



HOUSE INVESTIGATIVE COMMITTEE TO INVESTIGATE COMPLIANCE WITH AUDIT  
NOS. 19-12 AND 21-01

The Honorable Della Au Belatti, Chair  
The Honorable Linda Ichiyama, Vice Chair

**OFFICE OF THE AUDITOR'S CLOSING STATEMENT**

December 22, 2021

Chair Belatti and members of the House Investigative Committee to Investigate Compliance with Audit Nos. 19-12 and 21-01:

We submit this “closing statement” because we need to correct the record that the committee has attempted to create.<sup>1</sup> First, we need to correct the record as to the legitimate and authorized scope of the committee’s investigation. Second, we need to correct the record as to an alleged “pattern of omissions” and anomalies conjured up by the committee from data it either misinterpreted or misunderstood.

**A clear abuse of power**

The committee’s letter soliciting a “closing statement” pretends that the Office of the Auditor is one of the state agencies that was legitimately “examined during the course of” the committee’s work. We were never legitimately a subject of the committee’s investigation. Later, the committee – or rather, the committee’s chair – claimed we fell within the committee’s authorized scope of investigation. By ignoring the authorizing resolution’s scope of investigative authority, the committee committed a clear abuse of power.

As its name attests, the committee was specifically formed to investigate agency compliance with the recommendations made in our audits of the Department of Land and Natural Resources’ Special Land and Development Fund (DLNR) and the Agribusiness Development Corporation (ADC). The investigation was “for the purposes of improving the operations and management of these state agencies, their funds, and any other matters.”

The Office of the Auditor is not one of “these state agencies,” nor does it fall under “any other matters” relating to those agencies and audits. Despite these facts, the Office of the Auditor has not only been improperly targeted as a subject of the committee’s investigation; for a

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<sup>1</sup> We take the Chair at her word. Her letter solicits a closing statement on the analogy of an adversarial proceeding. On the analogy of a trial, then, we have taken the liberty of using language and tone more appropriate to the closing statement of an advocate at a trial, rather than the detached and dispassionate language and tone more appropriate to an audit report. We note, in addition, that unlike a trial, we have not been given the opportunity in this proceeding to present evidence or to respond to evidence or testimony presented by others.

considerable period of time, we became the primary focus of it.<sup>2</sup> We have even been forced to defend in court the confidentiality of our working papers, and the court agreed with us that the committee was improperly attempting to obtain materials confidential by law.

The committee's improper attempt to investigate the Office of the Auditor is based on the false pretext that it is part of investigating the two agencies' "compliance with" the two named audits. This is nonsense. Only a state agency that is the subject of an audit can comply or fail to comply with an audit. The Office of the Auditor can neither comply with, nor fail to comply with, the audits it issued concerning the two agencies.

An investigative committee exercises awesome powers that must be accompanied by a proportionate exercise of fairness and responsibility. That is why the Hawai'i statute governing legislative investigative committees, chapter 21, Hawai'i Revised Statutes (HRS), requires the committee to conduct its hearings "in a fair and impartial manner." HRS § 21-1.

The committee's procedure was not fair. Notice is an elementary requirement of fairness. Yet the Office of the Auditor had no notice that the committee would attempt an investigation of the Office – certainly not from the authorizing resolution. (House members who voted for the resolution also had no notice that it would be used for that purpose.)

### **Only one side, the committee's side**

The committee's selection of testimony was not impartial. It was, rather, an apparent attempt to conjure up malfeasance on the part of the Auditor in the form of alleged audit anomalies and omissions. Those alleged anomalies and omissions are, in fact, easily refuted. Yet, despite the Auditor's willingness (frequently repeated) to answer questions, the committee never gave him that opportunity. The committee clearly did not care to even consider the Auditor's position, avoiding inviting him to address the allegations and innuendos that the committee had cultivated through selective testimony. That does not seem fair or even honest, but it is definitely not impartial.

