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94-19 REORGANIZATION OF THE JUDICIAL SYSTEM OF GUAM

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HEARING

BEFORE THE

SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-FOURTH CONGRESS

FIRST SESSION

ON

H.R. 4580

TO AMEND THE ORGANIC ACT OF GUAM TO PROVIDE FOR
THE REORGANIZATION OF THE JUDICIAL SYSTEM OF
GUAM, AND FOR OTHER PURPOSES

JULY 31, 1975

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REORGANIZATION OF THE JUDICIAL SYSTEM OF CALIFORNIA
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0824 R.H. 4580

REORGANIZATION OF THE JUDICIAL SYSTEM OF GUAM

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COURTS, CIVIL LIBERTIES,
AND THE ADMINISTRATION OF JUSTICE
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:35 a.m., in room 2226, Rayburn House Office Building, Hon. Robert W. Kastenmeier [chairman of the subcommittee] presiding.

Present: Representatives Kastenmeier, Danielson, Drinan, and Pattison.

Also present: Herbert Fuchs, counsel, and Thomas E. Mooney, associate counsel.

Mr. KASTENMEIER. The committee will please come to order.

Now, the subcommittee turns to H.R. 4580, our colleague, Mr. Won Pat's bill, to amend the Organic Act of Guam, to provide for the reorganization of the judicial system of Guam. This legislation is occasioned by the decision of the District Court of Guam in *Agana Bay Development Company v. The Supreme Court of Guam*, a recent case, decided November 4, 1974, to the effect that the Guamanian legislation creating the Supreme Court of Guam was unauthorized in substance.

H.R. 4580 would amend section 22 of the Organic Act of Guam, 48 U.S. Code 1424, so as to remove any doubt as to the power of the legislature of Guam, to establish a local appellate court. The Departments of Justice and Interior have no objection to the legislation and a representative of the latter department will testify on the bill.

We are now very pleased to welcome the author of the bill, the Honorable Antonio Borja Won Pat, and I will let him introduce his witnesses.

[The bill, H.R. 4580 follows:]

(1)

94TH CONGRESS
1ST SESSION

H. R. 4580

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1975

Mr. WON PAT introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Organic Act of Guam to provide for the reorganization of the judicial system of Guam, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That the Organic Act of Guam (64 Stat. 384; 48 U.S.C.
4 1421-1424b) is amended by striking out section 22 and
5 inserting in lieu thereof the following new sections:

6 "THE JUDICIARY

7 "SEC. 22. (a) The judicial system for the territory of
8 Guam shall consist of the District Court of Guam, the
9 Supreme Court, the Superior Court, and such other courts
10 as the Legislature of Guam may establish.

1 “(b) The Legislature of Guam may, by law—

2 “(1) provide for the establishment of rules of
3 procedure for the Supreme Court and the Superior
4 Court;

5 “(2) establish divisions of the Superior Court and
6 designate which of such divisions shall be courts of record
7 and which shall not be;

8 “(3) establish the qualifications, method of ap-
9 pointment, salary, and tenure of justices of the Supreme
10 Court and judges of the Superior Court; and

11 “(4) otherwise provide for the proper administra-
12 tion of the courts of Guam.

13 “SEC. 23. (a) (1) The Superior Court shall consist of
14 a presiding judge and such additional judges as may be
15 necessary for the proper dispatch of the business of the
16 court.

17 “(2) The Superior Court shall have original jurisdiction
18 in all causes arising under the laws of Guam, civil or
19 criminal, in law or equity, regardless of the amount in
20 controversy, except for—

21 “(A) causes arising under the Constitution,
22 treaties, and laws of the United States; and

23 “(B) causes with respect to the Guam territorial
24 income tax.

1 “(3) The Superior Court shall have such appellate
2 jurisdiction as the Legislature of Guam may provide:

3 “(b) (1) The Supreme Court shall consist of the Chief
4 Justice of Guam and two associate justices.

5 “(2) The Supreme Court shall be a court of record
6 and shall have appellate jurisdiction as the Legislature of
7 Guam may provide from the judgments, orders, and decrees
8 of the Superior Court or any division thereof.

9 “(c) (1) The District Court of Guam shall be a court
10 of record and shall have the jurisdiction of a district court
11 of the United States in all causes arising under the Con-
12 stitution, treaties, and laws of the United States, regardless
13 of the sum or value of the matter in controversy, and shall
14 have original exclusive jurisdiction over all causes with
15 respect to the Guam territorial income tax.

16 “(2) Any general rule prescribed from time to time by
17 the Supreme Court of the United States pursuant to section
18 2072 of title 28, in civil actions, including admiralty and
19 maritime cases; section 2075 of title 28, in bankruptcy
20 cases; and sections 3771 and 3772 of title 18, in criminal
21 cases; shall apply to the District Court of Guam and to
22 appeals therefrom; except that no provisions of any such
23 rules which authorize or require trial by jury or the prose-

1 cution of offenses by indictment by a grand jury instead of
2 by information shall be applicable to the District Court of
3 Guam unless and until made so applicable by laws enacted
4 by the Legislature of Guam, and except further that the
5 terms 'attorney for the government' and 'United States attor-
6 ney', as used in the Federal Rules of Criminal Procedure,
7 shall, when applicable to cases arising under the laws of
8 Guam, mean the Attorney General of Guam or such other
9 person or persons as may be authorized by the laws of Guam
10 to act therein.”.

11 SEC. 2. Section 24 of the Organic Act of Guam (64
12 Stat. 390; U.S.C. 1424b) is amended—

13 (1) in subsection (a) by striking out “judge of
14 the Island Court” and inserting in lieu thereof “justice
15 of the Supreme Court”;

16 (2) by redesignating subsections (b) and (c) as
17 subsections (c) and (d), respectively; and

18 (3) by inserting immediately after subsection (a)
19 the following new subsection:

20 “(b) The Governor of Guam shall, by and with the
21 advice and consent of the Legislature of Guam, appoint the
22 Chief Justice and associate justices for the Supreme Court
23 and a presiding judge and such additional judges as may be
24 necessary for the Superior Court.”.

1 SEC. 3. (a) (1) So much of section 1258 of title 28,
2 United States Code, as precedes paragraph (1) thereof is
3 amended to read as follows:

4 **"1258. Supreme Court of Puerto Rico and Supreme Court**
5 **of Guam; appeal; certiorari**

6 "Final judgments or decrees rendered by the Supreme
7 Court of the Commonwealth of Puerto Rico and the Supreme
8 Court of the territory of Guam may be reviewed by the Su-
9 preme Court as follows:"

10 (2) Paragraphs (2) and (3) of such section are each
11 amended by inserting immediately after "Commonwealth
12 of Puerto Rico" the following: "or the territory of Guam".

13 (b) The item relating to section 1258 in the section
14 analysis of chapter 81 of title 28, United States Code, is
15 amended to read as follows:

 "1258. Supreme Court of Puerto Rico and Supreme Court of Guam;
 appeal; certiorari."

16 SEC. 4. Section 1869 (f) of title 28 United States Code,
17 is amended by striking out "section 22 of the Organic Act
18 of Guam, as amended (64 Stat. 389; 48 U.S.C. 1424)," and
19 and inserting in lieu thereof the following: "section 23 (c) of
20 the Organic Act of Guam, as amended,".

21 SEC. 5. (a) Except as provided in subsection (b),
22 the amendments made by the foregoing provisions of this
23 Act shall take effect on the date of the enactment of this
24 Act.

- 1 (b) The amendments made by the foregoing provisions
 2 of this Act shall not apply with respect to any cause arising
 3 under the laws of Guam which is filed in the District Court
 4 of Guam, or any division thereof, before the date of the
 5 enactment of this Act.

TESTIMONY OF HON. ANTONIO BORJA WON PAT, A REPRESENTATIVE IN CONGRESS FROM GUAM, ACCOMPANIED BY HON. PAUL J. ABBATE, SUPERIOR COURT JUDGE; HON. CONCEPCION BARRETT, CHAIRMAN, JUDICIARY COMMITTEE OF THE GUAM LEGISLATURE; CHARLES TROUTMAN, ATTORNEY GENERAL OF GUAM; AND HON. JANET HEALY WEEKS, JUDGE, SUPERIOR COURT OF GUAM

Mr. WON PAT. Thank you, Mr. Chairman and members of the subcommittee.

On behalf of the people of Guam, I want to express deep appreciation to you and the members of your subcommittee for this opportunity to present proposed legislation, H.R. 4580, to rectify a serious and urgent situation with respect to the administration of justice on Guam.

