

JOURNAL
of the
SENATE OF THE TWELFTH LEGISLATURE
of the
STATE OF HAWAII

Special Session of 1983

Convened Thursday, September 1, 1983
Adjourned Friday, September 2, 1983

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THE
TWELFTH LEGISLATURE
STATE OF HAWAII
SPECIAL SESSION OF 1983
JOURNAL OF THE SENATE

FIRST DAY

Thursday, September 1, 1983

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1983, was called to order at 10:15 o'clock a.m., by Senator Richard S.H. Wong, President of the Senate, in accordance with the Proclamation issued by the President of the Senate at the written request of two-thirds of the members of the Senate, and in accordance with Article III, Section 10, of the State Constitution.

The Divine Blessing was invoked by the Reverend Kim On Chong, former Chaplain of Mid-Pacific Institute.

At this time, the President made the following observation and stated:

"Members of the Senate, before we call the roll, may I remind the members of the purpose of this Special Session, again.

"The purpose of this Special Session is to consider the nomination and confirmation of James Wakatsuki as an associate justice for the Hawaii Supreme Court."

The Roll was then called showing all members present with the exception of Senator Young who was excused.

Senator Abercrombie then inquired as follows:

"Mr. President, you indicated that a petition was signed by at least two-thirds of the Majority, is that petition available on the floor?"

The President responded: "The petition is on the Clerk's desk, Senator Abercrombie."

MESSAGE FROM THE GOVERNOR

A message from the Governor (S. Gov. Msg. No. 1) submitting for consideration and consent to the State Supreme Court, the nomination of James H. Wakatsuki as Associate

Justice, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, for a term of ten years, was read by Clerk and was referred to the Committee on Judiciary.

STANDING COMMITTEE REPORTS

Senator Cobb, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. S1-83), informing the Senate that S. Gov. Msg. No. 1 has been printed and was distributed to the members of the Senate.

On motion by Senator Cobb, seconded by Senator George and carried, the report of the Committee was adopted.

At this time, Senator Chang requested a brief recess to permit members of the Judiciary Committee time to meet and act on S. Gov. Msg. No. 1 and the President granted the request.

At 10:28 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate convened at 10:32 o'clock a.m.

Senator Cobb, for the Committee on Legislative Management, presented a report (Stand. Com. Rep. No. S2-83), informing the Senate that Stand. Com. Rep. No. S3-83 has been printed and was distributed to the members of the Senate.

On motion by Senator Cobb, seconded by Senator George and carried, the report of the Committee was adopted.

Senator Chang, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. S3-83), recommending that the Senate consent to the appointment of James H.

Wakatsuki as Associate Justice, State Supreme Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, in accordance with S. Gov. Msg. No. 1.

On motion by Senator Kuroda, seconded by Senator Soares and carried, action on Stand. Com. Rep. No. S3-83 and S. Gov. Msg. No. 1 was deferred until Friday, September 2, 1983.

Senator Cayetano then rose on a point of personal privilege and stated as follows:

"Mr. President, you may recall, last session the State Ethics Commission solicited the views of all 76 members of this Legislature on an issue which went to conflict of interest of legislators who may be appearing before state agencies or committees, and on the 52nd day of the session I got up on this floor and inquired of the Chair as to what the Senate's response would be to that inquiry.

"I have here a copy of the Senate Journal, the 52nd day, and my recollection, as well as reading this copy of the Journal, indicates to me that our Majority Leader, who I suppose was appointed as the keeper of Senate ethics, was supposed to get a joint committee together. I believe this is what he told me in private. I think he said that the House and the Senate would get together. Off the record, he said he would solicit the views of Democrats and that a response would be forthcoming. No one has ever solicited my views on this matter, least of all the Majority Leader.

"As I recall, the deadline for the response to the inquiry was June 15th.

"My question and the point I raise here is, first, whether this joint committee was in fact formed and whether there was a solicitation of the views of the members of this House and also the House across the way; and, second, whether a response was made to the State Ethics Commission's inquiry?

"Mr. President, would you get me the answer please?"

At 10:35 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate convened at 10:40 o'clock a.m.

The President responded as follows:

"Senator Cayetano, with reference to your request on the disposition of the matter that you referred to on the floor. I must admit that there was not really a formal joint committee of the House and Senate. There were, during the course of the Session and toward the end of the Session, leadership meetings between the House and Senate and in those meetings the matter that you referred to was discussed with the House. Following the conclusion of the Session, the Senate and the House leadership did not meet for a while so in answer to your question it has not been resolved. We understand that the deadline is past. I would hope that the Ethics Commission could hold off on its meeting until the two Houses can get together and formulate a response. That's the situation as it stands today."

Senator Cayetano then said:

"Mr. President, the reason I bring this up is that my information is that the Ethics Commission will be making a decision on this question tomorrow and if the Ethics Commission makes a decision on this issue or this inquiry tomorrow, without the input from either the House or the Senate or both, then I think that will be a sad thing because it did solicit our input.

"The problem that I have is that certain representations were made to me that certain steps would be taken and these steps were not taken. Had I known this would be the case, I would have pursued the matter at that particular time but because these representations were made to me I stood back and waited for the leadership to come through with what it had promised.

"The members of this body, in case they have forgotten, the inquiry, I think, was a very, very serious matter. For example, the House was very concerned about it. Let me quote from Representative Blair's remarks.

"This is what the House Majority Leader said. He said, 'The opinion or the inquiry could go very far and have a devastating effect on our ability to operate as a House.'

"That was the way I saw the issue and I felt that we should have taken a position and in my remarks on the floor on that particular day I think I said that this particular question or the answer to this question and the

efforts which should be made to address this particular inquiry was above any kind of partisan politics; that all the members of this Senate should be concerned about it and address the issue simply on an objective basis rather than on a partisan basis. I'm sorry this was not done and I hope that whatever the decision of the Ethics Commission, if one in fact will be made tomorrow, I hope that decision will not be adverse to the position of this Senate and also the House."

The Chair responded as follows:

"Senator Cayetano, at the conclusion of this Session, I will attempt to contact the Ethics Commission to see if they will allow us, if what you say is true that a decision will be forthcoming tomorrow, perhaps a few more days to submit our comments. Perhaps there may yet be sufficient time."

Senator Abercrombie, on a point of inquiry of the Chair, asked:

"Was the Majority Leader responsible for the conducting of this inquiry of the Senate?"

The Chair responded:

"I think he was delegated the responsibility but the full responsibility lies with me."

Senator Abercrombie then said:

"I'll rephrase the question. He was delegated the responsibility?"

The Chair replied: "Yes, but ..."

Senator Abercrombie continued:

"Can you ask the Majority Leader why he failed to carry out his responsibility?"

The Chair replied: "I think I can answer that question for the Majority Leader, I know he is present, but there were no subsequent meetings following that one meeting that we had with the House."

Senator Abercrombie continued:

"I understand that, Mr. President. Can you ask the Majority Leader why he failed to carry out his responsibility?"

Senator Uwayne then interjected and stated:

"Mr. President, I think there is a need for some clarification as far as meetings are concerned.

"Let me first mention that this entire subject was first brought up during a regular monthly meeting, breakfast meeting, between the House and the Senate and this was in the latter part of the Session that Representative Russell Blair brought it to our attention, at this breakfast meeting, that the State Ethics Commission was considering the subject matter. Soon thereof a letter soliciting our input into this matter was sent, I think, by the State Ethics Commission.

"However, as far as the delegating of the responsibility, I'm not quite sure who delegated that responsibility to me. However, if it's my responsibility to assume it then yes, I take that responsibility, however, I wish someone will point out to me who delegated the responsibility to me. Thank you."

Senator Abercrombie continued:

"Mr. President, perhaps you can answer the Majority Leader's question. You indicated that it was delegated to him. He is now saying he doesn't know whether it was delegated to him or not. There appears to be a problem of communication between yourself and ..."

The Chair interjected:

"We have a lot of problems with communication."

