

**GM580**

**LATE**

**TESTIMONY**

**CHRISTOPHER J. YUEN**  
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March 14, 2014

Re: Nomination of Judge Michael D. Wilson to Hawai'i State Supreme Court

Dear Sen. Hee and members of the Committee on Judiciary and Labor:

Thank you for the opportunity to present further testimony in support of Judge Wilson's confirmation.

At the end of the March 6, 2014 hearing, which ended, rightfully, in a unanimous vote to recommend confirmation, the public record on this nomination stood as follows:

--over 110 individuals, including two retired appellate court justices, a former governor, and several former bar association presidents, had offered glowing testimony in support of Judge Wilson.

--not a single attorney had indicated his or her personal opposition.

--one neighbor had submitted testimony in opposition.

--not a single factual allegation of any misconduct, other than from the one neighbor, and that not involving judicial duties, had been placed in the public record.

--the bar association had submitted a letter rating Judge Wilson "unqualified", without offering any factual support, although the president-elect of the association admitted that for at least several of the instances of misconduct that Judge Wilson had been questioned about, the bar had no "specific factual allegations" of such misconduct, even anonymously. See the illuminating exchange between Sen. Hee and Mr. Markham at about 1:09 to 1:11 of the 'Olelo taping.

I've just finished reviewing the public testimony for the March 15 continued hearing, at about 9 pm. on March 14, and the record is almost the same. There is more favorable testimony; there are now two or three more unfavorable testimonies, but no new allegations supported by any facts have emerged. Not a single fact has been presented, verified or unverified, that supports the HSBA's letters.

A brief comment on the credibility of the bar association's letters. The president-elect spent most of an hour in testimony on March 6, with the current bar president sitting in the audience behind him, explaining why the bar's rules prohibited it from saying anything beyond the "unqualified" rating. Six days later, apparently after being reminded by Sen. Hee, the bar directors and president-elect remembered that they had changed their rules in late 2010 to permit some further explanation, and took this opportunity to add further criticism of Judge Wilson. One would think that this sequence of events would cause the bar directors to have a bit of humility and perhaps refrain from finding fault with others, especially because the president-elect, current president, and several of the current directors were directors when they changed their rule in 2010.

It should be especially telling that not a single attorney has come forward personally opposing the nomination. Even the bar president-elect was not necessarily offering his own personal opinion; his law partner actually submitted testimony in support of Judge Wilson in 2000 and again this year.

Could this lack of opposition from attorneys be due to fear of retaliation? There are thousands of retired and inactive attorneys in the state who have no reason to fear retaliation for themselves or their clients, and surely many had interactions with Judge Wilson during his 30+ year career in Hawai'i. The bar president-elect says that the concern is not for attorneys, but for their clients. All attorneys appearing before Judge Wilson in the circuit court in recent years have either been prosecutors representing the state, or defense attorneys representing the defendant. It's hardly credible that a judge would find satisfaction punishing the state to retaliate against a prosecutor, and surely a judge knows that punishing a defendant does not result in a defense attorney going to jail. If Judge Wilson is confirmed to the Supreme Court, he would be one of five justices; he cannot act unilaterally, and most criminal appeals are handled by separate appellate lawyers for both prosecution and defense, they are a different group than the lawyers who generally appeared before Judge Wilson.

This record shows genuine, tremendous support from members of the bar who know Judge Wilson.

Are we really at the point where vague anonymous accusations can override a record of 13 years of service as a judge, and the testimony of more than a hundred people who know Judge Wilson well? I hope not, and I hope this committee will re-affirm the decision it made on March 6.

I'd like to comment upon the request that Judge Wilson release information gathered in the course of the Judicial Performance Program under Rule 19 of the Rules of the Supreme Court. My considered opinion as an attorney is that Judge Wilson does not have the right to release such records, nor does anyone else, because of the confidentiality provisions of Rule 19. My opinion as a citizen is that if the Senate takes the position that a judicial candidate's nomination is in question because of a refusal to release such records, it will undermine the judiciary's internal program to evaluate and improve judges, and seriously erode the nomination process.

These records are generated by periodic reviews of judges, where attorneys are asked to answer a questionnaire rating the judge, and also invited to submit anonymous comments. These are used within the judiciary to provide feedback to judges during their tenure, and to help the Judicial Selection Commission in its role of providing lists of candidates, and deciding on judicial retention. A summary of the information, including comments, is given to judges; this summary contains much of the same information that goes to the Judicial Selection Commission.

Rule 19 could not be clearer that the information generated is to be confidential. Haw. S. Ct. Rule 19.5(b) provides:

**(b) Confidentiality of information and data.**

All information, questionnaires, notes, memoranda, data, and/or reports obtained, used, or prepared in the implementation and administration of the program shall be privileged from discovery in any lawsuit, **and shall not be made available to any tribunal, board, agency, governmental entity, or person, other than the Chief Justice.** Except as otherwise provided herein, the Chief Justice shall have the sole discretion and authority to determine how the above information can be used to fulfill the purposes of the program. (emphasis added).

The confidentiality applies to all information, including questionnaires. It is not just a matter of the confidentiality of the persons giving information, which is separately covered in Rule 19.5(a).

Rule 19.5 goes on to authorize release of information to the Judicial Selection Commission and to the judge in question:

**(c) Furnishing of information and data to the judicial selection commission.** The Chief Justice shall provide such information and data concerning the performance of a judge to the Judicial Selection Commission as the Commission may request in writing. All information and data furnished the Commission pursuant to this provision shall remain confidential.

**(d) Furnishing of summary to the evaluated judge.** The Chief Justice shall in a manner consistent with the requirements of, furnish the judge evaluated a summary paragraph (a) of this section relating to respondent confidentiality of the judge's performance as determined by the evaluation process established by this rule.

Rule 19(b) does give the Chief Justice some discretion in the use of the information:

Except as otherwise provided herein, the Chief Justice shall have the sole discretion and authority to determine how the above information can be used to fulfill the purposes of the program.

The Chief Justice's authority and discretion to use the information is expressly limited to uses to "fulfill the purposes of the program." These purposes are listed in Rule 19.1(a)-(e):

The purposes of the program are:

- (a) Improving individual judges' performance by providing information to the Chief Justice concerning their performance;
- (b) Providing a potential source of information for application and retention decisions by the Judicial Selection Commission of the State of Hawai'i;
- (c) Facilitating the Chief Justice's effective assignment and use of judges within the judiciary;
- (d) Improving the design and content of judicial education programs; and
- (e) Assisting the Chief Justice in discharging his or her responsibilities to administer the judiciary.

Giving information to the Senate during its deliberations on the confirmation of a judicial nominee is not one of the listed purposes of the program. The drafters of Rule 19 were surely aware that the Senate confirmed circuit court and appellate court judges, and the fact that providing information to the Senate during confirmation hearings is neither a listed purpose, nor anywhere else authorized in the Rule, was undoubtedly deliberate.

If information were released to the Senate, it would have to include the same "information and data" which Rule 19.5(c) provides "shall remain confidential." No exception is given to this command in Rule 19.5(c).

Rule 19 does not contain an express or implied provision that the affected judge can either waive the confidentiality of information obtained in the Judicial Review Program, or that the Chief Justice can delegate the decision to the affected judge whether to make a broader release of information. Besides the plain language of the Rule, the confidentiality of such information, as will be discussed below, is not simply for the protection of the affected judge, but is also essential for the functioning of the program.