But first, I would like to present the four distinguished officials of Guam accompanying me here this morning. They represent the three branches of the Government of Guam, and with your permission, I am submitting their statements for the record.

They are Judge Paul Abbate, of the Superior Court of Guam, and Judge Janet Weeks of the same court; Senator Concepcion C. Barrett, chairman of the judiciary committee of the Guam Legislature; and the Honorable Charles Troutman, attorney general of Guam who is representing the Governor of Guam. All of these knowledgeable officials will be glad to try to answer any questions any member of the subcommittee may care to ask.

[The prepared statements of the Honorable Paul J. Abbate, Senator Concepcion C. Barrett, and Attorney General Charles H. Troutman follow:]

STATEMENT OF PAUL J. ABBATE, PRESIDING JUDGE, SUPERIOR COURT OF GUAM

Mr. Chairman and members of the Subcommittee:

My name is Paul J. Abbate and I reside at Maina, Guam. I am the Presiding Judge of the Superior Court of Guam. I come before you today to present the views of the Guam Judiciary with respect to House Bill 4580 and to urge its passage.

It is the contention and thesis of this speaker, and that body I represent, that the particular House Bill 4580 before you today constitutes but another consistent step by the Guam Judiciary down the evolutionary path to total autonomy and control over local judicial matters. And further, that this bill is necessary to allow the Guam Judiciary to take its rightful place as a coequal branch of the tripartite Government of Guam.

To amplify and clarify these theses, I would like to trace for you the history of the judicial structure of the (unincorporated) Territory of Guam from its inception of 1950, via the Organic Act, to the present day.¹

The judicial structure established by that act provided for a District Court of Guam.² This court was granted the same jurisdiction as any other federal district court in all generally recognized federal matters.³ However, it further was entitled to receive whatever local original and appellate jurisdiction as the Guam legislature granted it.⁴ Also, Congress provided for a federal appellate review process for all decisions determined by the District Court of Guam. Specifically, it provided for a right to appeal to the Ninth Circuit where in issue was the Constitution or any treaty or law of the United States, all habeas corpus proceedings, and all civil matters where the amount in controversy exceeded \$5,000. Also, a right to appeal from that court to the Supreme Court was granted from any final or interlocutory judgment in which an act of Congress was contested, or where a federal agency or employee was a party.⁵

Congress in adopting the specific language of the Organic Act with respect to local original and appellate jurisdiction for the District Court, perhaps granted to the local law makers of Guam the greatest control of any such territorial body over its judicial structure.⁶

Specifically, they granted the local law makers the absolute and apparently unencumbered right to determine the local jurisdiction of the District Court and establish whatever local courts deemed necessary. It would, therefore, seem that as early as 1950 Congress anticipated, desired and even provided for the gradual responsible evolution of an indigeneous and autonomous judiciary on Guam.⁷ Viable in its own right to deal with the uniquely local problems which confront any judiciary of a state or territory.

Consistent with this great trust placed in it by the United States Congress, the First Guam Legislature responsibly set out to exercise this right to control the appropriation of local original and appellate jurisdiction. That legislature in 1951, via Public Law 1-17, limited the original jurisdiction of the District Court in criminal matters to felonies, and in civil matters to cases where the amount in controversy exceeded \$2,000.⁸ At the same time, the legislature reinvigorated the theretofore existing Island Court, which prior to the passage of the Organic Act had been the court of general jurisdiction on Guam,⁹ by granting it jurisdiction in criminal matters over offenses not constituting felonies, in civil matters where the amount in controversy did not exceed \$2,000 and granted it exclusive jurisdiction over all domestic relations and probate matters.¹⁰ Also, by this piece of legislation the Guam Legislature exercised its power to control appellate jurisdiction by the creation of the appellate division of the District Court.¹¹ This court was established to hear appeals from the Island Court and consisted of a three judge panel with the judge of the District Court acting as the presiding judge.¹²

That same year, 1951, the United States Congress took steps to place the District Court of Guam in the same status with respect to the federal judiciary as the other federal district courts. Specifically, Congress repealed those sections of the Organic Act which detailed the appellate route from the District Court of Guam,¹³ and simultaneously amended Title 28 §§ 1225, 1291 and 1294 to include the "District Court of Guam."¹⁴ Although this change served to eliminate some minor complications caused by the passage of Public Law 1-17, it also served to bring the District Court of Guam into alignment with other federal district courts.

In essence then, by the end of 1951 Guam had established its basic judicial structure which was to remain intact until July 1, 1974. The only alteration which occurred to this superstructure in that interim, was the amendment of the Organic Act to reflect the existence of the appellate division of the District Court.¹⁵ By that amendment, Congress recognized the existence of and formalized the pro-

¹ 81st Cong., 2d Sess., U.S. Code, Cong. & Ad News, 386 (Vol. 1, 1950).

² *Id.* at 391.

³ *Id.* at 391-92.

⁴ *Id.*

⁵ *Id.*

⁶ *See, e.g.*, 48 U.S.C. § 1406.

⁷ 81st Cong., 2d Sess., U.S. Code, Cong. & Ad. News, 2841 (Vol. 2, 1950).

⁸ Law of Aug. 9, 1951, ch. III, § 82 [1951] Guam Laws 1-17 (amended 1969).

⁹ The Code of Civil Procedure § 75 (effective prior to 1950).

¹⁰ Law of Aug. 9, 1951, ch. III, § 82 [1951] Guam Laws 1-17 (amended 1969).

¹¹ Guam Civil Proc. Code, Pt. I, Tit. I, ch. III, § 65.

¹² *Id.* § 63.

¹³ By Act of Oct. 31, 1951, 65 Stat. 729.

¹⁴ 28 U.S.C. §§ 1252, 1291, 1294.

¹⁵ 48 U.S.C. § 1424(a).

cedures to be adhered to by that court, which had been initially established by Public Law 1-17 in 1951.¹⁶ The significance of this act was that once again the Congress of the United States reaffirmed its confidence in the ability of Guam to responsibly and competently establish a judicial structure which insured that justice be administered equitably while meeting the unique needs of a territory lying some 5,000 miles off the continental coast of the United States. Consistent with this position is the fact that Congress, in providing for the procedures for the appellate division of the District Court, adopted those established by the Guam Legislature in fact utilizing essentially the identical language.¹⁷

Although the superstructure of the Guam Judiciary was firmly set by the year 1951, many steps have been taken since then to shore up the infrastructure. The following being the more notable steps: the updating and codification of all of Guam's law,¹⁸ the amending of the Organic Act to apply directly to Guam the United States Bill of Rights and the second sentence of the 14th Amendment (equal protection and due process clauses),¹⁹ the adoption of rules of criminal procedure modeled after the Federal Rules of Criminal Procedure,²⁰ the contracting out for the publication of all decisions arising from the courts of Guam to be titled the Guam Reports. All of these activities reflect major progress along the road to total autonomy by a maturing and evolving judicial system.

The next major change to the superstructure of Guam's judicial system occurred on July 1, 1974. At that date Public Law 12-85 became effective. That law established a Superior and Supreme Court of Guam and transferred to these newly created courts all local original and appellate jurisdiction from the District Court of Guam, and its appellate division.²¹ By this act, the Government of Guam, consisting of its executive, legislative, and judicial branches, expressed its determination that Guam's judicial system had matured and progressed to such an extent as to allow it to assume complete autonomy over local judicial matters.²² However, that provision of the bill which established the Supreme Court of Guam was legally attacked and ruled to be deficient by the District Court of Guam.²³

Specifically, that court ruled that the Guam Legislature had exceeded its authority granted to it by the Organic Act to grant appellate jurisdiction to a court other than the District Court of Guam.²⁴ Needless to say, that decision has been appealed and a decision is anticipated imminently inasmuch as oral arguments were made before the Ninth Circuit Court of Appeals on June 10, 1975. However, it must be noted that the Superior Court has been functioning during this period and continues to function.

It is believed that this brief narrative of the history of the Guam Judiciary depicts not a stagnant system but rather, a system which had matured, developed and evolved significantly and substantially from its early beginnings. It is further believed that this growth has been responsible, and consistent with the initial provisions of, and intents behind, the original Organic Act. And lastly, that this growth warrants and justifies this final step of fulfillment by the enactment of the bill before you today allowing the Guam Judiciary to have jurisdiction over all local matters of both an original and appellate nature.

With respect to the secondary thesis, that this bill is necessary to allow for the Guam Judiciary to take its rightful place as a coequal branch of the tripartite Government of Guam, the argument is more direct.

