

ADDRESS OF F. PHILIP CARBULLIDO UPON HIS INVESTITURE AS ASSOCIATE JUSTICE OF THE SUPREME COURT OF GUAM

**October 27, 2000
Guam Judicial Center**

Chief Justice Benjamin J. F. Cruz, Justice Peter C. Siguenza, Designated Justice Richard Benson, Designated Justice John Manglona, Retired Justice Janet Healy Weeks, Chief Justice Demapan of the CNMI Supreme Court, Justice Castro of the CNMI Supreme Court, Chief Justice Ruepong of the Yap State Supreme Court, Chief Justice George of the Kosrae State Court, Judges of the Superior Court of Guam, Retired Judges, Governor Carl T.C. Gutierrez, Lt. Governor Madeleine Z. Bordallo, First Lady Geri Gutierrez, Speaker Tony Unpingco, Chairman John Salas, Senators of the 25th Guam Legislature, Captain Jo Dee Jacob, Mayor Paul McDonald, Archbishop Anthony Apuron, Family, Relatives and Friends.

Today is a very happy day in my life. I am privileged to be filling a vacancy of a person I have admired throughout my legal career. She served the Judiciary of Guam with dedication and distinction for twenty-four years. Ladies and Gentlemen, please join me in recognizing Retired Justice Janet Healy Weeks. I intend to bring honor to the position as your replacement.

The past twenty-two years in the practice of law has prepared me for the next chapter of my legal career. I am anxious to be of service to the people of Guam. Before I share with you my vision of our Supreme Court, there are certain people I would like to thank.

I would like to express my sincere gratitude to Governor Carl T.C. Gutierrez for his trust and confidence in nominating me to the Bench. In accepting the appointment, I have committed myself to work tirelessly in bringing honor and respect to our Supreme Court. I will carry out my judicial duties with dignity and integrity.

I would also like to thank Speaker Tony Unpingco, Chairman John Salas, and the members of the 25th Guam Legislature for their unanimous vote of confidence in approving my nomination. I fully expect to live up to your expectations in upholding the oath of office I have just subscribed to.

I would like to thank my mother and father for teaching me to be a good person. For instilling in me the Christian values that I use in my daily life and call upon whenever faced with difficult decisions.

I would like to especially thank today my wife Fay, my partner for life. I would not be standing before you today if it were not for my wife. She has been the positive inspiration for our family.

In January of 1974, the Twelfth Guam Legislature under the Chairmanship of the late Senator Frank G. Lujan passed the Court Reorganization Act which created for the first time a Guam Supreme Court. Senator Lujan was the father of the late Justice Monessa G. Lujan who this courtroom is named after. Senator Lujan and his colleagues of the Twelfth Guam Legislature envisioned a Supreme Court that was the judicial and administrative head of our Judiciary. Further, all appeals were final and the decisions of the Guam Supreme Court were subject to review by the United States Supreme Court in the same manner as it reviews decisions of the courts of the several states. In other words, the decisions of the Guam Supreme Court were not subject to the further review by the Ninth Circuit Court of Appeals. Our local leaders then felt that our Guam legal community was sufficiently capable and mature to bring about institutional traditions in the development of our Supreme Court.

Three years after its establishment, the United States Supreme Court in a 5-4 decision struck down the Court Reorganization Act of 1974. The U.S. Supreme Court ruled that the language of the Organic Act did not give the Guam Legislature the power to create a local appellate court.

Seven years later, the late Congressman Antonio B. Won Pat, was successful in persuading Congress to amend the Organic Act and include language in the 1984 Omnibus Territories Act authorizing the Guam Legislature to create an appellate court. The congressional authorization however, came with restrictions. For the first fifteen years following the establishment of a local appellate court, the Ninth Circuit Court of Appeals would have jurisdiction to review by writ of certiorari all final decisions of the highest court of Guam in order to insure that it had developed sufficient institutional traditions to justify direct review by the Supreme Court of the United States.

Nine years later, in January 1993, the Twenty First Guam Legislature passed the Frank G. Lujan Memorial Court Reorganization Act. The 1993 Reorganization Act established a Supreme Court which would "handle all those matters customarily handled by State Supreme Courts... [such as] court rules and court administration." Thus, administrative functions of the courts, formerly lying either with the Judicial Council or the District Court of Guam were placed with the Supreme Court of Guam. The Supreme Court was initially recognized as the highest court of our Territory and given its proper respect and authority.

In preparing these comments, I had the chance to discuss over lunch the approval of the 1993 Court Reorganization Act with two lawmakers who were instrumental in its passage. The lawmakers were then Speaker Joe T. San Agustin and then Chairman of the Committee on Judiciary and Criminal Justice, Senator Pilar C. Lujan, the widow of the late Senator Frank G. Lujan who the 1993 Court Reorganization Act was named after.

