S. HRG. 108–27

POLICY OF THE UNITED STATES REGARDING RELATIONSHIP WITH NATIVE HAWAIIANS AND TO PROVIDE A PROCESS FOR THE RECOGNITION BY THE UNITED STATES OF THE NATIVE HAWAIIAN GOVERNING ENTITY

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON

S. 344

EXPRESSING THE POLICY OF THE UNITED STATES REGARDING THE UNITED STATES RELATIONSHIP WITH NATIVE HAWAIIANS AND TO PROVIDE A PROCESS FOR THE RECOGNITION BY THE UNITED STATES OF THE NATIVE HAWAIIAN GOVERNING ENTITY

FEBRUARY 25, 2003
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

85–424 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*
DANIEL K. INOUYE, Hawaii, *Vice Chairman*

JOHN McCAIN, Arizona,
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, Oklahoma
GORDON SMITH, Oregon
LISA MURKOWSKI, Alaska

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
BYRON L. DORGAN, North Dakota
TIM JOHNSON, South Dakota
MARIA CANTWELL, Washington

PAUL MOOREHEAD, *Majority Staff Director/Chief Counsel*
PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

CONTENTS

	Page
S. 344, text of	2
Statements:	
Akaka, Hon. Daniel K., U.S. Senator from Hawaii	25
Apoliona, Haunani, chairperson, Board of Trustees, Office of Hawaiian Affairs	39
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, chairman, Committee on Indian Affairs	24
Case, Hon. Ed, U.S. Representative from Hawaii	27
Faleomavaega, Hon. Eni, U.S. Delegate from American Samoa	29
Inouye, Hon. Daniel K., U.S. Senator from Hawaii, vice chairman, Committee on Indian Affairs	1
Kane, Micah A., director, Department of Hawaiian Home Lands	36
Lingle, Linda, Governor, Hawaii	32

APPENDIX

Prepared statements:	
Alaska Federation of Natives	48
Apoliona, Haunani	51
Berish, George L. (with attachment)	68
Burgess, H. William (with attachments)	72
Carter, Dallas, student,	222
Ingham, David (with attachments)	163
Kane, Micah A.	45
Kelly, Marion (with attachments)	177
Kitsu, Susan H., president, Japanese American Citizens League	189
Kuhea, Kealoha (with attachment)	194
Lee Loy, Emmett E., attorney at law (with attachments)	197
Lingle, Linda	46
Rose, Charles, president, Association of Hawaiian Civic Clubs	212
Additional material submitted for the record:	
Letters	235

NATIVE HAWAIIAN RECOGNITION

TUESDAY, FEBRUARY 25, 2003

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:36 a.m. in room 485, Senate Russell Building, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senators Inouye, Akaka, Campbell, and Murkowski.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs meets this morning to receive testimony on S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

This measure, S. 344, was introduced by Senator Daniel Akaka on February 12, 2003, and was referred to this committee. It is my honor to serve as an original cosponsor of this measure.

[Text of S. 344 follows:]

II

108TH CONGRESS
1ST SESSION

S. 344

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2003

Mr. AKAKA (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

(11) Native Hawaiians have maintained other distinctly native areas in Hawaii.

(12) On November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii.

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowl-

edge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian Government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also give expression to their rights as native people to self-determination and self-governance through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high

school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian governing entity for the pur-

pose of giving expression to their rights as native people to self-determination and self-governance.

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through the enactment of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for 5 purposes, one of which is

for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique sta-

tus as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

SEC. 2. DEFINITIONS.

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term ''aboriginal, indigenous, native people'' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

(2) APOLOGY RESOLUTION.—The term ''Apology Resolution'' means Public Law 103–150 (107 Stat. 1510), a joint resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(3) CEDED LANDS.—The term ''ceded lands'' means those lands which were ceded to the United States by the Republic of Hawaii under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawaii in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 4).

(4) INDIGENOUS, NATIVE PEOPLE.—The term ''indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(5) INTERAGENCY COORDINATING GROUP.—The term ''Interagency Coordinating Group'' means the Native Hawaiian Interagency Coordinating Group established under section 5.

(6) NATIVE HAWAIIAN.—

(A) Prior to the recognition by the United States of the Native Hawaiian governing entity, the term ''Native Hawaiian'' means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands

that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian governing entity, the term ''Native Hawaiian'' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian governing entity.

(7) NATIVE HAWAIIAN GOVERNING ENTITY.—The term ''Native Hawaiian governing entity'' means the governing entity organized by the Native Hawaiian people.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people, with whom the United States has a political and legal relationship;

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance; and

(C) the right to reorganize a Native Hawaiian governing entity; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—It is the intent of Congress that the purpose of this Act is to provide a process for the recognition by the United States of a Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(a) IN GENERAL.—There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

(b) DUTIES OF THE OFFICE.—The United States Office for Native Hawaiian Relations shall—

(1) effectuate and coordinate the trust relationship between the Native Hawaiian people and the United States, and upon the recognition of the Native Hawaiian governing entity by the United States, between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(2) continue the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian governing entity by the

United States, continue the process of reconciliation with the Native Hawaiian governing entity;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian governing entity prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to existing

Federal statutes or regulations promulgated under the authority of Federal law.

SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.

(a) ESTABLISHMENT.—In recognition of the fact that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the ''Native Hawaiian Interagency Coordinating Group''.

(b) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and

(2) the United States Office for Native Hawaiian Relations established under section 4.

(c) LEAD AGENCY.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

(d) DUTIES.—The responsibilities of the Interagency Coordinating Group shall be—

(1) the coordination of Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian governing entity by the United States, consultation with the Native Hawaiian governing entity; and

(3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5).

SEC. 6. PROCESS FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(b) PROCESS FOR RECOGNITION.—

(1) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—Following the organization of the Native

Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(2) CERTIFICATIONS.—

(A) IN GENERAL.—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the citizens of the Native Hawaiian governing entity;

(iii) provide for the exercise of governmental authorities by the Native Hawaiian governing entity;

(iv) provide for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons subject to the authority of the Native Hawaiian governing entity, and ensure that the Native Hawaiian governing entity exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302); and

(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.

(B) BY THE SECRETARY.—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the State of Hawaii supports the recognition of a Native Ha-

waiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State legislature.

(C) RESUBMISSION IN CASE OF NON-COMPLIANCE WITH FEDERAL LAW.—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian governing entity along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.

(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNING ENTITY.—If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian governing entity by the Secretary under clause (i), the duly elected officers of the Native Hawaiian governing entity shall—

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with the requirements of this paragraph.

(D) CERTIFICATIONS DEEMED MADE.—The certifications authorized in subparagraph (B) shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity have submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(3) FEDERAL RECOGNITION.—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian governing entity and the certifications by the Secretary required under paragraph (1), the United States hereby extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the activities authorized in this Act.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

(b) NEGOTIATIONS.—Upon the Federal recognition of the Native Hawaiian governing entity by the United States, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing entity regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use to the Native Hawaiian governing entity. Nothing in this Act is intended to serve as a settlement of any claims against the United States.

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT.—Nothing contained in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct

gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) BUREAU OF INDIAN AFFAIRS.—Nothing contained in this Act shall be construed as an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for such programs or services.

SEC. 10. SEVERABILITY.

In the event that any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

○

Senator INOUYE. Before I call upon members of this committee, I would like to remind those present here today, and those who are watching this hearing, of the historical events that have brought us here today. On January 17, 1893, the Government of Hawaii was overthrown with the assistance and direct involvement of the U.S. minister, who authorized U.S. Marine troops to assist in the overthrow of a stable government. Prior to the overthrow, that government enjoyed international recognition from countries around the world and carried on treaty relationships with Great Britain and France.

One hundred years later, the U.S. Government approved a resolution now known as the "Apology Resolution," in which the United States formally extended an apology to the Native Hawaiian people for America's role in the overthrow of the government.

We are here this morning to consider a measure that would restore the government that represented the Native people of Hawaii to its rightful status among domestic sovereigns of the United States, in the same manner that other governments representing the Native peoples of the United States are recognized by the Federal Government.

With that, may I call upon the very distinguished chairman of the committee, Senator Ben Nighthorse Campbell.

Mr. Chairman.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Thank you, friend and vice chairman, Senator Inouye. I apologize this morning that I have a conflict and I am not going to be able to be here this morning. I will not take much time with my opening statement before I go on to say that I have great confidence and great faith in Senator Inouye's knowledge and expertise in the matters at hand.

I wanted to also thank our distinguished witnesses for coming such a great distance. I see a number of leis in the audience, and I assume that all of those came from the great State of Hawaii. Leaving that island paradise to come back here to all this ice and snow must have been somewhat of a culture shock.

But I am looking forward to reading your testimony. I am encouraged that Governor Lingle, who is here in the audience somewhere—I wanted to congratulate you on your recent election, Governor Lingle. I understand you are the first woman Governor of Hawaii, is that correct? Well, you have certainly been a pioneer in the tradition of so many great Hawaiians, in a wonderful State of great pioneers. I thank you for coming to testify, too.

I would also say that Secretary Norton has offered her support, too, for this. She has made some very favorable comments recognizing Native Hawaiians. This committee has found time and again that the best way to improve the lives of Native peoples is to turn over to their control the resources dedicated to their benefit. I am certain that Governor Lingle will discover this to be true with Native Hawaiians, as we have with Native Americans.

At the hearing on September 14, 2000, several committee members, including myself, suggested that we should move very slowly

on this because it is an issue of great importance to Native Americans, and we have. With today's hearing, this committee will have had seven hearings and passed two bills on this matter. In addition, the House Resources Committee has held several hearings and passed two bills, one of which was passed by the complete House.

So I think we probably have moved along very, very carefully, and I look forward to working with Senator Inouye, as I have always done. I wanted to just once again thank you very much for appearing here today.

Thank you, Senator.

Senator INOUYE. I thank you very much, Mr. Chairman.

Now, it is my great privilege to call upon the author of this measure, the Akaka bill, Senator Daniel Akaka.

STATEMENT OF HON. DANIEL K. AKAKA, U.S. SENATOR FROM HAWAII

Senator AKAKA. Thank you very much, Senator Inouye. Mr. Chairman, I appreciate your convening this hearing.

I want to say aloha to Governor Lingle, Trustee Haunani Apoliona, and Micah A. Kane, Chairman of Hawaiian Home Lands Commission. Thank you for joining us this morning.

I also welcome the newest member of our delegation, Representative Ed Case. Your testimony is vitally important as representatives of the people of Hawaii.

I also want to say mahalo to our brother from Samoa. He will be here to testify before us this morning, and has been very supportive of our efforts.

I have repeatedly stated that Native Hawaiian issues are nonpartisan, because all of us in Hawaii recognize the need to address the conditions of Hawaii's indigenous peoples, Native Hawaiians. This is sometimes difficult for colleagues in Congress to understand, given the diversity and unique qualities of Hawaii's people.

All of us respect and recognize the need to preserve the culture and traditions of Hawaii's indigenous peoples. Your appearance this morning, Governor Lingle, demonstrates the importance that all people in Hawaii place on the need to address the conditions of Native Hawaiians. I want to thank you for appearing before the committee this morning.

As a Native Hawaiian, I firmly believe that it is important to understand the ways of our ancestors and honor our culture and traditions. In this day and age, it is also important to appreciate all cultures and all traditions. As indigenous peoples, we must be able to function effectively between indigenous and non-indigenous settings.

The Federal policy of self-determination and self-governance and the partnerships formed between the United States and Native governments is an appropriate avenue to accomplish this goal. For that reason, we have worked to draft legislation which would extend the Federal policy of self-determination and self-governance to Native Hawaiians.

The political relationship made possible by this policy is an important element in the process of reconciliation between the United States and the Native Hawaiian people. It is with the goal of rec-

onciliation that I have pursued passage of this legislation and worked on all other issues of concern to Native Hawaiians.

The legislation would also establish an office in the Department of the Interior to address Native Hawaiian issues and to continue the process of reconciliation pursuant to legislation that we worked on for 5 years already, and saw signed into law a decade ago. I am referring to Public Law 103–150, commonly referred to as the Apology Resolution. The Apology Resolution was significant not only because it apologized to Native Hawaiians for the participation of U.S. agents in the overthrow of the Kingdom of Hawaii, but also because it commits the United States to a process of reconciliation.

Reconciliation is an incremental dialog between Native Hawaiians and the United States. It is a structured process to address the many longstanding issues resulting from the overthrow of the Kingdom of Hawaii. In addition to continuing this process of reconciliation, the office would serve as a liaison between Native Hawaiians and the Federal Government, and would assist at facilitating the government to government relationship.

The bill would also establish an interagency working group composed of Federal officials representing agencies with policies that impact Native Hawaiians.

This bill is not race-based. Instead, this bill recognizes the legal and political relationship between the United States and the aboriginal indigenous peoples who occupy the lands now comprising the United States who were sovereigns, who existed prior to the formation of the United States—American Indians, Alaska Natives, and Native Hawaiians.

This legislation would not adversely impact program funding for Indian Country, as appropriations for Native Hawaiian programs have been and will continue to be separate from programs addressing the needs of American Indians and Alaska Natives. The bill explicitly states that it does not authorize additional eligibility for programs administered by the Bureau of Indian Affairs.

In addition, this bill would not authorize gaming under the Indian Gaming Regulatory Act.

Finally, this bill is widely supported by the State of Hawaii, as evidenced by two resolutions unanimously passed by the Hawaii State legislature, and by the appearance of our Governor Lingle, who also supports this bill. This bill is also widely supported in Indian Country, as reflected in the resolutions of support repeatedly passed by the National Congress of American Indians and the Alaska Federation of Natives.

Mr. Chairman, this bill was originally drafted based on input from five working groups consisting of representatives from Federal agencies, State agencies, the Native Hawaiian community, and the Native American community and constitutional scholars with expertise in Federal Indian law.

We relied heavily on input from the Native Hawaiian community. Over 100 people were initially involved in the drafting of this legislation. Hearings were held in Hawaii and in Washington, DC during the 106th Congress. After considering testimony and input that we continue to receive, we modified the legislation during the 107th Congress. S. 344 is identical to legislation reported by this committee during the 107th Congress.

Mr. Chairman, I will continue to consider all input and testimony received on this measure and to work with my colleagues to enact this measure, which is so vital to the people of Hawaii. I also want to thank the delegation for the kind of support that we have had as we worked together to pass this bill.

Thank you very much, Mr. Chairman.

Senator INOUYE. I thank you very much, Senator Akaka.

Pursuant to the tradition of the committee and the Congress, we will first call upon congressional witnesses. Before I do, without objection the statement of Congressman Neil Abercrombie will be made part of the record.

[Referenced document appears in appendix.]

Senator INOUYE. Mr. Chairman.

The CHAIRMAN. Mr. Chairman, I am going to apologize. I am going to have to excuse myself to go to another hearing. My apologies, too, to Congressman Case that I will not be able to hear his testimony, but I will certainly review it.

I just wanted to tell you that I think that that pretty lady that just came up and gave me these wonderful flowers probably sealed my vote on this issue. [Laughter.]

Senator INOUYE. It is now my great pleasure and privilege to call upon the new member of the Hawaii congressional delegation, Congressman Ed Case.

Representative Case.

STATEMENT OF HON. ED CASE, U.S. REPRESENTATIVE FROM HAWAII

Mr. CASE. Mr. Chairman and members of the Senate Committee on Indian Affairs, good morning and aloha.

Mahalo, or thank you very much, for holding today's hearing on S. 344, legislation introduced by both of Hawaii's Senators to affirm the longstanding political relationship between Native Hawaiians, the indigenous peoples of our Hawaii, and our Federal Government, and to extend to Native Hawaiians the time-honored Federal policy of self-determination provided other indigenous peoples under U.S. jurisdiction. Companion legislation, H.R. 665, has been introduced in the House by me and the fourth colleague from Hawaii, Representative Abercrombie. I know that all of us join together in welcoming our Governor, our Office of Hawaiian Affairs trustees, and all of our ohana here in Hawaii to our Nation's capital.

Mr. Chairman, allow me to be very direct. This is the most crucial piece of Hawaii legislation to come before Congress since our Statehood bill. The stakes are nothing more or less than the survival and prosperity not only of our indigenous Native Hawaiian people and culture, but of the very soul of Hawaii as we know it and love it.

You will hear passionate testimony today from my colleague and friend, Haunani Apoliona, reciting the often difficult history of the relationship between our country and the Native Hawaiian people, and asking for fairness, justice and further healing. For them and for me, that history and call alone provide the basis for Federal recognition.

But I speak to you today on behalf of all of Hawaii's people, and all those worldwide for whom Hawaii, in all of her forms, be they natural, environmental, cultural, social, or spiritual, is a truly special and unique place. I say to you that that Hawaii—the Hawaii that is the indigenous home of all Native Hawaiians, that my own ancestors and many other non–Native Hawaiians committed themselves to since recorded Western discovery in 1778, and that so many throughout the world continue to view as a beacon for what can be in our world—that Hawaii has never been so at risk as it is today.

It is at risk because it is a creation of and rests upon the foundation of our Native Hawaiian people and culture, and their survival and prosperity are at risk. As they go, so goes Hawaii as we know it. And Hawaii which is not Hawaiian is not a Hawaii I can bear to accept.

So our goal is not only reaffirming the longstanding historical and legal relationship between Native Hawaiians and the United States, not only delivering fairness and justice to Native Hawaiians, but ensuring the very survival and prosperity of our Native Hawaiian people and culture and, through them, Hawaii itself. This is a truly common goal, evidenced before you today not only by a united congressional delegation, but by the testimony you will hear, which spans ethnic, partisan and other distinctions.

The goal of assisting Native Hawaiians is not new to our Federal Government. Beyond a longstanding relationship that was reaffirmed when Hawaii became a territory in 1900 and a State in 1959, over 160 Federal statutes have enacted programs to address the conditions of Native Hawaiians in areas such as Hawaiian home lands, health, education and economic development. These have been matched by State and quasi-autonomous entities such as Trustee Apoliona's Office of Hawaiian Affairs, and private entities like the Kamehameha Schools. They have borne fruit with a renewed focus on unique Native Hawaiian needs, and a true renaissance of Native Hawaiian culture.

Federal recognition is the means by which these indispensable efforts can be carried forward into the next generation of Native Hawaiian governance. Federal recognition is also the time-honored means of memorializing our government's relationship with the indigenous peoples of the contiguous 48 States and Alaska. There, either government-to-government treaties or the Bureau of Indian Affairs recognition process or legislative recognition from this Congress have extended self-determination and affirmed relationships. Although the difference between those peoples and Native Hawaiians is exclusively geographic, such means have simply not been either available or exercised in the case of Native Hawaiians.

Nor is the concept of extending Federal recognition to Native Hawaiians a new one. The enactment into law in 1993 of the Apology Resolution, Public Law 103–150, expressed a national commitment to reconciliation efforts between Native Hawaiians and the Federal Government.

Subsequent efforts through the Departments of Justice and Interior, as well as the White House Initiative on Asian Americans and Pacific Islanders, established by Executive orders on a bipartisan basis by both Presidents Clinton and Bush, yielded Federal rec-

ognition legislation and the inclusion of Native Hawaiians in Federal programs and services as top priorities.

For all of these reasons, the time has clearly come for all of us to move resolutely into this relationship in order to resolve longstanding issues and ensure the survival and prosperity of the Native Hawaiian people and culture, and for all of us of their special home.

So in that spirit, for all of us in Hawaii, Mr. Chair and committee members, I express my heartfelt appreciation for your understanding and leadership, and urge the passage of S. 344.

Mahalo and Aloha.

Senator INOUYE. Thank you very much, Congressman Case. We look forward to working with you, with the hope that someday soon we will achieve the goal that we have been seeking for many years now.

Mr. CASE. Thank you very much.

Senator INOUYE. Senator Akaka, do you have any questions?

Senator AKAKA. No.

Senator INOUYE. I thank you very much, sir.

Mr. CASE. Thank you.

Senator INOUYE. And now it is my pleasure to introduce and to receive the testimony of the congressman from Alaska—no, from Samoa, the Honorable Eni Faleomavaega.

[Laughter.]

Senator INOUYE. I am sorry, sir. The snow just reminded me of Alaska. [Laughter.]

STATEMENT OF HON. ENI FALEOMAVAEGA, U.S. DELEGATE FROM AMERICAN SAMOA

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman. I am afraid Alaska is a little too big for me. I will settle for my little islands in the South Pacific.

Mr. Chairman and distinguished members of the Senate Committee on Indian Affairs, I want to thank you for the opportunity to testify in support of this proposed bill, which I believe will establish a firm foundation and a more defined relationship between the Native Hawaiian community and the United States.

I want to say personally also the chairman of this important committee to thank him for his sensitivity and the outstanding leadership that he has demonstrated over the years whenever the question of rights of indigenous peoples of our Nation are in question. Over the years, it was my privilege to work closely with Chairman Campbell when he was a member of the House Interior Committee, before becoming a U.S. Senator.

I can also sense, Mr. Chairman, that Senator Campbell as a Native American himself can certainly appreciate the anger, the frustrations, and tribulations that the Native Hawaiian people have had to endure for over 100 years now, not only having lost their sense of identity as a sovereign people, but not having to organize themselves in such a way that this unique relationship that they now seek is in accordance with the Constitution and Federal laws of the United States.

I would be remiss if I did not also express my deepest appreciation to you, Mr. Chairman, the senior Senator from the State of

Hawaii, Senator Daniel Inouye, who is currently the vice chairman of this committee, and my good friend and colleague, Senator Daniel Akaka, for your both outstanding service and leadership that you have demonstrated, not only to the people of Hawaii who you represent, but especially for your sincere efforts to assist the Native Hawaiian people.

I commend also my colleague and good friend, Congressman Neil Abercrombie, for his tireless efforts in addressing this important issue for the past several years. I also commend a new member of the Hawaii congressional delegation, Congressman Ed Case, who I knew when he served as a staffer to the late Senator Spark Matsunaga.

Mr. Chairman, as you are aware, the bill that is now before you and the members of the committee is not a new subject matter. However, members of both chambers of Congress raised certain issues that I believe the Hawaii congressional delegation has tried earnestly to resolve. One issue was the question of whether or not currently Federal funding for decrease in financial needs of Native Hawaiians were to be included in the funds specifically allocated for American Indians and Native Alaskans. I believe, Mr. Chairman, that this important issue was addressed quite adequately by the Hawaii congressional delegation in the previous Congress, given the fact that proceeds that have been received for the benefit of Native Hawaiians were derived from ceded lands that were under both the Federal Government and the State of Hawaii.

It should also be noted that whatever additional Federal assistance programs that were provided for Native Hawaiians were never taken from the American Indian and Native Alaskan funds.

Mr. Chairman, there are also those who make the argument that American Indians are specifically cited under the provisions of the Constitution as a sovereign entity, and that Congress is directed to conduct commerce and trade with the "Indians," but no where in the Constitution does one define or find Native Hawaiians as being inclusive in the definition of "Indian." To those who make that argument, at this point I would like to say that neither was there any mention in the Constitution of Native Alaskans. By its mandate from the Constitution, the Congress of the United States clearly passed Federal legislation to recognize Native Alaskans also as a sovereign people.

Some have argued that if Congress recognizes Native Hawaiians in the same way American Indians and Native Alaskans are categorized as a sovereign people under the U.S. Constitution, that this would violate again the equal protection clause of the Constitution. This is clearly not true, Mr. Chairman, since Congress by its mandate from the Constitution may establish rules and regulations that provide for Native Hawaiians as a sovereign people, and may also assist Native Hawaiians on how to organize themselves as a self-governing political entity in the same manner in which American Indians and Native Alaskan tribes are recognized as sovereign nations within the context of a government to government relationship with both States and the U.S. Government.

An example that comes to mind is the organization and political structure of the Navajo Nation, which is composed of some 250,000 Navajos. Considered the most populous of all American Indian

tribes, ownership of lands and minerals by the Navajo encompass four States, including Utah, Arizona, Colorado, and New Mexico. I do not mean to suggest that the Native Hawaiians adopt the same kind of government structure like the Navajo Nation. But out of some 1.2 million who claim residency in Hawaii, more than 300,000 are Native Hawaiians and tens of thousand more Native Hawaiians reside outside of the State of Hawaii.

This gives me hope and confidence, Mr. Chairman, that Native Hawaiians should be given the same opportunity to organize themselves as a political entity, and section six of the proposed bill gives a step by step approach on how this governing entity is to establish itself to be duly recognized by the Federal Government.

Mr. Chairman, I also fully support the provisions of sections four and five of S. 344, which seek to establish an office within the Department of the Interior and a Federal interagency group that periodically will meet to discuss issues that address the need of Native Hawaiians and that of the Federal Government. I believe it is wise and prudent that Native Hawaiian issues need not be included as a subdivision of the Bureau of Indian Affairs, given the fact that the BIA is tremendously understaffed and overloaded with responsibility of trying to administer Federal programs that provide for some 595 federally recognized American Indian Nations.

Mr. Chairman, I submit that the vast majority of our fellow Americans today are not at all familiar with the history of the State of Hawaii, and how these islands ended up being annexed as a territory of the United States, and over 100 years later now the 50th State of the Union.

People often think that Californians, Texans, and Washingtonians are the same as Hawaiians. The situation becomes worse, Mr. Chairman, when visitors from the continental United States look upon Native Hawaiians only to perceive them as a bunch of Natives dancing with hula skirts and still live in grass shacks and play their ukuleles without thought of having to work and earn a living to support their families.

On the contrary, Mr. Chairman, nothing could be further from the truth. Native Hawaiian people are one of the most educated among all the residents of Hawaii. Native Hawaiians have excelled in just about every major profession known in any community. Native Hawaiians are trained in the fields of medicine, in law, in engineering and physics. There are chemists, even pharmacists. Yes, Native Hawaiians are also admirals and generals in the U.S. armed forces. Mr. Chairman, many Native Hawaiians also fought and died in defense of our Nation.

Mr. Chairman, as members of the polynesian race, the Native Hawaiian people are exceedingly proud of their cultural heritage. Their cultural roots extend as far south as their Maori cousins in New Zealand, and to the other islands of the Pacific settled by their cousins the Rapa Nui or Easter Islanders, the Tahitians, the Rorotongas, the Samoans and the Tongans. For many years before the establishment of the Hawaiian Kingdom under the rule of Kamehameha the Great, a Hawaiian prophet by the name of Keaulumoku prophesied the day would come when the social order and religious rites of the Hawaiian people would be completely

changed due to their being exposed to outside influences from people who come from foreign lands.

Mr. Chairman, that day has come, and I believe the provisions of the proposed legislation clearly identifies the historical events governing the status of Native Hawaiians. It is now up to Congress to make a formal statement as a matter of Federal policy that Native Hawaiians should be officially declared not only as a trust responsibility of the U.S. Congress, but there should also be a distinct historical. Although there are distinct historical and cultural differences existing among American Indians, Native Alaskans and Native Hawaiians, there is a commonality among all three groups, Mr. Chairman, and that is they are all indigenous Native inhabitants of what we now consider the United States.

Given this commonality, Mr. Chairman, I also submit that it is now time for the U.S. Congress to officially recognize Native Hawaiians as a sovereign people with the same rights and privileges as American Indians and Native Alaskans.

I thank the Chairman for allowing me to testify, and I would gladly respond to any questions.

Senator INOUYE. I thank you very much, Congressman Faleomavaega.

May I note the presence of our new Senator from the State of Alaska, Lisa Murkowski. We are pleased to have you here. We miss your father, but I think you are a better replacement. [Laughter.]

Senator INOUYE. Now it is my pleasure to call upon our new Governor from the State of Hawaii. The last monarch of Hawaii was a lady, Queen Lili'uokalani. Our Governor today is a lady, Linda Lingle, Governor of the State of Hawaii.

Governor Lingle, welcome, ma'am.

STATEMENT OF HON. LINDA LINGLE, GOVERNOR, STATE OF HAWAII ACCOMPANIED BY MICAH A. KANE, DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS

Ms. LINGLE. Thank you very much. Senator Inouye, Senator Akaka, Senator Murkowski, I want to thank you for inviting me to appear before you today at this very important hearing.

For the record, I am Linda Lingle, Governor of the great State of Hawaii, and it really is an honor for me to be here.

I came to Washington, DC to accomplish two things. One is to testify before you on the passage of Native Hawaiian Federal recognition; and the second is to convince people in the Administration that this was something good for all the people in our State.

Every reporter who has interviewed me on this subject today and previous to today has asked me, why did I come in person to testify. I want you to know this is the very first time I have ever testified before a committee of Congress. I was a mayor for 8 years, a council member for 10, and there were many, many Federal issues that came up that affected my community, but I never felt compelled before to come and speak in person from my heart about why a bill before Congress was so important.

First, I want to thank Senators Inouye and Akaka for their perseverance on this issue. I am a johnny-come-lately to this. If I am able in any way to help, it is going to be an honor, but it should be pointed out that they have taken it through the very difficult

times when no one understood what this issue was, why it was important, or the significance to America. It is sort of like they moved the ball down the field methodically play after play, and we can see the goal line, and now collectively we have got to get this over that goal line.

We recognize that there are always differences of opinion in our approaches to many of the issues that we face, but all of us from Hawaii recognize the importance of working together in a bipartisan way to achieve the great issues that are important to our State. I want everyone in Congress to understand that the people of Hawaii are united on this issue. In fact, Federal recognition for Native Hawaiians is a plank in the Republican Party platform and in the Democratic Party platform. I do not know many issues that appear in quite the same way in both party platforms.

So we are united in asking Congress to pass the Akaka bill into law, thereby reaffirming the political relationship between the United States and the indigenous people of Hawaii.

The people of Hawaii respectfully submit that this is a matter of simple justice. I have heard the arguments against the bill, as have you, or against the concept of Federal recognition. I have heard some people say that it is race-based and that it is favoring one group over another. In fact, it is just the opposite. It is ending decades of discrimination against one group of indigenous people. Alaska Natives, American Indians, who we admire and we respect and who are indigenous to our country, have recognition. It is only Native Hawaiians, they are the only indigenous people who have not been so recognized. So it is the opposite of discriminating against others. It is ending discrimination against the indigenous people of Hawaii.

I have heard the claim that it would bring gambling. There is a concern about gambling. All of us from Hawaii know that this is not an issue. Senator Inouye, Senator Akaka, and myself have always been against gambling in Hawaii. The Native Hawaiians have never enunciated a desire for legalized gambling. That is true today and it has always been true, and it would be true with the enactment of this bill.

Finally, I have heard that this bill would be divisive somehow. It is the opposite of that. Again, justice cannot be divisive, and that is all this is, it would bring justice to an issue and to a people and to a State.

I have spent the last two days talking with the Attorney General John Ashcroft; talking with Gale Norton, the Secretary of the Department of the Interior and people on her staff; talking with officials in the White House about why this is important. I want to stress again, I feel that Senators Akaka and Inouye have worked for so many years on this issue that they deserve the credit for bringing this to this point. If, through bipartisanship, we can play a small role and get people to see things in a way they have not before or to see things for the first time, then it is just an honor to play a small part.

When we leave Washington, not only will we be a lot warmer, but we will have to get very focused on the follow-up that will be necessary to see this through to completion. I feel in the past two days myself, my chief of staff Bob Awana, Micah Kane, our Direc-

tor of the Department of Hawaiian Home Lands and others in our party—I feel we have laid a good foundation, a foundation of knowledge, and I hope of opening some doors, but I think it is only the foundation. Whether we are to achieve our final goal will be determined by the follow-up that we do when we leave Washington, DC I want you to know that although we are here in person today to speak and we have been speaking to others for the last 2 days, we feel this is just the beginning of our role, that we need to follow this every day, all day, until we can bring this to completion.

I want to thank the Senators who are here this morning, and I want to thank their staffs because we all know that the staffs play a key role. They do for me as a Governor, and when I am dealing with your offices the staffs have been tremendous to us, and I appreciate their help.

I look forward to continuing to work with you, Senator, on this matter, and I am more optimistic than I was before I came a few days ago. I am hopeful, but not over-confident, because I know that there is a lot of work ahead, and I will look forward to working with you, trustees from the Office of Hawaiian Affairs, and the people at home, to make sure that this matter of justice, this significant, but pure and simple matter of fairness gets resolved to the benefit of the Native Hawaiians and all the people of Hawaii, and to the integrity of the United States of America.

Thank you very much.

[Prepared statement of Ms. Lingle appears in appendix.]

Senator INOUYE. Thank you very much, Governor Lingle. We are most grateful for your very gracious statement. It will be very helpful.

Do you have any statement to make, Mr. Kane?

Mr. KANE. No; not at this time, but I will save my comments for my testimony.

Senator INOUYE. Then Governor Lingle, may I ask one question?

Ms. LINGLE. Yes, sir.

Senator INOUYE. In your statement, you alluded to spending 2 days in this Nation's Capital meeting with officials. If it is possible, can you provide us with some report on the outcome of your meetings with the Attorney General and with the Secretary of the Interior? I am certain all of us here would be most happy to learn your achievements. We have heard some great things.

Ms. LINGLE. I believe "achievement" may be overstating the case, Senator, but I do think we opened some doors and laid some foundation. I was quite surprised that the Attorney General really was not very aware of this issue, had not established a position. He took a lot of notes during our conversation. There were about eight of us in on that meeting just from our side, and then a couple of his staff members. He asked questions, he took notes, and he pledged a willingness to discuss this issue and that he would look into it further. I think that summarizes what his feeling was about it.

The Department of the Interior, we talked on two levels, one in brief conversation with the Secretary. I believe she has a number of issues, and I believe we can address them. Some specific questions that she was asking, I would say generally my impression is that she would like to see more definitiveness in certain aspects of

what this bill would do. Her staff I would say is very helpful and cooperative, and working through the various issues with us. So I felt a lot of support coming from Interior, but still some questions remaining.

Senator INOUYE. I thank you very much, Governor.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Governor Lingle, mahalo for your statement and for your support, and thank you for bringing your staff here. I am so happy as I look out and see all the leis, and not only leis, but the faces of Hawaii here with you. I want to say mahalo for bringing Micah Kane with you, and also Darryl Yagodich. I also want to say that the relationships we have had in days past have been good. They certainly represent you and the State of Hawaii very well.

I commend you for appointing such a diverse cabinet, which features many Native Hawaiians. I continue to have discussions with my colleagues about the diversity of the people of Hawaii. I have shared with them the overwhelming support among all of Hawaii's citizens for efforts to preserve Native Hawaiian traditions and culture.

So my simple question to you is, would you agree that the people of Hawaii have a special respect for Native Hawaiian culture?

Ms. LINGLE. I certainly would, Senator, and I would go a little further than that. Not only do all people in Hawaii respect Native Hawaiian culture, it is the foundation of our State. It is what makes Hawaii, Hawaii. Whether you were born and raised in Hawaii or you came from another country or another State, it is very quickly that you recognize that we are in a very unique place, made unique because of the Native Hawaiian people and their culture, and their willingness to share it with the rest of us. So I would agree with you that all people of Hawaii respect and admire and our thankful for the Native Hawaiian culture.

Senator AKAKA. I also want to, in mentioning names, commend you for also bringing your great staff, Bob Awana, your chief of staff, and also Randy Roth and also the LG's counsel, Robert Piper, here.

The Hawaii State legislature, as I mentioned in my testimony, has passed two current resolutions in support of Federal recognition for Native Hawaiians. I am just asking what you know about this, has there ever been any change in the State legislature's position?

Ms. LINGLE. Senator, I believe that the legislature will again pass unanimously a resolution in support of this bill. I expect anytime this issue arises, it will be one of the only issues that the legislature perhaps can support in a unanimous fashion.

If I could request just a moment of indulgence to mention a couple of other people who are with me, Senator. Would that be all right?

Senator AKAKA. Absolutely.

Ms. LINGLE. Because we really have applied a team concept to this, each one of us doing what we do best. I would like to recognize my Senior Adviser for Communications Lenny Klompus, who has done a good job here at the national level, helping me to get this issue out before the public. I have been interviewed by Dave

Broder of the Washington Post. I am in New York the rest of this week talking with other national media, talking about this and other issues as it relates to Hawaii.

I also want to mention a volunteer who is with me today, but who has been significant in our ability to move here in Washington. She is the National Committeewoman from the State of Hawaii for the Republican Party, Miriam Hellreich. She has been a tremendous asset to us. She is here in the audience and cares very deeply about this bill as well. So again, we want to apply a team concept within my office, as well as between my office, the Office of Hawaiian Affairs, and of course your own offices here.

Senator AKAKA. Thank you for mentioning them also. Let me further mention that we have here with us Tony Sang, who has joined you as the chairman of the State Council of Hawaiian Homestead Association, and Robin Danner, who is the vice chairperson. We are delighted to have you.

Senator INOUYE. Thank you, Senator Akaka, and thank you once again, Governor Lingle.

Before I ask for the next witness, we have questions that have been submitted by the Chairman of the committee. If I may, I would like to submit them to you for your response.

Ms. LINGLE. Yes.

Senator INOUYE. Thank you very much.

Thank you very much, Mr. Kane. We also have a question for you, if you will respond to that.

Mr. KANE. Absolutely.

Senator INOUYE. Before I call upon the next witness——

Mr. KANE. I am sorry, Senator. I apologize if I did not communicate it, but I would like to testify, if I may.

Senator INOUYE. Please.

Mr. KANE. Thank you.

STATEMENT OF MICAH KANE, DIRECTOR, DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII

Mr. KANE. Hello, Senator Inouye, Senator Akaka, and other committee members that may be viewing this hearing today.

My name is Micah Kane. I am the Director of the State Department of Hawaiian Home Lands, here today to show support of this measure.

The Department of Hawaiian Home Lands was established by an act of Congress. In the early 1900's, Congress recognized the hurt of our culture and the near-extinction of our culture, and set aside over 200,000 acres for the purpose of rehabilitating Native Hawaiians through homeownership and land stewardship. We know this act as the Hawaiian Homes Commission Act of 1920. I am managed by a nine-member commission of which I serve as the chairman. I am appointed by the Governor, serve in her cabinet, and am confirmed by the State legislature.

While that relationship state-to-state exists, the act requires oversight by the Department of the Interior, so I have a direct relationship with the Department of the Interior. This relationship government-to-government has been in place for over 80 years, and it is stronger now than it ever has been.

Today, more than 7,000 families reside on our lands, over 22,000 people, Native Hawaiians, throughout 30 communities and associations throughout our islands and our counties—communities that have been established, that have democrat elections, that come before our Commission to represent their communities.

Senator Akaka, I want to thank you for recognizing two very important people to my Department and to our Commission, and that is our State chairman for our Statewide association, Uncle Tony Sang and his Vice Chairman, Robin Danner. I think it is an incredible statement for them to come this distance and it shows the importance of this issue to our community.

As our Governor has so eloquently stated, the support of this issue is broad and it is deep. She mentioned the recognition of Native Hawaiians and the support of recognition in both of our party platforms, as well as the recognition of Native Hawaiians in our national platforms; unanimous support by our State legislature; and our entire congressional delegation; but also most importantly for me, our homestead communities.

Many people, at least over my short tenure in trying to get involved in this dialog, have spoken very passionately about the social impact that our department has and other departments, as well as the economic impact from a program standpoint on the Federal funding that has occurred over the years. I do not want to take away the importance of that, but if we set aside that issue, very few people I think recognize the indirect impact recognition would have on our economic situation back home.

The Akaka bill would begin to eliminate the legal problems and uncertainties that have adversely affected our economies, like a silent but pretty effective means of shutting down some economic arenas for us. These are issues related to property title, ceded lands, and rights to natural resources like water and minerals. This process would begin the healing and defining of these issues.

Risk of doing nothing puts us back into the courts, puts our department in the position of dedicating over thousands of hours of manpower hours and millions of taxpayer dollars toward defending Native Hawaiian rights and letting the courts define what those rights should be. By moving this bill forward, it would have, I believe, a significant impact on allowing our State to move forward.

Last, I would like to touch on the effort today on behalf of this delegation. As the Governor has said, we are a johnny-come-lately. However, I believe past efforts have been defined by and framed by challenges to our constitution. I think they have been improperly framed by plaintiffs who have challenged our department and the constitutionality of our department. I believe our effort here today has given us an opportunity to step back and re-frame the issue as an issue of justice, as an issue of equality, as an issue of States' rights, and simply doing what is right.

All the people of Hawaii are not afraid of this process. We are not fearful of this process. We embrace it. It is a great time for all the people of Hawaii. It is clearly a great time for all the Native Hawaiians. More Hawaiians serve in our Governor's cabinet than at any time in the history of our State. I think it shows the resilience of the Hawaiian people, and it shows that programs like the

Department of Hawaiian Home Lands are working, by our presence here today.

I would like to thank Sheriff Holiona for the support she has given me during this process, as well as all of the other Native Hawaiian leaders during this transition period. I would like to thank our Governor for her support.

On behalf of my department and our constituents, again I want to express our support for this measure and the opportunity to testify before you today.

Thank you.

[Prepared statement of Mr. Kane appears in appendix.]

Senator INOUYE. Mr. Kane, I thank you very much, not just for the testimony, but your mere presence here at this gathering, because your presence is symbolically very important. In 1920, when the Hawaiian Homes Commission Act was enacted into law, it was a most definitive manner in which the United States demonstrated that there was a special relationship between the government of the United States and the Native people of Hawaii.

When Hawaii became a State in 1959, one of the provisions in the Admissions Act was to transfer authority for the home lands to the State. However, they left one clause in there, that says if the State of Hawaii should make changes that would affect the trust or the beneficiaries of the trust, it would be subject to approval by the Congress. That indicates to me that the U.S. Government is still involved in this special relationship. So your presence here is extremely important.

I just have one question.

Mr. KANE. Yes, sir.

Senator INOUYE. If this measure is not considered and passed, what do you think may be the outcome?

Mr. KANE. In the short term, it challenges our department daily. There is not a day that goes by that I am not spending time defending our right to exist. We spend countless manpower hours trying to do what is right, to continue what the Act set us out to do. So in the short term, it is a tremendous amount of time and a tremendous amount of taxpayer money being dedicated to something that we believe should be done already. In the long run, it challenges the existence of our department. I cannot imagine being in the position I am in today, wondering what the 22,000 constituents I represent would do being removed from the land. I think it is very deep and far-reaching.

Senator INOUYE. In other words, we have only one option—success.

Mr. KANE. Yes, sir.

Senator INOUYE. Governor Lingle, once again may I thank you very much for your gracious statement, and may I assure you and pledge to you the complete support and cooperation of the Hawaii congressional delegation.

Ms. LINGLE. Thank you very much, Senator.

Senator INOUYE. Thank you very much.

Before I call upon the final witness, may I note that we have in the audience four Alaskan Native leaders—the President of the Alaska Federation of Natives, Ms. Julie Kitka, is here; the President of the Arctic Slope Native Corporation, Oliver Levitt is here;

the President and CEO of Sealaska Native Corporation, Chris McNeil is here; and one of the great Alaska Native Leaders, Willie Hensley is here. I, on behalf of the committee, thank all of you for your presence and your support of this measure.

Now, I would like to call upon the chairperson of the constitutionally-recognized entity that represents Native Hawaiians in Hawaii, Haunani Apoliona.

Ms. APOLIONA. Aloha.

Senator INOUYE. Thank you very, very much. Madam Chair, before you proceed, I know there are other trustees of the Office of Hawaiian Affairs here. May I just recognize them? Trustee Colette Machado, Trustee Dante Carpenter, Trustee Oswald Stender, Trustee John Waihee, IV, and Trustee Boyd Mossman. Unfortunately Trustee Rowena Akana cannot be with us. She is in Washington, but she had a matter of great importance to attend to. We have former Hawaii Supreme Court Justice Klein here with us, and we have Tony Sang, the president of the State Council of Hawaiian Homestead Associations, and Charles Rose, president of the Hawaiian Civic Clubs.

Now, it is my great pleasure and privilege to call upon the Honorable Haunani Apoliona.

STATEMENT OF HAUNANI APOLIONA, CHAIR, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Na ʻOiwi ʻOlino

E o e na ʻoiwi ʻolino ʻea
Na pulapula a Haloa ea
Mai Hawaiʻi a Niʻihua ʻea
A puni ke ao malamalama ʻea e

Ku e au i ka hewa, kuʻe!
Ku au i ka pono, ku!
Kuʻe au i ka hewa, kuʻe!
Ku au i ka pono, ku!

Answer, O natives, those who seek knowledge
The descendants of Haloa
From Hawaiʻi island in the east to Niʻihau in the west
And around this brilliant world

I resist injustice, resist!
I stand for righteousness, stand!
I resist injustice, resist!
I stand for righteousness, stand!

Ms. APOLIONA. Mahalo, Senator Inouye and Senator Akaka, members of the U.S. Senate Committee on Indian Affairs, members and staff, aloha.

I would also like to extend our greetings to our ohana from the north and to our ohana across the other 48 States of this Nation. And of course, aloha to Representative Case, Faleomavaega, Governor Lingle, Chairman Kane, and all those who come in support of Federal recognition for Native Hawaiians.

I am Trustee Haunani Apoliona, chairperson of the Board of Trustees of the Office of Hawaiian Affairs. I am pleased to highlight briefly some points made in the full text of my testimony, and

I ask that the official record of these proceedings reflect my complete testimony submitted earlier.

Before I proceed any further, Senator, you were gracious enough to introduce our Trustees and our Board Counsel, Robert Klein and Charles Rose, president of the Association of Hawaiian Civic Clubs. I would also like to take a moment to introduce our staff who have traveled with us from Hawaii—Clyde Namu'o, our administrator, his administrative staff, Nani Lee, the woman who sealed the vote with the chairman of this committee; and Peter Yee. And also to introduce finally our staff from the Office of Hawaiian Affairs who has just recently helped us to establish our Washington, DC bureau here at Connecticut Avenue, partnering with the National Congress of American Indians, and that is our staff of the Washington, DC bureau of the Office of Hawaiian Affairs, Martha Ross.

Let me begin my comments as is customary by addressing you in our traditional language.

E na alakaʻi a me na lala o keia Komike o na Kuleana ʻilikini o ka ʻAhaʻolelo Nui o ʻAmelika Hui Pu ʻia, aloha mai kakou. He loa ke ala i hele ʻia e makou, na ʻoiwi ʻolino o Hawaiʻi, a he ala i hehi mua ʻia e na aliʻi o makou, e laʻa, o ka Moʻi Kalakaua, ke Kamaliʻiwahine Kaʻiulani a me ka moʻiwahine hope o ke Aupuni Moʻi Hawaiʻi, o ia ko makou aliʻi i aloha nui ʻia, o Lilʻuokalani. A he nui no hoʻi na Hawaiʻi, kunou mai ai i mua o oukou e nana pono mai i ke kulana o ka oiwi Hawaiʻi, kona nohona, kona olakino, ka hoʻonaʻauao a pela wale aku.

Ua pono ka helena hou a makou nei a loaʻa ka pono o ka ʻaina, ke kulaiwi paʻa mau o ka lahui ʻoiwi o Hawaiʻi paeʻaina, o ia wale no ka Hawaiʻi. No laila, eia hou no ka oiwi ʻolino Hawaiʻi he alo a he alo, me ka ʻAhaʻolelo Nui.

To the leaders and members of this Committee on Indian Affairs of the U.S. Congress, greetings. Long has been the road traveled here by Native Hawaiians who dearly embrace wisdom and justice. Indeed, a path tread upon by such royal nobility of our past such as King Kalakaua, Princess Ka'iulani and our beloved last ruler of the Hawaiian Kingdom, Queen Lili'uokalani. And still countless other Native Hawaiians who have humbled themselves before this body for your consideration on such critical Native issues as housing, health, education.

Again, we come before you urging consideration and affirming the rights of Native Hawaiians as the sole indigenous people of our ancient homeland, Hawaii. We come together again face to face, Native Hawaiians and the Congress of the United States of America.

The United States has a unique legal and political relationship with the indigenous people of Hawaii, and that relationship is embodied in a myriad of history, treaties, statutes, Executive orders and court decisions. Once again, the congressional delegation from the State of Hawaii seeks, with the assistance of many of their colleagues, to achieve a formal recognition of the special status the indigenous people of Hawaii have in the fabric of American political relationships.

The Office of Hawaiian Affairs supports therefore the intent and framework of S. 344, and its companion in the House of Represent-

atives, H.R. 665. As stated in our more complete testimony, I would like to testify a few of the points made.

First, the relationship between the United States and the State of Hawaii and Native Hawaiian people is a matter of written record. Congress itself provided a factual account of the illegal overthrow of 1893, and the annexation of 1898, in the Apology Bill, Public Law 103–150, passed in 1993. We have in our testimony provided additional history, cultural insights, and legal citations for your consideration.

Reconciliation, described as a desired outcome of the passage of Public Law 103–150, and recognition for Native Hawaiians recommended in the October 23, 2000 joint report of the Department of the Interior and Department of Justice entitled Mauka to Makai: The River of Justice Must Flow Freely. Thus far, the recommendations have been denied Native Hawaiians.

Our centuries-old culture, society, history, language, relationships and spiritual traditions flourished in the Hawaiian archipelago before the first Western contact, and live on today despite over two centuries of contact with the West, despite more than a century of domination by an alien culture, and despite the threat of assimilation and cultural genocide. Our traditional practices recognized by the State of Hawaii deserve recognition and protection from the Federal Government as well.

The inseparable connectedness between Native Hawaiians and our natural environment, the land, ocean, plant and animal life, goes far beyond the Western ideology of a market economy. A ancient cosmogonic chant of creation known as the Kumulipo or "source from the dark" teaches the sibling relationship of all forms of life in the universe. This relates directly to our interconnectedness and interdependence with the land and our concept of malama aina, or care for the land.

Hawaiian recognition is about fairness and justice. The right of self determination has been extended to the indigenous people of every State in this union, save one, Hawaii and the Hawaiians. S. 344 and its House companion, H.R. 665 are initial, but significant steps on the path toward reconciling historic wrongs to Hawaiians, and advancing Hawaiians through Federal recognition toward a political relationship with the United States of America.

While Hawaiian ali‘i, monarchs such as Queen Lili'uokalani, worked nearly alone in trying to gain the attention of congressional leaders in the 19th century in pursuit of reconciling the history of our people, Native Hawaiians in the 21st century are joined by other citizens and indigenous people in this country who stand with us in our pursuit of Federal recognition and reconciliation. For this, we are grateful.

Indeed, we do not stand alone. We stand with the two other indigenous peoples of America and we appreciate their support. Federal policy on self-determination and self-governance currently extends to Alaska Natives and American Indians. Native Hawaiians, the third indigenous people in these 50 States, seek parity in inclusion.

No laila, eia makou ma ka palena pau o keia noi ha‘aha‘a a ha‘aheo, e ho‘olohe mai a e nana mai i ka ‘ike a me ka maopopo pono o kulana ‘oiwi o ka Hawai‘i i kona ‘aina kulaiwi mai ke au

kahiko loa a ka wa pau ʻole. He pono keia ʻolelo i mua o ʻoukou i ʻolelo i ʻoleo ʻia me ka ikaika a me ka mana a me ke aloha o na kupuna i hala, na Hawaiʻi he lehu o keia au a me na hanauna e puka a'e ana no. Mahalo nui, ke aloha no.

Therefore, as I approach the conclusion of this humble, yet cherished testimony, I ask that you listen and look upon us with wisdom and understanding on the status of the Native Hawaiians in our ancient homeland.

What is said to you is offered in truth and is uttered with the strength and power and love of our forebears, our ancestors, our nearly 400,000 Native Hawaiians in Hawaii and on the continent, and generations hence.

We appreciate the opportunity to present this testimony, and we ask for your positive consideration of S. 344.

Mahalo.

[Prepared statement of Ms. Apoliona appears in appendix.]

Senator INOUYE. I thank you very much, Chair Apoliona. I am certain all of us realize, as Chairman Campbell indicated, that the measure before us is the result of seven hearings. One of those hearings was held in August 2000 in Hawaii, and lasted for 5 days. I am certain some of you recall that hundreds of Native Hawaiians presented testimony, both oral and written.

We are hoping that this measure, with amendments if such be necessary, will soon be forwarded to the executive for his signature. This is an important measure, and as a result we will keep the record open until March 20. If any of you wish to review your testimony and make addendums; if any of you wish to correct your statements, please feel free to do so. If there are those who wish to submit statements, you are free to do so, but we would like to receive them before March 20.

There are several milestones that have had some important impacts upon the Native people of Hawaii. The first was in 1778 when the Western world came to Hawaii with the so-called discovery of the islands by Captain Cook. Next, was the overthrow of Queen Lili'uokalani in January 1893. History shows that this was done with the cooperation of the minister of the United States and the use of the U.S. Marines.

Then in 1921, the Hawaiian Homes Commission Act became law, thereby officially recognizing that there was a special relationship between the United States and the Native people of Hawaii. On August 21, 1959, came Statehood, but even with Statehood that relationship continued. On November 23, 1993, the apology resolution was enacted into law.

The last milestone, the most important, will be the one that is incorporated in this measure. I believe that though it may have been a long path, as you have pointed out, Chairperson Apoliona, it will become a reality. I look forward to working with you and Governor Lingle and with all of you assembled here. Senator Akaka and I pledge to you our full support and we are certain that this time we will make it, because we have no other option. If we do not make it, it will be disaster for the Hawaiian homesteaders and for all the many programs that we have, whether it be in education, health or housing. This is a must.

Senator Akaka.

Senator AKAKA. Thank you very much, Mr. Chairman.

Mahalo for your testimony, Chairman Apoliona. I also want to welcome the other trustees who are here and were introduced by the chairman. I also want to welcome Clyde Namu'o of your staff, Nani Lee, and Peter Yee, and also Justice Klein, who are with you this morning, and the DC Bureau Chief, Martha Ross.

I also want to say mahalo for coming and welcome to our brothers and sisters the Alaska Natives—Julie Kitka and Willie Hensley, Oliver Levitt and Chris McNeil. Thank you folks so much for your strong support over the years. I want you to know that we appreciate it.

Also, I see in the audience the friendly and great leader of our Association of Hawaiian Civic Clubs, Charlie Rose who is here with us. And others of you here, I want to say mahalo for coming and supporting us and supporting the passage of this bill.

I also want to echo the chairman that we appreciate your support and we want to continue to work with you and we are certainly doing all we can to help Native Hawaiians and the people of Hawaii in reaching out and raising our levels of support, not only for Hawaii, but for our country and even the world.

So mahalo nui loa. Thank you very much, Mr. Chairman.

Senator INOUYE. Chairperson Apoliona, I just have one question before we leave. I note the presence of Alaskan leaders here, and at this moment the National Congress of American Indians is having their national convention, and they send their regrets that they could not be here, otherwise they would have been here en masse.

You have had a long relationship with Alaska Natives and American Indians. Why do you think Hawaiians enjoy such strong support from Alaska Natives and Native Americans?

Ms. APOLIONA. Having had the opportunity to actually be in this hearing room when we gathered as Native people in the middle of the year last year, in honor of our country and the contributions of our Native people, it became clearer to me then that the effort for Hawaiian recognition is truly a priority for Alaska Natives and American Indians because we are all indigenous people.

It is sometimes far beyond words when we can reach into our own history and genealogy and know that we share the same values of family and protection of our environment and our respect for creative forces. We as indigenous people, Native Hawaiians, Alaska Natives, and American Indians, share that common tradition. It is that bond of spirit, and our spiritual traditions, that tie us.

The expressions in my reflection of 2001 and opportunities since then have only underscored for me and all of us who have opportunities to work with our Alaska Natives and American Indians, that they are truly committed. Like in any family, we look to and care for the 'ohana [extended family], and they look to and they are caring for us.

This is an honor to be here, and to be in the presence of our Native leaders, for if they did not care and they did not feel and they did not honor our tradition, they would not be here. They are here and they bring us great honor by their presence.

Mahalo.

Senator INOUYE. I thank you very much. As we all know, we are now in a very challenging moment in our lives. It has been said

that at any moment we may be at war in Iraq, which reminds me that since World War II, in Korea, in Vietnam, in Desert Storm, on a basis of per capita representation, more Native Americans, including Hawaiians, have put on the uniform and placed themselves in harm's way on behalf of the people of the United States than any other ethnic group. I think we should always remember that, that the Natives of this land more eagerly volunteered to serve this country—a country that has not always been generous, that has not always been understanding, that has not always been sensitive to their needs.

So with that, I would like to adjourn the hearing and thank all of you, the witnesses. Thank you very much.

[Whereupon, at 11:05 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MICAH KANE, DIRECTOR, HAWAIIAN HOME LANDS

Aloha mai kakou Chairman Campbell, Vice Chairman Inouye, Senator Akaka, and honorable members of the Senate Committee on Indian Affairs. My name is Micah Kane and I am the director of the State of Hawaii's Department of Hawaiian Home Lands. Mahalo for this opportunity to appear before you today to testify in support of S. 344, commonly known as the Akaka bill.

The Department of Hawaiian Home Lands is the agency within our State government that administers the Federal trust lands created by Congress more than 80 years ago under the Hawaiian Homes Commission Act of 1920. This act set aside more than 200,000 acres of land for use by Native Hawaiians. Currently, over 20,000 Native Hawaiians live on these lands, in more than 30 different communities, on almost every island in the state. An even larger number of qualifying Native Hawaiians remain on a waiting list—hoping for their opportunity for home ownership and land stewardship.

With me today, are Uncle Tony Sang, the chairman of the State Council of Hawaiian Homestead Associations [SCHRA] and Robin Danner, his vice chairman. These two individuals represent and work daily on behalf of real people, in real communities, and they do it very well. They are just the tip of the iceberg. There are many more Native Hawaiians who selflessly work for the betterment of our people.

My remarks today will focus on just three [3] issues. First—where the support for this bill is coming from. Second—the economic realities of this measure. And third—the practical reasoning which supports the passage of this bill.

First, there is broad and deep support from Hawaiian and Non-Hawaiian communities alike, and Republican and Democrat party lines. Our entire congressional delegation supports this measure and Governor Lingle has made its passage a major objective of her administration. It also is backed by resolutions passed by the Hawaii State Legislature, the National American Indian Housing Council, the National Congress of American Indians, and the Alaska Federation of Natives, and it has been included in the national and Hawaii platforms for the Republican and Democratic parties. Most importantly to me, the homestead communities to which I am accountable also support this measure. In short, the Akaka bill is supported by the people most directly affected by it, and also by people with no vested or common interests other than a desire to see justice done.

Second, the Akaka bill would eliminate legal problems and uncertainties that have adversely affected the Hawaii economy. These troubling and unsettled issues relate to property title, ceded land claims, and rights to natural resources. Without Federal recognition of Native Hawaiians, the State of Hawaii will spend thousands of unnecessary man-hours and millions of taxpayer dollars defending and clarifying Native Hawaiian rights. Enactment of the Akaka bill would bring closure and allow our state to move forward.

Third, the Akaka bill simply completes a journey that Congress began many years ago. There are over 150 statutes passed by Congress which address the conditions and lives of Native Hawaiians. The goal has been to redress past wrongs and to em-

power self-help. I would humbly submit that passage of this bill rightfully extends the successes of our country's era of self-determination for its native peoples to Native Hawaiians. It would allow us to control our destiny as a native people and thus to participate more fully and more proudly as Americans.

In closing, I would like to thank Senator Inouye, Senator Akaka, and the rest of Hawaii's Congressional Delegation for their long-standing commitment to the fight for self-determination for the Hawaiian people. I would also like to acknowledge the efforts and leadership of all Hawaiian organizations, including the Office of Hawaiian Affairs, who continue to dedicate themselves and to persevere in their work to achieve the goal of Federal Recognition.

I also want to publicly thank Governor Lingle for including so many Native Hawaiians in her administration. By doing so, she has empowered and challenged us to use our talents to improve the lives of all the people of Hawaii. We are humbled by the trust she has placed in us, and we fully recognize the responsibility that comes with the opportunity to serve others.

And finally, I thank you, the members of the Senate Committee on Indian Affairs, for your past and present efforts in ensuring that the profound American notions ofjustice, fairness, and equality are not only spoken to Native Hawaiians, but are preserved and brought to life for us. Once again, mahalo nui loa.

PREPARED STATEMENT OF LINDA LINGLE, GOVERNOR, HAWAII

Good Morning Chairman Campbell, Vice Chairman Inouye, and members of the Senate Committee on Indian Affairs. Thank you for inviting me to appear before you. For the record, I am Linda Lingle, Governor of the great State of Hawaii, and I am honored to be here.

I come before you today to express my support for passage of the Native Hawaiian Federal Recognition Bill, which is known throughout Hawaii as the Akaka bill. My administration and both houses of the Hawaii State Legislature believe this is the right thing to do—for Native Hawaiians, for the State of Hawaii, and for the United States.

Native Hawaiians are an important constituency in our State for many reasons. The Native Hawaiian culture is the foundation of the character of the State of Hawaii, and the basis for common understanding among our varied ethnic populations. Our very identity as a State is founded on Native Hawaiian values, cultural practices and knowledge. Their willingness to share that knowledge and understanding has enriched all who call Hawaii home. We have learned much from Native Hawaiians, and have much more to learn.

As a Republican Governor, I am happy to be working in close harmony with our Hawaii Democratic Congressional Delegation on this critically important issue. Senator Inouye, Senator Akaka, Representative Case, and Representative Abercrombie stand united in their support, and I proudly stand with them, along with the Hawaii State Legislature.

We recognize that there will be differences of opinion in our approaches to many of the challenges we face, but we also recognize the value of aloha and working in a bi-partisan manner to resolve issues of great importance to the people of our state. The people of Hawaii have voiced their support on this issue in many ways. For example, both Republicans and Democrats in Hawaii have supported Federal recognition for Native Hawaiians in party platforms.

We are united in asking Congress to pass the Akaka bill into law, thereby reaffirming the political relationship between the United States and the Indigenous people of Hawaii. This bill is vital to the survival of the Native Hawaiian people; it is vital to the continued character of our State; and it is vital to providing parity and consistency in Federal policy for all Native peoples in America.

As public-policymakers, all of us in this room believe deeply in the goodness of our great country, and in the strength of its democratic ideals.

America's Indigenous Peoples are America's First Peoples, and American Indians of the 48 States, Alaska Natives of the 49th State, and Native Hawaiians of the 50th State have demonstrated their love for this country and made contributions that all U.S. citizens can be proud of Indeed, our Federal Government owes our First Citizens a great debt of gratitude.

We policymakers owe it to ourselves to live up to the promise and power of Democracy and Justice for All, and to continue our journey by recognizing the inherent rights of the Indigenous Peoples of our country.

There have been many eras of Federal policy toward Native Peoples over the centuries—none so promising as the current one of self-determination and self-governance that has already been extended to American Indians and Alaska Natives.

It is time to set a new course in Hawaii. Specifically, it is time to extend this Federal policy of self-determination and self-governance to the Native Hawaiian people.

The people of Hawaii respectfully submit that simple justice requires that Native Hawaiians be empowered to determine their own future by employing their own solutions. I am confident that they will rise to the challenge.

I have found an abundance of talent, energy, and a love of democracy among members of the Native Hawaiian community, including many who serve in my administration. Bob Awana is my chief of staff and Micah Kane heads the Department of Hawaiian Home Lands. Dr. Chiyome Fukino left a successful medical practice to serve the larger community of Hawaii as Director of the Department of Health. Georgina Kawamura serves as our Director of Budget and Finance. Rick Bissen runs the attorney general's office as first deputy, and Kathy Watanabe heads our Department of Human Resources and Development. James Aiona is Hawaii's Lieutenant Governor. These are just the most visible of many Native Hawaiians who serve the people of Hawaii as members of my administration. They serve with competence, passion and vitality.

Many of you have worked with our Native Hawaiian Senator Daniel Akaka for a number of years. You know him by his Aloha, by his gentle spirit, and by his commitment to these United States. Like the individuals in my administration that I have named, Senator Akaka knows what it means to be Native Hawaiian, to be from Hawaii, and to be an American.

Like all Native peoples around the country, these individuals have embraced the promise of our democracy and now use their unique knowledge of our islands, and of its diverse people, to serve the public—and in doing so they do not give up what it means to be Native Hawaiian. They do not and have not abandoned their collective rights as Native Hawaiians to be self-governing and to practice and perpetuate a cultural heritage whose home is only found in one tiny part of our world, the Hawaiian Islands. Despite the historical events and policies that worked against them, Native Hawaiians have an unbroken desire for self-governance as a means of perpetuating their way of life and their culture, for future generations.

Passage of the Akaka bill will provide Native Hawaiians with an opportunity owed to them for many years—the right to engage their best talents and best ideas as full partners of the State and Federal Governments. Passage of this bill holds great promise for Native Hawaiians, and it holds great promise for our State and all its citizens. My administration believes that what is just and good for Native Hawaiians is just and good for all our people.

There have been concerns shared with me about what this bill might lead to—like gambling, or creating a divide among peoples in my State. Nothing could be further from the truth.

I do not support gambling in Hawaii; Native Hawaiians have not collectively enunciated a desire for legalized gambling; and this bill does nothing to permit it. The State of Hawaii controls whether or not there will be gambling in Hawaii. This is true today and it would be true after enactment of this bill.

This bill would not divide the people of Hawaii. To the contrary, by doing what is right for Native Hawaiians, passage of the Akaka bill would enable all the peoples of Hawaii to move forward and reach our potential together.

How, I ask you, can providing justice for long-standing wrongs ever be divisive? The underlying principles of our country tell us that justice and a recognition of rights—personal and collective—is the very definition of our unity. Our State motto—Ua mau ke 'ea o ka 'aina i ka pono, the life of the land is perpetuated in righteousness—says it well.

The life of Hawaii and unity of its diverse peoples are perpetuated by doing what is right.

The Native Hawaiian Federal Recognition Bill brings parity and consistency to our Federal policies on America's Indigenous People. The Native Hawaiian people of my State deserve nothing less. This bill provides a process that has not existed before, for the Hawaiian people to take hold of their destiny and to have a rightful place at the table in making decisions for themselves. I have every confidence that if this opportunity is granted to them, Native Hawaiians will find within their community an approach that works for themselves, for our State, and for this Nation.

Members of the committee, I urge you to pass the Native Hawaiian Recognition Bill out of your committee and to urge your colleagues in the full Senate to pass this bill without hesitation. In doing so, you will recognize the contributions of Native Hawaiians and the value of their continued and enhanced vitality to my State and our Nation.

In doing so, you also will recognize what is righteous, what is practical, and what is just.

Mahalo and Thank You.

The Alaska Federation of Natives

Statement of Support for the

NATIVE HAWAIIAN FEDERAL RECOGNITION BILL

S. 344, A bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

The Alaska Federation of Natives (AFN) is the largest Native organization in Alaska, with a broad membership including 178 villages, 13 regional Native corporations and 12 regional nonprofit associations. AFN strongly supports the desires of Native Hawaiian for equity in law with Alaska Natives and American Indians. AFN supports federal recognition for Native Hawaiians as a first step in allowing the Native Hawaiians to have this equity in federal law and in order for the constitutional basis of the special federal relationship to be clearer. AFN supports Hawaiian efforts for greater self-determination and congradulate them in their efforts todate.

AFN remains committed to seeing the federal government complete its unfinished business with Native Hawaiians by granting them equal status to that enjoyed by Alaska Natives and American Indians. We believe that Hawaiians must achieve parity with other Native Americans, and in our view, true parity cannot be achieved for Native Hawaiians without access to all of the legal tools available to other indigenous peoples in the United States. One of the essential tools currently being denied to them is federal recognition, and this legislation aims to remedy this problem.

This bill does not create a "new" federal relationship with Native Hawaiians, but rather clarifies an existing political relationship in the context of the U.S. federal policy of self-determination and self-governance. In 1970, President Nixon announced the federal policy of the rights of America's Native people to self-determination and self-governance, and over the course of the ensuing years, Alaska Natives and Native Americans have made enormous strides in assuming responsibility for providing programs and services previously administered exclusively by the federal government.

Every government study recently conducted concerning social and economic problems plaguing the Native communities of Alaska and Hawaii points to greater self-determination as the answer to healing our broken communities. Federal recognition for Native Hawaiians will enable greater self-determination, just as it has for Alaska's Native peoples and American Indians across the country.

To cite an example, the successes of the Alaska Native Tribal Health Consortium (ANTHC) would not be possible were it not for the federal recognition currently enjoyed by our people. Formed in 1997 to manage the statewide health services component of the Alaska Native Health system, ANTHC was created through the Alaska Tribal Health Compact, a self-governance agreement with the Indian Health Service. The ANTHC has nearly 1,200 staff and a $200 million annual operating budget, and it oversees the operation of the Alaska Native Medical Center (ANMC).

In FY 2000 alone, the ANMC admitted more than 6,600 patients, provided more than 320,000 outpatient visits, offered traditional healing with an Alaska Native Tribal Doctor, and earned $61 million from Medicaid, Medicare and other insurance payors for services. Federal recognition has served Alaska Natives well, and Native Hawaiians deserve the opportunity to realize this same level of self-determination.

AFN supports recognition because it gives the Native Hawaiian community the tools it needs to guide its own destiny. By providing an opportunity for a government-to-government relationship with the United States, it offers them a seat at the table and a direct voice on issues of importance to Native Hawaiians, including education, health care, land claims, housing, economic development and culture.

To clarify, this legislation focuses on three basic areas:

1. It provides for a process for federal recognition of the Native Hawaiian governing entity,
2. It establishes an office within the Department of the Interior to focus on Native Hawaiian issues and to serve as a liaison between Native Hawaiians and the Federal government, and
3. It creates an interagency coordinating group to be composed of representatives of federal agencies which administer programs and implement policies impacting Native Hawaiians.

AFN has testified at hearings in both Hawaii and Washington, DC, where we have heard the recommendations of hundreds of citizens of Hawaii who presented oral and written testimony to House and Senate committees. We have seen the recommendations in the federal government's report entitled, "Mauka to Makai: The River of Justice Must Flow Freely." We have also worked closely with Hawaii's Senators Daniel Inouye and Daniel Akaka, and Alaska's Senator Ted Stevens and Congressman Don Young, to win passage of this long overdue piece of legislation. The time has come for the United States Congress to honor its commitment to the Native Hawaiian people.

This bill is an important first step. We stand in solidarity with Native Hawaiians in their efforts to achieve equal status under federal law with all other indigenous peoples in the United States, and we urge your passage of federal legislation this Congress.

TESTIMONY OF TRUSTEE HAUNANI APOLIONA
CHAIRPERSON, BOARD OF TRUSTEES
OFFICE OF HAWAIIAN AFFAIRS

United States Senate, Committee on Indian Affairs
Hearing on S. 344
Tuesday, February 25, 2003, 9:30 a.m.
Room 485, Russell Senate Office Building

Nā 'Ōiwi 'Ōlino

E ō e nā 'ōiwi 'ōlino 'eā
Nā pulapula a Hāloa 'eā
Mai Hawai'i a Ni'ihau 'eā
A puni ke ao mālamalama 'eā ē

Kū'ē au i ka hewa, kū'ē!
Kū au i ka pono, kū!
Kū'ē au i ka hewa, kū'ē!
Kū au i ka pono, kū!

Answer, O natives, those who seek knowledge
The descendants of Hāloa
From Hawai'i island in the east to Ni'ihau in the west
And around this brilliant world

I resist injustice, resist!
I stand for righteousness, stand!
I resist injustice, resist!
I stand for righteousness, stand!

INTRODUCTION

E nā alaka'i a me nā lālā o kēia Kōmike o nā Kuleana 'ilikini o ka 'Aha'ōlelo Nui o 'Amelika Hui Pū 'ia, aloha mai kākou. He loa ke ala i hele 'ia e mākou, nā 'ōiwi 'ōlino o Hawai'i, a he ala i hehi mua 'ia e nā ali'i o mākou, e la'a, 'o ka Mō'i Kalākaua, ke Kamali'iwahine Ka'iulani a me ka Mō'iwahine hope o ke Aupuni Mō'i Hawai'i, 'o ia ko mākou ali'i i aloha nui 'ia, 'o Lili'uokalani. A he nui nō ho'i nā Hawai'i i kūnou mai ai i mua o 'oukou e nānā pono mai i ke kūlana o ka 'ōiwi Hawai'i, kona nohona, kona olakino, ka ho'ona'auao a pēlā wale aku.

Ua pono ka helena hou a mākou nei a loa'a ka pono o ka 'āina, ke kulaiwi pa'a mau o ka lāhui 'ōiwi o Hawai'i pae'āina, 'o ia wale nō ka Hawai'i. No laila, eia hou nō ka 'ōiwi Hawai'i, he alo a he alo, me ka 'Aha'ōlelo Nui.

To the leaders and members of this Committee on Indian Affairs of the United States Congress, greetings. Long has been the road traveled here by Native Hawaiians who dearly embrace wisdom and justice, indeed a path tread upon by such royal nobility of the past as King Kalākaua, Princess Ka'iulani and our beloved last ruler of the Hawaiian Kingdom, Queen Lili'uokalani. And still countless other Native Hawaiians have humbled themselves before this body for your consideration on such critical native issues as housing, health, education and so on.

Again, we come before you urging consideration in affirming the rights of Native Hawaiians as the sole indigenous people of their ancient homeland, Hawai'i. We come together again face to face — Native Hawaiians and the Congress of the United States of America.

The United States has a unique legal and political relationship with the indigenous people of Hawai'i and that relationship is embodied in a hodgepodge of history, treaties, statutes, Executive Orders, and court decisions. Once again, the congressional delegation from the State of Hawai'i seeks, with the assistance of many of their colleagues, to achieve a formal recognition of the special status the indigenous people of Hawai'i have in the fabric of American political relationships. OHA supports, therefore, the intent and framework of S. 344 and its companion in the House of Representatives, H.R. 665.

HAWAIIAN SELF-DETERMINATION – A HISTORY OF DENIAL

The relationship between the United States and the State of Hawai'i and the Native Hawaiian people is a matter of written record. Congress itself provides a factual account of the illegal overthrow of 1893 and the annexation of 1898 in the Apology Bill, Pub. L. No.1 03-150, 107 Stat. 1510 (1993). The story is worth retelling, however, because it serves to underscore the legacy left by over a century of benign neglect of and sometimes open antipathy toward Hawaiian self-determination.

One hundred and ten years ago, diplomatic and military representatives of the United States triggered and led the overthrow of the Kingdom of Hawai'i through, in President Grover Cleveland's words, "an act of war on a friendly and confiding people". Later, without the consent of the indigenous people of Hawai'i, the illegitimate "Republic of Hawai'i" purported to cede both Hawaiian sovereignty and more than 1.8 million acres of Hawaiian crown and government land to the United States. This usurpation of the sovereignty and land of a people was undertaken without the consent of and without compensation to the Hawaiian people.

The official marginalization of the Hawaiian people at the hands of the United States continued. In 1920, the United States divided our people by blood quantum, and through legislative fiat drew artificial lines between parent and child, grandparents and grandchildren and 'ohana (extended family) in a society

and culture knowing no such distinctions. In 1959, a continuation of this unwarranted division of the Hawaiian people became one of the conditions to Hawai'i's admission as the fiftieth state of the Union.

The Hawaiian people have endured the painful irony that they were made part of the American political family without being permitted to exercise one of the most basic principles of American political thinking – the right of self-determination. The United States of America used its power to allow the overthrow of the legitimate government of Hawai'i and then withheld that power and refused to rectify that wrong. While claiming a special relationship with the indigenous Hawaiian people, arbitrarily re-defined what it means to be "Hawaiian". For too long, our ancestors and 'ohana have waited for the United States and its political agent, the State of Hawai'i, to make right the wrong that was committed in 1893, only to see the small steps taken for our benefit persistently attacked and maligned as being contrary to modern constitutional jurisprudence. Reconciliation has been an option thus far denied.

HAWAIIAN RECOGNITION IS ABOUT FAIRNESS AND JUSTICE

Following the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893, the Provisional Government and then the Republic of Hawai'i seized management of all lands formerly controlled by Queen Lili'uokalani (the Crown Lands), Hawai'i Constitution, Art. 95. Sec. 262 (1894), as well as the lands controlled by the government of the Kingdom of Hawai'i (the Government Lands).

In 1993, the U. S. Congress acknowledged in the Apology Bill (Public Law 103-150), that this action was illegal and that it could not have been accomplished without the assistance of U.S. agents. The Apology Bill goes on to note that the subsequent "cession" of these lands to the United States in 1898 was "without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign government."

> Whereas, without the active support and intervention by the United States diplomatic and military representatives, the [January 1893] insurrection against the Government of Queen Lili'uokalani would have failed for lack of popular support and insufficient arms;
>
> * * *
>
> Whereas the Republic of Hawai'i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai'i, without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign government;
>
> * * *
>
> The Congress —
>
> (1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people. . .
>
> (Public Law 103-150, emphasis added.)

The United States established the Territory of Hawai'i pursuant to the Organic Act of April 30, 1900, ch. 339, 31 Stat. 141 (without any vote of the citizens of the former Kingdom of Hawai'i). The Organic Act provided that all proceeds from the Public Lands (the former Crown and Government Lands) were to be applied by the government of the Territory of Hawai'i to "such uses and purposes for the

benefit of the inhabitants of the Territory of Hawai'i as are consistent with the joint resolution of annexation, approved July seventeenth, eighteen hundred and ninety-eight." When Congress enacted the Native Hawaiian Health Care Improvement Act Amendments of 1992, Congress found that the joint resolution of annexation (the Newlands Resolution) and the Organic Act established "a special trust relationship between the United States and the inhabitants of Hawai'i." (42 U.S.C. §1701(12).)

In the 1959 Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959), the United States transferred about 1.2 million acres of the Public Lands, plus another 200,000 acres of Hawaiian Home Lands, to the State of Hawai'i. In 1992, Congress found that the Admission Act further "reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the [Hawaiian Home Lands] trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act." (Native Hawaiian Health Care Improvement Act Amendments, 42 U.S.C. §1701(15).)

Section 5(f) of the Admission Act explicitly provided that the lands granted to the State of Hawai'i upon admission were to be held by the State as a public trust. By this provision, again using the language chosen by Congress in 1992, the United States "reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State

for the betterment of the conditions of Native Hawaiians under section 5(f) of the [Admission Act]." (42 U.S.C. §1701(16).)

In Section 5(f) of the 1959 Admission Act, Congress stated explicitly that the transferred lands were to be held as a "public trust" by the State and that the revenues generated by these lands and the revenues were to be used for five specific purposes: "for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use." Until Hawai'i's 1978 Constitutional Convention, the State interpreted this provision as allowing it to use the revenues for any one of these purposes. The State devoted all revenues to public education, and allocated none of these revenues specifically to benefit native Hawaiians.

Because of the decades of neglect, the delegates to the 1978 Constitutional Convention proposed a series of constitutional amendments that were subsequently ratified by the voters and added to Hawai'i's Constitution. These amendments affirmed that the State "held" the Ceded Lands as a Public Land Trust, with native Hawaiians as one of the two named beneficiaries and the general public as the other (Article XII, Section 4). These constitutional amendments established the Office of Hawaiian Affairs (OHA) (Article XII,

Section 5) and required the State to allocate a pro rata share of the revenues from the Public Lands to OHA to be used explicitly for the betterment of native Hawaiians (Article XII, Section 6).

Throughout all of these years, despite all of the reaffirmations of the "special relationship" between the United States and the indigenous people of Hawai'i, despite the number of times our people have come to Congress seeking reconciliation – the historic wrongs forced on our people have been allowed to continue without redress. The right of self-determination has been extended to the indigenous people of every other state in the union save one – the Hawaiians.

S. 344 and its House companion H.R. 665 are initial but significant steps on the path in the direction of reconciling historic wrongs to Hawaiians and advancing Hawaiians toward a political relationship with the United States of America.

THE PROCESS OF HEALING MUST CONTINUE

We are not unmindful of the efforts that have been made by the federal government and the State of Hawai'i to try to alleviate the conditions faced today by the indigenous people of Hawai'i. Congress has, for example, repeatedly found that the health of native peoples is tied to their relationship to land. More specifically, Congress has found that this is indeed true for Hawaiian people.

The Apology Bill specifically finds that: "Whereas the health and well-being of Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land. . ." (107 Stat. at 1510.) The social and economic changes in Hawai'i which resulted from contact with the west had a "devastating" effect on the Native Hawaiian population and on their "health and well-being." (Apology Bill, 107 Stat. at 1512.) Foreigners brought new diseases to Hawai'i, and the Native Hawaiian population plummeted.

The condition of Native Hawaiians deteriorated to a point that in 1920 territorial representatives sought assistance from Congress. Noting that Hawaiian people had been "frozen out of their lands and driven into the cities," and that "Hawaiian people are dying," the representatives recommended allotting land to the Hawaiians so that they could re-establish their traditional way of life. (H.R. Rep. No. 839, 66th Cong., 2d Sess. 4 (1920).) The Secretary of the Interior echoed that recommendation, informing Congress that Native Hawaiians are "our wards . . . for whom in a sense we are trustees," that they "are falling off rapidly in numbers" and that "many of them are in poverty." (Id.) Those recommendations led to the enactment of the Hawaiian Homes Commission Act which designated 200,000 acres of lands for homesteading by "native Hawaiians," which was defined as descendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

Since Hawai'i's admission into the Union, Congress has assisted in addressing

the well-being of Native Hawaiians. Congress has established special Native Hawaiian programs in the areas of health care, as well as education, employment, and loans. (*See e.g.*, Native Hawaiian Health Care Improvement Act, 42. U.S.C. §§11701-11714; Native Hawaiian Education Act, 20 U.S.C. §§7901-7912; Workforce Investment Act of 1998, 29 U.S.C. §2911; Native American Programs Act of 1974; and others.) These statutes are premised on Congressional findings that the conditions of Native Hawaiians in such areas as health and education continue to lag seriously behind those of non-natives, 42 U.S.C. §11701(22); 20 U.S.C. §7902(17).

The U.S. Congress and President committed themselves to pursue a reconciliation between the United States and the Native Hawaiian people in the 1993 Apology Bill and the State of Hawai'i has committed itself to a similar process.

Further, the United States has recognized that Native Hawaiians, as aboriginal, indigenous, native peoples of Hawai'i, are a unique population group in Hawai'i and in the continental United States and has so declared in Office of Management and Budget Circular 15 in 1997 and Presidential Executive Order No. 13125, dated June 7, 1999.

On July 28, 1999, the United States filed an amicus brief supporting the State of Hawai'i and the Native-Hawaiian-only vote for OHA Trustees in the case of Rice vs. Cayetano, U.S. Supreme Court No. 99-818. In its brief, the United States,

through its Solicitor General, affirmed that it has a trust obligation to indigenous Hawaiians. The Solicitor General wrote, "The United States has concluded that it has a trust obligation to indigenous Hawaiians because it bears a responsibility for the destruction of their government and the unconsented and uncompensated taking of their lands." (See Brief of United States filed July 28, 1999 at p. 21.) The United States further explained that "Congress does not extend benefits and services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation as to whom the United States has a recognized trust responsibility." (id. at 27.)

In 1993, Congress, led by the Hawaii congressional delegation, concluded that a century of national silence and neglect was enough. In 1993, it enacted Senate Joint Resolution 19, popularly known as the Apology Bill. In that Bill, the Congress acknowledged America's illegal role in destroying the legal government of the Hawaiian people and urged President Clinton to support reconciliation efforts between the United States and the Native Hawaiian people. Six years passed before the federal executive branch, at the urging of Senator Daniel Akaka, appointed representatives to initiate the reconciliation process called for in the Apology Bill. In December of 1999, a series of community meetings on all five major islands of Hawai'i were held by the Federal Reconciliation Delegation. Those meetings represented a first step in the long-delayed journey toward reconciliation between the United States and the indigenous people of Hawai'i. These meetings resulted in the publication of a joint Department of the Interior

and Department of Justice report entitled *Mauka to Makai: The River of Justice Must Flow Freely*. The report recommends that the indigenous people of Hawai'i be given right to the full expression of self-determination and calls for federal recognition of a native Hawaiian government.

HAWAIIAN CULTURE AND PEOPLE DESERVE RECOGNITION

The culture, society, governmental organization and religious traditions flourished in the archipelago known as Hawai'i since the time of Christ – long before the first contact with the West in 1778. With more than 200 years of settlement by European explorers, American missionaries and businessmen, plantation workers from Asia and others from every corner of the world, Native Hawaiians, faced with cultural assimilation and cultural genocide, have tenaciously maintained a myriad of traditional practices that have their origins in pre-Western Hawai'i: Religion and spirituality, celestial navigation, wood carving, exquisite feather work, language, poetry, dance, chant, surfing and other sports, lei making, healing arts, traditional martial arts, fishing, farming, weaving and more. These cultural practices are integral to the lifestyle of the Native Hawaiian, and are enjoyed by kama'āina (residents) and malihini (visitors, newcomers) alike.

The inseparable connectedness between the Native Hawaiian and his natural environment – the land, ocean, plant and animal life – goes far beyond the western ideologies of control, manipulation and ownership. An ancient

cosmogonic chant known as the *Kumulipo* or "source from the dark" teaches us that the ocean and land were born first as elder siblings, followed by plant and animal life. Later, man emerges as the younger sibling, ingraining in the Hawaiian an innate kinship with his environment. 'Āina or land was not a commodity. Rather, it was regarded as the elder sibling which commanded respect and the appropriate behavior of "mālama 'āina" (to care for the land). Man cared for the land, and in turn, the land sustained the lives of man.

Cultural practices of the Native Hawaiian are inextricably attached to his land base and natural resources. Traditional methods of healing, including the use of native herbs and plants (la'au lapa'au), are being studied by Western medical experts as effective alternatives to chemical-based treatment modalities. Social and behavioral scientists are adopting aspects of traditional conflict resolution techniques (ho'oponopono) as a means of successful intervention therapies and prevention of family and domestic violence.

The hula, or traditional dance, perhaps the "best known" of Hawai'i's cultural and spiritual practices, also requires the gathering of symbolic flora from regions ranging from the high rain forests to the shoreline. In honor of the gods, these materials are fashioned in adornments and costuming that pay honor and respect to those gods, the ali'i or rulers and lesser chiefs, important historical events, and the myriad island districts, geophysical features and islands that make up Hawai'i. Yet over time, the hula was trivialized by westerners who, through

ignorance and lack of sensitivity, reduced this time-honored tradition to pretty girls, cellophane skirts and coconut bras. Today, the hula in its traditional form is widely popular in Hawai'i, and has brought about a heightened consciousness of the need for protection and preservation of our culture, land and natural resources as well as renewed pride in our Hawaiian identity.

Despite the largely Westernized way of life most Native Hawaiians live today, their culture, language, religion and traditions live on and, in many respects, thrive. These traditional practices are well-recognized and are embodied in the laws of the State of Hawai'i. Article XII, Section 7, of the Hawai'i State Constitution recognizes Native Hawaiians' right to exercise customary and traditional practices for subsistence, culture and religious purposes. (*See also* Haw. Const., Article X, Section 4 (mandating the promotion of the study of Hawaiian culture, history and language) and Article IX, Section 9 (granting state power to preserve and develop ethnic cultural, creative and traditional arts) These rights have received judicial affirmation, as well. (*See Public Access Shoreline Hawai'i vs. Hawai'i County Planning Commission*, 79 Haw. 425, 903 P.2d 1246 (1995).)

Our culture and language is perpetuated now by our children and grandchildren. In the fall of 2002, the Office of Hawaiian Affairs sponsored an essay contest for elementary, middle and high school students. The topic, "What it Means to be Hawaiian", generated numerous entries and a representative sampling of their

essays, written in both English and in Hawaiian, are provided along with this testimony.

In short, our culture, history, language, religion and traditions live on today despite over two centuries of contact with the West and despite more than a century of domination by an alien culture. Our traditional practices, recognized by the State of Hawai'i, deserve recognition and protection from the federal government as well.

As native people giving voice to our ancestors, we are descendants of traditions and values indigenous to this Hawai'i. Our Native Hawaiian elders (kūpuna), wayfinders and navigators, established and developed a sophisticated and efficient society in the middle of the vast Pacific Ocean. Our lifestyle and survival were guided by respect and honor for God, man and nature; stewardship of land and natural resources and careful attention to the balance of human use of a fragile ecosystem. These considerations are as important now in this 21st century as they were 1,000 years ago.

We know we don't stand alone. We stand with the two other indigenous peoples of America. Federal policy on self determination and self governance currently extends to Alaska natives and Native American Indians. Native Hawaiians, the third indigenous people in these 50 states, seek such inclusion. While Queen Lili'uokalani may have stood alone in the 19th century in pursuit of reconciling

history for her people, Native Hawaiians in the 21st century are joined by Native American Indians and Alaska natives who stand with us in our pursuit of federal recognition and reconciliation. For this, we Native Hawaiians are grateful.

IT IS NEVER TOO SOON FOR JUSTICE AND FAIRNESS TO BE DONE

There are those who contend that the legislation relating to federal recognition for Hawaiians is premature; that a Hawaiian government should be formed first. We could not disagree more. The legislation before you affirms the fundamental principle which has been so long denied to Hawaiians – the right of self-determination. It is never too early for justice to be done and the time is now for Hawaiians to be treated fairly. We seek the same treatment afforded to the other indigenous peoples of the United States of America – a right too long denied us.

I appear before you as an elected Trustee of the Office of Hawaiian Affairs, as one of nine people duly selected to represent the interests of the Hawaiian people, but most importantly, I appear before you as a guardian of my people's right to self-determination. I am a Hawaiian. He Hawai'i au.

No laila, eia au ma ka palena pau o kēia noi ha'aha'a a ha'aheo, e ho'olohe mai a e nānā mai i ka 'ike a me ka maopopo pono o kūlana 'ōiwi o ka Hawai'i i ko mākou 'āina kulaiwi mai ke au kahiko loa a ka wā pau 'ole. He pono kēia 'ōlelo i mua o 'oukou i 'ōlelo 'ia me ka ikaika a me ka mana a me ke aloha o nā kūpuna i

hala, nā Hawai'i he lehu o kēia au a me nā hanauna e puka a'e ana nō. Mahalo nui, ke aloha nō ...

Therefore, as I approach the conclusion of this humble and cherished testimony, I ask that you listen and look upon us with wisdom and understanding of the status of the Native Hawaiian in our ancient homeland. What is said to you is offered in truth, and is uttered with the strength and power and love of our forebears, our nearly 400,000 Native Hawaiians in Hawai'i and the continental U.S. today, and generations hence. Respectfully submitted ...

Trustee Haunani Apoliona
Chairperson, Board of Trustees
Office of Hawaiian Affairs

108th Congress
Committee on Indian Affairs, United States Senate
Hearing scheduled for Tuesday, February 25, 2003 9:30 a.m.
On S. 344, the Native Hawaiian Recognition Bill ("Akaka Bill")

Testimony by George L. Berish on his own behalf and on behalf of Hawaii's public school children

Good morning Chairman Ben Nighthorse Campbell, Vice Chairman Daniel K. Inouye and members of the Senate Committee on Indian Affairs:

I am a resident of Hawaii, and before retiring I spent eight years as a volunteer reader with Mrs. Ah Nee's 2nd grade classes at Kalihi Elementary School.

I am writing to ask that you not consider the Akaka Bill until the State of Hawaii provides equal protections to its public school children under the provisions of out Statehood Act from which OHA derives its wealth.

Hawaii's children are entitled to rights identical to OHA's but are denied them. I therefore am petitioning you to consider what follows before you proceed further with the Akaka Bill. My request is relevant, because until all citizens are given equal protection under the laws that already benefit the Akaka Bill beneficiaries, it seems inappropriate to make decisions about granting additional privilege.

Hawaii's children lack a full time lobbyist, so I hope you will at least read and consider my efforts until they are made whole under the Statehood Act and can defend their own interests.

The majority of Hawaii's children, some of whose pictures I copied from the internet for the enclosure, are a diverse mixture of many cultures, and they will be seriously disadvantaged by the Akaka Bill.

In contrast, the children the Akaka Bill benefits are of a single blood-line that is already among the wealthiest per capita group in Hawaii.

Akaka Bill beneficiaries have over $6 billion in a tax-exempt educational trust for their exclusive use (Bishop Estate), hundreds of millions more in a tax-exempt trust with tens of millions more flowing into it annually (OHA), and thousands of acres of land set aside to provide them a free homestead (Hawaiian Homes Commission Act, July 9, 1921).

Now, the Akaka Bill supporters are asking for a tax-exempt enclave from which to run tax-free commerce, and as I am sure you realize, eventually tax-free gambling. If you grant that, it will be the children of Hawaii who will grow up having to compete, on a taxable basis, for economic security with the tax-fee enclave you could create.

I know you have not had a fair presentation of all the facts. The children of Hawaii do not have hundreds of millions of dollars derived from land ceded to Hawaii by the United States to lobby you as the Akaka Bill supporters do.

So I am asking you, in the name of fairness, to take no action on the Akaka Bill until the children of Hawaii get equal protection under the law and their rightful share of the ceded land "income".

Before you bestow more benefits on the privileged few who seek them, please look at Hawaii's Admission Act --An Act to Provide for the Admission of the State of Hawaii into the Union (Act of March 18, 1959, Pub L 86-3, 73 Stat 4) (Statehood Act).

In the Statehood Act the United States ceded ownership of land it owned to the State of Hawaii in public trust. It further directed Hawaii to use "income" from that land for five purposes.

The purpose Congress listed first was public education. Betterment of Hawaiian natives was also included, but not the first purpose listed.

Then, as you face OHA, and its hired lobbyists, please ask why the rest of Hawaii's children, whose public education Congress put first in the Act, are still waiting for their equivalent of OHA and fair share of the "income" with which to lobby you for their rights.

Please ask our Governor why there is no comparable Office of Public Education (OPE) for Hawaii's children with hundreds of millions of dollars of government money in it. After all they are covered by the exact same Statehood Act. In fact they are covered by the exact same section, paragraph and words on which Hawaii based OHA. So why are they treated differently and less well?

Hawaii's children don't even have enough school text books. Yet despite the fact that the Statehood Act lists their interest in ceded land "income" higher than that of OHA, Hawaii's children have no comparable OPE. As Americans aren't they entitled to equal protection under the laws?

Please also note that apparently more than 100% of the "income" from ceded lands has actually been given to OHA.

The State is giving OHA 20% of gross revenues, but "income" from real estate, much of which is unimproved land, seldom generates "income" of as much as 20% of gross revenues. Therefore, 20% of gross revenues likely equals 100%, or more, of the ceded land "income".

This is not to deny OHA's rights. It is just to ask why they are so privileged at the expense of the rest of Hawaii's children. Both purposes are, after all, in the middle of the same paragraph of the same law, but one is enriched enough to run a D.C. lobbying office while the other is ignored.

I read in the Statehood Act that Congress wisely retained the power to sue the State to enforce the proper administration of ceded land, as I cannot. Therefore, in the name of equal protection for these American children, I am petitioning you to set the Akaka Bill aside, and sue the State of Hawaii to establish the Office of Public Education (OPE) on exactly the same terms as OHA.

Then the children Hawaii will have an equal ability to lobby you on their own behalf, and you will receive far more fair and balanced information with which to later reconsider the Akaka Bill.

Senator Akaka says that the Bill in not race based, but you have seen other proposals for a government sanctioned race registry to immortalize blood quantum claims. Please ask why, if the Akaka Bill in not race based, he seeks to create a racial authentication agency.

Akaka Bill Supporters claim they were once a tribe that owned Hawaii as a tribe. But please look at history and see that every time the chief's daughter was married, the chief gave away entire mountain sides as gifts. In reality, these claims seemed based on a man who made himself king by plundering and murdering his neighbors to take for himself ownership of the spoils of his warfare.

On the other hand consider children of Hawaii, such as the descendents of the men of Japanese ancestry who fought with unequaled valor and sacrifice in the 442nd infantry to protect these lands and their neighbors despite America's unjust internment of other people of Japanese ancestry. Their claim to these islands is based on having sacrificed and suffered and died to build them and to safeguard their neighbors.

Shouldn't claims based on ancestors that died to protect and serve these lands and its people supercede claims based ancestors who murdered and plundered them? I can't believe that in your hearts you will disagree.

Finally, please remember that recent polls in Hawaii show that the issue the separatists' desire is ranked lowest in importance by a wide margin. There is no need for a hasty and poor decision.

And please note that with family and friends in Connecticut, I know many of you are struggling to correct the past mistake of creating a nationwide tax-free gambling fraternity. Likewise, I can imagine the punishment you are likely targeted for by that incredibly wealthy fraternity when you oppose them, especially since it is so relatively free of bothersome political contribution laws. I can even imagine the political advantage for the politician who wins from you passage of the Akaka Bill, and with it the gratitude of the existing tax-free fraternity. All I can do is tell you I admire those who do the right thing as I hope you will, and I will help if I can.

Please be fair to Hawaii's children. All of them.

Please say yes to equality under the law. Reject S. 344. Mahalo,

George L. Berish

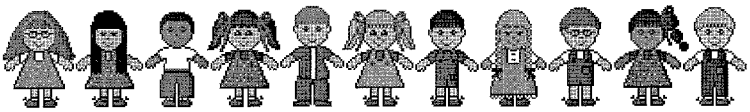
Unit 4009
88 Piikoi Street
Honolulu, Hawaii 96814
Tel.: (808) 593-8977
Email: g@America-3.org

Children of Hawaii

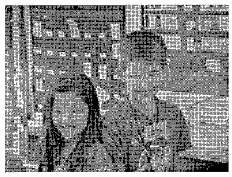
"Local" - The Truest Realization of the American Dream of a Melting Pot

Dissimilar people forged into a single new group different from, and better than, any of its separate components. Their separate strengths retained and their separate weaknesses discarded. The best of each part still visible, but no part can ever again be segregated or isolated from the whole.

Please don't Forget Their Rights and Needs Too!