First, there is the outstanding decision of the District Court of Guam, ruling that the Supreme Court of Guam is null and void.²⁵ Since that decision reached its conclusion from a rather narrow reading of the Organic Act, it is obvious that an amendment to the Organic Act specifying the existence of the Supreme and Superior Courts would eliminate that impediment. Specifically, that court stated: "Congress may at this time favor the creation of a Supreme Court, but it is incumbent upon the legislature and the people of Guam to seek the approval of Congress

¹⁶ See *Corn v. Guam Coral Co.*, 318 F. 2d 622 (1963).

¹⁷ Compare language of Law of Aug. 9, 1951, ch. III, § 82 [1951] Guam Law 1-17 (amended 1969) to 48 U.S.C. § 1424 (a).

¹⁸ See 1 Guam Civil Proc. Code iv.

¹⁹ 48 U.S.C. 1421b as amended Act of Sept. 11, 1968, 82 Stat. 847, codified 48 U.S.C. 1421 b.

²⁰ Rules of Criminal Procedure for the Superior Court of Guam, submitted to Guam Legislature Dec. 12, 1974, became law on Jan. 13, 1975.

²¹ Law of Jan. 16, 1974, Guam Law 12-85 (enacted Jan. 16, 1974).

²² This law was passed by the 12th Guam Legislature on Dec. 12, 1973 and approved by Gov. Carlos G. Camacho on Jan. 16, 1974.

²³ *Agana Bay Development Co. (Hong Kong) Ltd. v. Supreme Court of Guam*, Civil No. 74-177 (D. Guam Nov. 6, 1974).

²⁴ *Id.* at 35.

²⁵ *Id.* at 36.

through an amendment to the Organic Act."²⁶ That succinctly is the business we are about.

Secondly, even if the District Court decision were to be reversed by the Ninth Circuit, it would still be necessary for this bill to be passed. The issue at that point would not be the existence of these courts, but rather, the relative question of the nature of that existence. These courts would be forced to rely upon Public Law 12-85 for their continued existence. Thus, they would be merely creations of the local legislature, and as such totally subject and controlled by same. In fact, their continued existence would be controlled by that source. They would not then be a coequal partner, but rather a subservient maidservant, not a bastion of justice but rather a political pawn.

Therefore, it is obviously necessary for the judiciary to assume its rightful place as a coequal partner of the tripartite Government of Guam that it obtain its existence from the same source as the other two branches. Specifically, that it be created by Congress in the form of an amendment to the Organic Act, as the present bill before you today purports to do. Only thereby would the judiciary obtain the same permanence as the other two branches, for only thereby would its existence flow from the same source as the other two branches, specifically Article IV, § 3 of the Constitution granting to Congress the power to administer the territories.²⁷

It is for the above stated reasons that I, and that body I represent, support the passage of House Bill #4580.

STATEMENT OF CONCEPCION CRUZ BARRETT, CHAIRMAN, COMMITTEE ON JUDICIARY
AND CONSUMER PROTECTION, GUAM LEGISLATURE

I am Senator Concepcion Cruz Barrett, Chairman of the Committee on Judiciary and Consumer Protection of the Guam Legislature. I have traveled some nine thousand miles from Guam to Washington, D.C. to be able to testify today before the House Subcommittee on Courts and Civil Liberties in support of HR 4580.

HR 4580 would formally and effectively establish a third branch of government for the Territory of Guam. A third branch of equal status with the other two branches of the government in that it would be created within the framework of our Organic Act and, consequently, would be no longer at the mercy of the other two branches of government.

Last year the Twelfth Guam Legislature passed the Guam Court Reorganization Act (Public Law 12-85) which created a Supreme Court of Guam. However, the authority of the Guam Legislature to create a Supreme Court was challenged by the District Court of Guam, and the case is now pending decision with the Ninth Circuit Court of Appeals.

At this point, I wish to cite a portion of Section 22(a) of the Organic Act of Guam which states: (Quote) ". . . the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may have been or may hereafter be established by the laws of Guam . . ." (Unquote).

The question of whether or not our territorial government does have a Supreme Court today, I will leave up to our judicial system. I mentioned this simply to demonstrate to this Subcommittee that the Supreme Court of Guam, as created by the Guam Legislature, constitutes our third branch of government.

Perhaps it might be advisable to inform this Subcommittee that an appeal to the Ninth Circuit Court, generally costs a minimum of \$10,000, and considering the average income of our people which is between \$7,000 to \$8,000 per annum, it becomes extremely expensive, if not altogether impossible, for most of our common people to take advantage of their right to appeal.

It is my personal feeling that a Guam Supreme Court will benefit the people of Guam and reduce the long delays now experienced as a result of having to appeal either to the Appellate Division of the District Court of Guam, which holds sessions once each year, or to the Ninth Circuit Court of Appeals in San Francisco. I am told, that many times, appeals from the District Court of Guam to the Ninth Circuit Court of Appeals take as long as a year to a year and a half.

On another point, it seems to me that a Supreme Court composed of Justices within the Guam community would be best qualified to interpret the laws of Guam, taking into consideration the fact that our local judges would be or at least assumed to be more familiar with local customs and culture much more than those people 10,000 miles away. At the present time, our Judiciary is composed of a local man as Chief Justice, four statesiders, and one local, as trial judges

²⁶ *Id.* at 35.

²⁷ U.S. Const. art IV, § 3.

(included within these four statesiders is a female). I mentioned this only for the purpose of emphasizing that we in Guam do not have social prejudice.

As a member of the Judicial Council of Guam, I am familiar with the method for appointment of judges. The Council asks the Guam Bar Association to submit five qualified lawyers as candidates. From these five candidates the Council selects three to nominate and the Governor of Guam makes his appointment from the three nominees. The Governor's appointment must then be confirmed by the Legislature for the first five year term only. Upon expiration of that first initial term, the incumbent judge goes on the ballot for popular reelection. It seems to me that, every effort is being taken to assure the people of Guam that only those nominees possessing the necessary qualifications will ever be appointed to the bench.

In closing, Mr. Chairman and members of the House Subcommittee on Courts and Civil Liberties, I ask for your favorable consideration on H.R. 4580.

STATEMENT OF CHARLES H. TROUTMAN, ATTORNEY GENERAL, TERRITORY OF GUAM

Mr. Chairman and members of the Subcommittee: My name is Charles H. Troutman, and I am the Attorney General of the Territory of Guam. I appreciate this opportunity to testify on behalf of Ricardo J. Bordallo, Governor of Guam, and myself, in favor of H.R. 4580, "A Bill To amend the Organic Act of Guam to provide for the reorganization of the judicial system of Guam, and for other purposes." At the outset, I wish to state that the Executive Branch of the government of Guam is strongly supporting H.R. 4580. We feel that Guam has reached that stage of development where a Supreme Court of Guam will aid in the further development of the Territory. In addition, we feel that this bill, by establishing in the Organic Act of Guam not only the Supreme Court of Guam, but also the Superior Court of Guam, places the judiciary system of Guam on an equal level to that enjoyed by the Executive and Legislative branches, in that, with the passage of this Bill, all three branches of the Territorial government will have their basic structure firmly set in the Organic Act.

That the people of Guam believe that there is a need for a Supreme Court of Guam is evident by the passage of Guam Public Law 12-85 in 1974 which legislatively created a Supreme and Superior Court for Guam under the working of the present Section 22 of the Organic Act, which states, in pertinent part:

"... and the judicial authority of Guam shall be vested in the District Court of Guam and in such court or courts as may hereafter be established by the laws of Guam. The District Court of Guam shall have... original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have... such appellate jurisdiction as the legislature may determine..."

The second paragraph of the above Section 22, in my view, provides for an appellate division of the District Court for such appeals as may be given the District Court by the legislature. Public law 1285 removed all appellate jurisdiction from the District Court.

However, in a court challenge to the existence of the Supreme Court, the District Court declared that the Organic Act did not permit the Guam Legislature to create a Supreme Court. (*Agana Bay Development Co. (Hong Kong) Ltd. vs. Supreme Court of Guam* (Dillingham Corp. of the Pacific, Real Party in Interest), D.C. Civ. 74-177, 1974.) This case is now on appeal before the Ninth Circuit Court of Appeals, with oral arguments having been heard on June 10th of this year. No decision has been rendered as of this date.

The impact of H.R. 4580 would, therefore, be twofold. First, this Bill would create, by Congressional action, a Supreme Court of Guam. Secondly, this Bill would, in so creating a Supreme Court, and specifying both the District Court and Superior Courts in the same section, create a judicial system for the territory which could not be changed by the Legislature. Such changes would have a great impact upon the Territory.

