

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3

4 In the Matter of the Estate) Equity No.

5 of) 2048

6 BERNICE P. BISHOP,)

7 Deceased.)

8 _____)

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11

12 DEPOSITION OF ROBERT K.U. KIHUNE

13

14

15 Taken on behalf of Trustee Henry Haalilio Peters

16 at the Law Offices of Harry Yee, Suite 770, Pauahi

17 Tower, 1001 Bishop Street, Honolulu, Hawaii,

18 commencing at 9:40 a.m. on December 3, 1999,

19 pursuant to Notice.

20

21

22

23 Before: WILLIAM T. BARTON, RPR, CSR NO. 391

24 Court Reporter, State of Hawaii

25

1 APPEARANCES:

2 For Trustee Henry Haalilio Peters

3 HARRY YEE, ESQ.

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7

8 For Interim Trustees

9 Robert K.U. Kihune, Constance H. Lau,

10 Francis A. Keala, David P. Coon, and

11 Ronald D. Libkuman

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25

1 I N D E X

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8 ROBERT K.U. KIHUNE

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1 (Disclosure presented to Counsel.)

2 (Whereupon, Mr. Yee, Mr. Kawashima,
3 Mr. Ing, Mr. Jones, Mr. Lewis, and Mr. Kihune were
4 present in the room.)

5 ROBERT K.U. KIHUNE,
6 Called as a witness by Trustee Henry H. Peters,
7 having been previously duly sworn, was examined
8 and testified as follows:

9 EXAMINATION

10 BY MR. YEE:

11 Q. Mr. Kihune, my name is Harry Yee, and I
12 represent Trustee Henry Peters.

13 Have you ever had your deposition taken
14 before?

15 A. Yes, I have.

16 Q. You understand the sort of ground rules
17 there are for taking a deposition?

18 A. My attorneys have basically explained
19 that to me.

20 Q. So you understand that you're under oath
21 today, the answers you give are being taken down
22 by the Court Reporter here. There will be a
23 transcript produced. And that if you make any
24 corrections to that transcript after the fact,
25 those can be used to impeach your testimony at

1 trial.

2 A. I understand that.

3 Q. And that you have to answer audibly,
4 because the Court Reporter cannot take down any
5 movements of your head or any mumbled answers.

6 Do you understand?

7 A. I understand.

8 Q. Are you under any medication today which
9 would impair your ability to answer questions
10 accurately and fairly?

11 A. No.

12 Q. Would you please state your full name
13 for the record?

14 A. My full name is Robert Kalani Loichi
15 Kihune.

16 Q. And your current address?

17 A. 1597 Haleloke Street, Hilo, Hawaii,
18 96720.

19 Q. And are you currently employed?

20 A. I'm currently employed.

21 Q. Where are you employed?

22 A. I'm employed with the USS Missouri
23 Memorial Association as the president of the
24 association, as well as employed as an term
25 trustee for the Kamehameha Schools Bishop Estate.

1 Q. You hold no other employment at this
2 time?

3 A. I'm listed as a consultant, but I have
4 not done any consultant work.

5 Q. And who are you a consultant for?

6 A. Trex Enterprises.

7 Q. Could you spell that for me?

8 A. T-R-E-X.

9 Q. And where is Trex Enterprises?

10 A. Trex Enterprises have set up a new
11 company in Maui at the Technical Park. And they
12 are the world's leading manufacturers for the
13 mammogram machine, and they do imaging processes.
14 And I was responsible for luring them to Hawaii to
15 set up a shop here.

16 Q. And what is your consultant arrangement
17 with Trex Enterprises?

18 A. My consultant arrangement is for \$125 an
19 hour on whatever requirements they need to use me
20 for.

21 Q. What kind of services do you render as a
22 consultant?

23 A. Primarily advice. And also to set up
24 meetings for -- with people that were the people
25 that either were the people that were the

1 catalysts for -- to try to bring more industry to
2 Hawaii.

3 Q. What kind of advice do you provide to
4 Trex Enterprises?

5 A. The advice that I provide is where they
6 could set up shop and what laboratory facilities
7 were available and why those facilities were good
8 for the type of products that they worked with.

9 Q. Who are the principals that you deal
10 with at Trex Enterprises?

11 A. It's executive vice president Kenneth
12 Tang, T-A-N-G.

13 Q. Anybody else?

14 A. I deal with Allen Palmer, who is the
15 head of the Hawaii Trex Enterprises in Maui.

16 Q. Do you have ownership interest in Trex
17 Enterprises?

18 A. None whatsoever.

19 Q. Your position with the USS Missouri
20 Memorial --

21 A. The USS Missouri Memorial Association.

22 Q. As president, are you paid in that
23 position?

24 A. I was paid until the 1st of November.

25 Q. What was your salary as president?

1 A. \$90,000 a year.

2 Q. And why did that cease on November 1?

3 A. I decided to contribute back the money
4 to the Missouri, since I was being paid now by the
5 Bishop Estate.

6 Q. And how long have you served as
7 president of the USS Missouri Memorial --

8 A. Since September of 1998.

9 Q. So am I correct in stating that you've
10 contributed back your entire salary of a year's
11 work?

12 A. I have basically terminated taking
13 salary from the 1st of November.

14 Q. So you haven't given anything back?

15 A. Well, just what -- from the 1st of
16 November until now.

17 Q. Can you tell me what your duties were as
18 president of the USS Missouri Memorial
19 Association?

20 A. The president of the USS Missouri
21 Memorial Association is equivalent to a CEO of a
22 corporation.

23 Q. Is there a board of directors?

24 A. There is a board of directors.

25 Q. And are you accountable to the board of

1 directors?

2 A. I am accountable.

3 Q. Who is on the board of directors?

4 A. The chairman is Ed Carter. A former
5 head of Bishop trust. And we have business people
6 representing United Airlines, for instance, Matson
7 Orchid Isle Ford Motor Company. Os Stender is
8 also on it. And we have retired Admiral Hayes.
9 We have Pat McFadden, who runs the University of
10 Hawaii Foundation.

11 Right off the top of my head -- there's
12 a couple more people. What's his name that --
13 Don -- that guy that's representing --

14 MR. KAWASHIMA: What?

15 Q. That's okay. Mr. Kihune, if we wanted a
16 list of the members of the board of directors, you
17 could give that to us.

18 A. Okay.

19 Q. How were you appointed or hired as
20 president of the USS Missouri Memorial
21 Association?

22 A. I was asked by the board to take over as
23 the president.

24 Q. Was there a president before you?

25 A. There was.

1 Q. Who was that?

2 A. Roy Yee.

3 Q. And did he serve in the same capacity as
4 you now serve?

5 A. Yes, he did.

6 Q. Was he paid the same amount that you
7 were paid?

8 A. Approximately the same.

9 Q. Were you on the board of directors?

10 A. I'm also the vice chair of the board of
11 directors.

12 Q. And were you on the board of directors
13 at the time you were hired?

14 A. Yes, I was.

15 Q. So the board of directors who hired you
16 was very familiar with you and your work and your
17 commitment to the USS Missouri Memorial
18 Association?

19 A. That's correct.

20 Q. How long had you been on the board of
21 directors of the USS Missouri Memorial
22 Association?

23 A. Since January of 1996.

24 Q. And how did you first get involved with
25 the board of directors?

1 A. I was asked by the chairman to
2 participate.

3 Q. And who was the chairman at that time?

4 A. Ed Carter.

5 Q. How do you know Mr. Carter?

6 A. Through the Navy League.

7 Q. And is that when you first met
8 Trustee Stender, former Trustee Stender?

9 A. No.

10 Q. You had met former Trustee Stender
11 before that time?

12 A. Yes, I did.

13 Q. Was he one of the individuals that
14 convinced you to join the board of the USS
15 Missouri Memorial Association?

16 A. No, he wasn't.

17 Q. Since joining the board in 1996, had you
18 worked with former Trustee Stender as a member of
19 the board of directors of the USS Missouri
20 Memorial Association?

21 A. As part of the board, yes.

22 Q. In what capacity did you work with him?

23 A. I was a fellow director.

24 Q. And on what projects about you work with
25 him on?

1 A. Bringing the ship to Hawaii. And also
2 as a director, setting out the policies for the
3 ship as far as an attraction.

4 Q. As I recall, that was a big task. There
5 was a competition between the State of Hawaii
6 or -- Pearl Harbor and several other jurisdictions
7 that wanted the Missouri?

8 A. Yes, it was.

9 Q. Did you have to do a lot of traveling
10 for that?

11 A. No, I did not.

12 Q. But you had to lobby with the Navy? Was
13 it the Department of the Navy?

14 A. We did not lobby. We had to submit a
15 proposal.

16 Q. And you worked on that proposal in
17 conjunction with Trustee Stender?

18 A. Trustee Stender was one of the directors
19 that worked on the proposal.

20 Q. Are there any other positions which
21 you've held -- I know you've been recently retired
22 from the Navy -- not very recently. But within
23 the last five years; is that correct?

24 A. I retired on the 1st of July, 1994.

25 Q. And since retiring from the Navy, are

1 there other types of employment that you've held?

2 A. Yes.

3 Q. Can you describe them for us?

4 A. The first one was the executive director
5 of the Natural Energy Lab at Keahole, Kona. That
6 is an equivalent to a CEO for that small company.

7 Q. That was from what date to what?

8 A. That was From August 1994 until December
9 1995.

10 Q. And what were your duties?

11 A. My duties were to run Keahole, the
12 Natural Energy Lab, in nearly a commercial type of
13 setting to attract new aquaculture and live
14 technology type of companies to utilize the deep
15 sea water that had been used previously from the
16 OTEC power plant.

17 Q. And that is an aquaculture business?

18 A. It has more than aquaculture. It's also
19 biotech. And it also uses and researches
20 alternate energy.

21 Q. What was your salary?

22 A. My salary was \$75,000 a year.

23 Q. And what were your reasons for leaving
24 that company?

25 A. I was asked to take the job, because

1 they were having much difficulty with morale, and
2 also the organization appeared to be totally
3 dysfunctional. So they asked me to come in and if
4 I could straighten out the Natural Energy Lab and
5 put it back into good shape.

6 And so I left the job after I felt very
7 strongly that the job was completed, the morale
8 was very high. We reduced staff by one-third, and
9 I reduced the budget by one half.

10 Q. So you were brought in for a specific
11 purpose?

12 A. I was asked to come in for a specific
13 purpose.

14 Q. And who asked you to come in?

15 A. I was asked by -- at that time, by the
16 Department of Economic Development and Tourism.

17 Q. That's a State agency?

18 A. State agency.

19 Q. And was it the head of that agency who
20 asked you to do that?

21 A. It was a deputy head that asked me to
22 come in, which was confirmed by the governor.

23 Q. Who was that?

24 A. Tak Yoshihara.

25 Q. Is that considered a government

1 position?

2 A. It is.

3 Q. Because you said it had to be confirmed
4 by the governor, correct?

5 A. Yes. All of the heads of different
6 agencies are confirmed by the governor.

7 Q. And that would have been
8 Governor Cayetano?

9 A. That was Governor Waihee.

10 Q. And after you left the Natural Energy
11 Lab, did you have other employment?

12 A. Yes, I did.

13 Q. And where was that?

14 A. I became the CEO of the Waimana
15 Enterprises in this building.

16 Q. And what type of business is Waimana
17 Enterprises?

18 A. Waimana is a development business. They
19 were -- when I arrived, they were attempting to
20 build a second power plant on the Big Island. And
21 also, they were in the very embryonic stages of
22 developing a telephone company on Hawaiian
23 Homelands, to serve Hawaiian Homelands.

24 Q. What were your duties with Waimana?

25 A. My duties, I was the Chief Executive

1 Officer. I was basically in charge of the company
2 for -- to try to direct the company towards -- and
3 develop those -- the power plant at -- on the Big
4 Island as well as interfacing with all the
5 government agencies, the PUC, and everyone else,
6 to start a brand new telephone company here in
7 Hawaii.

8 Q. And what's the time period in which you
9 served as the CEO of Waimana Enterprises?

10 A. I was there from January of '96 until
11 September of 1998.

12 Q. Could I ask you what is the size of the
13 staff at Waimana?

14 A. The size of the staff was approximately,
15 when I left, about nine people. And when I say
16 "staff," I mean the immediate paid staff. We had
17 major consultants that were doing a lot of work
18 for us.

19 Q. Can you break down that number for me a
20 little bit between clerical and --

21 A. We had a legal counsel there. We had an
22 engineer. We had a general manager of a telephone
23 company. We had switch personnel that understood
24 switching, installation of switches for telephone
25 systems.

1 We had people that understood line --
2 putting in lines for different places. And then
3 we had -- the rest were clerical.

4 Q. And who hired you for CEO at Waimana?

5 A. The president of the company.

6 Q. Who is that?

7 A. His name is Al Hee.

8 Q. And how did Mr. Hee know you to hire
9 you?

10 A. He never knew me before. He is a
11 Kamehameha graduate. And he evidently knew my
12 background and what I'd been doing. And he also
13 knew what I was doing at Keahole, according to
14 what he told me. And he was impressed by that, so
15 he wanted me to come over and work for him.

16 Q. But it wasn't the same type of job as
17 Keahole that he had hired you for?

18 A. No. He was more attuned that the CEO's
19 position is more in management and oversight, and
20 trying to make sure that actions get done.

21 Q. Is there a board of directors for
22 Waimana?

23 A. There is a board of directors. But
24 since I left there, I'm not sure who comprises it
25 now.

1 Q. But while you were there, you were
2 accountable to the board of directors, correct?

3 A. I was accountable.

4 Q. And who was on the board of directors
5 when you were CEO?

6 A. Mr. Hee. There was a representative
7 from one of the Japanese companies that were
8 partners in the -- it was Mitsubishi company that
9 was one of the partners for the power plant.

10 There were --

11 Q. What's his name? If you know.

12 A. I cannot recall what his name was. He
13 was not there as often as -- the board meetings
14 were not that frequent. And there were a couple
15 of people which I can't recall off the top of my
16 head. But I could try to get that if you need
17 that.

18 Q. Do you know if Mr. Hee is related to
19 Clayton Hee?

20 A. It's the brother of Clayton Hee.

21 Q. Just to take a step back, because I
22 didn't get to ask you this question. What is the
23 size of the staff for the USS Missouri Memorial
24 Association?

25 A. We have about 90 people on the staff.

1 The core staff is about 23. The rest are all
2 part-time tour guides.

3 Q. Are those volunteer positions?

4 A. No. They're part-time. They are
5 paid -- the volunteer program -- although we do
6 have volunteers, we had to have part-time tour
7 guides that were required to be at their work at a
8 specific time, since people sign up for tours at
9 specific times, and volunteers are not really
10 committed to come at -- to tour. So we had to pay
11 people to come at specific times.

12 Q. Do you directly manage the core staff of
13 20 --

14 A. Yes, I do.

15 Q. Is that a full-time job for you?

16 A. It's not right now, since I came to the
17 Bishop Estate. And that's one of the reasons why
18 I dropped my compensation from the USS Missouri
19 Memorial Association.

20 Q. So is there somebody now who is taking
21 over responsibility for the duties of the
22 day-to-day management of the core staff?

23 A. No. I go in at 5:00, 5:30 and spend
24 about two and a half hours. Then after I get done
25 with Bishop Estate, in the evening I go back and

1 spend another two and a half hours and then go
2 home.

3 Q. As director of the Natural Energy
4 Laboratory, what is the size of the staff that you
5 had there?

6 A. I had a staff of about 34.

7 Q. Was that 34 full-time staff?

8 A. That was 34 full-time staff.

9 Q. And you said you reduced that by the
10 time you left by half?

11 A. No, one-third.

12 Q. So there were about --

13 A. About 20-some. 21.

14 Q. Since leaving Waimana Development -- or
15 Enterprises, have you held other employment?

16 A. Did you say appointment?

17 Q. Other employment.

18 A. Employment. Other than the USS Missouri
19 and the Bishop Estate? And my consulting, which I
20 haven't done anything since leaving Waimana.

21 Q. Is Trex Enterprises and Waimana in any
22 way connected?

23 A. No, they're not.

24 Q. I just need to get some background. Can
25 you tell us a little bit about your education

1 since high school. We know you went to --

2 A. Kamehameha School. And went to the U.S.
3 Naval Academy.

4 Q. Any education after the U.S. Naval
5 Academy?

6 A. I went to the U.S. Naval postgraduate
7 school for postgraduate education.

8 Q. Did you obtain a degree?

9 A. Yes, I did.

10 Q. What was your degree?

11 A. Communications electronics.

12 Q. Any other education?

13 A. Nondegree. They were in the Naval War
14 College and a lot of technical schools, such as
15 engineering schools and more functional schools
16 for the Navy.

17 Q. Even though it's a nondegree program,
18 did the war college issue you any type of
19 certificate?

20 A. They did.

21 Q. What is that certificate in?

22 A. It's just a certificate of completion.

23 Q. Other than those postgraduate seminars
24 and training that you had, is there any other
25 education and training that you had since leaving

1 the Naval Academy?