If release of this information were allowed, it is very likely that this will become routine and an expected part of the process for district court judges seeking confirmation to a circuit court position, and for all judges seeking confirmation to appellate courts. If the argument in favor of

release is that it gives the Senate a more complete picture of the judge's qualifications, it would seem to apply to all nominations. The Senate would request that the judge consent to the release, and the judge would be under great pressure to consent, because of the potential accusation that he or she was trying to hide something. This would have several bad results.

The nature of the program encourages anonymous comments. Unfortunately, as anyone who reads the anonymous comments posted online after news stories knows, this format can result in unfair, intemperate, and vituperative comments that may overshadow the real achievements of the judge in question. Allowing anonymous comments helps give feedback to judges, but making them public creates the possibility that writers of such comments can torpedo a judicial nomination later.

It's likely that the information would be used to attack and undermine the Judicial Selection Commission. The file on any judge, perhaps even the most respected, will surely contain at least some detrimental comments and information. This could be used to attack the JSC's decision to include the nominated judge on the selection list: "why was Judge X on the list when there were these comments" (or this seemingly low numerical ranking)? The Senate, however, does not see the files of all the other judges who applied, making comparison impossible. The JSC does see all files.

Finally, release of such records puts sitting judges at a great disadvantage compared with other judicial applicants in the confirmation process. They will have a long file containing anonymous comments while others will not.

In short, requiring a nominee to release such records is neither legal nor a good idea.

Thank you for your attention, and please reaffirm your vote for Judge Wilson.

# DAPHNE E. BARBEE

ATTORNEY AT LAW  
CENTURY SQUARE, SUITE 1909  
1188 BISHOP STREET  
HONOLULU, HAWAII 96813



DATE: 3-15-14

TO: Senator Hee, Chair of Judicial Committee and Honorable Committee Members

FROM: Attorney Daphne E. Barbee

RE: Judge Wilson

## SUPPLEMENTAL TESTIMONY IN SUPPORT OF JUDGE WILSON'S NOMINATION TO THE HAWAII SUPREME COURT

Dear Chairman Hee and Judiciary Committee Members:

I am a female attorney who practices law in Hawai'i for over 30 years. I was on the first Hawai'i Civil Rights Commission as a Commissioner. I specialize in civil rights law which includes sex discrimination and sex harassment. I have appeared before most Judges on Oahu. Some Judges are sexist in their treatment of attorneys and clients. However, Judge Wilson is not one of these Judges. Judge Wilson has been very fair to me, my clients and I have observed him in the courtroom treating everyone equally. He has exhibited no prejudices. He has not been intimidating. He is hard working, patient and conscientious, attributes which make a good Supreme Court Justice.

I am concerned that gossip and innuendoes are being used to smear his character with no identification of the persons who made derogatory allegations. In my discrimination cases, my clients are required to come forward with specifics and identify themselves. This is called due process, "notice" and a right to know who, what and when an action occurred. We must treat Judicial candidates fairly. If there is a complainant, he or she should come forward and give specifics. If the complainant is an attorney, whether female or male, they should come forward because part of being an attorney is to ensure justice prevails and Constitutional law on due process is followed.

I was not solicited by HSBA for input on Judge Wilson. When I asked HSBA why this happened, I was told that because I opted out of the non mandatory notices, my input was not solicited. I know of several other attorneys who support Judge Wilson who also did not obtain solicitations from HSBA to comment on Judge Wilson.

I urge Judge Wilson be approved as a Hawaii Supreme Court Justice. Thank you.

Sincerely,

Daphne E. Barbee  
Attorney at Law

March 15, 2014

TO: Senator Clayton Hee Chair, Senator Maile Shimabukuru Vice Chair  
Senate Committee on Judiciary and Labor

RE: GM 580 Testimony in Support of Michael Wilson for Consideration and  
Confirmation as Associate Justice to the State of Hawaii

I am glad to be able to write in support of the confirmation of judge Michael Wilson as Associate Justice to the Hawaii Supreme Court because I attended few years ago the Mental Health and Drug Court for the purpose to observe this judge in action and learn about the operation of his very special courtroom.


I took detailed notes of each case and I was very impressed about the way this judge conducted the hearing with clarity, impartiality and fairness in dealing with the special people appearing in front of him as well as the staff and those called to participate and testify in those proceedings.

The majority of the people I saw that day where local, young, female, and in trouble with mental and drug problems. I was very moved by the sensitive way in which the judge probed the matter of the case, asked questions, and commented, in a firm but also encouraging therapeutic way for the defendants to follow the requirement to improve their situation, stay out of prison and rehabilitate themselves. It was apparent to me that he was understanding of the human individual case, the circumstance of the facts, and he was attentive to the testimony, the evidence and the facts involving matters of behavior, mental, medical, and social-work case. He was a probing and taking the time for each case to have a fair hearing.

I was so impressed of Judge Michael Wilson way to handle his courtroom proceedings that I took upon myself to share my very positive view with a research staff of the Federal Sentencing Commission in WDC because I felt that the Hawaii Mental Health and Drug Court was an exemplary case of constructive administration of justice in the difficult area of social behavior related to mental health and drug issues.

In addition the previous experience of the judge Wilson administering a large and the very important State of Hawaii Department of Lands and Natural Resources reassure me that the experienced judge Wilson can serve eminently well in the Supreme Court. A judge with experience in individual and community social matters as well as in the administration and management of land and natural resources in Hawaii is a fitting addition to serve in the State of Hawaii Supreme Court.

Respectfully submitted as an individual expert in my field.



Luciano Minerbi, Dr. Arch. MUP  
Professor of Urban and Regional Planning  
2444 Hihiwai St. Apt. 2005 Honolulu, HI 96926

TO: Senate Judiciary and Labor Subcommittee  
FROM: J. Alberto Montalbano  
RE: Testimony in Support of the Confirmation of Michael D. Wilson  
DATE: March 4, 2014

Honorable Senators: It was my honor and privilege to serve as the law clerk for Judge Michael D. Wilson from 2001 to 2002. In those early days of Judge Wilson's appointment we were assigned to the busiest jury trial docket in the First Circuit – the Domestic Violence Misdemeanor Jury Trials in the Family Court. This assignment required the judge and the staff to sometimes run two jury trials a week to keep up with the flow of family abuse cases. As the lead judge, Judge Wilson used his abilities not only to try cases back to back, but also facilitated negotiations between the prosecutors office and defense bar to attempt to clear the backlog of trial demands. Judge Wilson's leadership and ability to deal fairly with each and every defendant kept our very busy division running smoothly.

As a newly licensed attorney working for a judge who has the wisdom and impartiality to deal with very volatile situations instilled upon me the importance of judicial demeanor and temperament from the bench. I never once saw Judge Wilson get upset or lose his temper while on the bench. He was always willing to take the time to calmly explain any sentence to a defendant or a curious juror during the back briefs he conducted after every jury trial. His patience in dealing with jurors and his deference to them as the citizens he believed he served, alleviated a lot of angst that can come from being called to jury duty.

Prior to his appointment to the bench Judge Wilson was a skilled litigator in his own right and an environmental champion. His work on Save Sandy Beach speaks volumes of his ability to serve and his dedication to the public's interest. Judge Wilson has dedicated a good part of his life to public service and the rights of the underrepresented without bias or partisanship. These are the qualities necessary of the job of associate justice.