I am firmly convinced of the need for a basic appellate system on Guam. First, there is the savings in cost and time afforded litigants over the present system. Now, the Appellate Division of the District Court meets once a year and during the incumbency of the present District Judge, has consisted of the visiting U.S. District Judge appointed by the Chief Judge of the 9th Circuit for the period of the absence of the regular District Judge, a judge from the High Court of the Trust Territory and an Island (Superior) Court judge who is designated by the Chief Judge of the 9th Circuit. Considering this annual sitting, it

is possible for a case from the Superior Court to be up to eighteen months old before being heard by the Appellate Division. If this is a civil case, another year or more can go by before decision by the 9th Circuit. A case arising in the District Court in September of 1973 only reached a final decision last month, and that did not require treading the route of the Appellate Division. Guam needs swifter justice than this.

A second reason for having a basic appellate structure on Guam is the fact that this Territory has gone through, and is now engaged in, a separate development, both legally and socially, from the other parts of the United States. This development is based upon both Guam's distance from the United States mainland (6,000 miles) and its different cultural makeup, and its close association with the Asian mainland and the island nations of the Far East. While those of us living on Guam are firmly tied to the principals of the United States Constitution, we believe that the best legal interests of Guam may be served by a local appellate structure.

Additionally, cost is a large factor in the low numbers of appeals reaching the 9th Circuit. The litigants must not only pay the fees required for appeal, but also pay the plane fares of their attorneys to the site of the appellate hearing, usually San Francisco or Honolulu. This latter cost can average over \$2,000 per appeal for each side. Despite the relatively small number of lawyers from which to draw a local judiciary, some 55 to 60 practicing lawyers, I believe firmly that there are those of sufficient competence and quality to staff whatever appellate system may develop on Guam. For instance, I do not believe that H.R. 4580 would mandate three *full-time* Justices of the new Supreme Court. Rather, I foresee in the near future, a system of part-time Justices who are called upon to sit for each case, thus giving the system a wider choice of justices and a better means of avoiding those conflicts of interest which are prevalent in as closely-knit society as is Guam. In the even farther distant future, I foresee some type of merger between Guam and the Northern Marianas, with a possibility of a joint appellate court structure. H.R. 4580 also sets a good foundation for this, should it occur.

The local bar has expressed a desire to retain the absolute right of appeal to the 9th Circuit Court of Appeals. While I am opposed to this absolute right, for the reasons stated above, I do believe that this Bill could be amended, without doing damage to the concept of a local Supreme Court by permitting the 9th Circuit Court to hear appeals from the Supreme Court of Guam upon the same basis as is provided in this Bill for appeals from the Supreme Court of Guam to the Supreme Court of the United States. Considering the latter court's case load, I believe that, for all practical purposes, this Bill in its present form will provide *no* form of appeal from the Supreme Court of Guam. Therefore, perhaps Section 3 of H.R. 4580 could be amended to *add* a new section to title 28, United States Code which would read:

"Final judgments or decrees rendered by the Supreme Court of the territory of Guam may be reviewed by the *Ninth Circuit of Appeals* as follows:

(Here inserting the wording of subsections (1), (2) and (3) of 28 U.S.C. 1258, and substituting therein the words "Supreme Court of the territory of Guam" for the words "Supreme Court of Puerto Rico.")

This approach would allow a separate development of Guam's legal system in consonance with the development of the rest of the territory, while keeping the Supreme Court's rulings consistent with the basic Constitutional tenets as interpreted by the Federal Courts.

Having given a statement of my concepts of a Supreme Court of Guam, I shall now examine H.R. 4580 in detail in order to point out some portions of this Bill which will cause problems in the future if not corrected.

First, Section 22(b)(3) of the Organic Act as amended by H.R. 4580 is inconsistent with amended Section 24(b) in that the latter section provides for the Governor of Guam to appoint the judges of the Superior and Supreme Courts "by and with the consent of the Legislature". Amended Section 22(b)(3) provides that the *Legislature* of Guam may provide for the "method of appointment" of the Supreme and Superior Court judges. Thus, by Section 22 the Legislature could provide that *it* would appoint the judges, as it has provided in the past. I believe that it is imperative for the stability of the judicial system that the method of appointment be specified in the Organic Act, itself, and not left up to any local body. Therefore, the phrase "method of appointment" occurring on lines 8 and 9 of page 2 of H.R. 4580 should be deleted.

Secondly, it is not clear what court on Guam will hear causes involving interpretations of the Organic Act. The new jurisdiction of the Superior Court gives that court authority to hear all local causes except ones arising under the "Constitution, treaties and laws of the United States". What is the Organic Act of Guam? Is it a "law of the United States"? If so, in what court would I bring an action which challenges a law of Guam as being repugnant to the Organic Act of Guam? Likewise, would there be removal to the District Court of Guam in an action wherein a defense was raised involving the Organic Act, as occurs in many criminal actions? This interpretation would seriously weaken the powers of the Superior Court to hear everyday matters, as well as matters of greater import. This question I have raised is a new one, as far as I can ascertain. Prior to the Court Reorganization Act (Guam P.L. 12-85) all such cases were heard in the District Court of Guam except for those criminal and civil cases wherein interpretation of the Organic Act was raised as a defense to an action brought under the laws of Guam. This was because of the jurisdiction retained in the District Court by the Guam Legislature under former Section 22 of the Organic Act, i.e., as that Section was written without reference to H.R. 4580.

Now, however, this question will arise and, I believe, should be clarified by law, rather than await a long-drawn court action with its uncertain results. Therefore, I would amend Section 23(c)(1) of the proposed amendment in H.R. 4580 by adding, after the final sentence thereof, the following:

"For purposes of determining the jurisdiction of the District Court of Guam, the Supreme and Superior Courts of Guam, the Organic Act of Guam is not a law of the United States."

This change would give the new Guam courts jurisdiction to hear actions of the sort I have mentioned above. My proposal to grant limited appeal rights to the Ninth Circuit Court of Appeals would give the necessary control over interpretations of the Organic Act which are required of what is actually a law of the United States.

I question the re-enactment of the clause, beginning on page 3, line 22 of H.R. 4580, regarding the authorization of jury trials by the Legislature of Guam. I realize that such a right to a jury trial and to indictment by grand jury is not such a right as is automatically granted to a territory by the Constitution. However, the Legislature has granted such a right under the laws of Guam applying to the laws of Guam, and these rights are cherished by all Guamanians. Will this reorganization of the courts require now that the Legislature specifically apply the right to jury trials and indictment by grand jury to the District Court of Guam wherein only "federal" actions will be tried hereafter? If anything, this clause should be made to apply to the Superior and Supreme Courts of Guam as newly constituted, and all of the Federal Rules of Procedure be made applicable to the Federal actions to be tried in the District Court.

Finally, there needs to be clarification of Section 5 of H.R. 4580 relative to the effective date and applicability of this Bill. As I have stated, Guam has now a Court Reorganization Act which, in practice, accomplishes every local phase of H.R. 4580. Will this Act be obsolete, requiring new legislative action upon the passage of H.R. 4580, or will those applicable parts of the Court Reorganization Act (P.L. 12-85) be retained in effect? Likewise, will this Bill affect those cases filed in the Superior Court after the effective date of P.L. 12-85, and whose route of appeal is in doubt at the present time?

I believe that Congress should, in the interests of the orderly procession of justice on Guam, ratify P.L. 12-85, and the existence of the locally created Supreme Court up to the passage of this Bill, permit the continued existence of those parts of P.L. 12-85 which are consistent with H.R. 4580 and amend the Organic Act as proposed by H.R. 4580 (coupled with the amendments suggested herein). In line with these observations, Section 5 of H.R. 4580 could read:

"(a) Public Law 12-85 of the Twelfth Guam Legislature is hereby ratified and its existence concurred in up to the date of passage of this Act.

(b) Those portions of Public Law 12-85 of the Twelfth Guam Legislature not in conflict with any provisions of this Act are hereby continued in force until changed by the laws of Guam.

(c) Appealable actions of the Superior Court of Guam shall be taken and continued in the Supreme Court of Guam, with a right of appeal therefrom to be in accordance with this Act.

(d) The amendments made by the foregoing provisions of this Act shall not apply with respect to any cause arising under the laws of Guam which is filed in the District Court of Guam, or any division thereof, before the date of the enactment of this Act, except as provided in this Section."

The use of the term "Superior Court" means that only actions filed under the new Court Reorganization Act (P.L. 12-85) will be covered, as the name of the court prior to that time was the "Island Court of Guam."

