

JOURNAL
of the
SENATE OF THE
TWENTY - FIFTH LEGISLATURE
of the
STATE OF HAWAII

Special Session of 2010

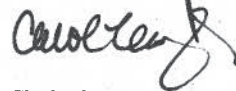
Convened Thursday, August 5, 2010
Adjourned Friday, August 6, 2010

CERTIFICATE

We hereby certify that the minutes for each day's session as appears in this Senate Journal are true and correct and that the original copies have been duly signed by the President and Clerk of the Senate and are on file in the Archives of the State of Hawaii.

A handwritten signature in black ink, consisting of a horizontal line with a vertical stroke crossing it, and a small loop at the end.

President of the Senate

A handwritten signature in black ink, appearing to be 'Carol Lee' with a stylized flourish at the end.

Clerk of the Senate

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THE
 TWENTY-FIFTH LEGISLATURE
 STATE OF HAWAII
 SPECIAL SESSION OF 2010
 JOURNAL OF THE SENATE

FIRST DAY

Thursday, August 5, 2010

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2010, was called to order at 9:05 a.m., by Senator Colleen Hanabusa, President of the Senate, in accordance with the following Proclamation, which was read by the Clerk and placed on file:

"August 05, 2010

PROCLAMATION

I, Colleen Hanabusa, President of the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawai'i, and at the written request of two-thirds of the members to which the Senate is entitled, do hereby convene the Senate in Special Session for the purpose of carrying out its responsibility established by Section 3, Article VI of the Constitution of the State of Hawai'i for a period of two (2) days commencing on Thursday, August 05, 2010, at 9 o'clock a.m.

/s/ Colleen Hanabusa
 Colleen Hanabusa
 President of the Senate"

The Divine Blessing was invoked by Reverend Alice Inoue, Honolulu Church of Light, after which the Roll was called showing all Senators present with the exception of Senators English, Hee, and Kim who were excused and Senators Bunda and Hooser who resigned from the State Senate on July 16, 2010.

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 1 to 4) were read by the Clerk and disposed of as follows:

Gov. Msg. No. 1, submitting for consideration and confirmation, the nomination of JEANNETTE H. CASTAGNETTI to the office of Circuit Judge, Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, was referred to the Committee on Judiciary and Government Operations.

Gov. Msg. No. 2, submitting for consideration and confirmation, the nomination of COLETTE Y. GARIBALDI to the office of Circuit Judge, Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, was referred to the Committee on Judiciary and Government Operations.

Gov. Msg. No. 3, submitting for consideration and confirmation, the nomination of FAAUUGA L. TO'OTO'O to the office of Circuit Judge, Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, was referred to the Committee on Judiciary and Government Operations.

Gov. Msg. No. 4, submitting for consideration and consent, the nomination of KATHERINE G. LEONARD to the office of Chief Justice of the Supreme Court of the State of Hawaii, was

referred to the Committee on Judiciary and Government Operations.

JUDICIARY COMMUNICATIONS

The following communications from the Judiciary (Jud. Com. Nos. 1 to 4) were read by the Clerk and disposed of as follows:

Jud. Com. No. 1, submitting for consideration and confirmation, the nomination of SHERRI-ANN L. IHA to the District Court of the First Circuit, for a term of six years, was referred to the Committee on Judiciary and Government Operations.

Jud. Com. No. 2, submitting for consideration and confirmation, the nomination of STEVEN M. NAKASHIMA to the District Court of the First Circuit, for a term of six years, was referred to the Committee on Judiciary and Government Operations.

Jud. Com. No. 3, submitting for consideration and confirmation, the nomination of MATTHEW J. VIOLA to the District Court of the First Circuit, for a term of six years, was referred to the Committee on Judiciary and Government Operations.

Jud. Com. No. 4, submitting for consideration and confirmation, the nomination of MICHAEL K. TANIGAWA to the District Court of the First Circuit, for a term of six years, was referred to the Committee on Judiciary and Government Operations.

At this time, the Chair made the following announcements:

"First of all, members and members of the public who are here: We do apologize for this auditorium, which is serving as our chambers, and it makes it a bit challenging for all of us. But as you know, effective about the second week of July, the Office of Elections takes over both the Senate and the House chambers; and as a result, to fulfill our constitutional obligation, we have to meet somewhere, and this is the best solution that we have.

"I would like to tell you that because of the challenge of the seating and the limited amount of mics, we have set up two podiums. And for tomorrow's session, we're asking members who wish to make any comments or statements about the respective nominees, that they do so from the podiums. And if anyone is seated in a seat which would make it very difficult for you to make comments, and if you intend to and you are willing to tell that to us now, we will do everything to accommodate your request and move you further towards the aisle. We may actually ask some of you, if we do know, to sort of queue in so that we can move it along. The only two seats that are really, really reserved are Senator Hee's and Senator Galuteria, and that's because we don't think they'll be comfortable in the middle of the row. So, with that, we're asking everyone to accommodate that.

“Okay, for tomorrow’s session, because we have several nominations to consider, we will begin by taking them in the following order: 9:00 a.m. will be the four District Court nominees. Hopefully, we will be done in time to start the three Circuit Court nominees at 10:00 a.m.; and at 11:00 a.m. tomorrow, the nominee for the Chief Justice of the Hawai’i Supreme Court. We will take a recess after each group of nominees and judges. To those nominees who are not being considered at that time, we will be asking them to wait with their families and monitor the proceedings in Conference Room 16. Of course, this is a public forum, so if people want to sit here for the whole thing, they are of course free to do so. We’re just concerned about space and not violating any fire codes. So, if we’re able to do that—and we do have people with large families or large community support who may be, for example, a Circuit Court or Supreme Court nominee—we may ask if they could wait in CR16. And we’re going to ask those who have been confirmed or not confirmed, depending on how the Senate decides to take on the recommendations of the Judiciary Committee, if after their process is over, if they would make room for the next group. I know it sounds a bit odd, but that’s the only way we could figure out how to accommodate the number of people we anticipate. As you can imagine, if we had all eight nominees in this auditorium, it would not work. So, we need to figure out some way of doing it, and that is why we have staggered the time.”

Senator Hemmings rose on a point of personal privilege and said:

“I’m following a tradition, I think, that was established by the Honorable Avery Chumbley in 2002.

“Madam President, parenthetically, I do want to acknowledge your graciousness in accommodating Senator Galuteria and Hee with their long legs in the ‘economy plus’ seats.

The Chair responded:

“And I don’t charge extra; I want you to know that.”

Senator Hemmings continued:

“Thank you kindly, Madam President. Avery Chumbley, upon retirement, distributed his ties to the remaining legislators. I think there probably was subtle message in the tie I received—it was a red onion. I don’t know what it meant; maybe you could find out someday, good senator? I suspect it meant something, but I don’t know.

“But anyway, I do have ties upon my retirement. I am a ‘plantation-poor’ Republican, but I will tell you that there are some nice ties here that were gifts to me from wealthy Democrats. So, I would like to leave these for my colleagues. I will tell you these are non-gender ties; if any woman would like to take a tie and make some use of it to strangle some over-testosterone guy, please help yourself. But I’d like to leave these ties, and I think it’s a wonderful tradition that Senator Chumbley started. Thank you, Madam President.”

The Chair inquired:

“Senator Hemmings, you don’t have a specific tie for a specific senator, like the red onion for you?”

Senator Hemmings responded:

“I have thoughts on that, good Madam President, but I am going to be discreet enough. You know how subtle I am. I’m going to allow the senators to work these things out for themselves. Thank you, Madam President.”

STANDING COMMITTEE REPORTS

On motion by Senator Sakamoto, seconded by Senator Slom and carried unanimously, the Clerk was authorized to receive standing committee reports on Gov. Msg. Nos. 1 to 4 and Jud. Com. Nos. 1 to 4. In consequence thereof, and subsequent to its recessing at 9:18 a.m., the Senate took the following action:

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 1) recommending that the Senate consent to the nomination of SHERRI-ANN L. IHA to the District Court of the First Circuit, State of Hawaii, in accordance with Jud. Com. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 1 and Jud. Com. No. 1 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 2) recommending that the Senate consent to the nomination of STEVEN M. NAKASHIMA to the District Court of the First Circuit, State of Hawaii, in accordance with Jud. Com. No. 2.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 2 and Jud. Com. No. 2 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 3) recommending that the Senate consent to the nomination of MATTHEW J. VIOLA to the District Court of the First Circuit, State of Hawaii, in accordance with Jud. Com. No. 3.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 3 and Jud. Com. No. 3 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 4) recommending that the Senate consent to the nomination of MICHAEL K. TANIGAWA to the District Court of the First Circuit, State of Hawaii, in accordance with Jud. Com. No. 4.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 4 and Jud. Com. No. 4 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 5) recommending that the Senate consent to the nomination of JEANNETTE H. CASTAGNETTI to the Circuit Court of the First Circuit, State of Hawaii, in accordance with Gov. Msg. No. 1.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 5 and Gov. Msg. No. 1 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 6) recommending that the Senate consent to the nomination of COLETTE Y. GARIBALDI to the Circuit Court of the First Circuit, State of Hawaii, in accordance with Gov. Msg. No. 2.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 6 and Gov. Msg. No. 2 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 7) recommending that the Senate consent to the nomination of FAAUUGA L. TO‘OTO‘O to the Circuit Court of the First Circuit, State of Hawaii, in accordance with Gov. Msg. No. 3.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 7 and Gov. Msg. No. 3 was deferred until Friday, August 6, 2010.

Senator Taniguchi, for the Committee on Judiciary and Government Operations, presented a report (Stand. Com. Rep. No. 8) recommending that the Senate not consent to the nomination of KATHERINE G. LEONARD to the office of Chief Justice, Supreme Court, State of Hawaii, in accordance with Gov. Msg. No. 4.

In accordance with Senate Rule 37(6), action on Stand. Com. Rep. No. 8 and Gov. Msg. No. 4 was deferred until Friday, August 6, 2010.

ADJOURNMENT

At 4:34 p.m., the Senate adjourned until 9:00 a.m., Friday, August 6, 2010.

SECOND DAY

Friday, August 6, 2010

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2010, convened at 9:10 a.m. with the President in the Chair.

The Divine Blessing was invoked by the Honorable Will Espero, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senator English who was excused and Senators Bunda and Hooser who resigned from the State Senate on July 16, 2010.

The President announced that she had read and approved the Journal of the First Day.

**ORDER OF THE DAY
ADVISE AND CONSENT**

Stand. Com. Rep. No. 1 (Jud. Com. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 1 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of SHERRI-ANN L. IHA to the District Court of the First Circuit, State of Hawaii, for a term of six years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Your Committee on Judiciary and Government Operations heard from Ms. Iha, and we are convinced that she will serve well in her capacity as District Judge. Testimony received was overwhelmingly in support of Ms. Iha. We also received information from the Hawai'i State Bar Association that Ms. Iha is qualified to serve as Judge of the District Court. For these reasons, I'm asking my colleagues to support the consent of Ms. Sherri-Ann Iha as Judge of the District Court of the First Circuit. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"I urge our members and colleagues to support this judge. Not only is she fully qualified, not only is she experienced, but she is involved in the community, she has the temperament and a compassion that we need. And, as we all know, when we talk about the Judiciary in Hawai'i, and it has been said many times, it's where the 'rubber meets the road' in the District Court. This is where people get their first taste of justice in Hawai'i. We want it to be a sweet taste. We want people to know that there's fairness and equality for everyone, and I think that Judge Sherri-Ann will demonstrate that. I urge a unanimous vote."

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

Ayes, 20. Noes, none. Excused, 3 (English, Ige, Ihara).

At this time, Senator Taniguchi introduced Judge Iha to the members of the Senate. Judge Iha was accompanied by her husband Brian, daughter Rebecca, and parents Janice and Sharland Chun.

Stand. Com. Rep. No. 2 (Jud. Com. No. 2):

Senator Taniguchi moved that Stand. Com. Rep. No. 2 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of STEVEN M. NAKASHIMA to the District Court of the First Circuit, State of Hawaii, for a term of six years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Your Committee on Judiciary and Government Operations heard from Mr. Nakashima, and we are convinced he will serve well in his capacity as District Judge. Testimony received was overwhelmingly in support of him, and he has expressed a real love for working in the District Court. We also received information from the Hawai'i State Bar Association that Mr. Nakashima is qualified to serve as Judge of the District Court. For these reasons, I'm asking my colleagues to support the consent of Mr. Steven Nakashima as Judge of the District Court of the First Circuit. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"You know, the interesting thing about Mr. Nakashima is that he was a judge, and that he left the bench to take care of his family. He put family first. I think those are the qualities that we're looking for on people that serve us in the Judiciary. He's also very active in the community. He puts public service first, and it'd be good to have him back. So, I urge a unanimous vote for Mr. Nakashima. Thank you, Madam President."

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

Ayes, 20. Noes, none. Excused, 3 (English, Ige, Ihara).

At this time, Senator Taniguchi introduced Judge Nakashima to the members of the Senate. Judge Nakashima was accompanied by his wife Sheree and mother Clarice Yokota.

Stand. Com. Rep. No. 3 (Jud. Com. No. 3):

Senator Taniguchi moved that Stand. Com. Rep. No. 3 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of MATTHEW J. VIOLA to the District Court of the First Circuit, State of Hawaii, for a term of six years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Your Committee on Judiciary and Government Operations heard from Mr. Viola, and we are convinced that he will serve well in his capacity as District Judge. We received strong testimony in support of Mr. Viola. We also received information from the Hawai'i State Bar Association that Mr. Viola is qualified to serve as Judge of the District Court. For these reasons, I'm asking my colleagues to support the consent of Mr. Matthew Viola as Judge of the District Court of the First Circuit. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"He has a very exemplary background and experience. I know the City and County of Honolulu is going to be sad to lose him because he's been the contract go-to man for ethics, and as we all know, they have a lot of ethics issues in the City and County of Honolulu. He has also had experience in arbitration; has taught at the Richardson School of Law. He is a fine and outstanding addition to the court; and besides that, he's

a New York Yankees fan, which holds him in good stead. I urge his unanimous confirmation. Thank you.”

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

Ayes, 20. Noes, none. Excused, 3 (English, Ige, Ihara).

At this time, Senator Taniguchi introduced Judge Viola to the members of the Senate. Judge Viola was accompanied by his wife Beverly, daughters Mia and Katherine, mother-in-law Jung Hai Pai, sister-in-law Dana Viola, and his brother.

Stand. Com. Rep. No. 4 (Jud. Com. No. 4):

Senator Taniguchi moved that Stand. Com. Rep. No. 4 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of MICHAEL K. TANIGAWA to the District Court of the First Circuit, State of Hawaii, for a term of six years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

“Your Committee on Judiciary and Government Operations heard from Mr. Tanigawa, and we are convinced that he will serve well in his capacity as District Judge. Testimony received was overwhelmingly in support of him, and we believe he will do a good job. We also received information from the Hawai‘i State Bar Association that Mr. Tanigawa is qualified to serve as Judge of the District Court. For these reasons, I’m asking my colleagues to support the consent of Mr. Michael Tanigawa as Judge of the District Court of the First Circuit. Thank you.”

Senator Slom rose to speak in support of the nominee as follows:

“Mr. Tanigawa has broad judicial experience, legal experience. He spent seven years in the Office of the Public Defender. He is well-known in the community. He also is an adjunct professor at the University of Hawai‘i Richardson School of Law, and has arbitration experience. He brings all of these skills together and would make an excellent addition. I urge unanimous confirmation. Thank you.”