An investigative committee is a kind of "adversary proceeding,"<sup>3</sup> much like a trial. Like a trial, the committee brings the awesome power of the state to bear on individual witnesses, who must testify under oath. Like a trial, an investigative committee can compel attendance of witnesses, compel testimony, and compel the production of documents. Unlike a trial, however, only committee members can ask questions of witnesses. Unlike a trial, no one on the receiving end

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<sup>2</sup> Whether the committee ultimately steps back from its excursion beyond the bounds of its legally authorized investigation remains to be seen; that will depend on the committee's final report.

<sup>3</sup> Stand. Com. Rep. No. 48, 1969 House Journal page 630 (noting "the many similarities between an adversary proceeding and a legislative investigation.") Chapter 21's legislative history says it was intended to be "a code of fair legislative procedure of the type that history has evolved for the courts." Id. at 629. A code of fair legislative procedure would not allow an investigative committee to exercise unauthorized and therefore illegal power – any more than a code of fair judicial procedure would.

of committee process is entitled to confront his or her accusers. Unlike a trial, witnesses testify under a continuing threat of criminal contempt.

Also, unlike a trial – or any other adversarial proceeding for that matter – a committee investigation can be deliberately conducted in a one-sided manner, and the one-sided story is not subject to correction. Unlike a trial, in a committee investigation, the other side does not have the power to compel witnesses to appear and to ask questions of witnesses. Unlike a trial, there are not even two sides to begin with – a prosecutor and a defendant. There is only one side – the committee's side – and only the committee is able to present witnesses to support its narrative.

In a trial, one side can ferret out inconsistencies or omissions in the other side's telling of the story through cross-examination. But an investigative committee does not allow questions by anyone not on the committee, and it need not attempt to balance the committee's perspective with contrary perspectives and contrary questions. It need not tell the whole story. In an investigative committee, unlike a trial, testimony can be choreographed to tell only one side of the story. In an investigative committee hearing and report, the committee can write its own script in advance, including its own pre-determined outcome, if it so chooses.

That is why the requirement that an investigative committee must be "fair and impartial" is so important. And that is why investigative committees must be scrupulously held to the limits of the authority delegated to them by one or both chambers in the legislative resolution that creates and authorizes the committee. Without those limits, the committee's powers would be virtually unlimited, and most would question whether politicians should be entrusted with unlimited power. That is not a comment on the character of any particular member of the committee. It is simply a comment on human nature. As Lord Acton famously said, "all power tends to corrupt, and absolute power corrupts absolutely."<sup>4</sup>

Here, a committee that was authorized and constituted to investigate only two agencies instead decided it had the power to investigate a third – the Office of the Auditor – not even mentioned in the House's authorizing resolution. It is not a coincidence that this unauthorized excursion beyond the bounds of the committee's authority would allow the committee, or its chair, to drum up testimony against the Auditor, as opposed to what House Resolution No. 164 actually envisioned: testimony that would assist DLNR and ADC to overcome the significant shortcomings identified in the findings in each of our audits of those agencies.

### **Auditing the Auditor**

The "change" in the course of the investigative committee's inquiry is hardly surprising. On January 14, 2021, House Speaker Scott Saiki issued a memorandum to all House members announcing his unilateral creation of a "State Auditor Working Group." Less than a week later, the Speaker introduced House Bill No. 1, which proposed cutting the Office of the Auditor's budget by more than 50 percent. Five days later, he and House Majority Leader Della Au

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<sup>4</sup> Quoted in Herbert Butterfield, *The Whig Interpretation of History* (New York: W.W. Norton, 1965), 110.

Belatti, who Speaker Saiki appointed to be the chair of this committee, introduced House Bill No. 354, which would have given lawmakers control over the Auditor's salary (currently set by the Salary Commission). The bill quickly died. And, two days after that, House Majority Leader Belatti introduced House Bill No. 1341, which would have established an office of public accountability to assume oversight and administrative responsibility for (i.e., control over) the Office of the Auditor and other watchdog agencies. That bill also died.

Like Speaker Saiki's Auditor Working Group before it, the committee's investigation of the Office of the Auditor seems to have been driven by a pre-existing political agenda. The committee was authorized to conduct a fact-based inquiry into the significant problems within DLNR and ADC, as reflected in House Resolution No. 164 and in the committee's own formal title. The committee's charter was to investigate those agencies' compliance with the audit recommendations and thereby to assist them in achieving their missions more effectively.

