

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE MEETING**

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**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION  
REVIEW COMMITTEE MEETING**

8:30 a.m.

Monday, March 14, 2005

Keoni Auditorium

Hawaii Imin International

Conference Center

Honolulu, HI

**COMMITTEE MEMBERS PRESENT:**

Ms. Rosita Worl, Interim Chair

Mr. Garrick Bailey

Ms. Vera Metcalf

Mr. Dan Monroe

Mr. Vincas Steponaitis

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1       **CALL TO ORDER - CHAIR**

2               ROSITA WORL: I'd like to call the meeting to  
3       order. And if we could begin our day by calling on  
4       Joe Joaquin, Joe Joaquin is a member of the Tohono  
5       O'odham Tribe from Southwest. If Mr. Joaquin would  
6       do - kindly do the invocation for us?

7       **INVOCATION - JOE JOAQUIN**

8               JOE JOAQUIN: Will you stand please? Again, my  
9       name is Joe Joaquin. I'm from the Southwest,  
10      Arizona. I'm happy to be here today, and our people  
11      have to deal with some of these things. We deal with  
12      it day in and day out, out in our country. And  
13      that's why we're here today is to find out what the  
14      committee is going to be about. We all pray to the  
15      Lord, ask our Creator to be with us on days like this  
16      because this is the way we are as peoples of this  
17      world, first peoples of the world. We know how to  
18      handle a lot of these things before the coming of the  
19      Europeans. Things weren't like this, but again, now,  
20      we have to face these things and deal with it the  
21      best we can so people can live in peace the way we  
22      were before. Now I'll say it in my language.

23              (Native American language.)

24      **REVIEW OF AGENDA**

25              ROSITA WORL: Thank you, Joe. We will begin our

1 session by going – we will have affected parties and  
2 members of the public speaking to the three disputes  
3 that we discussed yesterday, and what we will do is  
4 we will first – Dr. McKeown will be inviting those  
5 affected party members who have signed up and then  
6 other public members. And then we will have an hour  
7 for each of these disputes. Individuals will be  
8 invited to testify. You may – members of the  
9 committee may pose questions to the parties, but I’m  
10 asking that we keep our questions short and direct  
11 since we only have an hour for each dispute and I  
12 know that we want to hear from as many people as  
13 possible.

14 So Mr. McKeown, do we have anything that we need  
15 to discuss first? Any logistical questions or, oh  
16 yes, like yesterday I think there was a group that  
17 came in and that didn’t sign up and I don’t know if  
18 they’ll be here today, but if other members of their  
19 party who came in yesterday with the song or chant,  
20 if they would sign up that would be helpful for us.

21 So I will turn it over to you.

22 **PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN**  
23 **HUI MALAMA I NA KUPUNA O HAWAI’I NEI AND THE BISHOP**  
24 **MUSEUM REGARDING THREE UNASSOCIATED FUNERARY OBJECTS**  
25 **FROM MOLOKAI**

1           TIMOTHY MCKEOWN: Thank you, Madam Chair. The  
2 first dispute that we have invited affected parties  
3 to address is the one involving the three items from  
4 Molokai that are at the Bishop Museum. I contacted  
5 the Bishop Museum to help identify which other  
6 parties, which other Native Hawaiian organizations  
7 have also filed claims with the museum and got a  
8 response from them identifying two. One is the Royal  
9 Hawaiian Academy of Traditional Arts, and the second  
10 was Na Lei Ali'i Kawanānākoa. And I believe there  
11 are representatives of both of those organizations  
12 that have asked to address the committee on that as  
13 well. And after those two organizations testify,  
14 there also are a number of members of the public that  
15 I have on a list and I can identify those as well.  
16 So if we could have the representative of the Royal  
17 Hawaiian Academy of Traditional Arts and Na Lei Ali'i  
18 Kawanānākoa.

19           GARRICK BAILEY: I think we passed him. He was  
20 looking for a parking place, and we still have seven  
21 minutes before it's scheduled to start.

22           TIMOTHY MCKEOWN: Oh, we're a little early.

23           GARRICK BAILEY: Mr. Sukanuma, right? And I  
24 think I saw him trying to find a parking place, and  
25 we still have seven minutes. Can we just go ahead

1 and start with another one?

2 TIMOTHY MCKEOWN: Is Lapaka Mansfield here?

3 VINCAS STEPONAITIS: Madam Chair?

4 ROSITA WORL: Yes.

5 VINCAS STEPONAITIS: Could I take just a minute  
6 to ask some questions, or if we're kind of in a quiet  
7 moment now or --

8 ROSITA WORL: I think our party has arrived --

9 VINCAS STEPONAITIS: Okay.

10 ROSITA WORL: -- or we'll find out in a minute  
11 here. The other thing I might note is we haven't  
12 found out if you're able to park in the parking lot  
13 right here -- or the parking spaces right in front of  
14 the building. Someone told us that you had to have --

15 TIMOTHY MCKEOWN: A pass.

16 ROSITA WORL: -- a pass to park there. So if you  
17 parked there and don't want to have your car removed,  
18 we might want to move the cars.

19 Okay. We'll wait a couple more minutes, and  
20 then go ahead, Vin -- Mr. Steponaitis.

21 VINCAS STEPONAITIS: I just had a question for  
22 the DFO and also perhaps for the members of the  
23 committee who have been on the committee longer.  
24 Prior to this meeting, I was looking at the dispute  
25 resolution procedures and trying to understand them,



1 and I also noted, I looked at the procedures that  
2 were in effect before the St. Paul meeting, and I  
3 noticed that one of the changes that took place  
4 between those two sets of procedures was that in the  
5 earlier set there was a definition of involved party.  
6 And then in the corresponding spot in the second set,  
7 the ones that were adopted after St. Paul, that was  
8 changed to – excuse me a second, where did I have it  
9 – to interested party. And I just wondered what the  
10 thinking was behind the change from involved and  
11 interested. What the thinking is exactly? Why the  
12 difference? And I just needed that as background.

13 CARLA MATTIX: I think the wording was changed to  
14 correspond to the actual words in the regulation  
15 under 10.17 for dispute resolution. And there, under  
16 10.17 (b), Review Committee Role, it talks about the  
17 Review Committee may facilitate the informal  
18 resolution of disputes relating to these regulations  
19 among interested parties. So there was some  
20 confusion about all these different types of parties  
21 that were being identified in the dispute procedures,  
22 in the regs, and the statute. So I think that was  
23 done to help create less confusion.

24 VINCAS STEPONAITIS: Okay. And so is there –  
25 what is the interpretation of those terms now, just

1 again, out of curiosity?

2 TIMOTHY MCKEOWN: I can tell you what went behind  
3 the decision on who to invite to participate here,  
4 and these are parties that were identified by the  
5 institution that holds the pieces in question as  
6 having made claims. So that these are organizations  
7 that came forward to express an interest in it to the  
8 museum. And I've divided that from other parties of  
9 the members of the public that may also have an  
10 interest, but have never expressed that to the  
11 institution.

12 VINCAS STEPONAITIS: So all of those are covered  
13 by interested party, in your interpretation?

14 TIMOTHY MCKEOWN: I believe that is true, and I  
15 just wanted to make sure that everybody had the  
16 opportunity to present information to the committee  
17 through both personal invitations, because I sent  
18 letters to all of the ones that were identified by  
19 the museum as having made claims.

20 VINCAS STEPONAITIS: Okay.

21 ROSITA WORL: It's 8:45. Do we have our first  
22 member?

23 TIMOTHY MCKEOWN: I don't see Mr. Sukanuma here,  
24 but I guess he is coming. Perhaps we could go to  
25 members of the public.

1           ROSITA WORL: All right. Why don't we go ahead  
2 and do that.

3           TIMOTHY MCKEOWN: The first person that's signed  
4 up was Hannah Reeves. Is Ms. Reeves here?

5           **PUBLIC COMMENT**

6           **HANNAH REEVES**

7           HANNAH REEVES: Aloha. I am here in behalf of my  
8 family. My name is Kupuna Hannah Wahinemaikai O  
9 Kaahumanu Kelii'ulanani Ole O Kalama Kane Reeves. I  
10 am the daughter of the king and son, the daughter of  
11 the royalty line, the noble. I am coming behalf of  
12 my families that cover the four corner of the earth.  
13 I take myself back, been raised in Hawaii all my  
14 life, for generation of my mom and dad. And we own  
15 the islands, the Hawaiian Islands, all the Hawaiian  
16 Islands.

17           Our family intermarried with the Indian family.  
18 My people had covered the four corners of the earth,  
19 and I must say that the Indian people is connected to  
20 me. I don't have no Indian blood, but I am pure  
21 Hawaiian. I cover the United States down to the  
22 South American. We have under the corporations, 13  
23 corporations that covered the United States, New  
24 Zealand, Tonga, Samoa, Fiji, the Singapore, Japan,  
25 Hong Kong, China, Palau, Micronesia, and I can go on

1 and on and on that our people still living today.

2 I represent 60,000 families of the noble line  
3 that I count from 6 lines from the top that come down  
4 to one of the lines today is Liliuokalani. My family  
5 still live today on this island. We're the owner of  
6 the - all the islands, the Hawaiian Islands. To tell  
7 you, the Department of the Interior and the United  
8 States, I hold you and the Federal and the Bishop  
9 Museum for the damage that's been done to our people  
10 for over 100 years. I don't know how many of you are  
11 Hawaiian on the panel. It doesn't matter because  
12 they were damaged many years, our people were damaged  
13 for many years that the United States couldn't fix  
14 us. I myself several months ago charged the  
15 president of the United States Army for damage, and  
16 the President himself, holding him and the Federal  
17 Department and the Federal and the Department of the  
18 Interior because of all the things that was done in  
19 the Island of Hawaiian.

20 We are fighting for our life in our homeland.  
21 We are slave in our homeland, and the United States  
22 and other people, actually white man, they take  
23 advantage of our people and they still are today. I  
24 hold Bishop Museum and I demand the Department of the  
25 Interior hold a full investigation and I call all our

1 people on the four corner of the earth that people  
2 that was – I say Bishop Museum had so many items that  
3 are foreign country to maintain Bishop Museum, and I  
4 know for a fact that it was done many years ago and  
5 still doing today.

6 I demand the Department of the Interior let the  
7 four corner of the earth know that we need to bring  
8 our people home, all of our iwi and everything, the  
9 artifacts that were sold to the four corner of the  
10 earth to make money to maintain Bishop Museum. And I  
11 am not afraid to say that whatever happened to our  
12 people, it happened to the Indian, and they was  
13 destroyed too, just like us. We were destroyed, but  
14 we're still living.

15 Now how do you, the Department of Interior, can  
16 fix us Hawaiian? No money can be able to fix us. I  
17 don't care how much money you put up, it will never  
18 be able to fix the wrong that was done to our people.  
19 The Department of the Interior, I demand that you  
20 have a full investigation by the FBI to come in, to  
21 investigate the Bishop Museum, number one. And I  
22 wrote the President of the United States for damage  
23 in the Island of Hawaii, all the island. It was  
24 destroyed by running over for hundreds of years that  
25 our people was run over and destroyed, that our

1 islands was polluted.

2 I am for all Hawaii. I belong with a family of  
3 eight, and my ancestors go back both to the Kahuna  
4 and the royalty line. I have no fear and I'll hold  
5 the President for the wrong that they did to our  
6 people. They invaded. They occupied our lands, for  
7 over 100 years and rob us and still robbing us today.  
8 It's not enough that they rob us of land. They rob  
9 us with human rights, our gathering right, our  
10 fishing right, and also from the land, from the  
11 mountain to the sea, that our people were buried in  
12 all of the parks. The heiau, the po'o, the trails,  
13 the caves, many of them was removed and was taken to  
14 Bishop Museum and Bishop Museum had take advantage  
15 and rob and steal and sold many items to the foreign  
16 country.

17 I ask the Department of Interior and also go on  
18 television to let the world know that what happened  
19 to our people that the United States must realize  
20 that the damage they have done to our people, that  
21 they strip and killed us physically and spiritually.  
22 I take care of the Hawaiian people and also all other  
23 nationality. I am in the community from Kona all the  
24 way to Pahala. I feed the homeless and take care of  
25 our people. And I also am connected with 20 churches

1       that three foreign country, outreach country helping  
2       the people outside in the four corner of the earth.

3           I feel that this is something that is human  
4       right that we should live like human beings, that we  
5       should not be like slave in our homeland, that we  
6       should look at each other and say, I am sorry for the  
7       wrong that you did. Yes, we've all been taught to  
8       love our enemy. How much can I love my enemy if I  
9       have the heart of my ancestor, you know what I'll do  
10      to my enemy? I'll put them on the alter and crucify  
11      them to the God. But we don't do that today. We  
12      love our enemy and we forgave them for everything  
13      what they do.

14           And I understand you brothers in the back there  
15      that come from the mainland, my family intermarried  
16      with the Indians. And I want you to know that I am  
17      part of you, and I know that in my heart that what  
18      happened to you people from Alaska down to the United  
19      States and down and on and on, that your people was  
20      destroyed just like our people. Why did they do  
21      that? They wanted what they wanted all for money. I  
22      call that evil. I don't know what you do, you  
23      Indians that come from the mainland, to the people  
24      that enemies, but I tell you I'll put them on the  
25      alter and crucify them if I had my ancestors' heart,

1 but I don't.

2 ROSITA WORL: Ms. Hannah.

3 HANNAH REEVES: I love my enemy and always say I  
4 forgive them. Now is the time to fix up, clean  
5 house, no more lying bullshit going on.

6 ROSITA WORL: Ms. Hannah, excuse me.

7 HANNAH REEVES: And I say this -

8 ROSITA WORL: Excuse me.

9 HANNAH REEVES: - the last thing I want to say  
10 is -

11 ROSITA WORL: We're going to have to ask you if  
12 you could just make a final remark because I think we  
13 have other people who also want to speak to the  
14 issues here.

15 HANNAH REEVES: I want to say the last word,  
16 mahalo, thank you for your mana'o, the  
17 archaeologists. Thank you, I don't know who you are,  
18 you could be Indians or whoever you are, but there's  
19 nobody, huh, that is Hawaiian on the board? Are you  
20 Hawaiian? No. You will never understand the  
21 (comment inaudible) things of Hawaii, but I thank  
22 you. May God bless you and you do make right  
23 decision because we're going to make sure we clean  
24 house. Thank you very much.

25 ROSITA WORL: Thank you very much, Hannah, for



1 your comments.

2 Dr. McKeown, how many people do we have signed  
3 up?

4 TIMOTHY MCKEOWN: I have one more member of the  
5 public, and I have been informed that the Na Lei  
6 Ali'i Kawanānakoā will testify after lunch and not  
7 this morning. And I haven't seen if La'ākea Suganuma  
8 has arrived or not. So I think the remaining member  
9 of the public that has signed up is William Aila.

10 **WILLIAM AILA**

11 WILLIAM AILA: Good morning, members of the  
12 panel, members of the administration. My name is  
13 William Aila. I am a member of Hui Malama I Na  
14 Kupuna O Hawai'i Nei, but I am speaking here as an  
15 individual this morning. I come from the district of  
16 Waianae, on the Island of Oahu, which is on the most  
17 western end of the island of which you are on right  
18 now.

19 A few comments based on some observations from  
20 yesterday. The Bishop Museum made assertions that  
21 because Kamehameha V owned the land on which these  
22 items of cultural patrimony were found, that they  
23 have – they assert that they have the right of  
24 possession. Ali'i, as well as maka'ainana,  
25 understood that there were things that you cannot

1 possess, things that are of spiritual nature, things  
2 that are of cultural nature, things that are of a  
3 physical nature, such as water, air. The idea of  
4 land ownership and the ability to sell land was an  
5 introduced Western concept. So these items were all  
6 created by Native Hawaiians prior to this  
7 understanding or this transformation of this Western  
8 concept of land ownership. I think it's very  
9 important because you are tasked with trying to make  
10 a recommendation based on something that's culturally  
11 based, but you also have to have a legal basis by  
12 which to measure.

13 The legal basis is important because we have  
14 these conditions that we are forced to live with  
15 today. The spiritual basis is something that cannot  
16 change. You can change the law, you can change the  
17 rules, you can even change the interpretation, but  
18 the spiritualness of these items and their importance  
19 to their owners and in the case of Kalaina Wawae to  
20 the people of Molokai can never change.

21 There was a statement made by a kupuna yesterday  
22 afternoon at this table from the Bishop Museum that  
23 said we need to keep all of these items in the museum  
24 because our culture no longer exists. I respectfully  
25 disagree with that kupuna, that elder, because I know

1       where I come from has nothing to do with the Bishop  
2       Museum but I practice my culture every day. I ola.  
3       I pule. I build religious structures. I build  
4       cultural structures every day, not having to go to a  
5       museum to do these things.

6               So I want you to understand that there are –  
7       just as you Native members of the panel and those  
8       that have scientific backgrounds understand, there  
9       are people of generations within our culture that  
10      were told forget about the past, go learn the new  
11      ways. Just as there are people who chose to listen  
12      to those instructions, there were people mainly out  
13      in the countryside who chose not to, who continue to  
14      carry on the old ways. And whether or not an item is  
15      in the museum has nothing to do with their ability to  
16      conduct their culture. In fact, the responsibility  
17      for the return of some of the items that are being  
18      kept at the museum in some people's opinion,  
19      illegally, immorally, is part of the responsibility  
20      of those people who don't not necessarily talk about  
21      the culture but live the culture, that have the  
22      responsibility for living and promoting and teaching  
23      the culture.

24              So the culture is not dead and I don't have to  
25      go to a museum in order to learn my culture. I

1 practice it every day. I learned it from my kupuna.  
2 I'll teach it to my mo'opuna, my grandchildren. And  
3 I would encourage you to not only look at the law but  
4 also look at what's morally right and what's  
5 spiritually right.

6 And then the last words of advice is when you  
7 don't have all the data, when you don't have all the  
8 information, it's very cultural to err on the side of  
9 caution. And so these items that are being discussed  
10 as whether they're cultural – items of cultural  
11 patrimony or not, when you have the balance of lack  
12 of data or some data that's condescending to each  
13 other, always remember be safe because that's what we  
14 practice. So when I say be safe, it is our belief  
15 and it is the belief of many people that they belong  
16 to the ancestors. And so if there is no overwhelming  
17 data that says otherwise, then the process should be  
18 that we err on the side of caution and we put them  
19 back with those ancestors.

20 So I want to thank you for coming to Hawaii and  
21 thank you for listening to us this morning, and I  
22 want to thank you for some of the very good questions  
23 that you asked yesterday of the agencies because  
24 those questions needed to be asked. Not all of them  
25 were answered and I hope you ask them again. Mahalo.

1           ROSITA WORL: Thank you very much for your  
2           comments and your worthy advice. And I guess we  
3           didn't have any questions.

4           TIMOTHY MCKEOWN: The next person that is signed  
5           up is Charles Maxwell.

6           **CHARLES MAXWELL**

7           CHARLES MAXWELL: Aloha (Native Hawaiian  
8           language.) Good morning, everyone. My name is Kahu  
9           Charles Kauluwehi Maxwell, Sr. I am the Chair of Hui  
10          Malama, the board of Hui Malama I Na Kupuna O  
11          Hawai'i. For the last 50 years I've been involved  
12          with wrapping and putting back the iwi, the bones of  
13          our kupuna, way before Honokahua, why this act was  
14          created, NAGPRA, was one of the reasons, Honokahua,  
15          where we had over 800 remains that was taken out and  
16          the Ritz Carlton Hotel was going to be built over  
17          this, over the graves. There actually was over 2,000  
18          remains at Honokahua, and four – well, five of us,  
19          rather, protested and stopped the building of the  
20          hotel, along with all the people of the Hawaiians who  
21          came there to help us.

22          I was chosen to rewrap the 800 remains and 500  
23          pounds of scattered remains. In this 800 remains,  
24          and I'm speaking about the Molokai items, about the  
25          ki'i and all the other items that was from Molokai.

1       On each island it's very similar. On Maui, we had 11  
2       niho lei palaoa, 11 graves with symbols of royalty,  
3       from small little ones made out of clear glass to big  
4       niho lei palaoa. We had so many moepu of rock, of  
5       the choice onamika (phonetic), of beads, of leis that  
6       was buried with the remains. And we insisted that  
7       everything that came with the graves as moepu go back  
8       into the graves.

9               And like I said, I wear this around my neck,  
10       this is six of us that have it, made out of whale's  
11       tooth, and it was carved for us, shows that we are  
12       wrapping, we are the wrappers of Honokahua. And I  
13       wrote two songs, one is Honokahua Nani E when we  
14       found that this beautiful place was going to be  
15       violated and our ancestors were going to be taken  
16       out. And the last night that we buried the last 400  
17       remains, 12 o'clock at midnight, as we were going to  
18       bury a whale came into the bay of Honokahua and  
19       turned over on its side and slapped the waters of the  
20       bay, and immediately three owls flew overhead.

21               And for me it was looking like 2,000 years back  
22       in time, me and this venerated Hawaiian priest who  
23       gave me his ministry, Papa David Ka'alaka'a  
24       (phonetic), was on the top of the pit and there was  
25       torches lit all around. We were all dressed in black

1       and we had kehei and malo all in black. And looked  
2       like I was looking into 2,000 years back in time when  
3       Hawaii was all with Native people living here. And  
4       immediately when the whale slapped the waters of the  
5       bay, Papa Ka'alaka'a told me, he says, ah, ho'ailona,  
6       the sign. And so I wrote the song saying that at 12  
7       o'clock at midnight - and of course it was all in  
8       Hawaiian, but it basically means, at 12 o'clock at  
9       midnight, the torches were lit and the spirits that  
10      came back from O Kalua (phonetic) and all over the  
11      world came to unite with the bones again at  
12      Honokahua. And they didn't know how to thank these  
13      men who laid their bones to rest so they called upon  
14      the kohola, the whale, to slap the waters of the bay  
15      to signal that they finally have reunited with the  
16      bones of Honokahua.

17             I was born one mile away from Honokahua in  
18      Napili, and in the song, both songs, it says, please,  
19      protect the place of my birth. So from not too many  
20      people in this room have handled iwi and have handled  
21      the moepu. And like - and like I had said yesterday,  
22      these items were not carved for today. They are not  
23      carved for the people of today. They were meant to  
24      accompany the iwi in their spiritual eternity  
25      throughout this end of the earth. It was not meant

1 to be disrupted and taken out and put in the Bishop  
2 Museum so everybody can look at it. How nieli, how  
3 nieli and maha'oi Western man can be. It is not  
4 their right, not their duty. I was taught that it is  
5 kapu. You cannot look upon these objects. It  
6 belongs to those people, not to us.

7 Papa Ka'alaka'a told me once the old people when  
8 they wanted to be buried, they said, here, that's  
9 where I want to be. Where his fingers pointed,  
10 that's where they want to be. All the ground around  
11 the iwi, all the ground around the grave, the kanu,  
12 the place of planting, was sacred, all the dirt. If  
13 it's in a cave, that entire cave is sacred, and this  
14 is how it was.

15 People up here, I was shocked with Mr. Akina who  
16 said that our culture is gone. For 50 years, I have  
17 practiced our culture like Mr. Aila, and I have  
18 learned from our kupuna what the right thing should  
19 be done with the iwi. We cannot be maha'oi. We  
20 cannot be nieli. This is why. The reason - it's  
21 meant to deteriorate. Let me briefly tell you, I was  
22 fortunate enough about 25 years ago to find a ku'ula,  
23 excuse me, a Kuaka'ai (phonetic) in Haleakala Crater.  
24 And by accident I found it, and I believe some  
25 questions was is all caves same with royalty. I



1 believe that we found maybe Pi'ilani, the King of  
2 Maui. And you know, they put him in the heiau for  
3 ten years in this casket and the bones was in a  
4 casket with mother of pearl eyes. But on this alter  
5 in the cave, there was beautiful capes. Of course,  
6 they deteriorated. There were spears, there were  
7 bowls, there were carrying sticks, all carved.

8 I felt so proud and happy that it gave me my  
9 spirit of wealth to see all these things that was  
10 treasured by our kupuna and I prayed and I thanked  
11 them to bless me as I left the cave. And I collapsed  
12 that cave so nobody could ever disturb it again. I  
13 found it by accident. And so I implore you, if you –  
14 your recommendation, please, put those objects back  
15 to Molokai because it belongs there and hopefully all  
16 the things that Bishop Museum has can eventually be  
17 returned to the rightful owners and the rightful  
18 caves where they belong. Mahalo nui loa. Have you  
19 got any questions?

20 ROSITA WORL: Thank you.

21 CHARLES MAXWELL: Thank you.

22 ROSITA WORL: Thank you very much.

23 TIMOTHY MCKEOWN: Next is La'akea Suganuma  
24 representing the Royal Hawaiian Academy of  
25 Traditional Arts.

1 ROSITA WORL: Good morning.

2 **AFFECTED PARTIES**

3 **LA'AKEA SUGANUMA**

4 LA'AKEA SUGANUMA: Aloha. The Royal Hawaiian  
5 Academy of Traditional Arts is a recognized claimant  
6 in this matter. And after careful review of the  
7 positions taken, the academy submits that: one, the  
8 Bishop Museum appears to be in compliance with  
9 NAGPRA. Two, we don't believe that anyone can  
10 determine whether or not any of these objects were  
11 definitely funerary but we will accept the museum's  
12 designations. Three, the academy cannot refute  
13 Bishop Museum's claim of right of possession of the  
14 ki'i. In order to agree with Hui Malama, we would  
15 have to attack the Native Hawaiian who sold it by  
16 proclaiming he or she to have been a grave robbing  
17 thief and we vehemently decline to do so. Number  
18 four, the acceptance and hearing of this so-called  
19 dispute is clearly premature, unnecessary, and seems  
20 to be the result of Hui Malama's impatient need to  
21 own as many Hawaiian artifacts as they possibly can.  
22 Thank you.

23 ROSITA WORL: Thank you very much.

24 TIMOTHY MCKEOWN: Next is a representative of the  
25 Office of Hawaiian Affairs.

1           If we can go to the next person, it's Halona  
2           Kaopu'iki.

3           If we can go to the next person, it's Kehaloha  
4           Kuheha.

5           **PUBLIC COMMENT**

6           **HALONA KAOPU'IKI**

7           HALONA KAOPU'IKI: Aloha. My name is Halona  
8           Kaopu'iki, born and raised on Molokai. When I look  
9           this name Metcalf, my kupuna, from (comment  
10          inaudible), he was a culprit. I am here to claim my  
11          Molokai belongings. Look at the high society people  
12          who talk for my kupuna. They talk different tongue  
13          from me. They was raised and educated by the high  
14          society people. I came from the lepo, I bring the  
15          lepo from my island to your island. Please. On  
16          Molokai, we are the last surviving warriors. I come  
17          from a warrior bloodline. I was the one to protect  
18          my ali'i, and now I come humbly to this aina, because  
19          this is not my moku (phonetic). My mana is on  
20          Molokai, and every time you guys take and take you  
21          are taking the mana away from us, the spirit, the  
22          heart, halona (phonetic), the breath within me I see.

23          I was raised as a traditional bibi (phonetic).  
24          My papa, my great-grandparents (Native Hawaiian  
25          names), my grandparents (Native Hawaiian names), my

1       mamma's side (Native Hawaiian name), dang, you  
2       looking at a warrior who willing to die for my  
3       people. (Native Hawaiian name), my ali'i had to come  
4       over here and speak when I the one supposed to speak  
5       for her. I am the protector.

6             Kalaina Wawae is mine. My father told me when  
7       God created the Hawaiian Islands, he created my  
8       people, the mo'i. I come from the Laolui (phonetic)  
9       line. I come from the Kaopu'iki line. I come from  
10      the Polokeko (phonetic) line, is all warrior  
11      bloodline. I no come over here to play games. I  
12      come over here for take home what belongs to my  
13      people. Please understand me. I'm trying to hold my  
14      composure. These are my island brother. My imo  
15      (phonetic) they liked him. I burn my imo.

16            To the elite people in high society who have the  
17      (comment inaudible) and forget where they come from  
18      and who they are, here psychologically, they are  
19      (comment inaudible). They forget who they are.  
20      Because of my grandparents, who love Christianity,  
21      then I got to abide by them. I have to ask my  
22      grandma before she went to the house of heaven to  
23      give me her mana, give me her aloha to carry on.

24            In Molokai, they call me the (Native Hawaiian  
25      name). Four kupunas, they stay with the house of the

1 (comment inaudible). One of them was kupuna, (Native  
2 Hawaiian language and names).

3 I was brought up not to be educated. I was  
4 brought up to survive. They was my great-  
5 grandparents (comment inaudible). You got to take  
6 care of us. Take care of our lands and take care of  
7 the people. I'm not doing my job. I'm not doing my  
8 job very well because of the laws that doesn't comply  
9 for the Hawaiian people. We had Native rights. The  
10 rights came from God because we was here before  
11 anybody was here.

12 Again, if this was my island, I come over here  
13 humbly, asking the museum. My mother-in-law, great-  
14 great auntie, Pauahi Bishop, Bernice, Edna Pauki  
15 (phonetic), born on Molokai (Native Hawaiian name),  
16 so the mana is over there. The piko belongs to  
17 Molokai. We have the piko. We did one survey from  
18 the (Native Hawaiian name) grounds of the (Native  
19 Hawaiian name) the piko, the lava tube went all the  
20 way to San Francisco. So we would nourish the  
21 Indians, they are part of us. All Indigenous people  
22 are part of us.

23 Again, I come from the lepo, that's the  
24 difference between high society Hawaiians and the  
25 lepo people, we are for real. I am willing to die.

1 I told Halealoha, you're not going to bring my  
2 sacrificing club. I have a sacrificing club made out  
3 of pohaku that the Bishop never touched because it  
4 still got the blood stains of the warriors that have  
5 been commit to go to heaven to let Lono know, the god  
6 of fertility come back to earth. I sacrifice you, my  
7 son, you go to heaven and you tell akua what we need  
8 on Mama Earth. My island is not one island. My  
9 island is the breathing woman. My papa told me she's  
10 a woman, she's the mo'o (phonetic), and all of the  
11 babies of Molokai is the babies of the mo'o that she  
12 carried on her back.

13 When I was baby to I was twelve years old, we  
14 hunt the Hono, my ohana. We do ceremonies and  
15 protocols. You guys call protocols, I call  
16 ceremonies, with the blood of the Hono. That was my  
17 aumakua. I have aumakua of the puhi (phonetic), I  
18 have aumakua of the puales (phonetic), and aumakua of  
19 the Hono. When my tutu (phonetic) lady died, I saw  
20 the Hawaii lono of the kohala. (Native Hawaiian  
21 language), that was the sound of my tutu lady who  
22 would change my diaper when I was full of crap,  
23 telling me that she's going to Maui to see my ohana  
24 in Maui.

25 So when these high society Hawaiians tell that

1       they from ali'i blood, so am I. But who am I to come  
2       to this island and judge you guys' island, even  
3       though I catch the airplane, come over here. My eyes  
4       disagree for what they see. But who am I? Who am I  
5       to judge this island of Oahu? Who am I? My mana is  
6       over there. (Native Hawaiian language.) My island  
7       was feeling.

8               Again, I begging you guys for bring my kupuna  
9       back. I want them to go home with me. I told  
10      Halealoha, I'm going take them home today. I like  
11      them go home. Kalaina Wawae, you leave that thing  
12      alone. The training for me started when I had pubic  
13      hair. That was the beginning of my journeys to  
14      survive in the society that I no can handle.

15             I ask this Oahu brothers how do guys feel when  
16      you guys born in hospital and you're not going to see  
17      the ocean and you're not going to see the mountains.  
18      I am fortunate in my island. I can hear the mo'o,  
19      nighttime, I can hear the makani (phonetic). I can  
20      hear the rain. I no can hear sirens. I no can hear  
21      airplanes. Last night, I no can sleep in my hotel  
22      room. And again, I beg you guys bring home my  
23      kupunas, I want to take them home. My ohana will  
24      show me where all they was, and that is my job to  
25      take care of them. Please can you guys hear me and

1        please do something. In the name of you guys' gods,  
2        in the names of the Creator's son, Jesus Christ of  
3        you guys, please understand where my people and me  
4        coming from. Aloha.

5                ROSITA WORL: Thank you very much.

6                TIMOTHY MCKEOWN: We now have a representative of  
7        the Office of Hawaiian Affairs.

8        **LANCE FOSTER**

9                LANCE FOSTER: Aloha kakou. My name is Lance  
10       Foster. I'm Director of Native Rights, Land and  
11       Culture, OHA. The Office of Hawaiian Affairs, OHA,  
12       was created under the State of Hawaii Constitution,  
13       both as a fiduciary trust and as an advocate for the  
14       rights of all Native Hawaiians. OHA must do its best  
15       to fulfill its fiduciary and advocacy duties. And as  
16       a named Native Hawaiian organization in both NAGPRA  
17       and the State Historic Preservation statute, OHA must  
18       exercise its important kuleana, but in a manner  
19       cognizant of the sometimes diverse viewpoints of our  
20       beneficiaries. While our current beneficiaries come  
21       from every island in the state as well as on the  
22       mainland, we also consider those kupuna who have  
23       passed on our responsibility, as well as those yet  
24       unborn.

25               In regards to the Molokai dispute of three



1 unassociated funerary objects from Molokai, OHA has  
2 increasingly sought to enter claims under NAGPRA to  
3 preserve the rights of those individuals, families  
4 and communities who may not have access to the  
5 Federal Register and who often become aware of  
6 cultural situations through oral communication, often  
7 after deadlines have passed.

8 Disposition of the dead and their protection and  
9 care in the Hawaiian culture is primarily a family  
10 responsibility and of those most trusted by the  
11 deceased in their kauoha, their command or  
12 disposition. OHA makes claims to preserve the rights  
13 of these beneficiaries with the most direct kuleana  
14 to the issues. Unfortunately, all too often, due to  
15 a turbulent history, these family members can no  
16 longer be located.

17 OHA was recently contacted by Kamalama O'Molokai  
18 in a letter signed by multiple individuals expressing  
19 a desire for OHA to represent their interests with  
20 regards to the wooden ki'i. There was no mention of  
21 the other two items at dispute. OHA has initiated  
22 consultation with this organization to determine the  
23 nature of their affiliation and the best way our  
24 office can assist in their organization. In the  
25 absence of any additional request for assistance, OHA

1 will formulate a position and take action on behalf  
2 of our beneficiaries. Thank you.