I support Judge Wilson's nomination to the Supreme Court and humbly request you confirm his appointment.

J. Montalbano  
(808)372-1087



To: Senator Clayton Hee, Chairman, Judiciary and Labor Committee  
Vice Chair Maile S. L. Shimabukuro  
Committee Members

From: Carroll Cox

Date: March 15, 2014

Subject: Testimony in Opposition to the Appointment of Mr. Michael D. Wilson to the Position of Associate Justice of the Hawaii Supreme Court

My name is Carroll Cox. I reside in Mililani, Oahu, Hawaii. It is my understanding that allegations are being made regarding Mr. Wilson's character as it pertains to his becoming an Associate Justice. I am writing to express my own first hand knowledge of a situation that brings Mr. Wilson's character into question.

As an advocate for civil justice and environment, I had the occasion to investigate allegations that then Department of Land and Natural Resources Chairman, Mr. Michael D. Wilson, was "stalking and harassing" Ms. Trinidad and Tobago at the Miss Universe Pageant held here in Hawaii in 1998. I was informed of this by anonymous Honolulu Police officers who were providing security for the event. The initial information was that Mr. Wilson was behaving in a fashion that caused the contestant and her chaperone to become uncomfortable. One venue involved in the complaint was the Nike store on Kalakaua Avenue. He was also observed at the Hard Rock Cafe, where he was "making them uneasy with his gestures and appeared to be intoxicated". When approached by security, he identified himself as "Michael Wilson, Chairman of the Department of Land and Natural Resources".

During my investigation I spoke with security staff and management at one of the hotels. (I cannot remember the name of the hotel at this time, so long after the fact). Hotel personnel confirmed that the chaperone expressed concerns and notified security. When asked if any formal reports were made, the officers and security said no, because Wilson was a state official and they were instructed to refer the matter to Honolulu Police Department Administration.

Subsequently I met with Mr. Boisse Correa, who, at that time, was with the Honolulu Police Department. He would not give me a formal statement, in writing, but indicated that yes, it did happen. He then said he did not want to go into detail about the matter. That is all I can attribute to Mr. Correa about this matter.

I ask that, while this issue may have already been raised, I believe it warrants additional inquiry and explanation by Mr. Wilson, and he should be questioned about these issues during the committee hearings. Because there is no formal or official record of this incident, only Mr. Wilson can tell us the specifics.

Again, as I have learned through my numerous efforts to obtain information, formal complaints were not made because he was a state official and they did not want to bring embarrassment to Hawaii.

As a citizen of this state I believe it is important that Mr. Wilson be questioned about this in greater detail. For more information you can contact me at 808-782-6627.

Thank you for accepting my testimony.

Carroll Cox



To:  
Senator Clayton Hee, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair  
Senate Committee on Judiciary and Labor

Date: Thursday, March 13, 2014

Re: GM580 – Testimony in Support of Michael D. Wilson for  
Consideration and Confirmation as Associate Justice to the Hawaii  
Supreme Court

Dear Senators,

Thank you for this opportunity. I fully and enthusiastically support the nomination of Judge Michael D. Wilson to the Hawaii Supreme Court. I clerked for Judge Wilson from August 2008 to August 2009, and have known him since then. My yearlong clerkship was the capstone of my legal education. Clerking tied the theory to the reality of the practice of law. I would like to share a bit of my experience, which for me was formative.

As one of his clerks, I observed Judge Wilson on a daily basis. Never once—whether in chambers, in court, or out of court—did he raise his voice, lose his temper, or let emotion overtake careful thought and reason. He thoughtfully listened to and carefully considered every concern or argument of staff, counsel, defendant, probation officer, social worker, or doctor, alike. He knew all court staff and sheriffs by first name and took an interest in them and appreciated their work. When confronted with a tense and challenging situation—which in mental health and drug court and on the HRS 704 calendar (penal responsibility and fitness to proceed) was a weekly occurrence—he used the great power of his position in a very gentle and measured way, treating everyone before him with dignity. His commitment to each individual is evinced by his dedication to the therapeutic justice model of criminal justice and by his volunteerism.

I count myself lucky to have had Judge Wilson as a model and mentor. In listening to him think through issues, I was marveled by his insightful questions and his ability to keep sight of the big picture while

justly applying the law to the facts of the case before him. His nuanced and systematic way of thinking—which I suspect derive from a blend of his broad base of experiences, innate common sense, and deep understanding of the law and philosophy of law—has provided me a template to follow.

If others or I made a mistake, Judge Wilson was gentle in correcting us and took the time to think through the problem with us, even late after hours. He worked hard and expected his staff to do so as well. For each case, he would expect us to know the posture, the legal standard, and have a recommendation. In the beginning months of my clerkship, to test my preparedness, he would sometimes question me even after I had answered accurately, until my inflection was that of an assertion rather than a query. While sometimes this was a bit unnerving, in hindsight I am grateful for it. As an advocate, I understand how critical it is to not only have the answer or argument, but to know why it is right, and to deliver it with confidence and persuasion.

Whatever modest successes I have had in my fledgling career, I attribute in large part to the habits and thinking patterns that I learned under Judge Wilson's mentorship. I urge this committee and the entire Senate to confirm Judge Wilson.

Thank you,  
Makia Minerbi

**From:** lauren@hallinanwine.com  
**Sent:** Friday, March 14, 2014 2:07 PM  
**To:** hee2 - Lora Lee  
**Subject:** Supplemental Testimony reGM 580: In Support: Confirmation of Hon. Michael D. Wilson as Associate Justice, Supreme Court of Hawai'i

To Hon. Clayton Hee, Chair Senate Judiciary and Labor Committee, Hon. Maile S.L. Shimabukuro, Vice Chair Judiciary and Labor Committee, Members of the Senate Judiciary and Labor Committee, Members of the Women's Caucus:

Please find, below my supplemental testimony in support the Committee's recommendation of confirmation to the full Senate of the appointment of Hon. Michael D. Wilson as Associate Justice, Supreme Court of Hawai'i.

Dear Mr. Hee, Ms. Shimaburkuro and Members:

I have known Michael D. Wilson as an attorney, friend and judge for over 32 years. He has never shown anything other than the upmost respect, consideration, politeness, and kindness to me, to women, and to everyone no matter what and regardless of the circumstances. Further I have never heard him utter an unkind word about anyone. These vicious, anonymous allegations, particularly as to his conduct toward women are not worthy of consideration. Let those who would make these completely unsubstantiated charges and complaints come forward, so that they may be properly investigated and that Judge Wilson has the opportunity to answer them.

Although I am a member of the California Bar, I have had the happy occasion to co-counsel in Hawaii and serve as a managing attorney and consultant to the Legal Aid Society of Hawaii. It will be a loss to the people of Hawaii if Judge Wilson's nomination is not confirmed because of the Hawaii Bar's opaque process and anonymous complaints.

It is my great pleasure to submit this supplemental letter in support of the Committee's confirmation of the nomination of Judge Michael D. Wilson as Associate Justice of the Supreme Court of Hawai'i.

Once again I urge the reiteration of your unanimous recommendation to the full Senate for confirmation of the eminent and highly qualified Michael D. Wilson to Supreme Court of Hawai'i.