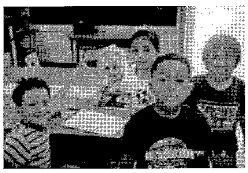
Congress promised these children 20% of the income from lands ceded by the U.S.A. to Hawaii for their education --The Admission Act, March 18, 1959. Yet Hawaii's children are still waiting for their Office of Public Education (OPE) and money, while the children who will benefit from the Akaka Bill already have their 20% (hundreds of millions in hand and tens of millions per year) in an Office of Hawaiian Affairs (OHA) and a new ceded-land-paid-for lobby office. Why?

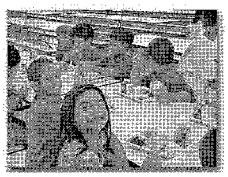


The children who benefit from the Akaka Bill are already entitled to a $6 billion Tax-Exempt educational trust for their exclusive use, but the children of Hawaii don't even have enough text books -- "Hawai'i schools face textbook shortage" Sunday Advertiser, February 23, 2003. http://the.honoluluadvertiser.com/article/2003/Feb/23/ln/ln03a.html Is it right to further burden the over taxed parents of Hawaii's children by shrinking the tax base with Akaka's Bill that gives its beneficiaries the right to run Tax-Exempt commerce and eventually gambling?

In the Hawaiian Homes Commission Act, Congress gave Akaka Bill beneficiaries thousands of acres of free land for homesteads (although Akaka Bill supporters, and our Governor, are trying to keep that land from them by leasing it to them rather than giving it free and clear). Is more for this group justified, when the children of Hawaii will have to grow up and pay for their own homestead.

Please Don't Forget Hawaii's Children Who Depend On You!





108th Congress
Committee on Indian Affairs, United States Senate
Hearing scheduled for Tuesday, February 25, 2003 9:30 a.m.
On S. 344, the Native Hawaiian Recognition Bill ("Akaka Bill")

Testimony by H. William Burgess on his own behalf and on behalf of Aloha for All[1]

Aloha and good morning Chairman Ben Nighthorse Campbell, Vice Chairman Daniel K. Inouye and members of the Senate Committee on Indian Affairs:

I am an attorney who practiced law in Hawaii for 35 years until I retired in 1994. For the last five years I have been advocating and litigating for the basic democratic principle of equality under the law. S. 344 would enshrine inequality. It would draw a line of racial segregation through all of Hawaii's intermingled, intermarried and integrated society. It would destroy the delicate but durable racial harmony that has made Hawaii a model for the world.

Introduction. This bill, commonly referred to as the "Akaka bill", was first introduced in the year 2000 shortly after the Supreme Court, in *Rice v. Cayetano,* struck down the racial restriction on voting for the Office of Hawaiian Affairs. Because that decision threatened many other laws and programs for the "benefit" of Hawaiians, Senator Akaka with Senator Inouye's endorsement, proposed candidly to circumvent the Supreme Court's decision by having Congress "recognize" Hawaiians (defined substantially the same way the Supreme Court had held in *Rice* to be "racial") as the equivalent of an Indian tribe.

The bill encountered resistance and did not pass in 2000, 2001 or 2002. Efforts to attach it as a rider to appropriations bills in both 2000 and 2001 were defeated. But Hawaii's political leaders have resubmitted the bill to the 108th Congress as S. 344 and H.R. 665.

A radical change in existing law. Although the proponents assert the bill will provide "parity in the Federal Government's interactions with American Indians, Alaska Natives and Native Hawaiians", this bill would in reality make a radical change in existing law. It would grant members of one group, defined by ancestry, the right to organize a new government. It would thereby give Native Hawaiians something no American Indian has: the right to create the equivalent of a tribe where none now exists. Congress may recognize tribes which have existed continuously from historic times to

1 Aloha for All, is a multi-ethnic group of men and women, all residents, taxpayers and property owners in Hawaii who believe that Aloha is for everyone and every citizen is entitled to the equal protection of the laws without regard to her or his ancestry. For further information about the Akaka bill see: http://www.angelfire.com/hi2/hawaiiansovereignty/OpposeAkakaBill.html or email hwburgess@hawaii.rr.com .

the present but it has no power to create tribes out of thin air (*U.S. v. Sandoval*, 231 U.S. 28 (1913)). Anyone who has lived in Hawaii knows that there is no "Native Hawaiian tribe" here, or anything resembling a tribe. Since 1810, when Kamehameha the Great unified the islands and established the Kingdom of Hawaii, there has never been a government exclusively of, by or for Hawaiians. The "nation" the Akaka bill proposes to "recognize" has never existed. See Patrick W. Hanifin's *To Dwell on the Earth in Unity:* Rice, Arakaki, *and the Growth of Citizenship and Voting Rights in Hawaii.* (A copy is furnished with this testimony.)

A dangerous precedent. If descendants of "indigenous, native" Hawaiians are entitled to organize a brand new native government and demand federal recognition, why should descendants of "indigenous, native" persons who, at the time of European contact, inhabited other lands that later became part of the United States, not have the same right?

For example, a group calling itself the "Provisional Government of Aztlan" now claims that since 1848 when the Mexican government signed the Treaty of Guadalupe Hidalgo, the U.S. has been illegally occupying the northern half of Mexico known as Aztlan. It seeks to have California, Arizona, New Mexico and Texas "liberated". If S. 344/H.R. 665 passes and becomes law, how could the U.S., bound to equal protection, deny descendants of Tenochca Mexica-"Aztecs" the right to organize their own native government, be recognized by the U.S., obtain the lands they seek and govern them as an independent sovereignty?

Unfair to real Indian tribes. The 2000 Census counted about 400,000 persons of some degree of Hawaiian ancestry in the United States. (Printout of Census 2000 data included with this testimony.) S. 344 would compel the U.S to "reaffirm" that all or substantially all of these persons have: "an inherent right to autonomy in their internal affairs"; "an inherent right of self-determination and self-government"; and "the right to reorganize a Native Hawaiian governing entity." This would be by far the largest tribe in America.

Sixty percent, or about 240,000 of these persons live in Hawaii. The other 40%, or about 160,000, live in other states. For example, 60 thousand live in California. The California branch of the Native Hawaiian "tribe" would have almost nine times the combined total enrolled membership of all of California's 103 tribes, 7,039. (www.nativeamericanonline.com/Pacific.htm)

Although the bill's proponents added language that "Nothing contained in this Act shall be construed as an authorization for eligibility" for BIA programs and services, how could adding 400,000 new "wards" to the Secretary of the Interior's guardianship responsibilities not slice the pie thinner for members of real Indian tribes?

Bad even for Hawaiians. Unlike American Indians and Native Alaskans, all citizens of the former nation of Hawaii, including those of Hawaiian ancestry, were given

full United States citizenship under the Organic Act in 1900 promptly after annexation. Members of Indian tribes have no right to U.S. citizenship under the Constitution. It was not until 1924 that Congress, by statute, gave members of Indian tribes the right to vote and other rights of U.S. citizenship. That right could still theoretically be taken away by statute.

S. 344 would demote Native Hawaiians to the same constitutional status as American Indians in recognized tribes. That would mean that Native Hawaiians could be singled out for differential treatment without the protection of the Equal Protection clause of the Fifth and Fourteenth Amendments. Differential treatment can mean better treatment or worse treatment.

This is not just a hypothetical possibility. Hawaii's citizens are showing resistance to the seemingly endless Hawaiian entitlement demands. The Honolulu Advertiser of Sunday February 9, 2003 polled the priorities of Hawaii's taxpayers about a number of current issues. Addressing Native Hawaiian issues came in last. Fifty two percent of those polled (more than on any other issue) would pay no more tax to address Native Hawaiian concerns.
(http://the.honoluluadvertiser.com/dailypix/2003/Feb/09/in03a3.gif .) The Honolulu Advertiser of February 21, 2003 quoted Regents of the University of Hawaii as "shocked" at $31 million of proposed tuition waivers, including 250 specifically targeted for needy students of Native Hawaiian ancestry.
(http://the.honoluluadvertiser.com/article/2003/Feb/21/ln/ln02a.html .)

One thing is certain. S. 344 would permanently put Native Hawaiians into a status of dependency as wards of the Department of the Interior. The most likely consequence would be similar to that experienced for over a hundreds of years by the other wards of that Department, grinding poverty and the highest rates of unemployment and alcoholism. It would guarantee that Hawaiians will not be held to the same standards as other citizens they compete against. This takes away their incentive and motivation, the most important factor in economic betterment. It would be a cruel hoax. It wouldn't do anything but insure failure, promote resentment and reinforce stereotypes.

Hawaiians have a right not to be patronized, not to be treated in some paternalistic, condescending manner but as responsible, competent human beings, from whom excellence is an expectation, not a surprise. American free market democracy where all citizens follow the same rules is the best hope for Native Hawaiians and all the rest of us.

Tax free businesses & casinos. The Akaka Bill would turn anyone with a drop of Hawaiian blood into a new kind of American Indian. It would allow Hawaii to be carved up into separate sovereign enclaves, like Indian reservations, that could have businesses free of federal and state taxes competing unfairly with those that pay them. While the bill says it does not authorize casinos, it does not prohibit them either, and

almost every state that has Indian reservations also now has casinos that pay no taxes. This makes Indian casinos far more likely to be profitable than casinos, such as those in Las Vegas and Atlantic City, who pay federal and state taxes.

Unlimited political contributions by Tribes. Indian tribes are not covered by campaign financing laws. Since there also is no limit on what the Indian tribes can contribute to political campaigns, if the Akaka bill passes and recognition is given, the casino money (a tax exempt gambling monopoly in the paradise of the Pacific) would flow and Hawaii certainly would soon have casinos and the addictions, ruined lives and other social ills that inevitably accompany them.

Rejection of democracy and Aloha. Today the State of Hawai'i is, by law as well as by aspiration, a multiracial, thoroughly integrated state. The Akaka bill is a frontal assault on both Aloha and the American ideal of equality under the law. It would elevate one racial group to the status of a hereditary elite to be supported by citizens who are not of the favored race. As U.S. District Judge Helen Gillmor said in Arakaki I, "This Court is mindful that ours is a political system that strives to govern its citizens as individuals rather than as groups. The Supreme Court's brightest moments have affirmed this idea" (citing Brown v. Board of Education and other cases); "while its darkest moments have rejected this concept" (citing Dred Scott, Plessy v. Ferguson, Bradwell v. Illinois and Korematsu).

See Paul Sullivan's *Killing Aloha, The Native Hawaiian Recognition Bill is wrong for Native Hawaiians, wrong for the State of Hawaii and wrong for the United States* with a comprehensive section-by-section analysis of the bill, submitted with this testimony

No valid reason. Contrary to the claims of the bill supporters, the U.S. took no lands from Hawaiians at the time of the 1893 revolution or the 1898 Annexation (or at any other time) and it did not deprive them of sovereignty. As part of the Annexation Act, the U.S. provided compensation by assuming the debts of about $4 million which had been incurred by the Kingdom. The lands ceded to the U.S. were government lands under the Kingdom held for the benefit of all citizens without regard to race. They still are. Upon annexation, ordinary Hawaiians became full citizens of the U.S. with more freedom, security, opportunity for prosperity and sovereignty than they ever had under the Kingdom. Hawaiians today are no different, in any constitutionally significant way, from any other ethnic group in Hawaii's multi-ethnic, intermarried, integrated society. Like all the rest of us, some do well, some don't and most are somewhere in between.

Keep Hawaii one state indivisible. Carving up Hawaii into separate sovereign enclaves would hurt all of us, whether we are of Hawaiian or any other ancestry. A house divided against itself cannot stand. The Constitution "looks to an indestructible union, composed of indestructible States." Texas v. White, 7 Wallace 700 (1869).

Over 40 years ago, in keeping with the principle that a government should be created only with the consent of the governed, the citizens of Hawaii chose American statehood by an overwhelming margin. (Over 94% voted Yes to Statehood in 1959.) The same choice would doubtless be made today. We thank our lucky stars to be living in Hawaii with the freedom, security, equal opportunity and Aloha for all that comes with being citizens of the United States.

Please say yes to equality under the law. Reject S. 344. Mahalo,

H. William Burgess

2299C Round Top Drive
Honolulu, Hawaii 96822
Tel.: (808) 947-3234
Fax: (808) 947-5822
Email: hwburgess@hawaii.rr.com

PCT10. NATIVE HAWAIIAN AND OTHER PACIFIC
ISLANDERS ALONE OR IN COMBINATION WITH ONE OR MORE OTHER RACES
AND WITH ONE OR MORE NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER
CATEGORIES FOR SELECTED GROUPS [14] -
Universe: Total Native Hawaiian and Other Pacific Islander categories
tallied and people with no specific Native Hawaiian and Other Pacific Islander category reported

Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data (Sorted by number of Native Hawaiians in each state)

	TOTAL	Hawaii	CA	WA	NV	TX	OR	FL	AZ	CO	NY	UT	VA
Total Native Hawaiian and Other Pacific Islander categories tallied	903,630	295,030	226,927	43,808	16,811	29,588	16,414	24,378	13,756	10,419	28,862	22,678	10,173
Polynesian:	585,057	276,846	128,796	25,675	11,701	13,207	8,980	7,957	8,026	5,827	6,216	20,021	3,990
Native Hawaiian	401,920	239,655	60,048	13,507	8,264	7,775	6,366	5,285	4,906	3,990	3,758	3,642	2,795
Samoan	133,680	28,184	49,804	10,607	2,178	3,668	1,770	1,981	1,874	1,440	2,218	6,470	1,050
Tongan	36,846	5,988	15,252	1,029	919	1,371	582	312	954	227	56	8,655	41
Other Polynesian	12,611	3,019	3,692	532	340	393	262	379	292	170	184	1,254	104
Micronesian:	115,482	12,622	36,458	9,799	2,385	6,240	3,607	4,086	2,602	2,193	2,974	761	2,291
Guamanian or Chamorro	92,845	4,221	33,849	8,597	2,090	5,410	1,668	3,549	2,101	1,867	2,746	348	2,045
Other Micronesian	22,637	8,401	2,609	1,202	295	830	1,939	537	501	326	228	413	246
Melanesian:	14,156	503	10,200	1,110	109	143	435	119	80	52	393	145	57
Fijian	13,581	459	10,104	1,083	106	117	426	91	75	42	340	143	40
Other Melanesian	575	44	96	27	3	26	9	28	5	10	53	2	17
Other Pacific Islander	12,598	58	1,324	309	82	1,054	179	739	155	166	987	43	422
Other Pacific Islander, not specified	176,337	5,001	50,149	6,915	2,534	8,944	3,213	11,477	2,893	2,181	18,292	1,708	3,413

IL	NC	GA	MI	PA	OH	OK	AK	MO	MN	NJ	MD	IN	MA	TN	NM	WI	ID	SC	KS	LA
11,987	8,793	9,906	7,434	8,919	7,170	5,264	5,751	6,807	5,949	10,171	6,279	4,468	8,784	4,673	3,137	4,390	2,974	3,884	3,182	3,340
4,207	3,871	3,635	3,060	3,327	3,076	2,677	4,500	3,460	2,441	2,467	2,148	2,165	2,212	2,220	1,812	1,693	1,858	1,574	1,508	1,320
2,506	2,390	2,183	2,058	2,051	1,989	1,932	1,878	1,620	1,526	1,501	1,475	1,402	1,356	1,302	1,261	1,143	1,139	1,056	997	850
1,539	1,335	1,305	858	1,102	958	623	2,172	1,661	767	858	567	653	747	837	450	483	445	469	435	436
43	62	28	68	81	33	50	326	55	71	18	22	52	41	25	27	20	173	11	29	5
119	84	119	76	93	96	72	124	124	77	90	84	58	68	56	74	47	101	38	47	29
1,640	2,127	2,458	1,226	1,138	1,234	1,386	464	1,351	574	1,218	1,242	817	892	1,073	580	658	494	887	728	647
1,496	1,828	2,173	1,007	1,037	1,117	966	387	761	483	1,135	1,108	732	812	962	534	573	386	745	565	584
144	299	285	219	101	117	420	77	590	91	83	134	85	80	111	46	85	108	142	163	63
68	20	47	40	38	44	19	15	53	41	40	56	20	44	27	10	21	16	10	31	13
57	16	40	30	19	24	6	11	44	14	34	37	12	31	12	5	8	15	7	25	9
11	4	7	10	19	20	13	4	9	27	6	19	8	13	15	5	13	1	3	6	4
326	466	821	368	401	339	141	34	260	97	340	240	165	218	242	68	135	71	371	57	377
5,746	2,309	2,945	2,740	4,015	2,477	1,041	738	1,683	2,796	6,106	2,593	1,301	5,418	1,111	667	1,883	535	1,042	858	983

KY	AL	CT	PR	AR	IA	NE	MT	MS	RI	NH	WV	ME	WY	DC	SD	DE	ND	VT
3,218	3,233	4,101	2,919	3,204	2,245	1,757	1,104	1,977	1,798	784	911	805	626	808	569	675	479	311
1,370	1,239	1,249	1,168	1,027	1,056	751	696	798	424	358	412	414	374	327	328	217	231	145
845	833	781	758	718	699	543	529	505	311	266	264	243	233	231	207	140	132	76
467	376	406	399	280	274	179	131	275	103	86	128	149	94	82	82	68	91	66
21	11	18	6	8	34	8	17	9	1	0	8	4	30	2	34	3	5	1
37	19	44	5	21	49	21	19	9	9	6	12	18	17	12	5	6	3	2
716	875	455	235	1,255	531	512	170	422	324	147	179	139	112	115	113	140	129	61
616	804	412	234	370	293	439	141	381	314	118	156	123	100	104	104	132	69	53
100	71	43	1	885	238	73	29	41	10	29	23	16	12	11	9	8	60	8
13	9	22	0	7	15	6	11	6	11	2	3	7	2	12	6	4	0	1
11	8	18	0	5	6	5	11	4	10	1	2	2	2	4	6	4	0	0
2	1	4	0	2	9	1	0	2	1	1	1	5	0	8	0	0	0	1
220	270	92	91	243	52	40	28	244	22	39	55	37	14	26	7	42	6	15
899	840	2,283	1,425	672	591	448	199	507	1,017	238	262	208	124	328	115	272	113	89

Killing Aloha

The "Akaka Bill" is wrong for Native Hawaiians, wrong for the State of Hawai'i and wrong for the United States.

Here's why.

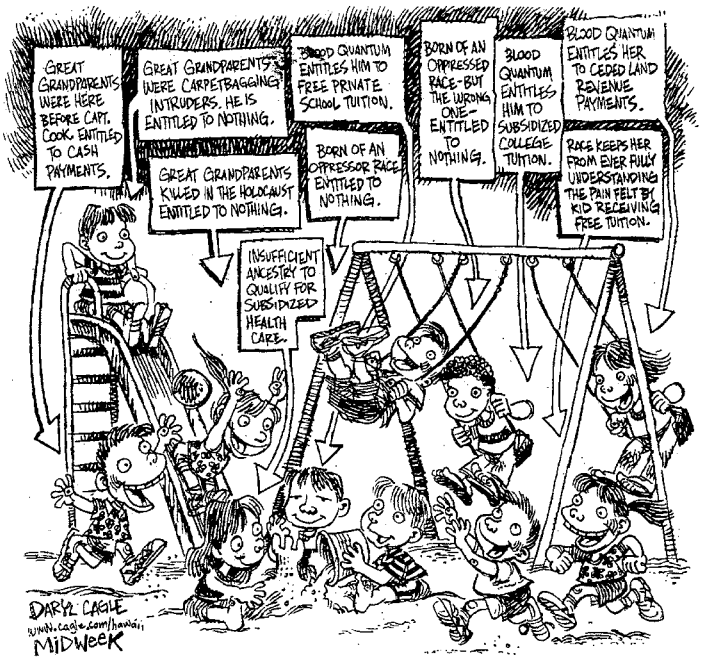
A section-by-section analysis of the bill

by

Paul M. Sullivan

Copies of this work may be obtained by mail, telephone or e-mail request to:

P. O. Box 30014, Honolulu, HI 96820
(808) 593-0929
sullivanp003@hawaii.rr.com



This paper incorporates several political cartoons by Daryl Cagle from one of Hawai'i's weekly newspapers, *Midweek*. Mr. Cagle's art uniquely illustrates the arrogance and naiveté of those who propose racial segregation for Hawai'i. Mr. Cagle, however, was not involved in the preparation of this paper and his views may differ from those of the author.

Introduction[1]

Hawai'i is justly admired as an integrated, racially blended, multi-cultural society. Some would call it a model for the rest of the country, and perhaps for the world. The qualities of respect for others and openhearted kindness, without regard to race or origin or station in life, are common traits among all of Hawai'i's people and are part of that many-dimensioned concept, "aloha."

But some people in Hawai'i find no comfort in integration and equality. For several years, a countercurrent promoting special privileges for persons of Hawaiian ancestry (one-fifth or more of the state's population) has achieved considerable success. Recently it has expanded into a movement for "Hawaiian sovereignty," a confused concept which can mean anything from the defense of current race-based Hawaiian entitlement programs to outright secession of all or part of the State of Hawai'i as an independent Hawaiian nation.

S. 746 and its companion bill H.R. 617 are part of this countercurrent. These bills propose the creation of a "Native Hawaiian governing entity" centered in the State of Hawai'i, along the lines of an Indian tribe, for a racially defined class of American citizens.

This paper provides a section-by-section review of S. 746 and explains why it is constitutionally infirm, why its factual and legal foundations are invalid, why it would fail to achieve its intended purposes even if those purposes were legitimate, why it would set a dangerous precedent with respect to American Indians and Alaska Natives, and why it would cause grave political, legal and social harm to Hawai'i and the United States.

Background of S. 746

S. 746 is derived from S. 2899 and H.R. 4904, introduced in the 106th Congress in the wake of the U.S. Supreme Court's February 2000 decision in *Rice v. Cayetano*[2]. That decision struck down a racial restriction on voting in Hawai'i's statewide elections for trustees of the state's Office of Hawaiian Affairs (OHA), a state agency charged with administering several hundred million dollars in state funds for the betterment of the conditions of "Hawaiians" and "native Hawaiians." These groups are defined respectively in state law as persons with at least one pre-1778 Hawaiian ancestor and persons with at least 50% Hawaiian "blood." Only "Hawaiians" could vote in these OHA elections.

---

[1] The author is an attorney who has lived and practiced in Hawai'i for more than eighteen years. His article *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i* appeared in the Fall 1998 edition of the University of Hawai'i Law Review. The views in this paper are those of the author, and are not necessarily those of the author's employer or of any organization or other entity with which he may be associated.

[2] 528 U.S. 495, 120 S.Ct. 1044 (2000).

In *Rice,* the Court held that the definition of "Hawaiian" established a racial classification[3] and that the state law unconstitutionally deprived Hawai'i's other citizens of the right to vote on grounds of race. Recently, the Federal district court in Hawai'i, relying on the *Rice* decision, held unconstitutional a state law which permitted only "Hawaiians" to seek office as OHA trustees. Other suits based on *Rice* have since been filed to overturn other statutory entitlement programs for persons of Hawaiian ancestry.

Much is at stake. If the state and Federal statutes which give favored treatment to persons of Hawaiian ancestry must meet the constitutional standards for racial classifications, they are all at risk.

The Supreme Court has not wholly prohibited race-conscious legislation, but it has accepted it only reluctantly, and only in circumstances of grave necessity. Such legislation is subject to "strict scrutiny;" that is, it must be justified by a "compelling interest" and be "narrowly tailored" in duration and effect to achieve its purpose.[4]

To justify special treatment, advocates for Hawaiian causes point to the overthrow of Hawai'i's monarchical government in 1893 and complain of "lost sovereignty" and "theft of lands" related to that event, and they recite a litany of social and economic disadvantages suffered today by many persons of Hawaiian ancestry. But the claims of lost sovereignty and stolen lands cannot withstand careful legal and historical analysis. As to the social and economic disadvantages which many Hawaiians unquestionably experience (but which are not unique to persons of Hawaiian ancestry), these advocates have established neither a race-based cause, nor a need for a race-limited solution, nor any credible link between these disadvantages and the 1893 change of government. Of course, the absolute, permanent race-based classifications in these statutes are not "tailored" in any way to correct the claimed wrongs or to alleviate the social and economic needs.

Thus few if any of the current Hawaiian-preference laws are likely to survive strict scrutiny. Perhaps anticipating this, the proponents of these laws have always asserted that the preferences are like those for Indian tribes and their members, which the U. S. Supreme Court has upheld as "political" rather than racial because they are grounded in the government-to-government "special relationship" between the United States and the Indian tribes. Indeed, the State of Hawai'i relied heavily on this argument before the U. S. Supreme Court in *Rice.*

But the Supreme Court found the argument unpersuasive. It did not reject it outright, but it called it "difficult terrain" and expressed serious reservations about its merits. There is good reason to believe that if the Court were squarely presented with the issue, it would hold that Native Hawaiians do not share the unique constitutional status of American tribal Indians.

S. 746, like its earlier versions (S. 81 in this session and S. 2899/H.R. 4904 in the last), seeks to foreclose a Supreme Court decision on the constitutional status of Native Hawaiians

---

[3] The court held that the state's definition of "Hawaiian" used ancestry "as a proxy for race", and that the definition of "native Hawaiian", drawn from a Federal statute from Hawai'i's territorial period, shared this "explicit tie to race".

[4] *See* Adarand Constructors v. Federico Pena, 515 U.S. 200, 115 S.Ct. 2097 (1995)

and to protect the state and Federal programs favoring Native Hawaiians through a Congressional declaration that "Native Hawaiians," ultimately defined as everyone having at least one ancestor who lived in the Hawaiian Islands before 1778, have a "political relationship" with the United States and that governmental discrimination in their favor is thus not "racial." The bill thereby seeks to extend to "Native Hawaiians" the special quasi-governmental status of Federally-recognized Indian tribes.

Objections to S. 746

Anyone who has lived in Hawai'i knows that there is no "Native Hawaiian tribe" here, or anything resembling a tribe. There are no enclaves where one racial or ethnic element of our community lives "separate and apart" from the rest of us. Interracial and interethnic marriage was accepted in Hawai'i from the earliest period of Western contact, and over the years, the tradition has extended to immigrants from other nations and has happily blurred our separateness. At a neighborhood luau, we may eat poi and sushi and baklava, dance hula and rock & roll, wear flower leis from Honolulu and shell leis from the Philippines and sing songs learned in childhood from around the world.

Persons of Hawaiian ancestry are part of this intermingled society. They may be found throughout the state's social, economic and political fabric in positions of power and influence. Neither language nor religion nor a territorial boundary separates them from their neighbors of different backgrounds. They are not segregated by prejudice or by tradition or by a voluntary decision to live apart. There is no Hawaiian government other than our state and municipal governments. In fact, "Native Hawaiians" as defined in this bill are not a distinguishable "they" or "them" at all, except by the test of race. In every way that matters to the Constitution, "they" are "us."

By giving this racial grouping its own "government," S. 746 would impose a racial segregation upon the people of the State of Hawai'i and the many other states where Native Hawaiians reside. This would be politically, socially and economically devastating to the State and its people, and there is no constitutional, legal, historical or moral basis for it.

The U. S. Supreme Court has held that while Congress has broad power to deal with Indian tribes and to determine what entities are in fact tribes, "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe[.]"[5] Yet S. 746 proposes to do exactly that: To *create* "tribe" and a "governing entity" where none exists now, and to do so using a test for membership virtually identical to that which the *Rice* decision held to be racial.

Apart from its constitutional infirmity and its pernicious racial character, this bill redefines the relationship of the United States not only with "Native Hawaiians" but with American Indians and Alaska Natives, so as to make all persons of American Indian or Alaska Native ancestry eligible for special treatment under Federal law without considering tribal

[5] *U.S. v. Sandoval*, 231 U.S. 28 (1913).

affiliation or tribal relationship. This is a dramatic change in current law which may have unintended and undesirable consequences for the tribes and their members.

Finally, the bill is awkwardly drafted, particularly with respect to the rights and obligations of the new "governing entity," the status of persons of Hawaiian ancestry inside and outside that "entity," and the means by which the "entity" will support itself.

In short, the constitutional failings, divisive effects and unsatisfactory draftsmanship of S. 746 would each counsel strongly against passing this bill. Together, they compel its defeat.

Section-by-section comments on S. 746[6]

SECTION 1. FINDINGS.[7]
Congress makes the following findings:
(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

Comment: The U.S. Supreme Court's decision in *Morton v. Mancari*, 417 U.S. 535 (1974) suggests otherwise.

In *Morton*, the U. S. Supreme Court considered an employment preference for Indians in the Bureau of Indian Affairs. In upholding the preference against a challenge that it constituted racial discrimination, the court noted that preferences for Indians are "political" in nature and would be upheld if they were "tied rationally to the fulfillment of Congress' unique obligation toward the Indians." The court made clear, however, that Congress' "unique obligation" is not to individuals or groups of individuals descended from the inhabitants of the United States before Western contact, or to any other group defined solely by race or ancestry. It pointed out:

> The preference, as applied, is granted to Indians not as a discrete racial group, but, rather, as members of quasi sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.

The court subsequently noted:

> The preference is not directed towards a "racial" group consisting of "Indians"; instead, it applies only to members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as "Indians." In this sense, the preference is political rather than racial in nature.

S. 746, however, ignores the requirement for tribal status by declaring that Congress has special responsibilities for, and special authority to "address the conditions of," the "indigenous" and "native" people of the United States, who are defined in Section 2(4) of the bill as the "lineal descendants of the aboriginal, indigenous, native people of the United States." Thus the bill speaks in terms of individuals and ancestry. There is no mention of tribes or tribal membership. The bill implies that this special responsibility permits Congress to authorize some or all of these individuals to create an entity to which Congress will then extend governmental authority. Neither the Constitution nor the logic of Congress' authority over

---

[6]This paper incorporates several political cartoons by Daryl Cagle from one of Hawai'i's weekly newspapers, *Midweek*. Mr. Cagle's art uniquely illustrates the arrogance and naiveté of those who propose racial segregation for Hawai'i. Mr. Cagle, however, was not involved in the preparation of this paper and his views may differ from those of the author.

[7] Throughout this paper, the provisions of S. 746 are set out in ***bolded italics*** and are followed by comments in Roman type. Comments are provided on selected paragraphs only. The omission of comments on other parts of the bill does not necessarily indicate the author's agreement with those other sections or subsections.

Indian tribal relations provides support for such a broad and unqualified contention, particularly in the case of persons of Hawaiian ancestry.

There is no constitutional or other authority for Congress' creation of a "tribe" or similar entity as proposed in this bill. The broad power of the Federal executive and Congress notwithstanding, no "tribe" eligible to claim the "special relationship" with the U.S. can be created where none exists in reality. In *U.S. v. Sandoval*, 231 U.S. 28 (1913), the U.S. Supreme Court considered whether the Pueblo Indians could be brought by Congress within the "special relationship." It examined a variety of factors indicating that Congress could do so, including the facts that the Pueblos are "Indians in race, custom, and domestic government," that they lived "in separate and isolated communities, adhering to primitive modes of life, largely influenced by superstition and fetichism [sic], and [are] chiefly governed according to the crude customs inherited from their ancestors." It balanced these considerations against arguments that the Pueblos were citizens of the United States (unlike most Indians at the time) and that their lands were held by them in fee simple (rather than being held in trust by the Federal Government) and concluded that it was within the power of Congress to treat the Pueblos as an Indian tribe. The court cautioned, however, that **"it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe,** but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46. (Bolding added.)

There is no Hawaiian "tribe" or anything like it, and one case which considered a claim by a purported Hawaiian tribe indicates that Hawaiians are unlikely be able to establish such a status under BIA policy. *Price v. Hawai'i*, 764 F.2d 623 (9th Cir. 1985). Unlike the Pueblo communities, there is no unifying group character to "Native Hawaiians" (as defined in this bill) other than race, no existing government, and as the late George Kanahele pointed out in the work quoted below, no distinct "Native Hawaiian" community (geographical or social) maintaining an existence separate from other elements of Hawai'i's population.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

Comment: Native Hawaiians, as defined in S. 746, cannot properly be characterized either as "a people" or as "indigenous."

a. **"People."** The bill's reference to "Native Hawaiians" as "the native people" of these islands appears to use the term "people" in the sense defined in Webster's Third New International Dictionary (Unabridged) (1993), p. 1673 as "a body of persons that are united by a common culture, tradition, or sense of kinship though not necessarily by consanguinity or by racial or political ties and that typically have a common language, institutions, and beliefs." Native Hawaiians as defined in S. 746, cannot claim such a status. As one prominent Hawaiian scholar has put it:

> These are the modern Hawaiians, a vastly different people from their ancient progenitors. Two centuries of enormous, almost cataclysmic change imposed from within and without have altered their conditions, outlooks, attitudes, and values.

> Although some traditional practices and beliefs have been retained, even these have been modified. In general, today's Hawaiians have little familiarity with the ancient culture.
>
> Not only are present-day Hawaiians a different people, they are also a very heterogeneous and amorphous group. While their ancestors once may have been unified politically, religiously, socially, and culturally, contemporary Hawaiians are highly differentiated in religion, education, occupation, politics, and even their claims to Hawaiian identity. Few commonalities bind them, although there is a continuous quest to find and develop stronger ties.

George S. Kanahele, *The New Hawaiians*, 29 Social Process in Hawai'i 21 (1982).

Mr. Kanahele's observations explain why the "society" of today's Native Hawaiians as defined in this bill, is fundamentally the "society" of the State of Hawai'i and the United States. "They" do not, as a group or as several groups, exist apart from the larger community of the state and nation. Today's citizens of Hawaiian extraction do not share the religion, language, forms of government, economics or any other of the defining social or cultural structures of precontact Hawaiian civilization. *See* Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U.Haw. Law Rev. 99 (1998). As Mr. Kanahele correctly observes, people of Hawaiian ancestry are fully and completely integrated into the larger social and economic life of the state of Hawai'i and the nation. Hawaiians hold positions of power and respect at all levels of society including business, government and the arts; for example, in the past several years, Hawai'i has seen persons of Hawaiian ancestry serve as its Governor (John Waihee), as the state supreme court's chief justice (William S. Richardson), as a Federal District Court judge (Samuel King), as a U.S. Senator (Daniel Akaka) and in other state executive, judicial and legislative offices.

Indeed, the use of the terms "they" and "them" with respect to "Native Hawaiians" is of questionable validity, except in the context of the racial definitions of this bill, and of earlier Federal and state legislation using the same racial definition. Except for race, "they" are "us."[8]

---

[8] In his introduction to Eleanor Nordyke's comprehensive study of Hawai'i's various ethnic groups, Robert C. Schmitt, Hawai'i's former State Statistician, noted an "erosion in the availability, quality, and meaningfulness of some of our most important [data] series." He observed:

> Budget cuts have forced drastic reductions in sample sizes used in the decennial censuses, the HHSP [Hawai'i Health Surveillance Program], and HVB [Hawai'i Visitors Bureau] Basic Data Survey. The 1950 census was the only such effort in the twentieth century to collect comprehensive data on race mixture, and in 1970 the Bureau of the Census deleted the category of "Part Hawaiian," which had appeared in all seventeen official enumerations from 1849 through 1960. As a result, the 1970 census was comparable neither to its predecessors nor to the birth, death, marriage, divorce, and related statistics regularly compiled by various state agencies. Further definitional changes occurred in 1980, with still others in prospect for 1990.
>
> These cutbacks in statistical programs occurred at the very time that Hawai'i's population dynamics were becoming ever more complex, further complicating a situation that was already badly tangled twenty years earlier. **Interracial marriage and a growing population of mixed bloods had been characteristic of Hawai'i since at least the 1820's, but prior to**

b. **"Indigenous."** Webster at p. 1151 offers two definitions of "indigenous" which deserve consideration. The first is "a(1): not introduced directly or indirectly according to historical record or scientific analysis into a particular land or region or environment from the outside <Indians were the ~ inhabitants of America><species of plants that are ~ to that country>," and the second is "(2) originating or developing or produced naturally in a particular land or region or environment <an interesting example of ~ architecture><a people with a rich ~ culture>." The term "indigenous" does not appear in the Constitution, although that document does refer to the power of Congress to regulate commerce with the "Indian tribes." But Hawaiians have a strong oral tradition, supported by recent scholarly research, which places their arrival in the Hawaiian Islands somewhere between the time that the Romans were colonizing England and the time that the Crusaders were invading the Holy Land. *See* ELEANOR NORDYKE, THE PEOPLING OF HAWAI'I (2nd ed., 1989) 7-11 (1989). This hardly

---

World War II most of these unions and their issue could be conveniently classified as "Part Hawaiian." For the past half century, however, all groups have participated in such heterogeneous mating. As a consequence, according the State Department of Health, 46.5 percent of the resident marriages occurring in Hawai'i in 1986 were interracial, and 60.6 percent of the babies born to civilian couples of known race that year were of mixed race. Based on tabulations from the HHSP, fully 31.2 percent of all persons living in households were of mixed parentage--19.9 percent Part Hawaiian and 11.3 percent of other origins. Yet neither the 1970 nor 1980 censuses provided any indication of such developments.

These statistical gaps, in combination with the growing complexity of demographic events, have seriously handicapped Hawai'i's demographers. **Even such a fundamental (and ostensibly simple) question as "Which groups are growing, which are declining, and by how much?" can no longer be answered, even in the most approximate terms: shifting and often arbitrary racial definitions have rendered decennial census tabulations almost useless, and annual data from the HHSP, now our sole source of population estimates by detailed race, have been marred by high sampling variation and unexplainable (and sometimes unreasonable) fluctuations in group totals.** Calculation of accurate birth, death, and other rates has consequently become exceedingly problematic. These difficulties are especially daunting in a work like the present one, which relies to an uncommon degree on accurate, consistent, and meaningful ethnic statistics. It is a tribute to Eleanor Nordyke's skill and perseverance that, in the face of such intractable underlying data, she has been able to fashion any kind of reasonable and defensible conclusions.

The importance of this analysis is underscored by the irresistible impact of the changes now sweeping Hawai'i. **Not only are the state's once-distinctive ethnic groups--under the influence of pervasive intermarriage--turning into a racial chop suey, but even those maintaining a fair degree of endogamy are becoming indistinguishable from their neighbors, as their third, fourth, and fifth generations succumb to cultural "haolefication."** These trends, plus the growing irrelevance of ethnic statistics, suggests that this may be our last chance to capture the significant differences among Hawai'i's people. When these differences can no longer be charted, either because the population has become biologically and culturally homogenized or because government no longer collects meaningful data, Hawai'i's value as a social laboratory will vanish.

Robert C. Schmitt, *Introduction to* ELEANOR NORDYKE, THE PEOPLING OF HAWAI'I xvi-xvii (1989). (Bolding added.)

supports a claim of being "indigenous." In the context of this bill, the term "indigenous" has more the character of a shorthand term for the one racial group, out of the many in Hawai'i, whose arrival antedated that of Westerners by a few hundred years and for which the bill's supporters seek special political privilege and status.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

Comment: This is not precisely the law. In a recent survey of American Indian law, Judge William Canby states:

> From time to time Indian litigants have urged the enforcement of a broader trust responsibility, going beyond the protection of tribal lands and resources and encompassing a duty to preserve tribal autonomy or to contribute to the welfare of the tribes and their members. As yet these attempts have not met with success in the courts, which tend to insist upon a statute or regulation establishing trust responsibilities, or upon the existence of federal supervision over tribal funds or other property. See United States v. Wilson, 881 F.2d 596, 600 (9th Cir. 1989).

WILLIAM C. CANBY, JR. AMERICAN INDIAN LAW 44 (1998).

Indeed, were the descendants of precontact Indians to have such a claim on the rest of the citizens of the United States as is stated in this Finding, unrelated to pre-existing tribal status, we would have precisely the notion of a "creditor race" and a "debtor race" which Justice Scalia rejected in his concurring opinion in *Adarand Constructors v. Pena*, 515 U.S. 200, 240 (1995).[9]

Stuart Minor Benjamin's comprehensive analysis in *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 Yale L.J. 537 (1996), shows why Native Hawaiians do not and almost certainly cannot share the "special relationship" which Indian tribes have with the Federal Government.

The principal statute creating benefits for persons of Hawaiian ancestry has been held *not* to establish a Federal trust relationship. A claim of a trust relationship deriving from the Hawaiian Homes Commission Act, 1920, Act of July 9, 1921, c. 42, 42 Stat. 108, which provides homesteading opportunities to those of 50% Hawaiian "blood" was rejected twice, first in *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216, 1224 (9th Cir. 1978) and again in *Han v. Department of Justice*, 824 F.Supp. 1480 (D. Hawai'i 1993), *aff'd* 45 F.3d 333 (9th Cir. 1995), where the U.S. District Court explained in detail why no such trust relationship existed.

The U.S. Supreme Court has expressed grave reservations about the claim that Native Hawaiians share the "special relationship" which Native American tribes have with the United States. In *Rice v. Cayetano*, 528 U.S. 495, 518, 120 S.Ct. 1044, 1057-58, (2000) the court stated:

> If Hawai'i's [racial voting] restriction were to be sustained under [*Morton v. Mancari* [417 U.S. 535, (1974)] we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting [in the Hawai'i Admission Act] the purposes for the transfer of lands to the State--and in other enactments such as the Hawaiian Homes Commission Act and the Joint Resolution of 1993--has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the state a broad

[9] Adarand Constructors v. Pena, 515 U.S. 200, 239, 115 S.Ct. 2097, 2118-19 (SCALIA, J., concurring). Justice Scalia stated:

> That concept [of a creditor or debtor race] is alien to the Constitution's focus upon the individual, see Amdt. 14, sec. 1 ("[N]or shall any state . . . deny to any person" the equal protection of the laws) (emphasis added), and its rejection of dispositions based on race, see Amdt. 15, sec. 1 (prohibiting abridgment of the right to vote "on account of race") or based on blood, see Art. III, sec. 3 ("[N]o Attainder of Treason shall work Corruption of Blood"); Art 1, sec. 9 ("No Title of Nobility shall be granted by the United States"). To pursue the concept of racial entitlement--even for the most admirable and benign of purposes--is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of government, we are just one race here. It is American.

authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, The Political Status of the Hawaiian People, 17 Yale L. & Pol'y Rev. 95 (1998) with Benjamin, Equal Protection and the Special Relationship: The Case of Native Hawaiians, 106 Yale L.J. 537 (1996). We can stay far off that difficult terrain, however.

A close examination of the issue suggests that if the U.S. Supreme Court were to enter upon that "difficult terrain," it would likely hold that Congress cannot constitutionally treat "Native Hawaiians" like tribal Indians. The Constitution at Article I, Section 8 extends to Congress the power to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." As noted in the Comment to Finding (1) above, the U. S. Supreme Court has upheld an Indian employment preference as not "invidious racial discrimination," basing that conclusion on the fact that such special treatment derives from Congress' recognition of the special status of Indian tribes as separate "quasi-sovereign" groups, *not* groups defined only by race. *Morton v. Mancari* found the employment preference for Indians in that case to be based on a "political" status rather than on "race" because Congress was legislating with respect to "members of quasi sovereign tribal entities," and that the preference "is not directed towards a 'racial' group consisting of 'Indians'; instead, it applies only to members of 'federally recognized' tribes." It pointed out that "[t]his operates to exclude many individuals who are racially to be classified as 'Indians'."

Beyond the issue of race, the establishment of an entity within a state of the United States with special privileges based solely on the duration of residence or the accident of birth raises constitutional issues of due process, the privileges and immunities clause (*see Saenz v. Roe*, 526 U.S. 489, 119 S.Ct. 1518 (1999); *Zobel v. Williams*, 457 U.S. 55, 102 S.Ct. 2309 (1982)), and the anti-nobility clauses (see, e.g., Jol A. Silversmith, *The "Missing Thirteenth Amendment": Constitutional Nonsense And Titles Of Nobility*, 8 S. Cal. Interdisciplinary L.J. 577, 609 (1999) ("We should remember that the nobility clauses were adopted because the founders were concerned not only about the bestowal of titles but also about an entire social system of superiority and inferiority, of habits of deference and condescension, of social rank, and political, cultural and economic privilege.")).

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

Comment: It should first be noted that, as explained more fully in the Comment to Finding 13 below, the "Hawaiian people" during the period from 1826 to 1893 included many naturalized and native-born subjects who were not "Native Hawaiians" in the sense of S. 746, and the Hawaiian government during this time included many senior officials of foreign birth. This

was particularly the case in the kingdom's foreign relations; the kingdom's Foreign Minister from 1845 to 1865, for example, was a Scot, Robert C. Wyllie, and his successors in that post included Charles de Varigny and Charles R. Bishop, both foreign-born.

In the interest of completeness, it should also be noted that U.S. acknowledgment of Hawai'i's national independence did not end in 1893. The Hawaiian revolutionary government was diplomatically recognized not only by the U.S. but by many other powerful nations as well. MERZE TATE, THE UNITED STATES AND THE HAWAIIAN KINGDOM 191-92 (1965).

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.
(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.
(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

Comment: The Hawaiian Homes Commission Act established a homesteading program for a small segment of a racially-defined class of Hawai'i's citizens. That is all it did. *See* H. Rep. 839, 66th Cong., 2nd sess. (1920).

Its intended beneficiaries were not and are not now "Native Hawaiians" as defined in S. 746 (i.e., those with any degree of Hawaiian ancestry, no matter how attenuated), but exclusively those with 50% or more Hawaiian "blood"–a limitation which still applies, with some exceptions for children of homesteaders who may inherit a homestead lease if the child has at least 25% Hawaiian "blood."

The HHCA was enacted in the heyday of *Plessy v. Ferguson*, 163 U.S. 537 (1896), which upheld the racial segregation of railway carriages and the concept that "separate but equal" facilities met the requirements of the Fourteenth Amendment. The conventional attitudes of those times are reflected in the testimony of Franklin K. Lane, then Secretary of the Interior, in support of the bill which became the HHCA. Lane said of the "natives of the islands":

> There is a thriftlessness among those people that is characteristic among peoples that are raised under a communist or feudal system. They do not know what the competitive system is and they will get rid of property that is given them. They do not look forward. They can not see to-morrow. Therefore, they should be given as close identification with their country as is possible and yet be protected against their own thriftlessness and against the predatory nature of those who wish to take the land from them, and who have in the past.

H.R. Rep. No. 839, 66th Cong., 2nd sess. at 4.

Astonishingly, this was said more than three generations after the Hawaiian monarchy had put an end to the "communist or feudal" system in the islands, at a time when full or part Hawaiians were a major power bloc in the Territorial legislature and constituted much of the civil service (*see* LAWRENCE H. FUCHS, HAWAII PONO: A SOCIAL HISTORY (1960), pp. 161-62).

Plessy was effectively overruled by *Brown v. Board of Education*, 347 U.S. 483 (1954), beginning a line of jurisprudence, culminating in *Adarand v. Federico Pena*, 515 U.S. 200 (1995), which shaped our present constitutional law on race-based decision-making by the government. If Secretary Lane's condescending stereotyping were ever a legitimate basis for Federal legislation, *Adarand* and a simple regard for the truth deprive it of any validity today.

For additional comments on the HHCA see the Comment to Finding 21(A)(ii) below.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

Comment: First and most obviously, the Hawaii Admission Act here referred to (P. L. No. 86-3, 73 Stat. 4, section 5(f) (1959)), like the HHCA, in providing benefits to descendants of precontact Hawaiians, restricts those benefits to persons of 50% Hawaiian "blood," referred to in the Act and in the HHCA as "native Hawaiians." Under the Admission Act, persons of Hawaiian ancestry lacking the 50% blood "quantum" are not "native Hawaiians."

Bettering the conditions of "native Hawaiians" (50% blood quantum) is, as noted, a merely one of five *permissible* purposes for which the ceded lands trust may be used, and there is no mandate to use *any* part of these proceeds for "native Hawaiians." The statute expressly states that the trust may be used for "one or more" of the five enumerated purposes. It permits the state to determine, within this limitation, how the trust property is used. *Price v. State of Hawaii*, 764 F.2d 623 (9th Cir. 1985). Indeed, from 1959 to 1978, ceded lands revenues were principally dedicated to education. *See Hoohuli v. Ariyoshi*, 631 F.Supp. 1153 (1990). State decisions concerning the use of these public funds, of course, are subject to the constraints of the Fourteenth Amendment and the *Adarand* decision with respect to any racial test for allocation or receipt of benefits.

For additional comments on the ceded lands and on Hawaiian claims concerning them see the Comment following Finding 18 below.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

Comment: Activists for Hawaiian causes have indeed made many demands for special control of, or access to, the ceded lands and their proceeds for a wide variety of purposes. Establishing and maintaining "native settlements" and "distinct native communities," however, have not been the foremost purposes as this proposed finding implies and would not appear to be lawful uses of that fund.

Under the Admission Act, the ceded lands and their revenues may be used *only* for *one or more* of the following purposes:

a. For support of the public schools and other public educational institutions,

b. For the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended,

c. For the development of farm and home ownership on as widespread a basis as possible,

d. For the making of public improvements, and

e. For the provision of lands for public use.

P. L. No. 86-3, 73 Stat. 4, section 5(f) (1959). The only one of these purposes which might arguably include the purposes listed in Finding 9 is "the betterment of the conditions of native Hawaiians." But the Admission Act defines "native Hawaiians" by reference to the HHCA, which in turn defines "native Hawaiians" as those of 50% or greater Hawaiian "blood." Many of the "Native Hawaiians" as defined in S. 746 (i.e., those with "one drop" of Hawaiian "blood"), would be excluded from benefits under the HHCA and the Admission Act.

The Admission Act makes no specific provision for "Native Hawaiians" as defined in S. 746. Thus any use of the ceded lands or their revenues to benefit "Native Hawaiians" would have to fall within one of the five permissible uses of these resources, and would of course have to meet constitutional requirements. Any use of the ceded lands and their resources "to establish and maintain native settlements and distinct native communities throughout the State" for the benefit of "Native Hawaiians" as defined in this bill, would not only involve grave constitutional issues, but would appear to fall outside all of the limited purposes of the trust and would be illegal on that ground alone.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

Comment: Since the HHCA is limited in its purpose and its scope to providing leasehold homesteads to persons of at least 50% Hawaiian ancestry, and since (as Finding (7) above acknowledges) only 6,800--less than 4%--of the approximately 200,000 Native Hawaiians (as defined in S. 746) hold leases under the HHCA and only 18,000 others--about 9%--are on the

waiting list, it cannot fairly be said that the Hawaiian home lands could effectively help the entire "Native Hawaiian community" (most of whom are not eligible for a Hawaiian home lands lease because they lack the requisite blood quantum) to maintain any specific culture, language and traditions. Similarly, the Admission Act's ceded lands trust, to the extent that it may provide any resources expressly for persons of Hawaiian ancestry, can provide them only for the "betterment" of those meeting the 50% blood quantum requirement ("native Hawaiians" rather than "Native Hawaiians). *See* section 5(f), Hawai'i Admission Act, P. L. 86-3, 73 Stat. 4, (1959).

The decision as to what constitutes the "betterment" of "native Hawaiians," of course, as well as the decision whether to apportion some, all or none of the ceded lands trust resources to that purpose, is committed to the citizens of the State of Hawai'i, *see Price v. State of Hawai'i*, 764 F.2d 623 (9th Cir. 1985) and not solely to persons of Hawaiian ancestry. As governmental decisions, they are subject to the constraints of the U. S. Constitution.

(11) Native Hawaiians have maintained other distinctly native areas in Hawaii.

Comment: There are several areas of the state where persons of Hawaiian ancestry tend to predominate, just as there are areas where persons of Filipino or Caucasian or Japanese ancestry tend to predominate. They are "distinctly native" only in the sense that these other areas are "distinctly Filipino" or "distinctly Caucasian" or "distinctly Japanese." None of these areas could legitimately be considered a "tribal enclave" or anything like it. None of these areas is subject to any "government" other than those of the United States, the State of Hawai'i and the county where it is located.

(12) On November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii.

Comment: The so-called Apology Resolution appears to have been adopted without careful examination of the purported "history" which it recites (see S. Rep. 103-126 (1993) and S. Rep. 102-456 (1992)), and the statements in the resolution's preamble provide no reliable support for the positions taken in S. 746. Chapter 10 of THURSTON TWIGG-SMITH, HAWAIIAN SOVEREIGNTY: DO THE FACTS MATTER? (1996) addresses each of the major historical assertions of the Apology Resolution and explains how each is in error, or misleading.

The U.S. Supreme Court in *Rice v. Cayetano,* 528 U.S. 495, 505, 120 S.Ct. 1044, 1051 (2000) acknowledged the existence of the Apology Resolution and then made no further reference to it as historical authority, preferring instead its own inquiry, based on original sources and scholarly works.

The Apology Resolution contains the following disclaimer: "Nothing in this Joint Resolution is intended to serve as a settlement of any claims against the United States."

When the Apology Bill was debated on the Senate floor, Senator Slade Gorton asked Senator Inouye:

> Is this purely a self-executing resolution which has no meaning other than its own passage, or is this, in [the proponent Senators'] minds, some form of claim, some form of different or distinct treatment for those who can trace a single ancestor back to 1778 in Hawai'i which is now to be provided for this group of citizens, separating them from other citizens of the State of Hawai'i or the United States?
> * * *
> What are the appropriate consequences of passing this resolution? Are they any form of special status under which persons of Native Hawaiian descent will be given rights or privileges or reparations or land or money communally that are unavailable to other citizens of Hawai'i?

Senator Inouye replied:

> As I tried to convince my colleagues, this is a simple resolution of apology, to recognize the facts as they were 100 years ago. As to the matter of the status of Native Hawaiians, as my colleague from Washington knows, from the time of statehood we have been in this debate. Are Native Hawaiians Native Americans? This resolution has nothing to do with that. . . . I can assure my colleagues of that. It is a simple apology.

139 Cong. Rec. S14477, 14480, Oct. 27, 1993.

It would appear that S. 746 now takes a different view of the Apology Resolution, since the resolution is now offered in support of precisely the demands for "special status" which were of concern to Senator Gorton.

> It is a good rule in life never to apologize. The right sort of people do not want apologies, and the wrong sort take a mean advantage of them.
>
> -- P. G. Wodehouse, *The Man Upstairs*

---

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

Comment: "Inherent Sovereignty." The Apology Resolution and S. 746 refer to the "sovereignty" or the "inherent sovereignty" of the "Native Hawaiian people" which was somehow taken from them at or about the time of the overthrow of the monarchy in 1893 and which has somehow persisted to the present day.

There is no historical or legal basis for these assertions. "Native Hawaiians," under the kingdom, never had "inherent sovereignty" to lose.[10]

Sovereignty, in the Hawaiian kingdom, resided inherently in the monarch, *not* the "people." In this respect, the monarchy was very different from a republic like the United States, where sovereignty--the supreme political authority within an independent nation--is with the people.

This difference was clearly set out by the Hawaiian kingdom's supreme court in the case of *Rex v. Booth,* 2 Haw. 616 (1863). A law of the kingdom prohibited sales of liquor to "native subjects" of the kingdom, but not to other inhabitants or visitors. Booth was charged with violating this law, and in his defense, he argued that the law was unconstitutional under the Kingdom's 1852 Constitution as discriminatory class or special legislation. He asserted that in constitutional governments, legislative authority emanates from the people, and that the legislature acts as agent of the people, and that "it is against all reason and justice to suppose . . . that the native subjects of this Kingdom ever entrusted the Legislature with the power to enact such a law as that under discussion." The court responded:

> Here is a grave mistake—a fundamental error—which is no doubt the source of such misconception. . . . The Hawaiian Government was not established by the people; the Constitution did not emanate from them; they were not consulted in their aggregate capacity or in convention, and they had no direct voice in founding either the Government or the Constitution. King Kamehameha III originally possessed, in his own person, all the attributes of sovereignty.

The court reviewed Kamehameha III's promulgation of the 1840 Constitution and its 1852 successor and explained that by these documents the king had voluntarily shared with the chiefs and people of the kingdom, to a limited degree, his previously absolute authority. The court explained:

> Not a particle of power was derived from the people. Originally the attribute of the King alone, it is now the attribute of the King and of those whom, in granting the Constitution, he has voluntarily associated with himself in its exercise. No law can be enacted in the name, or by the authority of the people. The only share in the sovereignty possessed by the people, is the power to elect the members of the House of Representatives; and the members of that House are not mere delegates.

---

[10] The following discussion on sovereignty under the Kingdom of Hawai'i is taken in substantial part from Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U. Haw. Law Rev. 99, 152-53 (1998).

It would appear that both Kamehameha V and Queen Lili'uokalani believed that this sharing of sovereignty could be revoked or modified by the monarch who granted it, or by his or her successor. In 1864, when Kamehameha V became frustrated with the inability of the legislature to agree on amendments to the 1852 Constitution, he simply dissolved the legislature and promulgated a new Constitution on his own authority with the statement (quoted here from 2 KUYKENDALL, THE HAWAIIAN KINGDOM 132 (1953)):

> As we do not agree, it is useless to prolong the session, and as at the time His Majesty Kamehameha III gave the Constitution of the year 1852, He reserved to himself the power of taking it away if it was not for the interest of his Government and people, and as it is clear that that King left the revision of the Constitution to my predecessor and myself therefore as I sit in His seat, on the part of the Sovereignty of the Hawaiian Islands I make known today that the Constitution of 1852 is abrogated. I will give you a Constitution.

Of like mind was Queen Lili'uokalani, who stated:

> Let it be repeated: the promulgation of a new constitution, adapted to the needs of the times and the demands of the people, has been an indisputable prerogative of the Hawaiian monarchy.

LILI'UOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN 21 (1898).

To these Hawaiian leaders of the past, a claim that the "Hawaiian people" had "inherent sovereignty" would likely have been viewed as revolutionary.

Nor was the government of the Hawaiian Islands, in the decades immediately before the ending of the monarchy, "Hawaiian" or "Native Hawaiian." As early as 1851, foreign-born subjects of the kingdom sat in the legislature (3 KUYKENDALL, THE HAWAIIAN KINGDOM 1[illegible] (1967)) and held various degrees of control during the monarchy period (*See, e.g., id.* at 40[illegible] 402, 406-410, 448-455). Westerners as well as natives sat as judges in the courts of the kingdom (*see*, e.g., 2 KUYKENDALL, THE HAWAIIAN KINGDOM 241(1938)) and as members of the cabinet along with natives and part-Hawaiians. Westerners had been trusted advisors of the monarchs from the time of Kamehameha I. During the reign of King David Kalakaua (1874-1891), many who lacked Hawaiian ancestry were appointed to the King's cabinet; at point in his reign, he had made a total of thirty-seven ministerial appointments of which on[illegible] eleven had gone to men of Hawaiian "blood." GAVAN DAWS, SHOAL OF TIME 214 (1968).

By 1893, when the monarchy was replaced by a provisional government, natives and foreigners alike had long participated extensively in the political, social and economic life of the nation, and continued to do so. Racial tension was often high, but the government was [illegible] a government of, by or for a particular race. See generally 3 KUYKENDALL, THE HAWAIIAN KINGDOM (1967) ch. 19 - 20; Patrick W. Hanifin, *A Tradition Of Inclusion:* Rice, Arakaki, [illegible] *The Development Of Citizenship And Voting Rights In Hawai'i*, http://www.angelfire.com/hi[illegible] hawaiiansovereignty/HanifinCitizen.html.

Thus under the Hawaiian kingdom, it could not be said from either a legal or a political standpoint that the native people of the kingdom had any exclusive claim to "sovereignty," inherent or otherwise. Legally, sovereignty resided in the monarch; there was no popular sovereignty in any sense whatsoever. Politically, Westerners as well as natives participated fully in the legislative as well as the executive and judicial functions of government, and could thus fairly claim to be counted among "those whom, in granting the Constitution, [the King] has voluntarily associated with himself" through the limited and revocable sharing of the King's sovereign power.

The sovereignty of the kingdom, once resident solely in the monarch, passed upon the revolution of 1893 to the provisional government which succeeded it, then to the Republic, and then, upon annexation, to the United States. It was as U.S. citizens that "Native Hawaiians" truly came to share in the "sovereignty" of their nation as a matter of right.

The bill should omit any reference to "sovereignty" of the "Native Hawaiian people." It never existed.

"Plebiscite or referendum": Whatever might have been the feelings in 1893 or 1898 of the "native people of Hawaii" (who formed less than 40% of the population at that time), those same "native people" or their descendants were full participants and a major political force within the Territorial government (*see* LAWRENCE H. FUCHS, HAWAII PONO: A SOCIAL HISTORY (1960), pp. 79-85, 161-62). In 1959, at the time of the statehood plebiscite, they were about one-sixth of the populace, and the overwhelming 17 to 1 majority vote for statehood shows support by Hawaiians as well as other groups for that measure. *Id.* at 414.

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

Comment: It is difficult to see how "reconciliation" can be advanced by separation; that is, by the establishment of a permanent, separate race-based "governmental" entity for Native Hawaiians within the State of Hawai'i. The U.S. Supreme Court has termed racial classifications "odious to a free people" (*Hirabayashi v. U.S.*, 320 U. S. 81 (1943)) and "presumptively invalid" (*Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979)); *see generally Adarand Constructors v. Pena,* 515 U.S. 200, 224 (1995), in which the Court

declared that "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny." S. 746 would segregate Hawai'i's population into two racially-defined groups, one with special status and privileges under Federal (and perhaps state) law and one without.

The pronouncements of the U.S. Supreme Court indicate that S. 746, if challenged, would be unlikely to pass constitutional muster. For Hawaiians to have their expectations raised by this bill, only to have those hopes dashed when the bill is found unconstitutional, can hardly advance "reconciliation;" in fact, such a course of events would be seen by many Hawaiians as one more in a long chain of "broken promises."

(15) Despite the overthrow of the Hawaiian Government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

Comment: This statement is false.

a. Native Hawaiians, as defined in S. 746, are thoroughly integrated into Hawai'i's social, economic and political life. (See the comments to Finding (2) above.) The formation of cultural, social and political institutions is no more unique to Native Hawaiians than it is to any of the other ethnic groups which came to the islands and stayed to build communities. More importantly, as Robert C. Schmitt, Hawai'i's former State Statistician makes clear in the quoted material in the Comment to Finding (2) above, underlying the separating influences of ethnic traditions in the islands is an integration, fostered and perpetuated by extensive interracial and intercultural marriage, which is rapidly eroding even the remnants of ethnic boundaries which exist today.

b. Native Hawaiians do not give expression to "rights as native people to self-determination and self-governance" through OHA. OHA is a state agency. It carries out a discretionary decision of the state to apply certain state funds to "the betterment of native Hawaiians and Hawaiians," two groups identified solely by what the U.S. Supreme Court has held to be racial definitions. *Rice v. Cayetano,* 528 U. S. 495, 514-15, 120 S.Ct. 1044, 1055-56

(2000). OHA is managed by trustees who are state officials elected (after *Rice*) by all the citizens of the state. OHA's status as a state agency was precisely the reason why the U.S. Supreme Court in *Rice* determined that it was unnecessary to decide whether Native Hawaiians are, legally speaking, analogous to American Indians; the court stated that whatever might be the rule in tribal elections, the election for OHA trustees was a state election for state officials, so the Fifteenth Amendment applied and invalidated the limitation of the franchise to one racial group. *Rice v. Cayetano,* 528 U. S. at 520-22, 120 S.Ct. at 1058-59. So OHA is not a vehicle for "self-determination and self-governance," except perhaps in the limited sense that all citizens engage in self-determination and self-governance on an individual basis by participating in the government of the state and the nation.

It might be noted that the "self" involved in the asserted "self-determination" and "self-governance" is a group defined in this bill by race, or as the U. S. Supreme Court described it in *Rice v. Cayetano, supra*, by ancestry used as a proxy for race. The basic premise of the Fifteenth Amendment and of cases such as *Gomillion v. Lightfoot,* 364 U.S. 339 (1960) is that in the United States, racial groups have no rights to "self-determination" or "self-governance" which involve the exclusion of their neighbors of different races from equal access to government.

(16) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

Comment: This statement is false.

Native Hawaiians as a racial group (as defined by S. 746) or as any other sort of group do not provide "governmental services" to anyone except insofar as individuals or groups might (1) assist state or local governmental agencies in providing governmental services or (2) offer, in a private capacity, services such as education which state or local government agencies also offer.

The services listed are provided, to Native Hawaiians and the rest of the state's citizens, both by true governmental agencies and by private schools, service clubs, labor unions and other community service organizations which may or may not have roots in, or a focus on, one or more of the islands' ethnic elements.

There is no existing Native Hawaiian government or anything resembling such an entity.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

Comment: It is no doubt true that some Native Hawaiians, as racially defined in S. 746, engage in some or all of these activities, although as noted in the Comments to Findings (1) and (2) above, since "Native Hawaiians" are found throughout the society of the state and nation at all economic, social, educational and occupational levels, their "cultural practices" vary widely. Certainly, the "cultural practices" even of those seeking to recapture the remote past do not include such "practices" of ancient Hawaiian society as the draconian *kapu* system or human sacrifice; these were abandoned at the insistence of the Hawaiian rulers shortly *before* the arrival of Christian missionaries in 1820.

Of course, persons who are not Native Hawaiians also engage in these activities and on the other hand, many Native Hawaiians do not engage in them. The issue is immaterial to the decision whether to enact S. 746.

The nature and extent of "traditional rights to gather medicinal plants and herbs, and food sources" is a matter of considerable debate. *See generally* Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U. Haw. Law Rev. 99 (1998).

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

Comment: Undoubtedly some people of Hawaiian ancestry desire some or all of these things. They are pretty much universal human aspirations. However, (1) if "ancestral lands" means "ceded lands," then Native Hawaiians as defined in the bill have no special claim to those lands, and (2) if "Native Hawaiian political . . . identity" means "political power allocated by statute on the basis of race," then governmental action to preserve, develop or transmit such power would likely be unconstitutional, and (3) if "self-determination" involves special political power over state or Federal governmental decisions for a group defined by race or ancestry, then such self-determination would run afoul of the decision in *Rice v. Cayetano,* 528 U.S. 495, 120 S.Ct. 1044 (2000).

Ceded lands. Native Hawaiian advocates have long asserted that Native Hawaiians have some special claim to the former Crown and government lands of the kingdom, sometimes referred to as the "ceded lands" because they were granted or "ceded" to the United States upon Hawai'i's annexation in 1898. These claims were examined in detail by the Congressionally-chartered Native Hawaiians Study Commission in 1983 and were found to have no legal basis. *See* "Existing Law, Native Hawaiians and Compensation," 1 FINAL

REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983), pp. 333-370; *but see* dissenting view in 2 FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983) 7-11, 80-99 (proposing moral rather than legal bases for reparations). They were examined again in 1995 in an environmental impact statement for land use changes at the Bellows Air Force Station in Waimanalo, Oahu. U.S. PACIFIC COMMAND, FINAL EIS FOR LAND USE DEVELOPMENT AT BELLOWS AIR FORCE STATION, WAIMANALO, HI (1995), section 6.6. The Record of Decision therein concluded that these claims had no legal or historical validity. 61 Fed. Reg. 28568, June 5, 1996. These findings were not novel; they were fully consistent with the 1910 decision of the U.S. Court of Claims denying ex-Queen Lili'uokalani's claim for compensation for the loss of her interest in the Crown lands and holding that both the Crown and the government lands of the kingdom were, in essence, "public lands" (*Lili'uokalani v. U.S.*, 48 Ct. Cl. 418 (1910)).

There is absolutely no legal support whatsoever for the notion that at the time of the overthrow of the monarchy or at any time after the land revolution which began in 1848, Native Hawaiians held any interest, directly or as beneficiaries of some sort of implied trust, in the ceded lands. Every credible legal authority is to the contrary. *See, e.g.,* JON J. CHINEN, THE GREAT MAHELE, HAWAII'S LAND DIVISION OF 1848 15-20 (1958); LOUIS CANNELORA, THE ORIGIN OF HAWAII LAND TITLES AND OF THE RIGHTS OF NATIVE TENANTS (1974); and the authorities cited in the paragraph immediately above. *See generally* Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai'i*, 20 U. Haw. Law Rev. 99 (1998).

There is, of course, no barrier to persons of Hawaiian ancestry carrying out the very legitimate desires set out in this Finding, so long as they do not seek race-conscious support of Federal, state or local government to do so.

It should also be borne in mind, as more fully explained in the Comments to Findings (1) and (2) above, that the "traditions, beliefs, customs and practices, language, and social and political institutions" of today's "Native Hawaiians" as defined in S. 746 are not those of precontact Hawai'i and are, in most respects, those shared by all the intermixed, intermarried inhabitants of the State of Hawai'i

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance.

Comment: For reasons explained earlier in this paper, Native Hawaiians as defined in the bill do *not* have inherent rights other than those shared by all citizens of the state and the nation, are *not* aboriginal or indigenous, are *not* a "native community," and have *no rights to self-determination or self-governance* other than the political rights held by all citizens of the state of Hawai'i and the United States. In addition, at the end of the monarchy in 1893 and for many years before, there was no "Native Hawaiian governing body" in the sense of a

government exclusively of, by or for Native Hawaiians, and there is no legal, historical or moral basis for the "reorganization" or creation of such a racially-defined body now.

The broad power of the Federal executive and Congress notwithstanding, no "tribe" can be created where none exists in reality. As explained in more detail in the Comment to Finding (1) above, the U.S. Supreme Court in *U.S. v. Sandoval*, 231 U.S. 28 (1913) held that while the Pueblo Indians could be brought by Congress within the "special relationship" with Indian tribes even though the Pueblos did not share all the characteristics of other tribes, "it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe, but only that in respect of distinctly Indian communities the questions whether, to what extent, and for what time they shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States are to be determined by Congress, and not by the courts." *Id.* at 46.

This warning deserves careful consideration before Congress attempts to bring "Native Hawaiians," who share none of the group or individual characteristics deemed pertinent in *Sandoval*, within the ambit of the "special relationship" which Congress has with true Indian tribes. Unlike the Pueblo communities, there is no unifying group character to the class called "Native Hawaiians" other than race.

There is no Hawaiian "tribe," and one case which considered a claim by a purported Hawaiian tribe indicates that Hawaiians are unlikely to be able to establish such a status. *Price v. Hawai'i*, 764 F.2d 623 (9th Cir. 1985).

Thus the bill would, if enacted, extend privileged political status to a group defined solely by race or ancestry. Considering the pernicious effects of racial discrimination and the U.S. Supreme Court's cautionary language in *Rice*, such an outcome appears neither socially wise nor constitutionally permissible.

(20) The United States has declared that--
(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

Comment: See the Comments to Findings (1) and (3) above. With all due respect for Congress' authority, it must be noted that Congress' constitutional power relates to Indian tribes, not to "native peoples of the United States." In *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044 (2000), the Court, in passing on the State of Hawai'i's argument that special statutory treatment for Native Hawaiians is justified on the same basis as Congress' power with respect to Indians, said "[a]s we have observed, 'every piece of legislation dealing with Indian tribes and reservations . . . single[s] out for special treatment a constituency of tribal Indians.' *Id.* at 1058. In discussing *Morton v. Mancari*, 417 U.S. 535 (1974), the *Rice* Court took pains to note that in *Morton*, "the Court found it important that the preference [there in question] was 'not directed toward a "racial" group consisting of "Indians"', but rather 'only to members of "Federally recognized" tribes.'" *Id.* As noted earlier in these comments, extending Congress' "special responsibility" to "native peoples" goes beyond present law.

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and
(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

Comment: Although there is ample room for debate about whether Congress has in fact delegated "broad authority" to the state and whether Congress has any "trust responsibility" for Native Hawaiians, the fundamental issue is not whether Congress has done what the proposed Finding says, but whether in so doing Congress acted within its constitutional authority. The U.S. Supreme Court's decision in *Rice v. Cayetano* raises significant doubt on this point (*See* Comment to Policies 3(a)(1)(A), (B) and (C) *infra*.)

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through--
(A) the enactment of the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (Public Law 86-3; 73 Stat. 4) by--
(i) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians; and

Comment: This finding is inaccurate.

There is no general mandate in the cited statute (the Hawaii Admission Act) that any of the ceded lands be held or applied in whole or part for the betterment of the conditions of "Native Hawaiians" as defined in this bill.

a. First and most obviously, while the Hawai'i Admission Act *permits* the use of public trust resources for "the betterment of the conditions of native Hawaiians," that class consists only of persons of 50% or more Hawaiian "blood," not "Native Hawaiians" defined in the bill as persons with any degree of Hawaiian ancestry. *See* section 5(f), Hawai'i Admission Act, P. L. 86-3, 73 Stat. 4, (1959).

b. Second, the Admission Act did not require that all or any part of the ceded land trust be actually used for the betterment of the conditions of native Hawaiians; it merely listed "the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act" as *one of five* purposes for which the ceded lands trust proceeds *might* be used. The statute expressly states that the proceeds of the ceded lands trust may be used for "one or more" of the five enumerated purposes. The statute permits the state to determine how the trust proceeds are distributed. *Price v. State of Hawai'i*, 764 F.2d 623 (9th Cir. 1985). Such state decisions, of course, are subject to the constraints of the Fourteenth Amendment and the *Adarand* decision with respect to any racial test for allocation or receipt of benefits. Indeed, because the U.S. Supreme Court has held that the definition of "native Hawaiian" in Hawai'i's statutes shares with the definition of "Hawaiian" an "explicit tie to race" (*see Rice v. Cayetano*,

528 U.S. 495, 514-517, 120 S.Ct. 1044, 1055-57 (2000)), the Admission Act provision concerning "native Hawaiians" is itself of questionable constitutionality.

(ii) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

Comment: Claims of a Federal trust relationship founded upon the Hawaiian Homes Commission Act (HHCA) and the Hawai'i Admission Act which transferred HHCA responsibilities to the State of Hawai'i have been rejected by the Federal courts.

In 1978 the U.S. Court of Appeals for the Ninth Circuit dismissed claims for breach of a claimed trust brought by beneficiaries of the HHCA against that agency and its chairman. It held that plaintiffs had no Federal cause of action under the Admission Act because "[w]ith Hawai'i's admission into the Union, the national government virtually relinquished its control over and interest in the Hawaiian home lands. The problem described in plaintiffs' complaint is essentially a matter of state concern." *Keaukaha-Panaewa Community Association v. Hawaiian Homes Commission*, 588 F.2d 1216, 1224 (9th Cir. 1978). It held further that the Federal court lacked jurisdiction over plaintiffs' claims under the HHCA itself because that act, after statehood, was a matter of state rather than Federal law.

A claim of a trust relationship was raised again and rejected again in *Han v. Department of Justice, et al.*, 824 F.Supp. 1480 (D. Hawai'i 1993), aff'd 45 F.3d 333 (9th Cir. 1995). The District Court stated bluntly:

> First, as a matter of law, the federal defendants have no trust responsibility to plaintiff or other native Hawaiians under statutory or case law. The Ninth Circuit Court of Appeals has expressly held that "the state is the trustee. . . . The United States has only a somewhat tangential supervisory role under the Admission [Statehood] Act, rather than the role of trustee." The Ninth Circuit reaffirmed that holding in Price v. Hawaii (the United states "is not a formal trustee" of the Hawaiian home lands)[.] . . . Furthermore, nothing in the statutes at issue here indicates the federal defendants have a trust duty. The Admission Act specifically requires the State of Hawai'i to hold the home lands "as a public trust for the . . . betterment of the conditions of native Hawaiians." Admission Act section 5(f). There is no such corresponding duty on the part of the United States.

Id. at 1486. (Internal citations omitted.)

Indeed, the District Court expressly rejected the argument set out in this bill's Finding that the Federal government's reserved power to enforce the state's obligation, and the

restrictions imposed on the state's power to amend the HHCA, implied a Federal trust obligation. The court stated:

> Section 4 merely establishes a compact between the State of Hawai'i and the United States, whereby the state has agreed not to amend any of the Commission Act's substantive provisions without the consent of the United States. Admission Act section 4. This creates an obligation of the state, not the federal government. And while the federal government may bring an enforcement action, it is not by law required to.

Id. at 1486.[11]

More fundamentally, the HHCA provides no support for the arguments that Congress has constitutional authority to legislate concerning the "conditions of Native Hawaiians," that HHCA benefits are not "racially" allocated or that the racial distinction at HHCA's core is constitutional. As noted above, the HHCA benefits only those of 50% Hawaiian blood under a definition of "native Hawaiian" which the U. S. Supreme Court in *Rice v. Cayetano*, 528 U.S. 495, 516, 120 S.Ct. 1044, 1056 (2000) found to have an "explicit tie to race." Beyond this, the HHCA itself is constitutionally infirm; as noted in the Comment to Finding 5 above, the blatant racial basis for the HHCA would be unlikely to survive a strict scrutiny review today.

It is worth noting with respect to the "exclusive right of the United States to consent to any . . . amendments to the Hawaiian Homes Commission Act . . . that are enacted by the legislature of the State of Hawaii" that in signing statements to two recent Federal statutes granting such consent, Presidents Ronald Reagan and George Bush each expressed concern with the racial character of the HHCA. In signing P. L. 99-577, President Reagan stated:

> Because the Act employs an express racial classification in providing that certain public lands may be leased only to persons having "not less than one-half of the blood of the races inhabiting the Hawaiian Islands previous to 1778," the continued application of the [HHCA] raises serious equal protection questions. These difficulties are exacerbated by the amendment that reduces the native-blood requirement to one-quarter, thereby casting additional doubt on the original justification for the classification.

22 *Weekly Compilation of Presidential Documents* 1462, Nov. 3, 1986.

In that same statement he urged Congress to "give further consideration to the justification for the troubling racial classification." *Id.*

---

[11] On appeal, the Ninth Circuit avoided the "general trust obligation" issue by "assuming without deciding" that a general trust or "guardianship" relationship exists between the United States and native Hawaiians similar to that between the United States and recognized Indian tribes. It held, however, that the Admission Act did not impose a "general fiduciary duty" upon the Federal Government to enforce the HHCA against the State of Hawai'i. Han v. Dep't of Justice, 45 F.3d 333 (9th cir. 1995).

Six years later, his successor, President George Bush, in signing P. L. 102-398, raised an identical equal protection concern. See 28 *Weekly Compilation of Presidential Documents* 1876, Oct. 12, 1992. He concluded by noting that "the racial classifications contained in the Act have not been given the type of careful consideration by the Federal Government that would shield them from ordinary equal protection scrutiny." *Id.*

(22) The United States continually has recognized and reaffirmed that--
(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

Comment: If this finding is intended to imply that modern-day Hawaiians maintain the societal and cultural forms of the precontact inhabitants of the islands, then this "finding" is incomplete and inaccurate. Native Hawaiians, defined as they are in S. 746 as descendants of the precontact inhabitants of the islands, necessarily have a "historic" link to their ancestors, but any modern-day link to precontact Hawaiian culture is more doubtful, and in fact is nonexistent for many contemporary Hawaiians.

Precontact Hawaiians had no written history, and there is debate as to who the "aboriginal, native people" were, where they came from and when they arrived. *See generally* ELEANOR C. NORDYKE, THE PEOPLING OF HAWAII (2nd ed., 1989) 7-12. There is a considerable body of opinion that there were various waves of migration, with the first perhaps from the Marquesas Islands between 200 and 700 A.D. and another from Tahiti between 900 and 1300 A.D. Captain James Cook's arrival in the islands in 1778 initiated another period of migration which still continues.

Culturally, the society of the Hawaiian Islands underwent significant change both before and after Western contact. There was at least one radical discontinuity reflected in the legends and oral traditions which occurred long before Western contact, when immigrants from the South Pacific introduced the "kapu" system which ensured the absolute power of the chiefs over the commoners. *See* MARTHA BECKWITH, HAWAIIAN MYTHOLOGY (1970), pp. 369-375. Thus the precontact culture of 1778 was apparently quite different from the precontact culture of the earlier immigrants.

After Western contact, radical change and cultural discontinuity were the order of the day, but the Hawaiian people were as much agents as victims of these changes. Hawaii's early kings and chiefs accomplished a near miracle in maintaining their nation's independence while guiding and shaping the chaotic forces which focused on the islands. It was Hawaii's own native leaders who dispensed with the "old religion" of polytheism and human sacrifice even before the arrival of Christian missionaries in 1820. 1 KUYKENDALL, THE HAWAIIAN KINGDOM (1938) pp. 65-70. A generation later, it was Hawaii's own native leaders, drawing upon but not surrendering to their Western advisors, who replaced ancient forms of governance, land management, land ownership and many aspects of economic life with Western models. *See generally* 1 KUYKENDALL, THE HAWAIIAN KINGDOM (1938), pp. 227-334; Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawaii*, 20 U. Haw. Law Rev. 99 (1998) 112-117. By the time it passed into history, the Hawaiian kingdom

was a constitutional monarchy in the Western style, with a racially mixed legislature, judiciary and Cabinet governing a multi-racial nation which was fully accepted as an equal in Western diplomatic circles and boasted a literate citizenry well-educated in Western as well as Hawaiian ways. See generally 3 KUYKENDALL, THE HAWAIIAN KINGDOM (1967).

One other vital influence on Hawaiian history since Western contact was an early and continued practice of intermarriage by Hawaiians with all the ethnic and racial groups which have made Hawaii their home over the last two hundred years and more. Intermarriage brought a multitude of cultural influences into the cultures of Hawaiians and new arrivals alike.

From the perspective of history we see that as the continuity of Hawaiians to the old precontact culture waned, their continuity to the varied cultures of the Pacific and the world expanded and intensified. Indeed, the asserted "links" of all modern-day Native Hawaiians to their precontact ancestors are perhaps most accurately viewed as the justifiable pride of ancestry and historical connection we all feel for the best traditions and accomplishments of our ancestors. For today's 8,000 or so "pure" Hawaiians, that pride may be more focused than in the thousands of Hawaiians whose forebears came not only from Hawai'i, but from varied regions of Europe, Asia and America and whose ancestors thus represent most of the great civilizations of the earth. But pride of ancestry is a universal characteristic of humanity. As it exists in Hawai'i, it implies no political consequence and justifies no special treatment.

Whatever form or forms the precontact Hawaiian "society" took before Captain James Cook arrived in 1778, it cannot be said that it persists today as it existed either at Western contact or at any time before that. To the extent that there is a "Hawaiian culture" today, it is not the culture of precontact Hawai'i, but a radically evolved blend of old and new, with the new predominating, and it is a "culture" embraced by many who have no Hawaiian ancestry at all.

It would be inaccurate to say that today's "Native Hawaiians" as defined by this bill have, as a group, a distinct society or lifestyle. As the passage from George Kanahele quoted in the Comment to Finding 2 above makes clear, the society and culture of today's "Native Hawaiians", as they are defined in this bill, is the society and culture of the State of Hawaii and the United States. They do not, as a group or as several groups, live apart from the larger community of the state and nation. They do not practice the religion of ancient Hawai'i, or use Hawaiian as a first language, or follow the forms of government, economics or other defining social or cultural structures of precontact Hawaiian civilization. *See* Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawaii*, 20 U. Haw. Law Rev. 99 (1998).

Indeed, "Native Hawaiians," as a group defined by race or ancestry, cannot fairly be said to share today *any* common language, religion, economic regime, form of self-government or other unique group-identifying features except those of the United States and the State of Hawai'i as a whole; "they" are fully and completely integrated into the larger social and economic life of the state of Hawaii and the nation. They hold positions of power and respect at all levels of society including business, government and the arts; for example, in the past several years, Hawaii has had a Native Hawaiian Governor (John Waihee), a Native Hawaiian

state supreme court chief justice (William S. Richardson), a U.S. Senator (Daniel Akaka) and numerous state officials and members of the state legislature.

If the Congress undertakes a full and open exploration of this issue, it is most likely to conclude that as to "Native Hawaiians," "they" are "us"--Americans, like all the other varied Americans in the state and the nation, mostly with mixed racial or ethnic backgrounds and sharing in the freedom and diversity of lifestyles guaranteed under the U.S. Constitution. The Congress would therefore find, consistent with *Adarand Constructors v. Federico Pena,* 515 U.S. 200 (1995), that each "Native Hawaiian" deserves the same access to political power, and the same governmental assistance when necessary, as any American of any race--without regard to race except as the U. S. Constitution might permit it--but nothing more.

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

Comment: **"Sovereignty."** "Native Hawaiians" as defined by this bill never had any "sovereignty" to relinquish, either at the time of the termination of the monarchy or before. *See* the Comment to Finding (13) above.

"Sovereign lands." This term appears to refer to the Crown lands and government lands of the kingdom, ceded to the United States at annexation in 1898. Native Hawaiian advocates have long asserted that Native Hawaiians have some special claim to these lands. These assertions and claims are baseless. Since 1848 as to government lands, and since 1865 as to Crown lands, these were public resources of the kingdom, and Native Hawaiians as a racial or ancestrally-defined group had no legal interest in or right to these lands except as subjects of the kingdom–rights shared by the non-"Native Hawaiian" subjects and denizens of the kingdom. Patrick W. Hanifin, *Hawaiian Reparations: Nothing Lost, Nothing Owed,* 17 Hawai'i B.J. 107 (1982); "Existing Law, Native Hawaiians and Compensation," 1 FINAL REPORT OF THE NATIVE HAWAIIANS STUDY COMMISSION (1983), pp. 333-370; U.S. PACIFIC COMMAND, FINAL EIS FOR LAND USE DEVELOPMENT AT BELLOWS AIR FORCE STATION, WAIMANALO, HI (1995), section 6.6.

> To the Constitution of the United States the term *sovereign*, is totally unknown. There is but one place where it could have been used with propriety. But, even in that place it would not, perhaps, have comported with the delicacy of those, who ordained and established that Constitution. They might have announced themselves "*sovereign*" people of the United States: But serenely conscious of the fact, they avoided the ostentatious declaration.
>
> -- *Chisholm v. Georgia*, 2 U.S. (Dall.) 419, 454 (1793)

(C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and
(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

Comment on Findings 22(C) and (D): These statements are inaccurate. See comments to Findings (1) and (3) above. *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044 (2000) implies that when the United States "extends services to Native Hawaiians" as such, it makes those services available on the basis of race and its actions must meet the constitutional standard of strict scrutiny.

If Congress adopts subsection (D) above as congressional policy, it will be redefining its relationship with American Indians and Alaska Natives as well as Native Hawaiians, and may be assuming responsibilities which are beyond those existing under current law. But such a change in relationship would imperil the continuing validity of the U. S. Supreme Court's decision in *Morton v. Mancari*, 417 U.S. 535 (1974), wherein the court held that an Indian preference under challenge as racial discrimination was not in fact "racial" because it was derived from the government-to-government relationship between the United States and Indian *tribes*. The court stated:

> The preference is not directed towards a "racial" group consisting of "Indians"; instead, it applies only to members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as "Indians." In this sense, the preference is political rather than racial in nature

Id.

Subsection 22(D) of this bill, however, would redefine the constitutional relationship underlying current Federal laws benefiting American Indians and Alaska Natives. It would permit such programs and preferences to be extended to all Native Americans and Alaska Natives by virtue of their race or ancestry alone, and would thus nullify the distinction between racial and political classifications so carefully drawn in *Morton*. By removing that distinction, this bill may have an effect absolutely opposite to the intent of its supporters. It will almost certainly fail to bring Native Hawaiian preferences and programs under *Morton v. Mancari*'s protection from equal protection challenges, and it may have the unintended consequence of destroying the constitutional basis of that protection as it applies to the tribes and tribal members who currently benefit from it.

SEC. 2. DEFINITIONS.
In this Act:
(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE- The term `aboriginal, indigenous, native people' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

Comment: This term is unhelpful as applied to Native Hawaiians, since with the exception of the ruling chiefs of the islands, neither the original inhabitants of Hawai'i nor "Native Hawaiians" as defined in the bill exercised sovereignty prior to European contact. *See Rex v. Booth*, 2 Haw. 616 (1863) and the comment to Finding (13) above.

This finding suggests that congressional recognition of the "original inhabitants" is of considerable importance to the rights of present-day individuals. If that is true, then in light of *Rice v. Cayetano*, that recognition must pass the test of strict scrutiny. It would be appropriate for Congress to review any past "recognition" of this sort and reopen the matter so that all affected persons may be heard on the issue.

Sections 2(2) and 2(3).

No comments are offered on sections 2(2) and 2(3) of the bill.

(4) INDIGENOUS, NATIVE PEOPLE. – The term ``indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

Comment: This definition, with its exclusive focus on ancestry, carries the same constitutional implications as the definitions of "Hawaiian" and "native Hawaiian" addressed in *Rice v. Cayetano*. This definition, like those, uses ancestry as a proxy for race, and any statute relying upon it must be drafted to meet the constitutional test of strict scrutiny as described in *Adarand Constructors v. Federico Pena*, 515 U.S. 200 (1995).

(5) Interagency Coordinating Group

No comments are offered on subsection 2(5).

(6) NATIVE HAWAIIAN-
(A) Prior to the recognition by the United States of the Native Hawaiian governing entity, the term `Native Hawaiian' means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

Comment: This definition is indistinguishable, in its essentials, from the definition of "Hawaiian" which the U.S. Supreme Court in *Rice v. Cayetano* found to be "racial." As with

the definition of "Hawaiian," this definition identifies a class within today's population of Hawai'i solely by ancestry. As with the definition of "Hawaiian," the ancestral link must be to the inhabitants of the Hawaiian Islands before Western contact; the definition of "Hawaiian" describes these precontact inhabitants as those in the islands before 1778, while this bill refers to them as the "aboriginal, indigenous, native people," but the group is manifestly the same. Lest there be any doubt, subsection 2(1) of the bill defines "aboriginal, indigenous, native people" as the "original inhabitants . . . prior to European contact."

In *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044, (2000) the U. S. Supreme Court, in declaring unconstitutional a State of Hawai'i law restricting the franchise for certain statewide elections to "Hawaiians" defined by ancestry in a manner essentially identical to the definition of "Native Hawaiian" in S. 746, condemned discrimination on grounds of ancestry as follows:

> The ancestral inquiry mandated by the State [of Hawai'i] implicates the same grave concerns as a classification specifying a particular race by name. One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the constitution itself secures in its concern for persons and citizens.
>
> The ancestral inquiry mandated by the State is forbidden by the Fifteenth Amendment for the further reason that the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve. The law itself may not become the instrument for generating the prejudice and hostility all too often directed against persons whose particular ancestry is disclosed by their ethnic characteristics and cultural traditions. "Distinctions between citizens solely because of their ancestry are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." Hirabayashi v. United States, 320 U. S. 81, 100 (1943). Ancestral tracing of this sort achieves its purpose by creating a legal category which employs the same mechanisms, and causes the same injuries, as laws or statutes that use race by name. The state's electoral restriction enacts a race-based voting qualification.

Id. at 517, 120 S.Ct. at 1057.

It would be difficult to imagine a more thoroughgoing "ancestral inquiry" than that proposed in the foregoing section of this bill, or one more likely to produce the very social ills described in the quoted section from *Rice*. Through this process, Hawai'i's citizens will be formally and officially segregated by race, with the favored race to be accorded special political privileges and all others to be denied them.

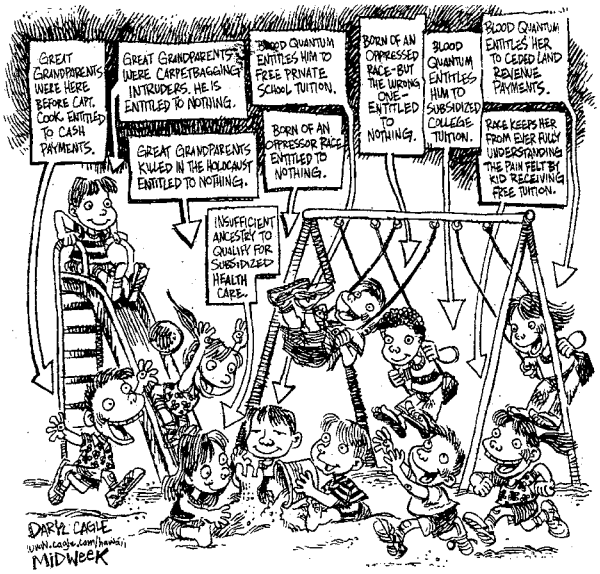
Given the racial character of the bill's definition of "Native Hawaiian" and the absence of justification for classifying Hawai'i's citizens on that ground, it must be concluded that S. 746 would not survive constitutional challenge.

(B) Following the recognition by the United States of the Native Hawaiian governing entity, the term 'Native Hawaiian' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian governing entity.

Comment: There will be serious difficulties in implementing this provision.

a. The "governing entity" may not have a free hand in incorporating a race-conscious definition of "Native Hawaiian" in its organic governing documents. Section 6(b)(2)(A) of this bill provides in pertinent part that "[t]he Secretary shall certify that the organic governing documents . . . (ii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States[.]" The constitutional principles enunciated in *Adarand Constructors v. Pena*, 515 U.S. 200 (1995) and *Rice v. Cayetano*, 528 U.S. 495 (2000) are part of "applicable Federal law," and for the reasons set out throughout these comments, they interpose a most daunting constitutional barrier to the Secretary's making the specified findings, at least so long as the governing documents preserve the "explicit tie to race" found objectionable in *Rice*.

b. Nowhere in the bill is there a consideration of the status of those who are now "Native Hawaiians" as defined in Section 2(6)(A) if they cease to become "Native Hawaiians" because the organic governing documents of the governing entity, as approved by the Secretary, so stipulate. That could occur, for example, if the governing entity adopts a blood quantum requirement like that of the existing Hawaiian Homes Commission Act and the Hawai'i Admission Act. Such a redefinition of "Native Hawaiian" would call into question the broad statements of congressional policy with respect to "Native Hawaiians" elsewhere in this bill. See the Comment to Section 3(a)(4) below for a fuller discussion of this point.



(7) NATIVE HAWAIIAN GOVERNING ENTITY- The term `Native Hawaiian governing entity' means the governing entity organized by the Native Hawaiian people.

Comment: This Section and others in the bill imply that there shall be only one Native Hawaiian governing entity. For the reasons set out in the Comment to Section 3(a)(4) below, such a limitation appears to be inconsistent with other statements of policy in the bill which suggest that the rights to self-determination, to self-government and to "reorganize" a Native Hawaiian governing entity inhere in all "Native Hawaiians" as defined in subsection 2(6)(A) of the bill.

Section 2(8).

No comments are offered on Section 2(8).

SEC. 3. UNITED STATES POLICY AND PURPOSE.
(a) POLICY- The United States reaffirms that--
(1) Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;

Comment: The statement "reaffirmed" is inaccurate.

a. **"A unique and distinct . . . people."** As explained in the Comments to Findings (2) and (15) above, the comprehensive integration of Native Hawaiians at all levels of state and national life precludes the claim that Native Hawaiians today are either "unique" or "distinct" in any other sense than the racial one, except insofar as every group within this country can claim "uniqueness" and "distinctness." Of course, nothing in this statement of policy and purpose explains how the claimed "distinctness" or "uniqueness" of this group, identified (in this bill and in other laws) solely by race or ancestry, would entitle it to preferential treatment under law, or exempt such treatment from the constraints of the Fourteenth Amendment.

b. **"Political and legal relationship."** The United States has no "political" relationship with the group identified as "Native Hawaiians" in this bill. The claim of a political relationship is intended to bring Native Hawaiians within the constitutional rule of *Morton v. Mancari*, 417 U.S. 535 (1974), discussed in the Comment to Finding (1) above. In *Morton*, the U. S. Supreme Court held that Congress had a "unique obligation toward the Indians" which was "political." It said:

> The preference is not directed towards a "racial" group consisting of "Indians"; instead, it applies only to members of "federally recognized" tribes. This operates to exclude many individuals who are racially to be classified as "Indians." In this sense, the preference is political rather than racial in nature.

The "political" relationship, however, could exist in *Morton* because there was a "polity"–a pre-existing political unit with a political organization–which could be "federally recognized." There is no such existing entity consisting of Native Hawaiians; the only group identified in this bill as "Native Hawaiians" is one defined by race or ancestry.

For the same reason, the United States has no "legal" relationship with "Native Hawaiians" as defined in this bill, except perhaps the same legal relationship it has with all other U. S. citizens.

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

Comment: This is incorrect. See the Comments to Findings (3) and (20)(A) above.

(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of–
(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);
(B) the Act entitled 'An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (Public Law 86-3; 73 Stat. 4); and
(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

Comment: The authority of Congress in these respects is precisely the issue the U. S. Supreme Court carefully declined to address in *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044 (2000), calling it "difficult terrain." It said:

> If Hawai'i's [racial voting] restriction were to be sustained under [*Morton v.*] *Mancari* [417 U.S. 535, (1974)] we would be required to accept some beginning premises not yet established in our case law. Among other postulates, it would be necessary to conclude that Congress, in reciting [in the Hawai'i Admission Act] the purposes for the transfer of lands to the State--and in other enactments such as the Hawaiian Homes Commission Act and the Joint [Apology] Resolution of 1993--has determined that native Hawaiians have a status like that of Indians in organized tribes, and that it may, and has, delegated to the state a broad authority to preserve that status. These propositions would raise questions of considerable moment and difficulty. It is a matter of some dispute, for instance, whether Congress may treat the native Hawaiians as it does the Indian tribes. Compare Van Dyke, The Political Status of the Hawaiian People, 17 Yale L. & Pol'y Rev. 95 (1998) with Benjamin, Equal Protection and the Special Relationship: The Case of Native Hawaiians, 106 Yale L.J. 537 (1996).

Id. at 518, 120 S.Ct. at 1057-58.

These comments by the U. S. Supreme Court hardly justify the sweeping statement of this subsection concerning Congressional authority to "address the conditions of Native Hawaiians," except insofar as Congress might "address the conditions of Native Hawaiians" in a context of addressing the conditions of all the citizens of Hawai'i, without regard to race.

