

THIRTY-THIRD DAY**Friday, March 16, 2007**

The Senate of the Twenty-Fourth Legislature of the State of Hawai'i, Regular Session of 2007, convened at 11:45 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by Pastor Les Lippincott, Kahua Baptist Church, after which the Roll was called showing all Senators present.

The President announced that she had read and approved the Journal of the Thirty-Second Day.

DEPARTMENTAL COMMUNICATION

Dept. Com. No. 22, from the State Auditor, dated March 14, 2007, transmitting their 2006 Annual Report, was read by the Clerk and was placed on file.

STANDING COMMITTEE REPORTS

Senator Taniguchi, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 1060) recommending that H.B. No. 92, H.D. 1, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 92, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO THE GENERAL EXCISE TAX," passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Taniguchi, for the majority of the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 1061) recommending that H.B. No. 252, H.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the majority of the Committee was adopted and H.B. No. 252, H.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CONVEYANCE TAXES FOR SPECULATIVE SALES," passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Taniguchi, for the majority of the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 1062) recommending that H.B. No. 1002, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the majority of the Committee was adopted and H.B. No. 1002, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO INCOME TAX," passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Taniguchi, for the Committee on Commerce, Consumer Protection and Affordable Housing, presented a report (Stand. Com. Rep. No. 1063) recommending that H.B. No. 1096, H.D. 1, as amended in S.D. 1, pass Second Reading

and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 1096, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO STATE MORTGAGE CREDIT CERTIFICATES," passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senator Kokubun, for the Committee on Water, Land, Agriculture and Hawaiian Affairs, presented a report (Stand. Com. Rep. No. 1064) recommending that H.B. No. 902, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Economic Development and Taxation.

On motion by Senator Ige, seconded by Senator Whalen and carried, the report of the Committee was adopted and H.B. No. 902, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO AGRICULTURAL TAX CREDITS," passed Second Reading and was referred to the Committee on Economic Development and Taxation.

Senators Kokubun and English, for the Committee on Water, Land, Agriculture and Hawaiian Affairs and the Committee on Transportation and International Affairs, presented a joint report (Stand. Com. Rep. No. 1065) recommending that H.B. No. 250, H.D. 2, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Ways and Means.

On motion by Senator Ige, seconded by Senator Whalen and carried, the joint report of the Committees was adopted and H.B. No. 250, H.D. 2, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO ALOHA TOWER DEVELOPMENT CORPORATION," passed Second Reading and was referred to the Committee on Ways and Means.

At 11:51 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 1:52 o'clock p.m.

ORDER OF THE DAY**ADVISE AND CONSENT**

Stand. Com. Rep. No. 1058 (Gov. Msg. No. 405):

Senator Hee moved that Stand. Com. Rep. No. 1058 be received and placed on file, seconded by Senator Kokubun and carried.

Senator Hee then moved that the Senate consent to the nomination of MARK E. RECKTENWALD to the office of Chief Judge, Intermediate Court of Appeals, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Kokubun.

Senator Hee rose to support the nominee as follows:

"Madam President, members, I rise in support and that this Body advise and consent to Mark Recktenwald as Chief Judge to the Intermediate Court of Appeals.

"Members, and those who have gathered in these Chambers, it is a great privilege to encourage you to advise and consent on the nominee. Mr. Recktenwald, throughout the process, has

been very dignified in his responses and will be, I believe, one of the finest judges to sit on the Intermediate Court of Appeals in his capacity as Chief Judge of the ICA.

“We received unanimous testimony in support of the confirmation. The comments made in support were 100 percent, without exception. I received two anonymous notes in non-support, but they were not identifiable – they were simply anonymous. They were not people who wished to remain anonymous; they simply were without identification.

“Mr. Recktenwald is a graduate of the University of Chicago Law School. He is also a graduate of Harvard University. Mr. Recktenwald moved to Hawaii and has immersed himself in public service, having served a brief part of his career in the Office of the U.S. Attorney. More recently, Mr. Recktenwald, as the Director of DCCA, has been someone who has elicited unanimous support in his ability to administer a very difficult department. We had, at the most recent hearing, one individual who came forward with reservations, but even that individual admitted that Mr. Recktenwald’s administering of DCCA was excellent.