In our discussion, both Senators emphasized two points to me. First, when the 1984 Omnibus Territories Act was being considered all our local leaders were unanimously opposed to the fifteen year review period mandated by Congress. They unanimously

took the position that our Guam Judiciary was sufficiently mature to develop the institutional traditions of an evolving appellate court.

Second, all lawmakers were unanimous in their support that the Guam Supreme Court would be the highest court of our Territory with similar powers and authority granted to comparable state appellate courts. They pointed out that at that time the authority of the Supreme Court did not depend on who were appointed to the Bench.

In reading the 1993 Court Reorganization Act, I note with interest the introductory recitals to the Act which state as follows:

"WHEREAS, the people of Guam in their desire to obtain full self-government also wish their primary governmental institution to be self-governing; and

WHEREAS, accordingly, Guam has sought since 1974 to establish its own judicial structure responsive to the people of Guam and similar to those of the several States of the Union; and

WHEREAS, Guam now has been authorized by Congress through the Omnibus Territories Act of 1984 to so establish such an independent judicial branch of its government; and

WHEREAS, the Guam legal system is fully developed with experienced judges and sound legal precedent, and the people of Guam have the fundamental democratic right to determine the appropriate procedures for reviewing decisions of the Supreme Court of Guam, thereby rendering unnecessary and inappropriate the fifteen-year writ of certiorari review period provided to the Court of Appeals for the Ninth Circuit in 1424-2 of the Omnibus Territories Act of 1984 which interferes with accepted democratic principles; and

WHEREAS, the Guam Commonwealth Act as approved by the people of Guam in support of their exercise of self-government seeks for Guam nondiscriminatory, state-like treatment for its courts and the process by which decisions for the Supreme Court of Guam are reviewed, thereby eliminating any discriminatory review process; now, therefore,

BE IT ENACTED BY THE PEOPLE OF THE TERRITORY OF GUAM: . . ."

[The statute then set out the 1993 Court Reorganization Act]

Three years after the first Justices were sworn in to the Guam Supreme Court, the Guam Legislature in its infamous rider stripped the Guam Supreme Court of its administrative oversight of the Guam Judiciary and created a dual administrative court system consisting of the Superior Court of Guam and the Supreme Court of Guam.

This brings me ladies and gentlemen to my vision of our Guam Supreme Court. It is no different than that shared by the late Senator Frank G. Lujan when he led a unanimous Twelfth Guam Legislature in passing the initial Court Reorganization Act of 1974 or when his widow Senator Pilar C. Lujan led a unanimous Twenty First Guam Legislature in passing the 1993 Frank G. Lujan Memorial Court Reorganization Act. It is the same vision previously unanimously shared by our elected leaders before the first Justices were appointed to the Guam Supreme Court. Likewise, ladies and gentlemen, my vision of our Supreme Court is:

FIRST: The Guam Judiciary is sufficiently matured to develop its institutional traditions and the interim fifteen year review by writ of certiorari of all final decision of the Guam Supreme Court by the Ninth Circuit Court of Appeals is unnecessary. This issue should be revisited by the Congress and deleted.

SECOND: The Guam Supreme Court should be properly recognized as the highest court of our Territory with judicial and administrative oversight of our judicial system.

At a subsequent meeting with former Speaker San Agustin, I asked him why was the Guam Supreme Court initially given administrative oversight over the entire judicial system. His response was, because at that time it was the right thing to do.

In the fifty states, either the Court of Last Resort (six states) or the Chief Justice of the Court of Last Resort (43 states) is the designated head of the judicial branch. In one state, Utah, the Judicial Council is the designated head. The composition of the Utah Judicial Council consist of the judges from each court level and the designee of the Utah Bar Association.

More importantly however, than just following how they do things in the other 50 states, recognizing the Court of Last Resort, our Supreme Court, as the head of our judiciary goes to the very fundamentals of an independent judiciary. You do not establish an executive branch with the Governor as the head and give all the administrative powers to the Lieutenant Governor. You do not establish an independent legislative branch with the Speaker as the head and recognize the Vice-Speaker as the controlling authority. You give proper respect and decorum to the head of the respective branch of government. This goes to the very soul of recognizing our independent co-equal branch of government.

I leave you today with a plea to our elected leaders to recognize our Supreme Court of Guam as the highest court of our territory with the necessary tools to exercise independent oversight jurisdiction of our third branch of government. The reason is quite simple, . . . because it is the right thing to do.

Thank You and Si Yuus Maase.