISSUE IS OF UTMOST IMPORTANCE TO THE PUBLIC, THE JUDICIAL COUNCIL WILL SOON BE ACTING ACCORDINGLY AND IT WILL BE REFLECTED IN THE UPCOMING BUDGET CYCLE.

IN ADDITION TO THE JUDICIAL COUNCIL'S OVERSIGHT OF THE BUILDING FUND, THE COUNCIL IS ALSO RESPONSIBLE FOR PERSONNEL ISSUES. WITH RESPECT TO PERSONNEL ISSUES, THE SUPREME COURT, AS REPRESENTATIVES OF BOTH THE UJC AND THE JUDICIAL COUNCIL, HAS MET WITH THE EMPLOYEES OF THE COURT. I WOULD LIKE TO PERSONALLY THANK MS. ROSEANNE CASTRO, THE PRESIDENT OF THE EMPLOYEES ASSOCIATION, FOR FACILITATING OUR MEETING WITH THE SUPERIOR COURT EMPLOYEES. WE HAVE BEEN RECEIVED WARMLY AND ENTHUSIASTICALLY AND HAVE BEEN PRESENTED WITH SUGGESTIONS ON HOW TO CONTINUE IMPROVING THE INTERNAL COURT SYSTEM. SUCH OPEN DIALOGUE HAS BEEN VERY INSIGHTFUL AND WILL YIELD POSITIVE RESULTS. THESE EMPLOYEES ARE AT THE FRONT LINES WORKING DAY IN AND DAY OUT. THEIR VIEWS AND EXPERIENCES ARE INVALUABLE.

AT THIS POINT, I WOULD LIKE TO BRIEFLY RECOUNT EFFORTS BEING MADE IN THE SUPERIOR COURT TOWARDS IMPROVING OPERATIONS. IN RESPONSE TO MY REQUEST FOR INFORMATION, THE PRESIDING JUDGE HIGHLIGHTED THE FOLLOWING:

IN THE **COURTS AND MINISTERIAL DIVISION**, THE "TEAM CHAMBERS" APPROACH HAS PROVEN TO BE SUCCESSFUL IN STREAMLINING CASE-FLOW MANAGEMENT FROM THE INITIAL CASE FILING TO FINAL DISPOSITION.

IN THE **PROBATION DIVISION**, THE EMPLOYEES HAVE NOT ONLY BEEN SUCCESSFUL IN ATTENDING TO THEIR REGULAR DUTIES OF SUPERVISION AND MONITORING, THEY HAVE ALSO LAUNCHED NUMEROUS PROGRAMS TO ENSURE THE SUCCESSFUL REHABILITATION OF DEFENDANTS.

IN THE **CLIENT SERVICES AND FAMILY COUNSELING DIVISION**, THE THERAPISTS AND PSYCHOLOGISTS ASSIGNED TO THIS DIVISION OFFER NOT ONLY FORENSIC AND PSYCHOLOGICAL EVALUATIONS, BUT ALSO THIRTEEN TYPES OF COUNSELING PROGRAMS, SUPPORT GROUPS, CLASSES AND WORKSHOPS.

THE **SPECIAL PROJECTS COORDINATOR** REPORTED THAT THE SUPERIOR COURT OF GUAM RECEIVED \$2.6 MILLION DOLLARS FOR THE LAST TWO YEARS. THESE MONIES ARE FOR CHILD SUPPORT, CRIMINAL HISTORY INFORMATION SYSTEM, AND DRUG EDUCATION AND TESTING PROGRAMS.

AS TO THE **MARSHAL'S DIVISION**, DURING THE PAST TWO YEARS, THE SUPERVISORS IN THAT DIVISION CREATED A TRAINING AND DEVELOPMENT AND ESTABLISHED THE MARSHAL RESERVE PROGRAM, AND THE NATIONAL CRIME INFORMATION CENTER SYSTEM CERTIFICATION PROCESS.

AT OUR END, I AM EXCITED TO HIGHLIGHT THE STRIDES THAT THE **SUPREME COURT** IS MAKING IN ITS ROLE AS A COURT OF REVIEW, AND, AS THE GATEKEEPER TO THE LOCAL LEGAL PROFESSION.