3 ROSITA WORL: Thank you very much. Do we have  
4 any questions? Mr. Steponaitis.

5 VINCAS STEPONAITIS: Just before I ask, how much  
6 time do we have?

7 ROSITA WORL: We have 15 minutes.

8 VINCAS STEPONAITIS: And are there other speakers  
9 on the – no. I just wanted to ask a question. In  
10 trying to follow the timeline of the materials that  
11 were submitted with respect to the Molokai dispute,  
12 it seemed to me that in going through that record  
13 OHA's position with respect to its status as a  
14 claimant seems to have evolved through that period.  
15 Am I correct in that, in that it initially made a  
16 claim and then for a while that claim was considered  
17 active, but then at a certain point in time OHA  
18 essentially stated that its claim was no longer  
19 active. Is that an accurate summary of how the  
20 position evolved?

21 LANCE FOSTER: As information comes in, it does  
22 evolve.

23 VINCAS STEPONAITIS: Okay. Thank you.

24 DAN MONROE: I have a question. Does OHA have a  
25 position on the Bishop Museum's claim to right of

1           possession, which in its words rests on textual  
2           analysis of the language of NAGPRA and connects to  
3           the Fifth Amendment, Fifth Amendment takings  
4           provisions?

5           LANCE FOSTER: In regards to these specific  
6           items?

7           DAN MONROE: Yes.

8           LANCE FOSTER: We have no formal position at this  
9           time.

10          DAN MONROE: Thank you.

11          ROSITA WORL: Any other questions from the  
12          committee? Thank you very much.

13          We have no further –

14          **REVIEW COMMITTEE**

15          TIMOTHY MCKEOWN: If I might ask Carla Mattix,  
16          there were a couple of legal points that we had  
17          thought would be useful to the committee to discuss  
18          at this time or to introduce at this time for your  
19          deliberations.

20          CARLA MATTIX: A couple of the issues that came  
21          up during the presentations yesterday I made note of  
22          where there were legal issues and also if you have  
23          any other questions, this might be a good time before  
24          you do your deliberations on the matter tomorrow.  
25          The first thing that I just wanted to review, and I

1 know you all are familiar with this but it might be a  
2 good time to just review this, is the criteria for  
3 repatriation. And that is found in the regulations  
4 at 10.10, and if you have a chance to read that maybe  
5 before you deliberate on this tomorrow that might be  
6 a good thing.

7 But to sum up, the criteria for repatriation for  
8 unassociated funerary objects, which is what we are  
9 possibly discussing on the Molokai situation, is –  
10 the first step is upon the request of a Native  
11 Hawaiian organization, the museum must expeditiously  
12 repatriate the item if all of the following criteria  
13 are met. The first thing to consider is whether the  
14 object meets the definition established in the  
15 statute and regs. The next step is to look at the  
16 cultural affiliation determination, and that is  
17 established either through the summary, consultation,  
18 and notification procedures that are outlined in the  
19 regs, or by presentation of a preponderance of the  
20 evidence by the Native Hawaiian organization. That's  
21 the cultural affiliation step.

22 Then the next criteria that must be met is that  
23 the Native Hawaiian organization has to present  
24 evidence which if standing alone before the  
25 introduction of evidence to the contrary would

1 support a finding that the museum does not have a  
2 right of possession. So that's where the right of  
3 possession concept comes in, after the cultural  
4 affiliation step. And initially it is the Native  
5 Hawaiian organization's responsibility to present  
6 that evidence that the museum does not have a right  
7 of possession. And that is using what in legal terms  
8 is called the prima fascia standard, if standing  
9 alone before the introduction of evidence to the  
10 contrary would support a finding that the museum does  
11 not have a right of possession. Then the museum – if  
12 the museum – the museum has an opportunity then at  
13 that point to provide evidence to counter any  
14 assertion that it does not have a right of  
15 possession, so then the burden shifts to the museum.

16 So those are all the criteria that are required  
17 to show repatriation. So any questions on that  
18 piece? Garrick.

19 GARRICK BAILEY: I have one comment, Carla, and  
20 this bothers me somewhat. We are not a court and we  
21 are not a jury and we are not here to act in that –  
22 any type of judiciary capacity. We are here as  
23 experts or are alleged knowledgeable on particular  
24 aspects of culture, archaeology, museums, Native  
25 American culture. We're here in another capacity,

1 and we're here to make a judgment based upon our  
2 collective perception. And the way I read it, it's  
3 really trying to do what we think from our various  
4 backgrounds meets the spirit of NAGPRA. I mean, now  
5 that's the way I see it.

6 Now there may be – there are certainly legal  
7 issues involved, but we're not here – otherwise  
8 there'd be seven attorneys sitting up here. Forget  
9 the cultural factors, have seven attorneys sitting up  
10 here. You don't have the Review Committee you have  
11 if that's what you think the Review Committee should  
12 be primarily concerned with. Yes, I know we have to  
13 be concerned with these things, but there are other  
14 factors as well. And I'm making – when I'm making  
15 judgment, I'm making judgment as a cultural  
16 anthropologist. I am not making a judgment as an  
17 attorney, and I am going on what I think the law  
18 means in that regard. And so, while we have to be  
19 aware of those, I think you have to be aware that we  
20 have a different perspective on it. I don't know  
21 what the other members of the committee think. Vin,  
22 for example.

23 VINCAS STEPONAITIS: I would like to just add to  
24 that and I'm not sure that you and I disagree,  
25 Garrick, on this, but I guess I would put it

1           differently. I agree that we're not lawyers. I  
2           certainly am not a lawyer, and we're certainly not a  
3           court in that anything we say or do is not binding on  
4           any of the disputants. And that we are here as one  
5           might say facilitators in trying to resolve a  
6           dispute. But at the same time, I feel that in trying  
7           to suggest ways of resolving disputes, we really do  
8           have to be mindful of what the law says because the -  
9           in every one of these disputes, I believe that all  
10          the parties are acting in good faith and they just  
11          have very, very different views of what should be  
12          done.

13                 And the value of NAGPRA and the strength of  
14          NAGPRA is that it provides a kind of a legal process  
15          for figuring out what the right thing to do is. That  
16          process, as stipulated in the law is essential,  
17          otherwise, we're just - you know, there's no way to  
18          find our way through the mess. So in suggesting  
19          resolutions, we certainly draw on our experience. We  
20          certainly use our common sense, but at the same time  
21          I feel at that we are constrained by the law and any  
22          solution we suggest that doesn't fit with the law is  
23          bound to fail. So I guess in that spirit, I do value  
24          the solicitor's advice in what - what the law  
25          actually says.

1           GARRICK BAILEY: I agree with you, Vin. What we  
2 do has to take into account the law. It has to be  
3 legal, but at the same time I think that one of the  
4 purposes of this committee is to try to resolve an  
5 issue in such a way that everyone can find – and I  
6 don't think it's always possible to do that. But the  
7 ideal is that we resolve it so that everyone can live  
8 with the outcome, and it does have to follow a legal  
9 model. I know that we can say certain things for the  
10 Bishop to do but the Bishop couldn't possibly do it  
11 because the Bishop Museum is constrained by certain  
12 legal aspects of the incorporation of it and the  
13 board of trustees and others. But we – but I think  
14 that we have to also think in other terms to try to  
15 work our way around these things as much as possible.

16           ROSITA WORL: Thank you, Garrick. Dan.

17           DAN MONROE: Yes. Does the Solicitor's Office  
18 have any comment on the Bishop Museum's argument for  
19 right of possession vis-à-vis the Fifth Amendment  
20 taking clause?

21           CARLA MATTIX: Could you repeat the beginning  
22 part of your question? I couldn't –

23           DAN MONROE: Do you have any comment on the  
24 Bishop Museum's argument that it has a right of  
25 possession based on Fifth Amendment taking clause?



1 CARLA MATTIX: I'm not going to comment on the  
2 correctness or the incorrectness of their analysis.  
3 That is their analysis and they can pursue that.  
4 That whole issue comes into play when you're looking  
5 at the evidence of right of possession. And that is  
6 part of their evidentiary – that they're putting  
7 forward, the evidence they're putting forward that  
8 they have right of possession. And they did mention  
9 – and this is where it does get very legal, very  
10 quickly. I certainly appreciate, Garrick, your  
11 comments that it's – what you consider is more than  
12 just the law. It's a number of things. And – but it  
13 does quickly get bogged down into very legal issues  
14 when you start looking at this evidence.

15 The facts that you take in have to be applied to  
16 the law. And part of what the Bishop has raised is  
17 an issue of a good faith purchaser. Well, there's a  
18 whole body of property case law involving, you know,  
19 good faith purchase and what the law is in the United  
20 States on that issue and who has – you know, when –  
21 who can transfer good title, who has good title in  
22 the first instance. A thief can never transfer good  
23 title if it's a thief in the first instance. There's  
24 a – I mean, there's just a big area of the law here  
25 that goes into that analysis.

1           So – and the Fifth Amendment taking issue comes  
2           into play when it's a constitutional issue. And  
3           obviously the Fifth Amendment is part of the  
4           Constitution. And the government cannot, the Federal  
5           government cannot force an individual or an  
6           organization to turn over property without just  
7           compensation. That is the gist of the Fifth  
8           Amendment. So if the Bishop Museum does establish  
9           that it has a property right under state law and the  
10          Federal government is telling it through NAGPRA to  
11          turn over this property, that's where the Fifth  
12          Amendment kicks in. And they have a potential  
13          constitutional issue regarding the constitutionality  
14          of NAGPRA. So that's why the Fifth Amendment has  
15          been put into – the Fifth Amendment has been  
16          highlighted within the law, just to keep that issue  
17          at the back of people's minds.

18           DAN MONROE: I'd like to comment, and I will  
19           later, on the whole argument the Bishop Museum has  
20           advanced in this case. But I – two other quick  
21           questions. Would it be the case that the Fifth  
22           Amendment takings provision would not in fact come  
23           into play until such time as a decision had been made  
24           adverse to the Bishop Museum's claim?

25           CARLA MATTIX: Right. That – it's an issue that

1 would go to Federal court. Essentially it would be  
2 an issue the Bishop Museum would bring up to say that  
3 NAGPRA is unconstitutional because it violates the  
4 Fifth Amendment.

5 DAN MONROE: And would it be the case that the  
6 evidence the Bishop Museum would need to bring  
7 forward in this matter would have to go beyond simply  
8 citing the fact that there is a potential issue with  
9 respect to Fifth Amendment taking?

10 CARLA MATTIX: I think –

11 DAN MONROE: In other words, the Fifth Amendment  
12 taking issue cannot be an argument for right of  
13 possession in and of itself.

14 CARLA MATTIX: I think that the way I understood  
15 the Bishop Museum bringing up the Fifth Amendment  
16 aspect is that they've – they're sort of using that  
17 as shorthand for that they have a property right  
18 under state law.

19 DAN MONROE: Yes, right.

20 CARLA MATTIX: And that property right under  
21 state law is their evidence. And what they say is,  
22 you know, the good faith purchase, that evidence that  
23 they have is their evidence of right of possession.

24 DAN MONROE: Okay. Thank you.

25 ROSITA WORL: I have a question. My

1 understanding of the law and the right of possession  
2 is that we are also to take under consideration the  
3 cultural context and the cultural laws governing  
4 ownership. And so in – for example, in one society,  
5 you may have objects that are owned by groups, and if  
6 one individual sold that independent of the group  
7 ownership then that would – and if a museum acquired  
8 that, they would not have the right of possession,  
9 but we have to look at the cultural context and the  
10 cultural laws and their cultural ownership in making  
11 determinations as well.

12 CARLA MATTIX: What the statute says with respect  
13 to the body of law that should be followed is that  
14 right of possession shall be provided – as provided  
15 under otherwise applicable property law. So if the  
16 jurisdiction you're in has a body of property law,  
17 whether it's statutory or case law, that takes into  
18 account the situation you just brought up, then that  
19 could be the case. I am not personally familiar  
20 within the 50 states of that being brought in. I  
21 don't know if anybody else is. But it does say  
22 property law, so the way I read this, I would look to  
23 what that jurisdiction's law is on property, and that  
24 would be a combination analysis of what is in the  
25 state code, what is case law in that jurisdiction.

1           ROSITA WORL: Sherry, do you have a comment?

2           SHERRY HUTT: Well, I don't know which state law  
3           the Bishop is referring to when they say state law,  
4           so only – we would only assume otherwise applicable  
5           property law within the state. So the basis upon  
6           which they're bringing that claim, the factual basis  
7           for that, is something that you can inquire into to  
8           determine the facts upon which the claim is made to  
9           determine whether the right of possession – whether  
10          the facts are there to support the right of  
11          possession claim. And you may then determine whether  
12          that right of possession overcomes the claim of the  
13          claimant.

14          As Carla said, the first step is the prima  
15          fascia case. Are there facts of, step one, the  
16          claimant has standing, the item meets a NAGPRA  
17          category, there's cultural affiliation between the  
18          claimant and the item, and those are all factual  
19          determinations that you make. If the museum then  
20          asserts right of possession to overcome that  
21          otherwise valid claim, then the facts of that right  
22          of possession and the basis of that is something that  
23          you then consider. And I would agree then if the  
24          museum then believes that to do so would violate its  
25          Fifth Amendment property rights, they can assert that

1 in state court.

2 ROSITA WORL: We'll take one more question and  
3 then we'll go on break. Garrick.

4 GARRICK BAILEY: And I was just – and speaking in  
5 general on this, I think that we have to take into  
6 consideration in determining what is the proper right  
7 of possession of the individual is the traditional  
8 cultural idea about property. That person's right of  
9 possession – I mean, the person who – and we don't  
10 know in this particular case who it is, but I think  
11 at the same time we have to remember that even if we  
12 knew who it was that person had to have right of  
13 possession according to the culture.

14 And I have a feeling that you get into right of  
15 possession and you get into inheritance laws, which  
16 usually in most states do make cultural exceptions.  
17 So that you would have to get into the inheritance  
18 law of the state, not just the simple property law of  
19 the state to determine the full right of possession,  
20 in a case involving something such as this if we knew  
21 the individual, we don't know the individual. But I  
22 want to make that clear that it's not just simply  
23 following the state's property rights laws. There  
24 are other factors involved, and I can show you  
25 precedent for that in other states of the union.

1           SHERRY HUTT: I think the law accounts for the  
2           cultural basis that you're talking about when it  
3           talks about when it left the group in the first  
4           instance whether the circumstances under which it  
5           left the group were with the authority of the group  
6           at that time. So that certainly is the cultural  
7           basis, which is the reason that we do not have  
8           lawyers but we have all of you for the benefit of  
9           your wisdom and skills and background. And that's  
10          how this committee functions. That's the beauty of  
11          this committee.

12          GARRICK BAILEY: So it becomes a very complicated  
13          legal issue is what I'm saying.

14          CARLA MATTIX: Yeah, it does.

15          GARRICK BAILEY: It's not just simply right of  
16          possession.

17          CARLA MATTIX: Right. And I think that the  
18          concept you're talking about, Garrick, was considered  
19          in the law in the definitions such as object of  
20          cultural patrimony. Congress was clear that that -

21          GARRICK BAILEY: That's right.

22          CARLA MATTIX: - that cultural ownership concept  
23          is applicable in that part. And one thing we do look  
24          at when we interpret a statute is, you know, where  
25          has Congress been explicit and where have they not

1        said this. And it's not, you know, clear where they  
2        say under otherwise applicable property law, they  
3        don't talk about the type of specifics. They talk  
4        about when there were talking about the definition of  
5        object of cultural patrimony. So I think it's  
6        something for you to think about and to determine  
7        what kind of recommendation you can provide without  
8        getting into some of these technical legal issues  
9        that are probably best left for other forums.

10        ROSITA WORL: Okay. Thank you. We'll continue  
11        this discussion, I'm sure, tomorrow. But if we can,  
12        right now I'd like for us to take a ten-minute break,  
13        and we'll go right into session and begin the second  
14        dispute.

15        **BREAK**

16        ROSITA WORL: We will go ahead and call the  
17        meeting back to order and we will hear from the  
18        affected parties on the second dispute between Hui  
19        Malama and Bishop Museum. Mr. McKeown.

20        **PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN**  
21        **HUI MALAMA I NA KUPUNA O HAWAI'I NEI AND THE BISHOP**  
22        **MUSEUM REGARDING KALAINA WAWAE**

23        TIMOTHY MCKEOWN: At the time that there was a  
24        decision to go forward with this dispute, I requested  
25        information from the Bishop Museum regarding other



1 potential affected parties, and I sent a letter of  
2 invitation to Hui Malama – to Hui Malama I Na Kupuna  
3 O Hawai'i Nei, as well as Hui Malama 'o Mo'omomi.  
4 And I don't know if there's a representative from the  
5 latter organization here today.

6 AUDIENCE MEMBER: (Comment inaudible.)

7 TIMOTHY MCKEOWN: In that case –

8 AUDIENCE MEMBER: (Comment inaudible.)

9 **PUBLIC COMMENT**

10 **HALONA KAOPU'IKI**

11 HALONA KAOPU'IKI: Leave them alone. I told you  
12 guys from the beginning of my testimony, please, I'm  
13 begging you guys again. That thing will stay home.  
14 I will tell you guys this right now, that thing will  
15 stay home. The warriors already know I am the voice  
16 for them. I am the voice of the Molokai moeaina  
17 (phonetic). She stay home. We did the ceremonies.  
18 You guys got to understand, when we do the ceremony  
19 it's pa'a, forever. You no can take them away. We  
20 cement them forever, these Wawae, (Native Hawaiian  
21 language) on the cliffs it was, the whole nine yards,  
22 Wawae.

23 During my childhood, 4,095 people on my island  
24 in the 1960s. I get 8,000 now attitudes of there, no  
25 understand nothing of Hawaiian. Wawae, leave them

1 alone. I'm telling you guys now, you come to my  
2 island I will turn on my imu, I will light the fire,  
3 (Native Hawaiian language), they was my tutu names.  
4 I am the caretaker of the fire of Pele. You guys  
5 will come my island, you guys going to try to take  
6 these Wawae. The warriors over there will (comment  
7 inaudible) and we will put our lives on the line  
8 again. We will die for my kupuna. You guys  
9 understand. I begging you guys. This is not my  
10 island, so I'm holding my composure, okay, to the max  
11 over here. Leave alone my kupunas, bring them back.  
12 When you guys steal bicycle I come back with tire and  
13 everything. I don't like it with flat tire and  
14 (comment inaudible). Same thing with the Wawae, same  
15 thing with my kupuna, please bring them back, leave  
16 them alone. Think of this (comment inaudible).  
17 Wawae will stay home forever. Aloha.

18 TIMOTHY MCKEOWN: As a member of the public,  
19 Hannah Reeves has asked to speak on this issue as  
20 well.

21 ROSITA WORL: All right. Hannah, Hannah Reeves.  
22 Did you have comments on -

23 TIMOTHY MCKEOWN: Regarding the Kalaina Wawae.

24 **HANNAH REEVES**

25 HANNAH REEVES: Thank you. I like today. Do I

1 have to say my name again?

2 TIMOTHY MCKEOWN: Please.

3 HANNAH REEVES: My name is Kupuna Hannah  
4 Wahinemaikai O Kaahumanu Kelii'ulanani Ole O Kalama  
5 Kane Reeves. On behalf of my people, to all the  
6 people in the back there that come from the mainland,  
7 mahalo nui loa for your support. To the Hawaiian  
8 people, mahalo nui loa, thank you brother who is  
9 sitting over there. Aloha. To you all in behalf of  
10 the Hawaiian people, I come before the Department of  
11 Interior letting you know that you have robbed our  
12 heritage of the Hawaiian people, that you have taken  
13 all of our rights of our people, our water rights,  
14 our mineral rights, our gathering rights, our fishing  
15 rights, that cover the four corner of the island of  
16 Hawaii that goes deep into the ocean, the deeper,  
17 deep, and deeper of the ocean, the depth of the  
18 island, and all to the international water where all  
19 our ancestors is buried around the islands and goes  
20 to Alaska down to Africa and down, all the way down  
21 to the different and out.

22 What I'm saying is that there's something that  
23 the United States is doing to our ocean. I want to  
24 bring it to the Department of Interior. I feel that  
25 you are damaging our battle site, our heiaus in the

1 deep ocean that covers around the island of Hawaii.  
2 From the mountains to the sea, from the shoreline out  
3 to the international water, we have heiaus that have  
4 been chunked into the ocean that I understand that  
5 many of the United States are sending out whatever  
6 you call ship to continue to grade our ocean. I  
7 believe with all my heart that they already destroyed  
8 all of our heiaus in the ocean. I believe that they  
9 have dig up our ancestors that is buried in the ocean  
10 for generation. I believe that they are the  
11 destroyers, invaders, occupying continually in our  
12 island that have no respect to our people.

13 I am of all Hawaii that protect Hawaii from the  
14 mountain to the sea, and that's my job. I was given  
15 as a gift the power over our old people to protect  
16 our people. And I mean, dead and alive. They are  
17 bringing the Department of Interior holding you  
18 damages to our water that continue to destroy. I  
19 charge the United States for damage again. I charge  
20 the Department of Interior for damage and many, many  
21 others that connected to the state and the land and  
22 resource and the burial council. Bishop Museum and  
23 many, many that who is making money, I repeat, making  
24 money over our ancestors' burials in the ocean. I  
25 feel in my heart that these things should be stopped.

1 No longer you will continue to destroy our people  
2 just like the whole – the Indian people, they're  
3 still fighting for their lives. They're my people  
4 too.

5 What happened to the United States? What is it?  
6 Don't they have any mercy and respect for Hawaiian  
7 people, for people, for human beings that live on  
8 this earth that God create us so unique that put us  
9 in the Pacific for a reason to take care of our  
10 people to bless them, to guide them, to direct them,  
11 to do the right thing. I feel in my heart that the  
12 United States has caused damage in many, many ways.  
13 When are you going to stop? I don't think they know  
14 how to stop because they crazy for money.

15 But I know what to do. I need to put them on  
16 hold and I will continue to put them on hold and I  
17 know that the President of the United States know who  
18 I am, that I charge the United States Army for  
19 damage, that continues to destroy the heiaus they run  
20 over it by the thousands of our ancestor bones.  
21 Believe me, this is a true story. It's not a lie  
22 thing. And the President admit that they are ready  
23 to compensate me. They don't realize what they  
24 doing. But I let you people know, our people, you  
25 need to know the truth, what is the United States

1           doing? They not here to steal money only. They will  
2           continue to destroy us until we don't have nothing.  
3           Enough. I say enough. To the Department of Interior  
4           I will continue to say I do not know what you do, but  
5           I believe that you are connected –

6           ROSITA WORL: Hannah.

7           HANNAH REEVES: – with the same things that is  
8           doing the wrong thing over and over. I want you to  
9           know that this is very important that our site, our  
10          fishing rights, our gathering rights, and everything,  
11          water rights and minerals and everything should be  
12          returned back to our people. No longer you will take  
13          control over us. Thank you.

14          ROSITA WORL: Thank you, Hannah.

15          TIMOTHY MCKEOWN: There was one other person that  
16          came up and asked me to comment here, and I didn't  
17          write it down, so if you know who you are – there we  
18          go. Sorry.

19          ROSITA WORL: So we're speaking to the Kalaina  
20          Wawae?

21          TIMOTHY MCKEOWN: Yes, all on the Kalaina Wawae.

22          ROSITA WORL: Kalaina Wawae.

23          **KEOLA AWONG**

24          KEOLA AWONG: Aloha. I thank you for the  
25          opportunity. For the record, I'd like to say that I

1 am speaking as an individual, as a Hawaiian, and I  
2 respectfully defer this to the families of Molokai,  
3 and pray that they can resolve what they – what they  
4 came here for.

5 ROSITA WORL: For the record, do you want to  
6 state your name?

7 KEOLA AWONG: My name is Keola Awong, Keolanui  
8 Awong.

9 ROSITA WORL: We have some time yet if there are  
10 other individuals who wanted to comment on the  
11 Kalaina Wawae.

12 **HANA "SWEET" MATTHEWS**

13 HANA "SWEET" MATTHEWS: Aloha. I'm not a public  
14 speaker, so don't mind me. But bothering me all day,  
15 all night last night, Dr. Brown comment yesterday  
16 that –

17 ROSITA WORL: Excuse me. For the record, would  
18 you introduce yourself?

19 HANA "SWEET" MATTHEWS: My name is Sweet  
20 Matthews. I'm coordinator for Na Kupuna a me na  
21 Kako'o O Halawa Valley. I'm going to get you guys in  
22 trouble.

23 Anyway, it was bothering me what Dr. Brown said  
24 yesterday. He said, in 1875, King Kamehameha V sold  
25 the land to the ranch, but he said today, and maybe I

1 was wrong hearing that yesterday, he said today, no,  
2 he left it to Charles Reed Bishop, who is  
3 Liliuokalani's husband. And he said in 1875 this  
4 happened, yeah? But King Kamehameha V died in 1872.  
5 So I'm sure his spirit didn't come alive and give the  
6 land away. As far as I'm concerned Ruth Ke'elikolani  
7 got half of his lands and she gave it to Bernice  
8 Pauahi Bishop. I don't know if that was legal, but I  
9 hope it is. But that was my manao that was bothering  
10 me, so thank you for giving me this opportunity to  
11 speak today.

12 ROSITA WORL: And thank you very much.

13 HANA "SWEET" MATTHEWS: That's all. Thanks.

14 TIMOTHY MCKEOWN: That's what I have.

15 ROSITA WORL: So that's - so we'll invite anyone  
16 if they have any comments to make on - Mr. Maxwell.

17 **CHARLES MAXWELL**

18 CHARLES MAXWELL: Kahu Charles Kauluwehi Maxwell  
19 from Pukalani, Maui. I was present when the Kalaina  
20 Wawae was brought back to Molokai and it was a very  
21 moving thing. I wanted to make - I heard Mr. Brown  
22 said that Mac Poepoe was happy with the arrangement,  
23 but you saw the movie. I wanted to (comment  
24 inaudible) except the people of Molokai. Mahalo and  
25 mehalo (phonetic).



1           ROSITA WORL: Thank you. I guess we have no one  
2           from the public to speak on this, and we want to keep  
3           to our agenda. So I think we could either go back  
4           into discussion if we had any further questions from  
5           Carla, I know I cut it off, and so we will go ahead  
6           and begin there, until 11 o'clock. So Vin, I know  
7           you had some questions.

8           **REVIEW COMMITTEE**

9           VINCAS STEPONAITIS: Thank you, Madam Chair.  
10          Just to go along the lines of the questions that were  
11          being asked at the end of our earlier session, in  
12          both this dispute and in one of the other disputes,  
13          one of the issues that has come up that is a legal  
14          issue has to do with whether a repatriation sort of  
15          is automatic, to use a colloquial term, once the sort  
16          of identification – once a claimant identifies him or  
17          herself, once that claimant is recognized and then  
18          the requisite amount of time, 90 days, passes. Now I  
19          understand that we're not lawyers – well, we're not  
20          lawyers and that, you know, we don't – we don't want  
21          to get into all the details of property law, but I do  
22          want to ask this question. Does it say anywhere in  
23          NAGPRA that the title passes automatically at the end  
24          of that 90 days, and would you care to add any  
25          additional comments on that?

1 CARLA MATTIX: The area of the regs that guides  
2 the process for repatriation is again at 10.10.  
3 There's a number of different sections in that  
4 provision of the regulation. To answer your very  
5 specific question, it does not say when title exactly  
6 passes. There's nothing in the regulations or in the  
7 law itself that says title at this point in time is –  
8 passes to another entity. I think you have to look  
9 at the process as a whole and the regulation and what  
10 it says and the steps that need to be taken. There  
11 are a number of exceptions that might arise as well  
12 that are outlined in the regulation that change the  
13 process, potentially, if there are multiple  
14 claimants. There are just a number of factors that  
15 come up that can affect the timeline.

16 VINCAS STEPONAITIS: Thank you. So do I  
17 understand correctly then that when title passes,  
18 since it's not controlled by NAGPRA or it's not  
19 stipulated exactly by NAGPRA and I've heard others  
20 say this morning that the issue of property transfer  
21 is a matter of state law, that then that does become  
22 a matter of state law, the point of time that the  
23 title passes, as it were.

24 CARLA MATTIX: I think if you're looking at the  
25 specific question of when – at what point does the

1 property transfer, you do have to look at a number of  
2 factors that could include provisions that are  
3 directed by that jurisdiction, the state.

4 VINCAS STEPONAITIS: Thank you. I don't want to  
5 get into the details of it.

6 ROSITA WORL: Garrick.

7 GARRICK BAILEY: One of the problems I see in it  
8 is that – and I think I'm getting at the same thing  
9 Vin's getting at, and that is does – say it has been  
10 filed, say an organization has requested  
11 repatriation, at the end of 90 days, does the  
12 institution have to formally reject it? Or just by  
13 not taking action, is that considered a legal  
14 rejection of it? In other words, is it incumbent  
15 upon the institution, say a museum, to actually take  
16 action on a request at the end of this period? Or is  
17 it assumed that if they take no action that they –  
18 that they are finding fault with the claim?

19 CARLA MATTIX: I wouldn't make that assumption  
20 either way. I mean, if I – it just –

21 GARRICK BAILEY: Because I'm thinking part of  
22 this becomes this issue of in many cases 90 days has  
23 gone by and the institution has not taken action. Is  
24 that clear? Am I correct in that? I mean, there  
25 seems to be a lot of –

1           VINCAS STEPONAITIS: I think the institution has  
2 not taken action in terms of making the affirmative  
3 transfer.

4           GARRICK BAILEY: Yeah, but does that mean they  
5 are negating it or rejecting it? I mean, or do they  
6 have to formally say, we reject this.

7           CARLA MATTIX: The regulation requires the museum  
8 to consider within the 90-day period the claim that  
9 comes in. I mean, they do have to take that into  
10 account. They have to – they have some action that  
11 is required once that process starts, once the notice  
12 is published.

13          GARRICK BAILEY: Once the notice is published.  
14 Because a lot of times it seems rather vague as to  
15 what happens at the end of that ninety days whether  
16 they – and this is a legal question. This is not – I  
17 mean, this is not –

18          CARLA MATTIX: Well, the regulation and law does  
19 not say exactly what has to happen at the end of the  
20 – I mean, if – if there are multiple claimants,  
21 something that – or some other instance of an  
22 exception that comes up, there are different factors  
23 that can come into play. So that 90-day period may  
24 or may not be the final period. But if you have,  
25 say, a situation that follows the sort of, you know,

1 the easy situation where you have – and I assume  
2 we're talking about unassociated funerary objects,  
3 sacred objects, or objects of cultural patrimony for  
4 a summary.

5 GARRICK BAILEY: Yeah.

6 CARLA MATTIX: You have a claim come in, then the  
7 museum has to act on that claim to make the cultural  
8 affiliation determination, in this situation.

9 GARRICK BAILEY: But I'm saying, is inaction  
10 considered an action?

11 CARLA MATTIX: Is inaction considered an action?

12 GARRICK BAILEY: I mean, is inaction considered a  
13 rejection?

14 CARLA MATTIX: I – the law does not speak to  
15 that.

16 GARRICK BAILEY: I mean, from a legal standpoint,  
17 do they have to really come out and then post another  
18 statement saying we have rejected the claim, which  
19 isn't a bad idea if you're going to reject it, but do  
20 they have to do that?

21 CARLA MATTIX: They are required to consider the  
22 claim.

23 GARRICK BAILEY: Yeah.

24 CARLA MATTIX: Yeah. I mean, they are required  
25 to do that. The law doesn't say they have to write

1 something formally if they're rejecting the claim.  
2 But I think you have to look at the factors, are they  
3 – what are they taking into account? Are they acting  
4 in some way? Are they consulting? Are they making  
5 this cultural affiliation determination? I don't  
6 know if that answers your question, but the law does  
7 not say either way exactly.

8 GARRICK BAILEY: The point is that there is no  
9 clear action – I mean, there is no clear point at  
10 which they have to – there is no clear action that  
11 they have to take in this regard.

12 CARLA MATTIX: They do have to look at the claim  
13 and make a cultural – make a determination of  
14 cultural affiliation.

15 GARRICK BAILEY: But then certain institutions  
16 can look at those claims forever too, I mean, it  
17 seems like. It seems it can be open-ended in a way.

18 TIMOTHY MCKEOWN: Carla talked a little bit  
19 earlier about the – about 43 CFR 10.10, which is the  
20 section that deals with repatriation activities, and  
21 section (a) deals with unassociated funerary objects,  
22 sacred objects, and objects of cultural patrimony.  
23 And that's where the criteria of what a valid claim  
24 are, that the object meets a definition, that there's  
25 cultural affiliation, and that the preponderance of

1 evidence – yeah, cultural affiliation.

2           There is a requirement, and this goes down to  
3 (a)(3). It says, repatriation must take place within  
4 90 days of receipt of a written request for  
5 repatriation that satisfies the requirements of  
6 paragraph (a)(1) of this section from a lineal  
7 descendent or culturally affiliated Indian tribe or  
8 Native Hawaiian organization, provided that the  
9 repatriation may not occur until at least 30 days  
10 after publication of the Notice of Intent to  
11 Repatriate. So the 90 days is if the claim comes in  
12 and it is evaluated by the museum and it is  
13 determined to be a valid claim, repatriation must  
14 take place within 90 days of the receipt of the  
15 claim.

16           GARRICK BAILEY: Okay. Now though what if the  
17 museum says, well, we looked at the claim and we do  
18 not agree with it?

19           TIMOTHY MCKEOWN: I think it would be incumbent  
20 upon the museum to notify the claiming party of that.

21           GARRICK BAILEY: But is it legally required for  
22 them to notify them? That's the point that I'm  
23 getting at, Tim. And we're talking about – we're  
24 talking about a legal point here. I'm not talking  
25 about moral or ethical points here.

1 CARLA MATTIX: And, Garrick, I would just say  
2 it's not written out specifically in the regs but it  
3 would be prudent for the museum, I think, in  
4 complying with the overall process of the regulation  
5 to inform the party that they have considered the  
6 information that party has provided with respect to  
7 cultural affiliation and the other criteria for  
8 repatriation, and either doesn't agree with it, needs  
9 more information, etcetera. They should respond.

10 GARRICK BAILEY: No, I agree. I think it would  
11 be prudent of them to do it, but I'm getting at that  
12 the law seems to be rather ambiguous and open-ended  
13 at that particular point on what they have to do.