With the passage of H.R. 4580, which the Governor of Guam and I endorse, the territory of Guam will take another large step along the road to governmental maturity.

I thank you for this opportunity to afford me a hearing, and I am open for questions.

Mr. WON PAT. Mr. Chairman, as a member of two standing committees and five subcommittees of the House, I am keenly aware of the excessive pressures on your time and energy. Therefore, I shall endeavor to be as brief as possible in providing your committee with the basic information necessary to enable you to consider and act on this gravely needed legislation expeditiously.

The measure before you which I have introduced, H.R. 4580, has three major purposes: To confirm the establishment of the Guam Supreme Court, to provide for the reorganization of our own territorial judicial system, and to provide for a direct appeal from the Supreme Court of Guam to the U.S. Supreme Court.

In essence, your favorable action on this measure will reaffirm the judicial power granted by Congress to the Guam Legislature, and will resolve a standing impasse which presently denies adequate appeal from decisions of the Guam Superior Court. You have before you the no objection reports of the Department of Justice and a supportive study of the American Law Division of the Library of Congress. I think you will find the report and study most enlightening.

The situation which my bill would rectify is the result of a decision of the District Court of Guam last November in the case of *Agana Bay Development Co. v. Supreme Court of Guam*. This case grows out of the passage of the Guam Court Reorganization Act—Public Law 12-85, 12th Guam Legislature, 1973—which authorized the creation of the Supreme Court of Guam. The legislature believed that such action was authorized by the present judicial provisions of the Guam Organic Act found in 48 U.S.D. 1414(a).

This section of the Organic Act provides in pertinent part that:

The District Court of Guam shall have jurisdiction of the district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, shall have original jurisdiction in all other causes in Guam, jurisdiction over which has not been transferred by the legislature to other court or courts established by it, and shall have such appellate jurisdiction as the legislature may determine. The jurisdiction of the courts of Guam other than the District Court of Guam shall be prescribed by the laws of Guam.

In *Agana Bay Development Co. v. Supreme Court of Guam*, the District Court of Guam rejected the contention that this provision gives the legislature the authority to determine which decisions will be appealed to the district court, if any, and which decisions will be appealed to other courts created by the legislature. The court construed the phrase "and shall have such appellate jurisdiction as the legislature may determine" to mean that if the legislature creates a

right of appeal, such appeal must lie with the District Court of Guam, and from there to the Supreme Court of the United States. Basing his decision on this rationale, the district court judge held that all sections of the Guamanian law "pertaining to the Supreme Court of Guam or the Chief Justice or Associate Justices of the Supreme Court, or which divest in any way the appellate jurisdiction of this Court are null and void."

Since the *Agana Bay Development Co. v. Supreme Court of Guam* decision early last November, no appeals have been taken from cases decided in the superior court, because it is impossible to determine where the appeal should be filed. Obviously, action on my court bill would resolve this judicial impasse, which is effectively denying the people rights of judicial review in a number of local cases.

As it now stands, Guam is left with half a judicial system. Public Law 12-85 was not struck down in its entirety, only that portion which establishes a supreme court. As the chief-justice-designate recently stated in a letter to me:

It seems that the territory of Guam has reached a stage of sophistication and maturity whereby it can handle its own affairs in the same manner as the Commonwealth of Puerto Rico, which has a Supreme Court, if not better. I trust that you realize the urgency of a final resolution of this dilemma. Consequently, I need not advise you that time is of the essence in the interests of justice to those parties whose cases have been appealed and are now pending.

Even if the Ninth Circuit Court were to reverse the *Agana Bay Development Co. v. Supreme Court of Guam* decision, enactment of H.R. 4580 would be urgently needed. Not only does my bill firmly establish the Guam court system, created by the people of Guam under the authority of Congress, as a coequal branch of government, it also provides a direct appeal from the Supreme Court of Guam to the Supreme Court of the United States. By granting this right, Congress would only be granting to Guam a right of appeal already enjoyed by the non-Federal court systems of every State and the Commonwealth of Puerto Rico.

By providing for certain appeals to the Supreme Court and eliminating appeals to the ninth circuit as a matter of right, my legislation would free Guamanians from the hardship and expense of having to go to Hawaii or San Francisco to litigate appeals of cases relating solely to Guamanian matters. Of course, any appeal to the U.S. Supreme Court would necessitate traveling to Washington, but as a practical matter, it can safely be assumed that the Supreme Court would hear very few appeals of cases concerning a local Guam matter.

H.R. 4580 also provides that the Guam Legislature will retain authority to set the rules of procedure for the Guam Supreme Court, to establish separate divisions for that court and of the superior court, to designate which of such divisions shall be courts of record, establish the qualifications, methods of appointment, salary, and tenure of the justices of the superior and supreme courts, and otherwise to provide for the administration of all the courts on Guam except the District Court of Guam.

For all the aforementioned reasons, I sincerely urge the committee to reaffirm this aspect of self-government for Guam granted by previous Congresses by quickly approving this urgently needed measure. I wish to emphasize, however, that I will be happy to support any changes in the bill's language which would make its provisions more clear and definite, particularly the proposed change in section 23(c)(1) which the Justice Department recommended in its report concerning my bill.

In closing, I must add that this measure before you today has the complete concurrence of the Government of Guam, the administration, the judiciary, and the 13th Guam Legislature, whose resolution 301 also requested the introduction of this legislation. The U.S. Department of Justice has no objection to the measure, and the Library of Congress presents facts that are supportive of it.

I thank you for granting us this time, and we stand ready to respond to any questions.

Mr. KASTENMEIER. Thank you, Mr. Won Pat.

I take it there may be a couple of questions here. One is the legal question of the decision itself, and that is pending in the court of appeals, and the disposition of that is unknown at the moment. Then there is the question, the policy question, notwithstanding whatever decision there may be arrived at, whether, as a matter of policy by legislation, we should insure that Guamanian matters can be determined within our direct route of the courts to the Guam Supreme Court, rather than to be diverted to the district courts. I gather that is a policy question.

What is the precedent on the question with respect to either territories of the United States which are not States, such as Puerto Rico and other governmental entities, which have status less than a State? Do they have a court system which is independent of the district court for these purposes?

Mr. WON PAT. Mr. Chairman, since I am just a layman and not a lawyer, perhaps I can give that question to one of the experts, Judge Abbate or Mr. Troutman.

Mr. TROUTMAN. Mr. Chairman, yes; there are precedents, but each territory has been treated differently by Congress. Puerto Rico, before its Organic Act, and before its commonwealth status, rather, had appeals from its supreme court heard by the Third Circuit Court of Appeals, and it had a separate court system aside from its district court.

The Virgin Islands, however, is in a different situation, in that it has a district court and such inferior courts as the legislature of that territory wishes to establish, which is the difference between the Guam Organic Act and the Virgin Islands Organic Act, that word inferior. In addition, in the Virgin Islands, the litigants may, on most any issue, petition to be heard by the district court, if they so desire, and the district court may move issues from the local courts up to it. So that is different still. The former incorporate the territories of Hawaii and Alaska. They had their own complete court systems separate from the district court.

Mr. KASTENMEIER. Would H.R. 4580 remove an option, remove the discretion for removal to U.S. district court from litigants?

Mr. TROUTMAN. On Guam, sir, there has never been a discretion, really, of removal in that sense. It has been up to the legislature

before, and to a certain extent, this bill would. But I believe in the extent it does, it would be a solidifying of the local process rather than anything else.

Mr. KASTENMEIER. How recently, historically, has Guam reorganized its own judicial system?

Mr. TROUTMAN. Two times recently, sir, in 1968, I believe, in which the then island court was given substantial jurisdiction over local matters up to \$5,000 in matters of law. In matters of equity at that time remained with the district court, as well as everything over \$5,000 in value.

The most recent reorganization was effective July 1, 1974, and this is the Public Law 12-85 of the Guam Legislature, which created a superior court, having complete local jurisdiction, and a Supreme Court of Guam, which was declared—that part of which was declared invalid by the district court. And the matter is still pending. That is the most recent reorganization.

Mr. KASTENMEIER. The case referred to, the *Agana Bay Development Co. v. The Supreme Court of Guam*, was the development of that surprising to you?

Mr. TROUTMAN. In a sense, it was; yes, because I, in fact, testified when I was Assistant Attorney General, testified before the Guam Legislature, and it had been my opinion that under the Organic Act, the legislature did have the power which it used in Public Law 12-85.

I knew, however, that there was controversy on the matter in Guam.