“There had been some comments that Mr. Recktenwald as the Chairman of the Board of the EUTF was not doing a good job. That suggestion was not buttressed by information that the Committee could consider. A point of fact – the EUTF, although not without its problems, is on the cusp of becoming self-insured, and has been making great strides to provide the active and the retirees with the funding source that in particular the retirees will enjoy going forward.

“Members, it is with great pleasure and great honor that I ask you to vote ‘yes’ on the confirmation of Mark Recktenwald as Chief Judge for the Intermediate Court of Appeals.

“Thank you, Madam President.”

Senator Gabbard rose in support and stated:

“Madam President, I rise in support of the nomination of Mark Recktenwald.

“Colleagues, Mr. Recktenwald obviously has outstanding credentials. He’s extremely intelligent, has solid work experience, but most importantly as the testimony pointed out, Mr. Recktenwald is a good and decent person who is known for his fairness and he will serve us all well on the bench. Therefore, I urge you to vote up on Mr. Recktenwald.

“Thank you, Madam President.”

Senator Hemmings rose to speak in support of the nomination as follows:

“Madam President, Colleagues, the Senate Minority is most pleased and proud to add our overwhelming support of this proven leader and judicious nominee, Mark Recktenwald.”

Senator Slom rose to add his support for the nominee and said:

“Madam President, I rise in strong support of the nominee, Mark Recktenwald.

“From a business perspective, and particularly a small business perspective, Mark Recktenwald was the right man at the right time for the right job. He took a department, the Department of Commerce and Consumer Affairs, which had probably the worst rating of any of the governmental departments, turned it around, made it customer friendly, made

it user friendly. He was able to cut fees and cut taxes and improve the online usage of business registration and other services, and for that, we will be eternally grateful.

“So it’s with mixed emotions that I congratulate him and support him, because we hate to see him leave DCCA, but we know that he has an able and efficient staff that is going to carry on his tradition. He will make an outstanding and excellent judge.

“Thank you, Madam President.”

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

Ayes, 25. Noes, none.

At this time, Senator Hee introduced Judge Recktenwald to the members of the Senate.

Stand. Com. Rep. No. 1059 (Gov. Msg. No. 404):

At this time, the President made the following announcement:

“Members, pursuant to Senate Rule 37(5), the final question on appointments by the Governor which require the confirmation or consent of the Senate must be stated in the affirmative. Therefore, those casting ‘Aye’ votes are voting to confirm, and those casting ‘No’ votes are voting to reject the nomination.

“The recommendation of the Committee on Judiciary and Labor on Gov. Msg. No. 404 is that the Senate not consent to the nomination of Glenn Kim to the Circuit Court of the First Circuit. Therefore, the Chair will first entertain a motion to file Stand. Com. Rep. No. 1059, then we will move on to the final vote on this matter.”

Senator Ige moved that Stand. Com. Rep. No. 1059 be received and placed on file, seconded by Senator Whalen and carried.

Pursuant to Senate Rule 37(5), Senator Inouye then moved that the Senate consent to the nomination of GLENN J. KIM to the office of Judge, Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Gabbard.

Senator Inouye rose to speak in support of the nomination as follows:

“Madam President and colleagues, I rise in strong support of Gov. Msg. No. 404, gubernatorial nominee, Glenn J. Kim, for consideration and confirmation to the Circuit Court of the First Circuit, State of Hawaii.

“I speak in support because I firmly believe that he is highly qualified to serve as a judge in terms of courtroom experience and legal knowledge. I also believe he has the judicial temperament, demeanor, and moral character to make him an excellent judge.

“During the lengthy confirmation hearings before the Committee on Judiciary and Labor, there were certain questions raised as to Mr. Kim’s lack of public service. But, this is a man who has served in the U.S. Army in Vietnam and who was awarded the Bronze Star medal for his service. I am hard-pressed to think of anything else that could be considered of

greater public service than putting one's life on the line to serve our country in times of war.