Senator Abercrombie continued:

"... and the Majority Leader. So I guess I'll ask, can you answer the Majority Leader's question? Who delegated the responsibility to ..."

The Chair interjected:

"The answer is me. I did not attend the meeting in question so I don't know for sure what happened. I assume that whatever is discussed at those meetings, they agreed to. However, when you run the ship, you're responsible for reports coming back or proper communications taking place. Therefore, whatever the blame might be, it's mine."

"I take full responsibility for the miscommunication, if you can classify it as that: I'm responsible."

ADJOURNMENT

At 10:48 o'clock a.m., on motion by
Senator Cobb, seconded by Senator

Soares and carried, the Senate
adjourned until 10:00 o'clock a.m.,
Friday, September 2, 1983.

SECOND DAY

Friday, September 2, 1983

The Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1983, convened at 10:15 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Peter Salmas of Saints Constantine and Helen Greek Orthodox Church, after which the Roll was called showing all Senators present with the exception of Senator Young who was excused.

The Chair announced that he had read and approved the Journal of the First Day.

At this time the President made the following introduction stating:

"Members of the Senate, I'd like at this time to acknowledge a person who, most of you have seen, one who really takes a very special role in the legislative process. She's very quiet and does her work quite efficiently. She's informed us that after 30 some odd years of public service to the legislature, she has decided to take a well-deserved vacation.

"At this time, I would really like for us all to acknowledge Mildred Shigemura from the Senate floor, after 30 years of service. I think at this time it is very appropriate, Mr. Clerk, if you would make the presentation."

Senator Kuroda then rose and stated:

"Mr. President, we also have here, a certificate for Mrs. Shigemura, and I believe it is proper that we share the wording. It reads as follows:

'With sincere appreciation to you, for your many years of dedicated service to the Senate. You have contributed greatly to the work of this body. Please accept our best wishes upon the occasion of your retirement.'

and it is signed by all the members of the Senate."

Senator Kuroda presented Mrs. Shigemura with the certificate, after which the Clerk presented her with a lei.

At 10:20 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:25 o'clock a.m.

The President then stated:

"Before proceeding with business of the Senate, I would also like to make a very brief announcement that also on our retirement list of long-standing members here in the Senate, our Assistant Sergeant-at-Arms, Harvey Kimura, after many years of service with the Senate, has also decided to take it easy and enjoy time with his family. He has also submitted to us his resignation from the Senate. I wish him well and I'm sure the members of the Senate also offer him their best wishes."

SENATE RESOLUTION

A resolution (S.R. No. S1-83), entitled: "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY, SPECIAL SESSION OF 1983," was offered by Senators Kuroda and Henderson.

On motion by Senator Kuroda, seconded by Senator Henderson and carried, S.R. No. S1-83 was adopted.

At 10:27 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:30 o'clock a.m.

ADVISE AND CONSENT

Standing Committee Report No. S3-83 (S. Gov. Msg. No. 1):

Senator Chang moved that Stand. Com. Rep. No. S3-83 be received and placed on file, seconded by Senator Cayetano and carried.

Senator Chang then moved that the Senate consent to the nomination of James H. Wakatsuki as Associate Justice, State Supreme Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Cayetano.

At this time, Senator Chang rose to speak in favor of the nomination and stated:

"Mr. President, this motion relates to an appointment to the Supreme

Court, one of two panels of appeals in the Judiciary branch of government in our state. One panel, the Intermediate Court of Appeals, deals with more routine, technical questions, including those questions relating to procedural issues presented at trial; while the second panel, the Hawaii Supreme Court, usually considers cases of first impression and cases that present issues of broad social policy. It is to this second panel, the Supreme Court, that this appointment is being made.

"The work of the Court may be characterized in many different ways. One pertinent description can be found in the tome entitled, The Nature of the Judicial Process, by Benjamin N. Cardozo, where he states, 'Everywhere there is growing emphasis on the analogy between the function of the judge and the function of the legislator. Hence, I will not hesitate in the silence or inadequacy of formal sources, to indicate as the general line of direction for the judge the following: that he ought to shape his judgement of the law in obedience to the same aims which would be those of a legislator who was proposing to himself to regulate the question.'

"Mr. President, the present justices of the Supreme Court have varied backgrounds. We find among them former government attorneys, former prosecuting attorneys, academicians and jurists. But none among them have the rich and varied legislative background that Judge Wakatsuki would bring to this panel of men who, in their union of interests and backgrounds, form the rich source of laws that we have in Hawaii today.

"Therefore, Mr. President, I would submit to the Senate that, in this appointment, we have no cacophony of political aims. The symphony of justice plays on, its harmony, to many, fuller and richer than before. Thank you."

Senator Kawasaki then rose to speak in support of the nominee stating:

"Mr. President, I too, rise to speak in favor of the confirmation of the applicant, Judge Wakatsuki, and in so doing, I place my judgment of individuals on the line. As you well know, during the course of the hearing for Judge Wakatsuki's confirmation, there was much discussion or speculation, if you will, on what would be one of his first actions once he gets on the bench,

regarding the appointment of the trustee to the Bishop Estate, and, notwithstanding, rumors circulated in town, I am fully confident that Judge Wakatsuki, fully recognizing the importance of his position, the highest judicial post to which an aspiring attorney could be appointed, recognizing that people respect and have full confidence in the judgment and the ability of the members of the Supreme Court, will not demean himself into being a party to selecting a person who is not fully qualified to hold a very important post of trustee of the Bishop Estate.

"I believe other Supreme Court Justices too, are fully aware that public attention is focused at this time on who is going to fill that post, and in view of the fact that there are over a hundred applicants, reputedly, interested in the position, it's just inconceivable to me, as I said, notwithstanding rumors to the effect that this is all cut out, it's a well-orchestrated design to place some 'cronies' into that highly sought \$235,000 a year post that the Judge will do the right thing in helping to appoint someone qualified.

"I did question Judge Wakatsuki during the course of the hearing and tried to ascertain from him, whether there was much credence to this rumor and he had answered my query with the remark that it was 'pure speculation.' Aside from that, I am fully confident that he has the judicial temperament, he's got the judgment, and certainly, because of the controversy surrounding his confirmation and his appointment, that he will 'break his back,' if you will, to prove that he can be a good Supreme Court Justice.

"For that reason and for the reason that I have full confidence, that neither Judge Wakatsuki nor any other member, including the Chief Justice, would demean that body by selecting other than the best qualified person to the Bishop Estate trusteeship post, I urge the confirmation of Justice Wakatsuki."

Senator Soares then rose to speak in opposition to the nomination stating as follows:

"Mr. President, I rise to speak against the confirmation of Judge Wakatsuki as an Associate Justice of the Supreme Court.

"I was present at the Judiciary hearing on Judge Wakatsuki's nomination last Tuesday, and I

listened with great interest to the favorable testimony presented by the Regional Director of the I.L.W.U., the Executive Director of the Hawaii Government Employees Association, the State Director of Health, and the Judge's former Administrative Assistant, and a few others.

"Mr. President, as I listened, I was struck by the fact that attorneys in this state, are placed in an impossible situation as regards testifying against such a nominee.

"It's a no-win situation for them. If the nominee is confirmed, in spite of their objections, they can look forward to facing him on the Supreme Court bench. If the nominee isn't confirmed as a result of their objections, or for any other reason, they'll still be facing him back on the Circuit Court bench.

"Mr. President, I wondered at the hearing on Tuesday, how many attorneys found themselves in this unfortunate position, and how much information on the nominee's fitness for the job was thereby denied to the committee. Phone calls I've received in the past few days indicate that there are quite a few attorneys in this bind.

"I myself, asked the Judge questions about his qualifications. I was not satisfied with the answers I received on Tuesday, and I am not satisfied now that Judge Wakatsuki is the best choice for a position on the Hawaii Supreme Court.