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

Ayes, 20. Noes, none. Excused, 3 (English, Ige, Ihara).

At this time, Senator Taniguchi introduced Judge Tanigawa to the members of the Senate. Judge Tanigawa was accompanied by his mother Yuki Tanigawa, wife Pat McManaman, daughters Katie and Samantha, sister Noe Tanigawa, brother-in-law Terry Lau, niece Ming Lau, nephew Cole Lau, and father-in-law Raymond McManaman.

At 9:30 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:01 a.m.

Stand. Com. Rep. No. 5 (Gov. Msg. No. 1):

Senator Taniguchi moved that Stand. Com. Rep. No. 5 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of JEANNETTE H. CASTAGNETTI to the Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

“Your Committee on Judiciary and Government Operations heard from Ms. Castagnetti, and we are convinced that she will serve well in her capacity as Circuit Court Judge. Testimony received was overwhelmingly in support of Ms. Castagnetti. We also received information from the Hawai‘i State Bar Association that Ms. Castagnetti is qualified to serve as Circuit Court Judge for the State of Hawai‘i. For these reasons, I am asking my colleagues to support the consent of Ms. Castagnetti as Judge of the Circuit Court of the First Circuit. Thank you.”

Senator Slom rose to speak in support of the nominee as follows:

“Besides her great experience and the things that she has accomplished, I think it’s important to note that she has served three years as a deputy prosecuting attorney in the Career Criminal and Domestic Violence and Juvenile Offenders Divisions, and she also served as special counsel to the Insurance Fraud Division of the State Department of Commerce and Consumer Affairs. She served the legal community and the community-at-large in many ways, and also including a volunteer arbitrator in the Court Annexed Arbitration Program. And she is a barrister in the American Inns of Court in the Aloha Chapter.

“And I can tell you from personal experience, when there was a situation in our community where someone was hurt, she was there, not as a judge, but as a citizen to render aid and to help, along with her husband. She is well-known in the community, well-respected. I urge a unanimous confirmation for Judge Castagnetti.”

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

Ayes, 20. Noes, none. Excused, 3 (English, Ihara, Kim).

At this time, Senator Taniguchi introduced Judge Castagnetti to the members of the Senate. Judge Castagnetti was accompanied by her husband Mark, father-in-law Gene Castagnetti, and her father Stewart Holmes who was watching the live feed from California.

Stand. Com. Rep. No. 6 (Gov. Msg. No. 2):

Senator Taniguchi moved that Stand. Com. Rep. No. 6 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of COLETTE Y. GARIBALDI to the Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

“Your Committee on Judiciary and Government Operations heard from Ms. Garibaldi, and we are convinced that she, too, will serve well in her capacity as Circuit Court Judge. Testimony received was overwhelmingly in support of Ms. Garibaldi. We also received information from the Hawai‘i State Bar Association that Ms. Garibaldi is qualified to serve as Circuit Court Judge. For these reasons, I am asking my colleagues to support the consent of Ms. Colette Garibaldi as Judge of the Circuit Court of the First Circuit. Thank you, Madam President.”

Senator Slom rose to speak in support of the nominee as follows:

“In addition to many of the experiences that people ascribe to Judge Garibaldi, she has been a per diem judge in the same court for nine years, prior to her appointment to the full-time bench. She served for six years as a deputy prosecuting

attorney after a brief stint as an attorney in the private sector. She's well-known in the legal community, has served on many committees to reform and to improve the Judiciary, and she's very involved in the community-at-large. I urge my colleagues to unanimously confirm Judge Garibaldi. Thank you."

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

Ayes, 20. Noes, none. Excused, 3 (English, Ihara, Kim).

At this time, Senator Taniguchi introduced Judge Garibaldi to the members of the Senate. Judge Garibaldi was accompanied by her husband John, son John Robert, and parents Mitsu and Peggy Yoda.

Stand. Com. Rep. No. 7 (Gov. Msg. No. 3):

Senator Taniguchi moved that Stand. Com. Rep. No. 7 be received and placed on file, seconded by Senator Takamine and carried.

Senator Taniguchi then moved that the Senate consent to the nomination of FAAUUGA L. TO'OTO'O to the Circuit Court of the First Circuit, State of Hawaii, for a term of ten years, seconded by Senator Takamine.

Senator Taniguchi rose to speak in support of the nominee as follows:

"Your Committee on Judiciary and Government Operations heard overwhelming testimony in support of Judge To'oto'o to sit as a judge on the Circuit Court. Judge To'oto'o has served as a District Court judge since 1994. The Hawai'i State Bar Association indicated that this nominee is unqualified for the position of Circuit Court Judge. Your Committee took this into serious consideration; however, no one opposed his nomination in public testimony before our Committee. Thus, by taking all information presented to the Committee into consideration, we believe he is qualified to serve in this position. For these reasons, I ask my colleagues to support the consent of Mr. Faauga To'oto'o as Judge of the Circuit Court of the First Circuit."

Senator Slom rose to speak in support of the nominee as follows:

"I think it was amazing to many of us the breadth of the reach that this man has in our community, and has had for so many years. The fact that he had been a judge for seventeen years, we certainly had an opportunity to put him under the magnifying glass and see what he has done. But more importantly, the people that came forward from every walk of life, including people that had gone against him—and he had ruled against them—without a doubt and without equivocation, they all supported this man for his integrity, for his character, for his fairness, for his judgment.

"It was shameful that the Bar Association would come out against this man without any explanation whatsoever, and hide behind the cloak of anonymity. But the public, who a judge really serves, came before our Committee, and one after another, without any contradiction, told about the leadership and the importance and the impact that this man has had on the lives of so many—and particularly among young people, and young people that have had troubles in our community. He is a role model; he understands that. He accepts that, but first and foremost, he is a judge, someone who looks at the law fairly and applies it. Not too harshly, not too softly, but just the right amount of the law and compassion.

"He is an amazing man. As I mentioned in the Committee hearing, he is the poster boy for the American work ethic. He trained himself to do so many things—to communicate, to be able to work with all kinds of people—and he has done it in an

exemplary fashion. I certainly expect to see him on a Wheaties box shortly.

"Madam Chair, the only thing that I'm really concerned about is in the parade of people that came forward, we had one prosecutor who came forward and said how he played basketball one-on-one with the judge. I don't think it's fair, looking at that prosecutor. We had another attorney come forward and talk about how he played the judge in softball. He, too, was height-challenged and weight-challenged; I don't think that was fair. And then finally, Judge Michael Town had to admit, under oath, how the Judge really whips him in canoe paddling. So, I don't know about the fairness issue, but I do know that this man commands, deserves, and is entitled to the respect for all of the things that he has done and all of the things that he will continue to do to make all of us proud of him. I urge unanimous confirmation of Judge To'oto'o. Thank you."

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

"Thank you, Madam President. We have done our job as senators in analyzing all the nominees that we are giving advice and consent on today. But I wanted to take the time on this particular nominee to thank the Chairman of the Judiciary Committee Senator Taniguchi, the Vice Chair Senator Takamine, and members Nishihara, Gabbard, and Slom for having the integrity and the fortitude to override the hearsay testimony of the Bar Association. It's a sad day that when the institution that should be of respect, the Bar Association, stoops to making recommendations behind the cloak of secrecy. It violates every tenet of justice and fair play; and to add insult to injury, doing so and presenting their opposition without one shred of evidence or one reason why. Therefore, I'd hoped that the good Chair of the Judiciary Committee can maintain a single standard in recognizing the Bar Association's rating process.

"I want to add my praise to the new judge to be voted on, personally, and congratulate him, but I also want to congratulate the Judiciary Committee for doing their job so well. Thank you."

Senator Taniguchi rose again to speak in support of the nominee as follows:

"However, I did want to respond to some of the comments with regard to the Hawai'i State Bar Association. In the past, yourself, Senator Hee, other members who have been chairs of the Judiciary Committee, have talked to the Bar Association about their recommendation. I have personally, in the past, requested more information from them, and I think what we've talked about was the fact that the Bar Association sees its role in a particular way. It feels that their vetting process needs to be like a safe haven, where people can come and not be afraid of retaliation and that they can have a free flow of information; and based on that, they are able to then make a decision. But to allow that safe haven to exist, they need this type of situation where they cannot disclose some of these things. And certainly, we will talk to them more in the future about how maybe they can revise that.

"But going into these confirmation hearings, all the members, everybody in the public knew that this is that they do; this is how they operate. And so, to come today and say that it's unfair—and I believe it's going to come up in the next Governor's Message—I believe is unfair to the Bar Association because it's a misstatement of what they do, and for us as legislators, our role is to then judge in the context of what they're doing. And so, we take it in that manner; and certainly we consider, with everybody else and everyone else who testifies, and we look at the substance of what people are

saying. Like I said, we have to look at that in the context of what the Bar Association is trying to do.

“And so, I know there’s going to be additional comments about the Bar and their process, but again, people knew what the process was coming into these confirmations, and I think it’s unfair to the Bar to make those kinds of statements, that it’s ‘unfair’ or ‘outrageous’. Thank you.”

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

“I didn’t know that the Chairman of the Judiciary would be challenged by my compliments to him. He mentioned a word that’s so important to not only the legislative branch of government, but certainly to the judicial branch, and that word is ‘substance’. The Bar Association’s procedures have no substance because we don’t know what was said and not said. They would not put on, in front of this Committee or this Senate, reasons. Therefore, we are taking their recommendations without substance.

“It’s just not me who sees this. It is a problem, and though I’m leaving this Senate, Madam President and colleagues, it’s a problem that has to be dealt with. It is so important that the third branch of government remain free from politics and from the vagrancies of the process. But I would offer to the good Chair of the Judiciary Committee who just spoke that it’s just not me. A respected journalist who has toiled away in the dungeons of this building longer than anyone else, Richard Borreca, wrote about it in this morning’s paper. The title of the article is, ‘Moon was right about bar’s role in picking judges’. Let me quote: ‘I don’t know Ronald Moon, our soon-to-be retired state Supreme Court chief justice, but I understand and share his worries about the Hawaii Bar Association.’

“So, to the good Chair of the Judiciary Committee, I do not stand alone in criticizing not what the good lawyers of over 5,000 in the state stand for, but what their directors did and the way they did it. Chief Justice Moon gave very explicit advice on how the system could be cleaned up. The good reporter, the respected journalist of many years now, says that, ‘The advice was not taken. If one wanted to weaken public confidence, a few hours of watching the state Senate go about its business should be enough for anyone to question the entire democratic process.’

“Madam President, I want to leave this Senate with my head held high, proud of the integrity of this organization and the procedures by which we conduct our business. Thank you.”

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

Ayes, 20. Noes, none. Excused, 3 (English, Ihara, Kim).

At this time, Senator Taniguchi introduced Judge To’oto’o to the members of the Senate. Judge To’oto’o was accompanied by his wife Cheryl; daughter Moani; brother Leti To’oto’o; mother-in-law Dorothy Turbeville; aunts Nana Lavatai, Lofa Lavatai, and Momi Lum; niece Cissy Sharma; and Setu Lepou.

At 10:24 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:06 a.m.

At this time, the Chair made the following announcement:

“Members, the recommendation of the Committee on Judiciary and Government Operations on Governor’s Message No. 4 is that the Senate not consent to the nomination of Katherine Leonard as Chief Justice of the Supreme Court of the State of Hawai’i.

“Senate Rule 37(5) requires that the final question on appointments by the Governor which require the confirmation or consent of the Senate shall be:

‘Will the Senate confirm or consent to this appointment?’

“Therefore, the question to be voted on today must be stated in the affirmative, so those casting ‘Aye’ votes are voting to confirm or consent, and those casting ‘No’ votes are voting to reject the nomination. Failure to consent shall constitute a rejection of the nomination pursuant to Article VI, Section 3 of the Hawai’i State Constitution.

“Before doing so, the Chair will entertain a motion to file Standing Committee Report No. 8.”

Stand. Com. Rep. No. 8 (Gov. Msg. No. 4):

Senator Sakamoto moved that Stand. Com. Rep. No. 8 be received and placed on file, seconded by Senator Slom and carried.

Senator Slom then moved that the Senate consent to the nomination of KATHERINE G. LEONARD to the office of Chief Justice, Supreme Court, State of Hawaii, for a term of ten years, seconded by Senator Hemmings.

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

“In the course of our deliberations, colleagues, and for the last ten years, we have seen, in the Senate process, numerous important votes concerning representation in the executive and the judicial branches of government. I would suggest that today, at this time and this hour, is one of the most important votes we’ll make for the State Judiciary, for the State of Hawai’i, and, I might add, for the integrity of the Senate.

“In the course of public discourse, we, in one way or another, do what most journalists learn in their first year of journalism: who, what, where, when, and why. Well, we know who: Judge Katherine Leonard. We know what: the highest office in the judicial branch of government, the chief justice. And we certainly know where: in our State Judiciary. And we know when: now, this hour, this day. But what each one of us has to dig deep in our soul to determine is why—why we vote the way we do. That’s the question we ask ourselves over and over and over again.

“Qualification—that’s an important question in this process, certainly. The highest judge in the highest court in the state should be judicially qualified. Just recently, the United States Senate voted on advice and consent of Elena Kagan, a political advocate from the White House; never served a day in the judiciary. So what we can conclude is that judicially and legally, this candidate is one of the most eminently qualified in the entire state. Judicially, this candidate can be said to be more eminently qualified than the recently confirmed Supreme Court Justice of the United States of America, if experience means anything, as it should in this Senate.

“Much has been said about administrative leadership, and I’m sure that some of you may have something to say about that today. I watched the proceedings of the Judiciary Committee on ‘Ōlelo here at the State Capitol. This nominee is a leader. The fact that she’s here demonstrates she’s a leader, and she knows what good leadership is. Good leadership is picking good people and letting them do their job and holding them accountable, and she articulated that so well in front of the Judiciary Committee.

“When we ask ourselves why we vote the way we do, of course politics play a role. But certainly, we’re going to do what’s best for the judiciary and all the people of Hawai’i, not what political label is stamped on a nominee’s papers. This

nominee has no political label. There should be no politics, as there should be no politics in the judicial branch of government. The fact that this nominee came from the nomination of a Republican governor is inconsequential. If we truly want a judiciary that's void of the vagrancies of politics, our decision should not be based on politics.

"Gender. There's a resolution passed, and you know about it. It's been rehashed and rehashed in the media. The resolution was passed in the Senate and House that said we should consider having more women on the court. Curiously, the vote was 23 to 2. Two senators voted against it; I happened to be one of them. What's more curious is that every woman in the Senate wholeheartedly endorsed it. Now, it comes time for you women to cast a vote consistent, and you men too, with the values articulated in the resolution you so wholeheartedly supported. Hawaii Women Lawyers said something about it; they said, in short, 'We found Judge Leonard eminently qualified—eminently qualified—not because she's a woman, but because she's qualified on merits.' And I think that I vaguely recall that the good senator from Hawai'i Kai said something about judge nominees being first and foremost nominated based on their merit.

"So for those of you that voted in favor of that resolution, I offer you today the best of both worlds. You have a nominee who is proven, through her record, through over 150 incredibly intelligent, balanced decisions; someone who is eminently qualified, and is also a woman. You have a chance today to achieve your goals. What an honor for the State of Hawai'i to put aside politics and have a woman lead the judicial branch of government. Madam President, I think you would attest that women are fully capable of leading, so I know you'll vote in favor of this nominee.

