

EIGHTH DAY

Monday, February 1, 2010

The Senate of the Twenty-Fifth Legislature of the State of Hawai'i, Regular Session of 2010, convened at 11:42 a.m. with the Vice President in the Chair.

The Divine Blessing was invoked by the Honorable J. Kalani English, Hawai'i State Senate, after which the Roll was called showing all Senators present with the exception of Senators Espero, Hanabusa, and Ihara who were excused.

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

At this time the following introductions were made to the members of the Senate:

Senator Fukunaga, on behalf of herself and Senator Taniguchi, introduced a group of 3rd grade students from Lunanilo Elementary School who were accompanied by their teacher Joy Buckland, and chaperones Mrs. Elsie Kawakami and Mr. Clayton Yanagisako.

Senator Tsutsui rose on a point of personal privilege as follows:

"Mr. President, I request today that the Senate adjourn this morning on a rising vote and observe a moment of silence in memory of former State Senator Nadao Yoshinaga. This Maui boy dedicated his life for the betterment of our state. A proud veteran of the famed 100th Battalion, 442nd Regimental Combat Team in World War II, was just the beginning of what became a very distinguished career in public service.

"Senator Yoshinaga was elected into the House of Representatives in 1954 and into the State Senate in 1959. During his career, he was responsible for landmark legislation, such as the Prepaid Health Act, the Arts in Public Places Act, and the creation of the Hawai'i State Commission on Status of Women, just to name a few. 'Najo,' as most of us knew him, was a visionary and he'll be truly missed by all of us. And, at this moment, I'd like to turn the floor over to Senator Fukunaga."

Senator Fukunaga rose and said:

"I'd like to add a few remarks to those of my distinguished colleague from Maui.

"While Senator Yoshinaga was undoubtedly a proud son of Maui, we in Makiki were privileged that he lived in our high density community during his last few years. He participated actively in One Kalākaua's exercise programs, social activities, and even in our community meetings. However, what I want to highlight today is that he was truly Hawaii's first science and tech guru: a man way ahead of the modern computer and internet age. Between the mid-1960s and 70s, he helped to fund the Hawai'i Institute for Marine Biology, Kewalo Basin Research Lab, the Mauna Kea Observatory, the Med School, the Law School, and even RCUH, whose purpose was to cut through red tape to advance scientific inquiry in all branches of learning. In that way, he is as much a part of the hopes and aspirations of today's robotics champs from Wai'alu, McKinley, or Wai'akea High School, or those of the talented dream-spinners like Wai'anae Seariders and Academy for Creative Media grads. That's when he occupied these Senate Chambers.

"When we do observe a moment of silence in his memory, I think we can all listen carefully and hear his voice saying, 'Make Hawai'i the best place in the world.'"

At this time, Senator Fukunaga introduced members of the late Senator Nadao "Najo" Yoshinaga's family and extended 'ohana including his son Alvin, daughter Susan and son-in-law Roger Ward, son Michael, and friends Steve Montgomery and Bob Miller.

At 11:48 a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:50 a.m.

HOUSE COMMUNICATION

The following communication from the House (Hse. Com. No. 6) was read by the Clerk and was disposed of as follows:

Hse. Com. No. 6, transmitting H.B. No. 2162, H.D. 1, which passed Third Reading in the House of Representatives on January 29, 2010, was placed on file.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, H.B. No. 2162, H.D. 1, entitled: "A BILL FOR AN ACT MAKING APPROPRIATIONS TO PROVIDE FOR THE EXPENSES OF THE LEGISLATURE, THE AUDITOR, THE LEGISLATIVE REFERENCE BUREAU, AND THE OMBUDSMAN," passed First Reading by title and was referred to the Committee on Ways and Means.

STANDING COMMITTEE REPORTS

Senator English, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 2001) recommending that S.B. No. 2003 pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2003, entitled: "A BILL FOR AN ACT RELATING TO STATE IDENTIFICATION," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator English, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 2002) recommending that S.B. No. 2174 pass Second Reading and be referred to the Committee on Labor.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2174, entitled: "A BILL FOR AN ACT RELATING TO THE EMPLOYEES' RETIREMENT SYSTEM," passed Second Reading and was referred to the Committee on Labor.

Senator English, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 2003) recommending that S.B. No. 2142, as amended in S.D. 1, pass Second Reading and be referred to the Committee on Judiciary and Government Operations.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2142, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO CIVIL IDENTIFICATION," passed Second Reading and was referred to the Committee on Judiciary and Government Operations.

Senator English, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 2004) recommending that S.B.

No. 2266 pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2266, entitled: "A BILL FOR AN ACT RELATING TO DRIVER LICENSING," passed Second Reading and was placed on the calendar for Third Reading on Tuesday, February 2, 2010.

Senator English, for the Committee on Transportation, International and Intergovernmental Affairs, presented a report (Stand. Com. Rep. No. 2005) recommending that S.B. No. 2179, as amended in S.D. 1, pass Second Reading and be placed on the calendar for Third Reading.