2 A. No. Those were basically it.

3 Q. When you retired from the Navy in 1994,
4 your position was rear admiral?

5 A. Vice admiral.

6 Q. And I know it's probably a little hard
7 to state it all. But could you give me an idea
8 what your duties were as vice admiral and what
9 particular area you commanded in your position as
10 vice admiral?

11 A. I had three jobs as a vice admiral
12 before I retired. The first job I had was called
13 the Assistant Chief of Naval Operations for
14 Surface Warfare. I was responsible for all of the
15 procurement of all the ships in the Navy.

16 I also procured all the weapon systems
17 for all the surface ships in the Navy. I had a
18 budget of \$22 billion. I had to do assessments of
19 each of the capabilities that we wanted to
20 produce. Not only for today, but for 20 years
21 out, as far as we could see.

22 I also had to review all of the
23 personnel issues, because I also had to disburse
24 all of the salaries and the -- for 200,000 --
25 approximately 200,000 sailors and officers that

1 were part of what they call the "surface Navy."

2 Q. And how many years were you in the Navy?

3 A. Thirty-five years.

4 Q. And your final position as vice admiral
5 in those areas that you've just described, that is
6 based on your experience as a naval --

7 A. My final was not that area. My final
8 experience in the Navy was I was the Chief of
9 Naval Education and Training for the Navy. I ran
10 all of the education programs, the NRTC programs.
11 We had 60-something colleges that I worked with.

12 And NJROTC programs in high schools, as
13 well as flight training. I only oversighted and
14 resourced nuclear power training, because there
15 was another group that did all nuclear power
16 training. But basically I was in charge and
17 responsible for training in the Navy.

18 Q. Can you describe for us, if you can,
19 briefly, what was the basis upon which you were
20 appointed to that position. What experience in
21 your 35 years in the Navy qualified you to serve
22 in that capacity?

23 A. My experience as far as serving in
24 various capacities throughout the Navy, as far as
25 the engineering side as well as the deck and

1 serving in joint staffs and working closely -- I
2 was a carrier battle group commander working with
3 aviators and working with aircraft. So my
4 operation experience spanned a very large span of
5 the Navy's requirements.

6 And so the Navy felt that I was the
7 right man to go into the job and take over this
8 particular position, since the requirements of
9 what we needed to train for was something that was
10 strong in the minds of the people that assigned me
11 there.

12 Q. You are a Kamehameha School graduate,
13 correct?

14 A. Yes, I am.

15 Q. Can you describe for us what connection
16 you've maintained with Kamehameha Schools? And
17 that's prior to your appointment as interim
18 trustee.

19 MR. KAWASHIMA: Objection. Overly
20 broad, vague and ambiguous.

21 Q. Can you answer the question? I can
22 rephrase it.

23 Have you participated in any alumni
24 associations since your graduation from Kamehameha
25 Schools Bishop Estate?

1 A. Yes. I belong to the Mamalahoa chapter
2 of the alumni association on the Big Island,
3 because that is where I live. And just recently,
4 I joined the Oahu chapter.

5 Q. How long had you been a member of that
6 association?

7 A. Since I retired. 1994. I'm talking
8 Mamalahoa since 1994. Just recently for the Oahu
9 chapter.

10 Q. Prior to 1994, had you participated in
11 any alumni associations of Kamehameha Schools
12 Bishop Estate?

13 A. When I was stationed here in Pearl
14 Harbor, I did not belong to the alumni
15 association. But I did go to the luaus and the
16 alumni week festivities.

17 Q. Do you regularly go to the alumni events
18 on an annual basis for Kamehameha Schools Bishop
19 Estate?

20 A. Previously not regularly, because the
21 school targets certain classes annually. And it's
22 an every five year event that they target these
23 classes to come up for the alumni week.

24 Q. Other than your membership in the alumni
25 association from 1994, have you participated in

1 any other functions with Kamehameha Schools Bishop
2 Estate, such as some committees, alumni outreach,
3 alumni chapters on the Mainland?

4 A. No, I have not.

5 Q. You're acquainted with the
6 court-appointed Master of the 109th, 110th and
7 111th accounts of the Estate of Bernice Pauahi
8 Bishop, correct?

9 A. Yes, I am.

10 Q. You know Colbert Matsumoto?

11 A. Since I became a special purpose
12 trustee.

13 Q. When was the first time you met Colbert
14 Matsumoto?

15 A. When he called me to his office. And I
16 assume you're talking met, meaning face to face.
17 And that is when he called me to his office to
18 talk about me being a candidate to become a
19 special purpose trustee.

20 Q. And do you recall when that was that he
21 --

22 A. That was in early February.

23 Q. Of what year?

24 A. 1999.

25 Q. Is that the first time you had spoken

1 with Colbert Matsumoto was February 1999?

2 A. I believe so. I've seen him on the BLNR
3 board where he participates. At my last job as
4 CEO of Waimana, I used to go to the board.

5 Q. Is it DLNR?

6 A. BLNR. Board of Land and Natural
7 Resources.

8 Q. And so you appeared before him?

9 A. I did not. I just used to go to
10 hearings.

11 Q. When you went to see Mr. Matsumoto in
12 February of this year, what was discussed?

13 A. He had called me previously in late
14 January to become a candidate for the special
15 purpose trustee position. And at which time I
16 turned him down.

17 Q. Did he tell you how he got your name to
18 be a special purpose trustee?

19 A. No, he did not.

20 Q. Did you subsequently find out how he got
21 your name?

22 A. No, I did not. Never asked.

23 Q. At the meeting in February of this year,
24 did he describe what your duties would be as
25 special purpose trustee?

1 A. Yes. He attempted to. But what he did
2 was showed me a petition that was filed by Jervis
3 and Stender that would set up a special panel to
4 deal with the IRS issues. And he made me read it,
5 to at least get some idea what that panel was
6 going to be about.

7 Q. And did you question him about the
8 document that he had you read?

9 A. I questioned him in the sense that I did
10 not understand what -- how much time was going to
11 have to be spent, since I was the president of the
12 Missouri and I had turned down his previous offer
13 to be a candidate.

14 And now that the Missouri was open -- it
15 was open on January 29, 1999 -- now in early
16 February, it was open. He now came back to ask me
17 if I would reconsider and consider being on the
18 panel.

19 Q. At that time, did he tell you what the
20 time commitment would be?

21 A. He gave me an estimate that he thought
22 it would be half a day twice a week.

23 Q. Did it turn out to be half a day twice a
24 week?

25 A. No, it did not.

1 Q. What else was discussed at that meeting,
2 other than the petition that was filed by former
3 Trustee Stender and former Trustee Jervis?

4 A. The only thing that was discussed was he
5 needed an answer, because there as some kind of
6 deadline that he needed to meet to submit the
7 candidates to the Court.

8 Q. Did he tell you who were the other
9 candidates?

10 A. No, he did not disclose any of the other
11 candidates.

12 Q. Did he discuss with you what had
13 transpired with the Internal Revenue Service prior
14 to the filing of the petition?

15 A. No, he did not discuss anything about
16 the Internal Revenue Service or issues, except
17 that what he showed me -- and he just kind of gave
18 me an overview -- that there was a conflict of the
19 incumbent trustees continuing on to trustee to
20 resolve the IRS issues.

21 Q. Did he give you an idea of what
22 authority, if any, you would have as a special
23 purpose trustee for dealing with the IRS --

24 A. He gave me just an overview and said
25 that basically our duties were only going to be

1 focused on the IRS issues and nothing else.

2 Q. Did he explain to you that that was
3 going to encompass obtaining information or
4 actually negotiating with the Internal Revenue
5 Service over the audit issues?

6 A. He explained that it was going to
7 involve negotiating with the IRS.

8 Q. And at that time, did you have any
9 concerns about what those IRS issues would be?

10 A. I had some concerns about what -- it was
11 already in the papers that there was, you know --
12 about issues regarding the IRS. But I -- he could
13 not disclose what they were. But he said if I
14 became -- if I was selected -- because this was
15 only talking about candidacy -- that they would
16 allow me to see the allegations from the IRS.

17 Q. And after that meeting, at some point
18 you did accept, correct?

19 A. I must say that Colbert Matsumoto did a
20 good job on me, being a graduate of Kamehameha
21 Schools. And he felt that I was committed. And
22 since -- and I felt the same way after talking to
23 him, that I should pay back the school and take
24 some time, half a day twice a week, to try to
25 resolve this issue.

1 Q. And you recall when you actually gave
2 him your agreement to be considered for --

3 A. I could not give him an agreement when
4 he and I talked, because I was the president of an
5 organization that required the board of directors
6 to approve anything -- any work outside of the
7 Missouri.

8 So I told him that I had to go back to
9 the board to get approval. So he asked me if I
10 could quickly do that, because he was on a
11 deadline.

12 Q. And you did do that?

13 A. I went to the chairman. And the
14 chairman said that it was not necessary to go to
15 the board. He would make the decision. And he
16 reluctantly agreed, because we had just opened up
17 the Missouri. But he agreed that I should go do
18 this.

19 (Whereupon, a secretary briefly entered
20 the room.)

21 Q. And subsequent to that meeting in
22 February of 1999, have you met with Mr. Matsumoto?

23 A. Yes. He called me about mid February
24 and said that a minute order had been issued by
25 the judge that has now appointed me as a special

1 purpose trustee and requested that I meet with him
2 in his office the next day.

3 Q. So did you meet with him?

4 A. I did meet with him, and I met with the
5 other candidates -- the other special purpose
6 trustees.

7 Q. Is that the first time you met the other
8 special purpose trustees?

9 A. That is the first time. I never met
10 them before -- there was one special purpose
11 trustee that was not there, Ron Libkuman. And he
12 was skiing in Colorado. But he was there on
13 telephone.

14 Q. And so that would have been Mr. Libkuman
15 and Ms. Lau, correct?

16 You need to say yes.

17 A. Oh, Ms. Lau. Connie Lau, Chief Keala,
18 Dave Coon, and myself.

19 Q. What was discussed at that meeting, if
20 you recall?

21 A. What was discussed was -- first of all,
22 it was getting to know who the rest of the special
23 purpose trustees were. And the Master then said
24 that he was going to set up from briefings for us
25 about the Estate, just so we could all get on the

1 same playing field, level, and give us some
2 orientation.

3 He also said that we needed to elect a
4 chairman. And he also recommended that we hire a
5 legal counsel for the board of special purpose
6 trustees, the panel. And he also stated that we
7 should have another set of eyes as far as auditing
8 to help us do the IRS audit -- deal with the IRS
9 issues.

10 Q. And who did he say was going to be
11 attending those briefings or giving those
12 briefings to the special purpose trustees?

13 A. He said that he was going to set it up
14 to have Mike Hare of Cades, Schutte, Bruce Graham,
15 Nathan Aipa, Gilbert Ishikawa, Glenn Hara, and I
16 guess that was it.

17 Q. And subsequent to that meeting, did he
18 actually set up those briefings --

19 A. Two days later, we met all of those
20 people for the first time. And they started off
21 with a briefing. Very general briefing about the
22 Kamehameha organization, Kamehameha Schools
23 organization.

24 Q. At that meeting with Mr. Matsumoto, do
25 you recall how long that meeting might have

1 lasted?

2 A. Are you talking the first meeting? The
3 very first meeting?

4 Q. The very first meeting with all the
5 special purpose trustees.

6 A. It was about two hours.

7 Q. Was there an agenda for that meeting?

8 A. No, there was not.

9 Q. Were there notes taken at that meeting?

10 A. I'm not a note taker. So I don't know
11 who took notes.

12 Q. Did you observe Mr. Matsumoto taking
13 notes?

14 A. No, I did not.

15 Q. Do you know if it was recorded in any
16 way?

17 A. No, I don't.

18 Q. I didn't hear as part of your
19 description of what was going to be briefed to the
20 special purpose trustees, any information with
21 regard to the IRS audit or what the Master had
22 done with regards to that issue.

23 Was there any discussion on those
24 issues?

25 A. Yes, there was.

1 Q. Could you tell me who that discussion
2 was?

3 A. The Master said that they were going to
4 provide us with 5701s that were issued by the IRS
5 so that we could read them. And that after we
6 read those 5701s, he would -- let me restate that,
7 because the Master was going to bring in Nathan
8 Aipa and that group here to talk to us about the
9 organization, and also provide us with the 5701s,
10 because the Master did not stay at the -- at our
11 meeting for more than about half an hour.

12 Q. So he left at a certain point?

13 A. He left to make us do our own
14 deliberations regarding who was going to be the
15 chair and, you know, who we wanted to hire as a
16 legal counsel for the board and those kind of
17 things.

18 Q. Did the Master have any
19 recommendations -- or Mr. Matsumoto have any
20 recommendations to you --

21 A. He did have.

22 Q. -- on those issues?

23 A. Yes, he did.

24 Q. What were those recommendations?

25 A. He recommended we use Carroll Taylor as

1 our legal counsel and recommended that we use
2 Arthur Andersen as another set of eyes to assist
3 us in the IRS audit -- IRS -- settling the IRS
4 issues.

5 Q. I'm just trying to get a little
6 definition here. When you say "another set of
7 eyes," do you mean that Arthur Andersen would act
8 as a consultant on IRS issues?

9 A. That's correct.

10 Q. And did Mr. Matsumoto recommend anybody
11 in particular within the Arthur Andersen
12 organization to assist you?

13 A. He had recommended Diane Cornwell.

14 Q. And did he explain to you whether or not
15 Ms. Cornwell had had any experience with the KSBE
16 tax audit issues prior to his recommendation?

17 A. Not at the first meeting. But he had
18 explained that they had been involved to assist
19 him in the tax audit issues.

20 Q. And you say that was a discussion that
21 you had with Mr. Matsumoto subsequent to this
22 first meeting?

23 A. He came back to give us the resume of
24 all these people, so that we could formally
25 determine whether we wanted to use them or not.

1 Q. Was that at that same meeting?

2 A. No. It was subsequent.

3 Q. At a subsequent meeting. Was there any
4 discussion with Mr. Matsumoto at that subsequent
5 meeting when he provided the resumes about Arthur
6 Andersen's report to the Court or to the Master
7 regarding the 109th, 110th and 111th accounts?

8 A. I don't recall any long discussions with
9 him, because it became a board decision on who we
10 wanted to use as a consultant. And we kind of
11 deliberated around how we wanted to do some of
12 these things.

13 Q. Did he provide you with a copy of that
14 Arthur Andersen report?

15 A. He did not. But it was given to us by
16 Nathan Aipa and that group. They came in with
17 folders -- different folders to brief us.

18 Q. That was during the briefing sessions?

19 A. Those were -- from the -- two days
20 later, when we got Nathan Aipa and that group, it
21 started a very long chain of briefings for us to
22 get us -- each different briefing they brought
23 different documents to us to brief us.

24 Q. So during Mr. Aipa's briefing, if I
25 understand you, he provided you with a copy of the

1 Arthur Andersen report?

2 A. Yes, he did. But I'm not sure if it was
3 Nathan Aipa that brought it. But there was a
4 whole series of people that came in all the time.

5 Q. Do you recall if he briefed you on the
6 report, even though he didn't provide it to you?

7 A. I can't recall who briefed us on it. I
8 would want to say that it was one of those people
9 that briefed us.

10 Q. And if you recall, did you then have the
11 Arthur Andersen report before you next met with
12 Mr. Matsumoto regarding the resumes of the
13 consultants that he had recommended?

14 A. No. We got the resumes before we got
15 the briefing.

16 Q. So within a day or so, Mr. Matsumoto
17 contacted you again and provided you with the
18 resumes?

19 A. When the groups showed up two days
20 later, he provided us with a summary. Not only of
21 Diane Cornwell, but everybody's, including Mike
22 Hare, Bruce Graham. So that at least we knew who
23 these people were.

24 Q. Did he provide you with the resumes of
25 the other special purpose trustees?

1 A. It was also in the Court order. When
2 they gave us the Court order, we could read it
3 right in there.

4 Q. And the decisions that you had to make
5 at that first meeting of the special purpose
6 trustees, were those decisions made regarding who
7 would be chair --

8 A. Yes.

9 Q. And was there a discussion about the
10 process under which you would select consultants?

11 A. There was some discussion. But not very
12 much discussion. Because we didn't know each
13 other very well. We didn't know what consultants
14 were available to us. So we just decided to be
15 cautious to -- let's talk about it, but let's
16 leave it for further meetings when we get more
17 information.

18 Q. You were expecting that further
19 information to come from Mr. Matsumoto; is that
20 correct?

21 A. Only the resume. The further
22 information would probably come out of the
23 briefings that we were getting.

24 Q. But those briefings were simply
25 background information regarding KSBE and the tax

1 audit issues, correct?

2 A. I'm not sure if you call that background
3 information, because some of those briefings were
4 pretty detailed, because we had to get to know
5 these issues in detail in order for us to make the
6 proper decisions on what we had to do. So it was
7 not just a skim over type of briefing.