ONE OF THE PRIMARY DUTIES OF THE SUPREME COURT IS TO HEAR APPEALS OF SUPERIOR COURT DECISIONS. THE COURT HAS RECENTLY RECEIVED HIGH MARKS WITH REGARD TO ITS OPINION-WRITING AND LAW-DECLARING FUNCTIONS. UNDER THE ORGANIC ACT, THE NINTH CIRCUIT IS REQUIRED TO CONDUCT A REVIEW OF OUR COURT EVERY FIVE YEARS FOR A PERIOD OF FIFTEEN YEARS, AND TO REPORT THE RESULTS TO CONGRESS. IN EARLY 2001, THE PACIFIC ISLANDS COMMITTEE OF THE NINTH CIRCUIT JUDICIAL COUNCIL CAME TO GUAM AND CONDUCTED AN IN-DEPTH REVIEW OF THE SUPREME COURT'S OPERATIONS. I AM PLEASED TO ANNOUNCE THAT IN ITS REPORT TO CONGRESS, THE NINTH CIRCUIT COMMITTEE COMMENDED THE SUPREME COURT FOR PRODUCING OPINIONS WHICH MATCHED THE QUALITY OF THE HIGHEST COURTS OF OTHER STATES WITHIN THE CIRCUIT.

WHAT IS MOST SIGNIFICANT, AND CERTAINLY TELLING OF THE GUAM SUPREME COURT'S DEVELOPMENT AS A RESPECTED APPELLATE COURT, IS THE COMMITTEE'S RECOMMENDATION THAT THE NINTH CIRCUIT'S FIFTEEN-YEAR PROBATIONARY REVIEW RESPONSIBILITY BE ELIMINATED OR SHORTENED.

THE NINTH CIRCUIT'S REPORT TO CONGRESS CONFIRMS THAT THE GUAM SUPREME COURT HAS SUCCESSFULLY DEVELOPED THE "INSTITUTIONAL TRADITIONS" CHARACTERISTIC OF ALL OTHER STATE SUPREME COURTS IN THE NATION. I HOPE OUR SUCCESS IN THE AREA OF OPINION-WRITING PROVIDES CONTINUED ASSURANCE TO LITIGANTS THAT ALL MATTERS BROUGHT BEFORE OUR COURT ARE DETERMINED IN A FAIR AND IMPARTIAL MANNER, WITH ADHERENCE TO SOUND PRINCIPLES OF INTERPRETATION.

ADDITIONALLY, THE SUPREME COURT IS RESPONSIBLE FOR ATTORNEY ADMISSIONS. THE COURT, THROUGH THE BOARD OF LAW EXAMINERS, IS TASKED WITH ENSURING THAT ALL INDIVIDUALS SEEKING TO PRACTICE IN THE COURTS OF GUAM POSSESS THE REQUISITE DEGREE OF LEGAL KNOWLEDGE AND ARE MORALLY FIT TO ADVOCATE THE LEGAL INTERESTS OF THE PUBLIC.

THE COURT CONTINUALLY SEEKS TO MAINTAIN INTEGRITY IN THE LEGAL PROFESSION AND THE QUALITY OF LEGAL SERVICES, AND HAS, WITHIN THE PAST YEAR, MADE IMPORTANT CHANGES WHICH AFFECT THE LOCAL LICENSING REQUIREMENTS.

FOR INSTANCE, IN PREVIOUS YEARS, THE GUAM BAR EXAM WAS ACTUALLY THE OREGON BAR EXAM, AND WAS DRAFTED AND GRADED IN OREGON. AS OUR LEGAL COMMUNITY HAS MATURED, WE ARE READY TO FULLY ASSUME THE RESPONSIBILITIES OF TESTING AND GRADING. STARTING IN THE JULY 2002 BAR EXAM, GUAM WILL BE UTILIZING THE MULTI-STATE ESSAY EXAM, WE WILL BE INCLUDING A QUESTION ON LOCAL GUAM LAW, AND WE WILL BE GRADING THE EXAM LOCALLY. RETIRED JUSTICE WEEKS, WITH THE ASSISTANCE OF JUDGE UNPINGCO AND MEMBERS OF THE GUAM BAR, HAVE BEEN INSTRUMENTAL IN MAKING THIS TRANSITION.

A FEW MONTHS AGO, THE COURT ADOPTED A CONTINUING LEGAL EDUCATION REQUIREMENT. STARTING THIS YEAR FORWARD, EVERY ATTORNEY WHO ACTIVELY PRACTICES LAW ON GUAM WILL BE REQUIRED TO TAKE ANNUAL CONTINUING LEGAL EDUCATION COURSES INCLUDING LEGAL ETHICS. THE CLE RULE SERVES TO BENEFIT THE PUBLIC INTEREST AND IMPROVE THE OVERALL ADMINISTRATION OF JUSTICE.