On motion by Senator Sakamoto, seconded by Senator Slom and carried, the report of the Committee was adopted and S.B. No. 2179, S.D. 1, entitled: "A BILL FOR AN ACT RELATING TO COUNTIES," passed Second Reading and was placed on the calendar for Third Reading on Wednesday, February 3, 2010.

At this time, Senator Slom rose on a point of personal privilege and said:

"At the close of last Friday's floor session, there was an announcement made that there was going to be another Judiciary hearing on the nomination of Mr. Ed Kubo for Circuit Court. There was also an announcement made that the Senate will be voting on that confirmation on Wednesday morning. I looked at the announcements for committees, and I did not see any committee hearing that has been scheduled prior to Wednesday for the nomination, again of Mr. Kubo. And it's come to my attention that, in fact, there was an overture to Mr. Kubo to meet privately with the members of the Majority caucus tomorrow at 10:30 behind closed doors to discuss various issues. If that information is correct, Mr. President, I find that very egregious.

"We are a Senate body. We talk about transparency. We talk about hearings and we should have those hearings, either at the Committee level where they are open to the public and fully announced, or we should have them on the Senate floor, which is fine with me. But we should not have them behind closed doors with just some of the members of the Senate present, and no members of the public, and not the full contingent from the Committee.

"So, if my information is incorrect, Mr. President, I would be very happy to have it corrected. If in fact there is a hearing scheduled prior to Wednesday's vote, I'd be very happy to have that information; and I'd also like to confirm that again this Senate body is going to vote on Mr. Kubo's nomination on Wednesday. Thank you, Mr. President."

The Chair responded as follows:

"Yes, the Senate will vote on the confirmation on Wednesday. There is not a Judiciary Committee hearing planned to address the Governor's Message; and of course, any Senator is welcome to meet with Mr. Kubo if he agrees to discuss his nomination."

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

"If indeed we can address the rumors going around about the nominee, does the nominee have the opportunity to defend himself in a forthright and open manner—which is, as we all know, the hallmark of fairness. And I find it incredible that in times when many people in this country and in this state are talking about transparency and openness in government that this man's nomination is being maligned through innuendo and an anonymous speech where he does not have the opportunity

to defend himself. I would urge the Majority party in the interests of openness in government to conduct all business concerning this nomination in a public manner. And possibly, it may be appropriate if there is the time, as the good Senator from Hawai'i Kai suggested, to have a committee hearing so that the public can be assured that this nominee was treated in an open and fair manner and had a opportunity to address the scurrilous rumors—half-truths as we see them—and most importantly, face his accusers one-on-one. So Mr. President, in the interests of honest democracy, I would suggest that the Majority party conduct a hearing. Thank you."

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

"I think what occurred from last week to this week is that there were some additional allegations that were made against Mr. Kubo, and that's, in part, why we did not have a vote and requested delaying the vote on Friday. Part of it was that we wanted an opportunity for him to address some of those concerns, and that we felt that maybe—well, in terms of the procedure of the Senate, because the nomination had already come down to the floor, it would be difficult for us to again have another public hearing. The other thing was that a lot of times when appointees or nominees are questioned by individual members, sometimes it's the interpretation or there's some concern about different stories that are being said by different people. And so part of it for us was that I considered maybe having a caucus, and we did invite Mr. Kubo to attend so that those kinds of questions could be answered and that would at least have—among the Majority members anyway—at least the same opportunity to see him answer the questions and respond to some of these things that came out after our hearing in Judiciary. So that was the attempt.

"Mr. Kubo has declined to speak before the caucus, and so we, I think, have an opportunity now, if members do have questions, for them to contact Mr. Kubo and get those questions answered. I don't believe I'll be raising those additional concerns, but I will try to talk to Mr. Kubo about them in the intervening time, either today or tomorrow, before our vote on Wednesday.

"So that's what happened. That's the situation. I don't think there's any attempt to cover up. Actually, it's an attempt to provide him with another opportunity to answer some of the questions that came up after the hearing. Thank you."

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

"Just a brief follow-up. Again, my point of personal privilege has to do with transparency and about allowing all of the Senators and all of the public to hear information at the same time, and I think that would have been very easy to do. And as I mentioned, the Senate President had mentioned that that was what was going to be done on Friday. So, to leave it to individual Senators to have individual meetings or just the Majority party behind closed doors I think defeats the whole purpose, not just for this nomination, but for anything that we do in the future. And I think that all of my colleagues should be very concerned about that and should speak up about it. Thank you, Mr. President."

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

"Just a response, a quick response: We have our caucus and I think the Minority has their caucus, and they can invite whoever they want at any time to answer to whatever questions their caucus may have. I don't see it's a matter of transparency necessarily; it's a matter of that they can also have their own caucus if they're so concerned. Thank you."