8 It was going through it very carefully
9 on what the findings were from the Master. What
10 the different documents that they were briefing
11 contained.

12 Q. And as I understand it, at that point
13 you hadn't made a decision during the course of
14 those briefings, you hadn't made a decision on who
15 would be the legal counsel for the special purpose
16 trustees?

17 A. We made a decision -- once Ron Libkuman
18 came back to town, he was the only lawyer that we
19 had within the group, and after talking to him, he
20 agreed that we take Carroll Taylor.

21 Q. Did Mr. Taylor attend those briefings
22 with you?

23 A. Once we said that he was going to be
24 part of us, he did.

25 Q. Do you recall in what stage of the

1 process of the briefings that was? Was it in the
2 middle? Towards of beginning? Toward the end?

3 A. It was really towards of front end. It
4 didn't take us long to make a determination of
5 Carroll Taylor.

6 Q. Is Mr. Taylor still representing the
7 interim trustees?

8 A. He does not represent us, per se. But
9 we use him whenever we have a specific requirement
10 to use him.

11 Q. At that first meeting of the special
12 purpose trustees, did you choose a chairman of the
13 trustees?

14 A. Yes, we did.

15 Q. Who was that?

16 A. That was me.

17 Q. Was that a unanimous vote?

18 A. Yes -- well, it was unanimous.

19 Q. Do you recall when the decision was made
20 to retain Diane Cornwell of Arthur Andersen?

21 A. It was -- I would -- I cannot remember
22 exactly. But I would say within the third meeting
23 that we had, we were convinced that we would like
24 to use her.

25 Q. At some point, Mike McConaghy of Price

1 Waterhouse Coopers was also retained as a
2 consultant, correct?

3 A. Mark McConaghy was already retained by
4 the Estate. He was working for the Estate. And
5 we didn't see him any different than Nathan Aipa
6 or people that were now already part of that tax
7 committee, what we are calling the tax committee.

8 Q. What I'm trying to get at, Mr. Kihune,
9 is whether or not you used him in the context of
10 the job that you were appointed to do as special
11 purpose trustee?

12 A. Yes, we did.

13 Q. And at that point, did you begin to use
14 Mr. McConaghy in that process?

15 A. Yes, we did. We used him, I would
16 say -- we said we would be using him almost
17 immediately because he was, in fact, already in
18 the process of the -- of having assisted the
19 Estate in the IRS issues.

20 Q. And how was he introduced to the special
21 purpose trustees, as part of these briefings that
22 were done by Mr. Aipa and the other employees of
23 KSBE?

24 A. He did not come to Hawaii. So most of
25 the briefings that were given showed where Price

1 Waterhouse was, and they mentioned Mark McConaghy
2 and Betsy Case and the people that were working
3 the issues. But in those first orientation
4 briefings, he was not there.

5 Q. And you said at some point you were
6 provided with 5701s?

7 A. Yes, we were.

8 Q. You had your own copy of the 5701s?

9 A. That's correct.

10 Q. Each of the special purpose trustees had
11 copies of the 5701s?

12 A. That's correct.

13 Q. Have you read the 5701s?

14 A. Yes, I did.

15 Q. All of them?

16 A. Yes, I did.

17 Q. You understand the 5701s?

18 A. I wouldn't say I understand every bit of
19 it, because I'm not a tax expert. But I
20 understand the implications of them, the way it
21 was written in the 5701s.

22 Q. Did the 5701s you saw include the
23 settled claim under the IDRs for discrimination by
24 the Estate in its admissions policy?

25 (Whereupon Mr. Mel Miyagi entered the

1 room.)

2 A. The 5701 regarding the admission policy
3 had already been briefed in Washington prior to we
4 becoming the special purpose trustees. And -- but
5 part of the briefings that we received after we
6 became the special purpose trustees was by Mike
7 Hare, who gave us the status and the allegations
8 of the IRS, and it was well done. And he went
9 through the whole presentation.

10 Q. So that was part of the 5701s that you
11 received, the claim of the IRS with regards to the
12 admission policy?

13 MR. KAWASHIMA: Part of the same
14 materials that he received, you're saying?

15 A. I've got to say I can't remember if that
16 was a specific 5701 that I saw, because of the
17 time difference. But I know I read what you call
18 a Technical Advice Memorandum. And that's why I'm
19 saying I'm not too sure which one I was reading.

20 Q. And do you recall what that Technical
21 Advice Memorandum said?

22 A. Let me answer the question this way:
23 There was a 1975 Technical Advice Memorandum which
24 Mike Hare was briefing to us that did basically
25 say that the admissions policies, that the Estate

1 was -- or the Kamehameha Schools was in compliance
2 with the IRC.

3 And, consequently, what the whole issue
4 that has been discussed was that -- that Mike Hare
5 presented to us was that it was, again, an issue
6 regarding discrimination.

7 Then I've seen the subsequent one that
8 was issued on 19 April. In fact, that TAM was
9 given to me.

10 Q. Would it be a fair statement that as a
11 result of your briefing and as a result of reading
12 that Technical Advice Memorandum that you and the
13 other special purpose trustees believed that the
14 admissions policy that was being challenged by the
15 IRS was appropriate?

16 MR. KAWASHIMA: Let me object to
17 that as calling for speculation as to what the
18 other special purpose trustees thought.

19 Q. Well, as to what you thought. After
20 reading that Technical Advice Memorandum and
21 getting the briefing from Mr. Hare, did you then
22 believe that the admissions policy of KSBE was
23 appropriate?

24 A. Yes, I did.

25 Q. And that it was appropriate as far back

1 as 1975; is that correct?

2 A. That's correct.

3 Q. The IRS was challenging an admissions

4 policy that essentially was valid since 1975,

5 correct?

6 A. Yes.

7 Q. And that subsequently proved to be

8 correct? As of April of 1999?

9 MR. KAWASHIMA: Objection.

10 Compound. Vague and ambiguous.

11 Q. The decision of April 1999 upheld the

12 admissions policy, correct?

13 A. Upheld the 1975 admissions policy; that

14 is correct.

15 Q. So it found that there was no basis to

16 challenge the admissions policy, correct?

17 A. It just -- well, I wouldn't say that it

18 didn't have a basis to challenge it. But it did

19 uphold the 1975 ruling.

20 Q. Well, if I understand the Technical

21 Advice Memorandum of April, it stated that the

22 admissions policy was appropriate, was valid,

23 correct?

24 A. That's correct.

25 Q. And it did not allow the regional office

1 of the IRS to challenge KSBE's tax exempt status
2 based on that allegation, correct?

3 MR. JONES: Objection. The
4 Technical Advice Memorandum speaks for itself.

5 MR. KAWASHIMA: Calls for a legal
6 conclusion. Also, if you want to show him the
7 document and let him read it and interpret it,
8 that's fine.

9 Are you representing that is
10 exactly what the document says?

11 Q. The IRS is not now challenging the tax
12 exempt status based on the admissions policy of
13 KSBE, is it?

14 A. It is not, no.

15 MR. YEE: Let's take a break.

16 (Whereupon, a recess was taken.)

17 (Whereupon, Mr. Suzuki entered the
18 room.)

19 BY MR. YEE:

20 Q. When we broke, we were discussing the
21 briefings which were provided by KSBE staff and
22 your meetings with Colbert Matsumoto subsequent to
23 your appointment as special purpose trustee,
24 correct?

25 A. That's correct.

1 Q. If you can recall, after the briefings,
2 did you meet, either individually or with the
3 other special purpose trustees, with
4 Mr. Matsumoto?

5 MR. JONES: Which briefing are you
6 referring to?

7 MR. YEE: All the briefings.

8 Q. At the end of all the briefings.

9 A. No. Because we shifted our briefings to
10 Arthur Andersen's conference room. And we just
11 extricated ourselves totally out of Matsumoto's
12 office after the first meeting.

13 Q. Did Mr. Matsumoto attend any of those
14 briefings?

15 A. Not that I recall.

16 Q. Except the fact that he did attend the
17 first briefing?

18 A. The first briefing.

19 Q. To give you the resumes.

20 A. If he did, I can't recall. But there's
21 a good possibility he came in maybe for the first
22 briefing to tell us who these players were. But
23 he never would stay for the briefings.

24 Q. And are you stating for the record at
25 this point that you have not met with

1 Mr. Matsumoto since that last point in time where
2 he presented the resumes to the special purpose
3 trustees?

4 MR. KAWASHIMA: Objection.
5 Misstates his prior testimony. Go ahead.

6 Q. Can you answer the question?

7 A. We have met with Mr. Matsumoto since
8 that time.

9 Q. Okay. And since that subsequent meeting
10 with him at the first briefing, when was the next
11 time you met with Mr. Matsumoto?

12 A. I do not recall. But I know that for
13 sure that we had met with Mr. Matsumoto after we
14 had made a decision subsequent to a 19 April
15 meeting with the IRS of the way we were going to
16 proceed to handle that -- the demands that were
17 made by the IRS.

18 Q. And to your recollection, am I
19 correct -- to your recollection, that is the next
20 meeting that you had with Mr. Matsumoto since --

21 A. I believe there was some meetings -- not
22 meetings, but discussions with him. But I'm not
23 exactly -- I can't recall meetings per se with
24 him.

25 Q. Are you making a distinction between

1 meetings and discussions?

2 A. Yeah. When I say a meeting and a
3 discussion, I've seen Colbert a couple times on
4 the street, and aside from the formal meetings.
5 But I can't remember if he was at any of the
6 meetings. If he was -- he may have been at a
7 couple of meetings. But if he did come, he came
8 only for a special purpose, because we had asked
9 him to come to clarify something.

10 Q. Other than running into him on the
11 street a couple of times, have you had discussions
12 with Mr. Matsumoto over the phone regarding KSBE?

13 MR. JONES: Objection. In what
14 capacity? As a special purpose trustee or an
15 interim trustee?

16 MR. YEE: It doesn't matter.

17 A. Yes, I've talked to Mr. Matsumoto on the
18 phone.

19 MR. YEE: Let's take a break for a
20 second.

21 (Pause.)

22 Q. Is your statement that you've had other
23 discussions with him?

24 A. On the phone, yes, I did.

25 Q. Do you recall what those discussions

1 were about?

2 A. I know that I had a discussion -- not a
3 discussion. But I requested that he come over to
4 the Arthur Andersen conference room after we came
5 back after the 19th of August, because we wanted
6 to talk to him about what we had intended to do
7 with the demands that the IRS had asked us to
8 could.

9 And I've had subsequent discussions with
10 him, because he queried me about CEO policies and
11 various other status on whether we had filed, you
12 know, a certain kind of -- we were going to make
13 the 24th -- a certain kind of filing dates and so
14 on.

15 MR. KAWASHIMA: Did you say 19
16 August?

17 A. No, 19 April. Sorry. 19 April.

18 Q. Prior to any of the meetings with the
19 IRS, prior to August -- sorry -- April of 1999,
20 had you had any discussions with Mr. Matsumoto?

21 A. If we did, it was probably on a specific
22 thing to clarify something. But off the top of my
23 head, I can't recall exactly what it would be.

24 Q. Would it refresh your recollection if I
25 asked you if you called him in an ongoing dialogue

1 during the course of your negotiations with the
2 IRS to discuss issues that would arise in the
3 negotiations with the IRS?

4 A. No, we did not -- they were mostly --
5 the kind of questions that I'm trying to
6 remember -- it had to do with the court order and
7 what our duties were that we specified in the
8 court order assigning us as the special purpose
9 trustees. And we -- sometimes were not clear
10 where the boundaries were on those things.

11 So I would call them and say,
12 Mr. Matsumoto, you know, there's a -- does the
13 Court really mean this, and he would give us
14 advice on that thing. So there were a number of
15 calls like that. That's why I hesitate to say
16 specifically what they were. But they're the
17 general terms of those kinds of conversations.

18 Q. Would it refresh your recollection if I
19 asked you possibly were some of the issues with
20 regards to concessions that you would make on
21 behalf of the KSBE to the IRS in negotiation --

22 A. Absolutely not. Absolutely not.

23 Q. In your mind, Mr. Kihune, what was the
24 purpose of negotiating with the IRS?

25 A. The purpose for negotiating with the IRS

1 subsequent to 19 April was to preserve our tax
2 exempt status.

3 Q. Prior to April 19.

4 A. Well, the whole issue is tax exempt.
5 And our purpose was to make sure that we preserve
6 our tax exempt status for the Estate.

7 Q. And you have that understanding as a
8 result of your meetings with Mr. Matsumoto?

9 MR. KAWASHIMA: Objection. Vague
10 and ambiguous what "that understanding" is.

11 Q. Let me test your understanding then.

12 What is the basis of that understanding
13 that you have?

14 MR. KAWASHIMA: Same objection.
15 Vague and ambiguous as to what "that
16 understanding" is.

17 Q. You just stated, Mr. Kihune, that you
18 understood your job to be the preservation of the
19 tax exempt status, correct?

20 A. That's correct.

21 Q. What is the basis of that understanding?

22 A. The basis --

23 (Whereupon, Mr. Wolsztyniak entered the
24 room.)

25 MR. YEE: Why don't we take a

1 break.

2 (Whereupon, a recess was taken.)

3 Q. Do you recall what the question was?

4 A. Could you restate the question, please.

5 (Record read by the Court Reporter.)

6 A. As the special purpose trustees, we were
7 advised by our legal and tax advisors that the IRS
8 had issued 5701s and had threatened the revocation
9 of the tax exempt status of the Estate.

10 Q. When is the first time you met with any
11 official as a special purpose trustee from the
12 IRS?

13 A. I personally met with the IRS on the 3rd
14 of March.

15 Q. Where was that meeting held?

16 A. In Los Angeles.

17 Q. Were there other special purpose
18 trustees present?

19 A. No, there were not.

20 Q. Was there anybody present assisting you
21 as a special purpose trustee?

22 A. Yes, there were.

23 Q. Who was that?

24 A. Nathan Aipa, Gil Ishikawa, Glenn Hara,
25 Myron Mitsuyashi, as well as representatives from

1 Price Waterhouse, Arthur Andersen, and Miller &
2 Chevalier.

3 Q. Can you name those individuals from
4 those --

5 A. From Miller & Chevalier was Emmett
6 Lewis. From Price Waterhouse, it was Mark
7 McConaghy, Howard Schoenfeld. And from Arthur
8 Andersen, it was Diane Cornwell.

9 Q. Where was this meeting held?

10 A. This meeting was held in Los Angeles.

11 Q. At the IRS offices?

12 A. At the district office of the IRS.

13 Q. And who attended that meeting from the
14 IRS?

15 A. There was representatives from the
16 national office, the district office, and the
17 chief counsel.

18 Q. Do you recall the names of those
19 individuals?

20 A. From the national office was a guy named
21 Jack -- his name escapes me. It was Jack. I can
22 see his face.

23 From the district office was Terry
24 Franklin, Gordon Wilke, and Wade Clark. And from
25 the Chief Counsel office, there were two ladies,

1 Janet Hughes and another lady.

2 MR. YEE: I think Mr. Lewis has the
3 name.

4 MR. LEWIS: Jack Riley.

5 A. Jack Riley, right.

6 Q. Other than the IRS officials who you've
7 named and the staffing consultants from KSBE and
8 yourself, were there any other people who were in
9 attendance at that meeting?

10 A. Yes. I left out Mike Hare, who was also
11 at that meeting.

12 Q. And he was there on behalf of KSBE?

13 A. He was there on behalf of KSBE.

14 Q. Do you recall how long that meeting
15 lasted?

16 A. It was no longer than one day.

17 Q. One day meaning eight hours?

18 A. I would estimate maybe about six hours,
19 at the most.

20 Q. And was there an agenda for that
21 meeting?

22 A. I did not see an agenda. I came just to
23 introduce myself to the IRS.

24 Q. Obviously, it was more than just an
25 introduction of yourself as special purpose

1 trustee if it lasted six hours, correct?

2 A. That's correct.

3 Q. Were there issues concerning the IRS
4 audit which were discussed at that meeting?

5 A. That's correct. There were -- the
6 purpose of the meeting was for the staff and our
7 consultants to ask questions of the IRS regarding
8 the 5701s that were issued.

9 Q. Would you describe it as a working
10 meeting then?

11 A. It was supposed to be a working meeting.

12 Q. And did you have access to the 5701s at
13 that meeting?

14 A. I had already read the 5701s prior to
15 the meeting.

16 Q. Were the 5701s referred to and used at
17 that meeting?

18 A. They were referred to by the tax and --
19 the advisors that were present.

20 Q. Were they referred to by the IRS people
21 who were present?

22 A. In response to the questions, they were
23 referred to by the IRS.

24 Q. It sounds as if there were a lot of
25 questions from the KSBE personnel who attended,

1 and possibly yourself, to the IRS, correct?