"In addition to his military service, Mr. Kim served on the board of advisors for a program here in Hawaii called CARE, or Child at Risk Evaluation. The program provides forensic medical services for child victims of abuse. Dr. Victoria Schneider, CARE's Medical Director, wrote in her letter of support that, and I quote: 'Mr. Kim has displayed tremendous moral courage. He has been unafraid to proceed with cases that need a champion for the truth. Mr. Kim is a gifted attorney who has devoted his career to the protection of individuals' rights under the law. He has consistently displayed fairness, honesty, intelligence, organization, and decisiveness. He will be a wise and thoughtful judge,' unquote.

"Dr. Schneider's letter was typical of the many received by our offices. There were also some concerns that his conduct towards attorneys under his supervision may have been less than respectful, that his behavior was demeaning. I do not seek to question the integrity of the two individuals who spoke out against Mr. Kim in these terms. In fact, I salute them for having the courage to come forward. However, I would like to point out that there is always a context, or circumstances that may unduly contribute to the shaping of an opinion of another person. While we are not privy to all of the details of those circumstances, we must, nevertheless, take them into consideration.

"Colleagues, we are all human, and retribution, unfortunately, is often an ugly part of our human nature. I would also like to point out, colleagues, that there were only two individuals who spoke out against Mr. Kim – just two. Their testimony was quite unflattering, to say the least, but their testimony must also be weighed against the dozens of letters of support for Mr. Kim from both supervisors and subordinates, as well as from former and present colleagues. These letters describe Mr. Kim as courageous, level-headed, fair, knowledgeable, and professional. In fact, I think we all received the letter signed by 12 attorneys who were under Mr. Kim's supervision. They wrote that they collectively saw no signs of the negative conduct attributed to Mr. Kim, even though they all worked in the same vicinity where some of the alleged misconduct took place.

"Colleagues, I believe that a judge should be fair, honest, and even. I am convinced that Mr. Kim is the right person for this job and I ask you, my colleagues, to also be fair, honest, and even and vote to advise and consent to his nomination.

"Thank you, Madam President."

Senator Gabbard rose in support also and said:

"Madam President, I rise in support of the nomination of Glenn Kim.

"Madam President and colleagues, after weighing both the positive and negative things that were said about Mr. Kim's nomination, I've come to the conclusion that Mr. Kim has all the necessary qualities and professional background to assume this important role. But what impressed me most about Mr. Kim were two things: Number one, at the Judiciary Committee hearing, was seeing the defense attorneys and the prosecuting attorneys agreeing – prominent defense attorneys who had been against Mr. Kim in the courtroom – agreeing on his qualifications. That stuck in my mind very deeply. And the second thing I wanted to mention was referred to by the previous speaker, and that was that coming from a military family myself and having a daughter in the military, when I learned that Mr. Kim had received the Bronze Star in Vietnam,

it was at one of these hearings and what astonished me was that many of his colleagues, many prosecuting attorneys, had no knowledge that he had even earned this award. And as you know, the Bronze Star is a high honor that is awarded for acts of heroism and meritorious service.

"So, with that in mind, I am asking you to please vote up on Mr. Kim's nomination. Thank you, Madam President."

Senator Slom rose to support the nomination and stated:

"Madam President, I rise in strong support of the nominee.

"First of all, I want to thank the Chair of the Judiciary Committee for making available to every Senator, the complete text of all of the testimony that was made both for and against. I think that was very important for transparency. And for those of us who took the time to watch the hearings, to attend the hearings, or to read the testimony, I think we came away from the hearings puzzled as to why there would be any question or any discussion for this individual's support and advise and consent.

"The support for Glenn Kim came from Republicans and Democrats and people that have no party affiliation; came from liberals and conservatives and people in the middle of the road. It came from prosecutors and public defenders – nearly unanimous. It was amazing. So, for some of us, it was really troubling when an issue is raised about two individuals. And we could question their motives, but there's no sense trying to figure out the motives of other people except to say there was such overwhelming support for this man and what he has already accomplished and what he can accomplish on the bench.

"We know that we have a perception problem with the Judiciary in this State, with the kinds of punishment that have been meted out or not meted out. We heard complaints that the nominee would want to go to trial and to prosecute even without all of the facts, and yet that flies in the face of the evidence and the overwhelming statements made by people. And to a man, to a woman, they said that this nominee was very deliberative, very focused, very intense, and very passionate about representing the people in this community.