14 TIMOTHY MCKEOWN: I think it is clear from the  
15 context that the institution is required within that  
16 90-day period to make that decision of whether that  
17 is a valid claim or not. You are correct that there  
18 is no specific provision in the statute that they  
19 notify the affected party. But the administrative  
20 record of the institution would need to show that  
21 they made that decision because they are required to  
22 do so.

23 ROSITA WORL: The Chair will recognize Vera and  
24 then Vin.

25 VERA METCALF: I guess in line of Garrick's



1 question here, it seems that the intent – the Notice  
2 of Intent to Repatriate was occurring but the museum  
3 changed its mind somewhere along the way. I was just  
4 wondering how often can a museum change their mind?

5 SHERRY HUTT: Vera, if I might speak to that in  
6 terms of the process and the way the program  
7 functions, the notice belongs to the museum. So the  
8 museum makes a decision in its notice and then that –  
9 the job of the NAGPRA program is to publish the  
10 notice of the museum. If the museum changes its mind  
11 on its determination, maybe they found more facts or  
12 for whatever reason they have changed their mind,  
13 they may amend that notice and we will publish their  
14 amended notice. They may withdraw their notice, and  
15 we will publish their amended notice. So the  
16 decision and the basis for it remains on the museum,  
17 but the consequence of having made a decision one way  
18 and then having made a decision another way, that's a  
19 matter of factual determination in terms of how it  
20 weighs into any future actions. But the notice  
21 belongs to the institution. Does that answer your  
22 question?

23 ROSITA WORL: Vin.

24 VINCAS STEPONAITIS: I just wanted to make an  
25 observation in light of this discussion. This isn't

1 a legal observation. It's just an observation of  
2 what I've seen happen in practice in my own  
3 experience with NAGPRA, which - and I've been  
4 involved in NAGPRA as a steward of a collection at  
5 the local level dealing with tribes and also watched  
6 it in many places at the national level. And that is  
7 that when - the law requires that repatriation take  
8 place within 90 days, but in every case with which  
9 I've seen and in every case with which I have been  
10 involved, the parties to that repatriation have  
11 viewed that transfer as an affirmative act taken by  
12 the museum and/or the other parties involved. That  
13 is, there's a kind of a - there's paperwork. We  
14 hereby, you know, sort of give you this.

15 So in those cases, and again, I can't comment on  
16 the legal basis of this, it's clear that the parties  
17 involved see the transfer as something that has to  
18 happen as a distinct step and it's not something that  
19 is just assumed to happen after the 90 days. And I  
20 don't know if others have different experiences, but  
21 that's just an observation that I'm making.

22 GARRICK BAILEY: Let me ask one question.

23 ROSITA WORL: The Chair will recognize Garrick.

24 GARRICK BAILEY: And I just thought of it. What  
25 do you see as the purpose of a Notice of Intent to

1 Repatriate? Where is the emphasis? Intent? And if  
2 it's only intent, then that puts – it's not a notice  
3 of repatriation. It's a Notice of Intent to  
4 Repatriate. So what do you see the purpose – what do  
5 you see the legal status of that being?

6 TIMOTHY MCKEOWN: There are three kinds of  
7 notices that are outlined in the regulations, Notice  
8 of Inventory Completion, Notice of Intent to  
9 Repatriate, and Notice of Intended Disposition. The  
10 Notice of Inventory Completion is completed or is  
11 published at the end of the completion of the  
12 inventory. The inventory includes the listing of all  
13 of the human remains and associated funerary objects  
14 and a decision by the museum or Federal agency of  
15 which tribe or Native Hawaiian organization is  
16 culturally affiliated. So the notice in that case is  
17 a notification to all parties that they've made a  
18 decision over which tribes, lineal descendant, Native  
19 Hawaiian organization has a right to claim those  
20 objects.

21 A Notice of Intent to Repatriate is, in terms of  
22 the concept and the intent of it, is an identical  
23 notice. It also indicates that the museum has made a  
24 decision of who has a right. The difference is that  
25 unlike Notices of Inventory Completion that are

1 completed or were required to be completed by a  
2 particular date, Notices of Intent to Repatriate are  
3 claim driven. That you get the claim first, you  
4 react to the claim, and those notices only apply to  
5 unassociated funerary objects, sacred objects, and  
6 objects of cultural patrimony. So in no way are  
7 these two types of notices linked. They are not  
8 sequential. They are separate in terms of what they  
9 apply to. But in terms of the intent of them, they  
10 are identical in purpose.

11 GARRICK BAILEY: But when you file, why do you –  
12 why do you put out an intent to repatriate for 90  
13 days?

14 TIMOTHY MCKEOWN: That is to allow any other  
15 party that feels that they may have a right to it to  
16 come forward and make their claim.

17 GARRICK BAILEY: Or anyone who objects to it can  
18 – and who can object to it?

19 TIMOTHY MCKEOWN: The primary issue is to  
20 identify – this is, you know, the basis of NAGPRA is  
21 essentially property law. And what these notices  
22 indicate is the potential or the intended transfer of  
23 human remains, funerary objects, sacred objects,  
24 objects of cultural patrimony from one party to  
25 another. And the parties that have a right to

1        participate in that activity are really any other  
2        party that may feel the property is theirs.

3                GARRICK BAILEY: So that a – so that it doesn't  
4        have to necessarily be another Native organization or  
5        entity. It could potentially be some family who gave  
6        the object to the museum.

7                TIMOTHY MCKEOWN: If they feel that they have a  
8        property right that's being infringed upon by this  
9        process.

10               GARRICK BAILEY: If they feel they have a  
11        property right, they can raise it. I'm trying to see  
12        how wide a group could – can the museum – now, we're  
13        working with museum, but I mean we're talking about  
14        other things besides museums. But say, could they –  
15        during that 90 days, now does the – the intent to  
16        repatriate is based on their initial investigation.  
17        During that 90 days should they continue? Is it  
18        expected that they're going to continue and may  
19        change their mind?

20               TIMOTHY MCKEOWN: No. The purpose of the notice  
21        is the end of the process from the museum or Federal  
22        agency's perspective that they have made a decision.  
23        And they are just publicizing this decision that they  
24        have made to see if there's any other party that  
25        wishes to come forward. It's a due process

1 consideration, but it reflects a final decision,  
2 administrative decision by the institution based on  
3 all of the information they have collected prior to  
4 that.

5 DAN MONROE: Unless they change their mind.

6 ROSITA WORL: Yes.

7 TIMOTHY MCKEOWN: They can change their mind.

8 CARLA MATTIX: Right. I was just going to make  
9 that point that if during that period I think for –  
10 certainly for a Federal agency, if a material fact  
11 came in after publication of the notice that somehow  
12 affected that decision, I would certainly counsel  
13 that that decision be revisited to take into account  
14 whatever that fact is, whether it's from a potential  
15 claimant or anywhere else. If it's a valid fact, it  
16 would need to come into consideration in some way.

17 ROSITA WORL: So I want to go back in terms of  
18 what Sherry said is that the notice belongs to the  
19 museum. So they put out their Notice of Intent to  
20 Repatriate. There are – and the 30-day lapses.  
21 There are no other claimants. There are no other  
22 facts that arise. But the museum still has the right  
23 to revise, change, amend its notice of intent to  
24 repatriate. So it seems – I don't know when a tribe  
25 or Native Hawaiian organization would be able to have

1       – perfect their title. When does that – when does  
2       that happen?

3               SHERRY HUTT: The critical aspect of a notice is  
4       that once published it gives notice to all comers  
5       that if they feel they have a claim that 30-day  
6       window is there for them. On the 31<sup>st</sup> day from  
7       publication the transfer may occur, is final. Now as  
8       a practical matter, if it doesn't occur on that day,  
9       if it's held off for whatever reason, then you get  
10      into this jumble of facts, some of which are before  
11      you in this meeting. You have – the transfer should  
12      occur on the 31<sup>st</sup> day because the decision has already  
13      been made. And where it doesn't transfer, then you  
14      get into these other issues. Typically what happens  
15      is once that notice is submitted to our office for  
16      publication, the consultation that is ongoing is not  
17      on the decision to be made because it's already been  
18      made. The consultation is in how are we going to  
19      effectuate the transfer, what ceremony might occur,  
20      what are the physical aspects of that transfer. And  
21      where you get into the problems that come before this  
22      committee are when the transfer does not occur on  
23      that 31<sup>st</sup> day.

24              The other thing I want to make very clear in  
25      terms of the notice of inventory completion, is that

1 is a decision by the museum or the Federal agency as  
2 to the cultural affiliation to those remains and  
3 associated funerary objects. It need not wait. In  
4 fact, the law doesn't indicate that it waits until  
5 you've determined as a museum or Federal agency who  
6 within that group of potential claimants, those who  
7 have a right, you're going to give it to. So if  
8 people are consulting ad infinitum on to whom the  
9 ultimate party should be, they're holding up the  
10 notice outside of what was intended in the law.

11 The law intends that you would make a decision  
12 of cultural affiliation and publish that notice.  
13 That then tells all of those who are within that  
14 notice that they have a right to come forward and  
15 make the claim. It also tells those who are not in  
16 that notice that feel that they should have been that  
17 they may have had a dispute. But it does not hold up  
18 the publication of that notice to determine who the  
19 final – deciding among potential claimants to whom it  
20 should ultimately reside.

21 ROSITA WORL: Vin.

22 VINCAS STEPONAITIS: I just first want to just  
23 make an observation and then a question. I guess  
24 again in my experience watching repatriations play  
25 out and the whole NAGPRA process play out, and I want



1 to stress that 99 percent of the time things work  
2 very, very well. We sometimes tend to be distracted  
3 by – or led into thinking that the whole process is  
4 flawed by virtue of the fact that it's the – the  
5 disputes that come to us. But we have to keep  
6 remembering that on the whole things work very well.

7 And in many of those cases where things are  
8 working very well, I mean, I know of many instances  
9 where a Notice of Intent to Repatriate or a Notice of  
10 Inventory Completion has been published and  
11 repatriation doesn't take place on the 31<sup>st</sup> day  
12 because the culturally affiliated tribe wishes for  
13 whatever reason to leave those objects in the care of  
14 the museum. And so just an observation, that I don't  
15 think that in all cases, that repatriation should  
16 happen on the 31<sup>st</sup> day otherwise a dispute will arise.

17 SHERRY HUTT: I caution you. First of all, I do  
18 appreciate your acknowledgement of the fact that the  
19 issues that you all see are the tough questions. The  
20 easy ones we can deal with. You get the difficult  
21 ones. The – in terms of the items staying in the  
22 museum, I caution you to separate the transfer of  
23 ownership, the transfer of title to the tribe from  
24 the physical repository of the item. The – the  
25 ownership may transfer on the 31<sup>st</sup> day to the tribe.

1       The tribe now controls the disposition of that item.  
2       But physically they may agree with the museum that it  
3       will remain in the museum for curation because they  
4       all have agreed to that. So it's still in the –  
5       physically the item may not move once all the  
6       paperwork is done. But the critical issue is that  
7       the ownership, the item has transferred in terms of  
8       who has the control and the say on the item. And  
9       that in the process of repatriation returns to the  
10      tribe.

11           CARLA MATTIX: It would be – I think it would be  
12      prudent for the museum or institution to have  
13      paperwork reflecting what Sherry just said, that in  
14      fact if it's the intent of the museum to transfer  
15      ownership and yet retain the physical custody of the  
16      item that that all be reflected in a transfer  
17      document.

18           SHERRY HUTT: A curation agreement.

19           CARLA MATTIX: Yeah, some sort of – something to  
20      reflect that. The law doesn't tell you that you have  
21      to have a document reflecting that, but in most  
22      situations of transfer of property, you have  
23      something that reflects an acceptance of that item by  
24      – or the release and the acceptance of that item by  
25      two parties and an understanding and meeting of the

1 minds, so to speak. So you would definitely want  
2 that so there wouldn't be any confusion about is  
3 ownership now with the tribe or is it still with the  
4 museum or what is going on.

5 VINCAS STEPONAITIS: Now, I understand that  
6 you're suggesting that that's a prudent step. But I  
7 think I heard two different things from the two  
8 lawyers sitting at that table in the sense that what  
9 I thought I heard you say, Sherry, is that at the end  
10 of that 30 days the sort of the transfer of ownership  
11 is automatic, in effect. Whereas what I heard Carla  
12 say is that the law is silent on that and that that -

13 SHERRY HUTT: What we're saying, I think, is the  
14 same thing. We're saying that do not - the fact of  
15 the item moving is not the issue. The issue is the  
16 transfer of the control, the transfer to the tribe.  
17 So the transfer may occur on the 31<sup>st</sup> day and now the  
18 tribe has control over what is done with that item,  
19 the ultimate and total control, but it may physically  
20 have never left the confines of the museum. And I  
21 think what Carla is saying is if you're going to do  
22 that be certain to have a curation agreement so  
23 everyone knows what the circumstances are.

24 VINCAS STEPONAITIS: I understand that, but I  
25 guess there's a third possibility, which is that if

1 in a particular setting the transfer has to be an  
2 affirmative act between the parties involved. That  
3 is, the museum has to sort of take an action and say  
4 we hereby transfer this to you. Then the third  
5 possibility is that the – the items can be declared  
6 affiliated. They can still reside in the museum and  
7 the tribe can thereafter claim them at any time and  
8 they have to be returned within 90 days.

9 SHERRY HUTT: The caution there is that's a  
10 difficult situation because it can become fraught  
11 with problems. If you say we have – essentially the  
12 scenario that you describe is an open-ended  
13 repatriation, not finalized, kept in abeyance on an  
14 ongoing basis. In other words, we've published the  
15 notice but we're not going to do anything once we've  
16 published that notice. And so what Carla is  
17 suggesting, and I think wisely so, is that you come  
18 to – you come to terms.

19 So but – and all I'm saying is that the item may  
20 never move, physically may never have moved. It may  
21 be where it is during the process and thereafter but  
22 those who have the right to control and have the say  
23 over its actions after that has transferred. And  
24 typically what happens as a matter of fact in these  
25 cases, once the notice is published, on the 31<sup>st</sup> day

1 transfer can occur. Sometimes on the 31<sup>st</sup> day that  
2 means the tribe comes and performs ceremony on the  
3 31<sup>st</sup> day and takes the item home. Sometimes the item  
4 never leaves the museum because during that 30-day  
5 period the museum and the tribe enter into a curation  
6 agreement and on the 31<sup>st</sup> day that agreement is  
7 effective and it – the item remains in the museum  
8 until such time as perhaps the tribe has a museum to  
9 take it to. But the critical difference is that it's  
10 the tribe's item being held in the repository of the  
11 museum rather than a museum item that a tribe is  
12 claiming. That's the finality that we all are  
13 reaching through the law.

14 CARLA MATTIX: Do you have any other questions,  
15 Vin? I think to give you the short answer, on the  
16 31<sup>st</sup> day repatriation may and can occur. It's not  
17 automatic. Transfer of custody, transfer of legal  
18 title is not automatic according to what is in the  
19 regulations. And that's where it can get confusing  
20 if there's a question about that, because the regs do  
21 not say specifically that's the case.

22 VINCAS STEPONAITIS: Thank you.

23 TIMOTHY MCKEOWN: And even in the drafting of the  
24 regulations, there was some consideration about  
25 requiring some sort of document like that, and it was

1       decided not to do that because the rules that would  
2       apply to that transfer by the institution are largely  
3       defined by state law or other relevant law, which  
4       gets us to another issue that's on the agenda.

5               VINCAS STEPONAITIS: Thank you.

6               ROSITA WORL: Garrick.

7               GARRICK BAILEY: I just would like to make one  
8       comment. I do believe that you might find that some  
9       of the tribes do not know what they wish to do with  
10      it on the 31<sup>st</sup> day and like to have it in kind of a  
11      limbo state until they figure it out. And I don't  
12      really think that we should force the tribes into an  
13      agreement prematurely. And you're thinking in terms  
14      of the museums' benefit. It's not the museums that  
15      necessarily benefit from this. I think a lot of  
16      tribal organizations do. They don't have the  
17      facilities. They don't know what to do. And they  
18      would just let it – would rather have it in a limbo  
19      state for a while.

20              SHERRY HUTT: Until – quite often the tribe  
21      arranges with the museum for the item to stay in the  
22      museum. The caveat here is that if it's not brought  
23      to a transfer, to a repatriation under the law, the  
24      longer you leave it open, then it's not done and is  
25      subject to whatever consequences occur in the

1           meantime until it is done. So if a tribe waits to  
2           make its claim until such time – I mean, a tribe can  
3           do that. I tribe can fully do that. But in so  
4           doing, the museum, as we've said before, can change –  
5           can modify the notice or any other factors can arise.

6           GARRICK BAILEY: Because in – what you – what is  
7           being done is being forced – is forcing tribes – and  
8           remember these things have been gone a long time.  
9           Now all of a sudden, the government in this great act  
10          of being nice to the tribes is saying basically we  
11          want the tribes to make up their minds almost  
12          instantaneously about what to do about these matters.  
13          And so you're forcing the tribes into at times what  
14          could be a potentially unacceptable agreement with a  
15          research institution or with a museum because they  
16          really do not have the ability at that time to really  
17          figure out what they want to do. And so I think this  
18          can be very negative for the tribes as well.

19          SHERRY HUTT: Notices of Intent to Repatriate are  
20          claims driving. So the tribe determines the timing  
21          on that.

22          GARRICK BAILEY: Is there any – this gets back to  
23          another point. Say a museum or a research  
24          institution lists a particular property as being  
25          affiliated or being subject to NAGPRA, is there any

1 time limit as far as the tribe is concerned, as far  
2 as filing for it?

3 SHERRY HUTT: No.

4 GARRICK BAILEY: Can the tribe wait indefinitely?

5 SHERRY HUTT: I think the answer is – the simple  
6 answer from two lawyers is no.

7 GARRICK BAILEY: They can't or they can?

8 SHERRY HUTT: They can wait.

9 CARLA MATTIX: There's no time limit.

10 SHERRY HUTT: There's no time limit.

11 GARRICK BAILEY: There's no time. And nothing –  
12 nothing can happen to this – the museum or institute  
13 has to hold this item, waiting the decision of the  
14 tribe to take any – to take action?

15 SHERRY HUTT: If the item is a NAGPRA item,  
16 they've been in consultation and it's a NAGPRA item,  
17 then to transfer it from the museum to another  
18 institution could be problematic, so that might  
19 prompt some further consultation.

20 GARRICK BAILEY: Because I've been asked by  
21 particular groups that question, like tribal museum  
22 curators, do I have to go ahead and claim something.  
23 They don't want it right now, but in the future they  
24 might well wish to pursue it. They don't – in other  
25 words there's a lot of – there's some question in



1           their own minds about what might be done with it.

2           But there is no time limit.

3                 SHERRY HUTT: Correct. And as you properly note,  
4           this law steps into hundreds of years of prior  
5           history, certainly history from 1906, the permit  
6           system, forward. But what typically happens as what  
7           we see as a practical matter, a tribe faced with so  
8           many different decisions to make will prioritize them  
9           based on where they see the need, either because they  
10          have determined that certain items are of critical  
11          importance to them, such as the White Mountain Apache  
12          who have sought out all the gaan headdresses or the  
13          Zuni who have gone to collect all of the Zuni War  
14          Gods. So they may identify certain items that they  
15          wish to go forward on. Other tribes may have the  
16          issues somewhat brought to a head because someone  
17          else has made a claim or because there's an event  
18          happening that brings that to the fore. So all of  
19          these factors come into play.

20                 ROSITA WORL: Vin.

21                 VINCAS STEPONAITIS: I'm sorry. Did Vera have  
22          her hand up?

23                 VERA METCALF: Just a comment. I know that  
24          there's cases in where I'm from in northwest Alaska  
25          that a lot of our communities don't have proper

1 facilities to have the proper disposition for our  
2 objects, but the University of Alaska Museum in  
3 Fairbanks out of the goodness of their heart has  
4 agreed to some of our objects to be cared for, be  
5 curated until we have adequate facilities. But we  
6 don't have an agreement with them. It's just that we  
7 worked out the details that these objects will not be  
8 used for scientific purposes but for – only to be  
9 used for – open to our people. But that's an  
10 agreement that can be arranged until, you know, the  
11 facilities are available or, you know, reburied or  
12 whatever. But that's just one case that we've done  
13 with one museum in Alaska.

14 ROSITA WORL: Based on our experience with  
15 museums, we in southeastern Alaska want our objects  
16 back. So we, you know, we move very quickly to  
17 obtain our items and perfect our title in whatever  
18 way that we have to, and usually it's with some, you  
19 know, some transaction where we do that. But we also  
20 have a formal memorandum of agreement that we have  
21 developed and I've sent it out to the National Museum  
22 Association and had them review it, as well as  
23 ourselves and our lawyers and our traditional legal  
24 experts. And if we choose to leave something in the  
25 museum, we do that. But we – but we allow the museum

1 to use it for some, you know, for some purposes, for  
2 educational and some exhibition. But we have certain  
3 kind of stipulations, you know, on cultural,  
4 intellectual property rights and things like that.  
5 So we've managed to do that. But I wanted – just  
6 want people to know that we don't have the same kind  
7 of hesitancy that you've been talking about where we  
8 don't know what we want to do with our objects.

9 Go ahead, Vin.

10 VINCAS STEPONAITIS: I just – I want to ask a  
11 rookie's question, being a newcomer to the committee.  
12 Just so I understand, what are the roles of the  
13 National NAGPRA Office and the Office of the  
14 Solicitor, their respective roles when it comes to  
15 interpreting what the law means? Just so I  
16 understand.

17 CARLA MATTIX: The Solicitor's Office provides  
18 legal advice, including interpretation of the law, to  
19 the program area, in this instance National NAGPRA.

20 VINCAS STEPONAITIS: Okay. Thank you.

21 CARLA MATTIX: And to the committee.

22 ROSITA WORL: And does that extend to – like  
23 yesterday I think we heard the reference to one of  
24 the parks, you know, where you offer advice to parks?

25 CARLA MATTIX: Yeah, in this situation, the

1 Department of the Interior Solicitor's Office is one  
2 office under this Office of the Secretary. We are  
3 broken into divisions that have client bureaus. The  
4 division I am in happens to counsel the National Park  
5 Service, and the Review Committee and National NAGPRA  
6 is currently housed under the framework of the  
7 National Park Service within the Department. When  
8 there is an issue – and all the attorneys in my  
9 branch work on various Park Service issues. When  
10 there is a specific Park Service issue that is  
11 potentially going to come before the committee, there  
12 have been times in the past where other Solicitor's  
13 Office attorneys have worked on it besides me. Even  
14 though I work on almost all the NAGPRA issues for the  
15 Park Service, they are given to field or regional  
16 office, as in the Hopi/Chaco dispute that came before  
17 the committee several years ago. That issue was  
18 primarily worked upon by our field office in Santa  
19 Fe, the Solicitor's Office field office in Santa Fe  
20 and Denver regional office. So that is one way that  
21 we sort of divide out the issues.

22 This type of crossover is inherent in the  
23 Department, because the Department wears a number of  
24 hats and the Solicitor's Office has to provide advice  
25 to all the various bureaus. And there are many times

1       when one bureau does not agree with another bureau.  
2       But we're all within the Solicitor's Office and we  
3       all ultimately provide advice to the Secretary. The  
4       — my colleague that was here yesterday, Kim Fondren,  
5       is working specifically on the Hawaii Volcanoes  
6       National Park issue. And I do not work on that  
7       issue.

8               ROSITA WORL: Well, she had indicated that you  
9       had been, prior to her assumption of that.

10              CARLA MATTIX: No, I don't think she said that.  
11       In fact, she said she wasn't sure who had been  
12       working on that case. And I had not been working on  
13       that case prior to that, other than just very general  
14       discussions involving NAGPRA, but not specifically  
15       looking at the park's records.

16              DAN MONROE: Just so I'm clear, there are no  
17       formal conflict of interest provisions within the  
18       Solicitor's Department such that the solicitor  
19       representing one party who adopts a position legally  
20       that's in opposition to another party, there's no  
21       protection against conflict of interest. Is that  
22       what I'm hearing?

23              CARLA MATTIX: There is no conflict of interest  
24       because ultimately the Secretary of Interior oversees  
25       both — any bureau. Say the Bureau of Land Management

1 has an issue that the Park Service disagrees with,  
2 and initially two divisions in the Solicitor's Office  
3 will represent those various viewpoints and work on  
4 the legal issues involved. But if they can't be  
5 resolved, ultimately the Solicitor herself, Sue Ellen  
6 Wooldridge, will make a decision about whatever the  
7 issue is and advise the Secretary on that.

8 DAN MONROE: In another context, one would say  
9 there is a conflict of interest, but I understand  
10 your point, since there's really only one client.

11 CARLA MATTIX: Yeah, and I guess the conflict of  
12 interest is used in various ways and it can mean  
13 different things. And in the Department we talk more  
14 about separation of functions rather than conflict of  
15 interest in a situation like this. And our general  
16 law division, who is the area in the Solicitor's  
17 Office, the Solicitor's Office General Law Division  
18 deals with all of these issues of administrative law  
19 and departmental delegation and function, has said  
20 there is no conflict of interest in this situation.

21 DAN MONROE: Technically I would guess, I'm not  
22 an attorney, I have some friends that are, but the  
23 fact of the matter is technically you would be right  
24 in my understanding, it is not a conflict of interest  
25 but there can be conflicting interests within the

1 Department. And it would be helpful, I think, to  
2 know in a more precise way for the committee to know  
3 how those interests are handled and managed as we –  
4 as we go forward because they have a bearing.  
5 Arguably they have a bearing, for example, on the  
6 next case we'll hear.

7 ROSITA WORL: So we'll make that a formal request  
8 is that we –

9 CARLA MATTIX: Can you give me the exact –

10 DAN MONROE: Yes, just to inform the committee  
11 exactly how you separate the functions so that you  
12 have representation to various parts of the Park  
13 Service, and for example, to this committee versus to  
14 Volcanoes National Park, that are separated  
15 sufficiently to provide sound legal counsel to all  
16 parties. You understand what I'm –

17 CARLA MATTIX: I understand and I think I just  
18 verbally explained that. Would you like that written  
19 in a memo?

20 DAN MONROE: Yes, please.

21 CARLA MATTIX: I think the verbal explanation is  
22 that the specific Hawaii Volcanoes matter has been  
23 assigned by my supervisor to a separate attorney.  
24 And the Solicitor's Office makes its management  
25 decisions in that regard on who works on different

1 issues.

2 DAN MONROE: It may be a minor point, but why did  
3 we receive a Solicitor's Office opinion from the  
4 Volcanoes National Park rather than from the  
5 Solicitor's Office directly?

6 CARLA MATTIX: First of all, that was not a  
7 Solicitor's Office opinion. I did want to correct  
8 that when we got to the Hawaii Volcanoes discussion.  
9 That document you received from Hawaii Volcanoes with  
10 the cover memorandum from Karen Mudar. She is not in  
11 the Solicitor's Office. She is a National NAGPRA  
12 Program employee. It's not a Solicitor's Office  
13 opinion. So I just would like to make that very  
14 clear, because there are some conclusions in that  
15 that are not legal conclusions that the Department  
16 necessarily agrees with. We haven't analyzed that  
17 issue.

18 DAN MONROE: Very good.

19 CARLA MATTIX: And I cannot address why the park  
20 provided that document to you. That's something I  
21 think you have to ask the park.

22 DAN MONROE: Yeah, we will take that -

23 ROSITA WORL: So you will provide us the  
24 written -

25 CARLA MATTIX: Sure.



1           ROSITA WORL: Thank you very much. It's now 11  
2 o'clock. Why don't we go ahead and take a break for  
3 15 minutes, and then we'll move right into our next  
4 dispute.

5           **BREAK**

6           ROSITA WORL: We'll call the meeting back to  
7 order. I don't know if anyone knows where the air  
8 conditioning is, but there's been a request to have  
9 the air conditioning turned on. Absent that, we'll  
10 open the doors for now. We will go ahead and hear  
11 from affected parties concerning the dispute between  
12 Hui Malama and the Hawaii Volcanoes National Park.  
13 And Dr. McKeown, I'll turn it over to you to call the  
14 list, the people forward.

15           TIMOTHY MCKEOWN: Thank you, Madam Chair. Our  
16 office sent out personal invitations to all of the  
17 parties that were identified by the park as having  
18 made claims. A number of those individuals have come  
19 forward. The first person that came in and requested  
20 time was Mel Kalahiki. Is Mel here?

21           ROSITA WORL: If Mel Kalahiki is not here, let's  
22 move on to the next one.

23           TIMOTHY MCKEOWN: The second person that  
24 contacted me was Van Horn Diamond for the Van Horn  
25 Diamond Ohana.

1           VINCAS STEPONAITIS: I saw him during the break,  
2           so he's -

3           PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN  
4           HUI MALAMA I NA KUPUNA O HAWAI'I NEI AND HAWAII  
5           VOLCANOES NATIONAL PARK REGARDING ITEMS FROM A CAVE  
6           AT KAWAIHAE  
7           AFFECTED PARTIES  
8           VAN HORN DIAMOND

9           ROSITA WORL: Good morning and welcome.

10          VAN HORN DIAMOND: Good morning. Thank you.  
11          Chairperson Worl and members of the NAGPRA Review  
12          Committee, aloha to each of you, and mahalo for this  
13          opportunity to provide testimony on this subject.

14          As you know, my name is A. Van Horn Diamond.  
15          I'm authorized to represent and speak on behalf of  
16          the Van Horn Diamond Ohana, a Native Hawaiian  
17          organization culturally affiliated, pursuant to the  
18          applicable and appropriate provisions of NAGPRA, to  
19          the 83 Kawaihae, also known as Forbes Cave, items.  
20          And that was accomplished in the year 2000.

21          Before proceeding, we note the following as  
22          important to our subsequent remarks: First, the  
23          Diamond Ohana does not speak for the Hawaiian  
24          community, only for the Van Horn Diamond Ohana.  
25          Second, we do not recognize and/or see any entity or

1 person able and/or authorized to speak for all  
2 Hawaiians in this matter. Third, from the foregoing,  
3 this Diamond Ohana chooses to observe that it does  
4 not accept any person's manao to be infallible or  
5 speaking from ex cathedra. And fourth, we believe  
6 the repatriation and reinterment of iwi kupuna,  
7 including their respectful care, custody and  
8 security, to be properly a familial kuleana or  
9 responsibility. Whereas, the repatriation of  
10 artifacts not directly associated or connected to iwi  
11 kupuna, including their care, custody, and security,  
12 does not necessarily require their reinterment.  
13 Lastly, when ohana, family, is involved in the  
14 repatriation and/or reinterment processes, we hope  
15 that non-ohana, Native Hawaiian organizations defer  
16 to and respect the kuleana of the organized - of the  
17 recognized ohana, including supporting them.

18 Regarding the dispute, the Van Horn Diamond  
19 Ohana can understand the relevance of continued open  
20 communication between Hui Malama I Na Kupuna O Hawaii  
21 Nei and the Hawaii Volcanoes National Park. We also  
22 understand the parties will work at improving this  
23 communication. But we have reservations and are  
24 disinclined to support any particular move by one or  
25 both parties to bring about repatriation in the

1 immediate future.

2 This Diamond Ohana supports what we discern to  
3 be a prudent, responsive, well-paced, non-expedient-  
4 oriented approach being pursued by the Hawaii  
5 Volcanoes National Park. We presume this is their  
6 goal.

7 It should be noted that the Van Horn Diamond  
8 Ohana recently received correspondence from the  
9 Volcanoes National Park. It, in effect, is inviting  
10 the Diamond Ohana to participate in an interface  
11 process leading to probable repatriation. Our family  
12 has approximately 60 days to consider and decide our  
13 response to this letter.

14 Our recommendation or recommendations. We  
15 recommend the following: One, that improved  
16 communication occur between the disputants.

17 Two, enable the Hawaii Volcanoes National Park  
18 to proceed to implement its front-end, proactive  
19 initiative so that, a, consultation will take place  
20 both per individual claimant and collectively  
21 involving all claimants together. Inspection of the  
22 items for each prospective recognized claimant will  
23 occur, presumably with sufficient frequency for all,  
24 so that determining each item's classification by a  
25 preponderance of evidence will involve all claimants,

1 as participating contributors.

2 Three, the consultation aspect for these items  
3 must fully conform and embrace the NAGPRA Review  
4 Committee 2000 determination involving the National  
5 Park Service and the Hopi Indian Nation, Chaco Park,  
6 wherein consultation must be conducted, a, one on one  
7 per individual claimant per each item, as well as  
8 collectively and/or globally between and among all  
9 claimants. It is presumed too all prospective  
10 claimants will be expected to demonstrate cultural  
11 affiliation to each item. We underscore the word  
12 all.

13 Four, the relief Hui Malama seeks beyond  
14 improving the communication needs to be tabled. What  
15 they seek should be forthcoming anyway. The  
16 difference, however, is that those out of the 47 who  
17 heretofore have expressed interest will have  
18 qualified to participate in the anticipated  
19 repatriation. Such an outcome advances the notion of  
20 more persons assuming their kuleana or  
21 responsibility. Of course, this also means, for just  
22 a little while, Hui Malama participation will be no  
23 sooner and/or no faster than all other interested  
24 prospective claimants.

25 Our reasoning is as follows: First, it appears

1 the Hawaii Volcanoes National Park has a definitive,  
2 progressive approach leading to appropriate  
3 repatriation wherein the pursuit and achieving of  
4 claimant status and repatriation status becomes  
5 doable.

6 Second, the Diamond Ohana senses greater  
7 prospects for improved culturally sensitive  
8 communication combined with the fullest possible use  
9 of both individualized and collective consultation  
10 per individual item. This should help to enhance the  
11 determination of each item's classification.

12 Third, the repatriation of these items must be  
13 decided on its own merit. The integrity of the  
14 decision-making needs to be both transparent and  
15 demonstrating its status as non sequitur to the 83  
16 Kawaihae items and needs to stand alone.

17 Thank you for this opportunity to converse with  
18 you on this subject before you. Hopefully, we have  
19 helped, I don't know, in this matter.

20 And with respect and aloha, thank you.

21 ROSITA WORL: Thank you very much. Do we have  
22 any questions from the committee? Vin.

23 VINCAS STEPONAITIS: Just a quick question, will  
24 we have a written copy of your testimony?

25 VAN HORN DIAMOND: As soon as we're done, I'm

1 turning it over.

