

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

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4 In the Matter of the Estate) EQUITY NO. 2048

5 of) VOLUME I

6 BERNICE P. BISHOP,)

7 Deceased.)

8 _____)

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12 DEPOSITION OF MARION MAE LOKELANI LINDSEY

13 Taken on behalf of Robert K.U. Kihune, Constance H.

14 Lau, Francis A. Keala, David P. Coon and Ronald D.

15 Libkuman, Trustees under the Will and of the Estate

16 of Bernice Pauahi Bishop, Deceased, at the law

17 offices of Watanabe, Ing & Kawashima, 23rd Floor, 999

18 Bishop Street, Honolulu, Hawaii 96813, commencing at

19 9:10 a.m. on Monday, November 8, 1999, pursuant to

20 Notice.

21

22

23

24 REPORTED BY: JOLENE C. HANECA, CSR #132
Notary Public, State of Hawaii

25

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9 Deposition Exhibit No. 76 9

10 Subpoena to Testify Before Grand Jury

11 Deposition Exhibit No. 77 16

12 Letter dated 11/5/99 from

13 D. Ing to J. Wolsztyniak

14 Deposition Exhibit No. 78 60X

15 Handwritten notes 2/19/93

16 Deposition Exhibit No. 79 63

17 Handwritten notes 3/16/93

18 Deposition Exhibit No. 80 66

19 Handwritten notes 9/13/93

20 Deposition Exhibit No. 81 69

21 Handwritten notes 10/18/93

22 Deposition Exhibit No. 82 77

23 Handwritten notes 5/23/94

24 Deposition Exhibit No. 83 83

25 Handwritten notes 5/26/94

Deposition Exhibit No. 84 86

Handwritten notes 8/10/96 or 8/16/96

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1 (Disclosure made available to all counsel.)

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3 MARION MAE LOKELANI LINDSEY,

4 called as a witness by and on behalf of the Robert
5 K.U. Kihune, Constance H. Lau, Francis A. Keala,
6 David P. Coon and Ronald D. Libkuman, Trustees under
7 the Will and of the Estate of Bernice Pauahi Bishop,
8 Deceased, having been first duly sworn to tell the
9 truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. ING:

13 Q. Please state your name.

14 A. Marion Mae Lokelani Lindsey.

15 Q. What is your current residence address?

16 A. 5581 Kalaniana'ole Highway.

17 Q. Are you currently employed?

18 MR. WOLSZTYNIAK: At this time, as per prior
19 discussions, I will indicate to counsel Ms. Lindsey
20 has recently received a subpoena regarding bank
21 records on her Pioneer Savings & Loan/First Hawaiian
22 Bank.

23 I have a copy of that subpoena which I will
24 tender, which I'd like marked as an exhibit, and I
25 will make it available to all counsel.

1 Basically, at this time I'm going to be
2 instructing my client to not answer any other
3 questions, invoking her Fifth Amendment rights. This
4 is not to say that this will be done in the future.

5 At this time -- we first learned of this on
6 Friday afternoon. Mr. Green has been in touch with
7 Mr. Les Osborne and has requested an appointment with
8 him to determine what the scope of this investigation
9 is.

10 At this time, we would be willing under Rule
11 30 (d) of the Hawaii Rules of Civil Procedure to
12 terminate the deposition proceeding so we may
13 determine what the scope of the subpoena is to
14 determine which questions, if any, we'll be
15 instructing Ms. Lindsey to invoke her Fifth Amendment
16 rights on or we can proceed and I will just instruct
17 her at this time to invoke the Fifth Amendment on any
18 questions.

19 We do want to cooperate. We are fully aware
20 of -- I was at the discovery conference with Mr.
21 Matsui. At this time, we are not indicating we will
22 not answer any questions on Fifth Amendment grounds.
23 We are just indicating that until such time as
24 Mr. Green can make a determination with Mr. Osborne
25 as to the scope of this investigation, there is no

1 way I can properly advise my client as to which
2 questions it would be proper to invoke the Fifth
3 Amendment and which questions it would not.

4 Therefore, under the circumstances, I would
5 request that the deposition be adjourned and
6 reconvened after Mr. Green has discussed this matter
7 with Mr. Osborne to determine which questions, if
8 any, will require the invocation of the Fifth
9 Amendment or we can proceed with the understanding I
10 will just be advising my client not to answer any
11 questions on Fifth Amendment grounds, subject to
12 answering them later once a determination is made as
13 to the scope of this investigation.

14 MR. ING: Counsel, did you want this marked?

15 MR. WOLSZTYNIAK: Yes, please, Exhibit 1, if
16 you would. I would be either happy to get copies to
17 all counsel or if you could be so kind to make
18 copies, I would see that counsel gets a copy of this
19 document as we sit here today.

20 MR. ING: I'll have copies made. Since
21 we're using a master exhibit list, we're going to
22 mark this the next exhibit in order, which would be
23 Exhibit 76.

24 MR. WOLSZTYNIAK: That would be fine.

25 MR. ING: Why don't we have this marked and

1 have copies made so that all counsel can take a look
2 at it.

3 (Exhibit No. 76 marked
4 for identification.)

5 MR. ING: Just for the record, in response
6 to your statements regarding the subpoena and the
7 Fifth Amendment, we sent you a letter on Friday
8 explaining our position with respect to that your
9 client does not have a right to assert a blanket
10 Fifth Amendment response.

11 You've had adequate time to make the
12 determination as to what the scope of the
13 investigation was. The current FBI investigation,
14 federal investigation regarding Mrs. Lindsey as well
15 as other former trustees has been in progress and
16 underway since last summer.

17 We see no need for further delay. If there was
18 any lack of diligence in determining the scope of the
19 investigation, that is your fault and not ours, and
20 we want to proceed with the deposition and we will do
21 so today.

22 MR. WOLSZTYNIAK: We are here to answer
23 questions, but we will be taking the Fifth Amendment.
24 We didn't find out about this until Friday afternoon.
25 It did not give us time.

1 Mr. Green attempted to contact Mr. Osborne
2 immediately to determine the scope of this
3 investigation. Mr. Osborne was not available.
4 Mr. Green requested a call back from Mr. Osborne's
5 office so that he could meet personally with him.

6 I know Mr. Green is in trial in Hilo for the
7 next three days on the Silva matter. I'm not sure if
8 he's going to be speaking to Mr. Osborne
9 telephonically to discuss what the scope of this is
10 or meet with him personally, but in any event, it's
11 my understanding he will be in touch with him in very
12 short order and we'll be making that determination so
13 that we can either make the determination to limit
14 the scope of what the invocation of the Fifth
15 Amendment rights will be or determine if it's proper
16 to make any Fifth Amendment objections at all.

17 I would also note, Mr. Ing, that the return date
18 for this is not even until tomorrow morning at 9
19 o'clock a.m. in Federal Court.

20 MR. ING: I note that this document was
21 apparently signed by the clerk on October 19th, 1999,
22 and there is a notation in the upper right-hand
23 corner that shows 10/27/99, 8:50 a.m. What is that,
24 Counsel?

25 MR. WOLSZTYNIAK: I do not know.

1 MR. ING: From whom was this document
2 obtained?

3 MR. WOLSZTYNIAK: I obtained it from Mrs.
4 Lindsey.

5 MR. ING: Will you inquire of Mrs. Lindsey
6 what that notation is?

7 MR. WOLSZTYNIAK: No, nothing other than,
8 nothing other than her name and address until we
9 determine the scope of what this investigation
10 entails so that we can properly advise her as to
11 whether or not any questions would impinge upon the
12 scope of the examination.

13 MR. ING: Are you instructing her not to
14 respond to questions regarding the --

15 MR. WOLSZTYNIAK: Yes, I am.

16 MR. ING: -- the notations on this document?

17 MR. WOLSZTYNIAK: Yes, I am.

18 BY MR. ING:

19 Q. Mrs. Lindsey, do you intend to comply with your
20 counsel's recommendation?

21 A. Yes.

22 Q. I'm sorry, you're going to have to speak up
23 louder.

24 A. Yes. I'm sorry, I have a cold.

25 MR. ING: Any other counsel wish to put a

1 statement on the record regarding Exhibit 76?

2 BY MR. ING:

3 Q. Mrs. Lindsey, are you currently a member of any
4 board of a nonprofit organization?

5 A. Excuse me.

6 MR. WOLSZTYNIAK: I'd advise my client not
7 to answer that question on Fifth Amendment grounds
8 until we can determine the scope of the FBI
9 investigation.

10 BY MR. ING:

11 Q. Mrs. Lindsey, do you have a response to that
12 question?

13 A. I'm going to comply with the attorney's request.

14 Q. Mrs. Lindsey, are you currently associated or
15 affiliated with any profit or not-for-profit
16 organization?

17 MR. WOLSZTYNIAK: Same instruction.

18 BY MR. ING:

19 Q. Mrs. Lindsey, are you going to answer that
20 question?

21 A. No.

22 Q. You were served with a subpoena for certain
23 documents. Do you recall receiving a subpoena?

24 MR. WOLSZTYNIAK: Same instruction.

25 MR. ING: Counsel.

1 MR. WOLSZTYNIAK: Same instruction.

2 MR. ING: The same instruction being that
3 you're going to recommend to her that she not answer
4 the question on the grounds of Fifth Amendment?

5 MR. WOLSZTYNIAK: Correct.

6 BY MR. ING:

7 Q. Mrs. Lindsey, did you bring my documents today
8 in response to a subpoena served upon you or your
9 counsel?

10 MR. WOLSZTYNIAK: Same instruction.

11 MR. ING: And that instruction being,
12 Counsel?

13 MR. WOLSZTYNIAK: That she's not to answer
14 anything on Fifth Amendment grounds until we can
15 determine the scope of the FBI investigation.

16 MR. ING: Counsel, is it your intent to
17 recommend that Mrs. Lindsey not respond to each and
18 every one of my questions?

19 MR. WOLSZTYNIAK: Yes, Counsel, it is, until
20 such time as we can determine the scope of the FBI
21 investigation.

22 MR. ING: And is the basis for that
23 recommendation the Fifth Amendment again?

24 MR. WOLSZTYNIAK: Yes, sir.

25 BY MR. ING:

1 Q. Mrs. Lindsey, do you intend to follow those
2 instructions?

3 A. Yes.

4 MR. ING: Counsel, it's our position that
5 this matter has already been ruled upon by the
6 Discovery Master that it is the law of the case that
7 you cannot make a blanket assertion of the Fifth
8 Amendment.

9 This is a civil proceeding. We're entitled to
10 seek and obtain a response to each and every
11 question, and if it is your intent to assert the
12 Fifth Amendment as a grounds of refusing to answer on
13 each and every question, then I would like you to so
14 state and we will terminate the deposition and seek
15 further instruction from the Discovery Master.

16 MR. WOLSZTYNIAK: What my intentions are is
17 until such time as I can determine what the scope of
18 this investigation is and since -- until I determine
19 the scope of what this investigation is, I cannot
20 reasonably and professionally advise my client as to
21 which questions would fall within the scope of the
22 investigation and which would not.

23 I will instruct her not to answer any of the
24 questions on Fifth Amendment grounds until such time
25 as we determine the scope of the investigation, at

1 which time we will then only raise Fifth Amendment
2 grounds on any issues related to the scope of the
3 investigation, if any.

4 At that time, if the scope is narrow, all other
5 questions will be answered properly, and if the
6 situation warrants it, she will not be invoking the
7 Fifth Amendment grounds on any question, but until
8 such time as I determine what the scope of this
9 investigation is, I cannot properly advise her and
10 would advise her to take the Fifth Amendment this
11 time without prejudice to answering these questions
12 in the future once Mr. Green has made that
13 determination, which he has undertaken to reasonably
14 do in very prompt order. In fact, he called Mr.
15 Osborne within minutes of finding out about the
16 subpoena in an attempt to determine that scope and
17 move these proceedings along in a prompt manner. So
18 yes, my answer is yes at this time.

19 MR. ING: And, Counsel, you are in receipt
20 of our letter of Friday, explaining our position with
21 respect to assertion --

22 MR. WOLSZTYNIAK: Which one, Mr. Ing? I've
23 received one. How many letters did you send? Let me
24 see if -- I can tell you if I got it. It depends
25 what time it was sent. Thank you.

1 No, I did not. I do believe Mr. Gierlach got
2 it, though. He did call and advise me about
3 receiving a letter. I don't know if it was this one
4 or not, but he did call me.

5 Basically, I don't want to assert the Fifth
6 Amendment grounds in a blanket fashion. I'm aware of
7 Mr. Matsui's ruling as to Trustee Peters. We don't
8 intend in a blanket fashion to assert the Fifth
9 Amendment. What I'm trying to do is determine what
10 the scope is so I do not have to assert the Fifth
11 Amendment in a blanket fashion, but I am
12 acknowledging receipt of that letter right now today.

13 MR. ING: Fine. I'd like to have this
14 marked as Exhibit 77.

15 (Exhibit No. 77 marked
16 for identification.)

17 MR. ING: Based on your instructions to your
18 client, we will terminate the deposition. I will
19 advise you that we will seek relief from the
20 Discovery Master as early as this afternoon.

21 MR. KAWASHIMA: Why don't you stay.

22 (Discussion off the record.)

23 (Mr. Matsui is present
24 via telephonic conference.)

25 MR. ING: Clyde?

1 MR. MATSUI: I'm here.

2 MR. ING: Douglas Ing. I'm here present
3 with Mrs. Lindsey, her attorney, Joe Wolsztyniak,
4 Harry Yee, I believe, although I haven't met him.

5 MR. SUZUKI: David Suzuki.

6 MR. ING: I'm sorry, David Suzuki. Dan
7 Morris, Mel Miyagi, and Jim Kawashima was here and
8 just stepped outside, and Teri Kondo of my office.
9 We are on the record and the court reporter is
10 present.

11 This deposition has been scheduled for several
12 weeks now. Just by way of background, I received a
13 call Friday afternoon from Mr. Wolsztyniak and he
14 left a voice-mail message on our phones indicating
15 that Mrs. Lindsey, or he had just learned that Mrs.
16 Lindsey received a subpoena, which has now been
17 marked as Exhibit 76 to the deposition -- it is a
18 subpoena to Pioneer Savings & Loan/First Hawaiian
19 Bank, Custodian of Records, to testify before a grand
20 jury and the return date is November 9, 1999; the
21 document is signed by the Clerk of the Court on
22 October 19th, 1999 -- and that because Mr.
23 Wolsztyniak had just become aware of the subpoena,
24 Mrs. Lindsey was not going to be showing up for
25 purposes of deposition until they had made a

1 determination of the scope of the subpoena and she
2 would not be responding to questions other than name
3 and address.

4 We sent a letter indicating that by your prior
5 rulings, which had only been issued last week, the
6 written portion of it, that there was no right to
7 assert a blanket privilege, Fifth Amendment
8 privilege, and that they had already had adequate
9 time to investigate this and that this was lack of
10 due diligence on their part, if anything, and in any
11 event, we would proceed with the deposition.

12 I did have a telephone conversation with Mr.
13 Wolsztyniak on Saturday afternoon as well. He did
14 indicate at that time that they would be showing up
15 for the deposition, but that she would only, Mrs.
16 Lindsey would only be responding to general
17 questions.

18 We have proceeded with the deposition. I have
19 asked her a series of questions beyond just her name
20 and address, which she did respond to, and Mr.
21 Wolsztyniak has instructed her not to answer based
22 upon Fifth Amendment grounds and she has thus refused
23 to answer.

24 It is our position that you've already made a
25 ruling that they're not entitled to a blanket

1 assertion of the Fifth Amendment. Mr. Wolsztyniak
2 has indicated that he will assert the Fifth Amendment
3 to each and every question that I ask and I think
4 we'd like a ruling from you on compelling her to
5 respond to her deposition questions.

6 MR. WOLSZTYNIAK: Mr. Matsui.

7 MR. MATSUI: Let me hear from you.

8 MR. WOLSZTYNIAK: Mr. Matsui, this is Joe
9 Wolsztyniak. What we've got here is, we received
10 this subpoena. Mrs. Lindsey advised us while we were
11 discussing various matters with her on Friday
12 afternoon. Mr. Green was also there. Mr. Green is
13 obviously the lead attorney on this case and
14 representing her on all other matters.