Respectfully submitted,

Ss/Lauren P. Hallinan

## hee2 - Lora Lee

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**From:** Andrew Yanoviak <yanoplan@gmail.com>  
**Sent:** Friday, March 14, 2014 2:35 PM  
**To:** hee2 - Lora Lee  
**Subject:** Hawaii Senate Judiciary and Labor Committee Confirmation of Hawaii Circuit Court Honorable Judge Michael D. Wilson, Esq. for 10-Year Appointment to the Hawaii Supreme Court intment Judge

Honorable Senator Clayton Hee, Chairman  
Hawaii Senate Judiciary and Labor Committee  
Hawaii State Capitol

14 March 2014

Dear Honorary Chair Senator Clayton Hee and Honorary Senatorial Members of Your Very Important and Distinguished Committee Serving Hawaii nei:

Enough is Enough Already!!! -- I have Stood Silently by with the Unjust "Mud-Slinging" Accusations involving "Character Assassination" of Honorable Circuit Court Judge Michael D. Wilson, Esq.; which is, Personally Insulting and Injurious and Painful to Many of Us Community Servants and Citizen Leaders who have had Several Privileged Opportunities to Work VERY Closely in Community Service and in Hawaii Government with TOTALLY Committed and Distinguished Public Service Attorney Michael D. Wilson, Esq.; who has Previously been "Approved" and Deemed "Qualified" by both the Hawaii State Bar Association and Its Judicial Selection Committee -- without Reprimand or Demotion for over a Decade -- but Rather, Further Honored by Our Hawaii Governor and Our Distinguished Responsible Senators in Upholding His Superior Nomination to the Hawaii Supreme Court -- which, as the Governor Publicly Announced, CONSCIENTIOUS Judge Wilson Sincerely Considers to be Our "COMMUNITY Conscience"!!! When I Subsequently Learned in the Press that the ESTEEMED Emeritus Hawaii Supreme Court Justice, the Honorable "Jim" Duffy, Esq. (Long Considered the "Chaplain" within HSBA) was Present at the Governor's Official Nomination Announcement Ceremony along with Judge Wilson and His Parents, I was Totally Gratified, as I Further would be if Chief Justice Richardson, and Justices Frank Padgett and Nakamura were Still with Us and able to Attend and Vouch for Judge Wilson's Most Appropriate Nomination based on STELLAR ("Going the Extra COURAGEOUS and Well-Reasoned Mile" in Numerous Instances) Voluntary Community Public Service LEADERSHIP as They Personally Did while WE were in the 'Heat of Battle' on Several Simultaneous 'Fronts', and I Never, Ever Witnessed (or had ANYONE Report to Me) that Attorney Wilson Transgressed or Offended ANYONE -- in Fact, Just the Opposite where MANY were Swayed by His Authentic Charm and Rational and Civil Persuasive Intelligent Manner, as well as His Humility and Strong Consideration for the Thoughts and Feelings of Others in All Deliberations I and Other Dedicated COMMUNITY Members Experienced -- Attorney and Judge and Hopefully for Hawaii nei's Sake, Justice Michael D. Wilson, Esq. Strong Capable and Honorable LEADERSHIP QUALITIES will be Further APPRECIATED and ADMIRER!!!

In My Capacity as Invited (by Kaneohe, Kailua and Waimanalo Community Leaders) President of the Save Mount Olomana Association (SMOA) for Over a Decade during the Entire Reign of Governor John Waihee !!!, and the First Couple of Years of Governor Benjamin J. Cayetano's Term, as well as a Member of "Save Our Bays and Beaches", and an Invited Participant in "Save Sandy Beach Association" (by Attorney Wilson and Others), I had an Opportunity to Ascertain Judge Wilson's Honorable Character and Demeanor in Several Proceedings. There were Actually MORE Women than Men Involved in Most Meetings and ALL Participants (Male and Female) were Enamored, INSPIRED and Motivated by "Mike" Wilson's BRILLIANT Thoughts and Ideas on How to Achieve SUCCESS in the Public Arena, and Devoted MANY Volunteer Hours Over a Number of Years to Execute Special Contributory Projects, including 3D Small and Large Scale Models,



Paintings, Large-Scale Graphics, Printed Brochures, Buttons, T-Shirts, Plus Masterminding a Public Opinion Exiting Poll at 18 Windward Public School Voting Locations (for which I Personally Visited All in a Single Election Day!) -- I Never Heard any Derogatory Comments from ANYONE Regarding Attorney "Mike" Wilson, Esq., but I Did Hear LOTS of PRAISE for His LEADERSHIP and BENEVOLENCE on Behalf of Our COMMUNITIES and SMOA!!!

As an Expert Witness for over 35 Years involved in Complex Construction, Land Use and Real Estate Premises Litigation (with Expert Testimony Provided in 17 Federal and State Trials as well as Additional Arbitration and Mediation Proceedings on Commercial and Residential Real Estate), and in Working with Hundreds of Mainland and Hawaii Attorneys including Gregory Markham, Esq. and His Partners, I Never Encountered ANY Derogatory Comments Regarding ANYTHING Detracting from the Distinguished Community LEADERSHIP or Character of Attorney or Judge Michael D. Wilson, Esq. I Did However in Certain Meetings and Deliberations with Attorneys, Attorney-Politicians and Planner-Politicians, Receive Personal "Ribbings" and Ridicule for My Community-Service Involvements for which I've Subsequently Received Several Professional and Governmental "Honors" -- and I've Authored Several Published Articles to Honor Our Organizational COMMUNITY Commitments; but, I NEVER Heard ANYTHING Derogatory about Attorney Michael D. Wilson, Esq.'s DEDICATED Community Service Ventures or Commitments -- NOTHING!!!

I've Only had the Pleasure of Two Brief Informal Encounters with Judge Michael D. Wilson, Esq. in Passing while He was Conversing with Someone Else -- both in the Diamond Head Courtyard of Waterfront Plaza and None after "Save Mount Olomana" and "Save Sandy Beach" Succeeded or after "Save Our Bays and Beaches" received a Government Grant!

In My Well-Rounded Professional Opinion, It Appears to Me that ALL of the Assertions Publicly Announced by HSBA and Its JSC are Fictitious and Fabricated and Without MERIT!!! My Personal Knowledge of "Mike" is that He is a BRILLIANT "Thinker", "Knower" and "DOER" and Regarding His Personal Dedication and Commitment, SURE, His Personal "Work Ethic" is Probably Still way Beyond the Typical 6, 7 or 8-Hour Workday (or Even 4-Hour Workday, as Executives have Said to Me, "IF I can Get Two Productive Hours in the Morning and Another Two in the Afternoon ... (Out of Him or Her) ... I Consider Myself LUCKY!" -- Naturally with a COMMUNITY LEADER and DEDICATED PROFESSIONAL Like "Mike" or "JIM" Duffy or Honorable Chair Senator "Clayton" Hee as I Know Him and Read about Him and Other Committed Legislators and DEDICATED Public Servants Here and There -- an 8-Hour WORKING Day Expectancy would be Considered ABSURD for an Astute and Akamai Professional and COMMUNITY Servant in Hawaii nei!

Respectfully and Faithfully Submitted,

Andrew Charles Yanoviak

## SUPPORT OF GM 580

March 14, 2014

Aloha Members of the Judiciary Committee,

I am writing again to express my strong support for Michael Wilson to be appointed to the State Supreme Court. I have known him well for decades. He treats all those that he meets with admirable respect, dignity, and courtesy. The overwhelming support he received in the previous hearing demonstrates the wide array of those that have been impressed by his years of hard work on multiple issues for justice, and his kindness.