"I watched the proceedings with great interest in the Judiciary Committee, and we all have special interests. And we all bring to this process different visions of what the future should be. I saw one senator question the nominee regarding—and I have grown to have a tremendous amount of respect for this senator's intellect, brought in part by experience and years of being part of this process. It's no secret that this senator's interests were the affairs of the native Hawaiians. The question was very interesting because it laid the foundation for a very vexing problem in our country concerning the judiciary. Do we have a judiciary that legislates or do we have a judiciary that adjudicates? I'd say 'that is the question', but it's been said before. This one learned senator said, 'Look what happened.' A man named Thurgood Marshall filed a suit against the Board of Education, and if it wasn't for an activist Supreme Court that overruled Faubus, Maddox, Wallace, Berg, and those Southerners who were denying equal rights to the African Americans, if it wasn't for the Supreme Court's activism, those schools would not have been segregated. And that goes to the very essence of the question, and that question answered itself because the Supreme Court did not make law. They did what they first and foremost should do in any proceeding: They adhered to the Constitution of the United States. They did not make law, make no mistake about it.

"This nominee has complimented us time and time again with her testimony and her decisions. She respects the legislative branch of government. And trust me, there have been decisions in Hawai'i where the judicial branch of government, specifically the Supreme Court, has rendered our responsibility constitutionally to make law moot by their errant decisions. There is gray area in the process, and that's why they call them judges. I won't go into those decisions.

"I also worry about, in making the decision here today, about our credibility. Much has been said about Attorney Seitz. You know what? I give Seitz credit. I don't agree with him, but he had the courage to come down here and state his case publicly

and on the record. What is particularly disturbing and what oftentimes filters into our decision-making and our asking ourselves 'why' is those anonymous calls, and some senator saying, 'Well, I got an anonymous call that said so and so is a nasty word.' The very fact that a senator would say that defies fairness and logic. We don't know about anonymous testimony. The anonymous call could have come from the Kaneohe mental institution. The anonymous call could have come from a convicted, violent criminal. The anonymous call could have come from the most vile, vicious person or someone who has tremendous credibility, but the fact that it is anonymous invalidates that. I pray that you, my colleagues, the 21 of you sitting here today, do not make the question 'why' partially answered by anything offered to you anonymously.

"This decision is momentous. It's no secret that many of you have made up your mind. I will leave you with this: I too made up my mind this last session on a nominee to the Land Board. In our long, deliberative caucuses, in the Republican Caucus, where all two of us debate the issues at hand—we also have split decisions—both of us decided that the nominee to the Land Board was great. We knew him, we were going to support him, and I was on the subject matter committee, and I was going to stand up and, as we always do, say laudatory compliments on those people who have gained the confidence of this Legislature. But a funny thing happened. We got to the floor and a respected leader on the other side of the aisle stood up, and he said something very interesting. He said that this nominee was the nominee to be 'a native practitioner', and he very intelligently laid a foundation for the necessity of having a native practitioner on the Land Board. It's because of a law we made. You might remember it, Senate President; I think you're familiar with the author of that law, because it was you. So, how could we defy our own law by confirming someone who himself said he was not a native practitioner. It was painful, but Senator Slom and I looked at each other and we agreed and voted 'no'.

"Well, I would suggest that you have an opportunity today to do just the opposite. You have an opportunity today to search your conscience. You have an opportunity today to vote consistent with the very resolution you passed this last session. But more importantly, you have an opportunity today to put in leadership of the State Judiciary a human being—not a woman, not a man, a human being—who is eminently qualified to lead the State Judiciary. You have a chance today to affirm the integrity of this process and the integrity of this Senate, and I hope you make Hawai'i proud. I hope you first and foremost will make yourselves proud by voting 'yes' for this nominee. Thank you, Madam President."

Senator Taniguchi rose to speak in opposition to the nominee as follows:

"Madam President, members, the chief justice heads one of the three branches of our state government. Unlike the other branches where voters have a direct input, the Senate has been charged with an important duty to consent or not to consent to a nominee for this position.

"Your Committee believes it conducted a thorough review of Judge Leonard. Once a chief justice is confirmed, he or she will lead the Judiciary for a term of at least ten years. The Senate will not have another opportunity for review.

"We heard numerous testifiers indicating very strong support for Judge Leonard. We also heard from individuals who opposed and had concerns about Judge Leonard. The Hawai'i State Bar Association found her to be unqualified for the position of chief justice. Your Committee took this into consideration as part of all the information we could gather on Judge Leonard. I personally spoke to her, to the Governor, and

others about Judge Leonard's qualifications and ability to lead the Judiciary.

"After taking everything into consideration, and despite her many, many positive qualities, I have serious doubt that Judge Leonard can lead the Judiciary at this point in her career. The position of chief justice is so important that I do not believe it is a position for an individual to grow and develop into. Madam President, this has been a very difficult decision for me because Judge Leonard is a smart and hard working individual, but it is a decision that I will stand by.

"For these reasons, I am recommending that my colleagues not support the consent of Judge Katherine Leonard to the position of chief justice to the Supreme Court of the State of Hawai'i. Thank you."

Senator Slom rose to speak in support of the nominee as follows:

"Ability to lead: What does that really mean? Well, if you're going to look at an individual and see if they have the ability to lead, you look at what their past experience has been, people that they have worked with, people that, in fact, they have led. All of the people that have worked directly with Katherine Leonard—in a supervisory position, a position of equality, or with her as their boss—everyone, without exception, came forward and spoke about her abilities, her leadership, her temperament, her concern, compassion, and care for those that she worked with and who worked for her. Now, we can talk about the one retired Circuit Court judge who opposed her, and five individuals, or we can talk about the more than 100 individuals who stepped forward, including people that knew her intimately from the Intermediate Court of Appeals, from the State Supreme Court, from her private practice. And certainly, everyone in every position should be given weight, but if we are truly talking about equality, then those people that came forward and know her best should at least be given the same equality as those few that opposed her and the Bar Association.

"It is not my purpose today to rail against the Hawai'i State Bar Association. I made a number of points during the session and when I had an opportunity to question the president of the Bar Association, Mr. Jones, but I will reiterate a few important points because they are important, and because as much as I hate to disagree with the Chairman of my Judiciary Committee, when he said earlier that everyone knows—everyone knows—the process of the Bar Association, I respectfully disagree with him. People that came to the hearing that listened to the statements were shocked, including experienced attorneys and jurists. They were shocked because the very basic foundation of American jurisprudence is that you have the ability to face your accusers, and this nominee does not have that ability. Instead, we get innuendo, we get cowardly inferences, and I, like Senator Hemmings, agree that congratulations to Attorney Seitz, to Circuit Judge (retired) Milks, and those that came forward for whatever reasons. That's important. But what I call 'outrageous' and 'shameful' is how a group of 20 out of 5,000 can make a decision that an individual is not qualified—especially after reading their criteria, which are very important and which include certain things such as integrity and character and respect and experience—not to let us know what the reason for that is, or reasons.

"Nobody's talking about anonymity. We don't care who said it; we want to know what the arguments are. Even the U.S. Senate, in discussing a nominee and looking to the American Bar Association for their recommendation, gets full dossiers, full explanations—why we think the person is qualified or not qualified, or areas of concern. And that's fair.

"This process is not fair, and it was said earlier this morning. It's not me saying it or my colleague Senator Hemmings saying it. It's the current chief justice saying it. It's the current attorney general saying it. It's several of the leading attorneys and jurists in the community saying it. It's the past presidents of the Bar Association saying it. But they don't get it. They've had seven or more years to look at their internal policies and to be transparent, and basically they've thumbed their nose at all of these distinguished people, as well as you and me.

"But here we are. We've come down to the final inning, the final out. This is it. There'll be no running. There'll be no hiding. By the way, lest I forget, Madam President, I do request a Roll Call vote. (The Chair so ordered.) We have the power—what a tremendous amount of power given to 25 individuals, 22 of whom are here today. It may be a very close vote. It may be a vote decided by one or two people, but it should be decided in favor of the nominee because as is been said over and over and over again by so many different people in the community, she is eminently qualified. That is the first and the last consideration that we should know about.

"Now, there was a hearing by the Bar Association that lasted, by the Bar Association's own time, two hours. They talked to her. It is my understanding, not being a member of the Bar Association and not being present for the interview, that not one of her cases was discussed. Everything seemed to surround this idea of leadership and administrative ability. I said yesterday, 'We're not hiring an administrative secretary. We're hiring the highest law enforcement official of our state, someone that everyone will look to for the operations and the fair application of the law.' There will be administrative assistants to do the administrative work, as the last four chief justices have done themselves. They don't micromanage. They don't do those things themselves. They attend to the law, which is the most important thing. Can we point to any of the four preceding CJs as having more leadership or administrative experience than this nominee? If you want to do it fairly, no, you can't. No, you can't.

"Can we fault the Governor for appointing a woman and surprising, let's face it, almost all of us in her pick? But it was a good choice. She explained her reasons, as she always does, in detail. I don't know whether she listened to the Senate resolution or not, but look at the women that you've already seen this morning that are now on the bench or on a higher level on the bench. And the community listened as well. But isn't it odd she selected a woman eminently qualified, and now people question her abilities, and 'what if' and 'what will she do' and all of that?

"Now, it's fine that we have our personal interests, questions, concerns, and even prejudices as individual members of a Senate committee or of the Senate as a whole. That's fine. But we should throw them out and look to the testimony, and look to the people and the things that they say because that's more important. We are, in effect, the representatives of the public. As was said, the public does not have direct input on the selection of judges or the chief justice. We do. We've got the power, and with that power comes the responsibility; and it is our responsibility to put personal and political points of view aside.

"Now, some of you know me as the lovable old man of the Senate. I've been here a while. I doubt that some of my colleagues would say that I have administrative or leadership abilities, but I know I do, and I've done it. But I was here during the last administration of a different political party, and if you look at my voting record, my voting record is about 98 percent in favor of all of those appointees, including one of the most controversial appointees who was sitting here earlier. I looked at those people, and personally, I wouldn't want to be in

the same room with some of them; and politically, we were poles apart. But they were qualified, and they were also the choice of the chief executive; and there should be respect given to that chief executive, especially after we have set up this system where it's not just his or her choice by themselves. They have to select from a group of nominees that are sent to them, and all of those nominees are qualified or they wouldn't be sent there.

"Now, this same Legislature applauded this same Governor with her first appointment to the state Supreme Court, who happened to be a man that several previous Democrat administrations, locally and nationally, had tried to get appointment for and failed, and yet she appointed that man first, knowing full well what his political considerations were. She looked for the best qualified; she had no hesitation in doing that, and we all applauded her. We said, 'Way to go, Gov!' And now this same Gov makes an appointment; now we're saying, 'Well, we want women, but this is not the right woman. And all of us men on the Committee, we'll decide about 'the woman'.' And all the people in the Bar Association—God bless them, there's ten men and ten women—we don't know the reasons for their unqualified rating. We don't know their vote because everything is secret. And again, it's not a question of anonymity because you don't care who says what as long as you have a basis for that. Otherwise, there is a cloud.

"And I've got to tell you, Madam President, when people come before the Senate and they say, 'Well, there are judges and there are attorneys that are afraid of intimidation.' They're afraid of this woman? They're afraid? Attorneys in this community, who sometimes say the most unbelievable things—they're afraid of intimidation? Just as long as they get their billable hours, I don't think they're afraid of anything.

"Come on! Let's be serious. There are forces in effect here that are bigger than this Senate Committee, bigger than this Senate, and outside this building because this nominee represents a break from what I described yesterday as 'the provincialism of the plantation era'. She is absolutely independent. I made this statement yesterday and it found its way into the committee report: I don't know whether she's a Republican or a Democrat. I've never asked her; I don't care and it doesn't matter. We're not electing a Republican or Democrat chief justice. We are nominating the best qualified person. That person is sitting in this room right now; that's Kate Leonard.

"Now, there were also comments by individuals and others, 'Well, these other guys, all five of them, they're just as qualified or more qualified.' Well, how do we know that? Because we didn't hear anything from the Bar Association; and as we know, we really don't know if a person is qualified until we hear from the Bar Association. Unless, of course, they leak it before the hearing, as they did with two of the justices who they found unqualified this time. Leaked. Everybody knew about it before we even walked into the hearing. That's not a way to run a professional association, and that certainly is not a way to choose a chief justice.

"Is this important? Yes! Should there be total scrutiny? Yes! Should every question be answered? Yes! The nominee answered every question. Those that gave testimony answered every question and illuminated us with additional things that only they knew because they worked with her. People on our Committee said, 'I don't know her. I don't know who she is, but yet I have opinions.' And they did not give equal weight to those people that said, 'We do know her! We've known her 10 years, 15 years, 20 years or longer. We've worked with her. We've seen her decisions.'

"And by the way, wasn't it interesting? In our hearing, which was long for the Senate—except Senate President, who

holds the record for the eight-hour unrestricted hearing without a bladder break—wasn't it interesting that during that time, no one on the Committee asked specifically about her jurisprudence and her cases, all of which were available and known. It took a former chair of the Senate Judiciary Committee, who just wandered in looking for some entertainment, to bring up those cases and to ask those questions. And then later on, we were told, 'Ah! No more time for questions. Oh! That's it!' And there were people sitting in our room that did not get an opportunity to give their testimony live. Oh, sure, it was put up online later after the hearing. What was the rush? We had 30 days; were we in a rush? Did we have to cut off discussion and more information? Of course, it didn't cut off some of the anonymous e-mails that have been received after the hearing and some of the scurrilous attacks that were made on this nominee. Now, I have faith in my colleagues on the Committee and in this body that they will disregard those things, but that's happened. In fact, there are some people that have a profession of attacking individuals. They don't do it on the issues; they attack the individual.

"We brought up all kinds of issues, but they were really not at the crux of a chief justice. You want to know where that chief justice stands on the issues. Well, she got into a discussion about the rule of law and about some specific cases, and she asked him, whether my colleague was fully satisfied or not. Maybe he'll speak today about that; maybe he wasn't. But she answered them. And see, that's the difference. I have a difference of opinion with my colleagues on various issues, and as Senator Hemmings said, we certainly are known as the 'independent lone eagles' because we listen. We work hard. We ask questions; and in the end, it may change our position on something we assumed because you can't assume. You have to listen, and you have to understand where the testimony is coming from, either for or against, what it's about. We had excellent opportunity to do that, although, as I said, we could've had more time to do it, but I don't think more time would've done it. I don't think any reasonable, rational person walking in and listening to the debate and listening to the facts and the questions would say, 'Oh gee, we can't do it. We can't confirm her because there still may be other questions.'

"I raised the issue of whether or not we're inventing standards that we never held any other judicial nominee to in the past, and I will stand by that because if you look back over past hearings, if you've attended them as I have, if you read transcripts, you would find out that all of the important questions were asked, and they weren't answered.

"This idea of transparency is very important because people are not comfortable with their government now, locally as well as nationally, and there have been criticisms of our Judiciary. They have not been solved. The nominee is a problem solver. She has demonstrated she can bring different parties together. The idea is not to impose her own philosophy, whatever that is, but to reach an amicable solution that is fair to all people concerned. She would not be a 'corporate' CJ. She would not be a 'native Hawaiian only' CJ. She would not be a 'special interests' CJ. She would be the learned chief justice of Hawai'i's Supreme Court. She earned the respect of the judicial community.