15 Mr. Green indicated that -- he immediately at
16 that time attempted to contact Mr. Les Osborne, the
17 Assistant U.S. Attorney, that caused that subpoena to
18 be issued so he could determine the scope of that
19 subpoena or the scope of the investigation to
20 determine which questions, if any, would be subject
21 to invoking the Fifth Amendment.

22 Mr. Green was unable to contact Mr. Osborne and
23 make arrangements to discuss this matter with
24 Mr. Osborne as soon as possible so that we may
25 determine what the scope of this FBI investigation

1 is.

2 At that time, we contacted Mr. Ing as per your
3 rulings. We did produce Mrs. Lindsey here today.
4 However, until such time as -- at this time, our
5 intention is to discuss the matter with the U.S.
6 Government to determine the scope so that we'd have
7 to determine whether or not we have to object or
8 instruct Mrs. Lindsey not to answer any questions on
9 Fifth Amendment grounds, but until such time as we
10 can determine from Mr. Osborne what the scope of this
11 investigation is, I don't know which questions would
12 fall within the scope and which ones wouldn't.

13 I have suggested and requested from counsel that
14 we postpone or adjourn the deposition until such time
15 as we can make this determination, because I would be
16 hopeful that we would have to raise the Fifth
17 Amendment on no questions, but at this time, until I
18 know what the scope of the investigation is, I really
19 can't make a determination which questions are proper
20 and which are not.

21 This is not the same situation with Mr. Peters
22 where there was criminal charges pending, where he
23 would certainly be invoking the Fifth Amendment
24 privilege on at least some of the questions.

25 This is a situation where we hope to get this

1 matter cleared up so that Mrs. Lindsey will either
2 have to invoke the Fifth Amendment on only a very
3 limited number of questions within the scope of the
4 investigation or, hopefully, not have to invoke the
5 Fifth Amendment on any questions, but I can't make
6 that determination until Mr. Green meets or discusses
7 this with Mr. Osborne, which he is presently
8 attempting to do in an expeditious manner.

9 MR. MATSUI: Let's examine this a piece at a
10 time. This thing about not knowing the scope of the
11 investigation, let's assume that to be true.

12 Now, there are matters which are properly the
13 subject of this discovery deposition and should be
14 answered which obviously are outside that scope.

15 For example, the things testified to in previous
16 depositions, why would that at all be the subject of
17 some claim of self-incrimination when responses have
18 already been given to those question areas? Let's
19 start with that.

20 MR. WOLSZTYNIAK: Well, under the
21 circumstances -- right now, I'm in a position where
22 Mr. Green represents Mrs. Lindsey on all matters, but
23 on matters relating to anything outside of the civil
24 actions, Mr. Green exclusively represents her and has
25 requested she not answer any questions until he

1 determines the scope.

2 As far as -- you would have to ask Mr. Green
3 that question, but I can say one of the reasons would
4 be that obviously anything she says regarding any
5 prior, any prior deposition testimony that is
6 possibly inconsistent could be used to impeach her in
7 any criminal proceeding that may be brought. We
8 don't know at this time. All I'm trying to do is see
9 what I'm looking at.

10 MR. MATSUI: Wait a minute. That's outside
11 the privilege. That something that may be
12 inconsistent and thus impeach her is not matters, are
13 not matters protected by the privilege and the right.
14 It is a privilege and right not to state anything
15 which in its nature is self-incriminating. I don't
16 know what's so hard about figuring out what could and
17 could not be self-incriminating.

18 Number 2, you're not suggesting that the reason
19 she cannot answer is because you have the wrong
20 lawyer at this deposition?

21 MR. WOLSZTYNIAK: No, I'm handling the civil
22 matter, but Mr. Green would be handling any matters
23 that relate to the FBI investigation. I'm not
24 handling that matter at all.

25 MR. MATSUI: I will say this. The answer is

1 not that because he is not here, she cannot answer.
2 That is not how this works.

3 MR. WOLSZTYNIAK: Absolutely not.

4 MR. MATSUI: If you represent her in this
5 matter, then you should segregate that which may tend
6 to be self-incriminating. Granted it's very broad,
7 but be cooperative to the extent of answering that
8 which is obviously not self-incriminating.

9 For example, how does a historical presentation
10 of her association with Bishop Estate impact upon the
11 criminal matter such as being self-incriminating?
12 Those are matters of record.

13 What I'm saying -- what I'm suggesting is there
14 will be a broad-brush interpretation of your right to
15 claim self-incrimination, but not to say that
16 everything might be and, therefore, we won't answer.
17 It takes a little bit more art and skill than that
18 and we've been through this one time before.

19 MR. WOLSZTYNIAK: Mr. Matsui, I know we've
20 been through it with Mr. Peters, but with Mr. Peters,
21 there was a definite line where we were going because
22 there were actually charges brought.

23 In this case, we don't have a clue why the
24 subpoena was filed by the FBI. We're trying to find
25 that out. Hopefully, I won't be raising the Fifth

1 Amendment on anything, but at this time, since I
2 don't know what is going on, it is extremely broad,
3 and at this juncture, I would not want her answering
4 anything that might have a potential to incriminate
5 her when I don't know what the subpoena is about, why
6 they did it, why they issued the subpoena.

7 MR. MATSUI: Well, your good faith and that
8 of your deponent in this deposition requires that you
9 then not color everything as being self-incriminating,
10 answer those things which you feel are appropriate to
11 answer, and then to say that "We don't know where
12 they're coming from" doesn't mean that every question
13 therefore becomes potentially self-incriminating.
14 There are areas of background that can be covered in
15 the time available.

16 Let's do this: If you are going to persist in
17 this position, then, Doug, make your record. Make it
18 as clean as you can. Ask the questions, take the
19 denial. Ask the subject areas you prefer, take the
20 denial.

21 It's going to take some effort in identifying
22 that which is benign and that which is malignant on
23 the standpoint of self-incrimination. Anything short
24 of that will be viewed as bad faith in terms of this
25 deposition.

1 We have gone through it before. I understand
2 what you're saying about a subpoena uncharged, but it
3 should be done the way, for example, Dickie Wong's
4 lawyer asserts the privilege. He says, "We won't
5 answer questions in these two particular areas."

6 Now, if you don't have the benefit of an
7 indictment, if you don't have the benefit of a
8 charge, then broaden your scope a little bit as to
9 what you're going to object to, but you cannot sit
10 there and say everything past name and address is
11 objectionable. It cannot be so. You're going to
12 have to make the effort of hearing the question,
13 making the determination and stating the objection.

14 Now, I pointed this out to Renee Yuen the last
15 time. The jeopardy you run if you permit her to
16 answer is that there may be a statement tending to be
17 self-incriminating, but there will be questions the
18 parties are definitely entitled to answers as a
19 matter of discovery and those you're going to have to
20 answer.

21 So the jeopardy on one side is potential harm to
22 the criminal proceeding and the jeopardy on the other
23 side is sanctions in the civil proceeding. If that's
24 an easy decision for you, then make the easy
25 decision.

1 MR. WOLSZTYNIAK: One of the situations
2 here, Mr. Matsui, is if we make -- if we're able to
3 make the determination from the U.S. Government what
4 the scope is, it will be very simple because we will
5 know the scope. It would be a much more prudent way
6 of proceeding for me to determine the scope as soon
7 as possible.

8 There may be no questions which warrant the
9 invocation of the Fifth Amendment rights once I make
10 that determination what the scope is, and even if
11 there are some, they will be very, very limited in
12 scope, so that we don't have to be objecting to 99
13 percent of the questions, because, as you indicated,
14 without the luxury of an indictment or charges in
15 this case, just having received a subpoena for
16 records such as we have that we learned about on
17 Friday, it would just seem more prudent to allow us
18 just a couple of days at the most to determine what
19 the scope of this investigation is and we might not
20 be advising the client to invoke the Fifth Amendment
21 on any questions.

22 At this juncture, it just seems to be an
23 imprudent way to proceed, to sit here, and even if
24 I -- obviously, I have a very broad-brush stroke here
25 since I don't have an indictment in front of me or

1 charge in front of me.

2 I would think the vast majority of the questions
3 even under those guidelines would require me to
4 advise her to invoke the Fifth Amendment, which I
5 would rather not have to do. I would rather
6 determine that there is no danger of those answers
7 causing self-incrimination and allow her to answer
8 the questions honestly and directly. That's my
9 position.

10 MR. MATSUI: Let me ask you this. On what
11 basis do you believe that the process of finding out
12 the scope of the investigation is a matter which will
13 involve at most two days?

14 MR. WOLSZTYNIAK: Because I know Mr. Green
15 attempted all Friday afternoon to contact Mr. Osborne
16 to determine what this was about and I know Mr. Green
17 and the rest of the firm is in trial over in the
18 Silva case in front of a jury right now, but I
19 believe he's still trying to contact Mr. Osborne from
20 Hilo, as far as I know.

21 I will try to contact him myself today if
22 Mr. Green is unable to make contact with him to find
23 out what this is about so we -- I would rather not
24 have to invoke the Fifth Amendment on any questions
25 and that's what I'm trying to do, is get to a

1 situation where I can just say, "Okay, there's no
2 problem, go ahead and answer everything," but I don't
3 know that right now and I would be remiss if I
4 allowed my client to answer the vast majority of the
5 questions without knowing at least what's going on.
6 I don't have a clue why they filed this subpoena.

7 I'm just trying to be practical here and say,
8 "Hey, I don't really want to invoke the Fifth
9 Amendment, but under the circumstances, I've got no
10 choice."

11 I would rather find out what the subpoena is all
12 about, make a determination as to the scope of it.
13 If there is a danger, just object to the questions
14 that are within the scope. If there's no danger,
15 allow my client to answer all questions without
16 invoking the Fifth Amendment. That's where I'm
17 coming from right now.

18 It just seems like a waste of time to instruct
19 her to answer 99 percent of the questions that "I'm
20 not going answer on Fifth Amendment grounds" when we
21 can possibly come in here in a few days and answer
22 everything without that onus hanging over everybody's
23 head. That's all.

24 MR. MATSUI: Let's assume you or Mr. Green
25 make contact and they choose not to tell you. Where

1 are we? Does that mean that the deposition then
2 cannot go forward?

3 MR. WOLSZTYNIAK: It will, but then at least
4 I know that and I wouldn't be saying this is a waste
5 of time. I can come here and know I'm going to have
6 to object on these grounds because I know -- or not
7 object, but instruct her not to answer on these
8 grounds because I know they're not going to tell me.

9 What I'm saying is it's been past history in our
10 office's relationship with Mr. Osborne that it's been
11 a good relationship where they will normally at least
12 let us know what is going on in the case and not keep
13 us in the dark, especially under the circumstances.

14 MR. MATSUI: Doug, where are you in terms of
15 your cycle of discovery?

16 MR. ING: Well, I believe we have the next
17 two weeks to complete discovery and we have other
18 depositions scheduled. I think pursuant -- we will
19 learn today whether or not Mr. Peters will be
20 tendering any expert witnesses and receive their
21 reports. They would be presented for deposition next
22 week. We do have other -- and if they do have
23 experts, we will take their depositions next week.

24 We do have other witnesses that need to be
25 deposed between now and the end of the discovery

1 period, which is November 29th. We have set aside
2 two days this week, today and tomorrow, to take Mrs.
3 Lindsey's deposition. Others to be deposed include
4 Trustee Jervis, John Waihee, Doug Adler and there may
5 be others as well. Gil Tam.

6 MR. WOLSZTYNIAK: I believe -- is anything
7 being filled in with Mr. Jervis's spot on Wednesday
8 and Thursday, which was planned and moved back? I
9 don't believe anything has been moved in those two
10 dates, which are open.

11 MR. ING: Well, let me just respond to what
12 Mr. Wolsztyniak said earlier. His office and
13 Mr. Green's office as well has been aware of the
14 federal grand jury investigation regarding Mrs.
15 Lindsey and Mr. Peters and Mr. Wong since it leaked
16 last summer. There was an article in the newspaper
17 discussing that.

18 In my telephone discussion with Mr. Wolsztyniak
19 on Saturday, he even indicated that yes, they were
20 aware of that grand jury investigation.

21 It appears to us that this is simply dilatory
22 and they're trying to put off the deposition, because
23 they were certainly under an obligation at that time,
24 and if they weren't aware by virtue of the subpoenaed
25 documents, they were certainly aware by way of the

1 story in the newspapers that this investigation in
2 the federal grand jury was proceeding, seeking
3 records of all three of those trustees.

4 They had a duty at that time to make the
5 inquiry, because they certainly knew that she was
6 going to be deposed. She's been identified on our
7 witness list since at least September.

8 MR. MATSUI: Joe, I'd like to note this on
9 the record. If you were aware of the investigation,
10 is the only change of circumstance that the subpoena
11 has issued?

12 MR. WOLSZTYNIAK: Yes, this is what gave us
13 immediate pause. We were aware an investigation had
14 taken place. Nothing had come of it. At that time,
15 I don't want to say we thought matters were resolved,
16 but there was nothing to give us pause, and then out
17 of the blue after months, we receive a subpoena for
18 bank records.

19 That, obviously, was in our estimation a
20 significant event that gave us pause which would
21 cause us to obviously want to discuss with the U.S.
22 Attorney why they want Mrs. Lindsey's bank records.

23 I mean, I'm sure if the FBI subpoenaed any one
24 of our bank records sitting here, we'd all be
25 given -- I'd be worried if the FBI started

1 subpoenaing my bank records. If there's a general
2 investigation as to lawyers in Honolulu, it would
3 certainly make me considerably more nervous if I got
4 a subpoena for my records where other people had not.
5 That's my main concern.

6 Had it not been for this subpoena, we were
7 ready, willing and able to proceed with this
8 deposition. It was this particular subpoena which
9 gave us immediate pause and at least put us in a
10 position where we immediately wanted to find out what
11 this was about before we went allowing our client to
12 testify in a deposition.

13 Like I indicated, I'd just as soon not have to
14 invoke the Fifth Amendment on any questions, but when
15 I get -- when I find out within several business
16 hours before my client's deposition is taken in a
17 case of this scope that she gets an FBI subpoena
18 regarding her bank records, I think that if any of us
19 had got that for one of our clients, we would at
20 least want to know what was going on before we went
21 helter-skelter and allowed questions to be answered.

22 MR. MATSUI: I'm not getting it and,
23 frankly, I'm not buying it. Are you suggesting that
24 if this deposition went forward last week Thursday
25 that there would be responses to questions? Now that

1 a subpoena has issued, granted I give you that the
2 subpoena might turn up the heat a little, but it does
3 nothing to change the scope of the investigation and
4 the potential that an investigation would lead to
5 some criminal proceeding.

6 MR. WOLSZTYNIAK: At that point, I wouldn't
7 necessarily agree, because -- I haven't done all that
8 much criminal work lately, but I did years ago and
9 usually grand juries don't go issuing subpoenas for
10 specific individual's records of any sort, especially
11 bank records, without meeting or focusing in one
12 particular area with that particular individual.

13 MR. MATSUI: We have the positions of the
14 parties stated. Does anyone else have a position to
15 state?

16 MR. SUZUKI: No position for Trustee Wong.

17 MR. MORRIS: None, Your Honor. Clyde,
18 sorry. This is Dan Morris.

19 MR. MATSUI: Then we have to do it this way.
20 Doug, you go ahead and make your record, either
21 particular questions or ask in areas, and you might
22 start with determining whether Mrs. Lindsey's counsel
23 will take the position that no, nothing further will
24 be answered. In which case, state the question areas
25 that you feel are not within the protection.

1 That's a hard thing to do. I'll understand when
2 I see the transcript that it's not all encompassing,
3 but more by way of example state those. That has to
4 be done. I wish we could do it the easy way. Do
5 that first. If possible, get those records over to
6 me today and I will be in the office this afternoon.