BECAUSE THE SUPREME COURT IS ULTIMATELY RESPONSIBLE FOR THE JUDICIAL BRANCH AND REGULATION OF THE LOCAL PROFESSION, I MUST ALSO MENTION THAT THE OFFICE OF THE ETHICS PROSECUTOR IS NOW UNDER THE AUSPICES OF THE SUPREME COURT. INDEPENDENT REPORTS SUBMITTED BY THE ETHICS PROSECUTOR, ALBERTO TOLENTINO, INDICATE THAT THE

POLICING OF THE BAR HAS BEEN VIGOROUS IN RECENT YEARS. THIS EMPHASIS ON DISCIPLINE UNDOUBTEDLY HAS HAD THE EFFECT OF ENCOURAGING ATTORNEYS TO BE VIGILANT IN THEIR ETHICAL DUTIES AND RESPONSIBILITIES. IN ADDITION, I HAVE MET WITH ATTORNEY DUNCAN McCULLY, THE CHAIRMAN OF THE ETHICS COMMITTEE, TO TAKE THE LEAD IN UPDATING OUR MODEL RULES OF PROFESSIONAL RESPONSIBILITY. I AM PLEASED TO REPORT THAT THE ETHICS COMMITTEE WILL BE MEETING TOMORROW TO START THIS PROCESS.

WHILE WE ALL EXPECT OUR PRACTICING ATTORNEYS TO ADHERE TO OUR RULES OF PROFESSIONAL RESPONSIBILITY, WE MUST EXPECT NO LESS OF OUR JUSTICES AND JUDGES. WE MUST HAVE IN PLACE A FAIR AND EQUITABLE SYSTEM TO REDRESS JUDICIAL COMPLAINTS. WITH THIS IN MIND, I HAVE ASKED RETIRED JUSTICE WEEKS TO PUT TOGETHER COMPREHENSIVE LEGISLATION TO ADDRESS JUDICIAL DISCIPLINE. AFTER OBTAINING COMMENTS FROM THE BAR AND THE BENCH, WE HOPE TO TRANSMIT WITHIN THE NEXT FEW MONTHS TO THE LEGISLATURE, PROPOSED LEGISLATION REGARDING JUDICIAL DISCIPLINE.

IN THE AREA OF CONTINUING JUDICIAL EDUCATION, I MET IN FEBRUARY WITH CHIEF JUDGE MARY SCHROEDER OF THE NINTH CIRCUIT COURT OF APPEALS. AS A RESULT OF OUR MEETING, THE JUSTICES AND JUDGES ARE NOW BEING INCLUDED IN CERTAIN NINTH CIRCUIT JUDICIAL SEMINARS. IN ADDITION, THE PACIFIC JUDICIAL COMMITTEE OF THE NINTH CIRCUIT IS WORKING WITH THE NATIONAL JUDICIAL COLLEGE TO SET UP A CONTINUING EDUCATION PROGRAM FOR THE JUDGES ON GUAM AND MICRONESIA. THE FIRST SUCH TRAINING PROGRAM WILL START IN JULY OF THIS YEAR. BOTH JUDGE LAMORENA AND MYSELF HAVE BEEN INVITED BY THE NINTH CIRCUIT TO ATTEND A ONE WEEK MANAGEMENT TRAINING PROGRAM AT THE NATIONAL JUDICIAL COLLEGE.

IN ADDITION, WE HAVE MET WITH GOVERNOR GUTIERREZ AND HE HAS AGREED TO WORK WITH THE DEPARTMENT OF INTERIOR TO PROVIDE FEDERAL FUNDING FOR A PILOT JUDICIAL TRAINING PROGRAM IN GUAM. THE RESULTS OF THIS PILOT PROGRAM WILL BE USED TO ACQUIRE FURTHER FINANCING FOR JUDICIAL TRAINING IN MICRONESIA. IF THIS IS SUCCESSFUL, IT WILL REDUCE THE COST TO FURTHER TRAIN AND EDUCATE OUR JUDGES. PRESIDING JUDGE LAMORENA HAS RECENTLY REQUESTED THAT THE PACIFIC JUDICIAL COUNCIL WHICH HE CO-FOUNDED ELEVEN YEARS AGO TAKE THE LEAD IN ESTABLISHING JUDICIAL TRAINING IN GUAM AND MICRONESIA. I WILL THEREFORE WORK WITH PRESIDING JUDGE LAMORENA TO UTILIZE OUR REGIONAL JUDICIAL ENTITY IN COORDINATING JUDICIAL TRAINING AND EDUCATION IN GUAM AND MICRONESIA.