"Madam President, yesterday I took it upon myself to call two individuals that I've known for some time, judges – Judge Michael Town, who I think has been on the bench for more than 25 years, I think he's the senior trial judge in this State; and also Judge Richard Pollack, who comes from a public defender's background. I called them; I initiated the conversation, and I asked them for their permission if they would allow me to share their remarks with you today, and both agreed. And both of them, interestingly enough, in individual conversations – both of them – used the word 'integrity,' used the word 'prepared,' used the word 'fair,' used the word 'balance,' used the word and term 'concerned particularly about families, women, and children.' To me that was extremely important and impressive.

"Now, some people, I know, did not like the demeanor of the nominee because it didn't fit their perception of how somebody should answer questions, particularly criticism. And we're used to all kinds of people in hearings and also in confirmation investigations, and some people are very gregarious, and some people are very shy, and some people are very private, and I think that's what the nominee is – extremely private. He's extremely dedicated, though. He has dedicated his life to community service – from the military, to academia, to protecting individuals – and I think that speaks louder than anything else.

“And for a while, Madam President, I was concerned that this Senate was going to go down a road it had been down before, sully the background and the integrity of an individual. But I’m not concerned about that today because I know the Senate is going to do the right thing in this vote coming up. And one of the reasons the Senate is going to do the right thing is because we recognize it is so extremely difficult to get people to give up their lives to support and defend weaker individuals in this community. And so when people come forward, when they volunteer, when they say ‘Yes, I’ll do it’ no matter how busy they are, no matter how concerned, no matter what their situation is at home with family members or children or other things that they have, when they volunteer to come forward it is our duty, it is our responsibility to give them the benefit of the doubt and not to worry about what the motivations may be of two individuals and have a difficult time saying, ‘Well, gee, are they telling the truth or not?’”

“We don’t have any problem with knowing that this nominee is telling the truth. And when this nominee says that he never did something and is very specific about it, I guess, being a political body, we’re used to people who equivocate or that don’t remember certain things. But when you can stand in the dock and say, ‘I can tell you, without reservation, I did not do this. I would not do this. This is not in my character or my integrity.’ And when you have dozens upon dozens of people saying the same thing, it’s an important message.

“I think that we are very fortunate to have an individual like this. I don’t remember anyone that’s had qualifications like this, a background like this. We are very fortunate to have someone who has come forward, and he’s gone through the process, and he has answered every single question, and he’s provided every bit of information. And I think that it’s real easy to determine priorities and who is telling the truth and who has integrity.

“So I think the process will be strengthened today. And I hope that it does send a clear message to people that are thinking of volunteering or who are asked to volunteer that they will be treated fairly, and that in the end, reason and rationality will prevail.

“So I strongly urge all my colleagues to enthusiastically support, endorse, and vote for the nomination of Glenn Kim, and Madam President, I would request a Roll Call vote. Thank you.”

Senator Hee rose to oppose the nomination and stated:

“Madam President, with all due respect to the nominee and with all due respect to his strong supporters, with all due respect to the members on this Floor, with all due respect to the Minority Party, with all due respect to the Attorney General and the Prosecutor, and with all due respect to the Governor of the State of Hawaii, respectfully I rise to oppose the confirmation of Glenn Kim to the Circuit Court of the First Circuit.

“Let me start out by saying this is by far the most difficult confirmation that I have been involved in. This is by far a very difficult conclusion to which I have reached over this time, and I have been involved with many confirmations. And let me state at the outset that this Governor has appointed for our consideration, very worthy jurists, not the least of which is James E. Duffy, Associate Justice of the Hawaii Supreme Court, Elizabeth Strance, Circuit Court Judge to Kona. Having said that, let me say that the difficulty today is because, Mr. Kim, a local boy who graduated from Kalani High School, who served this country with great distinction in Vietnam, who earned a Bronze Star for valor and courage in defense of this

country, who went on to earn an undergraduate degree with highest honors at the University of Hawaii, who earned an M.A. at Harvard University and a Ph.D. in Literature at Harvard and spent some time as an instructor at Harvard University, are accomplishments that by any standard all of us are humbled by and could only wish we could be measured by that standard. Mr. Kim, truly, a native son of Hawaii, has made great accomplishments and is a tremendous asset by which this State can be proud.

