

1998 State of the Judiciary Address
Delivered by:
The Honorable Peter C. Siguenza
Chief Justice of Guam

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Guam Legislature

Senators -- it is with some pleasure that I deliver my last State of the Judiciary address to you. Next year, I will be seated and one of my brethren, duly elected by all the Justices, will stand before you as the Chief Justice.

This change of leadership is a good thing. It guarantees that no one person will exercise the power over an institution of government. It also allows the growth and change that we think of as progress.

I have been looking forward to this moment, ever since the night we spent together here in early February -- we Justices waiting patiently to see if we would be let in your door. Some of you are wondering what we would have said that night. Others among you are worrying about what I'm going to say right now.

My speech today will not address either that curiosity, or those concerns. The speech that would have done that I shredded last night. I threw it all away because our time is too precious to waste on what's been said and what's been done.

Our time together is also too precious to spend on a statistical analysis of judicial operations. There are more pressing matters before us. In addressing the state of Guam's Judiciary, I will focus on one critical point -- that this branch is broken.

Speaking as the head of the Judiciary, all we want is that our branch be made whole. I believe that despite what's gone before, each of you does care about our government. You are not merely officers of this government. You are also citizens, and family members, who live with the same problems that affect every other resident of Guam.

Many of us know each other and share a common past. Some of us went to school together. Some of you I know through our efforts to make a difference. You may recall our marching together for the various causes that we cared so deeply about when we were younger.

The belief that we should work together to change our community is one of the reasons we are all here today. We pursued careers as public servants because we wanted to serve. I know we want the same things. You want a government that will provide you and your families with equality, opportunity and justice -- even when you are no longer public officials. So do I.

But we have a problem. We have a fractured government with a broken branch. We need to fix things, and we need to do it together. No one branch has the power to heal, or even to sustain itself, without the support of the others. We are all interdependent.

Some of you may feel that it's a good thing that the Judicial Branch can be changed at your will -- that you have that power. But if you stop to think about it, you'll realize it's not such a good thing after all. Because somewhere down the line, none of us will be here. Then it will be someone else's turn to make the rules, and the generations that follow may suffer the consequences.

You and I are of the same generation. We were the ones who were going to change the system for the better. But over the years, we've all learned that it's harder than we thought to change a legacy that's been left behind. We must regain our vision.

As we prepare for the Guam-U.S. centennial, ponder also our individual "days of rage" -- for it was then that we learned, first-hand, that it is democracy and a republican form of government which guarantees our cherished freedoms. That's why it's important that we leave to our children, and their children, a government that is complete and strong. We have been given the unique opportunity to make a difference through the positions we each hold. And we can do it. We can see to it that Guam is given a government comprised of three co-equal branches.

And there can be no real disagreement with that goal. I doubt that there is any high school graduate who would stand up and argue that a democracy can exist in any other form.

In a true democracy, each branch of our government performs a distinct and independent function.

Our Executive Branch holds the power to veto enactments and to enforce the laws which originate in these very halls. Our Judicial

Branch has the responsibility to ensure that these laws are objectively interpreted. And you, our Legislative Branch, possess an equally important duty. That of drafting the laws which define us as a people, as a society.

I say this simply because the laws -- which are created in these very halls -- are not just ink on paper, nor mere words which echo and fade in our courts. Laws are a living embodiment of the values of our society, which allow people of various cultures and beliefs to live and work together. In the truest sense, law permits our existence as a free society.

That is why I submit to you that the disposition of these laws must only be entrusted to a judiciary that is your equal.

It has long been recognized that the judiciary, which has no involvement in the creation of public policy or the appropriation of government monies, is the weakest of the three branches of government.

Some of you may know that the United States almost had a government built on two branches instead of three. When the Constitution was being drafted, there was a proposal that the Executive and Judicial Branches be connected. There were three distinct reasons that were given for this idea.

First -- that the Legislative branch would have too much power, and be inclined to make bad laws that could be better checked by a combined executive/judiciary;

Second -- that the Executive could not be assumed to understand the fine points of the law, and an association with the judiciary would be a useful resource;

And finally -- that, absent an alliance with the Executive, the judiciary would suffer the risk of being undermined or compromised by legislative assaults.

Ultimately, the proposal was rejected and the federal government was built solidly on three pillars. The Federal Judiciary was left to establish itself, with the benefit of an absolute role engraved in the stone of the Constitution.

But what of Guam? Do the concerns addressed in 1787 ring true here and now?

I wish I could tell you that our Legislature has never once made a bad law, or that our Governors have never once acted in a manner suggesting ignorance of or disrespect for the law, or for that matter, that our Courts have never once made a bad decision.

I would be especially happy if I could stand here and say that there has never been a political effort to undermine our judiciary. Quite obviously, I cannot.

But the response now must be the same as that arrived at two centuries ago. Guam's judiciary should not be compromised through an institutionalized dependence on some other branch of government -- whether executive, legislative, or both. That will not happen. What can, must, and will occur is that Guam's judiciary will be born into the Organic Act so that it stands in equal partnership with the other branches of our government.

This was a conclusion that was reached by our own community in past years during the drafting of two separate acts creating a Supreme Court for Guam. It was the determination reached by those of us who participated in drafting a Constitution for Guam. And it was the consensus of this community last year when Congressman Underwood proposed a revision to the Organic Act that would accomplish this goal.

This design protects you, me, *everyone*. A co-equal system affords each of us the security of knowing that, no matter what one branch is doing, we can count on the other two to provide checks and balances.

In a larger sense, this allows us more than just peace of mind. But to the extent that these lines are blurred, true democracy -- and our individual freedom -- is at risk.

There are those who say the federal government has no place dictating the structure of Guam's government today. Some have even suggested that it is an act of arrogance -- if not colonialism -- for the Congress of the United States to alter the Organic Act of Guam to make provision for our own local court system.

To those few -- I would ask, "Why stop at half measures? Why not petition Congress to remove from the Organic Act all references to the authority of the Executive Branch and the Legislature?"

Obviously such an act would completely undermine Guam's self-government. This effort would not be pursued by rational

individuals.

So I say to you -- if it so clear that chaos and disorder would result from the removal of the first and second branches from the Organic Act -- how can you justify the exclusion of the third?

That's why this Court has worked tirelessly to establish the Judiciary in the framework of the Organic Act. It's not just about us as a court. Each of us wants a fair and objective court system that will protect our rights -- one that will neutrally determine the truth of criminal allegations and factual disputes. We expect our judges to rise above personal prejudices and to remain beyond political concern.

In order to for the Judiciary to accomplish our duty, we must -- of necessity -- be free from the trappings of power, of influence, of relationships, of emotions *du jour*. The weight of that awesome responsibility is what we have perhaps idealistically chosen. But in a real sense, that is the lonely -- and often misunderstood -- solemn duty of an independent Judiciary.

We all know what our government should be. But we also know what it is. I ask each of you to stand with me in closing that gap. Or -- I challenge you to stand now and explain why the federal and state governments -- as well as the citizens of this community -- are all wrong in believing that democracy should be founded on three, co-equal branches of government.

Thank you for your attention. I -- and the People of Guam -- look forward to your response and your co-operation.