FINALLY, I MUST MENTION THAT THE COURT HAS CONTINUED ITS EFFORTS TO PROTECT THE INTERESTS OF MEMBERS OF THE PUBLIC IN NEED. THE SUPREME COURT LOBBIED FOR THE CREATION OF THE OFFICE OF THE PUBLIC GUARDIAN WHICH SERVES AS APPOINTED GUARDIAN FOR ELDERLY OR MENTALLY INCAPACITATED INDIVIDUALS WHO COME BEFORE THE COURTS OF GUAM. I AM PROUD TO STATE THAT IN MARCH OF 2001, THE OFFICE OF THE PUBLIC GUARDIAN WAS CREATED. RETIRED CHIEF JUSTICE B.J. CRUZ APPOINTED MR. JOHN WEISENBERGER AS OUR FIRST PUBLIC GUARDIAN.

THE SUPREME COURT'S ACCOMPLISHMENTS THIS PAST YEAR, AS CREATORS AND MEMBERS OF THE UJC, MEMBERS OF THE JUDICIAL COUNCIL, AND REGULATORS OF THE LEGAL PROFESSION CERTAINLY INDICATE THAT THE JUDICIARY IS IN FACT IN A STATE OF RECOVERY.

HOWEVER, ALL THAT WE ACHIEVED AND SEEK TO ACHIEVE FOR THIS BRANCH WILL BE RENDERED MEANINGLESS UNLESS THE JUDICIARY IS ESTABLISHED AS A TRULY INDEPENDENT BRANCH OF GOVERNMENT.

IN AN AMERICAN SYSTEM OF GOVERNMENT, EACH BRANCH OF GOVERNMENT IS INDEPENDENT BUT CO-EQUAL. THE POWERS OF EACH BRANCH ARE SPECIFICALLY FORMULATED UNDER THE CONSTITUTION TO ACT AS A CHECK ON THE OTHER TWO BRANCHES. THIS SYSTEM OF GOVERNMENT IS ABSOLUTELY NECESSARY SO THAT NO ONE BRANCH OF GOVERNMENT ACCUMULATES POWER FOR ITSELF. AS WISELY PROCLAIMED BY JAMES MADISON, THE ACCUMULATION OF POWER IN THE SAME HANDS CONSTITUTES THE VERY DEFINITION OF TYRANNY.

THE ORGANIC ACT IS, IN ESSENCE, OUR CONSTITUTION. WHILE THE ORGANIC ACT ESTABLISHES THE EXECUTIVE AND LEGISLATIVE BRANCHES OF THE GOVERNMENT OF GUAM, THE ACT *DOES NOT* ESTABLISH A JUDICIAL BRANCH. RATHER, THE ORGANIC ACT GIVES THE LEGISLATURE THE POWER TO BOTH ESTABLISH THE JUDICIAL BRANCH AND ABOLISH IT.

AS CURRENTLY WRITTEN, THE ORGANIC ACT *DOES NOT* PROVIDE FOR AN INDEPENDENT JUDICIARY. THEREFORE, THE WELL-ESTABLISHED CONSTITUTIONAL DUTIES AND LIMITATIONS FUNDAMENTAL TO A TRI-PARTITE SYSTEM OF GOVERNMENT SIMPLY DOES NOT EXIST IN GUAM UNDER THE CURRENT LAW.

INSTEAD, THE CURRENT LAW HAS LEFT THE JUDICIAL BRANCH SUBJECT TO POLITICAL MANEUVERING WHICH COMPROMISES OUR VERY PURPOSE AS A THIRD BRANCH OF GOVERNMENT. POLITICAL INFLUENCE OVER THE JUDICIARY WORKS TO Demean, DEGRADE, AND ULTIMATELY UNDERMINE THE COURT'S EFFORTS AS AN INDEPENDENT INSTITUTION IN THE OVERALL GOVERNMENTAL STRUCTURE. THE JUDICIARY'S STRENGTH COMES FROM ITS IMMUNITY FROM POLITICAL ATTACK. AS A THIRD-BRANCH OF GOVERNMENT, THE JUDICIARY MUST BE INDEPENDENT.

THE ONLY WAY TO ENSURE A TRULY INDEPENDENT JUDICIARY, BARRING THE ADOPTION OF OUR OWN CONSTITUTION, IS THROUGH AN ORGANIC ACT AMENDMENT. SUCH AN AMENDMENT IS *NOT* REDUCED TO A MATTER OF THE FEDERAL GOVERNMENT DICTATING WHAT IS RIGHT FOR GUAM, AND THOSE WHO OBJECT TO THE PROPOSED AMENDMENT ON THAT GROUND ARE CLEARLY MISGUIDED. AN INDEPENDENT AND CO-EQUAL JUDICIAL BRANCH, CREATED IN THE ORGANIC ACT, WILL SAFEGUARD THE SYSTEM OF CHECKS AND BALANCES AND ENSURE THAT THE JUDICIAL BRANCH REMAINS COMMITTED TO ITS DUTY TO INTERPRET THE LAW WITHOUT CONSTANT FEAR THAT THE STATUTE CREATING THE BRANCH WILL BE AMENDED OR REPEALED.