2 A. I did not have any questions. I left it
3 to the staff and the consultants to ask the
4 questions.

5 Q. Do you recall what specific 5701s were
6 the subject of questions by the KSBE staff or the
7 consultants?

8 A. No, I do not.

9 Q. Do you recall any of the responses by
10 the IRS to the questions asked by the KSBE staff
11 or the consultants?

12 A. No, I do not.

13 Q. Did you take notes at that meeting?

14 A. No. I'm not a note taker.

15 Q. As you can tell, I'm not either.

16 Do you know if anybody from the KSBE
17 staff or the consultants that attended on behalf
18 of KSBE took notes?

19 A. I was not paying attention.

20 Q. Has anybody given you a recap of that
21 meeting in writing?

22 MR. KAWASHIMA: Anyone who was
23 there, of course?

24 MR. YEE: Yes.

25 Q. Anyone who was there.

1 A. No, I did not see a recap of the
2 meeting.

3 Q. As a result of that meeting, was there
4 correspondence sent to the IRS by the KSBE staff
5 present or consultants present?

6 A. I did not specifically see the
7 correspondence. But as a result of that, quote,
8 working meeting, it started the dialogue of
9 questionings and information exchange between the
10 IRS regarding specific 5701s.

11 Q. And you said that that meeting took
12 place --

13 A. The 3rd of March.

14 Q. 3rd of March. So after your return from
15 that meeting with the IRS -- and I assume it only
16 lasted that one day?

17 A. It lasted one day.

18 Q. After your return from that meeting, did
19 you meet with the other special purpose trustees
20 to discuss the meeting?

21 A. Yes, we did.

22 Q. Just as a caution, Mr. Kihune. I speak
23 rather quickly sometimes. But, also, you have to
24 wait until I finish the question so that
25 Mr. Barton can take it down, the complete

1 question, and he can get your answer. It's hard
2 for him to take down both the question and the
3 answer.

4 A. Okay.

5 Q. Do you recall when that meeting with the
6 special purpose trustees regarding the IRS meeting
7 of March 3rd occurred?

8 A. The meeting after the 3rd of March
9 meeting was held on the 4th of March with the
10 special purpose trustees.

11 Q. And were all the special purpose
12 trustees in attendance?

13 A. Yes, they were.

14 Q. And other than the special purpose
15 trustees and yourself, were there any other people
16 in attendance at that meeting?

17 A. Yes, there were.

18 Q. And who was in attendance?

19 A. All of the people that attended the 3rd
20 of March meeting in Los Angeles.

21 Q. You mean all of the consultants --

22 A. The consultants.

23 Q. -- and employees --

24 A. That's correct, the consultants that
25 were there. As well as some of the other support

1 staff that was supporting us from Arthur Andersen.

2 Q. When you made a decision, going back a
3 little bit -- when you made a decision to appoint
4 a chairperson, to select consultants, did you
5 decide on a process amongst the special purpose
6 trustees on how meetings of the special purpose
7 trustees should be held?

8 MR. KAWASHIMA: Objection.

9 Compound. Vague and ambiguous, as to your
10 reference as to who "you" might be.

11 Q. The "you" I'm referring to is the
12 special purpose trustees.

13 A. The special purpose trustees did not
14 develop a written process by which we would
15 deliberate any of the decisions. However, we did
16 understand that for anything we were doing, it
17 would require a majority of the special purpose
18 trustees to sustain whatever decision we wanted to
19 implement.

20 Q. By "majority," do you mean the
21 conventional understanding of majority, when there
22 is a panel of five, that three out of five
23 constitutes a majority?

24 A. That's correct.

25 Q. Was there a decision whether or not to

1 take minutes of the meetings of the special
2 purpose trustees?

3 A. There was.

4 Q. And what was that decision?

5 A. That we did.

6 Q. Who keeps the minutes for the meetings
7 of the special purpose trustees?

8 A. Those minutes were kept by our
9 consultant that we had hired to be the
10 coordinator.

11 Q. And who was that?

12 A. Eric Yeaman from Arthur Andersen.

13 Q. And do you have copies of those minutes?

14 A. I do not have copies present with me,
15 no.

16 Q. But you do have them in your possession
17 or control?

18 A. I do have them in a file somewhere.

19 Q. Do you know how many pages of minutes
20 that you have approximately? A hundred? Two
21 hundred?

22 A. I would say about fifty.

23 Q. And do you know if there were minutes
24 taken of all of the meetings of the special
25 purpose trustees?

1 A. As far as I can recall, yes, we did take
2 minutes of all of them.

3 Q. Including the briefings that were done
4 by the KSBE personnel?

5 A. At the orientation point, no, we did not
6 take minutes for those.

7 Q. At what point did you begin to take
8 minutes --

9 A. When we began deliberating.

10 Q. Can you give me a date for that
11 approximately? Month?

12 A. I would say probably -- probably late
13 February, early March.

14 Q. Now, going back to the March 3 meeting
15 with the IRS, did you meet with the KSBE
16 personnel, you, yourself prior to the meeting of
17 March 3 with the IRS.

18 A. Yes, I did.

19 Q. Were the consultants that attended the
20 IRS meeting also present at that meeting with KSBE
21 personnel?

22 A. I cannot recall if all the consultants
23 were present. Because that deliberation -- they
24 may have been just on the telephone conference
25 rather than physically there.

1 Q. Do you recall how long prior to the
2 March 3 meeting the meeting with the KSBE
3 personnel and the consultants was?

4 A. It was at least a couple of days before,
5 in preparation for the meeting.

6 Q. Do you know if there was an agenda for
7 that meeting?

8 A. No. I did not have an agenda. I was
9 basically joining them to sit down and just go
10 over what they were going to be doing.

11 Q. Would it be a fair characterization to
12 say it was also a briefing for you on what would
13 be discussed with the IRS?

14 A. They did not brief me on what was going
15 to be discussed. Because what they had told me
16 was they were going to be asking questions of the
17 IRS on specific things. And, in fact, at one
18 point, they had asked me to not even go, because
19 it was more convenient.

20 Q. Obviously, you didn't follow that
21 advice?

22 A. It was the board's decision that I go,
23 because they wanted to have first contact with the
24 IRS.

25 Q. And do you know if there were notes

1 taken at that preparation meeting with the
2 employees, the consultants?

3 A. I never took any notes.

4 Q. But do you know if anybody else took any
5 notes?

6 A. No, I don't.

7 Q. Have you seen any recap of that meeting
8 in writing?

9 A. No, I've never seen it.

10 Q. Do you know if Mr. Mark McConaghy was
11 present at that meeting?

12 A. The meeting prior to the 3rd?

13 Q. Yes.

14 A. As I said, I can't recall. But I do not
15 believe, because he was on -- I believe he was one
16 of the people that was on the telephone
17 conference.

18 Q. When did you arrive for the March 3
19 meeting with the IRS in Los Angeles?

20 A. The night before.

21 Q. And that evening before the March 3
22 meeting, did you have an opportunity to sit down
23 with all the people from the KSBE side to discuss
24 any issues regarding the next morning's meeting
25 with the IRS?

1 A. I met with them socially. And because
2 the kind of issues that we were discussing were
3 questions directly from the IRS, and I didn't
4 think as a trustee I needed to get down into that
5 level.

6 Q. Did you have any questions for the IRS?

7 A. My mission for that meeting was to
8 interface with the IRS, introduce myself and try
9 to set up a relationship with the IRS.

10 Q. So you didn't have any questions for the
11 IRS?

12 A. I really was not going there to ask
13 questions. I was going to try to set up that
14 relationship, if we could.

15 Q. During the course of that six-hour
16 meeting on March 3, did you have questions for the
17 IRS?

18 MR. JONES: Asked and answered.

19 A. As I said, I did not have any questions
20 for the IRS. I left it to the tax counsels and
21 tax advisors.

22 Q. Mr. Kihune, have you ever served in the
23 capacity as a trustee prior to your appointment as
24 special purpose trustee?

25 A. As a trustee? No.

1 Q. And that goes to any type of trust.

2 Private trust --

3 A. Not as a trustee.

4 Q. Mr. Kihune, for today's deposition you
5 were served with a notice of the deposition along
6 with a subpoena duces tecum which was filed with
7 the circuit court November 22.

8 Have you had an opportunity to review
9 the subpoena that was issued?

10 A. No. I'd like to see it.

11 Q. Sure. Not a problem. Why don't we take
12 a few minutes. Take a quick look at that.

13 (Whereupon, Mr. Suzuki left the room.)

14 (Pause.)

15 Q. Mr. Kihune, you as interim trustee
16 signed the petition for permanent removal of
17 Trustee Peters; is that correct?

18 A. That's correct.

19 Q. And you signed the subsequent amended
20 petition for permanent removal of Trustee Peters;
21 is that correct?

22 A. That's correct.

23 Q. You've read both the petition and the
24 amended petition?

25 A. I have reviewed it, yes.

1 Q. And do you adopt all of the statements
2 therein as interim trustee as your statements
3 pursuant to Probate Rule 5?

4 A. I do.

5 Q. At paragraph 42 of the -- I think it's
6 both the petition and the amended petition, it
7 states that the Trust Estate's tax litigation
8 attorneys advise the interim trustees that because
9 of the conduct of the incumbent trustees, the
10 Trust Estate faces significant risks that the IRS
11 may ultimately prevail in any litigation over the
12 Trust Estate's tax exempt status. And it cites a
13 letter and exhibit attached to both the petition
14 and amended petition.

15 Have you read the Miller & Chevalier
16 letter that I'm referring to?

17 A. If it is a 12 August letter, I have read
18 it.

19 Q. I believe it is, sir.

20 And as part of the basis of your
21 petition and amended petition, you are relying on
22 in part this August 12, 1999 letter of Miller &
23 Chevalier and the attachments thereto?

24 A. Yes, I am.

25 Q. I'm going to show you and represent to

1 you that this is a portion of that letter which is
2 attached as an exhibit to that letter, which is
3 page 5 of the exhibit -- I'm sorry -- page 5 of
4 Appendix B to that letter.

5 MR. KAWASHIMA: What would you like
6 him to read?

7 MR. YEE: He can read the whole
8 thing.

9 MR. KAWASHIMA: It's a partial
10 page. The section starts --

11 MR. YEE: He can start at this
12 section.

13 MR. KAWASHIMA: "Indicating
14 criminal proceedings involving the incumbent
15 trustees."

16 MR. YEE: Yes.

17 (Pause.)

18 A. Okay.

19 Q. Have you read this before?

20 A. Yes, I did.

21 Q. As I understand your prior testimony,
22 the basis upon which you filed the petition
23 includes what you've just read, correct?

24 A. Yes.

25 Q. And just a few minutes ago, I had you

1 review the subpoena that was issued in this case.
2 I'm not going to have you review the letter of
3 your counsel dated December 1, 1999 to myself and
4 ask you to review the entire thing. But I'm going
5 to specifically ask you questions about this
6 portion of the letter which begins, Request number
7 1 (indicating).

8 A. Okay.

9 (Pause.)

10 A. Okay.

11 Q. As a result of reading that letter from
12 your counsel to me, Mr. Kihune, is it your
13 understanding now that you have objected to
14 producing any documents related to the criminal
15 matters against Trustee Peters?

16 MR. KAWASHIMA: Let me object to
17 these questions. These objections were made by
18 counsel, not by Admiral Kihune. But on his
19 behalf, they speak for themselves. I assume what
20 you're trying to do is compare this objection with
21 what is in the petition. The petition speaks for
22 itself. Also, the opinion letter speaks for
23 itself.

24 It may reference the criminal
25 indictment. That doesn't mean necessarily that

1 that is a matter of proof that will be brought up
2 in the trial on the amended petition.

3 We've never claimed we will bring
4 up the criminal indictment or the criminal matters
5 in the hearing on the amended petition. I think
6 you are wasting time. It is irrelevant and not
7 reasonably calculated to lead to the discovery of
8 admissible evidence, and I object.

9 MR. YEE: Our position is going to
10 be that anything that is attached to the petition
11 or the amended petition is fair grounds for
12 questioning of Mr. Kihune at his deposition.
13 Particularly where he's already stated that it's a
14 basis upon which he has filed a petition.

15 MR. KAWASHIMA: I am not
16 disagreeing with you. You are trying to compare a
17 legal objection to what is attached to the amended
18 petition, suggesting that every piece of
19 information there is a matter of proof in this
20 case. It's not. That's what I'm telling you.
21 We've never done discovery on the criminal issues.
22 You know that.

23 You have a question?

24 MR. YEE: Yes.

25 (Whereupon, a notice of deposition was

1 marked as Exhibit 1 for Identification.)

2 (Whereupon, a July 28, 1999 letter was
3 marked as Exhibit 2 for Identification.)

4 (Pause.)

5 A. Yes.

6 Q. Have you read it?

7 A. Yes.

8 Q. Mr. Kihune, I've shown you Exhibit 2, a
9 letter which I purport to be a letter from you to
10 Attorney General Earl Anzai dated July 28, 1999.

11 Do you recognize this?

12 A. Yes, I do.

13 Q. I'll ask you to refer to page 2.

14 A. Okay.

15 Q. Is that your signature on page 2 of this
16 letter?

17 A. Yes, it is.

18 Q. And is this letter a true and accurate
19 copy of the letter that you sent to
20 Attorney General Anzai on July 28, 1999?

21 A. To the best of my knowledge.

22 Q. Is there any reason for you to believe
23 this is not a true and correct copy of the letter?

24 A. No.

25 Q. Was this letter drafted by you, or was

1 it drafted by somebody else for you?

2 A. It was drafted by Colleen Wong.

3 Q. And did Colleen Wong draft it for you on
4 specific instructions of the content of the
5 letter, or was it drafted by her and then
6 presented to you for signature?

7 A. Could you clarify that a little bit
8 more, when you say "content of the letter"?

9 Q. Did you tell her what to draft in the
10 letter?

11 A. No, I did not.

12 Q. When did you first learn of this issue
13 which is stated in the letter?

14 MR. KAWASHIMA: Wait. Objection.
15 Vague and ambiguous, overly broad. Which issue?

16 Q. The letter purports to be a waiver of
17 the attorney/client privilege as to three matters
18 which are undergoing criminal inquiry by the
19 Attorney General's office.

20 The first is the KSBE sale of the Kalele
21 Kai condominium project. The second being
22 violations of the campaign spending laws. And
23 third being improper use of KSBE charge cards by
24 former employee, Milton Holt.

25 A. What was the question again?

1 MR. KAWASHIMA: He wasn't asked the
2 question.

3 THE DEPONENT: Okay.

4 Q. And the question is whether or not you
5 understood or knew about the request for waiver of
6 attorney/client privilege prior to seeing this
7 letter?

8 A. That's correct.

9 Q. And when did you first learn of the
10 request for the waiver of attorney/client
11 privilege?

12 A. I don't have an exact date. But there
13 was a request from the Attorney General regarding
14 these specific items.

15 Q. And with regards to the interim trustees
16 waiving the attorney/client privilege with regard
17 to those issues?

18 A. They requested -- that's correct.

19 Q. Did that request come in written form?

20 A. I cannot recall, based upon what this
21 letter -- the way it's written. I just don't
22 recall whether it was a written letter or just a
23 verbal.

24 Q. Do you recall if it was directed to you
25 or one of the other interim trustees?

1 A. The Attorney General normally sends
2 their letters to me.

3 Q. Do you have a letter from the Attorney
4 General requesting a waiver of the attorney/client
5 privilege on these three issues?

6 A. I cannot recall right now.

7 Q. Is the waiver of the attorney/client
8 privilege stated in this letter of July 28 a
9 waiver of the attorney/client privilege on behalf
10 of the interim trustees?

11 MR. KAWASHIMA: Objection. Calls
12 for a legal conclusion.

13 MR. JONES: Objection. Exhibit 2
14 speaks for itself.

15 Q. Do you understand the question?

16 A. Yeah. And the waiver regarding the
17 attorney/client privilege is a waiver regarding
18 information that belongs to KSBE.

19 Q. Do you know if there are any other
20 matters in which the Attorney General's office has
21 requested waiver of the attorney/client privilege
22 over and above the three that are stated in this
23 letter?

24 A. I know there were requests. But right
25 off the top of my head, I can't remember all of

1 them.

2 Q. Do you recall if these requests were
3 subsequent to this letter of July 28, 1999 or
4 prior to?

5 A. I believe they were prior to.

6 Q. And did you write letters similar to
7 this letter providing a waiver of the
8 attorney/client privilege on those matters?

9 A. Our policy is normally to respond back
10 to the Attorney General with a letter. But I
11 don't remember all the specifics of those.

12 Q. Do you believe it was more than one
13 time?

14 A. I cannot recall.

15 Q. Was it as many as ten times?

16 MR. KAWASHIMA: Asked and answered.

17 A. I don't believe so.

18 Q. If requested, are you able to provide
19 copies of those subsequent waivers of
20 attorney/client privilege?

21 MR. KAWASHIMA: If appropriately
22 requested. And if we're obligated to, we will.

23 Q. What is your understanding of the
24 phrase, The attorney/client privilege that belongs
25 to KSBE, which is in the last paragraph of your

1 letter of July 28, 1999?