7 How long was this deposition supposed to go?
8 How long was it scheduled?

9 MR. ING: Today and tomorrow, two days. It
10 just depends on whether -- I'm sure we would have
11 taken the whole day today and probably most of
12 tomorrow.

13 MR. MATSUI: Then we would not be wasting
14 time if I were to have all counsel present in the
15 room make yourselves available at about 2 o'clock.

16 MR. ING: Where would that be? At your
17 office?

18 MR. MATSUI: It may not occur at all. Let
19 me see what develops through the making of this
20 record and just give that over to me in any form.

21 MR. ING: Okay.

22 MR. MATSUI: Unless, of course, there is
23 acquiescence on the part of the party taking the
24 deposition that your preference would be to commit it
25 to two days from today, if that time frame is

1 available to everyone. In other words, Wednesday and
2 Thursday. That I need to know anyway. Is everyone
3 available Wednesday and Thursday?

4 MR. WOLSZTYNIAK: No, we can't do it
5 Wednesday or Thursday.

6 MR. MATSUI: Okay, all we can do is permit
7 the deponent to state her position and then deal with
8 it.

9 I can tell you, Joe, that, as I said, we've been
10 through this once before. I think there's clearly
11 identifiable areas where questions and responses are
12 in order in this discovery deposition in this civil
13 case.

14 Doug, you make your record and the other counsel
15 make your record and let me have it as soon as
16 possible.

17 MR. ING: Thank you. We will proceed.

18 MR. MATSUI: Just for matters of
19 housekeeping, Joe, I can tell you that this effort to
20 resolve is not wasted. I am ordering that you follow
21 the guidelines which were laid down when we discussed
22 the Peters deposition and that you adhere to them and
23 that a blanket refusal to answer is not proper and
24 will be sanctioned. As long as that is clear. Is
25 that clear?

1 MR. WOLSZTYNIAK: That's clear.

2 MR. MATSUI: Then you make your choice.

3 Anything else?

4 MR. ING: Nothing further. Thank you. We
5 will proceed and have a copy of the transcript to you
6 as soon as possible.

7 MR. MATSUI: Good luck. Thank you. Bye.

8 MR. ING: Let's take a short recess.

9 (Recess from 9:45 to 10:28 a.m.)

10 MR. WOLSZTYNIAK: At this time, you can go
11 through the general areas. I've got a call -- I'd
12 like to break if I get a call. I'm waiting for an
13 emergency call back. In the meantime, we'll go
14 through the areas and I'll be indicating whether
15 we'll be answering questions in that area or not.

16 MR. ING: The first area I intend to go into
17 is her background and work experience.

18 MR. WOLSZTYNIAK: Let me confer with my
19 client on this one. Let's go through the areas
20 first. Why don't I do -- if it's okay with you,
21 Counselor, if we can go through the areas and take a
22 very short break and I'll discuss it with my client
23 and come back and indicate which areas we'll discuss
24 and which ones we won't. Work experience.

25 MR. ING: The subpoena that was served and

1 the documents that we had requested. Preparation for
2 this deposition, primary purpose.

3 MR. WOLSZTYNIAK: Primary purpose for what?

4 MR. ING: Neglect of the primary purpose,
5 and I will refer you to paragraphs 51 through 66 in
6 the amended petition. That covers everything from
7 the mission of the school, the WASC report, the
8 Peterson report, strategic planning.

9 MR. WOLSZTYNIAK: Anything else?

10 MR. ING: Governance of the Estate, which
11 was discussed at length in the trial before Judge
12 Weil.

13 MR. WOLSZTYNIAK: Okay.

14 MR. ING: Fiduciary duties, intermediate
15 sanctions.

16 MR. WOLSZTYNIAK: Anything else?

17 MR. ING: Lobbying, political activities,
18 change in domicile, change in tax-exempt status,
19 trustee compensation.

20 MR. WOLSZTYNIAK: Any other areas?

21 MR. ING: CEO-governance system. That's
22 Count III of the petition. Risk, creating a risk of
23 the tax-exempt status. That's Count I. Failure to
24 resign. Obviously, the IRS audit. That is the 5701s
25 to the Estate. Those are the areas.

1 MR. WOLSZTYNIAK: Okay, let me confer with
2 my client briefly. I'll be back in a couple of
3 minutes.

4 (Recess from 10:33 to 10:40 a.m.)

5 MR. WOLSZTYNIAK: Mr. Ing, there are three
6 areas which I will allow my client to testify subject
7 to specific objections within those areas.

8 Obviously, those other areas which I will not
9 allow her to testify at this time are clearly -- if
10 we determine in the very near future, which we hope
11 to do, that they're not the subject of the
12 investigation, we will allow her to answer those
13 questions in those areas at a future date.

14 The three areas we'll go ahead with questions at
15 this time are work experience, preparation for the
16 deposition, and the change in domicile.

17 MR. ING: Is it your intent with respect to
18 all the other areas to instruct her not to answer
19 based upon Fifth Amendment grounds?

20 MR. WOLSZTYNIAK: Yes, as of today. Like I
21 said, subject to if we determine, which we hope to,
22 that it's not the subject of the investigation,
23 she'll be allowed to answer questions in those areas
24 once we make the determination that it's outside the
25 scope, which I've been trying to effectuate just

1 before we walked back into the deposition room.

2 MR. ING: How about with respect to the
3 documents we requested of you?

4 MR. WOLSZTYNIAK: No, she will not be
5 answering questions on that due to the fact that the
6 subpoena was for financial documents and the like.
7 As far as the documents themselves, I don't want her
8 answering any questions regarding documents until we
9 can determine what documents the FBI is reviewing at
10 this time.

11 We will -- by the way, in the meantime, I'd
12 attempt to get what documents you do need as far as
13 questions we wouldn't be answering.

14 MR. ING: When is it your intent to complete
15 your, I guess, assessment of the scope of the
16 examination here and tender her for her deposition?

17 MR. WOLSZTYNIAK: I would hope within the
18 next couple of days.

19 MR. ING: Meaning sometime this week?

20 MR. WOLSZTYNIAK: In fact, I was trying --
21 right now, I've been trying to -- as far as our
22 decision as to when to allow her to testify, what to
23 allow her to testify to, I was -- you know, we're
24 attempting to do that as we speak.

25 We hope to get it sometime this week. Because

1 of the fact that the other firm, the entire group of
2 lawyers I'm working with on this case are in trial in
3 Hilo and have been for several weeks and will be for
4 several more weeks, makes it a little more difficult,
5 but I'm attempting to do that in spite of that fact.
6 So I still hope to do that this week sometime, by the
7 end of the week.

8 BY MR. ING:

9 Q. Mrs. Lindsey, are you currently employed?

10 MR. WOLSZTYNIAK: As far as any current
11 employment, I'm going to object on Fifth Amendment
12 grounds as it relates to financial information that
13 may be the subject of the FBI investigation.

14 As to work experience, as you indicated, I have
15 no objection to her getting into work experience as
16 it relates up to and including the time that she was
17 removed as a Bishop Estate trustee.

18 MR. ING: Counsel, I'm just trying to
19 determine whether she is currently employed. I
20 haven't asked any questions about what she is
21 earning.

22 MR. WOLSZTYNIAK: Okay, I will allow her to
23 answer that question as to whether or not she is --
24 you mean on somebody's payroll employed at this time?

25 MR. ING: Yes.

1 MR. WOLSZTYNIAK: You can answer that
2 question.

3 BY MR. ING:

4 Q. Mrs. Lindsey, are you currently employed?

5 A. On someone's payroll at this time, no.

6 Q. Are you employed in any other capacity besides
7 being on someone's payroll?

8 A. Yes.

9 Q. How are you so employed?

10 MR. WOLSZTYNIAK: I won't let her answer
11 that. I instruct her not to answer that on Fifth
12 Amendment grounds, as the FBI subpoenaed related to
13 financial documents and we don't know whether or not
14 this investigation relates to any money she has
15 received from any other sources at this time. I'd
16 instruct her at this time to not answer that
17 question, subject to determining whether or not it's
18 within the scope.

19 BY MR. ING:

20 Q. Mrs. Lindsey, are you currently a member on any
21 board of a for-profit or not-for-profit organization?

22 MR. WOLSZTYNIAK: Same objection, same
23 instruction -- not objection. Same instruction.

24 MR. ING: What are the same instructions?

25 MR. WOLSZTYNIAK: Same instructions to not

1 answer at this time, as any financial records or
2 financial information may be related to the FBI
3 investigation, subject, of course, to withdrawing
4 that instruction if we determine it's outside the
5 scope.

6 MR. ING: Without saying it every time you
7 assert the objection, my understanding is that you're
8 instructing her not to answer based upon Fifth
9 Amendment grounds?

10 MR. WOLSZTYNIAK: Right, yes, sir.

11 MR. ING: It's our position that that is
12 not -- the answer to that question would not tend to
13 incriminate her.

14 MR. WOLSZTYNIAK: I understand that, Mr.
15 Ing. I understand your position.

16 BY MR. ING:

17 Q. Mrs. Lindsey, have you in the past held any
18 professional licenses or certifications in the area
19 of investment management?

20 A. No.

21 Q. Mrs. Lindsey, have you in the past held any
22 professional licenses or certifications in the area
23 of accounting?

24 A. No.

25 Q. Have you in the past held any professional

1 licenses or certifications in the area of finance?

2 A. No.

3 Q. Have you in the past held any professional
4 licenses or certifications in the area of real estate
5 management?

6 A. I'm a real estate salesperson with my license
7 inactive at the moment.

8 Q. Were you at one time a licensed real estate
9 salesperson?

10 A. I'm still a licensed real estate person with an
11 inactive status.

12 Q. When did you first become a licensed real estate
13 person?

14 A. Gosh, I'm not sure. Probably the early -- late
15 '70s, early '80s.

16 Q. Were you actively employed at any time as a real
17 estate salesperson?

18 A. I was.

19 Q. With whom?

20 A. With Marlene's Realty and I also worked for a
21 company in Maui. I can't remember it now.

22 Q. Is Marlene's Realty a company that is still
23 active?

24 A. Yes.

25 Q. In which county or counties?

- 1 A. Oahu, City and County of Honolulu.
- 2 Q. Do you recall the name of the company that you
3 worked for as a real estate salesperson on Maui?
- 4 A. No, and the reason is I didn't work long,
5 because they ruled that as district superintendent, I
6 could not sell real estate to anybody I even remotely
7 supervised, which included students and their parents
8 and stuff. So to avoid a conflict, I put my license
9 on inactive status.
- 10 Q. What year was that?
- 11 A. I can't remember.
- 12 Q. When did you become superintendent of the --
- 13 A. 1982.
- 14 Q. Was it during the time that you were district
15 superintendent that your license became inactive?
- 16 A. I believe so, but it may have been the time that
17 I was also a principal at a school or in an
18 administrative position at a school, because that
19 same conflict rule applied.
- 20 Q. But it was during the time that you were on
21 Maui?
- 22 A. Yes, I believe so.
- 23 Q. Prior to moving to Maui, you were employed on
24 the island of Oahu?
- 25 A. Yes.

1 Q. I believe you worked as a vice-principal; is
2 that correct?

3 A. I was principal of Kaimuki High School
4 immediately before going to, becoming the
5 superintendent in Maui district.

6 Q. So do you recall for how long a period your
7 license was active on Maui; that is, your real estate
8 salesperson's license?

9 A. I can't remember. It's been so long ago.

10 Q. Was it more or less than a year?

11 A. I can't remember.

12 Q. Your license was inactive -- I'm sorry, you went
13 on inactive status sometime in the 1980s while you
14 were district superintendent; that is, inactive on
15 your real estate license?

16 A. I believe so, but I'm not sure. As I stated
17 earlier, it may have been when I was in an
18 educational administrative position in the schools.

19 Q. Would you like some water?

20 A. I'm just really sick. I've been sick for over a
21 week-and-a-half. I had walking pneumonia. I'm
22 afraid if I drink water, I'll cough more.

23 Q. If you'd like water, you're welcome to it.

24 A. Thank you.

25 Q. Now since going on inactive status in Maui, did

1 you activate -- did you subsequently activate your
2 real estate license?

3 A. No. I've just been very, very interested in
4 real estate and have followed the trends of real
5 estate and talked to people regarding real estate.

6 Q. Since 1990, have you sold any real estate?

7 A. No, except my own.

8 Q. I mean as a real estate licensed salesperson.

9 A. No.

10 Q. Were you ever licensed as a real estate broker?

11 A. No.

12 Q. Did you ever take the test to become licensed as
13 a real estate broker?

14 A. No, I did not.

15 Q. Do you have any professional licenses or
16 certifications in the area of property management?

17 A. No.

18 Q. Do you hold any professional licenses or
19 certifications in the area of investment banking?

20 A. No.

21 Q. Have you ever held any such license in the past?

22 A. No.

23 Q. Have you ever been employed as the CEO of any
24 company?

25 A. No.

1 Q. Have you ever been employed as the chief
2 operating officer of any company?

3 A. No.

4 Q. You understand when I say CEO, I'm referring to
5 chief executive officer?

6 A. I know exactly what you mean.

7 Q. Have you ever been employed as a chief financial
8 officer of any company?

9 A. No.

10 Q. Have you ever been employed as a treasurer of
11 any privately held company?

12 A. No.

13 Q. Prior to becoming a Bishop Estate trustee, what
14 was the maximum that you earned in any year through
15 employment?

16 A. I can't even remember what the maximum was as
17 district superintendent. Somewhere 70,000 plus.

18 Q. Is there an SR rating to that or the equivalent
19 of an SR rating?

20 A. No, it's not an SR rating. It's an exempt
21 position and the salaries of the district
22 superintendent is contingent upon the salary of the
23 governor. If they get a raise, those people at that
24 level get raises. If the governor refuses his
25 raises, we don't get a raise.

1 Q. The last full year that you served as district
2 superintendent was the calendar year 1992; is that
3 correct?

4 A. They go on a different -- they don't go on a
5 calendar year and I went into the next calendar year.
6 They go on a fiscal year for us. So we start on July
7 1st and go to July 1st, June 30th.

8 Q. The last fiscal year would have been fiscal year
9 1992, which ends on June 30, 1992; is that correct?

10 A. No, I worked past that. I worked till February
11 of 1993.

12 Q. But the last full fiscal year that you served as
13 district superintendent in Maui would have been
14 fiscal 1992?

15 A. Right.

16 Q. And then you served a portion of fiscal 1993?

17 A. That's correct.

18 Q. Would that have been the year that you earned
19 the most or the highest level of earnings prior to
20 becoming a Bishop Estate trustee?

21 A. Possibly. We didn't get a raise for like five
22 or six years because the governor refused to take a
23 raise.

24 Q. Who was the governor at that time?

25 A. Well, I think John Waihee.

1 Q. Have you ever served as a member of the board of
2 a publicly traded company?

3 A. No.

4 Q. In preparation for your deposition today, did
5 you review any written materials?

6 A. No, I didn't. I've been too sick.

7 Q. Have you had a chance at any time to read the
8 petition for removal in this proceeding?

9 A. The petition, that great big thing?

10 Q. Yes.

11 A. Not all of it.

12 Q. Did you read the petition itself, excluding the
13 exhibits for the moment to the petition?

14 A. Some of it. I can't remember what all I read.

15 Q. Do you recall --

16 A. Excuse me, I'm sorry.

17 Q. Do you recall when you were served with that
18 petition?

19 A. When I was served with it?

20 Q. Yes.

21 A. No, they got it, the lawyer's office, and I
22 don't know when they got it.

23 Q. Do you recall when you first looked at it?

24 A. No, I can't even recall for sure the day that it
25 was filed.

1 Q. The file mark stamp on it is, I believe, August
2 24th of this year. Does that refresh your
3 recollection?

4 A. Yes, it does.

5 Q. When you first saw it, would it --

6 A. That would have been a couple of weeks after
7 that, maybe.

8 Q. Since reviewing the petition for removal in this
9 proceeding, have you reviewed any documents related
10 to the allegations or claims in the petition?

