

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

Second Special Session of 1995

Convened Wednesday, September 20, 1995
Adjourned Thursday, September 21, 1995

TABLE OF CONTENTS

	PAGE
First Day, Wednesday, September 20, 1995	1
Second Day, Thursday, September 21, 1995.....	3
Appendix:	
Standing Committee Reports.....	11
History:	
Senate Resolution	12

THE
EIGHTEENTH LEGISLATURE
STATE OF HAWAII
SECOND SPECIAL SESSION OF 1995
JOURNAL OF THE SENATE

FIRST DAY

Wednesday, September 20, 1995

The Senate of the Eighteenth Legislature of the State of Hawaii, Second Special Session of 1995, was called to order at 10:00 o'clock a.m., by Senator Norman Mizuguchi, President of the Senate, in accordance with the following Proclamation:

"P R O C L A M A T I O N"

I, NORMAN MIZUGUCHI, President of the Senate of the Eighteenth Legislature of the State of Hawaii, pursuant to the power vested in me by Section 10, Article III of the Constitution of the State of Hawaii, 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 of the Article VI for a period of two (2) days, excluding Saturday and Sundays, commencing on Wednesday, September 20, 1995, at 10:00 o'clock a.m.

/s/ Norman Mizuguchi
NORMAN MIZUGUCHI
President of the Senate"

The Divine Blessing was invoked by the Reverend Alan Urasaki, Honpa Hongwanji Hawaii Betsuin, after which the Roll was called showing all Senators present with the exception of Senators Ikeda, Liu and Matsuura who were excused.

JUDICIARY COMMUNICATIONS

The following communications from the Judiciary (Jud. Com. Nos. 1-S2 and 2-S2) were read by the Clerk and were disposed of as follows:

Jud. Com. No. 1-S2, submitting for consideration and consent, the nomination of RUSSELL BLAIR, II, to the office of Judge, District Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, was referred to the Committee on Executive and Judicial Appointments.

Jud. Com. No. 2-S2, submitting for consideration and consent, the nomination of DIANA L. WARRINGTON to the office of Judge, District Family Court of the First Circuit, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, was referred to the Committee on Executive and Judicial Appointments.

At this time Senator Aki rose on a point of order as follows:

"Mr. President, I rise to a point of order.

"Mr. President, a hearing is scheduled on the two appointments at 10:30 this morning and I have asked to sit on the committee and to have the opportunity to participate in the hearings. I have asked you and also

the chair of the committee. To date, I have not received a reply. I would like to know the reason why I cannot sit on the committee."

The Chair responded:

"I believe that in caucus, we did cover that issue, Senator. The authority rests with the committee chair and the committee members, and I believe we have given you ample opportunity to testify before that committee. You have posed a set of questions that you have given to the chairwoman, Senator Solomon, and she will be asking the respective nominee to answer the questions on your behalf."

Senator Aki then replied:

"Thank you Mr. President. That is exactly what transpired in the caucus which just finished. At this point I would like to rise on a point of personal privilege.

"Mr. President, I believe that the hearings are very important and the central issues are whether one of the nominees has the ethical standards and moral character, let alone, the work experience to become a judge.

"As a fellow Senator who has been directly affected by the actions of Russell Blair, I believe that I should be allowed to question him.

"Mr. President, I had hoped that this day would never come. But deep down inside, I never doubted that Russell Blair would be nominated someday. I am grateful that we now have confirmation powers where I can speak out. Sadly, I cannot question him directly and hold him accountable for his actions.

"These last two years have been very difficult for me and my family. I can never forget or forgive the harm caused by the actions of Russell Blair. I will never be able to clear my name. Faced with a public that is cynical and at times hostile, it is very difficult for all of us to convince the public that there are honest politicians around.

"I dread the day when my grandchild or my great grandchild will ask my family, 'Was grandpa Aki bribed?'"

"Mr. President, I also submitted a list of questions that I intended to ask Russell Blair. The questions are very straight forward. I would like to submit the questions for the record to this body. (The Chair having so ordered, Senator Aki's list of questions is identified as Exhibit "A.")

"Since I am not permitted to personally ask the questions, can I expect that the questions will be raised during the hearings? I am hopeful. I know that the chair has asked the nominee to respond and I look forward to that response.

"This was to be my day in court and this body by its actions have denied me the right to face my accuser.

"In closing, I am disappointed. I will not challenge your decision and I will testify against the nomination. Thank you."

Senator Anderson then rose on a point of personal privilege as follows:

"Mr. President, yesterday we received the Attorney General's opinion and this morning I think everyone received a letter from the Minority Leader, Senator Michael Liu. Senator Liu sent out this fax and I thought that all of the Senators had received it. But I see that it is addressed to the Senate President and Senator Malama Solomon, with copies to the Honorable Ronald Moon, myself, and the Attorney General.

"What he says here is that he apologizes for the lateness of this letter, however, the Attorney General did send out her opinion very late. After reviewing her opinion and conferring with other legal minds in the community, he has decided that regardless of the untimeliness of the Attorney General's opinion, it would be more prudent not to convene in Special Session.

"Now with this, I think that the Minority Leader should have been here to express this rather than to say at the end, for these reasons he shall not be participating. But I believe, very honestly, that what he says is true, that with a decision for the judges right now, Marks v. Cayetano, there might be a cloud. And if both judges get confirmed by us and there is anything that they take up that might be controversial, their decisions may not be valid. For that reason, he said he would not be participating. But as an attorney, and as the Minority Leader, I was hoping that he would be here so he could make these statements. So I thought I would bring them up because I fully understand why he would not want to participate. Thank you."

Senator Baker responded:

"Mr. President, I rise to offer some remarks in response to the questions raised in the letter from the Minority Leader, as articulated by the Senator from Kailua.

"First, let me advise the Senator he will be receiving a communication from the Staff Attorney for the Supreme Court, Mr. James Branham. (This memo was provided to the Majority members this morning and I apologize for not getting it to the Senator from Kailua, but I noticed that he took his seat just as the President was about to convene our Session.) I request that Mr. Branham's memorandum be inserted into the Journal.

"With regard to the propriety of holding this Special Session, the Majority has been advised that under case law and Article XVII of the Constitution, the Chief Justice is required to presume the amendments are valid unless a court of competent jurisdiction rules otherwise. There has been no such ruling; there has been no stay on the effective date of these amendments. The amendments, therefore, are presumed to be valid and in effect from the date of approval by the voters.

"Confirmation of appointments to the District Courts has been long advocated by the Senate. The voters agreed last November, and on September 1, 1995, the Chief Justice submitted his nominees for two District Court vacancies to the Senate for consideration. The Majority felt an obligation to presume the amendments are valid and to proceed in accordance with our

Constitutional mandate. This is why we have convened this Special Session of the Senate.

"Thank you, Mr. President."

The Chair so ordered and identified Mr. Branham's memo as Exhibit "B."