It should also be noted that the statutes referred to in this subsection–the Hawaiian Homes Commission Act (HHCA) and the Hawai'i Admission Act–both speak only of "native Hawaiians," defined as persons with at least 50% Hawaiian ancestry, not "Native Hawaiians" as defined in this bill. In *Rice v. Cayetano*, the U. S. Supreme Court held that the definition of "native Hawaiian" in the governing statutes of the state's Office of Hawaiian Affairs, which is essentially identical to the definitions of "native Hawaiian" in the HHCA and the Admission Act, was racial. *Id.* at 1056.

(4) Native Hawaiians have--
(A) an inherent right to autonomy in their internal affairs;
(B) an inherent right of self-determination and self-governance;
(C) the right to reorganize a Native Hawaiian governing entity; and

Comment: The statements in subsections 3(a)(4)(A) and (B) are true only to the extent that they are true of all of the citizens of the state of Hawai'i. On the matter of self-determination and self-governance, *see* the Comment to Finding (15) above. The statement in 3(a)(4)(C) is accurate only in the sense that any group of individuals may organize itself for lawful purposes and establish a body to govern itself. The evident purpose of 3(a)(4)(C), however is to validate the creation of an organization of Native Hawaiians which Congress can and will recognize as having a "government-to-government" relationship with the United States. For the reasons set out earlier in this document (*see, e.g.,* the Comments to Findings (1) and (19)), that is not constitutionally permissible.

This portion of S. 746 raises several troubling questions.

a. If Native Hawaiians as defined in this bill have true "autonomy in their internal affairs" and rights of "self-determination," how may they fairly be limited to a single governmental entity? The bill clearly contemplates that only "Native Hawaiians" may create the new entity, and that only one governing entity may be formed. But if the rights of autonomy and self-determination reside in "Native Hawaiians" defined by race or ancestry, then logically they should reside in any subset of that group, or even in each individual, because the only criterion for being "Native Hawaiian" is fully and completely met by each individual member of the group and by all the members of any subgroup. Thus each group and subgroup, or perhaps even each individual, should have the same right to the special solicitude of the U.S. Government as any other. Otherwise, the group which first obtains control of the "Native Hawaiian governing entity" would have the power to exclude the minority not only from "the government" but, under section 2(6)(B) of the bill, from the very definition of "Native Hawaiian" itself. If, on the other hand, the bill contemplates that more than one Native Hawaiian governing entity could be formed, then it should provide some guidance as to the mechanism for creating such additional governments and for resolving disputes between or among these governments which may affect Federal interests.

b. What will become of those who, either by exclusionary action of the majority by their own decisions not to participate,[12] cease to be citizens of the Native Hawaiian government after it is formed? Do the "inherent" rights and entitlements referred to in the Findings, Definitions and Policy sections of the bill, and the special trust relationship and other obligations of the Federal government announced in this bill, cease to exist with respect to these individuals? It might be inferred that those who elect not to join the new government still remain "Native Hawaiians" with the special claims upon the Federal government referred to in Sections 3(a)(1) and (2) of the bill, but it is equally reasonable to say that those who do

[12] The bill nowhere expressly gives Native Hawaiians as defined in Section 2(6) the right to "opt out" of the "governing entity." While such a right might be presumed to exist, it should be clearly set out if this bill becomes law.

not join the new government lose all claims to Federal "recognition" or benefits since the "political" relationship which (according to the bill's advocates) keeps Native Hawaiian preferences from being "racial" would be subsumed in the newly created and recognized entity.

c. What would become of those of Hawaiian ancestry who might fail to meet a new definition of "Native Hawaiian" enacted under subsection 2(6)(B) of the bill?[13] What would those then-former Native Hawaiians become? Would they retain any rights or claims either against their former Native Hawaiian government or the United States? As noted above, once the Native Hawaiian government is formed and recognized, the rights of autonomy and self-determination would appear to be subsumed in the new entity and would thus pertain only to those who are citizens of the new entity. If this is not to be the case (which is what subsections 3(a)(4)(A) and (B) of this bill seem to imply), then the bill should make clear how persons of Hawaiian ancestry who are excluded from the definition of "Native Hawaiian" adopted by the governing entity will be treated under the new order. Of course, for the State or Federal government to extend any rights to such persons by virtue of ancestry alone would trigger grave constitutional concerns because as noted above, the creation and recognition of a single "political" entity for Native Hawaiians would make it difficult for those who are "defined out" of the new governing entity to argue that any rights or claims which do survive are in any sense political rather than racial.

d. A related question is whether, if the definition of "Native Hawaiian" is changed by the new Native Hawaiian government, that new definition will carry over to other Federal and state laws which make special provision for persons of Hawaiian ancestry. Among these are statutes providing favored treatment with respect to health care (42 U. S. Code 11701 et seq.), education (25 U. S. Code 3001 et seq.) and repatriation of cultural items including human remains. If existing or future State and Federal benefits for "Native Hawaiians" are to be considered truly "political," then the governing political entity's definition should control. Otherwise, State and Federal statutes extending benefits to persons differently defined as "native Hawaiian" or "Native Hawaiian" could hardly be justified as creating a "political" rather than "racial" classification.

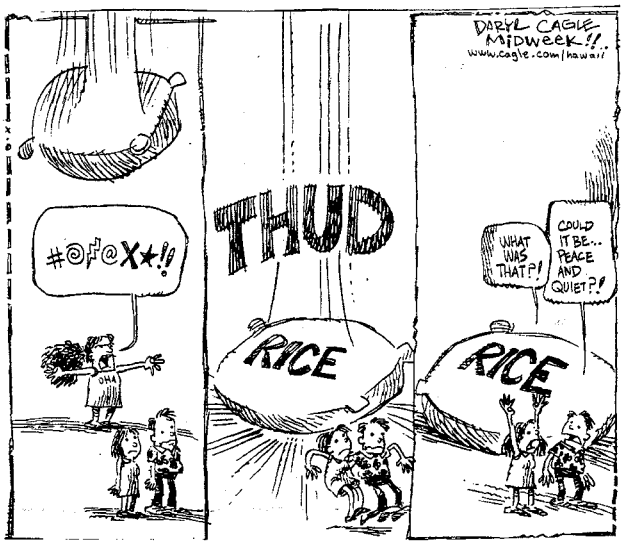
The United States could perhaps exercise its "plenary" authority over Indian tribes or the Secretary's certification authority under subsection 6(b)(2) to limit the power of a majority to "define out" dissident or undesired citizens of the Native Hawaiian government, but any such action would very possibly be condemned as interference with the "inherent" rights of autonomy and self-determination.

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

Comment: See Comments to Finding (14) and Policy 3(a)(1) above. The implication that the United States once had or has "political relations" with "the Native Hawaiian people" is invalid. During the monarchy, any "political relationship" between the two nations formally existed between the United States and the monarch in whom, individually, reposed the sovereignty of

[13] Such a new definition might, for example, impose a blood quantum requirement.

the kingdom. For nearly the entire duration of the monarchy, the kingdom's government included those who were not "Native Hawaiians" as defined in this bill, so if the "political relations" of the U. S. are construed as those with the kingdom's government, they were conducted with many subjects of the kingdom who were not "Native Hawaiian." Following the conclusion of the monarchy in 1893, the Hawaiian government included many citizens who were not Native Hawaiians. See the Comment to Finding (13) for a fuller discussion on this point. Thus there were and are no separate "political relations" with "the Native Hawaiian people" to be "continued."



(b) PURPOSE- It is the intent of Congress that the purpose of this Act is to provide a process for the recognition by the United States of the Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

Comment: As noted in the Comment to Finding 13 above, there was no purely "Native Hawaiian governing entity" during either the time of the Hawaiian monarchy, the time of the Provisional Government and the Republic after the 1893 revolution, or the time following annexation in 1898. The government of the Hawaiian Islands during the time of the Kingdom was not restricted to persons of Hawaiian ancestry, and it included many officials of American and European extraction. There is currently no "Native Hawaiian governing entity" to recognize. What this bill would do is to *create* a wholly new entity so as to invest a single one

of Hawai'i's many racial groups with special governmental power. As noted elsewhere in these comments, such a course is almost certainly unconstitutional.

SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.
(a) IN GENERAL- There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.
(b) DUTIES OF THE OFFICE- The United States Office for Native Hawaiian Relations shall--
(1) effectuate and coordinate the trust relationship between the Native Hawaiian people and the United States, and upon the recognition of the Native Hawaiian governing entity by the United States, between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;
(2) continue the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian governing entity by the United States, continue the process of reconciliation with the Native Hawaiian governing entity;
(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian governing entity prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;
(4) consult with the Interagency Coordinating Group, other Federal agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and
(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law.

Comment: Establishing a Federal office which provides or administers any preferential treatment for Native Hawaiians as defined in this bill raises the same constitutional issues of racial segregation and discrimination discussed elsewhere in this paper. Such an office would be presumptively unconstitutional.

The reference in subsection 4(b)(3) to "consulting with the Native Hawaiian people and the Native Hawaiian governing entity," and references in subsection 4(b)(2) and (3) to taking certain actions with "the Native Hawaiian people" and then with the Native Hawaiian governing entity upon its recognition, enhances the ambiguity of the status of persons of Hawaiian ancestry who are not citizens of the new government, and perhaps not even "Native Hawaiians" under a definition adopted in the organic governing document of the new entity. Is it the intent of the bill that the rights of the "Native Hawaiian people" cease to exist when the new governing entity is recognized, or will such persons retain some special status even though

they are not citizens of the new "government"? If persons outside the "recognized" "government" are given rights by this bill, it will be difficult to argue that such rights are not based on race rather than a "political" relationship, since the "political" relationship would arguably have been defined through the recognition of, and subsumed in, the "Native Hawaiian governing entity."

The section further requires consultation on matters that may "significantly or uniquely affect Native Hawaiian resources, rights or lands." The bill should define this term, since its meaning is not obvious.

a. There are currently no lands or other property which could be characterized as "Native Hawaiian," except perhaps lands or property owned individually by persons of Hawaiian ancestry. The assets and resources of the State of Hawaii Department of Hawaiian Home Lands and of the state Office of Hawaiian Affairs are the property of the State of Hawai'i. They are being applied at the moment for the betterment of native Hawaiians or Hawaiians, but they are not in any sense the property of all or any Native Hawaiian individuals, or of native Hawaiians or Native Hawaiians as a group. *Cf. Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044 (2000); *see also* the Comment "Ceded Lands" to Finding 18 above and authorities cited therein. Although some Hawaiians claim that the ceded lands are the property or patrimony of "Native Hawaiians," careful legal and historical research shows that these claims are baseless. *Id.*

b. The term "Native Hawaiian resources, rights or lands" may be intended to mean "resources, rights or lands of the Native Hawaiian governing entity," but it could fairly be construed instead to mean "resources, rights or lands" of any person with a precontact Hawaiian ancestor. Under the latter interpretation, any action with a significant effect on any property or right of any "Native Hawaiian"--such as placing a tax lien on a Native Hawaiian's bank account, condemning a utility right-of-way over a parcel in which a Native Hawaiian has an interest, or even placing a Native Hawaiian under arrest--would require prior consultation not only with the individual affected, but with "the Native Hawaiian people and the Native Hawaiian governing entity." This would place an extraordinarily heavy burden on the affected agencies of the municipal, State and Federal governments.

Given these ambiguities, the bill, if enacted at all, should be amended to clearly define the term "Native Hawaiian resources, rights or lands" and the scope of the consultation requirement.

SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.
(a) ESTABLISHMENT- In recognition of the fact that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the 'Native Hawaiian Interagency Coordinating Group'.
(b) COMPOSITION- The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from--

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and
(2) the United States Office for Native Hawaiian Relations established under section 4.
(c) LEAD AGENCY- The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

Comment: If in fact the Federal programs concerned with Native Hawaiians are administered "largely" by agencies other than the Department of the Interior, then it would probably be more efficient to have the agency with the greatest impact on Native Hawaiians take the lead role in this "group." Consideration should also be given to the agency whose activities most broadly affect Native Hawaiians, even if that agency does not administer any programs addressing the conditions of Native Hawaiians.

Of course, this section of the bill, like the rest, is founded on the "explicit tie to race" which the U.S. Supreme Court found sufficient, in *Rice v. Cayetano*, to render the OHA voting restriction unconstitutional. That same "tie to race" would infect the Interagency Coordinating Group established by this section of the bill, and would trigger the strict scrutiny standard for evaluating the constitutionality of the entity itself and any actions it might take. As noted elsewhere in this paper, strict scrutiny is likely to prove fatal both in fact and in theory to the racial segregation and racial preferences established by this bill.

(d) DUTIES- The responsibilities of the Interagency Coordinating Group shall be--
(1) the coordination of Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;
(2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian governing entity by the United States, consultation with the Native Hawaiian governing entity; and
(3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5).

Comment: This section of the bill perpetuates the same ambiguity discussed in the Comment to Section 4 above; i.e., the ambiguity concerning the definition, rights and prerogatives of "Native Hawaiians" as distinguished from "the Native Hawaiian people" following the recognition of the new "governing entity." This will surely make the "coordination" and "consultation" referred to in this

section impossibly complex, because there is at least one interpretation of this section which would require consultation and coordination not only with the new entity, but with all those, within or outside the new entity, who meet the bill's definition of "Native Hawaiian." This would be an extreme burden on the governmental agencies involved, and the ambiguity should be resolved so as to avoid that.

SEC. 6. PROCESS FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.
(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY- The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

Comment: On its face, this statement is unobjectionable, since it would apply to any lawful group which desired to organize for its common welfare and develop its individual charter and organizational structure. However, to the extent that this statement might imply that Native Hawaiians, as a racial group, have any "right" to special privileges because of race other than those which would pass the test of strict scrutiny, Congress' "recognition" of that "right" is, for the reasons stated throughout this document, inappropriate.

(b) PROCESS FOR RECOGNITION-
(1) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS- Following the organization of the Native Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.
(2) CERTIFICATIONS-
(A) IN GENERAL- Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents--
(i) establish the criteria for citizenship in the Native Hawaiian governing entity;
(ii) were adopted by a majority vote of the citizens of the Native Hawaiian governing entity;
(iii) provide for the exercise of governmental authorities by the Native Hawaiian governing entity;
(iv) provide for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;
(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;
(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons subject to the authority of the Native Hawaiian governing entity, and ensure that the Native Hawaiian governing entity exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302); and

(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.
(B) BY THE SECRETARY- Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the State of Hawaii supports the recognition of the Native Hawaiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State legislature.
(C) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW-
(i) RESUBMISSION BY THE SECRETARY- If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian governing entity along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.
(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNING ENTITY- If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian governing entity by the Secretary under clause (i), the duly elected officers of the Native Hawaiian governing entity shall--
(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and
(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with the requirements of this paragraph.
(D) CERTIFICATIONS DEEMED MADE- The certifications authorized in subparagraph (B) shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity have submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.
(3) FEDERAL RECOGNITION- Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian governing entity and the certifications by the Secretary required under paragraph (1), the United States hereby extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

Comment. There is an ambiguity with respect to Section 6(b)(2)(D)'s provision for "deemed made" DoI certifications. It would appear that the certifications referred to are those described in Section 6(b)(2)(A) rather than that of Section 6(b)(2)(B). The corresponding section of H.R. 617 refers to "subparagraph (A)" rather than "subparagraph (B)." In any case, such a "deemed certification" in default of an affirmative DoI approval of the Native Hawaiian governing entity's organic documents (which, among other things, will define the governmental powers of the entity; the protection of the civil rights of its members, and the criteria for citizenship in the entity) could result in much mischief if these documents purport to commit the United States to a relationship which is unreasonably burdensome or which is not in fact consistent with law. If the bill appears likely to pass, it should be amended to remove this "default" approval. It would also be wise, in view of the bill's requirements for Federal agency consultation with the new entity, for all Federal agencies to be afforded an opportunity to comment on the organic documents so that potential conflicts and difficulties could be ascertained and resolved before the documents are approved.

This section, of course, shares the same constitutional infirmity as the rest of the bill, and it ignores the interest of the rest of the citizens of Hawai'i in the creation of this new "governing entity" within the state's sovereign borders.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

Comment: No comment is provided on Section 7 of the bill.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.
(a) REAFFIRMATION- The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union' approved March 18, 1959 (Public Law 86-3; 73 Stat. 5) is hereby reaffirmed.

Comment: As noted in the Comments to Findings 8 through 10 and 21, if there were any delegation of authority to the State of Hawai'i in the cited statute, it concerned only "native Hawaiians" of 50% or greater Hawaiian "blood," not "Native Hawaiians" as defined in this bill. Under *Rice v. Cayetano*, 528 U.S. 495, 120 S.Ct. 1044 (2000), the constitutionality of any such delegation, like the constitutionality of all Congressional acts singling out either the racial group of "Native Hawaiians" or the racial group of "native Hawaiians" for special treatment, would appear to be subject to the standards of strict scrutiny, which this statute almost certainly cannot meet.

(b) NEGOTIATIONS- Upon the Federal recognition of the Native Hawaiian governing entity by the United States, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing entity regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use to the Native Hawaiian governing entity. Nothing in this Act is intended to serve as a settlement of any claims against the United States.

Comment: If the term "land, resources, and assets dedicated to Native Hawaiian use" refers to property of the State of Hawai'i[14], then the bill should expressly recognize that such property belongs to *all* the citizens of Hawai'i, and that the ceded lands are subject to a special trust obligation for all the state's citizens which originated in the Newlands Resolution (30 Stat. 750, July 7, 1898) by which Hawai'i was annexed to the United States, which was acknowledged in section 73 of the Hawai'i Organic Act (31 Stat. 141, April 30, 1900) and which, in somewhat different form, was confirmed in section 5 of the Hawai'i Admission Act (Public Law 86-3, March 18, 1959). Any diversion of such land from the trust to the "Native Hawaiian governing

[14] This term could be read as applying to such private trusts as the $2 billion Estate of Bernice Pauahi Bishop which supports the Kamehameha Schools for the education of children of Hawaiian ancestry. It could also be read to apply to land currently owned by individual Native Hawaiians. The statute, if enacted, should be modified to remove this ambiguity.

entity," or indeed any transfer of State resources, would require the consent of the State (which should not be assumed) and in all probability the payment of just compensation to the State for the property involved.

It might logically be assumed that this provision is intended to refer to the Hawaiian home lands or to the ceded lands in general. As written, however, this provision does not encompass either of these categories of state land.

a. S. 746 does not repeal or preempt the HHCA or those portions of the Admission Act which pertain to the HHCA, so the HHCA (including its restrictions on eligibility for a Hawaiian homestead) would presumably remain in effect for such current and possible future beneficiaries as may wish to remain with the program. The Hawaiian home lands are available under the HHCA only to those with 50% or greater blood quantum, so they are not, and cannot be, "dedicated to Native Hawaiian use" because most "Native Hawaiians" as defined in this bill do not have the requisite blood quantum to qualify. If the Hawaiian home lands program should terminate or be found unconstitutional, the lands, which are all impressed with an express trust under the Newlands Resolution and the Admission Act for all the state's citizens, would remain in the ownership of the State of Hawai'i and would be available for one of the other enumerated trust applications, so any divestiture would have to be consistent with the trust limitations. Supporting a "Native Hawaiian governing entity" independent of the State of Hawai'i is not within any of the permissible uses of trust resources.

b. The remainder of the ceded lands are definitely not "dedicated to Native Hawaiian use."[15] Neither the Newlands Resolution nor the Organic Act nor the Admission Act

[15] The Island of Kaho'olawe is not an exception to this. There is a popular belief that this former military bombing range is now "for Native Hawaiians," but this is not what the law provides. This island was returned from the Federal government to the state by deed dated May 7, 1994 pursuant to Title X of Public Law 103-139. Neither the statute nor the deed imposed a requirement that the island be in any way "dedicated to Native Hawaiian use." The State of Hawai'i in HRS section 6K-9, in anticipation of the Federal transfer, stipulated that "[u]pon its return to the State, the resources and waters of Kaho'olawe shall be held in trust as part of the public land trust; provided that the State shall transfer management and control of the island and its waters to the sovereign native Hawaiian entity upon its recognition by the United States and the State of Hawaii." At that time there was no "sovereign native Hawaiian entity" and there has been none since that time. HRS section 6K-3 provides that the island shall be used "solely and exclusively" for (1) preservation and practice of all rights customarily and traditionally exercised by native Hawaiians for cultural, spiritual, and subsistence purposes; (2) preservation and protection of its archaeological, historical, and environmental resources; (3) rehabilitation, revegetation, habitat restoration, and preservation; and (4) education. Only one of these uses even mentions persons of Hawaiian extraction, and the use of an initial lower-case "n" in the term "native Hawaiian" implies (perhaps inadvertently) that only those with 50% Hawaiian "blood" are referred to. In any case, the statute does not limit the "practice" of these "rights" to "Native Hawaiians" or even to "native Hawaiians." There is no requirement that the educational use of the island be limited to "Native Hawaiians" as defined in S. 746. Indeed, since the Commission designated by HRS chapter 6K to administer the island is a state agency established by state statute, Rice v. Cayetano, 528 U.S. 495 (2000) would indicate that any preference or special treatment for "native Hawaiians" (or for "Native Hawaiians" as defined in S. 746) would be vulnerable to constitutional challenge. Thus Kaho'olawe would not fall within the provisions of this subsection.

makes any reference to "Native Hawaiians" as defined in this bill. Under State law (HRS section 10-13.5), OHA receives 20% of the revenues from certain of the ceded lands, but this is a self-inflicted and revocable undertaking on the State's part and extends only to funds, not to land as such.[16] For the reasons set out in the preceding paragraph, the statutory ceded lands trust presents a formidable obstacle to any uncompensated "transfer" of any of those lands to any party including a "Native Hawaiian governing entity."

c. Any action by the state to "dedicate" state property "to Native Hawaiian use," either in the past or before passage of this act would, in light of *Rice v. Cayetano,* 528 U.S. 495 (2000) be open to challenge as an unconstitutional race-conscious measure. Thus even if there is currently state land which is apparently "dedicated to Native Hawaiian use," it should not be assumed that such a dedication would be legally valid.

Resourcing the new "government." The question of resources for the new "government" holds great promise of destroying that "governing entity" even if this bill survives constitutional challenge. If the "governing entity" is ever to be anything more than a welfare client of the United States–a true "domestic dependent nation" in the fullest and most demeaning sense–it will need resources. Before Congress passes this measure, both the Congress and the people of the State of Hawai'i must have a clear picture of the sources and uses of funds for this "nation," and an assurance that the "governing entity" will not simply become a public charge. Without an independent and honorable income–not "welfare" from either the Federal or the State government–the "governing entity" will be nothing more than a public cancer.

Yet there is no easy source of revenue for this new entity other than the United States Treasury. The new government could tax its own citizens, but such a course may be controversial if the property and income of those citizens is also taxable by the State of Hawai'i which could well be the case if the citizens of the "Native Hawaiian governing entity" are also citizens and residents of the State of Hawai'i. *See Oklahoma Tax Comm. v. Chickasaw Nation*, 515 U.S. 450 (1995). As last August's joint Senate Committee on Indian Affairs/House Committee on Resources hearings in Honolulu made clear, Hawaiians are already deeply divided over the bill and many are passionately opposed to it. That opposition can only become more widespread as it becomes clear that "sovereignty" is not free.

Indeed, when it is known that the new "government" will have to look to its own citizens for resources, those citizens may ask what equivalent benefits will accrue from their new sovereign status. Some may feel that a privileged political relationship with the United States should bring some immediate and tangible reward. Yet this bill offers no Federal resources either to the new "governing entity" or to its citizens, and Section 9(b) of the bill expressly denies to Native Hawaiians any benefits available through the Bureau of Indian Affairs.

---

[16] OHA, of course, is not terminated by this legislation and may, in the unlikely event that constitutional objections can be overcome, have a continuing role to promote the "betterment" of at least those persons of Hawaiian ancestry who choose not to join the Native Hawaiian government. OHA may well decide that its fiduciary responsibilities require it to oppose the uncompensated transfer of any ceded lands which represent a possible source of revenue.

It is hardly fair to ask Congress, or the citizens of the State of Hawai'i who must live with this new entity, to support this bill until these fundamental questions are addressed: What exactly will the "governing entity" be? Which governmental functions will it carry out for its citizens, and which will be left for the State of Hawai'i and the United States? Since it has no valid claim to the ceded lands or other property of the State of Hawai'i or the Federal government, what will be its territory (if any) and how will that territory be acquired? What will be its resource base? Will it look to the Federal government for support in the future, and if so, for how long and to what extent will that support be granted?

Other questions come to mind. Throughout the state, persons of Hawaiian ancestry live and work side by side with the rest of the state's citizens. Will Hawaiian businesses have tax exemptions or other immunities not shared by the non-Hawaiian businesses next door or across the street? If so, how likely is that to promote "reconciliation" and harmony? And what will be the status of the "governing entity" and of persons of Hawaiian ancestry (whether or not citizens of the "governing entity") in other states? Will the entity or its citizens be able to claim the immunities of the "governing entity" outside Hawai'i? What authority, if any, will this new entity have in foreign relations?

Leaving these questions to be resolved between the new entity and the Department of the Interior ignores the reality that all the citizens of the State of Hawai'i and the nation will be profoundly affected by the answers. These citizens have had little opportunity either to be informed or to be heard, and the voices of opposition at last August's hearing were somehow lost in transmission to Washington. That should not happen again in this session.

Ultimately, the bill will fail to achieve the "reconciliation" which Senator Akaka seeks. This bill offers nothing to people of Hawaiian ancestry but disharmony, discontent and disappointment. If Hawai'i's political history is any guide, we can expect disputes among ethnic Hawaiians as factions form and fight among themselves for control of, or recognition as, the single "governing entity." There will be disputes between Hawaiian groups and the Federal government as those who see no future in the first-recognized "governing entity" demand separate recognition for an entity of their own. There will be disputes between one or more of these entities and the State of Hawai'i over the questions of resources, jurisdiction, taxation and all the other issues presented when two sovereignties must occupy the same physical space. There will be

disputes between the entity and its "citizens" as these citizens discover few benefits and many disappointments in "sovereignty."

Underlying all these disputes will be the issue of constitutionality, an issue almost certain to be resolved in a way that dashes the hopes of the Native Hawaiians who placed their faith in this bill and in Congress' implied assurance that this time, segregation will work.

After all these disputes have run their course, what will persons of Hawaiian ancestry have achieved? Even if the bill survives constitutional challenges, our national experience with racial and political segregation, like that of the rest of the world, demonstrates that no good comes from such things; that the advantages to the dominant race or class, if any, are transitory, and that such segregation plants seeds of hatred that flourish generations after the inevitable abolition of the formal structures of separateness. If the bill is declared unconstitutional, Hawaiians will have one more "broken promise" to add to the litany of irremediable grievances. Whatever the outcome, those who put their hopes on this bill, along with the other citizens of the State of Hawai'i and perhaps of other states where Hawaiians reside, will have enduring scars.

At the conclusion of its opinion in *Rice v. Cayetano,* the Court stated:

> When the culture and way of life of a people are all but engulfed by a history beyond their control, their sense of loss may extend down through generations, and their dismay may be shared by many members of the larger community. As the State of Hawai'i attempts to address these realities, it must, as always, seek the political consensus that begins with a sense of shared purpose. One of the necessary beginning points is this principle: The Constitution of the United States, too, has become the heritage of all the citizens of Hawai'i.

S. 746 turns away from the Constitution, back to the discredited politics of race and ancestry. Congress should not take this path.

SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.
SEC. 10. SEVERABILITY.

Comment: No comments are provided on these sections of the bill.

Conclusion

S. 746 should not become law. It won't work. There is no need for it. It is almost certainly unconstitutional. It is replete with ambiguity and uncertainty. It perpetuates inaccurate and divisive views of history and law. Vital questions about its effects remain unanswered. It sets a dangerous precedent for other non-tribal entities elsewhere in the country.

And it is morally, politically and socially wrong. Its basic premise is that race and ancestry are valid grounds for the permanent political and social segregation of American citizens. By law, it divides forever not only the people of Hawai'i, but the people of the United States, on grounds which the U. S. Supreme Court has termed "odious to a free people."

We have known such divisions before, in this country and elsewhere, and we have seen their brutal and corrosive effects. Have we not learned from that?

PAUL M. SULLIVAN
September 2001

37210

TO DWELL ON THE EARTH IN UNITY: *Rice*, *Arakaki*, AND THE GROWTH OF CITIZENSHIP AND VOTING RIGHTS IN HAWAI`I

by PATRICK W. HANIFIN[1]

"*God hath made of one blood all nations of men to dwell on the earth in unity.*" Thus began the first Constitution of the Kingdom of Hawai`i in 1840.[2] As reflected in these words, Hawai`i has a long tradition of political inclusion: of including as citizens all people born on the `aina,[3] no matter where their families came from; and of including as voters a growing proportion of those who dwell in Hawai`i. When Hawai`i was an independent country, everyone born in Hawai`i (except children of foreign diplomats) was a citizen.[4] The government of the Kingdom of Hawai`i actively encouraged immigration and offered immigrants easy naturalization and full political rights. Race and ethnicity did not matter.

Current proposals to create a racially exclusive government or agency for ethnic Hawaiians[5] alone contradict Hawai`i's historical tradition. In 1978, in a departure from Hawai`i's long tradition of inclusion, a state agency, the Office of Hawaiian Affairs ("OHA") was created with voting and office-holding restricted to ethnic Hawaiians.[6] The United States Supreme Court, in *Rice v. Cayetano*,[7] and the federal District Court, in *Arakaki v. State*,[8] recently drew Hawaii back to the Hawaiian tradition of inclusion, as well as to the American constitutional principle of equal protection, by striking down that racial dis-

---

[1] Patrick W. Hanifin received his bachelor's degree in government from the University of Notre Dame in 1977; his law degree from Harvard in 1980; and a Masters in Public Policy from Harvard's John F. Kennedy School of Government in 1986. He is a partner in Im Hanifin Parsons, LLC.

[2] Hawai`i Constitution of 1840, Preamble, in LYDECKER, ROSTER OF LEGISLATURES OF HAWAI'I, 1842-1918 (hereinafter "LYDECKER") at 8 (1918) (emphasis added). This provision was first enacted as the opening of the Declaration of Rights of 1839, Hawai`i's first bill of rights. It paraphrases Acts, 17 21-26, in the King James Version of the Bible.

[3] *I.e.* the land of Hawai`i. M.K. PUKUI AND S.H. ELBERT, HAWAIIAN DICTIONARY, 11 (1986).

[4] "Citizen" is used here in the broad sense of a member of a political community, owing allegiance to that community. *See* BLACK'S LAW DICTIONARY 237(7th ed., 1999). The word can also be used in a narrower sense in which it refers to a member of a political community that has a republican form of government. In this narrower sense, it can be said that republics have "citizens," monarchies have "subjects," and tribes have "members." This article will refer to citizens of the United States and the Republic of Hawaii and to subjects of the Kingdom of Hawaii and the United Kingdom. "Citizenship" will be used in the broad sense signifying the status of a member of a political community.

[5] The term "ethnic Hawaiian" is used to refer to any person who can trace his ancestry back to one or more persons who inhabited Hawai`i in 1778, before the first Europeans arrived. *See* Haw. Rev. Stat. § 10-2, defining "Hawaiian" as "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778 and which peoples thereafter have continued to reside in Hawai`i." As discussed in part V below, there are numerous competing proposals that would variously give ethnic Hawaiians exclusive control of all or part of the government of Hawai`i, and all or part of the public land of Hawai`i.

[6] Hawai`i State Constitution Art. XII, §§ 5, 6, enacted in 1978.

[7] 528 U.S. 495, 120 S.Ct. 1044, 145 L.Ed. 2d 1007 (2000).

[8] Haw. No. CV-00-00514 HG-BMK (September 19, 2000). The author of this article was one of the attorneys representing the Plaintiffs in *Arakaki*.

crimination. Opponents of *Rice* have responded with proposals for racial separatism in the name of "recognizing" or "restoring" a race-based Hawaiian nation.[9] However, a racially exclusive government would not be a revival of the Kingdom of Hawai`i. On the contrary, the successors to the Kingdom, a polity with a multi-racial citizen body, are the multi-racial State of Hawai`i and United States of America.

This article surveys the historical development of the Hawaiian tradition of political inclusiveness and draws some implications for the current debate concerning proposals to create a government exclusively for ethnic Hawaiians. The rule that everyone born in Hawai`i is a citizen derives both from the Anglo-American common law and from traditional Hawaiian custom. Voting rights expanded as the Kingdom of Hawai`i developed from an absolute monarchy to a constitutional monarchy. However, coups by contending factions sometimes succeeded in reducing the electorate to those likely to support the regime in power. The period of coups ended and voting rights expanded when the United States annexed Hawai`i and extended American citizenship and constitutional rights to the citizens of Hawai`i. This article discusses the application of the federal constitutional right to vote to OHA in *Rice v. Cayetano*, and *Arakaki v. State of Hawai`i*, which voided the first laws in the history of Hawai`i that restricted voting and candidacy to a single ethnic group. The final section of this article analyzes proposals to revive racially exclusive government by manufacturing an Indian tribe and argues that such government would contradict both the Hawaiian tradition of inclusion and the American Constitution.

I. THE COMMON LAW RULE: CITIZENSHIP BY PLACE OF BIRTH

Hawai`i, when it was independent, followed the Anglo-American common law rule of "*jus soli*": everyone born in the country and subject to its jurisdiction is a citizen.[10]

The common law rule traces back to the Norman Conquest of England in 1066. When William of Normandy made himself William the Conqueror of England, he insisted that everyone in England was his subject and owed loyalty directly to him as the King. To be the King's loyal subject, a person necessarily had to be the King's legal subject. Hence, the rule developed at common law that almost everyone born in England was a subject of the King.[11] The exceptions were children of foreign diplomats and occupying armies.[12] Under the common law, a child born outside England was not an English subject, even if his parents were English subjects.[13] However, Parliament passed statutes that made most such children subjects.[14]

The English common law rule lasted through the 19th century as Britain built an empire that circled the globe and that was largely populated by people who were not of English ancestry. Under British law, anyone born in the Empire was a British subject and any British subject living in a parliamentary constituency (*i.e.* in the British Isles) could vote if he met the voter requirements (being male, satisfying property qualifications, if any, etc.). For instance, an Indian who moved from Calcutta to London had the same rights as a British subject born in London.[15]

---

[9] *E.g.* United States Senate Bill No. 2899, introduced in 106th Congress, 2d Session, in July 2000 and Senate Bills 81 and 746 in the 107th Congress; *see* U.S. Senate Committee Report 106-424. These bills are discussed in Part V below.

[10] GORDON, MAILMAN & YALE-LOEHR, IMMIGRATION LAW AND PROCEDURE, § 92.04[3] (1999).

[11] BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Bk. I, Chapter 10 *366-*374 (1765); *United States v. Wong Kim Ark*, 169 U.S. 649, 655 (1898); IMMIGRATION LAW AND PROCEDURE, § 92.03[a].

[12] *See Wong Kim Ark*, 169 U.S. at 655 (discussing English common law rule).

[13] BLACKSTONE at *373.

[14] *See Wong Kim Ark*, 169 U.S. at 668-671(discussing English statutes); BLACKSTONE at *373 (discussing English statutes).

[15] DICEY, THE LAW OF THE CONSTITUTION, p. liv n. 43 (1982 reprint of 1914 edition).

The English common law rule was adopted in the United States as part of the American common law, with royal "subjects" becoming republican "citizens."[16] In 1856, in *Dred Scott v. Sanford*,[17] the Supreme Court invented an exception to the common law: the Court barred blacks from citizenship, even if they were born free in the United States. That decision was widely condemned in the North and helped spark the Civil War. After the North won the Civil War, the Fourteenth Amendment overruled *Dred Scott* by constitutionalizing the common law rule that, "[a]ll persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."[18]

Applying the Fourteenth Amendment in light of the long history of common law rule of citizenship by birth, the United States Supreme Court held in *United States v. Wong Kim Ark*[19] that children born in the United States are native-born American citizens, even if their parents are aliens who are not eligible for citizenship. "The Fourteenth Amendment affirms the ancient and fundamental rule of citizenship by birth within the territory, in the allegiance and under the protection of the country, including all children here born of resident aliens . . . of whatever race or color."[20]

II. THE KINGDOM OF HAWAI`I

A. Hawaiian Custom

Before contact with the outside world, Hawaiian custom was in accord with the rule that all people living in a kingdom were subjects of the king, no matter where they had come from. As in England, a person became a subject either by being born on land that was within the kingdom's territory or by pledging his loyalty to the king.

When, in 1778, Captain James Cook became the first European to reach Hawai`i, it was divided into four kingdoms.[21] The aristocratic ali`i[22] and their retainers moved freely among these kingdoms, taking the best jobs they could find from whichever king or high-ranking ali`i that would hire them.[23] The maka`ainana (the commoners) generally remained on the land where they were born but they, too, had

---

[16] *United States v. Wong Kim Ark*, 169 U.S. at 658; IMMIGRATION LAW AND PROCEDURE, § 92.03[b]. The Constitution gives Congress the power to enact uniform rules for naturalization. U.S. Constitution, Art. I, sec 8, clause 4.

[17] 60 U.S. 393, 19 How. 393 (1856).

[18] U.S. Constitution, Fourteenth Amendment, § 1.

[19] 169 U.S. 649 (1898).

[20] *Id.*, 169 U.S. at 693.

[21] 1 R.S. KUYKENDALL, THE HAWAIIAN KINGDOM (hereinafter "HAWAIIAN KINGDOM") 30 (1938). The four contending kingdoms were based on the islands of (1) Hawai`i; (2) Maui and surrounding islands; (3) Oahu; and (4) Kauai and Niihau. Captain Cook was a British Royal Navy officer who led an expedition on orders of the British Admiralty to explore the Pacific and to report back on what he found. He was killed in a brawl during his second visit to Hawai`i in 1779. His crew returned to Britain and reported the existence of Hawai`i to the Admiralty and the world.

[22] The "ali`i" were the traditional Hawaiian chiefs, i.e. the hereditary aristocracy. They claimed the right to govern the commoners based on their alleged descent from the gods. 1 KUYKENDALL, HAWAIIAN KINGDOM at 8; M. BECKWITH, HAWAIIAN MYTHOLOGY 376-77 (1940). Some ali`i (including the family of Kamehameha the Great, founder of the unified Kingdom of Hawai`i) claimed descent from relatively recent immigrants from the magical land of "Kahiki" (a mythologized Tahiti) who had introduced new religious beliefs and had taken power from earlier lines of ali`i. M. SAHLINS, HISTORICAL METAPHORS AND MYTHICAL REALITIES 9-12, 24 ("usurpation . . . was the very principle of political legitimacy in the Hawaiian system") (1981); V. VALERI, KINGSHIP AND SACRIFICE: RITUAL AND SOCIETY IN ANCIENT HAWAII, 8-9, 143 (1985); BECKWITH, HAWAIIAN MYTHOLOGY 369-73; M. BECKWITH, THE KUMULIPO 141 (1972).

[23] MALO, HAWAIIAN ANTIQUITIES 58-59, 61, 65 (1951 reprint of 1898 ed.). This tradition was an ancient precedent for the Kingdom of Hawai`i's practice of advancing some immigrants to prominent political positions.

the right to move about in search of better economic conditions.[24] "Maka`ainana" literally means "people who attend the land."[25] The maka`ainana were generally "kama`aina," i.e. persons who were born in the area where they dwelled.[26]

The king expected the people who tended the land that he governed, whether born there or immigrants, to be his loyal subjects and to follow the rules that he laid down. When a king extended his kingdom by conquering an area from another king, the maka`ainana living on the conquered land became subjects of the conqueror. King Kamehameha I, like William the Conqueror, was a feudal overlord who demanded loyal obedience from all the subjects that he had conquered in his rise to unchallenged power over Hawai`i, wherever they had been born.[27] He rewarded his loyal followers with grants of land populated by peasants who paid rents and taxes. In return, his ali`i followers were obliged to support him in his wars and pass on to him as much as he demanded of the profits of peasant labor.[28]

Kamehameha also hired immigrant European and American advisors, such as John Young and Isaac Davis, to help him conquer and govern the islands. Although there was as yet no written law of citizenship, Kamehameha made his advisors prominent members of the political community. He rewarded them with ali`i status and prominent government positions.[29] For instance, Kamehameha made Young the governor of the island of Hawaii and made Oliver Holmes governor of Oahu.[30]

B. The Common Law Rule of *Jus Soli* Adopted in Hawai`i

In the mid-nineteenth century, the king and subjects of the Kingdom of Hawai`i transformed the feudal monarchy of Kamehameha I into a constitutional monarchy based on ideas of law and democ-

---

[24] HANDY & HANDY, NATIVE PLANTERS IN OLD HAWAII 288 (1972); CHINEN, THE GREAT MAHELE 5-6 (1958) MACKENZIE, NATIVE HAWAIIAN RIGHTS HANDBOOK 4 (1991).

[25] PUKUI AND ELBERT, HAWAIIAN DICTIONARY, 224.

[26] *Id.* at 124. "Kama'aina" literally means child of the land. *Id.* In common parlance, it is extended to refer to all long-time residents of the land. Testimony of such long-time residents can be used to prove custom and usage of an area. *State v. Hanapi*, 89 Haw. 177, 187 n. 12, 970 P.2d 485, 486 n. 12 (1998); *Application of Ashford*, 50 Haw. 314, 316, 440 P.2d 76, 79 *reh'g denied*, 50 Haw. 452, 440 P.2d 76 (1968); *In re Boundaries of Pulehunui*, 4 Haw. 239 (1879).

[27] Kamehameha I, sometimes called Kamehameha the Great, founded the Kingdom of Hawai`i by conquest. He was the cousin of the king of the Island of Hawai`i and led a successful revolt, making himself king of that island. Moving quickly to acquire guns, western ships and advisors, he disrupted the balance of power among the four kingdoms and successfully invaded the kingdoms of Maui and Oahu. Repeated threats of invasion persuaded the king of Kaua`i to acknowledge Kamehameha as overlord of Kaua`i. 1 KUYKENDALL, HAWAIIAN KINGDOM at 29-60. Kamehameha the Great founded a dynasty and was succeeded by four kings of the same name: his sons Kamehameha II and Kamehameha III; and his grandsons Kamehameha IV and Kamehameha V.

[28] CHINEN, THE GREAT MAHELE 5-6 (1958); Principles Adopted by the Board of Commissioners to Quiet Land Titles, in their Adjudication of Claims Presented to Them, Laws 1848, p. 81, reprinted in R.L.H. 1925, Vol. II, p. 2124 (describing feudal land tenure system and explaining that all tenants, whether native or foreign, owned obedience to the king); In re Estate of His Majesty Kamehameha IV, 2 Haw. 715, 718-719 (1864) (describing feudal system). See generally MALO, HAWAIIAN ANTIQUITIES 52-64, 187-204 (discussing the pre-contact system of government); 1 KUYKENDALL, HAWAIIAN KINGDOM at 9-10, 269-70 (same). The pre-contact Hawaiian political economy cannot be distinguished from feudalism on the ground that the maka`ainana were not serfs bound to the land, *compare* M. MACKENZIE, NATIVE HAWAIIAN RIGHTS HANDBOOK at 4. Many medieval European peasants were not serfs either. *See* H.J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION 317 (1983) (a third to a half of the medieval peasants were not serfs). To compare the pre-contact Hawaiian system with the wide variety of medieval European customs and legal systems that fall under the label "feudal", *see id.* at 295-332; M. BLOCH, 1 and 2 FEUDAL SOCIETY (1961); F.W. MAITLAND, THE CONSTITUTIONAL HISTORY OF ENGLAND, 23-39, 141-64 (1963 reprint of 1908 ed.).

[29] 1 KUYKENDALL, HAWAIIAN KINGDOM at 25. Young married an ali`i who was the niece of Kamehameha I; his son John Young II, also known as Keoni Ana, became minister of the interior and premier of the Kingdom in the 1840s and his granddaughter Emma became Queen as the wife of Kamehameha IV. 1 KUYKENDALL, HAWAIIAN KINGDOM at 263; 2 KUYKENDALL, HAWAIIAN KINGDOM at 78, 83.

[30] 1 KUYKENDALL, HAWAIIAN KINGDOM at 54.

racy inspired by England and America. With the cooperation of the king and his ali`i advisors, the new court system was designed and managed by American lawyers such as John Ricord and William Lee, who had been trained in the common law.[31] An early statute expressly authorized the courts to apply common-law rules,[32] and the judges, most of them trained in America and England, typically did so. Like the courts of every common law jurisdiction, the courts of Hawai`i adapted the common law to local conditions.

The common law rule that everyone born in a country and subject to its jurisdiction is a subject accorded with the Hawaiian tradition and was readily adopted as part of the new Hawaiian legal system. An early statute, I Statute Laws of Kamehameha III, § III, expressly enacted the common law rule:

> All persons born within the jurisdiction of this kingdom, whether of alien foreigners, of naturalized or of native parents, and all persons born abroad of a parent native of this kingdom, and afterwards coming to reside in this kingdom, shall be deemed to owe native allegiance to His Majesty. All such persons shall be amenable to the laws of this kingdom as native subjects.[33]

In 1850, H.W. Whitney, born in Hawaii of foreign parents, asked the Minister of the Interior, John Young II, about his status. The question was referred to Asher B. Bates, legal adviser to the Government, who replied that, "not only the Hawaiian Statutes but the Law of Nations, grant to an individual born under the Sovereignty of this Kingdom, an inalienable right, to all of the rights and privileges of a subject."[36]

In 1856, the Kingdom's Supreme Court decided *Naone v. Thurston*,[37] recognizing that persons born in Hawai`i of foreign parents were Hawaiian subjects. The defendant Asa Thurston challenged a law that required foreigners to pay $5 extra a year to educate their children in English language schools. The court's statement of the facts shows that the junior Thurstons, born in Hawai`i, were subjects of the Kingdom by birth.[38] This may have been the first equal protection case in Hawai`i's history. Thurston lost for two reasons. First, there was no equal protection clause in the 1852 Constitution.[39] Second, the Supreme Court believed that the law advantaged, rather than disadvantaged Hawaiian-born children of foreigners because it gave them a better education than children in the Hawaiian language schools and "a better style of education must . . . cost a better price."[40] The court quoted the legislative preamble to the challenged statute, which explained that the reason for the special education was

---

[31] 1 KUYKENDALL, HAWAIIAN KINGDOM, at 236-37, 241-45; Silverman, *Imposition of a Western Judicial System in the Hawaiian Monarchy*, 16 THE HAWAIIAN J. OF HISTORY, 48, 56-61 (1982).

[32] Third Act of Kamehameha III, An Act to Organize the Judiciary Department of the Hawaiian Islands, ch. 1, § IV (September 7, 1847). *See Hawaii v. Mankichi*, 190 U.S. 197, 211 (1903) (noting that 1847 marked the beginning of the common law system in Hawai`i). The statute also authorized the courts to apply civil law principles.

[33] *Thurston v. Allen*, 8 Haw. 392, 398-99 (1892) (noting that in only about 9 of 900 reported cases did the courts of the Kingdom depart from the Anglo-American common law rules).

[34] *Id.* at 398; *Branca v. Makuakane*, 13 Haw. 499, 505 (1901) (Hawai`i courts departed from English common law rules when rules were based on conditions that did not apply to Hawai`i or were excessively technical). *See generally*, Paul Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai`i*, 20 U. HAW. L. REV. 99 (1998); Damien P. Horigan, *On the Reception of the Common Law in the Hawaiian Islands*, 3 HAW. BAR J. No. 13, 87 (1999).

[35] I Statute Laws of Kamehameha III, p. 76, § III (1846).

[36] JONES, NATURALIZATION IN HAWAII 18 (1934) (citing Interior Department files from the Archives of Hawai`i).

[37] 1 Haw. 220 (1856).

[38] *Naone v. Thurston*, 1 Haw. at 220-221 (referring to "subjects of foreign birth or parentage" and citing I Statute Laws, p. 76).

[39] *Id.* at 221.

[40] *Id.* at 222.

that children born in the Kingdom of foreign parents were "destined to have a great influence, for good or evil, on the community."[41]

In 1859, the Kingdom's statutes were codified and the provision of I Statute Laws of Kamehameha III, § III, was dropped. However, the common law principle of *jus soli* remained.[42] Moreover, the 1859 Civil Code continued to provide that every naturalized subject would "be deemed to all intents and purposes a native of the Hawaiian Islands and entitled to all the rights, privileges and immunities of an Hawaiian subject."[43] Thus, Hawaiian subjects were either native-born or naturalized.[44]

In 1868, the Minister of the Interior rendered an official opinion that:

> In the judgment of His Majesty's government no one acquires citizenship in this Kingdom unless he is born here, or born abroad of Hawaiian parents (either native or naturalized) during their temporary absence from the Kingdom, or unless having been the subject of another power, he becomes the subject of this Kingdom by taking the oath of allegiance.[45]

The effect of the repeal of the citizenship provision of I Statute Laws of Kamehameha III, § III, was that if a Hawaiian subject permanently relocated out of Hawai'i and had a child in a foreign country, then that child was not a Hawaiian subject. Under the common law, a foreign-born child of a citizen is not a citizen.[46] Although the common law can be altered by statute, if no statute makes a foreign born child a citizen, then the child is not a citizen.[47] In *Wong Foong v. United States*, a child born in China in 1894 of a naturalized Hawaiian subject claimed that he had inherited his father's status and therefore had become a citizen of the United States when the Organic Act[48] converted Hawaiian citizens into American citizens.[49] The Ninth Circuit rejected the argument because it could not find any applicable Hawaiian law that varied the common law rule of *jus soli*.[50] The court interpreted the Minister of the Interior's 1868 ruling to apply only if *both* of a child's parents were Hawaiian citizens temporarily living abroad.[51] Thus, if a Hawaiian subject of ethnic Hawaiian ancestry moved to the United States, married, and had a child in the United States after 1859, then that child and the child's descendants would not have been Hawaiian subjects, even though they were ethnically Hawaiian. This illustrates the basic point that a person could be a subject of the Kingdom only by being born in Hawaii or by

---

[41] *Id.*

[42] *Wong Foong v. U.S.*, 69 F.2d 681, 682-683 (9th Cir. 1934).

[43] 1859 Civil Code § 432.

[44] *See United States v. Wong Kim Ark*, 169 U.S. at 664 (quoting Kent's Commentaries on the common law defining "natives" as "all persons born within the jurisdiction").

[45] Letter ruling from Minister of Interior F.W. Hutchinson, in response to inquiry from H.H. Parker, regarding his citizenship status. HAWAIIAN GAZETTE (official publication of the Government of the Kingdom) Vol. IV, No. 1, January 22, 1868, p. 2, col. 2; PACIFIC COMMERCIAL ADVERTISER, January 25, 1868, p. 2, col. 4, quoted in *Wong Foong v. U.S.*, 69 F.2d at 682. In *Cummings v. Isenberg*, 89 F.2d 489 (D.C. Cir. 1937), the court expressed doubt about the official status of Minister Hutchinson's letter because plaintiff cited it to the court only by citing Wong Foong which itself only cited the PACIFIC COMMERCIAL ADVERTISER account. However, the Minister's ruling was published in the HAWAIIAN GAZETTE, which was the official publication announcing governmental actions. *See* HAWAIIAN GAZETTE, January 25, 1868, p. 2, col. 1 (setting out its status as official government publication).

[46] *Wong Kim Ark*, 169 U.S. at 670; *Wong Foong*, 69 F.2d 681.

[47] *Wong Kim Ark* at 668-671.

[48] Act of April 30, 1900, 31 Stat. 141. *See* discussion of Organic Act in Part IV below.

[49] *Wong Foong v. United States*, 69 F.2d at 682.

[50] *Id.*

[51] *Id.*, 69 F.2d at 683. In *Cummings v. Isenberg*, 89 F. 2d at 493-96, the District of Columbia Circuit Court declined to decide whether a person born in Germany in 1880 whose father was a naturalized Hawaiian subject had acquired his father's status as a Hawaiian subject and so had become an American citizen by virtue of the Organic Act. The court found that, even if he had been an American citizen, he gave up that citizenship by his own actions.

being naturalized. Except for the rare case of the child born while its parents were temporarily outside the Kingdom, ancestry was irrelevant to citizenship.[52]

In 1892, "the common law of England as ascertained by English and American decisions" was declared to be the common law of Hawai'i except where a different rule had been "fixed by Hawaiian judicial precedent, or established by Hawaiian usage."[53] This included the common law rule of *jus soli*.[54] The English, American and Hawaiian precedents, as well as Hawaiian usage, all coincided on a rule of citizenship by place of birth. By 1893, about 1 out of 5 native-born subjects was not ethnic Hawaiian and the proportion was rapidly increasing.[55]

C. Citizenship Rights for Immigrants to the Kingdom

In its last half century, the government of the Kingdom actively sought immigrants from around the world, to replenish a population sadly depleted by disease,[56] to recruit persons with modern skills, and to provide labor for the growing sugar industry. As part of this effort, the Kingdom's statutes provided for easy naturalization of immigrants and offered political rights even to immigrants who did not wish to give up their citizenship in the countries from which they had come.[57]

The Kingdom's first written law code, published in Hawaiian in 1841 and in English translation in 1842, provided for naturalization of foreigners who married Hawaiian subjects.[58] In 1846, the Kingdom's Civil Code provided for naturalization of any alien immigrant who applied after living in

---

[52] By contrast, the United States did have statutes providing that the child born abroad of an American citizen was an American citizen if the child's American father had resided in the United States before the child was born. Act of March 26, 1790, 1 Stat. 103, 104; Act of January 29, 1795, § 3, 1 Stat. 414, 415; Act of April 14, 1802, § 4, 2 Stat. 153, 155; Act of Feb. 10, 1855, § 1, 10 Stat. 604; *Montana v. Kennedy*, 366 U.S. 308, 311-12 (1961) (before 1934, a child could inherit American citizenship only through his father, not his mother); *Weedin v. Chin Bow*, 274 U.S. 657 (1927) (father must have resided in U.S. before child born). Thus, a person such as Sanford B. Dole (legislator and judge under the Kingdom and President of the Republic) who was born in Hawai'i of a male American citizen who had immigrated to Hawaii was both a citizen of Hawai'i and of the United States. American citizenship could pass down to a second generation born in Hawai'i if (1) the grandchild's father had dual American and Hawai'i citizenship by virtue of being born in Hawai'i of an American father; (2) the grandchild's father had resided in America for some period of time, e.g. while attending college; and (3) the grandchild's father had not formally renounced his American citizenship before his child was born. Since 1934, American law has provided that a child born abroad of an American citizen is an American citizen, without regard to the gender of the American parent. Act of May 24, 1934, § 1, 48 Stat. 797.

[53] L. 1892, c. 57, § 5 (now codified at Haw. Rev. Stat. § 1-1).

[54] *Wong Foong v. United States*, 69 F.2d at 682.

[55] The 1890 census reported 40,622 ethnic Hawaiians and 7,495 native-born subjects who where not ethnic Hawaiians. Assuming that all of the ethnic Hawaiians were born in Hawai'i, native-born subjects who were not ethnic Hawaiians comprised about 15.58% of all native-born subjects. The next census, in 1896, reported 39,504 ethnic Hawaiians and 13,733 native-born subjects who where not ethnic Hawaiians. The percentage of native-born subjects who were not ethnic Hawaiians had increased to about 25.8% of the native born population in just six years. It was probably about 20% in 1893, midway between the 1890 and 1896 censuses. Statistics from THRUM'S 1900 HAWAIIAN ANNUAL 39 (1900).

[56] *See* 2 KUYKENDALL, HAWAIIAN KINGDOM 177-195 (1953); 3 KUYKENDALL, HAWAIIAN KINGDOM 116-85 (1967). The ethnic Hawaiian population fell throughout the period of the Kingdom, due to a number of causes, including exposure to diseases introduced from around the world, but has been rising ever since the United States annexed Hawai'i and introduced modern medicine and public health measures and as ethnic Hawaiians have intermarried with members of other ethnic groups. *See* E.C. NORDYKE, THE PEOPLING OF HAWAI'I, 174, 178, 190-93 (2d ed. 1989); R.C. SCHMITT, HISTORICAL STATISTICS OF HAWAI'I 9, 25-27 (1977).

[57] *See* JONES, NATURALIZATION IN HAWAI'I (summarizing the naturalization statutes of the Kingdom).

[58] Hawaiian Laws 1841-1842, Chapter X, § IX at 47 (1995 reprint of 1842 translation by William L. Richards, a naturalized subject and a member of Kamehameha III's cabinet).

Hawai`i for at least one year.[59] The Civil Code created a Bureau of Naturalization within the Ministry of Interior.[60]

The statute went on to provide that aliens who did not want to give up their citizenship in the country they came from could become "denizens," entitled to full legal rights of Hawaiian subjects.[61] The status of denizen, like the rule that aliens can be naturalized, goes back to the English common law. The King of England, by exercise of his royal authority, could make an alien a "denizen" of England, having most of the rights of an English subject.[62] In the Kingdom of Hawai`i, denizen status amounted to dual citizenship: a denizen had the rights of a subject of Hawai`i without ceasing to be a citizen of his native country.[63] Denizens had the right to vote and hold public office.[64] Similar provisions for naturalization and denization can be found in the subsequent Civil Codes of the Kingdom.[65]

Between 1844 and 1894, using these provisions, 3,239 foreigners became naturalized.[66] The Kingdom government granted another 143 foreigners letters of denization.[67] Naturalized subjects and denizens held high public office, including cabinet posts, legislative seats, and judgeships.[68]

D. Voting Rights in Kingdom Elections

Under the constitutions of the Hawaiian Kingdom, being a subject was neither necessary nor sufficient to be a voter. Denizens could vote if they met applicable qualifications of gender, literacy and wealth.[69] Women could not vote, even if they were Hawaiian subjects.[70]

Kamehameha III and the leading ali`i, with the help of their American and English advisors, transformed Hawai`i into a constitutional monarchy, loosely modeled on Great Britain, when they adopted

---

[59] I Statute Laws of Kamehameha III, § X at 78.

[60] *Id.*, at Chapter V, § 1.

[61] *Id.*, § Sec. XIV ("letters patent of denization conferring upon such alien, without abjuration of native allegiance, all of the rights, privileges, and immunities of a native"). At least after 1868, and perhaps before, an American citizen who took an oath to become a naturalized citizen of a foreign country thereby gave us his American citizenship. Act of July 27, 1868, ch. 249, 15 Stat. 223; 14 Op. Atty Gen. 295, 296 (1873).

[62] According to Blackstone, a "denizen is an alien born, but who has obtained ex donatione regis letters patent to make him an English subject: a high and incommunicable branch of the royal prerogative." BLACKSTONE at *374. By contrast, naturalization of aliens was accomplished by acts of Parliament. *Id.* The same distinction continued into the nineteenth century, even after Parliament enacted a general naturalization act delegating to the Secretary of State the power to naturalize immigrants. F. W. MAITLAND, THE CONSTITUTIONAL HISTORY OF ENGLAND, 426-28 (1963 reprint of 1908 edition of lectures first given in 1887-88).

[63] 3 G. H. HACKWORTH, DIGEST OF INTERNATIONAL LAW, 126-127 (1942).

[64] Aliens and Denizens, 5 Haw. 167 (1884).

[65] 1859 Civil Code, §§ 428-434; 1884 Civil Code, §§ 428-434.

[66] INDEX TO THE NATURALIZATION RECORD BOOKS FOR INDIVIDUALS NATURALIZED BY THE MINISTER OF THE INTERIOR OF THE HAWAIIAN ISLANDS, 1844-1894 (no date) (available in Hawai`i State Archives). This total included 1105 Americans; 763 Chinese; 596 British subjects; 242 Portuguese; 230 Germans; 47 French citizens; 68 other Europeans; 136 from Pacific Islands; 27 from South America; and 25 others. Id. Three Japanese were naturalized. Historical note appended to Organic Act, § 4 in 15 MICHIE'S HAWAI`I REVISED STATUTES ANNOTATED at 30.

[67] H. ARAI, INDICES TO CERTIFICATES OF NATIONALITY 1846-1854, DENIZATION 1846-1898, OATHS OF LOYALTY TO THE REPUBLIC FROM OAHU 1894, AND CERTIFICATES OF SPECIAL RIGHTS OF CITIZENSHIP 1896-1898 (1991). This index is on file in Hawai`i State Archives (Ref. 351.857 H3). It is unpaginated and the number given in the text is derived from a hand count of the indexed names.

[68] See list of cabinet members in 1891 THRUM'S HAWAIIAN ANNUAL 92-95; GAVIN DAWS, SHOAL OF TIME, 214 (1968) (26 of 37 cabinet appointees between 1874 and 1887 were not ethnic Hawaiians); 3 KUYKENDALL, HAWAIIAN KINGDOM at 188, 248 (discussing numbers of cabinet members and legislators who were not ethnic Hawaiians); *see* LYDECKER (listing members of each legislature); see the list of judges in the opening pages of each of the first 10 volumes of the Hawaii Reports.

[69] Aliens & Denizens, 5 Haw. 167 (1884); 1852 Const. Art. 78.

[70] Id.; 1852 Const. Art. 78; 1864 Const. Art. 62.

the 1839 Declaration of Rights – the "Hawaiian Magna Charta"[71] – and the Constitution of 1840.[72] The Declaration of Rights, which was incorporated into the 1840 Constitution declared:

> God hath made of one blood all nations of men to dwell on the earth in unity and blessedness. God has also bestowed certain rights alike on all men and all chiefs, and all people of all lands.
>
> . . .
>
> God has also established government, and rule, for the purpose of peace; but in making laws for the nation, it is by no means proper to enact laws for the protection of the rulers only, without also providing protection for their subjects.[73]

The adoption of the 1840 Constitution, incorporating the Declaration of Rights, marked Hawai`i's transition to constitutional monarchy and the adoption of the ancient common law principle that, "The King must not be under man but under God and under the law because law makes the King."[74] The Hawai`i Supreme Court later explained that "Kamehameha III originally possessed, in his own person, all the attributes of absolute sovereignty. Of his own free will he granted the Constitution of 1840, as a boon to his country and people, establishing his Government upon a declared plan."[75] That constitution introduced the innovation of representatives chosen by the people.[76] "This for the first time gave the common people a share in the government – actual political power."[77] A subsequent statute defined the procedure of choosing the representatives by a petition system.[78]

The 1852 Constitution placed elections on a more formal basis.[79] Advancing ahead of Britain, Hawai`i adopted universal manhood suffrage: "Every male subject . . . whether native or naturalized, and every denizen of the Kingdom, who shall have paid his taxes, who shall have attained the full age of twenty years, and who shall have resided in the Kingdom for one year . . . shall be entitled to one vote."[80]

---

[71] 1 KUYKENDALL, HAWAIIAN KINGDOM at 160.

[72] "Foreign contacts in general, and especially the work of the American missionaries over a period of twenty years led to the development of liberal ideas, if not an actual liberal movement, among the Hawaiian people; and this was viewed rather sympathetically by the Kings and several of the influential chiefs." KUYKENDALL, CONSTITUTIONS OF THE HAWAIIAN KINGDOM, (hereinafter, "CONSTITUTIONS") Hawaiian Historical Society Papers, No. 21 (1940) at 7. See W.D. Alexander, A Sketch of the Constitutional History of the Hawaiian Kingdom, 1894 THRUM'S HAWAIIAN ANNUAL 46-49 (Declaration of Rights and Constitution were originally composed in Hawaiian by Hawaiians and show influence of Bible and American Declaration of Independence).

[73] Constitution of 1840, Declaration of Rights Both of the People and Chiefs in LYDECKER at 8.

[74] 2 HENRY DE BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND, 33 (S. Thorne ed. 1968), which can be found on the Internet at bracton.law.cornell.edu/bracton/common/index.html (visited October 2, 2001).

[75] *Rex v. Booth*, 2 Haw. 616, 630 (1863).

[76] KUYKENDALL, CONSTITUTIONS at 14. Constitution of 1840, "Respecting the Representative Body," LYDECKER at 12.

[77] 1 KUYKENDALL, HAWAIIAN KINGDOM at 167.

[78] Laws of the Hawaiian Islands (1842), Chapter II, Of the Representative Body. The procedure was more like a petition drive than an election. "Whosoever pleases" could nominate a candidate by writing a letter addressed to the King and circulating it for signature in the district. The nominees who got the most signatures on their nominating letters were elected. No qualifications were specified as to who could sign the nominating letters. The statute provided that there would be seven representatives (two each from Hawai`i, Maui and adjacent islands, and Oahu, and one from Kauai. Id. By contrast, there were fourteen members of the House of Nobles, each named in the Constitution of 1840 ("House of Nobles").

[79] In accordance with the 1840 Constitution's provision for constitutional amendment (entitled "Of Changes in this Constitution," LYDECKER at 15), the 1852 Constitution was adopted by agreement of the King and both houses of the Legislature. 1 KUYKENDALL, HAWAIIAN KINGDOM at 267.

[80] Constitution of 1852, Art. 78, in LYDECKER at 44.

In 1864, Kamehameha IV died without naming an heir.[81] The 1852 Constitution provided that the Legislature had the power and right to elect his successor.[82] However, without waiting for an election, Kamehameha IV's brother Lot seized the throne and took the title of Kamehameha V.[83] He refused to take the required oath to the Constitution and did not convene the Legislature.[84] He called a constitutional convention to consider his proposals to amend the Constitution of 1852.[85] When the constitutional convention met, he instead proposed replacing the Constitution of 1852 with a new constitution that would impose a property qualification to disenfranchise poorer voters, most of them ethnic Hawaiian.[86] In Kamehameha V's opinion, universal manhood suffrage was "'altogether beyond the political capacity' of the Hawaiian people in the state of development which they have attained."[87] Kamehameha V had the support of the upper house of the legislature (the "Nobles" who were appointed by the King) and other wealthy residents; but the elected members of the constitutional convention, disagreeing with his opinion of their constituents' political capacity, rejected his proposal to disenfranchise the poor.[88] Kamehameha V, proclaiming that voting "is not a right belonging to the people," launched a bloodless coup d'etat, dissolved the convention, and abrogated the 1852 Constitution.[89] He imposed a new constitution that substantially increased the power of the monarch.[90] It included the property qualification for voting that the elected convention had rejected.[91] Depriving poorer citizens

---

[81] 2 KUYKENDALL, HAWAIIAN KINGDOM at 124.

[82] *Id.* Constitution of 1852, Art. 25, in LYDECKER, at 38.

[83] 2 KUYKENDALL, HAWAIIAN KINGDOM at 124-125.

[84] *Id.* at 125; KUYKENDALL, CONSTITUTIONS at 27. Constitution of 1852, Art. 94 (King to swear to govern in conformity with the Constitution and laws), in LYDECKER at 46. Alexander, A Sketch of the Constitutional History of the Hawaiian Kingdom, 1894 THRUM'S HAWAIIAN ANNUAL at 53.

[85] 2 KUYKENDALL, HAWAIIAN KINGDOM at 128-29; KUYKENDALL, CONSTITUTIONS at 32.

[86] 2 KUYKENDALL, HAWAIIAN KINGDOM at 130-31.

[87] Id. at 127, quoting Cabinet Council Minute Book, March 3, 1864.

[88] 2 KUYKENDALL, HAWAIIAN KINGDOM at 131; KUYKENDALL, CONSTITUTIONS at 35, 37.

[89] 2 KUYKENDALL, HAWAIIAN KINGDOM at 131-32. KUYKENDALL, CONSTITUTIONS at 35-36. The Latin Americans call this kind of coup an "autogolpe" – a coup d'etat by the head of government to overthrow constitutional limits on his own power, as President Alberto Fujimori did in Peru.

[90] 2 KUYKENDALL, HAWAIIAN KINGDOM at 133-34 ("by his coup d'etat, the king had accomplished his purpose to make 'the influence of the 'Crown' pervade 'every function of the government,'" quoting Kamehameha V); KUYKENDALL, CONSTITUTIONS at 39.

[91] Constitution of 1864, Art. 62, in LYDECKER at 95. Voters had to have paid their taxes, and had to hold "Real Property in the Kingdom to the value over and above all incumbrances of One Hundred and Fifty Dollars--or of a Lease-hold property on which the rent is Twenty-Five Dollars per year—or of an income of not less than Seventy-Five Dollars per year, derived from any property or some lawful employment." Article 61 imposed a new property qualification on representatives: a man had to own real estate of an unencumbered value of at least $500 or have an annual income of at least $250. KUYKENDALL, CONSTITUTIONS at 39-40. Measured by buying power and income of the time, these were substantial amounts. People who still lived by traditional Hawaiian subsistence agriculture had little or no cash income. A worker on a sugar plantation (the chief source of cash wages for ethnic Hawaiians at that time) made about $7-$10 per month. G.W. Willfong, Sugar Plantations in the Early Days in the Hawaiian Islands, 1 PLANTER'S MONTHLY 226, 228 (1882) (giving statistics from 1863). Land prices in the 1850s were in the range of 25 cents to $1.50 an acre. T. MORGAN, HAWAI'I: A CENTURY OF ECONOMIC CHANGE, at 133 n.38 (1948). In the 1860s the Government sold thousands of acres at average prices that generally fell below $1 per acre. In 1864 it sold 92,715 acres at an average price of 16 cents per acre. LEGISLATICE REFERENCE BUREAU, PUBLIC LAND POLICY IN HAWAI'I: A HISTORICAL ANALYSIS 186-87 (1969) (summarizing government land sales 1846-1893). Thus, $150 worth of land in 1864 would have been a hundred acres or more, far more than needed for subsistence and family farming. Given that most of the voters before the 1864 coup were ethnic Hawaiians, and that most commoners who were employed in jobs that paid cash income worked in low-wage plantation jobs, it is highly likely that most of the voters disenfranchised by Kamehameha V's property qualification were ethnic Hawaiians. The Constitution of 1864, Art. 62, also included a literacy requirement for voters born after 1840.

of the right to vote was understandably unpopular and, in 1874, after Kamehameha V died, that property qualification was removed by constitutional amendment.[92]

The 1864 Constitution lasted until 1887 when another coup imposed another Constitution.[93] By 1887 the coalition of ali`i and wealthy planters who had supported Kamehameha V in the 1864 coup had broken down over disputes about government spending and the exercise of royal powers.[94] The leaders of the 1887 coup, the self-proclaimed Reform Party, were wealthy, mostly white subjects and denizens who accused King Kalakaua and his prime minister, Walter Murray Gibson, of corruption.[95] They wanted to reduce the King's powers as defined in the 1864 Constitution.[96] After threatening to overthrow the monarchy, they settled for driving Gibson out of the country and forcing Kalakaua to sign a new constitution that drastically reduced the monarch's powers.[97]

The leaders of the coup designed the provisions of the 1887 Constitution to reshape the electorate to maximize the chances of the Reform Party winning elections and to increase the power of the wealthier members of the community at the expense of the King.[98] Until 1887, the King had appointed the upper half of the Legislature, the "Nobles."[99] The 1887 Constitution broadened voting rights by making the Nobles elected officials for the first time, but there was a stiff property qualification for voting for Nobles.[100] As in the amended version of the 1864 Constitution, there was no property qualification for voting for representatives under the 1887 Constitution,[101] but there were literacy requirements.[102] Any male resident who met the voting qualifications could vote.[103] Broadening the electorate for representatives to include all male residents would have created a new electoral majority: recent immigrants from Japan and China, most of them field workers in the sugar plantations.[104]

However, because there was no reason to think that these immigrants would support the Reform Party, the 1887 Constitution, for the first time in the history of Hawai`i, imposed a racial qualification on voting: persons of Asian ancestry were denied the right to vote, even if they had been able to vote

---

[92] 2 KUYKENDALL, HAWAIIAN KINGDOM at 134; 3 KUYKENDALL, HAWAIIAN KINGDOM at 192; KUYKENDALL, CONSTITUTIONS at 36, 41-43. After Kamehameha V died in 1872 without appointing an heir, the legislature elected King Lunalilo, who had won a non-binding popular election. Lunalilo died in 1874 and the legislature elected King Kalakaua without holding a popular election.

[93] *See* 3 KUYKENDALL, HAWAIIAN KINGDOM at 344-372.

[94] 3 KUYKENDALL, HAWAIIAN KINGDOM at 246-304, 344-356.

[95] *Id.* at 344-356; T.M. Spaulding, Cabinet Government in Hawai`i 1887-1893 at 4-5, HAWAI`I UNIVERSITY OCCASIONAL PAPERS NO. 2 (1924); SANFORD BALLARD DOLE, MEMOIRS OF THE HAWAIIAN REVOLUTION 45-55 (1936). Gibson was a naturalized Hawaiian subject who had previously been a British subject and an American citizen. *See* J. MICHENER AND A. GROVE DAY, RASCALS IN PARADISE 112-46 (1957).

[96] 3 KUYKENDALL, HAWAIIAN KINGDOM at 348-49; KUYKENDALL, CONSTITUTIONS at 46.

[97] 3 KUYKENDALL, HAWAIIAN KINGDOM at 365-372. WILLIAM ADAM RUSS, JR., THE HAWAIIAN REVOLUTION at 19 (1992 reprint, first published 1959); DOLE, MEMOIRS OF THE HAWAIIAN REVOLUTION at 49-58

[98] The imposition of this constitution by coup d'etat led to its nickname, the "Bayonet Constitution." *Id.* at 370.

[98] RUSS, HAWAIIAN REVOLUTION at 20-21.

[99] 1852 Const. Art. 72; 1864 Const. Art. 57.

[100] 1887 Const. Art. 59. To vote for Nobles a voter had to "own and be possessed, in his own right, of taxable property in this country of the value of not less than three thousand dollars over and above all encumbrances, or shall have actually received an income of not less than six hundred dollars during the year." *Id.* No voter lost the right to vote as a result of the property qualification because no one had ever had the right to vote for Nobles. Art. 63 of the 1887 Constitution empowered the Legislature to increase the property qualifications and add a qualification for voting for representatives. The Legislature never exercised its power under this article.

[101] *Id.* Art. 62.

[102] 1887 Const. Arts 59, 62 (literacy in Hawaiian, English or a European language); 1864 Const. Art. 62 (literacy, no specification of the language).

[103] 1887 Const. Arts. 59, 62 in LYDECKER at 166-168.

[104] According to the 1890 Census, Chinese and Japanese accounted for 51.8% of all males of voting age but none of the registered voters. R. C. Schmitt, *Voter Participation Rates in Hawai`i Before 1900*, 5 THE HAWAIIAN J. OF HISTORY 50, 56 (1971).

under the prior constitutions.[105] In *Ahlo v. Smith*,[106] naturalized citizens of Chinese ancestry who had voted before 1887 challenged this provision on equal protection grounds. They lost because the Hawai`i Supreme Court said that it could not do anything about a qualification written into the Constitution itself.

The number of Hawaiian subjects who could claim descent from pre-contact inhabitants of Hawai`i continued to decline throughout the history of the Kingdom while the number of immigrants grew. By 1893, ethnic Hawaiians were a minority of about 40% of the population.[107] Since almost all of the Asian immigrants were adults, the ethnic Hawaiian portion of the voting age population was even lower.[108] At the end of the Kingdom, about three out of four ethnic Hawaiians could not vote at all because of the gender, literacy, property, and age requirements.[109] However, because of the racial disenfranchisement of Asians, ethnic Hawaiians still amounted to about two-thirds of the electorate for representatives and about one-third of the electorate for Nobles.[110]

Had the Kingdom endured another generation, most of its adult citizens would have been the native-born children of Asian immigrants. It is hard to imagine that they would have put up with being disenfranchised on racial grounds. It is likely that they would have become either voters or revolutionaries. Thus, if an independent Kingdom had lasted into the mid-twentieth century, it is very likely that most of its voters would not have been ethnic Hawaiians.

However, the Kingdom did not last into the twentieth century; conflict within the ruling oligarchy ended it in 1893. The 1887 Constitution was a rush job[111] that failed to resolve the conflict. Despite the Reform Party's efforts to change the voting rules to ensure itself a majority, no party could secure a stable majority in the legislature.[112] The King's powers were reduced but he could still appoint the cabinet[113] and veto legislation.[114] Abrogating and imposing constitutions by coup d'etat discouraged respect for constitutional law. All factions were increasingly willing to use illegal and violent means to change the fundamental structure of the government.[115]

---

[105] 1887 Const. Arts. 59, 62.

[106] 8 Haw 420 (1892).

[107] *See* SCHMITT, HISTORICAL STATISTICS OF HAWAI`I 74 (1977) (reporting statistics from 1890 census showing ethnic Hawaiians and part-Hawaiians were 45% of the population and statistics from 1896 census showing ethnic Hawaiians and part-Hawaiians were 36% of the population).

[108] *See* R. C. Schmitt, *Voter Participation Rates in Hawai`i Before 1900*. 5 THE HAWAIIAN J. OF HISTORY at 56.

[109] *See* 1890 census statistics reported in THRUM'S HAWAIIAN ANNUAL FOR 1892 p. 16, showing that 23.5% of all ethnic Hawaiians were registered voters in 1890; *see generally*, Hanifin, *Hawaiian Reparations: Nothing Lost, Nothing Owed*, 17 HAW. BAR J. No. 2, p. 107, 118-21(1982) (discussing limitations on voting rights under 1887 Constitution).

[110] 3 KUYKENDALL, HAWAIIAN KINGDOM at 453. The rest of the voters were male residents of European or American ancestry.

[111] The Bayonet Constitution was drafted in five days to present Kalakaua with an offer he could not refuse; its framers did not have time to deliberate over the details. 3 KUYKENDALL, HAWAIIAN KINGDOM at 367; KUYKENDALL, CONSTITUTIONS at 45-46; DOLE, MEMOIRS OF THE HAWAIIAN REVOLUTION at 56-57. As Talleyrand is reputed to have warned Napoleon, "You can do anything with bayonets except sit on them."

[112] 3 KUYKENDALL, HAWAIIAN KINGDOM at 514-20.

[113] 1887 Constitution, Art. 41.

[114] 1887 Constitution, Art. 31; *Everett v. Baker*, 7 Haw. 229 (1887).

[115] *See, e.g.*, 3 KUYKENDALL, HAWAIIAN KINGDOM at 424-30 (Robert Wilcox's 1889 coup attempt); 509, 523-25, 528 (ethnic Hawaiians Wilcox and J.E. Bush calling for overthrow of monarchy and institution of republic); 533-41 (Annexation Club working for annexation of Hawai`i to U.S.); 582 (Queen's attempt to overthrow 1887 Constitution); RUSS, HAWAIIAN REVOLUTION at 92 (Wilcox's 1892 coup attempt), 66-67 (Queen's attempt to overthrow 1887 Constitution).

Kalakaua's sister Liliuokalani succeeded him on the throne in 1891.[116] In January 1893, she precipitated the long-brewing final crisis of the Kingdom by announcing her intent to impose a new constitution by royal fiat.[117] She denied the legitimacy of the 1887 Constitution and asserted a royal power to abrogate and grant constitutions, citing the precedent of Kamehameha V.[118] Her Constitution would have gone back to Kamehameha V's model, greatly increasing her power at the expense of all others in the political system: she would have had an absolute veto, the power to appoint most of the legislators, and to hire and fire the cabinet at will. She would have disenfranchised many voters by re-imposing the property qualification on voting for representatives and by denying denizens and other non-citizen residents the right to vote.[119] More fundamentally, a monarch who can alter the Constitution as she thinks best when she thinks best is an absolute monarch operating above the highest law of the land.[120] Liliuokalani's own cabinet refused to support her in overthrowing the 1887 Constitution.[121] She announced that she would delay the imposition of her new constitution.[122] Her opponents seized the opportunity to launch their own coup. They overthrew her, bringing the Kingdom of Hawai'i to an end.

It is not the purpose of this article to defend the overthrow of the Monarchy, nor to take sides among the contending factions of the 1890s.[123] Even assuming that the overthrow was illegal (as all revolutions are) and undemocratic, nonetheless the Kingdom that was overthrown was not a nation of ethnic Hawaiians alone. The Kingdom had thousands of citizens and voters of other ancestries and their numbers were growing toward a majority. Just as the Kingdom included them, so its overthrow affected them in ways that took decades to unfold.

III. VOTING RIGHTS AND CITIZENSHIP UNDER THE REPUBLIC

A. Voting Rights

As in 1864 and 1887, the winners in 1893 tried to ensure that they would have an electoral majority by limiting the franchise to their likely supporters. The victorious leaders of the 1893 coup created

---

[116] 3 KUYKENDALL, HAWAIIAN KINGDOM at 473-74. Liliuokalani succeeded to the throne because she was specifically named as Kalakaua's heir in Article 22 of the 1887 Constitution. She took the oath to the 1887 Constitution as required by Article 24. 3 KUYKENDALL, HAWAIIAN KINGDOM at 474.

[117] 3 KUYKENDALL, HAWAIIAN KINGDOM at 582; KUYKENDALL, CONSTITUTIONS at 56.

[118] LILIUOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN at 238 (1964 reprint of 1898 ed.).

[119] United States Commissioner James H. Blount acquired a copy of the Queen's draft constitution and published it in his report which supported the Queen's side of the dispute about her overthrow. J.H. BLOUNT, REPORT OF THE COMMISSIONER TO THE HAWAIIAN ISLANDS at 581-90 (1893) ("BLOUNT REPORT"); 3 KUYKENDALL, HAWAIIAN KINGDOM at 585-86; RUSS, HAWAIIAN REVOLUTION at 66-67. Under Liliuokalani's proposed constitution, the Queen would have appointed the Nobles and the cabinet members who would sit as legislators in a one-house legislature with the representatives of the people; thus her appointees would be a majority of the legislature. Kamehameha V's property qualification would have been restored.

[120] Compare 2 BRACTON, ON THE LAWS AND CUSTOMS OF ENGLAND at 33 (king is under God and the law because the law makes the king).

[121] 3 KUYKENDALL, HAWAIIAN KINGDOM at 584-85; W. Russ, THE HAWAIIAN REVOLUTION 66-68 (1992; original edition 1959).

[122] 3 KUYKENDALL, HAWAIIAN KINGDOM at 585-86.

[123] The history of the overthrow of the monarchy is intensely controversial but the controversy is beyond the scope of this article. Particularly controversial is the role of the American minister, John Stevens, and American sailors and marines landed from the U.S.S. Boston during the crisis. For various views on these events, see 3 KUYKENDALL, HAWAIIAN KINGDOM at 582-650; RUSS, THE HAWAIIAN REVOLUTION; T. COFFMAN, NATION WITHIN (no date); T. TWIGG-SMITH, HAWAIIAN SOVEREIGNTY: DO THE FACTS MATTER? (1998); NATIVE HAWAIIAN STUDY COMMISSION, REPORT ON THE CULTURE NEEDS AND CONCERNS OF NATIVE HAWAIIANS, Vol. I at 293-300, Vol. II at 54-79 (1983); BLOUNT REPORT; SENATE REPORT 227, 53D CONGRESS, 2D SESSION ("MORGAN REPORT") (1894); LILIUOKALANI, HAWAI'I'S STORY BY HAWAI'I'S QUEEN; DOLE, MEMOIRS OF THE HAWAIIAN REVOLUTION.

a "Provisional Government" and sought annexation by the United States.[124] When a change of administration in Washington blocked annexation, they organized the Republic of Hawai`i.[125] The nineteen members of Provisional Government's governing councils appointed themselves to the convention that wrote the Republic's constitution.[126] Eighteen more delegates were elected by voters who had to swear loyalty to the new regime and forswear any intent to restore the monarchy.[127] This loyalty requirement reduced the size of the electorate by about two-thirds compared to the 1890 election.[128]

Voting under the 1894 Constitution of the Republic was restricted to those the governing group trusted. Like Kamehameha V, the self-appointed leaders of the Republic believed that universal suffrage was "altogether beyond the capacity"[129] of the people of Hawai`i. As one leader of the Provisional Government explained, "the problem to be solved is, how to combine an oligarchy with a representative form of government so as to meet the case."[130] The Constitution of the Republic solved the "problem" by imposing a loyalty oath specifically disavowing the Monarchy,[131] and creating a voter registration board with broad discretion to determine who should be allowed to vote.[132]

The Republic's Constitution removed the express racial exclusion of Asians from voting rights that the last constitution of the Kingdom had imposed. There were no subsequent racial qualifications on voting in Hawai`i law until the Office of Hawaiian Affairs ("OHA") was created in 1978 with a racially discriminatory franchise.[133] However, voting rights under the Republic were limited to citizens and denizens. Because very few Japanese immigrants had become naturalized citizens or denizens, this rule excluded nearly all of them from voting but avoided offending the Japanese government by openly discriminating against Japanese.[134]

B. Citizenship

Citizenship under the Republic extended far beyond the narrow boundaries of voting rights. The 1894 Constitution of the Republic, Art. 17, included a explicit provision, copied from the Fourteenth Amendment of the United States Constitution, that everyone born in Hawai`i was a citizen of the Republic: "All persons born or naturalized in the Hawaiian Islands, and subject to the jurisdiction of the Republic are citizens thereof." In *McFarlane v. Collector*,[135] the Supreme Court held that a person of foreign parentage born in Hawai`i in 1847 was a citizen by birth. The Supreme Court not only relied on the Republic's Constitution, citing American Fourteenth Amendment cases to interpret it, but also

---

[124] *See generally*, RUSS, HAWAIIAN REVOLUTION at 135-53; KUYKENDALL, 3 THE HAWAIIAN KINGDOM at 605-16.
[125] *See generally*, W. RUSS, THE HAWAIIAN REPUBLIC (1962).
[126] *Id.* at 15.
[127] *Id.* at 20, 26-27.
[128] *Id.* at 26-27.
[129] 2 KUYKENDALL, HAWAIIAN KINGDOM at 127 (quoting Kamehameha V).
[130] RUSS, HAWAIIAN REPUBLIC at 15 (quoting comment of Attorney General W.O. Smith).
[131] 1894 Const. of the Republic, Art. 101.
[132] 1894 Const. of the Republic, Arts. 77-78. In addition, the Constitution of the Republic required literacy in English or Hawaiian. Art. 74, § 7.
[133] *Rice v. Cayetano*, 528 U.S. 495 (limiting voting rights to persons descended from inhabitants of Hawai`i in 1778 is unconstitutional racial classification).
[134] Japan in the 1890s was a rising naval power; it sent a warship to Hawai`i for a lengthy visit. RUSS, HAWAIIAN REPUBLIC at 136-38, 143, 166. The Japanese government insisted that its citizens should be given the same treatment as American and European immigrants to Hawaii: if the latter were to be given the vote, then Japanese in Hawai`i should be given the vote. *Id.* at 23-25, 136. That would have given the Japanese close to an electoral majority, which the leaders of the Republic wanted to avoid. *Id.* at 31. The voting laws of the Republic offered the possibility of carefully selected Japanese being given the vote as denizens, while effectively maintaining the control of the governing faction. *Id.* at 32.
[135] 11 Haw 166 (1897).

quoted an American case that said that the rule of citizenship by birth went back to the common law.[136] The Hawai`i Supreme Court also relied on the lower court's decision in *United States v. Wong Kim Ark*,[137] recognizing that American-born children of Chinese immigrants are citizens.

The laws of the Republic, like the laws of the Kingdom, provided for naturalization of foreigners and offered denization as a status of dual citizenship.[138] The Republic also offered the privileges of citizenship by special certificate to aliens who had supported the Provisional Government.[139] The Republic granted denization and special certificates to 362 aliens.[140]

The Republic was not a democracy, yet it laid the groundwork for a democracy. If it had endured, its citizenship law would likely have led to a multi-racial democracy in about a generation, when the children of the Asian immigrants reached voting age. More significantly, the leaders of the Republic aimed to persuade the United States to annex Hawai`i and accomplished their aim.[141] Annexation brought Hawai`i under the Constitution of the United States, including the Fourteenth Amendment, peacefully establishing a democracy in the long run.[142]

IV. AMERICAN CITIZENSHIP FOR HAWAIIAN CITIZENS

A. Territory and State

Annexation to the United States led to full democratic government in Hawai`i. "The Constitution of the United States . . . [became] the heritage of all the citizens of Hawai`i."[143] Annexation ended the series of coups and attempted coups that had disrupted the politics of Hawai`i.[144] It eliminated the option of re-writing the voting laws to exclude voters that the ruling faction disliked.[145]

After Hawai`i was annexed to the United States in 1898, Congress passed the Organic Act making Hawai`i a territory in 1900.[146] Sec. 4 of the Organic Act granted American citizenship to everyone who had been a subject or denizen of the Kingdom and everyone who had been a citizen of the Republic of Hawaii, i.e., everyone who was born or naturalized in Hawai`i during the Monarchy and its successor governments.[147] Persons who had obtained denizen status under the Kingdom or the Republic also became American citizens because the United States recognized denization as being dual citizenship.[148]

---

[136] *Id.*, quoting Ex parte Chin King, 35 F. 355 (1888).

[137] 71 F. 382 (D. Or. 1896). The United States Supreme Court's decision, *United States v. Wong Kim Ark*, 169 U.S. 649, affirming the district court, had not yet been decided.

[138] Constitution of the Republic Art. 17, Art. 19.

[139] *Id.* Art. 17, § 2.

[140] H. ARAI, INDICES TO CERTIFICATES OF NATIONALITY 1846-1854, DENIZATION 1846-1898, OATHS OF LOYALTY TO THE REPUBLIC FROM OAHU 1894, AND CERTIFICATES OF SPECIAL RIGHTS OF CITIZENSHIP 1896-1898 (hand count of indexed names for period of the Republic).

[141] *See* RUSS, THE HAWAIIAN REPUBLIC at 372-379 (summarizing the history and policy of the Republic).

[142] Of course, in the long run, the leaders of the Republic were all dead. The attitude of the government of the Republic to democracy is reminiscent of St Augustine when he was a wild young man and prayed to God, "Make me chaste . . . but not yet." AUGUSTINE, CONFESSIONS, Bk. 8, Chap. 7. The Republic wanted Hawai`i to be a democracy, but not yet.

[143] *Rice v. Cayetano*, 528 U.S. at 524.

[144] The Kingdom experienced successful coups in 1864, 1887, and 1893 and unsuccessful attempted coups in 1889, 1892, and 1893. The Republic suppressed a coup attempt in 1895.

[145] *See* J. MADISON, A. HAMILTON & J. JAY, THE FEDERALIST PAPERS, No. 10, at 77-84 (Rossiter ed. 1961) (a federal union tends to "break and control the violence of faction"); *Rice v. Cayetano* (striking down exclusion of voters from OHA elections).

[146] Act of April 30, 1900, c. 339, 31 Stat. 141.

[147] IMMIGRATION LAW AND PROCEDURE, § 92.04[3] n. 41; 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW, 125, 126.

[148] 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW, 126-127, quoting Memorandum of the Office of the Solicitor for the Department of State, Oct. 17, 1924, file 130 Hackfeld, John F. (concerning the claim of Clarence W. Ashford, a British subject who claimed American citizenship based on having been granted Hawaiian denization in 1883).

In 1901, Ching Tai Sai arrived in Honolulu from China, claiming to be an American citizen even though he had never set foot in America and his parents had been Chinese subjects. In *United States v. Ching Tai Sai*,[149] the court held he was an American because (1) he had been born in Hawai`i during the days of the Kingdom; (2) therefore, he had been a Hawaiian citizen under Hawaiian law; (3) therefore he became an American citizen under the Organic Act.[150]

Furthermore, by virtue of the Fourteenth Amendment, persons born in Hawai`i after Annexation were native American citizens, regardless of their ancestry or the citizenship of their parents.[151] The Organic Act removed all property qualifications for voting that had applied in the Kingdom and the Republic as well as the political disqualifications imposed by the Republic.[152]

In 1920, for the first time in the history of Hawai`i, women obtained the right to vote.[153]

During this period, while ethnic Hawaiians were American citizens, tribal American Indians generally were not citizens. Ethnic Hawaiians who had been born in Hawai`i had been Hawai`i citizens and so became American citizens as a result of the Organic Act. The Fourteenth Amendment made everyone born in Hawai`i after the Organic Act was passed a citizen by birth because they had been born subject to the jurisdiction of the United States. By contrast, the Supreme Court held that tribal American Indians generally were not American citizens because, although they were born in the United States, they were not directly "subject to the jurisdiction" of the United States, but rather were subject to the jurisdiction of their tribes.[154] It was not until 1924 that an act of Congress made all American Indians American citizens.[155] Because Hawaiians were never members of a tribe, they were not affected by this discriminatory rule denying tribal Indians citizenship under the Fourteenth Amendment.[156]

During most of the Territorial period, Asian immigrants (except for those who had become naturalized in Hawai`i before Annexation) were barred from voting because they were not citizens and could not become citizens. Although persons of Asian descent who had been Hawaiian citizens before Annexation became American citizens under the Organic Act,[157] Asian immigrants were not eligible to become naturalized American citizens at that time. The racial restriction on naturalization of Asians predated Annexation.[158] American citizenship was a requirement for voting in Territorial elections.[159] The result of the racially discriminatory naturalization laws was that ethnic Hawaiians, although they were a minority of the population, were a majority of the electorate until the 1930s.[160]

---

[149] 1 U.S. Dist. Ct. Haw. 118 (1901).

[150] Accord, *United States v. Dang Mew Wan Lum*, 88 F.2d. 88, 89 (9th Cir. 1937) (woman born of Chinese parents in Hawaii during period of Provisional Government became American citizen under Organic Act); 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW at 120.

[151] *United States v. Wong Kim Ark*. 3 HACKWORTH, DIGEST OF INTERNATIONAL LAW at 120. Everyone born in the United States and subject to its jurisdiction is a native American citizen. BLACK'S LAW DICTIONARY 1047 (7th ed. 1999) (a "native" is "a person who is a citizen of a particular . . . nation by virtue of having been born there").

[152] Organic Act §§60, 62.

[153] U.S. Constitution, Nineteenth Amendment (ratified 1920).

[154] *Elk v. Wilkins*, 112 U.S. 94 (1884).

[155] *Indian Citizenship Act*, 43 Stat. 253 (1924).

[156] *See MacFarlane v. Collector*, 11 Haw. at 175 (distinguishing *Elk* on the grounds that "the relation of Indians to the United States is peculiar" and so is irrelevant to "the general principle of nationality of birth" applicable in Hawai`i).

[157] Organic Act, § 4, *United States v. Ching Tai Sai*, 1 U.S. Dist. Ct. Haw. 118 (1901).

[158] Chinese Exclusion Act of May 6 1882, 22 Stat. 58; *Toyota v. United States*, 268 U.S. 402, 408 (1925) (discussing history of racial restriction on naturalization).

[159] Organic Act, §§ 60 and 62.

[160] In 1930, Asians accounted for 64% of the population but only 26% of adult citizens. The percentage of voters who were of Japanese ancestry rose from 3% in 1920 to 8% in 1926 to 25% in 1936. R.C. PRATT & Z. SMITH, HAWAI`I POLITICS AND GOVERNMENT 37 (2000).

However, the children of Asian immigrants were American citizens by birth and eligible to vote when they came of age.[161] Eventually, Congress allowed Asian immigrants to become naturalized citizens. Chinese immigrants became eligible for naturalization in 1943.[162] Japanese and other Asian aliens became eligible for naturalization under the Immigration and Nationality Act of 1952.[163]

In 1959, when Hawai`i became a state, its citizens gained the equal right with all other Americans to elect congressional representatives and senators and vote for president.[164] Just as there is only one class of American citizen, there is only one class of American state.[165] The citizens of Hawai`i took their equal place with the citizens of the other forty-nine sovereign states of the Union.

B. *Rice* and *Arakaki*: Voting Rights Lost and Restored

In 1978, a state constitutional amendment created OHA, a state agency, to administer state resources for the benefit of Hawaiians.[166] Another proposed constitutional amendment that would have limited OHA's beneficiaries, voters, and office-holders to ethnic Hawaiians failed to gain ratification because the constitutional convention failed to disclose that racial limitation to the voters.[167] However, the legislature added that limitation by a statute that defined the constitutional term "Hawaiian" in terms of ancestry and race.[168] This denied the right to vote in OHA elections to the vast majority of Hawai`i's voters.[169]

In *Rice v. Cayetano*, the United States Supreme Court held that the "State's electoral restriction enacts a race-based voting qualification"[170] that violates the Fifteenth Amendment to the United States Constitution.[171] Noting that 1778, the date in the statutory definition of Hawaiian was the date that Hawai`i's long isolation ended,[172] the Court drew the conclusion that "[t]he State, in enacting the legis-

---

[161] *United States v. Wong Kim Ark*; *Terada v. Dulles*, 121 FSupp. 6, 8 (D. Haw. 1954) (person born in Hawaii of Japanese parents was by birth an American citizen by virtue of being born in the United States and a Japanese citizen by virtue of having Japanese parents).

[162] Pub L. No. 78-199, 57 Stat. 600 (Dec. 17, 1943) amending Naturalization Act of 1940 § 303, 54 Stat. 1140.

[163] Pub. L. No. 82-414, 66 Stat. 163.

[164] An Act to Provide for the Admission of the State of Hawaii into the Union, Act of March 18, 1959, Pub. L. 86-3, 73 Stat. 4.

[165] Under the "equal footing doctrine" new states are admitted on terms of equality with existing states and every state is equally self-governing. U.S. Constitution, Art. IV, § 3; *Coyle v. Smith*, 221 U.S. 558, 565 (1911).

[166] Haw. State Const. Art. XII, §§ 5, 6 (added 1978).

[167] *Kahalekai v. Doi*, 60 Haw. 324, 342 (1979). In addition, blank ballots were counted as votes in favor of all of the proposed constitutional amendments, id. at 328-329, making it impossible to determine how many voters actually intended to cast ballots in favor of creating OHA. After the effect of blank ballots was publicized in subsequent litigation, *id.*, the voters amended the state constitution in 1980 to prohibit counting blank ballots as "yes" votes. Haw. Constitution, Art. XVII, § 2 "Ratification," as amended in the Nov. 4, 1980 general election.