“Colleagues, what troubles me most about this confirmation is that despite these sterling credentials, there were times where Mr. Kim’s responses were very difficult to acknowledge, let alone understand.

“I would like to say to all of you that the confirmation authority, which is part of our duties as Senators, is probably the most difficult and one of the greatest challenges that we are charged with as a responsibility. And, I certainly feel that the responsibility to Chair the Judiciary Committee to conduct these hearings is a tremendous honor and privilege to serve this Body. And to that extent, to the Senators who have previously spoken and to the other members who sit as members on this Committee, I am deeply grateful and honored that you folks have allowed this process and have attended virtually every second of this process involving the nominee.

“I have much respect for the Judiciary, which is our third branch of government, and the men and women who serve the public as judges. They have a huge responsibility because they directly affect the lives of the people who appear before them, whether in civil, criminal, or family law. This is why I take this duty and this process so seriously. We all know this is not an easy task because our decisions affect the person, and his family, who has chosen to put his name up to be evaluated publicly and with full transparency. But the Hawaii Constitution makes it clear that the Senate is to consent or disapprove the nominee. This is why the guidelines to determine whether a person should serve as a judge involve the consideration of qualities far beyond a person’s academic credentials. There is not a single soul that I can think of who would challenge the academic credentials of this native son. Far more difficult than Mr. Kim’s intelligence is to measure and evaluate other areas which cannot be objectively proven or disproven, such as an admonishment, a criticism, a reversal. That is what makes this process so difficult.

“Like Mark Recktenwald before this Body, Mr. Kim is also, as I said earlier, a graduate of Harvard University. And although Mr. Recktenwald during his process was fairly expediently decided upon, there was a reason and difference that made this one so difficult. And it speaks to judicial temperament – a quality which cannot be proven or disproven – indeed, a quality that is subjective. That is what makes this process such a difficult one.

“In an article by the Institute for Judicial Studies, entitled ‘Defending Independence and Demanding Accountability; The Moral Compass, Relative Ethics,’ it says in part: ‘One requirement that the code fails to mention explicitly is judicial temperament. A criterion almost universally regarded as the important consideration in judicial selection. Interestingly, recent international law includes judicial temperament as the requirement for the ethical conduct of judges. These principles specifically provide that a judge shall be patient, dignified, and courteous in the relation to litigants, jurors, witnesses, lawyers, and all others who appear before them in an official capacity. It is perhaps the most important in the Code of Ethics and the most difficult because of its subjectivity. While judicial temperament encompasses a variety of qualities, including fair-mindedness, patience, the avoidance of arrogance and tyranny,

requiring such a temperament as a matter of judicial ethics might be difficult to prove. While demeanor on the bench is easy to observe, it is so much harder to define, and what one person considers fair and patient, another might find cruel and brusque.'

"Members, as we have discussed, we live in a culture in this Chamber where all of us must make our decisions according to our conscience. It is also apparent to me, having spent time as the Chairman of the Judiciary Committee in 1987 and 1988, 20 years ago, that the culture of fear is pervasive with lawyers and the business of dispensing law. It is far easier to stand as a colleague in support of someone, particularly when you feel that someone is very likely to be confirmed. That is the situation here.

"When one looks at Mr. Kim's credentials, as I did, it was so easy to conclude that this confirmation would be easy and done over in a relatively short period of time. And in fact, as a matter of record, I felt so strongly about Mr. Kim that he was put on the original calendar at 9:00 and Mr. Recktenwald at 10:00 because I felt strongly that Mr. Kim would be dispensed of by this Body within an hour. I also, however, advised the nominee that we should not be surprised that things will, and I used the phrase 'bubble up,' although I could not imagine then that such criticism would follow. And as a matter of record, it was not an hour later, after our initial interview in my office, that Liza Tom's letter came to rest in my computer and addressed to Jeff Portnoy, President of the Hawaii State Bar Association, and myself in my capacity as Chairman of the Judiciary Committee. That is what started the odyssey of finding judicial temperament in Mr. Kim, because the letter, which all of you have, speaks to temperament, at least through the eyes of one deputy prosecuting attorney.