At this time, Senator McCartney, on behalf of the Senate, extended Happy Birthday wishes to Senator Rosalyn Baker. Senator Ihara then presented a lei to the Majority Leader.

At 10:13 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 10:14 o'clock a.m.

STANDING COMMITTEE REPORTS

On motion by Senator Ihara, seconded by Senator Anderson and carried unanimously, the Clerk was authorized to receive standing committee reports from the Committee on Executive and Judicial Appointments. In consequence thereof, and subsequent to its recessing at 10:16 o'clock a.m., the Senate took the following actions:

Senator Solomon, for the Committee on Executive and Judicial Appointments, presented a report (Stand. Com. Rep. No. 1-S2) recommending that the Senate consent to the nomination of RUSSELL BLAIR, II, to the office of Judge, District Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Jud. Com. No. 1-S2.

In accordance with Senate Rule 36(5), action on Stand. Com. Rep. No. 1-S2 and Jud. Com. No. 1-S2 was deferred until Thursday, September 21, 1995.

Senator Solomon, for the Committee on Executive and Judicial Appointments, presented a report (Stand. Com. Rep. No. 2-S2) recommending that the Senate consent to the nomination of DIANA L. WARRINGTON to the office of Judge, District Family Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, and in accordance with Jud. Com. No. 2-S2.

In accordance with Senate Rule 36(5), action on Stand. Com. Rep. No. 2-S2 and Jud. Com. No. 2-S2 was deferred until Thursday, September 21, 1995.

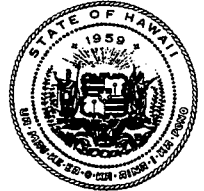
ADJOURNMENT

At 3:19 o'clock p.m., the Senate adjourned until 11:00 o'clock a.m., Thursday, September 21, 1995.

NORMAN MIZUGUCHI
PRESIDENT
MIKE MCCARTNEY
VICE PRESIDENT
ROSALYN BAKER
MAJORITY LEADER
LES IHARA, JR.
MAJORITY FLOOR LEADER
BRIAN TANIGUCHI
MAJORITY WHIP
CALVIN KAWAMOTO
MAJORITY CAUCUS LEADER
MICHAEL M. F. LIU
MINORITY LEADER

EXHIBIT "A"

The Senate
The Eighteenth Legislature
of the
State of Hawaii
STATE CAPITOL
HONOLULU, HAWAII 96813



FIRST DISTRICT
MALAMA SOLOMON
SECOND DISTRICT
RICHARD M. MATSUURA
THIRD DISTRICT
ANDREW LEVIN
FOURTH DISTRICT
ROSALYN BAKER
FIFTH DISTRICT
JOE TANAKA
SIXTH DISTRICT
AVERY CHUMBLEY
SEVENTH DISTRICT
LEHUA FERNANDES SALLING
EIGHTH DISTRICT
DONNA R. IKEDA
NINTH DISTRICT
MATT MATSUNAGA
TENTH DISTRICT
LES IHARA, JR.
ELEVENTH DISTRICT
BRIAN TANIGUCHI
TWELFTH DISTRICT
CAROL FUKUNAGA
THIRTEENTH DISTRICT
ROD TAM
FOURTEENTH DISTRICT
MILTON HOLT
FIFTEENTH DISTRICT
NORMAN MIZUGUCHI
SIXTEENTH DISTRICT
REY GRAULTY
SEVENTEENTH DISTRICT
DAVID IGE
EIGHTEENTH DISTRICT
RANDY IWASE
NINETEENTH DISTRICT
CALVIN KAWAMOTO
TWENTIETH DISTRICT
BRIAN KANNO
TWENTY-FIRST DISTRICT
JAMES AKI
TWENTY-SECOND DISTRICT
ROBERT BUNDA
TWENTY-THIRD DISTRICT
MIKE MCCARTNEY
TWENTY-FOURTH DISTRICT
MICHAEL M. F. LIU
TWENTY-FIFTH DISTRICT
WHITNEY T. ANDERSON
CHIEF CLERK
T. DAVID WOO, JR.

MEMORANDUM

SEPTEMBER 18, 1995

TO: SENATOR MALAMA SOLOMON

FROM: SENATOR JAMES AKI *J. Aki*

RE: QUESTIONS FOR THE CONFIRMATION HEARING

DEAR SENATOR SOLOMON:

AS A FOLLOW-UP OF YOUR MEMO DATED 9-13-95, I AM SUBMITTING THE FOLLOWING QUESTIONS THAT I WANT THE NOMINEE RUSSELL BLAIR TO ANSWER. I WOULD LIKE TO PARTICIPATE AND ASK QUESTIONS MYSELF.

THE CENTRAL ISSUE BEFORE THIS COMMITTEE IS WHETHER RUSSELL BLAIR HAS THE ETHICAL STANDARDS AND MORAL CHARACTER TO BE A JUDGE.

THE FACT THAT RUSSELL BLAIR ADMITTED TO SECRETLY TAPING A FELLOW SENATOR IS A SERIOUS BREACH OF TRUST.

THE FOLLOWING QUESTIONS NEEDS TO BE ASKED AND ANSWERED BY RUSSELL BLAIR.

1. DID YOU TAPE SENATOR BERT KOBAYASHI ON OCT._1993_ WITHOUT HIS KNOWLEDGE?
2. WHY DID YOU TAPE SENATOR BERT KOBAYASHI?
3. DO YOU HAVE COPIES OF THE TAPE?
 - A. IF YES; WOULD YOU RELEASE THE TAPE TO THE MEDIA? AND IF NOT WHY NOT?
4. DID YOU GIVE THE TAPE TO THE FBI? AND WHY?
5. DID YOU LEAK INFORMATION ABOUT THE TAPE TO THE

PAGE 2

MEDIA?

6. IF YOU DID NOT LEAK THE INFORMATION THEN DO YOU KNOW WHO DID?
 - A. WHAT REPORTER (S) HAVE PUBLICLY STATED THAT YOU WERE NOT THE ONE WHO GAVE THE STORY TO THE PRESS.
7. WHO ELSE KNEW ABOUT THE TAPE?
8. WERE YOU INSTRUCTED TO MAKE THE TAPES BY ANYONE OR THE FBI? IF YOUR ANSWER IS YES, WHO ARE THESE PEOPLE?
9. IN YOUR AFFIDAVIT YOU SAY THERE WERE "EXTRAORDINARY CIRCUMSTANCES," WOULD YOU EXPLAIN WHAT WAS THE EXTRAORDINARY CIRCUMSTANCES THAT MADE IT NECESSARY FOR YOU TO TAPE SENATOR KOBAYASHI.
10. WHAT IS YOUR EXPERIENCE THAT QUALIFIES YOU TO BE A DISTRICT COURT JUDGE.