[168] Haw. Rev. Stat. § 10-2. The definition of "Hawaiian" proposed by the Constitutional Convention in 1978 and not ratified was "any descendant of the races inhabiting the Hawaiian Islands previous to 1778." 1 PROCEEDINGS OF THE CONSTITUTIONAL CONVENTION OF HAWAI'I OF 1978, Committee of the Whole Rep. No. 13, at 1018 (emphasis added). In Haw. Rev. Stat. § 10-2, the legislature substituted "peoples" for "races" but the legislative history shows that the meaning was unaltered. *Rice v. Cayetano*, 528 U.S. at 516, quoting 1979 HAWAI'I SENATE JOURNAL, Standing Comm. Rep. No. 784 at 1350, 1353-54; id. Conf. Comm. Rep. No 77 at 998.

[169] In 1998, the last election held under the racially discriminatory rules struck down in Rice, there were 601,404 registered voters, of whom 100,143 (16.65%) were ethnic Hawaiians registered to vote in OHA elections. STATE OF HAWAI'I DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND TOURISM, STATE OF HAWAI'I DATA BOOK 1998 252, 261 (1999).

[170] *Rice v. Cayetano*, 528 U.S. at 517.

[171] The Fifteenth Amendment, § 1 provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude."

[172] *Rice* 528 U.S. at 500, 514-15.

lation before us, has used ancestry as a racial definition and for a racial purpose."[173] The State and OHA argued that the restriction of voting rights to descendants of people who lived in Hawaii in 1778 was part of a program to compensate the descendants of those who were harmed when the United States assisted in the overthrow of the Kingdom in 1893.[174] However, as discussed above, the subjects and voters of Hawai'i in 1893 were not limited to descendants of inhabitants in 1778, i.e. to ethnic Hawaiians. In 1893, most ethnic Hawaiians could not vote but some persons who were not ethnic Hawaiians were subjects, voters, and even prominent public officials. The Petitioner Harold F. Rice was himself a descendant of a subject and public official of the Kingdom of Hawai'i.[175] The Court observed that the State's use of the 1778 date had nothing to do with the overthrow of the monarchy 115 years later; rather it was selected to use ancestry as "a proxy for race."[176] Because the Fifteenth Amendment's prohibition on using racial classifications to deny or abridge the right to vote in state and federal elections is "explicit and comprehensive,"[177] the Court concluded that denying persons who are not ethnic Hawaiians the right to vote in OHA elections violates the Fifteenth Amendment.

More broadly, the Court reaffirmed the basic democratic principle that whether the classification is called "racial," "ethnic," "political," or something else, discrimination based on ancestry is wrong:

> One of the principal reasons race is treated as a forbidden classification is that it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities. An inquiry into ancestral lines is not consistent with respect based on the unique personality each of us possesses, a respect the Constitution itself secures in its concern for persons and citizens.[178]

The Supreme Court rejected the three justifications that the State of Hawai'i and OHA offered for the racially discriminatory voting laws.[179] First, the Court squarely rejected the argument that ethnic Hawaiians are analogous to an Indian tribe so that the restriction is like restricting voting in tribal elections to tribal members.[180] Second, the Court rejected the justification that OHA elections are "special purpose" elections, such as those for water districts, as to which the Fourteenth Amendment permits

---

[173] *Id.* at 515. The term "race" in the Fifteenth Amendment, enacted in 1870, encompasses ancestry-based groups that are now commonly referred to as "ethnic groups." *Id.* at 515. It would surely be implausible to suggest that there would be no constitutional violation if a state disenfranchised Japanese-Americans while allowing Chinese-Americans to vote.

[174] Brief for Respondent Benjamin J. Cayetano at 5-8, 34-35, 40, 46-49; Brief of Amicus Office of Hawaiian Affairs, et al., at 3, 6-8, 14, 24. The State and OHA repeated essentially the same argument in *Arakaki*. State Defendants' Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Injunctive Relief and in Support of Defendants' Motion for Summary Judgment filed August 3, 2000, at 5-10, 19, 32-33; and OHA's Proposed Intervenors-Defendants Memorandum in Support of Defendants' Motion for Summary Judgment and in Opposition to Plaintiffs' Cross-Motion for Summary Judgment filed September 5, 2000, at 19-24 (on file with author).

[175] *Rice*, 528 U.S. at 510; Brief for Petitioner, at 2, 8.

[176] *Rice*, 528 U.S. at 514.

[177] "The purpose and command of the Fifteenth Amendment are set forth in language both explicit and comprehensive. The National Government and the States may not violate a fundamental principle: They may not deny or abridge the right to vote on account of race." Rice, 528 U.S. at 511-12.

[178] *Rice*, 528 U.S. at 517. The origins of this principle go back to the original Constitution. See U.S. Constitution Art. I, § 9, clause 8 (United States forbidden to grant titles of nobility); Art. I § 10, clause 1 (states forbidden to grant titles of nobility), Art. III, § 3, clause 2 (prohibiting hereditary criminal status: "no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted"). Some of the advocates of limiting voting rights by ancestry revived the idea of "Corruption of Blood" by arguing that plaintiff Rice should not be allowed to vote in OHA elections because his grandfather had opposed King Kalakaua and Queen Liliuokalani. *See* H. Trask and M. Trask, *Rice's discrimination claim reveals legacy of overthrow*, HONOLULU ADVERTISER, October 3, 1999.

[179] Justice Kennedy wrote the majority opinion, joined by Chief Justice Rehnquist, and Justices O'Connor, Scalia, and Thomas. Justice Breyer wrote a concurrence joined by Justice Souter. Justices Stevens and Ginsberg dissented.

[180] *Rice*, 528 U.S. at 518-22. The Indian tribe analogy is discussed in the last section of this article.

departures from the one-person one-vote rule; there is no such exception to the Fifteenth Amendment.[181] Finally, the Court rejected the argument that the racial restriction ensured an alignment of interests between the trustees and the beneficiaries of a racially restricted trust. Without reaching the question of whether the federal or state government has a trust obligation to ethnic Hawaiians or whether such a trust would itself be constitutional, the Court rejected the trust argument for two distinct reasons. First, it was inconsistent with the OHA statutory scheme because, although the bulk of OHA's trust funds are earmarked for the benefit of "native Hawaiians" (i.e. those with 50% ethnic Hawaiian blood quantum), both "native Hawaiians" and "Hawaiians" (those with any degree of Hawaiian ethnicity) could vote for trustees.[182] More significantly, the trust argument failed because it rested "on the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters."[183] The government "may not assume, based on race, that . . . its citizens will not cast a principled vote."[184] Justices Breyer and Souter concurred on the ground that there is no federal trust relationship with ethnic Hawaiians and that the class of ethnic Hawaiians are not analogous to an Indian tribe.[185] Justices Stevens and Ginsberg dissented, accepting the analogy between Hawaiians and members of recognized Indian tribes.[186]

Because the decision was grounded on the Fifteenth Amendment, which absolutely prohibits racial discrimination in voting, the case turned on the determination that the classification "descendants of the inhabitants of Hawaii in 1778" is a racial classification. *Rice* has been criticized for disregarding the history of Hawai`i,[187] but that misses the true historical significance of the decision. The historical fact that mattered was that 1778 was the year that Hawai`i's long isolation from the outside world ended and therefore had been selected as a proxy for race. "Descendants of the inhabitants of Hawai`i in 1778" singles out ethnic Hawaiians as clearly as "descendants of the inhabitants of sub-Saharan Africa in 1492" singles out blacks.[188] Beyond its Fifteenth Amendment rationale, the holding in *Rice,* by striking down the first express racial exclusion since the Bayonet Constitution, advances Hawai`i's historical tradition of expanding the right to vote.

In *Arakaki v. State of Hawai`i,*[189] the United States District Court for the District of Hawai`i extended the principle of *Rice* to hold that state laws that denied to non-Hawaiians the right to run for the office of OHA trustee were also unconstitutional racial discrimination violating the Fourteenth

---

[181] *Id.*, 528 U.S. at 522.

[182] *Id.*, 528 U.S. at 523.

[183] *Id.* Compare the premise, advanced by Kamehameha V to justify his coup, that universal suffrage was "altogether beyond the political capacity of the Hawaiian people." 2 KUYKENDALL, HAWAIIAN KINGDOM at 127 (quoting Kamehameha V).

[184] *Id.* Having decided the case under the Fifteenth Amendment, the Court did not reach Rice's claims that the State had also violated his rights under the Fourteenth Amendment Equal Protection Clause.

[185] *Id.*, 528 U.S. at 525-27. Justice Breyer noted that the statutory definition of the favored class of "Hawaiians" included everyone with the slightest descent from the pre-contact inhabitants of Hawai`i. He concluded that to define membership in the class "in terms of 1 possible ancestor out of 500, thereby creating a vast and unknowable body of potential members -- leaving some combination of luck and interest to determine which potential members become actual voters -- goes well beyond any reasonable limit" and does not resemble "any actual membership classification created by any actual tribe." *Id.*, 528 U.S. at 527.

[186] *Id.*, 528 U.S. at 528-48.

[187] S.K. Hom & E.K. Yamamoto, *Symposium: Race and the Law at the Turn of the Century: Collective Memory, History and Social Justice*, 47 U.C.L.A. L. REV. 1747, 1766-76 (2000).

[188] Hawai`i is not the first state to have selected a date to define a racial classification. *See Guinn v. United States*, 238 U.S. 347, 360-63 (1915) (invalidating as racially discriminatory an Oklahoma statute that imposed a literacy requirement on voters but contained a "grandfather clause" exempting individuals entitled to vote "on January 1, 1866," a date prior to passage of the Fifteenth Amendment when only whites could vote, as well as the lineal descendants of such voters).

[189] D. Haw. No. 00-00514 HG-BMK (September 19, 2000) (appeal pending). The author of this article is one of the attorneys representing the Plaintiffs in *Arakaki.* The appeal by the State of Hawai`i has been briefed in the 9th Circuit.

Amendment, as well as the Fifteenth Amendment.[190] The court pointed out that "ours is a political system that strives to govern its citizens as individuals rather than as groups" and "[r]acial classifications are particularly harmful when used with respect to voting as they threaten to 'balkanize us into competing racial factions.'"[191]

The United States Constitution protects Hawai'i from such balkanization. In *Arakaki*, the court held that under the Equal Protection Clause of the Fourteenth Amendment "individuals have the constitutional right to be considered for public office without the burden of invidious discrimination."[192] The State's discriminatory scheme could not survive strict scrutiny because it was not narrowly tailored to any compelling state interest. Just as "Hawai'i may not assume, based on race, that . . . any . . . of its citizens will not cast a principled vote" *for* trustee, it "may not assume, based on race, that . . . any of . . . its citizens will not cast a principled vote" *as* trustees.[193] The court also held that the state's discrimination against candidates violated the Fifteenth Amendment by abridging the right to vote on account of the race of the candidates.[194]

Although OHA's racial restriction applied only to the elections for OHA trustees, nonetheless it was the first narrowing of the Hawai'i electorate since the Organic Act restored voting rights to all male citizens. The only parallel in Hawai'i's history to OHA's explicit racial discrimination in voting rights was the provision of the Bayonet Constitution that disenfranchised Asians.[195] Of both exercises in disenfranchisement, it can be said that "the use of racial classifications is corruptive of the whole legal order democratic elections seek to preserve."[196]

It is corruptive of democracy, not only because "it demeans the dignity and worth of a person to be judged by ancestry instead of by his or her own merit and essential qualities,"[197] but because racial classifications encourage racial partisanship. In *Wright v. Rockefeller*,[198] Justice William O. Douglas compared an alleged racial gerrymander to the electoral register system formerly used in Lebanon, Cyprus and colonial India to ensure that each racial or religious group got its own little piece of the government. Under an electoral register system, as under the OHA laws, certain offices are set aside for certain ethnic or religious groups and only members of those groups can vote for those offices. Justice Douglas said:

> When racial or religious lines are drawn by the State, the multiracial, multireligious communities that our Constitution seeks to weld together as one become separatist; antagonisms that relate to race or to religion rather than to political issues are generated; communities seek not the best representative but the best racial or religious partisan. Since that system is at war with the democratic ideal, it should find no footing here.[199]

---

[190] H.R.S. § 13D-2 required that to be eligible for election or appointment to the OHA Board of Trustees, a person must be qualified to vote under H.R.S. § 13D-3, which in turn required that the person be Hawaiian, HRS § 13D-3(a)(1). "Hawaiian" is defined in H.R.S. §§ 10-2 and 11-1 in the sense of descent from inhabitants of Hawai'i in 1778, which *Rice* holds defines a racial classification.

[191] *Id.*, slip op. at 4-5, quoting *Shaw v. Reno*, 509 U.S. 630, 657 (1993).

[192] *Arakaki*, slip op. at 26.

[193] *Id.* slip op. at 20.

[194] *Id.* slip op. at 20-22, relying on *Rice* and on *Hadnot v. Amos*, 394 U.S. 358 (1968) (holding that excluding candidates from the ballot because of their race violated the Fifteenth Amendment). The District Court also held that the racial discrimination against candidates in OHA elections violated the Voting Rights Act of 1965, 42 U.S.C. § 1973. *Arakaki*, Slip op. at 22-25.

[195] 1887 Constitution, Art. 59, 62, in LYDECKER at 166-168. The racial exclusion imposed by the 1887 Constitution applied to all elections and so was more extreme than the racial restriction in OHA elections.

[196] *Rice*, 528 U.S. at 517.

[197] *Id.*

[198] 376 U.S. 52 (1964).

[199] *Wright v. Rockefeller*, 376 U.S. at 67 (Douglas, J. dissenting), quoted in *Shaw v. Reno*, 509 U.S. 630, 648 (1993).

The rise of racial partisanship as a result of Hawai'i's version of an electoral register is illustrated by OHA's argument in *Arakaki* that a particular candidate should be excluded from the ballot because he had criticized OHA as being racially discriminatory, an opinion that OHA contended was incompatible with exclusive fiduciary devotion to the class of "Hawaiians."[200] Compare the Republic's use of a loyalty oath and a voter registration commission to exclude voters who had expressed royalist opinions: in both cases, the group in power wanted to exclude voters and candidates that it did not trust. In a democracy, the people choose the government, but under this strategy, the government chooses the people.[201] The District Court rejected OHA's argument because "barring a candidate from the ballot as a result of that candidate's public comments would strike a blow to one of our system's most fundamental principles—the right to robust public debate on matters of self-government."[202] Racial discrimination is not immunized from constitutional challenge by combining it with political discrimination.[203]

Rice restored the historic trend toward equal voting rights by overturning the racial discrimination in the OHA voting laws and rejecting "the demeaning premise that citizens of a particular race are somehow more qualified than others to vote on certain matters."[204] *Arakaki* extended *Rice* to running for office and rejected the first attempt in Hawai'i since Annexation to exclude candidates based on their expressions of political beliefs.[205] In the first OHA election after *Arakaki* opened the ballot, 97 candidates of different ethnic backgrounds ran, advocating views ranging from ending discrimination in OHA programs to restoring an independent Hawaiian kingdom: one candidate who is not of ethnic Hawaiian ancestry was elected.

V. RACIALLY EXCLUSIVE GOVERNMENT VIOLATES HAWAI'I'S TRADITION OF INCLUSION.

Dissatisfied with *Rice* and *Arakaki* opening OHA elections to all citizens, various factions have advanced competing proposals to create a governmental entity with citizenship, voting rights, and office

---

[200] Proposed Intervenors-Defendants' Memorandum in Support of Defendants' Motion for Summary Judgment and Opposition to Plaintiffs' Cross Motion for Summary Judgment at 24-34, filed September 5, 2000 (both arguing that Plaintiff Kenneth R. Conklin should be barred from running for OHA trustee because of public statements he had allegedly made critical of OHA and racial preferences for ethnic Hawaiians).

[201] Reacting to the 1953 East German revolt against the Communist government, the poet Bertold Brecht wrote:
The Secretary of the Writers' Union
Had leaflets distributed in the Stalinallee
Stating that the people
Had forfeited the confidence of the government
And could win it back only
By redoubled efforts. Would it not be easier
In that case for the government
To dissolve the people
And elect another?
"The Solution." B. BRECHT, POEMS, 440 (1976).

[202] *Id.*, slip op. at 37. The court relied on *Communist Party of Indiana v. Whitcomb*, 414 U.S. 441 (1974), which held that the First Amendment is violated by a state law requiring a political party to file a statement that it will not advocate the overthrow the government by force.

[203] *See Hadnot v. Amos*, 394 U.S. 358 (denying candidates right to run because of their race and because of their political beliefs violated both the Fifteenth and the First Amendments).

[204] *Rice*, 528 U.S. at 523.

[205] *Arakaki*, slip op. at 36-37. Following the District Court decision in *Arakaki*, one of the plaintiffs in that case brought a new case challenging the racial restriction on eligibility for OHA's programs and for homesteads offered by the Department of Hawaiian Home Lands. *Barrett v. State of Hawai'i*, CV00-00645 DAE-KSC. It has been consolidated with another case raising similar claims, *Carroll v. Nakatani*, Civil No. CV00-00641 DAE-KSC. *Barrett* has been dismissed on standing grounds. An appeal is pending in the Ninth Circuit. The author is one of the attorneys representing Mr. Barrett.

holding restricted to ethnic Hawaiians. Because they define themselves by ethnicity, they necessarily define themselves as a minority in a state that has no ethnic majority. Like the factions that launched the coups in 1864, 1887 and 1893, to gain the power they seek, they must somehow disenfranchise the majority. Numerous factions propose a wide range of plans on how to accomplish this, from secession and reestablishment of a monarchy to a federal statute that would create a "quasi-sovereign" agency modeled on an Indian tribe.[206] Each of these plans would give the new minority government exclusive power over some or all of Hawai`i's public lands and funds. All of these proposals depart from the constitutional principle of equal protection and the centuries-old Hawaiian tradition of inclusiveness.

A. Ethnic Hawaiians Are Not an "Indian Tribe."

In response to *Rice*, Hawai`i's Senator Daniel Akaka sponsored a bill that would have create a federal equivalent of OHA modeled on a federally recognized Indian tribe.[207] Sen. Akaka and other supporters of the bill argue that Hawaiians are like federally recognized Indian tribes and ought to be recognized as such. They also claim that creating a governmental entity restricted to ethnic Hawaiians would be proper redress for the overthrow of the monarchy in 1893.[208] The bill, submitted late in the 2000 session, died at the end of the 106th Congress but Senator Akaka introduced it again in the next Congress.[209] Under the bill, the Department of the Interior would create a roll of "Native Hawaiians."[210] The criterion for qualifying for the Secretary's roll is the same criterion that the Supreme Court in *Rice* held is a racial classification: descent from inhabitants of Hawai`i in 1778.[211] Anyone

---

[206] Under some of the more extreme proposals Hawai`i would secede from the Union and a independent government would be set up that would be exclusively controlled by ethnic Hawaiians or in which ethnic Hawaiians would be guaranteed control of key positions. More moderate proposals would create a racially exclusive governmental agency within the state or federal government or would create a racially exclusive government modeled on an Indian tribe that would control all or part of Hawaii's public lands. The class of proposals modeled on Indian tribes is sometimes called the "nation within a nation" model. Surveys of the wide range of proposals that use the slogan "Hawaiian sovereignty" can be found in S.P. King, *Hawaiian Sovereignty*, HAW. BAR. J. July 1999, p. 6; J.C.F. WANG, HAWAI`I STATE AND LOCAL POLITICS, 105-108 (1998); T. Castanha, *The Hawaiian Sovereignty Movement: Roles of and Impacts on Non-Hawaiians* (1996), www.hookele.com/non-hawaiians (visited Oct. 2, 2001). Links to the websites of many of these organizations can be found at www.hawaii-nation.org (visited Oct. 2, 2001).

[207] S. 2899 and S. 81 (106th Congress, 2d Session, 2000). An identical bill, H.R. 4904 (106th Congress, 2000), was sponsored in the House of Representatives by Rep. Neil Abercrombie of Hawai`i.

[208] On the debate over the overthrow of the monarchy, *see* the sources cited in n. 122, *supra*, and Hanifin, *Hawaiian Reparations: Nothing Lost, Nothing Owed*, 17 HAW. BAR. J. No. 2 107/1982)

[209] Susan Roth, *Native Legislation Dies in Senate*, HONOLULU ADVERTISER, Dec. 14, 2000 p. A1. The bill has been reintroduced in the 107th Congress as S. 81 and H.R. 617.

[210] S. 2899 § 7.

[211] S. 2899 § 2(1), (6) (7). Sec. 7(a)(1)(A)(i) limits the roll to "the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago." At first glance this would suggest that the key date is January 1, 1893, and the criterion is linked to the overthrow of the monarchy in January 1893. However "aboriginal, indigenous, native people" is defined in § 2(1) to mean "those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States." Sec. 1(2) of the bill says that Congress finds that "Native Hawaiians, the native people of the Hawaiian archipelago, . . . are indigenous native people of the United States." Sec. 2(6) defines "indigenous native people" as "the lineal descendants of the aboriginal, indigenous native people of the United States." For Hawai`i, first European contact occurred in 1778, when Captain Cook arrived. In short, to qualify for the roll, a person must be descended from someone who lived in Hawai`i in 1778. Compare the state statutory definition of "Hawaiian" that the Supreme Court held in *Rice* is a racial classification: "any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii." Haw. Rev. Stat. § 10-2. The reference to persons who "exercised sovereignty," copied from the state statute to the federal bill, was intended to avoid the "shipwrecked sailor" problem. As the Hawai`i legislature's conference committee report on the 1979

could apply for inclusion on the roll but anyone else could challenge the applicant's ethnic qualification.[212] A federal commission with membership restricted to ethnic Hawaiians would then examine applicants' genealogies to determine if they are really ethnic Hawaiians.[213] The Secretary of the Interior would establish a process by which questions regarding an individual's ethnic purity could be appealed.[214] The roll of federally approved ethnic Hawaiians would be the voting roll for an election for a "Native Hawaiian Interim Governing Council" which would act as a constitutional convention to draft "organic governing documents" for a "Native Hawaiian Government."[215] The ethnic Hawaiians on the Secretary's roll would vote again on the draft constitution.[216] Both elections would be paid for and managed by the Department of the Interior.[217] If the racially restricted electorate approves the constitution, then the "Native Hawaiian Government" would be officially recognized by the federal government that had created it, as if it were a pre-existing Indian tribe.[218] The Secretary of the Interior and the State could then negotiate with the "Native Hawaiian Government" to transfer land and money to that agency without further congressional authorization.[219]

Later in the 2001 session, Senator Akaka filed an alternative version of the bill that deleted the specification of a process for creating an ethnic Hawaiian government.[220] The essential structure remained: the definition of "native Hawaiian" picks out the same classification that the *Rice* Court determined is a racial classification: descent from inhabitants of Hawai'i in 1778. No knowledge or interest in Hawaiian culture is required; the membership test is purely one of ancestry. The federal government would empower the members of the racial class to form a government, "the Native Hawaiian governing entity," which would be granted unspecified "governmental authorities" and would be entitled to negotiate with the federal and state governments to receive lands and other assets.[221] The process would be funded by the federal government.[222]

OHA laws explains, it is "conceivable that persons descended from any race which may have been shipwrecked on Hawai'i before 1778" could claim to be "descended from races inhabiting the Hawaiian Islands previous to 1778." Stand. Comm. Rep. No. 784, in 1979 Sen. J. at 1353. To ensure that OHA would be racially exclusive, the legislature revised the definition of "Hawaiian" to include the reference to those who "exercised sovereignty." *Id.* at 1353-55. Sen. Akaka's bill also defines "Native Hawaiian" to include persons "who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their descendants." S. 2899 § 2(7)(A). This incorporates by reference the definition of Native Hawaiian in that act, a definition which again points back to 1778 and to race: "any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778." Hawaiian Homes Commission Act § 201(a)(7) (emphasis added). The Supreme Court held that this definition is a racial classification. *Rice*, 528 U.S. at 516-517.

[212] S. 2899 and S. 81 § 7(a)(1), 7(a)(3)(C).

[213] *Id.*, § 7(a)(2).

[214] *Id.*, 7(a)(3)(C).

[215] *Id.*, § 7(c).

[216] *Id.*, § 7(c).

[217] *Id.* §§ 7, 8.

[218] *Id.*, § 7(d). The bill would expressly override the Department's rules for recognizing genuine Indian tribes, 25 C.F.R. §§ 83.1, 83.7, and any other law that would prevent recognition of the Native Hawaiian Government. S. 2899, § 7(d)(2)(A). The racially exclusive constitutional convention and electorate could choose to expand the definition of "Native Hawaiian" beyond the racial definition in the bill.

[219] *Id.*, § 9.

[220] S. 746, introduced April 6, 2001. On May 16, 2001, the House Natural Resources Committee amended the original House bill, H.R. 617, to substitute the language of S. 746 and approved that version. "Hawaiian Bill takes first step in House," HONOLULU ADVERTISER, May 16, 2001, http://the.honoluluadvertiser.com/article/2001/May/16/br/br03p.html. House Report 107-140. On July 24, 2001 the Senate Indian Affairs Committee approved S. 746. "U.S. Senate to Consider Akaka Bill," HONOLULU STAR BULLETIN, July 24, 2001, http://starbulletin.com/2001/07/24/
news/story1.html. The provisions defining the process for creating the "Native Hawaiian governing entity" may have been deleted to make it less evident that that entity would be created by an exercise of congressional power subject to the Constitution.

[221] S. 746, § 6(b)(2)(A)(iii); § 8(b). The definitions of "Native Hawaiian," "indigenous, native people," and "aboriginal, indigenous, native people" remain the same as in S. 81. S. 746, §2(1), (4), (6).

[222] S. 746 § 7.

Because there is no detail about how the "Native Hawaiian governing entity" is to be organized, several organizations could claim the title.[223] That would force the Secretary of the Interior to choose a government for Native Hawaiians by any method she thinks appropriate.[224] Thus, any governmental authority exercised by the new government would be derived from federal law and a decision of a federal official. The bill does not say whether the "Native Hawaiian governing entity" chosen by the Secretary will be able to exercise governmental authority over all ethnic Hawaiians or only on those who voluntarily join it. This creates the possibility that some people might be forced to accept the authority of the "Native Hawaiian governing entity" over them based solely on their race.

S. 746 would also create a troublesome loophole: under § 6(b)(2)(D), if the Secretary does not certify the "organic documents" of a putative "Native Hawaiian governing entity" within 90 days of its application, then the certification "shall be deemed to have been made." Any organization claiming to be the "Native Hawaiian governing entity" which is not so certified by the Secretary could invoke this provision to claim that the Secretary's inaction has effectively certified it as the "Native Hawaiian governing entity." This could be a fruitful source of litigation among numerous claimants and the federal government.

These bills (and any other plan based on creating an analog to an Indian tribe) all suffer the same fatal constitutional defect as did OHA's voting scheme: they are racially discriminatory and violate the Fifteenth Amendment. The Fifteenth Amendment expressly applies to the United States, just as it applies to the states.[225] Federal governmental action is clear: the new government would be defined in a federal statute and federal regulations, paid for with federal money, and its creation would be managed by a federal agency. The definition of "Native Hawaiian" in terms of ancestry tracing back to inhabitants of Hawai`i in 1778 is the same racial classification that the Supreme Court detected in the OHA statutes.[226] That racial classification would be used to determine a voting roll for elections or an

---

[223] S. 746 avoids an express racial limitation on who could be a citizen of the "Native Hawaiian governing entity." That permits an argument that the entity would not necessarily be racially exclusive. However, it also creates the possibility that any group of ethnic Hawaiians could create a "Native Hawaiian governing entity" with a citizenship restricted in any way they please. The bill provides that when "the duly elected officers of the Native Hawaiian governing entity" submit "the organic governing documents of the Native Hawaiian governing entity" to the Secretary of the Interior, the Secretary is to review those documents and determine whether they "establish the criteria for citizenship in the native Hawaiian governing entity" and whether they were "adopted by a majority vote of the citizens of the Native Hawaiian governing entity." S. 746, §6(b). There is no requirement that the documents creating the "native Hawaiian governing entity" have been adopted by a majority vote of ethnic Hawaiians or any group other than the group specified in the documents themselves. Mutually antagonistic "sovereignty" groups may organize several contending "Native Hawaiian governing entit[ies]." Any two ethnic Hawaiians could form a group, draft "organic governing documents" which specify that citizenship is limited to themselves, vote for those documents, elect themselves officers, and then submit the documents to the Secretary, who would be required to certify that the documents do indeed specify a rule of citizenship and have been adopted by a majority of the citizens so defined. Other groups might form that included among their citizens persons who are not ethnic Hawaiians.

[224] S. 746 refers to "*the* Native Hawaiian governing entity" (emphasis added), apparently contemplating that there will be only one such entity. However, the bill gives the Secretary no guidance as to how to choose which one of several contenders is to be granted governmental powers, including the power to negotiate with the federal and state governments for land and other assets. The bill provides for the Hawai`i state legislature to "support[] the recognition of a Native Hawaiian governing entity," §6(b)(2)(B), but does not require the legislature to act. Rather, the bill provides that if the state legislature does not act within 90 days, the Secretary will be deemed to have certified that the legislature endorsed groups that submit organic documents in the proper form. S. 746, §6(b)((2)(D). The certification that organic documents have been filed in proper form is distinct from the certification of legislative endorsement. More than one group could qualify for either or both certifications. Thus, in the likely event that there is more than one contending candidate for "Native Hawaiian governing entity," the Secretary of the Interior, could exercise discretion to choose a government for "Native Hawaiians." The Senate Committee Report approving S. 746, Report S 107-66 at 43, states that the Committee on Indian Affairs "does not intend that the State of Hawaii have any role in determining the Native Hawaiian governing entity that is to be recognized by the United States."

[225] The Fifteenth Amendment is "binding on the National Government, the States, and their political subdivisions." *Rice*, 528 U.S. at 498.

[226] *Id.*, 528 U.S. at 514-16.

initial group of voters who can participate in the creation of the new government. Therefore, like the OHA statutes, it denies the right to vote on account of race, contrary to the Fifteenth Amendment. The possibility that the racially exclusive electorate might subsequently choose to adopt a constitution that broadens the franchise does not save the racially discriminatory rules for the elections that initiate and define the entire process.[227]

The Constitution's requirement that elections be open to all without regard to race cannot be avoided by analogizing ethnic Hawaiians to an Indian tribe and invoking Congress's power under the Commerce Clause to "regulate commerce" with "Indian Tribes."[228] Both the State of Hawai`i and OHA argued that analogy in their briefs in *Rice* and the Supreme Court rejected it.[229] As the Supreme Court pointed out in *Rice*, an Indian tribe can impose an ancestry restriction on voting because "various tribes *retained* some elements of quasi-sovereign authority, even after cession of their lands to the United States" and that "retained tribal authority relates to self-governance."[230] Therefore, "[i]f a non-Indian lacks a right to vote in tribal elections, it is for the reason that such elections are the internal affair of a quasi-sovereign"[231] government that was not created by the federal government or by a state but predates contact with non-Indians.[232] What is essential is a government and distinct political community with a continuous existence dating back so far that they does not derive their "quasi-sovereign" status from the United States. A group of Indian individuals that lacks such a government and continuous political community is not a tribe, even if its members can claim a common descent.[233] Because Indian tribes are governmental entities that are not creatures of the federal or state governments, the federal Constitution generally does not apply to them.[234] By contrast, the United States, like the states, is constitutionally barred from authorizing racial discrimination in voting.[235] In *Rice*, the Court rejected the analogy between Indian

---

[227] The Fifteenth Amendment applies to referenda about public policies as well as to election of candidates; it bars discrimination in "elections to determine public governmental policies or to select public officials, national, state or local." *Rice*, 528 U.S. at 514 quoting *Terry v Adams*, 345 U.S. 461, 467 (1953).

[228] U.S. Constitution, Art. I, § 8, clause 3, gives Congress power, "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." The committee reports of the Indian Affairs Committee, Sen. Report 106-424 at 21-34 (September 27, 2000), and S. Report 107-66 at 21-34 (September 21, 2001) rely on Congress' power over Indian tribes under the Commerce Clause as the constitutional power supporting the bill.

[229] *Rice*, 528 U.S. at 517-22.

[230] *Id.* 528 U.S. at 518 (emphasis added).

[231] *Id.* 528 U.S. at 520.

[232] *See, Montoya v. United States*, 180 U.S. 261, 266 (1901), defining an "Indian tribe" as "a body of Indians of the same or similar race, *united in a community under one leadership or government* and inhabiting a particular, though sometimes ill-defined territory." (Emphasis added.) In *United States v. Wheeler*, 435 U.S. 313, 322-23 (1978), the Supreme Court held that because "powers of Indian tribes" are "*inherent powers of a limited sovereignty which has never been extinguished*," tribes and federal government are dual sovereigns that can both prosecute an Indian without violating the constitutional prohibition on double jeopardy. (Emphasis in original). By contrast, a territory is a federal creature that cannot prosecute a defendant who has been prosecuted by the United States. *Id. See, Atkinson Trading Co. v. Shirley*, -- U.S. –, 121 S.Ct. 1825, 1830-31, 149 L.Ed. 2d 889, 896-99 (2001) (tribe's surviving inherent sovereignty as a domestic dependent nation is generally is limited to its members). Under the Department of the Interior regulations governing recognition of Indian tribes, an applicant organization must proved that it "has maintained political influence or authority over its members as an autonomous entity from historical times until the present." 25 C.F. R. § 83.7(c). Historical times are defined as times going back to the first sustained contact with non-Indians. 25 C.F.R. § 83.1.

[233] *Miami Nation of Indians of Indiana, Inc. v. United States*, 2001 U.S. App. LEXIS 13277, *19 - *20 (7th Cir. 2001). *See Montoya v. U.S.* 180 U.S. at 266 (tribe is community united under one leadership or government); *Worcester v. v. Georgia*, 31 U.S. 515, 559 (1832) (tribes are "distinct independent political communities"). A tribe that ceases to maintain political unity under a distinct tribal government ceases to be a tribe and its former members have no special status different from other citizens. *Miami Nation of Indians of Indiana, Inc. v. U.S.*; *Worcester v. Georgia*, 31 U.S. at 593 (M'Lean, J. concurring); *see Mashpee Tribe v. Secretary of the Interior*, 820 F.2d 480, 482-83 (1st Cir. 1987); *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575 582-87 (1st Cir. 1979)

[234] CANBY, AMERICAN INDIAN LAW, 327-28 (1998); *see Talton v. Mayes*, 163 U.S. 376 (1896) (tribe not limited by Fifth Amendment to US Constitution when dealing with its members).

[235] Fifteenth Amendment, § 1; *Rice*, 528 U.S. at 519-20.

tribal elections and race-based voting laws enacted under the Constitution.[236] Like any other governmental agency, an agency under the authority of state or federal legislation for an Indian group would be bound by the constitutional requirements of equal protection.[237]

The lack of any historical precedent for a Hawaiian "Indian tribe" is fatal to the Indian tribe analogy. The federal government cannot recognize or restore a Hawaiian tribe because no such tribe has ever existed. Neither ethnic Hawaiians nor any other citizens of Hawaii were ever organized as tribes.[238] The Kingdom of Hawai`i was not a tribe, but was the government of an independent country, a foreign country from the American perspective. Just as an Indian tribe is not a foreign nation, a foreign nation is not an Indian tribe.[239] Tribesmen are tribesmen because their parents were tribesmen.[240] However, under the laws of the Kingdom, everyone born or naturalized in Hawai`i was a subject, no matter where his family came from.[241] Many of the Kingdom's cabinet members, legislators, governors, and judges were not ethnic Hawaiians; some never even chose to become subjects.[242] By contrast, the leaders of a tribe are members of the tribe and descendants of members.[243] The annexation of Hawai`i was not the incorporation into the United States of a tribe with a pre-existing membership restriction based on ancestry. Under the terms of the Annexation Treaty[244] and Annexation Resolution,[245] the inde-

---

[236] The Court emphasized that OHA is a state agency, not an Indian tribe. *Id.* 528 U.S. at 520-21. Discussing *Morton v. Mancari*, 417 U.S. 535 (1974), a leading case on the scope of Congress' plenary power over Indians that was heavily relied upon by the State and OHA, the Court said that, "it does not follow from *Mancari* . . . that Congress may authorize a State to establish a voting scheme that limits the electorate for its public officials to a class of tribal Indians, to the exclusion of all non-Indian citizens." *Id.* at 520. *Mancari* upheld a hiring preference in the Bureau of Indian Affairs in favor of enrolled members of federally recognized Indian tribes. In *Rice*, the Court stressed that the hiring preference at issue in *Mancari* was political rather than racial because it was "'not directed towards a "racial" group consisting of "Indians,"' but rather 'only to members of "federally recognized" tribes.'" 528 U.S. at 519-20 quoting *Mancari*, 417 U.S. at 553, n.24.

[237] *See Mancari* (analyzing affirmative action program in Bureau of Indian Affairs for conformity with Constitution and interpreting it as favoring the political class of enrolled members of federally recognized tribes); *Rice*, 528 U.S. at 519-20 (Congress cannot authorize state to establish voting scheme for state office that limits electorate to tribal Indians).

[238] As the State of Hawaii acknowledged before the U.S. Supreme Court, the tribal concept has no place in the context of Hawaiian history. Rice v. Cayetano, Respondent's Brief in Opposition to Petition for Writ of Certiorari (Dec. 29, 1998), p. 18. Jon Van Dyke, *The Political Status of the Native Hawaiian People*, 17 YALE LAW & POLICY REVIEW 95 (1998) ("Native Hawaiians have never organized themselves into tribal units"). To establish that a group of Indians exists as an Indian tribe, the group's membership must consist of individuals who descend from a historical tribe. *See* Interior Dept. regulations defining criteria for tribal status, 25 C.F.R. § 83.7 b 1 . e. Ethnic Hawaiians are not descended from members of a historical tribe because there never was a tribe in Hawaii. They are not a federally recognized Indian tribe. *Price v. Hawai`i*, 764 F.2d 623, 626-28 (9th Cir. 1985). Ethnic Hawaiians as a group do not meet the criteria for recognition as an Indian tribe, particularly in that they are not descended from a historical tribe and they are not descendants of the aboriginal inhabitants of North America. 25 C.F.R. §§ 83.1, 83.7. For a detailed explanation of why ethnic Hawaiians are not an "Indian tribe" for constitutional purposes, see Stuart Minor Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 YALE. L.J. 537 (1996).

[239] *See Cherokee Nation v. Georgia*, 30 U.S. 1 (1831) (Indian tribe does not have standing to bring suit against under original jurisdiction of Supreme Court because it is neither a State nor a foreign nation but merely a domestic dependent nation); *Montoya v. United States*, 180 U.S. 261, 265 (1911) (Indians tribes do not and never have constituted "nations" as that term is used in international law).

[240] *See* Interior Dept. regulations defining criteria for tribal status, 25 C.F.R. § 83.7(b)(1), (e).

[241] *See supra*, text at notes 35 - 55.

[242] *See supra*, text at notes 31 -33, 68, 95.

[243] *See* 25 C.F.R. § 83.7(c) (requiring that the Indian group claiming to be a tribe must prove that it has maintained political authority over its members since contact with non-Indians . § 83.7(d) (the groups members must be able to prove descent from members of a historical Indian tribe).

[244] Treaty of Annexation of Hawai`i (1893) in L. THURSTON, FUNDAMENTAL LAWS OF HAWAI`I 243 (1904).

[245] Resolution No. 55 of July 7, 1898, 30 Stat. 750 (known as the "Annexation Resolution" or "Newlands Resolution"). Some opponents of Annexation argued that the Annexation Treaty could not constitutionally be approved by a majority vote of both houses of Congress but only by a two-thirds majority of the Senate. RUSS, HAWAIIAN REPUBLIC at 324-30. The question became moot when the Annexation Resolution, which expressly ratified the treaty, won a two-third majority in the Senate, as well as an even greater majority in the House of Representatives. *Id.* at 340-41, 353. Moreover,

pendent country of Hawai'i merged into the United States, transferring all its property and sovereignty to the federal government, and leaving no "quasi-sovereign" behind.[246] "If a nation doesn't exist, it can't be recognized, whether or not it ceased to be a nation voluntarily."[247]

Because there has never been a Hawaiian tribe, there is not and cannot be any tribal government with "retained quasi-sovereign" powers. Any government created for ethnic Hawaiians would be created *de novo* by the State of Hawai'i or the United States. Groups of individual citizens can form voluntary political organizations but they cannot invest their private organizations with sovereign public power.[248] The Organic Act made all of citizens of Hawaii American citizens, at a time when tribal Indians were generally denied citizenship.[249] Like all American citizens, individual American citizens of Hawaiian ancestry do not retain any mysterious "sovereignty" that they could use create a new sovereign distinct from the federal and state governments. Like all Americans, they exercise their rights of self-government by participating in the sovereign federal and state governments. Unlike Indian tribes on reservations, ethnic Hawaiians do not live in segregated communities that could make and enforce laws without affecting others; rather, they are integrated with their fellow citizens in the politics and society of the State of Hawai'i.

The law creating a "Native Hawaiian governing entity" would be legislated by Congress. The federal government and all of its creatures are subject to the Fifteenth Amendment's ban on racial discrimination in voting. Congress has no power to manufacture a tribe out of a racial classification by *ipse dixit*.[250] Congress' power under the Commerce Clause to "regulate commerce" with "Indian Tribes" is a special power of Congress over Indian tribes, not a special privilege of Indian tribes.[251] If Congress's power were cut loose from the requirement of a pre-existing Indian tribal organization, then it would become a power to discriminate for or against millions of individuals based solely on their racial ancestry, even if their Indian or ethnic Hawaiian heritage is only "1 possible ancestor out of 500."[252] That would contradict the principle of equal protection, which applies to the federal government as well as to the States.[253] All of Congress's powers under the original Constitution are limited by the Fifteenth

---

it is now well-established that "[t]he President, with the authorization or approval of Congress may make an international agreement dealing with any matter that falls within the powers of Congress and the President under the Constitution." RESTATEMENT OF THE LAW: FOREIGN RELARIONS LAW OF THE UNITED STATES § 303(2). *B. Altman & Co. v. United States*, 224 U.S. 583 (1912); *Weinberger v. Rossi*, 456 U.S. 25 (1982). Congress's powers include regulating the territory and property of the United States and admitting new States to the Union. U.S. Constitution, Art. IV, § 3. Accordingly, annexations of territory by joint resolution have been held to be effective in the case of Hawai'i, *United States v. Fullard-Leo*, 331 U.S. 256, 276 (1947) (all of the territory of Hawai'i annexed to U.S., including Palmyra Island), and Texas, *Texas v. White*, 74 U.S. 700 (1868) (Texas annexed by joint resolution, subsequently made a state by another resolution, and cannot quit the Union).

[246] *Compare, Rice*, 528 U.S. at 520 (Indian tribes can restrict voting to tribal members because the tribes have retained elements of original quasi-sovereign powers predating American annexation of their territories).

[247] *Miami Nation of Indians of Indiana, Inc. v. United States*, 2001 U.S. App. LEXIS 13277, *19 (7th Cir.) (applying same principle to tribe when its governmental organization lapsed).

[248] By contrast, a tribe "must be something more than a private, voluntary organization." *Mashpee Tribe v. New Seabury Corp.*, 592 F.2d 575, 582 (1st Cir. 1979), citing *United States v. Mazurie*, 419 U.S. 544, 557 n.3 (1975).

[249] Organic Act, § 4; *compare Elk v. Wilkins*, 112 U.S. 94.

[250] *See United States v. Sandoval*, 231 U.S. 28, 39-47 (1913) (Congress cannot "bring a community or body of people within the range of" its special power over Indians "by arbitrarily calling them an Indian tribe"); *United States v. Candelaria*, 271 U.S. 432, 439 (1926) (same). *Rice* establishes that the terms "Hawaiian" and "Native Hawaiian" are racial classifications when defined in terms of ancestry. 528 U.S. 515-17.

[251] Benjamin, *Equal Protection and the Special Relationship: The Case of Native Hawaiians*, 106 YALE. L.J. at 586.

[252] *Rice*, 528 U.S. at 527 (Breyer, J. concurring). Approximately fifteen million Americans can trace part of their ancestry back to the pre-Columbian inhabitants of the Americas but only about 1.4 million are members of federally recognized Indian tribes. G. RUSSELL, NATIVE AMERICAN FAQS HANDBOOK, 44 (2000).

[253] *Adarand Constructors Inc. v. Pena*, 515 U.S. 200, 204 (1995) (same test of strict scrutiny applies to federal race-based programs as to state race-based programs, including programs that give preference to "American Indians, Eskimos," and "Aleuts."). In addition, reading "Indian tribe" as if it meant "members of an ethnic group that lived in America before

Amendment and the Bill of Rights, including the equal protection principle implicit in the Due Process Clause of the Fifth Amendment.[254] Just as Congress cannot racially segregate school children, it cannot racially segregate voters by inventing an Indian tribe.

B. All of the People of Hawai`i Are the Heirs of the Kingdom.

All plans for racially exclusive government, whether organized as a state agency, a federal agency, a tribal government, or a government of an independent country with race-based citizenship, conflict with the Hawaiian tradition of political inclusion as much as they conflict with the constitutional principle of equal protection. From Kamehameha I's appointment of westerners as governors to *Rice*'s declaration that "[r]ace cannot qualify some and disqualify others from full participation in our democracy,"[255] none of Hawai`i's governments has ever restricted citizenship to a single racial ancestry. Except for OHA before *Rice*, there has never been an elected body with membership and voting rights limited to a single racial group. The citizens of the Kingdom of Hawaii included everyone born in Hawaii plus naturalized subjects and denizens.[256] When Hawaii was an independent nation in the international system it was, like the United States, a multiracial nation defined by a common citizenship. No ethnic group of citizens had any special legal status placing its members above their fellow citizens.

For two centuries, the trend in Hawai`i has been toward expanding the numbers of people who have a say in all parts of their government: from Kamehameha I's near-absolute monarchy to a hereditary oligarchy, to an oligarchy open to men with money, to American democracy. Although the Kingdom was not a democracy by today's standards, political rights were not limited to a particular ethnic group or to the lineal descendants of a founding group. Voting was never limited to ethnic Hawaiians.[257] Decisions about how government land was to be used were made by the people in charge of the government, and indirectly by the voters. No individual or ethnic group owned the Government Lands; the government did.[258] No individual subject could have sold or willed a personal share of the

---

the white men arrived" ignores the rule of Indian law that a member of a tribe can voluntarily quit the tribe. *See Montoya v. United States*, 180 U.S. 261 (members of tribes quit and joined another tribe; their original tribes not responsible for their subsequent crimes); *Nagle v. United States*, 181 F. 141 (9th Cir. 1911). One can quit a political organization but one cannot quit an ethnic group.

[254] *Bolling v. Sharpe*, 347 U.S. 497 (1954) (Congress' power to legislate for the District of Columbia is circumscribed by the equal protection principle implicit in the Due Process Clause of the Fifth Amendment and does not extend to legislation requiring segregated schools). Congress' exercise of its Indian Commerce Clause Power is limited by the Fifth Amendment. *Hodel v. Irving*, 481 U.S. 704 (1987) (statute barring inheritance of fractionated Indian land allotments unconstitutionally effected taking of Indians' property); *Babbitt v. Youpee*, 519 U.S. 234 (1997) (amended version of same statute also unconstitutional).

[255] *Rice*, 528 U.S. at 523.

[256] *See supra*, text at notes 31 - 68.

[257] *See supra*, text at notes 69 - 110.

[258] The Hawaii Supreme Court during the Monarchy repeatedly interpreted the King's 1848 grant of land to the government and the Legislature's acceptance of it as vesting land ownership in the Government alone. *See, In the Matter of the Estate of His Majesty Kamehameha IV*, 2 Haw. 715 (1864) (interpreting the Mahele between the Crown lands and Government lands and the Act of June 7, 1848, which accepted the King's grant, as vesting ownership of the Government lands in the Government and the Crown lands in the King); *Harris v. Carter*, 6 Haw. 195, 201 (1877) (per Judd, C.J.); *Kenoa v. Meek*, 6 Haw. 63 (1871); *Thurston v. Bishop*, 7 Haw. 421, 430 (1888). Statutes passed during the Monarchy confirm this view. *See* Act of July 11, 1851 to Provide for the Appointment of Agents to Sell Government Lands to the People, 1851 Sess. Laws 52, reprinted at 2 R.L.H. (1925) 2196; Act of July 6, 1853 to Amend the Second Section of the Act to Provide for Appointment of Agents to Sell Government Lands to the People, L. 1853 p. 55, reprinted at 2 R.L.H. (1925) 2197; Disposition of Government Lands, CC 1859 §§ 39, 46, 47; Cp. L §§. 39, 46, 47, C.L. §§ 166, 174, 175, reprinted in 2 R.L.H. (1925) 2198; 1874 Sess. L. c. 24 (allowing Minister of Interior as agent for the Government to lease sell or transfer land owned by Government); 1876 Sess. L. c. 44 and 1878 Sess. L. c. 5 (regulating sale of Government land); Act to Facilitate the Acquiring and Settling of Homesteads. 1884 Sess. Laws c. 45 (regulating sale of government land to the people), amended by 1888 Sess. Laws c. 54 and 1890 Session Laws c. 85; Act to Determine the Status of the Landings of the Kingdom

Government Lands to another person; nor could a subject have excluded anyone from any part of the Government Lands.[259] Nor did ethnic Hawaiians, individually or as a group, have any special legal privileges to use those lands.[260] Thus, a racially exclusive government for ethnic Hawaiians would not be a revival of the Hawaiian Kingdom or the independent nation of Hawai`i. Rather, it would be a novel and unconstitutional creature of the federal or state government.

All of the proposals to create an exclusive group of heirs of the Kingdom defined by ancestry, including both versions of the Akaka bill, ignore the Kingdom's own laws. To determine the members of an organization, look to the organization's membership rule. To determine the members of a political community, look to its citizenship laws. If one were to apply to people living today the citizenship laws of the Kingdom of Hawai`i to determine who would be a citizen of a successor of that Kingdom, then everyone born in Hawai`i would be a citizen and everyone who moved to Hawaii would be eligible to become a citizen. That is basically the rule for citizenship in the State of Hawai`i. The citizens of Hawai`i jointly exercise sovereignty[261] by participating in the sovereign governments of the State of Hawai`i and the United States of America, and so share in decisions about how the land of Hawai`i will be used.[262] All adult citizens of Hawaii now have the same right to participate equally in the multi-ethnic state and federal governments that rich men in 1893 had to participate in the multi-ethnic Kingdom of Hawai`i. No one deserves more than equality. All of the people of Hawai`i are heirs of the Kingdom and its tradition of political inclusion. The citizens of Hawai`i can say: "We are all sovereign now."

---

and the Rights of the Public Therein, 1892 Sess. Laws c. 44 (granting private persons the right to use government landings).

[259] The right to exclude others is the hallmark of a property interest. *College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board*, 527 U.S. 666, 673 (1999) (right to exclude is hallmark of property interest); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979) (right to exclude from privately owned former Hawaiian fishpond).

[260] A statute enacted at the time that land in Hawai`i was first privatized preserved the rights of "tenants of the ahupua`a" to gather specified items in the ahupua`a on public as well as private lands. Act of July 11, 1851, reprinted in LAWS OF HIS MAJESTY KAMEHAMEHA III, 98-99 (1851), now codified at Haw. Rev. Stat. § 7-1; *Oni v. Meek*, 2 Haw. 87 (1858). An "ahupua`a" is a traditional land division, generally corresponding to a valley from the mountains to the sea. All occupants and residents of the ahupua`a are "tenants of the ahupua`a," without regard to race. *Haalelea v. Montgomery*, 2 Haw. 62, 71 (1858); *Dowsett v. Maukeala*, 10 Haw. 166, 170-71 (1895); *Hatton v. Piopio*, 6 Haw. 334, 335-36 (1882); *Damon v. Tsutsui*, 31 Haw. 678, 687-90 (1930). *Compare Public Access Shoreline Hawai`i v. Hawai`i County Planning Commission*, 79 Haw. 425, 903 P.2d 1246 (1995) (extending gathering rights to other unspecified items but adding a racial restriction to ethnic Hawaiians based on a provision of the Hawai`i State Constitution, Art. XII, § 7, enacted in 1978, which uses the racial definition of "Hawaiian" that was at issue in Rice). *See* Paul M. Sullivan, *Customary Revolutions: The Law of Custom and the Conflict of Traditions in Hawai`i*, 20 U. HAW. L. REV. 88 (1998) (discussing gathering rights under Hawai`i law).

[261] "Sovereignty" has become a controversial term in Hawai`i politics. This article will not spoil "sovereignty" by defining it. Words mean what they are used to mean. Because "sovereignty" is used inconsistently, it can have no single, consistent meaning. Indeed, its vagueness is its value: people who agree on nothing else can agree to use "sovereignty" as a slogan and so can appear to agree on substance (until they begin to discuss specifics). If someone could decree a precise definition, everyone else would abandon "sovereignty" for something vaguer. Nonetheless "sovereignty" is not utterly meaningless. Its varying uses in the current debate are contradictory precisely because they point to contrary proposals regarding the same subjects. There are two broad themes: individual freedom of choice and collective political power. Individual freedom of choice encompasses freedoms of thought, expression, religion, and association. It includes the right to try to learn a culture and a language and so make them your own. The federal and state Constitutions guarantee all of these rights equally to everyone. U.S. Constitution, First Amendment; Hawai`i State Constitution, Art. I §§ 3 (equality of rights), 4 (freedom of religion, speech, press, assembly and petition), 6 (privacy) 7 (voting, privileges of citizenship). *See, Meyer v. State of Nebraska*, 262 U.S. 390 (1923) (statute forbidding parents to educate their children in foreign language is unconstitutional).

[262] As Justice Breyer noted in his concurrence in *Rice*, 528 U.S. at 525, the land formerly held by the Kingdom and the Republic is held in public trust for all of the people of Hawai`i, not just for ethnic Hawaiians, and is managed for the public by the State government and the federal government. *See* Resolution No. 55 of July 7, 1898, 30 Stat. 750 (known as the "Annexation Resolution" or "Newlands Resolution") (providing that except as to land reserved for federal use, e.g. national defense, all land and all revenues from land ceded by the Republic of Hawai`i to the United States "shall be used

solely for the benefit of the inhabitants of the Hawaiian Islands for education and other purposes"); An Act to Provide for the Admission of the State of Hawai`i into the Union (Act of March 18 1959), Pub. L. 86-3, 73 Stat. 4, § 5(f) (land formerly held by the Kingdom and the Republic and transferred by the federal government to the State is to be held in public trust); Hawai`i State Constitution, Art. XI, § 1 (public natural resources held in trust by the State for the benefit of the people).

Indian-Affairs, Testimony (Indian Affairs)

From: David Ingham [hotcoffee@prodigy.net]
Sent: Monday, February 24, 2003 9:22 PM
To: Indian-Affairs, Testimony (Indian
Subject: Testimony S344

David P. Ingham

21-5th Ave.

San Francisco Ca. 94118

Ph.221-7472

February 22, 2003

Senator Ben Nighthorse Campbell

Committee on Indian Affairs United States Senate 838 Hart Office Building Washington, D.C. 20510 ph: (202) 224-2251 fax: 202-224-5429

testimony@indian.senate.gov

Chairman Nighthorse, Senator Inouye, Senator Akaka, members of the committee and invited guests; This testimony regarding S344 is submitted on behalf of all people with knowledge of the truths expressed here:

I request that this testimony be recorded into the record and read into the record at the Committee Hearing on S344, 25 February, 2003.

Federal recognition has come to mean far more than simple diplomatic recognition. It has become a slogan for policy of the United States as it applies to indigenous people. The history of that policy is long and it is ugly. I don't think there is a person reading these words who will disagree with that simple truth. The record is clear.

The legacy of this truth is the lives of the people who are its product. Once proud, independent, and content people now grovel before congress and the Department of the Interior competing for scraps of well being that were once their birthright but that is now meted out to them through ever changing federal policy administered by Congress and the Executive through the Departments of the Interior and Justice. Federal indigenous policy has stripped them of their land, social systems, resources and governments. Federal policy has reconstructed these systems to fit in within the framework of federal indigenous policy. Indigenous people have become what federal policy has designed for them; domestic dependent wards of the federal government, second class Americans and second class indigenous people. Federal indigenous policy precludes realization of their full potential as either Americans or as the rightful heirs to their ancestral homeland. Federal indigenous policy has caused this. Federal recognition perpetuates this. Whenever the interests of indigenous people and the interests of the United States conflict, under federal policy, the interests of the United States take the front seat, indigenous interests the back. America has created a system in which indigenous people must make the choice between assimilation and second class citizenship in order to survive, a system in which the potential of their inherent identity and rightful destiny can never be fully realized. Now Hawaiians have come under the watchful eye of those who created, and are responsible for applying, federal indigenous policy. Hawaiians are awakening from the nearly fatal blow that was the hewa of the late 1800s. The collisions of ideologies and conflicting interests that the hewa was intended to quash 110 years ago were never reconciled, and they have begun to fester once again as the truth of what has been done by the United States seeps into Hawaiians collective psyche, as Hawaiians reject their condition, as the truth of how it came to be that they are living as second class citizens in their own homeland can no longer be effectively hidden from them. The conflicts that were meant to be permanently muted by the hewa are renewed

and growing, now exacerbated by the fact of the hewa, a fact that did not exist at the first attempt to extinguish these conflicts in favor of the United States. Every member of this committee knows and understands that Hawaiians have committed no crime, Hawaiians have made no offense, Hawaiians owe the United States nothing. Hawaiians have played the game squarely. Every member of this committee knows and understands that the United States control of the Hawaiian Islands came about through deception, violation of treaties, manipulation, and a host of other illegal and immoral acts by the United States. It is only by the actions of the United States that Hawaiians today are living on the fringes of their ancestral homeland in poverty and cultural decay, while the United States reaps the Lions' share of the bounty of Hawaii. I don't believe there is a member of this committee or a single Hawaiian who will contest these truths. Federal indigenous policy effectively contains and controls awakenings such as those that are stirring Hawaiians today, as it has for indigenous people for 200 years. These policies ensure that the interests of the United States are not adversely impacted by the indigenous people when interests conflict, These policies ensure that federal interests are not impacted by the people whose homeland they control. "Cooperation," "fairness," "mutual benefit," "agreement," "self determination," "equitable settlement," "meaningful expression," "apology," these are the words that cover the books and title the documents recording the history of federal recognition. These are the words in the treaties and agreements and speeches made, these are the words that mask the true form, scope and effect of federal indigenous policy. These are the words Hawaiians are hearing now. A map of the whole of North America held up next to a map of reservations. This is the effect of federal indigenous policy . . . the policy of those who promise Hawaiians a land base. Forty-two percent unemployment on those reservations on average. This is the effect of federal indigenous policy . . . This is the policy of those who promise Hawaiians economic improvement. Fifty percent high school dropout rate on average among recognized Tribes. This is the effect of federal recognition. This is the policy of those who promise Hawaiians protection of education entitlements. The Highest Diabetes and Heart Disease rates in North America. This is the effect of federal indigenous policy. This is the policy of those who promise protection of entitlements. Alcoholism, Divorce, Smoking, Drug Abuse, Obesity, Infant mortality, Low Birth weight, Low Life Expectancy, Poverty . . . Federally recognized indigenous people suffer the highest percentage of all of these and more, This is the effect of Federal recognition. This is the effect of the policy of those who promise Hawaiians a land base, protected entitlements, a seat at the table, and self determination. These effects have persisted side by side with the promises throughout the evolution of federal indigenous policy. Changes in that policy over the years, from extermination, to assimilation, to relocation, to allocation, to termination, to self determination, have done little to eliminate these effects. Yet, the same promises are made today that have always been made. Promises seldom realized by the many, but always realized by the few. The machinery of federal indigenous policy works to protect the interests of the United States, starting here in this committee. United States indigenous policy is a well-oiled strategy to deal with the kind of social and cultural awakening occurring among Hawaiians in Hawaii. It is a strategy designed to protect the interests of the United States first and foremost over those of indigenous people. I know, and many others are becoming aware of, the machinery that is the federal recognition process. I know, and many others are becoming aware of, the result of pursuing that process and becoming federally recognized. There are a great number of indigenous people who are satisfied with their status as federal wards. The National Congress of American Indians and the Alaska Federation of Natives represent a great many and are themselves satisfied, if not grateful federal wards. Grateful enough and satisfied enough to assume that their brothers and sisters in Hawaii should be included with them. Grateful enough and satisfied enough to sign documents in support of including Hawaiians as federal wards. These indigenous people saw such benefit for their people in federal wardship that each agreed on behalf of their people to permanently extinguish their people's claims to land, rights, and independence in exchange for life under federal indigenous policy for every generation to come, forever. The promise they saw in federal wardship included restoration of rights, restoration of land, economic prosperity, restored health, educational opportunity, and restored sovereignty, in short, a promise to end to the long suffered oppression at the hands of earlier American policies governing their lives. Statistics, litigation, and growing dissent tell the story of how that promise played out. The members of this committee know how the story played out. Please, lets not deceive ourselves or others. The promises that were made are yet to come if they are to come at all. Every member of this committee knows that the policies they create and the administration of those policies has resulted in a concentration of wealth and power in the hands of a few, while the health, education, employment, and housing statistics languish for the vast majority . . . as they always have for indigenous people. Is there a member here that can honestly say the promises made in exchange for extinguishment of claims has been realized by any indigenous group? That the expectations they rightfully anticipated have become reality . . . No, I didn't think so. Always working to improve that . . . I know . . . Another promise.

So now we come to the case of Hawaiians who are being led to believe federal recognition is their salvation. Promises of protected entitlements, promises of returned land, promises of restored sovereignty, promises of a safe harbor, promises of restored rights, health, prosperity, education, promises of freedom from State interference in their affairs, all noble goals, all in the name of reconciliation. The members of this committee know

too well that the legislation they are considering makes no guarantees of these promises. The members of this committee know too well that most Hawaiians who support this legislation support it because they believe the legislation will make these promises law and reality. The members of this committee know the legislation makes no such laws. The members of this committee know the reality. The members of the committee know the meaning of the commerce and treaty clauses of the Constitution. The members of this committee know that Hawaiians who believe this legislation will make these promises law and reality have been deceived. This is the process of recognition. In truth, the proposed legislation makes very few guarantees, So few they can be listed here: 1. The Congress of the United States will recognize a Hawaiian government provided the Secretary of the Interior certifies the Hawaiian Constitution meets the criteria spelled out in section 6 of the proposed legislation. 2. The Hawaiian government will negotiate with the United States once it is recognized. 3. An office will be established in the United States government to administer the relationship between Hawaiians and the United States. 4. The United States will fund the Process. There are no other guarantees in the legislation. None. Very few Hawaiians realize that greatest impact to come from this legislation will come in the negotiations after the Hawaiian government is established, after the Legislation becomes law, after Hawaiians are federally recognized, after the leaders are elected, and after the Constitution has been adopted by Hawaiians. Very few Hawaiians realize that the constitution they approve is required to give the leaders they elect the power to extinguish Hawaiians' claims to their homeland. Very few Hawaiians realize that the leaders of every indigenous group that has become federally recognized over the last 32 years have agreed to permanent claims extinguishment. Very Few Hawaiians realize that for the past 32 years the United States has systematically extinguished the claims of thousands of indigenous people through the very process Hawaiians are now being drawn into. Very few Hawaiians realize that the promises they are relying on will be paid for not by the suffering and losses of the past 100 years, but by extinguishment of their claims for redress of those losses and by future generations of Hawaiians who will likely lose their place in their homeland.

Very few Hawaiians realize that the addition of a clause saying the bill does not preclude their rights under international law does not mean those rights will not be extinguished in negotiations after the fact by the officers of the entity. The members of this committee know this to be the truth. The members of this committee know that any land transferred, any rights granted, any benefits administered come and can be taken away at the pleasure of congress. The members of this committee know those abuses of land and assets the United States holds in trust for indigenous people are the rule . . . not the exception. The members of this committee know that the sum total of concessions made by the United states in negotiations with the Hawaiian government will come no where close to the value of the claims extinguished. The members of this committee know the federal recognition process can be controlled through federal funding of Hawaiian election and information campaigns to ensure the outcome is in their favor. The members of this committee know that a disclaimer at the end of the legislation stating it does not affect Hawaiians' rights under international law is meaningless. This committee knows these rights are taken in negotiations that take place after recognition, after the passage of recognition legislation. Federal recognition of Hawaiians is not reconciliation or even partial reconciliation for the wrongs suffered by Hawaiians. It is a new deal. A raw deal. A cost-effective way for congress to put responsibility for the effects of their illegal actions behind them and to ensure United States control over the lives of Hawaiians forever. True reconciliation is independent Hawaii, and compensation for wrongs committed that cannot be compensated by restoration of rights. Some snickered, some gasped, some laughed out loud. But all reacted . . . This is the truth. This is the reality. The United States inability to accept this reality and unwillingness to fully pay for the damage they have done, is the reason for federal indigenous policy and the efforts to entangle Hawaiians in it. Congress is deceiving Hawaiians and this committee is spearheading the effort. Federal indigenous policy is evolving. Perhaps some progress is being made in improving the lives of the indigenous people it has ensnared. However the progress is minimal and the policy remains inherently flawed for indigenous people but effective for the United States. The core of federal indigenous policy has always been to deceive the indigenous masses, enlist those indigenous leaders who are sympathetic to the United States through deception, coercion, bribery, and promises seldom kept. To maintain control of those indigenous people by keeping the carrot stick baited and occasionally allowing a reward. There are questions every Hawaiian should know the answer to in order to make an informed decision on whether or not to support federal recognition for Hawaiians. I'm sure the members of this committee will protest an assertion that the intention of the process of federal recognition is to deceive Hawaiians into acceptance of policies that will ultimately harm them as I have stated. The campaign to misinform Hawaiians is growing and each one of you is aware of it. It suits your purposes and so you allow it, influence it, and condone it. If the proposed legislation becomes law, you will fund it. Is this justice? Is this reconciliation? If this committee and Congress are sincere in their desire to reconcile with Hawaiians, you will abandon this legislation, and work toward reconciliation that is more than simply "meaningful" but that is genuine and equitable, and not a continuation of the charade of pennies on the dollar settlements that ensure the United States retains the benefit of the wrongs it has committed simultaneously ensuring those aggrieved will never be fully compensated. The coming of the information age has numbered the days of the United States masking justice and fooling not only

indigenous people but all people around the world. The tide is turning. Old policies that rely on deception and false justice are beginning to corrode the United States like a cancer. Not only indigenous people, but the entire world is becoming wise to the harm they suffer from the tricks and crafty slight of hand long hidden behind smiling faces and words of sincerity and good intention.

The monkey with his fist in the bottle fills my reverie these days, it should be filling yours . . . Get back to your constitution and the principles you relied on to establish your country now gentlemen, Check your arrogance at the door, and start with justice for Hawaiians.

Malama Pono...

David Ingham

It is important in reading these flaws and discrepancies in the bill to understand that the United States has been manipulating **THE** Indigenous people **OF THE CONTINENTAL [**and their governments in the] United States for a very long time. [They are extremely clever and skilled at it.] The Federal Recognition Bill to be heard this Tuesday, February 25, 2003, contains deliberate complexities and political chicanery designed so that the average citizen, [and many above average citizens] will not be able to see through the complexities without exhaustive study of not only the bill but prior political dealings between the United states and Indigenous people, and the behavior of the Supreme Court when questions as to the intent of this kind of legislation arise. [The analysis and commentary below is not exhaustive, there are many other discrepancies in the bill not covered below.] The analysis below is intended give enough information to encourage Hawaiians, and those who support us, to take a closer look at the language of S344, the Akaka bill that will impact the lives of Hawaiians forever.

JUST IGNORE THIS TOP PART IN WHATEVER YOU COME OUT WITH AS A FINAL PRODUCT. AND GO IN AND CHANGE ALL REFERENCES HE MAKES TO HAWAIIANS --- I MEAN, HE IS NOT HAWAIIAN, SO HE IS TALKING ABOUT HAWAIIANS AS OTHER--- JUST CHANGE IT TO FIRST PERSON OR CHANGE REFERENCES TO SAY „US‰ OR „WE.‰
A.
Section1 Findings 2 and 3, **Section 2** Definitions 1 and 4 6(A) and other provisions of the bill establish the political status of Hawaiians "within the framework of Federal law"

Section 6 (b)(2)(A)(vii) requires The "Organic Governing

Documents" submitted to the Secretary of the Interior for confirmation and amendments to ensure the documents conform to the framework of Federal law"

Section 2 Definition 6(B) Says that the meaning of the term Native Hawaiian after Hawaiians are Federally recognized will be what the "Organic Governing Documents" drafted by and approved by Hawaiians say it means. The assumption being that Hawaiians will define themselves as they please.

The problem with this arrangement comes in the timing. **The definitions of Hawaiian in Sections 1 and 2 above and elsewhere in the bill become federal law the moment the bill becomes law**. After these become law, Hawaiians draft their "Organic Governing Documents" which must conform to Federal law. What this means is that any definition **Hawaiians install in their "Organic Governing Documents must fall within the already established definition of Hawaiian.**

The definition of Hawaiian established in the bill cannot be abridged by the Organic Governing Documents: The key words in the Federal definition of Hawaiian include "Pre- European Contact" the "Federal trust relationship" and Aboriginal, Indigenous, Indian Affairs power, and Native. Those familiar with the doctrine of Discovery and Inter Caetera and Federal Indian law know that this definition excludes Hawaiians from participation in the International community as equals, and makes them wards of the Federal government forever. No definition of Hawaiian included in the "Organic Governing Documents" to the contrary will withstand confirmation review by the Secretary Required in **Section 6. Specifically, the requirement that the "Organic Governing Documents":**
(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.

IMPACT: Federally recognized Hawaiians relinquish forever their claims to Independence and equal standing in the community of nations.

B.Section 1 Finding 4 includes the following immediately prior to language describing legitimate treaties between the United States and the Kingdom of Hawaii.:
Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty

between the United States and the government that represented the Hawaiian people.
This sentence, cryptically written, taken in context with the rest of finding 4 would have been more clearly written if it had read:

In the Newlands Resolution, made under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the Republic of Hawaii which represented the Hawaiian people.**The treaty referenced and the government referenced can only be the Republic of Hawaii and the Newlands Resolution. The validity of the Newlands Resolution, and validity of the Republic of Hawaii are key components in Hawaiians claims in international and Federal law.** The finding conveniently puts the issue to rest for Federally recognized Hawaiians who are obliged to conform to the "Framework of Federal law,"

IMPACT: Land and rights ceded ILLEGALLY to the United States by the Republic of Hawaii are declared legitimate and Federally recognized Hawaiians are obliged to accept this.

C.

Section 2 definition 2 Mis-states that the apology made in the Public Law 103-150, commonly known as the „Apology Resolution‰ was made by the United States. The Apology was made by Congress on behalf of the people of the United States. Language that implicates Congress or anyone other than low level officials in the hewa is deliberately absent in the Apology Resolution. IMPACT: Misleading, there is no admission of wrongdoing on the part of Congress, the Judiciary or the Executive in the apology or anywhere else .Cclever wording makes it seem that way, but the admission is not there.

D.

Section 2 definition 3 See B. above which Identifies the Republic of Hawaii as representing the people of Hawaii. This definition defines the history of the Crown and Government Lands. including their transfer to the United States from the Republic of Hawaii.

IMPACT: Taken with finding (4), This Definition makes the transfer of the Crown and Government lands a legitimate exchange between two governments acting as the

representatives of their respective people. This Definition makes the transfer of the Crown and government lands an act Hawaiians approved of through their government. This flies in the face of the Ku`e petitions which are not mentioned anywhere in the Apology or the bill, and damages Hawaiians claims to those lands.

E.

Section 2 Definition 7 It is becoming increasingly apparent that the governing entity will be comprised mainly of Hawaiians who owe their well being to Federally funded programs. If the bill becomes law, the Federal government will fund Election campaigns and the construction of the "Native Hawaiian" governing entity. It is doubtful the funding of these elections and the construction of the entity and its activities will be fairly distributed between Hawaiians who favor independence and reject recognition, and Hawaiians who are falling all over themselves to be first in line at the federal trough.

IMPACT: Federal funding of elections and other activities in forming a "Governing Entity" will ensure a government sympathetic to the Federal government.
F.

Section 3 (a)(4)(c) and 5 (b) United States policy is stated as giving Hawaiians the right to reorganize a government. The use of the word reorganize is important. The import of the word "reorganize", instead of organize can only mean that the "Hawaiian Governing Entity" is replacing whatever is left of the Kingdom of Hawaii," Further evidence that the "Governing Entity" is intended to replace the remnants of the Internationally recognized Kingdom is found in 5(b) where the intent of the U.S. Congress in recognizing the "reorganized entity" is described as for the purpose of continuing a government to government relationship. That is „continuing‰ a relationship with a government that already exists.

IMPACT: The "Governing Entity" could be interpreted as replacing what's left of the Kingdom of Hawaii including its constitution, laws and recently resurrected governmental structure as the government representative of the Hawaiians, damaging to Hawaiians, claims or the wrongful destruction of their Kingdom. G.
Section 4 Section 5 This "Office of Hawaiian Relations" to

coordinate the trust relationship between the United States and Hawaiians will be established under the office of the Secretary of the Interior of the United States. The lead agency for the "Interagency Coordinating Group" created under the bill will be the Department of the Interior. Given that the past two Secretaries of the interior, Babbit under Clinton and Norton under Bush, have been held in contempt of court for their actions in ongoing litigation (Cobel v Norton) where the Department of the Interior has been charged as responsible for the loss of up to 137 billion dollars of Indian Trust money. and given that Department of the Interior has destroyed documents, grossly mismanaged funds belonging to American Indian peoples. , - - **Judge Lamberth indicated that the actions of the Department of the Interior clearly make them an unfit trustee.** the sanity of placing Hawaiians assets in trust with this department, and making this department the coordinator of the trust responsible for Hawaiians assets has to be called into question . **The history of the Department of the Interior,s negative impact on Indigenous people is long and it is ugly.**

IMPACT: Hawaiians assets and management of their affairs are under placed the supervision of an unfit trustee and the agency responsible carrying out the policies that have resulted in the condition of indigenous people in North America today.

H.

Section 6 this section describes the process and conditions required for Federal recognition. It is important to understand that a primary requirement for recognition is a "Hawaiian Governing Entity" with its officers elected by Hawaiians and "Organic Governing Documents" approved by Hawaiians. The question of who is Hawaiian is the decision of the governing entity and must be approved by the voters. The formation of the entity, the drafting of the Hawaiian constitution or "Organic governing Documents" is perhaps all well and good; however,

The election of the officers of the entity and other activities in the formation of the government will be federally funded (Section 7)if the bill becomes law. It is a fair bet the funding will be distributed and administered by OHA or other NGOs that are heavily dependent on federal funding. These agencies and

organizations have declared their support for federal recognition. This raises the reasonable question whether Hawaiians who oppose the bill will be adequately represented or if their concerns will be addressed in the formation of the entity, the drafting of the "Organic Governing Documents", elections, and other activities related to the formation of the government.

IMPACT: The possibility that federal influence will taint the formation of the Governing Entity, the election of its officers, and the drafting of "Organic Governing Documents" is nearly assured.
I.

Section 6 (b) In addition to concerns over fairness, there are requirements the bill places on the "organic Governing Documents" among these are the items in italics below:
(ii) were adopted by a majority vote of the citizens of the Native Hawaiian governing entity;

(iii) provide for the exercise of governmental authorities by the Native Hawaiian governing entity;

(iv) provide for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities; I DON,T AGREE WITH THIS, BUT USE IT IF YOU THINK IT,S TRUE. IT SEEMS TO ME THAT CLEARLY, IF THE US FEDERAL OR STATE GOVERNMENT HAS ANYTHING TO DO WITH ESTABLISHING A GOVERNING ENTITY, THE ENTITY CANNOT STAND AS A „HAWAIIAN ENTITY‰ BECAUSE IT IS A PUPPET OF THE US GOVERNMENT.

IMPACT: These three requirements make it where the results of negotiations between the "Governing Entity" and the United States are the legitimate actions of a democratically elected government whose officers are authorized to negotiate on behalf of and as the representatives of the electorate. As such, the weight of agreements made in any future negotiations will carry huge weight in International, as well as Federal law.

J.

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

IMPACT: Leaves the door open to blood quantum description of citizenship which will immediately eliminate descendents of

naturalized citizens of the kingdom and begin to shrink the number of qualified Hawaiians. As we have seen with Hawaiian homes, the number of people who qualify today is a mere fraction of those who qualified when the program was put in place 83 years ago. Blood quantum restrictions are racist and don't play well in the international community, but play very well in federal law where a shrinking base of people who qualify makes control over their affairs easier and easier as years pass. Divisions in the community between those who qualify and those who don't, help the Federal government to maintain their control as well. See A. Above for existing citizenship restrictions in federal law. K.
(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.

The Hawaiian constitution must conform to applicable federal law. Some examples of existing federal law as it applies to the "Indigenous Native People of the United States" are found in the decisions of the supreme court. The same court that recently ruled in Rice v Cayetano,

The Supreme court has ruled that the Congress of the United States power over the lives and property, and governments of the "Indigenous, Native People of the United States" is absolute. If this bill becomes law, the "Hawaiian Governing Entity" is bound by that and their constitution can never escape it.

The trust relationship is a relation ship where indigenous people trust the United States to manage their affairs in exchange for their land, resources, claims and Independence. This is Federal recognition.

IMPACT: Hawaiians fate is placed in the hands of those who's policies have resulted in the loss of millions of acres of Indigenous land, the relocation of millions of Indians, the poorest health statistics in North America today, the highest disease rates, 42 percent unemployment, 50 percent high school drop out rate, highest suicide, divorce, incarceration and nearly every other social and health statistic.

L.
(iv) provide for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

The officers of the Governing Entity will negotiate with the Federal government after the Entity is formed and recognized. Proponents of the legislation place great hope in the outcome of these negotiations. It is Important to note that prior to negotiations, all of the above are now reality, the Federal government has plenary authority, absolute authority, over the Hawaiian government. This makes the negotiations something of a charade. **Proponents of the legislation have promised everything from free medical and dental to the return of the ceded lands to an open door to independence, to protected entitlements. All these promises must come from these negotiations. They are not in the bill. It is important for every Hawaiian to understand what will be on the negotiating table in these negotiations.....the only thing of value Hawaiians have left...your claims,**

Why it is that the Federal government must also take your claims in addition to the government, land and resources they have already taken should be understood. Reconciliation has been promised for the taking of everything other than claims, so why should the Federal government want more, why don't they just pay up and reconcile, why go through this exercise. The reason is their title to the Hawaiian Islands is not clear, Hawaiians, claims stand in the way of clear title.

Hawaiians are well advised to know that they are not the first to enter into these negotiations with the Federal government. There is a clear record of how these negotiations have gone for other indigenous people. In the last 30 years their have been more than a dozen claims settlement agreements reached through the process Hawaiians are facing now. The Alaska native claims settlement act is one of them. In that settlement, **Alaskans gave up 9/10ths of their land for three dollars an acre and much of their resources. The corporations that were formed could not be passed down to their children. A growing number of Alaskans are beginning to understand what a raw deal they got. The Alaska Federation of Natives that endorses this bill was instrumental in brokering the deal. fFshing rights that were promised have not been delivered after 32 years. Alaskans claims to all other rights were extinguished. The claims extinguishment agreement is reproduced here:**

Alaska Native Claims Settlement Act: Section 1603. Declaration of settlement

(a) Aboriginal title extinguishment through prior land and water area conveyances

All prior conveyances of public land and water areas in Alaska, or any interest therein, pursuant to Federal law, and all tentative approvals pursuant to section 6(g) of the Alaska Statehood Act, shall be regarded as an extinguishment of the aboriginal title thereto, if any.

(b) Aboriginal title and claim extinguishment where based on us and occupancy; submerged lands underneath inland and offshore water areas and hunting or fishing rights included

All aboriginal titles, if any, and claims of aboriginal title in Alaska based on use and occupancy, including submerged land underneath all water areas, both inland and offshore, and including
any aboriginal hunting or fishing rights that may exist, are hereby extinguished.

(c) Aboriginal claim extinguishment where based on right, title, use, or occupancy of land or water areas; domestic statute or treaty relating to use and occupancy; or foreign laws; pending claims

All claims against the United States, the State, and all other persons that are based on claims of aboriginal right, title, use, or occupancy of land or water areas in Alaska, or that are based on any statute or treaty of the United States relating to Native use and occupancy, or that are based on the laws of any other nation, including any such claims that are pending before any Federal or state court or the Indian Claims Commission, are hereby extinguished.

STATE CLEARLY THAT IF A HAWAIIAN GOVERNING ENTITY WANTS TO, IT CAN CREATE A SETTLEMENT WITH THE UNITED STATES THAT MIRRORS WHAT HAPPENED TO THE ALASKA NATIVES.
IMPACT: Hawaiians Claims are <u>Extinguished</u> in negotiations in exchange for what historically has amounted to a hand full of glass beads. United States Title to the Hawaiian Islands is perfected and Hawaiians have agreed to accept the Congress as the supreme authority over their land, lives, resources and

government forever. All this accomplished through a voter approved Constitution and elected officials whom that constitution authorized to act as their representatives in these negotiations.

M.

Section 6 (C) This section requires that the "Organic Governing Documents,"after‰ they are approved by the citizens of the "Hawaiian Governing Entity" be submitted to the Secretary of the Interior for certification and that they comply with all of the requirements spelled out in the bill. If the Secretary of the Interior finds they do not conform to federal law, the Officers of the Hawaiian Governing Entity are required to amend the Documents under the authority given them in the voter approved constitution as the representatives of the Citizens of the entity. It is important to consider here the potential effect federal funding may have had in influencing the elections of these Officers and where their loyalties lie. The potential for corruption here is immense.... In effect, the constitution voted on by Hawaiians will not be the constitution that will govern their lives. The amended version approved by the Secretary is the final document. The potential for a hidden agenda cannot be overstated. A constitution designed to gain voter approval could be approved with the intention of amending it to conform to Federal requirements that the voters would not approve is a real possibility. Think about it.
IMPACT: A hand full of Elected officials in a room with the Federal officials that control the entitlements they depend on for the purpose of amending the constitution to meet the requirements of the Federal officials. The same group of people who will later exchange your claims to the Hawaiian Islands in exchange for a promise to protect the entitlements they are depending on. Choose your officials carefully.

OFFICE OF SENATOR AKAKA
WASHINGTON, D.C.
2003 MAR 24 AM 8:30

Testimony by Marion Kelly, 3/20/03

SECTIONS OF THE AKAKA BILL EXAMINED

AS THE FEDERAL EXTERMINATION BILL FOR NATIVE HAWAIIANS

Quotations from the Akaka Bill are followed by comments as the REAL MEANING.

Section 1. Findings. Congress makes the following findings: The Constitution vests Congress with the authority to address the condition of the indigenous, native people of the United States.

REAL MEANING: The U. S. Congress will be the sole authority to identify the native people of the United States --Thus: "Indians and Hawaiians are the native people of the United States." The "Commerce Clause" of the U.S. Constitution (Sect. 8e Powers Granted to Congress) **"to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."** Congress will control Hawaiians.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is part of the United States, are indigenous, native people of the United States.

REAL MEANING: Hawaiian Islands are part of the United States, thus the people of Hawai'i are the same as the native people of the United States, thus Hawaiians are the same as Indians. This is NOT true.

(20) (B) Congress has identified Native Hawaiians as a distinct indigenous group <u>within</u> the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility. (underline added)

REAL MEANING: Native Hawaiians are identified as a responsibility of the U.S. Congress and it has powers over Hawaiians that are similar to those, it has over Indian Affairs, thus Congress controls Hawaiians.

(20) (C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawai'i

REAL MEANING: Congress delegates where in the Federal government the responsibility of Federal trust will locate, and that will be within the Interior Department, which is also responsible for American Indians.

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through the enactment of the Act entitled "An Act to provide for the Admission of the State of Hawai'i into the Union," approved March 18, 1959 (Public Law 86-3; 73 Stat. 4). **REAL MEANING:** (continued on next page)

STATEHOOD: It was a scam from the beginning. Natives of an occupied territory, under United Nations rules, must be able to vote on three issues

4 become a state of the occupying country,

5 remain a territory of the occupying country, or

c. become independent of the occupying country.

There was NO choice for INDEPENDENCE on the Statehood Ballot in 1959. Clearly, the Ballot was set up so the Hawaiians had no choice to re-establish their independent nation. This was not according to the accepted United Nations process.

(A) Ceding to the State of Hawai'i title to the public lands formerly held by the United States, and mandating that those lands be held in Public Trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians; and....

REAL MEANING: The illegal Dole Government stole the lands that were the lands of King Kamehameha III (the remains of the Crown Lands), and the lands of the Hawaiian Kingdom Government Lands (read "peoples lands"). They were originally stolen by the Dole Government and ceded (transferred) by the so-called Republic of Hawai'i to the United States. However, without title, one cannot transfer or cede title. Native Hawaiians had rights to all these lands, but the United States was not going to allow them all of their rights. 20% of the income from the ceded lands was all that would be allowed.

The fact that they designated even 20% for Native Hawaiians indicates that they recognized that Hawaiians had just claims to the Kingdom's lands. However, they provided only 20% of the income from these stolen lands to support Hawaiian needs -- and to keep Hawaiians quiet, and not asking for more of the income from their lands – as determined by the State agency, i.e. the Office of Hawaiian Affairs.

These so-called "public lands" are the lands stolen by the illegal Dole government and turned over to the United States (ceded) in exchange for territorial status for Hawai'i. Thus, Hawai'i was made a territory of the U.S., which meant greater profits for the owners of the sugar industry in Hawai'i. Hawai'i's sugar industry now became subsidized by the federal government.

(B) Transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawai'i, but retaining the authority to enforce the trust,

REAL MEANING: The Hawaiian Home Lands were set up by the United States Congress as an Act of Congress in 1920, thus, this statement transfers the responsibility of administering the Hawaiian Homesteads Lands to the State of Hawai'i and wipes out any responsibility that Congress had for dealing with landless Hawaiians, to whom the homesteads were supposed to be awarded.

(23) the State of Hawai'i supports the recognition of a Native Hawaiian governing entity by the United States as evidenced by two unanimous resolutions of the Hawai'i State Legislature.

REAL MEANING: It is now the responsibility of the U. S.-created State Government to administer those obligations previously begun by the U.S. Congress, i.e. Hawaiian Homestead Lands, and managing the so-called "ceded" lands (former Hawaiian Kingdom Lands and former Crown Lands) and providing OHA with 20% of the income from all the "ceded" lands, and all the rest of the income from these lands goes to other U.S. citizens and their programs.

Section 2. Definitions. (As they are identified) In this act:

(1)ABORIGINAL, INDIGENOUS, NATIVE PEOPLE- The term 'aboriginal indigenous, native people' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

REAL MEANING: This statement recognizes that there were "original inhabitants" of the lands of the Hawaiian Islands, but it fails to mention that they were the citizens of the Kingdom of Hawai'i since the time of Kamehameha I and long before 1893 and 1898. It also fails to mention the "Monster Petition" signed by over 38,000 citizens of the Hawaiian Kingdom, telling the U.S. Congress that they did not want to be annexed by the United States. Thus, it ignores everything that supports the right to Hawaiian Independence.

(3) CEDED LANDS- The term 'ceded lands' means those lands, submerged lands, natural resources and revenues which were ceded to the United States by the Republic of Hawai'i under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7,

1898 (30 Stat. 750), and which were later transferred to the State of Hawai'i in the Act entitled 'An Act to provide for the admission of the State of Hawai'i into the Union' approved March 18, 1959' (Public Law 86-3; 73 Stat. 4).

REAL MEANING: It fails to identify the so-called Republic of Hawai'i as illegal. The so-called "ceded" lands were stolen by the illegal Republic of Hawai'i from the Hawaiian Government Lands and resources of the Hawaiian Kingdom, and included the remains of the lands of King Kamehameha III, which were identified as the "King's Lands" and later as "Crown Lands" after his death in 1854.

It does mention that the United States accepted the "ceded" lands in return for the annexation of the so-called Republic, even though these lands were stolen by the Republic from the Kingdom of Hawai'i , and for which no compensation was given. Without clear title, these lands cannot be legally transferred or sold to anyone. In fact, Title Guarantee Company will not guarantee title to "ceded" land transfers.

(4) INDIGENOUS, NATIVE PEOPLE- The term 'indigenous, native people' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

REAL MEANING: This statement ignores the fact that there was a Kingdom dating from the time of Kamehameha I, and that the Kingdom had its citizens, most of whom protested annexation by signing the "Monster Petition" in 1894. The wording of this statement turns the citizens of the Hawaiian Kingdom into a race of people and makes them vulnerable to anti-racism laws and "everybody is equal" as expressed in legal decisions based on the Constitution of the United States.

(5) INTERAGENCY COORDINATING GROUP- The term 'Interagency Coordinating Group' means the Native Hawaiian Interagency Coordinating Group Established under section 5.

REAL MEANING: Read: Bureau of Indian Affairs translated into the Bureau of Hawaiian Affairs.

SEC. 4. ESTABLLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(A) IN GENERAL- There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations. Note: A comment on Sects, 4& 5: "Office for Native Hawaiian Relations."(Sect. 4) READ: Bureau of Indian Affairs, under (Sect. 5) the Department of the Interior, the lead agency.

SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP. (a) ESTABLISHMENT- In recognition of the fact that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the 'Native Hawaiian Interagency Coordinating Group'.

REAL MEANING: An extra agency between the "Lead Agency", Department of Interior, and the Office for Native Hawaiian Relations.

(b) COMPOSITION- The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from-

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and

(2) the United States Office for Native Hawaiian Relations established under section 4

REAL MEANING: The U.S. Government is in complete control.

(c) LEAD AGENCY- The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

REAL MEANING: The U. S. Department of Interior is the "Lead Agency, as it is with the Bureau of Indian Affairs.

Sect. 6 PROCESS. (1) Following the organization of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

REAL MEANING: A comment on Sect. 6: "governing documents of the Native Hawaiian governing entity to the Secretary" of the Interior, who is the head of the Lead Agency. This follows the same requirements as the Native American Indians must follow. Hawaiians are not Native Americans! Hawaiians had an Independent Kingdom, which must be returned to them.

SEE SUPPORTING DOCUMENTS (list on next page)

SUPPORTING DOCUMENTS FOR TESTIMONY BY MARION KELLY:

1. QUEEN LILI'UOKALANI'S LETTER TO THE GOVERNMENT OF THE UNITED STATES, JANUARY 17, 1893.

2, CHARTER OF THE UNITED NATIONS, CHAPTER XI: DECLARATION REGARDING NON-SELF-GOVERNING TERRITORIES.

3, THE OFFICIAL STATEHOOD BALLOT USED ON JUNE 27, 1959 WITHOUT ANY PLACE TO VOTE FOR INDEPENDENCE.

4. UNITED NATIONS, IV. DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES, 1960.

5. FIVE IMPORTANT POINTS ABOUT THE AKAKA BILL

6. WORLD HISTORY/ U.S. COLONIALISM – HAWAI'I : 1776 – 1946

7. WORLD HISTORY/U.S. COLONIALISM – HAWAI'I : 1947 -- 1959.

8. CHRONOLOGY OF KANAKA MAOLI EVENTS: MAI KA PO – 7/7/1898

THE OFFICIAL STATEHOOD BALLOT AS PRINTED IN THE HONOLULU ADVERTISER, JUNE 16, 1959

OFFICIAL BALLOT
SATURDAY, JUNE 27, 1959

VOTE ON ALL THREE PROPOSITIONS

Shall the following propositions as wet forth in Publlic Law 86-3 entitled "An Act To provide for the admission of the State of Hawai'i into the Union" be adopted?

1. Shall Hawai'i immediately be admitted into the Union as a State?

Yes ☐

No ☐

2 The boundaries of the State of Hawai'i shall be as prescribed in the Act of Congress approved March 18, 1959, and all claims of this State to any areas of land or sea outside the boundaries so prescribed are hereby irrevocably relinquished to the United States

Yes ☐

No ☐

3 All provisions of the Act of Congress approved March 18, 1959, reserving rights of powers to the United States, as well as those prescribing the terms or conditions of the grants of land or other property therein made to the State of Hawai'i are consented to fully by said State and its people.

Yes ☐

No ☐

To vote on a proposition, make an X in the square to the right of the word "YES" or "NO".

VOTE ON ALL THREE PROPOSITIONS

IV. DECLARATION ON THE GRANTING OF INDEPENDENCE TO COLONIAL COUNTRIES AND PEOPLES, 1960

The Declaration set out below was adopted by the United Nations General Assembly in Resolution 1514 (XV) on 14 December 1960. Eighty-nine States voted for the resolution and none against; but there were nine abstentions, viz., Portugal, Spain, Union of South Africa, United Kingdom, United States, Australia, Belgium, Dominican Republic, and France. The Declaration relates the normative developments in the field of human rights to the rights of national groups, and, in particular, the right of self-determination. The Declaration, in conjunction with the United Nations Charter, supports the view that self-determination is now a legal principle, and, although its precise ramifications are not yet determined, the principle has great significance as a root of particulse legal developments. See also the Declaration on the inadmissibility of intervention in Resolution 2131 (XX) of 21 January 1966, 5 *International Legal Materials* (1966), p. 374. Generally on self-determination see Whiteman, *Digest*, v, pp. 38–87; Brownlie, *Principles of Public International Law*, 4th ed., 1990, pp. 595–8; Rigo Sureda, *The Evolution of the Right of Self-determination: A Study of United Nations Practice*, 1973. Resolution 1514 (XV) is in the form of an authoritative interpretation of the Charter rather than a recommendation. For comment see Waldock, 106 *Recueil des cours de l'académie de droit international* (1962, II), pp. 29–34; and Jennings, *The Acquisition of Territory in International Law*, 1963, pp. 38–87. For earlier resolutions see Resolutions 637 A (VII) of 16 December 1952 and 1314 (XIII) of 12 December 1958.

The General Assembly established as a subsidiary organ a Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence by Resolution 1654 (XVI) of 27 November 1961. This consisted at first of seventeen and later of twenty-four states. In 1964 the Special Committee examined situations and made recommendations in respect to fifty-five territories. In 1963 the General Assembly decided to discontinue the Committee on information from non-self-governing territories and to transfer its functions to the Special Committee. As a result, apart from the Trusteeship Council, the Special Committee is the only body responsible for matters relating to dependent territories.

TEXT

The General Assembly

Mindful of the determination proclaimed by the peoples of the world in the Charter of the United Nations to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and to promote social progress and better standards of life in larger freedom,

Conscious of the need for the creation of conditions of stability and well-being and peaceful and friendly relations based on respect for the principles of equal rights and self-determination of all peoples, and of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion,

Recognizing that the peoples of the world ardently desire the end of colonialism in all its manifestations,

Convinced that the continued existence of colonialism prevents the development of international economic co-operation, impedes the social, cultural and economic development of dependent peoples and militates against the United Nations ideal of universal peace,

Affirming that peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law,

Believing that the process of liberation is irresistible and that, in order to avoid serious crises, an end must be put to colonialism and all practices of segregation and discrimination associated therewith,

Welcoming the emergence in recent years of a large number of dependent territories into freedom and independence, and recognizing the increasingly powerful trends towards freedom in such territories which have not yet attained independence,

Convinced that all peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory,

Solemnly proclaims the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations;

And to this end

Declares that:

1. The subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations and is an impediment to the promotion of World peace and co-operation.

2. All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

3. Inadequacy of political, economic, social or educational preparedness should never serve as a pretext for delaying independence.

4. All armed action or repressive measures of all kinds directed against dependent peoples shall cease in order to enable them to exercise peacefully and freely their right to complete independence, and the integrity of their national territory shall be respected.

5. Immediate steps shall be taken, in Trust and Non-Self-Governing Territories or all other territories which have not yet attained independence, to transfer all powers to the peoples of those territories, without any conditions or reservations, in accordance with their freely expressed will and desire, without any distinction as to race, creed or colour, in order to enable them to enjoy complete independence and freedom.

6. Any attempt aimed at the partial or total disruption of the national unity and the territorial integrity of a country is incompatible with the purposes and principles of the Charter of the United Nations.

7. All States shall observe faithfully and strictly the provisions of the Charter of the United Nations, the Universal Declaration of Human Rights and the present Declaration on the basis of equality, non-interference in the internal affairs of all States, and respect for the sovereign rights of all peoples and their territorial integrity.

Five Important Points About the Akaka Bill

1) The Bill, its initiation and promotion are violations of our Kanaka Maoli inherent right to self-determination in our homeland of Ka Pae'äina (Hawai'i) under International Law. The Bill also violates the US Congress 1993 Apology Resolution (PL 103-150). We Kanaka are a separate people and nation colonized in our homeland, as affirmed by the 1993 Kanaka Maoli Tribunal. Under International Law, our Kanaka political, economic, social and cultural status are to be determined by us Kanaka Maoli, not by non-Kanaka Maoli and not by US/State of Hawai'i officials, such as Senators Inouye and Akaka, who are our colonizers.

(2) Native Hawaiians supporting the Akaka Bill are a vocal minority of insiders who depend on US, State and County Native Hawaiian programs for their livelihood. A majority of the 240,000 Kanaka Maoli in Ka Pae'aina (Hawai'i) and 162,000 on the US continent have never read any of the 4 Akaka Bills.According to polls, a growing 40% of Kanaka Maoli favor independence from the US.

