

## FIFTY-FIFTH DAY

Monday, April 22, 1991

The Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1991, convened at 11:40 o'clock a.m. with the Vice President in the Chair.

The Divine Blessing was invoked by Captain Erik Sholin, The Salvation Army, after which the Roll was called showing all Senators present with the exception of Senators Ikeda, Matsuura and Wong who were excused.

The Chair announced that he had read and approved the Journal of the Fifty-Fourth Day.

The following introductions were then made to the members of the Senate:

Senator Tungpalan introduced Mrs. Rowena Akana and Mr. Abraham Aiona, trustees of the Office of Hawaiian Affairs, who were seated in the gallery.

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

The Senate reconvened at 11:46 o'clock a.m.

Senator Solomon introduced Ms. Melody MacKenzie as follows:

"Mr. President, on behalf of Senator Anthony Chang, it gives me great pleasure to introduce two distinguished guests that we are honoring here on the floor today. I would like to read from the Senate certificates.

"First we would like to recognize Melody MacKenzie for her outstanding work to promote native Hawaiian rights:

'Ms. MacKenzie, a senior staff attorney for the Native Hawaiian Legal Corporation, a per diem judge for the State of Hawaii, and a kumu hula for Halaau Mohala Ilima, has been involved in native Hawaiian rights since the early 1980's.

'As a student of the University of Hawaii Richardson School of Law, Ms. MacKenzie and her classmates became involved in compiling a text of cases and statutes relating to native Hawaiian legal rights. This eight-year project, the Native Hawaiian Rights Handbook, analyzes the applicable statutory and case laws that would be most relevant to Hawaiian.

'Throughout Ms. MacKenzie's legal career she has continued to promote native Hawaiian rights as a serious field for practice. She has served as the executive director of the Native Hawaiian Legal Corporation, the editor-in-chief for the Native Hawaiian Rights Handbook, and has taught native Hawaiian rights classes.

'The Senate of the State of Hawaii recognizes and commends Ms. Melody MacKenzie for her dedication for native Hawaiians to be recognized as native people and extends its very best wishes for continuing success in her future endeavors.'

"At this time I'd like to ask Ms. MacKenzie to rise. Mahalo."

Ms. MacKenzie rose to be recognized and was presented the congratulatory Senate certificate and lei by Senator Solomon.

Senator Solomon continued:

"Mr. President, at this time I would like to recognize our next distinguished guest and would like to commend and honor Mahealani Kamaau.

'Mahealani Kamaau, executive director of the Native Hawaiian Legal Corporation, was presented with this year's Liberty Bell Award, given by the Hawaii State Bar Association to a non-lawyer who has made significant contributions in a law-related field.

'Through her twelve years with the Native Hawaiian Legal Corporation and her intense dedication to many causes including her support of residents of Kalama Valley, Waiahole-Waikane, Ota Camp, Chinatown, and Niimalu-Nawiliwili, she has demonstrated her strong commitment to social justice and has made the struggle for Hawaiian rights her life's work, contributing countless hours working with the Hawaiian community, farmers, prisoners, and the homeless.

'Mahealani Kamaau also serves on the board of directors of the Native American Rights Fund and has been appointed by Chief Justice Herman Lum to the State Judiciary's Alternative Dispute Resolution Center. She is also a singer and a published poet.

'The Senate of the Sixteenth Legislature of the State of Hawaii, Regular Session of 1991, commends and honors Mahealani Kamaau for her tireless efforts to strengthen Hawaiian rights and ensure social justice for all and wishes continued success in her endeavors.'

"Mahealani please rise to be recognized.

"On a personal note, Mr. President, I served with both of these women when I was a trustee of the Office of Hawaiian Affairs and can attest to the integrity of their outstanding work and, of course, in their countless hours and their contributions in the study and the furtherance of native Hawaiian rights that would be a continuing pursuit here in Hawaii."

Ms. Kamaau rose to be recognized and was presented the congratulatory Senate certificate and lei by Senator Solomon.

At 11:50 o'clock a.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 11:53 o'clock a.m.

## MESSAGE FROM THE GOVERNOR

Gov. Msg. No. 366, dated April 17, 1991, transmitting the "State of Hawaii Program Structure, December 1990 (Effective July 1, 1991 to June 30, 1993)," required by Chapter 37, the Budget, was read by the Clerk and was placed on file.