"I said yesterday to a point that was raised also that there may be other people out there as qualified, or, in some people's minds, more qualified. I don't think so, but in some people's minds, 'We don't want someone that has to learn and grow on the job.' I do! I do. In business, I want somebody that's going to learn and grow, not be static. But she's already got the tools. She's already got the talent. She certainly has the learned ability to approach any problem, any complexity now. But I don't want somebody to say, 'That's it, man. I've done it; I've learned it all. Nothing more to go.'

“And some people are concerned because she’s too young. I used to get that a lot; I don’t get it anymore. They’re concerned because she’s so young. My God! She could be the CJ for as long as 19 years. Wow! Let’s see; how long as Dan Inouye been U.S. Senator...? I can’t remember.

“So, we have this double standard. On one side, it’s a good selection by the Governor because it’s one of our guys. On the other side, it’s not a good selection because we don’t know if it’s ‘our guy’—oh, it’s not even ‘our guy’, it’s our ‘gal’, and we want more gals but not this gal. I’m confused about that, and you should be, too. And you should search the corners of your mind because as Senator Hemmings said, it is the honor of Hawai‘i and it is your personal honor.

“The Senate has always operated in a transparent manner, unlike the HSBA or others. With all of our beauty spots and all of our warts, we’re right there; and you can come down and you can talk to us, and you can attend the hearings and you can testify or you can send in testimony. We’re accessible to you, as we should be. You pay for everything we do. You elect us, or de-elect us.

“There was an article in this morning’s paper that Senator Hemmings referred to from Mr. Borreca, and he had one sentence in there about election of judges. What a lousy idea; everybody agrees. Well, I don’t totally agree, and certainly my good friend—the Yankee fan, the attorney general—we disagree. I support the election of attorney general for the reason you heard today: The public doesn’t have any input. And I would be very happy to have the constitutional question available to people: Do they want to elect judges? Now this justice here, like previous nominees, has had to go door-to-door, basically campaigning, visiting with us, visiting with organizations and all that. Basically, they’re campaigning—‘Vote for me’—instead of just being a good, qualified justice or chief justice. I don’t think they should have to do that. I personally find it demeaning. But that’s what we do right now, and yet, after all of that, it is told and retold to us, the public doesn’t have any input. We do. Again, I remind you: We are the representatives of the public. And the public has told us overwhelmingly that they want this woman as chief justice, that we’re ready for a woman, that we’re ready for an independent, we’re ready for a graduate of Richardson School of Law, and oh yes, we’re even ready for somebody that wasn’t born here. How wonderful, how far we’ve come—but have we? Your vote will determine that today.

“I think that those people that said that they don’t know her, I think that’s unfortunate. She’s made every opportunity to be available for you to get to know her if you didn’t, but I think it’s really difficult to say, ‘I don’t know her, haven’t read anything about her, but I have these concerns and they’re serious enough that I’m going to vote no.’ That’s not rational behavior; that’s not rational thinking. The concerns—absolutely. Questions? Absolutely. But not, ‘I just don’t have a good feeling about this.’

“So, I would ask my colleagues again to look at the quality of the supporters who came forward, many of whom waited hours and hours and hours just to say a word about the person that they respected and that they knew. They had no questions with temperament, no questions with leadership, no questions with administrative ability, and they were there to tell you that; and if you listened, that should have a great deal of ‘gravitas’, I think was the word that was used over and over again. I think that it is extremely important that we show to the community that we are representative, that we do listen because most people don’t come down to the Legislature. Most people don’t tune into ‘Ōlelo to watch the hearings, hour after hour after hour. Those that do are surprised; they’re surprised at what goes on down here. More people should come down and watch because it’s like what Bismarck said: ‘If you like sausage or

laws, don’t inquire as to how either are made.’ If more people watched, if more people took advantage of this, we would be a better state.

“This Senate has the power today to make history, but more importantly, to do justice; to make sure that the qualities that this nominee possesses—just like the qualities that the judge that we confirmed a little while ago possesses—are not besmirched by nameless, faceless, cowardly actions. This chief justice will be a great chief justice. She’s come at a time when there are many problems facing the State—the executive branch, the legislative branch, and the Judiciary. She knows that problems about the budget. She knows the problems about the 1,800 employees, but more importantly than knowing about them, she brings a fresh pair of eyes and an ability and a youthfulness and an energy to solve the problems. And I have no doubt, from her past experience, that she will call on people, not asking them what their political or philosophical vein is, but calling on people to help solve these problems because it is in our best interest to have the best Judiciary that we can have. We can have that today with the confirmation of Katherine Leonard as our next chief justice. To do any less would be the real injustice in the State of Hawai‘i. Thank you, Madam President.”

Senator Baker rose to speak in opposition to the nomination as follows:

“Madam President, it is with regret and some sadness that I find I must rise in opposition to Governor’s Message No. 4, the nomination of Katherine Leonard as Chief Justice of the Hawai‘i Supreme Court.

“At first I was thrilled that a woman was being nominated for the position of Chief Justice. I have stood in our chambers on several occasions to ask for more qualified women to be elevated to positions of importance in state government and in our judiciary. I hoped we had found such an individual in Kate Leonard.

“By all accounts, she has been an able jurist during her short tenure on the Intermediate Court of Appeals. She is deemed very bright, writes well, and is considered a very capable legal analyst. But Madam President, the duties and responsibilities of the Chief Justice require more than just having a good legal mind. It requires the ability to manage and effectively administer the third branch of government as well as to lead and inspire the judges and the almost 2,000 employees that comprise the judiciary’s important human resources. A review of the research by LRB regarding the many powers and responsibilities that reside with the Chief Justice was most instructive. I ask that their memo, requested by Senator Ihara and shared with all Senators, be included in the record following my remarks. (The Chair having so ordered, the memo is identified as “ATTACHMENT A” to the Journal of this day.)

“The Chief Justice is far more than just the top judge of the Supreme Court. In fact, according to the office of the chief justice, the administrative/management duties and decision-making responsibilities comprise well over sixty percent of the Chief Justice’s time; some have said as high as 80 percent. The leadership and executive management functions for the Judiciary cannot be delegated to the Administrative Director of the Courts. The person who sets the tone, advocates, inspires trust and confidence in a fair, user friendly, accessible judicial system is the Chief Justice. That cannot be delegated away.

“I view this confirmation as one of the most important ones to come before the Senate. The decision we make will have lasting impact on our community and the administration of justice in Hawai‘i, far into the future. There is no second bite at this apple. A situation I believe we should change next year.

“Colleagues, I believe the Judiciary is at a cross roads. It needs an insightful, well-rounded, capable, and proven leader. I know this is not an easy vote for anyone. However, after weighing the testimony from the hearing, speaking with others who called my office on the record, came by or communicated with identification by e-mail, and having an in-depth discussion with the nominee, I have concluded that she is indeed a fine ICA judge and we were correct to confirm her to that position. However, in my humble opinion, for the position of Chief Justice to which she has been nominated, she does not, at this time, have the requisite skills, experiences, abilities, and knowledge of the administrative side of the equation to lead the Judiciary at this critical juncture. I cannot just trust that she will grow into this position; I cannot just trust that she’ll become a good leader and an effective administrator. Therefore, Madam President, colleagues, I will cast a no vote on this nominee for this position. Mahalo.”

Senator Takamine rose to speak in opposition to the nominee as follows:

“While this is still my first senatorial term, and I’m still learning more about the...

The Chair interjected:

“Senator Takamine, for what purpose do you rise?”

Senator Takamine responded:

“Thank you, that’s one of the lessons. I rise to speak against the motion for confirmation.”

The Chair instructed Senator Takamine to proceed.

Senator Takamine continued:

“Thank you. And while I am still learning more about the confirmation process, I will be voting against this nominee.

“In making my decision, it boiled down to framing of the issue as was done by Judge Marie Milks in the testimony that she offered to the Judiciary Committee. There she framed the issue in the following manner: She stated, ‘Any nominee for the position of Chief Justice who will be the leader of the entire third branch of government should not be confirmed merely because there is the promise of potential for success. It is not enough that a nominee has the potential to grow into the job. In order to warrant the Senate’s consent, a nominee must possess proven leadership skills.’

“But as has been raised by our colleagues, what does that mean? What is ‘proven leadership skills’? And therefore, during the public hearing process, I found instructive the testimony of another testifier who took no position for or against this nominee, but offered the following comments for consideration by the Committee, and he stated:

“The role of Chief Justice is different than the role of any other judge or justice. It is not enough that one be a fine legal thinker and writer who is dedicated to the rule of law. It is not enough that the Chief Justice be a hard worker. Those are prerequisites for a place on the Supreme Court, but they are not sufficient qualifications for a Chief Justice, despite what some have said.

“He went on to state:

The Chief Justice stands alone in having to fulfill additional important functions in our constitutional system. They are the most important aspects of that job and you should closely examine Judge Leonard’s abilities in these areas. In this area, I do not include the administrative responsibilities that go with the job. Personnel and budgeting decisions are best managed by experts. While in these areas the ‘buck’ may stop on the Chief Justice’s desk, experience over the last 40 years has

shown that it is not necessary for a Chief Justice—who is supported by experienced administrators—to be the expert in these areas when first appointed. One would, however, expect to see evidence of the ability to become expert in these matters of administration and finance, such as Chief Justice Moon as displayed.’

“Then he went on to state this:

Rather, these areas of great importance involve the ability of the Chief Justice to exercise effective leadership over the judges and the judicial staff throughout the state, to command respect from the community at large and other branches of government, to promote and defend the constitutional prerogatives of the judiciary as a co-equal branch of government, and to protect and preserve the judiciary from partisan attacks on its independence.

“That testifier then said, ‘Judge Leonard may have all of these qualities, but she has not had the opportunity to display in any public way the existence, or the depth, of her abilities in these areas.’

“I believe whoever the next chief justice is, it should be someone who is ready to provide leadership from day one. As our colleagues have shared with us, this is a decision that will determine the kind of leadership and the fate of the Judiciary into the next decade, if not longer. The next Chief Justice will also determine the role that the Judiciary plays; and in addition, Madam President, the next Chief Justice will appoint all District Court and Family Court judges during his or her tenure.

“As all of our colleagues have indicated, this is not an easy decision to make. Do we have models? Are there examples? Are there guideposts? Madam President, I tried looking at least at the example of the current chief justice because I believe that a person does grow and get better in the positions and opportunities that they are afforded. However, with Chief Justice Moon, I believe that there was a clear public record of demonstrated commitment to public service with substantial judicial and leadership experience when he was first considered for confirmation by the Senate.

“In making my assessment here, I believe that a person’s record speaks louder than a person’s representations, or even the representations of those who know her well. Based on my review of the nominee’s record—and in light of all of the input provided throughout this confirmation process, which included sitting through the public hearing process, having had two opportunities to sit with the nominee in person, and in light of the telephone calls, many e-mails, and faxes that I received—I have concluded that at this point in her career, I cannot, in good conscience, support this nominee for selection to be the next chief justice. Thank you very much, Madam President.”

Senator Gabbard rose to speak in support of the nominee as follows:

“Madam President, as you know, in Committee I had some reservations yesterday on this vote. Over the course of the last 24 hours, I had a second meeting with Judge Leonard; and for the better part of last night, I spoke to judges, former judges, and her work colleagues about concerns that had been presented to me about her temperament as well as other issues. Madam President, I’m satisfied with the answers that I’ve gotten.

“In the end, I’m supporting Judge Leonard’s confirmation not based on the symbolism that she would be the first woman Supreme Court chief justice, or the first Supreme Court justice who graduated from the UH Richardson School of Law. I’m supporting her because of her record as an accomplished attorney, and ICA judge, and because of the overwhelming amount of positive testimony from diverse members of our

community and our state. I'm convinced that she's qualified for the position and that she will do a great job. Mahalo."

Senator Galuteria rose to speak in support of the nominee as follows:

"Madam President, colleagues, as I've mentioned to many who've talked with me through the past week, our decision here deserves the full measure of our discernment. Albeit it's a numbers game, what we do today is history; and I certainly want my vote, like the rest of our colleagues, to reflect deep thought and fairness. Voting on a chief justice is a rare occurrence, and, for a few lucky senators, comes but once a career.

"Through the early interviews, the private conversations—as our legal community would say, the 'discovery' phase—the committee process (of which I thank our Chair for his patient and thoughtful demeanor, yet firmly guiding us through passionate testimony) I studied the judge's judicial acumen. I was very puzzled at the accusations of tyrannical management style. I had gotten through my concerns on her administrative skills, and despite its questionable process, inserted the Bar's recommendations into consideration. And by the way, Madam President, I hope, for the sake of that institution, they find a review process that has the transparency needed to truly be credible.

"I did have a chance, on the way down to the auditorium, to share the elevator with Chair Taniguchi and have a chance to share with him that I would be voting up with this decision. And when asked what stood out, for me, ideology would be my final stop. My tipping point appears to have come down to a conversation I had with my staff earlier this week. I tasked them with finding Judge Leonard's philosophical leanings. Some of them observed, to my surprise, that the nominee could hardly be viewed as conservative, that she appeared moderate, and, on occasion, even slightly progressive, which for me was rather illuminating considering the administration that nominated her. Ironically, it became the gist of my final decision. Obviously, the chief justice has many statutory responsibilities beyond the gavel, as we've heard today, but I believe the real impact for Hawai'i will come in the great number of nominations and/or judicial appointments that every CJ has to make. This will be the legacy. Did she move jurisprudence to the right? Did she shift us to the left? Or did she just steer us down a moderate path? That's the deeper question, and I prefer the latter.

"So, Madam President, I thank you for this opportunity, and I encourage colleagues to vote in favor of the nominee. Thank you, Madam President."

Senator Hee rose to speak in opposition to the nominee as follows:

Senator Hee rose to speak in opposition to the nominee as follows:

"Madame President, I respectfully rise to speak in opposition to the nomination of Katherine Leonard as Chief Justice of the Hawai'i Supreme Court.

Senator Hee rose to speak in opposition to the nominee as follows:

"Madame President, I respectfully rise to speak in opposition to the nomination of Katherine Leonard as Chief Justice of the Hawai'i Supreme Court.

"Before proceeding I wish to thank and acknowledge Governor Lingle for the selection of Judge Leonard and agree with the Governor that the nominee's years of service, achievements, her scholarly record as a law student, lawyer and

jurist are accomplishments exceedingly worthy of her consideration and qualifications as the next Chief Justice.

"I also wish to thank Judge Leonard for the discussion she and I had last evening regarding the concerns of native Hawaiians and her thoughts amplifying some of the statements she and I made during the public hearing on Wednesday.

"Governor Lingle has indicated and Judge Leonard has concurred that she would follow 'the rule of law,' that she would not be an 'activist judge' who would necessarily 'make the law'. In addition, the nominee during testimony on more than one occasion praised with great admiration the work of the late Chief Justice William S. Richardson for his vision and achievements in a life fulfilled in service to his fellow citizens.

"The nominee accurately testified that the rights of the native Hawaiians were 'enshrined' in the Hawai'i Constitution and she would vigorously support the efforts of native Hawaiians as the Chief Justice of the Hawai'i Supreme Court. Respectfully and philosophically, that is not enough.