(3) Should the Akaka Bill be enacted, we Kanaka Maoli will be analogous to an American Indian tribe, "wards...a domestic dependent nation...under the plenary power of the US Congress." We will have a puppet government reporting to an Office of Hawaiian Relations and Inter-Agency Council under the US Secretary of the Interior. We will have relinquished title to our entire Ka Pae'aina (archipelago) homeland to the US occupation as a military base to control the Pacific, Pacific Rim and Asia, to assure US global hegemony.

(4) We Kanaka of our generation have no right to sell our Kanaka nation and future generations of Kanaka as lesser "beneficiaries" to the US merely to save current hand-out US and State "entitlements" under continuing assault by US right-wingers in the US Supreme Court, US Congress and Bush administration.

(5) We Kanaka are a separate people and nation under international law, as affirmed by the 1993 Kanaka Maoli Tribunal and US Apology Law. Accordingly, as a minimum, the US Congress should hold hearings on S746 in Ka Pae'aina and begin negotiations with us Kanaka as equals.

HAWAII	WORLD HISTORY / U.S. COLONIALISM	THEMES
I. INTRO: Opening interview / Narrative		
EARLY COLONIAL HISTORY		
1776 Cook arrives in Hawaii		
1820 Missionaries arrive; laws, language change	1800s - Manifest Destiny	U.S. expansionism, imperialism
1826 U.S. "Gunboat Diplomacy"	Tyler Doctrine - control over Hawaii and Pacific	results in a global land grab.
1848 Mahele	Monroe Doctrine - control over Western Hemisphere	How colonialism works:
1887 "Bayonet" Constitution		1891 - Blaine: 3 places to be taken: Hawaii, Cuba and Puerto Rico
1893 Overthrow		
1894 Republic of Hawaii		
1898 Annexation	1898 - Spanish-American War: Philippines Puetto Rico, Guam annexed.	Annexation to United States without consent of the peoples of
20,000-plus petition against.	Plantations: U.S. economic/military motives	
Blount Report: annexationists didn't want vote of the people because annexation would lose territories ceded.	U.S. granted power under Treaty of Paris to decide civil rights and political status of peoples inhabiting "ceded" territories.	
II. 1900 Organic Act - HAWAII BECOMES A TERRITORY; US citizenship imposed		
1901 First Territorial Legislature convenes		
-- US Governor imposed on Territory		
-- Taxation w/o representation		
-- No control over immigration		
-- US Citizenship imposed without consent		
1903 Legislature petitions CongresS for admission of Hawaii as a state		
1935 U.S. House subcommittee on territories holds hearings in Hawaii; recommends further study of qualifications for statehood	1941 - World War II (Martial law imposed)	
	1945 - United Nations founded	
1946 House Committee on Territories subcommittee holds hearings, recommends immediate consideration of legislation to admit Hawaii as state; Senate oppositions prevails for the next decade	1946 - Hawaii added to U.N. list of non-self-governing territories. Triggers expedited move to statehood.	What UN decolonization process should have been followed, per international law:
	1946 - Philippines gain independence	

	HAWAII	WORLD HISTORY / U.S. COLONIALISM	THEMES
1947.	Bill HR 49 introduced to admit Hawaii as 49th state. Senate votes for further study.		
1950	House of Rep. passes statehood enabling act. (Four days later Korean conflict breaks out. Hawaii statehood is put on hold.)	1950s - U.S. Congress passes law for "Commonwealth" for Puerto Rico, predetermining its status for it.	U.S. assumes and exercises power to decide the political status of people in Hawaii and Puerto Rico.
1950s	Statehood Commission		
1952	Republican and Democratic parties endorse statehood for Hawaii	1953 - U.N. Resolution 742 creates standards for plebiscite	Informed consent of people denied
1954	Sen. committee on interior/insular affairs approves statehood bill		People didn't know about UN process; how decolonization works.
1955	Hawaii-Alaska statehood bill passes House Interior/Insular Affairs; bill is later sent back to committee		
1956	Senate security committee hearings conclude "conspiratorial forces" control labor movement		
1957	Statehood bill again fails in Congress. (The 23rd time since 1903.) Alaska is voted in as a state. Hawaii vote is delayed to next session.	Statehood as solution to colonialism: -- taxation -- elected governor -- external	
III.	**STATEHOOD**		
1959	Congress passes an enabling act to grant statehood to Hawaii on Mar. 11. Pres. Eisenhower signs law Mar. 18 Hawaii voters approve plebiscite on June 27 by a 17 to 1 margin.	1960 - U.N. Resolution 1514 What its impact on Hawaii could have been 1959 Statehood vote: what people thought it was about	Hawaii taken off list of non-self-governing territories by U.S. request.
IV.	**RIGHT TO SELF-DETERMINATION TODAY** 1. No full, free, informed choice of options 2. This option can still be asserted today 3. What should be happening now?	 Cite international law and UN law Informed concense/options for international process	

About Indigeous Peoples...

Indigenous peoples have the right to autonomy in matters relating to their own internal and local affairs...

Indigenous peoples have the right to decide upon the structures of their autonomous institutions...

States have the duty, in consultation with the indigenous peoples concerned, to take effective measures to ensure the full enjoyment of the exercise of the indigenous rights and other human rights and fundamental freedoms referred to in this Declaration;

Indigenous peoples have the right to special protection and security in periods of armed conflict. States shall observe international standards for the protection of civilian populations in circumstances of emergency and armed conflict, and shall not:

(a) Recruit indigenous people against their will into the armed forces and, in particular, for use against other indigenous peoples;

(b) Force indigenous peoples to abandon their land and territories and means of subsistence and relocate them in special centers for military purposes;

Indigenous peoples have the right to retain and develop their customary laws and legal systems...

Indigenous peoples shall not be forcibly removed from their lands or territories...

Chronology of Kānaka Maoli Events

Mai ka Po	Kumulipo
Puka ka Ao	Humankind is born
Na Huaka'i	Ancestral migrations.
100 A.D. (?)	'Ohana arrives to Hawai'i.
1300 A.D. (?)	Polynesian priest Pa'ao initiates new religion, Ku worship and governance: Ali'i, Kahuna and maka'ainana classes develop
1778	Captain Cook lands at Waimea, Kaua'i.
1778	Gonorrhea, syphilis and tuberculosis, guns, alcohol and tobacco introduced to Kanaka Maoli population.
July, 1782	Kamehameha defeats Kiwala'o in Battle at Mokuohai.
Jan 28, 1789	Kamehameha invades Maui
1791	Ka'u Chief Keoua is sacrificed at Pu'u Kohola by Kamehameha.
Feb, 1795	Maui, Lana'i and Moloka'i conquered by Kamehameha.
May, 1795	Battle of Nu'uanu. O'ahu conquered by Kamehameha.
April, 1796	Attempted invasion of Kaua'i by Kamehameha.
1804	"Ma'i o ku'u " kills 15,000
April, 1810	Kaumuali'i cedes Kaua'i to Kamehameha.
May 8, 1819	Kamehameha dies. Liholiho, Kamehameha II, becomes Mo'i.
June, 1819	Abolition of the kapu system.
Jan, 1820	Kakuaokalani's unsuccessful rebellion to restore kapu system.
Mar 31, 1820	First American Calvinist missionaries arrive.
July, 1824	Liholiho dies of measles in London.
1824-25	Whooping cough, influenza kill 1,000. Kanaka Maoli population at 135,000.
June 6, 1825	Kauikeaouli, Kamehameha III, becomes Mo'i. Ka'ahumanu becomes Kuhina Nui.
June 1832	Ka'ahumanu dies.
1832	Whooping cough kill 3,000. Kanaka Maoli population at 130,000.
1835	Mumps kill Kina'u.
1839	Laplace forces French catholicism and wine upon Kanaka Maoli.
1840	Leprosy introduced, kill 4,000 over 30 years. Kanaka Maoli population at 100,000.
Oct 8, 1840	First Constitution.
Dec 19, 1842	U.S. recognizes Hawai'i's independence.
Feb 25, 1843	Lord Paulet seizes Hawai'i for Great Britain.
July 31, 1843	Admiral Thomas declares Kauikeaouli independent sovereign.
Nov 28, 1843	Great Britain and France recognize Hawai'i's independence.
1845-49	Diarrhea, influenza, measles, whooping cough kill 10,000. Kanaka Maoli population at 65,000.
Mar 8, 1848	Mahele, land division by Kauikeaouli for the chiefs and government.
June, 1850	Kuleana Act grants 28,600 acres to 11,000 Kanaka Maoli adult males (28%). 72% left landless.
June, 1850	Act allows foreigners to own land.
Jan 3, 1852	First Chinese contract laborers arrive.
May, 1853	Smallpox kills 7,000. Kanaka Maoli population at 70,000.
Dec 15, 1854	Kauikeaouli dies and is succeeded by Alexander Liholiho, Kamehameha IV.
1860	Measles and whooping cough . Kanaka Maoli population at 70,000.
Nov 30, 1863	Alexander Liholiho, dies and Lot Kapuaiwa becomes Kamehameha V.
Aug 20, 1864	Lot decrees new Constitution.
1870	Scarlet fever .
Dec 11, 1872	Lot dies.
1873-74	William Lunalilo elected king.
Feb 3, 1874	King Lunalilo, dies.
Feb 12, 1874	David Kalākaua elected King.
Sept 19, 1878	First Portuguese arrive.
Feb 18, 1881	First Norwegian contract laborers arrive at Ma'alaea, Maui.
1882	Small pox .
Dec, 1882	New 'Iolani Palace completed.
July 7, 1887	Bayonet Constitution coup by all white Hawaiian League.
1888	Whooping cough and diphtheria .
July, 1889	Wilcox rebellion fails to overturn Bayonet constitution.
Jan. 20, 1891	King Kalākaua dies in San Francisco.
Jan. 29, 1891	Lydia Kamaka'eha becomes Queen Lili'uokalani.
Jan. 17, 1893	Queen Lili'uokalani deposed by illegal Provisional government. Kānaka Maoli population at 40,000.
Dec. 18, 1893	Cleveland message to congress to restore the Queen as sovereign.
July 4, 1894	Despotic Republic of Hawai'i declared.
Jan. 6, 1895	Unsuccessful attempt by Royalists to restore the Queen. Queen and 200 others jailed and tried. Queen abdicated under duress.
July 7, 1898	McKinley signs illegal resolution to annex Hawai'i by the United States.

JAPANESE AMERICAN CITIZENS LEAGUE
HONOLULU CHAPTER
P.O. BOX 1291, HONOLULU, HAWAII 96807
PHONE: 523-8464 EMAIL: honolulu@jacl.org
Working For A Greater America

Board Members

Susan H. Kitsu
President

Karen T. Nakasone
1st Vice President

David M. Forman
2nd Vice President

Vacant
3rd Vice President

Michael Murata
Treasurer

Lori K. Amano
Secretary

Clement Bautista
James Shigeo Dixon
Ioane Ho'omanawanui
Clayton Ikei
William Kaneko
Arthur F. Koga
Jody Kono
Benjamin A. Kudo
Mark Nakashima
Brian Niiya
Shelley Nishimura
Kalene Shim Sakamoto
M. Dolly Strazar
Kathryn Takakuwa
Yoshie Tanabe
Garrett Toguchi
Jane Yamashiro

Testimony of Honolulu Chapter

Japanese American Citizens League

Susan H. Kitsu, President

Before the U.S. Senate Select Committee on Indian Affairs

On **S.344**

Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes

On behalf of the Honolulu chapter of the Japanese American Citizens League, I am pleased to provide testimony in SUPPORT of S.344, which was heard by this committee on February 25, 2003. I understand that the committee has left the record open for additional testimony until March 20, 2003.

Past Support for Hawaiian Self Determination. The Honolulu chapter is a staunch supporter of the human and civil rights of Native Hawaiians, including their right to self-determination. We have been, and are, alarmed by the erosion of Native Hawaiian rights. Accordingly, with the support of over 100 JACL chapters across the country, we have successfully advocated for the adoption of resolutions by the JACL National Council formally expressing the organization's support for the rights of Native Hawaiians. Most recently, in 2000, the JACL National Council called for U.S. recognition of a political relationship with Native Hawaiians in the wake of the U.S. Supreme Court's decision in Rice v. Cayetano. We now believe that immediate action is necessary to protect the rights of Hawaiians. Simultaneously, we believe the process of recognition must be full, fair, and unqualified, so that Hawaiians may exercise their right to self-determination without limitation. S. 344 is a good step in that direction.

Hawai'i's Political and Demographic History. The Honolulu chapter is conscious of the history of Japanese immigration to Hawai'i, and of its impact on our contemporary culture and political conditions. Native Hawaiians are the indigenous people of Hawai'i. Until 1893, Hawai'i was a sovereign and self-governing nation recognized in the international community. In 1868, the *Gannenmono,* the first Japanese contract laborers, arrived in Honolulu. Beginning in 1885, the first 944 *Kanyaku Imin* arrived in Hawai'i. Over the next thirty-five years, 86,000 Japanese contract workers were brought to Hawai'i to work on sugar plantations. They were later joined, between 1900 and 1924, by 132,000 Japanese

immigrants. This history of immigration had a huge impact on these islands.

Although Japanese workers faced harsh conditions on the plantations, they were treated with aloha by Native Hawaiians. They were allowed to become naturalized subjects of the Kingdom of Hawai'i, with suffrage rights, under the Hawai'i Constitution of 1852. In 1887, however, Western businessmen used extraordinary political and military pressure to force King Kalakaua to sign the "Bayonet Constitution", which denied Japanese suffrage, among other things. We note with dismay that, after the alleged annexation of Hawai'i in 1898, the United States government denied the privilege of naturalization to persons of Japanese ancestry until after World War II.

Accordingly, descendants of those Japanese workers today remain immeasurably grateful for the treatment afforded to their ancestors by an unassuming Kingdom, which merely treated people fairly, without demanding gratitude (or asking these new citizens to prove their loyalty by sacrificing their lives in battle). Memories of the harsh treatment they received as workers on plantation run by American and European businessmen contrast sharply with recollections of the political treatment afforded to them, as equals, by the Kingdom of Hawai'i.

The Struggle for Equality in Hawai'i. Japanese Americans soldiers who fought for their country in World War II and witnessed the sacrifices made by those who battled by their sides, returned to Hawai'i after the war and engaged themselves in local politics. Among others, U.S. Senator Daniel K. Inouye and former U.S. Senator Spark M. Matsunaga reinvigorated local politics in Hawai'i and helped achieve statehood for its people. That ethnic struggle for equality was monumental, if not revolutionary in Hawai'i's history. It occurred at a time when other minorities around the United States joined in the larger struggle for civil rights in our nation.

Hawai'i's admission into the Union in 1959 set the stage for political changes that contrasted sharply with the oligarchical regime which had ruled Hawai'i for more than half a century. The returning AJA veterans would replace that system with a more democratic system of governance that opened up a substantial variety of political, social and economic opportunities.

However, as others began to achieve a greater sense of equality in those early decades following statehood, Native Hawaiians focused on a slightly different approach in their own efforts to achieve a sense of equality. They focused, instead, upon the principles expressed by President Richard M. Nixon on July 8, 1970, when he formally initiated the "Self-Determination" period of federal policy concerning Indian affairs on the continent. In Hawai'i, scant attention had been paid to provisions of the Statehood law designed to benefit Native Hawaiians. Simultaneously, the rapid period of development in the 1960's and 1970's (as a result of statehood) began to reach even rural areas populated by Native Hawaiian communities. The resulting protests by Native Hawaiians exposed many in Hawai'i to political injustices that had yet to be redressed.

During the 1978 Constitutional Convention for the State of Hawai'i, the delegates approved a constitutional provision establishing the Office of Hawaiian Affairs (OHA) as the entity responsible for administering a portion of the ceded lands trust revenues for the benefit of Native Hawaiians. This constitutional provision, and others concerning Native Hawaiian traditions, customs, water and land issues, were then ratified by popular vote of the people of

Hawai'i. One of the young leaders of this convention, John Waihee, would later serve as Lieutenant Governor under the Administration of the State's first Asian American Governor, George Ariyoshi, before himself being elected as the State's first Native Hawaiian governor.

This constitutional initiative spurred other related efforts. In the wake of that pioneering convention, both the state and federal governments initiated a variety of important publicly funded programs and enacted statutory provisions that address the unique needs of Native Hawaiians for better health, housing, employment, education, business development, social programs, and protection of traditional and customary practices. The resulting societal benefits have been immeasurable. More Hawaiians receive health care, housing, assistance, educational support, college tuition, vocational and job training, and homesteads than ever before. More important, these programs give young Hawaiians a sense of purpose and identity that they carry forward in their career development. Although these investments and laws have targeted Native Hawaiian communities, they have had tremendously valuable incidental benefits to the public at large.

The people of Hawai'i – and, from a practical perspective, the State's economy – have greatly benefited from the Native Hawaiian cultural renaissance. For example, the resurgence of Native Hawaiian hula, both kahiko (ancient) and 'auana (modern), has been embraced by Japanese American and other ethnic groups in Hawai'i, who have been welcomed into the various hula halau (hula academies). Hula and chants are now regularly incorporated into public ceremonies. The people of Hawai'i also regularly participate in hui wa'a, or canoe racing associations, which celebrate the ancient Hawaiian tradition of voyaging. In addition, all are welcome in the private, non-profit Hawaiian language schools that have been established on all major islands with the assistance of federal funds.

The Japanese American community has borrowed from Native Hawaiians the term hapa (mixed blood) to identify and focus discussion around the issues faced by the children of our interracial marriages. We have drawn liberally from the experiences of Native Hawaiian 'ohana (extended families) in order to embrace the diversity in our own community. Thus, family includes not only blood relatives, but also beloved friends and informally adopted children. The Native Hawaiian traditions of aloha 'aina (love for the land) and ahupua'a (land division extending from uplands to the sea) management techniques have also been incorporated in the State's land use planning processes. In addition, our State's family courts have successfully implemented ho'oponopono (conflict resolution) to address significant societal problems outside the courtroom.

The practices of la'au lapa'au (Hawaiian healing) have been incorporated in Hawaiian health centers established with federal financial support. Once mechanisms are in place to protect cultural interests in the intellectual property reflected in Native Hawaiian oral traditions, the potential benefits to be explored among the biological diversity found in these islands could be very significant. We are still learning lessons from the Native Hawaiian people and fear the potentially adverse impacts that may result from a failure to recognize their political status as indigenous peoples of this land. Their centuries worth of experience living in connection with this land represents a resource that needs to be nurtured and celebrated.

On a more practical and admittedly self-interested level, we fear the economic impact on our State should Congress fail to clarify the political status of Native Hawaiians, thereby

endangering vital social programs that may be subjected to further constitutional attacks in the wake of Rice v. Cayetano. The likely effect upon the State as a whole, as it struggles to fill the gaps left in the wake of such challenges, could be devastating. Even more compelling, of course, are the immediately adverse impacts upon the diverse communities served by federal legislation that benefit Native Hawaiians. Therefore, Congress must act to confirm what it has implicitly recognized since 1920. Our nation's trust responsibility to the Native Hawaiian people demands no less.

The cost of inaction on S. 344 could be insurmountable. Failure to recognize the political status of Native Hawaiians would certainly cripple the reconciliation efforts mandated by P.L. 103-150. It would also undercut the legitimacy of the more than 150 pieces of legislation enacted by Congress as well as efforts by the State of Hawai'i Legislature to address a variety of chronic ills that plague the Native Hawaiian community. The loss of these essential programs would cripple families and agencies structured to address some of the most profound problems facing our island communities.

This movement to institutionalize programs and rights in Hawai'i's constitutional framework reflected a widespread belief that the problems and affairs of Native Hawaiians deserved state government attention. That attention was justified on the basis of the unique history of Hawai'i and the role that its original inhabitants had played in establishing its initial mode of governance. There is widespread acceptance of the compelling need to politically address, in the political arena, the various issues facing Hawaiians.

Furthermore, our chapter recognizes the hard work that many Native Hawaiian organizations have engaged in to promote the concept of self-determination. This movement has grown in both size and sophistication over the past 25 years. Our support for S.344 is not meant as an endorsement of any particular form of self-governance. Rather, we believe that the Native Hawaiian people should make that decision pursuant to a democratic process that reflects the true exercise of self-determination.

The Honolulu chapter of the JACL recognizes Native Hawaiians as an aboriginal, indigenous and native people (kanaka maoli). They are not simply an ethnic minority. Rather, they occupy a unique position in the society that now calls Hawai'i home. That position is based on a political history that was once guided by an independent Kingdom recognized in the international community of nations. That governance structure was forcibly displaced with the support of U.S. troops in 1893. The United States has never provided any redress for those actions, although it has formally apologized for them by enacting P.L.103-150.

Accordingly, we urge the United States Congress and President to recognize the political status of Hawaiians as a native people, and provide for the implementation of reconciliation efforts between the federal government and Native Hawaiians in accordance with Public Law 103-150. We join with and support the call of the Hawai'i Advisory Committee to the U.S. Commission on Civil Rights in calling for this sustained process redressing the claims of Native Hawaiians. See, Hawai'i Advisory Committee, "Reconciliation at a Crossroads: The Implications of the Apology Resolution and Rice v. Cayetano on Federal and State Programs for Federal and State Programs Benefiting Native Hawaiians" (June 2001) (available at www.usccr.gov).

Consistent with the desires expressed by Native Hawaiians in the exercise of their right to self-determination, our chapter urges Congress and the President to include the establishment of a government-to-government relationship as part of the reconciliation process. This relationship must be formal, fair, and democratic, so true self-determination can occur. We urge Congress to create the conditions that will allow this model to emerge.

Finally, our chapter further urges that the United States remain open to creative resolutions in this process, to match the particular circumstances of Native Hawaiians, as S. 344 appears to contemplate. Hawai'i's unique history, and the differing conditions on the continent, demands different solutions to these complex problems. Accordingly, our chapter urges Congress to provide for such flexibility rather than constraining the legislation to fit circumstances that are relevant to other native groups.

Under these conditions, the Honolulu chapter supports the efforts of Congress to enact S. 344. Thank you for this opportunity to provide you with our views.

Kealoha Kuhea
P. O. Box 894030
Mililani, HI 96789

Testimony

Aloha to this Military board of inquiry, it's well Recorded in the Hawaiian history of 1893 January 17, that the Foreign Government of the United States of the America, was the major force in this unlawful and illegal overthrow of my Queen Liliuokalani, who was the legal heir to this land that was stolen by this arm forces of America.

The Kingdom of Queen Liliuokalani was stolen by American citizens with the help of the American armed forces of a foreign Government, the Government of the United States. This foreign government then proclaimed that the King should be a white man from the government of the Americas, the same white man who was one of the murderers of my Queen Liliuokalani.

The president of this foreign government was one of the key players in the plot to the murder of Queen Liliuokalani's government. We all know that this De-Facto government that was put in power was illegal. Stanford B. Dole was a murderer of the Hawaiian policeman who was killed by an American Citizen, whose name was Keloha, who was shot in the head in downtown on the island of O'ahu, where the illegal overthrow took place.

This foreign government of the United States of the America had broken every treaty that was made with Native Indian Tribes and the same thing happened to the Native Hawaiian Government, when the Treaty of 1850 was signed between King Kamehameha the Third of this here Hawaiian island, and the President of the America, President Zachary Taylor. This Treaty was called the Treaty of Friendship, Commerce and Navigation.

Liuokalani was deposed by the foreign Government of the United States of the Americans, and its band of revolutionary Citizens of this foreign Government, called "America". This was just pure bloody Murder of a friendly Nation.

Then on the 17th day of January, 1893, Queen Liliuokalani was deposed by a group of Revolutionary Citizens of America. And they had called themselves the "DE-FACTO" Government of Stanford B. Dole, that I yield to the superior forces of the United States of America, whose minister plenipotentiary excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the new provisional government.

Queen Liliuokalani had protested this illegal act by the United States of America, she then protested in the court of claims on the 20th day of November, 1909. Queen Lilioukalani asked the representative of the United States to reinstate her with full power as a constitutional sovereign of the Hawaiian Islands.

I, Kealoha Kuhea, by the grace of God and under the constitution of the Hawaiian Kingdom, do hereby solemnly protest against any and all acts done against myself and the constitutional government of the Hawaiian Kingdom, by certain persons making a claim to this 1.8 million acres of land that was stolen from the government of the Hawaiian Kingdom, and under the constitution of the Hawaiian Nation, I, Kealoha Kuhea, hereby proclaim his right by birth as the true legal heir and next of kin to Queen Liliuokalani, last ruling Ali'i.

Ke Aloha Kuhea

KE-ALOHA KUHEA
Hawaiian Citizen

HERE IS THE OTHER SIDE OF MAUI ROYAL GENEALOGY FROM PIILANI

HUSBAND	WIFE	KEIKI
PIILANI	LAIELOHELOHE	LONO-A-PIILANI PIIKEA, w. KALAAIHEANA KIHA-A-PIILANI
KIHA-A-PIILANI	KOLEAMOKU	KAUHIOKALANI
KAUHIOKALANI	KAUMANU	MAKAKU
MAKAKU	PUEOPOKII	LONOIKAMAKAHIKI - KUAPUU
LONOIKAMAKAHIKI -KUAPUU	KAIULIAKEA	KOO
KOO	KAHOOWAHA	KAINAHOPUKAHI
KAIAHOPUKAHI	KAUOKUU	PAPUAA, k. MALULU, k. LUUKIA, w.
KAUHIAIMOKUA-A-KAMA	LUUKIA	HOOHULE, w.
KAAEA	HOOHULE	KAPOLO KAAEA,w.
KE-AKUA	KAPOLO KAAEA	KUHIA KEKUA
KUHIA KEKUA	HOOKOHU KAAHIKI	KEKUA KUHIA
KEKUA KUHIA	ANNIE PAANU	PAA KUHEA
PAA KUHEA	IDA PAA	FRANK PAA KUHEA
FRANK PAA KUHEA	HILARIRA DE-JESUS	PAA KEKUA KUHEA KEHUALANI KUHEA KIHA KUHEA KEALOHA KUHEA

Kealoha Kuhea

KEALOHA KUHEA
RESEARCHER

SUPPLEMENTAL WRITTEN TESTIMONY OF EMMETT E. LEE LOY,
ATTORNEY AT LAW,

A NATIVE HAWAIIAN AS DEFINED IN THE HAWAIIAN HOMES COMMISSION ACT (HHCA) OF 1920

IN FURTHER OPPOSITION TO S. 344

BEFORE THE UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS

THE HONORABLE BEN NIGHTHORSE CAMPBELL, CHAIRMAN

THE HONORABLE DANIEL K. INOUYE, VICE-CHAIRMAN

HELD AT

ROOM 485, RUSSELL SENATE OFFICE BUILDING

HELD ON

TUESDAY, FEBRUARY 25, 2003, 9:30 A.M.

Honorable Chairman and Senator Campbell, Honorable Vice-Chair and Senator Inouye, Honorable Members, Senators and Staff of the U.S. Senate Committee on Indian Affairs, this testimony supplements my previous testimony submitted and incorporated by reference herein:

The Hawaiian Homes Commission Act, 1920, already provides a roadmap of self-determination for native Hawaiians

The purpose of the Hawaiian Homes Commission Act (HHCA), 1920, is to "rehabilitate native Hawaiians" upon lands given the status as "available lands" under the HHCA, 1920.

The legal phrase "rehabilitation" means self-determination. The problem is that the State of Hawaii officials, simply do not want to see the full implementation of the HHCA, 1920.

Akaka Bill S. 344 Is Inconsistent with the HHCA, 1920

The HHCA, 1920, reads in pertinent part as follows:

"§ 201. [Definitions.]

(a) That when used in this title:

(7) The term "native Hawaiian" means any descendant of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778...".

In contrast, the proposed Akaka bill, S. 344, reads in pertinent part as follows:

"SEC. 2. DEFINITIONS.

(6) NATIVE HAWAIIAN-

(A) Prior to the recognition by the United States of the Native Hawaiian governing entity, the term 'Native Hawaiian' means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants."

This open ended definition would include persons with as little as 1/64th part-Hawaiians, all the way down to "pin-prick" "Native Hawaiians" with not so much as 1/512th part-Hawaiian, and thus, would be inconsistent with the provisions of the HHCA, 1920, definition of "native Hawaiian."

Proponents of the Akaka bill will try and convince you that the term "native Hawaiian" is not inconsistent with "Native Hawaiian" because the term "Native Hawaiian" includes "native Hawaiian." This brings small comfort to the "native Hawaiians" threatened by a suddenly imposed massive influx of 390,000 "toe-nail" "Native Hawaiians".

Let us look at what we are talking about in order to deconstruct the proponents arguments for these Akaka bills and their empty fight for the rights of the 1/512th part, pin-prick "Native Hawaiians" or members of the general public of the State of Hawaii.

At one end of the spectrum, you have the survival of the last, intact, critical mass of the half to full blooded native Hawaiians, numbering approximately 60,000, trying to get onto the Hawaiian home lands encumbered under the HHCA, 1920, and to vindicated their interest in the Admission Act, Section 5(f) ceded land trust. This smaller group of 60,000 real deal native Hawaiians, that the State of Hawaii is trying to keep off of lands Congress intended for us to rehabilitate upon, are the real deal, kua aina, "native Hawaiians."

Now, way at the other end of the spectrum, under the Akaka bill, you have just added 390,000 toe-nail "Native Hawaiians." Are these people really "Native Hawaiian" at all? Do you really believe that someone who is 1/64th part-Hawaiian and 63/64th part-Caucasion has anything to do with us? Senator Akaka desperately wants you to believe so. However, we who oppose the Akaka bill, S. 344, for this reason, are not convinced.

These "Native Hawaiians" don't walk, talk, act, speak or otherwise have anything to do with us, not unless they are feeding at the public trough pretending to "service" the "native Hawaiians" as defined in the HHCA, 1920. See the State of Hawaii's Office of Hawaiian Affairs, for example.

The State of Hawaii's Office of Hawaiian Affairs, A Previous Attempt to End Run the Blood Quantum Criteria, Provides a Glimpse as to What Disastrous Effects will be Visited Upon the "native Hawaiians" treated under the HHCA, 1920, if you pass the Akaka bill, S. 344

Instead of creating a disaster for the native Hawaiians, perhaps you can all save yourselves valuable time by taking a close look at the current State of Hawaii's Office of Hawaiian Affairs, because it provides a microcosm of the experiment of the State of Hawaii's prior effort to end run the blood quantum criteria of the HHCA, 1920, and Section 5(f) of the Admission Act of 1959.

As anybody that knows anything about Hawaii will tell you, the State of Hawaii's Office of Hawaiian Affairs, hereinafter referred to as "OHA," is really a make work project for the politically well-connected.

Constituted by a majority of "toe-nail" "Native Hawaiians," OHA is a major cause of continuing embarrassment to all the people of Hawaii, especially to native Hawaiians defined in the HHCA,

1920. For example, KITV 4 News reported as recently as January 8, 2003, that OHA lost Eighty Million Dollars gambling in the stock market.

Eighty Million Dollars.

How many native Hawaiians could the State of Hawaii have settled onto the Hawaiian home lands with $80,000,00.00?

Did the OHA trustees step up to the plate and accept responsibility for this latest in a long string of disasters? No. Instead, the OHA trustees helped themselves to a free, first class, round trip airfare, hotel accomodations, all expense paid vacation to Washington, D.C., to exchange leis and germs, chant, put on their show of their rendition of "Hawaiiana" covered up by their effort to bring their testimony in support of S. 344 all the way to Washington, D.C.. E-mail and fax not good enough, no, they gotta spend our money to go to Washington, D.C., for what? Listen to Haunani Apoliona (who is not a native Hawaiian as defined in the HHCA, 1920) chant?

And yet, to fully comprehend the fundamental, conceptual and dysfunctional attributes of OHA, you all need to take a look at the history of OHA, how it was created and why it was created by the State of Hawaii.

After shafting the native Hawaiians, since statehood in 1959, in 1978, the State of Hawaii came up with a game plan to end run the blood quantum criteria of the HHCA, 1920.

You see, the State of Hawaii agreed, by federal-state compact, to administer the HHCA, 1920. Section 4 of the Act of March 18, 1959, P.L. 86-3, 73 Stat 4, hereinafter also referred to as the Admission Act of 1959, reads in pertinent part as follows:

"§ 4.

1. As a compact with the United States relating to the management and disposition of the Hawaiian home lands, the Hawaiian Homes Commission Act, 1920, as amended, shall be adopted as a provision of the Constitution of said State, as provided in section 7, subsection (b) of this Act, subject to amendment or repeal only with the consent of the United States, and in no other manner: Provided, That (1) sections 202, 213, 219, 220, 222, 224, and 225 and other provisions relating to administration, and paragraph (2) of section 204, sections 206 and 212, and other provisions relating to the powers and duties of officers other than those charged with the administration of said Act, may be amended in the constitution, or in the manner required for State legislation, but the Hawaiian home-loan fund, the Hawaiian home-operating fund, and the Hawaiian home-development fund shall not be reduced or impaired by any such amendment, whether made in the constitution or in the manner required for State legislation, and the encumbrances authorized to be placed on Hawaiian home lands by officers other than those charged with the administration of said Act, shall not be increased, except with the consent of the United States; (2) that any amendment to increase the benefits to lessees of Hawaiian home lands may be made in the constitution, or in the

manner required for State legislation, but the qualifications of lessees shall not be changed except with the consent of the United States; and (3) that all proceeds and income from the "available lands", as defined by said Act, shall be used only in carrying out the provisions of said Act." Emphasis added.

Not only was the State of Hawaii supposed to administer the HHCA, 1920 by federal-state compact, the State of Hawaii was also supposed to use revenues derived from additional lands that were to be held in trust for the general public and native Hawaiians as defined in the HHCA, 1920. In effect, there exists two trusts: the Section 4, HHCA, 1920 trust and the Section 5(f) ceeded land trust.

Section 5(f) of the Act of March 18, 1959, P.L. 86-3, 73 Stat 4, hereinafter also referred to as the Admission Act of 1959, reads in pertinent part as follows:

"§ 5...
(f) The lands granted to the State of Hawaii by subsection 1.(b) of this section and public lands retained by the United States under subsections (c) and (d) and later conveyed to the State under subsection (e), together with the proceeds from the sale or other disposition of any such lands and the income therefrom, shall be held by said State as a public trust for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians, as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible for the making of public improvements, and for the provision of lands for public use. Such lands, proceeds, and income shall be managed and disposed of for one or more of the foregoing purposes in such manner as the constitution and laws of said State may provide, and their use for any other object shall constitute a breach of trust for which suit may be brought by the United States. The schools and other educational institutions supported, in whole or in part out of such public trust shall forever remain under the exclusive control of said State; and no part of the proceeds or income from the lands granted under this Act shall be used for the support of any sectarian or denominational school, college, or university." Emphasis added.

From 1959 to 1978, the State of Hawaii never used any of the Section 5(f) revenue "for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920."

Why? Because the majority of people in the State of Hawaii are not "native Hawaiians" as defined by the HHCA, 1920, and it is the general public, the majority of whom are toe-nail "Native Hawaiians" under S. 344, that have always been hostile to higher blood quantum native Hawaiians identified under the HHCA, 1920.

Here is what the State of Hawaii did: The State of Hawaii created its own definition of a "Hawaiian" defined to end run the blood quantum criteria and underhandedly expand the target beneficial class of "native Hawaiians."

In 1978, the State of Hawaii invented the Office of Hawaiian Affairs. Having been told that the 5(f) revenue can only be used for the betterment of the conditions of native Hawaiians as defined in the HHCA, 1920, the State of Hawaii blatantly decided to skirt the criteria by creating this brand new

class it would call "Hawaiians."

Hawaii Revised Statutes (HRS) Section 10-2, reads in pertinent part as follows:

"**§10-2 Definitions.**

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778, and which peoples thereafter have continued to reside in Hawaii."

After the State of Hawaii invented OHA in 1978, the State foisted upon us this brand new class of people they called "Hawaiians" which is very similar in terms of "Native Hawaiian" in S. 344, and exactly the same in terms of circumventing the blood quantum criteria. It is open ended. It is a deliberate effort on the part of State of Hawaii officials, Hawaii Democratic Senator Akaka included, to end run the blood quantum criteria.

How have the "native Hawaiians" as defined in the HHCA, 1920, faired under this newly imposed regime by the State of Hawaii? Not too well. Why? Because we have to deal and compete with the much larger, anomalous class of "Hawaiians."

Three Hundred and Ninety Thousand (390,000) toe-nail Hawaiians are being forced into a group of 60,000 native Hawaiians as defined in the HHCA, 1920.

The failure of OHA to address and better the conditions of native Hawaiians, should serve as a warning to all of you Honorable Senators.

The OHA model provides you with a specimen of what life will be like for native Hawaiians, should you pass the Akaka bill, S. 344, into law.

Today, there are more than 20,006 native Hawaiians as defined in the HHCA, 1920, waiting for their share of lands under the HHCA, 1920. Is OHA, that is receiving the 5(f) revenue that is supposed to be used "for the betterment of the conditions of native Hawaiians as defined in the HHCA, 1920," using the 5(f) monies to better the conditions of native Hawaiians? No. Why, because the toe-nail Hawaiians control the purse strings at OHA. They are a much larger group and exert greater political pressure than the native Hawaiians.

Here, I would like to reiterate my previous testimony that the Akaka bill, introduced by a State of Hawaii representative in Congress, The Honorable Senator Akaka, and supported by another State of Hawaii official, The Honorable Senator Inouye, is really about promoting the interests of the State of Hawaii to open up the HHCA, 1920 and Section 5(f) trust to the toe-nail "Native Hawaiians" otherwise indistinguishable from the general public of Hawaii. S. 344 is not in the best interest of the native Hawaiians as defined in the HHCA, 1920.

This Honorable U.S. Committee on Indian Affairs Lacks Jurisdiction to Diminish the Benefits for native Hawaiians Treated Under the HHCA, 1920

Original jurisdiction over the Hawaiian Homes Commission Act of 1920, lies with the United States Senate Committee on Energy and Natural Resources, and this Committee on Indian Affairs lacks jurisdiction to impede implementation of the HHCA, 1920.

The Honorable Senator Daniel Akaka purposefully sought to wrest control over the HHCA, 1920, from the Committee on Energy and Natural Resources, when the Honorable Senator representing the State of Hawaii referred S. 344 to this Committee on Indian Affairs.

It is a card trick designed to effect the same result: rip off the undelivered property rights of the native Hawaiians as defined in the HHCA, 1920.

This is not the first time State of Hawaii representatives in Congress have tried to pull a fast one on us.

State of Hawaii Officials Cannot Figure Out What the Purpose of the HHCA, 1920 is, they Needed to Add a Purpose Clause; Another Previous Attempt to End Run the Blood Quantum Criteria

Look back at the failed "Purpose Clause" attempt by State of Hawaii officials. In the late 1980's and early 1990's, members of Congress representing the interests of the State of Hawaii and State of Hawaii officials, including then Governor Waihee, tried to add a "purpose clause" to the HHCA, 1920, that would have changed the entire comprehensive Congressional scheme of the HHCA, 1920.

Both the Honorable Senator Daniel Inouye and the Distinguished and Honorable Senator Daniel Akaka, then a member of the U.S. House of Representatives, played a role and trying to pull this fraud on us. Typically, in keeping with the pattern and practice of the State of Hawaii, it was yet another previous effort by State of Hawaii officials to try and end run the blood quantum criteria of the HHCA, 1920.

However, the Honorable Members of the U.S. Senate Commitee on Energy and Natural Resources saw right through the design to fleece the native Hawaiians as defined in the HHCA, 1920, by adding a "purpose clause" to the HHCA, 1920. The Committee on Energy and Natural Resources killed the purpose clause bills.

But they got you fooled now, haven't they? Federal-Recognition. Feigned, panic-stricken, chicken little crying "the sky is falling." Proponents of the Akaka bill, S. 344, are trying to put a "rush"

stamp on S. 344, to avoid your scrutiny. They stridently argue that "we" (the State of Hawaii) need S. 344, due to pending court challenges.

Let the Courts determine if the HHCA, 1920 is constitutional. I remain confident that the HHCA, 1920 will withstand the test articulated in *Aderand Constructors*, because it is narrowly tailored to deliver available lands to native Hawaiians to rehabilitate upon, in order to vindicate a compelling governmental interest of saving the "native Hawaiians" from extinction.

Dupes and Donkeys: Stooges and the Democratic Party of Hawaii's Role in Divesting the native Hawaiians as Defined in the HHCA, 1920

I feel sorry for people like Tony "Sell Out" Sang, of the State of Hawaii Council of (some, but not all) Hawaiian Homestead Associations (SCHHA). He is convinced that he will lose his Hawaiian homestead without the passage of this sloppy Akaka bill.

Any competent attorney could tell you that the Courts can only grant prospective relief under the causes of actions plead by Plaintiffs in the Carroll, Barrett and Arakaki law suits. In other words, everybody that has a Hawaiian homestead, will get to keep it, even in the very unlikely event that the HHCA, 1920 is ruled to be unconstitutional..

Get this, the SCHHA received a $600,000.00 "loan" that SCHHA does not have to pay back, from the State of Hawaii Department of Hawaiian Home Lands (DHH), so that SCHHA can pay their attorney fees in the Carroll and Barrett and Arakaki cases. Despite all of this money for attorney fees, SCHHA's still does not understand that the courts can only grant prospective relief in these cases.

It doesn't end there, SCHHA, OHA and the State of Hawaii actually had the nerve to argue against a group of native Hawaiians trying to intervene into the Carroll, Barrett and Arakaki cases.

The proposed intervenors, all native Hawaiians, were opposed by SCHHA OHA and the State of Hawaii. The native Hawaiians were arguing that the blood quantum criteria under the HHCA, 1920, was constitutional because it identified and reached the closest relatives, by degree of kinship, that are heirs to the native tenants that never received their share of the lands in the Mahele of 1848, and for whom Congress sought to especially treat under the HHCA, 1920.

This position by the proposed "native Hawaiian" intervenors was opposed by SCHHA, OHA and the State of Hawaii because it would strip the paint off of the State of Hawaii's facade that a half to full blooded native Hawaiian were the same as a 1/512th part-Hawaiian.

This facade is only intended to cover up the fact that these efforts to lower the blood quantum criteria down to nothing, is all about stealing the undelivered property rights of the native Hawaiians treated under the HHCA, 1920 and Section 5(f), by opening it up to the general public, the great

part of such population are people with only a trace of Hawaiian blood.

Since Statehood in 1959, the Democratic Party has been in control of most, if not all, political offices in the State of Hawaii. It has been mainly the Democratic Party of Hawaii responsible for keeping the native Hawaiians on the waiting list,(many of whom died on the waiting list,) and off of the Hawaiian homestead lands.

As I pointed out earlier in this testimony, it was the State of Hawaii, controlled by the Democratic Party of Hawaii, that invented the Office of Hawaiian Affairs in 1978, in yet another prior effort to end run the blood quantum criteria and thus, fleece the native Hawaiians as defined in the HHCA, 1920, of their interests located in Section 5(f) of the Admission Act of 1959.

You all should throw this problem back into the lap of the State of Hawaii. Tell them to put every one of the more than 20,006 native Hawaiians on the State of Hawaii's Department of Hawaiian Home Lands (DHHL) waiting list onto the homesteads and give them a lease.

Republican Governor Linda Lingle Catering to the Democratic Party of Hawaii Interests by Testifying in Support of S. 344

Up until the election of our new Governor, the Honorable Linda Lingle, a Republican, it was the ruling elite of the Democratic Party of Hawaii that controlled our lands and resources encumbered under the HHCA, 1920, and Section 5(f).

So it looks like a "new beginning" under Republican Governor Lingle in Hawaii, right? Hardly. Lingle is actually a Democrat masquerading as a Republican. Lingle is a Demopublican or a Republicrat, but far from being a Republican.

When asked why she ran for office as a Republican, Lingle was quoted as saying that she had a better chance of defeating the top-runner Democrat as a Republican, rather than running against the top runner as a Democrat. Hardly a philosophical difference.

Governor Lingle does not have a clue about the native Hawaiians as defined in the HHCA, 1920. The mere fact that she would support such a broad definition of "Native Hawaiian" in S. 344 only highlights this point.

Governor Lingle is playing right into the hands of the ruling Democratic Party of Hawaii, but she does not even know it, or does she?.

U.S. Senator Inouye "Using" Governor Lingle for His Own Political Ends

Honorable Democratic U.S. Senator Daniel Inouye recently stated that the Honorable Republican Governor Lingle was "key" to passage of the Akaka bill, because of her contacts with the Republicans in Washington, D.C..

However, Inouye knows that there is stiff opposition to the bill by us and others in Washington, D.C.

Inouye is setting Lingle up and Lingle is clueless.

Inouye is trying to bank on the misplaced hope that if the bill passes, both Inouye and Lingle will get to share the credit.

But if the bill fails again, as it will again, guess who Inouye is going to blame?

Governor Lingle.

In a way, this serves Governor Lingle right. She deserves to be treated this way for ignoring the concerns of the native Hawaiians as defined in the HHCA, 1920, that are opposed to this Akaka bill, S.344.

Inouye is using Lingle for his own political end: to wipe out the blood quantum criteria that has always been a pain in the side of his Democratic party buddies that run the State of Hawaii.

Sincerely,

/s/Emmett E. Lee Loy
Attorney at Law
758 Kapahulu Avenue, #429
Honolulu, Hawaii 96816
Tel. (808) 922-0455

Kawehionālani Kēhaulani Kāneakua
Grade 10, Ke Kula Kaiapuni 'O Ānuenue, island of O'ahu
First place, English essay
Grade category 9-12

I Am Proud to be Hawaiian

I am proud to be Hawaiian because it is who I am. I am not ashamed of it, and have no reason to be. Being part of a culture as strong as this one is a true blessing, and for that, I am truly grateful.

The blood that once flowed in the veins of my kūpuna continues to do so in mine. The language that they once spoke continues to be spoken by me. I do not consider myself to be Hawaiian because of my blood and the language I speak, that is how others know I am Hawaiian. I am Hawaiian of choice. I choose to speak it, learn it, and live it. It is my sense of pride for my culture and my determination to help it grow and be passed down to the next generation that makes me Hawaiian.

Living in a time where everything is changing at top speed can be a little overwhelming. I am glad that I can come to school, Ke Kula Kaiapuni 'O Ānuenue, and feel a great sense of relief to see others who share the same pride and strength as I do as a Hawaiian.

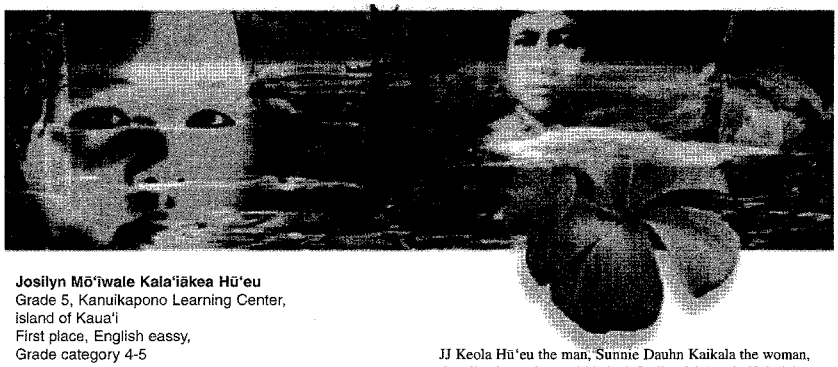
I have had the opportunity to leave Ānuenue and enroll in a regular school, where I could meet new people, and perhaps get a better education. I have considered this, but as always, have stood by my decision to remain exactly where I am, where my friends and teachers are, where my culture and family are.

At home I do not speak the 'ōlelo makuahine often, because my parents barely understand it. They sometimes ask me to teach them so they will be able to speak along with me, but I don't yield. I say that it is their responsibility as a makua and a Hawaiian to learn on their own, just like I did when I first learned to speak. I do feel guilty that I don't teach them, but if you truly want something then you must make the choice of achieving it. Still they try, and I praise them for it.

At times, I do wish that we could return to ka wā kahiko, where things aren't so materialistic and where things were said and done with good reason for them. People do wonder how we could survive without entertainment and distractions. But life shouldn't be about such things, it's about the hard work and the knowledge that you can learn from your elders, just like ka po'e kahiko.

I don't need to go out on the streets and protest all day, let it be broadcasted on the 'Ōlelo channel to show everyone that I too wish that we could live as our kupuna did. I am Hawaiian because of the blood that will forever flow through my veins, because of the stories that are forever in my mind and my heart. I am Hawaiian by choice.

I choose to speak it, learn it, and live it. ■



Josilyn Mō'īwale Kala'iākea Hū'eu
Grade 5, Kanuikapono Learning Center,
island of Kaua'i
First place, English eassy,
Grade category 4-5

People Seeking Wisdom

I am Hawaiian because ... I am Hawaiian in many ways. First, I
cherish the stories of my elders. Second, I can speak my mother's tongue. Third, my ancestors are Hawaiian.

I listen to the stories of my elders. My favorite is about the fresh
water pond of Pu'uhaoa. Pu'uhaoa runs through our family land in Kīpahulu, Maui. There is a stone that is shaped like a heart that stands for love.

I can talk story in Hawaiian with my friends, parents, and elders
too. I learned to speak Hawaiian from my elders and teachers at school. When I was a young child I went to a Hawaiian immersion preschool on Maui for two years. I learned to speak Hawaiian there. Soon after that, I entered into Hawaiian immersion elementary school at Pā'ia.
I didn't know Hawaiian all that well, so I continued at Pā'ia School until last year. I am proud to speak Hawaiian.

In the fourth grade, with Kumu Kamaka'eu, I did a genealogy project. I learned that I am related to the chiefs of Hawai'i. Here are some lines from my genealogy:

Kamehameha the man, Manono the woman,
they lived together and birthed, Kapapauai, a woman;
Kapapauai the woman, Keali'ikanaka'ole a man, they lived together and birthed, Mariana Manono, a woman:

Mariana Manono the woman, Thomas Pahukoa the man, hey lived together and birthed, Harry Kumukoa Pahukoa Sr., a man;

Harry Kumukoa Pahukoa the man, Mary Ann Aima the woman,they lived together and birthed, Margaret Maleka Pahukoa, a woman;

Margaret Maleka Pahukoa the woman, James Keolaokalani Hu'eu Jr., the man, they lived together and birthed Harry 'Aukai Hu'e, Sr., a man;

Harry 'Aukai Hu'eu Sr., the man, Sandra Gail Chaves the woman, they lived together and birthed, JJ Keola Hū'eu, a man;
JJ Keola Hū'eu the man, Sunnie Dauhn Kaikala the woman, they lived together and birthed, Josilyn Mō'īwale Kala'iākea Hū'eu a woman.
I am Josilyn Mō'īwale Kala'iākea Hū'eu.

This is the genealogy of the Pahukoa family, long live this family, LIFE! I am Hawaiian in many different ways, these are only a few. Mahalo nui. ■

Annielien Kanahele
Grade 8, Ke Kula Ni'ihau 'O Kekaha
island of Kaua'i
First place, English essay
Grade category 6-8

He Hawai'i Au

I am proud to be Hawaiian. I am proud to go to a Hawaiian church in Waimea town with my aunties, uncles, cousins and grandparents. At church, I pray for my family and I read the Hawaiian Bible. I even pray to the Lord in Hawaiian to forgive us for all the bad things we do and to ask the Lord for help when we need it. We also sing Hawaiian hymns from Puke Hīmeni.

I am proud to have a Hawaiian family that loves me for who I am. My father is full Hawaiian from Ni'ihau, and my mother is half Hawaiian from Kaua'i. I also have a brother and sister. In my family, we aloha kekahi i kekahi by showing we always support each other.
I am proud to have lived on Ni'ihau. On Ni'ihau, everyone speaks Hawaiian at the beach, at home, at church and at school. We don't have stores, cars, electricity, phones or water pipes. There are not that many people on the island, but there is a lot of aloha.

I am proud to be a student at Ke Kula Ni'ihau'O Kekaha. In our school we learn to speak, read and write in Hawaiian and English. We also learn how to use computers to do research on the internet, to do our lessons, and even to chat with friends from other schools on Leokī. Tūtū Ane teaches us songs that she sang on her CDs, and she also tells us to listen to our teachers. So, that's why I'm proud to be Hawaiian. ■

Na Tehani K. Louis
Papa 5, Kula Kaiapuni 'O Pū'ōhala
Moku 'o O'ahu
Kūlana 'ekahi, mo'olelo Hawai'i
Māhele 4-5

He Hawai'i Au

He Hawai'i au no ka mea, 'ōlelo, kākau, hīmeni, hula a hana au i ka'u mau ha'awina ma ka 'ōlelo Hawai'i. Hana au i ka'u Makemakika, Puke Ho'omana'o, Puke Kākau, ka makua 'Ōlelo a me ke oli ma ka 'ōlelo Hawai'i.

Ha'aheo au i ko'u koko Hawai'i no ka mea, maopopo ia'u he Hawai'i au. Ua lilo au i Hawai'i mai ku'u kupunahine, a me ko'u mau kūpunakāne.

He 'ōlelo no'eau 'o "'A'ohe pu'u ki'eki'e ke ho'ā'o e pi'i" he mea e kōkua ai ia'u. Inā pa'akikī kekahi mea ia'u, hiki i kekahi mana'o Hawai'i me kēia ke kōkua ia'u. ■

Na Ta'nia Pōhaikealoha Pau'ole
Papa 6, Ke Kula 'O 'Ehunuikaimalino
Moku 'o Hawai'i
Kūlana 'ekahi, mo'olelo Hawai'i
Māhele 6-8

He Hawai'i Au

Ha'aheo au i ko'u koko Hawai'i no ka mea, waiwai loa ka 'ōlelo makuahine ia'u. A maopopo au ua hana nā po'e Hawai'i, nā kūpuna, a me nā ali'i he nui no mākou.

Maopopo au he mau po'e akamai nā Hawai'i. He mau po'e lokomaika'i lākou a inā ua lawai'a a i 'ole mahi'ai, e ka'analike ana kekahi me kekahi. A hana lākou no ke aloha a kōkua wale. 'A'ole pono lākou e loa'a i ke kālā. Pono wale 'ce e ho'ā'o nui e hana 'oi aku ka maika'i ma mua o nā po'e 'ē a'e e a'o i nā po'e 'ē i ka waiwai o nā Hawai'i. 'A'ole ke kālā ka mea waiwai no nā Hawai'i akā 'o ka lokomaika'i ka waiwai o nā Hawai'i. A maopopo 'oe inā 'ike 'oe i kekahi po'e Hawai'i a'e, e hau'oli ana 'oe no kou 'ano Hawai i. Inā 'a'ole ka Hawai'i ma 'ane'i, e lawe ana nā po'e 'ē i ko mākou 'āina a pau a 'aka'aka iā mākou. He mau po'e kupaianaha nā ali'i a me nā kūpuna. 'O mākou keiki e hāpai ana i ka 'ōlelo makuahine a e a'o ana mākou keiki a pēlā aku. A mahalo au i ke Akua hiki ia'u ke 'ōlelo Hawai'i, a HE HAWAI'I AU! ■

Na Ilihia Nāk[illegible]
Papa 11, Ke Ku[illegible]
Moku o Hawai'i
Kūlana 'ekahi, mo'o[illegible]
lelo Hawai'i
Māhele 9-12

He Hawai'i Au

He Hawai'i au no ka mea ho'ōla wau i nā welo o nā kūpuna o'u. 'O ia ho'i, mau nō ka lapakapa o ko lākou mauli i loko o'u, a pēlā pū me nā Hawai'i 'ē a'e e ola nei i kēia manawa. 'Ike 'ia ma ka mauli Hawai'i nā 'ao'ao a pau o ke 'ano o ke kanaka Hawai'i.

'O ke 'ano o ka lawena o nā kūpuna, 'a'ole ia he 'ano lawena i laha i waena o nā po'e a pau o ka honua. 'O nā mea li'ili'i, e like me ka ālai 'ole i ka puka i biki i nā kūpuna ke komo a ha'alele, a i 'ole ka noho 'ole ma ke pākaukau no ka mahalo i ka nui o ka hana e loa'a ai ka mea'ai ma laila, 'o ia ka mea e Hawai'i ai ka Hawai'i.

He 'ano pili 'uhane ko ka Hawai'i kekahi, he pili wehena 'ole ma waena o ka piko 'ī o ke kanaka a me ka lani, ka pō, kahi e noho malu ai nā kūpuna i ha'alele i kēia honua a hele aku i kekahi 'ao'ao. Ma ke kahe 'ana o ka wai o ka manawa, ua komo mai nā 'ano pili 'uhane 'ē a'e, e like me ka ho'omana Kalikiano. Akā, loa'a nō kekahi 'ano ho'omana Kalikiano pili loa i ka nohona o ka Hawai'i.

Kapa 'ia ka 'ike a mākou i a'o ai mai nā hanauna ma mua o mākou 'o ia ka 'ike ku'una i nalo. Akā, 'a'ohe waiwai o ka namunamu no ka nui o ka 'ike i nalo. Ua nalo, no laila, pono wale e ho'omau.

A 'o ka māhele hope o ka mauli ola Hawai'i, 'o ia ka 'ōlelo makuahine. 'Ike 'ia nō ka lāhui o ke kanaka ma kāna 'ōlelo, a he 'oia'i'o loa kēia no nā Hawai'i. Ia'u, 'a'ole 'o ka 'ōlelo Hawai'i he 'ōlelo wale nō, e like me nā 'ōlelo 'ē a'e o ka honua. Nui nā māhele o ka 'ōlelo Hawai'i e hō'ike kiko'ī ana i nā ha'awina na'au o nā kūpuna, nā mea e hō'ike ana i nā lāli'i o ka nohona o ke au i kala loa.

Ma waena o kēia mau 'ao'ao 'ehā o ka mauli Hawai'i, ahuwale ke 'ano o ka Hawai'i. 'O ke kanaka i hiki ke mālama i nā 'ao'ao 'ehā o ka mauli e like me nā kūpuna o ke au i hala, 'o ia nō ka Hawai'i. 'Oiai he mea nui ke koko, 'oi aku ke ko'iko'i o kēia. Loa'a nō ka po'e koko Hawai'i e mālama 'ole nei i kēia mau 'ao'ao o ka mauli. Inā 'a'ohe mea e 'ā ai kēia ahi i loko o ka na'au o ke kanaka, pono 'o ia e ho'oikaika ma loko ona e ho'ā i ke ahi a lapalapa ikaika mau. 'O ia nō ka mea e Hawai'i ai ka Hawai'i i ku'u 'ike. ■

Josilyn Mō'īwale Kala'iākea Hū'eu
Grade 5, Kanuikapono Learning Center,
island of Kaua'i
First place, English eassy,
Grade category 4-5

People Seeking Wisdom

I am Hawaiian because ... I am Hawaiian in many ways. First, I
cherish the stories of my elders. Second, I can speak my mother's tongue. Third, my ancestors are Hawaiian.

I listen to the stories of my elders. My favorite is about the fresh
water pond of Pu'uhaoa. Pu'uhaoa runs through our family land in Kīpahulu, Maui. There is a stone that is shaped like a heart that stands for love.

I can talk story in Hawaiian with my friends, parents, and elders
too. I learned to speak Hawaiian from my elders and teachers at school. When I was a young child I went to a Hawaiian immersion preschool on Maui for two years. I learned to speak Hawaiian there. Soon after that, I entered into Hawaiian immersion elementary school at Pā'ia.
I didn't know Hawaiian all that well, so I continued at Pā'ia School until last year. I am proud to speak Hawaiian.

In the fourth grade, with Kumu Kamaka'eu, I did a genealogy project. I learned that I am related to the chiefs of Hawai'i. Here are some lines from my genealogy:

Kamehameha the man, Manono the woman,
they lived together and birthed, Kapapauai, a woman;
Kapapauai the woman, Keali'ikanaka'ole a man, they lived together and birthed, Mariana Manono, a woman:

Mariana Manono the woman, Thomas Pahukoa the man, hey lived together and birthed, Harry Kumukoa Pahukoa Sr., a man;

Harry Kumukoa Pahukoa the man, Mary Ann Aima the woman,they lived together and birthed, Margaret Maleka Pahukoa, a woman;

Margaret Maleka Pahukoa the woman, James Keolaokalani Hu'eu Jr., the man, they lived together and birthed Harry 'Aukai Hu'e, Sr., a man;

Harry 'Aukai Hu'eu Sr., the man, Sandra Gail Chaves the woman, they lived together and birthed, JJ Keola Hū'eu, a man;

JJ Keola Hū'eu the man, Sunnie Dauhn Kaikala the woman, they lived together and birthed, Josilyn Mō'īwale Kala'iākea Hū'eu a woman.
I am Josilyn Mō'īwale Kala'iākea Hū'eu.

This is the genealogy of the Pahukoa family, long live this family, LIFE! I am Hawaiian in many different ways, these are only a few. Mahalo nui. ■

Anniellen Kanahele
Grade 8, Ke Kula Ni'ihau 'O Kekaha
island of Kaua'i
First place, English essay
Grade category 6-8

He Hawai'i Au

I am proud to be Hawaiian. I am proud to go to a Hawaiian church in Waimea town with my aunties, uncles, cousins and grandparents. At church, I pray for my family and I read the Hawaiian Bible. I even pray to the Lord in Hawaiian to forgive us for all the bad things we do and to ask the Lord for help when we need it. We also sing Hawaiian hymns from Puke Himeni.

I am proud to have a Hawaiian family that loves me for who I am. My father is full Hawaiian from Ni'ihau, and my mother is half Hawaiian from Kaua'i. I also have a brother and sister. In my family, we aloha kekahi i kekahi by showing we always support each other.
I am proud to have lived on Ni'ihau. On Ni'ihau, everyone speaks Hawaiian at the beach, at home, at church and at school. We don't have stores, cars, electricity, phones or water pipes. There are not that many people on the island, but there is a lot of aloha.

I am proud to be a student at Ke Kula Ni'ihau'O Kekaha. In our school we learn to speak, read and write in Hawaiian and English. We also learn how to use computers to do research on the internet, to do our lessons, and even to chat with friends from other schools on Leokī. Tūtū Ane teaches us songs that she sang on her CDs, and she also tells us to listen to our teachers. So, that's why I'm proud to be Hawaiian. ■

Letter of Support for Passage of the
NATIVE HAWAIIAN FEDERAL RECOGNITION BILL

To Whom It May Concern:

This letter is written from members of a generation of Native Hawaiians that recognize the absolute necessity to obtain Federal Recognition of the Native Hawaiian governing entity. It is vitally important that this Bill be passed through both the House and the Senate and be signed by the current Presidential Administration.

It is our fundamental and inherent right to self-governance and self-determination. We need this right recognized and honored. It is our people who should choose what is best for our people. It is our people who will need to accept full responsibility for the past, the present and most importantly the future of Native Hawaiians. We can and will do so with the support of the United States government.

We have come a long way since the days of the overthrow of the Hawaiian Kingdom. We have learned what was not understood at the time. We are anxious to exercise our intelligence and sense of values to elevate the Hawaiian people to levels of achievement and productivity that eclipse even the glorious days that our ancestors once enjoyed.

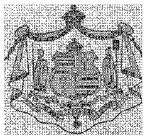
It is our time to end the dwindling spiral of the Native Hawaiian and to provide effective solutions to societal plaques that manifest in drug addiction, criminality, illiteracy and the like. We can and we will accomplish these goals. We can and we will continue to work, not it the role of the victim of past circumstances, but as the creators of our own destiny.

Once again, the importance of Federal Recognition is paramount amongst our concerns. It is vitally important that the United States Government also accept full responsibility for the past. The primary way to so, at this moment in time, is to pass the Native Hawaiian Federal Recognition Bill.

Mahalo,

Laura Thompson
Lita Blankenfeld
Myron Thompson

Wife, Daughter and Son of the Late Myron B.Thompson



Association of Hawaiian Civic Clubs
P. O. Box 1135
Honolulu, Hawai`i 96807

TESTIMONY OF CHARLES ROSE, PRESIDENT

ASSOCIATION OF HAWAIIAN CIVIC CLUBS

before the United State Senate Committee on Indian Affairs scheduled for 9:30 AM, February 25, 2003, on

S. 344

A bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of a Native Hawaiian governing entity, and for other purposes.

ALOHA!

I my name is Charles Rose and I am the President of the Association of Hawaiian Civic Clubs and provide this testimony in that capacity.

We are a confederation of forty-nine (49) Hawaiian Civic Clubs located throughout the State of Hawai'i and in the states of Alaska, California, Colorado, Nevada and Utah. We are the oldest community-based, grass roots Hawaiian organization having been formed in 1918 by Prince Jonah Kuhio Kalanianaole, the then Delegate to the United States Congress. At that time, the Delegate to the United States Congress was the highest and most prestigious elected office in the Territory of Hawai'i. The Prince served in Congress as the elected Delegate from Hawaii for a total

of twenty (20) years.

We are not part of the federal, state or county governments. We are a non-profit corporation registered with the State of Hawai'i. We are one of only two Hawaiian organizations that have clubs outside of the State of Hawai'i. We have one (1) club in Alaska, three (3) clubs in California, and two (2) clubs in Colorado, Nevada and Utah. We have held five (5) of our annual conventions outside of the State of Hawai'i, the only Hawaiian organization to do so. Our clubs are located in the communities and our members live in, work in and participate in the activities of their communities. They are aware of the community concerns and needs.

We view our role as an organization outside of government, providing information and recommendations to persuade and influence governmental entities on issues that affect the Native Hawaiian people.

Throughout our eighty-five year history, we have had a long, proud and cherished record of serving the Hawaiian people in a wide range of areas and through them the general community. At our annual conventions, we deliberate issues of mutual interest and adopt appropriate resolutions. We do not hesitate to take positions that may be controversial.

SELF-DETERINATION

The issue of self-determination is not new to us. As far back as 1991,

(3)

when the State of Hawai'i created the Sovereignty Advisory Commission, our President was invited to serve on that body. Since that time, our organization, at almost every convention, has adopted resolutions supporting the Native Hawaiian peoples effort toward self-determination.

Our members have actively participated in community meetings, rallies, governmental hearings, and other venues dealing with self-determination.

In the summer of 2002, we joined with two State of Hawai'i governmental agencies and two other major community groups, the State Council of Hawaiian Homestead Associations and the Kamehameha Schools Alumni Association, Oahu Chapter, to form Pono Kakou. This was a joint effort to specifically work towards the passage of Senate Bill 746, known in Hawai'i as the Akaka Bill. On July 17, 2002 we participated in a round table in Washington D. C. joining representative of the National Congress of American Indians and the Alaska Native Federation in providing information about the military contributions of the first peoples of our Nation which included Native Hawaiians and asking that Native Hawaiians as the first people of Hawai'i be given federal recognition equal to that of the American Indians and the Alaska Natives.

On November 16, 2002, at our annual Convention we again adopted

a resolution supporting federal recognition of Native Hawaiians. This resolution calls for the Civic Club movement to continue to work for federal recognition as partners in Pono Kakou.

With this background, we would like to inform the committee that we believe that:

1. The majority of the Native Hawaiian people in Hawaii' support self-determination and federal recognition for our people. Most, if not all, of the major Hawaiian organizations have publicly supported the effort either with resolutions, written testimony, verbal testimony, letter writing, e-mails or other means in the past and we expect that they will continue to do so. Large numbers of individuals have also actively supported this legislation.

   We recognize and expect that there will be voices of Native Hawaiians who are opposed this legislation. These voices are mostly supporters of independence who fear that this legislation will impede their effort. We submit to you that these voices, although loud and active, are in the minority and are not supported

by any large member constituency.

2. We believe that the majority of the non-Hawaiian citizens of the State of Hawai'i support self-determination and federal recognition for Native Hawaiians. The State of Hawai'i Legislature has adopted resolutions of support in the past and we expect that they will continue to do so. The local chapter of the Japanese American Citizen League has expressed support. Many non-Hawaiian individuals have expressed public support either in testimony or letters. The Governor of the State of Hawai'i, Linda Lingle a non-Hawaiian supports the effort.

For your information, this is not a partisan issue as both the Republican Party of the State of Hawaii and the Democratic Party of the State of Hawai'i have included language supporting self-determination for Native Hawaiians in their party platforms. We believe that there is also language of support in the national platforms of both parties.

(6)

On the National level, both the National Congress of American Indians and the Alaska Native Federation have adopted resolutions in support.

Again we recognize and expect that there are voices of non-Hawaiians citizens in Hawai'i and the nation who are opposed to this legislation. These voices are claiming that this legislation is un-American and race-based. We submit to you that these voices although loud and active are also in the minority and are not supported by any large member constituency.

I find it disturbing that some of these non-Hawaiian voices are claiming that this measure is un-American. I would like to point out to the committee, on a personal note, that I served our country in Korea during the Korean War and have been honorably discharged from the United States Army. I have also served our country as Staff Investigator for the Office of the Federal Public Defender for the District of Hawai'i retiring with 20 years of service. To infer that I am un-American is offensive. I am certain that there are many other Native Hawaiians who have served

our country and continue to do so, who feel the same as I do.

I also believe that the majority of the people of Hawaiian ancestry in Hawai'i who support self-determination and federal recognition are middle class and have made it in the American system. To infer that they are un-American is equally offensive.

For those who are playing the race card, by calling this legislation race based, I would point out to the committee, that we are not talking about race, we are talking about the preservation and protection of a culture. We are talking about an indigenous people being deprived of their heritage. We are talking about providing the same consideration afforded to the other indigenous people of America. We are talking about fairness, equality and justice.

I am confident that once all of the testimony has been received this committee will agree with our evaluation that the majority of the Hawaiian and non-Hawaiian people in Hawai'i support self-determination and federal recognition for Native Hawaiians.

NATIVE HAWAIIAN GOVERNING ENTITY

This legislation if passed will provide the process for the United States to recognize a Native Hawaiian Governing entity.

(8)

The legislation does not, and rightly so, create or form the Native Hawaiian governing entity. It is expected that the forming of the Native Hawaiian governing entity will rest entirely with the Native Hawaiian people.

The issue of forming a Native Hawaiian governing entity is also not knew to us. In our support for self determination, we have also been actively involved in the various efforts to form a governing entity.

Past attempts to unite our people and form a governing entity have been unsuccessful as each attempt has be unable to gain the support of the majority of our people. There are many reasons for this, including the lack of necessary resources. Never the less, we believe that each and every effort has had a positive effect because each has contributed towards further enlightening and educating our people about the importance of uniting ourselves and creating a governing entity. There is currently more awareness among the people.

Some of the problems and obstacles that we are confronted with include:

1. Our people have been assimilated into the

mainstream of America and live in every community. The 2000 Census documents that there are Native Hawaiians living in every state in America. We believe that our people can be found in every profession and at every level of our society. To locate, communicate with and organize these people is a complex and challenging task.

2. There are many groups and individuals within the Hawaiian community who have strong beliefs and positions relative to self-determination. To reach and interact with this group and find some type of common ground in order to work towards the unified goal of forming the Native Hawaiian Governing entity is also a challenging task.

3. There is a need to develop a fair and inclusive process for the creation of the Native Hawaiian governing entity that can be supported by the

majority of the people. This is also a challenging task.

4. There is a need to identify and obtain the necessary Resources, both physical and material that will be required to assure that we will be able to successfully create the Native Hawaiian governing entity. In the past, this has been a major obstacle.

We believe that recent activities in Hawai'i has convinced our people that there is an urgency to form our governing entity. The Board of Trustees of the Office of Hawaiian Affairs voted in October of 2002 to move forward in the forming our governing entity and invited the Association of Hawaiian Civic Clubs to join them along with other Hawaiian Organizations. Since that time, several planning sessions to map out strategies have occurred. We anticipate that the process for the forming of our governing entity will be developed and implemented shortly. We are very optimistic that our governing entity will become a reality soon.

We are hopeful that this legislation will be in place to grant us federal recognition as soon as our governing entity is approved by the majority of our people.

Thank you for the opportunity to provide this testimony

Indian-Affairs, Testimony (Indian Affairs)

From: Dallas Carter [dallascarter@mac.com]
Sent: Thursday, April 17, 2003 7:12 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Chairman Ben Nighthorse Campbell, Senator Akaka, Congressman Abercrombie please consider my research I have down on S344 for my Hawaiian people

To whom it may concern, I understand that many emails like this are probably ignored, I am a native Hawaiian student going to school at Franciscan University in Steubenville Ohio... I am a Theology/Legal Studies major there. Though I am so far from home, I still keep up on Hawaiian issues.. this "akaka bill" at first seemed very likable, and a great thing for the Hawaiian people. My research showed me otherwise.... I know Im just a undergrad student,, with no REAL experience,,, but I believe its imperative for you to consider the following,, if your time is limited, please at least read the ending four paragraphs of this collaboration of research....

Currently before the 1st session of the 108th Congress of the United States is S.344, , also known as the "Akaka Bill", A bill which would give Federal Recognition of the Hawaiian people, "Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes." (S.344) From the very onset of this "Akaka Bill" (Akaka being the name of one of the Hawaiian Senators in Congress) it has seemed likable and benenficial to the Hawaiian people. No doubt many Hawaiians believe this. Even the Office of Hawaiian Affairs, a political institution set up by the Hawaiian people under the State to give expression to their rights as native people to self-determination and self- governance, has supported and advocated the passage of the Bill. Even more recently the current governor of Hawaii Linda Lingle, surely with good intention, testified to the Senate Committee on Indian Affairs in Washington, D.C on February 25, 2003 on how the U.S "owed" this to the Hawaiian people. I also was excited about the Bill, and the possible goods that would come about by its passage. My legal research though has brought about a conversion of my mind. I am Hawaiian. I am and always will be proud of it. My research has thus far revealed to me that the passage of S.344 will attack the very meaning of being native Hawaiian , and will be the climax of all the injustices that have been done to my people by the U.S.

Before getting into the details of the bill including the history of the bill and the ramifications it will have for the Hawaiian people, its important To understand the history of Hawaii, particularly that part dealing with the "annexation" of Hawaii to the United States. You will also have to understand something about growing up in Hawaii and the sense of betrayal and anger one feels at learning the true history of Hawaii. Something that I, as a Native Hawaiian, can supply. This understanding of history coupled with an understanding of how Hawaii's people were betrayed by being consciously and systematically colonized, by the so-called benevolent United States, has led today's movement in Hawaii to restore Hawaii to its status as a free and independent nation. S.344, as I will show, would ultimately kill all possibility of this ever happening . In this report I will aim at presenting a fair and compact summary of the political history of the Hawaiian Kingdom and history of American presence in Hawaii. I will then discuss all this in relation to S.344,

I remember several years ago looking back at the weeping eyes of all my dear family and friends. Some of the faces seemed to plead with me, "Please don't leave Dallas. Stay home." My young friends and relatives , asked sincere questions in the native tongue "E ho'I ana oe ma ane'I? E ha'alele 'ana oe no na la apau?" (Will you ever come back? Are you leaving forever?) Mixed emotions twirled

within my spirit. Being a native of the land, speaking its language, and living its culture had me quite attached to my home. I only knew that culture, a rich culture characterized by its friendliness and beauty. It was a part of me. It made the thought of getting on that dc-10 Northwest airliner going to Franciscan University very sad. Nevertheless, I knew that God wanted me in Steubenville , and that I needed to obey. As I walked in the door of the plane my uncle, a kind-hearted Hawaiian man, called me one last time, "Eh boy! Don't forget who you are and where you're from. "He Hawaii 'oe" (You are Hawaiian), And God be with you." His words made tears form in my eyes for I knew I would miss the unique culture of my island. Growing up in a pretty isolated part of the world and being raised in a wholesome environment had given me the chance to develop my faith and morals and a deep understanding of the Hawaiian values of Pono (Righteougness, Justice), Lokahi (Unity), and Aloha (selfless love).

I have always been aware of the terrible things that happened to my Queen back in 1893, that she was forced to abdicate her thrown and that she eventually died in prison with no Justice given to her and my people, but I never really understood the depth and immensity of the illegality of U.S. actions in our land to my people. My mind's conversion began when I read Queen Liliuokalani's Hawaii's Story. I read first with curiosity followed by confusion, then anger and finally resolve of what needed to be done. What follows in the next several paragraphs is what I have discovered of Hawaii's history. And in order to substantiate and give credit to the history here provided, all of what follows can be found in summary in the 1993 Apology bill signed by Bill Clinton and passed by the U.S congress (P.L. 103-150) (185 103d Congress 1st Session)

Prior to 1892, Hawaii was recognized in the international community as a sovereign nation. As early as the reign of Kamehameha I, (1779 - 1819) Hawaii was among the first to salute Argentina's independence, was trading with China, England and the United States and was generally dealing with nations of the world on a regular basis. These international activities increased and resulted in the signing of treaties and executive agreements with many nations: Italy, France, Russia, Spain, the United States, Japan, England, China and others. By 1882, Hawaii was a member of the International Postal Union and had established as many as 94 diplomatic and consular posts around the world. Immigrants from all parts of the world came to Hawaii, many of whom renounced their former national allegiance and took up Hawaiian citizenship. By 1892, Hawaii was a multi-racial multi-cultural nation of Hawaiians. In fact from 1826 until 1893, even the United States recognized the independence of the Kingdom of Hawai'i, extended full and complete diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887;(p.1 (P.L. 103-150) (185 103d Congress 1st Session)

Early in its exposure to the western world, Hawaii became the focus of Christian zeal. The first flock of missionaries arrived from Boston in 1820, many remained in Hawaii and established homes and families. They were welcomed into Hawaiian society and established a strong hold over the people.The missionary party made drastic changes in the traditional form of land tenure. Formerly land was under the trusteeship of the Moi, (ruling chief) of each island. He allotted the lands to his chiefs who reallotted the remaining lands to their followers and supporters. These distributions were revocable but not often done. Under the influence of the missionary party, however, land was parceled out in fee simple estates along the traditions of England and the United States. The Hawaiians, most of whom were unfamiliar with these new laws suffered and lost land. Less than 1% of the land went to 99% of the population. Significantly, foreigners could be landowners in Hawaii.

The missionary party was also able to influence immigration policies, importing many laborers to perform the exhausting sugar plantation work upon the lands now controlled by the missionary party. Hawaiians refused to work at the low plantation wages.

Now that the missionary party had the land and labor problems overcome, it still had to pin down the last step in this commercial circle - obtaining a secure market for their sugar. The U.S. was the logical market. It was geographically closer to Hawaii than any other major power. Most in the missionary party were citizens of the U.S. and had been in constant communication and trade with the U.S. previously. The problem, however, was the inability to control the Hawaiian government in its foreign affairs.

To secure the American market, the missionary party saw only two alternative solutions; reciprocity or annexation. Annexation was preferred however because Reciprocity was temporary and could be revoked at any time. Reciprocity with the United States would permit Hawaiian sugar importation into the U.S. duty free and in return, U.S. products would be imported into Hawaii duty free. As the years passed, the U.S. wanted more than just an exchange of trade rights, it wanted sovereignty over Pearl Harbor to extend its commercial and military arm into the Pacific.

The missionary party was unable to control Hawaii's foreign dealings. Kalakaua, the Moi during the period 1874 - 1891, refused to cede Pearl Harbor to another nation. The missionary party, in order to control Hawaii's foreign affairs, began a campaign to discredit Kalakaua through attacks on his character and his lineage. They accused him of being a drunk and a lover of heathenism because he attempted to revitalize the hula and preserve the religious practices of his ancestors. They also branded him a womanizer. His character and his activities were continually berated in the press. But the people rallied around him and remained loyal in the face of these attacks. A second campaign denounced him as a bastard child, fathered by a black barber who had (conveniently for the missionary party) already left Hawaii, claiming Kalakaua was thus not deserving to be a high alii (chief) or a Moi. Hawaiians did not believe them and this rumor was later exposed when the person hired to witness this "fact" admitted missionary party members hired him to spread these rumors.

The missionary party, unable to obtain the downfall of Kalakaua through other means secretly formed a league to arm themselves and force the King at gun point if necessary to turn the powers of government over to them. In 1887, under force of arms and threat of death to himself, his supporters and his family, Kalakaua signed the "bayonet" constitution, the name reflecting the method of adoption. This constitution stripped Kalakaua of power. Now with the missionary party in power, they granted

the U.S. exclusive right to use Pearl Harbor, receiving in return an extension of 7 years the existing reciprocity treaty which was soon to have

expired. The sugar market was temporarily secure.

Kalakaua died in 1891 in San Francisco on a trip to recuperate from an illness advanced by the activities in Hawaii. Rumors still abound in Hawaii that his death was assisted by the missionary party's agents in the United States. His sister, Liliuokalani, succeeded him.

Upon the accession of Queen Liliuokalani, she received a petition of two-thirds of the voters, imploring her to do away with the bayonet constitution and return the powers of government to the Hawaiian citizens. By January 14, 1893, she completed a secret draft of a new constitution and informed her cabinet of her intention to put it into effect immediately. Begging her to put off this act for a short time, the cabinet, which was now

controlled by the missionary party as a result of the bayonet constitution, rushed to report the Queen's intentions to leaders of the missionary party.

It is important to identify two men in particular who were at the head of the missionary party. Lorrin Thurston was the grandson of one of the first missionary, Asa Thurston. Sanford Dole was the son of Daniel Dole, another missionary. These two men were prime conspirators against the Hawaiians. As early as 1882, Lorrin Thurston had already exchanged confidences with leading American officials on the matter of Hawaii's

takeover. In fact the U.S. Secretary of the Navy assured Thurston that the administration of Chester A. Arthur would look with favor upon a takeover in Hawaii. Ten years later in another visit to the United States, he again received the same assurance from the administration of Benjamin Harrison.

When Thurston received word of the Queen's intention, he, along with eleven other annexationists formed a "Committee of Public Safety" and arranged an immediate visit to the American Minister in Hawaii, John L. Stevens.

Little convincing was necessary for Stevens to join in the conspiracy to overthrow the Queen for he was already one of the foremost advocate for America's takeover of Hawaii. In writing to his superiors in 1892, he asks how far may he "deviate from established international rules and precedents" in the event of an attempted overthrow. He argues that the vast future interest of the U.S. in the Pacific clearly indicated taking

Hawaii and binding her "to the care of American destiny," warning "the golden hour is near at hand." The promise of Pearl Harbor permanently ceded to the U.S. and the use of all Hawaii as a major military and commercial outpost in the Pacific was tempting indeed.

Thus, when Thurston met with Stevens on January 15, 1893 to plot the overthrow of Liliuokalani, the "golden hour" was at hand. The conspiracy against Hawaii was quickly sealed. The U.S. marines would be landed under the guise of protecting American lives (the missionary parties'). Hawaii would then be taken by U.S. forces and given to Thurston's party who would call themselves the "provisional government."

This "government" would immediately turn Hawaii over to the U.S. in an

annexation treaty. Thurston's missionary party would be appointed rulers

of Hawaii with a complete reign to build their empires as a reward.

On January 16, 1893, over 160 American marines landed in peaceful Honolulu armed with Gatling gun, Howitzer cannons, double cartridge belts filled with ammunition, carbines and other instruments of war. The protest by Hawaii's Queen that such landing was a breach of treaty and international law was simply ignored. The troops marched along the streets of Honolulu, rifles facing the Queen's palace.

The following day, the resident conspirators numbering 18, mostly Americans, sneaked to a government building a few yards from where the American troops lodged the night before. There, an American lawyer who had been a resident of Hawaii less than a year previous proclaimed they were now the government of Hawaii. Calling themselves the "provisional government" and selecting Sanford Dole president, they were

to exist for the explicit purpose and until terms could be arranged with the U.S. for annexation.

Before the full declaration had been read, the U.S. marines marched into the building to protect and

support them. American Minister Plenipotentiary and commander of all U.S. forces in Hawaii, John L. Stevens, gave them immediate recognition as the government of Hawaii as had been planned. He then joined in their demand that the Queen surrender under threat of war with the U.S.Far more happened than I ever imagined a "honorable, just" country as the U.S. would be capable of. The troops did land and Liliuokalani forced to surrender. Protesting the U.S.'s role in this conspiracy and receiving promises of an immediate and fair investigation, the Queen, on January 17, 1893, trusting in the "enlightened justice" of the United States "surrendered" to the U.S. forces until the investigation could be completed and she restored. The

conspirators, acting now as the "provisional government" rushed off to Washington, forbidding any of the Queen's supporters from boarding the only ship leaving Hawaii. Attempting to evade the investigation, in less than a month, a treaty of annexation was hurriedly negotiated, signed and presented by President Harrison to the U.S. Senate for approval.

However, Grover Cleveland replaced Harrison before the Senate

voted. Meanwhile, the Queen's emissaries managed to sneakto the United States and plead with Cleveland to conduct the promised investigation. James H. Blount, formerly the Cha*Yirman of the House Foreign Relations Committee, was appointed special investigator by Cleveland. Following several months of investigation, Blount exposed the conspiracy. The President's response, upon receipt of Blount's report is best described by 1993 Apology Bill to the Hawaiian "Wherein on December 18, 1893, President Grover Cleveland reported to congress accurately on the illegal acts of the conspirators, described such acts as an 'act of war, committed with the participation of a diplomatic representative of the United States and without authority of Congress' , and acknowledged that by such acts the government of a peaceful and friendly people was overthrown"((P.L. 103-150) . President Cleveland also pointed to Blount's report where in describing the state and response of Hawaii's Monarch wrote:

" [Liliuokalani] knew that she could not withstand the power of the United States, but believed that she might safely trust to its justice. [S]he surrendered not to the provisional government, but to the United States. She surrendered not absolutely and permanently, but temporarily and conditionally until such time as the facts could be considered by the United States [and it can] undo the action of its representative and reinstate her in the authority she claimed as the constitutional sovereign of the Hawaiian Islands. (Blount report)"

"President Cleveland further concluded that a "substantial wrong has thus been done which a due regard for our national character as well as he rights of the injured people requires we should endeavor to repair" and called for the restoration of the Hawaiian monarchy" (P.L. 103-150) Cleveland in his response to Congress using very strong language as to the illegality of the U.S. in Hawaii. I would have a whole book instead of a report if I were to detail all that he said. I urge all those interested to read the report in its entirety. Nevertheless, the point that the President of the United States at the time of Hawaii's Overthrow was adamantly against it shoul be now noted.

Cleveland refused to forward the treaty to the Senate as long as he remained President and instructed the conspirators to restore the Queen to her constitutional authority. These Americans rejected the President's instruction now denying their American citizenship and declaring themselves citizens of the Provisional Government, thus beyond Cleveland's authority.

The conspirators, faced with the predicament of an administration which would not condone the

conspiracy, devised an alternate plan. The plan was to restructure this government to appear as a permanent rather than a provisional government. Hopefully, when a new president was elected, the "permanent" government would be able to give Hawaii away. Thus a constitution giving permanence and validity to these conspirators

had to be drafted. Dole announced a Constitutional Convention of thirty seven delegates, the majority, nineteen, selected by him, and eighteen elected. But even for these elected positions, the candidates and voters would first have to renounce the Queen and swear allegiance to the provisional government. Less than 15% of the voters participated in the

election, the vast majority refusing to dignify this sham by their participation.

The "Constitutional Convention" was held. A "Constitution," substantially as submitted by Dole and Thurston was adopted. The constitution of the "Republic of Hawaii" claimed dominion over all lands and waters of Hawaii. It claimed all citizens of Hawaii automatically its citizen. Foreigners who supported the new regime could vote; citizens loyal to the Queen could not; and because the Japanese and especially the

Chinese supported Liliuokalani, they were, as a group disenfranchised. Further, only those who could speak, read and write in English or Hawaii and explain the constitution, written in English, to the satisfaction of Dole's supporters could vote. The right to vote was tightly guarded.

On July 4, 1894 while the Americans were celebrating their independence day by firing their cÛYannons from their war ships in Honolulu Harbor, Dole, without placing the document before the Hawaiian people, simply proclaimed the Constitution and thus the "Republic of Hawaii" into existence at the same time making himself President.

The Republic of Hawaii remained in control with the continued presence of U.S. war ships. Liliuokalani, remembering the warning of Minister Blount not to take up arms lest the marines land and forever squash the hopes of returning Hawaii to the Hawaiians and believing in the enlightened justice of the U.S., waited in patience. A number of her

supporters attempted to restore justice by arms but were discovered before they could make serious advances.

Of course, those who took over the Hawaiian Government did not stop. They put together their own "Report" called The Morgan Report. It analyzed the situation but came to the opposite conclusion. U. S. Senator Morgan revealed his annexation bias with this declaration:

"ŠHawai'i is an American state, and is embraced

in the American commercial and military system. This

fact has been frequently and firmly stated by our govern-

ment to acquire any interest or control in the Hawaiian

Islands that is in any way prejudicial or even threatening

toward the interest of the United States or her peopleŠ"

(Budnick 1992:160)

The Hawaiians did not give up, although they were fighting the American war machine. Meanwhile, the Hawaiian women's organization began collecting signatures on petitions against annexation from all throughout the Islands. They collected about 38,000 signatures and took them back to Washington, D. C. to the U.S. Senate in 1897. Faced with this opposition, the Senate could not act to support annexation.

However, McKinley was elected president and this changed the forces of power. The war cry was for taking over the colonies of Spain, including the Philippine Islands, and Hawai'i as a port for warships on their way to the Philippine Islands. This was the excuse to take over the Hawaiian Islands. Thus, through an unconstitutional resolution passed at a meeting of both houses of Congress, Hawai'i was annexed in 1898, and the process of creating the Territory of Hawai'i under U.S. control was begun.

Following his appointment as territorial governor, Dole then provided for his fellow traitors government positions and lucrative government contracts, monopolies in shipping, finance and communications. The Big Five, a coalition of five business entities, all finding their roots in the missionary party controlled every aspect of business, media and politics in Hawaii. When they teamed up with the Republican Party and the United States Navy, there was virtually nothing left unexploited.

A massive brainwashing program began to convince Hawaiians that the U.S. was the legitimate ruler and that the Hawaiians were no longer Hawaiians but Americans. The term Hawaiian became a racial rather than a national term. Large numbers of citizens of Hawaii were identified no longer as Hawaiians but as Chinese, Korean, English Samoan, Filipino, etc. Even among the Hawaii race, division was forged

when Congress defined some as "native Hawaiians" (at least 50% of the aboriginal blood), entitled to special privileges and depriving the others.

Children were forced to attend school and there taught to pledge their allegiance to the United States, trained in the foreign laws, told to adopt foreign morality, to speak no language but the English and adopt the American lifestyle.

We were punished, ridiculed and coaxed into putting aside our customs and traditions and even our cultural names. Hawaii, that melting pot of cultures, races, languages and lores changed from a reality to an advertisement slogan for politicians and

business people.

Colonization took place. Thousands of Americans invaded Hawaii, taking choice jobs with government agencies or management positions with business interests. These Americans, bought up or stole through the manipulation of laws familiar to them much of the lands and resources of Hawaii. They gained power in Hawaii, controlled greater

chunks of the economy, controlled the public media, entrenched themselves in politics, and joined in the brainwashing of the Hawaiians to believe we were Americans.

The military turned Hawaii into their pacific fortress turning Pearl Harbor from a coaling and fueling station to a major naval port. They bombed valleys and took one of the eight major islands for their exclusive use as a target range. At will they tossed families out of homes, destroying sacred Hawaii heirlooms and built instead naval

communication towers emitting radiation and ammunition depots hiding nuclear weapons. They declared martial law at will and imposed military conscription over the Hawaiian citizens. They killed Hawaiians in open contempt of the very laws of the United States and when tried and found guilty, managed through the agency of a territorial governor appointed by the U.S. president, to obtain sentences as light as imprisonment for a few hours at the Queen's palace before sailing back to the U.S. on military cruises.

Freedom of trade was stopped. Congress took over foreign relations. We were forced to buy only American goods or foreign goods they approved (if we could ship it in, but the Big 5 controlled all shipping!).Every aspect of Hawaii was Americanized. Military show of strength was constant. Trade was totally controlled. Education and

media was regulated. The secret ballot was a farce.

After World War II, that some of us may remember, the United Nations was formed based on the need to clear the decksof colonies that preferred to be free. A process was accepted for decolonizing and a list was made of all colonies. Hawai'i was on that list as well as Alaska. The United States had to admit that it had taken over both Hawai'i and Alaska without the people having a chance to reject the take-over.

On March 3, 1959, he U.S. Congress passed the Statehood Bill. President Eisenhower's signing of the bill was reported in the Star Bulletin on March 18, 1959. The so-called "Plebiscite" was arranged by the Territorial Legislature for June 1959. The ballot was only to agree or disagree with the action already taken by the U. S. Congress.

According to the United Nations there should be a chance to (l) vote for becoming part of the dominant country, or (2) be-coming separate but still close to the dominant country, or (3) becoming independent, an entirely separate entity. Unfortunately, when the vote was taken in Hawai'i, there was no place on the ballot to vote for independence. The ballot was only that we agree or disagree with the U.S. Congress already accepting Statehood for Hawai'i . We tried to check the ballots, but could not locate any here in Hawai'i . So we looked in the newspapers, just before the scheduled voting date, and sure enough there was a SAMPLE ballot printed in the newspaper to let people know what the ballot looked like before they voted. (attached to this report is a copy of the actual ballot)

There were three places to vote, but they had nothing to do with voting for independence! Either you voted for statehood, or you voted to remain an Non-self-governing Territory

The whole Statehood vote was a scam that was allowed to take place before the U. N. passed Res. 1514 (XV) of 1960. This enabled the U. S. to control what was on the ballot and avoid providing the people with the proper choices for Independence,

or a government that would eventually provide the people with choices. The "Statehood Ballot"

prevented any of these broader choices from being available for the citizens to select.

Thus, the statehood vote took place on June 27, 1959 and by September 17, that same year, the U.S. requested in a letter to the United Nations that Hawai'i and Alaska be taken off the list of Non-self-governing Territories, to avoid U. N. controlled plebiscite.

Subsequently, the United Nations General Assembly passed Resolution 1514, which clearly laid out the process for indigenous peoples' assured self-determination, uncontrolled by the colonizer. The process directed by the United States for Hawai'i and Alaska provided no choices.

Now Hawaii was opened in a free for all, "grab what ever you can get" attitude. New economic interests poured into Hawaii to play the American financial game. Land become the play toy. Selling, trading, leasing, mortgaging, subdividing, etc. became the craze. Construction industries changed much of Hawaii from a lush green to a cancerous white concrete jungle stringed together by roadways of concrete and asphalt.But saddest of all was the continuing recycling our people were going through, a process so complete that the vast majority of our people are themselves believers in the American propaganda that they did no wrong and we had welcomed them to enslave us. Ouch!

Three points should be made clear here. First, history records no event in which the Hawaiians were given the opportunity to determine whether or not to become annexed to the United States. Where we were once a free nation, the U.S. connived through a combination of diplomatic promisses, force of arms and economic and political payoff to extinguish that freedom and replace it with rule by a handful of American residents of Hawaii. Having placed the powers of government in this handful, it was a

simple matter to then turn Hawaii over to the U.S. The "Treaty of Annexation" between Hawaii and the U.S. pretends to be an agreement between proper parties. Yet, the Republic of Hawaii was nothing more than a cover for the Annexation fever of the missionary party. Its formative document, the Constitution of 1894, was the product of a

handful. The Constitution was a self-serving instrument declaring all Hawaii under its rule. It was never ratified by the people, the Queen or in any other form legitimized. Sanford Dole merely proclaimed it one day. If I proclaimed ownership of San Francisco tomorrow and than deeded it to another nation, that nation would have no greater right to it than I. Second, the McKinley administration, in its fever to annex Hawaii ignored

the U.S. Constitutional requirement of 2/3 Senate consent. Thus, this "Treaty of Annexation" was never adopted by the U.S. in accordance with its own Constitutional mandate.. Further more The question, "Should the United States release Hawaii to determine its own destiny?" was never put to the Hawaiian citizens. The Americans voted for Hawaii's Statehood, not the Hawaiians.

With this history, should we trust the United States to guide Hawai'i through a process that will provide support for the independence of Hawai'i ? So what about the Akaka Bill?Let us look at a few sections and see how they will effect Independence for the Hawaiian Nation.

a. I quote from the Akaka Bill:

b. Section 1. Findings. Congress makes the following findings: The Constitution vests Congress with the authority to address the condition of the indigenous, native people of the United States.

REAL MEANING: The U. S. Congress will be the sole authority to identify the native people of the United States -Thus: "Indians and Hawaiians are the native people of the United States." The "Commerce Clause" of the U.S. Constitution (Sect. 8e Powers Granted to Congress)"to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Thus: Congress will control Hawaiians.

Again, I quote:

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is part of the United States, are indigenous, native people of the United States.

REAL MEANING: Hawaiian Islands are part of the United States, thus the people of Hawai'i are the same as the native people of the United States, thus Hawaiians are the same as Indians. This is NOT true.

Again I quote:

(20) (B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility. (underline added)

REAL MEANING: Native Hawaiians are identified as a responsibility of the U.S. Congress and it has powers over Hawaiians that are similar to those, it has over Indian Affairs, thus Congress controls Hawaiians.

Again I quote:

(20) (C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawai'i

REAL MEANING: Congress delegates where in the Federal government the responsibility of Federal trust will locate, and that will be within the Interior Department, which is also responsible for American Indians.

Again I quote:

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through the enactment of the Act entitled "An Act to provide for the Admission of the State of Hawai'i into the Union," approved March 18, 1959 (Public Law 86-3; 73 Stat. 4).

REAL MEANING:

STATEHOOD: It was a scam from the beginning. Natives of an occupied territory, under United Nations rules, must be able to vote on three issues

a. become a state of the occupying country,

b. remain a territory of the occupying country, or

c. become independent of the occupying country.

There was NO choice for INDEPENDENCE on the Statehood Ballot in 1959. Clearly, the Ballot was set up so the Hawaiians had no choice to re-establish their independent nation. This was not according to the accepted United Nations process. (attached to this report is a copy of the actual ballot)

And I quote:

(A) Ceding to the State of Hawai'i title to the public lands formerly held by the United States, and mandating that those lands be held in Public Trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians; andŠ.