## HOUSE COMMUNICATIONS

The following communications from the House (Hse. Com. Nos. 658 to 666) were read by the Clerk and were placed on file:

Hse. Com. No. 658, dated April 19, 1991, informing the Senate that the House has agreed to the amendments proposed by the Senate to the following House bills and said House bills passed Final Reading in the House of Representatives:

H.B. No. 825, S.D. 1;  
H.B. No. 1005, H.D. 1, S.D. 2;  
H.B. No. 1768, H.D. 2, S.D. 1; and  
H.B. No. 2157, H.D. 2, S.D. 2.

Hse. Com. No. 659, informing the Senate that the Speaker on April 19, 1991, appointed Representative Young as an additional manager on the part of the House at the conference on S.B. No. 621, S.D. 2, H.D. 1.

Hse. Com. No. 660, dated April 19, 1991, informing the Senate that the Speaker appointed Representative Metcalf as lead chairman on the part of the House at the conference on S.B. No. 1279, S.D. 1, H.D. 2.

Hse. Com. No. 661, informing the Senate that the Speaker on April 19, 1991, discharged Representative Ihara and appointed Representative Baker as a manager on the part of the House at the conference on H.B. No. 918, H.D. 1, S.D. 1.

Hse. Com. No. 662, informing the Senate that the Speaker on April 19, 1991, discharged Representative Yoshimura and appointed Representative Amaral as a manager on the part of the House at the conference on H.B. No. 1017, H.D. 1, S.D. 1.

Hse. Com. No. 663, informing the Senate that the Speaker on April 19, 1991, discharged Representative Arakaki and appointed Representative Morihara as a manager on the part of the House at the conference on H.B. No. 934, H.D. 1, S.D. 1.

Hse. Com. No. 664, informing the Senate that pursuant to the disagreement of the House to the amendments proposed by the Senate to H.B. No. 1012, and the request for a conference on the subject matter of said amendments, on April 19, 1991, the Speaker appointed Representatives Metcalf, chairman, Amaral, Hirono, Takamine, Thielen as managers on the part of the House for the consideration of said amendments.

Hse. Com. No. 665, informing the Senate that pursuant to the disagreement of the Senate to the amendments proposed by the House to S.B. No. 1424, S.D. 2, and the request for a conference on the subject matter of said amendments, on April 19, 1991, the Speaker appointed Representatives Metcalf, Say, co-chairmen, Amaral, Hagino, Ige, M., Takamine, Thielen as managers on the part of the House for the consideration of said amendments.

Hse. Com. No. 666, dated April 19, 1991, informing the Senate that the Speaker on appointed Representative Souki as lead chairman on the part of the House at the conference on H.B. No. 1682, H.D. 1, S.D. 2.

#### STANDING COMMITTEE REPORT

Senator Blair, for the Committee on Judiciary, presented a report (Stand. Com. Rep. No. 1433) recommending that H.C.R. No. 22, as amended in S.D. 1, be adopted.

On motion by Senator Blair, seconded by Senator Holt and carried, the report of the Committee was adopted and H.C.R. No. 22, S.D. 1, entitled: "SENATE CONCURRENT RESOLUTION EXPRESSING STRONG SUPPORT FOR HAWAII RESIDENT BRUCE I. YAMASHITA AND DENOUNCING RACIAL DISCRIMINATION," was adopted.

#### ORDER OF THE DAY

#### ADVISE AND CONSENT

Ldr. Com. Rep. No. 1297 (Gov. Msg. No. 63):

Senator A. Kobayashi moved that Ldr. Com. Rep. No. 1297 be received and placed on file, seconded by Senator Hagino and carried.

Senator A. Kobayashi then moved that the Senate advise and consent to the nomination John C. Lewin, M.D., for Director of Health, term to expire December 5, 1994, seconded by Senator Hagino.

Senator A. Kobayashi rose to speak in support of the nominee as follows:

"Mr. President, I rise to speak in favor of this confirmation.