Mr. KASTENMEIER. Take it as quite apart from the legal question involved, as a policy matter, the question is a popular issue. The Legislature of Guam and the people of Guam would prefer a judicial system by which access would be had to the superior court and then to the Supreme Court of Guam, without some form of preemption by the U.S. district court processes. Is that correct? Is that more or less the commonly held view, in terms of—

Mr. WON PAT. That is the general feeling. I think the justice can speak on that.

Judge ABBATE. The presiding judge of the superior court—I regret that the chief justice could not be here at the present time, unfortunately. But it is the popular view to sort of eliminate the Federal judicial intervention in cases at the present time, honorable chairman. But really, there is actually no due process as far as appellates today. We are just stymied based upon the *Agana Bay Development*.

Presently, we have 18 cases pending before the Supreme Court, and attorney are in a quandary, a dilemma, as to where to file their cases or notice of appeal, whether to go to the Supreme Court or to the appellate division of the district court.

We are in wholehearted agreement with the bill as presented. We feel that—and concurring also with Chief Justice Burger's speech in Williamsburg—to allow us to have our own court system, and get away from this Federal intervention and Federal courts. I am sure they have enough work without handling any of the *Guam* cases.

Mr. KASTENMEIER. The Chief Justice of the United States supports your position?

Judge ABBATE. In one of his speeches, by way of inference, anyway, I can say this.

Mr. KASTENMEIER. Might we not be—this committee be further guided by the decision in the circuit court of appeals involving this case?

Judge ABBATE. Even so, if we are faced with—if the district court judge is reversed on this matter, I think we should have something more basic to create a third branch of the Government. Right now, we do not have a judicial branch; we have got the executive. When it comes time for the judiciary, we stand down.

And of course the Federal court is in our place there. We feel that we should share equally with the other.

Mr. KASTENMEIER. Do you have any knowledge as to when the circuit court of appeals might hand down a decision in this case?

Judge ABBATE. The case was argued in San Francisco on June 10 of 1975, Mr. Chairman. Normally, they have expedited this appeal, and they have jumped it up on the calendar. We hoped we would get an earlier decision—we thought within 6 weeks, but apparently they are not—I do not know if they are waiting for the passage of this bill.

Mr. KASTENMEIER. The gentleman from California, Mr. Danielson.

Mr. DANIELSON. I did not realize—thank you, Mr. Chairman—what a difficult situation you are in, and I hope we can do something, Mr. Won Pat, and distinguished witnesses, to remedy it. Certainly, you should have an orderly judicial procedure and system, that there is no doubt as to which move of the checker comes next.

Let me ask you two questions only. What presently is the population of Guam?

Mr. WON PAT. The overall population is 110,000, not counting the refugees, of course.

Mr. DANIELSON. No; just the regular—

Mr. WON PAT. The latest figure is 110,000.

Mr. DANIELSON. About how many civil actions and criminal actions are filed annually?

Judge ABBATE. Up to date, Mr. Danielson, there are over 1,200 civil cases in the superior court, as of January 1. Criminal cases with felonies and misdemeanors, we have 524 at the present.

Mr. DANIELSON. That is a pretty good list.

Judge ABBATE. Criminal business has increased tremendously.

Mr. DANIELSON. Of that 524, how many are—I am going to call them very minor, low grade things, like traffic, and so forth?

Judge ABBATE. That does not include traffic. That is just misdemeanors. We have—there are 428 misdemeanors, and the balance would be the felony cases.

Mr. DANIELSON. Is your insular court, your Guamanian court—how many judges do you have?

Judge ABBATE. One chief justice of the supreme court; we have designated one presiding judge; and there is one traffic court judge. There are six judges altogether. The chief judge is Guamanian. The four stateside judges—the Honorable Janet Weeks is one of them.

Mr. DANIELSON. They are in the Guam courts?

Judge ABBATE. Yes, sir.

Mr. DANIELSON. There are six judges all told?

Judge ABBATE. That includes the traffic court judge.

Mr. DANIELSON. How much does—how many members does the Supreme Court have?

Judge ABBATE. Just one member.

Mr. DANIELSON. Does he designate some of the other judges to sit with him?

Judge ABBATE. Yes; our section of the law 12-85 that the chief justice can designate superior court judges or Federal District can sit, and also the trust territory judge can come over to sit.

Mr. DANIELSON. But they are to be designated by the chief justice?

Judge ABBATE. Yes; until such time business warrants it, and then there would be a permanent three-man bench.

Mr. DANIELSON. Of these actions, about how many of them reach a posture where an appeal should be taken, or probably would be taken?

Judge ABBATE. On the appeal end, at the present time, we have 17. The district court has 5, 11—there are about 28 cases pending on appeal at the present time.

Mr. DANIELSON. Does that include the district court as far as the superior court?

Judge ABBATE. Yes, sir.

Mr. DANIELSON. How many from the superior court?

Judge ABBATE. Seventeen, up to date.

Mr. DANIELSON. Do you seek to have an appeal from the district court to the Guam Supreme Court, or only from the superior court?

Judge ABBATE. From the superior court to the Supreme Court.

Mr. DANIELSON. And then, in the event there is an appeal from a district court, it should go to the ninth circuit?

Judge ABBATE. If it is a district court, yes.

Mr. DANIELSON. Forgetting the Federal cases from the superior court, to the Guam Supreme Court and on, how many appeals would there be there?

Judge ABBATE. This year, to date, there are about 28.

Mr. DANIELSON. And those are the ones that are now in limbo?

Judge ABBATE. Yes, sir.

Mr. DANIELSON. Thank you very much. I understand it a little better.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. Thank you very much, Mr. Chairman.

Thank you, gentlemen, and Judge Weeks for being here.

I would think that the ledgers of history of the Organic Act supports your contention. I would hope that you would prevail.

I wonder if Judge Weeks would want to respond to some questions. Let me introduce this lady as a graduate of Boston College Law School, where I was dean for a dozen years. Judge Weeks, would you concur in my sentiment from what I read here that the legislative history supports the position that you and your associates are taking, that Congress did not need to deny to Guam the power to create the courts.

Judge WEEKS. I find myself in an awkward position. The *Agana Bay Development Company* case was filed by the firm with which I served before going on the bench. So I was actually a member of the firm that brought the action.

Mr. DRINAN. That is another reason why this firm is doing the appeal too?

Judge WEEKS. Yes.

Mr. DRINAN. I am quite confident they will prevail.

Let me ask this, if the court resolves this favorably to your position—let's hope during the next month—will this legislation be needed in any way?

Judge WEEKS. Yes.

Mr. WON PAT. Regardless of the outcome of the decision, this legislation is needed in order to establish the judiciary system of Guam.

Mr. DRINAN. I wonder if you would accept the proposed amendment by the Department of Justice that would give to the court there diversity?

Mr. WON PAT. Yes, sir; I alluded to that in my statement. We concur with that.

Mr. DRINAN. It would give a diversity and removal of jurisdiction.

Mr. WON PAT. Right.

Mr. DRINAN. I welcome your testimony, and I am sorry for the difficulties encountered. I would hope that this could be clarified within the very near future.

Thank you very much.

Mr. KASTENMEIER. The gentleman from New York.

Mr. PATTISON. I have no questions.

Mr. KASTENMEIER. If there are no questions from the panel, I am very pleased to hear from you this morning. I know some of you have come a very long way to be here in Washington. We wish you a happy stay.

I am glad that Mr. Drinan asked the question on whether you would be willing to accept the recommendations of the Justice Department for the record.

That will conclude your testimony, and we appreciate your presence.

Mr. DRINAN. Mr. Chairman, one point of information—what is the status of this in the Senate?

Mr. WON PAT. There is no identical bill in the Senate.

Mr. DRINAN. There is not?

Mr. WON PAT. No. I might do that.

Mr. DRINAN. It might expedite it. It could be filed even this late, that is there, and if we can move forward on this, then there is a companion bill there.

Mr. KASTENMEIER. Next, I would like to call, on the same question, a Director of the Office of Territorial Affairs of the Department of Interior, Hon. Fred Zeder.

Mr. WON PAT. Thank you, Mr. Chairman.

TESTIMONY OF FRED M. ZEDER, DIRECTOR, OFFICE OF TERRITORIAL AFFAIRS, U.S. DEPARTMENT OF INTERIOR, ACCOMPANIED BY BREWSTER CHAPMAN, ASSISTANT SOLICITOR FOR TERRITORIES, AND STEPHEN SANDER, STAFF ASSISTANT, LEGISLATIVE AND POLITICAL AFFAIRS

Mr. ZEDER. I am Fred Zeder, Director of Territorial Affairs. I have with me Mr. Chapman, who is the Assistant Solicitor for Territories, and on my left Steve Sander, who is Staff Assistant for Legislative and Political Affairs.