While many others have highlighted his impressive professional credentials, those that know Michael Wilson personally are often amazed at his tireless dedication to community service and selfless acts. He will often dedicate many hours counseling and mentoring young adults to help guide careers and life decisions. He also donates his time to philanthropic causes, such as mentoring a youth and volunteering at Nakama Kai to teach youth an appreciation of the ocean.

The Judiciary committee must take into account hard evidence provided by specific individuals to provide a just recommendation. As a woman, and as a citizen of Hawaii, I hope to add my voice to the many others that attest to Michael Wilson's excellent personal character.

Sincerely,

Emma Yuen  
Kaka`ako, O`ahu



**From:** [Jesse Owens](#)  
**To:** [JDLTestimony](#)  
**Subject:** Support GM 580  
**Date:** Friday, March 14, 2014 4:26:07 PM

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Jesse Owens

1350 Ala Moana Blvd.

Honolulu, HI 96814

March 14, 2014

Dear Judiciary and Labor Committee,

Please support Michael Wilson to the State Supreme Court. Those of us that know him personally are sure that the allegations and rumors against him are just that – allegations and rumors. Believing them or being influenced by them would be an act of injustice. Michael Wilson deserves due process. He is a wonderful human being and deserves your respect and confirmation for the Supreme Court.

Committee members, thank you for your support of him during the first hearing. I hope you will once again make a decision guided by justice and evidence.

**From:** [Timothy E. Johns](#)  
**To:** [JDLTestimony](#)  
**Subject:** GM 580--Testimony in STRONG SUPPORT OF Nomination of Judge Michael Wilson as an Associate Justice of the Hawaii Supreme Court  
**Date:** Friday, March 14, 2014 10:24:11 PM

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Aloha, Chair Hee and Members of the Committee:

Thank you for the opportunity to submit additional testimony in strong support of the nomination of Judge Wilson as an Associate Justice of the Hawaii Supreme Court. I have known Judge Wilson for nearly thirty years, and I worked with him on a daily basis for six months as one of his Deputies when he served as the Chair of the Department of Land and Natural Resources. I ultimately succeeded him as the Chair of DLNR.

I understand issues have been raised regarding Judge Wilson's conduct toward women in the workplace, his work ethic and his legal abilities. Based on my personal experience with him, these issues do not hold water. I can speak to Judge Wilson's outstanding overall character and integrity, but this testimony will focus on my direct experience with him in the workplace at DLNR.

First, during my tenure at DLNR I never saw Judge Wilson treat any woman (or man, for that matter) with anything but the utmost respect. Judge Wilson possesses an inquisitive mind that truly seeks to understand the views and perspectives of others on any matter. This, I believe, forms much of the basis of the respect he displays to all he encounters.

Second, no one at DLNR put in longer hours or was more committed to DLNR's mission or the resources it protects and manages. His work ethic and sheer stamina were impressive.

Finally, his strongly analytic intellect was well displayed during every staff meeting, Board of Land and Natural Resources meeting or Water Commission meeting he chaired. I know I am joined by many of his former employees and colleagues who continue to hold his intellect, integrity and commitment to our community in the highest regard.

I again urge you to view Judge Wilson's nomination favorably. Mahalo.

Sent from my iPad

March 15, 2014

FAX TO: Senator Clayton Hee - 1-808-586-7334

I understand that Michael Wilson is being considered for the Hawaii Supreme Court.

As a former resident of Hawaii (for 28 years) and having dealt with Mike on many occasions I feel he is highly qualified for this position.

My husband, David Matthews (now deceased) worked very closely with Mike on the "Save Sandy Beach" Coalition. Mike is an outstanding citizen and one of impeccable integrity.

I hope you will endorse Mike. He will definitely be good for Hawaii and an asset to this high court.

Yours truly,

Elizabeth G. Matthews  
5916 Halle Farm Drive  
Willoughby, OH 44094  
Tel: 440-278-4573

From: [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
To: [JDLTestimony](#)  
Cc: [thirr33@gmail.com](mailto:thirr33@gmail.com)  
Subject: Submitted testimony for GM580 on Mar 15, 2014 11:00AM  
Date: Saturday, March 15, 2014 6:17:58 AM  
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## **GM580**

Submitted on: 3/15/2014

Testimony for JDL on Mar 15, 2014 11:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arvid Tadao Youngquist	1,978 "Conventional People"	Oppose	Yes

Comments: Chairman, Sen. Clayton Hee Vice Chair, Sen. Maile Shimabukuro Right Honorable Senate Judiciary & Labor Committee We the undersigned association, wish to express our opposition, to the confirmation of Justice Michael David Wilson, Esq. to the position of the Associate Justice, Hawaii Supreme Court. Mr. Wilson appears to have similar qualifications, but less than those of Intermediate Court of Appeals, Associate Justice Katherine Leonard, who your Committee rejected to the position of Chief, Justice of the Hawaii Supreme Court. She had received a "Not Qualified" evaluation from the Bar Association. Circuit Court Justice Ed Kubo, Jr., who we supported, underwent an extra week of scrutiny by your Committee (under a different Committee membership). He was eventually confirmed with the help of an extraordinary group of supporters who went to Beretania Street to express their admiration and appreciation for Justice Kubo, Jr., when the 100th Bn, 442nd Infantry Reservists needed legal advice about wills and trusts before they were shipped to the Middle East. And then there is Justice Michael David Wilson, who bears similar background, even exceeding that of LT GOV "Duke" Aiona, as a Drug Court Judge coupled with Mental Health oversight of those who came before his bench. I commend Justice Wilson's dedication to these underserved citizens who could and were often "rehabilitated". For this reason, I believe Justice Wilson has missed his calling. He should be running for office this year, either for GOV or LT GOV, as did "Duke" Aiona. Justice Wilson is a Man for All Seasons. He is someone who can be counted on to serve in time of plenty as well as in times of "famine". However, the expression goes, "What is good for the goose, is good for the gander." If Justice Katherine Leonard can be denied a seat at the head of the Hawaii Supreme Court as its Chief, why can not Justice Michael David Wilson, Esq., and from the Circuit Court bench, at that. Granted that Mr. Wilson has served as an Acting Intermediate Court of Appeals justice. As the Hawaii Supreme Court can appoint through its "clerks" an interim Associate Justice until a permanent Associate Justice is found and seated. Meanwhile, please work on raising the retirement age of Associate Justice Simeon Acoba to age 80, possibly, if he is so inclined. We lose too many capable, health condition willing, due to age limitations. I see so many individual who look and are more fit looking that I am (at age 65), that are over 70 years old. Our Governor is