NEXT WEEK, BEFORE THE HOUSE COMMITTEE ON RESOURCES OF THE UNITED STATES CONGRESS, I WILL BE TESTIFYING ON CONGRESSMAN UNDERWOOD'S MEASURE, H.R. 521. IT IS A BILL WHICH CLARIFIES AND RIGHTFULLY ESTABLISHES THE ISLAND'S JUDICIARY AS AN INDEPENDENT, CO-EQUAL BRANCH OF GOVERNMENT. I INVITE THE GOVERNOR AND THE SPEAKER TO SUBMIT TESTIMONY IN FAVOR OF H.R. 521.

THE MEASURE, ONCE ENACTED, WILL PROVIDE A SOLID, STABLE BASE FROM WHICH THE JUDICIARY CAN OPERATE APPROPRIATELY WITHOUT INTERFERENCE. INDIVIDUALS MUST BE CONFIDENT THAT THE BRANCH IN WHICH THEY SEEK JUSTICE WILL NOT BE MANIPULATED BY THE SIMPLE CASTING OF 8 VOTES OR BY THE STROKE OF A PEN.

TO CONTINUE TO LEAVE THE JUDICIAL BRANCH IN SUCH A FRACTURED STATE, SUBJECT TO POLITICAL WHIMS, WOULD UNDERMINE CREDIBILITY IN THE ONE ARENA WHERE PASSION AND EMOTIONS MUST BE HELD IN CHECK, AND FACTS AND THE LAW ARE THE RULE OF THE DAY.

SOME MAY SAY, IN THEIR INFINITE WISDOM, THAT WHAT WE ARE SEEKING IS SEDUCTIVE IN PRINCIPLE, BUT ILLUSIVE IN PRACTICE. I WOULD SIMPLY COUNTER WITH THE FACT THAT THE TRI-PARTITE SYSTEM OF GOVERNANCE WHICH WE WANT TO ADOPT AND FOSTER FOR OURSELVES, HAS BEEN IN PLACE FOR NEARLY 226 YEARS.

MOREOVER, BECAUSE THE DECISIONS RENDERED UNDER THIS ROOF SO PROFOUNDLY IMPACT THE LIVES OF PEOPLE WHO COME HERE, IT IS ESSENTIAL THAT THIS PART OF THE GOVERNMENT'S CORE, THE JUDICIAL BRANCH, BE INSULATED AT ALL TIMES FROM INVASION BY THE OTHER BRANCHES.

THE UNSUSTAINABILITY OF THE PRESENT STRUCTURE HAS CEASED TO BE MERELY A QUESTION OF POLITICS, IT HAS BECOME A MATTER OF PUBLIC TRUST AND CONFIDENCE.

LADIES AND GENTLEMEN, THE REFORMS THAT WE ARE UNDERTAKING ARE SMALL STEPS TOWARD IMPROVING THE JUDICIARY. WE WANT TO ACCOMPLISH OUR GOALS AS A UNIFIED JUDICIARY. AND WHILE SOME ARE NOT PREPARED TO FOLLOW OUR LEAD, WE WILL CONTINUE TO STRIVE UNTIL ALL OUR EFFORTS ARE REALIZED. I ASK THAT RESPECT FOR AN INDEPENDENT JUDICIARY BE THE CALL OF THE DAY. TO MAKE GREAT STRIDES, WE NEED TRUE COMMITMENT AND SUPPORT FROM ALL WHO CLAIM TO CHAMPION THE CAUSE OF AN INDEPENDENT JUDICIARY.

ACTUALLY CHANGING THE SYSTEM WILL HAVE PROFOUND RAMIFICATIONS FOR GUAM'S POLITICAL SYSTEM, ITS CITIZENS AND ITS TRADITIONAL PRACTICES.

WITH THAT, I CAN SAY WITH CONVICTION AND CONFIDENCE, THAT RECOVERY OF THE JUDICIAL BRANCH IS EVIDENT, AND A TRANSFORMATION IS BEGINNING.

WE HAVE THE OPPORTUNITY, NOW, TO DO WHAT SHOULD BE DONE.

AND, AS CHIEF JUSTICE SIGUENZA SAID, 'NOT FOR OURSELVES,' BUT RATHER, FOR THE PEOPLE.

SI YU'US MA'ASE, THANK YOU.