"Dr. John Lewin went through a lot, I must say, before his confirmation hearing. There were many concerns expressed and that's understandable because he runs the Department of Health which has close to 6,000 employees and their problems range from water quality to environmental quality control, so many diverse issues including the mental health hospitals and the state community hospitals. Yet, he has been able to come out ahead.

"There were many questions, many issues raised at his confirmation hearing but Dr. Lewin was able to answer all the questions very well. On the ones he was not able to answer, he provided answers to our committee at a later date.

"I know that Dr. Lewin will continue to move the health department forward and will continue to work on all of our problems including the funding for a state hospital which he has been doing this morning.

"Not once did he waver when all these questions concerning his confirmation were brought forth. Not once did he waver. Not once did he give up on continuing his work in his department.

"I urge you to confirm Dr. John Lewin. Thank you."

Senator Solomon also supported the nomination and remarked:

"Mr. President, as the previous speaker has indicated, there were times during the confirmation hearing that we had those who were not unhappy but concerned because Dr. Lewin has a certain style of leadership. I had to chuckle to myself about it because as I heard about the characteristics of his style, it kind of reminded me of me -- my style. So I said, 'No, no, no, Dr. Lewin is not abrasive he is action oriented.' So I think that once we were able to reconcile his leadership style, it was easy to see that he was effective and I would like to recommend the nomination of Dr. Lewin.

"I think, we can look forward to many new beginnings and hopefully many happy endings to a lot of our different health initiatives that we initiated throughout the State of Hawaii. I'm looking forward to working with him especially with regard to our new hospitals on the Big Island.

"So at this time, Mr. President, I'd like to urge all of my colleagues to support the nomination."

Senator McMurdo also supported the nomination and said:

"Mr. President, I couldn't be happier to recommend the nomination of Jack Lewin. From the first day I met him, which is some years ago now, I have been struck by

his positive, exuberant attitude and he's continued this for getting things done. As I said during his nomination hearing, he stumbled into a 'can of worms' over there and I think he has just done wonders.

"It gives me great pleasure to support his nomination today."

Senator George also spoke in support of Dr. Lewin and remarked:

"Mr. President, it appears to be a female trait to second the nomination of the nominee.

"The thing that moves me to request that my colleagues vote in favor of the nominee is an unusual combination of idealism and a conviction that anything is possible. When these two traits are harnessed to a conviction that things have to have a practical application then anything is possible. I urge his confirmation. Thank you."

Senator Levin also supported the nomination and said:

"Mr. President, from the other side of the gender gap, I would also like to express my very strong support for Dr. Lewin, and to thank Senator Kobayashi for moving this nomination to the floor.

"Rather than try to make any bad jokes about the fact that he never attends any hearings on time or never gets to a meeting when he's supposed to or he doesn't even finish his marathons on time, I would like to point out things that are already known that Dr. Lewin is a visionary; he is an activist; he is renowned nationally and internationally. We are very, very fortunate to have him as our health director.

"I'm pleased to have been able to work with him for the past years as Health chair and as the Ways and Means liaison. I urge his nomination be approved."

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

Ayes, 22. Noes, none. Excused, 3 (Ikeda, Matsuura, Wong, R.).

At this time, Senator A. Kobayashi introduced Dr. Jack Lewin, Director of Health, who was seated in the gallery.

Senator McMurdo also recognized and introduced Dr. Peter Sybinsky and Mr. Calvin Masaki, deputy directors of health, who were seated with Dr. Lewin.

Ldr. Com. Rep. No. 1298 (Gov. Msg. No. 254):

Senator A. Kobayashi moved that Ldr. Com. Rep. No. 1298 be received and placed on file, seconded by Senator Hagino and carried.

Senator A. Kobayashi then moved that the Senate consent to the nomination of Herbert K. Shimabukuro for Judge of the Circuit Court of the First Circuit, for a term of ten years, in accordance with the provisions of Article VI, Section 3, of the Hawaii State Constitution, seconded by Senator Hagino.

Senator A. Kobayashi rose to speak in support of the nomination and remarked:

"Mr. President, at the confirmation hearing for Judge Shimabukuro, I did not know him before this and I was very impressed with this man. He has done a wonderful job as district court judge.