over 72 when he first ran four years ago. Our Speaker of the House is over 80 years old (sic.), and he even considered dropping after his first year at the House! Additionally, it is time to stop nit-picking and cherry picking on the Hawaii Bar Association. When Associate Justice Bert T. Kobayashi, Sr., was still a private citizen, and a Bar Association President, then Gov. Bill Quinn wanted to appointed someone to a Circuit Court Bench. However, Justice Kobayashi objected, so Gov. Quinn sought out his former Harvard law school graduate, and asked him how else can the Bar see fit to support that appointment. The answer was, "Appoint him to any other Neighbor Island Circuit Court bench, but not here in Oahu." So Gov. Bill Quinn did just that, and all was happy. Unfortunately, there is no other equivalent seat available, other than the Federal Bench locally, and a possible Federal Bench on the Mainland, including the U.S. Supreme Court. Perhaps they will raise the age limit or overlook inactivity due to temporary health set backs of Supreme Court Justices. Therefore, we must respectfully ask that this Committee deliberate with due diligence for another week until all information and witnesses are exhausted, and thus satisfy the distaff's reasonable request and plea for equity. A candidate's disposition on a non-judicial position is just as relevant to a citizen's point of view, as is his conduct toward a person who appears before his bench, works for him, or has any business including non-profits and volunteer positions where they have had opportunity to observe Mr. Wilson and make certain conclusion. It is only fairness to let Mr. Wilson know that he is undergoing the very same scrutiny and vetting process of the Senate Committee as does "all candidates" for its endorsement. Only then, can the full Senate can come together, and vote with One Voice. Therefore, until that is accomplished, we are currently in "loyal opposition" to someone who we have known for over 13 years here in Honolulu. Me Ke Aloha Pumehana, Arvid Tadao Youngquist, Founder/Administrator Spokesman \*Note: Registered Voter in Kalihi Valley, the First Congressional U.S. House District, and more than eager to vote in the Primary as well as the General Election.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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To: [JDL Testimony](#)  
Cc: [hawaii\\_lawyer@yahoo.com](mailto:hawaii_lawyer@yahoo.com)  
Subject: Submitted testimony for GM580 on Mar 15, 2014 11:00AM  
Date: Saturday, March 15, 2014 9:24:40 AM

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### GM580

Submitted on: 3/15/2014

Testimony for JDL on Mar 15, 2014 11:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Hawaii Lawyer	Individual	Comments Only	No

Comments: Aloha Senators Thank-you for creating an additional opportunity to testify on the matter of Judge Wilson's appointment to our Supreme Court with GM580. I am a licensed Hawaii Attorney and have comments that I hope you will respect and consider, even though I must remain anonymous to protect my reputation and livelihood. I HAVE SERIOUS CONCERNS ABOUT THE PROCESS THUS FAR. Although I do consider Judge Wilson a fair and "good" circuit court judge, before placing him on our highest state court, I hope that there is a fair process for his senate confirmation where attorneys who work with him every day have a safe opportunity to speak candidly to his character, experience, and abilities. We were afforded this opportunity through the HSBA's confidential vetting process, however it appears that the Senate Committee on Judiciary and Labor is not respecting the HSBA's recommendation and is turning this confirmation into a mockery of victims and a witch-hunt for attorneys and court staff that can destroy their careers. PLEASE GIVE THE HSBA'S "UNQUALIFIED" RATING THE FULL WEIGHT OF ITS MEMBERS. The HSBA provides a confidential process for currently licensed attorneys to share their individual information while protecting our information. We have a process, please respect it and honor that our elected board and representatives that have been privileged to details through our confidence in the HSBA process. ASKING ATTORNEYS TO TESTIFY AGAINST A JUDGE IS UNREALISTIC. We are licensed attorneys, with reputations in a small community and cannot risk getting involved in hearsay with a judge. For those with serious allegations, I hope that they are brave enough to come forward. However, for the rest of us with serious concerns, we are unable to do so in our current processes without endangering our livelihood and jeopardizing our clients. ASKING INDIVIDUALS TO DISCLOSE details of sensitive history with supervisors in positions of authority re-victimizes individuals and is unnecessary. Licensed attorneys have a process to address improper conduct within the bar association and Office of Disciplinary Council. However, many times individuals cannot come forward because of complexities that surround workplace harassment. There is a very real livelihood risk of being seen as "making trouble", the patriarchal conceding to unbalanced and inappropriate dynamics with superiors, the belief and teaching that new attorneys just have to "put up with it and earn your stripes." Then there is the honest fact that being a victim of workplace harassment, experiencing inappropriate conduct from a sitting judge in power, and being a new attorney in a small community where coconut wireless is faster than twitter creates a culture of "deal with it" and just try to maneuver your career away from such dynamics where you can still get a good letter of recommendation. I hope that others will come forward and tell their stories. But the honest truth is that I don't believe they are able to do so within this public hearing setting. Furthermore, it is unnecessary because attorneys have already voiced their concerns to the HSBA, and the HSBA has vetted Judge Wilson as "unqualified" in our profession's vetting process. Please give the HSBA's recommendation the full weight of its members who were afforded an opportunity to disclose detailed information about Judge Wilson. Please see the following articles that support the HSBA process. Thank you for your time and consideration of the issues raised. - A Hawaii Attorney Uncomfortable with this process State bar's judicial evaluations are secret to avoid political taint - Hawaii Editorials - Honolulu Star-Advertiser State bar's judicial evaluations are secret to avoid political taint By Rai Saint Chu POSTED: 01:30 a.m. HST, Aug 10, 2010 StarAdvertiser.com The bashing of the Hawaii State Bar Association in the judicial nomination process concerns me. As HSBA president in 2009 (and now no longer privy to the confidential discussions of the HSBA board), we worked to meet our goal to improve the legal profession and promote justice. All lawyers who practice in Hawaii must be members of HSBA. The state Supreme Court, which traditionally oversees lawyers from admission to the bar until retirement, has passed on a large share of such responsibilities to the HSBA. Thus, it is very important that the HSBA and the chief justice of the Supreme Court, who heads the judiciary system, are on good terms and can work together. There is no other group with a bigger stake in any one of the three branches of government than Hawaii's lawyers, whose foremost concern is systematic fairness that comes from a well-run judiciary. The comments of lawyers who have experience with a nominee are most important. The lawyers are in the front lines seeking justice for their clients in the courts. They have first-hand knowledge of whether a judge is fair, unbiased, understands the law and the facts of a case and renders sound decisions. The confidentiality of a lawyer's comments is of utmost importance for candid and objective feedback without fear of retribution against the lawyer and his or her future clients. Some lawyers comment publicly, most often with positive comments. Lawyers with negative experiences prefer the private or confidential forum to the HSBA. Their confidential comments about a nominee are most often thoughtful and thorough, with anecdotes of specific incidents. Each negative comment with any merit is followed up with other individuals for verification and accuracy. This is the reason that the HSBA board met on the day before the scheduled Senate Judiciary Committee's confirmation hearing. The HSBA's criteria for evaluating a nominee must take into consideration the duties and responsibilities required by the specific office under consideration, whether it is District Court, Circuit Court, Intermediate Court of Appeals, Supreme Court or chief justice. Having served on the board of the HSBA for years before I became president, I know that the HSBA board's primary agenda is not political, but focused solely on the quality of the judges. IN THE confidential HSBA board discussions, the evaluative comments about the nominees and other bar association members are thorough and thoughtful. Most often, the board members give the greatest deference to the many positive qualities of a nominee. The protocol of sharing the good