CC: ALL SENATORS



EXHIBIT "B"

Supreme Court — THE JUDICIARY • STATE OF HAWAII

417 SOUTH KING STREET • ALI'ĪOLANI HALE • HONOLULU, HAWAII 96813-2912 • TELEPHONE (808) 539-4747 • FAX 539-4703

Ronald T.Y. Moon
CHIEF JUSTICE

September 20, 1995

James L. Branham
Elizabeth M. Zack
James N. Ishida
Alvin T. Sasaki
STAFF ATTORNEYS

MEMORANDUM

TO: The Honorable Norman Mizuguchi
President of the Senate
The Eighteenth State Legislature

FROM: James Branham
Supreme Court Staff Attorney

RE: Selection of District Court Judges

The Chief Justice thanks you for the invitation to consult about the selection of district court judges and sends his regrets that he could not be present today. I will, as requested, try to provide an overview of the process for selecting district court judges under Article VI, section 3 of the Hawai'i Constitution, as amended.

I. Controversy over validity of amendments

The Chief Justice is aware of the controversy over the validity of the 1994 amendments to Article VI, section 3 made by Senate Bill 2182. He is also aware that the Attorney-General believes the 1994 amendments are not valid and that Senate confirmation is unnecessary.

The Chief Justice is equally aware that litigation over the amendments, State ex rel Marks v. Cayetano, First Circuit Civ. No. 94-4369-11, has not been resolved and that circuit court resolution will likely be appealed to the supreme court.

However, the law about constitutional amendments requires the Chief Justice to presume the amendments are valid unless a court of competent jurisdiction rules otherwise.

II. Selection of the current nominees

On August 14, 1995 the Chief Justice received the Judicial Selection Commission's lists of nominees for the district court positions vacated when Judges Sabrina McKenna and John S.W. Lim were selected for circuit court.

The list of nominees for Judge McKenna's position included: (1) Russell Blair, (2) David L. Fong, (3) Jane Howell, (4) Carol Ann Kunishima, (5) Paula Devons Matayoshi, (6) James

The Honorable Norman Mizuguchi
September 20, 1995
Page 2

Nicholson, and (7) Barbara Richardson. The list of nominees for Judge Lim's position included: (1) Russell Blair, (2) Jennifer L. Ching, (3) Rodney K.F. Ching, (4) William H. Jameson, Jr., (5) Patricia McManaman, (6) Lillian Ramirez-Uy, and (7) Diana Warrington.

The Chief Justice selected Russell Blair for Judge McKenna's vacancy and Diana Warrington for Judge's Lim's vacancy.

III. Senate Confirmation

As you are aware, before the 1994 constitutional amendments the Chief Justice's selection of district court judges was final and Senate confirmation was unnecessary. Under that procedure, the Judicial Selection Commission made the selection if the Chief Justice failed to make a selection within thirty days after presentation of the Judicial Selection Commission's list. (See Exhibit 1, attached.)

The 1994 amendments require the Chief Justice to make a selection within thirty days after presentation of the Judicial Selection Commission's list. If the Chief Justice fails to select a nominee within thirty days, the Judicial Selection Commission selects a nominee. Upon selection by either the Chief Justice or the Judicial Selection Commission the Senate must, within thirty days, hold a public hearing and vote on the selection. If the Senate fails to hold a public hearing and vote on the selection, the appointment is to be made by the Judicial Selection Commission. (See Exhibit 2, attached.)

IV. Conclusion

The Chief Justice understands your concern about having made a nomination while the Senate was not in session. Under either the pre-1994 constitutional provision or the post-1994 constitutional provision, the Chief Justice had to make a choice within thirty days after presentation of the lists by the Judicial Selection Commission. The Chief Justice is quite willing to cooperate with the Senate and the Judicial Selection Commission so that nominations can be made at a more appropriate time.

If you have questions, I will try to answer them.

APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor shall, with the consent of the senate, fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, the appointment shall be made by the judicial selection commission from the list. The chief justice shall appoint per diem district court judges as provided by law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of such justice or judge for the period provided by this section or by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their

PROPOSED CONSTITUTIONAL AMENDMENTS

See also Act 272, this volume, at page 840 for proposed constitutional amendment to Article X, §§2, 3 and Act 280, at page 875 for proposed constitutional amendment to Article VII, §12 and Article X, §1.

S.B. NO. 2182

A Bill for an Act Proposing an Amendment to Article VI, Section of the Hawaii Constitution, to Provide for Consent of the Senate to the Appointment of District Court Judges.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article VI, Section 3, of the Constitution of the State of Hawaii to provide for consent by the senate to the appointment of district court judges. This will allow a public hearing, and open public input and comment on the qualifications of a nominee for a district court judicial position

SECTION 2. Section 3 of Article VI of the Constitution of the State of Hawaii is amended to read as follows:

"APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor [shall], with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than six nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list[.] with the consent of the senate. The senate must hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

PROPOSED CONSTITUTIONAL AMENDMENTS

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of such justice or judge for the period provided by this section or by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State."

SECTION 3. The question to be printed on the ballot shall be as follows:

"Shall the method of filling a vacancy in the district courts be changed by requiring the candidate selected by the chief justice to also be approved of by the senate which must hold a public hearing within thirty days of the appointment?"

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

✓ SECTION 5. The constitutional amendment proposed by this Act shall take effect upon compliance with Article XVII, Section 3 of the Constitution of the State of Hawaii.

S.B. NO. 2294

A Bill for an Act Relating to the Judiciary.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The purpose of this Act is to propose an amendment to Article VI, section 3, of the Constitution of the State of Hawaii to change the number of nominees for judicial appointments made by the judicial selection commission

SECOND DAY

Thursday, September 21, 1995

The Senate of the Eighteenth Legislature of the State of Hawaii, Second Special Session of 1995, convened at 11:10 o'clock a.m. with the President in the Chair.

The Divine Blessing was invoked by the Reverend Alan Urasaki, Honpa Hongwanji Hawaii Betsuin, after which the Roll was called showing all Senators present with the exception of Senators Ikeda and Liu who were excused.

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

ORDER OF THE DAY

ADVISE AND CONSENT

Stand. Com. Rep. No. 1-S2 (Jud. Com. No. 1-S2):

Senator Solomon moved that Stand. Com. Rep. No. 1-S2 be received and placed on file, seconded by Senator Holt and carried.

Senator Solomon then moved that the Senate advise and consent to the nomination of RUSSELL BLAIR, II for Judge of the District Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Holt.

Senator Solomon rose to speak in support of the nomination:

"Mr. President, I rise to speak in support of Judicial Communication No. 1-S2, Russell Blair, II, Chief Justice nominee to the District Court of the First Circuit, for a term of six years.

"Mr. President, Russell Blair holds a B.A. degree from the University of Hawaii and a J.D. degree from the William S. Richardson School of Law. He presently serves as Executive Director, Office of Consumer Protection, Department of Commerce and Consumer Affairs, and has previously served as a deputy prosecuting attorney for the City and County of Honolulu and as an attorney in private practice. Mr. Blair also served for a total of 19 years with the Hawaii State Legislature, from 1974 to 1987 in the House of Representatives and from 1988 to 1993 in the Senate. During his tenure as a Legislator, Mr. Blair was involved in many many legal issues, especially in the areas of business regulation, consumer protection, insurance, regulated professions, and civil and criminal legislation. Mr. Blair has also provided pro bono legal assistance to Hawaii Lawyers Care and Kula No Na Po'e Hawai'i.