"In a clumsy effort to engage Judge Leonard in a discussion on what she meant by her statements regarding native Hawaiians, I asked the nominee about her thoughts on the *Robinson v. McBride* case in which the Richardson Court ruled that water was a public trust not to be owned by either party in the suit which sought to 'own' the water over the other, but rather to be shared by everyone just as in pre-contact Hawai'i. Specifically, I asserted that the Richardson Court went beyond the 'rule of law' and that Chief Justice Richardson himself had stated many times over that he was 'not concerned about the well heeled Robinson and McBride' but rather he was concerned about the 'Hawaiian taro farmer downstream' as the basis of the court's ruling. The question I clumsily posed to the nominee asked, 'Was "he" (meaning Richardson) wrong?' The nominee responded that she was not present to say he was wrong. I am not sure whether that response meant that Richardson was right. In retrospect, I should have asked the nominee if she believed the Richardson Court strictly followed the 'rule of law'.

"Chief Justice Richardson often told the story of when, as a curious youngster, he found himself peering over the hedges from the shore at a grand party going on inside the Royal Hawaiian Hotel at Waikiki. He reminded us that a worker of the hotel instructed him that he, Richardson, needed to watch the ongoing party from 'in the water' as the beach was 'private property'. He said he never forgot the humiliation as a young Hawaiian being told that the beach was private property which he said gave rise to the ruling by the Hawai'i Supreme Court regarding the rights of access of all people that the beach up to (at the time) the high water mark belonged to the public.

"During our discussion last evening Judge Leonard mentioned the 'Kalipi' case involving customary and traditional rights of access for native Hawaiians, saying that it is (now) within the 'rule of law' and I agree. Respectfully, I assert and hold to the firm belief that such customary and traditional rights of access would not be established and could not be enforced but for the ruling by the Hawai'i Supreme Court as opposed to simply relying on the Hawai'i Constitution, which by definition is a 'broad purposeful document' intended to frame as opposed to implement or establish law.

"At the national level I firmly believe that but for the 'activism' of the US Supreme Court schools may never have been desegregated as it is well known that the US Congress for many years could not overcome the opposition of those, primarily members who represented southern states who vigorously defended segregated schools through maneuvers and machinations of the rules of congressional procedures.

“While some of my colleagues may disagree, I believe that following the strict ‘rule of law’ does not work to level the playing field of justice for minorities, the disenfranchised, people of color and native indigenes.

“I have been honored to serve in elected office for many years, more than a decade of which was with the Office of Hawaiian Affairs. Most of those years were spent in court over any number of issues on the rights of native Hawaiians. That was not by accident but rather based on a calculated strategy and the firm belief that justice for the people of the first nation of these islands regarding any rights of governance would be found in the judiciary, not the legislature. With all due respect, the strategy was based on the willingness of the courts including the Hawai‘i Supreme Court to view native Hawaiians in the context of the constitution that enshrines those rights and leaves the articulation to the courts to rule upon.

“Judge Leonard has demonstrated a hardworking ability to diligently take on and complete her assignments as evidenced by the number of cases she has participated as a panel member of the Court.

“It should be noted; however, that of the opinions she wrote as the primary author, approximately 20 percent were reversed. Among the reasons stated by the Hawai‘i Supreme Court was that she interpreted the law ‘too narrowly’. It is in keeping with Judge Leonard’s philosophy of the ‘rule of law’. It is that philosophy that I respectfully disagree.

“For the forgoing reasons—and let me interject here. The Senate Minority Floor Leader said, ‘I don’t think more time would have done it.’ He also said, ‘All of the important questions were asked and they were answered.’ I disagree. This nominee is entitled to more questions. Those who support her and those who do not support her deserve questions by the Senate. Why we are doing it today is something I cannot respond to. The 30-day clock has time. On the other hand, we are here today and this is the dénouement. And regrettably—and only because this legislator has a philosophical disagreement with Judge Leonard, that I respectfully will vote ‘no’ on the confirmation as Judge Katherine Leonard, Chief Justice of the Hawai‘i Supreme Court.

“Thank you, Madame President.”

Senator Slom rose in rebuttal and said:

“I certainly respect my colleagues and their opinions, and that goes to what I was saying earlier about the differences and the transparency in the Senate. We stand up and we tell you why we think a certain thing, and it’s not for me to argue with someone to disagree with their beliefs; and I certainly understand about philosophical and ideological principles and differences.

“But this is the nominee and this is the issue—whether or not she is qualified, whether or not she has led, can lead, will lead in this important position. And so, I note that some of the criticism talked about her short period of judicial leadership, particularly with the Intermediate Court of Appeals, and I would just point out some of her predecessors had shorter period of time. Some of her predecessors and some of the other nominees have no experience in the Intermediate Court of Appeals. Some of the other people that were talked about have no experience as being the head of the law review, which is a very prestigious and very sought after position.

“We’re not dealing with a popularity contest here. We are dealing with a very important issue. We all understand that, that it is important. The decision is important, and no one else can make it but us. That has some good points and some bad points because the public has overwhelmingly let us know how they feel, and they feel in support of this candidate.

“There is nothing—if you read the Legislative Reference Bureau definition and description of the responsibilities and the duties of the Chief Justice—there’s nothing surprising or new there, and nothing that Judge Leonard cannot do. So, I’m very surprised about that. It’s not a question of no one has said or suggested that Kate Leonard is going to delegate the important and critical decisions to anyone else. She’s not that kind of person. She makes those decisions herself, and she’s quite able to do that.

“Again, the ‘grow into’ argument has come up. The original source, I think, for that was Circuit Court (retired) Judge Milks. And again, I repeat, that as my colleague from the Big Island Senator Takamine said that he understands that really you don’t want a static person in any position—business, government, non-profit, whatever it is. You expect that they have the qualities now, which Kate Leonard does, and that they will get even better. He mentioned CJ Moon, and it’s true. Those of us that heard him years ago speak or discuss issues, he’s much more knowledgeable and qualified today; no question about it, and that’s what you want.

“So, let’s see: Most of my colleagues who are opponents now have jettisoned the administrative argument, which I think is good because it was no argument at all. We’re talking about leadership and we’re talking about capabilities. Judge Milks also, in her lengthy commentary the other day—and unfortunately as I said earlier, she was not available for questions afterwards—but she said that, ‘The nominee does not enjoy an earned or regarded reputation as a leader in any significant community organization or business entity.’ I think it was testified to about her civic involvement and leadership in one of the nation’s largest and most important organizations—scouting—and that she has done what very few people have done, and particularly people in public office, because it’s hard working with a bunch of little boys and young gentlemen. She’s done it, and she works side-by-side and rolls up her sleeves with other people. She’s involved in the orchid industry and the orchid growing business and all. I know nothing about that; I buy an orchid lei, that’s the end of it. But she has respect, and the fact that she involves herself in other issues shows the wide diversity of her experience and her abilities. Her leadership in her firm, her partnership, her giving up tremendous financial opportunities to become a public servant or remain a public servant with even more responsibility is a testament to not only her leadership, but also her respect. Respect, as I said earlier, is earned. Do we discount all of those people that came forward and said that they respect her and that she has the highest integrity because of one testimony? I would hope not.

“There was also the statement made that, ‘She has not had the opportunity to display her leadership.’ The last testifier, who I respect, the good senator from Kahaluu, talked about her more than 100 decisions. They’ve been gone over, they’ve been looked at, they’ve been examined. Believe me; people looked at them to find flaws or to find her philosophical direction. So, they’re out there.

“Judge Milks complained, in her testimony, that the nominee was not well-known and she did not spend enough time with the Bar Association. Gee, that’s a shame. Is her loyalty to the 20 board members out of the 5,000 lawyers, or is her loyalty to the clients and attorneys and plaintiffs and defendants and the issues that come before the court and the 1.3 million people of this state? I would say that there was some misplaced testimony there about priorities and responsibilities.

“And there was the statement made: ‘She has not demonstrated a commitment to public service.’ What more does a person have to do? She’s given up financial security. She’s given up the possibility of doing many more things that

are a lot less stressful and certainly not under the public microscope, but she chose—she chose—this route of public service. And she enjoys the ICA, and so do the people that work around her, for her, with her. They've said so; they've told us that. So, it really grates on me when people say, 'Well, she hasn't done this. She hasn't shown that. She hasn't proven this.' Proven to whom? She's proven it to the people that know her best.

"Now, I do agree that a person's record should speak louder than either personal endorsements or anything written. We all know about resumes and resume writers; and that's why when you get to meet and get to know the person, the human person that is Kate Leonard, you cannot help but be impressed and respect her. And I'm not talking about just her intellect. I mean, we can't even argue that; everybody understands she is one of the best and brightest legal minds we have in the state. My gosh, even the Attorney General was her professor and he knew he was done after the first day. We're not talking about that. We can have the smartest person in the world, but if they can't communicate, if they don't have ideas, if they can't work with people, if they can't get the respect of those who they work with, then all the brains in the world is for naught. But that's not Kate Leonard; she's a whole person with all of these qualities, and they've been demonstrated over and over and over again. And yet, some people say, 'Yeah, well that was yesterday. Show me what she can do today.'

"I do understand, as I said, philosophical differences; and I appreciate the good senator from Waikiki sharing his experience and forcing his staff to do extra work, and it was a good assignment. And if they can't figure out where she stands philosophically, then how can we—and why should we care? No one's come forward and said, 'Oh, she's really unfair and I don't like her decisions.' Well, one did—a convicted felon; he did come by and say he didn't like the affirmation. There are cases that she's decided I don't agree with and I don't like, quite frankly, but what's that got to do with it? This may come as a shock, but not everyone loves us in politics. Not everyone finds that we 25 senators are without fault—and as I said, we won't even go to the city level or the other branch. The point is not perfection. The point is not an individual's idea of what that ideal person should be. It is one of the people that was nominated with full qualifications to the Governor. The Governor made that selection. We did the due diligence.

"And I guess I have to correct myself because the good senator from Kahaluu was right when I said all of the questions had been answered. I had said earlier we didn't really ask the pertinent questions. It's kind of like in Hawai'i, as you know, when someone's running for office. You don't ask them about workers' compensation or about taxes; you ask them what high school they graduated from and who they're married to and what position on the football team they played. Well, whose fault is that? We had the opportunity to do that. And when I said that I don't think that more time would change what the outcome is going to be in a few minutes, I meant that people have made up their minds in this Senate.

"The issue of native Hawaiian rights came up, and it is important to remind everyone again that the Office of Hawaiian Affairs (OHA) testified in support of this nominee. It is important to note that no association or group or individual representing a minority point of view—you know, like the 'Left Handed People' or the 'People That Wear Palaka Shirts'—they didn't come forward and complain or criticize this nominee or said that she wouldn't be fair or that they couldn't trust the outcome of what she would do. None of them! Nobody came forward. It's right in here, or maybe outside this building, as I alluded to earlier.

"I just wonder, in closing, what would have happened if the Bar Association would've given Kate Leonard a 'qualified'

rating. Would that have done it for my colleagues? Would they have said, 'Oh, okay, well they did it,' because they earlier said that was only one consideration—the vote of non-qualification—but if they would've said she was qualified as was done previously for the ICA, would that have changed the minds of some people? Maybe I'm cynical, but I don't think so because we've got more going on here. I want to keep it to what we've learned, what we knew, what we asked and answered, and what's on the public record, and the quality of this individual and the integrity and the statement that we will make today. I hope it is the correct statement.

"I urge my colleagues to search their conscience to give equal weight to everything that has been said and testified to, to the people that have called you—their position in the community and their experience—and to vote for the confirmation of Katherine Leonard as our next chief justice. Thank you, Madam President."

Senator Ihara rose to speak in opposition to the nominee as follows:

"Madame President. I rise in opposition to the confirmation of Ms. Katherine Leonard for chief justice of the Hawaii Supreme Court.

"I have followed this confirmation process...closely, because the chief justice position is the most important of all judicial confirmations.

"This particular confirmation is different from all other supreme court nominations, because the nominee is seeking essentially two judicial positions...with two separate sets of duties.

"Thus, I have separated my consideration of this confirmation in two questions. The first: Is the nominee qualified to serve as a justice with the same duties as other supreme court justices; that is, to render judgments on cases before the court? To this question, my answer is yes.

"The second question: Is the nominee qualified to serve as the chief executive officer of our state's third branch of government, the Judiciary?"

"I have considered the nominee's experience and public testimony submitted at the hearing, and also met with the nominee to help build a best case for her confirmation.

"In fulfilling my constitutional duty to consider this nominee for confirmation, it is my judgment the nominee does not possess the experience and qualifications necessary for the chief executive officer position of the Judiciary.

"I will, therefore, be voting not to consent to the nomination of Katherine Leonard for Supreme Court Chief Justice.

"Thank you, Madame President."

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

Ayes, 8; Ayes with Reservations (Espero). Noes, 14 (Baker, Chun Oakland, Fukunaga, Hanabusa, Hee, Ige, Ihara, Kidani, Kim, Kokubun, Nishihara, Takamine, Taniguchi, Tokuda). Excused, 1 (English).

At 12:45 p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:47 p.m.

SENATE RESOLUTION

The following resolution (S.R. No. 1) was read by the Clerk and disposed of as follows:

S.R. No. 1 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE FIRST SPECIAL SESSION OF 2010," was offered by Senators Sakamoto, Hemmings.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, S.R. No. 1 was adopted.

ADJOURNMENT

Senator Sakamoto moved that the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2010, adjourn Sine Die, seconded by Senator Slom and carried.

At 12:49 p.m., the President rapped her gavel and declared the Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Special Session of 2010, adjourned Sine Die.

ATTACHMENT A

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August 3, 2010

MEMORANDUM

TO: Honorable Les Ihara
Senator, 9th District

FROM: Kammy Chan
Research Attorney

SUBJECT: Statutory Functions and Duties of the Chief Justice that are Different from Any Other Justice or Judge

You requested information on the statutory functions and duties of the chief justice of the Hawaii supreme court that are different from any other justice or judge. We reviewed the Hawaii Revised Statutes and have summarized the chief justice's unique statutory functions and duties by subject area. Due to the time constraints, we caution that the summary may not include an exhaustive list of all of the chief justice's responsibilities.

Judiciary Selection Commission

- The chief justice appoints one member to the judicial selection commission. (Haw. Const., art. VI, §4.)

Supreme Court; Intermediate Appellate Court; Circuit Court

- The chief justice may:
 - Assign a judge or judges of the intermediate appellate court or a circuit court to serve temporarily on the supreme court;
 - A judge of the circuit court to serve temporarily on the intermediate appellate court; and
 - A judge of the district court to serve temporarily on the circuit court. (Haw. Const., art. VI, §2.)

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- As provided by law and at the request of the chief justice, retired justices of the supreme court also may serve temporarily on the supreme court, and retired judges of the intermediate appellate court, the circuit courts, the district courts and the district family courts may serve temporarily on the intermediate appellate court, on any district court, on any district court and on any district family court, respectively. (Haw. Const., art. VI, §2.)

Judiciary History Center

- Chief justice appoints members of the board of the judiciary history center (§6F-3¹)
- Chief justice approves contracts entered into by the friends of the judiciary history center (§6F-7)

Elections

- When elections commission member vacancies are not filled within the times specified in section 11-7, HRS, the vacancies shall be filled promptly by the chief justice. (§11-7)

Salaries of Certain State Officers

- The chief justice appoints one member to the commission on salaries. (§26-56)

Employment of Attorneys

- The chief justice or the chief justice's designee may request that the attorney general provide representation to a court or judicial office. (§28-8.3)

Budget; Proposed Appropriations for the Judiciary (see also entries related to section 601-2 under Administration of Courts)

- Chief justice is responsible for submitting a plan of proposed appropriations of the judicial branch to the legislature, which shall accompany the judiciary biennial and supplemental budgets. According to statute, the plan of proposed appropriations shall include the judiciary budget, proposed grants to private entities, and any specific appropriation measures to be proposed by the judicial branch. (§37-92)
- Chief justice is one of the persons designated to be informed by the director of finance about the preliminary estimate and the final estimate of the state growth and expenditure ceiling. (§37-94)
- Council on revenues is required to report the estimate of the total state personal income for the calendar year in progress and the next succeeding calendar year, and any revisions, to several persons including the chief justice each August 5 and November 5. (§37-113.1)

¹ All references are to sections of the Hawaii Revised Statutes.