REAL MEANING: The illegal Dole Government stole the lands that were the lands of King Kamehameha III (the remains of the Crown Lands), and the lands of the Hawaiian Kingdom Government Lands (read "peoples lands"). They were originally stolen by the Dole Government and ceded (transferred) by the so-called Republic of Hawai'i to the United States. However, without title, one cannot transfer or cede title. Native Hawaiians had rights to all these lands, but the United States was not going to allow them all of their rights. 20% of the income from the ceded lands was all that would be allowed.

The fact that they designated even 20% for Native Hawaiians indicates that they recognized that Hawaiians had just claims to the Kingdom's lands. However, they provided only 20% of the income from these stolen lands to support Hawaiian needs -- and to keep Hawaiians quiet, and not asking for more of the income from their lands - as determined by the State agency, i.e. the Office of Hawaiian Affairs.

These so-called "public lands" are the lands stolen by the illegal Dole government and turned over to the United States ("ceded" to the U.S.) in exchange for territorial status for Hawai'i. Thus, Hawai'i was made a territory of the U.S., which meant greater profits for the owners of the sugar industry in Hawai'i. Hawai'i's sugar industry could now become subsidized by the federal government.

And I quote from the Akaka Bill:

(B) Transferring the United States responsibility for the administra-tion of the Hawaiian Home Lands to the State of Hawai'i, but retaining the authority to enforce the trust,

REAL MEANING: The Hawaiian Home Lands were set up by the United States Congress as an Act of Congress in 1920, thus, this statement transfers the responsibility of administering the Hawaiian Homesteads Lands to the State of Hawai'i and wipes out any responsibility that Congress had for dealing

with landless Hawaiians, to whom the homesteads were supposed to be awarded.

And I quote again:

(23) the State of Hawai'i supports the recognition of a Native Hawaiian governing entity by the United States as evidenced by two unanimous resolutions of the Hawai'i State Legislature.

REAL MEANING: It is now the responsibility of the U. S.-created State Government to administer those obligations previously begun by the U.S. Congress, i.e. Hawaiian Homestead Lands, and managing the so-called "ceded" lands (former Hawaiian Kingdom Lands and former Crown Lands) and providing OHA with 20% of the income from all the "ceded" lands, and all the rest of the income from these lands goes to other U.S. citizens and their programs.

Again quoted: Section 2. Definitions. (As they are identified) In this act:

(1)ABORIGINAL, INDIGENOUS, NATIVE PEOPLE- The term 'aboriginal indigenous, native people' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

REAL MEANING: This statement recognizes that there were "original inhabitants" of the lands of the Hawaiian Islands, but it fails to mention that they were the citizens of the Kingdom of Hawai'i since the time of Kamehameha I and long before 1893 and 1898. It also fails to mention the "Monster Petition" signed by over 38,000 citizens of the Hawaiian Kingdom, telling the U.S. Congress that they did not want to be annexed by the United States. Thus, it ignores everything that supports the right to Hawaiian Independence.

Quote: (3) CEDED LANDS- The term 'ceded lands' means those lands, submerged lands, natural resources and revenues which were ceded to the United States by the Republic of Hawai'i under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawai'i in the Act entitled 'An Act to provide for the admission of the State of Hawai'i into the Union' approved March 18, 1959' (Public Law 86-3; 73 Stat. 4).

REAL MEANING: It fails to identify the so-called Republic of Hawai'i as illegal. The so-called "ceded" lands were stolen by the illegal Republic of Hawai'i from the Hawaiian Government Lands and resources of the Hawaiian Kingdom, and included the remains of the lands of King Kamehameha III, which were identified as the "King's Lands" and later as "Crown Lands" after his death in 1854.

It does mention that the United States accepted the "ceded" lands in return for the annexation of the so-called Republic, even though these lands were stolen by the Republic from the Kingdom of Hawai'i and for which no compensation was given. Without clear title, these lands cannot be legally transferred or sold to anyone. In fact, Title Guarantee Company will not guarantee title to "ceded" land transfers.

(4) INDIGENOUS, NATIVE PEOPLE- The term 'indigenous, native people' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

REAL MEANING: This statement ignores the fact that there was a Kingdom dating from the time of Kamehameha I, and that the Kingdom had its citizens, most of whom protested annexation by signing the "Monster Petition" in 1894. The wording of this statement turns the citizens of the Hawaiian Kingdom into a race of people and makes them vulnerable to anti-racism laws and "everybody is equal" as expressed in legal decisions based on the Constitution of the United States.

(5) INTERAGENCY COORDINATING GROUP- The term 'Interagency Coordinating Group' means the Native Hawaiian Interagency Coordinating Group Established under section 5.

REAL MEANING: Read: Bureau of Indian Affairs translated into the Bureau of Hawaiian Affairs.

SEC. 4. ESTABLLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.

(B) IN GENERAL- There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

Note: A comment on Sects, 4 & 5: "Office for Native Hawaiian Relations."(Sect. 4) READ: Bureau of Indian Affairs, under (Sect. 5) the Department of the Interior, the lead agency.

SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP. (a) ESTABLISHMENT- In recognition of the fact that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the 'Native Hawaiian Interagency Coordinating Group'.

REAL MEANING: An extra agency between the "Lead Agency", Department of Interior, and the Office for Native Hawaiian Relations.

(b) COMPOSITION- The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from-

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and

(2) the United States Office for Native Hawaiian Relations established under section 4

REAL MEANING: The U.S. Government is in complete control.

(c) LEAD AGENCY- The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

REAL MEANING: The U. S. Department of Interior is the "Lead Agency, as it is with the Bureau of Indian Affairs.

Sect. 6 PROCESS. (1) Following the organization of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

REAL MEANING: A comment on Sect. 6: "governing documents of the Native Hawaiian governing entity to the Secretary" of the Interior, who is the head of the Lead Agency. This follows the same requirements as the Native American Indians must follow. Hawaiians are not Native Americans! Hawaiians had an Independent Kingdom, which must be returned to them.

No, the Akaka Bill is not good for Kanaka Maoli. It takes away from them their identity as Native Hawaiians and changes it to Native Americans, which they are NOT.

Senators Inouye and Akaka must know what they are doing to Hawaiians. This is racism at it's worst! Subsequently, the United Nations General Assembly passed Resolution 1514, which clearly laid out the process for indigenous peoples' assured self-determination, uncontrolled by the colonizer. The process directed by the United States for Hawai'i and Alaska provided no choices.

Kippen, Colin (Indian Affairs)

Subject: FW: S344

-----Original Message-----
From: Sesnita Moepono [mailto:sesnitam@oha.org]
Sent: Thursday, March 20, 2003 10:04 PM
To: Kippen, Colin (Indian Affairs)
Cc: Merlyn Akuna; Dante Carpenter
Subject: S344 Comments

March 20, 2003

TO: Colin Kippen
Senior Council to the Minority

FROM: Dante Keala Carpenter
Trustee, Oahu

CC: All Trustees
Administrator Namu'o

SUBJECT: **COMMUNITY MEETINGS; COMMENTS ON S.344**

FYI – Last weekend several Trustees with Administrative support we sponsored six community meetings at Roosevelt High School, Waimanalo, Waianae, Kaneohe, UH at Manoa and Molokai. I received several comments and recommendations from the four community meetings I conducted on Oahu. This will request an informal response from you as to their merits. Also, please forward these comments to the appropriate individuals that will be handling the public comments that are due on March 20, 2003.

Concern #1

Paragraph (15), page 5, lines 8 – 15.

Since the U.S. Supreme Court under *Rice v. Cayetano* (2000) mandated that non-Hawaiians participate in the OHA Trustees elections, (2001 & 2003 state elections), how can this paragraph accurately state that ". . . Native Hawaiians have continued to maintain their separate identity as a distinct native community . . . through their participation in the Office of Hawaiian Affairs."

Question: Would it be advisable to change the language to read:

"Despite the overthrow of the Hawaiian Government and prior to 2000 when the U.S. Supreme Court mandated the participation of non-Hawaiians in the election of the Office of Hawaiian Affairs' Trustees, Native Hawaiians have continued to maintain their separate identity as a distinct native community . . . and to give expression to their rights as native people to self determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs."

Concern #2

"Native Hawaiian" as defined in Subparagraph (A), Paragraph (6), Section 2. "Definitions"

Why is the definition for "Native Hawaiian" so complex? There are several ramifications of subsets

of conditions.

(continued)

Subparagraph A defines "Native Hawaiian" as indigenous, native people of Hawai`i:

- who are the direct lineal descendants of the aboriginal, indigenous, native people;
- who resided in the islands that now comprise the State of Hawai`i on or before January 1, 1893, and
- who occupied and exercised sovereignty in the Hawaiian archipelago and the State of Hawai`i, and
- includes all Native Hawaiians who were eligible in 1920 for the programs authorized by the Hawaiian Homes Commission Act and their lineal descendants.

Question: Would it be adviseable to use the definition for "Hawaiian" in Section 10-2, Hawai`i Revised Statutes, as modified below:

"Hawaiian" means any descendant of the aboriginal peoples inhabiting the Hawaiian Islands which exercised sovereignty and subsisted in the Hawaiian Islands in 1778[~~, and which peoples thereafter have continued to reside in Hawai`i~~]."

Concern #3

There are two ways that one can read paragraph (B) at line 10 on page 11. Therefore, it is not really clear. Further, why is Congress defining who is "Native Hawaiian" following the U.S. Recognition and then mandating its inclusion in the new Hawaiian government organic governing documents? This should be the prerogative of the Native Hawaiian Governing entity and not Congress.

Question: Would it be advisable to omit this paragraph?

Concern #4

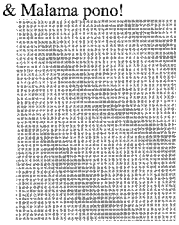
Page 21, Sec. 8, line 20

"Nothing in this Act is intended to serve as a settlement of any claims against the United States."

Question: Would it be adviseable to "strengthen" the language to read:

"Nothing in this legislation shall be interpreted as in any way diminishing the full rights of self-determination under international law."

Please feel free to email me at dantec@oha.org should you have any questions regarding these comments. I appreciate your kokua and hope things are going well with you in Washington. Aloha & Malama pono!



Kippen, Colin (Indian Affairs)

From: Toni Auld Yardley [hawaiiannews@hawaii.rr.com]
Sent: Friday, March 28, 2003 2:15 AM
To: Kippen, Colin (Indian Affairs)
Subject: Hui Aloha Aina Revisions to Akaka Bill

Revisions 344.cwk

Aloha Colin!!
Mahalo for returning my call! Not sure if you've gotten the revisions I submitted to the Akaka Bill last week, nor do I know how you will react to them, but they are attached here. I hope you can open the attachment as the changes are underlined making it easier to read.

I do realize these revisions will most likely "raise a stir" but in my view it is bringing TRUTH to the table for discussion.

I have been invited to speak to a confederation of indian nations in Louisiana, and while on the road decided to go to D.C. to follow-up with my proposed revisions. I will only be in town April 4th-8th so that's not much time, but I would like to meet with you on Friday the 4th if possible.

I would be very interested in your views and hopefully suggestions on how I can proceed with this effort. Paul Moorehead has been kind enough to schedule an appointment for me on Tuesday the 8th. If there are others whom you believe would be interested in meeting I would appreciate the opportunity. David Ingham of San Francisco also submitted revisions and will be traveling with me as well. We are hoping Dr. Kehaulani Kauanui will be able to join us - as we share like views on this subject.

I hope Washington D.C. has been kind to you and your ohana and that you are doing well. I'm sure it's not easy ---these are difficult times.

Malama Pono.
Toni Auld Yardley

Re: S 344 IS
108th CONGRESS
1st Session
S. 344
Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

IN THE SENATE OF THE UNITED STATES
February 11, 2003
Mr. AKAKA (for himself and Mr. Inouye) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

To THE SENATE OF THE UNITED STATES
March 20, 2003
Ms. Toni Auld Yardley, Hui Aloha Aina
2053 Kula St.
Honolulu, Hawaii 96817
Phone: (808) 595-4819

recommended the following revisions to the bill
which is to the Congress of the United States

A BILL

Expressing the policy of the United States regarding the United States relationship with Hawaiian Nationals and to provide a process to form an Interim Hawaiian governing entity until proper reconciliation can proceed between the United States and the Kingdom of Hawaii, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. FINDINGS.
Congress makes the following findings:

(1) Under the treaty making power of the United States, Congress has the authority and obligation to address the relationship between the United States and Hawaiian Nationals.

2) Hawaiian Nationals are not a race of people, but are citizens who continue to pledge their allegiance to the Kingdom of Hawaii, which was illegally overthrown through the assistance of the United States on January 17,1893 and whose nationality has been deprived for 110 years by their being absorbed into the body politic of the United States without their consent or naturalization.
(A) Hawaiian Nationals, organized under the patriotic banner of Hui Aloha Aina in 1893 to prevent annexation and to support Queen Lili`uokalani after the illegal overthrow of the Kingdom of Hawaii, and in December 1897 delivered a Memorial Document with a petition against annexation of over 21,000 signatures (representing more than 1/2 the native population) to the U.S. Senate Foreign Relations Committee and met with the U.S. Secretary of State to have the Bill for Annexation successfully killed on February 27, 1898 without the U.S. Senate meeting their required 2/3 vote to pass a treaty; but in the fever of the Spanish-American war, a Joint-Resolution called the ³Newlands Resolution¹ passed by a simple majority of each house; and was ratified by the defacto Republic of Hawaii, purporting to make Hawaii a territory of the United States but in actuality violated U.S. constitutional and treaty laws; and Hui Aloha Aina members pledged to forever protest the illegal annexation.

(B) In 1959, Congress violated the rights of self-determination for Hawaiian Nationals according to U.N. Resolution 66 by limiting the choices of self-governance to integration through statehood within the United States, without the options of free association or independence; and further violated the process of self-determination by allowing only American citizens residing in Hawaii to vote on statehood rather than restricting the process to Hawaiian Nationals, which further denied their nationality.

(C) Also by the ŒHawaii Statehood Vote¹ Congress violated their treaty powers and international laws by attempting to change the boundaries of the Hawaiian Islands through an election process limited to American residents which further denied Hawaiian Nationals their nationality and their rights of self-determination and self-governance over their national lands and waters.

(D) After the Hawaii`i Statehood vote, the U.S. reported to the U.N. that it had met its responsibility to Resolution 66 under Article 73; which was a fraudulent act; and U.N. Resolution 1469 (XIV) in 1959 relieved the United States of further responsibility to report to the U.N. on Hawaii`i; which further denied Hawaiian Nationals their nationality and their rights of self-determination and self-governance over their national lands and waters.

(E) For 110 years, Hawaiian Nationals have been risking their personal safety and means for their livelihoods by standing on their convictions and patriotism for their nation and in protest of the wrongs committed against their Queen; and have been criminalized and discriminated against for attempting to exercise their rights of self-determination in their own homelands; and now during the current U.S. war against terrorism Hawaiian Nationals urgently need to be protected from further criminalization and discrimination.

(F) For 110 years, the public treasury of the Kingdom of Hawaii and the private estate of the reigning monarch and native chiefs of the Kingdom of Hawaii have remained illegally confiscated, unreported, unaccounted for, and hidden from Hawaiian Nationals; which compounds the injuries to the Hawaiian Nationals and further denies their rights of self-determination.

3) The United States has a special trust obligation to Hawaiian Nationals resulting from the ceding in trust of lands belonging to the Kingdom of Hawaii by Queen Lili`uokalani, under duress, to the United States; which are the lands in the Public Lands Trust of the Organic Act of the Territory of Hawaii in 1898, and the Statehood Act of Hawaii in 1959; and are the lands formerly called Government Lands of the Kingdom of Hawaii, now referred to as the Ceded Lands.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to ratify treaties between the United States and the Kingdom of Hawaii from 1826 until 1893, and the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

5) Pursuant to the provisions of the Hawaiian Homestead Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres which include lands ceded to the United States by the defacto Republic of Hawaii; which were formerly known as the Crown lands of the Kingdom of Hawaii; which were already set aside for all time for the reigning monarch and native chiefs; to serve the purpose of rehabilitating the dying race of Hawaiian people; which further denied Hawaiian Nationals their nationality; and denied the hereditary rights of the chiefs to these lands; which further denied their rights for self-governance and self-determination.

(6) Of the 203,500 acres set aside, all prime agricultural lands and water sources were set aside for sugar plantations leaving the homesteads to be built on the remaining dry arid lands; and no revenues generated from the sugar plantations benefited the Hawaiian Homestead program until 1980 when the sugar industry was already in a decline.

(7) Approximately 6,800 leases have been awarded to date and approximately 18,000 eligible applicants are on a waiting list to receive Hawaiian Homestead lands .

(8) The ceded lands of the Public Lands Trust and the ceded lands of the Hawaiian Homestead Act have been transferred and sold so many times by the Territory and State of Hawaii and the United States, that a complete and accurate inventory of lands and an accurate account of revenues earned are nearly impossible to determine, therefore leaving the purposes of the Trust and the Act crippled and stagnant

(9) [formerly (12)] On November 23, 1993, Public Law 103-150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii, rather than apologizing to Hawaiian Nationals and further denying their nationality.

(10) [formerly (13)] The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people as a race never directly relinquished their claims to their
inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum, rather than acknowledging Hawaiian Nationals and further denying their nationality.

(11) [formerly(14)] The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution, rather than acknowledging Hawaiian Nationals and further denying their nationality, and disregarding the fact that proper reconciliation needs to be conducted between the United States and the rightful party overthrown, the Hawaiian Kingdom.

(12) [formerly (15)] Despite the multilayered conspiracy of the overthrow of the Kingdom of Hawaii, the Hawaiian people and Hawaiian Nationals have survived and perpetuated their culture and continue to claim their rights to self-determination, and despite their participation with the State of Hawaii agencies established to serve Hawaiian people, the Office of Hawaiian Affairs and the Department of Hawaiian Home Lands, they have not surrendered their nationality.

(13) [formerly (16)] The Hawaiian people and Hawaiian Nationals survive and perpetuate their culture through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion
programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs. Participation in these programs does not surrender or compromise their nationality.

(14) [formerly (17)] The Hawaiian people and Hawaiian Nationals are committed to
preserving their traditional cultural practices and protecting their sacred sites after 110 years of desecration and disrespect of the Hawaiian culture in Hawaii.

(15) [formerly (18)] The Hawaiian people and Hawaiian Nationals are obligated to their ancestors and to their future generations to preserve and protect their traditional cultural practices and sacred sites, and to achieve self-determination over their
own affairs.

(16) [formerly (19)] This Act initiates proper protocol within the framework of U.S. constitutional, trust, and treaty laws to fulfill the U.S. obligations to the U.N. Resolution 66 by giving all three choices of self-determination to Hawaiian Nationals of the Kingdom of Hawaii, and proceed to form an Interim Hawaiian governing entity until proper reconciliation can proceed between the United States and the Kingdom of Hawaii.

(17) [formerly (20)] The United States has declared that--

(A) the United States upholds their constitution, their treaties with other nations, their obligations under the United Nations Charter, and International laws, which includes their relationship to Hawaiian Nationals and the need for reconciliation with the Kingdom of Hawaii.

(B) Congress has labeled the Hawaiian people and Hawaiian Nationals as ŒNative Hawaiians' as a distinct indigenous group within the scope of its Indian affairs power,
and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility, further denying their nationality and rights to self-determination; and

C) Congress has also delegated broad authority to administer a portion of the U.S. trust responsibility to the State of Hawaii; which further denies

Hawaiian Nationals their rights to self-determination;

(18) [formerly (21)] The United States has confused its responsibility to Hawaiian Nationals by creating the racial term ŒNative Hawaiian‹ through the enactment of the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union', approved March 18, 1959 (Public Law 86-3; 73 Stat. 4) and further denied them their nationality; by--

(A) ceding to the State of Hawaii title to the public lands which were ceded in trust to the United States by Queen Lili`uokalani, under duress, and mandating that those lands be held in public trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians based on race rather than nationality; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii but retaining the authority to enforce the trust established with the defacto Republic of Hawaii, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act; which creates further confusion by overlooking the fact that these lands were the Crown Lands of the Kingdom of Hawaii illegally ceded by the defacto Republic of Hawaii to the United States; and protested by Queen Lili`uokalani stating that the ceding of these lands was illegal and denied the hereditary rights of the native chiefs; which obligates the United States to reconcile this with the Kingdom of Hawaii; and

(19) [formerly (22)] The United States continually has recognized and reaffirmed
that--

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands; which confuses the issue of nationality with race and further denies Hawaiian Nationals their nationality; and fails to recognize the Kingdom of Hawaii and its lawful domain of the Hawaiian Islands under treaty powers of Congress;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands; because as a race of people they can never claim sovereignty over national lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States claims it has a political and legal relationship under U.S. domestic laws with the U.S. Department of Interior rather than through a proper reconciliation process with the Kingdom of Hawaii through the U.S. State Department as foreign affairs according to International laws and treaty powers of Congress; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States has nothing to do with the unique status of Hawaiian Nationals.

SEC. 2. DEFINITIONS.
In this Act:
(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE- The term `aboriginal, indigenous, native people' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.; which does not apply to Hawaiian Nationals within the boundaries of the Kingdom of Hawaii;

(2) APOLOGY RESOLUTION- The term `Apology Resolution' means Public Law

103-150 (107 Stat. 1510), a joint resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States
in the January 17, 1893, overthrow of the Kingdom of Hawaii; which does not address Hawaiian Nationals or the Kingdom of Hawaii;

(3) CEDED LANDS- The term `ceded lands' means the former Government lands of the Kingdom of Hawaii which were ceded in trust to the United States by Queen Lili`uokalani under duress at the time of the illegal overthrow of the Kingdom of Hawaii, and were later transferred to the State of Hawaii in the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union' approved March 18,1959 (Public Law 86-3; 73 Stat. 4) under the Public Lands Trust.

(4) INDIGENOUS, NATIVE PEOPLE- The term `indigenous,
native people' means the lineal descendants of the aboriginal, indigenous, native people of the United States; which does not apply to Hawaiian Nationals.

5) INTERAGENCY COORDINATING GROUP- The term
`Interagency Coordinating Group' means the Hawaiian National Interagency Coordinating Group established under section 5;

(6) NATIVE HAWAIIAN-
(A) Prior to the recognition by the United States of the Interim Hawaiian governing entity, the term `Native Hawaiian' means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native
Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homestead Act (42 Stat. 108, chapter 42) and their lineal descendants; which confuses race with nationality.

(B) Following the recognition by the United States of the Interim Hawaiian governing entity, the term `Native Hawaiian' shall have no meaning given to such term in the organic governing documents of the Interim Hawaiian governing entity.

(7) INTERIM HAWAIIAN GOVERNING ENTITY- The term `Interim Hawaiian governing entity' means the governing entity organized by the Hawaiian Nationals of the Kingdom of Hawaii.

(8) SECRETARY- The term Secretary' means the
U.S. Secretary of State.

(9) HAWAIIAN NATIONALS - The term ŒHawaiian Nationals¹ means the citizens of the Kingdom of Hawaii; who have been absorbed into the body politic of the United States without their consent or naturalization; and with whom the United States has political and legal obligations;
(10) HAWAIIAN PEOPLE - The term ŒHawaiian People² means the lineal descendants of the aboriginal, indigenous, native people of the Hawaiian Islands.

SEC. 3. UNITED STATES POLICY AND PURPOSE.

(a) POLICY- The United States affirms that--
(1) Hawaiian Nationals are citizens of the Kingdom of Hawaii; who have been absorbed into the body politic of the United States without their consent or naturalization; with whom the United States has political and legal obligations;

(2) the United States has a special trust relationship to promote the welfare of the Hawaiian people; who may also be Hawaiian Nationals by nationality.

(3) The United States has the obligation to comply with U.N. Resolution 66 to assure and assist Hawaiian Nationals in the process of self-determination; by conducting a fair election process limited to Hawaiian Nationals on the choice of: integration, free association, or independence.

(4) The United States will provide a process to form an Interim Hawaiian governing entity until U.S. obligations to U.N. Resolution 66 for Hawaiian Nationals are completed; and proper reconciliation can proceed between the United States
and the Kingdom of Hawaii.

(b) PURPOSE- It is the intent of Congress that the purpose of this Act is to provide a process for the recognition by the United States of a Interim Hawaiian governing entity for purposes of establishing a government-to-government relationship until U.S. obligations for Hawaiian Nationals to U.N. Resolution 66 are completed; and proper reconciliation can proceed between the United States and the Kingdom of Hawaii.

SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE OF HAWAIIAN NATIONAL AFFAIRS.

(a) IN GENERAL- There is established within the Office of the Secretary the United States Office of Hawaiian National Affairs.

(b) DUTIES OF THE OFFICE- The United States Office of Hawaiian National Affairs shall--

(1) effectuate and coordinate proper diplomatic relations and protocols between the Hawaiian Nationals and the United States, and upon the recognition of the Interim Hawaiian governing entity by the United States, between the Interim Hawaiian governing entity and the United States through the Secretary, and with all other U.S. government agencies;

(2) [formerly (4)] consult with the Interagency Coordinating Group, other U.S. government agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Hawaiian Nationals' rights; and the resources, lands, and equities rightfully belonging to the Kingdom of Hawaii;

(3) [formerly (5)] prepare and submit to the Committee on Foreign Relations and the
Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to meeting the U.S. obligations to U.N. Resolution 66 .

SEC. 5. HAWAIIAN NATIONAL INTERAGENCY COORDINATING GROUP.

(a) ESTABLISHMENT- In recognition of the fact that Federal programs affecting Hawaiian Nationals are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the ‘Hawaiian National Interagency Coordinating Group'.

(b) COMPOSITION- The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from--

(1) each U.S. government agency that currently administers Native Hawaiian programs, establishes or implements policies that affect Hawaiian Nationals, or whose actions may significantly or uniquely impact Hawaiian Nationals' rights; and the resources, lands, and equities rightfully belonging to the Kingdom of Hawaii;

(2) the United States Office of Hawaiian National Affairs established under section 4.

(c) LEAD AGENCY- The State Department shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

(d) DUTIES- The responsibilities of the Interagency Coordinating Group shall be--

(1) the coordination of U.S. government programs and policies that affect Native Hawaiians or actions by any agency or agencies of the United States Government which may significantly or uniquely impact Hawaiian Nationals' rights; and the resources, lands, and equities rightfully belonging to the Kingdom of Hawaii;

(2) to assure that each U.S. government agency develops a policy on consultation with the Hawaiian Nationals, and upon recognition of the Interim Hawaiian governing entity by the United States, consultation with the Interim Hawaiian governing entity; and

(3) to assure the participation of each U.S. government agency in the development of the report to Congress authorized in section 4(b)(5).

SEC. 6. PROCESS FOR THE RECOGNITION OF THE INTERIM HAWAIIAN GOVERNING ENTITY.

(a) RECOGNITION OF THE INTERIM HAWAIIAN GOVERNING ENTITY- The right of Hawaiian Nationals to exercise their inherent rights of self-determination and to
adopt appropriate interim governing documents is hereby recognized by the United States.

(b) PROCESS FOR RECOGNITION-

(1) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS-
Following the organization of the Interim Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Interim Hawaiian governing entity, the duly elected officers of the Interim Hawaiian governing entity shall submit the organic governing documents of the Interim Hawaiian governing entity to the Secretary.

(2) CERTIFICATIONS-

(A) IN GENERAL- Within 90 days of the date that the duly elected officers of the Interim Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents--

(ii) were adopted by a majority vote of the Hawaiian Nationals registered with the Interim Hawaiian governing entity, who remain citizens of the Kingdom of Hawaii;

(iii) provide for the exercise of governmental authorities by the Interim Hawaiian governing entity;

(iv) provide for the Interim Hawaiian governing entity to negotiate with the United States, the State of Hawaii, and local City and County governments, and other entities;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Kingdom of Hawaii;

(vi) provide for the protection of the civil and human rights of the Hawaiian Nationals and the legal rights of the Interim Hawaiian governing entity and all persons subject to the authority of the Interim Hawaiian governing entity, and

(vii) are consistent with U.S. constitutional, trust, and treaty laws and

policies.

(B) BY THE SECRETARY- Within 90 days of the date that the duly elected officers of the Interim Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the State of Hawaii supports the recognition of a Interim Hawaiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State legislature.

(C) RESUBMISSION IN CASE OF NONCOMPLIANCE
WITH FEDERAL LAW-

(i) RESUBMISSION BY THE SECRETARY- If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with U.S. constitutional, trust, and treaty laws and policies, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Interim Hawaiian governing entity along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such laws.

(ii) AMENDMENT AND RESUBMISSION BY THE INTERIM HAWAIIAN GOVERNING ENTITY- If the organic governing documents are resubmitted to the duly elected officers of the Interim Hawaiian governing entity by the Secretary under clause (i), the duly elected officers of the Interim Hawaiian governing entity shall--

(I) amend the organic governing documents to ensure that the documents comply with U.S, constitutional, trust, and treaty laws and policies; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with the requirements of this paragraph.

(D) CERTIFICATIONS DEEMED MADE- The certifications authorized in subparagraph (B) shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the diplomatic officers of the Interim Hawaiian governing entity have submitted the organic governing documents of the Interim Hawaiian governing entity to the Secretary.

(3) FEDERAL RECOGNITION- Notwithstanding any other provision of law, upon the election of the officers of the Interim Hawaiian governing entity and the certifications by the Secretary required under paragraph (1), the United States hereby extends Federal recognition to the Interim Hawaiian governing entity as the representative governing body of the Hawaiian Nationals of the Kingdom of Hawaii.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.
There is authorized to be appropriated such sums as may be necessary to carry out the activities authorized in this Act.

SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.
(a) REAFFIRMATION- The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled `An Act to provide for the admission of the State of Hawaii into the Union' approved March 18, 1959 (Public Law 86-3; 73 Stat. 5) is hereby reaffirmed.

(b) NEGOTIATIONS- Upon the Federal recognition of the Interim Hawaiian governing entity by the United States, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Interim Hawaiian governing entity regarding the transfer of lands, resources, and assets to the Interim Hawaiian governing entity. Nothing in this Act is intended to serve as a settlement of any claims against the United States.

SEC. 9. NON-APPLICABILITY OF CERTAIN FEDERAL LAWS.

(a) INDIAN GAMING REGULATORY ACT- Nothing contained in this Act shall be construed as an authorization for the Interim Hawaiian governing

entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) BUREAU OF INDIAN AFFAIRS- Nothing contained in this Act shall be construed as an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for such programs or services.

SEC. 10. SEVERABILITY.
In the event that any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

Indian-Affairs, Testimony (Indian Affairs)

From: rwbrustjr@att.net
Sent: Monday, February 24, 2003 3:57 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Akaka bill S.344

Paul Moorehead Esq.
Chief of Staff
Senate committee on Indian Affairs

Mr.Moorehead,
I would like to give testimony in opposition to S.344- Native Hawaiian Tribe bill for Tuesday 25 Feb. at 9:30AM.
1. Historically,there has never been a "native tribe" of Hawaiians in Hawaii. The Akaka bill wants to recognize a "nation" de nova- something no American Indian has ever been granted.
2. The definition of a "native Hawaiian" is an absurdity- anyone with one drop of Hawaiian blood! Even allowing for this,the 2000 census data lists 400,000 Hawaiians out of 1.25million. Setting aside this group as a separate "nation" would allow casinos and other businesses to be exempt from the state of Hawaii and the U.S. regulations,taxes etc.
3. The Akaka bill would carry Affirmative Action to the nth degree. Roughly a third of the population of an entire state would be granted land,monies etc. based on race! What would this do to the rest of the state? When we became the 50th state 60 years ago,over 90% voted to become a state of the United States. No one asked to become a separate "Nation".

Thank you for consideration of this testimony.

Sincerely,
R.W.Brustjr,M.D.

Indian-Affairs, Testimony (Indian Affairs)

From: H. K. Bruss Keppeler [kepplaw.hawaii@juno.com]
Sent: Wednesday, March 12, 2003 5:25 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Testimony on S. 344

NHCC. Testimony on S. 344.doc

Aloha;

Transmitted is the testimony of the Native Hawaiian Chamber of Commerce (in text and attached) on S. 344.

NATIVE HAWAIIAN CHAMBER OF COMMERCE

The Voice of Hawaiian Business

Testimony on S. 344: Expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

Aloha;

Mahalo for this opportunity to present testimony expressing the position of the Native Hawaiian Chamber of Commerce on S. 344. I am Robson Hind, President of the Native Hawaiian Chamber of Commerce.

Founded in 1974, the Native Hawaiian Chamber of Commerce strives to encourage and promote the interests of Native Hawaiians engaged in business and the professions. Native Hawaiian Chamber of Commerce members participate in a variety of economic, social and public affairs.

Our Mission is: To strengthen Native Hawaiian businesses and professions by building on the foundations of relationships, resources and Hawaiian values: aloha, mālama, ho'okipa, laulima, 'imi 'ike, lokomaika'i, pono, ho'omau, ha'aha'a and lōkāhi.

The Native Hawaiian Chamber of Commerce supports the intent of S. 344; provided that the Native Hawaiian Chamber of Commerce reserves the right, at an appropriate time, to offer and recommend substantive amendments to the measure.

This bill is about justice and fairness. The right of self-determination has been extended to the native people of every state in the nation except one - the native people of the State of Hawai'i. This bill represents a significant step in the process of effecting the reconciliation spoken of in the Congressional measure passed in 1993 and referred to as "the Apology Resolution" (P.L. 103-150).

As the time approaches for further substantive discussion of the bill and possible amendments to it, please contact me at (808) 525-6946 or robson.hind @morganstanley.com and H.K. Bruss Keppeler, Esq., Chairman of our Government Relations Committee, at (808) 523-7004 or kepplaw.hawaii@juno.com for more input.

Indian-Affairs, Testimony (Indian Affairs)

From: Elizabeth Poepoe-Lawrence [elizabethp@molokai.org]
Sent: Wednesday, March 12, 2003 10:10 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Native Hawaiian Recognition

To Whom It may Concern:

I strongly support the Akaka Bill. Too long have the Native Hawaiians lacked federal recognition as being "Native Americans". In recent years long established trusts, that serve Native Hawaiians, have been broken because of frivilous lawsuits, won only because Native Hawaiians are not federally recognized. I am scared that as long as organizations like the Office of Hawaiian Affairs and Department of Hawaiian Homes Land are governed by the state, as opposed to by the federal government, these trusts will continue to be broken up and soon will have very little to offer Native Hawaiians. Like any controversial subject, this bill does have many opponents who are very vocal about their opinions. On the other hand there are quite a few supporters who are not as outspoken. I am looking at the situation Native Hawaiians are in as realistically as possible and I feel that the approval of this bill would greatly improve the status of Native Hawaiians. Thank you for taking the time to consider my position.

Elizabeth Poepoe-Lawrence
808-553-3654

----- Original Message -----
From: David Ingham
To: No NWO
Cc: Poka Laenui
Sent: Sunday, February 16, 2003 2:30 PM
Subject: Re: [livingnation] 1826 treaty (red text)

Ae Poka and Roy....

There is no question in my mind the "Treaty" referred to is the Newlands Resolution if there is any other possible interpretation i would dearly love to know what it is for my own relief.

Whether "Confirmation" amounts to ratification, Whether the 42 to 21 vote among "Senators present" voting on a resolution rather than Treaty elevates the resolution to the status of Treaty all can be argued.....but the intent of Congress in this finding is clear.

In my mind, this clause is a deliberate attempt by the authors of the bill to elevate the Newlands Resolution to treaty status, and to end any debate over whether or not the Republic of Hawaii legitimately represented the People of Hawaii.

Given the Supreme Court's propensity to interpret in favor of the United States when conflicts between the United States and Indigenous people arise.... I don't put much stock in the Supreme Court iterpreting this finding is contrary to the intent of Article II. Similarly, I don't see the Court interpreting the Republic of Hawaii as anything but the legitimate representatives of the people of Hawaii if this clause becomes the law of the United States.

I'm sure both of you understand the impact this finding will have on Hawaiian's claims. If the transfer of the Crown and Government lands from the Republic to the United States is determined to be the act of a government that legitimately represented the the claimants. Similarly the transfer of sovereignty and other claims.

This is hewa and it deserves the closest attention of those pursuing federal recognition who might not have noticed the easily overlooked intent and import of finding (4)

Please let me know what you think..... I think this point, if brought to the attention of the right people in congress, could help to stall the bill. I'm sure there are people on both sides of the isle that see the danger in making international treaties the subject of partisan politics as it surely

will become if treaties can be made by simple majority.

At the very least, a clarification from the authors is due. Altrhough the intent is crystal clear to me.

Mahalo for taking the time to look at this and not dismissing it out of hand.

david

>
>
>

Indian-Affairs, Testimony (Indian Affairs)

From: David Edersheim [dedersheim@baldcom.net]
Sent: Sunday, March 02, 2003 2:25 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: S.344

Please say no to S. 344, the Akaka bill This is how I feel about this issue:

Sooner or later having 500 + separate nations within the United States is going to change the whole fabric that this nation was founded on, nearly 227 years ago. ONE Nation under god, liberty and JUSTICE for all. Sovereignty is a serious issue. The minute you walk onto a reservation, you have left the USA and are under that nations laws, rules and processes. The laws are not set by a elected government, by the people like a democracy. Dissent is not allowed, you get evicted from your home. If even dare to speak out against the leaders. Do you want this for your children's and Grandchildren's future? I don't, I was told by a woman in the grocery store. The tribe will get their way, why bother? I told her the squeaky wheel gets the grease and I'm going to make some noise. If you are concerned at all about this national issue. Please spend a minute to read and sign the petition. Lets make some noise.

Please say no to S. 344, the Akaka bill" with your name, email address and Zip code is sufficient.
Name David Edersheim My email address is dedersheim@baldcom.net Cayuga, NY zip code 13034

Indian-Affairs, Testimony (Indian Affairs)

From: Kamana Beamer [kamanab@hotmail.com]
Sent: Monday, February 24, 2003 11:36 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Hawaiian Independence

I am a Kanaka Maoli and do not support the Akaka Bill/Native Hawaiian Recognition Bill, due to it attempting to extinguish the rights of us Kanaka maoli to the attainment of the independence that our nation once had and has been made to believe no longer exists as neither an option nor a reality. I support the Independece of the Hawaiian Nation!! THe Akaka Bill is a fraud and does not have the popular support of the Kanaka Maoli people nor does it have mine.
Brenton Kamanamaikalani Beamer
Feb 24 2002

MSN 8 helps eliminate e-mail viruses. Get 2 months FREE*.
http://join.msn.com/?page=features/virus

Indian-Affairs, Testimony (Indian Affairs)

From: Bill Lewis [wrl@hawaii.rr.com]
Sent: Sunday, February 23, 2003 11:00 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: kaka bill S344

This bill is a travesty of poor judgment, which would be visited on the heads of the proudest people I have ever known. This bill should be heard and equal weight of testimony be given to all. That will kill it!!!!

This is a matter for our State Dept. to address since it is all about the illegal seizure and occupation of a Rightful Nation for 110 years.

Recognition and restoration of the of the ongoing existence of the Hawaiian Nation, which has already begun with recognition from the U.N. Security Council and the International Peace Court at the Hague.

I ask that you reject Bill S344 as a callous attempt to undermine what is really in the interests of both Native Hawaiians and settlers like myself: a return to control by the people who originate in Hawaii (born here), as an independent nation with existing treaties with over 90 nations, the U.S. among them.

I ask you not support this bill.

Sincerely,

Bill Lewis
Volcano, Hi

Indian-Affairs, Testimony (Indian Affairs)

From: Ho`oipo [hooipopa@hawaii.rr.com]
Sent: Monday, February 24, 2003 8:26 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: Recon Team & Advisors Ÿ
Subject: Akaka Bill Statement for the Record

akakabillstatement1.do

c To: Senator Ben Nighthorse Campbell, Senator Inouye, Senator Akaka, members of the committee and invited guests,

From: `Ekolu Wale No: Kunani Nihipali, Ho'oipokalaena'auao Nakea Pa, and Pu'uhonua Kanahele

Re: Senate Bill 344, to be heard in DC at 9:30 on Tuesday, February 25, 2003 before the Senate Committee on Indian Affairs

Date: 2/24/03

Please enter this statement, a collaboration of many voices, into the record.

On Monday, February 24, 2003 at 12 Noon we held a press conference in front of the Queen Lili'uokalani's Statute behind the I'olani Palace to discuss the proposed Akaka Bill scheduled to be heard at 9:30 a.m. on Tuesday, 2/25/03 by the U.S. Senate in Washington D.C. and how it does not represent the best interests of the Kanaka Maoli/Na `Oiwi O Hawai'i/Hawaiian people. A second media conference will be held on Tuesday, February 25, 2003 to follow-up after the hearing in DC is held.

These Press Conferences are being held by the following organizations: Ka Pakaukau, Nuclear Free and Independent Pacific (NFIP Hawai'i), `Ekolu Wale No, Ho'okipa Network, Ahupua'a Action Alliance, Not of America, and Na Maka O Ka 'Aina.

This press conference has been endorsed by Louis "Buzzy" Agard, Kekuni Blaisdell, Soli Niheu, Kaleikoa Ka'eo, Nani Rogers, Puhipau, Jackie Kaho'okele Burke, Sparky Rodrigues, Leandra Wai, Kahu Ron Fujiyoshi, Jim Albertini, Richard Pomaikai Kinney, Lela Hubbard, Lynette Cruz, Ulf Darhe, Eric Po'ohina, Jackie ____, Maggie _____, Kahu Kaleo Patterson, A. Keala Kelly, Gwen Burrows, David Inciong (Tane), David Ingham, Keoni Agard, Pu'uhonua Kanahele, Ho'oipokalaena'auao Nakea Pa, and Kunani Nihipali.

Although there were only a handful of representatives, those who were present represent the views of 'thousands' for we are the sum of our kupuna.

We believe the Bill is an attempt to further cover up the illegal occupation of Hawai'i and to extinguish all Native Hawaiian claims.
The Akaka Bill will place Hawaiians under the plenary power of the U.S. Congress, where we will have to answer to the Department of Interior (DOI). The DOI is presently being sued for defrauding the Native Americans of hundreds of billions of dollars.

The Akaka Bill seeks to establish a puppet Hawaiian Governing Entity to represent the interests of the Hawaiian people.

The bill is an offer. The bill cannot tell Hawaiians what to do as it is internal U.S. law. The bill acknowledges Hawaiians right to reorganize our government and offers negotiations and diplomatic recognition if Hawaiians agree to become wards of the federal government. Hawaiians have the

opportunity to reject federal wardship and form a government that serves Hawaiian interests before all others, and use U.S. federal funding to do it.

There are no restrictions on the federal funding authorized in the bill to carry out the activity of reorganizing the Hawaiian Government. The DOI is well aware of this crack in their plan....but the crack has to be there in order to give the appearance that the acceptance of federal wardship was the will of the people through elected representatives. The bill does not require Hawaiians to take the bait, but it does acknowledge the right to reorganize our government. DOI Norton's interest in seeing what form the Hawaiian government will take before she will support the bill is intended to seal this crack.

One of our kupuna, Uncle Louie ³Buzzy² Agard, who has been steadfast and consistent in his stance for Hawaiian Independence will be participating in this conference on his 80th birthday, February 25, 2003, shared these thoughts:

"Past improprieties are being swept aside to be forgotten. We are where we are because of past improprieties, negotiations and unilateral activities. It is difficult to have much faith in offers being made to Hawaiians at this time due to past oversights and omissions, even after commitments have been made to Hawaiians relative to their interests in their homeland. It appears that the drafts of the Akaka Bill S.B. 746 are being done largely by federal employees using federal interpretations. This happened in 1983 with the Native Hawaiian Study Commission report and resulted in the claims being denied for reparations and recognizing Hawaiian sovereignty, and which was the Hawaiian initiative to the pending legislation. I would suggest that Hawaiian documents and practices be utilized and advanced and not try to fit into designed U.S. law. This will avoid being preempted or denied under complex laws dealing with Indian tribes, which is where we seem to be headed with the documents being drafted. Just a few thoughts, Mahalo Buzzy"

We, along with Uncle Buzzy, call for you to join us to Ku¹e! Onipa¹a! Ea!

E Iho Ana
Kapihe¹s Wanana (Prophecy)

E iho ana o luna;
That which is above shall be brought down;

E piŒi ana o lalo;
That which is below shall be lifted;

E hui ana na moku;
The islands shall be united;

E ku ana ka paia.
The walls shall stand upright.

****
Growing Hawaiian Opposition to Akaka Bill
Overshadowing Supporters

THE AKAKA BILL- ALSO REFERRED TO AS THE HAWAIIAN FEDERAL RECOGNITION BILL- IS GOING TO BE HEARD IN THE U.S. SENATE ON TUESDAY THE 25TH.

HAWAIIANS HAVE SERIOUS DOUBTS AND CONCERNS ABOUT THIS LEGISLATION DEFINING OUR POLITICAL STATUS, AND THE HAWAI'I STATE DELEGATION HAS NOT RESPONDED TO OUR CONCERNS AND HAS BEEN UNWILLING TO ALLOW FOR PUBLIC HEARINGS IN OUR HOMELAND OR A COMMUNITY WIDE VOTE.

WE FEEL THAT THIS ECHOES THE BEHAVIOR OF THE STATE OF ALASKA WHO IN 1971 PASSED A SETTLEMENT ACT THAT DISPOSSESSED THE ALASKA NATIVES OF MOST OF THEIR LANDS WITHOUT ALLOWING MOST OF THEM TO TAKE A VOTE ON THE FINAL DECISON AND IN VIOLATION OF THEIR INHERENT RIGHT TO SOVEREIGNTY.

ALSO LIKE THE ALASKA NATIVE CLAIMS SETTLEMENT ACT, THIS BILL REQUIRES A HAWAIIAN GOVERNING ENTITY TO BE APPROVED BY the DEPARTMENT OF INTERIOR (DOI) AFTER WE HAVE RELINQUISHED OUR NATIONAL STATUS, TO BECOME WARDS IN A ³DOMESTIC DEPENDENT NATION² STATUS UNDER THE ³PLENARY POWER² OF THE U.S. CONGRESS. WE MUST REJECT LEGISLATION THAT ALLOWS THE U.S. GOVERNMENT TO REDEFINE OUR POLITICAL STATUS, WHEN IN THE TRADITION AND WISDOM OF OUR ANCESTORS WE EXISTED AS AN INDEPENDENT SOVEREIGN NATION, MANY FEAR THAT NEGOTIATING AT A TABLE WHERE THE FEDERAL GOVERNMENT HAS THE RIGHT TO DEFINE, AS WELL AS ENFORCE, THE OUTCOME OF THE NEGOTIATIONS IS NOT IN THE BEST INTEREST OF THE HAWAIIAN PEOPLE.

A CONCENTRATED EFFORT IS UNDERWAY TO BRING HAWAIIANS TOGETHER UNDER ONE UMBRELLA TO ALLOW OUR COLLECTIVE VOICES TO BE MORE EFFECTIVE. HOWEVER, OPPONENTS OF THE AKAKA BILL FIND THE BILL TO BE HOPELESSLY FLAWED. ACCORDINGLY, OUR UNITY EFFORTS SHOULD, INSTEAD, FOCUS ON MEANINGFUL RECONCILIATION STRENGTHENING AND RECONSTRUCTING OUR GOVERNMENT AND REGAINING OUR LANDS AND ASSETS FIRST, AND THEN RESTORING RELATIONSHIPS WITH OTHER GOVERMENTS LATER (UNDER INTERNATIONAL OVERSIGHT).

THE DOI IS IN AN ONGOING SUIT OVER DEFRAUDING NATIVE AMERICAN OF BILLIONS OF DOLLARS OVER THE LAST 130 YEARS. THE RESPONSE BY THE DOI TO THIS SUIT HAS BEEN TO COVER UP - BY DESTROYING DOCUMENTS AND EVIDENCE - AND DOI HAS BEEN FOUND IN CONTEMPT OF COURT. WITH THIS RECORD, DOI CONTROL OF HAWAIIAN LAND, ASSETS AND THE MANAGEMENT OF THE HAWAIIAN GOVERNMENT WOULD NOT BE IN THE BEST INTERESTS OF THE HAWAIIAN PEOPLE. THEREFORE, WE RESPECTFULLY AND RIGHTFULLY REJECT U.S. WARDSHIP UNDER DOI GUARDIANSHIP.

THERE ARE GROWING CONCERNS ABOUT THE PROCESS, AS DEFINED IN THE BILL, THAT WILL NOT INCLUDE ALL HAWAIIANS, BUT ONLY A SELECT FEW CHOSEN BY THE STATE AND FEDERAL AGENCIES.

HAWAIIANS OPPOSED TO THE LEGISLATION HAVE ALSO COME TO REALIZE THAT A BLOOD QUANTUM DEFINITION OF CITIZENSHIP WILL RESULT IN AN EVER DECLINING NUMBER OF HAWAIIANS WHO QUALIFY--- BY DEFINING THEMSELVES BY BLOOD QUANTUM, SOME GENERATION OF THEIR CHILDREN OR GRANDCHILDREN WILL EVENTUALLY BE EXCLUDED. THIS WILL CREATE DIVISION IN THE COMMUNITY AND FAMILIES.

THE LEGAL CONCERNS OVER THE EFFECTS OF THE BILL ON HAWAIIAN CLAIMS TO LAND AND RESOURCES HAVE ALSO BEEN THE SOURCE OF GROWING DOUBTS OVER THE HAWAI¹I CONGRESSIONAL DELEGATION¹S ABILITY TO DRAFT LEGISLATION FOR OUR HAWAIIAN PEOPLE. THEIR PERFORMANCE THUS FAR SUGGESTS THAT THEIR CONCERN IS PRINCIPALLY GIVING FULL AND PERMANENT CONTROL OVER THE HAWAIIAN PEOPLE, OUR HOMELANDS AND ASSETS TO ASSURE U.S. MILITARY AND ECONOMIC GLOBAL HEGEMONY, MORE THAN the WELFARE OF THE HAWAIIAN PEOPLE.

IF THE PURPOSE OF THE AKAKA BILL IS TO PROTECT US HAWAIIANS FROM ADVERSE ACTIONS OF THE STATE AND U.S. COURTS AND ITS AGENCIES CURRENTLY DIRECTED AGAINST US, LET THE AKAKA BILL SO STATE AND PROVIDE THE NECESSARY AND APPROPRIATE SAFEGUARDS FOR US TO CONSIDER. HOWEVER, HAWAIIANS CANNOT AGREE TO SUCH PROTECTION AT THE PRICE OF SURRENDERING THE INHERENT SOVEREIGNTY BESTOWED UPON US BY OUR ANCESTORS.

THE AKAKA BILL DENIES HAWAIIANS OUR RIGHT OF SELF-DETERMINATION. THIS IS A CONTINUATION OF A CRIME THAT BEGAN WITH THE "ILLEGAL OVERTHROW" OF THE HAWAIIAN KINGDOM AND IS CLEARLY DEFINED IN U.S. PUBLIC LAW 103-150.

THE HAWAIIANS WHO ARE GOING TO WASHINGTON DC TO SPEAK FOR US FOR THE AKAKA BILL, DO NOT REPRESENT THE HAWAIIAN PEOPLE. THEY REPRESENT THE STATE, FEDERAL AND PRIVATELY FUNDED NON-PROFITS AGENCIES THAT THEY SERVE.

OUR VOICES MUST BE HEARD ON THIS MATTER. WE CALL FOR A MORITORIUM ON ALL HAWAIIAN FEDERAL RECOGNITION LEGISLATION UNTIL SUCH TIME AS ALL HAWAIIAN PEOPLE ARE ALLOWED AND ABLE TO BE HEARD.

SEND YOUR MANA'O TO testimony@indian.senate.gov.

YOU MAY WATCH THE HEARING IN DC AT 9:SO A.M., TUESDAY, FEB. 25, 2003 WHICH

WILL BE 4:30 A.M. Hawai'I time at this site: http://indian.senate.gov/.

ME KA MANA'O NUI

# # # # #

e kala mai no Hawaiian fonts!

_I could not turn back the time for the political change, but there is still time to save our heritage. You must remember never to cease to act because you fear you may fail. The way to lose any earthly kingdom is to be inflexible, intolerant of too many wrongs and without judgment at all. It is a razor¹s edge. It is the width of a blade of pili grass.
*Queen Lili¹uokalani 1917*_

This message is being sent from a legal advocacy network and may contain information which is confidential or privileged. If you are not the intended recipient, please advise the sender immediately by reply e-mail and delete this message and any attachments without retaining a copy.

Indian-Affairs, Testimony (Indian Affairs)

From: Kaleo1@aol.com
Sent: Monday, February 24, 2003 6:30 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Flawed Akaka Bill

CAVEAT-NOTICE

AloHa:

To The Honorable Ben Nighthorse Campbell;

As one with the understanding of a People with a similar heritage of American/U.S. citizenry encroachment upon the otherwise autonomy of an organized Council of the ELDERS/Na Kupuna O Hawaii Nei...I ask you to call upon the Wisdom of your forefathers...and to do THE RIGHT THINGS FOR A PEOPLE...YET UNACCOSTOMED TO THE WAYS OF SUCH POLITICAL INTRIGUE.

From its very inception...The Akaka Bill was designed for one thing ...AND ONE THING ONLY...to prevent the LAWFUL EXERCISE OF A 'SUPPRESSED PEOPLE' TO REINSTATE AND REORGANIZE THEIR LEGITIMATE GOVERNMENT OF A PEOPLE AND NATION RECOGNIZED BY TREATY AND INTERNATIONAL LAW.

THE HAWAIIAN KINGDOM DOES EXIST...albeit in an irregular and impaired 'state of exile', its people of social-polity CHOICE (not racial...national identity and citizenship...also impaired and irregular...DUE TO THE ILLEGAL ACTIONS OF CERTAIN TRAITORS WITHIN THE HAWAIIAN KINGDOM AT THE TIME; see Senate Joint Res. 17: Public Law 103-150, Nov. 23, 1993).

As of January 3, 1994...5-Members of the Hawaiian Community...renouncing their U.S.-Citizenry and ESTABLISHING A HAWAIIAN-KINGDOM EMBASSY at the OFFICE OF HAWAIIAN AFFAIRS (see Art. 12, Sec. 5, const. for the State of Hawaii)

In April of 1994, We, the People of the Hawaiian Society (see Pub L. 103-150, Nov. 23, 1993; Whereas <#35> two separate societies) took over the Office of Hawaiian Affairs (Honolulu Advertiser: April 16, 1994) and FORMALLY ESTABLISHED ...an INTERIM PROVISIONAL GOVERNMENT COUNCIL (of expatriating Declared-U.S.-citizens; Hawaiian-Kingdon descendants/Declarants of the citizens of the Hawaiian-Kingdom).

WHY THE OFFICE OF HAWAIIA AFFAIRS:

Due to the 1978 Constitutional-Actions of the People of the State of Hawaii (Art. 12, Sec. 5), together with the Actions of the 99th United States Congress (see Public Law 99-557, Oct. 27, 1996; Consent of Congress...RECOGNITION BY THE U.S. GOVERNMENT of the will of the People of the State..."in order to provide a proper foundation for reconciliation between the United States and the Native Hawaiian people".

In accordance with State of Hawaii Supreme Court Ruling...clarifying Hawaii Revised Statutes Chapter Ten: 10-4; stating that the Office (OHA) was separate from ALL BRANCHES OF THE STATE GOVERNMENT (see OHA Trustees v. Yamasaki; Oha Trustees v Hong).

THERE IS, and always has been a proper AVENUE OF ADMINISTRATIVE RESOLVE OF THIS MATTER. However, it appears certain INDIVIDUALS: members of the U.S.-CITIZENRY (see Pub L. 103-150, Whereas <#35> people of the American society)...to include State of Hawaii legislators and members of the Executive Branch, as well as State of Hawaii members of the U.S. Congress (Senators and Representatives of the House of Representatives)...

Have devised and ARE PUSHING FOR THEIR 'PLAN' OF CONQUEST OVER THE ACTIONS AND 'RECORDED-DOCUMENTARIES' OF THE DESCENDANT/PEOPLE OF THE HAWAIIAN KINGDOM NATION.

THERE IS MUCH YET TO BE DONE...IN THIS MATTER...

THE OFFICE OF HAWAIIAN AFFAIRS IS IN CUSTODY OF 'Over Six Boxes of Records and Documents' of our INTERIM GOVERNMENTAL COUNCIL AFFAIRS...ALL IGNORED AND UNANSWERED BY THOSE 'IN-CHARGE'.

THESE ARE RECORDS AND DOCUMENTS EVIDENCING REGISTERED-MAILINGS OF OUR NOTICES AND ACTIONS ON BEHALF OF THE NON-U.S.-HAWAIIAN-BENEFICIARIES OF THE QUEEN'S 1893-YIELDING...IN TRUST TO THE UNITED STATES GOVERNMENT.

TO DATE THERE HAS NOT BEEN ONE ACTION BY THE BOARD ON THE THESE 250,000 PAGES OF DOCUMENTATION...WHICH, BY OHA BY-LAWS AND TRUST-LAWS PROVISIONS REQUIRED ACTION AND RESPONSE.

LACKING THE REQUIRED DUE-PROCESS HEARINGS AND RESOLVE OF OUR CONCERNS...HAWAIIAN-SOVEREIGNTY & SOCIAL-POLITICAL-AUTONOMY...

ANY ACTION BY THE FEDERAL OR STATE GOVERNMENTS TO THE CONTRARY (see: Art 12, Sec. 1, const. for the State of Hawaii) IS WITHOUT THE NECESSARY LEGAL FORM AND LAWFULNESS OF DUE-PROCESS...TO THOSE OF US PURPOSEFULLY LEFT OUT OF THE 'DUE-PROCESS' PROCEDURES...IN ORDER TO EFFECT THE POLITICAL CORRECTNESS...NOW BEING PUSHED UPON THE U.S. CONGRESS BY SENATORS AKAKA AND INOUYE, FOR THE SOLE PURPOSE...OF JURISDICTIONAL-CONTROL OVER THE LEGITIMATE AND LAWFUL AFFAIRS OF AN INHERENTLY SOVEREIGN PEOPLE.

PLEASE CONSIDER THIS INFORMATION...AND IF ANYTHING CONDUCT SOME KIND OF INVESTIGATION OF THE RECORDS OF THE OFFICE OF HAWAIIAN AFFAIRS...TO SEE IF IN FACT MAL-ADMINISTRATION OF THAT OFFICE IS NOT THE REAL CULPRIT OF ALL THE CONFUSION AND DISCONTENT DEVIDING OUR TWO PEOPLES.

THE 'RECORD' IS SET...SEN. AKAKA AND INOUYE HAVE THESE CAVEATS AND CLAIMS...WITHIN THEIR OWN FILES...TRANSMITTED TO THEM BY MYSELF AND THE OFFICE OF HAWAIIAN AFFAIRS: ADMINISTRATORS AND BOARD MEMBERS.

ALL WILL...AND MUST COME OUT EVENTUALLY. TRUTH AND HONOR WILL NOT BE ABSENT FROM THESE PROCEEDINGS...AS OUR GREAT FATHER SPIRIT ...KE AKUA-ALOHA...WILL NOT BE MOCKED.

MAHALO NUI FOR YOUR TIME...AND WISDOM IN THESE IMPORTANT MATERS.

Executive-Minister: Lindsay-L. : Lindsey,
People of the Hawaiian-Society,
O'HA INTERIM PROVISIONAL GOVERNMENT COUNCIL

Indian-Affairs, Testimony (Indian Affairs)

From: Kealoha [i_k_hanau@yahoo.com]
Sent: Friday, April 11, 2003 3:00 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: esther.kiaaina@mail.house.gov; neil.abercrombie@mail.house.gov; administrator@campbell.senate.gov
Subject: Testimony against S344, aka, the Akaka Bill

10 April 2003

Dear Chairman Ben Nighthorse Campbell,

The current version of S344, aka, the Akaka Bill, has undergone many unilateral changes, which were made without consideration for the voice of the people whom it affects. The bill, as it stands now, is faulty. The entire process is faulty.

I resent that our livelyhood as Hawaiians are at the whim of a greedy government. I also resent that we are being asked to "take what we can get" from S344. As the bill currently stands, I'd rather not take whatever "benefits" we would stand to gain because there is so much more we can lose as well, should the bill be passed. I resent that Hawaiians' inherent rights are being swept under the carpet with the passage of this bill and that this theft could become legalized. The United States of America has a history of "legalizing" the theft of every aspect of our lives. The long paper trail uncovered says that the US has absolutely no legal standing to make decisions for Hawaiians.

The Hawaiian nation, once a self-governing entity, WILL be so again. Stop S344.

Me ka haahaa,

Raphael Kealoha Kaliko
P.O. Box 12031
Honolulu, HI 96828-1031
(808) 349-6412

Do you Yahoo!?
Yahoo! Tax Center - File online, calculators, forms, and more
http://tax.yahoo.com

Indian-Affairs, Testimony (Indian Affairs)

From: Tane808@cs.com
Sent: Friday, April 11, 2003 6:35 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: No to Akaka Bill S344

Aloha Sen. Campbell:

It would be in your and our interest to stop the Akaka Bill S 344. We Hawaiian Nationals are against it and rebuke it. Most of us have opposed this and demand public hearings on all the major islands to add input. OHA does not represent us; it is a state agency with the entire community in Hawaii as constituents. We Hawaiians and nationals have not voted these people in and plainly were not elected by us but the citizens of the State of Hawaii.

The US complicity in the takeover of our nation is much the way the US went into Iraq. Our Queen surrendered her authority under duress and to forestall bloodshed of her people to the US and not to the puppet government of the US. Three US Presidential administrations (Arthur, Harrison, McKinley) were discovered to be in covert operations to destabilize the Kingdom of Hawaii to gain control of it thereby breaking its treaties with our country. We have not extinguished our national rights including subjects of the Kingdom who do not have Hawaiian blood. Everything was forced on us and our Ku'e (resistance) Petition against annexation was totally ignored. US military occupation has never left Hawaii since the invasion of our friend neutral nation.

This matter should be taken up with the State Dept. and not the Department of Interior. This is an international matter that needs addressing. If Bush insists in going into Iraq to "liberate" the Iraqis and free them and put them on a righteous path of democracy, liberty and freedom; then he, as well as Congress, should have no qualms in returning our nation to us, make restitution, reparations, and leave us to govern ourselves rather than being under the US who is an illegal, unlawful, belligerent occupier of the Kingdom of Hawaii.

We never wanted the US to occupy us or any other nation; that's why we had treaties with over 25 countries and were a part of the family of nations, the predecessor of the league of nations and the united nations. We were denied our voices to be heard by being a minority in our own country; overwhelmed by supplanted Americans.

Let the truth be known and cease and desist in furthering the crime committed by the US.

He Hawaii au,
Tane

Indian-Affairs, Testimony (Indian Affairs)

From: Gwen Burrows [bzladi03@yahoo.com]
Sent: Friday, April 11, 2003 12:11 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: hawaii-
Subject: FREE HAWAII

To Whomever it May Concern,

Aloha,

I am writing to you as a concerned Hawaiian National in opposition of the akaka bill S344 that will grossly change my status. There are many Hawaiian Nationals that oppose this bill because it takes away our rights, freedom and identity. We are Hawaiians and citizens of the Hawaiian Kingdom and wish to remain so.

By what right does the US have to continue to force their presence upon a people through an act of their military's belligerent occupancy upon a once neutral and peace nation that had no desire to be a part of a country that has no honor, not even among thieves but only the need to expand upon their need of manifest destiny.

What the US is doing to Irag, which in my opinion is an unwanted take over and invasion of a country that didn't ask for their aid, but that the intent of the US is to rob them of their vital resources, oil, is the same as they did to Hawaii because they needed Hawaii strategically for their military purposes. There is no real justice in that the people of Irag and the people of Hawaii are and were forced upon by the greed and lust of a country that has no regard for human rights and the freedom of others.

The US continues to show no regards nor respect for its own Laws, Constitution and their Bill of Rights in their continuity and their enslavement upon the Hawaiian people and now upon the people of Irag.

Our history speaks for itself and it tells a sad, sad story of how a handful of greedy white hawaiian nationals with the aid of certain US citizens forcefully abdicated our late Queen from her throne and overthrew her government at gun point. Yes, gun point when they landed their marines upon her shores and declared war upon a peaceful nation with no regards of the treaties that both countries enjoyed, which I may remind you is the law of the land. I ask you then, was that not an act of treason according to International Law on the part of the US who also signed a treaty of friendship with the than ruling Monarch of the Kingdom of Hawaii who at that time was also a member of the great Family of Nations with treaties with over 23 countries? And let me also remind you, that on that occasion and shortly after the US's final occupation in 1898 of Hawaii during the Spanish American war, no peace treaty was ever signed between our gr! eat Nation and that of the US since it was a military take over and an invasion and a declaration of war according to US president Cleveland.

The US is guilty of much wrong doing and is in gross violation of International law and may I again remind you that the US is also in gross violation of the law of occupation, hence I say again and vehemently so, that the US is a country without honor. A country that hovers deception, greed and is no less predatory. A country without conscience of what is right and just and yet it dare say that it promotes and advocates peace, liberty and justice for all.

Hence I beg you, as an American citizen, to bravely stand up for what you feel is right and undo the wrongs that the US has done to the people of Hawaii and the long ignored request of our late Queen and

correct the wrong of your country and set our people and our Country free. That will be your most honorable and just cause after a long unwanted occpancy upon Hawaii by restoring it back to it's rightful status and by voting against the akaka bill which is truly a bill that will further enslave the Hawaiian people through a long, over due and unwanted military occupancy.

And we who are Hawaiian Nationals and citizens of the Hawaiian Kingdom say, shame on Mr. Inouye and Mr. Akaka and those who represent Hawaii in Congress for their part in another scheme to further enslave the Hawaiians through illegal means, which in this case is through their infamous bill known to all as the Akaka Bill.

We are Hawaiians! We are not Indians!

Respectfully,

Gwen Burrows
Hawaiian National

Do you Yahoo!?
Yahoo! Tax Center - File online, calculators, forms, and more

Indian-Affairs, Testimony (Indian Affairs)

From: 'Ehu Kekahu Cardwell [ehukekahu@earthlink.net]
Sent: Thursday, April 17, 2003 3:51 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: Akaka, senator (Akaka); senator@inoyue.senate.gov; neil.abercrombie@mail.house.gov; ed.case@mail.house.gov; gov@gov.state.hi.us
Subject: In Opposition to S344

Aloha 'aina kaua,

As a non-Native Hawaiian supporter of Native Hawaiian political self-determination, I wish to express my strong opposition to S344, the so-called Federal Recognition bill for Native Hawaiians.

This bill is flawed for many reasons, just a few of which I list below.

S344 names the Department of Interior as the US entity that will interface with a Native Hawaiian government. This is ridiculous given all of the facts of mismanagement of Native American lands and funds in the billions of dollars by the Department of Interior that has come to light recently. Indeed, Interior Secretary Gale Norton has been deemed an "unfit trustee" by a US federal judge for Native American lands and revenues. If this is the case, then how can she be fit to administer reparations for Native Hawaiians ?

This bill in fact guarantees no reparations for Native Hawaiians of any kind while asking them to sign away forever their aboriginal claims to their native lands.

S344 is being pushed without any hearings in Hawai'i. You will find, should hearings be held throughout the islands, that the vast majority of Native Hawaiians are AGAINST this bill. Supporters of Native Hawaiians, like myself, are also strongly opposed.

Furthermore, Hawai'i must be re-listed with the United Nations on their list of non self governing territories. The fraudulent statehood vote of 1959 must also be examined due to the fact that Hawaiian Nationals were never offered the choices of Independence and/or free association
as options to their present political status at the time of the 1959 statehood vote as mandated by international law. The US, to this day, is in fact illegally occupying the Independent Nation of Hawai'i, as admitted by the United States in US public law 103-150, known as the "Apology Bill" signed by then President Clinton in 1993.

An acceptable federal recognition bill might be possible, but only with the US Department of State, and not Interior listed as the US entity that interfaces with a Native Hawaiian government. Native Hawaiians want to relate to the US as equals, not as wards of the US or members of a "tribe" confined in any way by the United States government.

Native Hawaiians must have the right to their self-determination without US interference or attempted containment of any kind.

Ho'oku'oko'a,

'Ehu Kekahu Cardwell

Indian-Affairs, Testimony (Indian Affairs)

From: Tane808@cs.com
Sent: Sunday, April 20, 2003 8:39 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: What is sovereignty for Hawaii?

What the US is doing to Hawaii is unlawful and illegal under international law. The Recognition Bill to put us within the US Department of Interior is fraudulent and deceitful. We should be dealing with the State Department and the International court to rectify this atrocity and miscarriage of justice. We want our independence.

Aloha,
Tane

What is sovereignty?

Sovereignty must be defined in context. It is not wrong to use definitions that are personal as long as the listener understands what you mean.

Authority that has no higher level than God.

- Nation-state

- Personal

- Inherent

Hawaiian sovereignty?

Hawaii has gone through various stages of sovereignty. One must identify the meaning and the period of history as the context.

Public Int. Law:

Sovereignty and equality of states represent the basic constitutional doctrine of the Law of Nations, which governs a community of states having a uniform legal personality. If recognized, you have that sovereignty.

Sovereignty is in the state and its administration.

Presently in int. law, this sovereign legal presumption or right is only for territories constituted or accepted as states under criteria of int. law. (The criteria of Christianity is no longer required.)

In the context of the Apology Resolution:

"Inherent Sovereignty" is a term first used in 1945 (Fed. Indian Law) to define a limited sovereignty of American Indians, inferior to the State of Georgia, which had never been extinguished.

1978 U.S. v. Wheeler, "inherent sovereignty" re-iterated such.

1991, Supreme Court: domestic dependent nations exercise inherent sovereign authority over their members and territories.

1994 Apology resolution uses same term, also defining natives as descendants of pre 1778 aboriginals, which could imply, due to Hawaii's unrecognized status at the time, the same inherent sovereign status as American Indians - inferior to U.S.

Hawaiian sovereignty as of 1843 was not "inherent" but State sovereignty.

On the other hand, also brought out was that within the context of the Apology, the term inherent sov. appears to directly refer to the HK govt and state sovereignty.

The U.S. "inherent sovereignty" definitions notwithstanding, some choose to view the term explicitly used in the Apology as implicit in our understanding of our selves and where we come from. They include indigenous / "inherent" as well as nation-state political conditions. Because of the admissions we can use the resolution to combat U.S. intentions.

Above, and beyond international law concepts, inherent or personal sovereignty should be something that we choose to define for ourselves outside of U.S. congressional language. Yet when we discuss statehood, government, international relations, we must use clear, agreed upon terms / definitions.

Hawaii had State sovereignty.

"Indigenous" populations in political context are stateless. Inherent sovereignty refers to indigenous or stateless status.

For the sake of Living Nation discussions:
Sovereignty will imply political - or State as in international law context.

To get to a "best way" to "puka through" to remedy our condition, we must get on the same page, especially for the sake of future discussion.

2. Legal Order: National Laws of Hawaii. Domestic laws of the national government.

Context: Hawaii.

On the international law level, not all nations are States subject to

international law, included as members of U.N.

A nation per se can be the common consciousness of a people. State becomes the governmental expression of all or a portion of those people. Hawaii was an indigenous nation-state in the purest sense since it was, essentially, of an aboriginal people with one national consciousness.

Self-determination: Two types. State - and - a People.

State: Legal principle - protected from intervention in their internal affairs.

Terminology problem with what defines a "people", since the "people" is not a subject of int. law.

Int. Law recognizes principle of self-determination, however, not a right applicable to any group of people desiring independence or self-govt.

Indigenous rights as "peoples" are pending a U.N. (I.L.O.) process.

The legal order includes the rights and laws domestically and internationally that State has.

The self in self-determination.

Who qualifies as Hawaiian national or citizen?

i.e. 1959; U.S. brought in their citizens to become part of the self in Hawaii's self-determination.

Who is the self in our nation? "Self" is a major and complicated consideration to be worked out.

Descendants of citizens of the Hawaiian Kingdom?

Since 1893, do the laws then still apply today?

Dual citizenship?

National loyalty is a criterion.

International Law of Occupation.

Baltic States example. Law defines nationality.

Foreign residents born prior to occupation were allowed nationality. Those migrated or born during occupation were not.

Those naturalized after occupation were required to speak the language. (This was an internal decision subsequent to re-establishment of effectiveness of State.)

Another example - Germans born during occupation of Belgium could not acquire citizenship of occupied State.

Wong Kim Ark v. U.S. 1898 was precedent for Baltic (Estonia).

Reference to precedents set through law of occupation can be a starting point to build determinations.

The legal system before occupation is the starting point to identify nationals. It is a matter of evidence, not proclamation. From there we can determine inclusiveness/ exclusiveness ideals including naturalization.

Legal order of Hawaii allowed up until 1898, those born of migrants.

The civil code of Hawaii determines requirements for citizenship within the interior dept.

"Determination"

(Within the framework of self determination guidelines for stateless "peoples" desiring self determination)

- is to be determined as - integration, free association, or independence.

Not integration or integration as in Akaka Bill or the '59 Statehood vote.

"Self-Determination" from a State standpoint, under the concept that the State was not extinguished, as "person" of int. law, what are the avenues within int. law that address Hawaii?

Occupational Law. Because we are occupied, international law is involved. There is a large body of material in this area that relates directly to the problem and remedy. Under international law Hawaiian State continuity is protected.

Obligations of international law:

Treaty Law - Customary Law (without treaty) - Opinions (sometimes conflicting).

Organizations exist to codify laws: try to define practices.

Opinion is that International Law is not reliably clear, yet taken in a positive light Int. law is not static. It is fluid, yet building upon principles.

Similar to domestic law. It evolves.

- Domestically as expression of people through their representatives.

- Internationally through the States in the family through implementation.

What is created is a sense of grounded principles that merely identify the terrain. Politics is part of it. The General Assembly is still debating a code of State responsibility, a testament to implementation of international law.

Knowing int. law and precedents allows us to appreciate, even though we don't know where it is going tomorrow, where Hawaii is now. International law is constantly developing.

For example, intervention - is violation of sovereignty. It was an act of war in 1893 - landing of U.S. troops. It took a subsequent political investigation to determine the implications, but the principles were previously laid - non-intervention.

Laws of Occupation, Hague Convention, 1899, in codifying, recognized these were old laws - that keeps Hawaii in the game as far as knowing the terrain; ex post facto, after the fact.

That's why we need to look into international law history and see that we fit in.

All this time we thought Hawaii was overthrown and the State extinguished. So do we pursue it as a stateless nation seeking recognition or as a State that is occupied and has protection of int. law?

These are two separate roads. We must understand the terms in order to negotiate a path.

Living Nation attempt to agree on history, allows for applying knowledge of the terrain of int. law to Hawaii's situation.

Nationality / citizenship.

There are levels of nationality in U.S. One can be a U.S. national of Samoa, but cannot vote unless reside in U.S.

England and Canada are different since parliament is the sole legislature, and UK is not broken into states.

In Hawaii, one legislative body. Civil code defines nationality of its nationals as "subjects".

Provisional Gov't, and Republic of Hawaii used the word citizen (for the first time in Hawaiian history).

Subject is from monarchical govt. Citizen, from republican form.

Immigrant laborers were another kind of nationality, yet their offspring acquired citizenship.

Inclusiveness or Exclusiveness?

How do we exclude those that were here as immigrants that cannot trace their descendance as a national without breaking the spirit of the inclusive laws that we espouse?

Expatriation - Repatriation?

If you are a descendant of a subject you can prove your Hawaiian nationality.

The Human Rights Declaration says you cannot take away a nationality.

From legal standpoint, the Census of 1890 can identify Hawaiian subjects, verified by Hawaiian govt.

One's nationality cannot be denied. Precedents show today that the citizenry of an occupied state constitute the citizenry that existed before the occupation.

To expatriate is to admit you are a part of U.S. citizenry. Under int. law, U.S. domestic law cannot be applied in a foreign State to make you an American citizen.

Boils down to: was the Hawaiian Kingdom extinguished or not? If it was, we would need to pursue (as some suggest) self-determination as a stateless people.

*One faction (group) chooses to give U.S. expatriation paperwork, even though they never were legally made Americans, to show or help the U.S. identify who the "Hawaiian citizens" are, in the "reality of today". This gives evidence of non-American.

Another method used to deny American citizenship, is the concept of fraud, One can opt out if mistakenly included; allegiances, taxes, vote, etc. Since 1893, when and where did we lose our citizenship status?

Occupational law and precedents measure the noncompliance of U.S.

In a prolonged occupation, the legal issues of the occupied State are allowed an elasticity in transitioning out of occupation to deal with the impact on the continuity of the legal order and how this affects its workings within the State.

Noncompliance to duty of occupants to administer the legal order of the occupied is commonly observed through - purported annexation, establishment

of puppet states or govts. Using such surrogate institutions they deny international responsibility.

Occupant's role as trustee over occupied sovereign state in prolonged noncompliant situations has shifted from lawful minimal governmental intervention, on a temporary basis, to broader policing. In the area of political thought, the emerging principle of self-determination has shifted the focus regarding beneficiaries of the trust (occupied population). Current attention has been paid more to the indigenous community than to the legal order of the ousted State. These trends have been promoted to prop up occupiers' claims of sovereignty however illegitimate.

Michael

Indian-Affairs, Testimony (Indian Affairs)

From: Scott Crawford [scott@aloha.net]
Sent: Monday, February 24, 2003 4:31 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Testimony on S344 - 2/25/03

Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, D.C. 20510

Hearing on S344
25th February, 2003

Senator Ben Nighthorse Campbell, Senator Inouye, Senator Akaka, and members of the committee,

As a United States citizen living in Hawaii, I would like to state my opposition to S344, the Bill for Federal Recognition of the Native Hawaiian people.

I believe that most who support this bill have good intentions regarding the welfare of Native Hawaiians, but I also have witnessed widespread opposition to this bill among grassroots Hawaiians which seems to have been ignored as the bill is continually pushed forward by a select group of individuals many of whom have vested interests in federal dollars.

I believe this bill would only lead to increased federal wardship and dependency, and that it is an attempt by the federal government to entice Hawaiians to finally give up their sovereignty, which public law 103-150 admits they have never relinquished (although only as a part of the politically defined body of Hawaiian nationals, who are not strictly indigenous/ethnic Hawaiian).

Based on the clear and irrefutable history which has been exposed regarding the unlawful occupation of Hawaii by the United States, it is clear that the proper venue to resolve the dispute over Hawaiian sovereignty is the State Department, not the Department of Interior.

Thank you for the opportunity to offer my testimony,

Scott Crawford
PO Box 645
Hana, HI 96713
808-248-8808

Indian-Affairs, Testimony (Indian Affairs)

From: gabrielle welford [greenwom@yahoo.com]
Sent: Sunday, February 23, 2003 4:55 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: welford@hawaii.edu
Subject: Testimony against Bill S344 "The Akaka

Senator Ben Nighthorse Campbell, Senator Inouye, Senator Akaka, members of the committee and invited guests, this testimony regarding S344 is submitted on behalf of myself and my family, both here and in the continental United States.

I request that this testimony be recorded into the record and read into the record at the Committee Hearing on S344, 25th February, 2003.

I have been paying attention for some time now to the arguments pro and con the so-called Akaka Bill or Bill for Federal Recognition of the Native Hawaiian people. I come to the conclusion that this bill is not in the interests of the people of Hawai'i, neither the Kanaka Maoli nor other people who live here. The Alaska Native Claims Settlement Act deprived the native people of Alaska of control over their land, resources, and ways of life. The Akaka Bill is worse. The Hawaiian people are being asked to put themselves completely in the hands of an unknown group of people who have a very bad history when it comes to overseeing the welfare of those under its control, namely the Department of the Interior and the B.I.A., or what will be the Hawaiian equivalent.

The only reasons I can see for U.S. Congress to pass this bill is so that it can ensure and tighten its control over the territory it is occupying in Hawai'i.

Unlike Native American tribes on the continent, Hawai'i was an internationally recognized independent nation when it was taken illegally, first by sugar planters with the help of the U.S. Marines, and then by the U.S. government via a domestic bill. Domestic bills, of course, can never take the place of treaties, as you all know. The Apology Bill covers this illegal act.

There is growing unity among the Native Hawaiian people in their desire to re-establish the nation that was submerged by U.S. occupation. They have received international recognition of the ongoing existence of the Hawaiian nation, including recognition from the U.N. Security Council and the International Peace Court at the Hague.

I ask that you reject Bill S344 as a callous attempt to undermine what is really in the interests of both Native Hawaiians and settlers like myself in these islands: a return to control by the people who originate here in the form of recognition of their status as an independent nation with still-existing treaties with over 90 nations, the U.S. among them.

I ask that you do not support this bill.

Sincerely,

Gabrielle Welford

3/4/03

Indian-Affairs, Testimony (Indian Affairs)

From: Sam Sallome [Ssallome@netzero.net]
Sent: Wednesday, February 26, 2003 10:05
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: Why the Akaka Bill Must Not be Passed

Why the Akaka Bill Must Not be Passed

by : Sam Sallome
10752 W Providence Rd
Richmond, VA 23236

Hawaii's Akaka Bill has again reared up its ugly head and I find it necessary to write to you once again. Not since Senator Inoye nearly managed to sneak it past the discerning and astute eyes of members of the US Senate, burying it deep with an armed forces appropriation bill has optimism been this high among Hawaii's separatists. Hawaii's newly elected Governor Lingle now has come under their influence and has testified before your office saying : "This bill is vital to the survival of the native Hawaiian people." Vital for survival?! Please! The state of Hawaii alone has over 160 race-based preference programs specifically for native Hawaiians. If anything, these people have been picking the pockets of hard working tax payers of the state of Hawaii for too long. Now with the state in fiscal crisis, they come to Washington where there are even deeper pockets to pick.

One major influence behind this bill is an apology passed by Congress for America's supposed role in overthrowing the Kingdom of Hawaii. This "apology resolution" was passed with no fact-finding investigation and no hearings for evidence to be presented as to what America's actual role was. The senators, however received assurance from Senator Dan Inouye on the Senate floor just before the vote was taken, that the resolution was merely a harmless apology. When Senator Slade Gorton, R-Wash., expressed concern about the resolution and asked Inouye about its intention, Inouye said: "I once again say that the suggestion that this resolution was the first step toward declaring independence or seceding from the United States is at best a very painful distortion of our intent. To suggest that we are attempting to restore the kingdom, Mr. President, I find it most difficult to find words to even respond to that. No, no, this is not seceding or independence. We fought for statehood long enough and we cherish it and we want to stay there. I can assure you, I do not wish to leave this place. So, Mr. President, I hope that our assurance would suffice. After all, we are the authors of this resolution, and that is not our intention. Gorton responded: "As I tried to convince my colleagues, this is a simple resolution of apology. It is a simple apology. This senator wants to sincerely thank the senior senator from Hawaii for that answer and accepts it as such. This senator believes the senator from Hawaii has said this resolution is unrelated to any kind of special treatment for native Hawaiians." That was then. This is now.

Today, you are hearing from supporters that passage of the Akaka Bill will set things right by among other things, establish the right of native Hawaiians to adopt a native Hawaiian government. Like the "apology resolution" this bill is leading somewhere not readily apparent to the trusting. Some proponents claim this bill will settle issues relate to property title, ceded-land claims and rights to natural resources as documents under which those issues were established were under American law. Can you imagine the future legal costs imposed upon non-native Hawaiian homeowners living in that state from a well financed race-based promoting legal entity? And many say the Akaka Bill is a first step toward eventual independence. Essentially land, power and greed are the motives behind proponents of this bill. And supporting them are good intentioned but naive people who believe this is just another civil rights movements fighting for equality. How mistaken they are. What is at issue here is not equality, but maintaining and expanding race based preferences.

Read a disturbing portion of a round table discussion as printed in the Honolulu Weekly:
http://www.honoluluweekly.com/archives/coverstory%20%202002/01-30-02%20Akaka/01-30-02%20Akaka.html
"As to how this bill will address broader concerns Hawaiians have regarding discussions about native claims to 1.8 million acres of ceded land, Cardus is emphatic. This bill explicitly has nothing to do with land settlements," he says. "The absence of settlement language, however, appears to signify the order in which things occur, not a lack of intent. It's true that S. 746 says that it isn't a settlement of any claims," says Isaacs. "But Sec. 8 paragraph B says this bill authorizes the U.S. to negotiate and enter into an agreement with the state of Hawaii and the Native Hawaiian governing entity regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use. The Akaka Bill itself embodies no land settlements, but clearly they are setting up the framework. It follows that if you agree to all of this, then you've opened up the door for part two.

What is step two? We don't have to worry about step two if we don't stupidly take step one. For more, simply click onto the URL and read for yourself. Do not pass the Akaka Bill.

KANAKA MAOLI TRIBUNAL KŌMIKE
3333 Ka'ohinani Drive • Honolulu, Hawai'i 96817 • Tel (808)595-6691 • Fax (808)595-0156

DATE: March 19, 2003

TO: Senator Ben Nighthorse Campbell, Chair
US Senate Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, DC 20510
PH (202) 224-2251, 3991, FX (202) 224-5429

FROM: Kekuni Blaisdell, Convenor
Kanaka Maoli Tribunal Kōmike
3333 Ka'ohinani Drive, Honolulu, HI 96817
PH (808) 595-6691, FX (808) 595-0156

SUBJECT: S. 344 Native Hawaiian Recognition Bill

Dear Senator Ben Nighthorse Campbell, Chair, and other Members of the US Senate Select Committee on Indian Affairs:

Aloha 'āina a me ka mahalo no kēia manawa kūpono e kākau 'ōlelo e pili ana i ka S. 344 Native Hawaiian Recognition Bill.

We Kānaka Maoli and non-Kānaka Maoli of the Kanaka Maoli Tribunal Kōmike, guided by our ancestors, reject the United States of America (US) Congress Native Hawaiian Recognition Bill (S. 344), introduced by US Senator Daniel K. Akaka February 11, 2003, for the following reasons:

1. The bill, represents the US colonizer since 1790 , **US armed invader since 1893, and US belligerent occupier since 1898.** A power that continues to dominate and exploit our peaceful, neutral and independent Kanaka Maoli people and nation in the 21st century.

S. 344, like its three predecessors since July 2000, **is the product of a continuing, top-down, anti-democratic process,** initiated and pushed by Senators Daniel Akaka and Daniel Inouye in Washington, DC. **These and other US officials cannot represent us Kānaka Maoli.** Thus, S. 344, as its antecedents, is a violation of our Kanaka Maoli inherent sovereignty and right to self-determination, under international law, US law, Kanaka Maoli law and Indigenous Cultural law.

2. S. 344 was not initiated by our separate, equal and distinct Kanaka Maoli people and nation. Currently our nation numbers a total of 401,162 Kānaka Maoli worldwide; 239, 655 Kānaka Maoli in Ka Pae'aina represent 21% of 1,211, 537 total multi-ethnic residents in our homeland. Our archipelago consists of 124 islands extending across 1,600 miles in the mid-Pacific, 2400 miles west of California. Our nation's historical uniqueness is here summarized:

(a) Our Kanaka Maoli ocean-faring ancestors founded our island nation in **pre-colonial time immemorial.**

(b) On December 29, 1842, we were formally recognized as the Hawaiian Kingdom of Kamehameha III by US President John Tyler, and on November 28,1843, by Queen Victoria of the United Kingdom (UK) and French King Louis Phillippe.

(c) In 1898, US began military occupation of our homeland while alleging US annexation of Hawai'i.

(d) On February 6, 1946, Hawai'i was inscribed by the United Nations (UN) General Assembly Resolution (GAR) 66, on the UN List of Non-Self-Governing Territories eligible for decolonization. However, we Kānaka Maoli were not informed of this action and the US's "sacred trust" to prepare our colonized Kanaka Maoli people for "self-government."

(e) On December 12, 1959, US misrepresented the fraudulent June 27, 1959 Hawai'i Statehood vote to the UN. UNGAR 1469 removed Hawai'i from the UN List of Non-Self-Governing Territories eligible for decolonization. Kānaka Maoli were **not** informed of this action and its significance.

(f) On October 24,1970, UNGAR 2625 stated that colonized peoples and territories "have a status separate and distinct from the administering State...(and) are entitled to seek and to receive support...until...they have exercised...their right to self-determination." Kānaka Maoli were not informed of this action and its importance.

(g) In 1988, a US Justice Department memorandum concluded that the 1898 US Congress Newlands Joint Annexation Resolution was an inadequate legal basis for the US to acquire Hawai'i as a territory.

(h) August 12-21, 1993, the Peoples' Kanaka Maoli Tribunal found the US guilty of nine charges against the Kanaka Maoli people and nation from 1790 to 1993. Recommended appropriate remedies included: transfer of land and authority, but the US has failed to comply.

(i) November 23, 1993, US Congress Apology Resolution (PL103-150) acknowledged the US role in the conspiracy, armed invasion, overthrow of the monarchy and recognition of the usurping haole oligarchy Provisional Government; and suppression of Kanaka Maoli inherent sovereignty and right to self-determination, in violation of treaties and international law.

3. S. 344 erroneously labels us Kānaka "Native Hawaiians," defined as "indigenous, native people of the US." This status our Queen Lilli'uokalani and 38,269 (96%) of our 40,000 ancestors overwhelmingly rejected in the 1897 Kū'ē Anti-US Annexation Petitions. We, Kānaka Maoli, likewise, resoundly reject this subordinate, foreign status today.

4. **S. 344's "aboriginal, indigenous, native" label for us Kānaka Maoli wrongfully implies that we are "Native Americans," like American Indians and Alaska Natives.** Thereby, under the "commerce clause," Sec. 8 (3), of the US Constitution, we would become an "Indian tribe." Under US American Indian Control Law, we would be a "domestic, dependent nation...wards," with the US Department of Interior our "guardian" and "trustee," subject to the "plenary power of the US Congress."

5. **S. 344 defines a process for creation of a puppet "Native Hawaiian governing entity," but not** requiring approval by a majority of our Kanaka Maoli people. Instead, we Kānaka would be ruled by the US Secretary of the Interior, a bureaucracy of a "US Office for Native Hawaiian Relations," a "Native Hawaiian Interagency Coordinating Group" and ultimately, the US Congress. Such puppetry is pre-determination, not self-determination. We would suffer the fraud and genocide now directed by the US Department of Interior against American Indians.

6. **The Hawaiians and non-Kānaka who journeyed to Washington, DC, in February 2003, to speak for S. 344 do not represent our Kanaka Maoli people.** They represent colonial government and private agencies that are dependent on the US colonial and military occupation established in 1898 and, thus, maintain our colonized status.

7. **S. 344 does not address any of the US violations cited in the 1993 Kanaka Maoli Tribunal and acknowledged in the 1993 US Apology Resolution (PL 103-150).**

8. It has become clear that **S. 344 is intended to finalize Kānaka Maoli permanent relinquishment of our national claims to our homeland Ka Pae'āina** and to assure permanent US nuclear/military and economic Pacific and global hegemony.

9. **S 344 does not protect us Kānaka Maoli from US, State of Hawai'i , county and/or private agencies,** in spite of frequent assurances.

10. **US Congress members from Hawai'i have repeatedly displayed their anti-Kanaka self-determination position, by rejecting our calls for public hearings on the four Akaka Bills in our homeland in all Kanaka Maoli communities on all of our main islands.**

These anti-democratic US officials have also denied a referendum by our Kānaka Maoli prior to votes on these bills in the US Congress.

No laila, we Kanaka Maoli nationals in our homeland of Ka Pae'āina, submit that in accord with the August 1993 Kanaka Maoli Tribunal recommendations invoking US law, Kanaka Maoli law, Indigenous Cultural law and International law:

(a) US State Department officials begin negotiations with representatives of our Kanaka Maoli nation, as separate and distinct equals;

To: Senator Ben Nighthorse Campbell, Senator Inouye, Senator Akaka, members of the committee and invited guests,

From: `Ekolu Wale No: Kunani Nihipali, Ho'oipokalaena'auao Nakea Pa, and Pu'uhonua Kanahele

Re: Senate Bill 344, to be heard on February 25, 2003 before the Senate Committee on Indian Affairs

Date: 2/24/03

Please enter our statement into the record.

On Monday, February 24, 2003 at 12 Noon we held a press conference in front of the Queen Lili'uokalani's Statute behind the I'olani Palace to discuss the proposed Akaka Bill scheduled to be heard at 9:30 a.m. on Tuesday, 2/25/03 by the U.S. Senate in Washington D.C. and how it does not represent the best interests of the Kanaka Maoli/Na `Oiwi O Hawai'i/Hawaiian people. A second media conference will be held on Tuesday, February 25, 2003 to follow-up after the hearing in DC is held. Although there were only a handful of representatives, those who were present represent the views of "thousands" for we are the sum of our kupuna.

These Press Conferences are being held by the following organizations: Ka Pakaukau, Nuclear Free and Independent Pacific (NFIP – Hawai'i), `Ekolu Wale No, Ho'okipa Network, Ahupua'a Action Alliance, Not of America, and Na Maka O Ka 'Aina.

This press conference has been endorsed by Louis "Buzzy" Agard, Kekuni Blaisdell, Soli Niheu, Kaleikoa Ka'eo, Nani Rogers, Puhipau, Jackie Kaho'okele Burke, Sparky Rodrigues, Leandra Wai, Kahu Ron Fujiyoshi, Jim Albertini, Richard Pomaikai Kinney, Lela Hubbard, Lynette Cruz, Ulf Darhe, Eric Po'ohina, Jackie ____, Maggie _____, Kahu Kaleo Patterson, A. Keala Kelly, Gwen Burrows, David Inciong (Tane), David Ingham, Keoni Agard, Pu'uhonua Kanahele, Ho'oipokalaena'auao Nakea Pa, and Kunani Nihipali.

Although there were only a handful of representatives, those who were present represent the views of "thousands" for we are the sum of our kupuna.

We believe the Bill is an attempt to further cover up the illegal occupation of Hawai'i and to extinguish all Native Hawaiian claims.

The Akaka Bill will place Hawaiians under the plenary power of the U.S. Congress, where we will have to answer to the Department of Interior (DOI). The DOI is presently being sued for defrauding the Native Americans of hundreds of billions of dollars.

The Akaka Bill seeks to establish a puppet Hawaiian Governing Entity to represent the interests of the Hawaiian people.

The bill is an offer. The bill cannot tell Hawaiians what to do as it is internal U.S. law. The bill acknowledges Hawaiians right to reorganize our government and offers negotiations and diplomatic recognition if Hawaiians agree to become wards of the federal government. Hawaiians have the opportunity to reject federal wardship and form a government that serves Hawaiian interests before all others, and use U.S. federal funding to do it.

There are no restrictions on the federal funding authorized in the bill to carry out the activity of reorganizing the Hawaiian Government. The DOI is well aware of this crack in their plan....but the crack has to be there in order to give the appearance that the acceptance of federal wardship was the will of the people through elected representatives. The bill does not require Hawaiians to take the bait, but it does acknowledge the right to reorganize our government. DOI Norton's interest in seeing what form the Hawaiian government will take before she will support the bill is intended to seal this crack.

One of our kupuna, Uncle Louie "Buzzy" Agard, who has been steadfast and consistent in his stance for Hawaiian Independence will be participating in this conference today and on his 80th birthday, February 25, 2003, shared these thoughts:

> Past improprieties are being swept aside to be forgotten. We are where we are because of past improprieties, negotiations and unilateral activities. It is difficult to have much faith in offers being made to Hawaiians at this time due to past oversights and omissions, even after commitments have been made to Hawaiians relative to their interests in their homeland. It appears that the drafts of the Akaka Bill S.B. 746 are being done largely by federal employees using federal interpretations. This happened in 1983 with the Native Hawaiian Study Commission report and resulted in the claims being denied for reparations and recognizing Hawaiian sovereignty, and which was the Hawaiian initiative to the pending legislation. I would suggest that Hawaiian documents and practices be utilized and advanced and not try to fit into designed U.S. law. This will avoid being preempted or denied under complex laws dealing with Indian tribes, which is where we seem to be headed with the documents being drafted. Just a few thoughts, Mahalo Buzzy

We, along with Uncle Buzzy, call for you to join us to Ku'e! Onipa'a! Ea!

E Iho Ana

Kapihe's Wanana (Prophecy)

E iho ana o luna;

Composed April 27, 2002 Mailed October 1st ,2002

To: Senator Chuck Hagel R-Nebraska
Foreign Relations Committee
U.S.Capitol Bldg. Washington, D.C.

From:David F.Wilson BA., G.G. ASCAP
Son of the American Revolution potential candidate
Box 223125
Princeville,Hi. 96722

RE: The Kingdom of Hawaii

Aloha Senator Hagel,

I want to introduce myself. I, David F. Wilson , am also referred to as Waveslide, my performing name. I grew up in the mid west during my formative years (of 10-16) in Kansas and Oklahoma. I attended school with rich boys from Texas. I have been to Omaha and saw the movie 'It's a Mad, Mad, Mad, Mad World'in that sophisticated city.

I saw the Wednesday, April 10, 2002 I assume, CSpan2 broadcast (yesterday) of your speech sponsored by the (John Hopkins University) Paul H. Nitze School of Advanced International Studies.

I may have answers to your (quote) desire to "Peer into the lens" and "understand what produces the rage" against the United States and its' international policy.

You stated during the question phase of that speech: " I would learn an awful lot if I could listen to you." You asked: " How do other people see us?" or the U.S.A.