"But before minimizing the one deputy prosecuting attorney, it should be noted that she is a recipient of the top gun award given by Prosecutor Peter Carlisle as one of the attorneys in his office who received the most victories in trials that are resolved by juries. So, if we choose to minimize Liza Tom, let us do it in the context of what apparently the Prosecutor, through his own rules, awarded her as a litigant who received the most jury trial victories for a particular year.

"In Ms. Tom's letter to me, and as a prosecuting attorney in Los Angeles, she invited Jeff Portnoy and myself to call her. I do not know if Mr. Portnoy called her, but I did. She said to me things which were disparaging about the nominee, but she said to me there were others who would corroborate his behavior. And she said that she would speak to them and ask them if it was appropriate for me to call them. She did and she supplied me with names and numbers of former deputy prosecuting attorneys who worked with Mr. Kim. And I called them. They did then and do so now, wish to remain anonymous and confidential because they fear reprisals, true or imagined, by the nominee should he become a judge. I have honored that confidentiality, and as opposed to the anonymous letters received at Mr. Recktenwald's, these individuals I spoke to directly.

"One individual in particular said to me that they knew that I was a friend of another deputy prosecutor and if I would call that deputy, she would also corroborate. And she is the one who I know personally and corroborated the incidents of abuse - office abuse. But she said there was another attorney who was a supervisor who would also corroborate, but she could not remember the name. And a day later she left a message for me that that person is Lynn McGivern. And that is how the name of Lynn McGivern has come to light before this Chamber. Lynn McGivern would not come public during our telephone conversation. She was head, at one time, of the Domestic

Violence Misdemeanor and Domestic Violence Felony Sections. She would not come forward. So I asked her if she would consider speaking to the Senate President as well as myself, so that there could at least be someone else who could hear what was being spoken. She agreed, and we met on a Sunday. At the end of the conversation on Sunday, she said, 'I will not come forward.' And to put it in as blunt a language as the Senate President can be and with her right finger pointed, the President said, 'If you lawyers don't come forward, do not bitch if he becomes a bad judge.' And that's where we left it.

"On Monday of this week, Ms. McGivern called me and she said: 'I bet you thought you'd never hear from me,' and I said, 'Yes.' And she said: 'I will come forward if the Senate compels me with a subpoena.' And that is how she came forward on Wednesday.

"Members, as you know, a lawyer testifying under oath faces grave consequences of losing his or her license if she lies. That standard is not a standard that is required of others, but it is required of lawyers. And, therefore, whether I agree or disagree with Ms. McGivern, I agree that her testimony, as far as she was concerned, was the truth, the whole truth, and nothing but the truth. And I respect that.

"What is so difficult for the Committee and so difficult for me is not whether it was the whole truth, but how Mr. Kim would respond to what Ms. McGivern, under oath, testified. I was disappointed when Mr. Kim said, 'I never did that, and I categorically deny what she said.' It would have been so much easier for me if Mr. Kim, an intellect, said, 'Mr. Chairman and members, I can understand that she may feel this way; I can understand that she in fact believes that she is telling the truth because of the standard lawyers are held to under subpoena, but respectfully, Mr. Chairman and members, I disagree. She may feel this way, but with all due respect, I see it a little differently.'

"I was stunned when he said, 'I never, ever engaged.' I was stunned when he said, 'I categorically deny.' Because, in essence, he was saying to the Committee that Ms. McGivern had perjured herself as a lawyer before this Body. That is the difficulty of trying to understand an intellect and trying to reconcile judicial temperament.

"There are some of you who have said to me that there are worse judges presently presiding on the bench. And I agree. There are judges in disagreement to the arguments of the lawyer who turn their back to the lawyer in utter contempt of the lawyer's efforts to advocate for the lawyer's client. I agree. There was one public defender who said to me, 'You must confirm him because the other five are worse.' That's not the reason to confirm him. That is to say that some of the directors some of you may be confirming must be confirmed because the next nominee will be worse. That's not the basis of rational decision making.