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Civil Service

- For purposes of the civil service laws, the term "chief executive" includes the chief justice. Chief justice is the "chief executive" for purposes of overseeing civil service law as applied to judicial branch. (§78-11)

Public Service

- For the purposes of chapter 78 (public service), the term "chief executive" has the same meaning as section 78-11, HRS (meaning that the term "chief executive" includes the chief justice). The powers of the chief justice include the following:
 - Determining the judiciary's hours of operation. (§78-1.6)
 - Establishing a leave sharing program to allow employees to donate accumulated vacation leave credits to another employee in the judiciary who has a serious personal illness or injury or who has a family member who has a serious personal illness or injury. (§78-26)
 - Establishing incentive and awards programs to recognize employees. (§78-29)
 - Establishing a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code. (§78-30)

Standards of Conduct; Code of Ethics

- With regard to employees of the judicial branch, the powers and duties that are assigned to the governor with respect to the executive branch in part IV of Chapter 84 (regarding the administration and enforcement of the code of ethics of elected officers and public employees of the state) are assigned to the chief justice. (§84-38)

Collective Bargaining

- For purposes of negotiating a collective bargaining agreement for bargaining units (1), (2), (3), (4), (9), (10), and (13), the chief justice has one vote if the judiciary has employees in the particular bargaining unit. (§89-6)

Civil Defense and Emergency Act

- When an application for a preliminary or interlocutory injunction or temporary restraining order is presented to a circuit judge, the judge is required to immediately notify the chief justice. The chief justice assigns two other circuit judges to sit with the circuit judge in hearing and determining the application. (§128-29)

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State Highway Safety Council

- The chief justice or designee is a member of the state highway safety council. (§286-5)
- Grants authorization to the director of transportation regarding the records of the violations bureaus of the district courts and of the circuit courts, so that the information may be furnished in response to specific circumstances set forth in statute. (§286-172)

Substance Abuse Program

- Chief justice is one of the persons who approves the ex-offender who is selected to serve on the coordinating body, which oversees the development and implementation of offender substance abuse treatment programs. (§321-193.5)

Hawaii Paroling Authority

- Chief justice is a member of the panel that nominates members of the Hawaii paroling authority. (§353-61)

Interstate Compact for the Supervision of Adult Offenders

- With regard to the State's membership in the interstate compact for the supervision of adult offenders, if the State's membership is suspended or terminated, the chief justice is among the people notified of the suspension. (§353B-1)
- Chief justice appoints one member of the judiciary to be a member of the state council for interstate adult offender supervision. In addition, the compact administrator, who is appointed by the governor, is appointed with the advice and consent of the senate and the chief justice. (§353B-3)

Corrections Population Management Commission

- Chief justice appoints one judge and one adult probation administrator to serve as members of the corrections population management commission. (§353F-4)

Office of the Public Guardian

- Chief justice appoints the public guardian. (§551A-1)

Family Courts

- Chief justice is authorized to temporarily assign a family court judge to preside in another circuit when the urgency of one or more cases requires the chief justice to do so. (Haw. Const., art. VI, §2; §571-3)
- Chief justice designates judges of the first circuit to be judges of the family court of the first circuit. In any circuit in which more than one judge is authorized to exercise jurisdiction as judge of the family court, the chief justice designates one of the judges as senior judge. (§571-4)

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- All actions by the board of family court judges are subject to the regulatory supervision of the chief justice. (§571-5)
- Chief justice may:
 - Exercise discretion when the urgency or volume of cases requires the appointment of one or more district family judges for each judicial circuit;
 - Within any circuit, designate any district judge of the district court to act as a district family judge within that circuit;
 - Within any circuit, designate a district family judge appointed pursuant to this section to act as a district judge; and
 - Assign any district judge or district family judge of any circuit to serve temporarily in either the district court or the district family court of any other circuit. (§571-8)
- When there is a vacancy in the office of district family judge of any circuit due to disqualification, absence, or other reason, the chief justice may designate the district family judge of any other circuit or any district judge appointed pursuant to chapter 604. (§571-8.3)

Interstate Compact for Juveniles

- Chief justice appoints one member of the judiciary to the Hawaii state council for interstate juvenile supervision. In addition, the compact administrator, who is appointed by the governor, is appointed with the advice and consent of the senate and the chief justice. (§582D-1)
- With regard to the State's membership in the interstate compact for juveniles, if the State's membership is suspended or terminated, the chief justice is among the people notified of the suspension. (§582D-1)

Courts; Civil Defense Emergency

- During a period of civil defense emergency proclaimed by the governor under section 129-7, the chief justice is authorized to order the suspension, tolling, or granting of relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders, in civil or criminal cases or administrative matters, in any judicial circuit affected by the governor's proclamation. (§601-1.5)

Administration of Courts

- Chief justice is the administrative head of the judiciary.
 - Chief justice is required to:
 - Report to the legislature at each regular session on the business of the judiciary and the administration of justice throughout the State;

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- Present to the legislature a unified budget, six-year program and financial plan, and variance report for all the programs of the judiciary; and
- Direct the administration of the judiciary, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business.

- Chief justice shall possess the following powers, subject to such rules as may be adopted by the supreme court:
 - To assign circuit judges from one circuit to another;
 - In a circuit court with more than one judge, (A) to make assignments of calendars among the circuit judges for such period as the chief justice may determine and, as deemed advisable from time to time, to change assignments of calendars or portions thereof (but not individual cases) from one judge to another, and (B) to appoint one of the judges, for such period as the chief justice may determine, as the administrative judge to manage the business of the court, subject to the rules of the supreme court and the direction of the chief justice;
 - To prescribe for all of the courts a uniform system of keeping and periodically reporting statistics of their business;
 - To procure from all of the courts estimates for their appropriations; with the cooperation of the representatives of the court concerned to review and revise them as the chief justice deems necessary for equitable provisions for the various courts according to their needs and to present the estimates, as reviewed and revised by the chief justice, to the legislature as collectively constituting a unified budget for all of the courts;
 - To exercise exclusive authority over the preparation, explanation, and administration of the judiciary budget, programs, plans, and expenditures, including without limitation policies and practices of financial administration and the establishment of guidelines as to permissible expenditures, provided that all expenditures of the judiciary shall be in conformance with program appropriations and provisions of the legislature, and all powers of administration over judiciary personnel that are specified in Title 7 (public officers and employees); and
 - To do all other acts which may be necessary or appropriate for the administration of the judiciary. (§601-2)
- The chief justice, with approval of the supreme court, appoints an administrative director of the courts to assist the chief justice in directing the administration of the judiciary. The administrative director performs its functions subject to the direction of the chief justice. (§601-3)

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- The chief justice is a member and chairperson of the judicial council. (§601-4)
- Chief justice is authorized to hire on a contractual basis an arbitration administrator. (§601-20)

Courts of Appeal

- By statute, the supreme court sits in Honolulu, provided that the chief justice may appoint a different place for the sitting of the court, pro tempore. (§602-9)
- When there is a vacancy in the supreme court, or if a justice of the supreme court is disqualified from sitting in any case pending before the supreme court, is unable to attend, is absent, is recused, or has been excused, the vacancy or place of such justice may be temporarily filled by a circuit judge designated by the chief justice or the appointment of a justice who has retired from the supreme court. (§602-10)

Intermediate Appellate Court

- When the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification, the chief justice may designate circuit judges or retired intermediate appellate judges or retired supreme court justices to temporarily fill such need. (§602-55)

Circuit Courts

- A chief justice may designate a place, other than the circuit in which the case is pending, where a jury trial shall be conducted. (§603-14)
- The chief justice may assign and require the judge of any other circuit, or any retired circuit judge, from any circuit, to hear and determine any or all matters then or thereafter pending in the circuit to which the judge is assigned for such purpose, and to perform any other duties pertaining to the office of the circuit judge of the circuit to which the judge is so assigned, and while so engaged the judge shall have and exercise all the powers vested in a judge of that circuit. (Haw. Const., art. VI, §2; §603-41)

District Courts

- The chief justice may authorize the district judge that hears landlord-tenant and small claims matters to substitute for or act in addition to or otherwise in place of any other district judge of the district court of the first circuit. In addition, the chief justice may designate a judge in each circuit as the administrative judge for the circuit. (§604-1)
- The chief justice, with the consent of the senate, appoints district judges. The chief justice also appoints district judges to serve on a per diem basis. (Haw. Const., art. VI, §3; §604-2)

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- When it is advisable by reason of a vacancy, disqualification, absence, or other reason, the chief justice may designate the district judge of any other circuit, or any district family judge of any circuit, to hear and determine any and all matters pending in the district court to which the district judge or district family judge is called for such purpose. (§604-3)

Grand Jury Counsel and Proceedings

- Chief justice appoints and removes one or more grand jury counsel for the four judicial circuits of the State. (§612-51)
- The term of a grand jury counsel may be extended when the matters for which the counsel was called to service cannot be completed before the end of the counsel's term, and the chief justice must authorize the extension where completion of such matters would be substantially extended or hindered by the assignment of another counsel. (§612-53)

Center for Alternative Dispute Resolution

- The chief justice or the chief justice's designee organizes, guides, and administratively maintains the center for alternative dispute resolution. Additionally, the chief justice appoints the director of the center. (§613-2)
- The chief justice appoints the members of the board of advisors of the center for alternative dispute resolution. (§613-3)

Small Claims Division of the District Court

- The chief justice, as administrative head of the judiciary, shall cause to be published a booklet or pamphlet describing the procedures of the small claims division of the district court, remedies available upon judgment of the small claims division, and such other information as will facilitate the utilization of the small claims procedure and shall also cause to be made and printed such standardized forms as may be utilized throughout the small claims procedure prior to, upon and after judgment. (§633-36)

Medical Claim Conciliation Panel

- The chairperson of a medical claim conciliation panel is appointed by the director of commerce and consumer affairs from a list of eligible persons approved by the chief justice. (§671-11)

Design Claim Conciliation Panel

- The chairperson of a design claim conciliation panel is appointed by the director of commerce and consumer affairs from a list of eligible persons approved by the chief justice. (§672B-3)

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Electronic Eavesdropping

- Chief justice designates a circuit court judge to issue orders under the state's electronic eavesdropping law. (§803-46)

Criminal Procedure

- The chief justice may by order authorize district court judges to make probable cause determinations, set bail, and direct the issuance of arrest warrants, as provided by section 806-85. (§806-85)

If you have any questions, please contact me by phone at 587-0666 or by email at k.chan@capitol.hawaii.gov.

APPROVED:

Ken H. Takayama
Ken H. Takayama
Director

ADDENDUM (provided by Sen. Les Ihara, Jr.)

Source: Judiciary Deputy Director Walter Ozawa

In addition to the responsibilities outlined in the LRB memo above, the Chief Justice also has the following duties and responsibilities relative to the Associate Justices on the Supreme Court:

1. is the "administrative head" of the Judiciary - Haw. Const. Art. 6, section 6; HRS 601-2
2. presides over the state senate if the governor, lieutenant governor, or appointed officer are impeached - Haw. Const. Art. 3, section 19
3. adjusts salaries and benefits of employees excluded from collective bargaining - HRS 89C-15
4. receives reports of volunteer utilization - HRS 90-5
5. may "direct" the administrative judge of the first circuit with regard to the assignment of land court matters to judges - HRS 501-2

Relative to the Judiciary Budget, the Chief Justice:

1. is authorized, whenever the need arises, to transfer sufficient funds and positions between programs for operating purposes.
2. shall have the power, if he/she secures federal funds or other property under any act of Congress or any funds from private organizations or individuals which are to be expended in connection with any programs or works authorized by the budget act, to enter into the undertaking with the federal government, private organization, or individual.
3. shall determine when and in what manner authorized capital improvement projects shall be initiated, and shall notify the governor periodically of specific amounts required for the projects.
4. may make supplemental allotments from the Judiciary project adjustment fund if the amount allocated from the general obligation bond fund for a capital improvement project in the budget act is insufficient.
5. can authorize a reduction in the scope of a capital improvement project if it has been determined that changed conditions permit the reduction of the scope of an authorized project.
6. may supplement funds for any cost element for an authorized capital improvement project by transferring needed sums from funds appropriated for other cost elements of the same project
7. is authorized to correct any clerical, typographical, or mechanical error on the budget act.

STANDING COMMITTEE REPORTS

SCRep. 1 Judiciary and Government Operations on Jud. Com. No. 1

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

J.C. No. 1 SHERRI-ANN L. IHA, for a term to expire in six years.

Testimony in support of the appointee was submitted by Representative Glenn Wakai, State House of Representatives; the Public Defender; the Department of the Honolulu Prosecuting Attorney; Hawaii Women Lawyers; and fifty individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Sherri-Ann L. Iha received a Bachelor of Arts degree in English from the University of Hawaii at Manoa and a Juris Doctor degree from the University of Hawaii, William S. Richardson School of Law. Ms. Iha has worked with the Honolulu Department of the Prosecuting Attorney from 1992 until the present, being promoted to increasingly challenging positions. According to testimony submitted on her behalf, Ms. Iha has been a valued part of the Department, successfully handling a variety of cases and gaining extensive trial and legal experience in district and circuit court. Cases handled by Ms. Iha have included murder, assault, robbery, and burglary cases. For the past three years, Ms. Iha has served as the Misdemeanor Jury Demand supervisor, which requires her to mentor and oversee deputy prosecutors who are learning to try cases before a jury.

Ms. Iha has also been extensively involved in community activities, including serving on the 'Iolani Alumni Association Board of Directors, serving as an ex-officio member of the 'Iolani School Board of Governors for the past two years, on various capacities with the Honolulu Japanese Junior Chamber of Commerce, and assisting other organizations such as Big Brothers Big Sisters, Special Olympics, and the Kaelepu Elementary School Parent Teacher Student Association.

Testimony in support of Ms. Iha's appointment indicates that she is highly qualified to serve as a District Court judge. She has a universal reputation as intelligent, thorough, professional, dedicated, and skilled. Her decisions are well-analyzed and well-researched, and she is always prepared. Testifiers related that she has an even and reasonable temperament, and that she remains calm and cheerful even when inundated with her caseload. Your Committee received testimony praising her integrity and fairness. As a supervisor, she is respectful and is a role model within the Department. Additionally, testimony indicates that Ms. Iha values the judicial process and is dedicated to maintaining the integrity of the judicial system.

Your Committee finds that, based on the testimony submitted on her behalf, Sherri-Ann L. Iha has the experience, temperament, judiciousness, and other competencies to be a District Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

SCRep. 2 Judiciary and Government Operations on Jud. Com. No. 2

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

J.C. No. 2 STEVEN M. NAKASHIMA, for a term to expire in six years.

