

FIFTEENTH DAY

Tuesday, February 4, 1986

The Senate of the Thirteenth Legislature of the State of Hawaii, Regular Session of 1986, convened at 11:40 o'clock a.m., with the President in the Chair.

The Divine Blessing was invoked by the Reverend Thomas Okano of the Wahiawa Hongwanji Mission, after which the Roll was called showing all Senators present.

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

Senator Soares then introduced to the members of the Senate Michael Kaneko and Ian Swafford, students of Niu Valley Intermediate School, participants of the school's "A Day at the Legislature Program."

MESSAGES FROM THE GOVERNOR

The following messages from the Governor (Gov. Msg. Nos. 99 to 113) were read by the Clerk and were disposed of as follows:

Gov. Msg. No. 99, transmitting a report prepared by the Department of Health in response to S.R. No. 18 (1985), Epidemiological Study to Determine Why Lana'i and Moloka'i Have Extraordinarily High Rates of Birth Defects, was referred to the Committee on Health.

Gov. Msg. No. 100, transmitting a report prepared by the Department of Health, relating to deinstitutionalization of Waimano Training School and Hospital, pursuant to Sec. 65, 66 and 81 of Act 300, SLH 1985, was referred to the Committee on Health.

Gov. Msg. No. 101, informing the Senate that on February 3, 1986, he signed into law House Bill No. 1779-86 as Act 1, entitled: "MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE LEGISLATIVE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, AND THE OMBUDSMAN," was placed on file.

Gov. Msg. No. 102, submitting for consideration and confirmation to the Board of Acupuncture, the nominations of:

Randy Kook Do Chun and Paul W. Condry, terms to expire June 30, 1988; and Benny K.P. Fan, William E. Pickard, D.C., and Yaacov Tzror, terms to expire June 30, 1987,

was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 103, submitting for consideration and confirmation to the Board of Physical Therapy, the nominations of:

Elroy K. Chong and Ronald Y. Honda, terms to expire June 30, 1988; Dennis M. Crowley, M.D., and Joni S. Kanazawa, terms to expire June 30, 1989; and Mark K. Ono, term to expire June 30, 1987,

was referred to the Committee on Consumer Protection and Commerce.

Gov. Msg. No. 104, submitting for consideration and confirmation to the State Council on Mental Health and Substance Abuse, the nomination of Lyn Kux, term to expire June 30, 1989, was referred to the Committee on Health.

Gov. Msg. No. 105, submitting for consideration and confirmation to the Technical Advisory Committee on Pesticides, the nomination of James K. Ikeda, term to expire June 30, 1987, was referred to the Committee on Health.

Gov. Msg. No. 106, submitting for consideration and confirmation to the Board of Regents, University of Hawaii, the nomination of Herbert M. Richards Jr., term to expire June 30, 1987, was referred to the Committee on Higher Education.

Gov. Msg. No. 107, submitting for consideration and confirmation to the Board of Directors, Aloha Tower Development Corporation, the nomination of Don J. Daley, term to expire June 30, 1987, was referred to the Committee on Housing and Community Development.

Gov. Msg. No. 108, submitting for consideration and confirmation to the Advisory Council for Children and Youth, the nominations of:

Marlene K. Burgess, term to expire June 30, 1989; and Patricia Jenkins, term to expire June 30, 1988,

was referred to the Committee on Human Services.

Gov. Msg. No. 109, submitting for consideration and confirmation to the Criminal Injuries Compensation Commission, the nominations of:

Thomas Blondin, term to expire June 30, 1989; and Nobuki Kamida, term to expire June 30, 1987,

was referred to the Committee on Human Services.

Gov. Msg. No. 110, submitting for consideration and confirmation as Attorney General, the nomination of Corinne K.A. Watanabe, term to expire December 1, 1986, was referred to the Committee on Judiciary.

Gov. Msg. No. 111, submitting for consideration and confirmation to the Criminal Justice Data Interagency Board, the nominations of:

Wayne Carvalho, Max Graham, Robert Graham and Richard M.C. Lum, terms to expire June 30, 1988;
Joseph E. Cardoza, Robert Won Bae Chang, Warren Ferreira and Bob Kita, terms to expire June 30, 1989; and
Norman Okamura, Ph.D., Alfred Suga and Paul Toyozaki, terms to expire June 30, 1987,

was referred to the Committee on Judiciary.

Gov. Msg. No. 112, submitting for consideration and confirmation as Director of Labor and Industrial Relations, the nomination of Robert C. Gilkey, term to expire December 1, 1986, was referred to the Committee on Labor and Employment.

Gov. Msg. No. 113, submitting for consideration and confirmation to the Medical Advisory Board, the nomination of Michael K. Imura, M.D., term to expire June 30, 1989, was referred to the Committee on Transportation.

At this time, Senator Hee rose on a point of personal privilege and remarked as follows:

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

"Mr. President, I'm aware there's going to be some discussion regarding pornography in the Legislature this session. I want to point out that as we have passed the bill deadline, I saw two bills which deal with pornography this year in the Senate at least.