"I was very impressed with the way he was brought up. He has really paid his dues to society and he's really given back to the community. His father was also the same way. His father moved here many years ago and worked for 20 years in the sugarcane fields of Kauai and then moved his family, which consists of ten children, to Oahu because he knew that educational opportunities were better here. He bought a farm and worked on it very hard to be able to provide for his family of ten. But no matter how busy his father was, his father always taught him these basic truths which is part of Judge Shimabukuro's life. He taught his son the things that are important -- obligation to others, respect for the land and its people, the importance of being honest, keeping your word and helping your friends and neighbors. This is the way Judge Shimabukuro was raised and this is what he believes in.

"I wish I could have met his father also, but his father passed away on the same day that Governor John Waihee named Judge Shimabukuro to the circuit court bench. I'm sure that Judge Shimabukuro's father knew of his son's appointment and I'm sure he is looking down now and feeling a lot of pride that his son will now be a circuit court judge.

"I urge your confirmation."

Senator Solomon also supported the nomination and said;

"Mr. President, I too would like to speak in support of the nominee. As a member of the Executive Committee I was very impressed with the judge's resume and, Mr. President, I think the most impressive part was the judge's community service. I can truly say he is a 'keiki o ka aina.' I recommend to my colleagues to vote in the affirmative. Thank you."

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

Ayes, 21. Noes, none. Excused, 4 (Cobb, Ikeda, Matsuura, Wong, R.).

Senator A. Kobayashi then introduced Judge Herbert Shimabukuro who was seated in the gallery with his wife Lillian, other members of his family and friends.

#### RE-REFERRAL OF HOUSE CONCURRENT RESOLUTIONS

The Chair re-referred the following House concurrent resolutions that were received:

House Concurrent Resolution	Referred to:
No. 138 Intergovernmental Relations	Committee on Transportation and Intergovernmental Relations
No. 185, H.D. 1	Committee on Transportation and Intergovernmental Relations
No. 186	Committee on Transportation and Intergovernmental Relations
No. 187	Committee on Transportation and Intergovernmental Relations
No. 188, H.D. 1	Committee on Transportation and Intergovernmental Relations
No. 189	Committee on Transportation and Intergovernmental Relations

At 12:05 o'clock p.m., the Senate stood in recess subject to the call of the Chair.

The Senate reconvened at 12:06 o'clock p.m.

Senator Solomon then rose to speak on a point of personal privilege and said:

"Mr. President, on Friday, April 19th there was a very interesting viewpoint appearing in the Star-Bulletin. The article was entitled 'Stereotypes obstruct justice for battered women.' The reason I bring this article to the attention of my colleagues is that the Women's Caucus here in the Senate has been championing the crimes against women package.

"Mr. President, throughout my academic career as well as my career in leadership, I have always been very involved with championing the civil rights of the native Hawaiian, but it never dawned on me that various kinds of stereotypes existed pertaining to women.

"I would like to quote from the article, Mr. President, because I was really enlightened by this article. It talks about the different stereotypes and Laura Crites, the writer, mentions that basically there are five myths about women. And these five myths are so embedded in our psyche in terms of how we view each other, both males and females, that sometimes these myths have a way of obstructing justice.

"She compared the manslaughter conviction of February 8th of Alexander 'Boy' Carvalho for the beating death of his wife Cathie, the manslaughter conviction of August of Ben Bonifacio who strangled his wife to death two days after the restraining order against him had run out, with the more serious second-degree conviction in June of Stacy July who stabbed her husband to death after years as a battered woman.

'Some have said that this disparity in treatment of women and men charged with murder of their spouses is a result of the differences between state and federal court rules of evidence and can be corrected with legislative changes.'

And this is a very interesting point, Mr. President, because at this time this body is considering those changes. However, the writer continues:

'I am less optimistic. I think the problem is more deep-seated and lies in the differing expectations of appropriate behavior for women and men in our society -- in short, gender bias. This bias ... is influenced, if not directed, by myths and stereotypes about women passed down through the centuries in religious doctrines and literature. These stereotypes strongly influence the treatment of women in society in general, and in the justice system in particular.'

"She cites the five dominant myths that were identified by Juanita Williams in her book, 'Psychology of Women.'

'First is woman as Mother Nature, ordained by nature and her unity with mother earth to reproduce. This myth justifies woman's position in the home, ....