11 A. Have I reviewed any documents?

12 Q. Yes.

13 A. A couple.

14 Q. What did you review?

15 A. I reviewed some of the things that happened in
16 the other trial.

17 Q. Can you explain for us what those documents
18 were?

19 A. I don't remember specifically now. I just was
20 going through the boxes and looking at things.

21 Q. The boxes that you were going through were
22 located where?

23 A. Their office.

24 Q. "Their office" being Mr. Wolsztyniak's office?

25 A. Yes.

1 Q. Whose documents were contained in those boxes?

2 A. Everybody's documents.

3 Q. Everybody's, identify who you mean by
4 "everybody".

5 A. Well, some of the things that were filed in
6 court.

7 Q. So these were boxes of documents held by your
8 attorneys?

9 A. Yes.

10 Q. In those boxes were documents relating to things
11 that were filed in this proceeding or other
12 proceedings?

13 A. No, not this proceeding. In what happened in
14 other proceedings and some of the things before Judge
15 Chang.

16 Q. What were the subject areas of the documents
17 that you reviewed?

18 A. I have no idea now. I was just thumbing through
19 documents.

20 Q. In preparation for your deposition today, did
21 you speak to anyone about the deposition or matters
22 related to the petition for removal in this
23 proceeding?

24 A. Just Mr. Wolsztyniak.

25 Q. Anyone else?

1 A. No.

2 Q. Did you review transcripts of your deposition
3 taken in the prior removal proceeding, the one that
4 went to trial before Judge Weil?

5 A. No, and I wish I could have.

6 Q. Did you review any of the transcripts of your
7 testimony in the proceeding before Judge Weil?

8 A. No. As I said, I've been really sick for a
9 while.

10 Q. When did you learn that your deposition was
11 going to be taken today?

12 A. About a week-and-a-half ago.

13 Q. Since that time, is it your position that you
14 have not reviewed any documents?

15 A. Uh-huh.

16 Q. Is that correct?

17 A. That's correct, I have not reviewed anything.
18 I've been flat out in bed.

19 Q. You testified in deposition and in the Lindsey
20 trial that you had taken notes during the course of
21 various trustee meetings in the past?

22 A. I did.

23 Q. Isn't that correct?

24 A. That's correct.

25 Q. Did you review any of those notes at any time

1 since May 7, 1999?

2 A. Since May 7th?

3 Q. May 7 would have been the date of the removal
4 order.

5 A. I may have.

6 Q. What was the purpose of your review?

7 A. Just to see what was written down.

8 Q. As best as you can recollect, when was that?

9 A. I'm not sure. I know I looked at them. I'm not
10 even sure when it was.

11 Q. During the time that you were on the Board of
12 Trustees, did you serve as secretary of the Board?

13 A. I did. I did.

14 Q. When was that?

15 A. From the time Pinkie Thompson left, which would
16 be around maybe November, December of '94. Somewhere
17 around there, right after that, they had a
18 restructuring of the officers on the Board, because
19 he was the chair until -- I'm not sure, Mr. Ing.

20 Q. Do you recall how long the period was that you
21 served as secretary of the Board?

22 A. It wasn't a very long period, but I don't recall
23 the length.

24 Q. Would it be noted in the minutes of the Board
25 somewhere?

1 A. A lot of things were left out of the minutes of
2 the Board, but it would have been noted by when I
3 stopped signing things.

4 Q. If we were to go to the minutes of the Board of
5 Trustees, the secretary is the one who signs the
6 minutes; is that correct?

7 A. That's correct.

8 Q. So we could determine the period of time that
9 you served as secretary to the Board by examining the
10 dates and times that you would sign the minutes?

11 A. That's correct, because soon after Mr. Jervis
12 came on, there was another change in the makeup of
13 the Board.

14 Q. The notes that you took during the course of
15 these trustee meetings were on spiral notebooks; is
16 that correct?

17 A. Most of them were on spiral notebooks.
18 Sometimes I didn't have the spiral notebook with me
19 and I used notepads, or if it was anything else, I
20 might have used just regular lined paper.

21 Q. What was the purpose of these notes?

22 A. I didn't like the fact that so many things were
23 left out of the proceedings of the meetings and they
24 were not included in the minutes. A lot of the
25 discussions was not included in the minutes, and I

1 was in the habit of taking my own notes so that we
2 would have at least some discussions logged and what
3 led up to a decision. The minutes were very prim and
4 proper, for lack of a better term, and it just said
5 the decision was made and did not for me give me
6 enough background information.

7 Q. Did you try to take accurate notes?

8 A. I tried to. Sometimes I was speaking and
9 couldn't put some of the things down because I was
10 busy participating, but I tried to take accurate
11 notes.

12 Q. Was the purpose of these notes to refresh your
13 recollection as to what the discussions were during
14 the course of the Board of Trustees meetings?

15 A. Sometimes, but it's sometimes just for my own
16 edification of what took place.

17 Q. Did you take notes on these spiral tablets
18 during the entire time that you were, that you served
19 on the Board of Trustees?

20 A. Except when I wasn't at the meetings. I was
21 trained to do this as an administrator and I've
22 always done it. I have notes on everything that
23 happened in the DOE since I became an administrator
24 and sat in meetings.

25 Q. So then you were appointed as a trustee, I

1 believe, in February of 1993?

2 A. That's correct.

3 Q. And you took notes from February of 1993 up
4 through, I guess, the week of May, the week prior to
5 May 7, 1999?

6 A. I don't want to say I took notes from February
7 '93 to May. I may not have, because I didn't
8 understand what transpired and what minutes would
9 reflect and so forth, but at sometime, I started
10 taking notes on a regular basis.

11 Q. But this practice continued during the entire
12 time that you served as a trustee?

13 A. That's correct, but there were also times when
14 they told me, "Don't write anything down."

15 Q. "They" being whom?

16 A. Nathan Aipa.

17 Q. Was that during the course of an executive
18 session?

19 A. Sometimes during the course of an executive
20 session. Sometimes when it was confidential
21 material. So you'll see some lapses because some
22 things are not documented.

23 Q. But if you felt that the subject matter merited
24 taking of notes and if there was no instruction from
25 Mr. Aipa not to take notes, then it was your practice

1 to take notes?

2 A. That's correct.

3 Q. The notes that you took were taken during the
4 course of the meeting; is that correct?

5 A. For the most part, but sometimes we had a
6 discussion where I didn't take notes during the
7 meeting, in which case I would immediately go to my
8 office and write down what transpired during the
9 meeting.

10 Q. Immediately after the meeting?

11 A. Usually immediately after the meeting.

12 Q. So you either took notes during the course of
13 the meeting or immediately after the meeting?

14 A. That's correct.

15 Q. If you were going to take notes?

16 A. That's correct.

17 Q. Did you refer to these notes from time to time
18 during your course of your services as trustee?

19 A. Sometimes I did. It depends on if I put down
20 that I was responsible for doing something or
21 somebody was supposed to come back and give us
22 information when it wasn't forthcoming. I would
23 always go back and check the notes to see if there
24 was anything due at any time.

25 Q. Now in preparation for the deposition today or

1 subsequent -- strike that. Let me re-ask the
2 question.

3 Since May 7 of 1999, do you recall what
4 particular areas of your notes you reviewed?

5 A. No, I don't.

6 Q. You indicated that occasionally you'd be
7 instructed by Mr. Aipa not to take notes?

8 A. That's correct. He said, "I don't want you to
9 put anything down."

10 Q. Do you recall specific occasions when you were
11 so instructed by Mr. Aipa?

12 A. No, I don't.

13 Q. The notes that you did take, that is, those
14 spiral notepads and other materials, where were they
15 maintained?

16 A. In my office.

17 Q. Do you have possession of those notes today?

18 A. No, I don't.

19 Q. Where are they?

20 A. In the attorney's office.

21 Q. The "attorney's office" being Mr. Green's office
22 or Mr. Gierlach's office?

23 A. I'm not sure where they are in the building.

24 Q. The last time you saw them, they were in the
25 possession of your attorneys?

1 A. Yes.

2 Q. When was that?

3 A. Gosh, I guess a little bit after the trial that
4 I had.

5 Q. The trial before Judge Weil?

6 A. Yes.

7 Q. Do you recall taking notes containing
8 discussions of intermediate sanctions?

9 A. Some of them, yes.

10 Q. Do you recall taking notes regarding change in
11 domicile?

12 A. Change in domicile, it's interesting, because I
13 don't recall some of the stuff I read in that
14 newspaper article ever happening.

15 MR. WOLSZTYNIAK: Mrs. Lindsey, just listen
16 to the question carefully and answer only the
17 question Mr. Ing has asked.

18 A. I didn't take any notes of it.

19 BY MR. ING:

20 Q. Do you recall taking any notes regarding change
21 in domicile?

22 A. No, I don't at all.

23 Q. Do you recall taking any notes regarding trustee
24 compensation?

25 A. I believe so.

1 Q. Do you recall taking any notes regarding the
2 changes or the form of governance or the change in
3 the form of governance at the Estate?

4 A. Meaning? What do you mean by the change in the
5 form of governance?

6 Q. Form of governance, do you recall-- let me
7 rephrase the question.

8 Do you recall using the term CEO as it relates
9 to the form of governance utilized at the Estate?

10 A. I recall that.

11 Q. So when I speak of the form of governance, I'm
12 talking about CEO form of governance or the form of
13 governance that people have loosely called the lead
14 trustee system.

15 Now with that understanding, do you recall
16 taking notes regarding the form of governance at the
17 Estate?

18 A. I recall taking notes with form of governance.

19 MR. ING: I'd like to have this marked as
20 Exhibit 78.

21 (Exhibit No. 78 marked
22 for identification.)

23 BY MR. ING:

24 Q. Mrs. Lindsey, have you had an opportunity to
25 look at what has been marked as Exhibit 78?

1 A. That's correct.

2 Q. Is that your handwriting?

3 A. It is my handwriting.

4 Q. Are those notes that were taken during the

5 course of a trustee meeting?

6 A. No. I wasn't a trustee at that time.

7 Q. Had you been appointed at that time?

8 A. Yes, I was appointed, but I didn't take office

9 until -- using that term very loosely, because I

10 wasn't to take office until February 26th or

11 something.

12 Q. You were advised of your employment sometime in

13 December of 1992; is that correct?

14 A. That's correct.

15 Q. And you were sworn in on or about the 26th of

16 February 1993?

17 A. Give or take a few days.

18 Q. And this would have been just prior to the time

19 you were sworn in?

20 A. That's correct.

21 Q. What was the purpose of this note?

22 A. I received information from Oz Stender that he

23 wanted us to consider a CEO. He was lobbying us at

24 the time and wanted us to come aboard with him to

25 change the structure of the institution, that he

1 didn't believe that the Trustees should be following
2 the will of the Princess, and he wanted to change the
3 will of the Princess so that the Trustees would not
4 have full power as she stated in her will, but to go
5 to a CEO-management system. And he also wanted to
6 name the CEO, as I recall.

7 Q. What was your position with respect to the CEO
8 form of governance?

9 A. I didn't know enough about it at the time. I
10 didn't know what he intended. I only knew that's
11 what he wanted and that's just exactly as it says.

12 Q. There's a note there that says, "Henry is
13 Matsi's protege"?

14 A. That's what Oz told us.

15 Q. And there's a subsequent note that says, "Ozzie
16 said 'Matsi is taking me around'"?

17 A. That's right.

18 Q. What was that in reference to?

19 A. I can't remember. I don't know if it was taking
20 Oz around or taking me around.

21 Q. The notation on Exhibit 78 states that, "Ozzie
22 wants Dickie and I to consider a CEO for Bishop
23 Estate"; is that correct?

24 A. That's correct.

25 Q. Were you in a discussion with Trustee Wong --

1 A. No.

2 Q. -- and Mr. Stender at the time?

3 A. I don't recall.

4 Q. Do you recall whether Trustee Wong was present
5 at the time you made this note?

6 A. I believe -- I believe that was when I went to
7 my first observation of what was going on at Bishop
8 Estate and kind of a pre-orientation to my coming in.
9 I don't recall if Dickie was present there.

10 Q. Was Mr. Stender present at the time you made
11 this note?

12 A. He talked to us about that on several occasions,
13 so I'm not sure, but one of the occasions was in the
14 hallway right outside the trustee meeting room and it
15 may have been this time.

16 Q. You talked to Oz about the CEO form of
17 governance on several occasions; is that correct?

18 A. No, Oz talked to us about changing the CEO
19 governance because he wanted a CEO like Campbell
20 Estate and he promoted it from the day I became a
21 trustee.

22 MR. ING: I'd like to have this next exhibit
23 marked as Exhibit 79.

24 (Exhibit No. 79 marked
25 for identification.)

1 BY MR. ING:

2 Q. Mrs. Lindsey, would you examine Exhibit 79,
3 please.

4 A. Okay.

5 Q. Have you had a chance to review Exhibit 79?

6 A. Yes, I have.

7 Q. Is that in your handwriting?

8 A. Yes, it is.

9 Q. There's a date that appears there. What is that
10 date?

11 A. March 16th, 1993.

12 Q. And that would have been subsequent to the time
13 that you became a trustee or were sworn in as a
14 trustee?

15 A. I believe so.

16 Q. At the top, there's a note that says "Trustees
17 meeting"?

18 A. Yes.

19 Q. And below that, would you read the entry below
20 that under "arm's length"?

21 A. "KS/BE - when this -- when they KS/BE
22 subsidiaries for-profit operate autonomously."

23 And then number 2, "KS/BE as a tax-exempt
24 nonprofit cannot." And I didn't finish the sentence.

25 Q. What was the thought there?

1 A. What is that?

2 Q. What was the purpose of this comment?

3 A. I guess in the discussion the issue of arm's
4 length --

5 MR. WOLSZTYNIAK: I instruct you not to
6 guess. If you know, you can testify. If you have an
7 estimate or a general area or reason to know, you can
8 testify, but do not guess or speculate.

9 A. Somebody must have said something about arm's
10 length.

11 BY MR. ING:

12 Q. What does "arm's length" mean?

13 A. That you have to keep a distance from the
14 for-profit subsidiary.

15 Q. Do you recall who had raised this during the
16 course of the trustee meeting?

17 A. No, I don't.

18 Q. Over the years, have you had discussions about
19 arm's-length transactions or maintaining arm's length
20 from the for-profit subsidiaries?

21 A. Yes.

22 Q. What is the purpose of the maintenance of an
23 arm's-length distance between trustees at the Estate
24 level and the for-profit subsidiaries?

25 A. As explained, was that the group of trustees

1 should not be involved in the for-profit subsidiary
2 operations.

3 Q. Why was that?

4 A. Because we were -- we could have a conflict.
5 However, they also said that it is okay for a trustee
6 to sit on the board of for-profit subsidiaries, and
7 as a board member, providing there were other board
8 members, they could have some direct input into the
9 for-profit entities. And we had a workshop on this.
10 Not until a couple of years after this. Maybe three
11 or four.

12 Q. When you said "they said," who were you
13 referring to?

14 A. Our legal counsel.

15 Q. And that was whom?

16 A. Well, we had -- at various times, we had various
17 people.

18 Q. Who were among the various people?

19 A. Basically, Mark McConaghy, Nathan Aipa, Bruce
20 Graham, Mike Hare.

21 MR. ING: I'd like to have the next exhibit
22 marked as Exhibit 80.

23 (Exhibit No. 80 marked
24 For identification.)

25 BY MR. ING:

1 Q. Mrs. Lindsey, would you examine Exhibit 80,
2 please.

3 Mrs. Lindsey, did you have a chance to look
4 through the pages that comprise Exhibit 80?

5 A. Yes, I did.

6 Q. Just for the record, there are eight pages; is
7 that correct?

8 A. Yes, but I notice it doesn't finish the sentence
9 on the last page of page 8. So there may have been
10 more pages. I'm not sure.

11 Q. But at least with respect to the portion of the
12 pages that are contained in Exhibit 80, these are
13 numbered at the bottom with the Bate's style number
14 LL 00413 consecutive through LL 00420; is that
15 correct?