2 A. The attorney/client privilege that is
3 stated herein for these documents were provided
4 under the advice of Colleen Wong that she had
5 reviewed them and they were, in fact, waivable.

6 Q. Is it your testimony today that the
7 attorney/client privilege that is provided for in
8 this letter of July 28, 1999 is a waiver of
9 attorney/client privilege contained in documents
10 provided to the Attorney General's office?

11 MR. KAWASHIMA: Objection. Vague
12 and ambiguous. Calls for a legal conclusion.
13 Lacks proper foundation.

14 MR. JONES: I join in the
15 objection.

16 MR. YEE: I'm questioning what he
17 just said. He said it had to do with documents
18 with regard to the three subject matters which
19 were stated in the letter.

20 MR. KAWASHIMA: I understand what
21 you're saying. What is your question?

22 Q. My question is, is that the only
23 attorney/client privilege waiver that was
24 provided, as to documents --

25 MR. KAWASHIMA: That misstates --

1 you are misstating your prior question. This one
2 is vague and ambiguous and calls for a legal
3 conclusion and lacks proper foundation.

4 MR. JONES: Same objection.

5 A. These were not the only documents.

6 Q. Were there other documents?

7 A. I believe there were other documents.

8 But I never saw them.

9 Q. What is your understanding as to what
10 the attorney/client privilege -- the phrase,
11 attorney/client privilege that belongs to KSBE,
12 what is the attorney/client privilege that belongs
13 to KSBE?

14 MR. KAWASHIMA: Objection. Calls
15 for a legal conclusion.

16 MR. JONES: Join.

17 MR. KAWASHIMA: Go ahead.

18 A. My understanding is that it is any of
19 the information or advice provided by the attorney
20 to the members of KSBE in the capacity not as
21 individuals, but as workers and staff and trustees
22 of the Estate.

23 Q. How did you come to this understanding
24 of that phrase?

25 A. Through the definition that was given to

1 me by our legal counsel.

2 Q. Which legal counsel is that?

3 A. Colleen Wong.

4 Q. Do you know if this request for waiver
5 of attorney/client privilege came from Mr. Goya of
6 the criminal division of the Attorney General's
7 office?

8 MR. KAWASHIMA: Lacks proper
9 foundation, calls for speculation. Go ahead and
10 answer.

11 A. I don't know. I can't recall.

12 Q. Have you ever met with Mr. Goya of the
13 criminal division of the Attorney General's
14 office?

15 A. Yes, I did.

16 Q. When was that?

17 A. Back in early June.

18 Q. And who was in attendance at that
19 meeting?

20 A. Mr. Goya and the then-acting Attorney
21 General --

22 MR. JONES: Rick Keller.

23 A. -- Rick Keller.

24 Q. Anybody else?

25 A. There was another person. I don't

1 recall who he was. He just sat there. He must be
2 an investigator.

3 Q. And were any of the other special
4 purpose trustees or interim trustees at that
5 point --

6 A. All of them were there.

7 Q. Who from the KSBE staff was present, if
8 anybody?

9 A. None.

10 Q. Was Mr. Aipa in attendance at that
11 meeting?

12 A. He was not.

13 Q. At the time you signed this letter on
14 July 28, 1999, were you aware that Mr. Aipa had
15 testified before the Grand Jury in the criminal
16 matter against Trustee Peters?

17 MR. KAWASHIMA: When? When had he
18 testified?

19 MR. YEE: No. At the time he
20 signed this letter.

21 MR. KAWASHIMA: But when had
22 Mr. Aipa testified?

23 MR. YEE: Do you need to know that,
24 Mr. Kihune?

25 A. I don't recall him testifying before the

1 Grand Jury.

2 MR. YEE: That's all I'm trying to
3 get at.

4 Q. Had Mr. Aipa, prior to your signing of
5 this July 28 letter of 1999, come to you and
6 discussed his Grand Jury testimony?

7 A. He did not.

8 Q. Had Colleen Wong, the general counsel of
9 KSBE, come to you prior to your signing of this
10 July 28, 1999 letter, come to you and discussed
11 Mr. Aipa's Grand Jury testimony?

12 A. No, she did not.

13 Q. You said that you have also provided
14 waivers of attorney/client privilege for other
15 matters requested by the Attorney General's office
16 prior to your July 28, 1999 letter.

17 Would it refresh your recollection if I
18 asked you if they were with regards to the
19 criminal cases against Trustee Peters and
20 Trustee Wong?

21 A. I specifically do not remember whether
22 they were against the criminal -- because there
23 was an omnibus subpoena from the Attorney General
24 that we were trying to fulfill during that whole
25 period.

1 And that's why it's kind of vague
2 which -- which slot we're talking about here,
3 whether it's the criminal or the civil.

4 Q. We're real vague about that too.

5 MR. KAWASHIMA: I'll stipulate to
6 that.

7 Q. Would it refresh your recollection if I
8 asked you if the waiver that was requested by the
9 Attorney General prior to your July 28, 1999
10 letter with regards to the surcharge petition that
11 was filed by the Attorney General's office?

12 MR. JONES: Objection to the form
13 of the question. Vague and ambiguous. Compound.

14 MR. KAWASHIMA: Calls for a legal
15 conclusion.

16 Q. I'm just asking you if it would refresh
17 your recollection if I said it was a surcharge?

18 MR. JONES: If you are trying to
19 refresh the witness's recollection, I suggest you
20 show him a document.

21 A. If you show me something. I can't
22 remember that.

23 Q. I don't think we need to show Mr. Kihune
24 the surcharge petition filed by the Attorney
25 General's office to refresh his recollection about

1 that. I'm sure it's fresh in his mind.

2 MR. KAWASHIMA: There may be
3 certain items of that petition you want to ask him
4 about -- but, fine, do whatever you like.

5 Q. You are aware of the surcharge petition
6 that has been filed?

7 A. I'm aware. But I don't remember all the
8 details of it. In the course of a day I read so
9 much on the Estate that I cannot remember
10 everything.

11 Q. Getting back to the letter of July 28,
12 1999, what are you referring to on the last page
13 of the letter by the term, "a personal
14 attorney/client relationship"?

15 A. What we are talking about, if, in fact,
16 the former trustees or incumbent trustees had
17 hired a specific attorney to represent them.

18 Q. You mean an attorney who also represents
19 the Estate?

20 A. No. Just the individual.

21 Q. And when you say in that last sentence
22 "trustees," are you referring to just the former
23 trustees?

24 MR. KAWASHIMA: Vague and
25 ambiguous.

1 Q. Do you understand my question?

2 MR. JONES: Which reference to the
3 word "trustee" on page 2 are you talking about?

4 MR. YEE: The one that is not
5 preceded by "former."

6 A. Well that sentence or that trustee uses
7 the word "these," which refers back to the former.

8 Q. And by "former trustees," are you
9 limiting it to just Trustee Peters, Trustee Wong,
10 Trustee Lindsey, Trustee Stender and
11 Trustee Jervis?

12 A. That's correct.

13 Q. What is Mr. Aipa's position today with
14 KSBE?

15 A. He is the acting Chief Operating
16 Officer.

17 Q. And he's been in that position how long?

18 A. Since the 7th of May.

19 Q. And what was the process by which the
20 interim trustees appointed Mr. Aipa as the acting
21 COO --

22 A. That's correct. We sat down and
23 deliberated that it was a real requirement that we
24 have somebody that would oversight the staff,
25 because we did not desire to have a governing

1 system that was going to be managing the Estate on
2 a day-to-day basis and micromanage the Estate.

3 So we decided that we wanted a COO that
4 would be in a similar capacity as a CEO that would
5 do the management of the -- the detail management
6 of the Estate.

7 Q. When you refer to CEO, are you referring
8 to the description of the CEO that is contained in
9 Stipulation 22?

10 MR. WOLSZTYNIAK: Do you mean COO
11 or CEO?

12 MR. YEE: The CEO.

13 A. The CEO, that's correct. That's right.

14 Q. So Mr. Aipa is actually acting in the
15 capacity of the CEO that is referred to in
16 Stipulation 22?

17 A. He is currently doing some of the duties
18 that would normally be with the CEO. We have
19 retained the president of the school to have full
20 responsibility for the school until we hire a CEO.

21 Q. I assume the vote for Mr. Aipa's acting
22 in that role was a unanimous vote?

23 A. It was a unanimous vote.

24 Q. Since May 7, 1999, Mr. Aipa has not
25 served as the attorney for the interim trustees;

1 is that correct?

2 A. That's correct.

3 Q. Has Mr. Aipa spoken to you since his
4 appearance before the Grand Jury on July 21, 1999
5 regarding his testimony?

6 A. He never has talked to us about his
7 testimony.

8 Q. Did Mr. Aipa ever request from you a
9 waiver of the attorney/client privilege for his
10 testimony on July 21, 1999?

11 A. He did not.

12 Q. Did you discuss with Mr. Aipa the
13 contents of the letter which is Exhibit 2 which
14 I've shown you dated July 28, 1999 before it was
15 sent out?

16 A. No, we did not.

17 Q. Cited in the letter of July 28 in the
18 second paragraph is a portion of the vesting order
19 that was issued by the Court on May 7, 1999,
20 correct?

21 A. That's correct.

22 Q. The vesting order is one of the sources
23 under which you act as interim trustee for KSBE,
24 correct?

25 A. That's correct.

1 Q. What are the other sources of authority
2 under which you act as interim trustee of KSBE?

3 MR. KAWASHIMA: Calls for a legal
4 conclusion.

5 Q. Do you have an answer for that question?

6 A. Well, we are -- we act under the -- both
7 the federal laws and the state laws. Specifically
8 the Uniform Trustees Powers Act and the Uniform
9 Prudent Investors Act.

10 Q. Have you read both of those acts?

11 A. Yes, I have.

12 Q. Isn't it also true that you act under
13 the authority of the will of Princess Bernice
14 Pauahi Bishop?

15 A. Absolutely.

16 Q. And that you, in fact, are bound by and
17 authorized by the subsequent orders of the probate
18 court here in the State of Hawaii with regards to
19 Equity Number 2048?

20 A. I'm not familiar with Equity 2048.

21 Q. 2048 is the probate number of this case.
22 I'm sorry. We tend to take it for granted that
23 everybody knows that.

24 (Discussion off the record.)

25 Q. And that, in fact, there are orders

1 which date back to the first filing of the will
2 which control the actions and authority of the
3 trustees.

4 Do you understand that?

5 A. I understand that.

6 Q. Have you been briefed on those orders
7 that affect your authority to act as a trustee?

8 A. We were briefed on that.

9 Q. Have you read the will of
10 Princess Bernice Pauahi Bishop?

11 A. Yes, I have.

12 Q. And the codicils?

13 A. Yes, I did.

14 Q. I'm going to show you another exhibit
15 which I'm going to have marked as Exhibit 3.

16 (Whereupon, a June 2, 1999 letter was
17 marked as Exhibit 3 for Identification.)

18 (Whereupon, a recess was taken.)

19 (Whereupon, Mr. Miyagi left the room.)

20 BY MR. YEE:

21 Q. Mr. Kihune, during the break you had an
22 opportunity to review what I've had marked as
23 Exhibit 3, which is a letter of June 2, 1999 to
24 you from the Department of the Attorney General
25 from Deputy Attorney General Lawrence A. Goya.

1 Have you had a chance to review that?

2 A. Yes, I did.

3 Q. And does that letter look familiar to
4 you?

5 A. It looks familiar. Yes, it does.

6 Q. And you stated previously in your
7 testimony that you had a meeting with
8 Deputy Attorney General Goya and acting
9 Attorney General Rick Keller?

10 A. That's correct.

11 Q. Does this letter reflect some of the
12 issues that were discussed at that meeting?

13 A. Yes, it does.

14 Q. And is this letter a true and accurate
15 copy of the letter that you received from
16 Deputy Attorney General Lawrence Goya?

17 A. As best I can recall.

18 Q. Is there any reason for you to believe
19 today that this is not a true and correct copy?

20 A. No.

21 Q. As a result of that meeting, which I
22 believe says took place May 27, 1999 -- does that
23 refresh your recollection about the date of that
24 meeting?

25 A. Yes. I thought it was about early June.

1 Yes, I think the end of May.

2 Q. As a result of reading this letter, do
3 you understand what the Attorney General was
4 seeking cooperation on from the employees of
5 Kamehameha Schools Bishop Estate?

6 MR. KAWASHIMA: Objection. The
7 document speaks for itself.

8 MR. JONES: Join.

9 Q. Do you have an answer to my question?

10 A. Yes, I do. I do understand.

11 Q. What is your understanding as to what
12 the Attorney General's office was looking for in
13 seeking cooperation of employees of Kamehameha
14 Schools Bishop Estate?

15 A. That they can testify with immunity.

16 Q. Do you understand what issues the
17 Attorney General was seeking testimony on in
18 offering immunity?

19 MR. JONES: Same objection.

20 MR. KAWASHIMA: Speaks for itself.

21 Q. Do you understand my question?

22 A. Yes, I understand.

23 Q. Which were those issues which the
24 Attorney General was seeking cooperation of?

25 A. In their criminal investigation.

1 Q. And do you understand the specifics
2 of -- or were you told the specifics of the
3 criminal investigation by the Attorney General's
4 office?

5 A. They did not give us specifics. In
6 fact, they were complaining to us in the meeting.

7 Q. And do you recall what those complaints
8 were?

9 A. That we were not giving them enough
10 information.

11 Q. And did they give you any information
12 with regards to the complaint -- strike that --
13 with regards to their criminal investigation?

14 A. No, they did not.

15 Q. What action did you take, if any, after
16 you received this letter of June 2, 1999?

17 A. We turned it over to Colleen to
18 determine if this -- somehow if this could be --
19 how we could implement something like this for our
20 staff.

21 Q. Do you know if this letter was
22 disseminated to the employees of Kamehameha
23 Schools Bishop Estate?

24 A. I do not recall. But the letter itself
25 in this format was not disseminated to the Estate.

1 Q. Have you taken any action to do what the
2 letter requests, which is to encourage cooperation
3 of the employees of Kamehameha Schools Bishop
4 Estate?

5 A. We did not specifically, as trustees, do
6 that. We turned it over to the -- to our legal
7 counsel, Colleen Wong.

8 Q. Other than your turning it over to
9 Colleen Wong, have you discussed this letter or
10 its contents with any of your other legal counsel?

11 A. No.

12 Q. To your knowledge, has any employee of
13 Kamehameha Schools Bishop Estate cooperated with
14 or provided information to the Attorney General's
15 office pursuant to this offer of immunity?

16 MR. JONES: Objection. Calls for
17 speculation.

18 A. I don't know.

19 Q. Since your appointment as interim
20 trustee on May 7, 1999, have there been any
21 changes in the investment policies of Kamehameha
22 Schools Bishop Estate or its subsidiaries?

23 A. There was no investment policy at the
24 Bishop Estate. And we have just recently
25 developed one.

1 Q. So you've adopted an investment policy?

2 A. That's correct.

3 Q. Are you able to give me the details of
4 that investment policy?

5 A. The investment policy basically is to
6 put benchmarks. And also to hire external
7 managers for our liquid assets. And to try to
8 get, as a minimum return, inflation plus
9 5 percent.

10 Q. Has that investment policy been approved
11 by the interim trustees?

12 A. It has been approved by the interim
13 trustees.

14 Q. When was it approved by the interim
15 trustees?

16 A. I don't recall. But it has been.

17 Q. Has it been implemented by KSBE?

18 A. You have to understand that investment
19 policies don't happen overnight. While we approve
20 it, the migration from one policy to the next
21 takes a long time, because you have to liquidate
22 some assets to move it around and so on. But,
23 yes, it is in the process of being implemented.

24 Q. Is there anybody on the staff that's in
25 charge of that implementation?

1 A. The asset management group, with the
2 oversight of the acting Chief Operating Officer.

3 Q. And the asset management group consists
4 of Mr. Ishikawa --

5 A. No. Randall Chang. He is the general
6 manager of the asset management group.

7 Q. Who else?

8 A. There is a whole array of people down
9 there. Specifically on the investment side is a
10 person by the name of Aaron Au.

11 Q. And did Mr. Au and Mr. Chang provide you
12 with input about these new investment policies?

13 A. They provided comments. But the primary
14 person was Cambridge Associates, which is a
15 national renowned investment advisor.

16 Q. Do you know if Cambridge Associates was
17 used prior by Kamehameha Schools?

18 A. They were used prior by Kamehameha
19 Schools.

20 Q. And were you privileged to their prior
21 reports regarding Kamehameha Schools?

22 MR. KAWASHIMA: Vague and
23 ambiguous. Assumes facts not in evidence also.

24 A. I'm not exactly sure what the prior
25 reports are. But we are dealing with them on a

1 forward looking basis. And so all of the previous
2 things that they were doing for the Estate, we
3 didn't really look at very closely.