"Mr. President, Hawaii's Supreme Court has been blessed by many outstanding jurists since statehood. Each and every one of them brought to the bench extensive legal experience, either in private practice or as a federal, state or county government attorney. Several have been past presidents of the Hawaii Bar Association, and several have been legislators as well as practicing attorneys.

"Let me review for you and my colleagues the current nominee's qualifications for a seat on the highest court in this state. During his twenty-four years in private practice, the Judge drafted and reviewed documents for a variety of businesses, associations, and individuals.

"He practiced law before the Family Court on divorce matters, before the District Court on collection matters, and before the Circuit Court on

foreclosures and civil matters.

"He appeared before the Liquor Commission of the City and County of Honolulu on applications for licenses and license transfers and for alleged violations of Liquor Commission rules.

"He appeared before the Bank Examiner for the State of Hawaii on applications for branch offices for finance companies and a savings and loan institution.

"He also appeared before the Public Utilities Commission on applications for certificates of public necessity and convenience.

"Mr. President, I submit that this amount and kind of experience is insufficient in a nominee for a seat on the highest court in the State of Hawaii. Our citizens have a right to expect the best, the most qualified. This nominee appears not to have had any experience at all in jury trials, either as an attorney or since assuming a judgeship in the First Circuit Court.

"In the committee hearing, Mr. President, we heard testimony to the effect that trial experience was not necessary for a Supreme Court Justice. The nominee himself even suggested that it was not desirable since a Justice must consciously avoid bias and, according to him, trial attorneys tend to be either plaintiff or defense oriented.

"Mr. President, I have a different opinion, and I believe very strongly that our Justices should be experienced in the practice of jury trials as well as bench trials.

"I expect our Supreme Court Justices to bring to their responsibilities a knowledge, not just of the theory of the jury system, but a practical knowledge of presiding throughout a trial, deciding what evidence a jury may consider, and instructing a jury as to the laws governing their duties.

"I for one, Mr. President, am not willing to lightly gloss over this nominee's lack of jury trial experience. In fact, his legal career leaves a lot to be desired.

"Mr. President, I also should note that in the past, we've had a number of outstanding jurists before the committee and the hearing room was packed with other judges and attorneys testifying on behalf of the nominee's legal ability, their

outstanding legal minds and the kinds of qualifications that we look for in our candidate. This kind of support was not, in my opinion, present at this hearing.

"Before closing, Mr. President, I should like to make sure that the record does show that if the Senate believes the question that was posed by my colleague across the hall, about the trusteeship of the Bishop Estate, is going to shake the opihi, forget it. If a deal has been struck, if the names that were mentioned have been put together for the package that now seems to be hanging over our heads, let today be a day to remember. Because, if he is going to do that, there is no way our speeches here on the floor, or in committee, will shake him at all. Under his opihi shell, he will do exactly what he has planned to do."

"Mr. President, I feel very strongly about the fact that our people deserve the best qualified, the most outstanding judicial minds in this court. I therefore ask all to vote against this nomination."

Senator George also rose to speak in opposition to the nomination stating:

"Mr. President, I too, wish to speak against this nomination.

"I doubt that there are very many people left in this state who are laboring under the illusion that we have true merit selection of judges. I would like very much to...I would hope there might not be any recurrence of today's monument to political selection of judges. I would like to use my 'no' vote to call the public's attention to the fact that if we want to put a stop to this practice, the only way that we can do it is through amending our Constitution.

"The magic words are Missouri Plan, I hope one day we will have the courage to do it. Thank you."

Senator Kawasaki then rose and stated:

"Mr. President, if I may reply to my colleague across the hall here, that as I said, I stake my judgment on this vote and in my sixteen years around here, I don't think my judgment has been wrong other than one other occasion in which I helped to preserve the newspaper monopoly in this town. But, other than that, I

believe Judge Wakatsuki will help to justify the confidence that we place in him.

"Unfortunately, we had no basis upon which to compare Judge Wakatsuki's qualifications with others rumored to be selected by the Judicial Selection Commission. I've stated time and again on this floor that a judge selection system which does not present to this body, the confirming body, all five or six names, advanced by it to the appointing authority, the Governor, when that list is not made available to us, then we have no basis to compare the Governor's nominee with others selected by the Judicial Selection Commission and for that reason, I would urge this body to do its utmost to change that system or that modus operandi, if you will, so that we will, the Senate, have the full list to make comparisons. We don't have that today, and I think that is the shortcoming that we are hampered with and this happens to be the case in today's action.

"In any case, as I said, I am fully confident that Judge Wakatsuki, realizing the publicity attendant upon this controversy to select a Bishop Estate trustee, will exercise his best judgment. And, I trust that this judgment will be exercised in a very prudent fashion by others who sit on the Supreme Court bench, the four other justices, to be exact, I trust that they will be fully aware that the welfare of literally hundreds of thousands of Hawaiians today, and Hawaiians to come, will be affected by their judgment."

Senator Abercrombie then rose to speak in opposition to the nomination as follows:

"Mr. President, I rise to speak against the...I hesitate to say the confirmation, because as you know, all we can do is to reject. I suppose what I am asking is that we reject the appointment of Judge Wakatsuki to the Supreme Court.

"Mr. President, I am desirous of repeating some material that I read into the record at the time of the rejection situation for Judge Wakatsuki previously. I will not read all of it, but I am desirous of reading some of it for the reason that some members of this body were not in this body at the time and may not be aware of it, and it is pertinent to the case that I wish to make against, or rather in favor of rejection of this nominee and I would like to do so.

"Mr. President, I am disappointed in the presentation for affirmation by the chairman of the Judiciary Committee, Senator Chang. The reason I am disappointed, is that I think you and the members of this body are quite aware of the low state of public confidence in the Judiciary at this time in our state. The reasons for it I think are fairly well known to the members of this body, they are reasons that I am not particularly happy with, I don't think they're very good reasons on the whole, but that is not the case in point here today. What is necessary today, given that situation, is to present to the public a strong case for the renewal of confidence, not only in the procedures involved in choosing a judge, most especially for the Supreme Court, but, that the process itself, bears some relationship to an examination of the qualifications other than that which is convenient.

"The chairman owed us and the public a detailed, comprehensive analysis of why this appointment was being made. My question, in this sense, then, Mr. President, is where is the leadership? What we are faced with is a recitation of platitudes, with respect to what the democratic party is able to offer the state, and a recitation of a series of lightweight cliches does not suffice. To state, in the present atmosphere that long legislative experience is a criterion upon which to base the selection of a Supreme Court justice, when the people of the state, in good faith, and when the Constitutional Convention of which I believe the chairman was a member, presumably in good faith, put forward an alteration of the process by which the judges are chosen. To wit that the 'political nature' of choices, that is to say when the legislature and the Governor combined, that is to say the Senate and the Governor combined to make a choice on judgeships, and it was clearly political in nature and we had to stand by our choices and be accountable to the public, was altered.

"Now, the chairman knows, that the Constitutional Convention desired that there be a subduing at the very least or a submersion, if you will, of the 'political nature,' the legislative nature of choices for judgeships. Now we come full circle from that convention and say 'no, the advantage of having Judge Wakatsuki in the Supreme Court is that he is a long-time politician.' Now, I don't dispute that someone could have a long political career and an

outstanding legal career at the same time. It is quite possible to do that. Whether this is the case today is something else. The problem is that the focus has been on the political nature of this selection at the expense of the judicial nature that is required in the post.

"The reason that I wish to present to you and to the body, some excerpts from what I mentioned before, when Judge Wakatsuki was the Speaker, is as follows. At the hearing, I recapitulated for the benefit of the Judge and for the benefit of those members who may not have heard my concerns previously, and for the public hearing, I reiterated my concerns about holding two offices at the same time.

"Now, Mr. President, I cited at the time numerous citations, which I had researched, indicating that to hold two offices at the same time was anathema to the Constitution of the United States and to the separation of powers, a well-founded doctrine in this country, for the preservation of democracy, and most especially with respect to the Judiciary, minimizing conflict of interest and the possibility of political considerations overwhelming the rights and privileges of our citizenry.