"Testimony in support of the nominee submitted to your Committee, attests to Mr. Blair's knowledge of the law as well as a genuine concern and compassion for persons involved in our legal system. Mr. Blair's fairness, objectivity, and independence in his legal work and his interaction with constituents during his tenure as a Legislator, are often mentioned as qualities which qualify him to be an excellent judge.

"Your Committee also received testimony from Senator James Aki regarding allegations of misconduct by Mr. Blair during his tenure as a Senator. While your Committee may empathize with Senator Aki's concerns, your Committee finds that the nominee has provided both written and verbal information during the public hearing

which satisfactorily addressed the concerns raised by the Senator.

"Based upon the testimony presented and your Committee members diligently questioning the nominee regarding his actions during his tenure as a Legislator and his thoughts about his individual capabilities to serve as a judge and a member of the judicial branch, your Committee believes that the nominee adequately responded to the Committee's inquiries and therefore, recommends confirmation by the Senate. Thank you, Mr. President."

Senator Aki, rising in opposition to the nominee, then stated:

"Mr. President, I rise to speak against the nomination.

"Mr. President, I attended the hearing yesterday morning and also presented testimony at the hearing. I was grateful that I was able to do so. What I witnessed was a disappointing display of arrogance, hypocrisy, and power politics. Sadly, the citizens of this state could not have been present to see what transpired.

"Mr. President, the playing field was not level.

"Unfortunately, Russell Blair did not answer the questions I asked. A few were raised by the chair and Senators, much to their credit. Unfortunately, the committee did not pursue the questions. In my estimation, the committee failed in their task.

"The central issue before the committee was whether Russell Blair has the character and ethical standards to be a judge. The committee can only determine that by pursuing the questions that were asked by myself and others, then by listening to the responses can they find out the truth. That was not done.

"At this time, I would like to ask the chair of the Committee on Executive and Judicial Appointments, did Russell Blair submit written response to the questions I submitted? Mr. President?"

The President then posed the question to Senator Solomon, and Senator Solomon responded:

"Yes he did."

Senator Aki further inquired:

"Is the response in the packet with all the testimonies? I have not received a written response from Mr. Blair."

Senator Solomon responded: "Yes it was, Mr. President."

Senator Aki continued:

"I did not see it and I apologize for that. What were the questions? Since Russell Blair did not answer the questions, in my estimation, I believe the questions should be brought forth here on this floor. I have the questions in front of me and I submitted this yesterday for the record:

- (1) Did you tape Senator Bert Kobayashi in October 1993 without his knowledge? I do not think that question was very difficult. Russell Blair admitted that he did tape Senator Kobayashi.

- (2) Why did you tape Senator Bert Kobayashi? That question was not answered, Mr. President.
- (3) Do you have copies of that tape? That question was never asked or answered, I believe. And if yes, would you release the tape to the media? And if not, why not? That question was not addressed clearly.
- (4) Did you give the tape to the F.B.I.? That question was answered. Russell Blair has admitted to giving the tape to the F.B.I., but he has not answered why, or if he did, it was very vague.
- (5) Did you leak information about the tape to the media? Russell Blair did answer the question and said that he did not and he has claimed that there are articles in the paper that say he did not. However, I bring to the attention of this body that while at the hearing yesterday, and much to the credit of an individual who testified at the hearing, Russell Blair did disclose that he did reveal that this tape would be given to the F.B.I. and to the media. And yet he said that he did not. So someone is not telling the truth.
- (6) Who else knew about the tape? That question was never asked.
- (7) Were you instructed to make the tapes for anyone or the F.B.I.? That question was never answered. And if yes, who are these people?
- (8) In your affidavit, you say there were extraordinary circumstances. Would you explain what these extraordinary circumstances were that made it necessary for you to tape Senator Bert Kobayashi. That question was not asked or answered adequately.

"This morning I read in the newspaper, Mr. President, a statement that Mr. Blair made. It says here, 'In my twenty years in the Legislature, this was the first time I heard credible information about alleged criminal wrong doing by a Legislator,' Blair said, indicating he felt a responsibility to turn the information over to authorities.' What is the credible information he is talking about? He did not answer. And that relates to question number 9 that I posed to him and which was never answered.

"Mr. President, I am concerned about Russell Blair's respect for the truth by not answering the questions that were posed to him. I am also concerned about this body's search for the truth. The central truth about what happened in 1993 is not the bribery or the tape. I was not bribed. The truth is that the taping was done to change the leadership in this State Senate. The truth is that Russell Blair played a key role and he is now being rewarded. The truth is that people in our State are disgusted with these kinds of political actions and they will be demanding better.

"I may have lost in yesterday's hearing, but the battle is not over. The vote today ends a sad chapter in the affairs of this body. But, there are other days ahead. It is our hope and my hope that this body can now move forward and start working on the pressing problems of the day.

"Mr. President, in closing, I have additional comments that I had intended to say on the floor but I would like to have them submitted into the journal for the record. Thank you."

The Chair having so ordered, Senator Aki's remarks read as follows:

"Mr. President, members of the Senate, I rise to speak against the confirmation of Russell Blair to the District Court of the First Circuit.

"I had prayed and hoped that this day would never come. However, deep down inside of me, I never doubted that Russell Blair would be confirmed and on the other hand in a way, I am glad, because now I have my day in court. Hopefully, the truth will prevail. To come to the point, this confirmation should be denied. Russell Blair does not have the character, integrity, nor the ethical standards to be a judge in our State of Hawaii.

"His actions speak for themselves.

"The true character of Russell Blair was finally revealed in October of 1993. He did what no Legislator should ever do, more so because of his legal background. Russell Blair tape recorded conversations over the phone with another Senator without the Senator's knowledge or approval, for devious purposes.

"Numerous bar associations have opposed lawyers participation in secret telephone recordings on the grounds that such conduct involves fraud, deceit, or misrepresentation.

"Russell Blair engaged in conduct involving misrepresentation and used recorded statements out of context and in a misleading way. His sole intent was to discredit me.

"Among numerous definitions of 'deceit' are: the act or practice of deceiving (as by falsification, concealment or cheating) ... artifice, or practice designed to mislead another! Wily device ... any trick, collusion, contrivance ... or underhanded practice used to defraud another.

"'Deceitful' is defined as serving to mislead or ensnare.

"The surreptitious recordation of conversation by Russell Blair was an 'underhanded practice' designed to ensnare an opponent. It was deceitful conduct of the highest level.

"Why did he do it? Only Russell Blair can answer that. I had hoped that he would have answered that question before the Executive and Judicial Appointment Committee. There were many questions that needed answers. Unfortunately, the chair did not allow me to ask the questions. I am disappointed that the committee did not pursue the questions. In my estimation, the committee failed in their task. The hearing was a 'shibai.'