16 A. That's correct.

17 Q. Are these notes taken in your handwriting?

18 A. These notes are taken in my handwriting.

19 Q. So you took these notes?

20 A. Yes, I did.

21 Q. Are these an accurate representation of your
22 notes at least for the pages that are included in the
23 exhibit?

24 A. They are.

25 Q. Up at the top, you have, "Purpose of the

1 meeting - Mark," I believe?

2 A. That's right. This is a meeting that Mark
3 McConaghy chaired and Mark McConaghy told us almost
4 everything I have written here.

5 Q. And this was -- what is the date?

6 A. September the 13th, 1993.

7 Q. So that would be reflective of the day that Mr.
8 McConaghy held the meeting?

9 A. That's correct.

10 Q. So you were taking notes of his conversation?

11 A. Of his advice to us and of him telling us what
12 to do in all of these areas and what the IRS was
13 looking at and what we needed to look at and how we
14 needed to do things in order to be in compliance with
15 the law.

16 Q. Was this at a trustees meeting?

17 A. I'm not sure, and the reason I'm not sure is I
18 don't know if he came here or we went to Washington.
19 I'd have to check.

20 Q. Where would you go to make that determination?

21 A. I'd have to see -- I'd have to see if there was
22 a trustee meeting scheduled on September the 13th,
23 1993 per the minutes of the Board, and if it was, it
24 was in a trustees meeting.

25 Q. Who was present with you during the course of

1 this discussion?

2 A. I don't recall.

3 Q. Do you recall whether other trustees were
4 present?

5 A. I don't know, because it may have been listed on
6 a previous page that you don't have here, which would
7 have said it was a trustees meeting and might have
8 said who was present, but I don't have the previous
9 pages, so I can't tell you at this time.

10 Q. We'll obtain that page and see if we can verify
11 that after the break.

12 MR. ING: Off the record for a second.

13 (Discussion off the record.)

14 MR. ING: I'd like to have the next exhibit
15 marked as Exhibit 81.

16 (Exhibit No. 81 marked
17 for identification.)

18 BY MR. ING:

19 Q. Mrs. Lindsey, would you examine Exhibit 81,
20 please.

21 Mrs. Lindsey, have you had a chance to examine
22 Exhibit 81?

23 A. Yes, I have.

24 Q. Is this in your handwriting?

25 A. Yes, it is.

- 1 Q. Are these your notes?
- 2 A. Yes, they are.
- 3 Q. Are these a fair and an accurate reproduction of
- 4 those pages of your notes that are reflected in the
- 5 exhibit?
- 6 A. Yes.
- 7 Q. Were these notes taken during the time that you
- 8 were trustee?
- 9 A. Yes.
- 10 Q. Do they involve Estate, Bishop Estate business?
- 11 A. Yes, they do.
- 12 Q. What was the date that these notes were taken?
- 13 A. October the 18th, 1993.
- 14 Q. This exhibit consists of seven pages, correct?
- 15 A. Yes.
- 16 Q. And these pages are numbered consecutively at
- 17 the bottom LL 00486 through -492; is that correct?
- 18 A. That's correct.
- 19 Q. Do you recall what the purpose of these notes
- 20 are?
- 21 A. I'd have to see again the pages preceding the
- 22 notes to see if there was a trustee meeting. And I
- 23 remember some of these notes referred to investments
- 24 that were made by and actions taken by the former
- 25 trustees and they were discussing the tax issues

1 surrounding them at that time.

2 I note in the notes that Gil Ishikawa is
3 mentioned here, as is Mark McConaghy, and they are
4 our tax advisors, Mark McConaghy being our tax
5 counsel.

6 Q. If you would look at Bate's number at the bottom
7 LL 00488. Do you have that page before you?

8 A. Yes, I do.

9 Q. At the bottom, there's a note that says, "Big
10 issue." And then it's underscored and it says, "Tech
11 advice from national office regarding compensation
12 issue"?

13 A. Right.

14 Q. Did I read that correctly?

15 A. That's correct.

16 Q. What was that about?

17 MR. WOLSZTYNIAK: At this time, you're
18 getting into a compensation issue. I have no problem
19 with laying foundation or having my client testify as
20 to various aspects of what's in the document, but the
21 issue of trustee compensation, I believe because of
22 the fact that the subpoena relates to finances and
23 the trustee compensation relates to finances, at this
24 time, I would instruct her not to answer on Fifth
25 Amendment grounds as to anything that is outside the

1 scope, the foundation for the document, stating what
2 the document says, who was present, without prejudice
3 to answering at a later date or to answer any other
4 questions regarding that document that don't relate
5 to an area that I believe gets into the possible
6 privilege of Fifth Amendment.

7 BY MR. ING:

8 Q. Mrs. Lindsey, could you refer to the sixth page
9 of Exhibit 81.

10 MR. WOLSZTYNIAK: What's the Bate's number
11 on that?

12 MR. ING: The Bate's number at the bottom
13 is, the last three digits, 491.

14 BY MR. ING:

15 Q. Do you have that before you?

16 A. I do.

17 Q. Up at the top, I'm sorry, there's a reference to
18 a meeting with Mr. McConaghy?

19 A. That's correct.

20 Q. If you could just for a minute focus on the
21 spelling of Mr. McConaghy's name.

22 A. It's wrong.

23 Q. It's wrong?

24 A. Yeah, it's definitely wrong. I had a hard time
25 coming up with how you actually spell it, having

1 never seen it in writing.

2 Q. The notes that you have here, however, refer to
3 a performance-based compensation system; is that
4 correct?

5 A. That's correct.

6 Q. I take it that that related to trustee
7 compensation?

8 A. That's correct.

9 Q. Did the trustees ever establish a
10 performance-based compensation system for the Estate?

11 A. I'm not sure. I know that --

12 MR. WOLSZTYNIAK: Mrs. Lindsey, listen to
13 the question. Just answer only the question and
14 don't go any further and answer Mr. Ing's specific
15 question.

16 A. But I really want to say this. We wanted to do
17 the right thing.

18 MR. WOLSZTYNIAK: Please listen to Mr. Ing's
19 question. Just answer only the question, please.

20 THE WITNESS: Okay.

21 BY MR. ING:

22 Q. Was a performance-based compensation system set
23 up for the trustees at any time?

24 A. I'm not sure.

25 Q. Where would you go to determine whether or not

1 that was done?

2 A. There were so many times that this was discussed
3 that I'm not sure even where I would go to determine
4 what was done, because there were subsequent Court
5 orders.

6 Q. Did you ever see a performance-based system for
7 trustees written down in writing?

8 MR. WOLSZTYNIAK: You mean whether it was
9 passed or not? Just whether there was a model,
10 whether there was a proposal?

11 BY MR. ING:

12 Q. In any form, whether it was a proposal, whether
13 it was acted upon, whether it was revised or whether
14 it was actually utilized in determining compensation.

15 A. I'm not sure, because the Master made some
16 recommendations and then we had to -- based upon
17 that, we had to go and get a consultant to look at
18 compensation and we had to report it to the Court and
19 then we had to review it every three years. So a lot
20 of things that started out being what we would want
21 to do ended up changing based on a Master's report
22 and orders from the Court.

23 Q. Do you recall which Master's report in
24 particular or do you recall any in particular that
25 referred to that; that is, the trustee compensation

1 system?

2 A. That referred to a trustee compensation system?

3 Q. Yes.

4 A. I don't recall exactly which Master at this
5 time. I do recall that the judge said that we had to
6 get one or more consulting firms, and maybe I'm using
7 the wrong word, one or more firms to review
8 compensation and to come in with a range based on
9 some of these things that we have here in these
10 notes. And it was discussed and it was reported to
11 the Court, and then three years later, we had to do
12 it again. That's my recollection.

13 Q. There is at the bottom of the page a reference
14 to, "Performance base compensation, independent board
15 to decide" and then it has "\$ compensation"; is that
16 correct?

17 A. That's correct.

18 Q. Was an independent board ever established to
19 decide compensation for the trustees?

20 A. No, because the judge's --

21 MR. WOLSZTYNIAK: Mrs. Lindsey, listen to
22 Mr. Ing's question. Answer only his question that
23 elicits a yes or no answer. Just only go as far as
24 what the information requested is and go no further,
25 please.

1 A. No.

2 BY MR. ING:

3 Q. Would you turn to the last page of the exhibit
4 numbered at the bottom 492, the last three digits.
5 There's a reference to Omnitrak and in parenthesis
6 "Nam". What is that reference?

7 A. Omnitrak was going to do -- how do I want to
8 say? It was going to get some information for us
9 regarding this leasehold issue, because it was a
10 critical issue and Nam was going to be in charge of
11 doing a marketing study regarding leasehold and then
12 do some informational meetings on it.

13 Q. And "Nam" refers to whom?

14 A. Namlyn Snow. She was in charge of government
15 relations.

16 Q. What was her position at the time?

17 A. I guess director of government relations.

18 Q. Who does she report to?

19 A. Gil Tam initially and then Rodney Park.

20 Q. Do you recall whether a marketing study was
21 completed at any time?

22 A. There was several studies completed and I don't
23 recall specifically.

24 Q. Who was the person at Omnitrak who was
25 contracted?

1 A. I don't recall.

2 MR. ING: I'd like to mark the next
3 exhibit as 82.

4 (Exhibit No. 82 marked
5 for identification.)

6 BY MR. ING:

7 Q. Mrs. Lindsey, would you examine Exhibit 82,
8 please.

9 Mrs. Lindsey, have you had a chance to review
10 what has been marked as Exhibit 82?

11 A. I did.

12 Q. This exhibit consists of four pages, correct?

13 A. Yes.

14 Q. And these are Bate's-numbered at the bottom,
15 last three digits, 835 through 838, correct?

16 A. No. I'm sorry, yes.

17 Q. Are these a copy of your notes?

18 A. Yes, it is.

19 Q. Does Exhibit 82 represent an accurate copy of
20 your notes for these particular dates and on these
21 pages?

22 A. That's correct.

23 Q. Do you recall what the occasion was that you
24 were taking these notes?

25 A. Not unless I have the previous pages.

- 1 Q. What date did you take these notes on?
- 2 A. May 23rd, 1994.
- 3 Q. There's a reference to Mark McConaghy at the
- 4 top?
- 5 A. That's correct.
- 6 Q. This time I believe his name is spelled
- 7 correctly?
- 8 A. Yes, it is.
- 9 Q. And there's a phone number associated with that?
- 10 A. That's correct.
- 11 Q. Does that refresh your recollection as to
- 12 whether you were talking to him on the phone or
- 13 whether he was there in person?
- 14 A. No.
- 15 Q. Having reviewed the information in Exhibit 82,
- 16 does that refresh your recollection as to what the
- 17 subject matters were that were discussed?
- 18 A. It does.
- 19 Q. What were those?
- 20 A. We were talking about our commissions and what
- 21 we have a right to do with them and how we would be
- 22 taxed on them and how this would affect the
- 23 operations of the Estate and asking him for advice on
- 24 what we were to do.
- 25 Q. As a result of this discussion, do you recall

1 taking action as a trustee?

2 MR. WOLSZTYNIAK: At this time, I'm going to
3 instruct my client not to answer on the grounds it
4 gets into the area of trustee compensation. In light
5 of the subpoena for her records relating to income
6 and compensation, I would instruct her not to answer
7 on Fifth Amendment grounds as to that area, without
8 prejudice to any other questions regarding the
9 foundation in that document or other areas which are
10 outside of the area I just objected to or just
11 indicated was possibly a problem with the Fifth
12 Amendment rights.

13 BY MR. ING:

14 Q. Mrs. Lindsey, just looking at your notes, one of
15 the issues that was discussed apparently was what you
16 refer to as the diminimus rule?

17 A. Yes.

18 Q. What was the diminimus rule?

19 A. Diminimus rule was a rule that says we cannot
20 spend more than 49 percent, I believe. We cannot
21 spend the majority of our money on outside
22 activities, in education or any other arena, and
23 specifically to education.

24 And so we were asking what would keep us safe,
25 because a lot of money was going into community

1 programs that were not directly related to the school
2 and we were told that the diminimus rule meant it had
3 to be our school, our teachers, our curriculum and
4 our students and we could not be subsidizing all
5 these other programs that were in the community, if
6 it indeed went over the amount, over -- if it's over
7 49 percent, was kind of what it is.

8 And Mark McConaghy also advised us that 49
9 percent is pushing it to the limit. We were advised
10 that only 20 percent of our money should be used in
11 this diminimus setting and 80 percent of it should
12 not be.

13 And the rule of thumb was to spend only
14 approximately 20 percent on activities that did not
15 fall within those four criteria, meaning our school,
16 our buildings, our teachers, our curriculum and our
17 students directly related to Kamehameha Schools.

18 We found that Kamehameha Schools itself was in
19 100 percent compliance with the diminimus rule
20 because it met all four criteria and we found that
21 many of our other programs did not fit into that
22 criteria, and as a result, maybe we should re-look at
23 what we were doing. We wanted to --

24 MR. WOLSZTYNIAK: Mrs. Lindsey, just answer
25 only the question that Mr. Ing has inquired of and

1 stick to the question and answer only that question,
2 please. Thank you.

3 A. The diminimus rule is that, and --

4 MR. WOLSZTYNIAK: You've stated the
5 definition of the diminimus rule. Thank you.

6 BY MR. ING:

7 Q. As applied, did the Board of Trustees ever
8 authorize expenses for non-core areas which totalled
9 greater than 20 percent of the funds spent?

10 A. I don't remember at this time, because I'd have
11 to go look at the amounts spent in that report that
12 was done for us.

13 Q. Do you recall whether these notes, that is the
14 notes comprising Exhibit 82, were taken during the
15 course of a trustee meeting?

16 A. Again, without having the preceding pages, I'm
17 not sure.

18 MR. WOLSZTYNIAK: Doug, it's about five
19 minutes of 12:00. I've got -- I'm trying to squeeze
20 my appointments in. With everybody gone during the
21 noon hour, I do have some other things I have to do
22 regarding a deposition I've got to move around,
23 because I don't know how long we're going to go this
24 afternoon. I'm just inquiring. Is this going to be
25 a short one?

1 MR. ING: Let me look and I'll tell you.

2 MR. WOLSZTYNIAK: Thank you.

3 MR. ING: This can wait.

4 MR. WOLSZTYNIAK: Pardon?

5 MR. ING: We can take a break.

6 MR. WOLSZTYNIAK: I want to go off the
7 record.

8 (Luncheon recess 11:53 a.m. to 2:05 p.m.)

9 MR. ING: During the lunch hour or extended
10 lunch hour, the Discovery Master called to find out
11 whether we were going to get together at 2 o'clock
12 and I had told him that based on the progress we had
13 made and the fact that you had agreed to answer
14 questions in a certain set of areas that we would
15 continue on today and we'd get him a copy of the
16 transcript of whatever occurred today and try to set
17 up a time tomorrow, and he said that was fine. He
18 preferred to do it at 1:30. He's tied up in the
19 morning. If that's okay, we can take up whatever
20 remaining issues that are to be taken up tomorrow.

21 MR. WOLSZTYNIAK: Do you want to continue
22 with Mrs. Lindsey's depo through tomorrow as well?

23 MR. ING: Yes, until I exhaust the areas
24 that you've agreed to testify.

25 I think, Mrs. Lindsey, the last exhibit that we

1 had gone through prior to the break for lunch was
2 Exhibit 82.

3 MR. WOLSZTYNIAK: Correct.

4 MR. ING: I'd like to have the next exhibit
5 marked Exhibit 83.

6 (Exhibit No. 83 marked
7 for identification.)

8 BY MR. ING:

9 Q. Mrs. Lindsey, could you examine Exhibit 83,
10 please.

11 Mrs. Lindsey, have you had a chance to look at
12 Exhibit 83?

13 A. Yes, I have.

14 Q. Is this exhibit in your handwriting?

15 A. Yes, it is.

16 Q. Is that a fair and accurate representation of
17 your notes that day at least as it relates to the
18 particular page that has been copied?