Please allow me to assist you with a bit of the current historical perspective, my observations and some advice. Please keep an open mind as some of what I write is reactionary and may be thought of as rhetoric.

letter form David (Waveslide) Wilson to Sen. Hagel continued

The Arabic speaking peoples came to know a man named Ka Wai Puna Preshiem (sp?). It is alleged that after this eloquent speaking man and Hawaiian activist traveled to Lybia, there meeting with Moamar Kadafi, (1980?) he was executed by the CIA. I can't verify this, yet I have spoken to many who knew the man.

In 1993 public Law 103-150 was signed into law yet it missed the mark as far as justice is concerned both domestically and internationally. My book Why Surf Cuba illustrates why.

Here in Hawaii an H Bomb exploded in 1962 and weapons of mass destruction abound. On public access Television and educational T.V. too people of Aboriginal Hawaiian ancestry are able to argue successfully in open forums, disrupt county government meetings and with predictable regularity describe how the U.S. perpetrated tyranny and legal abuse has effected them. They show us how corrupt the U.S. has become in the world view.

These shows are multiplying ! Please come and observe for yourself at this cross roads of the world. Just a week before I saw you on Csapn2 an Afgani Taxi driver in Honolulu explained to me U.S policy similar to your description. I know you speak the truth.

What is so telling is how U. S. lawyers can lie in court or on legal documents and never be subjected to perjury / felony charges. As with president Clinton these lying lawyers are only disciplined with a mere slap on the hand ! How corrupt ! Adverse Possession and Quiet Title cases in Hawaii are questioned to be prolific and appointed U.S. Governors can be questioned to have aided and abetted in the illegal forcing of citizens of the Kingdom of Hawaii off their land to make way for American colonists. The Massey case is so well documented and repeatedly recalled here.

United States of America illegal acts in the Kingdom of Hawaii, become noticeably prevalent the more we investigate.

letter form David (Waveslide) Wilson to Sen. Hagel continued

You, my good sir, are humble enough to understand and read my book 'WHY SURF CUBA' to gain a biased perspective of an educated U.S. citizen who is trapped in a U.S. illegally held colony.

The conflict in the Middle East(Holy Land) may seem trivial in perspective to the possibilities should the controversy brewing in the Kingdom of Hawaii erupt. An arsenal of unfathomable dimensions exists in Hawaii. If the Al Qeada can use American assets against the United States consider well how familiar Aboriginal Hawaiians are with U.S. assets and weapons.

Be humble please, Senator(s), and consider my advice.

Capitulate and remove an illegal star from the field of blue on old Glory, the United States flag.

I understand that the United States is being sued in the Hague World Court by the King of Hawaii.

Diplomatically, please go beyond making the Aboriginal Hawaiians angry as you members of congress have accomplished with U.S. Public Law 103-150 . To say I'm sorry, I stole your car and then say but I'm going to keep that car anyway because I'm bigger than you is no way for a dignified and law abiding American to act. The analogy if fitting wouldn't you agree. The U.S. has a treaty that allows for U.S military presence in Hawaii so there is no excuse to steal a country.

Recognize the Kingdom of Hawaii diplomatically so we don't observe Amnesty International gaining the release of the King of Hawaii from prison on trumped up charges again. Let the citizens of the Kingdom of Hawaii deal with the past legal abuse and alleged fraud caused by American lawyers in Hawaii. Allow the Kingdom of Hawaii to become a military protectorate of the United States once again as prior to 1893. End the defacto State of Hawaii's existence with haste and due diligence.

letter form David (Waveslide) Wilson to Sen. Hagel continued

These words are not easy for me to write. I take a great risk personally communicating with you so candidly. These times do call for extreme frankness and courage.

Please in order to gain humility, on your next opportunity, visit the statue of King Kamehameha (never an American) housed in Statuary Hall in the Capitol building and note a warrior is depicted there who it is alleged killed American seamen aboard the ship The FAIR AMERICAN. Please say a prayer prior to visiting the statue of blessed Joseph Damien du Vester of Tremelo from the Kingdom of Belgium (never an American) . Father Damien never threatened people I'm told.

Did the United States Senate in 1894 threaten the world with its military should they interfere with the U,S, puppet government it placed illegally in the Kingdom of Hawaii ? Has a military occupation existed for 109 years in the Kingdom of Hawaii ? Others have answered affirmatively to these questions.

Please be respectful of the truth and emulate Father Damien, my good Senator , Chuck Hagel.

Lead the way to
justice in the world.

Ua Lele Ua Noa !

I remain respectfully yours,

David F. Wilson aka Waveslide

David F. Wilson also known as Waveslide

C.C. Chris Mathews

From : Candidate Waveslide (D.F. Wilson) **Attachment to Affidavit**

To : My constituents and the ample many who signed nomination papers for the office of United States of America Governor of the Hawai'ian Islands.

Thank you for your faith in me and for taking the time to express your concerns.

As I spent the time seeking your signatures for nomination I listened to you (the people of Hawai'i nei) tell me of your problems and bring up issues that are important to you. Soon thereafter I felt that I needed to take the time to reflect well on those issues. I have taken the time to research the items you good people brought up.

I listened to the Hauoles. Almost always their comments were concerns about money and how other Hauoles in the corporate world were stealing from them. Some Hauoles expressed trouble with the traffic or price of gas. After I listened to the Hauoles most who would sign my nomination papers refused to give me the required social security number because they worried about identity theft and the resultant banking theft.

I listened to the Hawai'ians and they educated me about United States of America history and their 109 years of protest.

I heard about U.S. Public Law 103-150 of 1993, an admission by the United States of America's Congress of most of the illegal acts with regards to invading and stealing a country called the Kingdom of Hawai'i. This law 103-150 was by no means an admission, I was informed, of all the illegal acts perpetrated against the citizens of the Kingdom of Hawai'i done by the United States of America that the Hawai'ians enumerated.

I learned about United States (McCarran) Immigration Law 414 of June 27th, 1952, adopted just days before my birth, an act that instantaneously and retroactively, I question, made anybody living in the Hawai'ian islands since 1898 an "Automatic American Citizen". It is interesting to read that the U.S., as out lined in an immediately following paragraph of Act 414, did not make "Automatic Americans" of the Danish residents of the Virgin Islands when those islands were absorbed by the U.S. of A. These people were given the option to keep their Kingdom of Hawai'i, oh excuse me, Kingdom of Denmark citizenship when the United States took over their islands.

Waveslide to constituen. continued 7/20/2002

A mandatory oath is required of candidates to support and defend both the U.S. and a State Constitution when submitting all the signatures, and accompanying social security numbers, of nomination to enter the race to be elected U. S. Governor here in the Hawai'i Islands.

I took the time to go to the Supreme Court Law Library and verify what the Hawai'ian people have told me. After having read the alleged State of Hawai'i Constitution with the Organic Act and other documents organized together that explain it's inception, documents found bound up in their own little volume on the Supreme Law Library shelf, I developed a conscientious objection to signing an oath to uphold and defend a document that was admittedly created by and preceded by acts leading up to its' creation that were done with , I question, deception, extortion, fraud, bad faith and illegal act after illegal act.

I just could not bring myself to sign, especially before a notary, that oath to uphold such an immoral and illegal document.

Because I could not find a U.S. treaty of Annexation as required by the U. S. Constitution to annex the Kingdom of Hawai'i to the United States of America and only found a Bill, which applies only to the confines of the existing United States, called the Joint Resolution to Annex, I question if United States of America Constitutional Law prohibits the absorption of the Hawai'ian Islands into the body of Territories or States in that Union.

Therefore I submit my Affidavit composed July 20th, 2002 to certain boards of election, ethics committees, Judicial bodies, and you, the people of Hawai'i nei who have in ample number and with good hope nominated me to be your Gubernatorial candidate.

My advise to you is to read the Feb. 15th, 1848 letter authored by President Abraham Lincoln to William H. Herndon with regards to the War with Mexico over Texas and think of the current assertion made that the U.S.A. needs Hawai'i as a military base to defend its self and to launch wars.

All the Best, signed

Waveslide D.F. Wilson

Waveslide (D.F.)Wilson July 20th, 2002

AFFIDAVIT

I, David F. Wilson, also known as Waveslide and a citizen of the United States of America who's ancestors served in the U.S. armed forces during the American Revolution, do attest and say, that after studying the Constitution of the United States of America as it is presently amended, certain of the U.S. Congressional Records, U.S. Public Acts and Laws pertaining to the Hawai'ian Islands, I cannot with good conscience sign an oath to support and defend a State Constitution that was promulgated on admittedly illegal acts perpetrated by the Unites States of America's military, agents and past government officials.

Any person who signs an oath to support and defend a Constitution of any State not located in the United States of America without first studying: the body of the U.S. Constitution; U.S. Public Law 103-150 of 1993; U. S. Immigration Act 414 of June 27th, 1952; The U. S. Congressional debates with regards to the Texas acquisition; and Both President Tyler's and Cleveland's addresses to the combined Congress (House and Senate) in the 1800s may be uninformed or has acted with out good faith and thorough consideration of such an act.

I do hereby withdraw my application to enter the election as a candidate for United States Governor of Hawai'i and now announce my candidacy for President of the United States of America effective immediately.

Further affiant sayeth not.

David F. Wilson — Date 07/00/02

David F. Wilson

NAME: DAVID FREDERICK WILSON

BIRTH DATE: JULY 7, 1952 | BIRTHPLACE: HAWAII, U.S.A.

HEIGHT: 6 FEET 1 INCHES | HAIR: MIXED BROWN | EYES: BLUE

WIFE: X X X | ISSUE DATE: OCT. 13, 1972

MINORS: X X X | EXPIRATION DATE: OCT. 13, 1977

CANCELLED NEW APPLICATION 12/30/72

SIGNATURE OF BEARER

IMPORTANT: THIS PASSPORT IS NOT VALID UNTIL SIGNED BY THE BEARER. PERSONS INCLUDED HEREIN MAY NOT USE THIS PASSPORT FOR TRAVEL UNLESS ACCOMPANIED BY THE BEARER.

TERRITORY OF HAWAII — DEPARTMENT OF HEALTH

CERTIFICATE OF LIVE BIRTH 52 08137

BIRTH NUMBER 151

1a. Child's First Name: DAVID | 1b. Middle Name: FREDERICK | 1c. Last Name: WILSON

2. Sex: Male | 3. Single, Twin, Triplet: Single | 4. If Twin, Triplet—Born 1st, 2nd, 3rd | 5a. Birth Date (Month Day Year): July 7, 1952 | 5b. Hour: 5:35

6a. Place of Birth, City or Town (If outside city or town limits write Rural and give judicial district): Honolulu | 6b. County: Honolulu

6c. Name of Hospital or Institution (If not in hospital or institution, give street address or location): St. Francis Hospital

7a. Residence of Mother, City or Town (If outside city or town limits write Rural and give judicial district): Lanikai-Koolaupoko | 7b. County: Honolulu | 7c. State: T. H.

7d. Street Address (If rural give location): 1576 Mokulua Drive, Lanikai, Oahu, T. H. | 7e. Mother's Mailing Address if Different From Usual Residence

8. Full Name of Father: Theodore Frederick Wilson | 9. Race of Father: Caucasian

10. Age of Father: 32 | 11. Birthplace, State or Foreign Country: Newark, New Jersey | 12a. Usual Occupation: Proprietor | 12b. Kind of Business or Industry: Chemical-Compan

13. Full Maiden Name of Mother: Rosemary Braunagel | 14. Race of Mother: Caucasian

15. Birthplace of Mother, State or Foreign Country: Wichita, Kansas | 16. Age of Mother: 32

I certify that the above stated information is true and correct to the best of my knowledge. | 17. Signature | 18. Date of Signature: 7-8-52

I hereby certify that this child was born alive on the date and hour stated above. | 19. Signature | 20. Date of Signature: 7-12-52

24. Date Accepted by Loc. Reg.: JUL 14 1952 | 22. Signature | 23. Date Accepted by Reg. Gen.: JUL 16 1952

DRIVER LICENSE

LICENSE	DATE OF BIRTH	CLASS
4791349	07-07-52	4
EXPIRES	CODE	ORIGINAL DATE
07-07-92	1 2	06-02-88
ISSUE DATE	HEIGHT	SEX
06-02-88	6 0	M

WILSON, DAVID FREDERICK
5150 SW BARNES RD APT D-20L
PORTLAND, OR 97225

"IF ELECTED

I will Surf

" Vote:

ΩαϖεΣλⓘδε

Waveslide

For Presidente

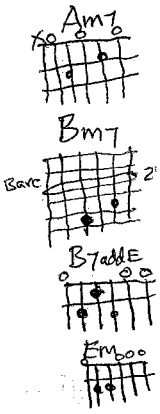
False Arrogant American Exaggeration

There are 50 voluntary States in the U.S.A.

FACT: The Kingdom of Hawai'i is an illegal U. S. Military Occupied Colony. American Citizens in Hawai'i are illegal Colonists who's courts in the Kingdom of Hawai'i act only under the color of the U.S.A. and who's magistrates and judges know that their actions are illegal under: the U.S. Constitutional Law; International Law: as well violating many Treaties...
EVIDENCE: U.S. Public Law 103-150;
President Cleveland's Dec. 1893 Address;
10/20/98 Amendment of 1898 not to annex Cuba;
No Treaty of Annexation Hawai'i to U.S...
only False Joint Resolution unconstitutional method.
Premise: *If YOU STEAL* someone's car and then apologize for stealing that car but still keep that car after the apology then *YOU ARE* all the more *A THEIF* *!!!*

DANCE 4X (2000)

© & ℗ Waveslide Publishing
ASCAP 0062029



Am7 Bm7 ~~add E~~
I'm learnin' a lesson from a heathen Queen Learnin' what it is
B7 add E Em
to be seen Struttiin' my stuff all over town, town, town, town

Am7 Bm7 ~~add E~~
Round and round and round we go Sitin' still we'll never know
B7 add E Em
What it is .... to be.... free, free, free, free

Am7 Bm7
Policy let it be damned Project on us an other plan
B7 add E Em
Let us be free, free, free, and dance, dance, dance, dance

(instrumental) two choud Progressions of Am7, Bm7, B7 add E, Em lead riffs as appropriate with feeling.

Am7 Bm7
All day long we work the fields So at night we do reveal
B7 add E Em
Our spirits flight in dance, dance, dance, dance

Am7 Bm7
Let the trumpet sound it's blare Eyes set deep in rum's warm stare
B7 add E Em
W atch..... as we dance, dance, dance, dance

This song refers to Her Majesty Liliuokalani's trip to Washington D.C. to protest the United States braking the treaty with the Kingdom of Hawai'i and her efforts to restore her nation during a time when the U.S. Senate in a resolution threatened the rest of the world with military action if they interfere with the American puppet government imposed and bolstered by the United States. The false joint resolution to annex method ended with ~~Cuba~~ Hawai'i 1898. Other nations are weary of the USA since the USA continues to hold the Kingdom of Hawai'i militarily occupied and colonized.

Anti annexationist U.S. Congressmen April 20, 1898 placed an ammendment on Presidents Appropriation Bill prohibiting the Annexation of Cuba when funding $50,000 to send U.S. troops to Cuba during it's revolution from Spain.

To : Ambassador Richard Holbrook (retired)
c/o New Yorker Magazine
13 Times Square Plaza
New York, N.Y. Composed September 28,2002

From: David F. Wilson aka Waveslide
Box 223125
Princeville, Hawaii 96722

RE: The Kingdom of Hawaii

Aloha Ambassador Holbrook,

I saw you on Cspan television during your hosting of the New Yorker Magazine discussion about Sadam Hussein and the country of Iraq unwisely created it was alledged by Sir Winston Churchill at a meeting in Cairo.

I live in a Sovereign Kingdom militarily occupied and colonized by the United States of America for 109 years and counting. During the 1970s and 1980s diplomats and articulate men, such as yourself, of Hawaiian ancestry sought assistance from Arab princes and leaders including Lybia's Kadafi amongst other middle eastern statesmen. They share a common bond recognized to be abuse and threats by America. The abuse of the Kingdom of Hawaii by the United States of America remains an example of the most egregious illegal acts conceivable, of treaty fraud, and U. S. commercial interests infecting a non U.S. nation. The environmental abuse by Americans in Hawaii and the 90% reliance of Hawaii on U.S. imports for survival are unprecedented failures that only the U.S. Government fails to demand be rectified. A Kingdom that once exported food to California and reprovisioned all manner of visiting ships now cannot feed the population there present.

I think that you will agree when you have read some of my discovery found in my enclosed unpublished book WHY SURF CUBA that the example set forth by the United States of America in the Kingdom of Hawaii of : Legal Corruption ; Economic Exploitation; Military Occupation and Colonization sets fear and distrust in the hearts of non-European peoples of color through out the world. Couple that example with the

Waveslide to Ambassador Holbrook 9/29/02 continued

pervasive white European racial discrimination by arrogant Americans who utilize and often waste raw materials and human resources extracted from peoples of color from U. S. dominated nations and we have a recipe for the destruction and harm of innocent American citizens and those non-Americans living amongst them be it on the continent of North America or any where else.

Hawaii is geographically separated from the United States homeland of North America as is the island of Cuba. One might contend that these two island nations exist as parallel universes on either side of the United States. The comparison of these two sovereign nations, the Kingdom of Hawaii and Cuba, and their treatment by the the United States both militarily and politically is instructive to the world. The lesson posed to the world's leaders and populations outside U.S. economic and military domination has almost totally been lost to citizens of the United States incubated in their " America the Beautiful".

Hawaiian nationals, Kanaka Maoli, openly exert their claims that American Courts have no jurisdiction over them and decisions made by planning commissions, county councils and the like are illegal by the very same international law which incidentally the infant United States recognized in the Declaration of Independence and now abuses. A scant few televised public meetings here in Hawaii nei occur without a diatribe by these Hawaiian Nationals and an account of illegal acts by the United States of America in the Kingdom of Hawaii.

Bolstered by the McCarran Walther Immigration Act 414 of June 1952 the false history taught to citizens of the Kingdom of Hawaii includes a retroactive granting of U.S. citizenship reverting back to 1898 forced upon people of Hawaiian ancestry yet this act deprives them of the courtesy extended to the citizens of the Kingdom of Denmark living in the Virgin Islands. This occurs in the same document drafted fifty (50) years ago that can be questioned to be the first step and a ploy by the United States to perpetrate fraud in a plebiscite designed by U.S. Government officals to fool the United Nations. Article ~~53~~ 73 of the U.N. Charter mandates that the U.S. decolonize Hawaii.

Waveslide to Ambassador Holbrook 9/28/02 continued

The reason Rome fell, many people of religious faith may tell you, could be that the Romans crucified or rather murdered an innocent man named Jesus of Nazareth in a military occupied Land.

So too the American Lawyers and Newspapermen, in their quest to steal the Kingdom of Hawaii for The United States of America and after U.S. Marines were landed in January of 1893, (these Americans) killed an innocent Hawaiian man. The crime especially the murder has gone untried and unpunished.

Would you not agree it is unwise to underestimate the reaction to the murder of an innocent. Though the tale of the Nazarene took hundreds of years to form sizable groups of believers to muster a crusade force, in the information age there are few educated people on earth who do not ~~not~~ have access to information about Hawaii. The Oil rich often visit Hawaii, be they Texans or Arabs.

Hawaiian aboriginal people have infiltrated the continental borders of the United States of America and its military ranks including postings to remote bases.. Like a Trojan Horse the citizens of the Kingdom of Hawaii in U.S. uniform move about freely undetected and are trained to use the complete U.S. arsenal. These citizens of the Sovereign Kingdom of Hawaii reeducated by popular songs, the video sphere, and the World Wide Web may be denied the opportunity to live in their Paradise ancestral home displaced by arrogant wealthy American of European ancestry or wealthy non-U.S. immigrants who it can be logically contended hold false title to Hawaiian Lands and who colonize the Kingdom of Hawaii during this the United States of America's over 100 plus year occupation of Hawaii.

These aboriginal Hawaiians have watched as the water that nourished their self subsistance agriculture has been and is currently being diverted from streams and dumped needlessly in order to maintain falsely claimed rights by American Economic Tyrants and Corporate Lawyers that this diverted water gallonage may be allocated to future housing projects. These new housing projects may further exclude aboriginal Hawaiians.

Waveslide to Ambassador Holbrook 9/28/02 continued

The people so bound by religious fervor and political anger known as Al Qaeda have an example of United States : tyranny; violation of international law; and genocide not to mention often repeated false promises to Hawaiian people of color . These Islamic peoples hold forth a clear picture of this abuse in their bosom when they kill American people or plan to do so

Does the United States of America remain: foolish enough: greedy enough: morally corrupt enough to exist as an International outlaw with regards to the Kingdom of Hawaii and still hope to protect its self under the banner of a just and upright democracy ?

The Kingdom of Hawaii has been a staging ground for war waged unscrupulously by the United States of America beginning with the initial occupation of the Kingdom of Hawaii, the invasion of the Philippines 1898, the Korea War 1950 , and notably the Vietnam War.

October 2001 the King of Hawaii served the President and members of both houses of the U.S. Congress with notice of a suit filed against the United States of America at the World Court in the Netherlands. August 2002 Hawaiian Kanaka Maoli lowered the United States flag in a ceremony at Admiral Thomas square in Honolulu. This notable park commemorates a British relinquishing of military occupation by its Navy in 1848 and a return of power to the Constitutional Monarchy of the Kingdom of Hawaii. This precedent the United States advisably could well follow. The pseudo U. S. state of Hawaii usurps its motto from this event yet the English translation hypothecated is in error.

I hope you will read the enclosed unpublished book WHY SURF CUBA and not fail to share your response with me and others. I am including a copy of this letter to two other gentleman, Senator Chuck Hagel and Judge Clifford Nakea. Judge Nakea shared with me today, after he officiated at a wedding of a D.C. lawyer employed by a prominent Washington firm, that he was studying the Hawaiian language and that he had not heard of the McCarran Walther Act 414 of 1952.

Waveslide to Ambassador Holbrook 9/28/02 continued

I wish to conclude with two questions for you to answer.

1. How many Arab followers of Wahabi Islam are observing the treatment of citizens of the Kingdom of Hawaii at the hands of the United States of America's colonists and military enforced puppet government ?

2. Does an entity and sham U.S. state, 2,200 miles from the North American continent, illegal as measured by both international and U.S. domestic Constitutional law, and officially acknowledged as a breech of good faith and International treaties by U.S. Public Law 103-150 have any hope to endure ?

Daily protest by Hawaiians and equal encroachment of their Sovereignty by US. colonists and the U.S. puppet government is an affront to the sensibilities of this American citizen who's family fought in the American revolution.

I remain disgusted by this American tyranny.

Ua Lele Ua Noa !

Sincerely.

Waveslide

Waveslide

To: Luci Prinz Editorial Staff
The Atlantic Monthly
77 N. Washington St.
Boston, Mass. 02114 Phone : (617) 854-7772

From: David F. Wilson aka Waveslide
Box 223125
Princeville,Hawaii 96722

April 27, 2002

Dear Luci,

I wrote you April 02 of this year and want to thank you again for your assistance in the matter we discussed,RE: "The Man Without a Country".

I found the subject matter published in a Heritage Press, limited additions club, Inc. volume. As I told you the package, with my material, I sent them was returned from New York. I noticed one other item they published that I want to quote from verbatim in the epilogue I am writing. What I want to use is a letter from 'The Literary Works of Abraham Lincoln' that the Heritage press notes has a copyright from 1942.

I've looked on the web and asked the librarian for help but can not get an address for the Heritage Press that is current and the one in 'The Man With out a Country' that I used was sent back undeliverable as I had no floor number or suite number for the Madison Ave. address I found to be printed in the 60s. (?)

Located on page 54 of the works of A.Lincoln is a letter to William H. Herndon the President wrote Feb. 15, 1848. The letter deals with the violation of the Constitution with regards to the Joint Resolution to annex or false annexation of Texas and the war with Mexico that resulted. If you had a chance to read my 'Associated Writings to Accompany Surf Cuba' you would realize how important Abraham Lincoln's words on the subject are and how it applies to the illegal overthrow and current colonizing of the U.S. military occupied Kingdom of Hawaii that is before the World Court currently.

Please check out www . free hawaii . org on the net to understand the suit filed by the King of Hawaii, His Highness Akahi Nui at the Hague in Holland. Note that the conflict with England in 1812-14 and the war of 1848- 1902 with Mexico was settled by the Treaty of Ghent's provision for the World Court of Arbitration now the Hague in Holland.

Can you help me with an address or contact regarding the A.Lincoln copy right matter and or the Heritage Press?

Thank you

Waveslide

Hawaii's Royal History
Wong & Carey Hogarth Press

perty in Hawaii.

The Queen and her advisors had become frightened when they learned of the secret meeting of the Annexation Club. Two days later they issued a statement that the constitution would not be changed. But Liliuokalani's change of heart came too late. The revolution was under way.

That same afternoon Captain G. C. Wiltse of the United States warship *Boston* landed a force of sailors and marines. The United States' Minister to Hawaii, and a friend of the Committee of Safety, had asked for the troops to protect American lives and property. It was well known that Stevens favored annexation.

When the cabinet saw the American troops, they met with Governor A. S. Cleghorn. He then protested to Stevens that the landing of troops was a violation of international law. He promised to formally protest to the American government.

The Deposing of Liliuokalani

On Tuesday afternoon the Committee asked a Mr. Soper to be the commander-in-chief of the revolutionary forces. He wasn't in favor of overthrowing the Queen and instead agreed with Sanford Dole that it would be unwise, because Great Britain and the United States had an agreement to protect Hawaii. Dole thought that the Queen should be asked to give up her throne in favor of Princess Kaiulani, her heir. This idea was not acted on favorably. Later Soper agreed to become the commander and Dole agreed to head the new government.

Then the Committee members walked from the armory to the government office building, *Aliiolani Hale,* and assembled on the steps. On the way over a policeman had tried to stop one of their ammunition wagons and he was shot. It was the only shot fired in the revolution. ← false this was murder!

Queen Liliuokalani still had loyal troops that outnumbered the Committee forces two to one. She wasn't sure what to do but she wanted to avoid bloodshed. It was fairly certain that the troops from the *Boston* would back the Committee. She believed that the United States, when it learned the truth, would restore her to power. — Troops were landed and gun used.

In the offices of the *Aliiolani Hale,* Henry A. Cooper quietly read a proclamation that ended the monarchy and set up a pro-

false

Friend of the

United States of America

Appellate Court Brief

Referring to the December 5th,2002 ruling & opinion by Judge Sabrina McKenna

By: David F. Wilson aka Waveslide

U.S. citizen Judge, Sabrina McKenna, residing in Honolulu and acting presumably under the color of a State judicial magistrate of the United States of America set forth a ruling December 5th, 2002 claiming that the current U.S puppet government located in the Kingdom of Hawaii (U.S. military occupied for over 109 years) has sovereign immunity and (il) legal authority (not) to sell the crown lands belonging to the Kingdom of Hawaii.

This ARROGANT action by an American citizen acting as a pseudo-American Judicial member flies in the face of world opinion and U.S. recognized International Treaty Laws amongst other Laws including a violation of the U.S. Constitution. Sabrina McKenna's display of arrogance in her ruling condemns U.S. citizens to further acts of terrorism against them which are now common place since this U. S. behavior persists.

Judge Sabrina McKenna, of the non-State, in the Kingdom of Hawaii, chooses a lawless opinion in her ruling thereby ignoring the History of the United States of America and the International Law upon which that "Nation under God" was founded as recognized by the Declaration of Independence July 4th, 1776. Perhaps Sabrina has not read: that declaration; The Constitution of the United States; the 1814 Treaty of Ghent; the Geneva Conventions provisions regarding observing the laws of a military occupied land; President Cleveland's address to the joint chambers of Congress December 1893; The Cuba appropriations military funding Bill of April 20th, 1898 stating that the U.S. is restricted from annexing Cuba; the Universal Postal Convention and the Postal Treaty between the U.S. and the Kingdom of Hawaii signed by President Grant May 5th, 1870; the Treaty of Amity and Commerce between the Kingdom of Hawaii and the U.S. ratified January 20th, 1887; the United Nations Charter and 1952 decolonization mandate specific to Hawaii; the McCarran-Walther Immigration Act 414 of June 27, 1952 with regards to conflicting rights given to the citizens of Denmark in the Virgin islands and the citizens of the Kingdom of Hawaii in the Hawaiian archipelago; and the salient parts of U.S. Public Law 103-150 an admission of illegal acts on the part of the United States of America with regard to the Kingdom of Hawaii.

If Judge Sabrina McKenna were to travel to the nude beach that bares her name on Maui by removing her robes of office at the water's edge this is what she may symbolically reveal.

Twice the United States has admitted publicly in the U.S. Congress of Washington D.C. that U.S. officials, U.S. military, and U.S. citizens supported by the United States Naval Marine Corp soldiers have violated International law in the ceasing of the Kingdom of Hawaii. Initially when he came into office President Cleveland withdrew the Lorin Thurston proposed Annexation Bill of the Kingdom of Hawaii, ordered the investigation of the facts (Blont Report), and addressed both Chambers of Congress simultaneously December 1893 stating that the United States had violated International Law when it invaded militarily the Kingdom of Hawaii. Major players in that illegal action, proceeded by the murder of an aboriginal Hawaiian policeman(has a trial for his murder ever occurred), were the principles of the law firm of Ashford and Wriston amongst other U.S. attorneys. Later, in what may be the most stupid action and display of arrogance since the false Texas annexing and a wild warning to the rest of the world by the Resolution of the US. Senate of 1894 that the U.S. would take it as a threat upon it's own shores if any nation should interfere with it's puppet government that the U.S. imposed in Hawaii, the U.S. passed Public Law 103-150 in 1993. This the apology that the U.S. broke International Law and it's Treaty of Amity with Hawaii's Kingdom came about during the 100th anniversary of that illegal occupation. Angered countless citizens of the Kingdom of Hawaii saw this false apology as the U.S. falling short of recognizing Native Hawaiian sovereignty. Vacating the false government the U.S. continues to impose in the Kingdom of Hawaii is the best choice.

Furthermore, the U.S. by maintaining a puppet government supported by military force and threat in the Kingdom of Hawaii began the illegal action by first spying in the Hawaiian Kingdom as evidenced by the 1878 report of army officers Alexander and Schofield . Their report was offered at the time of Lorin Thurston's first annexation treaty attempt in 1893 and that report evidence the military strategic importance of the Kingdom of Hawaii. President Cleveland rejected and withdrew that annexation treaty and supporting spy documents penned by U.S. military men then posing as tourists intent on ceasing the Kingdom of Hawaii. Certain U.S. officials and newspapermen had preplanned and published a military takeover scenario for the islands we know as the Kingdom of Hawaii even though the U.S. had several treaty obligations not to carry out these imperialistic plots in the Hawaiian Kingdom. U.S. Minister Stevens plotted the overthrow of Hawaii's Monarchy publishing his intended views in his newspaper in Maine 1890.

After several failed attempts to adhere to Constitutional provisions with regards to annexing new territories to the United States, a 2/3 majority vote being necessary along with bilateral agreement, those U.S. citizens posing as Hawaiian nationals proposing to unilaterally annex the Kingdom of Hawaii to the U.S. were willing to use an illegal method proposed by President Tyler. The illegal joint resolution to annex Bill that caused the U.S. / Mexico war over Texas had been chosen for a false annexation of the Kingdom of Hawaii to the United States. The case of the false annexation of Texas in 1846 caused the resignation in protest by Secretary of State Daniel Webster, as it was a violation of the U.S. Treaty with Spain regarding West Florida (whereby the U.S. agreed not to annex Texas) and a violation of the Constitution with regards to annexation. After many wars with Mexico the issue was ultimately settled in the World Court (the Hague in Holland) in 1902. Several thousands of people died as a result of the actions of lawless Americans and their stupid Congressmen using, **a false Bill, not a Treaty** as required by the Constitution of the United States, a false Bill or joint resolution to Annex unilaterally Mexican territory. This Mexican Territory of Texas was protected by solemn treaty agreements. Note a Bill applies only to existent U.S territory not to territory outside the United States such as Mexico, Cuba, the Philippines, or the Kingdom of Hawaii at the time the joint resolutions were introduced.

This recognition, of the failure to annex by joint resolution any new territory unilaterally an act illegal by U.S. Constitutional standards, was displayed by the U.S. Legislature April 20th, 1898 when an amendment was attached to a Military spending or Appropriations Bill that forbade the annexation of Cuba. Congress wanted to fund the sending of U.S. troops to protect American citizen's during the revolution by Cuban islanders against Spain. The international out cry over the many failed U.S. attempts to pass a treaty to annex the U.S military occupied Kingdom of Hawaii and the protest petitions of thousands of Kingdom of Hawaii citizens outlined by Joseph Nawahi and submitted to the Government of the United States of America in Washington D.C. by his wife, along with Queen Liliuokalani's protests and diplomatic missions to Washington in 1895 had made a difference in light of the U.S./ Texas illegal joint resolution to annex blunder. The signatures on documents penned by Americans, who also submitted Annexation documents as U.S citizens to the U.S. Congress, were coerced under threat of death during the false Republic and U.S military occupation of Hawaii's Kingdom.

American officials chose to go to war with Spain, although unprovoked, in 1898 and the U.S. Congress violated both International Law and U.S. Constitutional Law when July 7th, 1898 U.S. Senators and Representatives utilized that illegal joint resolution to annex Bill method to hoodwink U.S. : citizens; administrators; judiciary officers; and U.S. military troops that the they could (illegally) declare the Kingdom of Hawaii, a drop off station when sending U.S. Army personnel to fight in the illegally annexed Philippines Islands, (not) a territory of the United States. This was war time and Congress passed an illegal Bill not a Treaty. Many years later in 1947 after the United Nations Charter was organized in San Francisco , California the U.N. began to form it's mandates that the United States be ordered to decolonize the Philippines, the Kingdom of Hawaii, and other colonized lands occupied by the United States of America.

Like any lie or illegal Bill, many illegal decisions must be made or lies must be subsequently told to keep the first lie or illegal deed misrepresented as fact. Hawaii is not part of the United States both by United States of America Constitutional Law nor by International Law.

For over 109 years the U.S. Military Occupation and ecological devastation of a peaceful prolifically fertile food producing Hawaiian Island Archipelago has been viewed by the rest the nations and peoples of the world as the worst case example of when U.S. Citizens enter a non U.S. country, settle, and begin their commercial and industrial activity. The illegal actions of U.S. citizens in Texas, going against their word that they would live under Mexican law and the U.S. Government as well violating it's treaty about not annexing Texas, a province of Mexico, set the president of repeated illegal acts the other Nations of the World now expect from the United States of America. Hawaii has been rendered, at the hands of U.S. citizens acting under the color of the U.S. Courts in the Kingdom of Hawaii, (especially the island of Oahu) to be an ecological disaster zone of pollution and urban blight that now can not feed the population there residing. The false U.S. Hawaiian appointed Governor Poindexter and Dillingham family collusion with regards to stealing property from Hawaiians in Waikiki is a similar example to that of Sabrina McKenna's illegal ruling the False State or U.S. Puppet Government in Hawaii may sell Kingdom of Hawaii Crown lands with sovereign immunity. Americans have created pollution and diversions of natural water routes thereby posing major problems in the present Kingdom of Hawaii.

Americans are notorious for causing problems with the agricultural waters in the lands that they occupy. The diverting of streams and the building of tunnels with cheep imported labor have lead to the end of what was one of the riches agricultural lands of the world. The Hawaiian islands at the hands of U.S. citizens and their illegal United States military imposed occupation puppet governments have systematically destroyed the agricultural base with it's extensive irrigation stream and awai system and mullet producing estuaries. In order to make way for tourism and U.S. colonization of the Hawaiian Kingdom the American and foreign immigrants have engaged in the efforts to disenfranchise the aboriginal Hawaiian population, steal their lands, fill in their fish ponds, and pollute their bays.

The first efforts of American lawyers to disenfranchise the Hawaiians was the destruction of the Konohiki system and Ahapua'a during the American advisory period to the Hawaiian monarchy and Constitutional Monarchy tenures prior to the (overthrow of 1893)current U.S. military occupation of the Kingdom of Hawaii. The subsequent U.S. imposed governments of occupation have devastated the Hawaiian peoples rights to their Aina or land and water rights.

Courts operating under the color of the United States of America in the Kingdom of Hawaii have forced the ban of the use of the Hawaiian language in official capacity. The publishing of legal notices to Adverse Possession and Quiet Title cases in English, a foreign tongue to the Hawaiian majority population, is the method of conduct that these American officers of the illegal U.S. courts in Hawaii's Kingdom assumed. Dillingham's company Hawaiian Dredging cleared the Alawai canal on Oahu and the illegal U.S. government ordered the residents of Waikiki to raise their land elevation, i.e. fill in their taro patches (loi) or loose the land that was not already confiscated for the canal dredging. Hawaii can no longer feed it's people by its self.

The Hawaiian Homes Act an illegal Bill of the United States Congress has never been implemented as proposed and remains an example of American treachery and deception aimed at peoples of color. Many editorials and other accounts of blatant white American racism aimed at aboriginal Hawaiians can be found in the newspapers and books published in the U.S occupied Kingdom of Hawaii.

I doubt that Sabrina McKenna is aware of these evidensory facts especially the false joint resolution to annex issue prior to making her ruling and the forming of her , I question misinformed, opinion of December 5th, 2002. The state of Hawaii, an illegal government, may not grant equitable title in the sale of land for which it posses no title.

The Declaration of Independence July 4th 1776 recognizes International Law for American court's conduct and consideration of fact. Treaties are the main instrument of International Law and admissible as evidence in any court be it an authentic Court under the Jurisdiction of the United States of America or one operating under the color of the United States of America in an Occupied country under the military control of the United States of America. The 1814 Treaty of Ghent between the United States and England recognizes the World Court as having jurisdiction over Islands who's sovereignty is ensured by British treaty protection. The United States is currently being sued in the World Court by the internationally recognized Kingdom of Hawaii a protectorate of the Kingdom of England. [The gentleman known as His Majesty Akahi Nui, a grand nephew of her Royal Highness Liliuokalani was released from prision on Maui by the efforts of Amnesty International. This King of Hawaii, recognized by the governments of over 60 Nations was held in jail by agents of the United States of America on trumped up charges that he had trespassed while visiting family graves in the Hawaiian Kingdom.] A subsequent Treaty the U.S. government signed in the year _____ with Great Britain ensured that the U.S would protect the sovereignty of the Kingdom of Hawaii. The Geneva Convention of which the United States of America is a signature Nation stipulates that the occupying country will administer the Laws of the conquered nation until the military activity by the victor/aggressor is terminated as in, Japan, Germany, Italy, and the Kingdom of Hawaii.

Judge Sabrina McKenna is a member of that False U.S. Government illegally supported by invading armed forces of the United States stationed in Hawaii. Her decisions are only a further example of arrogance and the rule of thuggery that perplexes honorable and law abiding U.S. citizens living without visas in the Kingdom of Hawaii. Any ruling by Sabrina McKenna that upholds United States Constitutional Law with regards to the Hawaiian Islands would be unexpected. Is Sabrina McKenna upholding U.S. crime ?

She, Sabrina McKenna, can be questioned to be part of the long list of U.S. citizens who have told many lies since the Joint Resolution to annex Bill or False Treaty of July 07. 1898 with regards to the Kingdom of Hawaii. I predict many arrogant U.S. citizens will repeat any untruth Sabrina McKenna wishes to publish. I for one do not agree with this ruling and her opinion and advise her to recant. The decision she makes about the Crown Lands of the Kingdom of Hawaii puts my life and other humble U.S. citizens residing in Hawaii (without visas for this Kingdom) at risk for violent Terrorist attacks. I have often experienced such threats. For Terrorists are those people who when all judicial efforts fail to bring about the Rule of Law (International and Domestic), in their occupied homeland, turn to violence.

Through one of the well known efforts of President Nixon in 1973 the Secretary of the Interior is forever enjoined from selling the land of sovereign aboriginal native Americans. Indian Reservation Treaty lands how do they differ from Hawaiian Crown lands if the United States Government can claim those lands are protected from sale or transfer ? Native Hawaiians though not recognized as Native Americans can look to the **Trail of Tears** incident and **know** that even if the U.S. Supreme Court upholds their right of sovereign ownership to the Crown Lands (not ceded lands) like during President Andrew Jackson's tenure our current U.S. Executive and Legislative branches are unlikely to enforce a ruling in favor of aboriginal peoples of color.

There never has been a true treaty to annex the Kingdom of Hawaii to the United States. None exists. All other government documents written since July 7th, 1898 by citizens of the United States of America, including the Constitution of the State of Hawaii are illegal documents a judged by me who's eldest male family members have been officers in the Military of the United States of America since the Revolutionary War until my birth in the U.S. Occupied Kingdom of Hawaii 1952. All my esteemed American ancestors vowed to uphold the Constitution of the United States of America and defend that Constitution as amended against foes both foreign and domestic. I question if Sabrina McKenna is a foe of the Constitution of the United States of America and/or ignorant of said document and it's contents.

So says I, David F. Wilson aka Waveslide

To : Bill Meheula Esq. , Office of Hawaiian Affairs, and Kanaka Maoli
970 N. Kalaheo Ave. Suite A300 Kailua, Oahu 96734

From: David F. Wilson aka Waveslide December 16th, 2002
Box 22 3125 Princeville, Hi. 96722

Aloha Kakou,

I have family members who are of Hawaiian ancestry yet I am only of Caucasian ancestry. I was a classmate of Mr. Meheula at New Spring School (Punahou) and have listened to his lecture at the Lihue library about his case seeking to prevent the sale of Hawaiian Crown and Government Lands. I agree with him on the issues. I send to you my manao and comments about Sabrina McKenna's recent decision and opinion as reported in the Honolulu Star Bulletin Newspaper. Enclosed is a Friend of the court brief I have prepared that I assume is not in standard form yet acts as my protest.

I understand that an appeal of this ruling by American citizen Sabrina McKenna will be initiated by you the plaintiffs. I hope that you will continue to pursue any and all appeals until they are successful and / or reach the highest court possible. What may be worthwhile considering for you are any motions or requests that any American citizen who resides in the Hawaiian Islands recues themselves as Judge from making a decision on this issue and have the issue decided in a venue by someone other than a resident of the Hawaiian Islands. A Judge, that would render a decision that the Crown and government Lands (ceded lands) be banned from sale by the American defacto government in the Hawaiian Islands, would set a precedent that would surely put an end to the defacto (not dejure) U.S. military imposed government in Hawaii nei.

The defacto U.S. Government in Hawaii and it's courts must honor the law of the Constitution of the United States of America as the Supreme law when deciding issues in the captured territory unless the rule of Marshal Law is established and maintained. The question I have asked of Judge Ronda Loo of Maui in open court when she told me there were no Lawyers that spoke Hawaiian in Hawaii remains unanswered by her. Is the Writ of Habeas Corpus suspended in the Hawaiian islands (and does it remain so)? Can a American citizen like me be judged by a court under color of the United States in Hawaii. I say no and present you with my reasons.

David F. Wilson

For Mr. Art Bowen
U.S. History instructor Punahou School

Many Hawai'ian ali'i

Am. Stud. / S.S.
9/13/00

WHAT MAKES THE ILLEGAL U.S. COLONIAL GOVERNMENT IN THE KINGDOM OF HAWAII DIFFERENT FROM THOSE U.S. STATES THAT EXIST LEGALLY UNDER THE U.S. CONSTITUTION?

1) *What similarities and differences stand out most among the various legal U.S. States from the illegally imposed U.S. military occupation of the Kingdom of Hawaii and the illegal U.S. Colonial government found there.?*

There are many similarities between all five English colonies now existing as States in North America that we discussed (Virginia, Maryland, The Carolinas, Massachusetts, and Rhode Island). The first and possibly the largest similarity is the closely-knit family unit shared by the people in each colony. It seemed as if the nuclear families in each colony were extremely tight. They needed to stick together in order to survive. The daughters would help the mom around the house while the sons, when of adequate age, would assist their fathers with hunting, farming, labor, etc. Secondly, each colony was founded by people of the Christian faith, but they all supported freedom of religion (it would have been hypocritical of them to flee Europe because of religious persecution then solely tolerate their religion in America). They almost all produced significant amounts of tobacco, though some more than others. For the most part (at least at first), education was limited to literacy, religion, and daily skills. Most colonies were run by educated people and each colony tried to be as democratic as possible. Each was faithful to the Kingdom of England.

Some differences include the emphasis on education in the further developed Massachusetts colony. Many prestigious colleges developed in Massachusetts before

the other colonies. Education was regarded highly in Rhode Island as well. Art developed further in the Carolinas while art in the rest of the colonies was restricted mostly to religious themes. As opposed to the rest of the colonies, The main crop of the Carolinas was rice, not tobacco. For the most part, the differences outweigh the similarities when comparing the Kingdom of Hawaii to the colonies of Britian now known as the United States.

2) *Do you notice similarities/differences based on geography between the legal and illegal US States? (U.S. North America vs. Kingdom of Hawaii)*

An obvious difference between the northern and southern colonies is the amount of slaves imported to run the plantations. In fact, the south was known for it's larger and more numerous plantations. The north had its share of Black (and sometimes Indian) slaves, but the south had a significantly larger number of slaves than the north. At one point, 80% of the population in the Carolinas consisted of Blacks. As I briefly mentioned above, Rhode Island and Massachusetts (the northern colonies) promoted education much more than the southern colonies. While the southern colonies concentrated on agriculture, the northern colonies became more urbanized. They developed more formal education systems and complex trade routes before the southern colonies.

In the illegal colony of Hawaii the labor pool of imported indentured workers was told that they were U.S. citizens by the McCarran-Walther Act of 1952. What is unusual is that on the same page of this illegal document that illegally makes all Hawaiian citizens of the Kingdom of Hawaii U.S. citizens (Act 414) also allows the people of the Virgin Islands the option to keep their Kingdom of Denmark citizenship. Members of the United Nations question if U.S. immigration law Act 414 was purposefully implemented to circumvent the mandate of UN Article 73 that the super powers decolorize their illegally held colonies. The United States of America Eisenhower administration wished to maintain the military presence of U.S. troops in Hawaii and questionable methods such as staging a fraudulent plebiscite only offering U.S. territorial or Statehood status in the Kingdom of Hawaii with US colonists and military voters was used. After all in the documents sent to the UN with regards to

the mandate to decolorize the Kingdom of Hawaii the US false plebiscite only offered

What efforts were made by U.S. American politicians to subvert the U.S. Constitution with regards to annexation treaties during the term of Zachary Taylor? (Joint resolution to annex, War with Mexico over Texas, Adams-Onis treaty with Spain over Texas and East Florida {Alabama Mississippi}, treaty of Gent 1814 establishing the World Court at The Hague where the War with Mexico was ended through arbitration 1912.)

President Taylor who had led U.S. troops in the War with Mexico was unable to get the 2/3 majority votes for a true treaty of annexation of Texas. In a speech before the joint Senate and House of Representatives President Taylor proposed a joint resolution to annex method needing only ½ majority to pass circumventing the rules of the US Constitution with regards to annexing new territory. This is a unilateral method and is illegal according to International Law.

Many years later President Grover Cleveland called a meeting of the joined House and Senate to inform the Congress that the United States had violated International Law in the year 1893 with regards to the US military invasion of the Kingdom of Hawaii. The President had withdrawn a treaty of annexation for Hawaii submitted by Lorin Thurston of Punahou School and member of the false government of the illegal republic of Americans in Hawaii. The U.S. Senate in 1894 enacted a resolution to threaten the rest of the world giving notice that they would consider any action taken against the illegal US imposed puppet government in Hawaii as a threat against the United States of America.

Is the US government guilty of duplicity in its policy difference between the Kingdom of Hawaii and Cuba in April 20, 1898 amendment prohibiting annexation of Cuba?

The amendment to the appropriations Bill of April 20, 1898 with regards to the

prohibition of US annexation of Cuba.

The England and the United States of America signed a treaty after the government of the Kingdom of Hawai'i was reinstated by Admiral Thomas of the Royal British Navy. Essentially the treaty was a continuation of the treaty of Ghent of 1814 whereby the British and Americans took measures to insure that they would not have further hostilities over territory both wished to claim. With the Kingdom of Hawaii the treaty represents an agreement that the United States of America and England will insure that the Kingdom of Hawai'i will endure and that neither of these two signatory nations will incvade and control the Kingdom of Hawai'i.

Did the United States of America grant independence to the U.S. territory of the Phillipines after the mandate of the United Nations that the U.S. decolonize it's possesions and at the same time did the U.S. refuse to allow the ctizens of the Kingdom of Hawai'i the same rights as the Philipinos?

What methods of deception did the Government of the United States of America use in Imigration legislation Public Law 414 of June 27, 1952 to extinguish claims of citizenship by the ***kanaka maoli*** *of the Kingdom of Hawai'i and yet still alow the citizens of Denmark to keep their Danish citizenship as residents of the Virgin Island U.S. territory ?*

What efforts were made by the American citizens, posing as the U.S. imposed puppet government known as the Republic of Hawaii, to destroy the human rights of the ***kanaka maoli*** *and the use of the Hawaiian language in the courts, schools, and newspaper legal notices in the Kingdom of Hawai'i that still exist today ?*

What deception was used by the United States of America during the Eisenhower administration and the congress it controlled to generate an influx of American colonists to the Kingdom of Hawai'i and / or make the many foreign peoples brought in to provide labor in the American owned plantations in Hawai'i to believe that they were no loger denied U.S. citizenship ?

How has the effort of a citizen of the Kingdom of Hawai'i named Kawaipuna who's mettings with prominent Arab heads of state in the 1970's and 1980's effected

Islamic fundamentalists views of the Uniterd States of America as lawless colonialists ?

Does the government of the United States of America still "speak with forked tongue" or missrepresent the facts of treaties it holds with aboriginal peoples when it wishes to exploit the ecconomic and military potential of a nation it invades and occupies ?

What is the meaning of kanaka maoli and does the Hawaiian Homes Commission estabklished by the United States of America have a rexord of corruption and racism

Bitmap Image

with it's blood quantum restrictions that promote racial genocide ?

What domestic laws, Treaties, and U.N. sanctions has the United States violated and continues to violate with reguards to the Kingdom of Hawai'i ?

Why are you as an illegal U.S. colonist not allowed to Surf Cuba ?

False Arrogant American Exaggeration

There are 50 voluntary States in the U.S.A.

FACT: The Kingdom of Hawai'i is an illegal U. S. Military Occupied Colony. American Citizens in Hawai'i are illegal Colonists who's courts in the Kingdom of Hawai'i act only under the color of the U.S.A. and who's magistrates and judges know that their actions are illegal under: the U.S. Constitutional Law; International Law: as well violating many Treaties...
EVIDENCE: U.S. Public Law 103-150;
President Cleveland's Dec. 1893 Address;
10/20/98 Amendment of 1898 not to annex Cuba;
No Treaty of Annexation Hawai'i to U.S...
only False Joint Resolution unconstitutional method.
Premise: *If YOU STEAL* someone's car and then apologize for stealing that car but still keep that car after the apology then *YOU ARE* all the more *A THEIF* *!!!*

EXCERT from the SOON to
Be
published
Book of fiction

The Hawai'ian Navy Resurgent

& Why Surf Cuba ?

The contents of the book The Hawaiian Navy Resurgent remains fictictious. Should the Americans continue to remain arrogant and lawless toward the government and Kanaka Maoli citizens of the Kingdom of Hawai'i this senario may never come to pass. For although Hawai'ian Kanaka Maoli are angry at the continued arrogance of the United States of America, Hawai'i is the land of Aloha. This is not a primer for terroist activity nor a warning to Lawless Americans or their government of what may happen if the U.S. failes to recognize the Kingdom of Hawai'i after such a long history of U.S. occupation and colonizing of Hawai'i. Any references to history or blatant out burst of retoric, interspersed in this fiction the reader is compeled to verify the truth of the matter for themselves. This work of literature requires the reader to think and ask should the government of the United States of America twice admit it is in violation of International Law and omit to see that the USA is in violation of it's own domestic law,the United States Constitution,while refusing to recognize the Government of the Kingdom of Hawaii.

Chapter one Pu nalu'u , The Big Island

Kainoa, stirred from his slumber, rises from the camp

cot in his tent. He hears the loud ringing of the bell attached to his fishingpole planted in the sand. Little indications inform him members of his family hear the bell as well. The youngest children remain motionless yet the older boys russel their sleeping bags and emerge from the tent slowly following his leadership. Be he their father or be he their Uncle, Kainoa commands the respect that a six foot seven inch man weighing three hundred and forty five pounds deserves.

Kainoa removes the clanging bell from the fishing rod and sets it gently in the sand. Lovingly the young boys draw near him as he begins to reel in the line made taught by the creature struggling for freedom hooked to the other end. That frantic struggle for freedom Kainoa knows well. These children standing in the sand reflect the imerging rays of mornings first light glimmering against their eyes intently struggling to focus. With effort they gaze in trance like stares of the not fully awake. Heavy lidded eyes glance between the fishing line emerging from the sea and the reel that gives a clicking testimony to the struggle. The force of a massive and yet gentle hand churning clockwise works diligently againgst the creature's pull.

The sound of the water surging against the ili ili stones of black regular form produces a patern that syncopates with the clicking of the drag mechanism of the reel. Both sounds are measured and regular. The ancient Hawai'ians prized the ili ili from Punalu'u for their Hula castanets. A section of the black sand beach bears the name Koloa . Refered to as the "birth pebbles of Koloa" these ili ili were believed to reproduce themselves, the smooth nonporous ones being male, the porous ones female. The regular syncronized sounds end abrupty as the reel screems loudly.

Kainoa passes the fishing pole to one of the larger young gentlemen on the beach beside him, pausing long enough to be asured that the youngster has a firm grip and can bear the force delivered. Now running his hand down the mono filiment clear line, Kainoa lifts his wide bare feet deliberately across the sand to the waters edge. The reef at Punalu'u remains more of a testament to the lava flows that formed her than to the coral that may grow in abundance elsewhere. A black dense lava blanket made smooth by the wash of waves glistens irridecent green with seaweed at low tide. Kainoa walks with trepidation as he slips forward. Awkward resumptions of balance and the occasional position many ballet dancers may recognize as the begining of a grand movement play forth in the morning light.

Water reaches Kainoa's knees yet his hand glides steadily surrounding the fishing line held secure at the shore. He nears the lines emergence from the waters. Now resembling a submerged bull rider in a rodeo he lifts the line above his baseball capped head. He dives under and the cap floats away.

The flippers flutter and the carpace emerges gripped by Kainoa's massive hands. A Honu, or green sea turtle, displayed tail first struggled to remain in the water. Blessed with a kapu or ban in recent years against their hunting, these Honu have always been repected and preserved by the Hawai'ian Kanaka Maoli at remote Punalu'u. Turtles seem to have been especially resergent here at the birth place of Henry Opukaha'ia and one has swallowed Kainoa's bait.

Tossing the turtle under his arm Kainoa flings the line ahead of him as he painstakingly trudges toward the shore. His

charge with the fishing pole winds up the slack line as the bold Hawai'ian nears the tip of the rod. The turtle continues to move it's flippers even now as it is planted in the sand. The children gather to sit on it's back or stroke it with reverence.

Uncle Dario approaches. He looks out of his seaspray clouded glasses at the creature on the sand. Arresting his step beside the youth who towers over him he removes his bifocals and cleans the lenses on his shirt. Rubbing near his waist in a circular motion then holding the lenses up to the light, Dario replaces the glasses on his nose. Never one to speak much amoungst strangers, he has learned to smile, wink, and nod approvingly as his major form of social interaction.

Dario had once been the leader of a failed Coup hoping to overtake the government of the Sechele Islands. He found sanctuary and ananimity in the vicinity of South Point a location where he could build a rock house for next to nothing and quitely escape plots originating in Africa directed towards him. The rock house would likely be impenatrable to bullets he reasoned and who would seek him out in Na'alehu ?

Kainoa looks up at the intruder Dario. Dario smiles and nods. The turtle slows it's flipper motions in a surrender complete. With feet dashing about the course sand a child arrives beside Kainoa and hands him a pair of needle nose plyers. Gratefully Kainao accepts the plyers and places his other hand near the neck of the trutle. Before he can steady the turtle's head it is drawn inward hidden, except for a small glimmer of the beak and emerging fishing leader. Head retracted into the shell the turtle,anxious and fearful,waits. Kainoa hands the plyers back to the child who brought them. Dario gained Kainoa's attention in

his quiet way.

Dario, unchariticly especially in a crowd, talks. " Can I speak with you for a moment ?" he asks. "Aye, Hiki no." Kainoa replies. " He aha kou makemake ?" "Kainao, what I have to say to you I must use English even though if I could use Italian that would be better." "My Hawai'ian is much too slow and I don't have the vocabulary necessary to give you the details." "A'ole pilikia, you can use English, but come let's move away from the children." "We don't want to set a bad example."

The two men of such contrasting porportions slowly make thair way toward the tent. The wind that was so calm stirs with the sunrise and graying clouds apear more distinctly overhead in the brightening light. Dario turns the shoulder of Kainoa as the larger man stupes to sit on the beach. "May I sit, Dario ?" "This is urgent." "Why don't you sit too, Noho maka'ī"says Kainoa. Dario remains standing facing the cliff backdrop and directly in front of seated Kainoa. "If you knew what I do, you would not be so relaxed." "Do you think the honu will die or that the children will not be able to get the fishook from it's mouth ? " " No, I trust them and they are old enough to get the job done." , Dario replies. "What I must tell you is important and needs swift action and a decision on your part." "It is ironic that this message is delivered here at the birth place of Opukaha'ia for he was the reason given by the missionary Thurston family, that later over threw our Kingdom's government, for their arrival in the Islands." " I know", answered Kainoa, "they said they came to save Opukaha'ia's people and actually the family was greedy and were oportunistic racist pseudo-Christians." "Any way" Dario interjected,"the problems we have been having with the

powerplants has been solved and then we'll are ready to launch the prototype at Moloa'a." "Once we get your approval that is." "How soon can you get there ?" Kainoa scratches his head and asks. "Are those the engines for the unmanned canoe or the malolo flying canoe ?"

Dario shakes his head from side to side. "Kainoa, we got the original drawings for the Savio-Marchetti X10 flying boat a double hulled catamaran with a wing and boom mounted epinage, I mean tail peice, rudders and elevator." "That's the one." "Remember you approved the modifications and now we got a great powerplant option." "Kainoa you must see it and make the decision." "Tell me more." responds Kainoa.

"You'll see." "Just come to Kaua'i, Kainoa." "Dario, any time we hurry without preparation we doom our selves to failure, so go slow and fill me in on some of the details." Dario removes his eyeglasses and begins his lens cleaning ritual. "Well the Italian sea planes were too big and had been fitted with two twelve cylinder engines as pusher and puller propeller in line power plants and we liked the configuration." " No asymetric thrust if one engine failed, yes." "That was the old design, Dario. "Yes, so now we reduced the size of the boat planes and have made them out of composites and foam for the most part." "Dario, these Malolo catamarans don't weigh as much as the Italian design sea planes." counters Kainoa. "Yes, they are sleak, modern looking craft made to fly in ground effects to save fuel."

"Are you hungry ?" Kainoa askes. "Listen, Kainoa, our German friend found a great way to power the Malolo with an engine from the Fiesler F-103 pulse jet flying bomb of World War

Two fame." " The damned Americans called it the V-1." "The Germans lanched these things against London and the jet used lowgrade gasoline or octane as fuel."

"Have we got one to test, Dario ?" "No, that's why we need you at Moloa'a." answeres Dario." "We need your approval before we can get the money released to build one." "We have assembled a video of the pulse jet in flight and have some illustrations and cutaway drawings of the mechanicals but no engineering drawings." Frowning Kainoa asks,"How much will it cost to build one ?"

"I can't answer all your questions." "We need to go to Moloa'a and meet with the team." Dario explains. Kainoa pauses then agrees. "Let me tell my ohana and we'll head out right away."

Chapter Two Black Banners on Flag Poles

Kiki drapes the long black streamer out behind him on the garage floor and rolls it up like a tight tube. When he comes to

the wide edge of the triangle he measures off fifty eight inches and sinks the hot end of the soldering iron into the polyester and nylon black sail cloth. The hole widens as he twists the glowing red hot end of the iron into the black cloth. He tests the gromet to insure the brass fitting will slip in snugly. Pounding the mandrel with a hammer the gromet flattens against the retaining washer and finds it's finished form. Now Kiki repeats the step and sets the second gromet in the banner.

The black triangular field with sprayed white lettering reads **Surf Cuba**. Four Hundred and Fifty such banners will be distributed for the flag switching. Kiki struggles to complete his quota. "How many U.S. flags fly illegally over the Kingdom of Hawai'i ?", Kiki wonders. "We'll soon change that." he mutters out loud.

Young Kanaka Maoli with courage and determination have been educated about the History of the United States illegal military occupation of the Kingdom of Hawai'i and specifically how the American Congress failed to ever pass a true treaty of annexation for Hawai'i to the U.S. In the two attemps at an annexation treaty that have been brought to the U.S. Congress the first is withdrawn by President Cleaveland and the second never recieves the two-thirds majority required by the Constitution to pass.

The arrogant American Congressmen months after granting Cuba a reprieve from annexation and total U.S. military occupation in their ammendment of April 20th , 1898 to President McKinley's $50,000.00 appropriations bill, this same legislative body later failed to protect the ever protesting Hawai'ans demand that the U.S. not annex them. A joint

resolution or false treaty of annexation proposed by President Tyler with regards to Texas becomes a method greedy Americans propose to annex Hawai'ian lands. A third attempt to annex The Kingdom of Hawai'i to the Territory of the United States by a method Congressman Abraham Lincoln states is illegal on Constitutional grounds and Secretary of State Daniel Webster resigns over is adopted by unscruplous members of the U.S. Congress. They pass a Bill restricted to only the confinds of the United States and not a treaty thereby reducing the number of votes by a fraction of the total needed for a treaty to pass. In times of War the U.S. judiciary may not render decisions that the U.S. policy makers will not uphold. The Injustice remains and the lies of the Americans are repeated or new lies are told to keep the original lie alive.

Hawai'i has never been annexed as a Territory of the United States of America and to say otherwise is a lie. Arogant or misinformed American citizens read revisionist and false Hawai'ian History published by such persons as the son-in-law of appointed U.S. governor Porteus. Gavan Daws may not have ever researched the U.S. Congressional record with regards to the Kingdom of Hawai'i. The Blont Report and Cleveland's address of December 1893 to the combined bodies of Congress Gavin Daws never mentions nor the violation of International law which is documented by those records. I question if Gavan Daws was paid to write a blatantly false history about a false revolution. Anyone who calls a U.S. military occupation a revolution is a lier.

During this the ongoing illegal U.S. military occupation of the Kingdom of Hawai'i ethnic Hawai'ians have been murdered by white European American citizens without

punishment for their crimes, stolen the citizen's of Hawai'i's Kingdom's land, and subjected those indigenous people to cultural and ethnic genocide. The first act of the U.S.puppet government of 1893 imposed by U.S. military force in Hawai'i's Kingdom was to deny the vast majority of the population of the Hawaiian achipeligo the use of their indegenous language in the courts, legislature, and schools. American racism and blood quauntum schemes were used to divide the citizen's of Hawai'i by race.

Educted Hawai'ians prepare to replace all the American flags flying in the Hawaiian islands. A precedent was established by U.S. governor John Waihe'e when for three days in mid January, 1993 he ordered that no U.S. flag fly on Government Buildings in Hawai'i.

The Unites States gave the island and emerging nation of Cuba the right to be free of the Yoke of American illegal annexation yet tricked it's own American people into believing it had annexed the Kingdom of Hawai'i. The Hawaiian Island Kingdom remains geographically discontiguous from North America and separated from the U.S. government by virtue of the retrictions imposed by the United States Constitution. Even though their President gave evidence of a breach of Law by the U.S. against the Kingdom of Hawai'i, the United States Senate threatened the rest of the world in 1894 that they would consider any act of intervention against the U.S. imposed puppet government in the Kingdom of Hawai'i as an act of war against the United States its self. American armed forces and U.S. militia put down any force against the illegal U.S.puppet government in the Kingdom of Hawai'i with ease.

American citizens threatened citizens of the Kingdom of Hawai'i with death in order to extract signatures on documents of surrender. These were dispicable acts by American Lawyers and newspapermen who often expressed racist views and polocies toward the brown skinned vast majority polynesian residents . The first thing these American citizens did after ceasing controll in the Kingdom of Hawai'i with aid of a U.S. military occupation is insist that the United States annex Hawai'i as had been preagreed with the Harrison administration that had just been elected. A premeditated U.S. military occupation and unilateral decision to annex a nonviolent Kingdom was revealed and President Cleveland who was elected to a second term documented the injustice. Any American who perpetuates lies about the Kingdom of Hawai'i as a U.S. Territory or State is misinformmed and needs to be ~~eductae~~ EDUCATED with the truth.

Shortly after the United Nations formed, it ordered that the U.S. decolonize the Kingdom of Hawai'i at the end of World War Two. The U. S Congress passed an illegal Imigration Law Act 414 of June 27th, 1952 that retroactively forced U.S. citizenship on citizens of Hawai'is Kingdom back as far as 1898. In the same page of that Bill 414 the U.S. allowed citizens living in the Virgin islands to keep their Danish citizenship. This was the method chosen by the Texan President Eisenhower to extinguish the United Nations recognition of the Kingdom of Hawai'i. The Philipino citizens were much more fortunate. The Philipine islands were no longer a territory or colony of the United States of America even though theses islands along with the Kingdom of Hawai'i were prizes of expansion during the American war directed against Spain trumped up over Cuba independence.

Why was Cuba spared annexation to the United States and the Kingdom of Hawai'i forced to remain illegally in the control of the United States Armed forces and U.S. puppet governments ?

How is it that Americans can Surf Hawai'i yet may not SURF CUBA ?

Are four hundred and fifty like minded citizen's of the Kingdom of Hawai'i prepare to walk up in broad daylight ~~and~~ as Governor Waihe'e did, and remove the Stars and Stripes (the U.S. flag) flying on flagpoles in the Hawai'ian Islands ? The Americans along with others will be reminded that the island nation of Cuba was treated differently than the Kingdom of Hawai'i by Americans.

AND please note:

Cuba is a restricted destination to Americans citizens but not to citizens of the Kingdom of Hawai'i.

Does Kiki prepares the black triangular banners to replace U.S. flags in the Kingdom of Hawai'i ?

Chapter Three :
Those Aren't Christmas Decorations

Author's note: American citizens of the United States

Chapter Seven: Title Insurance

"The Kingdom of Hawai'i never declared war on the United States, so you guys got to pay." "Furthermore it is no act of God that we got to give up our home." Mr. Thornton screamed. "Look I'm sure you folks are frustrated that you couldn't get a visa to stay in Hawaii', but as far as we are concerned this is a minor setback and you, Mr. and Mrs.Thornton need to address the issue with the U.S. Embassy in Honolulu." said the title insurance manager. "Our office in Honolulu is still operating and we have the best lawyers addressing the matter." "What was the address of your home and the T.M.K. ?" he asks. "You don't understand, our property was quiet titled by American lawyers from a Hawai'ian family and they brought in a bulldozer and flattened it." "All the adverse possesion / quiet title legal work happened in the American courts not the Kingdom of Hawai'i courts." "We want to collect on our title insurance." "You guys should have known better and advised us of the case before the World Court that was ongoin when we paid you for this insurance." Mr. Thornton yelled excitedly. "Please, relax , we here in the office in California are not aware of the legal issues in Hawai'i." "I'll get you a form to fill out and you can make a claim."
"We just built the house two years ago and you guys had to know about all the appology bill 103-150 and Clevelands address." "There was bound to be violence against American property sometime." " How were we suppose to know that the Hawai'ians were talking to the Muslim leaders since the 1970's."

Chapter Eight: $orry no Rent a Cars

Chapter Nine: Embargo

"I propose the U.S. Senate introduce embargo legislation against the Kingdom of Hawai'i, Fred" " Don't be rediculous, Ernie." "That didn't solve any problems we had with Cuba. " "It just created more." "Any how there isn't enough food grown in Hawai'i to feed all the Americans remaining there." "At one time the islands produced enough food to export." "Even exported food to California." "The American sugar planters and developers destoyed the Hawai'ian irrigation system and most of the major fish ponds." "The Hawai'ian fishery and food production capacity suffed an unbelievable blow at the hands of the Americans, Fred." " Who but the Hawai'ians themselves are interested in reversing the Realestate upward spiral and ecological nightmare the greedy Americans brought to their home ?" "What will happen to the Cubans in the Kingdom of Hawai'i now that the U.S. is forced by the International community to allow Hawai'i to revive it's Kingdom's Government ?"

EXCERPT FROM the soon to
be published
Book of fiction

Chapter Ten : OCCUPATION OF PUNAHOU SCHOOL

For hours the children and young adults enrolled at the venerated academy esstablished by American citizens of the calvinist faith watched as brown skinned people poured en mass into their friendly campus. The sea of aboriginals clothed themselves in Kihei, toga like garments draped across one shoulder, and some wore garlands and head bands of flowers. These people chanted in loud even tones that resonated with rich vocalizations. Some pounded drum like gourds and some paused to blow flutes using their noses alone to create the scarry sounds. As the crouds of Native peoples gathered in the educational bastian of white caucasian creation a murmer grew amoungst the students. They questioned amoungst themselves if these people were trespassers. They wondered if the guards of Samoan, Japanese, and Portugese ancestory would expell or deny entry to the those brownskinned people marching in increasingly large numbers into the compound of school buildings and sports fields. They could hardly believe that the entire space seemed to be filling with Hawaiian activists and their children, hundreds of them. Those wo spoke gathered at the school president's house.

The hawaiian History that they, the students of Punahou school, had been taught they knew was false and had eminated from the offices that previous white American students of their school had produced with wanton deception. They were aware that the current school president is of Hawaiian ancestory. Had

he not been a member of the ROTC program and like they had he not pledged allegience to the Kingdom of Hawaii ? Oh excuse me, the United States of Occupiers oh excuse me, American military imposed illegal government . Why are so many people occupying peaceful Punahou school ?

"Oh well, at least we students can now logically escape, justifiably get our surfboards out, and go surf."

continue

and

READ WHY SURF CUBA

for a historic perspective.

thanks for you effort to understand

WavesTide

The Associated Writings

to accompany the musical

Surf Cuba

By Waveslide (co author of the musical Surf Cuba)

Contents:

Forward to the musical Surf Cuba

Prologue to the mini book Why Surf Cuba ?

Mini Book WHY SURF CUBA ?

All selections written by Waveslide

The musical Surf Cuba is copyright registered with the Library of Congress Washington, D.C. U.S.A. 2001

The subject matter is political !

All opinions and views expressed in this publication are those of the author, Waveslide, and any errors of syntax, grammar, or spelling are his alone.

The mini book Why Surf Cuba refers to an article by E. E. Hale titled 'The Man Without a Country' that appeared in the December 1863 issue of The Atlantic Monthly Magazine. When I phoned the magazine's editor in Boston I was told that the article is now in the public domain.

Forward to : Surf Cuba the comedy and political musical

Cuba, an island nation, can be seen as the opposite and negative photo image or parallel universe to the island archipelago Kingdom of Hawaii. Cuba, located on the opposite side of the North American Continent from the Kingdom of Hawaii, is not a pseudo possession of the United States of America yet the U. S. maintains a military base there. The U.S. invasion of the Kingdom of Hawaii had great implications and significance to the rest of the nations of the world and especially Cuba.

The international and domestic problems, speeches, breaking of treaties, and subsequent legislation in the U. S. insured, according to an amendment to an appropriations bill of April 20, 1898 in the U.S. Congress, that the United States of America would not annex Cuba. Cuba's people were achieving a revolution to free themselves from Spanish control. The Cubans had virtually achieved this goal when the United States declared unprovoked war on Spain, annihilating Spain's Navy and took for Imperialistic purposes the territories of Puerto Rico, the Philippines, Guam, (Hawai'i) ... Then the United States began a military occupation of Cuba itself.

The U.S. was the most feared Navy after having built the USS Olympia in 1893. Under Secretary of the Navy Theodore Roosevelt's direction the U.S. began building an impressive Navy. That same year the USS Boston was used to threaten Honolulu with its guns and land it's marines with cannon and Gatling gun. The object was to capture militarily the Kingdom of Hawaii. A false revolution was soon proclaimed by American lawyers and news paper men in the Kingdom of Hawaii who were aided by an order to land U.S. marines. The orders were given by a sympathetic U.S. Consul named Stevens. An annexation treaty to annex the false republic of Americans in Hawaii was rejected repeatedly in the U.S. Congress. A bill, not a true treaty, resolving to annex Hawaii, illegal by Constitutional Standards, had only mustered a 50% vote and never has there been a 2/3 or 66% majority needed to annex the unwilling population of Hawaii into the U.S. Union.

This amendment of April 20, 1898 would prevent a similar illegal act from occurring in Cuba that had happened in the Kingdom of Hawaii.

Much false reporting in American periodicals and newspapers during

the time of "yellow journalism" swayed politicians. Even today in the most current issue of U.S. News and World Report I can read false history propagated by misinformed or overly edited journalists in that publications February 25, 2002 issue. The articles referring to T. Roosevelt and President McKinley I feel give a slanted depiction of the facts.

The Kingdom of Hawaii is Surf equipment rich while Cuba is poor in surfboard assets. People in Hawaii's Kingdom regularly throw away, discard or store indefinitely surf equipment under their houses or on their lawns. Children in the Hawaiian Kingdom can be assured that there is a surfboard for them to be had with little or no effort I have experienced.

Like Cuba, and the Philippines, did or have, the indigenous non-American people seek to rid themselves of the corrupt American imposed government in Hawaii's Kingdom and the large U.S. military occupying forces found there.

The comedy SURF CUBA is a musical that speaks of surfers fomenting a revolution yet mirrors the current condition in the Kingdom of Hawaii. The irony is this.

There are not enough surfers, nor surfettes, living in Cuba to foment a true revolution. The analogy is that there were not enough Americans residing in the Kingdom of Hawaii during 1893 to start a popular uprising or revolution. Some blatantly false historical accounts published in Hawaii try to establish that a revolution occurred in the Kingdom of Hawaii during 1893. This false information occurred in print again in the Garden Island newspaper page 10-A October 04, 2002.

The Kingdom of Hawaii is occupied by the Armed forces of the United States of America illegally not only by the standards of International Law but also illegally by the Standards of the United States Constitution.

Please read the prologue to the book Why Surf Cuba next for historic perspective. After you've read the short book Why Surf Cuba that follows I hope you will gain a better understanding of the situation.

Why is all the international attention being paid to the case before the World Court at the Hague in Holland filed by the current King of Hawaii versus the United States of America initiated November 2001 ?

SEE : WWW. FREE HAWAII . ORG

Thank you and Mahalo,

Your singing American friend known as,

Waveslide

Prologue to: the mini book Why Surf Cuba

I dedicate this prologue to future American scholars

and to my name sake a mature Hawaiian man

who's Hawaiian name means

"the wave cresting and reflecting the sunset".

It is written in retaliation to my arrest by

the defacto U.S. government found in the Kingdom of Hawaii,

the treatment of me by its Judiciary, and the failure of the

Chief Justice of the United States Supreme Court to respond

to my request for

information regarding the Writ of Habeas corpus.

Waveslide

What do surfing and Cuba have in common and what could lead two gentlemen authors to combine the two words in the title of a musical ?

Surfing first of all is thought of as a sport that began in the North Pacific islands of Hawaii. During the voyages of discovery of British naval officer and cartographer James Cook, Hawaii was documented and mapped precisely due to Harrison's extremely accurate chronometer or clock. Other foreigners had arrived in Hawaii before the British expedition sponsored by the Earl of Sandwich. That expedition led by Cook arrived on Kauai about the same time as the American Revolution was fomenting.

Naturalists and artists on those British ships recorded the activities that we today know as bodysurfing, long board surfing, and just surfing in general. Today through examples set by famous Hawaiian men such as the Kahanamoku brothers, Ben Aipa, David Nuuhiwa, Eddie Aikau, and other non-Hawaiian residents of the American military occupied Kingdom of Hawaii, the rest of the world has come to understand the joy and health benefits of this fluid sport. Surfing originated with the citizens of the Kingdom of Hawaii yet the Americans were the ones to exploited the sport commercially.

One exception to the places on earth who's citizens regularly enjoy surf sports and which is in close proximity to those that often do surf, is the island nation of Cuba.

Historic Link : THE GREAT DEBT --- CUBA OWES QUEEN LILIUOKALANI A GREAT DEBT !

Recently the Kingdom of Hawaii's government has been restored in the year 1996. The Kingdom of Hawaii's citizens struggle with a great deal of effort to oust the United States military imposed or illegal puppet (non) state of Hawaii false government which the Americans have been questioned to installed through threats, deception and fraud. Currently along with American forces of occupation, United States lawyers, and Gestapo-like police remain to harass the aboriginal Hawaiians. The previous lawyers of American ancestry, current lawyers, and current judiciary members of the Hawaii state bar association that repeat the illegal behavior of the American occupiers of Hawaii were and are guilty of immoral acts.

How was the debt incurred ?

When the USS Boston landed troops as requested by U.S. consul Stevens in support of the U.S. citizen lawyers and newspaper men's attempt to cease power and establish a coupe de ta. The United States government was in breach of several international treaties and most of all the International Law that was the basis for the United State's own existence. Secondly, the United States of America broke the treaty of Amity (friendship) and Commerce that it signed with the Kingdom of Hawaii and that the U.S. Congress had ratified January 20, 1887. U.S. marines were used in that landing, an illegal unprovoked first strike who's purpose was to further American commercial interest. The U.S. Marine Corp has an obligation to right the wrong by leading an exodus away from the Hawaiian Islands or by creating a U.S. protectorate for the newly reinstated Kingdom of Hawaii. Thirdly, the American Consul, American Marines and American citizen groups calling themselves the "Committee of Safety" and the "Honolulu Rifles" were an extremely small percentage of the people in Hawaii yet they threatened the vast population with artillery fire and much bloodshed. These U.S. Lawyers formed a false republic and with the consent and assistance of the U.S. Senate in 1894 and the U.S. postal service broke the treaty terms of the Universal Postal Union. The United States created a Postal Convention with the Kingdom of Hawaii signed by President Grant, May 05, 1870. The

U. S. assisted the Kingdom of Hawaii helping it join the Universal Postal Union in January 1882. The American occupiers disposed of Kingdom of Hawaii postage and currency. Fourthly, the illegal U.S. occupation of Hawaii's Kingdom put the United States in breach of the Treaty of Gent signed in 1814 between the U.S. and Great Britain (Hawaii's Kingdom being their protectorate) AS WELL AS A U.S./BRITISH TREATY CONCERNING HAWAII.

British action led the moral example of overturning illegal action by their military citizens against the Kingdom of Hawaii. Admiral Thomas on July 31, 11843 reinstated King Kamehameha III after Captain Paulet attempted to take Hawaii's Kingdom by force of arms for Great Britain's empire.

Being well aware of this example, immediately the American lawyers and newspaper men, who illegally held Hawaii's Kingdom with the aid of the obedient and hoodwinked U.S. marines, went to Washington D.C. in 1893 to seek a treaty to have the U.S. annex Hawaii's Kingdom's lands. President Harrison was defeated in the election and Grover Cleveland took office as president on March 14, 1893. Cleveland an eminent legal scholar was a friend to Hawaii's monarchs. He recognized their petition for protection and documented the illegal acts that the U.S. Marines were duped into supporting by force of arms. Violations of International Law, treaties the U.S. had signed, and even violations of the U.S. Constitution by Americans in Hawaii followed.

Evidenced by U.S. Senator Blont's Report of 1893 and President Cleveland's address to the joined houses of Congress, December of 1893, the Kingdom of Hawaii's claim to sovereignty remains secure legally. Hawaii's Kingdom's claim to jurisdiction and sovereignty in the Hawaiian archipelago is further bolstered by U.S. public law 103-150 of 1993, the admitting of these U.S. Government crimes and a weak apology for them. This led to series of hearings in the Hawaiian Islands during the late 1990's held by an international tribunal.

So where is the CUBA CONNECTION ?

The U.S. Marines are still in the Kingdom of Hawaii occupying land illegally today and also in Cuba at Guantanamo Bay. Some U.S. marines surf on these military bases, at least in Hawaii. Queen Liliuokalani protested to and surrendered to the superior U.S. military forces, illegal as they were

unprovoked, and prayed that the United States authorities would right the wrong thereby reinstating her government as had the British in 1843.

President Cleveland mandated reinstatement and evidenced that the U.S. consul Stevens, acted on his own and with out the necessary authority to threaten Hawaii's citizens, land U.S. marine soldiers, and support the overthrow of Hawaii's Queen by ambitious imperialistic Americans. The United States House of Representatives debated and argued to reinstate the Queen of Hawaii's government yet the United States Senate voted unanimously (I question if that is an accurate portrayal) to threaten the rest of the world in a resolution of 1894 that states in essence; IF ANY NATION SHOULD INTERFERE WITH THE AMERICAN ACTIVITIES IN HAWAII THE U.S. WOULD REACT MILITARILY AS IF IT WERE AN ATTACK ON THE UNITED STATES OF AMERICA ITS SELF ! ! !

Similar to the first and previous attempted treaty wishing to annex Hawaii's U.S. marine occupied island Kingdom (the first was withdrawn by President Cleveland) a new treaty hoping to annex the Kingdom of Hawaii to the United States of America was sent to the U.S. Congress. This occurred after a new U.S. president was elected. Those American lawyers and newspapermen in the U.S. occupied Kingdom of Hawaii hoped to try again and steal Hawaii. June 16, 1897 the votes necessary were not there to pass this another attempted treaty aiming to annex the Kingdom of Hawaii to the United States of America.

In 1894 several petitions against annexation had been circulated amongst the citizens the Kingdom of Hawaii gathering many tens of thousands of signatures. One of the petitions was presented to the United States Government. That petition was called the Palapala Ho'opi'I Kue Ho'ohui 'Aina and it alone had over twenty thousand signatures of citizens of the Kingdom of Hawaii who were threatened with death by the American occupiers of their land.

The December 1893 speech by President Grover Cleveland to the unified U.S. Congress noting violations of international law was joined by the protests of Nations that have treaties with the Kingdom of Hawaii. Signature countries to the Universal Postal Union (treaty) who would not accept U.S. stamps on mail coming from Hawaii's U.S. occupied Kingdom was one form of protest for them. The U.S. puppet government known as the republic of Hawaii made attempts to silence the Hawaiian speaking majority population

and disenfranchise them in the courts, legislature, and schools. The American occupiers would not let the Hawaiian language be spoken in the legilature it imposed nor the schools nor the Hawaiian courts. Aboriginal Hawaiians were active in letting the world and their own people know of the injustices that these American lawyers and newspapermen were causing.

The American puppet government : forbade (outlawed) the use of the Hawaiian language in Hawaiian courts, schools and Hawaiian legislature buildings; forced the closure of Hawaiian newspapers; and arrested prominent aboriginal Hawaiian leaders who spoke out against that illegal American puppet government. Those elected officials who filibustered in the Hawaiian language, members of the Home rule party and especially Joseph Nawahi, the Americans tried to silence by jailing them. As a consequense the United States has never met the U. S. Constitutional requirements to annex the Kingdom of Hawaii.

Hawaii has never been part of nor will it ever be part of the United States of America as Cuba will never be part of the United States of America ! Only a joint resolution to annex the Kingdom of Hawaii exists as an illegal Bill, even by U.S. Constitutional Standards.

This illegal document, a joint resolution to annex the Kingdom of Hawaii voted for in the U.S. Congress July 07, 1898 does not meet the two-thirds (2/3) majority requirement necessary for a true treaty of annexation (see page 122, "The American West Year by Year", John Bowman editor, 1995, Crescent Books, ISBN No. 517-12186-7).

But How does that effect Cuba and its' debt to Hawaii ?

Just like the USS Boston in Honolulu on the ready to land U.S. Marine soldiers to occupy the Kingdom of Hawaii, the USS Maine was at anchor in Spain's Havana harbor in the island waters of Cuba. The Cuban sugar plantations had onetime slaves who had revolted and along with other folks they were at war with the Spanish seeking independence for Cuba. The Spanish, who had been approached by the U.S. in order to purchase Cuba, had been recently been given the mandate, voted by the U.S. Congress April 19,1898, that Spain must evacuate its' armed forces from Cuba and recognize Cuba's independence. The U.S. Congress acted thusly even though on April10, 1898, nine days earlier, the U.S. Ambassador in Spain cabled his government in Washington that Spain was ready to suspend hostilities in

Cuba and grant the Cubans self government. April 11, 1898 President McKinley asked the U.S. Congress to intervene and send U.S. troops to Cuba (see pages 122 of the book previously listed and page 201 of "The American Presidents" 8th edition, David C. Whitney, 1993, Double Day Books, ISBN No. 1-56865-031-0). also see page 201 joint resolution to annex.

The Cubans began their revolution in 1895 and President Cleveland kept the U.S. from being involved. When President McKinley was elected he changed U.S. policy and in May of 1897 he asked Congress for $50,000.00 (fifty thousand dollars) to aid American citizens questioned to be stranded on the island of Cuba. It has lately been researched that a boiler exploded (coal bur accidentally on the USS Maine at anchor in Havana harbor February 15, 1898 causing the ship to sink. At the time that fact was unknown and the ship was hauled away to be sunk in deeper waters before the truth was discovered almost one hundred years later.

April 20, 1898 the U.S. Congress allowed President McKinley to use American military forces to intervene in Cuba yet an amendment that forbids the annexation of Cuba was attached to that bill. It seems the international outcry about the U.S. military occupation of the Kingdom of Hawaii and Queen Liliuokalani's acts of diplomacy affected the judgment of the United States Congress.

April 25, 1898 the U.S. declares war on Spain. May 01, 1898 the U.S. destroys the Spanish fleet in Manila harbor in the Philippines. June 10, 1898 the U.S. marines landed at Guantanamo Bay on the island of Cuba and they have maintained a force there ever since similar to the landing of U.S. marines in the Kingdom of Hawaii five years earlier (see page 184, 194, 195, 201, and 202 of "The American Presidents" book).

Hawaii's mail and her Kingdom's international correspondence was protected by the United States up until the illegal occupation of the Kingdom of Hawaii by the U.S. marines. Many other treaty countries, signatories to the Universal Postal Union (treaty) refused to accept mail originating from the Hawaiian Islands with United States postage affixed. After World War I (one) began some of these countries relented in order to gain aid from the United States in their struggle to win the war in Europe and the rest of the

world.

Americans had a long history of massacre and fueling warfare in the Hawaiian islands beginning with the massacre of Hawaiian aboriginal residents of Oluwalu, island of Maui. Led by Captain Simon Metcalf the American seamen of the merchant vessel Eleanor bombarded the Hawaiian village there in 1790 (see page 40 of "The American West Year by Year"). In retaliation, it is alleged, King Kamehameha captured Metcalf's other ship the FAIR AMERICAN killing almost all aboard including Metcalf's son.

February 1794 the British Captain George Vancouver persuaded King Kamehameha to cede for protection his Hawaiian Kingdom to England in exchange for support against the hostile Americans. This English/Hawaiian protectorate relationship continued to flourish and ensures the claim that the United States violated the terms of the treaty of Ghent of 1814. Provision there in for dispute resolution and settlements to International Law suits involves the outside entity now known as the World Court at the Hague in Holland (see page 41 of "The American West Year by Year"). By 1810 Kamehameha extended his rule over the other islands and his Kingdom which became recognized internationally through the efforts of a Spaniard, the courtly naval officer, Don Francisco de Paula Marin.

Marin acts as an emissary for King Kamehameha and he is skilled in the practices of diplomacy and court conduct (see "Don Fancisco de Paula Narin" by Ron H. Gast, 1973, University Press of Hawaii, ISBN No. 0-822480220-9). Marin preferred life in the Hawaiian Islands better than the Pacific North West where he had been stationed in the Spanish Navy.

In 1820 Kamehameha II succeeds his father as king and the American missionaries lead by Hiram Bingham Sr. arrive in Hawaii. Ka'ahumanu the woman Ali'I who controls vast powers acts as regent while the young king matures in statecraft. Together they are encouraged to break the kapu, or taboo, separating the sexes during meals. Moku Ai Kaua church is founded near Kailua, Kona on the island of Hawaii. This church is named in recognition of the breaking of the Kapu system of laws.

These church builders and subsequent American Calvinist missionaries will influence the Kingdom of Hawaii in the future, Beginning in 1831 the act of imprisoning aboriginal Hawaiians converted to Catholicism were not altered until 1839. A French intervention, the first time the American

Protestants were restrained by international efforts began (see: pages 59 and 63 of "The American West Year by Year"). The children of these American Calvinist missionaries of New England, U.S.A. eventually engaged in the commerce of the Hawaiian Islands and the agriculture of sugar planting. The enterprise began with Ladd and Company, Koloa, island of Kauai in 1835 (see page 61 of "The American West Year by Year").

The Hawaiian aboriginal peoples were the recipients of many scholarly produced grammars of their language from different Europeans and Americans. Other Polynesian speakers and the citizens of the Kingdom of Hawaii were quick learners. Ethnic Hawaiians developed, with the American missionary's assistance, a comprehensive practice of preparing themselves to become literate in their own tongue or Olelo. A majority of their people gained an ability to read and write the Hawaiian Olelo or language. The multitude of documented Hawaiian language newspapers can be found in the Hawaiian museums and archives. Some Hawaiian newspapers are published even today.

A Constitutional Hawaiian Monarchy finds acceptance the year 1840 based both on the British and American examples in the Kingdom of Hawaii. Ambassadors from Hawaii's Kingdom obtained recognition and guaranties of her Sovereignty from Washington D.C., London, and Paris. December 19, 1842 U.S. Secretary Daniel Webster declares in a letter to the Kingdom of Hawaii's Ambassadors that : **" as a sense of the government of the United States, that the government of the Sandwich Islands (Kingdom of Hawaii) ought to be respected, that no power ought either to take possession of the islands as a conquest or for the purpose of colonialisation, and that no power ought to seek for any undue control over the existing government, or any exclusive privileges or preferences in matters of commerce."** This letter is written during the war between Mexicans and the Americans who have declared a republic in Texas. May 08, 1843 Daniel Webster resigns as Secretary of State disputing the proposed annexation of Texas. In a similar effort later with regards to the Kingdom of Hawaii, the proposed annexation treaty for Texas fails to muster enough votes for a true treaty of annexation to the United States of America. **A joint resolution, illegal by U.S. Constitutional standards for annexation passes by a simple 50% (fifty percent) majority not by the 66% two-thirds (2/3) majority needed to make either Texas or the Kingdom of Hawaii a territory of the United States as required** (see: page 65 and 67 of "The American West

Year by Year" and **WWW.FREEHAWAII.ORG)**. This illegal instrument is a BILL not a treaty. President Tyler proposed this illegal joint resolution method and addressed the combined houses of the U.S. Congress imploring its use.

Do SURFERS lead the way to courage and Justice ?

I question if on January 16 or 17, 1993 John Waihe'e ordered that the American flag not be flown on buildings and grounds of the puppet government in the U.S. military occupied Kingdom of Hawaii. This type of act can be understood as an unprecedented order in the history of elected Governors of states that are part of the United States Union since the 1860's. Ever since an act to remove the U.S. flag from the Kingdom of Hawaii the kanaka maoli (aboriginal Hawaiians) and other people interested in truth and justice have studied to aquatint themselves with the history of the illegal U.S. occupation of Hawaii's Kingdom.

The defiance of the citizens of the Kingdom of Hawaii against the U.S. puppet government there remains strong and justified. So many false promises to these people have occurred at the hands of the United States of America's government and colonizing citizens the world can easily compare them to the Jews at the hands of the Nazis. The Americans eking out a slow death towards the Hawaiians rather than gassing them. The American lawyers, politicians, and sugar planters taking their land in concert with each other.

Did the United States perpetrate fraud when it included votes by members of the U.S. Marine Corps, other U.S. military reservists and personnel in its tabulations to evidence (perhaps fraudulently so) that it had completed a plebiscite for the United Nations. Article 73 of the UN charter mandated that the super powers decolorize occupied territories. The U.S. failed to offer Hawaii self-determination and only offered the choice to remain an illegal territory of the U.S. or to become a false state in its union. The vast influx of American military personnel and their dependents over whelmed the indigenous population and their protests were ignored. This protest continues even today in the United Nations.

Writer mark Twain (Samuel Clemens) debated Winston Churchill on the subject of military effected colonial occupations to build evil empires

when they met in New England and later at Madison Square Gardens in New York City, U.S.A. Mark Twain began an introduction of Churchill an the Grand Ball Room of the Waldorf Astoria hotel, New York, December 12, 1900 : **"Fellow thieves and robbers ! I take it that this audience consists of English people and Americans, so I commence my remarks, fellow thieves and robbers ; The Americans in the Philippines and the English in South Africa. But never mind, we are kin in war and sin !"** (see: page 15 of "Mark Twain's Jest Book edited by Cyril Clemens, 1963, and pages 367-9 of "Mark Twain Speaking").

The U.S. invaded the Philippines in 1898 and refused them independence until about the time the United Nations was founded in 1946. General Ben Kelsey of the United states Air Force on page 40 of his book "The Creation of the United States Air Power for World War II, or The Dragon's Teeth ?" ISBN no. 0-87474-574-8 states: **"Although we had defense responsibilities in Panama, Hawaii, and the Philippines, there was a generally held feeling that we had no colonial ambitions and these areas were not considered foreign possessions."** Hawaii has yet to escape that dragon's grasp as has Panama and the Philippines. John F. Kennedy at his now famous Berlin Wall speech stated that America would not tolerate colonialism in the world.

The apology bill, U.S. public law103-150 of 1993 enacted by the U.S. Congress accepts the truth of the Kingdom of Hawaii's claims and the wrongs done to the Hawaiian Kingdom. Citizens of the Kingdom of Hawaii are recognized to be an occupied people similar to the people of Kuwait during the occupation by Saddam Hussein's Iraq. There is no difference and the United States' intervention to save Kuwait's monarchy contradicts its' own illegal acquisition of the Kingdom of Hawaii by force of arms.

The U. S. military supported defacto puppet state government now in place in the Kingdom of Hawaii continues to be abusive to Hawaii's aboriginal people. The influx of cash rich U.S. and international citizens continues to deny the aboriginal Hawaiians their legal claims to their homeland. Americans and foreigners build walled enclaves and golf courses. These exclusive homes, some in gated communities are the end users of dangerous chemicals and plastics that are detrimental to the ecosystem that nourishes aboriginal Hawaiians. New jobs are mostly filled by other than aboriginal Hawaiians be they Japanese, Chinese, Black and White U.S. citizens, Hispanics, Middle Easterners, or Europeans.

Clint Eastwood is one of the most recent examples of the cash rich land grabbers coming to the U.S. military occupied Kingdom of Hawaii. Clint paid to have built a fenced-in big house and pool at Palauea beach, Maui. Did he destroy archeological sites at one of the most significant locations on Maui ? Is Palauea beach the place where the U.S. military (Navy) made its first concession to the protests of Hawaiian activists ?

In the Kingdom of Hawaii the U.S. military occupation has continued with out interference by the United Nations. What remains can be questioned to be an ongoing system of injustice and fraud perpetrated against aboriginal Hawaiians and citizens of the Kingdom of Hawaii. William B. Breuer in his book "The Secret War with Germany" (199*, published by Presidio Press, ISBN No. 0-89141-298-0) on page one of the introduction explains how the U.S. may accomplish and maintain its military occupation in the Kingdom of Hawaii. Stating that the first two cardinal virtues of WAR have been recognized to be FORCE, remember the U.S. Marine soldiers were landed 1893 in Honolulu with Gatling Gunn and Cannon, and by FRAUD. The source Breuer quotes as his source is 550 B.C. author of "The Art of War", Sun Tzu.

The James Clavell translation of "The Art of War" widely available (1983, published by Delatore Press, ISBN No. 0-3385-29216-3) states: "Undermine the enemy first then his army will fall to you." ; "Subvert him, attack his morale, strike at his economy, corrupt him." . At the very end of Clavell's translation we read, Spies are a most important element in war, because upon them depends an army's ability to move." Which recalls the U.S. admitted spying in the Kingdom of Hawaii prior to the U.S. military occupation initiated by U.S. Marines in1893.

Traveling to Hawaii's Kingdom disguised as tourist's U.S. officers Schofield and Alexander acted as spies searching out area in the Kingdom of Hawaii where the United States of America could maneuver and build forts. Their report was used as justification for occupation when Americans requested that the U.S. Congress annex the Kingdom of Hawaii.

Justifying its action for fear that Queen Liliuokalani would execute the Americans who ceased power in the Kingdom of Hawaii, U.S. Senators refused to acknowledge the Blont Report of 1893, continued military aid to the illegal U.S. puppet government in Hawaii, and these Senators in 1894 threatened other countries of the world to stay away from interfering with that

puppet government they had installed.

American military might still threatens, with its ability to over power any foe. It is no wonder that in August 1962 a hydrogen bomb was exploded off Johnston Island only about 800 miles distance from Honolulu. Repository for weapons of mass destruction including biological and hazardous gasses this Pacific Ocean outpost arsenal assures any group that the United States has the firmest grasp of military occupations.

The U.S. military comprises nearly ¼ (one quarter) of all the people in the Kingdom of Hawaii. American Colonials and other foreigners exist in massive numbers that swell regularly at holiday times in the Kingdom. With scant few exceptions these people are unaware of the fraudulent immigration law known as U.S. Act 414 the McCarran-Walther Act of June 27, 1952.