I have a statement prepared, a two-page report to you. It seems to me, however, that we have been through most of it. If you will consent

to having us submit this, I will read you the conclusions in the interest of time, or if you want me to read it, I will.

Mr. KASTENMEIER. Frankly, it is one of the shortest statements we have had. You are quite at liberty to read it all. It will not take up too much time. I think that might well be the way to do it, because we will have your complete sentiment expressed to us.

Mr. ZEDER. I appreciate the opportunity to appear before this subcommittee today to testify on H.R. 4580, a bill that would amend the Organic Act of Guam to provide for the reorganization of the judicial system of Guam.

With regard to the bill's impact upon Guam, the Department would have no objection to the enactment of this legislation.

H.R. 4580 amends the Organic Act of Guam by establishing for Guam a supreme court, a superior court, and such other courts as the Legislature of Guam may establish. Under section 23 of the Organic Act of Guam, pursuant to this bill, the Superior Court of Guam would have original jurisdiction in all causes arising under the civil and criminal laws of Guam, and such appellate jurisdiction as the Legislature of Guam may provide.

The superior court would not have jurisdiction over cases arising under the Constitution, treaties, and laws of the United States, or causes with respect to the Guam territorial income tax.

Under H.R. 4580, the Supreme Court of Guam would have such appellate jurisdiction as the Legislature of Guam might provide.

Further, this legislation, by amending section 23 of the Organic Act, would confer upon the District Court of Guam the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the amounts of the matter in controversy, and original exclusive jurisdiction over all cases with respect to the Guam territorial income tax.

This bill would also amend section 1258 of title 28 of the United States Code to provide for review by the U.S. Supreme Court of the final judgments or decrees rendered by the Supreme Court of Guam.

By enactment of Guam Public Law 12-85, the Legislature of Guam had attempted to establish an appellate court for Guam. In 1974, the District Court of Guam, in *Agana Bay Development Co. v. Supreme Court of Guam*, held that the Guam Legislature lacked the authority to establish such an appellate court. H.R. 4580 would establish a territorial supreme court as an appellate court and thereby accomplish what the Legislature of Guam could not.

Keeping in mind the Department's responsibilities for territorial affairs, we have no objection to the bill. However, with regard to the impact of this legislation upon the Federal judicial system, we defer in our views to the Department of Justice and to the Judicial Conference of the United States.

This concludes my prepared statement. I would be pleased to respond to any questions that you may have.

I might add that I have just returned from Guam, July 8. I met with a number of the legislators over there, and they are very anxious and urged me to support this to the fullest, and we do concur with that wish.

Mr. KASTENMEIER. Thank you, Mr. Zeder.

Did the Department of the Interior express its views with respect to the case, *Agana Bay Development Co. v. The Supreme Court of Guam*, or have you been interested in the case as it presently pends before the Circuit Court of Appeals?

Mr. ZEDER. Brewster Chapman, on my right, would be quite qualified to answer that.

Mr. CHAPMAN. We reviewed the case at the request of Mr. Won Pat. The case had been decided. I was not aware until yesterday that it had gotten to the ninth circuit. I share, however, with the witnesses from Guam, the need for this legislation, regardless of the outcome of the ninth circuit case.

Indeed at the present time, the situation is such that the judicial branch is not well defined in the Organic Act. Much of it is left to local legislation, which could possibly be whimsical, year to year, in changing the judicial system. This would set it under Congress article 4, section 3, clause 2 authority as a judicial system for Guam.

Mr. KASTENMEIER. Are you satisfied that appeals from the Supreme Court of Guam should be reviewed by the U.S. Supreme Court?

Mr. CHAPMAN. I feel that this treatment—assuming that by review you mean on petition for a writ of certiorari—would put them in exactly the same standing as any other State in the Union, to have their highest court decisions reviewed by the Supreme Court for constitutionality according to the various criteria applied by the Supreme Court.

Mr. KASTENMEIER. There is some reference to the Virgin Islands, and the Supreme Court of the Virgin Islands cases were appealed to the U.S. Circuit Courts of Appeal, for that circuit has a different formulation—that is what I had in mind when I asked it.

Mr. CHAPMAN. Yes, sir. First of all, there is no supreme court in the Virgin Islands. These are inferior courts established by the local legislature to handle local criminal matters, and other things that are really non-Federal, but those defendants have a right to go into the Federal system, and it is then a district court decision which is appealed to the third circuit in the normal process of appeal from a district court.

Mr. KASTENMEIER. I appreciate that clarification. I yield to the gentleman from New York, Mr. Pattison.

Mr. PATTISON. I have no questions.

Mr. KASTENMEIER. The gentleman from Massachusetts.

Mr. DRINAN. I want to thank you, Mr. Zeder. I want to welcome Mr. Brewster Chapman, an old classmate of mine from law school.

I have just a couple of questions. I assume that it is not now possible for you people or for Justice to intervene as an *amicus curiae* in the cases of the ninth circuit. The arguments have been held. Was that a live option at one time?

Mr. CHAPMAN. I suppose it was a theoretical live option, but we take the position, in the administration of our territories—particularly the Virgin Islands and Guam—since the elected Governors feel that these are as much like a State as anything you could find short of being a State, and that their local business is their business, and that they handle it. We do not interfere unless we are asked to, and we were not asked to.

Mr. DRINAN. Thank you. Do you have any difficulties at all with H.R. 4580? You defer to the Justice Department. They made one good suggestion, but I take it you have no difficulties at all.

Mr. CHAPMAN. I have none. This is what the people of Guam want, we are for it and we do not object to it.

I understand that the attorney general of Guam had some technical suggestions. I believe he has prepared a report that I have reviewed. I think some of his points are relevant.

Mr. DRINAN. Thank you for coming.

Mr. KASTENMEIER. The gentleman from California.

Mr. DANIELSON. I thank you also for coming, and for your position here.

I feel that within the framework of Government, if anything ought to be orderly, it ought to be the judicial system. I am sorry that, somehow or other, the people of Guam have been left in limbo, so I think we ought to do something about it as quickly as possible. I am convinced that the people of Guam can provide justice for the people of Guam better than anyone else on Earth. They should be given both the privilege and responsibility of doing it.

Years ago, I lived in Puerto Rico. We had an insular court system, in addition to the Federal District Court. The two are perfectly compatible. I am quite positive that the same thing can occur in Guam.

Thank you very much.

Mr. KASTENMEIER. Thank you, gentlemen. This concludes our hearing, on this matter.

I would make reference to the fact that the administrative conference—the judicial conference, rather—Administrative Office of the U.S. Court has not—reports that the judicial conference has not yet met on this question. So we do not have their guidance. They will be reporting late in September, presumably, and we may then have the benefit of their views.

In any event, this concludes the hearing on H.R. 4580, and we are grateful for your appearance this morning.

Mr. ZEDER. Thank you.

Mr. KASTENMEIER. The Chair will make only one other observation, on a different matter, a question of amnesty. Two points—one, your concurrence has been sought by staff, and our report to—we will not have a markup as I had hoped to today or tomorrow, prior to the recess. Rather, it is my hope that staff will have in your hands another amended version of the amnesty bill. We have been working so you will have an opportunity to study it over the recess, and perhaps even test in terms of its acceptance with your constituents, or others, so that when we come back in September, we can dispose with the issue of amnesty by legislation or otherwise, that concluding the business before the subcommittee.

Mr. DRINAN. Do they want a picture?

Mr. KASTENMEIER. Yes, we will have a picture.

The committee stands adjourned.

[Whereupon, at 11:15 a.m., the subcommittee adjourned, subject to the call of the Chair.]

APPENDIX

DEPARTMENT OF JUSTICE,
Washington, D.C., July 16, 1975.

HON. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 4580, 94th Cong., 1st Sess., "To amend the Organic Act of Guam to provide for the reorganization of the judicial system of Guam, and for other purposes."

In substance the bill would amend section 22 of the Organic Act of Guam (48 U.S.C. 1424) so as to remove all doubts as to the power of the legislature of Guam to establish a local appellate court. Guamanian legislation to that effect had been held unauthorized under existing legislation by the District Court of Guam in *Agana Bay Development Company (Hongkong) Ltd. v. Supreme Court of Guam et al.* (D.C. Guam, Civil Case No. 74-177, November 4, 1974). The bill would also abolish the present appellate jurisdiction of the District Court of Guam over the local courts of Guam and provide for the review by the Supreme Court of the United States of the decisions of the Supreme Court of Guam.