2 VINCAS STEPONAITIS: Okay.

3 VAN HORN DIAMOND: The print machine didn't work  
4 this morning.

5 VINCAS STEPONAITIS: Thank you. Will we have  
6 that, the benefit of that tomorrow? Will we get  
7 copies? I also, with your permission, this is not a  
8 question, but just an observation. I felt very badly  
9 at our last meeting, our teleconference meeting in  
10 November. You were on the agenda and because we were  
11 running so late you were not able to speak, and you  
12 very graciously agreed to -

13 VAN HORN DIAMOND: Defer.

14 VINCAS STEPONAITIS: - to kind of forego that.  
15 Although I do remember from looking at the minutes  
16 that you were invited to submit written - a written  
17 version of the testimony that you were going to give.  
18 And I just - I didn't know. I hadn't seen that. I  
19 don't know.

20 TIMOTHY MCKEOWN: That's in the other binder, not  
21 in the main part of the binder here. It's in the  
22 other one.

23 VINCAS STEPONAITIS: In the second binder. Okay.  
24 Thank you.

25 ROSITA WORL: Mr. Bailey.

1 GARRICK BAILEY: Yes, I have one question. And  
2 this actually has to do with some things we're going  
3 to be talking about tomorrow unrelated to this cave.  
4 But you represent the Van Horn Diamond Ohana.

5 VAN HORN DIAMOND: Yes, sir.

6 GARRICK BAILEY: And my impression is that the  
7 closest term, like an anthropologist like myself  
8 would use for an ohana, is an extended family. It is  
9 a kinship group, a lineage or kinship group.

10 VAN HORN DIAMOND: Yes.

11 GARRICK BAILEY: Under the – the way the law is  
12 written, any organization can be a Native Hawaiian  
13 organization but they don't seem to have any  
14 territorial limits to what they can legally request  
15 under the law. And I was wondering, does the Van  
16 Horn Diamond Ohana have any direct relationship to  
17 the island of Hawaii, or is it on another island?

18 VAN HORN DIAMOND: The answer to your question is  
19 yes.

20 GARRICK BAILEY: It is from Hawaii, the island.

21 VAN HORN DIAMOND: We have genealogical ties to  
22 Kohala, as well as to Honokua Coast.

23 GARRICK BAILEY: Okay. That was the point I  
24 wanted to ascertain.

25 VAN HORN DIAMOND: Yes.



1 GARRICK BAILEY: Although under the law it  
2 doesn't make any difference, it doesn't seem to.

3 VAN HORN DIAMOND: One, if I –

4 ROSITA WORL: Garrick, we'll limit it to  
5 questions.

6 VAN HORN DIAMOND: So if I can try to interpret  
7 your question that you're wanting to go at.

8 GARRICK BAILEY: Yes.

9 VAN HORN DIAMOND: For many of us to come forward  
10 to achieve recognition under NAGPRA as a Native  
11 Hawaiian organization, we put forth our genealogy and  
12 our history, etcetera. And then we attempt to use  
13 that to also be culturally – to demonstrate the  
14 cultural affiliation to the items, whatever they may  
15 be. In this particular instance, they're – for the  
16 83 items we were successful in demonstrating that.  
17 And presumably if we choose to go forward, we should  
18 – our prospects probably for the ones at Volcanoes  
19 are pretty good, but you never know.

20 ROSITA WORL: Dan.

21 DAN MONROE: Since 1995, what's the nature of the  
22 consultation process that your group has experienced  
23 with Volcanoes National Park?

24 VAN HORN DIAMOND: I can only talk about  
25 consultation that we've had relative to two areas,

1       one was with Bishop Museum and one was with the  
2       Marine Corps, because those are the only two that  
3       we've achieved Native Hawaiian organizational status,  
4       culturally affiliated. One was for the remains at  
5       Mokapu. So with regard to the Volcanoes, I can say  
6       though that in the limited contact that we have had,  
7       I have had family members go to visit the items. It  
8       has been okay and open.

9             DAN MONROE: Thank you.

10            VAN HORN DIAMOND: Thank you.

11            ROSITA WORL: Thank you very much.

12            VAN HORN DIAMOND: Thank you.

13            ROSITA WORL: And —

14            TIMOTHY MCKEOWN: Next is Mel Kalahiki, who  
15       represents Na Papa Kanaka O Pu'ukohola.

16       **MELVIN KALAHIKI**

17            MELVIN KALAHIKI: Aloha, Chairman Worl, Timothy  
18       McKeown, and NAGPRA Review Committee. My name is  
19       Melvin Lono Kaiolohia Kalahiki. I serve as ali'i nui  
20       on the Council of Chiefs of Na Papa Kanaka o  
21       Pu'ukohola Heiau. I would like to thank you for  
22       holding this meeting here in Honolulu, which made it  
23       possible for us to participate in this important  
24       proceedings that seeks a final resolution to Honokoa  
25       Cave issue.

1           In the shadows of Pu'ukohola Heiau, our family  
2 descends from (Native Hawaiian language) in Kawaihae.  
3 My great-grandmother is buried below the heiau. Our  
4 family connection runs very deep here. My nephew  
5 William Akau (phonetic) is ali'i ai moku, and I'm the  
6 ali'i nui or noho ali'i of the Council of Chiefs. We  
7 were given lenient status by the Hawaii Burial  
8 Council on July 20, 2000. The meeting was held in  
9 the Natural Energy Lab in Kona. Others who were  
10 given the status on that day were Papa Auwae,  
11 Mahealani Pai, and Van Horn Diamond.

12           In April 10, 2001, I visited Hawaii Volcanoes  
13 National Park to examine the artifacts that were in  
14 their possession. With me on the occasions were  
15 Eugene F. Gregory, Dr. Bruce Ka'imiloa, and Kimo  
16 Pihana. We spent a long time studying the wooden  
17 statue, the konane board, tools made of bones, and  
18 the button made of bones, and the (comment inaudible)  
19 vessel. There was a feeling of reverence and for our  
20 ancestors who made these artifacts. We were in  
21 agreement that these were cultural objects, should  
22 not be returned to Honokoa Cave but that they should  
23 be kept in a depository for future generations to see  
24 and appreciate.

25           I am very concern about any items that have

1 human remains attached being classified funerary  
2 objects. These objects has had a use. In particular  
3 these collections in Volcanoes National Park is tool  
4 made of bones and bone button. Both these were  
5 cutting purposes. These artifacts were intended for  
6 use. We recommend that the Review Committee classify  
7 these artifacts as cultural patrimony.

8 There are those who consider all of these  
9 artifacts to be funeral objects, moepu, a companion  
10 in death. This is an assumption, and as many will  
11 tell you, that not necessarily so. The main concern  
12 in ancient Hawaiian burial was the iwi. We agree  
13 that iwi must be returned to its rightful burial  
14 place. After the death of King Kamehameha, artifacts  
15 of value any importance were placed in a cave at  
16 Honokoa Gulch for safekeeping. Pu'ukohola Heiau is  
17 very close to Honokoa Cave. At the breakdown of the  
18 kapu system, we know from document at Bishop Museum  
19 that the artifacts were placed there.

20 Na Papa Kanaka o Pu'ukohola was organized to  
21 fulfill, to hold the history of our Pu'ukohola Heiau  
22 as a place of destiny. August 17, 1991 commemorated  
23 the bicentennial of the dedication of this heiau. It  
24 united the descendents of Kamehameha and Keoua  
25 Ku'ahu'ula of Ka'u. The rededication of Pu'ukohola

1 inspired a spirit of cooperation and unification.  
2 All elements of our organization, Na 'Elemakua  
3 (phonetic), Na Alo'Ali'i (phonetic), Na Wa'a Lalani  
4 Kahuna (phonetic), and Na Koa o Pu'ukohola Heiau  
5 provide a unique and fitting opportunity for the new  
6 generations of Hawaiians to learn, understand,  
7 appreciate, preserve and advocate their cultural  
8 heritage, therefore unifying their rich past and the  
9 present and the future generations.

10 We endeavor to develop ways and means to ensure  
11 the dignity – the integrity and dignity of our kupuna  
12 and to establish a priority for long-range objective.  
13 To this end, Na Papa Kanaka o Pu'ukohola is  
14 instructor organization to cooperate with the  
15 National Historic Site and National Park Service.  
16 During my childhood, I lived at Kawaihae with my  
17 paternal grandfather, William Maino Ali Akau  
18 (phonetic). I was fortunate to grow up in the  
19 shadows of Pu'ukohola. Something missing here.

20 Anyway, in closing I encourage the Review  
21 Committee to recall the loan made by Bishop Museum.  
22 I strongly suggest that the artifacts be returned to  
23 Bishop Museum for inventory and kept there until the  
24 issue is settled amongst claimants. I propose that  
25 we do this in the Hawaiian way, Ho'oponopono.

1           In the spirit of aloha and pono, and on behalf  
2           of Na Papa Kanaka o Pu'ukohola, I would like to say  
3           mahalo to all of you for your diligent attention to  
4           this very important issue. Mahalo.

5           ROSITA WORL: Thank you very much. Does the  
6           committee have any questions? Thank you very much.

7           VINCAS STEPONAITIS: I'm sorry.

8           ROSITA WORL: Oh, I'm sorry.

9           VINCAS STEPONAITIS: Just a very brief question.  
10          This is the first time I've been to Hawaii, and so I  
11          just wondered if you could tell me just a little bit  
12          about the group that you represent.

13          MELVIN KALAHIKI: Well, King Kamehameha was the  
14          one that brought the islands together. Prior to  
15          that, there were – the chiefs were fighting for  
16          supremacy to – for one leader. And this great leader  
17          built this heiau for that purpose of uniting the  
18          island. And, you know, for many years the heiau was  
19          not kept, but the National Park went in and restored  
20          the heiau and with that restoration we got organized  
21          and brought life back to the heiau and thereby  
22          enflaming the essence of the Hawaiian culture.

23          VINCAS STEPONAITIS: Thank you.

24          ROSITA WORL: Thank you very much.

25          MELVIN KALAHIKI: Thank you.

1 ROSITA WORL: Tim.

2 TIMOTHY MCKEOWN: The next person on the list is  
3 La'akea Suganuma representing the Royal Hawaiian  
4 Academy of Traditional Arts.

5 ROSITA WORL: Shall we move on if he's not  
6 present?

7 TIMOTHY MCKEOWN: The next one of the claimants  
8 identified by the park was Hannah Reeves.

9 ROSITA WORL: So Hannah, this is in discussion  
10 about items from the National –

11 **HANNAH REEVES**

12 HANNAH REEVES: Aloha. I guess you're getting  
13 tired of me, huh? My name is Kupuna Hannah  
14 Wahinemaikai O Kaahumanu Kelii'ulanani Ole O Kalama  
15 Kane Reeves. I am a living descendent of Kawaihae  
16 Caves. I claim every item that's in a cave right now  
17 that belonged to the cave. My ancestors is buried in  
18 the cave and it was our story handed down generation  
19 to me from my family. We go back many years of the  
20 King Kamehameha I.

21 I would like to acknowledge the Department of  
22 Interior that this is a very, very strong cave of our  
23 people that was buried in the cave. And I want to  
24 let you know that it is very important that you know  
25 that all the iwis to be brought back and every

1 artifact and many, many things that was taken. I  
2 want to tell you that the Department, the park, every  
3 park on all the islands we connected to all of them  
4 on all the islands. The most sacred thing about  
5 these islands of Hawaii is that our royalty is buried  
6 in all these heiaus and I connected to the apua  
7 (phonetic) off of the mountain to the sea.

8 To understand the location of the Kawaihae,  
9 these are the place that our ancestors that were  
10 crucified went of the king from Ka'u. One of the  
11 greatest thing about this sacred site is it's very  
12 sacred, very historical area of our people for many  
13 generation. I feel in my heart that it is very  
14 important that archaeologist, I think you understand  
15 that I am going to say directly to you even if you  
16 not Hawaiian, it's very important that I say it to  
17 you, directly to you, because you would understand  
18 where I coming from, that our people honor and  
19 respect our iwi. They have many mana, plenty mana,  
20 and I mean power.

21 And I wanted to let you know that I come from  
22 the line of the royalty and also the high priest of  
23 Kamehameha, and I can go on and on, go back through  
24 many generations. My deepest desire is bringing our  
25 people back, and I know that their goods are is not



1       damaged. But you need to know because it's very,  
2       very sacred to our people. And I will continue to  
3       lay down and hold everyone who is responsible.

4             My heart go out to the people of our people that  
5       on the four corner of the earth to let them know that  
6       we are very, very, very sacred and that we know that  
7       our people have been taken out to foreign countries  
8       and was used in a foreign country for a reason is  
9       making money. I do believe that the Department of -  
10      Bishop Museum that is involve, the Department of  
11      Interior and also the Federal and the United States,  
12      and I can go on and on. Whatever it is is no longer,  
13      you are not in control of our people. You have no  
14      hold of our ancestors. You have no authority, and I  
15      say no authority over our ancestors that are buried  
16      in all the island. The Department of Interior and  
17      the United States and the Federal have no authority  
18      and I hold you for damage.

19            It is a very, very sacred thing to me because I  
20      know in my heart the truth will always be the truth.  
21      It cannot be hidden under the ground anymore. It's  
22      up to the surface, and may I advise all of you who  
23      are connected and constantly destroying our people,  
24      stop. No more you going to do that. I Kupuna Hannah  
25      Wahinemaikai O Kaahumanu Kelii'ulanani Ole O Kalama,

1 I leave my power on you. I hold you, the Department  
2 of Interior and the United States and the Federal for  
3 damage and I will continue to do this until you fix  
4 us. Thank you.

5 ROSITA WORL: Thank you very much.

6 TIMOTHY MCKEOWN: The next of the claimants is  
7 Lance Foster from the Office of Hawaiian Affairs.

8 **LANCE FOSTER**

9 LANCE FOSTER: Aloha kakou. My name is Lance  
10 Foster. I'm director of Native Rights, Land and  
11 Culture at the Office of Hawaiian Affairs. And this  
12 is our testimony for this matter.

13 With regards to the matter of the Kawaihae  
14 burial cave artifacts, OHA is a recognized claimant  
15 and co-owner in Western law, but would be preferred  
16 to be viewed as a Kahu with a shared kuleana with  
17 other recognized individuals and organizations. OHA,  
18 as with any dynamic organization, can amend  
19 priorities, policy, positions and viewpoints as  
20 changes in leadership and support staff occur. And  
21 the changes in institutional memory and expertise can  
22 sometimes present difficulties.

23 Notwithstanding this acknowledgement, OHA seeks  
24 to exercise our kuleana to the best of our ability  
25 and to represent our diverse beneficiaries' interest

1 in the most appropriate manner. We commend the  
2 National Park Service for researching background  
3 information pertaining to Kawaihae in general, with a  
4 specific focus on Honokoa Gulch, as synthesized by  
5 Roger Rose. Admittedly in draft form, the document,  
6 which may provide the basis of decisions by the  
7 National Park Service and others, should strive to be  
8 as complete as possible to lend integrity to the  
9 discussion.

10 While the potential defilement of ali'i iwi  
11 provides a basis for preserving the anonymity of  
12 individual remains, it would be hard to categorically  
13 state the ali'i iwi were buried devoid of items with  
14 which rank and status would be divulged.

15 Notwithstanding the wide variety of burial methods  
16 and practices from district to district and island to  
17 island and the changes which occurred in the span of  
18 1,000 years, modern archaeological evidence provides  
19 insight into at least some practices. The observance  
20 of lei niho palaoa, whale tooth and human hair  
21 necklaces, and 'ahu 'ula, or feathered capes, with  
22 individual sets of iwi clearly indicates status of  
23 the deceased.

24 In 1823, William Ellis noted in his journal  
25 while traveling through Ka awa loa (phonetic) on

1 Hawaii Island, Towards evening we examined another  
2 boa (phonetic) similar to the one we passed at  
3 Hokukano (phonetic). On entering it, we found part  
4 of a canoe, some mats, tapa, and three small idols  
5 about 18 inches in length carefully wrapped in cloth.  
6 The man who accompanied us said, my father lies here.  
7 Don't disturb him. I have not yet done weeping for  
8 him, though he has been dead some years.

9 The boa referred to by Ellis is actually a  
10 pu'o'a, a house constructed to hold a corpse. While  
11 the canoe, mats and tapa are well-known moepu, the  
12 nature of the three idols wrapped in cloth is  
13 unknown. Later, peering into Hale o Keawe at  
14 Honaunau, a notable hale for ali'i burials, Ellis  
15 notes, However by pushing one of the boards across a  
16 doorway a little on one side, we looked in and saw  
17 many large images, some of wood very much carved,  
18 others of red feathers with distended mouths, large  
19 rows of sharks' teeth and pearl shell eyes. Later  
20 Ellis notes, The wearing apparel and other personal  
21 property of the chiefs is generally buried with them.

22 The Rose report should strive to include all  
23 available references to Hawaiian burial practices and  
24 include a discussion of them. Often we are left with  
25 more questions than answers, and the nature of the

1 Honokoa Gulch burial caves will most likely be  
2 debated for decades to come.

3 One thing is certain though, the plundering of  
4 Native Hawaiian burial caves, which has occurred over  
5 the last century, will continue into the future. A  
6 decade ago, a burial cave on Maui, Kalua olapa  
7 (phonetic) was violated not once, but twice. Thieves  
8 broke in through a wall of concrete to clean out the  
9 cave, taking the po'o, the skulls of our beloved  
10 kupuna to an unknown fate. Last year, Kanupa Cave on  
11 Hawaii Island was broken into and the investigation  
12 is still ongoing. What we do know is that thieves  
13 are persistent, calculating, and often patient for  
14 big returns. It is unclear how secure the Honokoa  
15 Gulch caves are, especially in light of expectations  
16 to reenter them to place the remainder of a  
17 collection from the National Park Service. What is  
18 clear is that the Honokoa Gulch burial caves may  
19 become the most widely known Hawaiian burial caves  
20 throughout the world as their location and contents  
21 can be assessed extensively on the internet.

22 While debating the fate of these objects, four  
23 kupuna involved in this situation have passed on and  
24 taken with them their 'ike and manao. How many more  
25 will pass before solutions are found? Honokoa has

1       been raped and ravaged throughout the years. While  
2       we all focus on restoring the kino, the body of the  
3       victim, let us not forget that we must heal the  
4       uhane, the spirit, as well.

5               ROSITA WORL: Thank you very much. Do any of the  
6       committee have questions? Vin.

7               VINCAS STEPONAITIS: First I wanted to ask the  
8       same question. Will we be getting written copies of  
9       your testimony?

10              LANCE FOSTER: Yes, you will.

11              VINCAS STEPONAITIS: Okay. And I guess I just  
12       wanted to make sure I heard one thing right, and that  
13       is you mentioned at one point in your testimony you  
14       said that the nature of the wooden figures wasn't  
15       clear. And by that, do you mean that they may or may  
16       not be funerary objects or –

17              LANCE FOSTER: There are limitations in the  
18       written records, and we always have to remember that  
19       when we read reports that derive from those – those  
20       written reports.

21              VINCAS STEPONAITIS: Okay.

22              LANCE FOSTER: Which are usually from people from  
23       other cultures as well. With the increasing  
24       translation of Hawaiian newspapers, that thing – that  
25       sort of thing should become more and more clear.

1 VINCAS STEPONAITIS: Okay. Thank you.

2 ROSITA WORL: Garrick.

3 GARRICK BAILEY: I have one question about the  
4 Office of Hawaiian Affairs. Am I correct that it is  
5 now elected not by Native Hawaiians but by the  
6 Hawaiian public as a whole?

7 LANCE FOSTER: Like Kamehameha Schools, it is  
8 under attack by non-Hawaiian or actually anti-  
9 Hawaiian interests. And so it is in a struggle for  
10 its existence at this time. The 9<sup>th</sup> Circuit Court  
11 could come back at any point and actually rule that  
12 it is unconstitutional, race-based, the whole thing.  
13 So interestingly enough, while some parties state  
14 that OHA is not Hawaiian enough and all our trustees  
15 are Hawaiian, at the same time – and it is elected by  
16 a large number of people across the state, many non-  
17 Hawaiians do not vote for OHA, do not write in their  
18 things, anymore than any of them always submit their  
19 kids to go to Kamehameha Schools, although some do.  
20 So how many do or don't vote for OHA is hard to say.  
21 It is open because of legal challenges.

22 GARRICK BAILEY: But now, up until a few years  
23 ago it was still elected by – only by Native  
24 Hawaiians.

25 LANCE FOSTER: Solely.

1 GARRICK BAILEY: Solely. And it's been that  
2 recent 9<sup>th</sup> Circuit ruling -

3 LANCE FOSTER: Well, it wasn't a 9<sup>th</sup> Circuit  
4 ruling. There was a recent challenge that basically  
5 opened up the can of worms, so to speak.

6 GARRICK BAILEY: and there is a bill introduced  
7 by - was is it, Aka?

8 LANCE FOSTER: Akaka.

9 GARRICK BAILEY: Now, he's introduced a bill that  
10 will make it a Native Hawaiian organization -  
11 election again, is that correct? I'm just trying to  
12 get the political status.

13 LANCE FOSTER: Well, actually - actually that's  
14 another issue that isn't really my kuleana to  
15 discuss. But essentially what we have is OHA, while  
16 having gone through some changes in the recent years,  
17 is the most disinterested party at this time. We  
18 just try to - we are mandated under the Constitution  
19 to advocate for the betterment and advancement of all  
20 Hawaiians. We do that to our best advantage.

21 KEHALOHA KUHEA: Bullshit.

22 LANCE FOSTER: Some people disagree, as you  
23 heard, but we do do that. And there's a variety of  
24 feelings about that.

25 GARRICK BAILEY: I was just trying to clarify.



1 LANCE FOSTER: Sure.

2 ROSITA WORL: Thank you very much. We have five  
3 minutes left. Do we have any other individuals to  
4 testify?

5 TIMOTHY MCKEOWN: We have one more affected  
6 party. That would be a representative of the  
7 Hawaiian Genealogical Society.

8 **AMELIA GORA**

9 AMELIA GORA: Greetings, everyone. My name is  
10 Amelia Kuulei Gora. I'm from the Hawaiian Genealogy  
11 Society. And I also have the Hawaiian Genealogy  
12 Society on the Web, and it's - that one started just  
13 two years ago. Anyway, there's a number of kanaka  
14 maoli aboriginal people around the world, and some of  
15 them are in contact with us. Also I've started a  
16 newspaper. It's called Iolani on the Web, and there  
17 was a special edition that just went out, even to the  
18 President, because what was sent to me on the last -  
19 the last packet at the tail end it talks about the  
20 crown lands, and that - that's an issue that - you  
21 see, the reason why we came together and I was  
22 recognized as one of the claimants because our  
23 families came together on the question of do you have  
24 stories of how your families were hidden, were being  
25 killed, or thrown on Kalauapapa. And as it turned

1 out, after doing genealogy found out that these  
2 people are the Kamehameha lines. You know, they're  
3 still descendants. Royal families exist today, and  
4 they were – a lot of them were beaten, thrown on  
5 Kalauapapa. And we have detailed oral histories and  
6 I have a number of documentation that – with  
7 references that shows that.

8 Anyway, coming to this, this particular – I  
9 wanted to address the issue about OHA, you know. I  
10 question OHA's claims because they're looking at the  
11 word Hawaiian. If you – I have written several  
12 books, but anyway, this one is called The  
13 Chronological History of Hawaii, Abroad, and the  
14 United States. And in San Francisco Chronicles,  
15 Saturday, January 28<sup>th</sup>, the Pratts, he represented his  
16 wife and the families of the Kamehameha lines and  
17 stated that the crown land still belongs to the  
18 families. Anyway – oh sorry, this is the – he did  
19 write a few days later. But anyway, this one is  
20 having to do with the commissioners of the wrongful  
21 dethronement of Queen Liliuokalani. Loren Thurston  
22 was recognized as a chairman and he – they actually  
23 have it in this article, he is a Hawaiian by birth.  
24 So there is a lot of issues regarding the  
25 terminologies used over time.

1           Anyway I do a lot of history research, and let's  
2           see – I wrote something and you'll get this this  
3           week, you know, I guess the last day of your meeting.  
4           Anyway, a special opposition included in the Iolani  
5           (comment inaudible) Special Edition, March 11, 2005,  
6           briefly the following was documented. In 1852, US  
7           supported by Great Britain looked to assume for  
8           empire in the Pacific. 1861, France surveyed the  
9           Pacific Ocean supported by the US. Book can be found  
10          here at the Hamilton Library. 1890, US supported by  
11          Great Britain made claim of assuming all lands within  
12          the 3,000 miles from the US coast, and name Hawaii,  
13          the Galapagos Islands, and South America. Europe  
14          cities are also within 2,000 miles off the coast of  
15          US. In other words, the US is claiming everybody  
16          around them. And in 1892, Thurston offered \$250,000  
17          for Hawaii, through the annexation club, another  
18          person offered a large sum of money to Queen  
19          Liliuokalani. And Thurston met with B.F. Tracy, who  
20          was the Secretary of State under President Harrison  
21          who was a former American Civil War general. There  
22          were – there were five Civil War generals in Hawaii  
23          at the time of the wrongful dethronement of Queen  
24          Liliuokalani, and I have that documented also in one  
25          of my other books. It's called Pirates of the

1       Pacific, Charles Reed Bishop and Friends. Thurston  
2 met with him in Makua Valley to plan the dethronement  
3 of Queen Liliuokalani and annexation.

4           Anyway in 1893, Queen Liliuokalani did sign a  
5 new constitution and was under stress, duress,  
6 coercion, and usurpation. She was called a nigger by  
7 Congressmen, and anyway, she temporarily gave her  
8 rights to the superior of the US. Now the superior  
9 is actually US President Benjamin Harrison, who was  
10 also an American Civil War general before. But  
11 Harrison suggested a plebiscite to give an appearance  
12 that it was what the majority wanted. 1893, Pratt  
13 telegraphed the President and Congress the  
14 oppositions for the takings of the private lands -  
15 and that's where all of our kupuna is on, private  
16 lands - and documented that the conspirators and  
17 terrorists were not able - I call them terrorists in  
18 letters to President Clinton, I have it documented,  
19 because certified mail went out, and also to  
20 President Bush, certified mail went out.

21           Also the documentation for the recent  
22 information went also to the President and it's also  
23 going to the Hague and France and so many different  
24 countries are receiving our paperwork. You see,  
25 Royals still exist. Kamehameha descendents including

1 myself exist. I am a descendent of Kamehameha in  
2 multiple lines and also descendent of Keliimaikai  
3 (phonetic), descendent of John Young, and that's part  
4 of the Po'u Kohola area too. And also I was on the  
5 court case for the – you know, Pearl Harbor and fraud  
6 deed was brought up. Anyway I've come across so much  
7 fraud. It's totally disgusting.

8 But anyway, [Hawaiianhistory@yahoo.com](mailto:Hawaiianhistory@yahoo.com) is my  
9 email. And everybody can contact me. And there's a  
10 lot of genealogies and history information that's  
11 going out to many. But the point is is that in 1894  
12 Charles Reed Bishop, he deeded all his life interest  
13 over to the Bishop Estates, and that's where all the  
14 pilikia is coming from, because Charles Reed Bishop  
15 only had a life interest. Once he make, once he  
16 died, that was it. All the interest ceases, and  
17 besides the families still have ownership and claims  
18 on all of this.

19 Anyway, in 1939, the President appointed  
20 Governor Poindexter, who extended the lease on lands  
21 for sugar companies, and based on a signature of Lot  
22 Kamehameha who they got it in the 1850s, anyway  
23 they've pirated and assumed that claim. And that's  
24 how the US is just maintaining the claims to the  
25 crown lands. And that comes under the Department of

1 Commerce, Kohala Sugar files. You folks can go look  
2 it up. Also I filed a Bureau of Conveyance affidavit  
3 lien 96-177455 and it's 281 pages. It's located at  
4 the Bureau of Conveyances. Or you can pick up a copy  
5 at Aiea Copy Service. It's available. You just ask  
6 for the Hawaiian Genealogy Society file. Anyway, a  
7 lot of people have been asking for it.

8 There's a lot of documentation showing Queen  
9 Liliuokalani's claims that she did not sign any - she  
10 did not sign a trust deed, you know. She signed a  
11 will. And then Harold Abel Cathcart opposed  
12 statehood, and because he opposed, and it's  
13 documented sovereignty shall be, President Clinton  
14 signed an apology in 1993, with an erroneous history,  
15 and in 1994 the Hawaiian Genealogy Society started.  
16 In '96, I filed the affidavit lien that's 281 pages  
17 with genealogies and other documentation showing how  
18 US was fearful of the Japanese entering San Francisco  
19 Bay and it would take more than 10 years to get them  
20 out, so they wanted to claim Hawaii. But also -

21 ROSITA WORL: Excuse me, if you might, could you  
22 offer us your concluding statements?

23 AMELIA GORA: Okay. Well, the pilikia involved  
24 is - the trouble involved is about the Nihipali's  
25 group. And we were meeting for a number of times and

1       it got pretty flustering on us, and I thought we  
2       should get together and do a Hawaiian thing instead  
3       of going through what's happening. But anyway, I did  
4       file him on the Honolulu Police Department report and  
5       this did go out to a lot of interested parties and  
6       even to the Minister of Interior. So you folks do  
7       have a copy. It was done July 30, 2001, and Nihipali  
8       is listed on my Honolulu Police Department genocide  
9       activities file, reference 98-273435AF-CF.

10           Anyway, there's - there's - I also have the  
11       history of the Royal Mausoleum, you know, and while  
12       the Kawaihae caves complex claimants. In 1700, the  
13       Hale o Keawe (phonetic) was built at Honaunau Bay.  
14       Anyway I have this history and it shows all of the  
15       ali'i that's, you know, do have the rightful claims.  
16       And if anyone's interested, I have the list here of  
17       our ancestors' burials, because that's what Hawaiian  
18       Genealogy Society is for too because we have a number  
19       of families who are actually descendents and heirs.  
20       But I am one of the bloodlines and I do realize that  
21       you folks are part of the United Nations group, and  
22       the United Nations was based on - it started -  
23       there's some questions on the United Nations. And  
24       anyway it's in - it's in the special edition that  
25       went out. Anyway, that's what I wanted to tell you

1           and I do appreciate your (comment inaudible) states  
2           and other people. Anyway, these issues do not  
3           connect, just moving along with you folks doesn't  
4           mean that I'm accommodating that your message about  
5           the public lands that were sent, you know, the  
6           history is actually erroneous and land owners still  
7           exist such as myself and many others. In fact,  
8           there's a number of people in here that I know who  
9           belongs - you know, have claims too. But anyway,  
10          thank you.

11                 ROSITA WORL: And thank you very much. We will  
12          break for lunch -

13                 TIMOTHY MCKEOWN: If I might just add one thing.

14                 ROSITA WORL: Oh, go ahead.

15                 TIMOTHY MCKEOWN: There were two other claimants  
16          that were specifically contacted about this that  
17          decided that they would defer their comments to this  
18          afternoon on the related issue. And those are  
19          representatives of the Department of Hawaiian  
20          Homelands and Na Ali'i Lei Kawanānakoā. So they will  
21          be this afternoon.

22                 ROSITA WORL: All right. Thank you.

23                 Go ahead, Vin.

24                 VINCAS STEPONAITIS: Madam Chair, and we - also I  
25          gather that Mr. Sukanuma was going to speak at this



1 time and perhaps he can speak to this in the  
2 afternoon session as well, if he chooses to, if  
3 that's all right.

4 TIMOTHY MCKEOWN: That's correct.

5 ROSITA WORL: That's fine. All right. We will  
6 break for lunch and we'll return at 1:30. Thank you  
7 all.

8 **LUNCH**

9 ROSITA WORL: We will call the committee to  
10 order, and the first order of business is to receive  
11 comments regarding the matter involving the Royal  
12 Hawaiian Academy of Traditional Arts and Bishop  
13 Museum regarding items from a cave at Kawaihae. I've  
14 asked Vera Metcalf to chair this portion.

15 **PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN**  
16 **THE ROYAL HAWAIIAN ACADEMY OF TRADITIONAL ARTS AND**  
17 **BISHOP MUSEUM REGARDING ITEMS FROM A CAVE AT**  
18 **KAWAIIHAE**

19 VERA METCALF: Thank you, Madam Chair. My name  
20 is Vera Metcalf. I understand from Dr. McKeown that  
21 we have an hour to hear from all parties. If you  
22 could possibly have 20 minutes at the most to present  
23 your information, I think we're all -- you know, we  
24 have a lot of folks on line to give their information  
25 to the committee. And if you haven't, state your

1 name for the record, please do so when you are  
2 called. But I will defer this to Tim.

3 TIMOTHY MCKEOWN: If I might make a small  
4 presentation to kind of talk over the issue of how  
5 this issue came before the committee. Several of you  
6 were on the committee in 2003 when this issue was  
7 initially raised at St. Paul, Minnesota, May 9<sup>th</sup>  
8 through 11<sup>th</sup>, 2003. The dispute was brought by the  
9 Royal Academy and involved the Bishop Museum. There  
10 was testimony presented to the committee. Based on  
11 that, the committee issued a recommendation following  
12 that meeting that was published in the Federal  
13 Register, actually on August 20<sup>th</sup> of 2003.

14 Subsequent to that recommendation's publication,  
15 another organization that was involved in claiming  
16 the same objects involved in this requested of the  
17 committee at the Washington, DC meeting September 17<sup>th</sup>  
18 and 18<sup>th</sup> that the issue be reconsidered by the  
19 committee, and based on that the committee  
20 recommended or decided to hold in abeyance its  
21 initial findings and to reconsider the issue at a  
22 subsequent meeting that would be held in Hawaii. And  
23 that is in large part why we are here.

24 At the point when it was decided that we would  
25 go ahead with reconsideration of this, I sent out

1       several letters to parties, including the Bishop  
2       Museum and the Royal Hawaiian Academy of Traditional  
3       Arts, as well as to the Department of Hawaiian  
4       Homelands, and received responses from all three  
5       organizations. Two of them are in your binder. One  
6       came in a little bit late, but was provided to you  
7       yesterday. So that sort of brings us now to where we  
8       are.

9               In terms of the reconsideration, I think we now  
10       have three primary parties involved that have stepped  
11       forward, the Royal Academy, the Bishop Museum, and  
12       Hui Malama. And then I have also sent letters to all  
13       of the other claimants that were identified by the  
14       Bishop and invited them to present testimony to the  
15       committee as well. So I think that's what brings us  
16       to the issue today.