Testimony in support of the appointee was submitted by the Public Defender, the Chief of Police of the Maui Police Department, and eight individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Steven M. Nakashima received a Bachelor of Arts degree in Economics from the University of Hawaii at Manoa and a Juris Doctor degree from Willamette University College of Law. Since 1999, Mr. Nakashima has been in private practice as a partner with the law firm of Marr Jones & Wang, concentrating his practice in employment and labor law litigation and advice. From 1994 to 1999, Mr. Nakashima was a District Court judge of the First Circuit, and from 1997 to 1998, he was the Lead Civil judge and served on the District Court's Civil Rules and Forms Committee. From 1981 to 1994, Mr. Nakashima was an associate and then a partner with the

law firm of Goodwill Anderson Quinn & Stifel, engaging in insurance defense and products liability litigation, and employment and labor law litigation and advice. Prior to that time, he was a law clerk for Judge J. Blaine Anderson in the Ninth Circuit Court of Appeals.

Mr. Nakashima is also active within the community. He has been the President of the Kaimuki High School Foundation, which raises funds and awards grants for school projects. He is also the President of Youth Service Hawaii, a nonprofit organization that promotes service learning through public and private schools, and has also served as a volunteer at legal clinics sponsored by Volunteer Legal Services Hawaii. In addition, Mr. Nakashima serves as a volunteer arbitrator in the Judiciary's Court Annexed Arbitration Program and as a mediator for the Mediation Center of the Pacific.

Testimony in support of Mr. Nakashima's appointment indicates that he is ethical, civil, honest, fair, and hardworking. Testifiers praised his legal skills and abilities, his common sense, good communication skills, and good sense of humor. Testimony submitted in support of Mr. Nakashima's appointment also emphasized that, despite his leaving his District Court judicial position in 1999 to better provide for his family, Mr. Nakashima has always wanted to return to the bench and truly missed the opportunity being a judge provided to be a positive influence within the community. In his statement to your Committee, Mr. Nakashima spoke of his great appreciation of a second opportunity to serve on the bench and how he loved his years as a District Court judge.

Your Committee finds that, based on the testimony submitted on his behalf, Steven M. Nakashima has the experience, temperament, judiciousness, and other competencies to be a District Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

SCRep. 3 Judiciary and Government Operations on Jud. Com. No. 3

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

J.C. No. 3 MATTHEW J. VIOLA, for a term to expire in six years.

Testimony in support of the appointee was submitted by the Court Administrator of the Juvenile Drug Court Program and eighteen individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Matthew J. Viola received a Bachelor of Arts degree magna cum laude from Williams College and a Juris Doctor degree, with distinction, from Stanford Law School. From 2002 to the present, Mr. Viola has been a solo practitioner in private practice, concentrating on employment law and general civil litigation. During this same period, he has also served as a per diem judge with the District Family Court of the First Circuit. From 2003 to the present, he has also acted as a contract attorney with the City and County of Honolulu Ethics Commission. From 1995 to 2002, he was a partner with the law firm of Simons & Viola, concentrating in employment law. From 1993 to 1995, he was a law clerk for Justice Paula A. Nakayama of the Hawaii Supreme Court. From 1991 to 1993, he worked as an associate attorney with the law firm of Heller, Ehrman, White & McAuliffe, in San Francisco, California.

Mr. Viola has also served as an adjunct professor at the University of Hawaii at Manoa, William S. Richardson School of Law and a lecturer at Kapiolani Community College. He has also been an arbitrator with the Judiciary's Court Annexed Arbitration Program and a mediator with the Judiciary's Appellate Mediation Program.

Testimony in support of Mr. Viola's appointment commended his intelligence, fairness, exceptional trial skills, integrity, and self-deprecating humor. Testifiers indicated that, due to the breadth of experience in different areas of law, he is a skilled and insightful attorney. Testimony regarding his work as a per diem judge for the District Family Court reflects that he is very dedicated and committed to working with families, youth, and the community. In this capacity, he demonstrates exemplary proficiency and expertise, and has earned the reputation of being a fair and entirely impartial adjudicator of the facts and law, displaying evenhandedness, thoughtfulness, and reasonableness in all his dealings. Testifiers praised his firm but fair legal rulings, noting that he is well-prepared and shows good judicial temperament.

Your Committee finds that, based on the testimony submitted on his behalf, Matthew J. Viola has the experience, temperament, judiciousness, and other competencies to be a District Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.
Ayes, 5. Noes, none. Excused, none.

SCRep. 4 Judiciary and Government Operations on Jud. Com. No. 4

Recommending that the Senate consent to the nomination to the following:

DISTRICT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

J.C. No. 4 MICHAEL K. TANIGAWA, for a term to expire in six years.

Testimony in support of the appointee was submitted by the State Attorney General and fifteen individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Michael K. Tanigawa received a Bachelor of Arts degree from the University of Massachusetts and a Juris Doctor degree from Hastings College of the Law. Since 2008, Mr. Tanigawa has been a staff attorney with the Hawaii Intermediate Court of Appeals (ICA), where he is responsible for screening appellate cases, advising the ICA judges on case dispositions, responding to inquiries from practicing attorneys and pro se litigants, and handling other projects. His broad legal background also includes private practice with two different law firms, where he engaged in a wide variety of civil litigation matters, including bankruptcy, business transactions, general civil litigation, and representation of nonprofit organizations. His legal career has also included significant criminal law experience, gained from his seven years with the Office of the Public Defender.

Mr. Tanigawa has also served as an adjunct professor for appellate advocacy at the University of Hawaii at Manoa, William S. Richardson School of Law and as an arbitrator with the Judiciary's Court Annexed Arbitration program.

Testimony in support of Mr. Tanigawa's appointment indicates that he is intelligent, thoughtful, responsive, fair, respectful, energetic, compassionate, and hardworking. Testifiers praised his incisive legal analysis and excellent research and writing skills. He has a reputation in the legal community as a conscientious and thoughtful attorney, with a superior substantive knowledge of the law, developed through his broad experience and his inquisitive nature and love of the law. These excellent legal skills are tempered with a respectful demeanor and a genuine, unpretentious sense of humor. Testimony in support of Mr. Tanigawa's appointment indicated that he will make an ideal judge in the District Court.

Your Committee finds that, based on the testimony submitted on his behalf, Michael K. Tanigawa has the experience, temperament, judiciousness, and other competencies to be a District Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a District Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.
Ayes, 5. Noes, none. Excused, none.

SCRep. 5 Judiciary and Government Operations on Gov. Msg. No. 1

Recommending that the Senate consent to the nomination to the following:

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

G.M. No. 1 JEANNETTE H. CASTAGNETTI, for a term to expire in ten years.

Testimony in support of the appointee was submitted by the State Attorney General, the Honolulu Prosecuting Attorney, Hawaii Women Lawyers, and thirty-one individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association and one individual.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of District Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Jeannette Holmes Castagnetti received a Bachelor of Arts degree from Pitzer College and a Juris Doctor degree from California Western School of Law. Ms. Castagnetti's litigation experience includes both criminal and civil matters and work in both the public and private sectors. Since 2007, she has served as a per diem judge in the District Court of the First Circuit, presiding over both civil and criminal cases on an as-needed basis. She has also been employed as a civil litigation attorney in trust, commercial, and employment matters with the law firm Bronster Hoshibata since 2002. Ms. Castagnetti served for three years as a Deputy Prosecuting Attorney in the career criminal, domestic violence, and juvenile offenders divisions. Ms. Castagnetti has additionally served as Special Counsel to the Insurance Fraud Division of the state Department of Commerce and Consumer Affairs.

Ms. Castagnetti has served the legal community as a volunteer arbitrator in the Court Annexed Arbitration Program and as a barrister in the American Inns of Court, Aloha Chapter.

Testimony in support of Ms. Castagnetti's appointment indicates that she is intelligent, competent, hardworking, and ethical. Testifiers praised her preparedness, professionalism, compassion, fairness, and knowledge both of the law and of courtroom procedure. Ms. Castagnetti has a reputation as a respectful, thoughtful attorney who is always well-prepared and who faces challenges with composure and grace. As a per diem judge, she has carried out her duties with intelligence and diligence, earning a reputation for competence and sound judicial temperament. Ms. Castagnetti's broad legal experience and excellent reputation in the legal community make her a strong candidate for appointment to the Circuit Court.

Your Committee finds that, based on the testimony submitted on her behalf, Jeannette H. Castagnetti has the experience, temperament, judiciousness, and other competencies to be a Circuit Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a Circuit Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

SCRep. 6 Judiciary and Government Operations on Gov. Msg. No. 2

Recommending that the Senate consent to the nomination to the following:

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

G.M. No. 2 COLETTE Y. GARIBALDI, for a term to expire in ten years.

Testimony in support of the appointee was submitted by the State Attorney General; the State Public Defender; the Honolulu Prosecuting Attorney; Hawaii Women Lawyers; Chief Judge (retired) Colleen K. Hirai, Circuit Court of the First Circuit; Judge (retired) Karen N. Blondin, Circuit Court of the First Circuit; Judge (retired) Victoria S. Marks, and twenty-five individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association and two individuals.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

The Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be qualified for the position of Circuit Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

Colette Y. Garibaldi has served as a judge in the District Court of the First District since 1997, presiding over both civil and criminal matters. She was also a per diem judge in the same court for nine years prior to her appointment to the full-time bench. Judge Garibaldi served for six years as a Deputy Prosecuting Attorney after a brief stint as an attorney in the private sector.

Judge Garibaldi has a full history of service to her profession. She is currently a member of the Kapolei Courthouse Working Group, Single Tier Implementation Committee, and Statewide Committee on Trial Court Performance Standards in addition to serving as Administrative and Chief Deputy Judge. From 2007 through 2009, she was President of the Hawaii State Trial Judges Association and co-chair of Hawaii State Bar Association's Bench-Bar Committee. Judge Garibaldi co-chaired the 2008 District Court Judges Annual Symposium, served on the Per Diem Judge Education Committee, and participated in the implementation of the Judiciary Information Management System (JIMS) electronic data system through service on the Statewide Judiciary Business Processing Assessment Team and the Traffic Judges Committee Reviewing Statewide Process. In addition, Judge Garibaldi has been an active volunteer in her children's school and extracurricular activities.

Testimony in support of Judge Garibaldi reveals an individual who is an effective and efficient manager and a decisive, intelligent and fair jurist. As a District Court Judge, Judge Garibaldi has demonstrated facility with criminal and civil law and procedure. Judge Garibaldi has earned the respect of the legal community for her work ethic, integrity, knowledge, and sound judicial temperament. Colleagues who testified on her behalf repeatedly cited her strong leadership skills and blend of practical common sense with intellect as major factors in the smooth implementation of new court policies and procedures. Testimony in support of Judge Garibaldi's appointment indicated that she will make an ideal judge in the Circuit Court.

Your Committee finds that, based on the testimony submitted on her behalf, Colette Y. Garibaldi has the experience, temperament, judiciousness, and other competencies to be a Circuit Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a Circuit Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

SCRep. 7 Judiciary and Government Operations on Gov. Msg. No. 3

Recommending that the Senate consent to the nomination to the following:

CIRCUIT COURT OF THE FIRST CIRCUIT, STATE OF HAWAII

G.M. No. 3 FAAUUGA L. TO'OTO'O, for a term to expire in ten years.

Testimony in support of the appointee was submitted by the State Attorney General; the State Public Defender; the Department of the Prosecuting Attorney of the City and County of Honolulu; and numerous individuals, including community members and attorneys. Comments were submitted by the Board of Directors of the Hawaii State Bar Association, as described more fully below. Additionally, at the request of a committee member, your Committee received comments from Judge Michael A. Town, Circuit Judge of the First Circuit.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

Faauga L. To'oto'o received a Bachelor of Arts degree from Missouri Valley College and a Juris Doctor degree from St. Louis University School of Law. Since 1994, Judge To'oto'o has been a District Judge of the District Court of the First Circuit, where he has handled numerous criminal and civil cases of all types. From 1984 to 1994, Judge To'oto'o was a Deputy Prosecutor in the Prosecuting Attorney's Office of the City and County of Honolulu.

Judge To'oto'o has also been an active contributor to the community. He has served as a Director on the Board of the Kaneohe Cultural Foundation and a member of the Board of Directors of Palama Settlement. He volunteers with Hawaii Youth Challenge academy, which is sponsored by the Hawaii National Guard, Mookini Heiau Foundation, and Big Brothers Big Sisters, among many of his community endeavors.

Your Committee notes that the Hawaii State Bar Association Board of Directors (HSBA Board) found the appointee to be "not qualified" for the position of Circuit Court Judge of the First Circuit, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

The process for the HSBA Board's rendering of its finding is as follows. As described to your Committee by the President of the HSBA Board, this finding is arrived at through a vote of the HSBA Board, which is composed of twenty elected members of the Hawaii State Bar Association, after solicitation of all members of the Hawaii State Bar Association through a confidential process for sharing their input and past experience with the appointee and review of the resulting comments by the members of the HSBA Board. The President of the HSBA Board also explained that, following submittal and review of these comments, the appointee is interviewed by the HSBA Board and apprised of the nature of any negative comments so that the appointee may fairly address those concerns during his or her interview with the HSBA Board.

The President of the HSBA Board also explained that the criteria for the finding described above has always been applied with a specific view toward the vacancy being filled. As also explained to your Committee, information such as the final vote tally and the basis upon which each member voted is confidential and not subject to disclosure to your Committee or to the public.

It is uncommon that your Committee is faced with evaluating a judicial appointee who has been found to be "not qualified" by the HSBA Board for the position to which the appointee has been appointed. As noted above, findings by the HSBA Board regarding an appointee are based on comments from the appointee's peers, who presumably are very knowledgeable about the appointee's legal qualifications but who may not feel comfortable coming forward with public testimony against the appointee for fear of reprisals or retaliation from the appointee or the appointee's supporters. Your Committee acknowledges that this avenue of comment by an appointee's peers is an important tool in determining the appointee's qualifications in order to avoid a chilling effect on input from members.

For purposes of your Committee, however, this "not qualified" finding has raised concerns, because, as explained by the President of the HSBA Board in oral testimony in response to questions posed by your Committee, the HSBA Board is unable to give specific reasons or an explanation for the finding due to confidentiality mandates in its policies and procedures. Accordingly, it is incumbent upon your Committee to determine the weight to give the HSBA Board's finding.

Your Committee is highly cognizant of its role in the judicial confirmation process. For circuit court judges, article VI, section 3, of the Hawaii State Constitution requires the Judicial Selection Commission to present to the Governor a list of nominees for a vacancy. The Governor then selects one of the individuals from the list, appointing the person to the judicial position. Thereafter, the Senate reviews the appointment and, in its discretion, may consent or reject an appointment. During the Senate's review, public testimony is taken and evaluated. Prior to the Senate's evaluation of the appointment, the HSBA Board, as mandated by its constitution and bylaws, reviews the qualifications of the appointments and submits comments to the confirming authority (i.e., the Senate).

All of the actors in the appointment process are essential in assuring that the individual who ultimately assumes the weighty mantle of judicial responsibility has been thoroughly vetted, is qualified for the position, and possesses the requisite qualities to fairly, intelligently, and impartially interpret and apply the law that governs our society. As described in the Hawaii Revised Code of Judicial Conduct, "the judiciary plays a central role in preserving the principles of justice and the rule of law. . . . [J]udges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system."

Each actor in the appointment process may have different criteria for evaluating an appointee, and each actor represents different stakeholders and aspects of society. As such, no actor can, in good conscience, shirk its responsibility by simply "rubber stamping" the evaluation of another actor; otherwise, the voice of those who are to be represented by the actor is ignored and rendered superfluous.