"The central issue before the committee was whether Russell Blair has the ethical standards and moral character to be a judge. The committee can determine that only by pursuing the questions asked, and listening to the facts from him. Neither was accomplished. What is more reprehensible is the fact that information of a taped conversation leaked to the media while the tape was transmitted to the FBI.

"I can only hold Russell Blair accountable. If this individual is a man of honor, he would submit a copy of the tape to the media. I know that the tapes will reveal no information that I was bribed. And for the record, I say to you, my colleagues, I was not bribed.

"An individual without compassion, or a sense of fair play, cunning and deceitful, intent only on a path to defame, no matter what the facts reveal, all done to further his own personal interest.

"There is no doubt in my mind that Russell Blair is here today because of his actions. Russell Blair did everything he could to discredit me, and he has succeeded; in affecting my presidency in the Senate. In doing so, he revealed his character for the kind of person he is.

"I ask, is this the kind of individual we want to be a judge in our Hawaii nei? The answer is no! I found out two days ago that Russell Blair and a few others petitioned the Office of Disciplinary Counsel to modify formal opinion number 30. This was done only two months ago.

"One has to question the reason for doing this. To understand the significance of this latest action, I must go back to late 1993 when I made a request to the office to investigate his taping of a fellow Senator. The case was dismissed in March 1994, because the counsel claimed, Russell Blair was not aware of the existence of formal opinion number 30.

"The modification is confusing. I have a copy of their opinion in a letter dated July 27, 1995. The context of the letter says, 'A lawyer can tape conversations without permission,' but it goes on ... let me read the opinion.

"The fact is opinion 30 has been adopted and addressed by the American Bar Association for many years. It was adopted by our Office of Disciplinary Counsel in 1988. The fact is Russell Blair should have known the basic tenet of law and for the counsel to dismiss my complaint without even a reprimand is very disappointing.

"I have not even touched on his work experience. The nominee has very little court experience. He worked in the Public Prosecutors' Office earlier this year for six months.

"The public deserves better. Our courts cannot afford the luxury of allowing this individual to do on-the-job training. There are other lawyers better qualified.

"I ask that this body dismiss this confirmation. Vote this nomination down. Send this nomination back. Show that we are an independent body of government acting in the best interest of the people of the State of Hawaii.

"To confirm Russell Blair as a judge will only undermine our judicial system. How can our people have faith and confidence in our judiciary if we confirm devious and unethical people into positions with prestige and power.

"This confirmation is an affront to the honest and hard working people of Hawaii. This confirmation should be denied.

"Thank you."

At 11:24 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:27 o'clock a.m.

Senator Solomon rose again in support and said:

"Mr. President, again speaking in support of the nomination and just for the record, I would like to state that I felt the committee dealt with the subject matter in a very fair way. I thought we were open-minded. I am very sorry that the previous speaker felt that the nominee did not answer the questions; the committee felt that he did.

"We were in a very difficult situation, as you know. We were trying to provide the linkages between the previous speakers testimony and how that would impugn the character of the nominee in terms of his capabilities and capacities to serve as a judge. As a result, I did request a written response which we do have. I have the record if any of my fellow colleagues would like to see it, it is available. We have even submitted the response to the press. So I felt that we were very fair in that respect.

"As far as the remarks of the previous speaker, in terms of him feeling that the committee was arrogant, I totally disagree with that. As a matter of fact, Mr. President, just for the record, the previous speaker did request to defer the actual voting until two o'clock and the committee complied. We were making every effort to accommodate the previous speaker, being that he is a fellow colleague of ours, and we were sensitive to his concerns. So, Mr. President, it aggrieves me, as your chairperson, when one of our fellow colleagues feels that the committee did not treat him fairly. And I hope that we can clarify that today.

"I am not going to get involved with the actual remarks of the previous speaker because I think that is his interpretation of what had happened back then and I feel that is his prerogative. But again, I would like to reassure you and I would like to reassure my colleagues that the questions were asked; records were submitted; we do have a judgment that was given by the Disciplinary Counsel which said that the nominee was not unethical; the nominee did submit newspaper articles in reference to the fact that he did not leak the information to the press, so we have all of that on file and if any of my colleagues would like to see any of those documents, please feel free to contact my office and it will be immediately sent to your office.

"With that, Mr. President, again I would like to assure you that there was no attempt to railroad the candidate; there was no attempt to disregard anything that was submitted to the committee for their consideration. Thank you very much."

Senator Fernandes Salling also rose in support of the nominee as follows:

"Mr. President, I rise to speak in favor of the nominee.

"I am proud, Mr. President, to speak on behalf of these two outstanding nominees, one of whom is a man my family and I have come to consider a friend. I have been privileged to work closely with Senator Blair as a colleague for nearly a decade, and I have the highest regard for his work habits, the level of commitment he brings to every task and goal, and the honesty and integrity which are deeply imbedded in his fundamental character.

"Just as I know that Senator Blair was one of the finest Legislators I've worked with, I am equally confident that he comes before this body today as one of the most highly qualified, and most fully prepared candidates for judicial office whose appointment I have had the opportunity to consider during my 13 years in the Hawaii State Senate.

"Finally, I wish to commend and congratulate our Chief Justice Ronald Moon for the calibre of these two appointments, and for the manner in which they have been submitted to this body for its consideration, pursuant to Article VI, Section 3, of the Constitution. Thank you."

Senator Anderson then rose in opposition to the nominee and stated:

"Mr. President, I am afraid that I am going to have to speak against the nominee.

"Primarily because of what Senator Aki had said earlier, I went and did some research. I was not here when the Senate was having some problems, but there were some other Senators' names that were brought out when this thing was going on. Also, I went and listened yesterday and got Representative Colleen Meyer's testimony and went over it and was quite concerned about that. I listened on the little black box in my office and when the question was asked, 'Did you release any names to the news media?' if I remember correctly, Bob Reese said that he had received a call. These are some of the concerns.

"But most of all, Mr. President, I stand because there is an old saying, 'I am not my brother's keeper.' In my case, Mr. President, I have always been my brother's keeper. I was brought up to love my brother and I always did. And when he went ahead and bid on a piece of land in Kakaako where John Dominis now stands, he bid on it legally. Mr. Blair was a Representative at that time and said that he was going to make that into a park and that the Senator had no right going into that. And there were, more or less, allegations that there was somebody who had helped in that. And I remembered that it was a bid, an open bid, and that there were only two people that bid. I also remember that Spence Weaver called some time later and said, 'Andy, had I only known.' And Andy said, 'Hell Spence, I would have called you, then you could have bid against me.' It was things like that.