4 Q. Did you look at them at all?

5 A. We have looked at some of the statements
6 that were made during one of the trials.

7 Q. Have you made -- strike that.

8 Have the interim trustees made a
9 decision on who the outside asset manager should
10 be for investment purposes?

11 A. We have already selected what you'd call
12 the global custodian. But we have not made a --
13 well, I take it back. We just made, approved two
14 external managers in the last board meeting.

15 Q. And who are they?

16 A. I wish I could tell you. I know that
17 the New York -- one of the New York banks is going
18 to be the global custodian. But the other two --
19 I'm not an investor, so I can't remember all these
20 names. But if you tell me -- you give me a list,
21 I can tell you who they are.

22 Q. Could your counsel help you?

23 MR. KAWASHIMA: No.

24 A. They were not present at our board
25 meeting. This just happened Thursday. Which is

1 yesterday, in fact.

2 MR. KAWASHIMA: That's right.

3 Q. And when will that turnover of the asset
4 management function take place?

5 A. That is something we're trying to
6 determine right now, to ensure that the turnover
7 of those assets are done at the correct time and
8 with the full understanding by staff on what their
9 roles are, once we turn it over.

10 Q. Have there been any changes in the
11 school's policy since your appointment on May 7,
12 1999?

13 MR. JONES: Objection. Vague and
14 ambiguous.

15 MR. KAWASHIMA: Overly broad.

16 A. The overriding policy is we have given
17 back full responsibility of the school to
18 President Chun.

19 Q. Does he report to you at the board
20 meetings?

21 A. Yes, he does.

22 Q. Does he report to you about changes that
23 he is making to the school's policy?

24 A. He does not make any policy changes. We
25 make the policies.

1 Q. And since May 7, 1999, have the interim
2 trustees adopted any changes to the school's
3 policies?

4 A. We have adopted procurement type of
5 policies. We have adopted conflict of interest
6 type of policies of who they can hire. You don't
7 hire relatives and close friends.

8 We have adopted various other governance
9 type of policies to ensure that we remain well
10 within what is expected out of an organization --
11 or a tax exempt organization like KSBE.

12 Q. Have you adopted any policies regarding
13 the expansion of the schools?

14 A. We have.

15 Q. What are those policies?

16 A. We have made a decision to purchase a
17 300 -- piece of property in Keaau on the Big
18 Island to develop a new school there.

19 MR. JONES: 300 acre?

20 A. Yes. 300 acres.

21 Q. Has that purchase been completed?

22 A. There is a due diligence period. We've
23 signed a contract for buying. But the seller and
24 we have a 90-day period by which we can rescind
25 the contract if either one finds that there's

1 something wrong with either the site or there are
2 things that environmentally are unsound for a
3 school and so on.

4 Q. What type of school do the interim
5 trustees envision for that site?

6 A. A very diverse curriculum. It's going
7 to be both college prep and a choice of pursuing
8 on a vocational basis.

9 Q. Is that going to be a dorm school?

10 A. We have not made the decision yet.

11 Q. Are there plans for expansion to the
12 other neighbor islands?

13 A. One expansion was made by the incumbent
14 trustees. And that was on Maui to build a new
15 school there, which we just, on the 30th of August
16 cut the ribbon, and we have an ongoing school now.

17 Q. Any of the other neighbor islands?

18 A. We are embarked on a strategic planning
19 process right now to answer those questions and to
20 see what the input of all the different Hawaiian
21 groups and alumni are regarding what the
22 requirements for education are on the other
23 islands. And once we match the resources we have
24 versus what the desires are for the communities,
25 we will start to make some decisions.

1 Q. Is President Chun advising you on that
2 strategic planning process?

3 A. He is involved in the specific strategic
4 planning process. And we meet once a week to get
5 their status.

6 Q. Is there somebody amongst the interim
7 trustee who is in charge of that strategic
8 planning process?

9 A. The trustees do not have anybody in
10 charge of anything. We work as a board.

11 Q. Since your appointment on May 7, 1999,
12 have there been any changes in policies on trust
13 administration?

14 A. Trust administration? Could you define
15 that more clearly?

16 Q. You understand that you have fiduciary
17 obligations as a trustee, correct?

18 A. That's correct.

19 Q. And you have fiduciary obligations
20 pursuant to the will of Bernice Pauahi Bishop; is
21 that correct?

22 A. That's correct.

23 Q. What are those fiduciary obligations
24 pursuant to the will?

25 MR. KAWASHIMA: Objection. Calls

1 for a legal conclusion.

2 MR. YEE: Calls for his
3 understanding what his obligations are under the
4 will.

5 MR. KAWASHIMA: That isn't the
6 question you posed, though.

7 Q. What is your understanding as to your
8 fiduciary obligations pursuant to the will of
9 Princess Bernice Pauahi Bishop?

10 A. It is to perpetuate her legacy of trying
11 to provide education to Hawaii children.

12 Q. And as part of your duties under the
13 will, are you responsible to administer her
14 estate?

15 A. Yes, we are.

16 Q. Have there been any changes in the
17 policy of administering the Estate since you
18 became an interim trustee on May 7, 1999?

19 A. As far as governance of the staff, there
20 has been.

21 Q. And can you give me the details with
22 regard to governance of the staff?

23 A. As I explained to you before, we have an
24 acting COO that is given responsibilities that
25 are, in fact, not totally as a CEO but partially

1 as a CEO right now.

2 We have also adopted a CEO management
3 based system. And we also have adopted that the
4 trustees will be a policy making body, will be in
5 the oversight role. And that we will establish
6 safeguards to ensure that the oversight of the CEO
7 and the staff is such that we do not, in fact,
8 violate the laws of the State in being a fiduciary
9 of this particular Estate.

10 Q. You mentioned earlier that Mr. Aipa is
11 serving in that capacity as acting CEO?

12 A. Yes.

13 Q. Do you anticipate hiring a CEO at some
14 point?

15 A. We are right now very close to hiring
16 one.

17 Q. And is Mr. Aipa a candidate for CEO?

18 MR. KAWASHIMA: Just a minute. I'm
19 going to object to any further questioning along
20 this line. I don't see what the relevance is of
21 it. And truly it is not reasonably calculated to
22 lead to the discovery of admissible evidence in
23 this case.

24 Unless you can give me an offer of
25 proof as to what you are getting at, I will

1 instruct him not to answer that question or any
2 questions about who might be candidates for CEO.

3 MR. YEE: I think that's fair. If
4 you want to make that instruction on the record, I
5 will refrain from asking those questions.

6 MR. KAWASHIMA: Yes. I instruct
7 him not to answer that question or any questions
8 related to who the candidates for CEO are.

9 BY MR. YEE:

10 Q. Since your appointment as interim
11 trustee on May 7, 1999, have the interim trustees
12 implemented any changes with regards to trustee
13 compensation?

14 A. We did not implement changes to the
15 trustee compensation. We personally, as interim
16 trustees, were asked by the Master and -- through
17 the Master by the courts to provide our
18 recommendation for compensation, which we did.

19 But we have not changed either the
20 stipulation that was prior agreed to by the
21 incumbent trustees on the method of
22 compensation -- and so as far as changes go, we
23 have not changed anything.

24 Q. But in practice, you are receiving less
25 compensation than the incumbent trustees were?

1 A. That's correct.

2 Q. And that's not a policy change at this
3 point in time?

4 A. It is not a policy change. It's what we
5 think is reasonable.

6 Q. Am I correct you are receiving \$200,000
7 a year?

8 A. \$180,000 a year.

9 Q. At the present time, what amount of time
10 do you spend during the course of the week as a --
11 acting on the behalf of Kamehameha Schools Bishop
12 Estate in your capacity as an interim trustee?

13 A. I would venture to say maybe I spend
14 about anywhere from 50 to 60 hours at the Estate.

15 Q. You maintain offices at the Estate?

16 A. That's correct.

17 Q. And how many times during the course of
18 the week do the interim trustees meet as a board?

19 A. We meet multiple times. But we have a
20 formal scheduled board meeting on Thursdays so the
21 staff knows when they can submit all of their
22 action items for decision.

23 Q. And that's every Thursday?

24 A. Every Thursday.

25 Q. If you know, what is the time which the

1 other interim trustees put in working on behalf of
2 Kamehameha Schools Bishop Estate?

3 A. Today, the three trustees are there
4 full-time, besides myself. One trustee is there
5 full-time. But the -- her working hours are not
6 the standard working hours from 8:00 to 5:00. She
7 comes in at 6:00 at night and works to midnight
8 sometimes, and even into the wee hours of the
9 morning.

10 Q. And the interim trustee you are
11 referring to is Ms. Lau?

12 A. Ms. Lau.

13 Q. And that her hours are because she is
14 fully employed someplace else?

15 A. Yes. She works for HEI.

16 Q. Do you know her position at HEI?

17 A. She was the treasurer of HEI. And she
18 is about in the process of moving to the American
19 Savings Bank.

20 Q. The meetings that are scheduled for
21 every Thursday by the interim trustees, who
22 creates the agenda for these meetings?

23 A. The acting Chief Operating Officer.

24 Q. That is Mr. Aipa?

25 A. Mr. Aipa.

1 Q. So all of the agenda items which are
2 proposed by staff and the interim trustees are
3 collected and consolidated and placed on the
4 agenda by Mr. Aipa?

5 A. That's correct.

6 Q. Are there special meetings which are
7 held amongst the interim trustees?

8 A. Numerous of them.

9 Q. And are these special meetings which
10 occur on a weekly basis or on a daily basis?

11 A. It's almost on a daily basis. Multiple
12 times on a daily basis.

13 Q. I assume a lot of those meetings are
14 with your attorneys?

15 A. Not necessarily. They're policy issues
16 regarding the Estate.

17 Q. Since your appointment as interim
18 trustee on May 7, 1999 have you met with
19 Governor Cayetano?

20 A. Never did.

21 Q. Prior to your appointment, had you met
22 with Governor Cayetano?

23 A. I did not meet with Governor Cayetano.
24 But I have been in socials with him before.

25 Q. I'm specifically asking whether or not

1 you met with him prior to your appointment with
2 regards to matters of KSBE?

3 A. No, I did not.

4 Q. Prior to your appointment as interim
5 trustee on May 7, had you had meetings with former
6 Attorney General Bronster?

7 A. Yes, we did.

8 Q. And do you recall when your first
9 meeting with former Attorney General Bronster was?

10 A. It was within about -- I would say an
11 estimate of about within two weeks after we became
12 special purpose trustees.

13 Q. And do you recall who requested that
14 meeting?

15 A. She did.

16 Q. And do you recall where that meeting was
17 held?

18 A. It was held at Arthur Andersen's
19 conference room.

20 Q. Do you recall if all of the special
21 purpose trustees were present?

22 A. We were all present.

23 Q. Do you recall if there was an agenda for
24 that meeting?

25 A. There was no agenda.

1 Q. Do you recall what was told to you by
2 former Attorney General Bronster at that meeting?

3 A. She requested that she be part of the
4 IRS negotiations, because she was *parens patriae*.

5 Q. And how did the special purpose trustees
6 respond to that request?

7 A. We said no to her request.

8 Q. And after the meeting of March 3 of this
9 year with the IRS, did you have a follow-up
10 meeting with former Attorney General Bronster?

11 A. Yes, we did.

12 Q. And did you discuss with her the results
13 of the meeting with the IRS on March 3?

14 A. No, we did not.

15 Q. What was discussed at that follow-up?

16 A. She was asking about the 5701s, because
17 she was *parens patriae*, and she had the right to
18 see them.

19 Q. What was your response to that request?

20 A. We said no.

21 Q. Can you recall any subsequent meetings
22 with former Attorney General Bronster before
23 her --

24 MR. KAWASHIMA: Nonretention.

25 Q. -- nonretention?

1 A. The only one that I remember was when
2 she came over with Hugh and Dorothy Sellers and
3 Rick Keller to the Estate, which was a meeting
4 that Rick Keller asked to have with the trustees.

5 Q. And what was discussed at that meeting?

6 A. What was discussed was her concern -- or
7 the Attorney General's concern about us using
8 Nathan Aipa as the acting COO.

9 Q. And do you recall her specific concerns?
10 Did she request that you not use Mr. Aipa as COO?

11 A. She were just cautioning us about using
12 him, because of what had happened previously. And
13 they wanted to make sure that as the fiduciaries
14 of the Estate, that we were making the correct
15 decision. And they just wanted to be sure that we
16 understood that there were some risks -- in their
17 mind, there were some risks.

18 Q. Did they detail those risks to you in
19 any --

20 A. No, they did not.

21 Q. Did they have particular concerns about
22 Mr. Aipa's ability to serve a new set of trustees?

23 A. They just had a perception that based
24 upon what had happened previously, that -- that
25 they had concerns that we had adopted him as the

1 acting COO.

2 Q. Did the Attorney General feel that some
3 of the errors that were related in the 5701s could
4 be the responsibility of Mr. Aipa?

5 A. They never mentioned things like that.

6 Q. What was your response to the Attorney
7 General's concerns about Mr. Aipa?

8 A. We told them that we hear what they
9 said. But we as a Board of Trustees would make
10 our own decisions.

11 Q. Have you met with Attorney General Anzai
12 since your appointment as an interim trustee in --

13 A. Yes, we have.

14 Q. When was that meeting?

15 A. We met a couple of times with him. And
16 I can't remember -- after he was appointed by the
17 governor to become the -- I guess you call him the
18 acting Attorney General now still. But he
19 requested that we meet along with his staff.

20 Q. And who was present at that meeting?

21 A. I believe it was Hugh and Dorothy when
22 we first met.

23 Q. And who from the interim trustees was
24 it?

25 A. All of the interim trustees.

1 Q. What was discussed with
2 Attorney General Anzai at that meeting?

3 A. What we discussed was generally, I think
4 we -- he was still -- there was still some
5 concerns about the omnibus subpoena that we had
6 not given them all the information, and how we
7 could get -- how they could get information from
8 us.

9 Q. And what was your response to their
10 request regarding --

11 A. We told them we'll continue to have
12 Colleen work out the details with Hugh and
13 Dorothy.

14 Q. Was there any discussion with regards to
15 the criminal prosecution that the Attorney
16 General's office had against Trustee Peters or
17 Trustee Wong?

18 A. No. Because this was the civil side,
19 and they couldn't talk criminal with Hugh there.

20 MR. YEE: Why don't we stop for
21 lunch.

22 (Whereupon, a luncheon recess was
23 taken.)

24 (Whereupon, Ms. Sellers, Mr. Ing,
25 Mr. Lewis, Mr. Wolsztyniak, Mr. Miyagi, Mr. Yee,

1 and Mr. Kihune were present in the room.)

2 (Record read by the Court Reporter.)

3 BY MR. YEE:

4 Q. And that question was with regard to
5 your first meeting with then recently appointed
6 Attorney General Earl Anzai; is that correct?

7 A. Yes.

8 Q. Have you had subsequent meetings with
9 Attorney General Anzai?

10 A. Yes, we have.

11 Q. What is the next subsequent meeting, if
12 you can recall, that you had with the
13 Attorney General Anzai?

14 A. I don't recall the exact date of the
15 next meeting. But they were mostly general in
16 nature. Just discussing the general status of
17 where we were and trying to resolve the IRS issues
18 of the Estate.

19 Q. Excuse me?

20 A. The IRS issues of the Estate.

21 Q. Is this prior to the proposed settlement
22 and closing agreement with the IRS?

23 A. Yes, they were.

24 Q. Do you know how many meetings you had
25 related to the settlement of the IRS issues in the

1 closing agreement with Attorney General Anzai?

2 A. I would say approximately --

3 approximately three or four.

4 Q. And were all of the interim trustees

5 present at that meeting?

6 A. Yes, they were.

7 Q. Was Mr. Anzai usually accompanied by

8 other members of the office?

9 A. He was always accompanied by either Hugh
10 or Dorothy.

11 Q. Was he ever accompanied by
12 Deputy Attorney General Lawrence Goya?

13 A. He was once.

14 Q. And were the IRS audit issues discussed
15 at that meeting?

16 A. No.

17 Q. What was discussed at that meeting?

18 A. It was just discussed about the -- just
19 warning us that some of the criminal findings that
20 they had made may implicate certain staff members,
21 and that we should be prepared to, if we want to
22 address any kind -- anything that comes out of the
23 press on those things.

24 Q. When was that meeting?

25 A. I would say probably mid November,

1 approximately mid November.

2 Q. And how long did that meeting last?

3 A. Not very long. It was just -- maybe for
4 about -- about an hour at the max.

5 Q. And were all the interim trustees in
6 attendance at that meeting?

7 A. Yes, they were.

8 Q. And did you have counsel present at that
9 meeting?

10 A. We had agreed that we would not have
11 counsel present. Primarily because there was
12 going to be some names of staff members mentioned.
13 So they just didn't want to -- and it was not
14 going to be any more than that.