"Recently, much discussion has surrounded the arguments on pornography and the discussion on pornography from the City Prosecutor's Office as well as from the Legislature and if the message was clear, the message from the prosecutor's perspective was, if you don't like the law change the law. Well, there is no question in mind that there will be an attempt this year to deal with this issue which affects all of us and I can tell you that from my own office I've received letters which are well-meaning. There are two in particular which really took the effort from the community to explain their perspectives on

pornography and how pornography should be dealt with and I appreciate those letters as it highlights the anxiety that has been created in the public environment.

"I would like to point out that the bills dealing with pornography is a good faith effort to address the problem. It's a product of much work on behalf of the authors who drafted the bill and let me say that I feel that I can speak for the authors of the bill that if we felt that this bill was not a clear conscientious effort to deal with this problem that this bill would not have been drafted. It's a bill that asks for much dialogue to make it a better bill and it's an effort by the members of the Senate to deal with this problem.

"Thank you, Mr. President."

At 11:45 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:47 o'clock a.m.

Senator Abercrombie also rose on a point of personal privilege as follows:

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

"As has been indicated by the previous speaker, there are bills that will be debated and this is not the place to do it and I do not intend to do so, I'm sure you'll be happy to note, Mr. President. However, there have been characterizations made in the press, including name-calling such as using the words 'creeps' and 'slimy' to designate perfectly legitimate differences of opinion.

"Mr. President, when a legislator whose record is of long-standing in terms of service to this community can be so designated, before a bill has even seen the light of day, that is a commentary on the people who make such accusations rather than on those who are accused.

"I stand today on a point of personal privilege because I feel that it is patently unfair for anyone using the power of his office to characterize other people in such a fashion, especially when it makes it appear that to differ on a point of view is tantamount to committing a criminal act.

"Mr. President, I have had the unpleasant task of speaking with people who are under the impression that simply because we were attempting to defend this document, the Constitution of the State of Hawaii, the basis upon which all of us exist in this body and to which all of us has sworn an oath to uphold, that to merely have a view concerning the privacy and the rights of individuals and citizens of this community which is differentiated from that,

particularly of the City Prosecutor's Office, constitutes an attitude on my part or on the part of any other legislator who is concerned about it is being someone who promotes pornography? Someone who approves of sexual assault on children and gross acts of indecency and obscene behavior and that to have a concern about whether or not public morality and public policy can be balanced is to find one's self accused of wanting to promote that kind of activity? It is totally unfair.

"Anyone who reads the bill that we have put forward, Mr. President, will see that we have actually strengthened the pornography statute. No responsible legislator, no responsible person favors pornography. What is involved as I have indicated is the eternal tension between private morality and public policy.

"In the present instance, I do not think nor do those who have introduced the bill with me think that arresting young clerks or elderly people trying to supplement their incomes addresses the problem in any positive way.

"Mr. President, the present statute with respect to the promotion of pornography involves a discussion of the content and character of the material involved. Even the prosecutor would have to admit, one need only read through some of the literature on pornography in the law to know that sexual activity in and of itself is not obscene. Unfortunately, there are some people who believe that it is. That is their right. They can have that view but the law does not say that. The law says that in order for something to be pornographic or judged obscene it must meet certain tests of the law. This bill does not propose to dispute that, on the contrary, it seeks to get rid of the present ambiguity with respect to content and character so that we can have reasonable dialogue among reasonable people. Not to try to protect criminal action.

"What it does, Mr. President, in short, is incorporate the obscenity law into the

promotion of pornography law, thus, strengthening the law and I fully expect the City Prosecutor's Office to be in the Judiciary chairman's hearing when this bill comes up testifying in favor of this bill. If the Prosecutor's Office does not testify in favor of this bill we will know what the true purpose of all of this alleged concern about pornography is, a political agenda separate and apart from upholding the law.

"We have provided in this bill an opportunity for people not to be arrested and then find out whether they have committed a crime. We have provided an opportunity for due process to take place to enable us to get a finding of probable cause and if someone then disputes it they can take it to court.

"Mr. President, this provides a methodology to protect our citizens and to provide an opportunity for the Prosecutor's Office, on Oahu at least, not to have to act as a censor but to act as an enforcer of law.

"I will not take further opportunity today to comment on its content other than to say that I feel that it is very unfortunate for people to try and stir up people's fears and anxieties and to categorize the content of a bill before it even appears and I think that any judicious person, someone who does not have, as I have indicated, a separate political agenda, will find that this is reasonable; that this strengthens the law; and this answers all the questions with respect to privacy and seeing to it that our citizenry is not harassed.

"Thank you."

Senator Cobb, at this time, introduced to the members of the Senate an assistant to the City Prosecutor, Mr. Rick Reed.

ADJOURNMENT

At 11:55 o'clock a.m., on motion by Senator Cobb, seconded by Senator Soares and carried, the Senate adjourned until 11:30 o'clock a.m., Wednesday, February 5, 1986.