"Then there was an allegation that he had some friends on the land board. Well that may or may not have been true after the bid went out and he won. Everybody that was in that room yesterday that was for Mr. Blair was a friend. You don't go to an enemy and say 'hey, I need some help, is there a possibility of something?' I've been to the city and county and I've been to the state on many of my bids that I have worked on to find out how do you go about trying to get some changes. That's why we did the procurement law over -- there were problems.

"For those reasons alone, at this particular time, I have to be opposed to that because I don't think that Andy Anderson going before the ethics commission once, was enough. But to then have a statement made that the Senator needed to go a second time and get cleared for a second time, that has bothered me all these years. But I figured maybe Mr. Blair was young at the time, and I wasn't going to say anything today until after a few things came up and I had to go and do a lot of research. And for those reasons, I will be voting 'no.' Thank you very much."

Senator Tam also rose to speak against the nomination as follows:

"Good morning, Mr. President and fellow colleagues of the State Senate. I wish to formally register my 'no' vote to the confirmation of Russell Blair, II, to fill the vacancy on the District Court of the First Circuit.

"I may be one of the few in opposition, but before I proceed with my reasons of a 'no' vote, I wish to make it clear that my vote is based on the Constitution of the State of Hawaii and the proceedings before us. I do not intend to bring in any personalities for voting 'no.' It has always been my past practice to vote on the merits of any legislation brought before us.

"The proceedings and communications between us, the Executive Administration, and the Chief Justice has been

very educational and fruitful to me in making my decision today. Thus, my reasons for voting 'no' are as follows:

1. On general election day of 1994, the voters of Hawaii passed three Constitutional Amendments: (1) authorized the State Senate to confirm State of Hawaii's District Court judges; (2) limit term of members to the Judicial Selection Commission to six years; and (3) change the composition of the Judicial Selection Commission member appointments. There is confusion to the validity of the Constitutional Amendments due to the Governor and Chief Justice having refused to comply with the amended composition of the Judicial Selection Commission's member appointments. Furthermore, if one is to follow logic, the Judicial Selection Commission in abiding by the First Constitutional Amendment (asking the State Senate for confirmation of District Court judges) should be in compliance with the amended composition of the Judicial Selection Commission. My conclusion is that the Judicial Selection Commission should recall its District Court nominees. The two Constitutional Amendments are of partnership.
2. Since the Judicial Selection Commission considers the Constitutional Amendments valid, it should also abide to the six year term limitation for members of the commission. The commission is not at the present time in compliance with the six year term limitation. Thus, again, my recommendation to the commission is to recall its nominees.

"In summary, there are questions of the validity of the Constitutional Amendments but yet the three branches of government interpret and acts differently. Also there is a pending law litigation, *Marks v. Cayetano*. Again my recommendation to the Judiciary Selection Commission is to withdraw its nominees until the differences are resolved. In the meantime, in terms of our branch of government judiciary system, continue to utilize per diem judges. My job as designated by the State of Hawaii's Constitution is to be accountable to the public for open government and to make sure that our government's process and constitution is practiced. This is not the case as I view it. The Judicial Selection Commission is in violation of the State of Hawaii's Constitution.

"My last two comments are that the Office of Disciplinary Counsel is a joke. To make a decision that it takes no discipline action against Russell Blair because he did not know that he had to conform his conduct with Disciplinary Board Formal Opinion No. 30, is a poor excuse. A more sensible and logical reason should be made. I remember another case where Russell Nagata, now a District Court judge, tampered, actually tampered (and I asked for an investigation on that) with public records as the comptroller of the State of Hawaii for the Department of Accounting and General Services, which is against the law, and he was not disciplined. (Keep in mind that he had a law degree at that time.) Also the Attorney General under former Governor Waihee refused to file criminal charges. I'll let the public be the judge of that case and I think the public has made its decision, unfortunately, due process will not be carried out.

"I have to walk very lightly in the future if I approach any judges because there may be repercussions. But so be it, I remember back in 1979, I had opposed Ahuna Street and my life was threatened. I made a bold step and after two days of thinking about it, I decided that I'm not going to turn around and back down from what I believe in. Today I'm still alive.

"As a Senator, I am glad we passed S.R. No. 47-95, requesting the Judicial Selection Commission to develop,

publish, and utilize standards for the appointment of judges and justices, introduced by yours truly and I thank my colleagues for helping me on that. This report is to be reported to the Legislature 20 days before the 1996 Legislative Session. Hopefully, in the future the Judicial Selection Commission, Governor, State Senate, etc., will have formal criteria in appointing judges. Thank you."

Senator Aki rose again and stated:

"Mr. President, I just wanted to respond to the comments made by the chair of the Executive and Judicial Appointments Committee in regards to the term I used, 'being arrogant.' I want it known that I did not direct my comments of arrogance to the members of the Legislature and if that is the impression, then I apologize to my colleagues. That is not my intention. I stated in my comments that I believe the members did try to ask some questions and they were tough questions and I give credit to them for trying. Thank you."

Senator Baker then rose to speak in favor of the nominee as follows:

"Mr. President, I rise in support of this nominee.

"It is curious, Mr. President, that I too sat through the hearing yesterday and listened to all of the testimony but I came away with a very different interpretation of what transpired at that committee hearing. I saw a committee of the Senate exercising its responsibilities with fairness, with sensitivity and with an attempt to maintain not only decorum, but the dignity that goes with the Committee's responsibilities. The members of the Committee on Executive and Judicial Appointments stuck to the issue at hand, which was to determine the qualifications of the nominees before them, and the committee did not stray into other matters as some would have wanted them to.

"I thought I knew Russell Blair fairly well because he at one time represented the district that I now represent. I also was a colleague in the House when he was in the Senate. But after listening to the people that knew him in many different arenas, I better understood why so many thought he would make a fine judge. I was a supporter of Russell Blair's going in, but as I listened, the kinds of attributes that rang over and over again were the kinds of qualities that we need in our District Court judges -- things like respected, qualified, extremely strong analytical and writing skills. From his days in the Legislature, former constituents came in to support him indicating that Russell does, in fact, know how to listen and how to work with people. Those are qualities, too, that District Court judges must have because District Court is the people's court. It is the court closest to the people and the court that most folks come into contact with.

"During the hearing, Russell Blair was praised by foes and people who have been on the same side of issues with him. He has been described as conscientious, independent, and a phrase I liked, fearless when he feels he's correct. It is perhaps this strong sense of right, this strong sense of duty, the sense of fearlessness that put him at odds with one of his former colleagues. He knows how to talk to people; he knows how to listen; he has a strong sense of ethics. When such a cross section of the bar from plaintiffs' attorneys, to prosecutors, to public defenders, corporate lawyers, attorneys who have worked with him and the Judicial Selection Commission recommended him for both positions. I think we have an individual who not only will serve our state well, but this also indicates very clearly, that Russell will follow that long line of former Legislators who went on to serve very effectively on the bench. I am sure that my colleagues could recite those names a lot better than I --

but former Justices Wakatsuki and Menor, as well as former Judge Hiroshi Kato come to mind.