"This has been a most difficult process for me personally, and I'm sure for many of you. I know some of you have called him privately in your office, and I know some of you have been given the same response that we were given on the Judiciary Committee as late as this morning. I know that because you have shared that with us. But, I want to recall with you what Vickie Viotti of the Honolulu Advertiser said to me at approximately 5:30 last night. She said to me, 'Isn't there a reasonable doubt that in fact Mr. Kim would be a good judge?' My answer was this: 'When such reasonable doubt exists, we have a duty and an obligation to err on the side of the people. We are elected by the people. We are here to serve the people.'

“Such reasonable doubt exists with me, and I’m sure exists with many of you. It becomes a question that when such reasonable doubt exists, regardless that he is an intellect and scholar, regardless that many have come in support of Mr. Kim, and regardless that some have come with the courage to be identified in opposition of Mr. Kim, regardless of the reason, if such doubt exists, we must err on the side of the people who charged us with the duty to represent them. The process of confirmation is not to disprove his worthiness to serve; it is for the nominee to prove to the Senate his worthiness to move on. That’s the troubling aspect of a native son who is truly an intellectual, accomplished hero of Vietnam. That is what makes this process so difficult.

“That is why, with all due respect to Mr. Kim, his family, his friends, I rise to oppose the nomination because of the remaining reasonable doubt that exists. Thank you, Madam President.”

Senator Hemmings rose in favor of the nominee and said:

“Madam President, I rise to speak in favor of the nominee, Glenn J. Kim for the First Circuit Court, State of Hawaii.

“Madam President, colleagues, this in so many ways is a test for who we are and what we are doing as our constitutional duty is to advise and consent on behalf of those whom we are elected to serve. This is an opportunity, we the members of the Senate, to demonstrate the attributes of wisdom and integrity and nobility that we rightfully demand from the nominees to the judicial branch of government. I would suggest our virtues will likewise be judged by what we do here today. I ask my colleagues to make this a proud day for the Senate and to vote in the affirmative for this imminently qualified, respected, and deserving nominee, Glenn J. Kim.

“Thank you, Madam President.”

Senator Nishihara rose and said:

“Madam President, I ask that my comments be inserted into the journal.”

The Chair having so ordered, Senator Nishihara’s remarks read as follows:

“Madam President and Colleagues, I rise in support of the nomination of Mr. Glenn Kim to the First Circuit Court. Two days ago I was one of the members of the Judiciary and Labor Committee that voted not to recommend Advise and Consent of Mr. Kim. I did so with a great deal of angst and inner conflict. To have to vote against someone who came with tremendous support of his peers and superiors was not easy. Mr. Kim’s answers, in questioning by others as well as myself, made the duty of deciding on his confirmation even more difficult and troubling. However, I was unsatisfied even after I voted.

“I had resolved to speak to Mr. Kim the next day, to give him another opportunity to satisfy my concerns. We met yesterday afternoon. When he left, I was faced with the uncomfortable conclusion that I might have to reconsider my previous vote.

“Colleagues, I feel that one of the hardest things for anyone to do is to face up to reevaluating and reconsidering the actions one has taken. It is even more problematic when it has to be in an environment of political scrutiny.

“Mr. Kim, to many, has in their sense, measured up to what they believe are the requisite qualities to make him an excellent judge. Following my discussion yesterday with Mr. Kim which addressed my concerns, I am now confident that he does

possess those qualities; therefore, I will vote in favor of the nominee, in opposition to the recommendation that I myself was a part of two days ago.

“I do not ask others to follow my lead. I only ask that you follow your own sense of justice in deciding your vote today.

Senator Sakamoto rose to speak in opposition of the nomination as follows:

“Madam President, short comments in opposition.

“I believe judges need to be able to see all sides of an issue, and when a case comes before him or her, they need to keep an open mind and to see the faults of others and to understand how to fairly deal with people. In hearing and reading part of the testimony, I believe the candidate holds a strong image of himself and doesn’t see the faults perhaps others see in him, and I believe a judge needs to be able to see his or her own faults to better deal fairly to those that come before him or her.”

Senator Trimble rose in favor of the nominee and said:

“Madam President, I rise to read in favor of Glenn Kim.