As stated above, your Committee is very concerned over the HSBA Board's "not qualified" finding. However, because of the Senate's constitutional duty to evaluate the appointee and the HSBA Board's inability to inform your Committee as to the reason for its "not qualified" finding of the HSBA Board, your Committee must conclude that the HSBA Board's finding is not dispositive on your Committee's evaluation of Judge To'oto'o's appointment but must be considered along with the testimony submitted to your

Committee regarding the appointment and your Committee's own conclusions regarding Judge To'oto'o's qualifications for the appointment to the Circuit Court of the First Circuit. Nonetheless, the "not qualified" finding of the HSBA Board remains a "red flag" for your Committee to carefully consider all information into the appointee's qualifications.

Your Committee initially notes the overwhelming weight of testimony from community members regarding Judge To'oto'o's community endeavors and positive personal qualities, including his humble and generous nature. For purposes of evaluating Judge To'oto'o's legal qualifications, however, your Committee specifically and carefully reviewed and considered testimony from attorneys who have practiced with Judge To'oto'o prior to his elevation to the bench and in front of him as litigants in his court. Your Committee notes that the testimony submitted by attorneys who have practiced in his court indicate that Judge To'oto'o is well-respected in the legal community for his integrity, fairness, compassion, and sound judgment. Testifiers praised his extensive knowledge of the law, good communication skills, professionalism, and excellent judicial temperament. As observed by more than one attorney who has appeared before Judge To'oto'o many times, he has an excellent grasp of the law and possesses the ability to make quick decisions based upon the applicable law and facts.

Other testifiers also pointed out that Judge To'oto'o has, indeed, already performed the responsibilities of a Circuit Court judge during instances when he has substituted for a circuit court judge. One testifier recalled a case where Judge To'oto'o was called in as a last-minute replacement for a circuit court judge and presided over a felony trial from jury selection to verdict. The testifier praised Judge To'oto'o's decisions on law, evidence, and procedure. Judge Town testified that all parties and court staff were satisfied with Judge To'oto'o's handling of the duties of the circuit court in Judge Town's stead.

Based on testimony submitted, your Committee finds that, notwithstanding the HSBA Board's finding of Judge To'oto'o as "not qualified" for the position of Circuit Court Judge of the First Circuit, Judge To'oto'o has actually stepped into this role on prior occasions and has performed very well in these instances. As observed above, your Committee is not aware of the basis for the HSBA Board's finding and while your Committee respects the HSBA Board's comments regarding the appointee, your Committee must respectfully conclude that Judge To'oto'o is, indeed, qualified to be a Circuit Court judge.

Your Committee finds that, based on the testimony submitted on his behalf, Faauga L. To'oto'o has the experience, temperament, judiciousness, and other competencies to be a Circuit Court judge, and has a good sense of where the equities, rights, and responsibilities lie in a case, which is essential for a Circuit Court judge.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, 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.

Signed by the Chair on behalf of the Committee.

Ayes, 5. Noes, none. Excused, none.

SCRep. 8 Judiciary and Government Operations on Gov. Msg. No. 4

Recommending that the Senate not consent to the nomination to the following:

CHIEF JUSTICE, SUPREME COURT, STATE OF HAWAII

G.M. No. 4 KATHERINE G. LEONARD, for a term to expire in ten years.

Testimony in support of the appointee was submitted by the State Attorney General; the State Public Defender; the Chief Executive Officer of the Office of Hawaiian Affairs; the Honolulu Prosecuting Attorney; Hawaii Women Lawyers; First Circuit Court Judge (retired) Eden Elizabeth Hifo; First Circuit Court Judge (retired) Colleen Hirai; First Circuit Court Judge (retired) Karen N. Blondin; the Chair of Hawaiian Homelands Assembly; First Circuit Court Judge (retired) Patrick K.S.L. Yim; six past presidents of the Hawaii State Bar Association; and ninety-three individuals. Testimony in opposition to the appointment of Judge Leonard was submitted by First Circuit Court Judge (retired) Marie Milks and five individuals. Comments were submitted by the Board of Directors of the Hawaii State Bar Association, as described further below, and ten individuals.

Written testimony presented to your Committee may be reviewed on the Legislature's website.

Judge Leonard received her Bachelor of Science degree from the University of Wisconsin-Parkside and received her Juris Doctor degree from the University of Hawaii at Manoa, William S. Richardson School of Law. As a law student, Judge Leonard published one scholarly article in the University of Hawaii Law Review, for which she also served as Editor in Chief. Judge Leonard began her legal career as a law clerk, first in the First Circuit Court and then in the Hawaii Supreme Court with Associate Justice Robert G. Klein. She was hired by the law firm of Carlsmith Ball Wichman Murray Case Mukai & Ichiki and became a partner there in 1997 where she concentrated her practice in civil litigation issues. Judge Leonard was appointed to the Intermediate Court of Appeals in 2008 and has served on that body as an Associate Judge from that time through the present.

Judge Leonard was a founding member of the American Judicature Society's Hawaii chapter and served as a leader of several of its committees. She was the Chair of the Hawaii Access to Justice Commission's Hawaii Rules of Professional Conduct Rule 6.1 Task Force. In 2003, Judge Leonard was the Vice President of the Bankruptcy Section of the Hawaii State Bar Association. Additionally, Judge Leonard taught Environmental Law as an Adjunct Professor at the William S. Richardson School of Law. She is also active in scouting, serves as an American Youth Soccer Association coach, and has volunteered with the Honolulu Orchid Society.

Your Committee notes that the Hawaii State Bar Association (HSBA) Board of Directors (Board) found the appointee to be "not qualified" for the position of Chief Justice of the Hawaii Supreme Court, based upon a modified version of the American Bar Association Guidelines for Reviewing Qualifications of Candidates for State Judicial Office. These Guidelines include the following criteria: integrity, legal knowledge and ability, professional experience, judicial temperament, diligence, financial responsibility, and public service, collegiality, and writing ability. The HSBA Board rating system includes the categories of "qualified" and "not qualified."

The process for the HSBA Board's rendering of its finding is as follows. As described to your Committee by the President of the HSBA Board, this finding is arrived at through a vote of the HSBA Board, which is composed of twenty elected members of the HSBA, after solicitation of all members of the HSBA through a confidential process for sharing their input and past experience with the appointee and review of the resulting comments by the members of the HSBA Board. Following submittal and review of these comments, the appointee is interviewed by the HSBA Board and apprised of the nature of any negative comments so that the appointee may fairly address those concerns during his or her interview with the HSBA Board.

The President of the HSBA Board also explained that the criteria for the finding described above has always been applied with a specific view toward the vacancy being filled. Furthermore, information such as the final vote tally and the basis upon which each member voted is confidential and not subject to disclosure to your Committee or to the public.

It is uncommon that your Committee is faced with evaluating a judicial appointee who has been found to be "not qualified" by the HSBA Board for the position to which the appointee has been appointed. As noted above, findings by the HSBA Board regarding an appointee take into consideration comments from members of the HSBA, who presumably are knowledgeable about the appointee's qualifications.

While your Committee is concerned over the HSBA Board's "not qualified" finding, due to the HSBA Board's inability to inform your Committee as to the reason for its "not qualified" finding, your Committee concludes that while it must be considered, the HSBA Board's finding is not dispositive on Judge Leonard's appointment. Nonetheless, the "not qualified" finding of the HSBA Board remains a concern for your Committee.

Your Committee would like to emphasize three criteria, raised in testimony as areas of potential bias, that it did not consider when evaluating whether the Judge Leonard is qualified for the office of the Chief Justice of the Hawaii Supreme Court:

- (1) Judge Leonard's gender. Notwithstanding Senate Resolution No. 26 (2010), Judge Leonard's gender is entirely irrelevant to your Committee's prima facie determination of whether she is qualified for the office of the Chief Justice of the Hawaii Supreme Court. While your Committee certainly appreciates the historic nature of the appointment and, if Judge Leonard is confirmed, her status as the first female Chief Justice of the Hawaii Supreme Court, gender is not germane to the qualification issue.

Nor did your Committee, contrary to suggestions in submitted testimony, require additional proficiency or qualifications from Judge Leonard simply because she is a woman or hold her to a different "temperament" standard than would be applied to a male candidate. Heightened scrutiny of a qualified candidate based on gender is foolish and deprives all of us of necessary expertise for no good reason. Your Committee would definitely prefer, all other things being equal, that the Judiciary (including the position of Chief Justice) reflect the diversity of our State, including an appropriate gender balance; but the initial consideration of a candidate's qualifications must be gender-blind and ascertained upon the merits;

- (2) Judge Leonard's political philosophy. Your Committee is unacquainted with Judge Leonard's political philosophy. Nor was her political philosophy identified in testimony, although one testifier indicated that he had known Judge Leonard for years and still did not know if she was a Democrat or a Republican. Your Committee understands that the appointing authority, Governor Lingle, is, in fact, a Republican; and
- (3) Judge Leonard's law school. While your Committee acknowledges that, if Judge Leonard is confirmed, she will be the first graduate of the William S. Richardson School of Law to hold the position of Chief Justice, this factor, too, is entirely irrelevant to your Committee's prima facie determination of whether she is qualified for the office of the Chief Justice of the Hawaii Supreme Court. Your Committee notes that two of its members are graduates of the same law school.

The Hawaii State Constitution, article VI, section 6, establishes the Chief Justice of the Hawaii Supreme Court as the "administrative head of the courts. . . ." Your Committee is mindful that, through the appointment and confirmation process, the Executive Branch and the Legislative Branch are, together, choosing the head of the Judicial Branch of our State. The choice is an important one. Your Committee believes that it is when all three branches of government are strong and capable that our state government is able to perform at its peak and serve its people well.

The role of the Chief Justice is not only enshrined in our constitution, but also in our statutes. Hawaii Revised Statutes (HRS) section 601-2(a) states that "[t]he chief justice shall be the administrative head of the judiciary. . . . The chief justice shall direct the administration of the judiciary, with responsibility for the efficient operation of all of the courts and for the expeditious dispatch of all judicial business." The Chief Justice is therefore responsible for the administration of the Judiciary's 1,917 employees and an annual budget of \$141,747.129. The Chief Justice also serves as the primary representative of the Judiciary and the State in the community and nationally.

Your Committee does not believe that it is necessarily only administrative experience that makes for a good Chief Justice. Rather, it is leadership. Leadership may come in the form of prior administrative experience, but it may also come with significant time spent serving in the Judiciary as a judge or justice, or from holding a prominent position in the community. Clearly, keen intelligence and facility with a judicial opinion are only part of the skill set that must be displayed by the Chief Justice. The ability to lead and administer are equally important roles of the Chief Justice.

It should be noted that previous Chief Justices have either served on the bench for a significant time, had administrative experience, or had recognized leadership experience. For example, Chief Justice Ronald T.Y. Moon was a partner in a law firm for fourteen years prior to being appointed as a circuit court judge in 1982. Eight years later in 1990, he was elevated to the position of Associate Justice of the Hawaii State Supreme Court. Three years later, Chief Justice Moon was once again elevated to become Chief Justice.

Chief Justice William S. Richardson was lieutenant governor under Governor John A. Burns. Previous to that tenure, he was in the Army Air Corps and led an infantry platoon into combat. From 1956 to 1962, he was chairman of the Hawaii Democratic Party during its formative years. His leadership qualities are unquestioned.

Chief Justice Herman T.F. Lum had both significant administrative and judicial experience. He was the chief attorney for the Territorial House of Representatives, followed by a tenure as the chief clerk of the House, during which time, he also engaged in private practice. He then served as the United States Attorney for Hawaii between 1961 and 1967. For seven years thereafter, he was a circuit court judge, and was then appointed as an Associate Justice of the Hawaii Supreme Court, a position he held for two years prior to his elevation as the Chief Justice.

It is within this context that your Committee reviewed the testimony submitted regarding the appointment of Judge Leonard, including her own testimony, to your Committee and evaluated her qualifications for the position of Chief Justice of the Hawaii Supreme Court.

Testimony in support of Judge Leonard's appointment indicates that she is a skilled and highly competent attorney and jurist. She is described as being highly intelligent and knowledgeable, with sound judgment and integrity. In her two years as an ICA judge, Judge Leonard's opinions have been characterized as articulate, well-reasoned, and respectful of legal precedents. She is a hard worker and characterizes herself (as do others) as a "moderate."

Testimony attempting to address Judge Leonard's qualifications as an administrator or leader refer primarily to her civil litigation background. In particular, Judge Leonard worked on the termination of the Campbell Estate as the primary drafter of the termination plan. This endeavor involved transitioning a \$2.5 billion ongoing enterprise from a trust structure to a corporate structure. The termination plan was, by all accounts, complex in structure and implementation.

Testifiers also discussed Judge Leonard's participation in the management of the Carlsmith law firm. Those activities included serving as co-chair of the Litigation Department and as a member of the firm's Compensation Committee and Hiring Committee.

Testimony also highlighted Judge Leonard's participation in and leadership of several committees of the American Judicature Society. Moreover, she has also been involved with the Hawaii Access to Justice Commission as described above.

Judge Leonard also submitted a statement to your Committee regarding her participation in some review of potential funding adjustments in the various circuit courts and Judiciary administration. Judge Leonard also reviewed certain budget reports and bills submitted to the Legislature. She also participated directly in the consideration of operating expenses, personnel, and positions at the courts of appeal.

On the other hand, your Committee received comments from individuals with concerns regarding the appointment. Several testifiers raised concerns about the lack of proven administrative or leadership abilities. These testifiers highlighted the qualities of leadership and then questioned whether those qualities were present in Judge Leonard, and, if not, whether it was wise to take a chance on an unproven entity for the important position of Chief Justice, who is, as explained above, the head of one of the three co-equal branches of our state government. The qualities these comments mentioned include being able to inspire and motivate others for the common good of all and to instill confidence in those who are unwilling to take risks. Upon review of all the information presented to it, your Committee remains concerned over Judge Leonard's ability to serve as the administrative head of the Judiciary. This concern is very problematic.

On balance, your Committee does not believe that there is sufficient evidence to reflect the administrative or leadership qualities that are necessary to head one of the three co-equal branches of state government. Your Committee acknowledges that it is a tall order to expect someone who has clearly excelled in the area of legal skill to also possess the administrative or leadership qualities that your Committee is looking for, but, as noted by one testifier who submitted comments regarding Judge Leonard's appointment, Judge Leonard "comes with none of these credentials of a proven leader. She may have the potential for leadership, but the traits have yet to be demonstrated. Some proof is required before [your Committee] gives consent to such an important appointment." Your Committee agrees with the concern raised by this testimony.

Your Committee is cognizant of the Senate's responsibility to ensure that the Judiciary is helmed by the best possible candidate. To do otherwise, particularly in these difficult economic times, is unacceptable and an abdication of the Senate's responsibility. There is no probationary period for this job.

Accordingly, based on submitted testimony and the statement provided by the appointee, your Committee finds that while Judge Leonard appears to be a capable Associate Judge with the ICA, for purposes of the position of Chief Justice of the Hawaii Supreme Court, your Committee believes that Judge Leonard is not qualified to administer the Judiciary, one of the three co-equal branches of the state government.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee, after full consideration of the background, experience, and qualifications of the appointee, recommends that the Senate not consent to the appointment.

Signed by the Chair on behalf of the Committee.

Ayes, 4; Ayes with Reservations (Gabbard). Noes, 1 (Slom). Excused, none.

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. No. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THIS SENATE FOR THE SECOND DAY OF THE FIRST SPECIAL SESSION OF 2010.	16			16