I learned about the Mc Carran-Walther Act that instantaneously and retroactively, I question, made anybody living in the Hawaiian Archipelago since the year 1898 an "AUTOMATIC AMERICAN CITIZEN". It is interesting to read that the U.S., as outlined in an immediately following paragraph to that illegal documents mention of citizens of the Kingdom of Hawaii, did not make "Automatic Americans" of the Danish residents of the Virgin Islands when those Islands were absorbed by the U.S. of A. These citizens of a Danish Kingdom were given the option to keep their Kingdom of Hawaii citizenship, oh excuse me, Kingdom of Denmark citizenship when the United States took over their islands.

The citizens of the Kingdom of Hawaii could be considered expendable by the United States Military. Not only were those mostly ethnic non-white peoples in close proximity to the Hydrogen bomb blast of 1960 detonated above Johnston island, a mere 800 miles from Honolulu, but they were also used as test subjects of biological and chemical warfare. Pages A1 and A6 of the October 10th edition of the Honolulu Advertiser newspaper give an account and location in the Kingdom of Hawaii where the United States of America through its military used Sarin gas, VX nerve agent, and toxic biological contaminants as part of its research. "Thousands of residents of Oahu were exposed as well as those with the most deadly methods on the big Island of Hawaii.

THE UNITED STATES MARINE CORPS BEGAN THE

ILLEGAL INVASION AND ONGOING OCCUPATION

OF THE

KINGDOM OF HAWAII

My family came as U.S. colonists to the Kingdom of Hawaii. The attack on Pearl Harbor by the Japanese brought my Dad as an artillery officer to the Kingdom of Hawaii and after a few years of G.I. Bill education on the continent of North America our family returned to colonize the Kingdom of Hawaii for the United States of America.

The Kingdom of Hawaii was never a Territory of the United States of America as determined either by International Law or by the standards of the U.S. Constitution. The U.S.of A. has NO TREATY OF ANNEXATION for either the Kingdom of Hawaii or the false republic installed illegally by the U.S. Consul and Marine Corps.

What U.S. Senator uttered these words "Treaties under the Constitution have the force of Law" broadcast on Cspan television from the Hart Senate Building February 15, 2002 ?

Professor Joseph Sox of Bolt Hall Law school, Berkley, California stated when interviewed about his book "Public Trust Obligations in Hawaii" admitted essentially that no permanent trust situation exists between the United States and the Kingdom of Hawaii and that that relationship is open to accommodation.

The Golf commentator broadcast this remark on ESPN Saturday January 05, 2002, 3:10 PM Pacific Standard time at the Kapalua golf course "Hawaii feels like its own country".

All the Best, Waveslide

Why SURF CUBA ? in the public domain

by Waveslide No - copyright claimed of what is mine in this work of literature except the mistakes of syntax, grammar, spelling, etc.

Dedication:

This minibook 'Why Surf Cuba ?'
or My life as an American Colonist in
The U.S. Military occupied
Kingdom of Hawai'i

is dedicated to the memory
of my paternal Great Uncle

Rene Gouldner Esq. M.D.
a physician and expert in the
field of Canon Law
educated at Columbia (NYC)
and in Strausbourg France
home to the International
Court of Human Rights

&

to the memory of my maternal
Great Uncle and defacto Grandfather

Louis Braunagle Esq.
an expert in Tax Law

note: The Ist spoke Russian to me when I
studied that language in Wichita, Kansas
and the 2nd played piano and recited poetry.

mini book WHY SURF CUBA ?
Contents : no copyright claimed

Introduction

Chapter 1 Waveslide's arrest

Chapter 2 Book review

Chapter 3 My passports are they wrong ?

Chapter 4 Mug Shots

Chapter 5 Counting Americans

Chapter 6 Symbols

Chapter 7 Relax

Chapter 8 The Allegory of 'Surf Cuba'

Chapter 9 The Moral

Chapter 10 If I Was Queen (note: there may be more chapters later)

Bibliography
Treaty List affecting Hawai'i and Cuba
Quotes too

Note: Where permission has not been received for quotes to other sources that space in the text has been left blank or a reference to the book given so you can can access the material.

Why Surf Cuba ?

My Life as an American Colonist

in the U.S. occupied Kingdom of Hawai'i

Introduction

I was a spark before my life began. My European ancestors fought in the American Revolution and members of the family were active as officers of the U.S. Military in every declared war the United States waged until my birth. Fearing reprisals should the infant nation, who declared it's independence July 4 th, 1776, fail to shake off the bonds to England it has been alleged that the family patriarch changed his name for the protection that anonymity may afford.

So it is with me. I have been given the nick name Waveslide by those that know my idiosyncratic behavior and the music that flows from my heart.

I was born in a hospital in Nu'uanu valley, Oahu prior to the United Nations decolonization mandates to the Super Powers. What history occurred between the birth of the Hawai'ian Kingdom and today was for the most part misrepresented to me. The true facts can be researched and documented. What had been taught at School as Hawai'ian History during my formative years may now be questioned to be propaganda and an aid to social genocide aimed at the Kanaka Maoli.

I did not take the Hawai'ian History offered at New Spring School (translated from the Hawai'ian) where famous author David McCullough has lectured in the chapel and who's son has taught. Much of the shame to true American idealists with respect to the illegal Occupation of the Kingdom of Hawai'i was fomented by the graduates of that Punahou School .

I was fortunate That I had a bit of my education in Denmark, Kansas and most importantly Oklahoma before being enrolled at the high school academy of what was also referred to as Oahu college. In Oklahoma it was required that I study Oklahoma History. In the second school I attended there my perspectives changed from being an all accepting believer of all the indoctrination that was required for later regurgitation. A cross had been burned in the school yard there it was alleged just prior to my enrollment. The Klu Klux Klan was blamed. Tulsa, Oklahoma was a city of sophisticated Native Americans (false Indians) and the Oil industry. At Monte Casino School as a 6 th

(2)

grade student I was a new kid without the usual prejudices nor suspicions of people who were unique or different in their customs. One of the first persons I met was Jeff, who claimed to be grandson of the chief of the Osage. I was latter to find out that my aunt married to a maternal uncle was also of Osage extraction. I have Osage cousins .

The historians and general population of Oklahoma who's ancestors were by and large European were not concerned that the history presented of that region contained elements of unethical behavior. They seemed to revel in it and proclaim openly disgusting and disparaging racial epithets. Condescending remarks were their forte. After all with a little explanation the song Boomer Sooner hails illegal acts. Wasn't Oklahoma comprised of sovereign nations composed of Native American Tribes prior to 1906?

A lot happened from the time John F. Kennedy was assassinated 1963 during my Oklahoma education and when a lawyer in Tulsa sued a deceased Native American of the Creek nation using my name and without my fore knowledge nor consent. Oil spills and pipeline ruptures triggered the mess I am told .

Was this Quiet Title and Adverse Possession lawsuit filed in Okmulgee, County an epiphany for me ? Some seem to think so.

I hope that the experience that I share with you will be useful to your understanding of the situation here in the Hawai'ian Kingdom.

With much shame and sorrow for the past ill treatment of indigenous peoples I remain.

Yours in print,

Waveslide

Waveslide

the district of Hanalei, island of Kauai

2002

Certain books and publications in my recently departed father's library assisted me to understand what actually occurred in Hawai'i yet one book that may be thought unlikely to have any useful information nor thought to shed any light on the subject is "The Man without a Country' by Edward Everett Hale (special publication S24 by the Limited editions club The Heritage Press of NewYork ,595 Madison Avenue, copyright 1936 yet published in the 1960's as best I can ascertain) . I refer to it to make a point

Chapter one

Waveslide's arrest

I was dumbfounded and shocked when I was arrested. "Step this way " the court clerk uttered as he led me to the side door at the Maui District traffic court presided by Judge Ronda Loo. Two sheriffs deputies awaited me behind that door as it swung open. Their task was clear to them yet I assumed they had mistaken me for some one else.

As we rode down the elevator in to the stomach of the beast I asked them if my social security number was other than that of the person they intended to arrest. " Same number, no mistake" he said. The cold concrete hallway was sapping up my body heat with alarming speed. I was thankful for the warm shirt that I had chosen to wear that morning.

Here is a spot to laugh and reflect. All police and law enforcement officers may well expect a person who claims to be not guilty to act amazed in this situation. Remember we are on Maui home to the plantation families who's interest it might be questioned these police protect and serve at the expense of others. I may feel I'm different. Privileged and molly-cottled one might say. Educated with the upper crust and thought suitable to date their daughters and be entertained in their homes.

"Empty your pockets and put the items in full view in front of you." "We're going to pat you down now." "Relax and elevate your arms ." "Now move your feet apart." "Wider !" "Open your mouth." The older deputy cocks his head as the younger well fed man proceeds. He looks up as he collapses my trousers about the legs and elsewhere. I know it is useless to tell them I'm unarmed. They may not trust the scanning equipment and employees who operate the check point prior to entering the court house.

I remain quiet and wait for them to talk to me before I respond again. They have their job to do and I respect the vulnerability that they mask. Gruff and assertive in their direction giving they sense my nervousness and I try to calm myself.

I learned that listening is a form of prayer. This was just the beginning of my prayer and the answer to my petition a long way ahead. Closing my eyes my thoughts rambled to the linoleum and the sounds of the other detainees who's boisterous frolic or angry voices have filled my ears. Now I'm numb.

Chapter 1 page 2

"One black wallet with four cards and a dollar three eighty , a white faced watch with, are those aliens embroidered on on the black velcro band? " "Key ring four keys, handkerchief..."

Glad that he mentioned the handkerchief because I try to keep one about my person when I know that I'll be required to act as a gentleman should. I smile and then twist my nose, lips and chin under my half framed reading glasses.

Lifting them off me the chubby deputy quips. " glasses". I know I'm disarmed now and my spirit sinks a little further. "Please don't put them in the envelope with the keys and scratch my glasses", I plead. No answer ensues yet the older deputy be speckled himself places them on the ledge next to the large envelope. "We'll give these back to you later." "I'll look after them, no worry, eh."

"Yes, worry, eh !" I think to myself. "Now don't say anything you'll regret." my handkerchief mentality reminds me. They have the handkerchief now but like the contents of Jake Blues' envelope in the 'Blues Brothers' movie after I serve my time I just may get all the envelope's contents, my precious possessions , back.

Boy is it getting cold in here just standing in front of these two wired caged reception areas. Turned towards the plexiglass windowed depository I see my envelope and glasses both through the open door and the pass through slot in that window. Perfume faint and delicate becomes stronger as I take one look backwards at the cells and prisoners. I'm grabbed by the arm and nodded to. The nod implies we are going in further for advanced processing nearer the perfume.

Hawai'i is a unique place. My cousin knows your cousin and your cousin knows somebody. Keep that in mind. Just the right reference to an old friend, classmate, ex wife's bothers wife, etc. can change the way a European or caucasiod is treated or viewed. If you are displaying an accent that sings of Tulsa they may treat you very differently than if you have tonal roots back to: Nanakuli, Waimanalo, Papakolea on Oahu; Hilo, Ka'u or Pu'u Anahulu on the big Island; Kaunakakai and the west end of Moloka'i; Anahola or maybe better Kalaheo on Kaua'i. I start with being respectful and using humor. I hold the humor for now. I'm in jail ! ! !

Chapter 2

Book review of
'The Man Without a Country' by Edward Everett Hale

I got the Heritage Book Club publication of Edward Everett Hale's book 'The Man Without a Country' down from the shelf. There are two volumes of the same work here in my late father's library. One had belonged to my defacto God father and maternal uncle. He is also deceased. I loved them, Dad and Uncle Bill, both for their intellect and the way they nurtured me. I've reread the fifty-five(55) page volume recently and I want to share with you the truths this work of fiction delivers to me and offers as a mirror of the way Americans forced their laws on the aboriginal Hawai'ian family.

Here is a good time to stop by the house cosy-up in a comfortable overstuffed leather chair here in Dad's book lined den. Make yourself at ease then reach over and turn on the high intensity light. The shade directs the rays of light so they fan out on the book's pages. The black printed English, or are they American, words contrast sharply with the cream back ground page. The volume has been sleeved and the edges of 'The Man Without a Country' are not yellowed nor stained. Like a hidden lie, this book lingers to be later brought out to the light of scrutiny.

The Heritage book club insert explains that Hale, the author, intended the book to instill Patriotism during the conflict of the Civil War when secession from the Union had occurred. Could this book be seen as similar to the withdrawl of the Kingdom of Hawai'i from the Universal Postal Union of Geneva, Switzerland made by the United States of America after breaking many treaties and international law when Hawai'i was invaded by U. S. Marines in 1893 ? Read on. The more you know the better the decision you'll make.

Edward Everett Hale was nephew to two great men and the most significant is the martyr spy Nathan Hale of U. S. Revolutionary times. The other proceeded Abraham Lincoln as keynote speaker at Gettysburg. His name was (Uncle) Edward Everett. E.E. Hale the nephew and author later became the chaplain for the U. S. Senate in 1903. Hale imagined an unpatriotic man condemned never to see or hear about his land of birth again. Charged in a military tribunal all the documents were held secret except they were revealed to the officers who had charged, convicted and carried out the sentence deemed appropriate for 'The Man Without a Country' .

The sentence, method and injustice found in this book is telling of the American's treatment of the Hawai'ian Kingdom and its people. The similarity is uncanny and reinforced when watching the debate in 2001 after the 9/11 attack and the criticism of Attorney General Ashcroft's position on the Military Tribunals that President Bush(43) ordered.

Chapter 2 page 2

On page sixteen (16) of 'The Man Without a Country' Hale has the convicted character Philip Nolan read the fifth Canto of the 'Lay of the Last Minstrel' by Scott. Before you search for Sir Walter Scott's poem, try to find Hale's book 'The Man Without a Country ' first. If it is no where to be found then please do this for me.

Imagine You are in the easy chair with good light. You are relaxed and well fed. Some one occupies militarily your country illegally even by the standards of the laws of the United States and international law. Are you a Native Hawai'ian ? Would you be willing to put yourself in the shoes of a Native Hawai'ian, a Kanaka Maoli, who has received an apology from the United States for having illegally invaded your country in 1893 using Public Law 103-150 witch also says by the way we are still keeping your country and calling it part of the United States. Similar to if , I stole your car, apologized for stealing your car and then still kept your car. What would you say in response ?

Now you are comfortable reading in Dad's den the lyrics that a nephew of a patriot borrowed from Sir Walter Scott. Are you imagining yourself to be a Hawai'ian now ? Maybe in a perfect world these printed words would be in the Hawai'ian Language. Did the American occupiers allow the Kanaka to continue printing, reading and speaking the Hawai'ian language ? No they did not ! Common use of the Hawai'ian language was the first thing the American occupiers tried to extinguish. The Hawai'ian voice or Olelo was prolific in the Kingdom of Hawai'i. The Hawai'ian people's literacy rate was greater on a per capita basis than any where else on earth in 1893.

In 'The Man Without a Country' Philip Nolan stopped and drank something. So drink a little some thing too. Try some pure Hawai'ian artisan water. Nolan hadn't a thought about what was coming. We're talking fiction here so clear your mind of any my country wrong or right stuff you may have up there in your head. Proceed knowing that the world sees the U. S. on CNN and other T.V. channels firing missiles regularly.

<u>Lay of the Last Minstrel by Sir Walter Scott</u>

"Breathes there a man, with soul so dead.
Who never to himself hath said,
This is my own, my native land !"

Hale says his character Philip Nolan(d) the "Man Without a Country" turned pale here. You are Kanaka Maoli and so you turn pale too as you read before speaking these lines that follow.

"This is my own, my native land !"

Chapter 2 page 3

Oh did we say that already ? Well keep paying attention like a good little American can: who is comfortable, well fed and backed up by the largest storehouse of weapons of mass destruction and controls World diplomacy.

"This is my own, my native land !"

Opps there Sir Walter Scott goes again. Sorry I know that I don't have to apologize again especially if it was deliberate and I'm going to keep repeating that behavior. Shoot, I might anger you by stealing Sir Walter's words. I'm pale like you and Nolan(d), get it No-land "the Man Without -- a Country".

"Whose heart hath ne'er within him burned,
As home his footsteps he has turned
From wandering on a foreign (

I'm going to stop and insert some thing here, so, I'm using parenthesis. So don't get the idea Sir Walter Scott wrote what is in parenthesis. I'm going to cross out the word foreign as well. Because this is just a Waveslide cutback, off the lip and in the curl maneuver.

"From wandering on ~~a foreign~~ an (occupied) strand ?--
If such there breathe, go, mark him well,"

Author Hale infers the characters in the reading circle on deck of the fictitious U.S. Naval vessel fidgeted as No-land turns "crimson", "gagged a little" and proceeded to read the self describing passage. You've imagined yourself to be a Kanaka Maoli, so read on !

"For him no minstrel rapture swell;
High though his titles, proud his name,
Boundless his wealth as wish can claim,
Despite these titles, power, and pelf,
The wretch, concentred all in self,"

Overboard the book was flung in disgust. Please don't do what Hale accused No-lan(d) of doing with Sir Walters words. Share my words !

Hale 's Introduction to 'The Man Without a Country' proffers that it is ok to break the code of silence imposed on the case of Philip Nolan(d) now that he is dead. He thinks that the orders and court transcript were destroyed by British invading Officer Ross when the White House was burned in war of 1812. It is a good bit of fiction but read my book first. Not all is fiction and most of 'Why Surf Cuba' is Factual. Read on Kanaka Maoli.

Chapter 3

My Passports are they wrong ?

Remember you are still in the leather overstuffed easy chair warm and comfortable reading with good light. Grab a candy from the covered dish next to the chair and savor the moment. Unwrap the bon bon and place the raspberry sweet flavored treat in your mouth. The waves of the North shore are thundering about a half of a mile away yet seem ever so close due to their powerful roar. Read on ! Remember you are imaging that you are Kanaka Maoli, aboriginal Hawai'ian. If you can't remember this reread chapter two.

I, Waveslide have three expired United States passports. All have different numbers for identification yet they all say I was born in the Territory of Hawaii. Remember you are Kanaka Maoli and you are reading my passport information, looking at the pictures (don't laugh) and verifying that I am Waveslide. You really only need one but because they are all expired I proffer all three for your examination.

There is no visa to enter the Kingdom of Hawai'i in the most recent passport you are shown. I tell you that I had a visa to enter the French nation as a tourist and it was valid for five years. Oh no that is not correct. That passport was stolen in Paris and reissued at the U.S. embassy near the Place de Concorde. The photo is revealing a human being some what worn out and discouraged. So you are told I had a visa to enter France but the passport does not reflect this. You are Kanaka Maoli and sitting in your easy chair in Dad's den/library and it is possible to imagine yourself as a Customs official at the only embarkation office at the Honolulu airport. You are an employee of the Kingdom of Hawai'i.

Why don't you believe Waveslide that he had a visa to enter France as a Tourist and now his passport, excuse me, expired passport shows no such detail. "We'll don't be so concerned." I say. "I was born here in Hawai'i". "It does not say you were born in the Kingdom of Hawai'i" you answer. "Territory " you chime up! "Not even by your own United States Constitution!" you add. " Nor according to international Law !" you shout.

So you look at the next and second to most current passport that I respectfully hand you. "I see you went to Japan." you answer. " Yes, my University of Hawai'i ceramics locker partner Randy and I visited his family and my exchange student classmate Masaru there. " A visa is displayed and a rubber stamp imprint has a duration from the time of arrival clearly visible.

"Your Visa to Japan has expired along with your passport, Sir." "I know.", I say . " Look I came here to surf." "Can't you give me a surfing visa ?" " A surfing visa ?" "Yeah" You say "Let's see is that another

passport you are holding ?" " Yes" I say.

I start talking to you all about the places I want to go to surf and the Hawai'ians that I grew up with. I tell you how I have cousins and family that are part Hawai'ian and related to me living in the islands that I want to visit. I'm rambling on about my expectations, desires and I let out that I have business to attend to in the islands including missed court dates.

You look up from reading my passport and you say " Why don't you go Surf Cuba it is closer to the United States than Hawai'i." "There is no restriction in this passport issued 1960. " But there are restrictions in the other two more recently issued passports. Fairly close to the top of the third page boldly printed almost to say DON'T SURF CUBA . There are the restrictions. Just about any place where the U.S. at the moment didn't want me to go for political or other reasons not listed, U.S. citizens are restricted.

You the all accommodating Customs agent ask me " Are you claiming to be a citizen of the Kingdom of Hawai'i by birth ?" Before I can answer you say ,"All three passports say you were born in Honolulu, Hawai'i." "I don't know", says I. "Do I have to relinquish my U.S. citizenship ?".

"We don't want Americans displacing citizens of the Kingdom of Hawai'i." " Nor do we want to be invaded and occupied by your military again. " " You may want to speak with your ambassador here and apply for a temporary visa." "You'll have to wait with the other Americans in the Detaining facility." A large man of Polynesian features arrives to escort me. "Oh, here are your three passports." you say. "Don't worry we'll make your stay here as comfortable as possible. "

After all you are in a large leather easy chair with a bon bon in your mouth and a book that teases your imagination. Hey, did I tell you that the chair reclines. Try it out you lazy boy lover you ! I hope I didn't confuse you too much asking you to imagine one thing then the other embedded inside the first imagining. It is kind of like imagine we annexed your country and now imagine we made anyone residing there a citizen of our country who lives in your country. Once I have you imagining up to speed I can ask you repeatedly to keep building on that image. Full feature cartoons are made this way. The images of cartoons are on film not on diplomatic papers.

With film we project the images rapidly. It takes on a motion all of it's own. Next thing you know without a plebiscite your occupied Kingdom will never become a State. In the easy chair you can dream all you want. Your personal safety is assured, unlike the Hawai'ian killed January 16, 1893 by the haole who brought the wagon full of guns to The Committee of Safety.

Chapter 4

Mug shots

I sat in the cell without my glasses envisioning what the mug shot looked like. How ironic it was that I should be in jail. I had just finished last year the copyright phase of co-writing 'Surf Cuba' a play. No, it is a musical and every one is set free from jail on the occasion of Che Guevara's birthday in one of the scenes.

I had written a new song after viewing Sting in concert. I didn't pay admission. Rather I looked on the open air concert from the hill top park with picnic tables. A song for Estella flowed from within me after the concert. Inspiration from Sting's samba like vocals remained in me.

Estella is a character and heroine of 'Surf Cuba'. She is the leader of the Surfettes. I don't have permission from Tree, my song writing partner, today as I write this book to include Dance 4X my new song in the musical. Tree previously had objected then relented. I was in jail and the officers called him to say they had me in custody. He was upstairs in the court room when they brought me in before the judge in hand cuffs.

I had a warm shirt on in that cold cell and was thinking about the lyrics we had written to 'The Prisoners' Song' , 'Catch a Wave in Cuba' and the new lyrics I'd written to 'Dance 4X'. The 'Dance 4X' direction of thought calls attention to Estella before she enters the cafe in the city of Havana. The soldiers hear her voice and follow her as she repeats " Policy let it be damned project on us an other plan, Let us be free, free. free and dance, dance, dance, dance... ". Dance 4 X reminds me of Liliuokalani. The lyrics start I'm learning a lesson from a heathen Queen learning what it is to be seen strutin my stuff all over town, town, town, town. She was in Washington D.C. ! The soldiers find Estella dancing in the cafe when they arrest her. She thinks she has been arrested for dancing . She has no idea what she is charged with.

So it is with me. I have no idea why I've been arrested and held prisoner by the government in Hawai'i acting under the color of the United States of America. Can we get back to chapter 2 for a minute ? 'The Man Without A Country' book review. You are comfortable right ? The light is still on next to the easy chair you are sitting in and you have not reclined and fallen asleep yet . You look alert.

Could it be that Hale's book about Nolan is loosely grasping at facts that illustrate his point regarding the blind patriotism he is trying to foster ? Ok then please turn to pages twenty eight and twenty nine (28-29) of 'The Man Without a Country'. I'm forced to paraphrase here because I don't

have permission from the copyright holder to extract the passage verbatim. Can we ascertain that this bit of historical reference occurred in fact with people other than the characters that Hale uses ? President James Madison is mentioned. Hale refers to the Virginians with disrespect here as well.

Remarks Hale uses could be a verbal slight to Madison as the U.S. Civil War is in progress during the first publication of 'The Man Without a Country' printed 1863 in the Atlantic Monthly's December issue.

Hale's narrator states that Nolan(d) wrote a letter to the Secretary of War asking for a pardon yet the letter was unanswered. Nolan's imprisonment was to carry on and on. Allegedly with no new orders from America regarding the man, who never wanted to hear about the United States of America ever again, were forth coming. I guess that is consistent. Remember this book had a lot of impact on the American mind set of its day. Who knows if you my Kanaka Maoli reader might be influenced by those who came to be influenced by it themselves.

Naval officer Porter held Nolan as prisoner when he allegedly "took possession of the Nukuhiwa Islands" for the U.S. Stating that Nolan's ability with the design and building of fortifications could have been useful in keeping those islands, author Hale suggests that Nolan could have been left in the islands with Officer Gamble and this would be punishment enough for Nolan's transgressions. Defending the United States occupation of Nukuhiwa prior to 1863 would have been meritous duty according to Hale.

We do not have a year specified by the author for the U.S. occupation of Nukuhiwa as we do with the Kingdom of Hawai'i. 1863 is well into the colonial period for European peoples. Hale's narrator wishes to have kept these islands. Warding off the French from Nukuhiwa was inferred.

Hale may have been upset at a diplomatic decision by Madison and "Virginians' for not taking an opportunity to gain a colony in the Pacific Ocean. Can a Kanaka Maoli like yourself find in the record of the U.S. Congress or Madison's presidential papers a reference to the U.S. occupation of Nukuhiwa ? Were Porter and Gamble commissioned Navy and Army officers of the United States who took a vow to uphold the Constitution of the United States of America ? Go to Washington and investigate !

You in the easy chair wait, there is more to read here.

Lets go to Texas the lone star land. Turn to page forty four (44) forty four of 'The Man Without a Country ". We are talking Texas, big T, little e, little x, and an as too. Was Nolan an anarchist roaming from one colony to

the next not claiming any specific nationality at all. Hale creates him as a person who went to Texas.

I, Waveslide have only been to Texas once and at Texarkana, crossroads of Louisiana, Arkansas and Texas. It is marked in paint right there in middle of the street. I stepped into Texas deliberately yet not unlike some one stepping accidentally in a cow pie. My father loved to take his children out of school for a few days and we would go along with him on the business trip he chose. I went to Louisiana from our home, the town of Coffeeville, Kansas.

The Dalton museum in Coffeeville teaches that community citizens if prepared and alerted can over power the bad guys. Wow, 23 expended bullets extracted from Emmett Dalton are on display. The guy lived to a ripe old age in prison. Coffeeville citizens hit their target yet they were not trained military sharpshooters. They did not have a Gatling gun or early machine gun such as the U.S. Marines landed by order of the U.S. consul in Honolulu January 16,1893. The legend of the Dalton's Death is just the opposite of what happened in the Kingdom of Hawai'i. The U.S. Cavalry (Marines) arrived and helped the Bank robbers (American Lawyers and newspaper men).

You say, "But little boy Waveslide has his foot in Texas and I'm in the easy chair imagining I'm a Kanaka Maoli or aboriginal Hawai'ian". What is the Texas connection ?

Well we will get to that, so be patient. We need to ask again did our President Madison relinquish possession of Nukuhiwa as author Hale implies in his work of fiction, 'The Man Without a Country' ? I think Madison gave up Nukuhiwa diplomatically to appease the French or other European power who had prior claim. The United States was a weakling of a country militarily when Madison was president. He did not want to have another invasion of the U.S. Who wants to research this factoid ? How about some one with humility ? A humble Texan perhaps !

By the way as we are talking about Texas, How do I know if a person has "Texas humility" ? Easy because a person with Texas humility knows they are the biggest or the best and are humble enough to admit it, Brash and boastful Texans are known to be arrogant. Can we compare them to be like a thief that got away with something and was never punished ? Texans with lots of money are a phenomenon to be experienced.

Secretary Daniel Webster the great American Statesman resigned his cabinet post in protest of the Unconstitutional method the Congress used to illegally attempt to annex the Mexican province of Texas as a Territory to

the United States. To use a common American expression that's a fact, Jack ! The Texas incident caused several wars. Lots of people died. Lots of controversy occurred internationally. Texas issues were not settled as evidenced by Garza's December of 1891 attempts to seize Texas for Mexico. The U. S. submits its first ever case to the Hague Court of Arbitration in 1902 against not surprisingly Mexico. May Texas legally sucede from the Union ?

The Paniolos or Vagueros, the Mexican cowboys, wrangling the wild cattle in the Kingdom of Hawai'i had a diplomatic tie to Hawai'i. Don Francisco de Paula Marin, a courtly Spaniard, vacated his position in North America and settled 2000 plus miles to live in Hawai'i. He served as an emissary assisting Kamehameha the great. Those Mexican cowboys or paniolo may have been from Texas, a Spanish Territory. What is important is that Don Francisco established international relations for the Kingdom of Hawai'i with all the major international Navies. He was from the Spanish military and spoke many languages. Marin learned to speak Hawai'ian. He dealt with sea captains for the Ali'i.

Americans displaced Spanish speaking people and people speaking aboriginal language in Texas. Aboriginal languages were rarely used for diplomatic letters in the 1800's yet those speaking Native languages had been recognized as sovereign nations internationally. International law was the basis of the U.S. Declaration of Independence and the U.S. Constitution with regards to annexing new Territory has never been altered, amended nor changed since it became the all supreme law of the United States. Don't be fooled. If you are a citizen of the United States or claim to be one READ the Constitution. A ship by that name is preserved in Boston and it was used to force the Treaty of Ghent ending the War of 1812.

The vote for the annexation of Texas failed to gather the (2/3) two thirds majority of both Senators and Representatives in order to adopt a Treaty of Annexation. This is mandatory in order to comply with the U.S. Constitution, period. If you don't have two thirds (2/3) majority vote you have no Treaty of annexation and hence you have no new territory. The Texas issue became hotly debated in Washington and else where. Not to mention in Mexico. The Mexicans lost some battles but they were still at war with U.S. settlers that were originally permitted to settle in the Mexican province of Texas.

President Tyler and imaginative congressmen crafted a joint resolution only needing half or 50% of the majority votes to "resolve to annex" Texas. This failed the Constitutional requirement and the U.S. Congress approved this method of circumventing the U.S. Constitution in Feb. 1845.

Secretary Daniel Webster was not fooled, he resigned in protest. The Mexican government was not fooled they gathered more weapons and prepared to fight again. Just before the U.S. Civil War Robert E. Lee and the other U.S. graduates of West Point military academy who later fought each other in the war of cessation of the states (Civil War) fought the Mexican army over the Texas issue. Even after the Civil War the Congress of the United States and the U.S. diplomatic arm of government was forced to treat Texas as not part of nor a Territory of the United States.

Why you may ask sitting there in your easy chair with the light on imagining you are a Kanaka Maoli. Why, because there was no Annexation Treaty for Texas to become part of the United States. There was only a resolution to annex Texas to the U.S. No Treaty ! No (2/3) two -thirds of the majority vote. After the U.S. Civil War Texas was not immediately accepted as part of the United States of America. After The Confederate States of America were defeated, Lee surrendered to Grant at Appomatox court house , Texas was not immediately part of the Union and the Slaves were not truly free either. Texas it is alleged was readmitted to the U.S. in 1870.

This method the Joint Resolution to Annex was used several times when the U.S. Congress was approached by American Thiefs who wanted to steal Territory. Take California for instance, was a Joint Resolution used to annex it from Mexico ? Are there other States too ?

How about the Kingdom of Hawai'i ? A Joint Resolution was used after three failures in Congress. How many American citizens are in the Kingdom of Hawai'i with out Visa's, green cards or permission from the Government of the Kingdom of Hawai'i. From where you are sitting in the easy chair with the light on it will be difficult for you as a Kanaka Maoli in the year 2002 to accomplish readily such a count of Americans.

You will have to get out of your leather easy chair, turn off the light, go out of the house and start to count the Haoles. Did the haoles (foreigners) steal Texas ? Yes they did and lots of people died for this error .

The haoles believed that they stole Hawai'i. They asked the U. S. Congress to mislead the world and force their will militarily. No Treaty of Annexation hence no Territory of the United States. The Constitution of the U.S. requires (2/3) majority of both Houses of Congress to ratify a Treaty of Annexation and to this day that never happened with regards to the Hawai'ian islands. Congress tried but failed two times prior to resorting to the joint resolution illegal covoluted method.

We all know, three strikes and you are out.

March 09,1893 President Cleveland withdraws the 1st Annexation Treaty.

June 16 1897 Secretary Sherman submits a Annexation Treaty for Hawai'i that fails to pass the U. S. Senate.

July 07, 1898 Many Americans oppose what is an unwanted step towards Imperialism and as Congress cannot pass a true annexation treaty it passes a joint resolution (illegal according to the U.S. Constitution) regarding annexing of the Kingdom of Hawai'i. It is a bill not a Treaty.

May 31,1894 in a unanimous(I question that) decision the U.S. Senate declares that the illegal Government it fomented in the Kingdom of Hawai'i must be allowed to remain and that the United States will regard any nation that attempts to interfere there as hostile to the U. S. A threat is made ! ! !

If striking out three times is not enough you have the report of Senator James Blont to Congress and the December 1893 address to the joint houses of Congress by President Grover Cleveland to demonstrate the illegal acts of the U. S. invasion of the Kingdom of Hawai'i. Basically Cleveland said the U. S., according to International Laws and several International and U.S. Treaties, acted illegally in Hawai'i. That has never changed.

In Hale's book 'The Man Without a Country' the news about Texas is clipped from the news papers prisoner No-lan(d) is given to read. The idea is that Texas people will fight for the North when a convincing picture of patriotism is instilled. This is author Hale's goal. The Naval officers let Nolan read about California the story goes but then that changed I guess with a later joint resolution bill or false annexation from Mexico. The narrator of this bit of fiction, or historically semi-fiction, on page (45) forty five ends his physical interaction with the military prisoner.

He starts to write a letter about the voyages, the narrator does this . You can assume that the easy chair you imaging yourself to be in is not on the deck of a ship but No-lan(d) is confined to the ships of the United States and they are keeping word of any thing to do with the United States from him. The naval officers from Texas think this is humorous. They don't know, I'll wager that Nolan spent a good deal of time in Texas. If they were typical Texans they would fight for their fellow Texan, don't you think ? The Texans I went to boarding school at Casia Hall prep school in Tulsa loved to fight. So did the Mexicans. They have all kinds of derogatory words for each other.

Back to the book 'The Man Without a Country'. The narrator becomes

chummy, friends or confidentially intimate with the prisoner. The author was ordained as a Judeo-Christian minister and his family had a tradition of giving speeches. He may have felt that tradition needed upholding . Was Hale cofidentaly intimate with his fictitious character, No-lan(d) ?

I'm beginning to like this book because it has not failed me yet. I hated to make book reports. This book of Hale's is no 'Moby Dick' composed in spiritual complexity. It is a strait forward fib by a clergyman. It is honestly introduced as dishonest to me by the publisher of 1936. Dad and Uncle Bill's copies were printed in the 1960's. The readers in 1863 did not get the introduction I got. The fiction may have been presented as fact. I need to get a copy of the Dec. issue of the Atlantic Monthly magazine where it first appeared to ascertain that.

Al right so page (45) forty five of Hale's fiction may reveal his goal when his narrator gets to discussing his consideration to print this story as a warning to the "young Nolan's"(No-land), men who speak out against the Union(the government of Washington, D.C.) or the future Nolans . Be cautious. ! Hale is warning them of "what it is to throw away a country".

The narrator has received a letter giving an account of how Nolan dies which justifies to him it is all right to reveal a military secret about a secret trial and a secret prisoner kept imprisoned secretly with no court orders or files. The Beatles sang "Do you want to know a secret?" and we all listened.

Secrets get revealed. They are intentional. If you want every one to be curious tell them you are going to keep a secret. Attorney General Ashcroft says President Bush (43) is establishing a secret military tribunal and every body wants to know the secrets. Senators and think tank gurus react to this secret thing big time. December 2001 near the seventh (7th) or Pearl Harbor Day much of the debate about secret military tribunals was held all over television broadcasts including coverage by CNN, Cspan, Fox and the Comedy Channel.

Comedian Bill Maher held a discussion about the Question of Military secret Trials hosting Vanity Fair magazine editor Christopher Hitchins, Miami Herald columnist Dave Barry and others for a revealing discussion of International law. A Spanish Judge was mentioned who distrusted American Fairness. This judge refuses to extradite to the U. S. suspected terrorist prisoners held in Spain. Perhaps he knows of the Kingdom of Hawai'i's plight. The U. S. has a reputation of shooting first and asking if it complied with the law later. The Spanish American War dealing with Cuba, the Philipines, Guam and Puerto Rico are examples that closely followed the Kingdom of Hawai'is occupation by the U.S. Naval Marine Corps.

Chapter 4 page 8

"Isn't this chapter titled mug shots ?"you ask. Yes, I say but please be patient and read on any way. Please, just for old times sake !

Also on page (45) forty five The narrator of "The Man without a Country"says the prisoner Nolan has died and then concludes, "He has found a home at last, and now a country." That is odd, don't you think ? A minister should know that there are no nations for the spirit in death. This guy Nolan was born in a land other than a Territory the U.S. of A. and held prisoner away from "his country" by the U.S. Marines and Navy. It is not Nolan(d)'s country, it is the land acquired by the U.S. Military and they have transplanted their symbols to represent the Land.

Page (46) forty six reveals the problem of secret orders from a secret tribunal. Hale asks will we get sued as a nation by this prisoner for the false imprisonment or kidnapping? Hey, this Nolan guy may not even be a true citizen of the United States of America. Blind Patriotism is even questioned by the officers given the old orders to keep Nolan prisoner. These officers vow to uphold the Constitution of the United States of America. These guys are questioning why they are holding this guy and what is going to happen when and if he escapes. But what is most telling is the "Mission Impossible" part here on this page. Fail i.e. let the prisoner escape and the U. S. will disavow any knowledge about the affair. Sounds like an American thing !

Americans understand their Constitution is not perfect. When it is clear and precise some times Americans ignore it. Naval officers, Congressmen and Judges have an ugly record in the U.S. of ill advisably ignoring the Constitution.

Nolan was not to hear or see America again. He the fictitious character passes away on page (47) forty seven. He's got an American flag in his room and the picture of Washington the author says. He 's got a bald eagle with lightning in it's beak and a map of the good old U.S.A. drawn from memory. Just like old Frank Sinatra singing "you can't take that away from me ", the man this fictitious 'Man Without a Country' shows you he's got a country . He's saying in the book I got a country and you imposed it and it's symbols on me. By taking away any mention or news of that country I want to be part of it even the more. Kanaka Maoli see the symbols of their Kingdom daily.

Now if you stole this dude Nolan's car, yes they didn't have cars in 1863, but later apologized for stealing his car, were foolish enough to still retain a claim and possession of his car, he would be angry. Even if you have a gun on the guy he would be angry. If he was bigger than you just like the Hawai'ian guy who smashed the scull of the Japanese pilot that shot him on the island of Ni'ihau after Pearl Harbor was attacked, he may beat you up !

This is what Waveslide is faced with as a blue eyed surfer waiting for waves in the Kingdom of Hawai'i. You apologize to the big Hawai'ians for stealing their internationally recognized Kingdom who's government old Daniel Webster as U.S. cabinet minister recognized. I, Waveslide am defenseless in the water. At least if I'm in the water I am not in a jail cell presently.

There is a warrant for Waveslide's arrest, and maybe not the last. Sit back in the big leather chair and relax. The surf is small now and the light coming from the lamp above you is still shining steadily. You have been given a task to count Americans in the Kingdom of Hawai'i.

How you get your mug shots of Americans in order to facilitate counting them may be best accomplished by the same method that is used to bring people to traffic court. Americans, you have heard don't follow their own Constitution so why should you.

Are you still imagining you are Kanaka Maoli ? I hope so ! I hope you will be creative and seek the advise of professionals from the International Law community through out the world in order to solve the problem you have with illegal alien Americans in the Kingdom of Hawai'i.

Please, think about the way the Cubans successfully got the Americans out of their island country. In all fairness to the Cubans the United States ruined their government's chances at self determination immediately after the Spanish American War. The Filipino's like the Cubans held armed uprisings against the American invaders. The United Nations helped the Philippines get independence from the U.S. in 1946.

What happened in the Kingdom of Hawai'i after the United Nations received it's charter ?

Well let us put that easy chair and lamp on a big old surf board. We can now surf around the world and discover facts.

Americans can be imaginative in their use of fraud. The Kingdom of Hawai'i may be the worst case to test or unravel the illegal acts of America's Congress. If you had mug shots of the guilty Americans it would help.

Remember this, you are in the leather easy chair. You have the light on. Relax and uncover the foolishness of the United States Congress. It is easy provided you have the right publications. But remember this, for I know that if I tell a Lie and want to maintain that lie I will need to tell many more lies to reinforce the first lie.

Chapter 5 Counting Americans

We are hoping to count Americans, not just people who think they are Americans and who were fooled by the illegal acts of the U.S. Congress in to believing they are Americans. No we don't want to count service men and women and their dependents in the Kingdom of Hawai'i because they are the occupying forces in the Kingdom of Hawai'i. Or do we ?

We now need to ask did any International body try to assist in the decolonization of the Kingdom of Hawai'i ? Did The United States help build this International body and do they have veto power over it ?

Let us look into the records of the United Nations. If we look at the League of Nations that was in Switzerland we can ask did the United States have a veto power over that body ? The International Postal Union in the same country may be helpful so we can examine their records too. But, let us see what happened with the Kingdom of Hawai'i in the records of the United Nations in New York City, State of New York, United States of America.

The Year is 1952. Waveslide an infant cannot walk much less Surf .

Actions of the United States Congress in previous years reflect special treatment given to the Kingdom of Hawai'i and the people that reside there. Like a lie that must be maintained several lies follow to keep the lie alive before it is uncovered. Remember , imagine you are Kanaka Maoli reading the Constitution and Congressional record of the United States with a critical eye and in complete comfort in the Library of Waveslide's dear Dad. You are in Hanalei on the island of Kauai.

You find ou that in January 1895, The U.S. Puppet Government in the U.S. occupied Kingdom of Hawai'i threatens the Queen of Hawai'i that her people who are revolting against the U.S. puppet government will be executed if she does not sign papers that they wrote. From Liliuokalani's arrest in January until she signs these forced on her documents she is imprisoned in isolation. She is kept in the palace so as to give the impression nothing is wrong. She is charged with misprision of treason and could also be executed by the American Lawyers holding her.

June 1897 the U.S, Secretary of State John Sherman submits a failed proposed treaty to annex Hawai'i from the U.S. Puppet Government now known as the Republic of Hawaii. These Lawyers claimed a bloodless revolution occurred in Hawaii, yet their first act was to kill a Hawai'ian policeman when gathering their rifles into a wagon. The murder of this policeman in 1893 was it ever tried in court ? Within months of the U. S. occupation of 1893 the U. S. puppet government declared martial Law.

Chapter 5 page 2

If you can get up now and get the copy of the book 'Hawaii Pono' by Lawrence H. Fuchs (1961 Harcourt Brace and World L.C.C.C.61-13347) off the shelf at this time it is proper that you should do so.

On page 32 of that volume you can read of the lies and false information that American Lawyers in Hawai'i told the U.S. Congress in 1893. The extortion and other means of force that the Kanaka Maoli were subjected to by the American Lawyers and newspaper men who enjoyed the protection of the U.S. armed forces after January 16. 1893 is portrayed in Fuchs' book. Telling is that the U.S. imposed puppet government imposed a Constitution for it's illegal Republic without a referendum. There was no revolution. The forces of evil had the support of the U.S. Government and military.

The illegal governments that have followed in the Kingdom of Hawai'i are all characterized by the all telling fact that referendum has not existed since the acts of American lawyers and newspapermen in 1893. Lawyers are not prosecuted for perjury in the United States that I know of.

Read on through page 33 to 37 and concentrate on the account of a part Hawai'ian man who claimed the Republic of Hawai'i was a "Police State" in Fuchs' book.

July of 1898 a bill (fraud?) that has passed both houses of the U.S. Congress resolving to annex the Kingdom of Hawai'i to the United States is signed into law by President Mc Kinley. Illegal act that it is, it hopes to make American citizens of the population found in the Kingdom of Hawai'i.

Few people know of the restrictions imposed by the January 1867 U. S. law that grants citizenship to all males over the age of 21 in the U.S. Territories. It may not apply to Midway island claimed by the U.S in August 1867 the first Territory of the U.S. outside of North America because it has no population. On March 12, 1888 the Secretary of State Charles F. Bayard representing the United States of America signs a treaty that excludes Chinese laborers from the U. S for twenty years. Oct. 1,1888 the Scott Act is made U. S. Law excluding the Chinese from the United States. Chinese in Hawai'i are discriminated against and abused by white Americans for decades after they proclaim that the Kingdom of Hawai'i is a U.S. Territory illegally. In 1952 The U.S. Congress passed the McCarran- Walter Act once again illegally granting U.S. citizenship to the Population in the Kingdom of Hawai'i.

You are in your easy chair and you can ask why go to all the trouble to tell an other lie ? I'm Kanaka Maoli and I want to KNOW what is the compelling reason necessary to <u>again falsely grant</u> U. S. citizenship in Hawai'i ? Does the United Nations have any thing to do with such U.S. actions ?

Chapter 5 page 3

Our goal is to count Americans in the Kingdom of Hawai'i . The United Nations is making an effort to follow through on the world trend to decolonize lands held by the super powers. Mahatma Gandi assisted the Indian people to be recognized as first class citizens in South Africa prior to his nonviolent success to rid the Indian continent of British imperialism. The United Nations begins forming it's charter in SanFrancisco in 1946. If the U. S. is to hold on to it's military strong hold in the occupied Kingdom of Hawai'i it must gather the votes necessary to keep the lie of U. S. Territorial existence alive there .

In 1952 there are very few white Americans living in the Kingdom of Hawai'i as compared to the bulk of the population. People of other nationalities in Hawai'i's Kingdom have been treated poorly by the powerful Americans whites and their ability to advance in life has been limited by those white wealthy Americans. These poorly treated people include many Kanaka Maoli and part Kanaka Maoli who have endured racial slurs and prejudice at the hands of the U. S. occupiers. Many of these people can remember the illegal acts of the U.S. occupiers and some even lived during the United States invasion of the Kingdom of Hawai'i. The U.S. in order to keep it's lie of a claim to Hawai'i would need votes of the immigrants that had been brought as agricultural laborer to Hawai'i in order to bolster the false evidence the U.S. was about to deliver to the United Nations concerning decolonization.

On December 01, 1881 Secretary of State James Blaine declared that the Hawai'ian islands were part of the Americas and fell within the expansion plans of the Monroe Doctrine. In 1883 the U.S. Congress appropriates money to build Steel Cruisers to enable to U.S. Navy to pursue the aims of that Doctrine. On 14 June 1889 After German and American warships begin hostile manurers over Samoa, that a hurricane halts, a Three-power protectorate treaty is signed in Berlin with the assistance of Britain. Three American warships had been sunk by the hurricane as they were at anchor in Apia harbor. No such hurricane saved the Kingdom of Hawai'i in 1893.

January 20, 1887 the United States signed a treaty of Amity and Commerce with the Kingdom of Hawai'i that is in effect today. Originally negotiated in 1875 and renewed in 1884 the Reciprocity Treaty as it was known is finally ratified by the U. S. Senate when it is amended to give the United States the exclusive right to build a Naval base at Pearl Harbor.

Ironically the Dawes Severalty Act is signed a few months later by President Cleveland dissolving the national status of Aboriginal American Tribes and dividing their national lands for distribution. It seems any Treaty the U.S. makes with Aboriginal peoples is subject to rejection at a later date by whim of the U.S. Congress in it's imperialistic scemeing.

From an easy chair in a library on Kauai we find information about Article 73 of the United Nations charter. Oh no maybe we have to get up and go to the computer or a web T.V. unit to look up www. free hawai'i . org to find about the decolonization specifics of that Article.

Was the United States of America required to decolonize Hawai'i and give the indigenous people the opportunity to self govern themselves ? I was a little boy when the procedure, chosen by the U.S. authorities to bring about a vote by the people dwelling in the Hawai'ian islands in the 1950's to furnish evidence to the United Nations that it had complied with Article 73 of it's charter, took place.

Persons who had come to serve in the military of the United States and their dependence voted in that occurrence. Professors at Hawai'i's Universities say that this "False plebecite" did not allow for self-determinization. The questions set for voting were restricted to shall Hawai'i remain a Territory (of the United States) or should it become a State ! The option to restore the Kingdom of Hawai'i was not offered by the defacto government that could be thought to be a puppet of the United States. The vast amount of U. S. military personnel stationed in Hawai'i, their spouses and dependents, U. S. colonists who had established themselves in the Hawai'ian islands and immigrants to Hawai'i's Kingdom that were told they were citizens of the United States by means of the "unconstitutional" joint resolution to annex Hawai'i of July 07, 1898, the McCarran-Walter Act, etc. outnumbered the aboriginal Hawai'ians as registered voters for this particular procedure. Colonials voted !

Remember some of the immigrants and especially their children had fought valiantly in World War II and the then recent Korean Conflict in order to show their loyalty and patriotism for the United States. Service as a reservist after discharge and mandatory enrollment in junior ROTC in Hawai'i's High schools was common place even up until the Vietnam War of the 1960's and 1970's. This was true for my father , an anti-aircraft artillery man arriving in 1942 and for myself, released from junior ROTC in 1970. Kammehameha school disgarded mandatory ROTC in 2001.

Americans who are part of a U.S. military establishment have been extensively indoctrinated in the jingoistic views of the United States rhetoric. These people in the 1950's residing in Hawai'i would most certainly be ostracized for espousing views that called for the restoration of Hawai'i's monarchy. Certainly they would not be exposed to the television programs that are telecast today in Hawai'i with regards to the truth of the illegal overthrow of the Kingdom of Hawai'i and it's recent 1996 reinstatement. Most people in Hawai'i do not know if the U.S. is guilty of fraud in this U.N.

required self determinization question that the U.S. actions and report constitute ? The election methods, demographics of voters and returns interpretation of this U.N. mandated action may now be put in a truer light and as any Lawyer will tell you the statute of limitations for fraud does not terminate.

Many indigenous and concerned individuals world wide would rest easier if the United Nations would investigate and allow an independent body to determine if the U.S. had only used the decolonization mandate to bolster it's colonial hold of Hawai'i's Kingdom by having it's colonist and military voters think Hawai'i was an equal standing State with in it's union.

Look back at our copy of 'The Man Without a Country' written in 1863, the subject is from Texas and he has been deprived of his privilege to see his home. Vindictive American military men in this fiction have a basis in fact. Some American whites were known to lynch people of color and other atrocities when those of color were out spoken. White Americans often went unpunished for their involvement in the murder or abuse of people of color and the Masey case in Hawai'i is a prime example of the well publicized situation where a Hawai'ian aboriginal man was murdered. The whites escaped punishment. The more telling shooting of an aboriginal citizen of the Hawai'ian Kingdom by an American militant that went unpunished was of the police officer that was shot when the driver of a wagon full of arms wished to elude detection in January, 1893.

Since the arrival of U. S. spies, military men Alexander and Schofield 1nto the Kingdom of Hawai'i (1884 approx.) the military occupation by the United States of these islands had been planned. Fiercely defended both by the armed forces (U.S.Marines, Air force ,Army and Navy) and by the rhetoric of the American Colonists, their Puppet Government and Press the American Government, Military and Business interests sought to hold the captured Kingdom of Hawaii one way or the other even though U.S. Secretary of State Daniel Webster recognized the Kingdom of Hawai'i officially in 1842. Efforts to purchase both Cuba and Hawai'i are considered beginning in the year 1853 , while Franklin Pierce the fourteenth President of the U.S. comes to office.

What is of interest is that the next year in March, 1854 Admiral Perry forces the Japanese to grant the U. S. a coaling station in the ports of Shimoda and Hakone along with a U. S. Consulate. The next month U. S. commissioner David Gregg meets with Kamehameha III April , 1854 to discuss annexation of The Kingdom of Hawai'i to the United States.
All in all this is inappropriate as the major European Powers have continued to guarantee the Kingdom of Hawai'i's existence offering their protection .

Since Hawai'i became a Constitutional Monarchy in 1840 based on both the American and British models of Government, recognition from world powers were swift. Hawai'i's King Kamehameha had received the protection of King George of England since the late 1790's and according to the journals of prominent people in Hawai'i especially Don Francisco de Paula Marin the Americans and their merchant vessel crews caused the most threats to the peace of the Hawai'ian islands. Incidents that follow including the recognition of Hawai'i's Kingdom by major world governments in 1842 are very telling and set the precedent for International Law for dealing with the illegal taking of the Kingdom of Hawai'i by superior military force at the hands of an aggressor Nation's minister or citizens. The actions of British Captain Lord Paulet who threatens to shell Honolulu February, 1843 unless Hawai'i's King provisionally cedes the island Kingdom to England are later diplomatically reversed. Paulet states later that he made these threats and ceased the islands by force because the French fleet was on it's way to do exactly what he had done, capture the Kingdom of Hawai'i .

Kamehameha III sent a messenger to Spanish Mexico to inform the ambassadors, consuls, viceroys etc. of other countries of the illegal acts that British Captain Lord Paulet had caused in His Kingdom. His message arrived while the Americans and Mexicans were fighting over Texas. The United States had relinquished any claim to Texas with the Adams -Onis treaty of February 22, 1819. American citizens began the conflict after settling in Texas. This is very much a scenario which would be repeated by American citizens in Hawai'i.

Admiral Thomas sailed from Mexico with his British ships to Hawai'i after receiving the message of Kamehameha III . He arrived in Honolulu in July of 1843. The motto: " 'Ua mau ke ea o ka 'aina i ka pono ' (The independence of a righteous Kingdom is restored) now usurped by the defacto State of Hawai'i was expressed by King Kamehameha III at the ceremony that took place July 31,1843 when Admiral Thomas lowered the British flag and raised the flag of Hawai'i's Kingdom there-by setting a precedent of international law in the matters dealing with aggression against the Kingdom of Hawai'i .

Later in November of that year the Government representatives of both France and England met in London signing a joint declaration on November 28, 1843 recognizing the independence of the Kingdom of Hawai'i . France had previously recognized the independence of Texas September 23, 1839 yet the United States president Jackson refused to sign a Congressional resolution to recognize Texas in July 1836.

The Texas tie-in I mention here is important because the next effort

will illustrate the repeated willingness of the United States Congress to ignore it's own Constitutional requirements when acting to acquire more territory improperly and illegally. Methods used can be questioned to have been both illegal according to U. S. laws and International law which is the basis for the existence of the United States of America according to it's origination Documents The Declaration of Independence, the Bill of Rights and the Constitution of the United States even as that document has been amended over time.

April 12, 1844 American colonists now in Texas claim to have formed a Republic and those Americans sign a treaty with certain United States officials ceding public land in Texas (Mexico). Calhoun a negotiator asks the U. S. Congress for $10 million to settle public debt in Texas and president Tyler urges its adoption. The Senate rejects the treaty from the "Republic of " Texas by a vote of 35 to 16. No annexation takes place ! ! !

December of that year in his annual address to Congress Dec. 03, 1844 President Tyler suggests that the United States annex Texas by what can be termed an unconstitutional method, that of joint resolution instead of trying to adopt a treaty. This joint resolution method is not a true treaty of annexation and only requires, Tyler suggests, a majority vote and not the two-thirds majority of a Constitutional mandated treaty of annexation. This is a method to circumvent U. S. and International Law.

January 25, 1845 The United States puts it's self in jeopardy of War with Mexico as the House of Representatives votes 120 to 98 to annex the "Republic of " Texas by a joint resolution, a false annexation treaty and it fails to meet the U. S. obligation of the Adams-Onis treaty of 1819. February 27 that same year the Senate amends the proposed joint resolution to annex Texas to provide for negotiating a new treaty later on and having passed that by a vote of 27 to 25 sent the bill back to the House of Representatives for adoption. The next day the House passes that amended joint resolution. Four States will result from the Texas acquisition by joint resolution or false annexation.

How does the joint resolution to have a treaty at a later date work and how did it end in War with Mexico and finally become resolved by the world court in 1902 (the Hague court of Arbitration) ?

How does this effect Hawai'i and the American colonists living there in the years 2002 and beyond ?

How is any of the fraud presented to the United Nations concerning the Kingdom of Hawai'i reversed ?

SYMBOLS

As with the previous chapter please remember you are comfortable and resting in a leather easy chair. The light is filling the page of the book 'The Man Without a Country' and you are near the completion of this inspiring book. You may ask if the Edward Everett Hale classic was written in order to gain the support of the Texas warriors for the side of the Union (North) in the U.S. Civil War or more to convince people that the Nations symbols are inspiring and dear to it's citizens. Texas reserves the right to succeed from the union to this day I am told by Texans visiting Hawai'i. Be that as it may Nolan(d) the book's main character dies holding those symbols that stir patriotism in Americans very dear as he has been denied access to his home land. He allegedly wished never to hear of the United States ever again in his military trial and was granted that wish as a sentence. The idea that if the United States citizenship was denied to the southerners (Confederates) they would be rendered men without their country can also be assumed as Hale's intent in writing this book.

Let us look beyond Texas, to the War with Mexico that followed it's false annexation by joint resolution fueling that war, the first case involving the United States (and Mexico 1902) at the Hague in Holland, and the Spanish American War over Cuba and the Philippines. Let's look at the symbols left behind after the U.S. Government intervened in those countries and see the symbols it placed in substitution for what had previously existed.

How similar these symbols became to the United States symbols. Texas the U.S. citizens gave a banner with a lone star within a field of Navy Blue , one white and one red bar or stripe. Not dissimilar to the U. S. Stars and stripes from a distance or as seen from a galloping horse. Cuba the United States citizens gave a flag after occupation by its armed forces in 1898 with a single star on a blood red triangular back ground and multiple white and blue stripes reverse colors to the United States flag . In Hawai'i the U. S. citizens simply usurped the Hawai'ian Kingdoms flag as it was similar in shape to the stars and stripes of the United States flag yet it contained the British Union Jack in place of the field of stars and held navy blue stripes along with the red and white. Americans usurped Hawai'i's motto as well yet gave it another interpretation to suit it's needs. "The land is preserved in righteousness" may be a convenient interpretation of "'Ua mau ke ea o ka 'aina i ka pono " if you have stolen a Kingdom and wish to interpret the motto in order to deceive the majority of the people that no change has occurred in the government. Ask the Americans for advice . Usurp the national anthem of Hawai'i as well .

Flags and mottoes are rallying symbols and they unify a people to the call of their government just as the leaders images and presence do. The imprisoning of Queen Liliuokalani in her palace was also a usurping of

the National symbol of Hawai'i's Kingdom by the U.S. backed puppet government. This act kept the Queen from rallying her people in times of threat and foreign occupation. The Chinese people had landed weapons in order to assist the removal of the American forces of occupation in response to the threats made by the U.S. Senate to the World to stay out of it's affairs in the Hawai'ian islands in 1894. (The Kung Fu or Boxer rebellion in China was an uprising due to the opium trade and influence perpetuated on China by the Western powers including the U.S.) Chinese were treated unfairly by the U. S. citizens and Government. Their assistance to the Queen of Hawai'i was logical at the time.

Stupid statements by U.S. officials of the highest ranking are exemplified by the statement made by U.S. Secretary of State James G. Blaine Dec. 01, 1881 when he declared that the Hawai'ian Islands are part of the "Americas" thus failing within the Monroe Doctrine of "Manifest Destiny". This type of foolish thought stirred up jingoist fervor in Americans of European ancestry that later use all manner of devious, deceptive and unlawful acts that ended up with the death of indigenous Hawai'ians and the usurping of their lands and Kingdom. Murders of Hawai'ian Kanaka Maoli have gone untried or unpunished if they were perpetrated by white Americans and court rulings in their favor in the corrupt puppet governments imposed by the United States persists today.

An example of the treatment of Indigenous Americans including genocide and one-sided repealing of treaties by the United States can be researched in the books 'American Tribal Governments' by Sharon O'Brien (ISBN 0-861-2564-0 or 0-8061-2199-8), 'Oklahoma ', a history of the "Sooner State" by Edwin C. McReynolds (Lof C CCN 54-10052) and 'What Your 5TH Grader Needs To Know' by Ed Hirsch Jr. (ISBN 0-385-41119-7) pages 163 to 223.

A large amount of false history of the Hawai'ian islands exists currently in print and no scholar should read any work by Gavan Dawes without taking any of his assumptions as "Facts" in this authors opinion. He coauthored a book with George Cooper titled ' Land and Power in Hawaii' (ISBN 0-9615052-6) . If you read the introduction to this book especially starting at page 2 the third paragraph after the three stars * * * you may question if, (knowing the fact that the U.S. marines invaded and set up a puppet government in Hawai'i's Kingdom is omitted and since the threat of the U.S. Senate in 1894 to the rest of the world not to interfere in any U.S. action or that of it's citizens acting with the superior support of the U.S. armed forces in the Hawai'ian islands) any of what actions followed after 1894 reported in this book are not legally binding on any of the Kanaka Maoli, true sovereigns to Hawai'i's lands.

Chapter 6 page 3

An other book which is for the most part dubious in it's assumption of facts is 'The Parker Ranch of Hawaii' by Joseph Brennan (ISBN 0-381-98265-3). Its introduction stating that it is a sincere, true and authentic picture of the times may be over stated by Richard Smart. Mention of Alfred W. Carter a Lawyer and graduate of Yale who was offered a position in the U.S. puppet government in 1893 as a source of information along with the Hawaii historical society, The Hawaii State Library system files, Hawai'i of Today by Lieut. R.C. Wriston (a member of the Honolulu rifles who's gun carriage driver murdered a Hawai'ian policeman January, 1893) and the news papers The Star Bulletin and the Honolulu Advertiser (published by Lorin Thurston primary instigator of the Honolulu Rifles and annexation promoter extraordinare) cause me to question it's truthfulness.

On page 21 of 'The Parker Ranch of Hawaii' the account of the massacre of Kanaka Maoli by Americans may be of merit to read and I can obtain from this passage an understanding of the blasting a ship may deliver to a population of noncombatives. You may realize that Queen Liliuokalani knew that the U.S. had in the past and would, if the lie could be told that it (the U.S) had been provoked, set it's naval guns upon Hawai'is people at will and render great destruction. On page 112 the most uninformed or false statement made in Brennan's book about Hawai'i' Kingdom exists ironic as it is. He states "The presence of American troops in the city (Honolulu Jan. 17, 1893) made possible a bloodless revolution." which is a blatant falsehood and I question if it was meant to mislead the public and vilify the Parker Family, the Dosett family and their heirs from culpability as co-conspirators in the acts of treason that took place during the overthrow of Liliuokalani.

The overthrow of the Hawai'ian Monarchy of 1893 was no revolution by any means as Fuchs in his book 'Hawaii Pono' tells it true. Certainly for the Hawai'ian aboriginals, who lost one policeman from American gunfire and who observed the genocide of Kanaka Maoli that followed the over throw of their Kingdom's government by United States citizens and it's military imposed series of governments, it has not been bloodless. The U. S. continues to threaten the Hawaiian aboriginals with bloodshed and they may well question if some of their leaders have been poisoned and met untimely deaths because of U. S. actions Mr. Preshiem is one example and the Struggle of Nawahi Kalani o Pu'u is an other example of U. S. efforts to disenfranchise and prevent out spoken Kanaka Maoli from representing the majority of the population of Hawai'i's Kingdom.

The Atomic blast on Johnston Island August 1962 seen in the book 'Hawaii 1959-1989 ' by Gavan Dawes (ISBN 0-935180-64-8) is on page 19 . Pages 2 through 8 of this book leaves a lot of information out especially regarding the United Nations mandate to decolonize Hawai'i. Yet on page 3 Dawes writes " In 1898 the United States ... a new imperial power, ready

to flex it's muscles and stake a claim overseas. Hawaii offered the United States the classic permanent attraction of all real estate, political or other wise : location, location, location. Further Gavan Dawes here mentions the strategic importance of Hawaii in the Cold War and Vietnam War.

Most people are unaware of why the United States troops fought in Vietnam. I was fortunate enough to study at the University of Hawai'i the subjects of chemistry , physics and gemstones science (Gemology) later at the Gemological Institute of America ,Los Angeles. The Cold War was about nuclear weapons development and power generated from nuclear reactors. Strategic minerals that were necessary in order to build future reactors and improve and maintain existing ones relied on minerals and metals that are rarely found in the continental United States.

By far the most important location for mineral purchasing from reliable sources is South East Asia. Begun in the times when South East Asian lands were vassals to India, mining of rubies, sapphires and associated gem gravels has been carried on by even the proudest of rice growers no matter how small his fields in what is now Cambodia, Laos, Burma Thailand and unified Vietnam. The Eisenhower U. S. Administration refused the U.N. mandate to unify Vietnam because the U. S. wanted it's mineral wealth. Similarly the Eisenhower government held on to Hawai'i for military purposes and opposed the U. N. mandate to decolonize Hawai'i. The U. S. fought Stalin of the U.S.S.R. (Russia) by building a strong nuclear program.

Knowing that nuclear fuel is kept in a metal jacket inside a reactor while it begins the fission processes is important. The hotter the reaction the more efficient the production of power in a system Delta Q over Delta T is the classic method of determining efficiency. With advances in metallurgy and the combination of metal oxides and minerals in new alloys that are pounded together from dust of certain minerals, metals and metal oxides people have made parts for airplane engines that can operate at higher temperatures, burn less fuel, last longer and produce more thrust. Electrical power plants can use liquid mercury turbines where the mercury is converted to steam and produce more heat and power than by using water steam alone.

In the mineral zircon, zirconium metal used to make a Diamond substitute cubic Z is one mineral used in the technology associated with nuclear power. Developed by Warsaw pact or Communist countries and Americans too, synthetic minerals production necessary for atomic reactor pile sleeve technology relied on steady streams of natural occurring minerals. No place on earth has them so abundantly as South East Asia and has been producing those rare gem minerals continuously and competitively as well. Madagascar has deposits yet no population nor roads nearby.

Many nations fought over the rubber tree plantations of Indo China as well and the Petroleum reserves existing there. France , Australia, New Zealand ,China, Russia, etc. all fought in Viet Nam yet the citizens, the miners if you will, lost the most of their people. In the "War" 3.8 million citizens of Vietnam died it has been reported. Only 58,000 American died there. Japanese, French, Chinese , Cambodians etc. soldiers died there too.

The H-Bomb exploded off of Johnston island a few hundred miles from Honolulu August 1962 heralded the coming of Fusion as opposed to fission nuclear technology. An H bomb is a secondary explosion I'm told and man must explode a fission bomb to trigger a fusion Bomb. The Sun I'm told is a fusion phenomenon. Scientists have tried to harness hot fusion via a device that encases the fusion reaction inside an electric field. So far these devices use more energy than they provide and hopes for hot fusion reactors were lost to dreams of cold fusion which has been so far less promising. In the mean time reactors of old design have melted down and caused great terror to civilian populations. Three mile island and Chernoble are the most fearful of fatal mistakes. Radiation levels in Hawai'i's Kingdom are due to American bravado and military brandishing of nuclear power.

Is the Kingdom of Hawai'i one of the largest repositories of weapons of mass destruction in the world ?

Will those angry with the United States make Hawai'i and it's population of American colonists the target of the next Terrorist activities aimed at the United States of America ?

Where does that leave American colonist living in Hawai'i in the year 2002 and beyond. ?

Will the people living in the Kingdom of Hawai'i be cut off from the source of imported food that sustains them ?

Will nuclear powered ships bring cargoes to the Kingdom of Hawai'i when fossil fuels are depleted ?

RELAX THE HAWAI'IIAN PEOPLE HAVE NEVER GONE TO WAR WITH THE UNITED STATES

The World Court has a body of law and precedents that look favorably to the petition of the King of Hawai'i in His suit against the United States. The King of Hawai'i, I assume, has the compelling case. His people are held in prison in the United States in Minnesota,Texas and California to mention a few states where they are incarcerated. Those prisoners may be repatriated to Hawai'i and at that time in the future we hope that they are truly rehabilitated by the U.S. prison system .

Most Haoles or foreigners holding documents prepared by American Lawyers and the like may want to examine their documents. People holding title insurance policies may ask if they need to make demands upon the insurer or ask the insurance provider/underwriter if the company will honor any claims that may arise due to forfeiture of their title to properties held in the Kingdom of Hawai'i due to rulings expected from the World Court of Arbitration (the Hague in Holland) .

Get yourselves a passport if possible, at least apply for one, and prepare to take the driving test if you expect to continue to operate a vehicle in the Hawai'ian Kingdom. The first case to come before an International tribunal dealing with the illegal occupation of Hawai'i's Kingdom by the United States began over a traffic matter I am told.

I will do my best in the future to gather more information regarding proper behavior of Americans in the reinstated Kingdom of Hawai'i in order to assist you . To prepare yourself adequately as an American please read the books mentioned in the previous chapters and especially the book 'Hawaii Pono' by Lawrence H. Fuchs (lib. of Con. C.C.N. 61-13347) beginning with the prologue up until page 85. The understanding of the condition of the Hawai'ian indigenous people found there will give you a deep appreciation of the matter with the aid of Mr. Fuchs' words and scholarship.

Any Americans or other Haoles that feel upset, relax. The Hawai'ian islands have been host to visiting troops from many International ports. Likely there will be a great sense of cooperation in the Kingdom of Hawai'i and if you have any fears take a surfing lesson if you haven't already . Purchase a long board and be prepared to sit out any unrest by taking to the water where you may face only the surf and sand. U.S. military intervention is always close at hand and the King of Hawai'i has not indicated he will not honor his treaties with the United States.

Chapter 8 page 1

THE ALLEGORY of SURF CUBA

Surf Cuba the musical blossomed . It came by way of a song who found a voice in a thrift store guitar. Savers is the Store in Kahului where the instrument presented its self to me. I admired the Guild model Starfire III even though it's paint was pealing and it was missing most of it's parts. I had a great sense of excitement when I held it and saw the $3.99 price tag. Like a genie's bottle I rubbed and brought back the luster to it's surface. I then trusted it's refurbishment to Roy Tanaka a luthier of note on Maui and he made it sing..

The night I came home with the guitar from Roy's music shop, what was A.M.P. Music across the street from the Chevy dealer , I was awakened in the night by the Song 'ALL OVER HAVANA' and I wrote those lyrics down and practiced the rhythm on the Starfire III until I knew I could repeat them . A few days later I was interviewed on National radio by Rick Dees on his Top 40 Count Down during a remote show at Jack's bagels in Maui.

It was April 24,1997 that Rick Dees inspired me to continue song writing prior to interviewing me . I had been persuaded to stop for the free food at the Grand Opening of Jack's Bagels Kahului, Maui store by Dana a Hawai'ian woman who insisted we stop there on our way to surf . Dana, who I met at my friend Ian Wagstaff's rented quarters, had a mainland connection yet she is of predominately Hawaiian aboriginal ancestry. She is magnificently beautiful ! Her tenderness and zest for life are characteristic of people who share her heritage. She assisted with positioning me so that I have the opportunity to voice my experiences with a global audience.

Ian, at who's home I met Dana, is an accomplished guitarist with improvisational skills. He is young and his Danish step father, Jan, has shared his vast guitar vocabulary with his step son and "Hanai" charge . These gentlemen are both characters of note. Jan worked as a paniolo or cowboy up in Kanaio on Maui's upper slopes yet his commitment to music as a full time avocation permits little horse back riding now. Leaning over his instrument he displays a resplendent shock of sandy blonde hair . Looking up he sends a cascade of crisp riffs or note patterns into the night air. Many an evening at the bonfire parties of my gal Sunny's home did we share.

Back to Ian, his curly long brunette hair dangles in ringlets about his shoulder strap as he emotes sweet notes from his guitar. With beard and mid length hair he resembles the ever present photo of Che Guavara.

Chapter 8 page 2

Much of the beginning of Surf Cuba came by chance or by inspiration of Great Spirit. Random observations that drew a picture and the whisper of a song was unforced as it arrived on the warm tropical wind were accepted with laughter by Tree and me. We would not force the creative energy and simply let it flow until we neared the finale phase.

Within the finale phase of Surf Cuba we existed . Without a conclusion we faced no task of analyzing the work. Begun in 1997 ending when ? No ending ,no need for allegory comparison completed.

Since Tree and I regularly hosted an acoustic open mike "no mike" at Starbucks Kahului we lingered there preparing for the upcoming events. Absorbing the steady views of characters and testing performance styles we gathered applause and inspiration to conclude the final scenes of Surf Cuba. Easy chairs available in pairs allowed for the comfort to sip a beverage and scribble near one another in grand style. Often an observation of a particular individuals was worth sharing and we would note what character in the musical we were reminded of.

Visualizing the stage comes redly to Tree as he has often performed in Musicals. At times I shared a remembrance of musicals I had seen with vivid sets. We both had concerns about encoring the wrath of Fidel Castro should he get wind of this musical named after his country's waves. He may be angered to no end and search us out . His agents may not bring warm greetings should the musical prove less than light hearted. Tree's concerns built to near sleeplessness and we both nursed our fears by study of the history. Frequent evenings at the source of learning, Borders Books and Music assisted . We perused the information available in the countless volumes written about Fidel, Che, and all things Cuban. The history of famous Americans associated with the island such as Hemingway , Teddy Roosevelt, and Presidents Cleveland and McKinley we gleaned.

We found that there is little difference in the perception of Beneficence and Benevolence when it comes to seeing the greatness of your countries leaders. We choose to let the musical display the best possible attributes of the Cuban leader and give him a laughable human weakness . Will our character who's love for the Russian hermaphrodite Colonel be soiled by conspicuous consumption of western goods and western surf culture ? Will the Ghost of Che Guvara call upon our main political character and refocus, redirect his thoughts in a manner consistent with the hard party line ?

The finale must first of all free the authors of persecution we believed. Sitting in the velvet brown broad overstuffed armchairs our goal persuaded the vibrating brain waves with in us to Surf Cuba near a shore of

contentment for all involved including the eminent reader who holds official status in perpetuity, El Jeffe Maximo. We set out to please him and save our hides at the same time.

So where is the allegory analysis you elude to you may ask. I answer, don't be so pushy ! I'm not going to get to that until I ensure that I'm surviving this authorship of what has now intentionally become a Love Comedy featuring Rebelling Surfers. Two years have passed since we found the courage and spiritual guidance to publish the finale and transcribe the music great spirit chose to send our way.

Tree has a purple velvet lined newspaper litho print of the portrait of Queen Liliuokalani within a gold leafed ornate frame. She often hung above us as we conversed and Tree transferred the sense and acts to computer files. I've come to understand that as a colonist in the U. S. occupied Kingdom of Hawai'i Surf Cuba is all about the surfers of Hawai'i regaining control of their Kingdom. Wrestling control from the U.S. armed forces that occupy Hawai'i militarily they, the surfer can be identified as the Hawai'ian Navy resurgent.

According to the May 2000 issue of Surfer magazine the professional surfers Cory Lopez and Dino Andino, both of Cuban extraction who clandestinely visited Cuba in order to shred waves on the island of their ancestors, noticed few Cuban that surf. The Cuban had crude materials to make their surf riding vehicles and tried to imitate styled of equipment that they had scant information about. Though the article ridiculed the Cuban surfers the story is telling of how youngsters of an island stake a claim to the freedom of expression that surf culture offers them.

So it is with the Hawai'ian surfers who inspired the Musical Surf Cuba. They gather together with a mind set that is counter culture driven and now well informed by the generation of well educated indigenous Hawai'ians and the variety of internet and cable television stations through out the Kingdom of Hawai'i. These government stations show the Kingdom of Hawai'i citizens speak out in county forums about the fact that the U.S. puppet government has no valid legal right to make decisions effecting the Hawai'ian islands nor the people found there. Not surprising is the growing frustration by the U. S. citizens that try to speak out at these meeting and promote a vote in favor of a blatantly stupid approach to zoning changes that mainland U. S. citizens have applied for.

The educational cable television channels feature well produced documentary films about the illegal U.S. take over and illegal U. S. administration of the Hawai'ian islands. These are common programs.

Chapter 9 page 1

The Moral of 'Man Without a Country '

Like all fables there can be found a moral associated within it's tale. The Greek fables have been published with the moral explained in a direct fashion. The reader of a Greek fable has little room for further speculation about the intended moral. Unlike a Greek fable the 'Man Without a Country' gives you a passage on page fifty-four (54) where the author avoids the subject of the Civil war rebellion. So this book gives us a warning like moral.

Seems Nolan(d) had been conscripted or enlisted in the United States Armed Forces and Commissioned a Lieutenant. He vowed to uphold the Constitution of the United States of America so help him God. As he lies dying , you read on the last pages of the book, he is treated as a civilized man.

He ,Nolan(d) is assisted in his dying prayers read from the 'Presbyterian Book of Prayer' . He repeated along as this was read to him: " For ourselves and our country, O Gracious God, we thank Thee, that not withstanding our manifold transgressions of Thy holy laws, Thou hast continued to us Thy marvelous kindness," after these words he, the fictitious character died. Further in the bible the narrator found, as instructed on Nolan's deathbed, a passage underlined " They desire a country, even a heavenly : wherefore God is not ashamed to be called their God ; for He hath prepared for them a city." I am not sure where in the bible this is found. The passage could be in the Old Testament as the content leads me to research in Exodus, yet I am still looking for it. None the less he asked to be buried at sea and that a tombstone be erected in his memory at Fort Adams or New Orleans.

The moral is again implied in the tombstone inscription that ends the Book printed in italics.

In Memory of
PHILIP NOLAN
lieutenant of the Army of the United States

'He loved his country as no other man has loved her; but
no man deserved less at her hands'

The Americans had driven the Civilized tribes out of Georgia and the surrounding states and after the civil war they put them in stockades and they suffered hardship and died while waiting for food. As an amendment to the appropriations bill to purchase supplies to feed the captured Indians the congress added the Dawes Act. Senator Dawes said that The Indians "have got as far as they can go, because they own their land in common."

Dawes said that the Indians could never be fully civilized as long as they owned their land in common. Among the Aboriginal peoples of the Americas Dawes said " There is no selfishness, which is at the bottom of civilization." The Dawes Allotment act of 1887 divided tribal lands amongst the individuals and the whites took over more Indian Land.

See :

www. free Hawaii. org
Kingdom of Hawai'i
Sovergien Nation of God
Majesty Akahi Nui
Under Duress P.O. Box 2845
Moku'aina O' Wailuku, Mokupuni 'O Maui 96793

Cleveland Dec. 18, 1893 A compilation of messages and papers of the presidents 1789-1908 Vol. IX (1993)

"These applications of Law are only as valid as the foundations provided by the (false) joint resolution of annexation of July 7, 1898 and the Organic act of 1900 (MC Carran-Walter Act of 1952 as well) . The instrument of annexation is illegitimate, hence all subsequent acts founded on the initial act are all equally unlawful. Under Article 73 of the United Nations Charter, member nations are obligated to bring about self-government of people within its colonial territory.

Did in 1959 the U. S. falsely report to the United Nations that it met it's responsibility in Hawai'i by the Statehood vote, a false plebecide ? The U. N. Declaration on the Granting of Independence to Colonial Countries and Peoples General Assembly Resolution 1514 (XV) Dec. 14, 1960, that declaration and the activities of a special committee related that the action taken by the United States in Hawai'i did not meet the standard of self-government ....
required under Article 73. The U. S. altered the "self" in who qualifies to participate and limited the choice to integrate with the U. S.

Christopher Hitchens C-SPAN 11/12/01 Saturday

"Universal Jurisdiction" term he coined
" The Law has a long arm and a Long memory "

Let us keep in mind that we are concerned with the moral of the book 'The Man Without a Country ' .

Back to the Moral

If you take away from a person his/her National Identity yet keep the symbols of that Nation ever present, those people will hold their stolen Nation ever more the dearer.

The United States admits to breaking International Law, an illegal act, when ceasing the Hawai'ian Kingdom by force of arms several times in history. Now the Hawai'ians have met the criteria to restore their kingdom since 1996. The restored Kingdom has been recognized by many nations.

It follows that: if I stole your car; then later apologized for stealing your car; yet kept your car after the apology; would you not still actively seek to gain the recovery of your stolen car ?

We American colonists in the U.S. militarily occupied Kingdom of Hawai'i have a moral obligation to assist in the ongoing restoration of the Kingdom of Hawai'i. We are obligated to assist our fellow Americans understand the basis in law that mandates the restoration of the Hawai'ian Kingdom. We Americans need to be prepared to stand aside and abide by the laws of the reinstated Kingdom of Hawai'i. Our government (The United States of America) has most probably defaulted by not responding to the suit against it in the World Court (Hague in Holland) brought about by the King of Hawai'i in November of 2001. By it's own admission of guilt and apology The U.S. in 1993 brought about this action against it in the World Court.

Also Americans must understand that much false and/or illegal acts have been perpetrated under the color of the United States Judicial system in Hawai'i's occupied Kingdom. These acts will be set aside in favor of true justice.

The year 2002 and the times that follow call for a strong and unbiased American/Hawai'ian ethical position. ! ! !

I hope this book assists both Hawai'ians and Americans alike to see IT IS TIME TO SET ARROGANCE AND INJUSTICE ASIDE IN FAVOR OF A RESTORED KINGDOM OF HAWAI'I.

Chapter 10 Page 1

Threats and Violent Hate Crimes by Imperialist English Speaking Whites Against Aboriginal Dark skinned Peoples

or

If I Was Queen of Hawai'i ?
(paying attention to current affairs on continents far away)

Please be very still and say a Christian prayer with me now !

Dear Jesus, let me be calm and realistic. Help me, Lord, to percieve the difference between what is hype and what is factual news in the papers and periodicals that I read. Give me the wisdom to know the difference between falsehood and truth and make good decisions for my people about what is threatening us today as I look out side the palace and see United States Marines with rifles and those horrid death machines I've read about those gatling guns and small cannon. Lord are they breech load style rapid firing behemoths that I've read about that decimated the Zulu folk in Southern Africa and who caused the devastation at Wounded Knee plus Colonel Chivington's raid of the peaceful Colorado tribes. Is it true my Sweet Savior that I "Should Know" what compelled Sitting Bull, Gall and Crazy Horse to surrender was the Americans use of these Gatling Guns and Breach Loading Cannons fired at their people . Did the Zulus, Blackfeet, Sioux, Arapaho,Cheyenne,Mexican, Hotentots, etc. die in vast numbers due to the unleashing of terror that these artillery pieces wrought that I now face. E Makua Lani 'awe . Dear God help me to make a good decision. What sources can assist me now ? I thought we had a pledge from the Americans through their government that they would do us, Hawai'ians (and our government) no harm. Three times we have together, with the Americans, prepared, and ratified by their bicameral legislators, Treaties of Amity between our two countries. The Postal Treaties safeguarding our diplomatic mail they have been so kind to assist us with. Why now does the United States of America threaten the Hawai'ian people, me the duly elected Queen and allow the Americans here to just murder one of our policemen ?

Help me to see, Lord, for I know my people have done nothing to provoke a War with the United States of America, the most feared Naval Power on Earth. What am I to do Lord ? The Gatling Gun and Cannon face me now as I am on my knees praying to you.

You know, that I was adopted by Anglos, married into the Holt family and raise a God fearing Protestant Christian. I am not the Heathen Queen they accuse me of being. Tell them the truth,Lord, Please, Please, Please . . .

Chapter 10 Page 2

Remember you are Kanaka Maoli and sitting in the easy chair in the den. You have the light on and you reach for another bonbon. The sweet raspberry candy fills your mouth yet as you bite down on the hard candy your jaw slips and you bite the inside of your cheek. Now tasting raspberry, then tasting blood you notice a sick felling coming over you as the two flavors combine. You swallow the thick piece of blood soaked candy and it barely sinks to your stomach almost lodging in your throat on the way down.

You get up and walk over to the ornate book case and see a book hailed as a new American classic titled 'Son Of The Morning Star'. It subtitled 'Custer and the little Bighorn' a paper back stands out amongst the rest of the hard bound books found there. Reaching for this book you wince as the flap of skin inside your mouth flaps up and starts to bleed and sting. You drop the book. It opens to page 101.

101, you flash, that is the name of the ranch in Ponca City, Oklahoma where the Ponca Indians resided, who also performed in Wild Bill's Great Western Extravaganza Show and Rodeos. They toured the "Civilized" world. You read the page. It starts mid sentence, which can happen. It begins: " one- half infantry companies, the entire Seventh Cavalry, a battery of Gatling guns, a wagon train, and a beef herd. "

You know from looking at the pictures in the middle of the book that this is 1876 the U. S. Centennial and year of Custer's death. His massacre of Sioux women and children at Black Kettle's camp on the Washita river the winter of 1868 in the not too distant past was avenged at Little Big horn. You may have heard the rumors from Native Americans that the braves left wounded Custer to be torn apart by the women brandishing spoons. His brother's heart was torn from the live body in rage and his brother in law too was killed at that battle along with his nephew.

News of the of Gatling guns from 1876 onward by U.S. troops must have reached Queen Liliuokalani at some time at least she was informed of its devastating effects. One of her ministers must have known. She read and wrote English, didn't she ? After all she traveled to Victoria of England's Jubilee celebrating the British Queen's 50th Year as Monarch. Surely her minister Joseph Nawahi Kalani O Pu'u would have known of the Gatling gun's effectiveness and it's power to obliterate human beings. The one thing that was never dismissed is that if provoked the officer of the U. S. S. Boston would shell the sleepy town of Honolulu.

I'm sure Queen Liliuokalani knew the name of the murdered Hawai'ian policeman who lost his life January, 1893. Perhaps she sent his

family a condolence letter. Oh well, let us read more of page 101 and not dwell on the unsuspecting and murdered Policeman of January, 1893.

Maor George Gillespie of the United States Missouri Division accounts for the compliment of over 1,000 soldiers, various scouts and over 1600 animals on the expedition to make war on the Sioux. We read about the equipment of M Company headed by Sgt. Ryan in this book published by Harper and Row, New York written by Evan S. Connell in 1985 ISBN No. 0-06-097003-0(pbk.) Ryan commanded two Gatling guns, one 24 pound brass cannon, and one rifle barreled Rodman cannon.

The book falls from your hands as you stumble walking back to the easy chair, You had been reading as you went back to the chair. The book about Custer closes face down on the plush carpeted floor. You turn to sit down and the flap of skin in your mouth is lifted by your tongue. The sweet taste of raspberry melting off your teeth and the blood dripping in your mouth disturb your thoughts. You look down and lift the over 400 page volume titled 'Son of the Morning Star' up by your thumb and index fingers. You grab there into the last few pages and back cover.

Page 402 open up as you focus and read compliantly perhaps guided by Great Spirit. You read about the present day battle ground of Little Bighorn now a monument. " Still, the significant change has not been the river's (change of) course or a pattern of (displaced) trees but the substitution of industrial life for aboriginal life." remains a sentence that bites into your cheek hard and stings with true reflection of present day observances of Hawai'i's Kingdom.

"Gone is the sinuous continuity of primitive villages beside the coiling stream." you read. The Little Bighorn valley lands contains no more natives.

George Catlin the man who made portraits of many aboriginal North American tribes knew the charm of whiskey and trinkets would be fatal to the people who were the subjects of his artistic studies. He predicted that the voracious white men would sweep the streams and prairies of Indians like a very cleaning broom all the way to the Pacific, leaving the Indians to inhabit, and at last to starve upon, the dreary and solitary waste."

Kanaio on Maui is such a dreary and solitary place given the Kanaka Maoli as a parcel of the "Hawaiian Home lands "as an act of the U.S. Congress. Such shameful behavior by whites never seems to stop and festers as a growth of bigotry and arrogance.

On page 404 of 'Son of the Morning Star' writer Connell quotes Thomas Henry Tibbles and General Phil Sheridan. The author says that Tibbles visited the Sioux reservation after the battle of Little Bighorn in Montana. There a band of Sioux huddled in leaky canvas tents near the Rosebud agency . They were idle. Tibbles had known these people more than twenty years earlier when living farther west and they were healthy and vigorous. He found them weak and dejected. " I saw many of them covered with running sores, others with scrofula... Many of the women here could not bear children after their twenty-fifth year..."

General Phil Sheridan, noted that the Indians or aboriginals of western North America suffered because of the coming of Europeans and their progress "or what ever it may be called ". These people were content beforehand. Sheridan said, " . . . we took away their country and their means of support, broke up their mode of living, their habits of life, introduced disease and decay among them, and it was for this and against this that they made war. Could anyone expect less ?"

Like all white European war mongers General Sheridan wondered about his actions afterwards. If asked had the Hawai'ians gone to war against the United States he would have had to answer in the negative. No the Hawai'ians had not declared war against the United States after it invaded in 1893. The hawai'ians had a diplomatic precedent to invoke and a treaty of Amity with the U. S. to invoke.

The Sioux warrior chief Old Inkpaduta, a Santee, took revenge on Custer's charging men at the battle of Little Bighorn. He avenged the massacre
of his people at Minnesota by General Sibley in 1862. Despite age and blindness Old Inkpaduta charged with venom Custer's second column headed by U.S cavalryman Reno the Santee tribesmen claimed. Viscous acts by
U.S. Americans against aboriginal peoples are never forgotten by those people of "color" attacked by the white Hauoles.

Perhaps Queen Liliuokalani had read about Custer and his last stand. The After effects were also reported I'm sure. What devastating effects could she expect for her people ?

JAN. 17, 1893 GATLING GUN, CANNON, AND THE BATTLE SHIP USS BOSTON

THREATENED HER KINGDOM

THREATENED HER LIFE AND HER PEOPLE

THE UNITED STATES MARINES BEGAN THE

ILLEGAL INVASION AND ONGOING OCCUPATION

OF THE KINGDOM OF HAWAI'I

My family came as colonists to the Kingdom of Hawai'i. The attack on Pearl Harbor brought Dad as an artillery officer to the islands and after a few years of G. I. Bill education on the continent of North America our family returned to colonize the Kingdom of Hawai'i for the United States of America.

The Kingdom of Hawai'i was never a Territory of The United States of America as determined by International Law nor by the Standards of the Constitution of the U.S. The US. has no Treaty of Annexation for Hawai'i.

"Treaties under the Constitution have the force of Law" uttered by what U.S. Senator (Hart Senate Bldg. C span 1 or 2 , 11:45 PST Feb. 15, 2002) ?

Bibliography

1. U.S News and World Report Feb. 25th,2002 issue volume 132 number 36
2. 'The Man without a Country' E.E Hale,Atlantic monthly December 1863 issueThe Heritage press 595Madison Ave. NewYork,NY
3. Palapalaa Ho'opi'i Kue Ho'ohui 'Aina 1890's petition submitted to the United States Crongress by the citizens of The Kingdom of Hawai'i
4. Universal Postal Treaty Geneva, Switzerland
5. 'The American West Year by Year', Cresent Books, John Bowman editor 1995 ISBN No. 517-12186-7
6. 'The American Presidents', 8th Edition David C. Whitney,1993 Double Day Books, ISBN No. 1-56865-031-0
7. 'Don Francisco de Pala Marin', Ross H. Gast, 1973, University Press of Hawai'i, ISBN no.0-8248-0220-9
8. 'Mark Twain's Jest Book', Cyril Clemens editor,1963, publisher to be located yet refered to in other Twain publications.
9. 'The Dragon's Teeth', General Ben Kelsey, Smithsonian Inst. Press 1982, Washington D.C. ISBN No. 0-87474-574-8
10. 'The Secret War with Germany', William B. Breuer, Presidio Press ISBN No, 0-89141-298-0
11. 'The Art of War' SunTzu 550 B.C., translated by James Cavel, 1983 Delaorte Press, ISBN No. 0-385-29216-3 and other translations
12. U.S. Public Law 103-150 www. free hawaii.org and the U. S. Congressional record.
13. Treaty of Gent 1814 U.S. and Great Britian
14. Surf Cuba, Tree and Waveslide, copyright 2001 library of Congress
15. Constitution of the United States of America www. free hawaii.org and the Library of Congress Washington D.C.
16. The King of Hawai'i vs the United States of America law suit in the World Court Hague of Holland, see www. free hawaii.org
17. 'Hawaii Pono', Lawrence H. Fucchs, Harcourt, Brace and World 1961 L.C.C 61-13347
18. 'American Tribal Governments', Sharon O'Brien, ISBN Numbers 0-861-2564-0 and 0-8061-2199-8
19. 'Oklahoma a history of the "Sooner State", Edwin C. Mc Reynolds L.C.C. No. 54-10052

Bibliography continued

20. 'What YourFifth Grader Needs to Know', Ed Hirsch Jr. ISBN No. 0-385411197
21. 'Land and Power in Hawaii', Gavan Dawes and George Cooper ISBN No. 0-9615052-6
22. 'The Parker Ranch of Hawaii'. Joseph Brennan, ISBN No 0-381-98265-3
23. 'Hawaii 1959-1989, Gavan Dawes, Published by the Honolulu Advertizer ISBN No.0-935180-64-8
24. The McCarran-Walter act of 1952 Library of Congress Congressioal record
25. Article 73 of the United Nations Charter and the U.N. Declaration on granting of Independence to the Colonial countries and Peoples General Assembly Resolution 1514(XV) Dec. 14, 1960
26. President Cleveland's address to the joint Houses of Congress and The Blont Report, www. free hawaii.org and the Congressional Record.
27. Hawaiian Dictionry, Mary Kawena Pukui and Samuel H. Elbert University Press of Hawaii 1957 etc. (revisions) ISBN No. 0-87022-662-2
28. 'Sun of The Morning Star, Custer and the Little Bighorn' , Evan S. Connell, 1985, Harper and Row, NewYork, ISBN No. 0-06-097003-0
29. Surfer Magazine, May 2000 issue

TREATY LIST affecting the illegal occupation of the Kingdom of Hawaii

Note; there is no treaty authorizing the United States to annex the Kingdom of Hawai'i. What exists is a Bill, a resolution to annex Hawai'i dated July 07, 1898. The Kingdom of Hawai'i has never been annexed to the United States of America even by it's own Constitutional requirements.

Basis : United States Constitution (see www. free hawaii . org)

1. **Treaty of protection, 1794, Britain and King Kamehameha, British Captain George Vancouver establishes a protectorate for the Kingdom of Hawaii ensuring that the British will assist militarily should the Americans (still considered British subjects by some) massacre Hawaiian people such as occurred in 1790 inflicted by Simon Metcalf's ship at Oluwalu, Maui.**
2. **Treaty of Gent, 1814, U.S. and Great Britain establishes that the U.S. and Great Britain will settle their disputes, over islands that they claim or act as protectorates too and their territorial boundaries, in the Court that is now the World Court in the Hague of Holland.**
3. **Treaty of Friendship and Commerce Nov. 09, 1850, U.S. and The Kingdom of Hawaii establishes an obligation by the United States of America to defend and protect the Kingdom of Hawaii. Pearl Harbor was granted to the U.S. Navy as a refueling or coaling station and Hawaiian produced sugar was accepted into the United States without tariff payments when ratified 1874 ?**
4. **Postal Convention, May 05, 1870, U.S. and the Kingdom of Hawaii singed by president Grant. This set mail rates and guaranteed transshipment of mail from The Kingdom of Hawaii through the United States.**
5. **Universal Postal Union (treaty), January 1882 Geneva, Switzerland, The Kingdom of Hawaii was admitted to the Universal Postal Treaty and recognized as a full fledged member of the Nations of the World participating an an equal footing with the exchange of international Mail and banking regulations set forth by that body.**

Note: December 19, 1842 " as a sense of the government of the United States, that the government of the Sandwich Islands (Kingdom of Hawaii) ought to be respected; that no power ought either to take possession of the islands as a conquest or for the purpose of Colonialisation, and that no power ought to seek undue control over the existing government, or any exclusive privileges or preferences in matters of commerce." Daniel Webster U.S. Secretary of State.

6. **In November 28, 1843 both France and English representatives met in London signing a joint declaration recognizing the independance of the Kingdom of Hawai'i.**

Quotes

Captain of the Submarine played by Sean Connery in the movie
HUNT FOR RED OCTOBER " A little revolution now and then is a good thing. "

Broadcast on Cspan 2 Feb. 15, 2002 at 11:45 Pacific Standard Time recorded earlier at the Hart Senate Office Building, statement by a Senator, but who ? :
" Treaties under the Constitution have the force of law. "

Waveslide, found in Chapter 10, page 5 of Why Surf Cuba ? :
"The Kingdom of Hawai'i was never a Territory of The United States of America as determined by International Law nor by the Standards of the Constitution of the U.S. The US. has no Treaty of Annexation for Hawai'i. "

Professor Joseph Sox, Bolt Law school U.C. Berkeley from inter view about his book Public Trust Obligation in Hawaii : ". . . no permanent Trust situation . . . (exists between the U.S. and the Kingdom of Hawai'i) . . . (it is) open to accommodate . . . "

President Truman : " Veto " Mc Carran Act of 1950 , an authorization of concentration camps for ordinary citizens in times of emergencies for national security purposes, over ruled by congress. i. e. law is passed.

ESPN sports channel 3:10 pm Pacific Standard time Saturday Jan. 05, 2002 at the Kapalua golf course commentator says : " Hawai'i feels like its own country . "

Cspan broadcast November 22, 2001 Chief Justice of the U.S. Supreme Court Renquist made light of the European courts and discussing the Gelpve case his reference to the "Transience of the Constitution Doctrine "

Mark Twain : " I am God's fool and all His works must be contemplated with respect ! " and " I never told the truth that some one did not take as a lie. "

Theodore Dalrymple : We gain this lesson from history that it is a "World view that makes the Underclass . " from LIFE AT THE BOTTOM

Alfred Mahon U.S.N. : HISTORY OF SEA POWER ON NATIONS 1880
" Build an offensive navy ." effect ; U.S.S. Olympia built in 1893

Mark Twain : "There is no distinct American criminal class except Congress."