“Colleagues, you may have noticed that my staff is of a different generation and a different gender than I. My challenge to them yesterday was not what remarks I should say on the Floor, but what remarks would they say if they had the opportunity. And so, I would like to read a couple of excerpts they gave me so perhaps you could share my experience in hearing from a different generation and a different gender.

“How can the Senate bear to deny this incredibly qualified, scrupulously honest, genuinely caring, extremely intelligent, well-meaning individual, a judicial position? It is ridiculously superficial to deny someone a judicial position based upon their use of a four-letter word. His actions surely show him to be a caring individual. The theme of the testimony has been actions which show him to care for others, particularly those in positions that are less important and less able to defend themselves. Furthermore, his intent to serve must be apparent by his choice to serve a government agency rather than work for a lucrative law firm and the endless testimony as to his honesty to the point of scrupulousness, as well as his willingness and availability to help others to his own detriment, in spite of his own heavy case load. He definitely has not only the character and judicial temperament to be a judge, but the keen analytical mind, comprehensive understanding of law, as well as the excellent discernment to some immature women’s displeasure. He is certainly one of the most highly qualified judicial nominees and it would be a disservice to deny him a judicial position in the First Circuit.”

“Thank you, Madam President.”

The motion was put by the Chair and, Roll Call vote having been requested, carried on the following showing of Ayes and Noes:

Ayes, 16. Ayes with Reservations, 4 (Chun Oakland, Ihara, Kim, Taniguchi). Noes, 9 (English, Hanabusa, Hee, Hooser, Ige, Kokubun, Sakamoto, Tokuda, Tsutsui).

At this time, Senator Inouye introduced Judge Kim to the members of the Senate.

At 2:51 o’clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 2:57 o’clock p.m.

ADOPTION OF RESOLUTIONS**MATTERS DEFERRED FROM
THURSDAY, MARCH 15, 2007**

Stand. Com. Rep. No. 1049 (S.C.R. No. 41):

On motion by Senator Hooser, seconded by Senator Gabbard and carried, the report of the Committee was adopted and S.C.R. No. 41, entitled: "SENATE CONCURRENT RESOLUTION CONDEMNING THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES' FEE INCREASE," was adopted.

Stand. Com. Rep. No. 1050 (S.C.R. No. 40, S.D. 1):

On motion by Senator Hooser, seconded by Senator Gabbard and carried, the report of the Committee was adopted and S.C.R. No. 40, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO PROVIDE FUNDING FOR THE CONSTRUCTION OF A NEW STATE EMERGENCY OPERATING CENTER," was adopted.

Stand. Com. Rep. No. 1055 (S.R. No. 20, S.D. 1):

On motion by Senator Hooser, seconded by Senator Gabbard and carried, the report of the Committee was adopted and S.R. No. 20, S.D. 1, entitled: "SENATE RESOLUTION REQUESTING THE UNITED STATES CONGRESS TO PROVIDE FUNDING FOR THE CONSTRUCTION OF A NEW STATE EMERGENCY OPERATING CENTER," was adopted.

THIRD READING**MATTER DEFERRED FROM
WEDNESDAY, MARCH 14, 2007**

H.B. No. 853, H.D. 2:

By unanimous consent, action on H.B. No. 853, H.D. 2, entitled: "A BILL FOR AN ACT RELATING TO PUBLIC WORK PROJECTS," was deferred until Friday, March 23, 2007.

THIRD READING

H.B. No. 25, H.D. 1, S.D. 1:

By unanimous consent, action on H.B. No. 25, H.D. 1, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO TEACHER LICENSING," was deferred until Friday, March 23, 2007.

H.B. No. 613:

By unanimous consent, action on H.B. No. 613, entitled: "A BILL FOR AN ACT RELATING TO VETERANS," was deferred until Friday, March 23, 2007.

**RE-REFERRAL OF A
SENATE CONCURRENT RESOLUTION**

The Chair re-referred the following Senate concurrent resolution that was offered:

Senate
Concurrent
Resolution

Referred to:

No. 43

Committee on Energy and Environment

ADJOURNMENT

At 2:59 o'clock p.m., on motion by Senator Hooser, seconded by Senator Gabbard and carried, the Senate adjourned until 11:30 o'clock a.m., Monday, March 19, 2007.