The Department of Justice would have no objection to the enactment of this legislation. We would suggest, however, a redraft of proposed section 23(c)(1) on page 3, lines 9-15. That section defines the jurisdiction of the District Court of Guam in accord with existing law as follows:

"(c)(1) The District Court of Guam shall be a court of record and shall have the jurisdiction of a district court of the United States in all causes arising under the Constitution, treaties, and laws of the United States, regardless of the sum or value of the matter in controversy, and shall have original exclusive jurisdiction over all causes with respect to the Guam territorial income tax."

Read literally this provision would limit the jurisdiction of the District Court to cases involving federal questions without regard to the amount in controversy and all cases involving the Guam territorial income tax—which is identical with the Internal Revenue Code. Thus the District Court of Guam would seem to lack diversity jurisdiction. Recent decisions of the District Court of the Virgin Islands dealing with the analogous section 22 of the Organic Act of the Virgin Islands of 1954, 48 U.S.C. 1612, have interpreted that provision as being designed to integrate the District Court of the Virgin Islands into the federal judicial system and thus to confer on it generally the jurisdiction of the District Courts of the United States. *Ferguson v. Kwik-Chek*, 308 F. Supp. 78 (D.C. V.I., 1970); *Government of the Virgin Islands v. May*, 384 F. Supp. 1035 (D.C. V.I., 1974), accordingly held that the District Court of the Virgin Islands has diversity and removal jurisdiction. Similarly the Court of Appeals for the Third Circuit held recently that the District Court of the Virgin Islands has jurisdiction under the Federal Arbitration Act. Title 9, United States Code. *Econo-Car International, Inc. v. Antilles Car Rentals, Inc.*, 499 F. 2d 1391, 1393 (C.A. 3, 1974).

We are not aware of any reported case dealing with this problem on Guam. We believe that the decisions under the Organic Act for the Virgin Islands reach the correct result and would recommend to remedy the ambiguity in section 23(c)(1) by substituting for it a version based on section 402 of the proposed Covenant to Establish a Commonwealth for the Northern Mariana Islands (121 Cong. Rec. S 4084 (Daily Ed., March 17, 1975)):

"(c)(1) The District Court of Guam shall be a court of record and shall have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties, or laws of the United States, it shall have jurisdiction regardless of the sum or value of the matter in controversy, and it shall have original exclusive jurisdiction over all causes with respect to the Guam territorial income tax."

On page 1, line 4 of the bill, substitute 1428e for 1424b.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

MICHAEL M. UHLMANN,
Assistant Attorney General.

ADMINISTRATIVE OFFICE OF THE U.S. COURTS,
 SUPREME COURT BUILDING,
 Washington, D.C., October 7, 1975.

Re H.R. 4580.

HON. PETER W. RODINO, Jr.,
 Chairman, Committee on the Judiciary, House of Representatives, Washington,
 D.C.

DEAR MR. CHAIRMAN: This will refer further to your letter of July 18, 1975 and to my reply of July 24, 1975, relating to H.R. 4580, a bill to amend the Organic Act of Guam to provide for the reorganization of the judicial system of Guam.

This legislative proposal was considered by the Judicial Conference of the United States at its session on September 25-26, 1975. At that time the Conference agreed that the substance of the proposal involved a question of legislative policy. The Conference, however, did ask me to transmit to you for such assistance as it might prove to be the comments submitted to the Judicial Conference committee which studied the bill by Judge Cristobal C. Duenas of the Federal District Court of Guam. These comments are attached hereto.

The Conference further suggested that the Congress give consideration to the potentially substantial drain which this legislation would impose on the caseload of the District Court of Guam and, further, the Conference suggested that if such legislation is passed, Section 23(c)(1) be amended to make it clear that the District Court of Guam will have general diversity jurisdiction as well as federal question jurisdiction. The Conference requested further that the Congress consider whether jurisdiction to review the decisions of the Supreme Court of Guam should be given to the Supreme Court of the United States under its certiorari jurisdiction or to the Court of Appeals for the Ninth Circuit under its appellate jurisdiction or by certiorari.

Sincerely,

WILLIAM E. FOLEY,
 Deputy Director.

DISTRICT COURT OF GUAM,
 Agaña, Guam, May 14, 1975.

JOSEPH F. SPANIOL, Esq.,
 Executive Assistant to the Director,
 Administrative Office of the U.S. Courts,
 Washington, D.C.

DEAR MR. SPANIOL: I have received your letter of April 28, 1975, requesting my views on H.R. 4580 providing for the reorganization of the judicial system of Guam.

Assumedly, the bill was prompted by a decision rendered by the District Court of Guam on November 6, 1974, nullifying the existence of the Supreme Court of Guam as created by the Guam Legislature under Public Law 12-85, approved January 16, 1974. (The Court Reorganization Act). A copy of the Court's decision and the Legislature's Court Reorganization Act are enclosed. The decision has been appealed to the United States Court of Appeals for the Ninth Circuit.

In principle, I have no objection to the enactment of the bill creating the Supreme Court of Guam. I would suggest, however, that the chief justice and associate justices be nominated by the President and confirmed by the U.S. Senate. This was the pattern followed in the creation of supreme courts for the territories. Tenure, qualification and salaries should also be set forth in the bill.

Section 22(a) of the bill provides for the creation of a Superior Court. Under Public Law 12-85, the Guam Legislature has already established the Superior Court of Guam. I do not understand the necessity of such court being created by the United States Congress.

Section 22(b)(4) of the bill, provides as follows:

"Section 22(b). The legislature of Guam may, by law—

- (1)
- (2)
- (3)

(4) otherwise provide for the proper administration of the courts of Guam." (Underscoring supplied).

This could be interpreted to include the District Court of Guam. Is it intended that the Legislature shall have the authority to provide for the administration of the District Court of Guam?

Presently, the original jurisdiction of the District Court of Guam consisted primarily with federal causes, civil and criminal, since all local jurisdiction, with the exception of matters arising under the Guam Territorial Income Tax Laws, are vested in the Superior Court of Guam. There simply is no justification for the Guam Legislature to provide for the administration of the District Court under the present setup. Subsection (4) should be worded as to make it clear that the District Court of Guam is not included.

Section 23(c)(2) of the proposed bill provides as follows:

"(2) Any general rule prescribed from time to time by the Supreme Court of the United States pursuant to section 2072 of title 28, in civil actions, including admiralty and maritime cases; section 2075 of title 28, in bankruptcy cases; and sections 3771 and 3772 of title 18, in criminal cases; shall apply to the District Court of Guam and to appeals therefrom; *except that no provisions of any such rules which authorize or require trial by jury or the prosecution of offenses by indictment by a grand jury instead of by information shall be applicable to the District Court of Guam unless and until made so applicable by laws enacted by the Legislature of Guam, and except further that the terms 'attorney for the government' and 'United States attorney', as used in the Federal Rules of Criminal Procedure, shall, when applicable to cases arising under the laws of Guam, mean the Attorney General of Guam or such other person or persons as may be authorized by the laws of Guam to act therein.*" (Italics supplied.)

The underlined portion of the section is inconsistent with the provisions of Section 1421b(u) of the Organic Act of Guam as added to said Organic Act by Public Law 90-497, effective September 11, 1968:

"(u) The following provisions of and amendments to the Constitution of the United States are hereby extended to Guam to the extent that they have not been previously extended to that territory and shall have the same force and effect there as in the United States or in any State of the United States: article I, section 9, clauses 2 and 3; article IV, section 1 and section 2, clause 1; the first to ninth amendments inclusive; the thirteenth amendment; the second sentence of section 1 of the fourteenth amendment; and the fifteenth and nineteenth amendments.

All laws enacted by Congress with respect to Guam and all laws enacted by the territorial legislature of Guam which are inconsistent with the provisions of this subsection are repealed to the extent of such inconsistency."

The Fifth Amendment, in conjunction with the Fourteenth Amendment, extended the prosecution of criminal cases in Guam by indictment of a grand jury; the Sixth Amendment, in conjunction with the Fourteenth Amendment, extended to Guam the right to a speedy and public trial, by an impartial jury.

The availability of indictment by grand jury and trial by a petit jury are constitutional rights that are not properly within the purview of the Guam Legislature.

I hope that these views may be of some assistance to the Subcommittee.

Sincerely yours,

CRISTOBAL C. DUENAS,
Judge, District Court of Guam.