"I think Russell Blair will rise to the occasion -- he has the skills necessary. He is qualified and I will be proud to cast a vote in his favor.

"With regard to some of the comments that other of my colleagues have made on the floor regarding the propriety of these proceedings, may I just assure my colleagues that the Senate is acting pursuant to its constitutional mandate. The Chief Justice of the Supreme Court forwarded these nominees to us for consideration, in accordance with the Constitution as amended by the voters in November of 1994. When queried, the Counsel to the Supreme Court advised that since there has not been any court of competent or appropriate jurisdiction that stayed or set aside the effective date of the amendment which is upon ratification by the voters, then the amendment must be presumed to be in full force and effect. I am also advised by those learned in the law that officials cloaked with apparent authority will be given deference in the execution of their responsibilities. We must then presume that the Judicial Selection Commission was duly constituted and acting appropriately.

"I don't believe there is going to be a cloud on these nominees as we move forward in fulfillment of our constitutional responsibilities and I urge all of my colleagues to vote 'aye' on this particular nominee and the next one we will take up. Thank you, Mr. President."

Senator McCartney, also rising in support of the nominee, then said:

"Mr. President, I rise to speak in support of the nominee.

"Mr. President, today brings back a lot of memories, a lot of painful memories of what happened in 1993 and it is a time that I am not too happy about or proud of. I look back at the time I supported the good Senator from Waianae as our President and I was proud to do that. I think there are many things that you can be very proud of that you did during your tenure. I think that we were all happy to support you.

"The fact of the matter is that we are here today and we are moving forward as you said. And I think that is very important and I hope today brings a close to that chapter in 1993 when I think all of us did things that maybe when we look back, we could have done a little better. And even for myself, when I look at some of the feelings that I had and the concerns that I had, it was a very frustrating time for all of us. I'm proud to say that the Senate has moved forward and we are moving forward by having this discussion today and getting everything out and bringing closure to this issue.

"I think what is important is that when I review the nominee, I look back on his career and I take into context all the things he has done. I don't know if we will ever get to the truth of who taped whom and who did what. There are so many versions and stories and there is so much frustration, anger and hurt involved in all of it that it is hard to get out the actual facts; we are not in a court of law.

"When I look at the nominee and I look back at his career, I look back at having many meetings in his office, having philosophical discussions about right or wrong and what we should do and I always remember those thoughts. He talked about process. He always believed in the process and that if the process were fair, the right

thing would happen and he could live with the result as long as the process was fair.

"I remember being a freshman and during my freshman year he challenged the process of the Senate by taking two bills to the floor even though the votes were not there in caucus. Those two bills were the Bishop Estate trustees' salary cap and a moratorium on foreign investors owning residential and agricultural property in the state and there were not enough votes, but Russell was fearless and he said, 'No, I'm the chairman; we're going to take it to the floor.' And I remember as a freshman saying, 'Wow, what am I going to do?' And I remember supporting his position and voting for those two bills on the floor and yet those bills died. He was fearless and he challenged a process that he thought was wrong. That is something I have always admired in him and I learned a lot of lessons from that process.

"He is independent; there's no question about that. I disagreed with him when he sued the lieutenant governor on the A+ program, which I thought was a great program, but again, he was fearless. So I think he has integrity and he is fair. In hearings that he conducted, he would always take time to listen to both sides, ponder the issue, review all different sides of the story and then make a recommendation to the committee on what should be done.

"I feel that the bottom line for Russell Blair is that I think he will be an excellent judge. He will be a people's judge; he will work with people to resolve some problems. So it is my hope, Mr. President, that the Senate can heal and as the Senator from Waianae said, that we can move forward and start focussing on the issues of the people and a lot less on our own political agendas. Thank you very much, Mr. President."

Senator Holt then rose in support of the nominee as follows:

"Mr. President, I rise to speak in support of the nomination.

"Mr. President, before I proceed, will you yield to a question?"

The President having answered in the affirmative, Senator Holt inquired:

"Is it true that you are the only member of this body who ran for a Senate seat (generations ago and after statehood of course) when this state had multi-member districts and fourth place was just as good as first place on election day?" (Laughter.)

The President answered: "That is correct."

Senator Holt continued:

"Thank you, Mr. President. This is a very historic day for the Senate. I feel extremely fortunate to have the opportunity to participate in today's proceedings. I would especially like to thank the chairman and the members of the Judiciary Committee, Senate Leadership and the House for passing landmark legislation that makes certain that our communities are provided with quality public servants on the bench at all levels.

"Mr. President, I have known this nominee for 17 years; I have worked with this nominee for 17 years. And as you know, Mr. President, he has been a pain in you know where, for 17 years. (Laughter.) Even Red Morris, who has been working in this body generations before you, had but a few choice words to say about the nominee in yesterday's hearing. Those few choice words

were words in praise of the nominee's scholarship and fairness, in spite of the nominees ability to disagree with Red's clients occasionally. (And you know Red's clients are numerous and how could anyone not disagree with Red somewhere on Final Reading.)

"Mr. President, I remember a very controversial bill that the nominee had to negotiate several years ago as Senate Judiciary chairman. As I recall, he was neither strongly for or against the measure, but as chairman, he was the steward of the measure and we entrusted him to lead us through an onslaught of public and media pressure on both sides of the issue. As expected, and characteristic of his work ethics throughout his career in the Legislature, the nominee spent hours and hours researching the issue, dissecting testimony as would the Revisor of Statutes. When Russell Blair came into my office during conference with a standing committee report from the 1950 Constitutional Convention, I knew the Senate had a very strong conference position lead by a very competent chairman. The rest is history, Mr. President.

"This nominee is very qualified, in my opinion. The people in this state will be well served by Russell Blair as a judge, just as they were when he was a Legislator. I am confident he will do a great job and will demonstrate to both his supporters and detractors that the Chief Justice made a wise decision in nominating a former colleague and the Senate made a smart decision in confirming the said nomination. I urge all my colleagues to look at the significant contributions Russell Blair has made to his community and to this state and vote in support of his future contributions to society as a judge of the District Court of the First Circuit.

"I close by requesting that the nominee, if confirmed by this body, to not change his demeanor and continue to be a pain in the you know where in the other branch of government too. (Laughter.) Thank you."

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

Ayes, 19. Noes, 4 (Aki, Anderson, Matsuura, Tam). Excused, 2 (Ikeda, Liu).

Stand. Com. Rep. No. 2-S2 (Jud. Com. No. 2-S2):

Senator Solomon moved that Stand. Com. Rep. No. 2-S2 be received and placed on file, seconded by Senator Holt and carried.

Senator Solomon then moved that the Senate advise and consent to the nomination of DIANA L. WARRINGTON for Judge of the District Family Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Holt.

Senator Solomon rose in support of the nominee and stated:

"Mr. President, I rise to speak in support of this nomination.