'Second is that of a woman as enchantress/seductress, luring men away from their holy mission. Through cunning and devious use of her sexual powers woman, otherwise powerless, brings down her prey, man.

'The third myth of woman as necessary evil is also ages old. Necessary as sex object and child bearer, the

presence of women is otherwise a burden which man must bear.'

and it goes on and talks about Eve, how she seduced Adam.

'The fourth myth is that of woman as a mystery.

'Sigmund Freud ... went to his grave bemoaning his inability to understand what he considered the riddle of femininity.

'The French feminist and philosopher Simone de Beauvoir discussed at length in her book "The Second Sex" how men have used the "women as mystery" myth to avoid responsibility for understanding and engaging with women on an equal basis.'

'The final myth is that of the virtuous woman.'

And this is the myth that I thought was the most interesting because as I've been following the convictions in the newspaper, I think this myth is the one that's the most profound.

'The ... virtuous woman ... is a faithful, loyal and submissive wife, a dedicated loving mother, a competent, diligent homemaker and an unquestioning supporter of the moral and religious values of her society.'

"This is the myth, Mr. President, that defense attorneys use the most.

'The task of attorneys defending men charged with violence against women is to prove that the victim was not the virtuous, moral, loving, submissive woman -- but rather, the victim was the man who had fallen prey to the evil influence of a cunning, nagging, unfaithful, seductive woman.' And she offers the following cases and points.

'Ben Bonifacio's attorney argued that his violence was a result of learning that his wife had been involved with another man.

"'Boy' Carvalho's attorney described how his client lost control and beat his wife to death after she accused him of having an affair.

'Segundo Matias was described as killing Lee Ann Kauhane after cracking under the force of her "evil smile."

"Mr. President, I find this outrageous.

"Then it goes on, Mr. President:

'Fair and just treatment of battered women in society and in the justice system will only come when the power and influence of these myths about women are raised to the conscious level of our thinking and consciously dispelled as destructive.'

"Well, I would like to tell each and everyone of my colleagues that this is deep-seated and it's going to take all of our efforts and energy to dispel it. Perhaps, the State of Hawaii, being that we have an aloha attitude in how we treat each other as human beings could become the leader in dispelling these stereotypes.

"Thank you very much, Mr. President."

Senator A. Kobayashi also rose on a point of personal privilege and said:

"Mr. President, I support the words of the previous speaker. The Senator from Kohala pointed out the problem very well. The Women's Caucus has annually introduced legislation that will deal with this problem of violence and our Judiciary chairman did a very good job this year of trying to help us. He brought in all the different parties involved in this problem and tried to get them to come out with proper legislation.

"Our Ways and Means chairman and our House Finance chairman have agreed to fund a committee dealing with gender fairness and there is \$95,000 in the budget to provide support staff and equipment for this committee that will look into gender bias and fairness in our courts.

"It is hoped that this whole problem can be addressed no matter what legislation we introduce. There is an underlying problem. It's a cultural problem; it's a problem that's been around for so many years that it's become part of us ... you know, if a man comes home and a woman nags him, it's okay to hit her. This is a wrong attitude. If a woman gets raped, the first question is 'What was she doing out at night?' or 'What was she wearing?' So we have to overcome all of this, these stereotypes before our legislation can be successful. Thank you."

Senator Cobb also rose to speak on a point of personal privilege and said:

"Mr. President, on an entirely different subject, today is the day we observe Earth Day and I would like to express the hope, since a number of measures are in conference, that we emerge and complete this session with some measures for the sake of the environment to protect it to include drift net fishing, long lines, and oil contamination, both recycled oil, pipeline oil, and new oil that is to be brought in.

"The environment is indeed fragile and I think the celebration of Earth Day helps demonstrate that, and while people observe it globally today, I hope we do our part this session to insure that we have taken adequate steps to help protect our environment as well. Thank you."

Senator Tungpalan, on behalf of the Senators, extended Happy Birthday wishes to Senator Mary Jane McMurdo.

#### ADJOURNMENT

At 12:18 o'clock p.m., on motion by Senator Solomon, seconded by Senator Reed and carried, the Senate adjourned until 11:30 o'clock a.m., Tuesday, April 23, 1991.