

**Supreme Court of Guam
Kotten Mås Takheló Guåhan**

**Testimony Delivered By
The Honorable Peter C. Siguenza
Chief Justice of Guam
Before the Committee on Resources
U.S. House of Representatives
on "The Judicial Empowerment Act"**

**Wednesday, October 29, 1997
Washington, D.C.**

Good morning Chairman Don Young, Congressman Robert Underwood and other distinguished members of the House Committee on Resources. Thank you for allowing me to have the opportunity to speak. It is indeed an honor.

I am here today as the Chief Justice of Guam. My rotating term expires in about a year and a half from now -- at which time we justices will elect a new chief. And so -- in my first and final appearance before you -- I want to stress the importance of the critical matter which is before us today.

In simple terms, H.R. 2370 would place the judiciary of Guam on an equal footing with its two coordinate branches of government. As you will note, the inherent powers of both the executive and legislative branches are clearly delineated within the Organic Act. Only the structure of the judiciary lacks this kind of clarity.

Ironically, the original local legislation which created the Supreme Court distinctly outlined the court's authority -- clearly placing administrative and appellate jurisdiction with the court.

In this sense, H.R. 2370 undeniably reflects the will of the people. Virtually every provision within the Judicial Empowerment Act before you today mirrors the 10-year drafting process which culminated in the passage of the Bill in 1992.

It is significant to point out that no effort was made to alter the Bill for the next three years. The legislation sat intact and untouched for nearly four years -- that is, up until the seating of the court in April of 1996.

At that time, on the eve of the confirmation hearings of the justices -- efforts were undertaken to alter the legislation and curtail the authority of the court. In effect, what had taken a decade to build was summarily undone within three months.

In fact, since the court's inception -- there have been no fewer than four legislative attempts to undermine the court's administrative authority and -- even as recently as last month -- a successful legislative bid to limit this court's legal jurisdiction.

Let me briefly share with you the chronology of this court:

1973 - Guam Public Law 12-85 is enacted, envisioning a judiciary with a local Supreme Court at the helm.

1974 - The first Supreme Court of Guam is established.

1977 - The U.S. Supreme Court strikes down Guam's Supreme Court.

1977 - That same year, Guam convenes a Constitutional Convention. The foundation is laid to establish a Supreme Court as the judicial and administrative head of the Judiciary. This draft Constitution is submitted and approved by the U.S. Congress.

1984 - The Omnibus Territories Act amends the Organic Act to allow for the creation of a Supreme Court.

1993- The Frank G. Lujan Memorial Court Reorganization Act is signed into law after its 1992 passage in the 21st Legislature. The Bill is patterned after the 1973 local legislation, 1977 draft constitution and provisions from various state constitutions.

The legislation calls for a Supreme Court of Guam which will "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, are placed with the Supreme Court of Guam."

1995- In November, myself, Janet Healy Weeks and Monessa G. Lujan are nominated to the Supreme Court.

1996- In March, hours after the Justices of the Supreme Court are confirmed, the 23rd Guam Legislature passes Bill 404 which removes certain inherent powers from the Supreme Court. A second bill, Bill 494, aims to strip the supervisory jurisdiction of the Supreme Court over all lower courts. That bill is debated, but tabled by the Legislative Committee on the Judiciary.

1996- Eight months later in December, the Legislature attaches the contents of the shelved Bill 494 as a "midnight" rider to Bill 776. The legislation passes, but is vetoed by the Governor. An override attempt fails by only a slim margin.

In short -- this is the problem faced by the Supreme Court of Guam, and why we seek to have this Court established within the Organic Act. Permit me the luxury of overstating the obvious when I say that a Judiciary -- or *any* branch of government -- cannot function independently if another branch can modify or strip it of its powers at will. The Bill before this distinguished panel will ensure that like the inherent power of the Executive and Legislative branches -- the corresponding authority of the third branch cannot be tampered with on whim.

There are those who espouse the view that the Judicial Council of Guam is the policymaker for the Judiciary. Allow me to let the record speak for this Court when I say that in the eight years it took lawmakers to craft and fine-tune the Bill that created the Supreme Court of Guam -- the notion of a Judicial Council as the administrative arm of the Judiciary was explored and subsequently rejected in that role. The Frank G. Lujan Memorial Court Reorganization Act which created the court explicitly envisioned an advisory role for the Council.

And since that time, the will of the people has not changed. A recent survey conducted on Guam by your colleague and our Delegate, Congressman Robert Underwood -- in addition to a poll conducted by the Guam Bar Association -- along with numerous media editorials -- have each independently and resoundingly confirmed the original legislative concept of the Supreme Court at the administrative helm of the Judiciary.

This is not a structure without precedent. The Judicial Empowerment Act would not only restore the initial intent of local legislation creating the court, but would also confer upon it the same inherent authority exercised by judiciaries in the fifty states and other U.S. jurisdictions.

In closing, I leave you with the words of Alexander Hamilton who noted over 200 years ago -- "the judiciary is beyond comparison the weakest of the three departments of power -- all possible care is requisite to enable it to defend itself against their attacks."

Thank you Mr. Chairman, Congressman Underwood and other distinguished members of this panel for your time and attention.