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

“Regarding Mr. Kubo, I don’t know about any Majority caucus, and if there is one, I don’t suspect that there’s anything nefarious about the Majority calling this caucus or any other caucus in the future.

“I do know about Mr. Kubo to the extent that questions have arisen, and I intend to meet with Mr. Kubo. I had a brief conversation with him on Friday, and I believe Cherie has scheduled a subsequent meeting either today or tomorrow. I don’t think it’s a secret in the caucus when we had a discussion. For me, it has to do with disclosure. And, not surprisingly, having served as Judiciary chairman in the 80’s as well as more recently, lawyers’ questions. So I want to ask the nominee how he ‘lawyered’ the question because the question is: Has he been admonished, has he been reversed, has he been criticized in writing by any court? It’s a real simple question. Evidently, his answer was ‘no’ when asked by the Judicial Selection Commission.

“Now, until the caucus met last week, I was prepared to vote for him. Evidently, he has something in writing that was presented by the Chairman of Judiciary. But maybe he made a mistake and he forgot, and maybe if he had to do it over again, he would include it. That’s a fair statement. That’s a fair response. But in fact the Chairman of Judiciary has since disclosed that there are two other cases in writing admonishing the nominee. Well, that’s a serious matter, and those are the things that trouble me with this nominee. So in the spirit of transparency, those are the questions that I will ask him. If he has legitimate answers, so be it. If he doesn’t, that’s the way it is. That’s why we have the advise and consent process. It has nothing to do with anything other than that; and if you folks wish to know how the discussion goes, I invite you to call me after I’ve had my opportunity to meet with the nominee. Thank you.”

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

“Mr. President, I’ve been getting a number of e-mails from people that are in support of Mr. Kubo, and many of the e-mails are stating some false information. One of them is stating that supposedly Mr. Souza has called most of us. Well, I just want to go on record to say that he has not called me, he has not come to my office, I do know him, and I’m not sure who else in this body has been contacted other than the Senator from Hawai’i Kai. But certainly the statements that most of us have been contacted, I think, is perhaps not an accurate one; and I would like to ask that when people send us this kind of e-mails, that they put in information that they know is true and not false ones. I’ve been accused in the past for voting against someone because when he was a prosecutor he had prosecuted my sister, and that was false. So this kind of false information is certainly not appreciated by me. Thank you.”

Senator Hemmings rose in rebuttal and on a point of personal privilege and stated:

“I think this has been a healthy debate that needs to be fully aired. Thank you for allowing me to proceed, Mr. President.

“I think this discussion on this floor today provides enough evidence of why we need a more open and honest debate on this issue, and most especially in a formal setting where the public, the nominee, and all legislators can make informed decisions. We need to know who’s making the accusations that have been discussed on this floor and some of the disguised questions that possibly could be more indictments than questions. And then, quite frankly, regarding the previous speaker’s allegations about violating the written orders as mandated by the court—we need answers to that too, because if the nominee is for whatever reasons not forthcoming, then that is an element that all of us should know about. So, what we’re

doing here is advise and consent, and what is best for the people of Hawai’i and the judicial branch of government and justice itself, and a good man who’s served our nation well and our state well has not only the right, but also should have the privilege to defend himself in an open and honest manner with all 25 senators.

“So, once again, Mr. President, I’d urge the Majority party--there’s no rush on this nomination—to have another committee hearing despite the paperwork it may involve or whatever floor action it would take to do it. And let’s do this fairly in front of the public so that we all can make informed and honest decisions. Thank you, Mr. President.”

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

“I will be very happy to—and by this announcement—we will e-mail to every member of the Senate the three cases that were provided by the staff of the Judiciary Committee where the nominee was evidently criticized by the court. In addition, my staff is more than happy to also e-mail to each member the salient question by the Judicial Selection Commission which asks all nominees to disclose any cases where the nominee may have been criticized by the court, which evidently, according to the Judiciary Committee, he responded in the negative. He did respond to me on Friday that he said ‘no’ and that he did say that if he had to do it over again, he would’ve included it. Of course, the issue here is: We were under the impression—at least I was under the impression—it was one case. It turns out it was evidently three cases in writing.

“I agree with the previous speaker. I wish that we could continue this longer, but unfortunately, the Constitution requires us as a Senate to act on the nominee no later than Wednesday, or, as all of you know, it’s an automatic approval by no action by the Senate, and I don’t think any nominee would like to proceed under a cloud like that. Thank you.”

At this time, the Chair made the following announcement:

“Referrals and re-referrals are made in accordance with the referrals and re-referrals listed on the Supplemental Order of the Day that may be distributed to your offices later this afternoon.”

ADJOURNMENT

At 12:08 p.m., on motion by Senator Sakamoto, seconded by Senator Slom and carried, the Senate adjourned until 11:30 a.m., Tuesday, February 2, 2010, on a rising vote, observing a moment of silence in memory of Senator Nadao “Najo” Yoshinaga.