It was a great leap from that specific and limited charter to using the committee to attempt – first covertly, and then increasingly overtly – to continue to “audit the auditor” by other means. The rerun of that prior effort by the working group, now under a different name, even features some of the same actors, for example, the former auditor of the City and County of Honolulu, who had a starring role in the earlier show, yet knows nothing about the two agencies' compliance with their respective audit recommendations. In any case, this effort is far beyond what the House authorized – and smacks of some form of political retribution against the Auditor. If that is what it is (or even partly is), then it is a political assault on an office that was designed under the Hawai'i Constitution to be independent of such political pressures.

### **An inquiry that ignores inconvenient facts and stops short at insinuation and innuendo**

On October 20, 2021, Chair Belatti announced that the committee would be pursuing “a larger pattern by the Auditor to unilaterally decide not to report on certain substantive and critical issues discovered in the field, including in some cases of criminal and potentially criminal acts.” She made this announcement before introducing the first of several witnesses whose recollections supposedly necessitated this change of direction. That witness, Ronald Shiigi, former Administrative Deputy Auditor, gave a hazy, fact-free account of a fraud by a former DLNR Land Division employee that went unreported by the Office of the Auditor. Mr. Shiigi, who was the supervisor on the audit, claimed that he was made aware of the fraud by two analysts he supervised and passed the information along to the Auditor. He could not recall the details of his conversations with the two analysts regarding the fraud or any subsequent discussions with the Auditor. He did claim that the Auditor makes the final call on what is or is not included in the final audit report, implying that the Auditor had arbitrarily dropped the matter.

Mr. Shiigi's claims of negligence were quickly and easily refuted by committee member Representative Dale Kobayashi, who pointed out that not only had DLNR been aware of the fraud before the office's analysts discovered it, but the Department of the Attorney General had

prosecuted the case and secured a verdict. Later that day, DLNR Chairperson Suzanne Case confirmed to Chair Belatti that DLNR had forwarded the case to the Attorney General long before she met with Mr. Shiigi's audit team. Undeterred, Chair Belatti noted that it was still unclear if the fact that the fraud had been fully prosecuted had been evident to members of the audit team at the time. If Chair Belatti was truly interested in gaining clarity on this and other issues, she could have just asked the Auditor. She did not.

This type of inquiry, which ignores inconvenient facts and stops short at insinuation and innuendo, continued with the testimony by a former contractor who worked on an unrelated audit and got even worse with the former city auditor, whose testimony descended into hyperbole and name-calling.

### **There is no pattern; there are no omissions**

On numerous occasions, Chair Belatti has proclaimed that the committee would follow the evidence where it took them, as she described an ever-growing inventory of documents in the tens of thousands that she and the committee's staff had to sort through. We had hoped that the laborious review involved Report Nos. 19-12 and 21-01 and their findings and recommendations. However, it became quickly apparent that the committee was far too interested in seeking information about what the Auditor did not do, instead of focusing on the real, serious problems and issues raised in the audit reports.

Both Report Nos. 19-12 and 21-01 raised serious issues that showed the need for reform and contained recommendations designed to help bring about those reforms, and it is noteworthy that the committee does not criticize our work product. And neither ADC nor DLNR disputed our findings, and in fact, both testified about actions they were taking to implement our recommendations.

Our reports are thorough, accurate, and impactful. They provide transparency into agency programs, include findings that are supported by real evidence, and offer meaningful recommendations to improve program operations. It is truly a shame that the investigative committee squandered the opportunity to fully address the real problems and shortcomings with DLNR and ADC identified and reported in Report Nos. 19-12 and 21-01.

We ask that the committee take all of this into consideration as it completes drafting of the report. There should be no room in the report for innuendo and unsupported allegations. However, if the committee is to properly discharge its duty to make relevant, helpful findings that are related to the purpose for which it was formed, we would hope that your report will focus on DLNR and ADC and omit the troubling and improper lines of inquiry impugning our office.

The public deserves better.