19 A. Yes.

20 Q. There is a note that begins with "Dickie" and
21 it's underscored. Do you see that?

22 A. Yes.

23 Q. What was the purpose of that note?

24 A. I don't remember.

25 Q. Who is Richard Post?

- 1 A. That's not Richard Post.
- 2 Q. There's the name Richard there followed by --
- 3 maybe I just can't read it, but would you read the
- 4 second dot?
- 5 A. Richard Port.
- 6 Q. Port, I'm sorry. Who is Richard Port?
- 7 A. He was the head of the Rainbow Coalition.
- 8 Q. What was the Rainbow Coalition?
- 9 A. I don't know how to define it. It's a group of
- 10 people within the Democratic party.
- 11 Q. What was it associated with? Hawaii politics,
- 12 national politics?
- 13 A. This is local politics.
- 14 Q. There's a series of bullets or dots. Do you see
- 15 that?
- 16 A. Yes.
- 17 Q. The third bullet reads, or maybe you should read
- 18 it. Read it for us, please.
- 19 A. The one starting with "if"?
- 20 Q. Yes.
- 21 A. "If the rezos are killed in committee, nothing
- 22 will happen."
- 23 Q. What rezos did that refer to?
- 24 A. I don't remember.
- 25 Q. The next bullet says, "Russell & Gary will walk

1 with us." Do you see that?

2 A. Yes.

3 Q. Who is Russell?

4 A. I'm not sure.

5 Q. Could that refer to Russell Ogata?

6 A. I don't know.

7 Q. Who is Gary?

8 A. I don't know. I don't remember now.

9 Q. What was the date of this note?

10 A. 5/26/94.

11 Q. Do you recall what the issue was as it related

12 to the Democratic party convention?

13 A. No, I don't.

14 Q. Did you attend any of the Democratic party

15 conventions?

16 A. I did.

17 Q. During the time that you were trustee?

18 A. I did.

19 Q. Do you recall which ones you attended?

20 A. I think all of them, because I was precinct

21 chair for Maui.

22 Q. Were there any issues regarding Bishop Estate

23 which came up during the course of the Democratic

24 party convention?

25 MR. WOLSZTYNIAK: At this time, I'm going to

1 advise Mrs. Lindsey to -- or, I'm sorry, can I hear
2 the question again?

3 (Record read.)

4 MR. WOLSZTYNIAK: Of which she's aware of
5 being at the convention? You may answer that
6 question.

7 A. Yes, there were.

8 BY MR. ING:

9 Q. What were those issues?

10 A. I don't remember.

11 Q. Do you have any records or documents related to
12 any of the Democratic conventions that you attended
13 locally?

14 A. No, I don't.

15 Q. I'm sorry, did I ask you what the date of this
16 note was?

17 A. Yes, I believe you did. It was May 26, '94.

18 MR. ING: Mark the next exhibit in order as
19 Exhibit 84.

20 (Exhibit No. 84 marked
21 for identification.)

22 MR. WOLSZTYNIAK: Doug, just for the record,
23 this seems to be a little rough copy. Is it my copy
24 or are they all a little bit off?

25 MR. ING: They all appear to be similarly

1 rough.

2 BY MR. ING:

3 Q. Mrs. Lindsey, could you examine Exhibit 84,
4 please?

5 A. Yes.

6 Q. Mrs. Lindsey, have you had a chance to review
7 Exhibit 84?

8 A. Yes, I have.

9 Q. Is this a page from your notes?

10 A. Yes, it is.

11 Q. Is it in your handwriting?

12 A. Yes, it is.

13 Q. When did you make these notes?

14 A. Well, it's either dated August 16 or August the
15 10th, 1996.

16 Q. Could you read the notes as best you can?

17 A. Yes, it says, "Call Henry. Questions." Bullet
18 point 1, "Value of the Estate. We all said 1.6
19 million" with a question. "What would we do to
20 increase the income stream" with a question.

21 "Why should we have a tax-exempt status,
22 compensation, selection process. Why don't we invest
23 more money at home? Why did we take this offshore?
24 How are the assets managed? Ask about RE on a" -- it
25 looks like -- I can hardly read that last word.

1 "Goldman Sachs, they want to talk to someone there."

2 Q. Do you recall what this note is in connection
3 with?

4 A. No, I don't.

5 Q. Who did "Henry" refer to?

6 A. I -- Henry Peters.

7 Q. Were there discussions at any time amongst the
8 trustees about the tax-exempt status of the Bishop
9 Estate?

10 A. There were.

11 Q. Do you recall what the substance of the
12 discussions were as it related to the tax-exempt
13 status of the Estate?

14 MR. WOLSZTYNIAK: I object and I'll instruct
15 the witness not to answer on Fifth Amendment grounds
16 the question in that form as it's overly broad, vague
17 and ambiguous as to her involvement and time frame,
18 things of that sort.

19 So I can't really tell if there's any Fifth
20 Amendment problems or not. In a more refined or
21 reduced scope question, I would very possibly not
22 instruct the witness not to answer. I just have a
23 major problem with that question in its present form.

24 I don't have a problem with her testifying as to
25 what discussions or what was said about tax-exempt

1 status. As far as any statements she made regarding
2 tax-exempt status, I would have a Fifth Amendment
3 problem. I'm just concerned. Because of the broad
4 scope of the question, I'm having difficulty with
5 determining whether or not there would be a Fifth
6 Amendment problem without prejudice to any other
7 questions along that line.

8 MR. ING: Counselor, I'm going to reserve my
9 right to re-ask the question following a ruling by
10 the Discovery Master.

11 MR. WOLSZTYNIAK: Of course.

12 MR. ING: But I will rephrase the question
13 in an attempt to take advantage of the time we do
14 have available.

15 BY MR. ING:

16 Q. Mrs. Lindsey, did other trustees besides
17 yourself raise the issue of the tax-exempt status of
18 Kamehameha Schools/Bishop Estate?

19 A. I think we all did, because of the
20 discrimination case that was before us.

21 Q. Was the discrimination case still active in
22 August of 1996?

23 A. I believe it was.

24 Q. Do you recall any discussions on or about August
25 1996 about whether or not KSBE should have a

1 tax-exempt status?

2 A. I don't recall that.

3 MR. ING: I'd like to have the next exhibit
4 marked as Exhibit 85.

5 (Exhibit No. 85 marked
6 for identification.)

7 BY MR. ING:

8 Q. Mrs. Lindsey, could you examine Exhibit 85,
9 please.

10 A. Yes.

11 Q. Have you had a chance to examine Exhibit 85?

12 A. Yes.

13 Q. Is this a copy of the page of your notes?

14 A. Yes, it is.

15 Q. Is it in your handwriting?

16 A. Yes, it is.

17 Q. What is the date of the notes?

18 A. September the 5th, 1994.

19 Q. Was there a gubernatorial race that year?

20 A. Yes.

21 Q. Except for the large watermark running across
22 the page, is this a fair and accurate copy of the
23 page of your notes?

24 A. Yes, it is.

25 Q. What was the purpose of the notes on this page?

1 A. My girlfriend Susan Halas, she used to make
2 predictions about upcoming races. She was the writer
3 in Maui and she called or I talked to her and
4 documented what she said.

5 MR. ING: Mark the next exhibit as 86,
6 please.

7 (Exhibit No. 86 marked
8 for identification.)

9 BY MR. ING:

10 Q. Mrs. Lindsey, would you examine Exhibit 86.

11 Have you had a chance to examine Exhibit 86?

12 A. Yes.

13 Q. This exhibit consists of two pages marked with
14 Bate's numbers at the bottom 01050 and 01051; is that
15 correct?

16 A. That's correct.

17 Q. Are these copies of your notes?

18 A. Yes, it is.

19 Q. What is the date of the notes?

20 A. September the 6, 1994.

21 Q. Is this in your handwriting?

22 A. Yes, it is.

23 Q. Is this a fair and accurate copy of the notes
24 for those particular days?

25 A. Yes.

- 1 Q. For the pages represented?
- 2 A. Yes.
- 3 Q. This set of notes has under the date "trustees
4 meeting." Do you see that?
- 5 A. Yes.
- 6 Q. Does that indicate to you it was taken during
7 the course of a trustees meeting?
- 8 A. Yes, it does.
- 9 Q. And who was Barbara Ankersmit?
- 10 A. She was one of the people that worked on a
11 survey for us from Omnitrak.
- 12 Q. Was she present in the boardroom?
- 13 A. Yes, I believe she was.
- 14 Q. Are these notes made from one of her
15 presentations?
- 16 A. Yes.
- 17 Q. How many occasions do you recall Barbara
18 Ankersmit making a presentation on matters such as
19 what are contained in Exhibit 86 to the Board in the
20 boardroom?
- 21 A. Maybe a couple.
- 22 Q. During election years?
- 23 A. No, I don't know when they took place.
- 24 Q. But there were other occasions or at least one
25 other occasion in which Barbara Ankersmit made a

1 presentation to members of the Board?

2 A. I think so.

3 Q. Do you recall whether Nam Snow was present at
4 the time?

5 MR. WOLSZTYNIAK: I'm sorry, who?

6 MR. ING: Nam Snow.

7 A. No, I don't.

8 BY MR. ING:

9 Q. Do you recall seeing a report prepared by
10 Omnitrak or Barbara Ankersmit regarding the issues
11 discussed in Exhibit 86?

12 A. I do.

13 Q. Would you describe for me what that looked like?

14 A. Physically what it looked like?

15 Q. Yes.

16 A. It was a book like that with some (indicating)
17 black binding on it, I believe. It was a report to
18 the board.

19 Q. Referring to what was marked as Exhibit D522 in
20 the trial before Judge Weil. This happens to be a
21 log of KSBE minutes, but I think you're referring to
22 the spiral, the black spine?

23 A. Right. I'm not saying that specific document.
24 I said something like that. It was put together in a
25 very formal package.

1 MR. WOLSZTYNIAK: About three-quarters of an
2 inch or so thick.

3 BY MR. ING:

4 Q. Did you retain a copy of that?

5 A. I don't believe so.

6 Q. Do you recall why it was prepared?

7 A. Yes, we wanted to find out what the issues were
8 facing Hawaiian people so that we could be readily
9 able to address them and wanted to find out what they
10 thought of Kamehameha Schools in the whole context.

11 We focused specifically on what the Hawaiian
12 people comments were as opposed to the general public
13 comments to see if there was congruence or if there
14 was a large separation in the way they looked at some
15 of these issues.

16 We wanted to be more cognizant of what the
17 community thought about issues, what the Hawaiian
18 people specifically thought about issues and how we
19 could in their education address these issues.

20 BY MR. ING:

21 Q. Was the report that was prepared by Barbara
22 Ankersmit that you looked at that you described as
23 looking like a formal report with a spiral-bound
24 backing done under the government relations division,
25 communications division or someone else?

1 A. I'm not sure, but it was usually government
2 relations or communications.

3 Q. Whether it was government relations or
4 communications, were there moneys in the budget for
5 that purpose; that is, for these studies, surveys?

6 A. It is my understanding there was.

7 Q. Do you recall how much that was?

8 A. No, I don't.

9 Q. This particular study apparently was done on or
10 about September 1994, correct?

11 A. No, that's when she reported it to us and they
12 usually take months before that to do a study.

13 Q. Do you recall whether there was a budget for
14 studies of this nature in other years besides 1994?

15 A. I'm not sure.

16 MR. ING: Mark the next exhibit in order 87.

17 (Exhibit No. 87 marked
18 for identification.)

19 BY MR. ING:

20 Q. If you could examine Exhibit 87, please.

21 Mrs. Lindsey, have you had a chance to examine
22 Exhibit 87?

23 A. Yes, I did.

24 Q. Is this a copy of a page from your notes?

25 A. Yes, sir, it is.

1 Q. Is it in your handwriting?

2 A. Yes, it is.

3 Q. What is the date of the notes or note?

4 A. October 6, 1994.

5 Q. If you would look halfway down the page right
6 where the word "document" begins on the watermark.

7 A. Yes.

8 Q. There's another date there also.

9 A. I can hardly see it. Maybe October 7, 1994.

10 Q. There's a name written under-- there's a name
11 written about halfway down the page. It says "David"
12 and I can't make out the last name.

13 A. Neither can I.

14 Q. Now there's a further note that begins, "As of
15 10:30 a.m." Do you see that?

16 A. Yes.

17 Q. And then there's a series of bullets below that?

18 A. Yes.

19 Q. Would you read that, please.

20 A. I think it says, "White House has been
21 contacted, so they don't object. Senator Inouye is
22 meeting with Representative Conyers. Bill is
23 included in the House EFC bill."

24 A bracket that says something about, "Within the
25 next hour Senator Inouye is keeping the bill on the

1 Senate bill; he's pretty optimistic it's going to
2 happen. Representative Mink and Abercrombie are
3 going to Representative Conyers."

4 Q. Who was Representative Conyers?

5 A. I have no idea.

6 Q. There's an arrow that points to the word "bill"?

7 A. Right.

8 Q. And there's a double-underscored note up above.
9 Would you read that, please?

10 A. It says, "EFC bill did not contain our
11 provision." And it has "Conyers" underneath it.

12 Q. Who was Representative Conyers?

13 A. I don't know.

14 Q. What was this in reference to?

15 A. You know, I really don't know. I see over here,
16 it says something about Title 4 where it has
17 Confidential Document and I don't know what Title 4
18 includes at this time.

19 Q. What was Title 4?

20 A. I don't know.

21 Q. Is Title 4 written on Exhibit 87?

22 A. Yes, right where you have these arrows right
23 here. It says Title 4. And we have Title 1,
24 Title 2, 3 and 4 and some of those things are
25 government funding grants for educational purposes,

1 but I don't know at this time what this applies to at
2 all.

3 Q. Do you know what the initials EFC stand for?

4 A. Not now, I don't. Can I correct that?

5 Q. Yes.

6 A. I just thought of something it may be.

7 Educational Finance Committee.

8 MR. ING: Can I have the next exhibit marked
9 as Exhibit 88.

10 (Exhibit No. 88 marked
11 for identification.)

12 BY MR. ING:

13 Q. Mrs. Lindsey, would you examine Exhibit 88,
14 please.

15 Mrs. Lindsey, have you had a chance to look at
16 Exhibit 88?

17 A. Yes.

18 Q. Exhibit 88 consists of 10 pages numbered at the
19 bottom 03259 consecutively through 03268; is that
20 correct?

21 A. That's correct.

22 Q. Are these copies of pages in your notes?

23 A. Yes, it is.

24 Q. Is it in your handwriting?

25 A. Yes, it is.

- 1 Q. What is the date of these notes?
- 2 A. December 1, 1994.
- 3 Q. Was it taken at a trustees meeting?
- 4 A. Yes.
- 5 Q. There's a notation that says "conference call"?
- 6 A. Yes.
- 7 Q. What does that indicate to you?
- 8 A. We're in the trustee meeting and a conference
- 9 call was made by Mark McConaghy and Dale Snape to us
- 10 or we conferenced them.
- 11 Q. And who is Mark McConaghy and who is Dale Snape?
- 12 A. Mark McConaghy was our tax attorney out of Price
- 13 Waterhouse at the time, now known as Price Waterhouse
- 14 Coopers Lybrand. And I can't remember what Dale
- 15 Snape was doing, but he was out of a firm in
- 16 Washington, D.C. also.
- 17 Q. Out of the Coopers firm or Price Waterhouse?
- 18 A. I don't believe so, but I'm not sure what firm
- 19 at this time.
- 20 Q. Is this an accurate and fair copy of your notes?
- 21 A. Yes, it is.
- 22 Q. What was purpose of the discussion with Mr.
- 23 McConaghy at that time?
- 24 A. There was an article, I believe, that appeared
- 25 in the National Enquire that talked about Bishop

1 Estate and all the money we were getting and we were
2 teaching kids how to do cultural things, throw
3 different things at each other and it was really a
4 nasty article. It was picked up in part by some of
5 the national media and it mentioned the IRS and there
6 was a whole bunch of things.

7 And all of a sudden, it was reported to us that
8 CNN and 60 Minutes and all of these various big TV
9 entities, shows were going to send people to Hawaii
10 to display Kamehameha Schools/Bishop Estate in a very
11 bad light because we were getting federal moneys and
12 using it for the school and our school was the
13 richest school in the nation and why would we be
14 doing this.