17              VERA METCALF: Thank you, Tim. Do you have the  
18       list of folks that will be presenting?

19              TIMOTHY MCKEOWN: I think the primary claimants  
20       would be – or the primary parties involved in this  
21       would be the Royal Academy, and that's La'akea  
22       Suganuma, who I spoke with, Dr. Brown from the Bishop  
23       Museum I think is interested in making a statement,  
24       and Edward Halealoha Ayau from Hui Malama I Na Kupuna  
25       O Hawai'i Nei would be the first group of people.

1 VERA METCALF: Is Mr. Suganuma here?

2 **LA'AKEA SUGANUMA**

3 LA'AKEA SUGANUMA: Aloha again. I am not going  
4 to take this time to present the academy's side of  
5 this dispute, because the record speaks for itself.  
6 I will, however, point out a few things that those  
7 committee members who are here with serious intent to  
8 carry out their duties might think about.

9 Let's go back a few years, approaching the year  
10 2000. After roughly five frustrating years of trying  
11 to get their hands on what was commonly referred to  
12 as the Forbes Collection, Hui Malama is faced with a  
13 serious dilemma. It can't get the other three  
14 recognized claimants to agree to have everything  
15 repatriated to them. And even worse, more potential  
16 claimants are on the horizon, making their chances  
17 grow even slimmer. So with the cooperation of the  
18 Bishop Museum administration, Hui Malama borrows the  
19 Kawaihae Cave items. This is done very quietly, on a  
20 Saturday, when there is virtually no chance of being  
21 discovered.

22 There are other things that lead up to this and  
23 it's all in the record and makes for very interesting  
24 reading. The Bishop Museum employee, Betty Tatar,  
25 who signed the so-called loan agreement, had no

1 authority to do so and violated the museum's long-  
2 standing loan procedure. This one-way loan is  
3 discovered by the media and all hell breaks loose.  
4 The museum's then director, Donald Duckworth, takes  
5 no disciplinary action against Tatar, who handed over  
6 83 precious pieces of our culture to Hui Malama,  
7 knowing full well that there was no agreement amongst  
8 the claimants to do so. But, the 21 employees who  
9 signed a petition protesting the loan were all  
10 reprimanded and one even suspended.

11 A number of claimants are eventually recognized  
12 and the majority is in favor of recalling the loan  
13 and recovering the items, allegedly put back in the  
14 cave and sealed. When Hui Malama refuses to return  
15 the items, the museum tells the claimants that it  
16 assumes full responsibility for the recovery. It  
17 seems odd to a number of claimants that the museum  
18 doesn't pursue some form of legal action against Hui  
19 Malama, who borrowed millions of dollars worth of  
20 unique artifacts and then refuses to return them.  
21 Perhaps part of the reason is that it would be quite  
22 difficult to pursue any theft charges when the museum  
23 was a willing co-conspirator and would be implicated  
24 as such should it go any further.

25 A plan had been devised wherein the museum would

1       assume full responsibility, but really intends to  
2       claim completed repatriation and walk away, with  
3       nobody being the wiser. They knew there would be  
4       protests, but eventually it would all go away. Sure  
5       enough, there are protests and angry claimants but it  
6       soon quiets down, as they suspected it would. This  
7       was a brilliant plan, they thought, but unfortunately  
8       for them, the Royal Hawaiian Academy of Traditional  
9       Arts did not go away, and eventually the academy's  
10      request for review is accepted by the NAGPRA Review  
11      Committee and scheduled to be heard in May 2003 in  
12      St. Paul.

13             Just before this occurs, the museum's new  
14      director, Bill Brown, who inherited this problem when  
15      Duckworth retired, receives and reviews the dispute  
16      binder. Brown, honestly and with clear conscience,  
17      concludes that repatriation did not properly take  
18      place. He says so in St. Paul. Members of the  
19      committee state that they are pleased with the  
20      museum's position, as they were prepared to take the  
21      museum to task and rule in favor of the academy  
22      anyway. Everyone was in agreement, except Rosita  
23      Worl, who seemed to be taking directions from another  
24      source.

25             Hui Malama is not pleased and, although they

1 publicly say that the committee is only advisory and  
2 doesn't affect them, they know that the decision  
3 carries some weight should the dispute end up in  
4 court. Hui Malama, in concert with others, devises  
5 another brilliant plan, in which friends of theirs  
6 are seated on the committee and the chairmanship is  
7 secured. They then fabricate a reason to have the  
8 St. Paul decision rescinded at the September meeting  
9 in Washington, DC, but failing that, held in abeyance  
10 until reheard. The academy sends letters to the DFO,  
11 dated September 9<sup>th</sup>, 10<sup>th</sup>, and 12<sup>th</sup>, via email, air  
12 mail, fax, and local NPS office, but they never reach  
13 the committee until too late for them to review.

14 Hui Malama claims a procedural error occurred in  
15 St. Paul because the regulations allegedly require  
16 the presence and participation of all interested  
17 parties. They also say that a completed repatriation  
18 cannot be reopened. The Chair reads a statement for  
19 missing member Metcalf, which said, We were ill-  
20 advised by previous NAGPRA staff to hear another  
21 party, as all parties should have been notified  
22 before, and Bishop miscalculated its good-faith  
23 efforts in this case. The Chair recuses herself  
24 during the discussion but echoes Hui Malama's  
25 sentiments, as she did in St. Paul. Mr. Monroe does

1 his part by supporting a rehearing, quoting from the  
2 minutes, due to the substantive new information  
3 presented on this critical dispute and the need to  
4 address some fundamental misunderstandings. The fact  
5 is, however, that there was no procedural error in  
6 St. Paul and the academy asked, time and again, for  
7 the ever-elusive error to be identified, to no avail.

8 The Review Committee holds a teleconference in  
9 November 2003, during which, interestingly enough,  
10 only Hui Malama, former Bishop Museum director  
11 Duckworth, and former museum NAGPRA representative  
12 Kaulukukui, who were involved in the great deceit,  
13 the so-called repatriation, are allowed to speak.  
14 The Chair announces the next meeting will be held in  
15 Hawaii to rehear the Kawaihae matter. The academy,  
16 on November 26<sup>th</sup>, sends comments to the Review  
17 Committee via the DFO, per his invitation to do so  
18 and his commitment to distribute all comments to the  
19 committee. It takes over three months to reach the  
20 committee members. By the way, in those November  
21 comments that only recently got to the committee  
22 members, I predicted that the so-called rehearing was  
23 really a ploy to eliminate the St. Paul decision.  
24 We'll see what happens.

25 Meanwhile, the plan is working well because not



1       only can Hui Malama take care of the St. Paul  
2       decision, they can also tackle another dilemma that  
3       they are faced with. The Akaka Bill, which provides  
4       for self-governance and gives Native Hawaiians the  
5       same status as Native Americans, is moving rapidly  
6       through Congress. Once that happens, repatriated  
7       objects will go to the Hawaiian governing body and  
8       Hui Malama will no longer be able to have precious  
9       artifacts repatriated, or rather ownership legally  
10      transferred, to them. They must hurriedly get their  
11      hands on everything they can before this bill is  
12      passed and so they also file a number of premature  
13      disputes, which are accepted, and here we are. The  
14      rest of the story, or rather this chapter, will be  
15      written on Tuesday, so stay tuned.

16             Meanwhile, the Royal Hawaiian Academy of  
17      Traditional Arts' position is that: number one, the  
18      rehearing of the dispute between the academy and  
19      Bishop Museum regarding the Kawaihae Caves complex is  
20      predicated upon deceptive and false claims of a  
21      procedural error. Number two, in addition, the  
22      academy recommends and calls for a moratorium on all  
23      NAGPRA activity in Hawaii until such time as self-  
24      governance is effected and repatriations are done in  
25      the same manner as with Native Americans and Native

1 Alaskans.

2 One final word, I would caution this committee  
3 not to become embroiled in discussing any cultural  
4 matters, for that is an area that this committee  
5 knows little or nothing about and, I might add, this  
6 also seems to apply to Hui Malama.

7 The question is, did proper and legal  
8 repatriation take place? The academy says no. The  
9 Van Horn Diamond Ohana, the Kekumano Ohana, the  
10 Keohokalole Ohana, Na Papa Kanaka O Pu'ukohola Heiau,  
11 the Hawaii Island Burial Council, and the Hawaiian  
12 Genealogy Society all say no. The NAGPRA Review  
13 Committee in St. Paul said no. The Hawaiian Royal  
14 Societies say no. Many, many others in our  
15 community, both Hawaiians and non-Hawaiians say no.  
16 What does this committee say? And remember that no  
17 matter what we are all accountable for our actions.  
18 Thank you for your attention.

19 VERA METCALF: Thank you, Mr. Sukanuma. Are  
20 there any questions or comments from the members of  
21 the committee?

22 VINCAS STEPONAITIS: Will we have the opportunity  
23 to see a copy of the statement? Thank you.

24 VERA METCALF: Thank you. On our next list is -  
25 Tim, did you have a comment?

1 TIMOTHY MCKEOWN: No.

2 VERA METCALF: No. Dr. Brown.

3 **WILLIAM BROWN**

4 WILLIAM BROWN: Thank you, and I'm accompanied by  
5 Dr. Abbott. My statement is brief. I will review  
6 some things that the committee knows but I think for  
7 the purposes of the audience it's worth saying them.

8 As you know, this matter concerns the status of  
9 83 lots of items removed from the Kawaihae Caves  
10 complex in 1905 and subsequently then placed in the  
11 collections of the Bishop Museum at Kalihi, Oahu.  
12 The items do not include any human burial remains.  
13 The items do include, among other objects, an  
14 exceptional carved wooden representation of a woman  
15 and two other exceptional carved wooden figures.

16 Multiple Native Hawaiian organizations made  
17 claims to the items under NAGPRA. The museum  
18 consulted with them. Some stated that the objects  
19 were funerary and others stated that they were not.  
20 The Bishop Museum accepted that the items were  
21 funerary and proposed to repatriate them to the  
22 claimants collectively.

23 On February 26, 2000, the museum loaned the  
24 items to the Hui Malama. The Hui Malama told museum  
25 staff that the other claimants had agreed that Hui

1 Malama would hold the items until consultation was  
2 completed. The loan agreement was signed by a Hui  
3 Malama representative, and it required Hui Malama to  
4 return the items one year later or sooner if  
5 requested. Hui Malama representatives subsequently  
6 announced that the items had been placed in the  
7 Kawaihae Caves, and more recently announced through  
8 the media that Hui Malama never intended to return  
9 the loaned items. Other claimants protested the loan  
10 to Hui Malama stating that they, contrary to Hui  
11 Malama's assertions, had not agreed to it.

12 On April 12, 2001, the president of the Bishop  
13 Museum at that time sent a letter to the claimants,  
14 then numbering 13, stating that repatriation of the  
15 items was complete and title to them transferred to  
16 the claimants. The Royal Hawaiian Academy of  
17 Traditional Arts, one of the 13 claimants, filed a  
18 dispute with the NAGPRA Review Committee. The  
19 academy took the position that the museum was  
20 obligated to recover the items from Kawaihae Caves  
21 and to continue consultation in a manner that would  
22 treat all of the claimants equally and equitably.  
23 The matter was addressed by the committee at its  
24 meeting on May 9 and 10, 2003.

25 The museum reviewed the materials provided by

1 the academy and circulated by committee staff in  
2 advance of the meeting. And as La'akea Suganuma  
3 noted, for me it really was the first time that I  
4 personally looked closely at the record. Up until  
5 then, I'd been trying to run a big and complex  
6 museum, and looked to staff largely. And I  
7 concluded, and then with the board concluded that,  
8 despite good faith and best intentions on the part of  
9 prior museum management, the representations in the  
10 April 12, 2001 letter were invalid because of the  
11 flawed process which preceded it.

12 After hearing from the academy and the museum at  
13 its May meeting, the committee agreed to findings and  
14 advisory recommendations. As the committee knows,  
15 its findings were, one, the repatriation process used  
16 by the museum for the 83 items was flawed and remains  
17 incomplete. Two, the place and manner of return for  
18 the 83 items has not been determined consistent with  
19 NAGPRA, and then the finding cites the part of the  
20 code that's referred to. Three, the museum is  
21 responsible for the completion of the repatriation  
22 process for the 83 items.

23 Then the Review Committee recommended that the  
24 museum renew the consultation process for  
25 repatriation of the 83 items. The Museum recall the

1 February 26, 2000 loan of the 83 items to Hui Malama.  
2 Three, the 13 claimants in the consultation process  
3 be treated in a respectful and equitable manner. And  
4 four, the 83 items be made available to all parties  
5 in the consultation. Which actually, the last point  
6 is a particularly important one, and could be – could  
7 be the first step if the items are in the cave, then  
8 there would be more discussion. It's certainly  
9 possible the items are not there. So I think that  
10 would be – it's worth thinking about support for that  
11 as an initial step.

12 The museum concurred with the committee's  
13 findings and recommendations and does not believe  
14 that the committee should revisit them. The museum  
15 requested the Hui Malama to return the loaned items.  
16 And the museum requested that the Department of  
17 Hawaiian Homelands allow access to the items so that  
18 they could be recovered. At this time, as of today,  
19 the items have not been returned and the permission  
20 for access has not been given. The museum's only  
21 objective is to reset the process so that the  
22 consultation may be continued without prejudice to  
23 the interest of any of the claimants. And the museum  
24 will respect any decision that is made by them.

25 On December 2, 2004, in preparing for this

1 meeting, the committee staff officer, Mr. McKeown,  
2 sent a letter to the museum suggesting that it should  
3 initiate, suggesting that it should initiate  
4 litigation in a court of competent jurisdiction to  
5 resolve this matter. I understand why the suggestion  
6 was made. But please appreciate that we have no  
7 plans to initiate litigation on this matter at this  
8 time. We continue to hope that cooperative means can  
9 be found to put the matter back on track. And we do  
10 not wish to be adversarial in our relationship with  
11 the claimants or the Department of Hawaiian Homelands  
12 or any other state agency. Thank you.

13 VERA METCALF: Thank you, Dr. Brown. Do you have  
14 comments from Dr. Abbott?

15 **ISABELLA ABBOTT**

16 ISABELLA ABBOTT: Thank you. I think it's a  
17 privilege to allow me to say this, because I have  
18 said this before but not before this committee. We  
19 had a meeting with everybody whom we could think to  
20 invite to the Bishop Museum after the Kawaihae  
21 material had been put in the cave and we were  
22 wondering what to do about it and so on. And I, as  
23 Chairman of the museum collections committee and also  
24 a biologist, reminded them, everyone in the room,  
25 that the biological and physical conditions of that

1 cave when these objects were returned to it, after  
2 about 70-80 years in the Bishop Museum with  
3 controlled conditions, that this cave was not in the  
4 same position, biological position or physical  
5 position, as when those objects had been removed. I  
6 was thinking of the numbers of increasing insects  
7 going on to this day, as I talk probably.

8 We have something like four million specimens of  
9 insects that have been curated in the Bishop Museum.  
10 And any – most of these are endemic species, that is  
11 to say they were – they originated here, they  
12 hybridized and became new species here. We probably  
13 have one of the most specious collections of living  
14 insects here in Hawaii. On top of that, though, we  
15 have maybe one or two million introduced insects that  
16 come in without us – our knowledge usually, until  
17 they start fighting with the endemic insects or  
18 eating something that we particularly like in the  
19 gardens and so on. We don't discover them. They  
20 come so easily. And my point is that many of these  
21 insects could have entered the cave in the time that  
22 the artifacts were out but now is a very good time  
23 for them to enter again because there are things  
24 there for them to eat.

25 And my biggest worry as a biologist is how can



1 we protect those Hawaiian artifacts, most of which  
2 are one of a kind. Those precious things will be,  
3 could be eaten up by these invading insects that I  
4 have described. And that worries me possibly more  
5 than having the artifacts removed from the museum.  
6 For this reason, you can see that I'd be very excited  
7 to have them back under any circumstances, just so  
8 they could be protected more than they are now.  
9 Thank you.

10 VERA METCALF: Thank you, Dr. Abbott. Any  
11 comments or questions from the committee members?

12 WILLIAM BROWN: Thank you, Madam Chairman.

13 VERA METCALF: Thank you. We have – is Eddie  
14 Ayau here?

15 **HALEALOHA AYAU**

16 HALEALOHA AYAU: As you know, in December of –  
17 no, September of 2004, Hui Malama testified in  
18 Washington, DC before this very committee, presented  
19 our perspectives and our positions on the dispute  
20 that the Royal Academy filed with the Bishop Museum.  
21 Our position is the same. It hasn't changed. We  
22 augmented that with the testimony that I presented  
23 telephonically at your November 2<sup>nd</sup> Review Committee  
24 meeting. And that position is that we believe that  
25 it is a court of competent jurisdiction that is the

1 appropriate forum for the issues that are being  
2 raised in this matter. We do not believe there is an  
3 issue over whether or not these are cultural items  
4 under NAGPRA. We do not believe there is an issue  
5 over cultural affiliation. We do not believe there  
6 is an issue over right of possession. Those are  
7 matters properly before – or disputes properly before  
8 the Review Committee. We believe that the issue of  
9 finality should govern what took place, that  
10 repatriation was final. And that for us the focus is  
11 now, as we have brought the dispute with Hawaii  
12 Volcanoes National Park, getting back the rest of the  
13 moepu that were taken from – from Forbes Cave.

14 I think I will speak to the concerns that have  
15 been raised. We were trained to believe and to  
16 understand that nothing good comes from stealing from  
17 the dead. While that may seem funny to you, but this  
18 case is a primary example of that. We were trained  
19 to malama, to put them back, to restore integrity and  
20 respect to our kupuna. We have done this for the  
21 last 15 years. Some may disagree with what we've  
22 done.

23 We didn't inherit this problem – I mean, we  
24 didn't create this problem, rather, we inherited it.  
25 And we made the commitment, we undertook the

1 commitment to address a very difficult problem and to  
2 learn about all the different instances in which our  
3 kupuna were disturbed in all the different  
4 institutions and museums, not just in the United  
5 States but around the world, that took liberties and  
6 ripped off our kupuna and ripped off their  
7 possessions. The knowledge of that brings in and of  
8 itself kaumaha, heaviness. And we have, to our best  
9 abilities, undertaken that kuleana, that  
10 responsibility, to try and make them – make a  
11 situation right by bringing them home.

12 People earlier said, you know, that we don't  
13 speak for them. We don't. We accepted a very  
14 difficult challenge at a time, you know, when  
15 Honokahua occurred in 1988 at a time when 1,100  
16 kupuna were disturbed. There was a kahea for  
17 Hawaiians to come forward and help, and we were born  
18 out of that.

19 You know, we stand by our commitments and the  
20 work that we have done in terms of treatment of our  
21 kupuna. Does that mean we have exclusive say? No.  
22 Does that mean we have been committed and dedicated  
23 to doing this? Absolutely. Absolutely. It was not  
24 done with disrespect or disdain for any of the  
25 Hawaiians who are here that are not happy with what

1       took place. It was done of a sincere hope or sincere  
2       belief in trying to do right by our kupuna like we  
3       were all raised. It wasn't a zeal to own objects or  
4       to become powerful in that way. We don't own  
5       anything. We just accepted this very difficult  
6       kuleana, one that, you know, requires help and  
7       support. I mean, you guys know what I'm saying. So  
8       we stand by what we've done. We don't believe that  
9       this is an issue that's appropriate before the  
10      committee. Other forums may be appropriate to  
11      resolve those issues. That's it.

12           VERA METCALF: Thank you, Eddie. Any comments or  
13      questions? Vin?

14           VINCAS STEPONAITIS: I'd like to thank all the  
15      groups for coming again today to discuss this  
16      difficult matter with us. And I, unlike in  
17      September, this time we have all the briefing  
18      materials before us and I've had an opportunity to  
19      review the record, which I hadn't had back at our  
20      last face-to-face meeting. So I just -- I guess I  
21      have a question that by way of clarification, in part  
22      based on what I see in the record and also in part  
23      based on what I saw yesterday during the meeting.

24           I see in the record that there is a loan  
25      agreement with your signature on it involving these

1 items that was signed for the Bishop Museum. And  
2 yesterday at one point in our discussions, and I  
3 don't remember exactly when that came up, but it was  
4 at a point where representatives of Hui Malama were  
5 sitting at the front of the room and someone  
6 mentioned the loan, and I saw members of the  
7 representatives of Hui Malama all shaking their heads  
8 as if there was no loan. So I wondered if you could  
9 explain to me -

10 EDWARD HALEALOHA AYAU: Why we were shaking our  
11 heads.

12 VINCAS STEPONAITIS: Yeah, what that was about.

13 EDWARD HALEALOHA AYAU: We were working in the  
14 context of repatriation, obviously. Repatriation  
15 means that the items leave the museum or Federal  
16 agency. The loan agreement or the particular vehicle  
17 being a loan was the vehicle that the museum chose by  
18 which to release those items to us. It wasn't of our  
19 choosing. For us, that agreement was a vehicle by  
20 which to return them to where they were taken from,  
21 with the loan becoming moot once repatriation was  
22 declared, which the museum I believe did in June of  
23 2000, if I remember correctly. So in other words, it  
24 was not our request to have the items loaned to us.  
25 We never requested the loan.

1           VINCAS STEPONAITIS: But at the same time, it was  
2           a loan and you signed the loan. So when you signed  
3           the loan, did – did you understand that – I mean, the  
4           commonly understood meaning of the word loan is that  
5           when something is loaned then it is subject to be  
6           brought back.

7           EDWARD HALEALOHA AYAU: I wouldn't agree that  
8           that's what happens in all instances. Sometimes a  
9           museum loans an item to another museum or another  
10          entity and then repatriation is declared and the loan  
11          is moot, the loan is over. That has happened on more  
12          than one occasion with museums in which we have  
13          worked out repatriation including the Peabody Essex  
14          where the items were placed on loan at Bishop Museum,  
15          and when repatriation is declared the item is then  
16          turned over. They're not returned to the original  
17          museum.

18          VINCAS STEPONAITIS: Well, then let me ask a  
19          question that you can take as a hypothetical  
20          question. At the time that you signed this loan  
21          agreement, if the museum had asked for the items back  
22          prior to the execution of a repatriation, would you  
23          have returned the items?

24          EDWARD HALEALOHA AYAU: No.

25          VERA METCALF: Dan.

1 DAN MONROE: What was the purpose of the loan?

2 EDWARD HALEALOHA AYAU: Purpose? To facilitate  
3 repatriation, in our view.

4 DAN MONROE: What was the museum's understanding  
5 of the purpose, in your view?

6 EDWARD HALEALOHA AYAU: To facilitate  
7 repatriation.

8 DAN MONROE: Did, in the course of that  
9 transaction, Hui Malama represent to the museum that  
10 it in fact had the concurrence of other parties in  
11 seeking a loan?

12 EDWARD HALEALOHA AYAU: We believed we had the  
13 concurrence of the parties in terms of returning them  
14 to Hawaii Island and returning them to Forbes Cave.  
15 The issue outstanding at the time with the parties  
16 had to do with security of the cave. And we believed  
17 after inspecting the cave that it could be secured.

18 DAN MONROE: Did Hui Malama sign an agreement  
19 that it would, in fact, return the objects within one  
20 year?

21 EDWARD HALEALOHA AYAU: I believe the language  
22 was stated in the loan.

23 DAN MONROE: But you had no intent to do that.

24 EDWARD HALEALOHA AYAU: Our intent – our  
25 understanding was that it was to facilitate

1        repatriation, and that's the language that the museum  
2        included in the agreement. So it was neither our  
3        intention nor it was our understanding that Bishop  
4        Museum intended us to return it either.

5                VERA METCALF: Any other comments or questions?

6                Thank you, Eddie. Dr. McKeown, do we have  
7        members from the public?

8                TIMOTHY MCKEOWN: We have a number of -- in the  
9        end of last year and prior to the beginning of the --  
10       when the binders were sent out for the committee  
11       members, I communicated with all of the other  
12       claimants for these particular items and invited them  
13       to participate and a number of them have stepped  
14       forward. The first one would be a representative of  
15       the Department of Hawaiian Homelands, Micah Kane.

16        **AFFECTED PARTIES**

17        **MICAH KANE**

18                MICAH KANE: Thank you, Mr. McKeown, Chair Worl,  
19        and members of the NAGPRA Review Committee. Thank  
20        you for this opportunity to testify before you. And  
21        what I would like to do is to summarize some of my  
22        comments today rather than reading from our  
23        testimony.

24                The Hawaiian Homes Commission meets the criteria  
25        of the Native Hawaiian organization pursuant to



1       Section 2(11). From that position, we will be  
2       testifying today. Hawaiian Homes Commission was  
3       established by an Act of Congress in 1921. Congress  
4       set aside more than 200,000 acres of land for the  
5       purpose of rehabilitating Hawaiians through land  
6       stewardship, home ownership, agriculture and pastoral  
7       opportunities. In 1959 when Hawaii became a state,  
8       the administration of our trust lands was passed to  
9       the state of Hawaii. However, oversight is still  
10      maintained by the Department of Interior. And so a  
11      relationship, a formal relationship does still exist  
12      with the Department of the Interior, at which time  
13      myself, as well as our staff, will meet with members  
14      of Department of Interior on issues pertinent to the  
15      management of our property.

16             Hawaiian Homes, at this point in time, is -  
17      manages more than 7,500 residential, pastoral and  
18      agricultural leases throughout the State of Hawaii,  
19      throughout 30 different democratically elected  
20      communities. Currently we manage over 600 different  
21      land dispositions very similar to that of the way in  
22      which we manage those lands that the Kawaihae Caves  
23      sits on. Rights of entry, revocable permits,  
24      licenses, those dispositions are all managed by our  
25      130 staff in our state. We have offices on every

1 island and believe that we are good stewards of our  
2 land.

3 We feel that this information is important and  
4 pertinent to the NAGPRA Review Committee to  
5 understand the unique nature of how Hawaiian Homes  
6 Commission Act in the context of how Federal rights,  
7 how Federal Native rights, as you review your  
8 position going forward. Hawaiian Homes Commission is  
9 managed by a nine-member commission, all appointed by  
10 the governor. At which time our position today that  
11 we will articulate is a eight/one position on behalf  
12 of our nine members.

13 The Hawaiian Homes Commission's position with  
14 regard to the cultural objects repatriated by the  
15 Bishop Museum is that they are funerary objects and  
16 that the repatriation process has been complete. The  
17 position is consistent with the position that the  
18 commission has taken back in 2000, and we have  
19 maintained that position. At the present time, any  
20 requests to enter the caves would be denied or would  
21 be accepted and be considered as an intentional  
22 excavation under Section 3.

23 With regard to the Volcanoes National Park, we  
24 also as a commission believe that those objects are  
25 funerary and at that time we would give authorization

1 to access the Kawaihae Caves for the repatriation  
2 process to be complete. We believe that the process  
3 undertaken with the Bishop Museum among the claimants  
4 to reach a determination that these are funerary  
5 objects is sufficient for the Volcanoes National Park  
6 to reach the same conclusion.

7 We hope today that you will take our comments  
8 into consideration and would await any comments or  
9 questions you might have. Thank you for this  
10 opportunity to testify before you.

11 VERA METCALF: Garrick.

12 GARRICK BAILEY: I have some comments about your  
13 statement. What we are talking about is a legal  
14 question. Do you think it is appropriate for the  
15 Hawaiian Homes Commission to actually be acting as a  
16 judicial body, which is de facto what you are doing  
17 by making a determination? In other words, are you  
18 overstepping your jurisdiction?

19 MICAH KANE: We would never –

20 GARRICK BAILEY: I mean that's what I – that's  
21 the way I'm reading it.

22 MICAH KANE: Sure. Sure. Mr. Bailey, we don't  
23 in any way, shape, or form intend to be  
24 obstructionist to the law. However, we have taken as  
25 a commission a very strong position that any argument

1 to access the caves at this time does not warrant the  
2 breach of disrupting the cultural artifacts and the  
3 funerary objects that are in there right now. And  
4 our commission, as I had stated, has taken a very  
5 strong position that until justification is given,  
6 which in some cases is subjective, we will continue  
7 to hold that position. But as I had stated, we will  
8 not be obstructionist to any court proceedings that  
9 require us to – to do as we are instructed.

10 VERA METCALF: Rosita.

11 MICAH KANE: So I guess to answer your question –  
12 I'm sorry, Chair – would be no.

13 ROSITA WORL: Thank you. Could you clarify for  
14 me your statement? You said that you have – there's  
15 some relationship with the Department of Interior and  
16 does that relationship encompass oversight or trust  
17 relationships insofar as your land?

18 MICAH KANE: Yes, ma'am. The Department of  
19 Hawaiian Homelands Hawaiian Homes Commission on any  
20 land exchange or – needs to be given the  
21 authorization by the Department of Interior and  
22 signed off by the Secretary of the Department of  
23 Interior. So they are – their oversight is active  
24 and many of our – any amendments to the Hawaiian  
25 Homes Commission Act would need to be signed off by

1 Congress as well.

2 DARRELL YAGADICH: I would like to add to that.  
3 Just to add that there is a Hawaiian Homelands  
4 Recovery Act, which passed in 1995, and it  
5 specifically identifies the Assistant Secretary for  
6 Policy and Budget as the liaison to Hawaiian  
7 Homelands within the Department of Interior.

8 VERA METCALF: Garrick.

9 GARRICK BAILEY: Going back to the Department of  
10 Hawaiian Homelands, now are you a state agency, are  
11 you a Federal agency or how are you selected, how are  
12 you governed?

13 MICAH KANE: We are governed and managed by a  
14 nine-member commission appointed by the governor. We  
15 are one of 16 departments in the State of Hawaii with  
16 oversight by the Department of Interior. So it is  
17 quite a unique relationship that we have with – with  
18 both Federal and State government.

19 GARRICK BAILEY: That is an appointed commission  
20 of nine members who becomes the ultimate authority  
21 within the Hawaiian Homelands Commission?

22 MICAH KANE: Yes, sir. Yes, sir.

23 VERA METCALF: Any additional comments or  
24 questions before we move forward with public  
25 comments? Thank you very much.

1           We have less than 20 minutes. Do we have  
2           comments from the public?

3           TIMOTHY MCKEOWN: We still have a couple more,  
4           several more claimants to speak.

5           VERA METCALF: Okay.

6           TIMOTHY MCKEOWN: Next would be a representative  
7           of the Office of Hawaiian Affairs.

8           VERA METCALF: Okay. Thank you, Tim.

9           TIMOTHY MCKEOWN: I think they've decline. The  
10          next would be a representative of Na Lei Ali'i  
11          Kawananakoa.

12          **LOPAKA MANSFIELD (FOR PRINCESS KAWANANAKOA)**

13          LOPAKA MANSFIELD: Aloha. To the Review  
14          Committee, to the staff of NAGPRA, aloha kakou. I am  
15          Lopaka Mansfield and I am here to read the testimony  
16          of Princess Abigail Kinoiki Kekaulike Kawananakoa of  
17          Na Lei Ali'i Kawananakoa.

18          Yesterday, Hui Malama acknowledged that Forbes  
19          Cave is a repository of ali'i artifacts both from the  
20          Bishop Museum and those currently held by the  
21          Volcanoes National Park. In addition, the history of  
22          royal ownership of Molokai was acknowledged. The  
23          importance of the tie between the ali'i and the  
24          artifacts of the Hawaiian people is essential to  
25          understanding who has what rights under NAGPRA.

1           My royal lineage is well-documented for hundreds  
2 of years. Under Hawaiian custom and law, the care,  
3 ownership, and the responsibility for the ali'i and  
4 their property rests exclusively with the ali'i. The  
5 continued refusal to return the property of the ali'i  
6 to the rightful custodians demonstrates profound  
7 disrespect for the central beliefs of the Hawaiian  
8 people for thousands of years.

9           I am descended from all the ruling chiefs of  
10 every major island and have specific genealogical  
11 connections to the areas from which these artifacts  
12 came.

13           With regard to the Molokai items, my lineage  
14 encompasses the ruling chiefs of Molokai and the  
15 particularly important ruling Chief Kaiakea and the  
16 Ohule Priesthood. In addition, our historical  
17 traditions place the island of Molokai under the  
18 hereditary domain of both the Oahu ruling chiefs,  
19 namely Peleioholani, Kahahana, and the Maui ruling  
20 Chiefs Piilani and Kekaulike, from whom I am a direct  
21 lineal descendant.

22           With regard to the Kawaihae artifacts, my  
23 lineage goes to the specific district chiefs who  
24 ruled the various areas surrounding the Kawaihae  
25 caves. The strategic placement of Naohuleelua,

1 denoting the boundaries between Hamakua, Kona, and  
2 Kohala are reflected in the genealogical lines that  
3 come down to the Kawananakoa family through the  
4 Chiefess Hikuiekekualono.

5 The genealogical evidence available to this  
6 committee is exhaustive and authentic and must be  
7 carefully considered before any findings are made as  
8 to who may or may not have an interest in the  
9 artifacts in dispute from Molokai and Kawaihae.

10 Notwithstanding the facts and Hawaii's history,  
11 it is evident that this committee is inclined not to  
12 accept any responsibility for correcting the illegal  
13 transfer of the Kawaihae collection to Hui Malama.  
14 It must stand behind the decision made in St. Paul.

15 After so many years of indecisive and  
16 unprofessional procedures we are left with a very bad  
17 precedent to guide us in similar situations.  
18 Apparently this committee will endorse the notion  
19 that NAGPRA permits the use of a fraudulent scheme to  
20 acquire Hawaiian cultural artifacts. I wonder  
21 whether this would be the committee's position if the  
22 artifacts were those of another indigenous people.

23 The reason there is no recognized central  
24 authority for all Hawaiian artifacts is because the  
25 legitimate government of Hawaii was illegally



1       overthrown. If Congress had heeded the Blount report  
2       regarding the overthrow of the Hawaiian Kingdom, we  
3       might still be an independent nation with a monarch  
4       today.

5               Liliuokalani trusted the United States  
6       government and she spent the rest of her life  
7       pleading for her peoples' rights. Now we are once  
8       again pleading for what few rights we have left and  
9       still facing the lack of understanding or concern for  
10      our culture and our history.

11             I have watched with increasing concern the false  
12      and defamatory attacks that have been recently made  
13      against the Bishop Museum and its president William  
14      Brown. From the very outset, the Bishop Museum has  
15      given every consideration necessary for the  
16      protection and preservation of all the items in their  
17      custody. Apart from serious lapses under the prior  
18      administration, the museum must be recognized for its  
19      vigilance and integrity in preserving what little we  
20      have left of Hawaii's past.

21             In conclusion, this leaves me with a Royal  
22      obligation to seek justice and impose a moral  
23      responsibility. It is my sincere wish that we  
24      resolve our differences in this meeting and that we  
25      amiably settle disagreements concerning the care of

1 Hawaiian cultural artifacts for the benefit of future  
2 generations of our people.

3 VERA METCALF: Thank you for your comments. Tim?

4 TIMOTHY MCKEOWN: The last claimant who has asked  
5 to make a presentation is a representative of the  
6 Kekumano Ohana.

7 VERA METCALF: Is there a representative here?

8 **VAN HORN DIAMOND (FOR CY HARRIS)**

9 VAN HORN DIAMOND: Madam Chair, Cy Kamuela  
10 Harris, who is the representative of the Kekumano  
11 Ohana, could not stay. So he asked that I would read  
12 his testimony into the record, if that's okay.

13 Members of the Native American Graves Protection  
14 and Repatriation Review Committee, aloha, I am  
15 writing to you on behalf of the Kekumano Ohana, which  
16 is currently a recognized NAGPRA claimant in the  
17 Mokapu and Kawaihae claims based on lineal descent,  
18 through the genealogy of Moana and the family of  
19 Lonoamoana –

20 VINCAS STEPONAITIS: Pardon me. Could you speak  
21 up just a little bit?

22 VAN HORN DIAMOND: Oh, sorry. – whose bones were  
23 displayed with Keawe at Honaunau, also known as Hale  
24 O Keawe Puuhonua. After Kaahumanu dismantled the  
25 Puuhonua and took the bones of the chiefs of Kona and

1 placed them in a cave above Kealakekua, the bones of  
2 Lonoamoana remained there until the Kaai of  
3 Liliuokalani were moved back to Honolulu, these bones  
4 were moved to a cave in Kawaihae.

5 The position of the Kekumano Ohana is in support  
6 of its representative in this matter, La'akea  
7 Suganuma and the Royal Hawaiian Academy of  
8 Traditional Arts, since the beginning and up until  
9 the findings and recommendations of the Review  
10 Committee in favor of La'akea and concluded proper  
11 repatriation never took place. The opinion of the  
12 present administration of the Bishop Museum agrees  
13 with this finding.

14 The minority opinion by Ms. Rosita Worl is based  
15 on the assumption that when the museum filed its  
16 notice to the public and filed in the Federal  
17 Register that it had possession and control of the  
18 collection, which in actuality it was in Hui Malama's  
19 possession and control. How can there be  
20 repatriation without delivery? The fact is Hui  
21 Malama had possession and control before the rest of  
22 the 13 claimants had been chosen, yet received  
23 possession through a loan, the intent of which was  
24 never to be returned.

25 In conclusion, the rehearing of this dispute

1 without any error, procedural or otherwise committed  
2 by the members, is totally unnecessary and the  
3 decision in St. Paul must stand. The point of the  
4 matter is the 13 claimants never took possession or  
5 had control, only Hui Malama. How can you repatriate  
6 what you never had? Nor did we allow Hui Malama to  
7 act as our agent in this matter. Therefore, proper  
8 repatriation never took place. Sincerely, Cy Kamuela  
9 Harris.

10 VERA METCALF: Thank you. Any comments or  
11 questions from the committee members? Vin.

12 VINCAS STEPONAITIS: Yes, I have a question much  
13 like the one that Garrick asked earlier. Could you  
14 speak to the relationship of the ohana whose  
15 testimony you just read to the area or the region  
16 involved in this dispute?

17 VAN HORN DIAMOND: Based on the names of the  
18 genealogy, and that's subject to his knowledge in  
19 depth more than mine, I would suggest to you that  
20 based on the names they come from both Maui and Kona  
21 and Kohala side of the island, that portion of the  
22 island where the cave is situated, as well as a  
23 portion of Maui, which is across the channel. So the  
24 genealogy ties to that.

25 VINCAS STEPONAITIS: So there are connections –

1 VAN HORN DIAMOND: Yes.

2 VINCAS STEPONAITIS: – to the place where this  
3 cave is?

4 VAN HORN DIAMOND: Yes.

5 VERA METCALF: Anyone else? Tim?

6 TIMOTHY MCKEOWN: Madam Chair, I might recommend  
7 – I know that on the agenda it says that there will –  
8 at some point soon there would be discussion amongst  
9 the committee. However, I have quite a list of  
10 members of the public that would like to address the  
11 committee on it and I think it's important for you to  
12 get as much information as you can at this point, if  
13 that's okay to proceed.

14 VERA METCALF: Yes.

15 TIMOTHY MCKEOWN: In terms of members of the  
16 public that would like to speak, I actually would  
17 like to bring up several people at a time in order to  
18 make it go a little faster. First, would be  
19 representatives from Hale O Na Ali'i O Hawaii, which  
20 would be Van Horn Diamond and William Ha'ole.

21 GARRICK BAILEY: Madam Chair.

22 VERA METCALF: Garrick.

23 GARRICK BAILEY: I was thinking it's five minutes  
24 until we're supposed to have a break. Should we have  
25 a break, a short ten-minute break and then go on?

1           VERA METCALF: No. I believe we have – pressing  
2           for time here.

3           GARRICK BAILEY: Okay.

4           TIMOTHY MCKEOWN: Let me just ask whether the  
5           committee needs a break, that's the issue.

6           GARRICK BAILEY: Why don't we hear – are there  
7           more after this?

8           TIMOTHY MCKEOWN: I have a long list.

9           GARRICK BAILEY: Okay. Why don't we hear these  
10          gentlemen and then take a break.

11          TIMOTHY MCKEOWN: I would recommend that it be a  
12          short break, because –

13          VERA METCALF: Five minutes, five-minute break?

14          TIMOTHY MCKEOWN: – I want to make sure we have  
15          enough – okay.

16          GARRICK BAILEY: Yeah.

17          VERA METCALF: Thank you.

18          **WILLIAM HA'OLE (FOR HAILAMA FARDEN)**

19          WILLIAM HA'OLE: Aloha and mahalo. Thank you  
20          very much for hearing us. I am the Iku Kau Nui,  
21          Secretary of the State Board of Governors for Hale O  
22          Na Ali'i O Hawaii, and I am delivering a message from  
23          our state board president and also concur this is the  
24          expression of the entire 'Ahahui, Hale O Na Ali'i O  
25          Hawaii.

1 Aloha nui loa kakou a pau loa. I am Hailama  
2 Farden, Iku Ha'i Nui IV, State President, of the Hale  
3 O Na Ali'i O Hawaii. I have asked the Iku Kau Nui,  
4 Mr. William Ha'ole, III to present our 'Ahahui's  
5 testimony as I am unable to greet you personally. At  
6 a recent meeting of chapter presidents, we  
7 unanimously agreed that it is imperative Hale O Na  
8 Ali'i O Hawaii submit a letter of testimony to the  
9 NAGPRA committee and request this letter be included  
10 as testimony of our concerns.

11 Hale O Na Ali'i is a Royal Hawaiian Benevolent  
12 Society well rooted in our Hawaiian community.  
13 Although our organization was reestablished in April  
14 of 1918, we were first established as the Hale Naua,  
15 II, under His Majesty, King Kalakaua in 1886.  
16 Members of Hawaii's lineal Royal Family have always  
17 participated as members of our – as members of an  
18 overseeing entity, or our Kumu'ahakalani, the Supreme  
19 Council, since the society's conception.

20 It has never been the society's mission to pit  
21 any Hawaiian organization against another. It is,  
22 however, within our mission and founding principles  
23 to assure items of royal origin and significant  
24 cultural patrimony be cared for in a manner of  
25 respect and proper protocol. Further, it is our

1 practice to address concerns regarding the means by  
2 which any royal item or culturally significant item  
3 is handled.

4 Our organization's work is mandated and guided  
5 not only by a constitution, bylaws and rules and  
6 regulations of the Western world, but especially by  
7 sacred rituals, kapu or taboo to nonmembers. Great  
8 mentors and esteemed elders have aided and given  
9 advice in the writing of our – in the writing and  
10 maintaining of rituals of the society, especially our  
11 death and burial rituals. Many of these members were  
12 great chanters and composers of the late 19<sup>th</sup> Century  
13 that used their unequivocal knowledge to document  
14 these rituals that had never before been written.  
15 Among these great elders were Joseph Ilala'oleo  
16 Kamehameha, Mrs. Makakuikalani, Mrs. Kau and  
17 Mrs. Ruth Lilikalani, not to forget many nonmembers  
18 who served as reference points for the 'Ahahui,  
19 society, like David Bray, Jennie Wilson, and Prince  
20 Jonah Kuhio Kalaniana'ole.

21 You may recall that the Iku Ku'auhau, historian,  
22 of our Honolulu Chapter, Mr. A. Van Horn Diamond,  
23 read the testimony of Hale O Na Ali'i O Hawaii at the  
24 September 2004 hearings. The testimony affirmed our  
25 royal and historic past, to include that our society



1 has been using the same burial rituals, in Hawaiian,  
2 since they were first documented in print in 1921, as  
3 established by many of the aforementioned elders.

4 We, the Hale O Na Ali'i O Hawaii, are extremely  
5 confidant of our standing as a recognized Native  
6 Hawaiian organization in Hawaii and continue to seek  
7 your recognition of our society as a Native Hawaiian  
8 organization under the laws of NAGPRA. It is not our  
9 desire to lay claim to every item that has been or  
10 will be deliberated by NAGPRA. However, we would  
11 assert our knowledge of items and of sacred royal  
12 origin or cultural patrimony.

13 Although we have much gratitude for the good  
14 work that Hui Malama I Na Iwi Kupuna organization has  
15 done to insure the speedy repatriation of our iwi  
16 kupuna, it is our utmost concern that we air our  
17 discomfort, displeasure, and upset regarding the  
18 mishandling of artifacts with respects to the  
19 familiar Forbes Caves. Hale O Na Ali'i O Hawaii is  
20 extremely cautious to the fact that the museum has  
21 called for the items to be returned as they were only  
22 on loan to Hui Malama. We call upon this NAGPRA  
23 Review Committee to assist us in demanding that Hui  
24 Malama return the aforesaid items to the Princess  
25 Bernice Pauahi Bishop Museum for further

1 consideration of the said items' representation as  
2 funerary objects.

3 Let us be clear that it is not our practice to  
4 fight over the iwi of our kupuna and this is not an  
5 attack on any claimant, to include Hui Malama or  
6 Bishop Museum. It is imperative, however, that the  
7 items of the Forbes Cave, as well as those stored at  
8 the Volcanoes National Park are returned immediately  
9 for reevaluation by all claimant parties.

10 Hale O Na Ali'i is deeply concerned that  
11 renowned elder Papa Henry Auwae, before his death, at  
12 the time of the loan of said items to Hui Malama,  
13 indicated in writing that the 83 Kawaihae items and  
14 the Volcanoes National Park items should not be  
15 buried, nor joined together with the iwi as he felt  
16 the items were misrepresented as funerary items. For  
17 this specific reason, we feel it is imperative that  
18 the said items be returned so that all potential  
19 claimants have fair examination and evaluation over  
20 the items.

21 Furthermore, whereas these items have been on  
22 loan from the Bishop Museum to Hui Malama, the group  
23 should be held responsible for the theft of these  
24 items and if the group refuses to return the items to  
25 the museum – excuse me, should be held responsible

1 for the theft of these items if the group refuses to  
2 return the items to the museum as it is in the  
3 group's possession.

4 In conclusion, seven chapters of Hale O Na Ali'i  
5 O Hawaii collectively request your support of the  
6 return of the aforementioned items, as we await  
7 official recognition and standing as a Native  
8 Hawaiian organization under the laws of NAGPRA.

9 Please indicate any documentation necessary to  
10 formalize our standing and desire to be notified  
11 regarding future items of Hawaiian origin under  
12 NAGPRA review.

13 Mahalo. Me ke aloha, Hailama Farden, Iku Ha'i  
14 Nui, for the members of Hale O Na Ali'i O Hawaii.

15 VERA METCALF: Thank you for that presentation.

16 We should go – no comments or questions from the  
17 committee? Maybe take a five-minute break?

18 **BREAK**

19 **PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN**  
20 **THE ROYAL HAWAIIAN ACADEMY OF TRADITIONAL ARTS AND**  
21 **BISHOP MUSEUM REGARDING ITEMS FROM A CAVE AT**  
22 **KAWAIHAE**

23 VERA METCALF: Hello. I'd like to call the  
24 meeting back to order. We have eight additional  
25 comments before us, and because of time I'm going to

1 ask the committee members if – we have additional  
2 agenda items this afternoon. That's a discussion of  
3 the situation involving the Royal Hawaiian Academy of  
4 Traditional Arts and the Bishop Museum regarding the  
5 cave at Kawaihae, and also the discussion of the  
6 statutory definition of what is – constitutes a  
7 Native Hawaiian organization. With that I want to  
8 figure out what the committee wants to do because we  
9 have eight folks.

10 TIMOTHY MCKEOWN: What I might recommend, Madam  
11 Chair, is if we can use the next bit of time to try  
12 to hear from the eight individuals or organizations  
13 that wish to provide information on the situation  
14 regarding Kawaihae. And then if there's time  
15 remaining we can talk about the definition of Native  
16 Hawaiian organization. I know that the individual  
17 that was going to kind of lead you through the  
18 testimony that you have been provided is here.

19 VERA METCALF: Okay.

20 TIMOTHY MCKEOWN: If that's okay?

21 VERA METCALF: That's fine, Tim. Thank you.

22 TIMOTHY MCKEOWN: One claimant did come forward  
23 who apparently had sent me an email that I didn't get  
24 or misplaced or something. So if we could have the  
25 representative of the Keohokalole Ohana.

1        **AFFECTED PARTIES**

2        **ADRIEN KEOHOKALOLE**

3                ADRIEN KEOHOKALOLE: Greetings to you, committee.  
4        (Native Hawaiian language.) I am Adrian Kealoha  
5        Keohokalole. I am a member of Ohana Keohokalole, one  
6        of the 13 recognized claimants in this dispute. Our  
7        paternal side, we are family to the last reigning  
8        monarch of these islands, whose roots began on the  
9        big island of Hawaii. On our maternal side, her  
10       roots were also from Kona, and the family lived in  
11       Waimea and Kawaihae. We are also a Native Hawaiian  
12       organization, who for the past 12 years has been  
13       involved in Native Hawaiian education projects, and  
14       11 of those 12 years has been actively involved in  
15       repatriation of ancestral remains and funerary  
16       objects. We are privileged to represent our  
17       ancestors, our kupuna in this dispute today. Even  
18       though you may see a few of us, be assured that  
19       they're all here behind me.

20               We are aligned with the Royal Hawaiian Academy  
21       of Traditional Arts and support the view that the  
22       decision you made in St. Paul should stand. Why have  
23       you decided to rehear this issue is indeed puzzling.  
24       The conspiracy continues.

25               When is a decision you make binding, a binding

1       one? The 83 items allegedly returned to the cave at  
2       Kawaihae were removed from the Bishop Museum without  
3       our families' consent or agreement. I repeat again,  
4       stick to your previous decision and move forward to  
5       retrieve these prize possessions for all Hawaiians.  
6       Mahalo.

7               VERA METCALF: Thank you.

8       **DENNIS KEOHOKALOLE**

9               DENNIS KEOHOKALOLE: To the Chair and members of  
10       the NAGPRA Review Committee, greetings. (Native  
11       Hawaiian language.) My name is Dennis Kaiwi  
12       Keohokalole. I am a member of the Ohana Keohokalole.  
13       I too share a very rich heritage from both my parents  
14       and thank you for this opportunity to offer input to  
15       these important issues before us.

16              I'm here to implore this committee to follow  
17       through on its earlier decision to have the Bishop  
18       Museum fulfill its obligations under the NAGPRA law  
19       to the 13 recognized claimants in this dispute. Many  
20       have offered, many their thoughts and many more will  
21       do the same. However, this committee must restore  
22       integrity to this process to which it has already  
23       rendered an opinion because you also have an  
24       obligation to us, the majority claimants. You have  
25       chosen to come here, to our aina, to our turf, at the

1 request of one minority claimant. How is that one  
2 group among 13 other Native Hawaiian organizations  
3 has such a strong influence on a national committee  
4 to hold these hearings here in Hawaii when in fact it  
5 took two trips to the mainland and one teleconference  
6 session just to get your attention two years out?

7 We are cognizant that there are many members on  
8 this committee who have ties with the minority  
9 claimant group. The proper course of action would be  
10 to recuse yourselves. You know who you are, but  
11 since you have chosen to remain we simply ask that  
12 you apply fairness in your deliberations. Mahalo.

13 **EMALIA KEOHOKALOLE**

14 EMALIA KEOHOKALOLE: Madam Chair, committee  
15 members, welcome. (Native Hawaiian language) back to  
16 all of you. I am Emalia Keohokalole, the sister of  
17 the two previous speakers. I might say the best  
18 looking, but they're pretty good looking too, so I'm  
19 proud to be here sitting next to my two brothers. I  
20 speak on behalf of two other siblings of mine,  
21 Ho'opili and Keawahelulu (phonetic), who reside on  
22 the Hawaii Nui O Kiawi or the Big Island of Hawaii,  
23 and myself.

24 Like many of you, our lahui (phonetic), we come  
25 from significant lines of ancestors and we do not

1 take this standing lightly. We are both honored and  
2 humbled at the opportunity we have been afforded to  
3 speak with you, members of this committee, about  
4 matters which concern our family ohana. Family or  
5 ohana is very important to Native Hawaiians. You  
6 see, from family we inherit many deeply held  
7 traditions and practices which have been passed down  
8 from one generation to the next. And if we have been  
9 faithful in maintaining them, we will assure that  
10 these traditions and practices will continue to our  
11 future generations of family.

12 Among the many traditions we malama, or we give  
13 special care and consideration to, is that of  
14 ancestral remains and related funerary objects.  
15 Special attention and utmost respect are given to  
16 their care. All of this is done out of love and  
17 aloha for them.

18 It is from this perspective that we, the  
19 recognized claimants, come before you to request your  
20 assistance in settling a matter that has dragged on  
21 for more than three years. Why, one might ask, are  
22 matters concerning the kupuna or the ancestors being  
23 held hostage once more by processes and procedures  
24 for which they have no say? The worth of the  
25 artifacts in question are treasures of inestimable



1 value for all kanaka. Who would dare to fix a  
2 numerical value to them and consider their sale? How  
3 would we as lahui appreciate these artifacts in the  
4 practice of our traditions if they are removed and  
5 placed in an inaccessible location? But the more  
6 important question is how, under NAGPRA rules, does  
7 one claimant group make the removal decision for the  
8 other claimants and not be held responsible. Can  
9 you, members of this committee, can you explain the  
10 logic involved here?

11 These questions are nagging and disturbing.  
12 This ohana, Ohana Keohokalole, strongly urges each of  
13 you committee members to reach into your own hearts  
14 and consider the impact of your decisions with regard  
15 to this dispute, whatever they are, and make the  
16 right ones. We say all of this with aloha from our  
17 ohana. Mahalo a nui loa. Thank you.

18 VERA METCALF: Thank you. Any comments or  
19 questions?

20 VINCAS STEPONAITIS: Just a quick question that I  
21 asked of the other ohana groups. Could you briefly  
22 just tell us what your connection is to the area in  
23 question?

24 EMALIA KEOHOKALOLE: Yes, I think one of my  
25 brothers stated earlier that our family roots go back

1 on our maternal side to the area Kawaihae. So that's  
2 the family connect, but then we are also a Native  
3 Hawaiian organization, a Native Hawaiian educational  
4 organization, as well.

5 VINCAS STEPONAITIS: Thank you.

6 VERA METCALF: Thank you for your presentation  
7 and comments. Tim.

8 TIMOTHY MCKEOWN: If I could bring up three  
9 speakers next to facilitate the information that you  
10 are getting, the next three will be EiRayna Adams,  
11 William Aila, and Alice Greenwood.

12 **PUBLIC COMMENT**

13 **EIRAYNA ADAMS**

14 EIRAYNA ADAMS: NAGPRA Review Committee – can you  
15 hear me?

16 VERA METCALF: No. Can you move closer to the  
17 mic, please?

18 EIRAYNA ADAMS: It's short. NAGPRA Review  
19 Committee Chairperson Rosita Worl, 18 years ago, I  
20 attended a regular business meeting of the Daughters  
21 and Sons of Hawaiian Warriors, Mamakakaua, where  
22 Eddie Ayau was given permission to represent us as an  
23 Hawaiian organization compliant with and answerable  
24 to NAGPRA law and Hawaiian tradition. It is becoming  
25 increasingly evident that direct personal involvement

1 is required. Therefore, I am withdrawing support  
2 from Hui Malama and applying to be recognized as a  
3 Hawaiian organization under NAGPRA regulations with  
4 rights and privileges of an authentic claimant.  
5 Please inform us of any forms to complete and  
6 meetings we may attend.

7 Further, we see a need for representation to the  
8 Review Committee. We would prefer one who knows the  
9 ways of our royals and one who is qualified and  
10 approved by the four royal societies. We therefore  
11 nominate and recommend Van Diamond. Oh, I have the  
12 wrong copy. Finally, we would like to stand with  
13 La'akea Suganuma. Thank you.

14 VERA METCALF: Thank you.

15 EIRAYNA ADAMS: EiRayna Kaleipoli Hale Adams.  
16 Thank you.

17 **ALICE GREENWOOD**

18 ALICE GREENWOOD: Aloha. My name is Alice  
19 Ulilani (phonetic) Greenwood. These are some of my  
20 concerns in addressing the panel. Number one, under  
21 the laws of NAGPRA a Native Hawaiian is defined in  
22 NHPA at Section 301-17. It means an individual who  
23 is a descendent of an aboriginal people who prior to  
24 1778 occupied and exercised sovereignty in the area  
25 that now constitutes the state of Hawaii. Two,

1 Native Hawaiian organization as defined in Section  
2 301-18 of the NHPA means an organization which,  
3 number one, serves and represents the interests of  
4 the Native Hawaiian, two, has a preliminary – primary  
5 and stated purpose the provision of services to  
6 Native Hawaiians, and number three, has demonstrated  
7 expertise in aspects of history, preservation, that  
8 are culturally significant to Native Hawaiians.  
9 There are only two Native Hawaiian organizations  
10 NAGPRA names; one, Hui Malama I Na Kupuna O Hawai'i  
11 Nei, two, Office of Hawaiian Affairs. By the way, I  
12 stand independent.

13 One, what does it mean an individual who is a  
14 descendent of aboriginal people who prior to 1778  
15 occupied and exercised sovereignty in the area that  
16 now constitutes the state of Hawaii? Why, when the  
17 US government of the state of Hawaii does not  
18 official – when the US government or the state of  
19 Hawaii does not officially recognize the Hawaiians as  
20 Native Americans, census and also within your  
21 guidelines. Two, whose decision is to decide that my  
22 lineal descendent is correct when known facts, laws  
23 of 1860 we must have three names, Alice Ulilani  
24 Koholo (phonetic). But if my parents is not married,  
25 Alice Ulilani Kiama (phonetic). Am I my mother's

1 child or my father's child? Names has been  
2 shortened, Kapa'aokalani (phonetic) to Kapa'a  
3 (phonetic). Names has been Americanized, Pohaku to  
4 Stone. Names has been changed, Kawanana'kōa. Names  
5 has been dropped, Louise Freeman Opuno (phonetic), a  
6 hundred percent Hawaiian, to Louise Freeman. Mrs.  
7 Opuno did not have enough breast milk. Mrs. Freeman  
8 lost her baby but had plenty of milk. They hanied  
9 (phonetic) Louise.

10 Race, my great-grandmother and father, marriage  
11 on both sides, Hawaiian. Grandmother and father,  
12 birth and marriage records on both sides, Hawaiian.  
13 Mother, no record, and father, birth and marriage  
14 records, mother Hawaiian-Chinese and father Hawaiian.  
15 My mother died. She has Hawaiian, Chinese, and  
16 Japanese because the lady at the center says Kiama  
17 (phonetic) is a Japanese name. I once had Hawaiian,  
18 Chinese, and Japanese. Adoption is worse. I can  
19 change my adoptive son to Hawaiian, instead of  
20 Hawaiian-Japanese-Filipino. Would a well-know  
21 expertise genealogist, a Hawaiian professor know  
22 that.

23 The Hawaiian Homes Act states I have hundred  
24 percent Hawaiian. My mother is hundred percent and  
25 my father is hundred percent; I have two hundred

1 percent. How did they come up with their figures?

2 The Hawaiian Homes Act of 1920, one part of my  
3 genealogy can go back as far as 1568, Tahiti to  
4 Hawaii. Another names can show my lineal descendents  
5 has lived and died in many parts of these islands.

6 In the year 2000, I was the chairperson for my  
7 late husband's family, the Poli'iamahu (phonetic)  
8 Ohana of Waimea, Oahu. There were 47 members and  
9 guests. Our meetings were open to the public in  
10 Ali'i Beach Park in Waialua, Oahu. I was involved  
11 from the start to the reburial and the blessing of  
12 the new road. My husband's family members became our  
13 cultural monitors. This was the first time we had  
14 done this type of work. It was highly publicized and  
15 work has started a week ago.

16 I worked and - I lived and work in Lualualei and  
17 Nanakui Alpuaa (phonetic), secondary district, Moku,  
18 major district of Waianae. Why are meetings were  
19 open to the public, there were talk around town also  
20 family members stated, there were immigrant workers,  
21 Chinese, Japanese and Filipino camps during the  
22 building of the railroad tracks, not only Hawaiians.  
23 It seems only right that what was being impact was  
24 our community.

25 Why my husband's family was chosen for cultural

1 monitors, when requests for volunteers, five hands  
2 went up with not even a second thought. All others  
3 waited to see if they could get paid. All human  
4 remains, funerary objects, sacred objects or objects  
5 of cultural patrimony will be treated in an  
6 appropriate manner, will stay in Alpuua of Weimea.  
7 All surrounding sand, dirt, shells, and nails and any  
8 other found around them will be placed with them upon  
9 interment, interment to be close as possible to their  
10 findings. Site is not immediate adjacent to existing  
11 utility figure or activities that could disturb the  
12 remains. The site affords easy and safe access to  
13 the family members who may want to visit them.

14 This wasn't a simple task. There were many  
15 lines and issues that needed to be done. However, as  
16 the project proceed, I had to make sure that our  
17 family and the community was on the same wavelength.  
18 Those that questioned and protest were given  
19 assignment, if their way was right then show us. In  
20 the meantime, I had to do a lot of research myself.  
21 I had the genealogist who needed to do – I mean, the  
22 archaeologist who needed to do its sampling.

23 Archaeology is the only science that destroys  
24 its subject matter during the course of the work. A  
25 camera experience can be done many times for example,

1 while once an archaeological site is dug, it is gone.  
2 When they dig up many famous mounds and other sites,  
3 they do not save the charcoal or animal bones because  
4 it was considered junk. They just wanted the  
5 artifacts. However, what is considered junk could be  
6 analyzed to see what people ate and what species they  
7 used. This is why everything around Kupuna was  
8 saved. The sites, people, culture in and around  
9 Waimea had to be researched. Even Bishop Museum  
10 needed to be researched. This land was not Bishop  
11 Estate, but that all, Waihini Ali'i (phonetic). She  
12 is an opu nui from Waialua. She also comes from  
13 Oahu's ruling chief. She has heirs still living  
14 today. She in her own rights has ali'i blood. This  
15 land was quit title and given to the estate in  
16 exchange for other dealings.

17 When projects are delayed, it causes confusion,  
18 misleading information, and feelings of mistrust.  
19 And when my custom and culture is questioned and  
20 judged by outsiders, I question the democracy of its  
21 intent. In a village, tribe, individual or  
22 organization, when a person or object is excavated,  
23 all intentions becomes meaning on the act of science.  
24 Logic seems to be placed out the window. Thank you  
25 for giving me this time to vent. Thank you for



1 taking the time to help us. Mahalo.

2 VERA METCALF: Thank you. Any comments or  
3 questions? Thank you very much.

4 **WILLIAM AILA**

5 WILLIAM AILA: Aloha again, Chair and panel  
6 members. First a little bit about myself and then  
7 some observations. I descended from farmers and  
8 fishermen. I don't pretend to be ali'i. My  
9 grandmother taught me, and when my grandmother died,  
10 the items that she chose to be buried with, I never  
11 claimed right of ownership over them. The items that  
12 she wanted to give away while she was alive were  
13 given away. The items that she wanted taken with her  
14 went with her. Twenty years from now, 40 years from  
15 now, it would be so disrespectful of me to dig her up  
16 and say I own those things because I was related to  
17 her. I say that because that has total preference to  
18 what you have before you, this discussion that's  
19 before you.

20 With regards to some observations. There's been  
21 no discussion about how these items came to the  
22 Bishop Museum. They were stolen. They were stolen.  
23 And I'm going to say it one more time because  
24 sometimes people need to hear it three times. They  
25 were stolen. The people who stole them knew that

1       they were stealing. The correspondence is in your  
2       file. You understand that. So when we view – when I  
3       view the Bishop Museum, and I'm speaking as an  
4       individual now, I view them as fences because they  
5       knew the items were stolen when they took them and  
6       compensated the thieves for those items. That makes  
7       them fences. The folks who stole the items and  
8       desecrated the burial cave did so with the intent of  
9       making money.

10           These facts I have to reiterate for you because  
11       this is what the discussion should be about and not  
12       about what group I'm with, who I'm related to,  
13       failure in the process, the fact that I'm not  
14       recognized and I need to be recognized. These items  
15       were stolen, these items were fenced, these items  
16       were retrieved and then later given back to the  
17       rightful owners. Some people view that as a flaw in  
18       processes. I view that as making things pono, making  
19       them whole again.

20           The folks that have come before you have talked  
21       about value of these artifacts, they've talked about  
22       how the process is flawed, but I'll leave you with  
23       one thing that they have never talked about and that  
24       is making those kupuna in the burial caves pono. And  
25       that is what this discussion should be about, and

1       that's the only thing that this discussion should be  
2       about. And if NAGPRA doesn't address something as  
3       simple as that, then there is something wrong with  
4       NAGPRA. Thank you for the opportunity to address you  
5       this afternoon.

6               VERA METCALF: Thank you. Tim.

7       **LILIKALA KAME'ELEIHIWA**

8               LILIKALA KAME'ELEIHIWA: (Native Hawaiian  
9       language.) I'd like to apologize for my back to all  
10       of the relatives. If you don't mind, I need to start  
11       with a prayer. (Native Hawaiian prayer.) Mahalo.

12              My name is Lilikala Kame'eleihiwa. I have a  
13       Ph.D. in Hawaiian history. I am also a genealogist.  
14       I teach at the Kamakakuokalani Center for Hawaiian  
15       Studies here at the University of Hawaii at Manoa. I  
16       also speak Hawaiian. I am a descendent of the  
17       Pialani and I (phonetic) lineages, although I must  
18       say that every Hawaiian in this room descends from  
19       some chiefly lineage as our historian Kamakau said at  
20       one time, all Hawaiians are chiefs. Some decided  
21       they would rather live in the country and not be  
22       bothered with chiefly matters, so they stopped  
23       talking about being chiefs, but all Hawaiians in this  
24       room descend from chiefly lineages and in that sense  
25       have kuleana in this instance. And all who claim to

1 be maka'ainana, or commoners, have kuleana in this  
2 instance as well.

3 I am a Native practitioner. I am not a  
4 Christian. I guess you would call me a pagan. And  
5 some of the things I want to address today have to do  
6 with that distinction between Christians and Native  
7 practitioners. But I want to thank you folks for  
8 coming to listen to all of this. You must think that  
9 all we do is fight over bones and moepu here. I'm a  
10 little embarrassed about that. But I'm very glad  
11 that you've come because I think it's an important  
12 issue. What I'm so amazed about is that NAGPRA can  
13 give equal rights to Native bones, equal to white  
14 bones. We are not allowed to dig up white peoples'  
15 bones. We are not allowed to rob their graves. We  
16 are not allowed to take maybe art possessions that  
17 they have taken to the grave with them because it is  
18 against the law. NAGPRA says that's against the law  
19 for natives too, and I really like the equality and I  
20 thank you for sticking up with that. I know this is  
21 not an easy thing to hear, many points of view.

22 As you can see, the iwi, the bones of our  
23 ancestors and the moepu and those things that are  
24 buried with our ancestors are very important issue  
25 for us as Hawaiians. And one of the reasons is

1       because we believe that until we as descendents can  
2       take care of the ancestral remains, we don't really  
3       have a right to take care of the land. How can we  
4       have sovereignty, how can we say that we are our own  
5       people, that we have a right to control our country  
6       if we can't even take care of the bones of our  
7       ancestors and if we can't take care of the treasures  
8       that were buried with our ancestors.

9               I don't claim to be a claimant, although I  
10       could, because my ancestry comes from Hawaii Island,  
11       as well as Maui, but today you could say that's true  
12       of every Hawaiian in this room. And if they think  
13       they don't have an ancestor to Hawaii Island, they  
14       don't know who their father is, to quote Kamakau.  
15       But I come here today to support Hui Malama and their  
16       position. I should be at work. I'm overdue on about  
17       six reports, all Federal. I should be at work. I  
18       should be correcting exams.

19              When I heard about this, I came today because I  
20       so respect the work of Hui Malama and their 15 years  
21       of repatriation of hundreds and hundreds of ancestral  
22       remains. They have gone to fight with museums all  
23       over the world. In fact, museums here as well as in  
24       America, as well as in Europe, to bring the bones  
25       back home, as well as in New Zealand. The bones need

1 to come home. I hope I don't offend too many people  
2 who are associated with museums, but generally  
3 museums are not friendly to Natives. Generally,  
4 especially Bishop Museum is not friendly to Natives,  
5 as me as a Native researcher has found out so many  
6 times. I won't go into that today, but I'm not much  
7 impressed by how they care for our treasures.

8 So perhaps one of the things we might want to do  
9 with all of the claimants is ask them to produce a  
10 record, their track record. How many iwi have they  
11 repatriated? How many years have they been doing  
12 this kind of work? The repatriation of iwi is a  
13 very, very serious thing because you don't know  
14 exactly how you're related to those ancestors and you  
15 must treat each of them with the same respect. You  
16 know, we believe that if you deal with the ancestors  
17 and you do wrong, it eats you. It eats you. It will  
18 come back and harm you, so you have to be very  
19 careful. I don't do this kind of work. I don't come  
20 forward to say I'm the one to repatriate. Therefore,  
21 I respect those who do because it is a very heavy  
22 spiritual burden from the Native practitioner point  
23 of view to carry, and I respect those who have  
24 carried it before me.

25 Therefore, I'm glad you have come to hear this

1 issue because I think the issue should have been  
2 reopened. I agree with the minority report in the  
3 first instance. Some have called for the return of  
4 the moepu to Bishop Museum as rightful owners but I  
5 agree with William Aila, the Bishop Museum were  
6 recipients of stolen goods, therefore how can you  
7 return these things that are supposedly owned to  
8 those who knew they were stolen in the first place.  
9 They are aiding and abetting the thieves who robbed  
10 our caves, who broke the law, a moral law. They  
11 should not have been robbing those caves. They knew  
12 that. The Bishop Museum knew that. They still know  
13 that. So why should we give our treasure, our kupuna  
14 treasures back to the thieves? It doesn't make sense  
15 to me. They don't have clear title, and so they  
16 don't deserve it.

17 For the others who are claimants, I respectfully  
18 ask that in this instance, we should leave the moepu  
19 where they are with our ancestors, and we should  
20 develop a really clear way of handling any other  
21 moepu. But for this instance, once they're back I  
22 agree with Micah Kane and the Hawaiian Homes  
23 Commission that they should stay in the ground.

24 I wanted to address a few other things, though.  
25 I understand that some people associated with Bishop

1 Museum, some Hawaiians have said that Hawaiians have  
2 lost their culture, and of course I object to that.  
3 But there has been colonization. There has been  
4 Christianization. There has been a confusion about  
5 culture. So what do we do about that? You know, the  
6 thing is you don't learn culture from artifacts. You  
7 learn it from people, and there are many sources of -  
8 Native practitioners that you can go to learn culture  
9 from today. I would suggest Center for Hawaiian  
10 Studies is one place. Of course, we offer over 30  
11 classes in Hawaiian culture. That would be a good  
12 place. Certainly, you should learn to speak our  
13 language, because the voice of the ancestors become  
14 more clear when we speak our own language. But you  
15 don't learn that from an artifact. If you would  
16 learn - if we were to say that we learn culture from  
17 looking at an artifact, then we could learn it from  
18 looking at the photograph of the artifact just as  
19 easily as we could the artifact itself. And if we're  
20 going to follow Native practitioners and understand  
21 cultural - Hawaiian culture from the Native  
22 practitioners, then we should look to people like Pua  
23 Kanahele, who is a Native practitioner, who is a Pele  
24 worshiper, who is a renowned cultural expert, kupuna  
25 of Hawaii Island. Her advice to us and her teachings



1 to us is that the moepu belong with those iwi they  
2 were buried with. So once again I say please let  
3 them stay there.

4 For those of us who worship the 40,000 gods  
5 we're going to tell you that moepu belong with iwi.  
6 For those of us who are Christian who believe that  
7 moepu are not filled with mana necessarily, we look  
8 from the Christian point of view, we say, well, they  
9 probably have a different kind of value. There's  
10 going to be a difference of opinion, and I think  
11 you've heard it today. You've heard it yesterday.  
12 You've heard it for the last few years. There must  
13 be a space for those of us who are Native  
14 practitioners who say this is the way we believe.  
15 Now, the moepu come from the caves where people were  
16 Native practitioners. They weren't Christians. So  
17 let us leave that custom with how they practiced it.  
18 Let us leave those things with them.

19 There has been some suggestion that moepu were  
20 placed there after burial in order to keep them safe  
21 from kaahumanu (phonetic). And I really respect Papa  
22 Auwae if indeed he was the person who said that. I  
23 wasn't sure. I didn't even hear that until today. I  
24 respect Papa Auwae a lot. But there is no way of  
25 knowing that that is true, and I would rather err on

1 the side of caution to say we don't really know  
2 whether this was placed afterwards and let us make  
3 sure that they're there just in case they were placed  
4 there at the beginning when the bones were put in  
5 there.

6 I guess also I'd like to comment on a couple of  
7 other things. For those who feel that the caves  
8 should be opened and then the moepu brought out  
9 again, none of us who die today with our treasures  
10 want to have those taken away by future generations  
11 20 years, 40 years, 60 years, 100 years, 200 years  
12 later. Oh, isn't that an interesting ring this  
13 person is wearing. Oh, isn't it interesting what  
14 kind of clothing they had on. Oh, isn't it  
15 interesting that perhaps they took a carved idol into  
16 the grave with them. Let's take that out and  
17 understand more about it since we didn't know about  
18 it at the time. Especially, let's study the Native  
19 practitioners of, say, 2005 who died now, and don't  
20 tell anybody what they're doing and don't show the  
21 carvings they've taken to the grave with them.

22 If it goes to the grave, it should be respected  
23 as part of that grave, whether it was 200 years ago  
24 or whether it is today. And again, I would like to  
25 point out we're not allowed to dig up missionary

1 bones and find out if they had some strange disease  
2 and do osteological analysis and take their  
3 treasures. Did they wear a silver cross or did they  
4 wear a gold cross? These are things Hawaiians need  
5 to know. We don't do that because it's  
6 disrespectful, same thing here. So please let's let  
7 the moepu stay where they are.

8 I'd also like to call for the Volcanoes National  
9 Park to return any of the so-called Forbes Caves  
10 moepu that they have. Those are stolen. It's not  
11 good to keep stolen things. Of course, at the  
12 Volcanoes National Park, they of all people should  
13 know that Tutopeli (phonetic) has a long reach and  
14 they should take care of this and have those returned  
15 to the cave.

16 And let me come to the aspect of who is ali'i.  
17 You know, from the 1870s, Hawaiians chose to elect  
18 their national ali'i, Lunalilo. King Lunalilo was  
19 elected by the people. Later after him, King  
20 Kalakaua was elected by the people. No one has  
21 elected ali'i recently. I'd like to make that point.  
22 So those who say they choose to speak on behalf of  
23 the Hawaiian people as our ali'i, I didn't elect  
24 them.

25 And then finally, I know today – I have to go

1 back to work, but you're going to talk about the  
2 definition of a Native Hawaiian organization. A  
3 Native Hawaiian organization, in my opinion, should  
4 be by Native Hawaiians. It should be led by Native  
5 Hawaiians. It should be staffed by Native Hawaiians,  
6 and it should be by those people who ala (phonetic)  
7 Hawaii. The Bishop Museum is not a Native Hawaiian  
8 organization. It will claim to be, I'm sure, later  
9 on. They are run by a non-Native who can't pronounce  
10 Hawaiian names who we've called for his resignation.  
11 We don't see cultural experts there at the highest  
12 reaches. We see them at the bottom, if at all. We  
13 see them mistreated. We see our ancestors mistreated  
14 there. And you can tell, actually, because we're  
15 still hearing the term idols.

16 So last, my conclusion I'd like to say that  
17 please keep in mind what are the difference between  
18 Western law and traditional customary rights, which  
19 NAGPRA is trying to make equal. And between  
20 Christian and traditional religious practices because  
21 I think that is at the heart of this matter and that  
22 should be considered. I thank you very much.

23 VERA METCALF: Thank you for your comments and  
24 for the prayer. And I'm not sure of the other  
25 person's -

1 LILIKALA KAME'ELEIHIWA: Questions? Any  
2 questions? I thank you.

3 TIMOTHY MCKEOWN: The last two names that I have  
4 are Dutchie Kapu Saffery and Attwood Makanani.

5 **DUTCHIE KAPU SAFFERY**

6 DUTCHIE KAPU SAFFERY: Aloha, and thank you very,  
7 very much for being here. I know that this is out of  
8 the norm for you and truly. I come as a Native  
9 Hawaiian on behalf of myself and my own family.  
10 We're not claimants but I have had the good fortune  
11 of sitting in your meeting held in Washington, DC in  
12 September. And truly I was there totally by mistake.  
13 I was en route to the opening of the Indian museum  
14 and my good fortune was having run into Van Horn  
15 Diamond at the airport, thinking that he was coming  
16 to the same grand affair only to learn that there was  
17 a NAGPRA meeting being held and that this meeting was  
18 only held twice a year. And though I had all of  
19 these commitments to do things in Washington with  
20 nine people that I had brought, this was most  
21 important for me to attend.

22 I went there and I sat in the back of the room  
23 and I witnessed Hawaiians that I identified to but I  
24 did not know them. And as I sat back there, I could  
25 see that there was a relationship and I didn't know

1 anyone. I was totally a greenhorn to this meeting  
2 and also to even what NAGPRA really was. When I left  
3 that meeting I was quite concerned because I felt and  
4 I heard Hawaiians who were speaking, and they  
5 certainly had the right to, but that was not my  
6 heart. It was theirs and I respected that.

7 I come here today because I have sat in the  
8 second day of meetings, witnessing the same thing  
9 that I did in Washington. And I'm not accustomed to  
10 speaking. My kupunas, my parents were not. But I  
11 come because I need to speak for what I know my  
12 parents would have wanted, though they would not have  
13 come to this mic. There are many Hawaiians who sit  
14 behind me, who like myself are ashamed to come  
15 forward. But may I say this, I am a Christian. Our  
16 state is known as the Aloha State, and that is love.  
17 That is the Hawaiians that I grew up with, and we are  
18 from all islands.

19 The Hawaiians that I know are forgiving, loving  
20 people. That is our blood. This anger and this  
21 disturbance that I feel among my own kind, it pains  
22 me to see that, and I pray that the healing will come  
23 amongst our people. And your presence here, I've  
24 witnessed things that have been said earlier, using  
25 the mana, and I know that it's powerful because it

1 has happened to me through hula. But may I say this,  
2 that as these words are being said by Hawaiians the  
3 prayer that I place over and above what has been said  
4 is to our ka'akua (phonetic) to protect your walk,  
5 your journey, because you come here with an open  
6 heart to help us as a people. You come here to hear  
7 our story. That's why you chose to come to Hawaii,  
8 because you did not hear the people of Hawaii. You  
9 heard a group speaking for the Hawaiian people. And  
10 I thank you, because I speak for the Hawaiian that I  
11 know that loves and forgives and the Hawaiian that I  
12 know honors the ali'i. And the ali'i who remain  
13 today, our people know who they are and we honor  
14 them. Thank you very much.

15 **VAN HORN DIAMOND**

16 VAN HORN DIAMOND: This is getting to be a habit.  
17 Hopefully it will be done.

18 E olu olu mai iku hai Rosita Worl and then Vera  
19 Metcalf as the acting iku hai and Elele of the NAGPRA  
20 Review Committee. Aloha kakou. My name is A. Van  
21 Horn Diamond and we've talked before, and I'm  
22 appreciative of the fact that we can come again to  
23 talk about the subject that you've chosen to rehear,  
24 that is the 2003 NAGPRA determination of the issue  
25 involving in the Royal Academy of Traditional Arts

1 and the Princess Bernice Pauahi Bishop Museum.

2 The 2003 determination in effect affirmed, one,  
3 that the repatriation process was flawed and  
4 warranted correction in terms of repeating same so  
5 the proper repatriation occurs, and two, that the 83  
6 items loaned to, buried by, and refused to be  
7 returned by Hui Malama I Na Kupuna O Hawai'i Nei be  
8 retrieved so to implement the non-flawed  
9 repatriation.

10 This rehearing seemingly was prompted by Hui  
11 Malama alleging its participation in the 2003  
12 proceedings was somehow prevented, that repatriation  
13 was completed/concluded and any claimant relief  
14 required court adjudication. Testimony has been  
15 provided by Messrs. Duckworth and Kaulukukui of the  
16 2000-2002 museum administrative regime.

17 Accordingly, the Diamond Ohana asserts the  
18 following stance:

19 One, the 2003 NAGPRA Review Committee  
20 determination is herein endorsed with a request for  
21 its implementation be carried out in a most  
22 expeditious manner. Further, we recommend  
23 enforcement or follow-through in this regard be  
24 promptly undertaken, and should it be deemed  
25 warranted, court prosecution sought and implemented.



1           Two, there is no change in the cause, reasons  
2           for the 2003 determination. Ergo, the determination  
3           should not be modified one iota. It needs to be re-  
4           endorsed by this honorable committee.

5           Three, Hui Malama should not be accorded any  
6           special privileges over the fact that it failed to  
7           participate in the 2003 Review Committee proceedings  
8           in Minnesota. All claimants had the equal  
9           opportunity to attend and participate in the  
10          proceedings. The agenda was known to this Ohana  
11          claimant. However, we could not afford to attend.  
12          Noteworthy too is the fact that this Diamond Ohana  
13          traveled at its own expense to the NAGPRA Review  
14          Committee meetings in Tulsa, Oklahoma, May 30 through  
15          June 1, 2002. And in Tulsa, the record shows we  
16          tried to communicate our grave concerns regarding the  
17          questionable actions of the museum in dealing with  
18          this situation of Kawaihae. In fact, we basically  
19          confirmed that the processes of claimant recognition,  
20          claimant consultation, the right to inspect the  
21          items, the handling of the recall and retrieval, and  
22          even the way the so-called repatriation came about  
23          were each flawed and highly questionable. Hence, the  
24          repatriation came about – hence, the Diamond Ohana  
25          saw the 2003 determination as responsive to the Tulsa

1       communicated concerns regarding how poorly the  
2       Duckworth/Kaulukukui Junta of the museum handled the  
3       Kawaihae matter.

4               Four, this factor centers on two facts. Except  
5       for the Hawaii Island Burial Council, the Hawaii  
6       State Department of Hawaiian Home Lands, Hui Malama I  
7       Na Kupuna O Hawai'i Nei, and the Office of Hawaiian  
8       Affairs, no other recognized claimant had the chance  
9       to inspect the 83 items to affect, with their own  
10      manao, respectively, what the 83 items should be  
11      categorized. Why? Because the 83 items loaned to  
12      Hui Malama were buried before the remaining claimants  
13      were recognized. Further, the statutory right to  
14      inspect has never been accorded this Diamond Ohana  
15      because the items are buried and the museum under the  
16      Duckworth/Duarte/Kaulukukui administration failed to  
17      retrieve them despite this call by claimants, early  
18      on, for their return.

19              Consultation failed to access the manao of each  
20      recognized claimant, especially in terms of one-on-  
21      one context per claimant and per each of the 83  
22      items. In fact, there was no known individual  
23      claimant consultations to our knowledge. There was  
24      none with the Diamond Ohana. Moreover, the  
25      collective consultation centered mainly on the

1 retrieval, very little on the repatriation per se.  
2 The point here is that this slaps the NAGPRA Review  
3 Committee determination regarding the importance of  
4 consultation and the application of same within the  
5 individual and collective context. And I go back to  
6 the point that I did earlier this morning that around  
7 this time, the Hopi Indians versus the National Park  
8 Service, the issue was on consultation. The issue  
9 was on cultural affiliation, and that it had to be  
10 one on one per claimant per item in addition to  
11 global consultation. And here is flaunting in your  
12 face a contrary position made by the museum at that  
13 point in time.

14 Many have spoken profusely about the hewa, the  
15 wrongdoing committed in terms of the desecration of  
16 the cave by Forbes, etcetera. But it appears that it  
17 is equally acceptable behavior and ethical to perform  
18 the following. With premeditation, to obtain under  
19 questionable circumstances 83 items in a loan  
20 arrangement from the museum and to subsequently bury  
21 them with the rationale of correcting the prior  
22 misdeed. Then when asked to return the items, there  
23 is refusal. Also, the collusion of the Department of  
24 Hawaiian Homelands, which continues even until today,  
25 the eight to one vote is really interesting, isn't

1       it? And that was a great question that you asked  
2       about whether or not they are attempting to be  
3       adjudicating on the issue.

4               The point here is the loanee in the commission  
5       of the reburial, in the pronouncement that there  
6       never was any intention to honor the loan  
7       arrangement, in the clear declaration that there  
8       would be no honoring or regarding the requests by the  
9       majority claimants and the museum subsequently, it  
10      appears there is being affirmed that they are the  
11      only ones with the exclusive franchise to do whatever  
12      they wish when it comes to the repatriation of  
13      ancestral remains and artifacts. It is also  
14      interesting that the justification employed is a  
15      combination of self-developed meanings and words in  
16      tandem with the subtle use of the scientific and the  
17      law. Frankly, the tandem technique works and the  
18      user needs to be congratulated. But the thesis that  
19      an organization can pre-empt family kuleana or to  
20      presume to act as the Hawaiian community whenever it  
21      is in its self-interest, as it defines it, is not  
22      acceptable, not to the sovereignty of this family.  
23      When this happens, the sovereignty of the family and  
24      each member is at risk and depreciated. It is an  
25      unwelcome imposition.

1           The refusal to enable the items to be  
2           appropriately determined as to disposition by  
3           claimants to whom the items might be repatriated is  
4           likewise hewa. It may also ultimately translate into  
5           a violation of law comparable perhaps to theft. If  
6           so, the law breakers may just need to be prosecuted  
7           and incarcerated. But of course, they may see  
8           themselves above the law. And those who aid and abet  
9           them may see themselves also above the law.

10           In closing, please note the Diamond Ohana looks  
11           forward to the time when all recognized claimants are  
12           enabled to inspect the items, to work together in  
13           determining the appropriate classification for these  
14           items. How can we determine that they are moepu when  
15           they're all buried and the determination was made  
16           before the claimants came on board? That's really a  
17           challenge. I mean, because it's done, I think – if I  
18           recall correctly, it's done by a preponderance of  
19           evidence.

20           Now who made the preponderance of evidence  
21           determination and what information? It wasn't done  
22           to the 13 claimants that came subsequent. It was  
23           already established, just like it was – when we asked  
24           for the return, we got a game – we got a game plan  
25           which I labeled "The Jumanji Safari," because it

1 would take them longer than it took to bury them. It  
2 took them seven days to bury. Presumably it would  
3 take ten days to bring them out. The proposal that  
4 they've put forth would take six months before you  
5 ever got to the cave. Sorry. I'm going off. After  
6 appropriate consultation – okay, to work together in  
7 determining the appropriate classification for these  
8 items. To have the items available for all of us to  
9 codetermine their final disposition, after  
10 appropriate consultation and processes leading to  
11 repatriation are completed. Until then and more  
12 immediately, we respectfully and strongly urge  
13 favorable Review Committee response to upholding the  
14 2003 determination, as well as finding ways to bring  
15 about constructive closure to this matter.

16 And I found this while I was – and I decided to  
17 bring it along. One of the other hats I happen to  
18 wear is that I am the chairman of the Oahu Island  
19 Burial Council. And so sometimes we have similar  
20 kinds of discomfort. So I appreciate what you're  
21 doing. This is a colleague. She is the chairman of  
22 the Kawaii Island Burial Council. She wrote this in  
23 June 2003 in the Office of Hawaiian Affairs. I will  
24 read only the final phases of it. It serves as a  
25 guide for me in how I attempt to serve the people as

1 chair and as the Koana (phonetic) District rep for  
2 o'au (phonetic). But it also serves as a guide when  
3 I look at – hopefully look and then talk with family  
4 in dealing with some of these things.

5 It begins, my tutu wahine lived to the age of 98  
6 years. Our prayers were answered. She lived to see  
7 me to adulthood, a wife and also a mother. How  
8 important her teachings have been to me. It has  
9 allowed me the ability to discern in a quiet, still  
10 way the voice of our kupuna. When they allow  
11 themselves to be found through development or natural  
12 causes, the following advice is given: We do not use  
13 them for personal hidden agendas. We do not use them  
14 as power brokers in deciding merits of project  
15 development. We must acknowledge them as individuals  
16 who were born and from whom we descend. We must  
17 continue to distinguish genealogical connections  
18 direct or indirect so individual healing of the ohana  
19 can occur within the context of the process. We need  
20 to allow for the perpetual knowledge and care for the  
21 iwi in the area of Kanu (phonetic), thereby lessoning  
22 the kuleana for our children. We need to focus on  
23 the next generation's responsibility to the living,  
24 but always with respect of those gone by. May we  
25 continue to acknowledge issues that binds and builds

1           us as Native people instead of issues that divide us.

2           I want to – I also choose to respond to  
3 something else. Yes, there are some people that are  
4 Christian, and yes, there are some people that are  
5 practitioners. What I am is nobody's business, but  
6 my sovereignty it says that I am aware from my own  
7 family and from others about the old ways, and I  
8 still live by them and I still respect them. I  
9 considered myself a defrocked Roman minnow muncher  
10 (phonetic). And I practice more being a Hawaiian  
11 than anything else.

12           So therefore, with profound respect, for the  
13 Diamond Ohana and for me personally, we extend to  
14 each of you, Honorable Chairperson Worl and Honorable  
15 Committee members, our appreciation for you spending  
16 your time in addressing Hawaii concerns. It's not an  
17 easy chore and great respect is extended to all of  
18 you. It's a hard road. In our own little ways,  
19 we've been there.

20           Under the – I want to also change hat for a  
21 minute and say as the Chairman of the Oahu Burial  
22 Council, the Native Hawaiian organization definition,  
23 I want to recommend to you and I'll provide a copy of  
24 the administrative rules. There are definitions of  
25 lineal and cultural descendent that elaborates for



1 families to come forward. And then – and also  
2 another definition for organizations that might be  
3 helpful when you're looking at how Native Hawaiian  
4 organization, that definition might be able to be  
5 elaborated upon or expanded somewhat. Because  
6 standing alone when you lump all together all those  
7 that are not lineal that have come forward by  
8 genealogy to be family, along with organizations, and  
9 they only have coequal status as a result. Whereas,  
10 maybe in this kind of approach, family will have a  
11 greater latitude and consideration, even though they  
12 may not be lineal. And so I would like to offer  
13 that, changing hat for a minute, and I thank you very  
14 much for your attention.

15 VERA METCALF: Thank you.

16 **ATTWOOD MAKANANI**

17 ATTWOOD MAKANANI: Aloha kakou. My name is  
18 Attwood Makanani, and I am here to speak on behalf of  
19 the Protect Kahoolawe Ohana, in particular Kawaii.  
20 I'm a member of Hui Malama I Na Kupuna, and since  
21 1977 when being arrested on Kahoolawe because of a  
22 desecration by the United States military forces in  
23 bombing the graves, archaeological work, removal,  
24 some of those historic properties, some of those  
25 kupuna, those moepu, those sacred ki'i pohaku la'au

1 are in the Bishop Museum. I've been fortunate  
2 through my years to have participated in a  
3 ho'oponopono process in the repatriation and  
4 returning of some of the human ancestral remains back  
5 to Kahoolawe.

6 We have been trying as practitioners; we have  
7 been trying as traditionalists by all of the elders,  
8 especially from Molokai from the different islands.  
9 And as I spoke earlier, representing the Island of  
10 Kawaii, that is where I was born, but meeting the  
11 rest of the family on Kahoolawe throughout our  
12 pi'aina (phonetic). It was the common need in, I  
13 guess, for some saying being reborn again as a kanaka  
14 maoli and learning from the last generation of living  
15 traditional elders and kupuna, it was shared on how  
16 to peacefully try to arbitrate, mediate, ho'oponopono  
17 some injustice.

18 In the discussion that you have been listening  
19 to and for me coming now and sharing has been this  
20 constant theft. And part of the wrong is a continued  
21 wrong because in an act of war, a lot of the laws  
22 when we are trying to interpret, always subject to  
23 interpretation, how we present the law is where as a  
24 traditional practitioner, our law in our religious  
25 beliefs and practices, especially when we're going

1 back to the 1700s and the 1600s, has created a very  
2 difficult situation on how acceptable the behavior by  
3 the society is in laying judgment on pono, what is  
4 right as a traditional practitioner and what is  
5 wrong. And who is to determine or recommend what is  
6 in our best interests as kanaka maoli here in our own  
7 homeland.

8 Kahoolawe has taught us that we have been able  
9 for those since the closing of the last hundred years  
10 in the last 30 years to try and address an illegal  
11 act of war, an illegal occupation by a government in  
12 a society that continues by some that I have heard  
13 claim to be terrorists. I've heard this hostage-  
14 taking situation and it is as if it continues. Our  
15 kupuna iwi, all those sacred things that have been  
16 left as kuleana for us as a generation that is living  
17 now have been questioned, and it has been very  
18 difficult without offending anyone. And we have been  
19 repeatedly trying.

20 As a member of Hui Malama, the intent was the  
21 lack of participation, actively, by other families to  
22 address a need. Coming as a member of Kahoolawe, we  
23 were able to participate in stopping what happened at  
24 Wanakahua (phonetic) and eventually creating part of  
25 the burial program where NAGPRA was part of that.

1       The Indian American Religious Freedom helped The  
2       Protect Kahoolawe with a consent decree and  
3       consultation. In trying to respect our different  
4       family kuleana in how we need to be active  
5       participants, not just within the moepu and the  
6       burials and associated, but our religious rights that  
7       we have in ho'oponopono.

8           And I think some of those things that Bill Aila  
9       mentioned is why I'm here. In saying that those are  
10      very key elements that are not really being  
11      addressed. And I guess it is, because here we find  
12      Hawaiians coming before you, that are guests, and  
13      expecting you as our guests to come up with a  
14      solution for us who are the hosts. How we behave  
15      amongst ourselves when Hui Malama began was knowing  
16      that in time more families would be stepping forward.  
17      It was part of an educational process to take care of  
18      a kuleana and allow others to come forward and begin  
19      the discussion and application on the pono and  
20      ho'oponopono process to malama our own kuleana.

21           The fact that you are here hopefully reminds us  
22      that the solution isn't with you, but it's actually  
23      with the family. You have helped us to be able to at  
24      least share individually how much and deeply we're  
25      affected and care about our family kuleana. And I

1 hope that what we have been trying, especially with  
2 Hui Malama, with other organizations, with other  
3 families for me as a practitioner, has been on the  
4 honua, the earth, our pi'aina is just a small pu'u on  
5 the honua, and part of that kuleana has been to  
6 malama the pono and to ho'o the pono.

7 I as a practitioner have been able to work with  
8 other organizations and families here, in being able  
9 to rededicate and build ahu. And yet at the same  
10 time on Kahoolawe with the military occupation have  
11 had our sacred ki'i stolen. Our traditional ki'i  
12 have been stolen. We have yet been able to bring  
13 them back. Those family members that have come  
14 forward to continue in the traditions of the ki'i. I  
15 am a konohiki, a fisherman, part of the carrying of  
16 the ku'ula and the hiena stones and the fishing and  
17 the koa have been part of that kuleana. And yet as  
18 we continue, because we have yet to repatriate and to  
19 return our sacred ku'ula and our ki'i, we have had to  
20 try to malama that pono and to continue within our  
21 family tradition to bring out the new ku'ulas. Those  
22 have been stolen on Kahoolawe during the military  
23 occupation, and now from their money a new created  
24 state government.

25 There are many other violation that continues.

1 My kuleana in '95 was as a cultural consultant to  
2 work for the state in bringing back the cleanup  
3 process. I was in charge of all of the burial sites  
4 on Kahoolawe, as well as all the sacred sites that  
5 were being used for ceremony. Those are some of the  
6 issues that in the consultation that we have found  
7 ourselves yet to go to the Bishop Museum and address  
8 how is NAGPRA going to help the Bishop Museum to  
9 understand what our kuleana is on how we  
10 traditionally ho'oponopono and malama the pono within  
11 our families.

12 I do not believe that you can find the solution.  
13 There is the law that you seem to be bound by. We  
14 have a traditional law that we also are bound by.  
15 There are the interpretations that try to look at  
16 jurisdiction. We have a kuleana that looks at  
17 jurisdiction before you have arrived with your laws  
18 and your jurisdiction. If it is illegal, then how  
19 can I look at somebody who is a thief, who has stolen  
20 everything and who now says that he has the law and  
21 the answer to be a solution. We are the evidence; we  
22 are not the crime. We are the hosts; we are not the  
23 guests. We are the solution; we are not the problem.

24 There are other families that are here. The  
25 greatest nation on earth, the United Nations, by my

1 brothers on Great Turtle Island, sometimes I have a  
2 very difficult time when I look at what I have been  
3 labeled as a Native American or a Native Hawaiian,  
4 for the sake of recognition. I am a kanaka maoli,  
5 and I have a hard time believing that a gentleman in  
6 a boat who arrived on the Great Turtle Island, who  
7 thought he was in India, who called Indians Indians,  
8 today are sovereign Indian nations or Native American  
9 Indians. Before they were Americans and before they  
10 were Indians, they were already First Nation people  
11 on Great Turtle Island.

12 And I truly believe that we need to look at  
13 expanding where we have been and not repeating the  
14 same mistakes but look, not just at those points in  
15 history where the greatest lessons have been learned  
16 and maybe in the 1700s where Kamehameha in a family  
17 dispute rippled in a pond and washed out on the  
18 pi'aina where today we have yet to ho'oponopono. We  
19 can see what Kukaheiliimoko (phonetic) has done, not  
20 just in a war within our own family, but in the  
21 world. It's out. And I think that the answer might  
22 lie – before the 1700s, before Christianity, before  
23 Buddha and before everybody came and we have become  
24 something we set out not to become.

25 So I truly hope, like others, my brothers and

1 sisters from Great Turtle Island, who have flown here  
2 to try and look how as Native Americans or Native  
3 American Indians this review process or NAGPRA is  
4 going to really address solving a problem which  
5 American created and I think America needs to return  
6 what is not theirs as a thief. And I think that we,  
7 within our families, hopefully one of the last things  
8 we need and we seem to be working towards is to  
9 malama the pono. Our kupuna are here. Our moepu are  
10 here, but it is for us to be pono and to never forget  
11 to ho'o that pono in this pu'u on this honua.

12 And with that I look forward to working with the  
13 rest of the families. It was never the intent to own  
14 or for money to buy or to pay or to play politics.  
15 It was to address a need within the family that no  
16 one was willing to come forward. More have and that  
17 is maikai. It is an indication that we are healthy  
18 and we are alive. This is ho'opapa. This is a time  
19 to kuka. This is not just wala'au, but this is our  
20 kuleana.

21 VERA METCALF: Excuse me. Could you please  
22 summarize?

23 ATTWOOD MAKANANI: And I hope that you folks make  
24 some good decisions in listening seriously to what is  
25 our kuleana and not yours. Malama pono.



1 VERA METCALF: Thank you very much.

2 TIMOTHY MCKEOWN: Madam Chair, I know that we're  
3 running a little bit late, but I realize that I've  
4 overlooked one name on my list and I want to  
5 apologize to Kehaloha Kuhea and ask that you provide  
6 him with a short amount of time that he can address  
7 you as well, and I apologize to him.

8 VERA METCALF: Yes.

9 **KEHALOHA KUHEA**

10 KEHALOHA KUHEA: Aloha. Aloha to this committee.  
11 In 1999, there was another committee like this from  
12 Washington.

13 VINCAS STEPONAITIS: If you just speak closer to  
14 the mic, I think that might -

15 KEHALOHA KUHEA: In 1999 - oh, I don't need that  
16 mic. In 1999, there was another committee like this  
17 over here. That committee was from the Department of  
18 Interior asking for reconciliation. We gave  
19 testimony to Washington and I was on the agenda for  
20 speak. At that hearing, lot of Hawaiians came out,  
21 they gave their manao about reconciliation about the  
22 new government, creating our government. What boiled  
23 down to that committee was the draft report from  
24 Mokatumakai (phonetic) and out of that draft report  
25 from Mokatumakai came out of Makakabu (phonetic). We

1 all was against Makakabu because we was looking for  
2 recognition to stop an Hawaiian government, not to  
3 become one, quote, Indian nation. I don't dance to  
4 the tom-tom drum, and I don't dance to the feathers  
5 in my head and I call myself a Cherokee or a Wichita  
6 or a Usage Oklahoma.

7 I am Native Hawaiian and I was born here in  
8 Hawaii. As far as Makakabu goes, we're the Injuns,  
9 oh Lordy, they don't have genealogy. Who they guys  
10 are? The NAGPRA Act was created for the Indians  
11 without genealogy and when the law came to Hawaii, lo  
12 and behold, we had genealogy to crap on the NAGPRA  
13 Act, to tell the Indians, we know who our ancestors  
14 are, where yours? Lot of them have treaties and when  
15 they look at the treaty, they cannot even recognize  
16 who signed the treaty for them. We can recognize our  
17 own ancestors' writing. We know who they are. My  
18 one, the probate record states who was they married  
19 to, who was they children. My two, you also have a  
20 descendent come in there who was right here standing  
21 in front of you, as all these other people was here,  
22 making their requests, and this was in 1999. Thank  
23 you for hearing me.

24 Now we coming up to the Forbes Cave collection  
25 in the year 2000, according to my claim. I was one

1 of the ten families denied, denied. I wasn't even  
2 allowed to enter the door because Donald Duckworth  
3 and Valerie Free at that time says Kehaloha is a  
4 China man, he doesn't belong here. Lo and behold.  
5 Lo and behold, the document states that I'm a Native  
6 Hawaiian, I'm on the homestead list right now with a  
7 50 percent documentation.

8 Under the NAGPRA Act, when Hawaiians come up and  
9 we say that we can lay claim to Section 2, article  
10 10.1, we using genealogy. We're not using Indian  
11 documentation. We're not using treaties from America  
12 with the Indians. We using document to show that  
13 this is who we come from. If you can make your  
14 (comment inaudible) to 1848 in Mahele from 1905 going  
15 back to 1848 is what, some 42 years, 45 years, and  
16 you cannot find your grandparents in 1848, then I  
17 guess you're not part of the Mahele system. Mahele  
18 has been recorded. That's why the chiefs at Konohiki  
19 are there, the ali'i system are there; they're  
20 recorded. Kanaka maoli, the common citizens are not  
21 there. They is Native tenants under the chiefs. We  
22 know who they are. We are the control of all the  
23 Native tenants. This is 1848.

24 Go back to Kamehameha, 1800, when he died, we  
25 still have records of who we was, 1800 when he died,

1 and we still have records of who the chiefs was that  
2 he killed, Kamehameha. Part of the Forbes Cave  
3 collection, what they call the crown lands was given  
4 to Kamehameha III. That was his own lands. And  
5 another portion of Forbes Cave collection in Kawaihae  
6 was Keoniana (phonetic). He owned the other half.  
7 Those two are family members of our family and those  
8 two was never, and I say this, never part of the  
9 American system in 1905. When you go back to the  
10 title report, 1905, before homestead was created,  
11 that land belongs to that family, Kauikeaouli's  
12 family. Those artifacts that came out of those caves  
13 belonged to that family. They owned the land, they  
14 owned the cave, and they owned the artifacts that  
15 they put in the cave.

16 The Bishop Museum wants to say that this is  
17 funerary objects, I say that no way, (comment  
18 inaudible) of your ancestor who worshiped that as a  
19 God to be put away as a funerary object. They put  
20 away for safekeeping because that portion of that  
21 property, the two properties only belonged to two  
22 family members, nobody else had (comment inaudible)  
23 over there. According to Bishop Museum and Herb  
24 Kane, 1921 Homestead Act gave them, quote/unquote, a  
25 title from the Department of Interior to tell what,

1 to tell me the Hawaiian that I cannot go on their  
2 property because one white man gave it to another  
3 white man and the two white man telling me, Kehaloha,  
4 you cannot go on that property because I have a  
5 paper. Where's your paper? You go back and you look  
6 at the title of transfer.

7 Who will transfer what to what, or should we  
8 say, under the RICO Act, who conspired to steal from  
9 the certain family, Kamehameha III and Keoniana  
10 (phonetic). Part of the RICO Act today, you still  
11 have the same white man telling the same Hawaiian  
12 people like me, you don't have a claim because you're  
13 China man. We use documents. We don't use bull.  
14 When we come up under NAGPRA, section 2(10)(i) we  
15 stated as our version of the Native Hawaiian, we can  
16 relate to 1778. 1778 is when Cook came. You guys'  
17 Constitution was 1776, two years difference. Why you  
18 guys want to put us later than you people. Do you  
19 know for a fact that Kamehameha was born in 1736.  
20 Kekauliki died in 1735. We gave you this history.  
21 Why is that not in you guys' Constitution? Because  
22 you guys are not part of the Hawaiian kingdom.  
23 You're quote/unquote revolutionaries from you guys  
24 own country. You guys wipe out the Indians over  
25 there. You guys come here and you guys like wipe us

1 out. The only thing that save us from the Indians,  
2 genealogy and palapala.

3 I came home in 1997 to create my family's  
4 genealogy after my brother died. I live in San  
5 Francisco and I live in Campbell County. In fact, I  
6 live on the Hoopa Reservation with a lady by the name  
7 of (comment inaudible) and Jessie Shot (phonetic),  
8 who live in Eureka. I painted Jessie Shot's house.  
9 Most of you know that Jessie Shot versus United  
10 States. She won a whole lot of cases for her  
11 Indians, the Hoopas, and I live on that reservation  
12 for five years. I know what is Indian law and I know  
13 what the Indians do.

14 So for you to tell me under the Federal  
15 guideline that I got to be an Hawaiian organization  
16 or an Indian organization, what happened to who's the  
17 owner of the property, who the property got taken  
18 away from, what happened to that ohana? The property  
19 was given in Mahele. If they sold the property, then  
20 they sold the property and that's what the title  
21 states. The Hawaiian Homeland now today under the  
22 Federal guideline, they still under the Department of  
23 Interior. Why don't they wash their hands and return  
24 the property back to their original owners. That  
25 (comment inaudible) of war or the Federal government?

1 Well, return what you stole to that world and that  
2 world would be gladly to take care of his ohana and  
3 his family artifacts to keep – the Americans to keep  
4 their hands out of the Hawaiian (comment inaudible).

5 Every family has a problem here, every family.  
6 I have a problem too. I have a problem with Office  
7 of Hawaiian Affairs. I think the guy's name was  
8 Colin Kippen, Assistant Administrator for the Office  
9 of Hawaiian Affairs. Right now he's working for  
10 Senator Inouye. That man had told me that my father  
11 was a China man and I told him straight, fuck you,  
12 asshole. He turn around. He prosecute me for  
13 swearing at a public official. But when I asked that  
14 man for a document to show that my father wasn't a  
15 Hawaiian, a birth certificate, a death certificate,  
16 he press charges on me, and for insulting me, for  
17 telling me that my father was a China man, I'm not  
18 going to believe your father's birth certificate, I  
19 called him a – I swore at him because I had the  
20 document in my hand and I wanted to see him document.  
21 They arrested me, OHA. I'm filing charges against  
22 them, but we still not (comment inaudible).  
23 Discrimination is loud and clear here. I say,  
24 discrimination is loud, it's here.

25 You guys have no say whatsoever for the Hawaiian

1 artifacts. You guys should turn this over, back to  
2 the Department of the Interior and tell them go back  
3 to (comment inaudible), there's an ohana, Kehaloha  
4 Kuhea. We need to become the entity to start our  
5 government moving. I don't have to talk to you  
6 people. I told them to pack their bags and leave and  
7 I'll tell you the same. Once I become the entity, I  
8 tell America to get out. And quote/unquote, don't  
9 use the phrase, oh, I'm afraid of the Hawaiian man.

10 We give you guys ample notice, America, leave  
11 Hawaii now. Leave Hawaii now. Don't stay here and  
12 create one coalition government. We all know what  
13 the coalition government does. Take Iraq. We know  
14 that they was in good standing. We still come with  
15 palapala or proof that they committed weapons of mass  
16 destruction. We still knew by palapala when Colin  
17 Kippen say my father was a China man. And so that  
18 haole man there, he's weeping in Washington, DC, the  
19 guy who call himself P. Bush, yeah, he's weeping.  
20 He's a liar and he's a scum for lying to these  
21 people. He never lied to me because I already told  
22 American to fuck off. Excuse my language.

23 ROSITA WORL: Excuse me, please.

24 VERA METCALF: Thank you for the public comments.  
25 Are we pretty much wrapped up here? I think we're



1           due a break here. With that, I'd like to turn it  
2           over to you, Madam Chair.

3           ROSITA WORL: Okay. Thank you. Let us take a  
4           very short break, a ten-minute break and then we'll  
5           come back.

6           **BREAK**

7           VERA METCALF: Madam Chair, before you begin I  
8           would just like to remind everyone that the issues  
9           that are placed before us are very difficult to  
10          address and we appreciate the comments that we  
11          received earlier, public comments. We treat everyone  
12          with respect, and we also like to be afforded that  
13          respect in return. Thank you.

14          TIMOTHY MCKEOWN: There was one more person that  
15          came forward that indicated that I had skipped over  
16          their name or I had called it and they didn't come  
17          forward at that time. Would it be okay for them to  
18          address the committee?

19          ROSITA WORL: We want to hear from everyone who  
20          wants to have comments.

21          TIMOTHY MCKEOWN: Okay. And that would be  
22          Kanaloa Koko. And everybody needs to speak into the  
23          microphone, not for amplification but for the record  
24          because that's where the tape recording is coming  
25          from.

PRESENTATION OF EVIDENCE REGARDING DISPUTE BETWEEN  
THE ROYAL HAWAIIAN ACADEMY OF TRADITIONAL ARTS AND  
BISHOP MUSEUM REGARDING ITEMS FROM A CAVE AT  
KAWAIHAE  
PUBLIC COMMENT  
KANALOA KOKO

KANALOA KOKO: I'm Kanaloa Kanaina Kakino Koko (phonetic), the royal descendent of Queen Liliuokalani and ali'i nui for the crown order and affiliated to iwi claimant group Kaiwiolalo, which is my great-great grandmother's name. It means The Talking Bones of Hawaii.

Earlier when you said that there was a document on ownership of artifacts or ownership of Hawaiian properties, when the King Kamehameha formed the unification with the chiefs and they gave up their rights to make Hawaii civil so they wouldn't fight with each other, the chiefs, and claim that as a kingdom, they – in his power they put everything under his ownership. This is documented from Kawaii to the big island. From then on when the monarchy is formed that's one document of ownership of possession. And in the Great Mahele, when King Kamehameha III makes the Great Mahele, he also makes a document of ownership to the subjects and the

1 Hawaiian people of their undivided one-third interest  
2 in the kingdom. And that is still recognized today.  
3 And that United States hold the crown lands and the  
4 public crown lands that were recorded as lease trust  
5 lands.

6 These lands that the Forbes collection artifacts  
7 were found were before the Hawaiian Homes, which is  
8 in 1920. So the ownership, like I say, still belongs  
9 to the monarchy and the people of Hawaii. They still  
10 hold their interest in whatever is found, bones or  
11 artifacts in Hawaii. Our group is a claimant for the  
12 people of Hawaii for their one-third interest and the  
13 crown's interest in all of artifacts or bones  
14 discovered in Hawaii.

15 When this came about, we formed the crown order,  
16 just before these claimants, and I was a late  
17 claimant. And my concern was – and I wrote a letter  
18 to the attorney general, Hawaiian Homes, and  
19 Mr. Brown – that under the rules of NAGPRA because  
20 these were on loans that these objects were in  
21 imminent harm, which is in your document, and I was  
22 concerned that these objects, if they were  
23 repatriated, would be stolen. And this was addressed  
24 to him before it got stolen. And that's why we have  
25 this problem today, that I've made a request that I

1 was concerned and that I wanted to view these things,  
2 making a late claim for the people of Hawaii. In the  
3 NAGPRA Act I had a right, and the people of Hawaii  
4 have a right, to view any articles that was going to  
5 be reinterred, because they were on loan we still had  
6 that right to come forward to view these articles.

7 So for the people of Hawaii and the crown, we  
8 would like to view, under the NAGPRA act, the  
9 articles that were repatriated that were on loan.  
10 Thank you very much.

11 VERA METCALF: Thank you very much. Is this  
12 final? Thank you. Rosita.

13 ROSITA WORL: Thank you very much, Vera.

14 First of all, I want to thank everyone for their  
15 great testimony. Each and every one of you have  
16 offered us very valuable information. And I know at  
17 times people felt very intense, very emotional about  
18 your positions. And this is a good thing. It's a  
19 good thing because it says that we feel very strongly  
20 about our culture, our ancestors, and the things of  
21 our past. It's a good thing.

22 This NAGPRA law may be a flawed law but it is a  
23 good law because it allows us to have this kind of a  
24 discussion. Prior to 1990, American Indians, Native  
25 Hawaiians did not have this kind of opportunity to

1 even engage in a discussion where we might be talking  
2 with museums and Federal agencies and expressing our  
3 cultural values and the rights that were accorded  
4 under NAGPRA. It's not a perfect law but for now  
5 it's a good law for us, and we still seek to improve  
6 it in ways that we are able.

7 So I want to again just to thank you for all of  
8 your testimony. And I could assure you that this  
9 committee will weigh all of the material that has  
10 been provided to us, weigh all of the testimony that  
11 has been offered, and do our very best within the  
12 constraints of this less than perfect law to come to  
13 a fair decision.

14 And with that, I know that we're behind time and  
15 I do apologize for – to our next person because I  
16 think we have kept him waiting. And I would like to  
17 invite him at this point in time. And this committee  
18 has put on its agenda a discussion of the statutory  
19 definition of Native Hawaiian organizations. This is  
20 an issue that came before the committee. We are not  
21 saying that we are certainly going to be in the  
22 position to try to offer a definition, but perhaps we  
23 could support a process in which Native Hawaiians may  
24 be able to advance that definition through Congress.  
25 And with that, I'd like to ask Colin Kippen to come

1 forward.

2 **DISCUSSION OF THE STATUTORY DEFINITION OF NATIVE**  
3 **HAWAIIAN ORGANIZATION**

4 **COLIN KIPPEN**

5 COLIN KIPPEN: Aloha kakou to Chairperson Worl  
6 and the members of the NAGPRA Review Committee, to  
7 Dr. Hutt, to Dr. McKeown, and the other National Park  
8 Service staff, and to all of the others who are in  
9 attendance here today. My name is Colin Kippen and I  
10 am former senior counsel to Senator Inouye on the  
11 Senate Committee on Indian Affairs. I recently left  
12 the employ of the committee after Senator Inouye  
13 relinquished his position as the committee's vice  
14 chairman. Senator Inouye now continues to serve as a  
15 member of the Senate Committee on Indian Affairs, a  
16 committee he has led and served on for many years.

17 Dr. McKeown has asked that I briefly address the  
18 committee in my newly acquired civilian capacity to  
19 provide some context on a hearing Senator Inouye and  
20 the committee held here in this same room on December  
21 8, 2004. That hearing was Senator Inouye's last  
22 hearing in his role as the vice chair of the  
23 Committee on Indian Affairs. The purpose of that  
24 December 8<sup>th</sup> hearing was to address concerns expressed  
25 to the committee that the NAGPRA act definition of

1 Native Hawaiian organization warranted further  
2 consideration and possible amendment.

3 Our December 8<sup>th</sup> hearing was preceded by a NAGPRA  
4 workshop for the Hawaiian community and State and  
5 Federal agencies sponsored by the Senate Committee on  
6 Indian Affairs on November 11<sup>th</sup>, 2004. That workshop  
7 was intended as a means to educate the community and  
8 to increase their understanding on the NAGPRA law and  
9 how it works. That workshop was hosted by the  
10 Kamehameha Schools at the Kapalama Campus and  
11 featured Dr. McKeown as our volunteer guest speaker.  
12 Dr. McKeown made a Power Point presentation and  
13 discussed the NAGPRA law with the attendees. Our  
14 workshop lasted over three hours with more than 70  
15 people in attendance. I received many comments since  
16 then about how helpful Dr. McKeown's presentation  
17 was. I would like to again thank Dr. McKeown for  
18 volunteering his time in traveling to Hawaii and in  
19 helping to increase the knowledge and understanding  
20 about the NAGPRA law.

21 I understand that a copy of the witness list and  
22 the public testimony is available for public  
23 distribution on the day of our hearing have been  
24 placed in your NAGPRA meeting materials. Our witness  
25 list consisted of many representatives from Hawaii.

1 We had the State of Hawaii Department of Land and  
2 Natural Resources, the Historic Preservation  
3 Division, which administers the burial sites program.  
4 We had the Department of Hawaiian Homelands, Hui  
5 Malama I Na Kupuna O Hawai'i Nei, the Office of  
6 Hawaiian Affairs, the counsel of Hawaiian Homestead  
7 Associations, the Royal Academy of Traditional Arts,  
8 the Kekumano Ohana, the Van Horn Diamond Ohana, Na  
9 Papa Kanaka O Pu'u Kohala, and a witness with  
10 expertise in the history of NAGPRA's implementation  
11 in Hawaii. We held our record open through the  
12 beginning of January and received even more  
13 testimony.

14 Many of the witnesses who testified in our  
15 hearing have also testified in your NAGPRA Review  
16 Committee hearings over the last two days. Our  
17 legislative hearings were well attended and added  
18 substantially to our understanding of how NAGPRA  
19 works in Hawaii and some of the refinements and  
20 changes which may be necessary.

21 I want the listeners to pay particular attention  
22 to what I am about to say. The record of that Senate  
23 Committee hearing has been set and it may be  
24 accessed, viewed, and downloaded by going to this  
25 address: [indian.senate.gov](http://indian.senate.gov) and click on Past Hearings



1 and Testimonies of the 108<sup>th</sup> Congress. That record  
2 consists of 97 pages and contains the written  
3 testimonies of the witnesses, as well as their  
4 answers to Senator Inouye's questions. It also  
5 contains additional testimonies and information  
6 submitted by other individuals and organizations  
7 before the record closed.

8 I'm hopeful that the information we developed in  
9 our legislative hearing is helpful to you and that it  
10 gives you a better understanding of the NAGPRA law in  
11 Hawaii. Thank you for the opportunity to provide  
12 this background information to you about our hearing  
13 that we held in December.

14 **REVIEW COMMITTEE**

15 ROSITA WORL: Thank you very much, Colin, and now  
16 if we may, could we pose you a couple of questions?  
17 And I recognize Garrick. I assume that was a yes.

18 GARRICK BAILEY: I will take it as a yes. First  
19 of all, my — just looking at NAGPRA in Hawaii and  
20 this testimony today, for all intents and purposes,  
21 NAGPRA doesn't exist for Hawaii. There's no way to  
22 straighten out these organizations and their claims  
23 relative to the law as it exists. You could just  
24 look at it simply. There are so many organizations  
25 could cancel each other out. They could argue for

1 the next 500 years and never straighten it out. And  
2 there's no one to step in and say who is right and  
3 who is wrong or who has more of a claim than another.

4 It was written for American Indian groups. It  
5 was not written for Native Hawaiians. I think that's  
6 one of the problems. It's just dealing with a  
7 totally different world, one whose social history is  
8 very different than Hawaii. It doesn't even work  
9 well for the eastern part of the United States. I  
10 mean, it's a disaster when you try to apply it to the  
11 eastern tribes, and it's even more of a disaster with  
12 Hawaii.

13 How much of it, though, is in the law and how  
14 much of it is in the regulations? One of the things  
15 we keep hearing in Hawaii is lineality, descent. And  
16 in the law itself, if I'm not mistaken, the law says  
17 that that is to be given priority. But it's in the  
18 definitions and the regs that it comes out that you  
19 have to define it in a very precise manner that is  
20 impossible if you go back – even in Hawaii where  
21 genealogies are important, it's impossible to take  
22 that and adequately apply it to meet the definitions  
23 in the regs. So how much of it's the regs and how  
24 much of it's the law? That's the first question.

25 COLIN KIPPEN: Well, that's a – you're asking me

1 for a legal question. I think that should probably  
2 go to Mr. McKeown and Dr. Hutt to perhaps try to  
3 answer. I will say this, that those things that you  
4 mentioned, those themes, I think if you look at our  
5 record and our – the record of our hearing, those  
6 themes are reflected in the testimony that we  
7 received. And again, many of the witnesses who have  
8 testified here and will testify were also people who  
9 attended our workshop as well as people who attended  
10 and testified at our hearing.

11 GARRICK BAILEY: Yes, I was going on the basis of  
12 the families. The family that's important here and  
13 descent that's important. And yet, NAGPRA as it's  
14 created and implemented does not recognize that.  
15 Tim? Carla?

16 CARLA MATTIX: The regulations have to follow  
17 from the statute. They can't be in opposition to it.  
18 And the regulations are a further interpretation of  
19 the statute. So to this juncture there's not been  
20 any sort of challenge on this issue with regard to  
21 our regulations. I would –

22 GARRICK BAILEY: That's why I raised it.

23 CARLA MATTIX: The section in the regs, 10.14,  
24 which lists the criteria for determining lineal  
25 descent, is something you may want to read through

1           because that is where it explains how that is  
2           determined, and that's I think where you look to.

3           GARRICK BAILEY: So you think --

4           TIMOTHY MCKEOWN: I think one point --

5           GARRICK BAILEY: So you think that the regs are  
6           reflecting the law itself. It's not -- as far as the  
7           extent with which one has to determine lineal  
8           descent.

9           TIMOTHY MCKEOWN: I think you raise two issues  
10          there. One is about the definition of lineal  
11          descendent that appears in the regulations and the  
12          other one is about identifying differences in  
13          cultural affiliation between Indian tribes and Native  
14          Hawaiian organizations. There was no definition of  
15          lineal descendent in this statute. That was a device  
16          that was created in the regulation. The primary  
17          constraint that was forced upon the Department is  
18          that a lineal descendent by definition has a priority  
19          claim over any Indian tribe or Native Hawaiian  
20          organization. It thus had to be a very high  
21          standard. It also had to be consistent with the  
22          common meaning of the term of lineal descendent,  
23          which would be an unbroken line between a named  
24          individual and the claimant, and that's basically  
25          what the statute, what the regulations say.

1 GARRICK BAILEY: But it's not in – but it's not  
2 stated that way in the statute itself.

3 TIMOTHY MCKEOWN: They only use the term. There  
4 is no definition in the statute, and the regulatory  
5 text was devised to identify the kind of relationship  
6 that would necessarily have priority over any Indian  
7 tribe or Native Hawaiian organization.

8 GARRICK BAILEY: And of course, one of the  
9 problems – and I recognize the problem. If you – if  
10 you make a distinction – there should be a  
11 distinction between Native Hawaiian and American  
12 Indian in this.

13 TIMOTHY MCKEOWN: I actually would take issue  
14 with your comment that the statute was not written  
15 with Native Hawaiians in mind. The definition of  
16 Native Hawaiian organization was one that was  
17 carefully crafted by the Senate and House staffs in  
18 coming forward to the final statute. And it was  
19 included in the deliberations from very early on in  
20 the process.

21 The second issue that you raised was the  
22 inability within the statute to make distinctions  
23 between Native Hawaiian organizations. For museum  
24 collections there actually is a priority order that  
25 is listed there. It is categorical. It is not

1       closest or farthest away, but there is a distinction  
2       in the statute between those organizations or Indian  
3       tribes that are clearly culturally affiliated vis-à-  
4       vis those that are not clearly culturally affiliated  
5       but are given the preponderance of the evidence  
6       culturally affiliated. So there is a distinction  
7       that is drawn in the statute and in the regulations  
8       to reflect those differences.

9               GARRICK BAILEY: I think one of the problems that  
10       I see, and not being a lawyer I can't really address  
11       these issues, but the thing is that it would appear  
12       that as it stands anytime something is – anytime an  
13       object may be repatriatable, you can have 20 or 30  
14       groups with an equally valid claim under the law. I  
15       mean, there's no limit to the number of Hawaiian  
16       groups. Potentially, it's an open-ended thing.

17              ROSITA WORL: Garrick.

18              TIMOTHY MCKEOWN: Certainly the situation in  
19       Hawaii is different than on the mainland because of  
20       the unique nature of Native Hawaiian organizations  
21       and that there are not governmental organizations,  
22       except for the Office of Hawaiian Affairs, which was  
23       specifically mentioned, and also the Department of  
24       Hawaiian Homelands, who has asserted their status as  
25       a Native Hawaiian organization. However, the idea

1       that there would be multiple claimants is actually  
2       not unusual. It is common. And typically there is  
3       no dispute amongst them, so that is not an obstacle  
4       towards the repatriation.

5               GARRICK BAILEY: Obviously that is an obstacle  
6       here.

7               ROSITA WORL: Garrick. Garrick, if we could,  
8       let's let Vin have a chance at it, and then Dan.

9               VINCAS STEPONAITIS: Just following up on  
10       Garrick's question, let me just first make an  
11       observation. I had said at our last face-to-face  
12       meeting that I knew very, very little about the  
13       Hawaiian situation and I still don't claim to know a  
14       great deal. But I have learned a great deal in the  
15       last two days and I appreciate everyone who has come  
16       to help me learn. And one of the things that I've  
17       been persuaded of, both from the testimony at the  
18       November hearing but also the testimony we've heard  
19       in the last two days, is that we really do need to  
20       look again at the definition of Native Hawaiian  
21       organization and consider some of the suggestions  
22       that have been made about how that definition may be  
23       tightened or improved.

24               And to follow up on Garrick's question, it seems  
25       to me that improvements can be made in two ways

1       procedurally; one is through legislation and the  
2       other is through rulemaking, through updating or  
3       refining the regulations, which leads to my question.  
4       As we think about this issue, I assume that this  
5       committee can make recommendations and suggestions  
6       with respect to both legislative changes and with  
7       respect to changes in the rules. Am I correct in  
8       that assumption?

9           CARLA MATTIX: Yes. One of the responsibilities  
10       under the Review Committee section does say  
11       consulting with the Secretary in the development of  
12       regulations to carry out this Act. So I would assume  
13       that would include amendments and things to clarify.

14          ROSITA WORL: And in addition to that, we can  
15       make recommendations to Congress in our report to  
16       Congress.

17          VINCAS STEPONAITIS: Thank you.

18          ROSITA WORL: Dan.

19          DAN MONROE: Just very briefly, there was  
20       considerable thought and effort given to this issue  
21       at the time the legislation was under development.  
22       Whether or not it was perfect is another question and  
23       I would argue that from my standpoint it's probably  
24       to the benefit of Native Hawaiians that an effort was  
25       not made to determine at a Federal level who and



1       which organizations comprise Native Hawaiian  
2       organizations and which do not. Whether or not there  
3       needs to be some further steps taken to assure that  
4       Native Hawaiian organizations are organizations run  
5       by or populated by Native Hawaiians may be an issue.  
6       But aside from that, I think that clearly there are  
7       other more compelling, in my mind, issues that need  
8       to be attended to. And most of that, at least if we  
9       reference the testimony today, lies in the hands of,  
10      I would argue, Native Hawaiians.

11           ROSITA WORL: If I could – Colin, I had an  
12      opportunity to read all of the testimonies that were  
13      submitted, and I think like – I think we learned a  
14      lot today and I'm hoping that whoever does the review  
15      and begins to work on if there is going to be  
16      amending language, that the testimony that was  
17      offered in yesterday and today, I think – or was is  
18      just today, I'm losing track of time – but I think  
19      that would also be worthy of analysis and  
20      consideration in working up that definition.

21           I was taken with the reference by one – and I'm  
22      sorry, I can't remember who provided the testimony,  
23      but there was an indication that things were evolving  
24      or maybe not so much evolving but maybe the old  
25      social order was, you know, becoming more active in

1       repatriation. And that's something, you know, we  
2       might take a look at or whoever is doing the work.  
3       And I take it it's not you any longer.

4               COLIN KIPPEN: It will not be me, but I will  
5       email them of your concerns and your ideas. I can  
6       tell you that this is an important issue to my  
7       senator. It was a specially set hearing as he was  
8       basically leaving the committee, and he wanted to  
9       make sure that he began to establish a record for all  
10      of the families, for all of the organizations, for  
11      all of the people who care so much about this issue  
12      in Hawaii.

13             VINCAS STEPONAITIS: May I just make one quick  
14      follow-up comment?

15             ROSITA WORL: Yes, I will recognize Vin and then  
16      Garrick.

17             VINCAS STEPONAITIS: Thank you. Just very  
18      quickly, I just wanted to clarify that I am in  
19      complete agreement with Dan Monroe about the fact  
20      that if refinements are made to the definition of  
21      Native Hawaiians, Native Hawaiian organizations, that  
22      would have to come from within the Hawaiian community  
23      and the only reason I alluded to our committee making  
24      recommendations is that I see us as being a vehicle  
25      for amplifying that voice when it comes time to make

1 changes.

2 ROSITA WORL: Garrick.

3 GARRICK BAILEY: I would say the same as Vin.  
4 It's Native Hawaiians who are going to have to deal  
5 with the issues. But we have to make certain that  
6 the law does not so straightjacket them that they  
7 cannot make it on their own. In other words, I think  
8 one of the things that I – the difficulties in the  
9 law as with written in the regulations is it  
10 certainly straightjackets Hawaiians as far as using  
11 families of those ohanas as a unit for repatriation,  
12 except if they organize – become a Native Hawaiian  
13 organization, which I think at times they also have  
14 other types of requirements in there that forces them  
15 to define themselves in a way they really wouldn't  
16 define them. That's not really that fitting  
17 necessarily.

18 In other words we're forcing them to restructure  
19 their family organizations to fit a NAGPRA model and  
20 not the traditional model. Because, you know what, I  
21 looked at this and I saw these issues, now I'm  
22 looking at it as a cultural anthropologist. Look, I  
23 deal with societies, I deal with communities. To me,  
24 continuity is in communities. Continuity and  
25 lineality is in communities. It's in families. It's

1 not in, necessarily, a genealogy of names from one  
2 person to another. That's meaningless really. It's  
3 the community; it's the family as a whole that  
4 becomes the important factor. That's on the mainland  
5 as well. It's not just here.

6 You know, we see groups in the eastern United  
7 States that are denied rights under NAGPRA because  
8 the NAGPRA law requires them to act as part of a  
9 recognized tribe. The Natchez community is live and  
10 well. You can go to Greenleaf in Oklahoma and see  
11 it. They're not extinct. There's a group among the  
12 Creek. But as far as NAGPRA is concerned, there are  
13 no Natchez. But there's lineal communities. They're  
14 the lineal descendents. They say there are no  
15 Yuchis. There are lineal descendents. There are  
16 three Yuchi communities that show direct continuity  
17 with Yuchi communities over hundreds of years, but  
18 because of the way we define lineality we deny them  
19 recognition. So that's what I'm talking about. So  
20 it's not just Native Hawaiians that are affected. I  
21 think we place a straightjacket on these groups. I  
22 think Native Hawaiians have to work it out but they  
23 have to be as flexible as possible in how they define  
24 these things.

25 ROSITA WORL: Thank you, Garrick. Sherry.

1           SHERRY HUTT: Madam Chairman, if I might clarify  
2 something to the extent it might assist you here in  
3 response to Dr. Bailey's comments. In terms of  
4 tribes on the mainland, federally recognized tribes  
5 because NAGPRA talks about a government-to-government  
6 relationship, they are federally recognized tribes.  
7 As to Native Hawaiian organizations, in National  
8 NAGPRA we list as Native Hawaiian organizations all  
9 those who have been recognized by a Federal agency or  
10 a museum in their consultation process. So there are  
11 no structure or requirements or hoops, simply those  
12 that have identified themselves and have been  
13 recognized by the museum or the Federal agency and we  
14 then list them as Native Hawaiian organizations. So  
15 in that regard, it is more inclusive than it is on  
16 the mainland.

17           GARRICK BAILEY: Well, I think, Sherry, you point  
18 out one thing that's very important and you said it,  
19 the museums get to recognize.

20           SHERRY HUTT: The groups come -

21           GARRICK BAILEY: And that is the way that -  
22 because the museum, in this case, and we can talk  
23 about the National Park Service as well as far as  
24 that, they get to recognize, these are the ones they  
25 legitimize. One of the things that came up about

1 Forbes Cave (comment inaudible) Bishop Museum told –  
2 said they're not a Native Hawaiian organization.

3 SHERRY HUTT: One thing you might ask as a  
4 committee is whether the individual group is making  
5 the claim as a lineal descendent or as a Native  
6 Hawaiian organization. I only acknowledge that the  
7 process is taken to be the more inclusive rather than  
8 restrictive in any way.

9 GARRICK BAILEY: But I think it is in the spirit  
10 – first of all, let's look at the law itself. The  
11 law is to return certain objects to their rightful  
12 descendants. That's the purpose of the law. It's  
13 not to play, kind of, political games with this  
14 material. This is important – it is important,  
15 people. So when you have an organization that  
16 doesn't fit, like in this case, one model, I think it  
17 becomes necessary to tell them there are alternative  
18 models which they would fit. I think at times that –  
19 I would say this that the possible claimants have not  
20 been fully advised of their rights –

21 SHERRY HUTT: If I might –

22 GARRICK BAILEY: – or they're not fully  
23 knowledgeable of them. Now I don't know whose  
24 responsibility it is to inform them of those. But I  
25 think that's important, and I think that they haven't

1 always known what their rights are.

2 SHERRY HUTT: If I might make two comments that  
3 might assist you in your deliberations tomorrow. One  
4 is in working through NAGPRA as a process if you take  
5 it step-by-step, as Carla said earlier, you have that  
6 sort of step one, the prima fascia case, are they a  
7 recognized group, does the item meet a category, is  
8 there cultural affiliation, and you deal with the  
9 step-by-step analysis and then you look at, if it is  
10 raised, the right of possession. The impact that you  
11 all have as a Review Committee in resolving as a  
12 matter of fact any step along the way that may be in  
13 dispute has a monumental impact on these people, all  
14 of the people, whether it be here in Hawaii or on the  
15 mainland as they go forward to resolve the disputes.  
16 That your decisions may not be completely dispositive  
17 of those issues that divide people or that there may  
18 be other matters that need to be resolved even after  
19 you're done with the issue as it's presented to you,  
20 I would hope would not deter you in your examination  
21 of the issues that are before you because sometimes  
22 it is a building process. So that was one thing.

23 The other point that I might make is that within  
24 your authority as a Review Committee you have the  
25 ability to do what no court can do, and that is a

1 court is bifacial, you know, up/down. As a Review  
2 Committee, you can make creative suggestions as to  
3 how these parties might go forward to resolve the  
4 remaining issues that go before them. So you can  
5 resolve certain matters of fact to the extent you  
6 can, and you can make suggestions as to where the  
7 parties may go when they leave the room. And in that  
8 regard the importance of your actions and the  
9 assistance that you provide is monumental, even if  
10 you have not resolved, as an entirety, all of the  
11 matters that are in dispute.

12 ROSITA WORL: Thank you very much. Colin, did  
13 you have anything further that you would like to add?

14 COLIN KIPPEN: No, I just wanted to thank you for  
15 coming and thank you for listening.

16 ROSITA WORL: And thank you for being here.  
17 Thank you very much.

18 Well, we've – we went off of our agenda because  
19 we wanted to hear from as many people as we could and  
20 so therefore we are going to have to defer further  
21 discussion on the Royal Hawaiian Academy of  
22 Traditional Arts and the Bishop Museum issue until  
23 tomorrow. But we really, truly wanted to hear from  
24 as many people as we could.

25 I do want to thank the people who came in from



1 the outlying communities to be here. We had a very  
2 hard decision about which communities we would visit.  
3 We wanted to visit them all, but alas we have a  
4 budget that barely got us here, let alone travel to  
5 all the communities. So we had to make that decision  
6 about remaining here. So I thank you all and I  
7 thank, you know, the people who came, especially from  
8 the outlying communities. I know you had additional  
9 expense to be here.

10 And I would hope you would join us tomorrow as  
11 the committee begins its deliberation on these cases.  
12 And it will be our priority to begin the deliberation  
13 on and complete the deliberations on these issues.  
14 And if we have to defer some of the administrative  
15 discussions, we will. However, we're hopeful that we  
16 are going to get to our review of the committee's  
17 draft report to Congress since we know that's very  
18 urgent to get something before Congress and hopefully  
19 have continued support for the work that we're doing  
20 and maybe even additional funds for the tribes and  
21 Native Hawaiian organizations, as well as a  
22 discussion of our nomination of our committee's  
23 seventh member.

24 So we have five minutes and are there any final  
25 comments from the committee members?

1           VINCAS STEPONAITIS: Madam Chair, just a question  
2           for those who came this afternoon for the purposes of  
3           hearing the discussion in the Royal Academy-Bishop  
4           Museum dispute. I know that we will take that  
5           tomorrow as you said, but it might be helpful to them  
6           to know whether we would take it up in the morning or  
7           the afternoon, and should the committee discuss that  
8           before we leave today?

9           ROSITA WORL: What's the wish of the committee?  
10          My recommendation is we try to address it right in  
11          the beginning.

12          VINCAS STEPONAITIS: Yes.

13          ROSITA WORL: Tim.

14          TIMOTHY MCKEOWN: It's your agenda.

15          VINCAS STEPONAITIS: I would support that.

16          ROSITA WORL: So if there are no objections, we  
17          will begin our morning session with a discussion of  
18          the cases.

19          Thank you all and good night.

20          **MEETING RECESS**