15 Q. And I know I've asked you this before.
16 But did you take any notes at that meeting?

17 A. No, I did not.

18 Q. Do you know if anybody took notes at
19 that meeting?

20 A. I can't recall anyone taking notes.

21 Q. Is that something that would be
22 reflected in the minutes of the interim trustees'
23 meeting?

24 A. No. We generally felt that if we were
25 going to be meeting with the AG's office, that --

1 anyway, I -- we discussed that we wouldn't
2 maintain some notes from that.

3 Q. Were there any subsequent discussions
4 amongst the interim trustees about what was
5 discussed with Attorney General Anzai and
6 Deputy Attorney General Goya --

7 A. Could you repeat that question again?

8 Q. Sure. Were there any subsequent
9 discussions amongst the interim trustees during
10 the regularly scheduled meetings of the interim
11 trustees regarding the subject matter that was
12 discussed with Attorney General Anzai and
13 Deputy Attorney General Goya?

14 A. No.

15 Q. Have you proceeded to investigate, as an
16 interim trustee, proceeded to investigate some of
17 the claims made by Attorney General Anzai and
18 Deputy Attorney General Goya against certain
19 employees of KSBE?

20 A. No. Because they didn't even mention
21 names.

22 Q. What did they discuss with you that they
23 did not mention the names of the individuals?

24 A. They just discussed the -- said that in
25 the various investigations they have conducted

1 into political campaigning -- political campaign
2 issues and Kalele Kai and some other things, that
3 there are names of certain staff members that have
4 come up, and they just wanted to make sure that we
5 were prepared to deal with this if it does come
6 out in the press.

7 Q. Did they put it in the context that
8 there would be potential criminal action against
9 certain employees of KSBE?

10 A. No.

11 Q. I'm going to be asking you a set of
12 questions with regards to the petition and the
13 amended petition.

14 Would you like to take a few minutes to
15 go over that?

16 A. The petition and the amended petition --

17 Q. -- for permanent removal.

18 A. If you give me a copy, I can follow it
19 through --

20 Q. Or you can take a few minutes to read
21 it.

22 A. I think I would prefer to get a copy,
23 because I've read it before.

24 (Discussion off the record.)

25 (Pause.)

1 MR. ING: You want him to look
2 through it or refer to it?

3 (Discussion off the record.)

4 Q. Before we start asking you questions
5 about the amended petition, you stated earlier in
6 your testimony, Mr. Kihune, that the Attorney
7 General had met with the interim trustees and
8 talked about -- the Attorney General had met with
9 the interim trustees and talked about concerns
10 that they had about the appointment of Mr. Aipa as
11 acting COO.

12 Did they raise any concerns or
13 complaints about any other employees of KSBE or
14 any other consultants of KSBE?

15 A. No, they did not.

16 Q. They did not raise any concerns about
17 potential conflicts of interest of Mark McConaghy?

18 A. No, they did not.

19 Q. Has anybody raised with the interim
20 trustees the potential conflict of interest that
21 Mr. McConaghy has?

22 A. We ourselves raised that.

23 Q. "You" meaning the interim trustees have?

24 A. Yes.

25 Q. And in what context was that concern

1 raised by the interim trustees?

2 A. His co-investment in the Shelter Bay
3 operations.

4 Q. What is your understanding of the
5 Shelter Bay investments?

6 A. My understanding in accordance with what
7 Mark McConaghy told us was that he had a friend
8 that was looking for investment up in Michigan and
9 had approached the trustees. And Henry Peters had
10 told him that before we invest, you better put
11 your money in first. And we'll invest -- if you
12 think it's a good idea, you put your money in
13 first and we'll put our money in.

14 Q. And that was told to you by
15 Mr. McConaghy?

16 A. That was told to us by Mr. McConaghy.

17 Q. And that was the explanation for his
18 conflict of interest?

19 A. We -- as far as continuing on as the
20 advisor to us, we did not see him in conflict
21 after he had explained to us what his situation
22 was in the Shelter Bay operations.

23 Q. Is that the only conflict of interest
24 which he disclosed to you?

25 A. There was another one -- but I can't

1 recall -- which was also set aside.

2 Q. Did he have any documentation which
3 showed or supported his statements to you about
4 how that conflict of interest came about?

5 A. He did not produce any documents when we
6 confronted him with that investment.

7 Q. Did he have any corroborating testimony
8 by any employee of KSBE or any other consultant of
9 KSBE?

10 A. It was -- we had present Gil Ishikawa
11 there, as well as Diane Cornwell, when he was
12 giving that testimony.

13 Q. Did they support his statements?

14 A. They generally supported that statement.

15 Q. Did they say that they had heard
16 Trustee Peters make that statement?

17 MR. ING: Objection to the form of
18 the question. Trustee Peters make that statement?

19 MR. YEE: Yes. Mr. McConaghy is
20 saying that Trustee Peters told him to put up this
21 money. I'm asking if either Ms. Cornwell or
22 Mr. Ishikawa heard that statement from
23 Trustee Peters.

24 A. They did not say that.

25 Q. I'm going to be asking you questions

1 about the petition that's in front of you,
2 Mr. Kihune. And I'm going to propose to you that
3 the questions that I'm going to be asking you are
4 for your opinion. And I'm going to be asking you
5 whether or not your opinion is based on your
6 education or training, whether your opinion is
7 based on your work experience, whether your
8 opinion is based on your view of any documents or
9 literature relevant to the subject matter which
10 I'm going to be asking you. Whether it's based on
11 subsequent seminars or training which you've had,
12 or whether it's based on consultation with your
13 colleagues, the other interim trustees.

14 MR. ING: Counsel, he's not being
15 offered as an, expert so he may not have an
16 opinion.

17 MR. YEE: And that's fine.

18 BY MR. YEE:

19 Q. I'm going to ask you to turn to page 15,
20 Mr. Kihune.

21 A. Of the amended?

22 Q. Of the amended petition that's in front
23 of you. I'm going to look at -- I'm going to ask
24 you to look at paragraph 51 through paragraph 66.

25 A. Through paragraph 66?

1 Q. Yes.

2 (Pause.)

3 A. Okay.

4 Q. You've reviewed the section of the
5 petition with regards to the claim of neglect of
6 primary purpose, have you not?

7 A. Yes, I have.

8 Q. And you agree with the statements that
9 are contained in paragraphs 51 through 66?

10 A. I agree.

11 Q. And do you adopt those as your
12 statements with regards to the neglect of the
13 primary purpose and a basis to seek permanent
14 removal of Trustee Peters?

15 A. I do.

16 Q. The first basis of the claim that there
17 is a neglect of primary purpose is Judge Yim's
18 report, correct?

19 A. Yes, it is.

20 Q. And have you reviewed Judge Yim's
21 report?

22 A. I have read it.

23 Q. Have you seen the documentation upon
24 which he bases his report?

25 A. No. I just read his report.

1 Q. Do you know if the documentation upon
2 which he based his report is still in existence?

3 A. I have no idea.

4 Q. Is part of his report, Mr. Kihune, a
5 survey that was done of alumni parents, teachers,
6 of Kamehameha Schools Bishop Estate?

7 A. I don't recall exactly. But I believe
8 it was partially.

9 Q. It contains the results of a
10 questionnaire?

11 A. That's correct.

12 Q. Do you know if the results of those
13 questionnaires, the actual questionnaires
14 themselves, still exist?

15 A. I don't.

16 Q. Have you queried Judge Yim about the
17 existence of the actual questionnaires?

18 A. No, I have not.

19 Q. Actually, have you spoken to Judge Yim
20 about his report?

21 A. No, I have not.

22 Q. Have any of the interim trustees met
23 with Judge Yim about his report?

24 A. I have no idea.

25 MR. ING: Objection. Calls for

1 speculation.

2 Q. Do you intend to meet with Judge Yim
3 about his report?

4 A. No, I do not.

5 Q. The second source, I believe, for the
6 claim of neglect of primary purpose is the Western
7 Association of Schools and Colleges Report from
8 March of 1998; is that correct?

9 A. That's correct.

10 Q. And have you read that report?

11 A. I have read that report.

12 Q. And have you had any communication with
13 the authors of that report for the Western
14 Association of Schools and Colleges?

15 A. I have no idea who really authored the
16 report, the specific names of the people that
17 authored it.

18 Q. Do you know if the report was given to
19 the other interim trustees?

20 A. Yes, they were.

21 Q. Has that report been discussed by the
22 interim trustees?

23 A. It was discussed in the orientation
24 process.

25 Q. Has either Judge Yim's report or the

1 Western Association of Schools and Colleges report
2 been evaluated to see what has changed at
3 Kamehameha Schools Bishop Estate since the interim
4 trustees were appointed?

5 A. Could you repeat the question again.

6 Q. Has either Judge Yim's report or the
7 Western Association of Schools and Colleges Report
8 been evaluated since your appointment to determine
9 whether or not things have changed at Kamehameha
10 Schools Bishop Estate?

11 MR. ING: Objection to the form of
12 the question as being vague and ambiguous.

13 You may answer if you understand
14 it.

15 A. Not formally.

16 Q. When you say "not formally," Mr. Kihune,
17 do you mean there has been discussion but there
18 has not been any review of both reports by the
19 interim trustees?

20 A. No. We have looked at some of the
21 recommendations and the allegations of both
22 reports and have implemented changes to improve
23 the situation at the school.

24 Q. Can you tell us today what specific
25 changes from Judge Yim's report that were

1 recommended that you have implemented?

2 A. We have met with all the teachers to
3 express to them what our role is as of Board of
4 Trustees, and that the president now has the
5 authority and responsibility for the school. We
6 have also told the teachers that we will have open
7 communications. We had talk story meetings with
8 them so that we could get their views on how we
9 can improve the school.

10 And we have relayed to them that there
11 was not going to be any intimidation and fear at
12 the school in the atmosphere, and that we hoped
13 open communications would alleviate most of the
14 problems that are contained in the report.

15 Q. When were these talk story sessions?

16 A. They happened all in September when the
17 teachers came back from their summer vacations.

18 Q. Are there going to be other such
19 sessions?

20 A. We continued. Last night we stayed at
21 the Estate until 8:00 talking to the faculty of
22 both the union and Nakumi, which is an
23 organization of faculty members.

24 Q. And the union is a recent development at
25 Kamehameha Schools Bishop Estate.

1 A. It was implemented while --

2 MR. ING: There's no question
3 pending.

4 Q. Do you know when the unions began to
5 become organized at Kamehameha Schools Bishop
6 Estate faculty meetings?

7 A. I was not here when it was organized.
8 But I think it was about in 1998 sometime.

9 Q. Have the interim trustees entered into
10 new contracts with the faculty at Kamehameha
11 Schools Bishop Estate?

12 A. We -- that's one of the main things we
13 were discussing last night, was who was going to
14 be the -- represent KSBE with the union. And
15 those contract negotiations will start after the
16 first of the year.

17 Q. Is that going to be -- I don't know if
18 you understand this term of art. But is that
19 going to be a collective bargaining process?

20 A. I'm not sure, since we have not
21 determined who our negotiator is going to be.

22 Q. Do you know who their negotiator is?

23 A. Yes. The head of the union -- of their
24 union.

25 Q. Who's that?

1 A. I can see his face, but I can't remember
2 his name. I'll get you his name.

3 MR. ING: You don't have to
4 remember his name.

5 Q. I'm going to ask you to turn your
6 attention to paragraph 65, which is part of the
7 amended petition.

8 A. Okay.

9 Q. That's actually the amended portion of
10 the petition. It says that substantial trust
11 resources were expended to have outside
12 consultants and law firms analyze and examine the
13 relocation of the Trust Estate's domicile from
14 Hawaii to another jurisdiction and a change of its
15 tax status to a taxable entity.

16 Do you have an understanding what is the
17 basis of that statement?

18 A. I've been advised by our legal
19 personnel.

20 Q. What is your understanding of that
21 statement?

22 A. That the incumbent trustees had hired
23 Verner, Liipfert to take a look at the move in the
24 domicile of the Estate to another area and to --

25 Q. Go ahead.

1 A. -- and to change the tax status and to
2 see what the ramifications would be to change the
3 tax status.

4 Q. Do you know what is meant by
5 "substantial trust resources," Trust Estate
6 resources?

7 A. In the business that I was in in the
8 Navy, anything over \$10,000 was substantial.

9 Q. Do you know what is meant by
10 "substantial trust resources"?

11 A. In this case the DOP that says it's in
12 excess of \$200,000.

13 Q. If it's more than \$300,000?

14 A. If it was in excess of \$200,000.

15 Q. I'm just trying to get a feel for where
16 that amount would be. In excess of \$200,000 would
17 be anything above \$200,000. I'm trying to get a
18 range --

19 A. I have never seen the bill myself. I've
20 relied upon my legal advisors to give me the
21 advice.

22 Q. Have you reviewed the analysis or
23 reports or documents that were produced by Verner,
24 Liipfert in this effort that's described in
25 paragraph 65?

1 A. I have not.

2 Q. Do you know if they are in the
3 possession or control of KSBE?

4 A. I do not.

5 Q. Have you looked for them?

6 A. I did not. I just relied on the legal
7 counsel's advice.

8 Q. What's your understanding of the change
9 of tax status to a taxable entity?

10 A. I'm not exactly sure what you're asking
11 here. But in relation to the incumbent trustees?

12 Q. In relation to what was asked of the
13 consultants and Verner, Liipfert.

14 A. The legal advisors have advised us that
15 it was to allow the trustees to continue to
16 receive unreasonable compensation.

17 Q. That's not what is stated here though,
18 Mr. Kihune. What is stated here is --

19 A. To avoid the federal --

20 Q. State scrutiny of public charitable --
21 as a public charity. There was an effort to focus
22 on the commercial activities rather than
23 educational purpose.

24 MR. ING: There's no question
25 pending.

1 Q. So is your understanding here today that
2 it wasn't for the purpose stated in the petition,
3 but rather --

4 A. It is. That's part of his report. One
5 bears upon the other.

6 Q. One of the bases for seeking permanent
7 removal of the incumbent trustees is the failure
8 of the incumbent trustees to hire a CEO. That, I
9 believe, is in the amended petition, correct?

10 A. That's correct.

11 Q. And even though you've been advised by
12 counsel not to answer questions as to who that CEO
13 may be, do you have a date in which you are going
14 to be appointing a CEO?

15 A. We don't have a specific date.

16 Q. Have you been using the services of, for
17 lack of a better word, a headhunter to identify --

18 A. Yes.

19 Q. -- individuals to serve in the capacity
20 of CEO for KSBE?

21 A. Yes.

22 Q. Has that headhunter advised you as to
23 the range of salary which you must offer a CEO?

24 A. He has not advised us specifically a
25 range that we have to. But he has given us a

1 listing of comparable nonprofit organizations that
2 have CEOs and what their salary ranges are.

3 Q. I know you don't have a specific date,
4 as you stated just now. You don't have a specific
5 date for the hiring of a CEO. But do you have a
6 target date which you would like to see a CEO
7 hired by?

8 A. We would like to hire a CEO as soon as
9 possible. But none of the candidates can get here
10 before the 1st of January. So we are hoping to
11 have somebody here in late January or early
12 February.

13 Q. Have you made offers to individuals?

14 MR. ING: You don't need to answer
15 that question. I will instruct him not to answer.

16 Q. Can you tell me what the salary is you
17 offered to candidates for CEO?

18 THE DEPONENT: Can I?

19 MR. ING: I'm going to instruct him
20 not to answer that as well. We're not going to
21 provide any details with respect to the hiring of
22 an actual CEO for the Estate.

23 Q. When do you plan to disclose the hiring
24 of a CEO to the Court?

25 A. As soon as we have an agreement between

1 whoever that individual is as to what his
2 compensation will be and when he can arrive here.

3 Q. Is that one of the first jobs that the
4 interim trustees undertook after their appointment
5 on May 7, 1999?

6 A. No. That was not one of the first jobs.
7 It was to develop the governance in accordance
8 with the stipulation, and to formulate an
9 organizational chart that would then -- from which
10 a basis for hiring a CEO would come about.

11 Q. And who did you come up -- who did
12 you -- strike that.

13 Who participated in that process of
14 developing that chart?

15 A. It was the Board of Trustees -- the
16 Board of Interim Trustees.

17 Q. Anybody else from the staff?

18 A. In the chart, it was only one meeting
19 with Arthur Andersen, because we wanted to
20 understand what was meant by the stipulation that
21 says in accordance -- to adopt a CEO based system
22 in accordance with Arthur Andersen.

23 Q. Did Mr. Aipa participate in the
24 formation or formulation of the chart?

25 A. No, he did not.

1 Q. Did the interim trustees produce a job
2 description for the new CEO as a result of that
3 chart?

4 A. We did.

5 Q. And are you going to be disclosing that
6 job description to the Court?

7 A. It has been already submitted to the
8 Court as part of the closing agreement.

9 Q. When did the interim trustees first
10 undertake the issue of hiring another CEO after
11 May 7, 1999?

12 A. We did not start the hiring of the CEO
13 until we had fairly -- we were fairly confident
14 that the governance policy would be adopted -- or
15 we did not start the process until we had the AG's
16 and the Master's approval of the governance
17 policy.