and not so good comments with all the nominees was done confidentially by current HSBA President Hugh Jones. Finally, the HSBA board must speak with one voice to the public and the state Senate on whether the nominee is qualified or not qualified for the position. The vote is by secret ballot and the vote count of the board should never be revealed publicly. Otherwise, it will serve only as unhelpful political fodder. Copyright (c) Honolulu Star-Advertiser  
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Bar's judicial review process does justice to nominees - Hawaii Editorials - Honolulu Star-Advertiser Bar's judicial review process does justice to nominees StarAdvertiser.com By Michael Nauyokas POSTED: 01:30 a.m. HST, Sep 01, 2010 LAST UPDATED: 01:33 a.m. HST, Sep 01, 2010 When the Hawaii State Bar Association board of directors rated Judge Katherine Leonard as "unqualified" to be chief justice of the Hawaii Supreme Court, it brought the organization's judicial review process into question. Many in the community thought the HSBA should have provided reasons for its decision. In separate commentaries, HSBA President Hugh Jones and past president Rai Saint Chu defended the process. Jones stood on precedent, saying the process is the same as previous judicial reviews. Chu defended the good intentions of HSBA members who provided input and the careful and fair deliberation of the 20-member board. The furor died somewhat when Associate Justice Mark Recktenwald received a "qualified" recommendation from HSBA, but there are several important facts that should be vetted before this controversy is put to rest. First, it's worth stating the obvious. HSBA is not the deciding entity in judicial nominations, merely one organization providing input to the Hawaii Senate Committee on Judiciary and Government Operations that then chooses whether to recommend confirmation of the nominee by the full Senate. The committee incorporates HSBA's recommendation along with testimony from anyone in the community wishing to voice their opinion. Second, HSBA makes its recommendation only after input from its 7,000-member body and an interview of the nominee. The recommendation appropriately comes without explanation. Why? It's not necessary. HSBA's intention is to state whether the nominee is prepared to serve, not to detail his or her strengths and weaknesses. Providing detail behind the HSBA board decision, can only serve to hurt the nominee. For example, describing the nominee's adequate or inadequate administrative abilities, strong or weak leadership skills, erudite or lackluster legal knowledge, admirable or scandalous personal life, would at best be argumentative and at worst, embarrassing for the nominee. Whose benefits from this? No one. The current process respects the career of the nominees. Comments regarding their professional and personal lives could easily be remembered long after they are accurate or even relevant. A nominee found to be unqualified this year, may be eminently qualified five years from now. Yet, he or she may never see a later opportunity for balanced public vindication unless the person is again nominated for a judgeship and reviewed by HSBA. It has been noted, but not sufficiently appreciated, that any HSBA vote or detailed comments made public could lead the nominee to subtly or even subconsciously retaliate against those who voted or voiced opinions against him or her. The current procedure recognizes that attorneys must represent their clients before judges, and anything that is prejudicial to the attorney, and hence his client, would be a disservice to both and diminish the integrity of our legal system. Divulging details of HSBA's deliberations of nominees could make attorneys have second thoughts about being candid regarding a nominee's weaknesses and instead offer only glowing adulations. This could undermine the very accuracy and value of HSBA's recommendation. Rather than incomplete by not sharing more information, the current HSBA process appropriately provides the Senate Judiciary Committee with the singular most important piece of relevant information: Whether the nominee is qualified for the judgeship. It is an appropriate complement to public testimony, including testimony by HSBA members at ratification hearings. The current process is both professional and in step with our local culture that rightfully believes it is inappropriate to unnecessarily speak poorly of another person. In short, it is the best possible process for the nominee, the public and lawyers who represent their clients before the judiciary. It should not be changed. Copyright (c) Honolulu Star-Advertiser

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Hugh Jones - Honolulu Star-Advertiser Hugh Jones The president of the Hawaii State Bar Association defends his group's recommendation process for judges, despite intense public criticism By Dave Koga POSTED: 01:30 a.m. HST, Aug 20, 2010 LAST UPDATED: 02:21 a.m. HST, Aug 20, 2010 A decade ago, when he was on the team of state lawyers that prosecuted Bishop Estate trustees for misconduct, Hugh Jones was no stranger to public outrage and controversy. These days, as president of the Hawaii State Bar Association, he finds himself back in the fray. On Aug. 6 - the day after the U.S. Senate confirmed Elena Kagan as an associate justice of the U.S. Supreme Court - the state Senate rejected the nomination of Katherine Leonard as chief justice of Hawaii's Supreme Court. The vote came three days after the bar association's board of directors rated Leonard "unqualified" for the job. Leonard's supporters slammed the rating - especially the process leading to it. Where the American Bar Association's designation of Kagan as "well qualified" included documentation to support that assessment, the HSBA's rating came with nothing else. No names. No reasons. No explanations. Now, with confirmation hearings scheduled next week for Associate Justice Mark Recktenwald - Gov. Linda Lingle's next choice for chief justice - the HSBA's board is back at work. Jones is on the job, too, explaining the HSBA's methods and defending its policies but also suggesting that changes might be coming. Out of fairness, the board won't alter its evaluation process for Recktenwald, but Jones said in an e-mail interview that "we recognize that the high profile of this nomination process has produced questions from the public and the media." Question: The federal judicial ratings process conducted by the American Bar Association includes testimony and a public statement that provides reasons why a candidate was found to be "Very Qualified," "Qualified" or "Unqualified." Why doesn't the Hawaii State Bar Association do the same? Answer: It would be very difficult to follow the ABA process entirely for a number of reasons, including that: » The ABA has far more staffing and financial resources to perform this function. » The ABA generally has the luxury of far more time to complete the process for federal judicial nominees. For example, we had only about 10 days to review input from members and background materials, schedule and conduct interviews with all eight of the nominees just considered (one chief justice, four District Court and three Circuit Court), debate and deliberate, vote and communicate our testimony to the Senate. The HSBA must work with the time afforded by the Senate, so the time frame for the chief justice appointment was shortened, but we anticipated that, assigned more directors to do the legwork, and reviewed the materials and interviewed the nominee. Our process, although compact, was thorough and in-depth. As you know, it's difficult to put the reasons 20 directors voted the way they did into one succinct statement. Our policy has been to not give

rationale for a vote, but I can assure you that the insinuation of "double standards" or "bias" were not factors. Q: Understandably, there is a need for a certain amount of anonymity when it comes to soliciting information from lawyers about a judge's qualifications. But as the fallout from the Katherine Leonard rating suggests, doesn't the extent of the HSBA's secrecy only end up damaging the process and the association's credibility? A: The HSBA process is not secret. The policy has been explained to members frequently and followed for all nominees. The nominee is fully apprised of the process upon nomination, and all negative comments or concerns raised are communicated to the nominee to provide an opportunity to address these issues during the interview. As comparisons are made to the ABA process, it should be pointed out that the ABA review members are from all over the country, and are unlikely to appear before the nominee should their appointment be confirmed. That said, we recognize that the high profile of this nomination process has produced questions from the public and the media, and we will listen to our members and review the process based on their comments. An HSBA committee is currently studying comments which have been solicited from the members. In the process of soliciting input from members, however, I point out that many members were thankful for the opportunity to share their views and experiences about a nominee confidentially. Q: What was your personal reaction to the criticism of the HSBA following the announcement of the Leonard rating and her subsequent rejection by the Senate? A: The controversy was not a personal issue but a professional one. My involvement did not involve me in my personal capacity but my capacity as president of the HSBA. I do think there is great misunderstanding and lack of knowledge about the particulars of the existing process for reviewing the qualifications of nominees, including the incorrect perception that it's a "secret" or "anonymous" process. Q: Had the Senate approved her, Leonard would have been the first woman to become chief justice of the Hawaii Supreme Court and the first graduate from the William S. Richardson School of Law to sit on the court. What kind of pressure did that put on the board? A: The fact that the nominee was a Hawaii law school graduate naturally is something that HSBA directors would value and "feel good" about. Thus you can imagine it was difficult for them to vote her "unqualified" for the position. It was not also an easy thing for a board of 10 women and 10 men to vote the first female nominee "unqualified." Ultimately the question is whether the nominee is qualified, not their ethnicity, gender, school of graduation or place of birth. Q: Should Mark Recktenwald be confirmed as chief justice, do you think the process allows Gov. Linda Lingle enough time to nominate his replacement before her term expires? A: That depends on whether the Judicial Selection Commission has sufficient time to advertise the judicial vacancy, set a realistic application deadline, schedule interviews with applicants and "resource persons," check references and develop a list of not less than four nominees to present to the sitting governor. ... Copyright (c) Honolulu Star-Advertiser  
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**Subject:** Submitted testimony for GM580 on Mar 15, 2014 11:00AM  
**Date:** Saturday, March 15, 2014 10:09:36 AM