15 It came up on the House, I believe, at this
16 time. I hope I'm getting all the dates in the right
17 order. And as a result of that, we had a conference
18 call to these two people. We were looking at some of
19 the things that were supposedly leaked to or from or
20 made reference to the IRS and they were advising us
21 on what we had to do because some inquiries might be
22 made of the IRS, and they would reply in a generic
23 way, and we didn't want to take the bashing, which we
24 ultimately received, but at this time from the
25 Washington scene.

1 Q. Do you recall whether there was any follow-up to
2 this discussion?

3 A. There was a lot of follow-up to the discussion.
4 And I don't know if it was CNN or Money Line. One of
5 them actually came down and had a TV series that
6 lasted possibly a week, so many minutes on their show
7 and a culmination, as we anticipated they would.

8 MR. ING: Mark the next Exhibit 89, please.

9 (Exhibit No. 89 marked
10 for identification.)

11 BY MR. ING:

12 Q. Mrs. Lindsey, have you had a chance to review
13 Exhibit 89?

14 A. Yes.

15 Q. Is this a copy of a page from your notes?

16 A. Yes, it is.

17 Q. Is it in your handwriting?

18 A. Yes, it is.

19 Q. Except for the watermark, does it appear to be
20 an accurate copy of a page from your notes?

21 A. Yes.

22 Q. What was the date of the note?

23 A. February the 10th, 1995.

24 Q. There's a note that says "Henry" about the
25 middle of the page?

- 1 A. Right.
- 2 Q. Would that be Henry Peters?
- 3 A. Yes, it would be.
- 4 Q. Would you read the note, please.
- 5 A. "Legal people checking with moving the Trust
- 6 that is far more friendly."
- 7 Q. What does that note refer to?
- 8 A. I don't know. It's probably what he said.
- 9 Q. Was there any discussion about moving the Trust
- 10 from the jurisdiction of Hawaii at any time?
- 11 A. From the time I came aboard, there was
- 12 discussion about moving the Trust as a, as a takeoff
- 13 from other people in Hawaii moving their entities out
- 14 of the state.
- 15 Q. Was the discussion about moving the Trust out of
- 16 the state of Hawaii similar to other businesses
- 17 having relocated their headquarters from Hawaii to
- 18 other jurisdictions?
- 19 A. Basically, it was looking at like what the First
- 20 Hawaiian Bank did with going to New Jersey, what Dole
- 21 Company was doing, what Amfac was doing and seeing if
- 22 there was anything in that or any reason, business
- 23 reason that would benefit the Trust.
- 24 Q. Who was involved in that discussion or those
- 25 discussions about moving the Trust?

1 A. I know it was -- I guess the trustees at
2 sometime or another.

3 Q. Was anyone hired to do any work in connection
4 with any due diligence or further investigation about
5 moving the Trust out of the state of Hawaii?

6 A. Not that I know of.

7 Q. Were you aware at any time of consultants to
8 KSBE working on changing the domicile of the Trust
9 Estate?

10 A. No.

11 Q. Referring back to that same note on Exhibit 89,
12 do you recall what in particular caused you to make
13 the note that you did regarding Mr. Peters on
14 February 10, 1995?

15 A. Repeat the question.

16 Q. Yes. Why did you make the note that you just
17 read to us on Exhibit 89?

18 A. It was probably a piece of information given to
19 me. I just noted it. I don't remember anything else
20 about it.

21 Q. When you wrote "legal people" here, who were you
22 referring to?

23 A. Probably our legal staff.

24 Q. And that would consist -- do you know which
25 person from the legal staff was assigned to that

1 particular issue?

2 A. No, I don't.

3 (Telephonic interruption.)

4 A. Excuse me, I'm sorry.

5 MR. ING: Would you mark the next exhibit

6 Exhibit 90, please.

7 (Exhibit No. 90 marked

8 for identification.)

9 BY MR. ING:

10 Q. Mrs. Lindsey, would you examine this exhibit.

11 Mrs. Lindsey, have you had a chance to review

12 Exhibit 90?

13 A. Yes, I have.

14 Q. Exhibit 90 consists of 21 pages from numbers at

15 the bottom 01510 through 01530; is that correct?

16 A. That's correct.

17 Q. Is Exhibit 90 a copy from your notes?

18 A. Yes, it is.

19 Q. Is it in your handwriting?

20 A. Yes, it is.

21 Q. When were these notes made?

22 A. On April the 13th, 1995.

23 Q. Were these notes made during the course of a

24 trustees meeting or an executive session of a

25 trustees meeting?

- 1 A. Executive session.
- 2 Q. Of a trustees meeting?
- 3 A. Of a trustees meeting.
- 4 Q. Do you recall who was present?
- 5 A. The trustees, Nathan.
- 6 Q. Anyone else?
- 7 A. And Senator Inouye at the outset at least.
- 8 Q. Was Mr. McConaghy present at any time either in
- 9 person or by phone?
- 10 A. Yes.
- 11 Q. In person?
- 12 A. I'm not sure. You said either in person or by
- 13 phone and I'm not sure.
- 14 Q. So if it wasn't in person, then it would have
- 15 been by phone; is that correct?
- 16 A. Yes.
- 17 Q. If you look at the page with the Bate's number
- 18 01526. I'm sorry, this is not a Bate's number, but
- 19 the printed number 01526.
- 20 A. Right.
- 21 Q. Up at the top, it says "Mark McConaghy". Below
- 22 that, it says "Gil, Nath, Mark & Gary"?
- 23 A. Right.
- 24 Q. Who does that refer to?
- 25 A. Gilbert Ishikawa, Nathan Aipa, Mark McConaghy

1 and Gary, whatever his name is, from SCA.

2 Q. Would that be Hurihan (phonetic)?

3 A. It could be. I'm not sure.

4 Q. Did you have a discussion with anyone from SCA?

5 A. We had several discussions with the people from
6 SCA.

7 Q. Who were the individuals from SCA that met with
8 the trustees from time to time?

9 A. I can't remember.

10 Q. Do you recall whether in April of 1995 there was
11 a discussion about technical advice on trustee
12 compensation?

13 A. I'm not sure.

14 Q. Did the IRS regional office seek a technical
15 advice from the IRS national office regarding trustee
16 compensation during certain periods of time during
17 which the tax returns of the Estate were under audit?

18 A. I'm not sure if they sought a technical advice
19 from the national office.

20 Q. Do you know whether there was a request made to
21 the national office for a technical advice?

22 A. I don't remember at this time.

23 MR. ING: Would you mark the next exhibit
24 91, please.

25 /////

1 (Exhibit No. 91 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, could you review what has been
5 marked as Exhibit 91.

6 Mrs. Lindsey, have you had a chance to review
7 Exhibit 91?

8 A. Yes, I have.

9 Q. Is Exhibit 91 a copy of pages from your
10 notebook?

11 A. Yes, it is.

12 Q. Is Exhibit 91 a fair and accurate copy of pages
13 from your notebook?

14 A. Yes, it is.

15 Q. Is it in your own handwriting?

16 A. Yes, it is.

17 Q. When were the notes on Exhibit 91 made?

18 A. March 13, 1995.

19 Q. Exhibit 91 consists of three pages numbered at
20 the bottom 1467 through 1469; is that correct?

21 A. Right.

22 Q. Would you refer to the page numbered at the
23 bottom 1468, please. There's a note that begins
24 "tech advice" and it's underscored.

25 A. Right.

1 Q. Do you see that?

2 A. Yes.

3 Q. I wonder if you could read that and the
4 following page, please, just to yourself.

5 Mrs. Lindsey, does this note refresh your
6 recollection as to whether or not a tech advice was
7 sought on or about March of 1995?

8 A. I don't know if it was sought in March of 1995.
9 It talks about a tech advice. I'm not sure if it was
10 from the local office or the national office. It
11 says here, "Tech advice, non-conclusive," but I don't
12 know what tech advice they're referring to.

13 Q. Does your note indicate that the tech advice
14 itself was not conclusive?

15 A. It does.

16 Q. Was SCA involved in a compensation study at the
17 time?

18 A. Yes.

19 Q. Your note also indicates that IRS was concerned
20 with precedence setting; is that correct?

21 A. That's correct.

22 Q. Your note also indicates that IRS did not like
23 the formula under the statute?

24 A. Yes.

25 Q. And that would be the state statute; is that

1 correct?

2 A. Yes, that's correct.

3 Q. Further down, your notes indicate that, it says,
4 "It's clear IRS feels they can preempt the state
5 statute"?

6 A. That's correct.

7 Q. Was this information being provided to you by
8 Mr. McConaghy?

9 A. I believe so. It comes under his name on the
10 page marked 01468.

11 MR. ING: I'd like to mark the next exhibit
12 as Exhibit 92.

13 (Exhibit No. 92 marked
14 for identification.)

15 BY MR. ING:

16 Q. Mrs. Lindsey, would you examine Exhibit 92,
17 please.

18 Mrs. Lindsey, have you had an opportunity to
19 examine Exhibit 92?

20 A. Yes, I have.

21 Q. Exhibit 92 consists of seven pages numbered at
22 the bottom 1546 through 1552; is that correct?

23 A. That's correct.

24 Q. Is Exhibit 92 a copy of certain pages from your
25 notes?

- 1 A. It is.
- 2 Q. Is it in your handwriting?
- 3 A. Yes, it is.
- 4 Q. When were these notes made?
- 5 A. April the 25th, 1995.
- 6 Q. Is Exhibit 92 a fair and accurate copy of those
7 pages from your notes?
- 8 A. Yes, it is.
- 9 Q. Mrs. Lindsey, did these notes represent the
10 notes taken during the course of a trustees meeting?
- 11 A. Yes.
- 12 Q. Was Mr. McConaghy present either in person or by
13 phone?
- 14 A. I'm not sure.
- 15 Q. There's a reference to "Mark" at the middle of
16 page numbered at the bottom 1546. Do you see that?
- 17 A. Yes, I do.
- 18 Q. Does that refresh your recollection as to
19 whether Mr. McConaghy was present?
- 20 A. No, it really doesn't.
- 21 Q. Did the subject of the Wall Street Journal
22 article come up during the course of this meeting?
- 23 A. Yes, it did.
- 24 Q. Did these notes pertain to the Wall Street
25 Journal article?

1 A. Yes, and the advice from Mark McConaghy.

2 Q. I'm sorry, and?

3 A. And advice from Mark McConaghy.

4 Q. With respect to the Wall Street Journal article,
5 what was the advice from Mr. McConaghy?

6 A. Based on what's written here.

7 Q. Which specific pages are you looking at?

8 A. Well, I'm looking at all of the notes that I
9 took on the pages marked, last three digits, 546,
10 547, and on 548, "advice" at the bottom of the page.

11 This was advice or advise regarding comments and
12 our comments should be we have to manage a business
13 as well as a school. We're forced to sell our land
14 holdings. Got a lot of cash that had to be invested.
15 We deal with an organization forced upon us by the
16 Supreme Court when we had to sell our land. Our
17 fiduciary duty is to maximize returns. We grew fast
18 and we continued to grow. More complex putting
19 things in perspective.

20 Q. Was part of the concern about the Wall Street
21 Journal article the fact that trustees who were
22 decision-makers from a charitable institution were
23 earning substantial sums of money?

24 MR. WOLSZTYNIAK: Objection, lacks
25 foundation, but you can answer over that objection.

1 BY MR. ING:

2 Q. Mrs. Lindsey, you may answer the question if you
3 understand it.

4 A. I do, but up here, it says -- on page 546,
5 "Discussion - Wall Street Journal. Three things
6 require a response." One was the school
7 announcement, how they calculate it.

8 I didn't finish that, but as we go through this,
9 they're talking about the corporation. They're
10 talking about the IRS person, Howard Shone, I guess,
11 and I put a question about that.

12 There's a reference to, "Most lawyers would wish
13 their clients would go to the IRS to get rulings.
14 This is prudent."

15 They talk about Royal Hawaiian Shopping Center.
16 I don't have here listed anything about compensation.
17 That doesn't mean it wasn't put in the article. It's
18 just that I don't recall what it had in the article,
19 other than what is noted in these notes.

20 Q. Did Mr. McConaghy advise you that IRS would be
21 looking closely at the Estate as a result of the
22 issues raised in the Wall Street Journal article?

23 MR. WOLSZTYNIAK: Just -- go ahead and
24 answer that question.

25 A. It says here that Mark McConaghy said that this

1 is going to mean a close look by the Service at some
2 of the things stated in the article.

3 BY MR. ING:

4 Q. And the reference to "Service" is the Internal
5 Revenue Service?

6 A. That's correct.

7 MR. WOLSZTYNIAK: Just checking with the
8 court reporter and Mrs. Lindsey. We've been going
9 about an hour-and-a-half, close to it. I just was --

10 MR. ING: Do you want to take a short break.

11 (Recess from 3:22 to 3:38 p.m.)

12 MR. ING: We'll have this marked as
13 Exhibit 93.

14 (Exhibit No. 93 marked
15 for identification.)

16 BY MR. ING:

17 Q. Mrs. Lindsey, did the Estate hire John Waihee in
18 his capacity as an attorney for Verner Liipfert?

19 A. I believe the Estate hired Verner Liipfert.

20 Q. And was John Waihee one of the attorneys from
21 Verner Liipfert that worked on matters for Bishop
22 Estate?

23 A. Yes.

24 Q. Do you recall John Waihee having a discussion
25 with the trustees at any time regarding a Wall Street

1 Journal article that had appeared?

2 A. No. In fact this is the first I'm seeing this.

3 Q. Why don't you take a look at Exhibit 93, please.

4 Mrs. Lindsey, have you had a chance to review
5 Exhibit 93?

6 A. Yes, I have.

7 Q. This appears to be a memo from John Waihee to
8 the Trustees; is that correct?

9 A. It appears to be.

10 Q. Were Verner Liipfert and John Waihee retained to
11 assist the Estate with respect to potential national
12 exposure of the Estate as a result of the Wall Street
13 Journal article?

14 A. Not that I know of.

15 Q. Do you know whether John Waihee sent the Estate
16 a bill for the services he performed in connection
17 with reviewing the Wall Street Journal article and
18 preparing this memorandum?

19 A. No, I don't.

20 Q. Did you as a trustee have any discussion with
21 John Waihee regarding the Wall Street Journal
22 article?

23 A. No, I didn't.

24 Q. Were you aware at the time that there would be
25 expanded interest in KSBE as a result of the Wall

1 Street Journal article at the national level?

2 A. Only based on my notes regarding Mark McConaghy
3 and his concern.

4 Q. Do you know whether that concern was expressed
5 by John Waihee as well?

6 A. If it was, I wasn't privy to it.

7 Q. Did you have any occasion to meet with John
8 Waihee at it related to work performed by the Verner
9 Liipfert law firm for the Estate?

10 A. Did I -- repeat that question. Did I?

11 Q. Yes, did you on any occasion meet with John
12 Waihee as a trustee regarding work performed by the
13 Verner Liipfert law firm for the Estate?

14 A. I don't remember.

15 Q. You don't remember any occasion where John
16 Waihee met with the trustees?

17 A. Not off the top of my head. I'd have to review
18 notes.

19 Q. Do you know whether the Verner Liipfert law firm
20 sent Bishop Estate bills totalling in excess of
21 \$900,000 in connection with certain matters appearing
22 or that were at issue before Congress?

23 A. Yes, I do.

24 Q. Do you know what that work involved?

25 A. I thought it involved intermediate sanctions.

1 Q. Was John Waihee involved in representing the
2 Estate as it related to intermediate sanctions?

3 A. He must have been as part of the law firm.

4 MR. ING: Mark this as Exhibit 94, please.

5 (Exhibit No. 94 marked

6 for identification.)