"Mr. President, Diana Warrington holds a B.A. degree from the University of Oregon and a J.D. degree from Boston College. She presently serves as a per diem Family Court judge with the First Circuit and previously held positions with the Legislative Reference Bureau, the U.S. Court of Appeals, and as law clerk to Associate Justice Frank D. Padgett of the Hawaii Supreme Court.

"Testimony in support of the nominee submitted to your committee indicates that Judge Warrington has exhibited

legal expertise and objective courtroom manner during her tenure as a per diem judge. Her personal qualities of being fair-minded, calm and compassionate have been used to characterize her service as a jurist. Judge Warrington, in her remarks to the committee, expressed her commitment to public service as well as her guiding principles that there must be fairness in the courtroom and that all litigants deserve a meaningful opportunity to be heard.

"Your committee members diligently questioned the nominee regarding her tenure as a per diem judge and her capabilities to continue to serve as a jurist with the Family Court. Your committee believes that the nominee adequately responded to the committee's inquiries and therefore, I am requesting a positive vote for this nominee. Thank you."

Senator Tam rose in opposition to the nomination as follows:

"Mr. President, please register a 'no' vote for me again based on the same three reasons I gave earlier about the process itself. It's still not very clear and I think it should be cleared up before any action be taken. Thank you."

Senator Aki then rose and said:

"Mr. President, I would also like to request the same."

Senator Gaulty then rose in support of the nominee and said:

"Mr. President, I rise to speak in support of this nomination.

"Mr. President, in Diana L. Warrington, the Chief Justice has appointed someone who is eminently qualified to serve in our Family Court. She graduated from Radford High School in 1974, one of the best high schools in the state of Hawaii and which also happens to be in my district, Mr. President. That alone eminently qualified her for this position but she has done other things beyond graduating from Radford. She went to the University of Hawaii and after that went to the University of Oregon where she graduated Phi Beta Kappa. During that period of time, she supported herself through her college career working in a very dangerous occupation full-time, while trying to save up enough money to complete her education. The dangerous occupation was that of bank teller. From there, Mr. President, she went on to the Boston College School of Law then came back to Hawaii to serve as a law clerk to Justice Padgett in our Hawaii Supreme Court. She was fortunate enough to be selected to serve as supervising staff attorney with the United States Court of Appeals of the Third Circuit in Philadelphia. She distinguished herself in that particular position supervising and training staff attorneys in substantive and procedural law, federal, appellate, civil and criminal procedure and preparing legal memorandums and drafting opinions for the Third Circuit Court of Appeals. More importantly, Mr. President, she fell in love with her husband Alex and fortunately, she came back to Hawaii after that.

"As the chair has indicated, in Diana Warrington, we have someone who has served as a per diem Family Court judge for the last four years. It was very interesting to me, Mr. President, to hear the comments of the practitioners who have practiced before her in the Family Court. Comments such as: a person of high intellect and a capacity to act in a decisive fashion; at the same time, another attorney said, she is kind, gentle and compassionate; another attorney said that despite the fact that the judge may have ruled against her, she felt that

she was treated fairly and her client was treated with respect; another attorney said that she was a careful listener and someone who demonstrates great patience in searching out relevant facts; and another attorney mentioned that of all the per diem judges that she had experienced in her practice of law, Judge Warrington was one of the best to ever sit in Family Court.

"These are words of high praise for this nominee and I think she has distinguished herself every step of the way. I am confident that she will make a significant contribution to the Judiciary and to the people of Hawaii in her new capacity as a District Family Court judge. I would urge all my colleagues to express their approval for the nomination by voting 'aye.' Thank you."

Senator Holt rose in support and said:

"Mr. President, I rise very briefly in support of the nominee.

"Yesterday's hearing was a very, very powerful, moving hearing for this nominee. The testimony, as expressed by the previous speakers, went from one extreme of being very intellectual, to someone who is very sensitive and compassionate and it just covered the whole range.

"When Judge Michael Town came up to the table yesterday and indicated that Ms. Warrington has demonstrated superior ability to handle basically every assignment within the system, it showed that the Chief Justice was not only making a smart selection here, but a very sound one, because in the District Court area, we need people like Ms. Warrington. I think the people of this state will be well served. Thank you."

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

Ayes, 21. Noes, 2 (Aki, Tam). Excused, 2 (Ikeda, Liu).

SENATE RESOLUTION

The following Senate resolution (S.R. No. 1-S2) was read by the Clerk and was disposed of as follows:

Senate Resolution

No. 1-S2 "SENATE RESOLUTION AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE FOR THE SECOND DAY."

Offered by: Senators Baker, Ihara.

On motion by Senator Ihara, seconded by Senator Anderson and carried, S.R. No. 1-S2, was adopted.

Senator Baker rose on a point of personal privilege and stated:

"Mr. President, I rise on a point of personal privilege.

"Mr. President, a question has been raised regarding the status of interim executive appointments and those interim appointments to executive boards and commissions since these matters were not before this Special Senate Session. I wish to remind my colleagues that the purpose of this session was a very limited one. This session was convened at the request of two thirds of the Senate members pursuant to Article III, Section 10, for the purpose of carrying out the Senate's unique responsibilities established by Section 3 of Article VI, as amended by the voters in November of 1994.

"The Senate has no authority to call itself into Special Session to consider executive appointments. Additionally, the Senate Leadership has been advised by the Senate Majority Attorney that in his opinion, this Special Senate Session to consider judicial appointments only, does not constitute a session in the meaning of Article V, Section 6, which refers solely to executive appointments. Our Senate Attorney's opinion is that the interim executive appointments are therefore not affected by our adjournment Sine Die of this Special Senate Session. Thank you, Mr. President."

ADJOURNMENT

Senator Ihara moved that the Senate of the Eighteenth Legislature of the State of Hawaii, Second Special Session of 1995, adjourn Sine Die, seconded by Senator Anderson and carried.

At 12:05 o'clock p.m., the President rapped his gavel and declared the Senate of the Eighteenth Legislature of the State of Hawaii, Second Special Session of 1995, adjourned Sine Die.

STANDING COMMITTEE REPORTS

SCRep. 1-S2 Executive and Judicial Appointments on Jud. Com. No. 1-S2

Recommending that the Senate consent to the nomination of RUSSELL BLAIR, II, for Judge of the District Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the State Constitution.

Signed by the Chairman on behalf of the Committee.

Ayes, 6. Noes, none. Excused, 1 (Liu).

SCRep. 2-S2 Executive and Judicial Appointments on Jud. Com. No. 2-S2

Recommending that the Senate consent to the nomination of DIANA L. WARRINGTON for Judge of the District Family Court of the First Circuit, for a term of six years, in accordance with the provisions of Article VI, Section 3, of the State Constitution.

Signed by the Chairman on behalf of the Committee.

Ayes, 6. Noes, none. Excused, 1 (Liu).

NUMBER AND TITLE	Offered	Referred	Report of Committee	Adoption
S.R. 1 AUTHORIZING THE PRESIDENT TO APPROVE THE JOURNAL OF THE SENATE FOR THE SECOND DAY.	9			9