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**GM580**

Submitted on: 3/15/2014

Testimony for JDL on Mar 15, 2014 11:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
anonymous	Individual	Comments Only	No

Comments: The fact that we are here today, in a second senate hearing for this judicial nominee should serve as a warning. There is truth to what the committee refers to as “innuendo, allegations, insinuations and rumor.” The Judiciary committee claims they will not engage in a witch-hunt, but that is exactly what they are doing. They are seeking victims in the community and among the members of the bar. They are asking us to speak out publicly; because they were not satisfied we called upon our elected officials to speak on our behalf. And if the community does not, if the community chooses to remain silent, they are interpreting our silence as an admission that we have nothing relevant to say. But, the community has already spoken. Members of the bar and women in the community have called Senators, they have submitted to HSBA, they have testified. You simply don’t believe the women because we are terrified to tell you our names. Thank you.

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# Citizens for Recall

www.citizensforrecall.org

Post Office Box 2805

Honolulu, HI 96803

Michael G. Palcic, Chairman  
mikepalcic@gmail.com  
(808) 255-5633

Gary R. Fruth, Treasurer  
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March 15, 2014

Aloha Chairman Hee and members of the Senate Judiciary and Labor Committee,

Citizens for Recall has advocated legislation centering on Citizen empowerment: Recall, Referendum, Initiative and Term Limits. Although deserving consideration, those four bills put forward in this legislative session have not so much as been granted a hearing.

We don't have a lot of clout.

But we are an active interest group, just like the unions, or any other organization that represents its members interests before the legislature.

The Hawaii Bar Association is just such an interest group. It exacts considerable mandatory dues from lawyers and represents a particular interest. The Bar Association serves its members and not the public.

We do not believe the interests of lawyers should be placed above the interests of the public or given any additional credibility. They are hardly an underrepresented group in this body and exert vastly more influence on public policy than is their just due. We have heard and read a series of vague references, but nothing that would give anyone any logical reason to trust their recommendation. In fact, their advice has been contradictory, concocted in secrecy and therefore is due even less credibility.

We are aware of Judge Wilson's history of involvement in Citizen initiative, something that we believe is laudable.

You might never know this from the newspaper accounts which have repeatedly run the same wretched photograph of the nominee for Associate Justice of the Supreme Court.

In any event, with lawyers and the newspaper and other obviously powerful interests weighing in, but unable to cite any clear reason for opposing this nomination, it seems that their advice should be given much less weight.



## Testimony of Stewart Alan Yerton, Esq.

### Regarding Governor's Message No. 580: The Nomination of Judge Michael Wilson to the Hawaii Supreme Court

Dear Honorable Members of the Senate,

Thank you for the opportunity to submit testimony in this matter. I served as an extern and clerk for Judge Michael D. Wilson in 2011 and submit these comments based on first-hand observations. I hope this information will promote transparency and fairness in this process, for the sake of Judge Wilson, the Senate, the Judiciary, and the public.

I was not surprised to hear Judge Wilson say he viewed the Hawai'i Supreme Court as the conscience of the state. Judge Wilson demonstrated great compassion for the parties in his court. This included victims and defendants. Judge Wilson showed an extraordinary ability to connect with people. He exhibited wisdom when dealing with non-violent defendants for whom a criminal justice system based on incarceration simply did not seem appropriate. Judge Wilson oversaw his Mental Health Court calendar with firmness, fairness, and compassion. In brief, Judge Wilson used the court as a vehicle to heal the community. He used his power for good.

As you know, the Hawaii State Bar Association has raised questions about Judge Wilson's qualifications to be promoted to the Hawai'i Supreme Court. Although I am a member of the Bar Association, I did not submit written comments when the Bar Association vetted Judge Wilson. Nonetheless, I hope I can shed light on some issues raised by the Bar Association and thereby allow the Senate to make a more informed decision. Specifically, as you know, the Bar Association expressed concerns about Judge Wilson's conduct toward women in professional contexts, Judge Wilson's ability to serve at the level of Supreme Court Justice, Judge Wilson's work ethic, and a purported lack of professionalism in the workplace." I will address these below:

1. Treatment of women  
I never saw Judge Wilson mistreat a woman in a professional context.
2. Ability to serve at Supreme Court  
Judge Wilson has served by assignment on both the Intermediate Court of Appeals and Hawai'i Supreme Court. The jurists who served with Judge Wilson would be best able to say whether the judge is qualified to serve on the Supreme Court.
3. Work ethic concerns

I can attest Judge Wilson stayed on top of a very busy calendar. He did this in part by delegating considerable work to staff. For example, for motions hearings, clerks and interns would summarize the reports from the probation office on each of the 15-20 defendants appearing that morning. Judge Wilson would be given these summaries and the reports before hearings; however, Judge Wilson was not given the complete case files to review. Although I did not conduct a formal survey of each Circuit Court judge, I believe, based on conversations with other law clerks, that Judge Wilson was the only Circuit Court judge who relied so heavily on law clerks for these matters. I have no opinion on whether the practice should mean Judge Wilson is "not qualified" to be a Supreme Court justice. Other Circuit Court judges would be better able to assess whether this practice was appropriate.

Concerning issues raised about Judge Wilson's punctuality, in my personal experience, Judge Wilson was never 30 minutes late to a hearing as media reports have said. It is true Judge Wilson would on some days arrive in chambers shortly before hearings were to begin at 8:30 a.m., but I never recall him making lawyers wait a half hour because he was late to court, as reports have said.

4. Professionalism in the workplace

Judge Wilson showed the highest respect to attorneys, defendants, witnesses, jurors, sheriffs, probation officers, and court reporters. For staff, Judge Wilson often used a different tone, one that was not always conducive to a harmonious and productive working environment. A recent media report said Judge Wilson's tone was so harsh that he would make clerks cry. I personally never saw staff cry; however, it has not surprised me to hear personal accounts from attorneys that they have seen clerks and volunteer externs reduced to tears by Judge Wilson. I have taken these stories to be credible, especially because at least one of these stories came directly from the person who supposedly cried. Concerning the assertion that Judge Wilson asked clerks to run personal errands for him, such as picking up his lunch, that is true. That was just part of the job. Given the tone I witnessed Judge Wilson use with staff, I chose not to see what would have happened if I had declined to pick up his lunch.

I hope this information helps the Senate as it deliberates on this important process. Thank you for your time.

Sincerely,

Stewart Yerton