7 BY MR. ING:

8 Q. Mrs. Lindsey, would you examine Exhibit 94.

9 Mrs. Lindsey, have you had a chance to review
10 Exhibit 94?

11 A. Yes.

12 Q. Exhibit 94 consist of nine pages at the bottom
13 running from 01567 through 01575; is that correct?

14 A. That's correct.

15 Q. Is Exhibit 94 a copy of pages from your
16 handwritten notes?

17 A. Yes, it is.

18 Q. Is it in your handwriting?

19 A. Yes, it is.

20 Q. Is Exhibit 94 a fair and accurate copy of your
21 notes?

22 A. Yes.

23 Q. When did you take these notes?

24 A. May the 9th, 1995.

25 Q. Was this taken at a meeting of the Board of

1 Trustees?

2 A. In the executive session.

3 Q. But it was a meeting of the Board of Trustees?

4 A. Yes, it was.

5 Q. What is executive session?

6 A. When only the trustees and -- well, there's
7 several kinds. There are situations where there's
8 only the five trustees, there's situations where it's
9 five trustees and their lawyers, and there are
10 situations where we have outside counsel coming in or
11 outside investors coming in where the details are to
12 be confidential.

13 Q. Were the notes represented by Exhibit 94 taken
14 during the course of an executive session?

15 A. They were.

16 Q. Did they pertain to Estate business?

17 A. Yes, it did.

18 Q. Did you take these notes in your capacity as
19 trustee?

20 A. Yes, I did.

21 Q. Was Mr. McConaghy present for that executive
22 session?

23 A. I'm not sure.

24 Q. There's a note here that says "Mark McConaghy"
25 up at the top?

1 A. It does.

2 Q. On the first page of Exhibit 94?

3 A. Yes.

4 Q. Was it your practice to indicate who the speaker
5 was in connection with your notes?

6 A. Yes, it usually is.

7 Q. Does that indicate to you that Exhibit 94, at
8 least with respect to the numbered points in these
9 notes, that Mr. McConaghy was the speaker?

10 A. Usually it indicates Mr. McConaghy was the
11 speaker.

12 Q. Do you recall whether these notes reflect a
13 discussion with Mr. McConaghy following his meeting
14 with IRS and Mr. Barrett of IRS in particular?

15 A. Well, I believe it says that in point number 2.
16 "Chuck Barrett did not want us to meet with him at
17 this time."

18 And I don't know if Mark himself met with Chuck,
19 although in number 8, it says, "Mark assured Chuck
20 that we are looking at this positively and are trying
21 to catch up with all that we need to do."

22 So I'm not sure if he wrote a letter to Chuck
23 Barrett or if he talked to Chuck Barrett or what
24 transpired.

25 Q. If you take a look at what's been stamped at the

1 bottom as page 01571, please. There's a reference to
2 "Chuck & Mark" at the top.

3 A. Yes, there is.

4 Q. Does that refresh your recollection as to
5 whether or not Mr. McConaghy was reporting to the
6 trustees at the time the substance of a meeting that
7 he had had with Mr. Barrett?

8 A. It could have been. I'm not sure.

9 Q. If you could look at the very next page numbered
10 01572, please. This page of your notes includes a
11 discussion regarding reasonable compensation; is that
12 correct?

13 A. Yes, it does.

14 Q. You note under point 2 is "Reasonable
15 compensation law"; is that correct?

16 A. That's correct.

17 Q. There's a note there that says, "Presently" --
18 with a double-underscore -- "the only option they
19 have is to take away the tax exemption for the
20 institution." Do you see that?

21 A. Right.

22 Q. That refers to "they," the IRS?

23 A. Yes.

24 Q. And tax exemption for the institution would mean
25 or would refer to tax-exempt status under 501-C3; is

1 that correct?

2 MR. WOLSZTYNIAK: Just hold it. I'm going
3 to object and instruct her not to answer on Fifth
4 Amendment grounds.

5 I don't have any problem with laying foundation
6 for the document as the trustee and secretary for the
7 Board, but getting into this area, I believe,
8 warrants my advising Mrs. Lindsey not to answer on
9 Fifth Amendment grounds that particular question,
10 without prejudice to any other questions relating to
11 this document

12 BY MR. ING:

13 Q. Point 3 of your notes on that same page, Mrs.
14 Lindsey indicate that, "They" -- meaning IRS -- "had
15 difficulty with the compensation for." And then it
16 says, "Charitable compensation should be less than
17 those that are in the private business."

18 Do you see that note?

19 A. Uh-huh, that's there.

20 Q. What did that mean?

21 MR. WOLSZTYNIAK: Just for clarification --
22 I'll object, vague and ambiguous. Do you mean what
23 was her understanding or where did she get that? I
24 guess I just don't understand the question.

25 If you understand the question, you can answer

1 over my objection on the grounds vague and ambiguous,
2 but you can answer if you do understand the question.

3 A. Can you repeat the question?

4 BY MR. ING:

5 Q. What did that note mean to you?

6 A. That Mark McConaghy was telling us that the IRS
7 was having difficulty with our compensation, that
8 they believed charitable compensation should be less
9 than those that are in private business, and we had a
10 problem because only one part of our, of KSBE was
11 charitable. The other one was for profit.

12 Q. Continuing on to the next page, 01573, there's a
13 notation regarding inurement and private benefit; is
14 that correct?

15 A. That's correct.

16 Q. And then there's separate bullets, one for
17 private benefit and another one for inurement; is
18 that correct?

19 A. That's correct.

20 Q. In this case, you were taking down notes
21 regarding Mr. McConaghy's discussion about these
22 issues?

23 A. That's correct.

24 Q. What was your understanding of private benefit?

25 A. As noted here, it says, "Officers, directors and

1 decision-makers of the organization. IRS can find a
2 significant amount of inurement." Even though it's
3 listed under private benefit, they talked about
4 inurement and not cancel the exempt status.

5 Then under Inurement, "Can find a small amount
6 and cancel the exempt status." So he was showing
7 both sides of the coin.

8 Q. So in the case of private benefit, there may be
9 substantial private benefit, but IRS may not cancel
10 the exempt status; is that correct, that was your
11 understanding?

12 A. No, but I put over here "significant amount of
13 inurement" even though it's listed under Private
14 Benefit. So I think that what he was trying to do is
15 show us they can find inurement and not cancel the
16 tax-exempt status or they could find a small amount
17 and still cancel it.

18 Q. So your second note indicates that IRS,
19 according to Mr. McConaghy, IRS can find a small
20 amount of inurement and cancel the exempt status?

21 A. That's correct.

22 Q. Then on the following page, Mrs. Lindsey, number
23 01574, there's also a discussion by Mr. McConaghy
24 about two cases, one in Florida and one regarding the
25 Herman Hospital; is that correct?

1 A. That's correct.

2 MR. ING: Let's have this marked as
3 Exhibit 95.

4 (Exhibit No. 95 marked
5 for identification.)

6 BY MR. ING:

7 Q. Mrs. Lindsey, would you examine Exhibit 95,
8 please.

9 Have you had a chance to examine Exhibit 95?

10 A. Yes, I have.

11 Q. This exhibit consists of three pages, correct?

12 A. Yes.

13 Q. It's marked at the bottom 01670 through 01672,
14 correct?

15 A. That's correct.

16 Q. Is Exhibit 95 a copy of your notes?

17 A. Yes, it is.

18 Q. Is it in your handwriting?

19 A. Yes, it is.

20 Q. Were these notes taken at a trustees meeting?

21 A. Yes, they were.

22 Q. Do the notes concern Estate business?

23 A. Did it concern Estate business?

24 Q. Yes.

25 A. I guess so.

- 1 Q. Do you recall who was at the meeting?
- 2 A. No, I don't.
- 3 Q. Was there anyone besides trustees who were
- 4 present?
- 5 A. I have noted here Nathan made a report.
- 6 Q. What does that indicate to you?
- 7 A. That Nathan was present.
- 8 Q. And Nathan is Mr. Aipa?
- 9 A. Yes.
- 10 Q. Are these a fair and accurate copy of your
- 11 notes?
- 12 A. Yes.
- 13 Q. The subject of this discussion was what, Mrs.
- 14 Lindsey?
- 15 A. His meeting with the joint committee on
- 16 taxation.
- 17 Q. Do these notes involve the intermediate
- 18 sanctions legislation?
- 19 MR. WOLSZTYNIAK: I'll object. The document
- 20 speaks for itself, but as far as any recollection as
- 21 to discussions, you can answer over the objection.
- 22 BY MR. ING:
- 23 Q. Mrs. Lindsey, you may answer the question if you
- 24 understand it.
- 25 A. I'm not sure if it meant intermediate sanctions

1 at that time, because it says here that they were --
2 the issues covered were questions from the Wall
3 Street Journal and they were talking about
4 legislation, but I'm not sure when intermediate
5 sanctions actively started. I do know when it
6 concluded, it went back to, retroactive to September
7 of '95, but I don't know if this was intermediate
8 sanctions as we know it today at this time or not.

9 Q. What was the date of these notes?

10 A. June 29th, 1995.

11 Q. Is that the date of the meeting?

12 A. Yes.

13 Q. If you would refer to the second of the three
14 pages. Up at the top line, it says, "Interim
15 sanctions and inurements may be a part of legislation
16 in September"; is that correct?

17 A. Yes, it does.

18 Q. Does that refresh your recollection as to
19 whether or not this note refers to intermediate
20 sanctions legislation?

21 A. I'm not sure, because I didn't use the term
22 "intermediate sanctions". I used the term "interim
23 sanctions" and I'm not sure if they were one and the
24 same.

25 Q. If you could refer back to the first page. The

1 last item that's noted with a bullet on that page, it
2 says, "Legislation may come out in September" and
3 there's an arrow drawn to "trustees commissions".

4 Do you see that?

5 A. Yes.

6 Q. Your notes indicate that legislation may come
7 out in September regarding trustees commissions,
8 meaning trustee compensation?

9 A. Yes, but it also includes all these other.

10 Q. Do you know whether "interim sanctions" was used
11 interchangeably with "intermediate sanctions"?

12 A. I don't know, and if it were, then we would be
13 talking about intermediate sanctions.

14 MR. ING: Mark the next exhibit as 96,
15 please.

16 (Exhibit No. 96 marked
17 for identification.)

18 BY MR. ING:

19 Q. Mrs. Lindsey, could you examine Exhibit 96.

20 A. I have.

21 Q. Is this a copy of a page from your notes?

22 A. Yes, it is.

23 Q. Is it in your handwriting?

24 A. Yes, it is.

25 Q. When did you take these notes?

- 1 A. On July 19, 1995.
- 2 Q. Were these notes taken at a trustees meeting?
- 3 A. Yes, they were.
- 4 Q. Is Exhibit 96 a fair and accurate copy of your
- 5 notes of that particular meeting?
- 6 A. It is.
- 7 Q. Do these notes regard matters of concern to the
- 8 trustees?
- 9 A. Yes.
- 10 Q. If you look down about two-thirds of the way
- 11 down, there's a line that says "Nathan"?
- 12 A. Yes.
- 13 Q. Do you see that?
- 14 A. Yes.
- 15 Q. Does that refer to Nathan Aipa?
- 16 A. It does.
- 17 Q. It references requested an executive session be
- 18 held; is that correct?
- 19 A. That's correct.
- 20 Q. And the executive session was to be held
- 21 regarding legislation on intermediate sanctions?
- 22 A. Yes.
- 23 Q. On excessive compensations; is that correct?
- 24 A. Yes.
- 25 Q. And excessive compensations mean compensations

1 of highly paid employees?

2 MR. WOLSZTYNIAK: At this time, I'm going
3 to -- I'm sorry, are you finished with the question?
4 Do you want to see what it is before I object to it?
5 I may have interrupted it.

6 MR. ING: Yes, I had finished the question.

7 MR. WOLSZTYNIAK: Therefore, I'll instruct
8 Mrs. Lindsey not to answer on Fifth Amendment
9 grounds.

10 I have no problem with any foundational
11 questions regarding the document, but this is into an
12 area where I indicated she would not be answering
13 questions until we can determine the scope of the
14 investigation of the U.S. Government.

15 BY MR. ING:

16 Q. Do you recall whether an executive session was
17 held on that issue, Mrs. Lindsey?

18 A. No, I don't.

19 Q. Your next note indicates that, "We" -- meaning
20 the trustees -- "must get." And then there are two
21 firms mentioned there; is that correct?

22 A. Yes.

23 Q. Possibly three. One was Spencer & Hecht?

24 A. Right.

25 Q. H-e-c-h-t?

1 A. Right.

2 Q. And the other one is Verner Liipfert?

3 A. Yes.

4 Q. And it also requested a briefing by Mark,

5 meaning Mark McConaghy?

6 A. That's correct.

7 MR. ING: Mark the next exhibit number 97.

8 (Exhibit No. 97 marked

9 for identification.)

10 BY MR. ING:

11 Q. Mrs. Lindsey, would you examine Exhibit 97,

12 please.

13 A. Yes, I'm finished.

14 Q. Is Exhibit 97 a copy of pages from your notes?

15 A. Yes, it is.

16 Q. Is it a fair and accurate copy of pages from

17 your notes?

18 A. Yes.

19 Q. Is it in your own handwriting?

20 A. Yes, it is.

21 Q. When were these notes taken?

22 A. August the 8th, 1995.

23 Q. Were these notes taken during the course of a

24 trustees meeting?

25 A. Yes, it was.

1 Q. Exhibit 97 consists of two pages numbered at the
2 bottom 01722 and 01723, correct?

3 A. That's correct.

4 Q. In Exhibit 97, you refer to arm length policy;
5 is that correct?

6 A. That's correct.

7 Q. There's also a reference to individual
8 guidelines. Do you see that?

9 A. Right.

10 Q. What were the individual guidelines?

11 A. I don't remember right offhand right now, but
12 this is our first attempt of having an arm's-length
13 policy manual, because heretofore, there was none.

14 Q. Apparently the trustees at that meeting approved
15 the policy?

16 A. That's correct.

17 MR. ING: Mark the next Exhibit 98.

18 (Exhibit No. 98 marked
19 for identification.)

20 BY MR. ING:

21 Q. Mrs. Lindsey, would you examine Exhibit 98,
22 please.

23 A. I've finished examining it.

24 Q. Is Exhibit 98 a copy of your notes?

25 A. Yes, it is.

- 1 Q. Is it a fair and accurate copy of your notes?
- 2 A. It is.
- 3 Q. On what date did you make the notes reflected in
- 4 Exhibit 98?
- 5 A. August 10, 1995.
- 6 Q. Were those notes made at a trustees meeting?
- 7 A. Yes.
- 8 Q. Was there also an executive session?
- 9 A. It was in executive session.
- 10 Q. The notes refer to, "Loke passed out." Is that
- 11 in reference to yourself?
- 12 A. That is correct.
- 13 Q. Did you pass out something from Hecht & Spencer?
- 14 A. Yes, I did.
- 15 Q. Do you recall what that was?
- 16 A. My notes --
- 17 MR. WOLSZTYNIAK: Okay, go ahead.
- 18 A. My notes say it's a memo regarding prohibition
- 19 on lobbying
- 20 BY MR. ING:
- 21 Q. There's a date associated with that as well?
- 22 A. August the 7th, 1995.
- 23 Q. Do you recall what was contained in that memo
- 24 from Hecht & Spencer regarding prohibition on
- 25 lobbying?

1 MR. WOLSZTYNIAK: At this time, I'm going to
2 instruct Mrs. Lindsey not to answer on Fifth
3 Amendment grounds as we're getting into an area that
4 may fall into the purview of the investigation of the
5 U.S. Government, without prejudice to any question
6 regarding foundation on this document.

7 BY MR. ING:

8 Q. Mrs. Lindsey, are you going to follow your
9 counsel's advice?

10 A. Yes.

11 MR. ING: Mark this Exhibit 99, please.

12 (Exhibit No. 99 marked
13 for identification.)

14 BY MR. ING:

15 Q. Mrs. Lindsey, would you review Exhibit 99.

16 A. I'm finished.

17 Q. Mrs. Lindsey, have you had a chance to review
18 Exhibit 99?

19 A. Yes, I have.

20 Q. Is Exhibit 99 is copy of pages from your notes?

21 A. It is.

22 Q. