On My Mind
2/15/02

I hope the Governor isn't superstitious. Thirteen is an inauspicious number in any case, but that the very first bill bearing his signature - Public Law 13-1 - makes such a mockery of all he has promised does not bode at all well.

Public Law 13-1 takes the CNMI back to the times of 'Roilin Froilan' - who issued an executive order which, among other things, gave the governor the authority to appoint not only agency heads and division heads but heads of boards, commissions, councils, as well, and which placed the office of personnel management under the direct control of the governor. Those parts of Froilan's executive order had been rescinded by the Twelfth Legislature with considerable effort - a veto over-ride was required - but now P.L.13 -1 has put them back into effect.

Public Law 13-1. With all the promises made and hopes inspired by the incoming administration, it would have been nice if the very first bill to become law under the new regime had been deliberately chosen to serve as symbol of the administration's priorities and the legislature's cooperation, had been processed with all the promised integrity, transparency, and opportunity for public comment, and had been signed into law with all appropriate pomp and ceremony to show everyone that the Governor meant what he said.

Instead, the bill was hastily introduced, hastily pushed through both houses with no public notice or opportunity for public input of any kind or in any form, and hastily signed into law within hours of its passage - again with no public notice. So much for transparency and openness. To make matters worse, not only does it appear to have been hastily thrown together, but its subject smacks of political aggrandizement or patronage - take your choice.

Under the new law, agency heads - it's a pity Public Law 13-1 didn't at least rescind the pompous "Secretary" label - will now be forced to accept as their deputies and division heads people appointed by the Governor - a rather weird circumstance, when one stops to think about it. The Governor claims P.L. 13-1 is necessary to enable him to choose compatible staff to work with, but apparently he sees no need to grant the same benefit to his department heads.

In addition to making working relationships awkward, giving the governor authority to appoint division heads will also disrupt department operations and continuity and will reduce agency effectiveness, since political appointees do not have to meet any position qualification require-ments. If the governor is concerned about working effectively with the departments, forcing agency heads to accept division heads answerable to the governor is not the answer. Good management practice would expect accountability from the agency heads, not an undermining of their authority by appointing political flunkies as deputies and division heads.

Under the new law boards and commissions, regardless of their own rules, will be forced to accept a chairman appointed by the governor, rather than one chosen by the board. In this case as well, the Governor does not seem willing to extend to others privileges he insists are, in his

case, just “good management” - the ability to choose with whom one works.

P.L. 13 -1 also places the personnel office under the governor's office - again. This will be the the third shift of that office in just eight years. Perhaps it’s time to appoint a task force to study the issue more thoroughly? That may be seen as a Teno ploy, but it has its uses.

Even as he signed the bill into law, moreover, the Governor acknowledged - in his cover letter to the Legislature - that it was already in need of amendment. Among other anomalies, there is apparently some disagreement as to whether civil service staff now working in the office of the governor will lose their civil service status. According to the <I>Tribune</I>, the civil service status of some 219 people is at issue though this has been denied by the Governor. Again, it’s all rather weird, when one stops to think about it. With advice and review of the bill available to both the Governor and the Legislature from a seeming excess of legal beagles (there’s House and Senate legal counsel, the staff of the Attorney General’s Office, additional Legal counsel in both the Governor and Lt. Governor's office, not to mention the special legal advisor to the Governor or the office of legislative affairs) how could it have turned out less than perfect?

While it may speak to new-found harmony on the Hill that only one legislator had the independence of mind to vote against the bill, the fact that no one else saw fit to question the reversal of their predecessors' actions is of considerable concern.

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It may be politics as usual, but there’s evidence that change may be coming to the field of law. Among questions being asked in certain quarters: Are there certain times of day when people are apt to have better alibis than others? In domestic abuse cases (that are non-life-threatening), is it more effective to counsel the victim, arrest the perpetrator, or order the perpetrator to leave the house? In identification line-ups, is it more effective to have suspects appear individually, or in a group? How good are witness statements, anyway?

The application of scientific research methods to questions of law is, according to an article in the <I>New Yorker</I> not a popular notion with most of the legal community. Yet there is research being done, and useful findings are emerging.

The question about alibis was raised by Gary Wells, professor of psychology at Iowa State, and known as a leading figure in eyewitness research. A study of alibi validity is ripe for research, he says in the article, questions not only about a possible connection between the time of day and the strength of an alibi, but also whether - whatever the answer regarding time of day - the finding would hold true for both married and single people, for both employed and unemployed people. Is memory of past events equally reliable in all people? Is it true - as is now generally held - that the worse the alibi, the more guilty the person? Or is it: the better the alibi, the more guilty the person?

A study and field experiment conducted by Lawrence Sherman, sociologist at the University of Pennsylvania, showed that arresting the perpetrator was the most effective way to reduce repe-

tition of domestic violence. Further research - left incomplete because prosecuting attorneys objected in a dispute over methodology - showed that counseling was not very beneficial. In fact, it seemed to increase the reoccurrences - because the victims, believing the counseling had worked, would agree to see the perpetrator again.

Formal research has shown that witnesses' rate of correct identification in line-ups is higher when suspects are shown singly, rather than in a group. And that accuracy increases if witnesses are warned that the suspect may not be part of the line-up. (That's because, if the suspect isn't there, witnesses will choose the person in the line-up who most closely resembles the suspect.) But these research results have not been widely applied, leaving line-ups as a questionable tool, and witnesses relied upon more than perhaps they should be.

According to Sherman, "the clash of cultures between the legal and scientific approach, which is compounded by ignorance and suspicion" has kept scientific research of legal procedures to a minimum. Wells agrees. "The legal system doesn't understand science," he says in the <I>New Yorker</I> article.

The article points out that medicine has hundreds of teaching hospitals, where innovation and testing are a routine part of what doctors do. But there is nothing similar in the field of law. Rather, law enforcement "is in thrall to a culture of precedent and convention, not of experiment and change,"says Atul Gawande, author of the article. Gawannde, interestingly, is not a member of the legal profession, but a surgical resident in Boston, and research fellow at Harvard School of Public Health.

Sherman says that the process of bringing scientific scrutiny to the methods of the judicial system has hardly begun. "We're holding a tiny little cardboard match in the middle of a huge forest at night. We're about where surgery was a century ago."

The article may be found in the <I>New Yorker</I>, January 8, 2001, pages 50-53.