"The Judge stated to me again, as had been stated by others at the time, that simply because he had not taken the oath of office, he was entitled to pursue his political career as Speaker of the House and engage in all of the activities associated with being a legislator after being appointed judge.

"I indicated, that to be appointed, was a constitutional mandate. I refer the members to Article VI, Section 3, appointment of justices and judges. Nowhere in there Mr. President or members, is there anything about taking the oath of office. It is concerned exclusively with the appointment to office, and for good reason. Because with appointment, you have the fixing of authority. Once appointment is given, as will happen today, or within thirty days, had we not come into Special Session, no one else is entitled to take that oath of office -- only Judge Wakatsuki! It is a disservice to the English language, let alone to the logic and reason of anyone who truly cares about this process, to engage in the dubious legalism, which has nothing in fact to do with the Constitution, and yet, we're talking about someone I believe, as Senator

Soares has indicated, will be making the fundamental social, political, economic and other kinds of policy that follow from judgments of the Supreme Court, because we cannot go higher than that court, unless we go in fact, to the Supreme Court of the United States, upon which, we have based our Constitution -- that is to say, our section in the Constitution with respect to appointments.

"When you have an appointment, it is an act which vests power in the person who enjoys that estate. It vests power, no one else can assume that power. And, an estate as you well know, historically speaking, the attorneys in the body will confirm that it is a class vested with distinct, political powers. A class of people, a class of activity, vested, with particular and distinct powers.

"Now, why do I go on in such detail and such emphasis on that... because, even now, Judge Wakatsuki does not see, from an ethical point of view, from the point of view of retaining or regaining public confidence, that he does not even admit of the possibility that perhaps it was unwise or perhaps it was not judicious, and I don't mean that in a ironic sense, even, to retain his Speakership and to conduct himself as a legislator and a politician, having achieved appointment as a judge, in what is by definition, a separate and equal body with respect to the conducting of governmental affairs in our country and in our state.

"I ask the members to think about this for a moment. What if a judge decided to run for public office, as a legislator or as a prosecutor, as is possible in this city and county...I can't recall whether the other counties in this state have an elected or appointed prosecutors, but at least in the City and County of Honolulu, it is now possible for someone to run for the prosecutor's office. Would there be any discussion such as I'm having right now, if a judge, a sitting judge, if Judge Wakatsuki decided to run for the Senate or decided to run for the office of city prosecutor and said at the same time that he would continue to hold office as a Judge, continue to make decisions, to make rulings?

And, having been elected, let's presume he was elected prosecutor, or elected as a state senator or a representative and then said that he would continue to sit on the bench and make decisions until such time as the oath of office was administered in

January, after the October and November primaries and elections? The very recitation of the instance brings smiles to peoples' faces here on the floor because you all recognize that of course, we would not tolerate it for a moment. Yet, we were asked to assume that its converse was perfectly all right and we're to assume today that the political nature of that appointment, and the attitude that the Judge expressed at that time and at the hearing before the Judiciary Committee is acceptable.

"Part of my reason for asking for rejection is that there has been apparently, not even the slightest contemplation or reflection on the Judge's part that the point that I'm raising here is not an esoteric one, it's not an arbitrary one, it's not a capricious one, it's not something I've dreamed up. This is a serious issue to be resolved in any working democracy. So, although the vote will come today, for those who think that at least the raising of this issue is a valid one, I assure you that in the remarks that were made in the Journal of the Fortieth Day of the Session in which the Judge's nomination was affirmed, will find numerous citations I believe that make this point.

"I wish to, inasmuch as the Judiciary chairman has made reference to Justice Cardozo, I wish to make reference in turn to Justice Holmes, quoting from Justice Holmes in Eugene Rostow's book, The Sovereign Prerogative. Justice Holmes stated, 'A page of history may not be worth a volume of logic.' This view, Mr. President, may seem contradictory to that view that I have been expressing. But, it is only apparently so. What he (Rostow) seeks to emphasize is Holmes' awareness of the contrapunctal themes necessary to the creation of legal orchestrations. Holmes maintained in the common law, 'The law embodies the story of a nation, a development through many centuries and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. We must alternately consult existing theories of legislation, but the most difficult labor will be to understand the combination of the two, its a new product at every stage.'

"This is what we're confronted with today. It's not a matter of saying that Judge Wakatsuki isn't a nice man, or he was a good legislator or any of these things. The question here is what kind of person, what kind of mind, what kind of approach

do we want on the Supreme Court of the State of Hawaii? Now, whether it is convenient or not for us to do it, that's what's at issue here. That leads me to the other questions that I asked of Judge Wakatsuki. And, I want to indicate parenthetically, that I was sincere, it's necessary for us to do these things today, because the assumption would be, 'Well, you were going to vote against him anyway.' That wasn't true. I said I would wait until the hearing, and make up my mind.

"What was true, was that I doubted that my mind would be changed, because I doubted that the answers would be forthcoming. But, when people said to me, members of this body and members of the other body, friends of the Judge, including friends of mine, in here, said to me, 'Well, how do you feel?' I said, 'I'm probably going to vote against him.' They said, 'Well, why don't you wait until the hearing?' I said, 'Look, I didn't even think that there was going to be a hearing, because I just assumed that this was just going to be something that went through anyway, and if there was, a session, it was because the votes are already there, so what difference does it make?' They said, 'Go to the hearing anyway.' I said, 'Okay, I will.'

"So, when I say to you that I hadn't made up my mind, I want to be straightforward with you, I didn't think I was going to get answers different than what I got. But, if people said go to the hearing and see if you get them, and you do get different answers, then you've got to think again. Well, that's fair. Well as it turns out, I didn't get answers different than I thought I was going to get. So, I find myself standing up here and saying, yes, I'm asking you to reject it. And this is the other element that was involved. It's quite well known, at least to those who were at the hearing, unfortunately, my sense of timing and my questions were overshadowed by Mr. Marsland's remarks, who is at least my equal in show business, I had thought at the time that perhaps the introduction of my concerns about the Bishop Estate trusteeship might get more play at the time...not necessarily I would get more play...but the concerns would, and as is the nature of the news business today, especially if it's television, you can concentrate on one thing at one time, at least as far as the news directors are concerned, and that's it, that pretty much was the prosecutor's demurs about the

capacity of the ex-Speaker and now Judge Wakatsuki.

"But, there have been very, very serious questions raised by Senator Kawasaki, and unfortunately, I do not share his view. The reason I said why this hearing and why I went through quite a lengthy discussion with you, Mr. President, about whether I had made up my mind or not, is that quite frankly, Senator Kawasaki I think was quite inclined to vote against Judge Wakatsuki and the hearing convinced him to do it. Senator Kawasaki I might say was one of those people who said to me, 'Well, let's go to the hearing and let's listen first.' So, he's been convinced. I have not.

"It is very important with respect to whether we affirm Judge Wakatsuki to remember what the chairman of the Judiciary Committee admonished his committee and other members of the Senate at his hearing, twice, not once, but twice, that the members of the Supreme Court and I quote now from the will of Bernice Pauahi Bishop and its codicils of publication of the Bishop Estate: 'Provisions for trustees -- 1) there shall be five; 2) a majority of three trustees must concur before acting; 3) appointment of trustees is made by a majority of Supreme Court Justices acting as private citizens; 4) trustees must be Protestant.'

"Now, as I say, the chairman of the Judiciary Committee reminded us not once, but twice, that the Supreme Court Justices acted as private citizens. Therefore, I asked Judge Wakatsuki, in that capacity, what did he consider the qualifications would be for trusteeships, and whether in particular he considered the qualifications of David Trask, the ex-head of the HGEA, to be such that he could be named; and whether he was taking into account that the trustee had to be a Protestant, when it is a well-known fact that David Trask has been a prominent Roman Catholic layman all his life, until recently. How prominent he is in the afterlife is something to be decided at that point.

"Now, I had every right, every obligation, and in fact, every urging, as a result of what the chairman of Judiciary said to ask the Judge to give me his opinion because he acts in a private capacity, and you cannot retreat...according to the chairman of the Judiciary Committee...you cannot retreat on to the bench of the Supreme Court and refuse to answer.

You can refuse to answer, but you should also take the consequences from that answer. He said that 'he had an open mind.' He said that he wouldn't be likely to make the difference. It only takes three. The Chief Justice has said that this decision will not be made until a new justice comes on board. Now that would seem to indicate to me that there might be a split. It might be two-and-two and then there's going to be a three-to-two. Why wouldn't he make a difference? If not this time, then the next time or the time after?

"It is not only this appointment coming up, but there will be appointments during the next ten years in all likelihood. So, if Mr. Trask doesn't come up now, if enough publicity is generated, that even the Supreme Court could see that its credibility would be seriously damaged or eroded for God knows how long. With the appointment of Mr. Trask, it might be that it might be the second time. Maybe the issue won't be raised so loudly; maybe there'll be a different set of people in here; or something of that nature, or people get so discouraged by the appointments that they feel that there is nothing to be done.

"I was very disappointed that the Judge took an equivocal position as far as I was concerned, in answer to that question. He knows Mr. Trask as well as he knows, or better than he knows most of us in here. If my knowledge of his service in the legislature is correct, they even served together in the legislature. They certainly know one another from their political activities, and he certainly should have been able, as a private citizen to make that kind of a judgment and let me know it. If he decided that he didn't want to do it, then he has to take the consequences of it. I would have said, had I been up there and been asked the question, exactly what I thought, I generally do. That's why I'll never be up there to be asked the question.

"As far as I'm concerned, not only are the Hawaiian and part-Hawaiian children and their children after them affected by who's selected to the Bishop Estate trustees, but all the leaseholders on Bishop Estate land are affected, because this same document put out by the Bishop Estate in explanation of the will indicates that the trustees have full power and authority to lease and sell land, or make such other arrangements with it, with respect to land as it seems to

be in the interest of the estate. So, the leaseholders are affected, and ultimately then, directly then, not indirectly, ultimately every citizen and taxpayer and resident of the State of Hawaii is affected by what the estate trustees do, because land prices and land availability and housing and educational opportunities, all these things are affected for everybody. In other words, the Bishop Estate is everybody's business in this state.

"Therefore the questions were in order and the equivocal answers were not. So, I concluded that in my judgment, that I would not receive these answers was the correct one. And so, my inclination to the rejecting of this nomination was unfortunately affirmed. So, if people want to say today, 'Well, you've been against Judge Wakatsuki right straight along, so this is just a continuation of it,' my answer would have to be, 'Yes.' But not for the reasons that you think. It's because I never have received answers adequate to the question I asked and I have presented them to this body today. If they make sense to you, I would hope that my sense of reasoning would prevail upon you. If it doesn't or if you've got another agenda that you're operating from then you'll make another decision.

"I simply want to point out to you that I was a member of the House for four years, the entire time that I was in the House, the only Speaker that I knew was James Wakatsuki, and I voted for him as Speaker of the House, twice. So, I don't want it said that I've always been against Jimmy Wakatsuki. I voted for him after I had had good reason from a political point of view to think that he would oppose anything or most of the things I was for in the House, but I thought he was clearly more capable than anyone else who presented themselves as Speaker, and I voted for him. By no stretch of the imagination, in fact, some of the very elements that I thought that he would be a good Speaker, indicate to me that he'd be a very bad judge.

"There is a different temperament. When that is brought up...the judicial temperament...is manifested by his legislative career, that forms the last part of my objection. It is the exact opposite. The Judge is not known for his sense of objectivity, or his sense of open play of forces. His strong suit in the legislature has been is to figure out where to go to get the votes, and what will it take

to get those votes, and what needs to be accommodated. Now, that's a good thing in a Speaker and it even works occasionally in terms of being the President of the Senate. But I'm sure that the President would agree, possibly, and others in this body might agree that sometimes getting all the votes ends up a Pyrrhic victory, or there are occasions to come where the votes which were counted at one time become an unendurable burden at another time and that political decisions are not necessarily judicious ones, and, in addition, all of us look to this final, if you will arbitrating point, that regardless of what we do in good faith in the legislature, we know that the Supreme Court ultimately, in this state may judge whether we did right or wrong, constitutionally speaking.

"So, we look to what is called by all of us a 'higher authority,' we may not like the decision, but we certainly all want to hope that the persons making those decisions are going to be people of the highest probity. The greatest sense of integrity in bringing the finest of intelligence to bear, with respect to these matters. Under all those circumstances, then, it seems to me that we are not well served by this nomination, and that as has been pointed out by other speakers perhaps, we need to revise this constitutional amendment once again. Those of you who've been here with me over these past years know that I'm so discouraged with it that at one point I even said to the President that I don't even care to vote anymore because the Senate has become a kind of punching bag in this whole situation with little or nothing to do except try to reject people. It's no fun to stand up here and do this, by the way. I don't think that any of us really like it and want that role.

"Perhaps that's the way to go. But that's not what's before us today. There's a decision to be made today pending such changes. So on the bases that I have outlined, I ask that this nomination be rejected so that we may once again, at least have the opportunity to enjoy a sense that the public trust is well placed in us. Thank you."

At this time, Senator Ajifu rose to speak in opposition to the nomination stating:

"Mr. President, two weeks ago, I thought that I would be voting for the candidate that's before us. This morning I rise to speak against the

confirmation of Judge James Wakatsuki to the Hawaii State Supreme Court.

"As we are all aware, it is the Supreme Court which selects the five trustees to the Bishop Estate. Under current trends, it is doubtful if these trustees will serve more than ten-year terms and, as such, we may assume that Mr. Wakatsuki, if appointed to the Supreme Court, may well be voting on trustee appointments almost every couple of years.

"Mr. President, I realize that this is not the primary responsibility of the associate justice's position. However, it is with this background that I posed this question to Mr. Wakatsuki during his confirmation hearing: if he came across a candidate to become a Bishop Estate trustee, and if that applicant had been a lifelong non-Protestant and had only recently converted to Protestantism, how would he make his decision? Mr. Wakatsuki replied that he would have an 'open mind' to such a candidate.

"Now, while I feel that his answer may have only limited relevance, I feel compelled to state that it reflects broader deficiency in Mr. Wakatsuki's approach to problems. I think that Princess Pauahi Bishop made only one criterion which candidates for trustees of her estate had to fulfill and that was that they had to be men or women who reflected the values and beliefs of her own Protestant faith. While an individual may truly come to some religious stage in their life and choose to convert to the Protestant faith, I nevertheless feel that such a fact could have a major impact on scrutinizing a trustee candidate. It certainly is not a matter of business as usual, or a matter for keeping an open mind. This could open up a situation of making a mockery of the Princess' will.

"So, while this immediate matter may not be a major one, I feel that Mr. Wakatsuki's response is indeed of very major importance. We need someone to fill that bench on the Supreme Court who will respect Princess Pauahi's will. Someone who will not take open-minded positions on issues which instead require strength and fortitude, and, as such, Mr. President, I cannot vote for Mr. Wakatsuki for the Supreme Court. Thank you."

Senator Carpenter then rose to speak in favor of the confirmation as follows:

"Mr. President, the committee report quite explicitly reads, 'Your Committee on Judiciary, after consideration of the background, character and experience and qualifications of the appointee, has found the appointee to be qualified for the position to which appointed and recommends that the Senate consent to the appointment.'

"Mr. President, that is a very succinct statement and I believe very little argument can be given that almost sterile statement. I think, in my mind, Mr. President, that the question is not about the qualifications of the individual, because he certainly meets the words as stated in that report, but rather, of the process under which the appointment was made and that is the point I wish to address.

"Other names have been released, obviously then causing a subjective kind of decision to be made in each and every one of us in evaluating the worth of the individual ultimately selected, which indicates to me that there may be several ways that the leak occurred. One, by speculation of the media; two, by a leak from within the Judicial Selection Commission, which is expressly prohibited by Rule 7 which requires confidentiality in that body; or three, a leak within the Governor's Office, which the Governor has indicated certainly would not have come from him.

"That, to me, seems to break the system down and causes us to take a look at the entire process. Mr. President, additional to that, in my mind, Capitol rumor had it that the successful appointment of Jimmy Wakatsuki to the Supreme Court represented the third vote for David Trask to the Bishop Estate trusteeship. If I were sure of that, I certainly would not vote for Judge Wakatsuki. I'm not sure, however, and after listening to the comments and the discussions of the hearing, I am sure that Judge Wakatsuki certainly knows that if that scenario came to pass, that it would represent a black eye to the entire Judiciary.

"It would additionally be a slap in the face to the Hawaiian community and to the Democratic Party, and would confirm the allegations that Prosecutor Charles Marsland, who has essentially accused him of being a 'political hack,' or one who essentially follows orders. I hope that Mr. Marsland is wrong, again, and I

sincerely hope that the tenure of Judge Wakatsuki to the associate justiceship will be one that will be proudly recognized, not only by the State of Hawaii, but by the Judge himself. Thank you."

Senator Chang then rose and stated:

"First, Mr. President, I would like to thank the previous speaker for corroborating that I presented the committee report with 'clean hands.'"

Senator Abercrombie then rose and interjected:

"Point of order, Mr. President, I object strenuously to that designation. I really resent that. I very bitterly resent that. I didn't make any such allegation at all that it was presented in any other manner. I ask that the Senator withdraw that last comment."

The President replied:

"Senator Abercrombie, would you allow Senator Chang to proceed?"

Senator Chang then continued stating:

"As a clarification, Mr. President, I was referring to the Senator from the Big Island."

Senator Abercrombie then replied:

"Mr. President, I object to that. I don't believe that for one second."

The President then asserted:

"Senator Abercrombie, I have tried to be very patient and get on with the order of business and...."

Senator Abercrombie then interjected:

"So am I, but I don't believe that for one second. I've been aggrieved. I rise on a point of personal privilege and I don't believe for one second that that comment was directed to Senator Carpenter."

The President then continued:

"I'm afraid that an explanation has already been given by the speaker that has the floor. He has given his explanation and it is acceptable to the Chair. Therefore, can we proceed with the order of business which is to allow Senator Chang, who has the floor to...."

Senator Abercrombie then stated:

"We'll talk about it after then, in more than one way."

Senator Chang then continued:

"The Constitution of the State of Hawaii does not permit the Senate to substitute its wisdom for that of the Governor in making specific appointments to the Judiciary, but to serve responsibly and necessarily as a check to insure that the qualifications required by the Constitution are met. The Constitution's requirements are simple and do not offer much guidance for a diligent inquiry into any appointee's qualifications.

"Inasmuch as reasonable persons can differ, as to the relevant criteria for the selection of appellate justices, I consulted the following sources. First, Mr. Cardozo's book, The Nature of the Judicial Process, Mr. Cardozo being a former Associate Justice of the United States Supreme Court, published by the Yale University Press; then, Judicial Selection: the Search for Quality and Representativeness, written by Robert P. Davidow, Professor of Law at George Mason University School of Law, with a Juris Doctor from the University of Michigan and a Master of Law degree from Harvard University; next, Judicial Selection and Qualities that Make a Good Judge, written by Sheldon Goldman, Professor of Political Science at the University of Massachusetts; and finally, Judicial Selection: Casting a Wider Net, by Abner J. Mikva, who sits on the U.S. Circuit Court of Appeals for the District of Columbia.

"This literature offered the committee guidance in judging the qualifications of Judge Wakatsuki. In the committee's judgment, Judge Wakatsuki met these criteria. I will say that the committee is always open to suggestions from this body as to the development of different references or adding different criteria for these kinds of evaluations. I'm sure that the committee will welcome assistance in these matters; as a previous speaker did indicate, these procedures cannot be described as enjoyable. Thank you."

Senator Kawasaki then rose on a point of personal inquiry stating:

"Mr. President, in view of the dialogue that has just taken place, as articulated by the chairman of the Judiciary Committee, I would like to

ask him what he would decide to do in regards to a letter I sent to him, requesting that the chairman of the Judicial Selection Committee attend the confirmation hearing, and I realize that was on a different subject, but I thought that it was perhaps appropriate that the chairman of the Judicial Selection Committee explain to the members of the Judiciary Committee, as well as any other Senators interested and present there, as to why the name was submitted out of session, when perhaps some temporary appointment could have been made from the Appellate Court of Appeals, i.e., a judge from that body to serve on the Supreme Court temporarily. A letter was sent to the chairman from the chairman of the Judiciary Committee which said in effect, 'you don't have to attend, because the hearing is not to inquire into that question.' I just wanted to know subsequently, do you have any plans to make that inquiry of the chairman of the Judicial Selection Panel?"

Senator Chang replied:

"Mr. President, I did refer Senator Kawasaki's letter to the chairman of the Commission, indicating his concerns and suggesting to the chairman that these concerns be addressed. I also requested of the chairman certain specific information concerning Judge Wakatsuki's qualifications and indicated to Senator Kawasaki that, if the chairman did attend the hearing to present this information, they might discuss the Senator's concerns after the hearing. As it turned out, the chairman did not attend the hearing, but did present the information.

"We took this matter up in committee yesterday, Mr. President, and I think there is consensus in the committee that there needs to be an inquiry about the judicial selection process and we will be sure to communicate with all members of the Senate as we proceed in addressing this question."

Senator Cayetano then rose and spoke in favor of the nomination as follows:

"Mr. President, first, with respect to the inquiry made of the chairman for the Judicial Selection Commission chairman to give us an explanation, I think that maybe we should make the issue a bit clearer for the members of the Senate. It seems to me that it was a bit odd that the appointment be made at this particular time, and that

this is why an explanation from the commission chairman would have been appropriate.

"As you know, the way the commission operates under the Constitution, once the names are sent to the Governor, the Governor then is given a certain time frame within which to act. If he does not act within that certain time frame, then the commission, as I understand it, will make the appointment. If the Governor makes the appointment, then the Senate is set in motion. So the query should be, 'Why did the commission make this appointment at this particular time?'

"Those of us who are familiar with the operation of the Supreme Court know, that if there was a vacancy, as there was, the Court could have designated a circuit court judge, even Judge Wakatsuki, to sit during the interim. This would have obviated the need for us to come into Special Session. This would have obviated the need for all of the expense that the Senate has had to go through, and raises again, another question. 'What if Judge Wakatsuki's vacancy is filled in the interim?' Do we then react and then come back in to Special Session, and how many times will this occur when the Senate is not in session. It promises to speak of a process which can time-consuming and expensive to the Senate and to the legislature in general. So, I would hope that the chairman of the Judiciary Committee solicits an explanation and looks into the process.

"A few years ago, when Judge Wakatsuki was appointed to the Circuit Court bench, I voted against his appointment. The reason I did so was not because I was disrespectful of him as a person, I considered him a personal friend, even though when I served in the House with him, most of the time, I was on the opposite side. I felt that he was a good leader in the House, he was a strong leader, and that he used the process and contrary to expectations and in reflection, I think that he was fair. Certainly, during the four years that I served in the House, and with all of the fights that I had with him, I managed to continue to chair a major committee.

"So, Mr. President, having gotten past that hurdle, Judge Wakatsuki was appointed to the Circuit Court and so the next question that I had in my mind and for this appointment, was whether in fact, he had served

with distinction as a circuit court judge. Now, I think we should be careful about how this issue is framed. Because of the process, because of the Judicial Selection Commission procedures that we have to follow, the question posed to us as Senators, is not whether the appointee, in this case, Judge Wakatsuki, is the best man available. That is not the question as I see it.

"The question is whether his credentials are adequate to qualify him for that appointment. Now, when you view it in that sense, it makes a big difference. We cannot look at it from the point of view, 'Is he the best man available,' quite frankly, because we don't know under the existing procedure, who the others are that were selected, in other words we don't know who the other five names are. So, the points raised by Senators Kawasaki and Carpenter are therefore, legitimate ones. This issue has been debated before and the process is such that we do not know. I do not think then, that in voting on his appointment, we should look at his appointment in terms of is he the best man available. The question in my mind is 'Does he have the qualifications?'

"I think the answer to that question is, yes. My past experience with him in the legislature clearly convinces me that he is an intelligent man. But, more importantly, my observations as a practicing attorney, in the legislature, have clearly convinced me that he certainly is an intelligent man. More importantly, my observations, as a practicing attorney, of his performance as a motions judge, certainly one of the most difficult assignments in the circuit court level, is that he has done a very good job.

"So, as far as I'm concerned, having passed the test at that level, he is certainly qualified to perform as a Supreme Court justice, since that is the appointment that was made. That is the question that is before us.

"Another question that I have is the political question raised by some of the other members of this body. That question focused quite narrowly on one particular individual, a former labor leader of this state...I won't mention his name, others have done it for me. I am very, very concerned about that particular appointment also. I strongly believe in my heart that the question of the Bishop Estate is not the business of merely the Hawaiian community. The estate is so

huge, its ramifications so widespread, that the Bishop Estate's business is everybody's business.

"But, when the question was put to Judge Wakatsuki at the hearing, he stated that he had an 'open mind.' Now, quite frankly, one would look for an open mind in a judge. And, I do not see how he could have given any other answer. If he had given any other answer, and said that of the hundred or so applicants that are rumored to be before the Supreme Court that David Trask...I mentioned his name...that he had made up his mind as to that man's qualification to serve as Bishop Estate trustee, then I may have very well voted against him. I think that those ninety-nine others deserve a fair shot, and I think that that is an essential trait or characteristic that we would want in a justice who serves on a court of appeals.

"So, for that reason, I'm going to give him the benefit of the doubt and for that reason, I will vote for him. Thank you."

Senator Soares then stated:

"Mr. President, I think it is important that I make a few comments based upon what's been going on since I spoke earlier on the nominee's qualifications. Unfortunately, there is no job description that's been presented to us. As I indicated in my statement earlier speaking against the confirmation of Judge Wakatsuki, it was my view, from what I asked at the hearing and from what I've read and what I've heard, that his qualifications fall short of what I personally heard and feel to be very important in this decision.

"I also feel very importantly, that the decisions we make on the floor of this Senate, be it confirming a judge or a department head, are done with full dialogue as we have had this morning, respecting one another's views and respecting the fact that we can get up here and make judgments upon what we think as individuals and when we finally vote, that the applicant and/or the judge, in this case, has the necessary qualifications for our vote of confidence.

"I'd hate like heck to see us come in here and say, well, the votes are already counted. Don't worry about it, he's got it anyway, and walk away without having to really look into our own consciences and say, 'Did we vote for the best person that we know to be available?' I realize that

the names of those others that were submitted to the Governor are not brought to us, but it's very difficult to ignore that fact.

"I think also, for the record, that it is important for us, maybe at the next session, to review, in committee, a set of standards or a list of criterias so that when a name is brought up, there is a certain rule of thumb to follow in discussing the merits or demerits of the applicant.

"I think it's important, in that spirit, that we vote for what we consider to be the applicant's qualifications. I wonder, of course, if he had not been Speaker of the House at all, whether the attorney Wakatsuki would be considered. I question that in my own mind.

"But, I respect the fact that we have had dialogue this morning, we've looked at a variety of approaches to the committee's selection and by the time that we get back into session, that we will look at it in a different light."

Senator Kawasaki then rose on a point of personal privilege and stated:

"Mr. President, I do want to join Senator Soares here in expressing our appreciation to you for permitting this dialogue about the importance of the appointment to the Bishop Estate trusteeship, because this shows to the public, that at least the Senate, does care about the quality of appointees to that body, and that indeed, in our caring, we do bring these questions up even during the course of the discussion on the confirmation of a Supreme Court Justice.

"I would perhaps request, with your permission, that when the transcripts of today's dialogue regarding our concerns about the Bishop Estate, our concerns about the qualifications and temperaments and the judicial ability of people that we appoint to the Supreme Court, all of this dialogue, after it is printed in the Senate Journal, that copies of that be made available to each and every member of the Supreme Court as well as to the Bishop Estate trustee. I think that it will have a salutary effect for the public by our doing this and certainly I think it's going to enhance our ability to appear that we made the proper judgment in the confirmation. I think it will be sort of a leverage on these people to do the best job that they can in the

way first of all, in selecting the trustee, and secondly, the trustees themselves realizing that the Supreme Court is neither a closed shop nor an ivory tower, and that public attention is focused on their each and every action that they undertake on behalf of not only the Hawaiian people but the entire state."

Senator Cobb then spoke in favor of the confirmation as follows:

"Mr. President, I rise to speak in favor of the nomination. In doing so, I take note also, of my differences with the nominee, while a member of the House of Representatives, for a period of six years, of which during the first two years, I was denied any chairmanship of anything, along with yourself and a number of other Representatives.

"We had our differences, and yet, I cannot question the intelligence of the nominee. But, the question that is before us is, 'Is he qualified?' Not, 'Is he the best qualified?' but, 'Is he as an individual, qualified to sit?' To that I think the answer is yes.

"But, about two months ago, there took place an incident that, at least to me, was significant. It was when Judge Wakatsuki issued a temporary restraining order in the case of a seawall that was being built in Waikiki, and he gave some citizens of Waikiki their day in court, even without benefit of attorneys, till later, to argue their case.

"Mr. President, he didn't have to do that. But I was very impressed with the action that he took -- that he allowed a full discussion of the issue, and even went so far as to issue a temporary restraining order to stop construction until such time as the issue could be heard, argued and decided upon in court. That's the kind of judicial approach I like to see.

"I too, have a number of concerns about the pending appointment of the Bishop Estate trustee, and I take note for the record, that there has yet to be a woman trustee on that Bishop Estate Board of Trustees. I think that there are a number of qualified female applicants, and I would urge the court, if possible, to look favorably upon the female applicants as well -- many of whom I think are exceptionally well qualified.

"I also read, very carefully, the remarks and the transcript that were provided by the City Prosecutor, on

the questions that were raised by him, relative to some decisions that Judge Wakatsuki had made on a variety of motions before his court. I not only read them myself, but I asked two attorneys on my staff to look at them also, and see if they gleaned the same impression that I did. The impression was that the motion that was made by the Prosecutor was very broad. It should have been more narrow, more specific and the decision that was taken was highly arguable.

"Of the three cases that the Prosecutor mentioned, two have already been resolved, in effect in favor of the Judge, and the third is still on appeal. But, in each of those cases, the breadth of the motion and the decision or the ruling that was made, is very, very arguable.

"I think in closing, however, that a point has to be made, based on the amount of debate that has been taking place today. I think we should be looking at a further change in the selection process -- either to reduce the number of names that are sent forward to the Governor, or to make public those names, or in some manner to streamline and yet at the same time, open up the selection process. I hope that the committee will be working on that as a possible forthcoming recommendation during the interim as well. Thank you, Mr. President."

The motion was put by the Chair and carried on the following showing of Ayes and Noes:

Ayes, 19. Noes, 5 (Abercrombie, Ajifu, George, Henderson and Soares). Excused, 1 (Young).

MISCELLANEOUS COMMUNICATION

A communication from Senators Abercrombie, Carpenter, Cayetano, Kawasaki, Fernandes Salling and Toguchi (Misc. Com. No. S1-83), relating to Senate Rules changes, was read by the Clerk and was placed on file.

At this time Senator Abercrombie rose on a point of personal inquiry and stated:

"Mr. President, a memorandum was delivered to your office from myself and other Senators on the subject of a Joint Special Session -- that is to say, a request of you, that under the Constitutional prerogatives available to us, that inasmuch as we were in session, already...the Senators were

already here, that you call upon the House to join with us to take up certain matters of pressing import -- among them, not only outlining the financial situation, but the pesticide situation and the sunshine law, on the basis that questions have arisen since the closing of the term, with respect to pesticides and the advisability of an immediate ban on EDP and DBCP, and, questions have arisen since the closing of the session with respect to closed hearings and meetings of governmental bodies, such that an increasing number of these closed meetings are being held throughout the state. The result of which, is that, in the absence of a special session, to at least deal with these matters, we face weeks and perhaps months of either inaction on our part, or continuing action on the part of the possibility of pesticide contamination and I will not say violations of the sunshine law, but certainly the incapacity of many individuals in the public and the media to have access -- up to and even including, I might add, meetings on time-sharing practices being closed by the Director of Regulatory Agencies, to the public. This is a beginning, I think of a situation that is liable to go on for months, and some of these decisions, Mr. President...and the reason I'm asking...may be irreversible, and no one would be there.

"So, my question to you is, under Section III, Article X, which allows for the calling of the Special Session by both houses, the question is whether you will take the lead in addressing the issues that I've outlined of immediate import, by requesting the House to join with the Senate in Special Session?"

The President replied:

"Senator Abercrombie, following the receipt of the memorandum from several of the Senators yesterday, I put in a call to the Speaker of the House. But for some reason he just hasn't returned my call. It takes two to tango, Senator Abercrombie."

Senator Abercrombie then continued:

"Thank you, Mr. President, I appreciate that answer. Interestingly enough, he gave a somewhat similar analysis of his attempts to contact you, to me, on similar occasions.

"Mr. President, in the absence of the capacity to have a Joint Special Session, might we have something

from you, in the way of an indication as to whether there will be at least, interim work on these issues? The reason I ask that is that I have before me a copy of the proposed 1984 Majority Program...I don't know why it was sent to me, but nonetheless I do have it, and I notice that both in the areas of agriculture and I assume, in the area of consumer protection and commerce, is the area that the sunshine law might come under, although I'm sure the judiciary section is in it as well. I do not notice that there is presently contemplated, except by indirection of some of the bills that are listed, the possible changes that I've indicated, could we get an assurance from you, that these issues of pesticide banning and issues of amendments to the sunshine law which would address these problems of closed meetings will be taken up, prior to January."

The President then responded:

"In response to that request, Senator Abercrombie, we've turned over the memorandum that was sent to my office, regarding this issue to the chairman of the committee. He hasn't reached a decision yet, but I'm sure he's going to be having interim hearings...not only that particular committee, but all standing committees of the Senate."

Senator Abercrombie then concluded his remarks to the Chair stating:

"Thank you, Mr. President."

At this time, Senator Cobb rose and stated:

"Mr. President, by way of announcement, to inform the members as far as possible in advance, I anticipate later this year of having some interim hearings on the whole problem of investment counselors as has taken place with the result of some rather well-known names in this town. We are presently doing a lot of investigatory work and research with the Securities and Exchange Commission and other states because of the preemption that does exist by the SEC in the investment counseling area.

"However, my concern is that there should be more disclosure requirements as well as a much quicker reaction, and I'm not convinced that the SEC either reacted quick enough or did an adequate job, when the notice of the problem did come. When we receive the additional information, we will be having either

an informational hearing, or an interim hearing later in the year, and I hope to provide as much notice to the committee members and all other interested Senators, as possible. Thank you."

Senator Abercrombie then queried:

"Mr. President, given the fact that the chairman of the Consumer Protection and Commerce Committee has indicated that he wants to have hearings on investments counselors, would you ask the chairman a question which follows upon this comment. I find it very interesting, Mr. President, that Mr. Rewald is in jail, with a ten million dollar bail, because he took from the rich and the powerful, and at the same time, Manoa Finance and Great Hawaiian and other industrial loan companies who took from the trusting and generally, the poor or the people who are saving for their old age, are allowed to walk around and not have any problems -- and even in effect, receive a degree of sympathy in terms of whether or not they're going to be prosecuted for fraud or any other criminal activity.

"So, would the chairman indicate whether there will be hearings on the industrial loan companies, and perhaps modifications that Thrift Guaranty Corporation and other such entities, which were supposed to be able to protect our people?"

The question was posed by the Chair and Senator Cobb replied:

"Yes, Mr. President, Thrift Guaranty or industrial loan companies are not charged with criminal offenses, as is the case with Mr. Rewald. Furthermore, there is insurance, not only under Thrift Guaranty, but this last session we passed into law, a requirement that the FDIC insure industrial loan companies in the future. It could be a corollary to the hearing but, it would not be the primary purpose of the hearing at all."

Senator Abercrombie then continued:

"Mr. President, apparently I didn't make myself clear. I wasn't asking whether the investment counselor hearing would embody work on industrial loan companies. I asked, are there going to be any hearings or inquiries with respect to whether the industrial loan company law should be amended as well?"

Senator Cobb then replied:

"In response to that Mr. President, the law was just amended, I anticipate taking that issue up again next session since by then, it will give us an opportunity to see how well the FDIC amendment to the law is working that we just passed this year."

Senator Abercrombie then stated:

"Mr. President, I'm afraid that I must comment then, that I continue to be amazed at the tender mercies that are applied to the industrial loan companies and what they do to our people in the legislative process. It must be a great comfort to run an industrial loan company when you know that the people whom you ostensibly serve are going to take it on the chin all the time and that you'll be able to waltz around town and be able to get away with it."

Senator Cobb then replied:

"I'd like to respond to that, Mr. President. I don't think that anyone's getting away with anything. The assets are being liquidated, they're being sold, the investors are being paid back, even if it takes time, they are all going to be paid back, and I'm monitoring that process very carefully."

Senator Chang then rose and stated:

"On the matter of pesticide use and abuse, I would like to say that your committee chairmen, Senators Machida, Hagino, and myself, have been discussing these matters among ourselves, with the corresponding committee chairmen in the House, and with the Speaker of the House, and we are preparing a program of joint inquiry. If any members of this body would like to participate in this inquiry in the early stages, please feel free to contact us. Thank you."

At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:52 o'clock a.m.

At this time, the President made the following announcement:

"If the members of the Senate have no objection, I'd like to send letters of appreciation to the ministers who have provided their wisdom for the past two days.

"In closing, I'd like to take this opportunity to thank all the Senators. I know you all have very busy schedules, and to call you back into Special Session meant that you people had to make all sorts of arrangements to be here and the Chair appreciates this."

ADJOURNMENT

Senator Cobb moved that the Senate

of the Twelfth Legislature of the State of Hawaii, Special Session of 1983, adjourn Sine Die, seconded by Senator Soares and carried.

At 11:57 o'clock a.m., the President rapped his gavel and declared the Senate of the Twelfth Legislature of the State of Hawaii, Special Session of 1983, adjourned Sine Die.

STANDING COMMITTEE REPORTS

SCRep. S1-83 Legislative Management

Informing the Senate that S. Gov. Msg. No. 1 has been printed and was distributed to the members of the Senate.

Signed by all members of the Committee except Senator Young.

SCRep. S2-83 Legislative Management

Informing the Senate that Stand. Com. Rep. No. S3-83 has been printed and was distributed to the members of the Senate.

Signed by all members of the Committee except Senator Young.

SCRep. S3-83 (Majority) Judiciary on S. Gov. Msg. No. 1

Recommending that the Senate consent to the nomination of JAMES H. WAKATSUKI as Associate Justice, Hawaii Supreme Court, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Constitution of the State of Hawaii.

Signed by all members of the Committee.
Senator George did not concur.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
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SR S1-83. AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE FOR THE SECOND DAY, SPECIAL SESSION OF 1983.