18 Q. Did you meet with the Attorney General
19 on the governance policy?

20 A. Yes, we did.

21 Q. When was that meeting?

22 A. We gave them a copy of the draft
23 government policy -- the closing agreement in --
24 on 13 July 1999 in which was a copy of the
25 governance policy.

1 Q. Is it would be safe to say that sometime
2 after the 13th of July, you took up the issue of
3 hiring a CEO?

4 A. No. Because we had multiple meetings to
5 determine, to negotiate both with the AG and the
6 Master to make sure that all of their concerns
7 were addressed in the governance policy.

8 Q. Do you have any idea how long that took,
9 Mr. Kihune?

10 A. We did not get a governance -- a closing
11 agreement policy until about mid August. So I
12 would guesstimate that our governance policy of
13 the closing agreement was approved either about
14 the early part or mid part of August.

15 Q. So would it be sometime in the latter
16 part of August that you started the process of
17 hiring a CEO?

18 A. That's correct.

19 Q. Have you actually interviewed
20 candidates --

21 A. Yes, we have.

22 Q. -- for CEO?

23 A. Yes.

24 Q. The interim trustees and yourself have
25 interviewed --

1 A. We always interview as a board.

2 Q. Is anybody else part of that interview
3 process?

4 A. No one else except the headhunter
5 himself.

6 Q. Going back to the neglect of primary
7 purpose, is it your understanding that delegation
8 of education oversight to former Trustee Lindsey
9 was improper and neglected the primary purpose?

10 A. I believe the method by which she
11 conducted herself at the school was improper.

12 Q. And when you say the method by which she
13 conducted herself at the school, you are basing
14 this not on your personal observations of her at
15 the school, correct?

16 A. That's correct.

17 Q. You are basing it on the Yim report and
18 on the Western Association of Schools and Colleges
19 report, correct?

20 A. That's correct.

21 Q. Any other sources of information you're
22 basing it on?

23 A. On the findings of Judge Weil --

24 Q. Are there any decisions of the Board of
25 Trustees with regards to education which you can

1 point to by the incumbent trustees which reflect
2 that Trustee Lindsey was given absolute control
3 over education at the schools?

4 MR. ING: Objection to the form of
5 the question as being vague and ambiguous.

6 Q. Do you know of any decisions of the
7 prior trustees which gave Trustee Lindsey absolute
8 control of KSBE?

9 A. No, I don't.

10 Q. Do you know of any decisions that she
11 made in her tenure as a trustee of KSBE with
12 regards to education which should have been made
13 by the entire Board of Trustees?

14 A. Yes. I think there were many incidents
15 that the Board of Trustees should have acted on.

16 Q. Can you give me one example?

17 A. One was the education management system,
18 I guess it was called, the computer system that
19 failed that she put in and never let the other
20 trustees know until it was so late that they had
21 to just can it.

22 Q. Are there any other examples?

23 A. I believe that the actions regarding the
24 reprimand of the senior that was distributing a
25 petition should have not been an action of a

1 trustee. And if the trustee wanted an action, she
2 should have gone back to the board to discuss it
3 rather than to take action by herself.

4 Q. So by Trustee Lindsey's action in those
5 two examples you gave me, you are attributing her
6 conduct to the rest of the trustees, correct?
7 You're saying that they are responsible for her
8 actions because they didn't do anything to stop
9 her?

10 MR. ING: Objection to the form of
11 the question. Misstates the witness's prior
12 testimony.

13 Q. Is that an unfair characterization of
14 what you said?

15 A. I would say that the inactions of the
16 other trustees, except for Os Stender, clearly is
17 responsible for what has happened on the campus.

18 Q. So if I were to say -- give you a
19 hypothetical -- and ask you if you hire a new CEO
20 for KSBE and that person doesn't perform his
21 functions or commits malfeasance, is that
22 attributable to you as a trustee of KSBE?

23 A. Of course. The buck stops with the
24 trustees.

25 Q. But aren't trustees in a different

1 position? You can't dismiss or fire another
2 trustee, can you?

3 MR. ING: Objection to the form of
4 the question. Calls for a legal conclusion.

5 Q. Do you understand the question,
6 Mr. Kihune?

7 A. Yes.

8 Q. Do you have an answer for me?

9 A. There are ways that under the laws that
10 you can do that. But it's not, as you described
11 it, just firing a trustee, that he walks out of
12 the job.

13 Q. Do you know of any positive effect that
14 Trustee Lindsey had in her role at the Estate?

15 A. I was not here during the period that
16 Trustee Lindsey was a trustee. And having read --
17 my knowledge of the incident has been only in the
18 reports of Judge Yim and the WASC. And everything
19 has been negative. So I'm not aware of any
20 positive issues that she brought up.

21 Q. Are you aware of her background?

22 A. In general terms.

23 Q. Are you aware of her history in the
24 educational system here in Hawaii?

25 A. The only knowledge I have heard about

1 education is that she was on Maui and was,
2 evidently, heading up the Board of Education
3 there.

4 MR. YEE: Why don't we take a
5 break.

6 (Whereupon, a recess was taken.)

7 (Whereupon, Mr. Ing left the
8 deposition.)

9 Q. Mr. Kihune, you earlier described in
10 your testimony that you spend between 50 and 60
11 hours a week at the Estate working on behalf of
12 KSBE; is that correct?

13 A. That's correct.

14 Q. Can you describe for me what comprises
15 the work that you do during that 50 to 60 hours a
16 week?

17 A. Come in and basically we have a lot of
18 correspondence, mostly adverse type of
19 correspondence come in from people, from lease to
20 fee conversion, that I have to take care of. And
21 tuition aid gripes from various parents and so on.

22 As well as working on different parts of
23 implementation of policies. We are in the throes
24 of doing some changes to the trustee policy
25 handbook. We also work daily on many things. In

1 fact, the governance policy that is written, I
2 wrote it myself.

3 And there are many things that I do
4 myself. And then I go out and participate in the
5 school. They invite trustees to come up to listen
6 to the children when they have a play or they have
7 some kind of program. So I participate in those.

8 Q. And is what you just described typical
9 of what the other interim trustees also do?

10 A. The first part, I believe they probably
11 have as many letters complaining about things.
12 The second part of trying to redo the governance
13 and trying to implement changes in the Estate to
14 correct what we, the Board of Interim Trustees,
15 feel need to be corrected, has been our full-time
16 job.

17 Q. Do you have a staff?

18 A. We have one secretary.

19 Q. Between all five trustees?

20 A. That's correct.

21 Q. Mr. Aipa is not responsible for any of
22 the areas you just described?

23 A. Oh, we do the policy. We tell -- we
24 basically say basically, we want to change this or
25 we want to modify this. And then we talk to

1 Mr. Aipa, and the implementation goes to the staff
2 for things we'd like to change. Except for one
3 area. And that was the governance policy that the
4 Board of Trustees felt that we should make
5 ourselves.

6 Q. Was there a general consensus among the
7 interim trustees that you should draft a
8 governance policy? Because you said you drafted
9 the governance policy, right?

10 A. I did. And there was agreement that I
11 would draft it and they would comment and make
12 changes to it.

13 Q. And this is the governance policy for
14 KSBE?

15 A. That's correct.

16 Q. And is this the first governance policy
17 you have drafted?

18 A. I've drafted, if not thousands, maybe
19 about a couple of hundred policies while I was in
20 the Navy. That's standard practice.

21 Q. In terms of a trust, a public charitable
22 trust, is this the first governance policy that
23 you've drafted?

24 A. That's right.

25 Q. And can you give me an estimate of how

1 long it took you to draft that policy?

2 A. Probably about -- about two and a half
3 weeks.

4 Q. And was it reviewed by anybody before it
5 went to the interim trustees, the other interim
6 trustees?

7 A. No.

8 Q. That governance policy is not something
9 that you handed over to Mr. Aipa to implement, is
10 it? It's something that the Board of Trustees is
11 now implementing, correct?

12 A. It is something that the Board of
13 Trustees is implementing. But we have not
14 implemented it until this court order that says
15 that Judge Chang has approved the closing
16 agreement.

17 Q. So the effective date of the governance
18 policy is the date of Judge Chang's order?

19 A. That's correct.

20 Q. You said you also answer complaints of
21 parents, students, faculty.

22 Isn't that something that either
23 President Chun or Mr. Aipa or some member of the
24 staff should be doing?

25 A. It is. But they're all addressed to me,

1 personally, my name.

2 Q. And because of that fact, you respond to
3 them directly?

4 A. I farm it out to the different principal
5 executives for -- to draft a response. And also
6 to brief me what the problem is, so that when I
7 sign it off, at least I can respond to whoever
8 complained by phone, if they call me.

9 Q. So you don't actually just sit there and
10 put pen to paper?

11 A. No.

12 Q. And on the average, how many events at
13 the school do you attend during the course of a
14 week?

15 A. I would say it's been running about two
16 a week.

17 Q. Do you have an estimate from the
18 financial staff at KSBE of how much KSBE has
19 improved its trust corpus since your appointment
20 as interim trustee?

21 A. We do not -- we have never gotten an
22 estimate since May 7, no.

23 Q. Are financial records or reports given
24 to the interim trustees at the regular weekly
25 meeting?

1 A. They do. But they were a shambles.

2 They were not consolidated financials. It took us
3 nearly five months to find out what the worth of
4 the Estate was, because no single office knew what
5 it was.

6 Q. Not even Mr. Aipa?

7 A. Not even Mr. Aipa. I'm talking about
8 the real worth of the Estate. Not the estimated
9 worth of the Estate.

10 Q. Do you, sitting here today, do you have
11 a figure for the real worth of the Estate?

12 A. For what the average market value is for
13 the Estate, yes.

14 Q. What is that?

15 A. \$5.6 billion.

16 Q. And do you know what the actual net
17 worth of the Estate was prior to the appointment
18 of -- who was the first incumbent trustee? That
19 would be Mr. Peters; is that correct? He was
20 appointed in 1984, I believe. Out of the present
21 group of present incumbent trustees, he is the
22 most senior.

23 Do you know what the net worth of the
24 Estate was in 1984?

25 A. No, I don't.

1 Q. Would you have any disagreement if I
2 said it was considerably less than \$5.6 billion?

3 A. Oh, absolutely. Because real estate in
4 Hawaii has skyrocketed during that period.

5 Q. And do you attribute all of the
6 \$5.6 billion of the Estate's worth to the real
7 estate values here in the State of Hawaii?

8 A. Oh, not all.

9 Q. Isn't part of it due to the investment
10 strategy and planning of the former incumbent
11 trustees?

12 A. I don't believe they had an investment
13 strategy. I believe they just went out and
14 invested whenever somebody told them to invest in
15 something.

16 Q. Is it due to those efforts?

17 A. In total, they -- the investments that
18 they made across the spectrum, as far as we can
19 determine and through the -- through what has been
20 given to us through Arthur Andersen's reports, is
21 that they were not necessarily spectacular, except
22 for one; that was Goldman Sachs.

23 Q. And have you been given a net figure for
24 what the Goldman Sachs investment produced for
25 KSBE?

1 A. We were given a figure of something like
2 approaching a little over a billion dollars.

3 MR. YEE: I'm done. Any other
4 questions?

5 EXAMINATION

6 BY MR. WOLSZTYNIAK:

7 Q. I have just a few. Mr. Kihune, you
8 indicated that you had some criticisms of
9 Mrs. Lindsey's tenure at the Estate that I think
10 you enumerated in your prior testimony.

11 You indicated one was the educational
12 management system of the computer, correct?

13 A. Correct.

14 Q. Was this through firsthand knowledge,
15 or what was this based on?

16 A. This was based on the reports.

17 Q. Would it be fair to say that all of your
18 opinions you have as far as Mrs. Lindsey's
19 performance as a trustee was based on either the
20 Yim report, the WASC report, or the findings of
21 Judge Weil?

22 A. That's correct.

23 Q. There is no other basis you have?

24 A. I did not even know the lady that well,
25 so there's no other basis.

1 Q. Have you ever spoken to Mrs. Lindsey?

2 A. I have spoken, yes.

3 Q. When she was a trustee or prior?

4 A. I met her in the airport a couple of
5 times while she was a trustee. And I saw her at
6 the ribbon cutting on August 30 for the Maui
7 campus.

8 Q. Did you discuss Estate business or just
9 small talk?

10 A. At the Maui campus, basically I
11 acknowledged her efforts to build the campus
12 school.

13 Q. When you say "acknowledged her efforts,"
14 can you recall specifically on that date what you
15 said to her and what she said to you?

16 A. What she said to me was all before the
17 ceremony. And we just made small talk. What I
18 said during the ceremony was I just wanted to
19 thank her for her efforts in making the school a
20 reality.

21 Q. And that was August of --

22 A. 30.

23 Q. -- of what year?

24 A. 1999.

25 Q. Have you ever viewed any documents

1 drafted by Trustee Lindsey or signed off by
2 Trustee Lindsey?

3 A. I don't recall any.

4 Q. Would it be fair to say that none of the
5 discussions you've had with people at the Estate
6 since you became an interim trustee are the basis
7 of any of your opinions as to Mrs. Lindsey's
8 performance?

9 A. There has been some discussions by the
10 faculty and staff, as I said. We have been having
11 open discussions with the staff. And the same
12 thing that came out of the reports from Judge Yim
13 were reiterated by the faculty.

14 Q. Because the reason I'm asking is you
15 indicated it was just the reports that were the
16 basis of your opinions. Would it be fair to say
17 that none of the statements by people at the
18 Estate were the basis of any of your opinions as
19 to Trustee Lindsey's performance?

20 A. No. Because they were already in the
21 reports.

22 Q. So basically the information that was in
23 the reports was the basis exclusively for your
24 opinions, correct?

25 A. Correct.

1 MR. WOLSZTYNIAK: I have nothing
2 further.

3 EXAMINATION

4 BY MS. SELLERS:

5 Q. You're aware, are you not, that there's
6 a civil team and a criminal team at the Attorney
7 General's office?

8 A. Yes, I'm aware.

9 Q. Do the civil team and the criminal team
10 communicate separately with the trustees?

11 A. They absolutely do.

12 Q. Have you ever observed any breach of the
13 law between the civil team and the criminal team?

14 A. Never have.

15 Q. Let me ask you to take a look at Exhibit
16 3 to your deposition, Mr. Kihune.

17 A. Okay. Is this the one that grants
18 immunity? Is that the subject matter? The
19 subject is grants of immunity --

20 Q. I have Exhibit 3 -- sorry. This one is
21 a June 2 letter. But I really meant Exhibit 2.
22 That's what I meant.

23 A. Exhibit 2.

24 Q. Sorry. That's my fault.

25 This is the one concerning the waiver

1 the attorney/client privilege for the Kalele Kai
2 and other matters.

3 Did that letter come from the criminal
4 team or the civil team?

5 A. This one came from the criminal side.

6 Q. How about Exhibit 3, did that come from
7 the criminal side or the civil --

8 A. Criminal side also.

9 MS. SELLERS: I have no further
10 questions.

11 (Deposition concluded at 3:20 p.m.)

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1 I, ROBERT K.U. KIHUNE, hereby certify
 2 that I have read the foregoing typewritten pages;
 3 and corrections, if any, were noted by me; and the
 4 same is now an accurate and complete transcript of
 5 my testimony.

6

7 Dated at _____ Hawaii
 8 this _____ day of _____, 1999

9

10 _____
 11 ROBERT K.U. KIHUNE

12

13

14 Signed before me this _____ day
 15 of _____, 1999.

16

17 _____

18 Witness to Deponent's Signature

19

20

21

22 Re: Bernice P. Bishop
 23 Equity No. 2048, December 3, 1999
 24 by William T. Barton, RPR, CSR.

25

1 CERTIFICATE

2 STATE OF HAWAII)

3) SS.

4 COUNTY OF HONOLULU)

5 I, WILLIAM T. BARTON, RPR, Certified
6 Shorthand Reporter, State of Hawaii, do hereby
7 certify:

8 That on December 3, 1999 at 9:40 a.m. there
9 appeared before me ROBERT K.U. KIHUNE, the witness
10 whose deposition is contained herein; and that
11 prior to being examined was duly sworn;

12 That I am neither counsel for any of the
13 parties herein, nor interested in any way in the
14 outcome of this action;

15 That the deposition herein was by me taken
16 down in machine shorthand and thereafter reduced
17 to print via computer-aided transcription under my
18 supervision; that the foregoing represents a
19 complete and accurate transcript of the testimony
20 of said witness to the best of my ability.

21 Dated this 7th day of December 1999 at
22 Honolulu, Hawaii.

23

24 WILLIAM T. BARTON, CSR No. 391

25 Certified Shorthand Reporter

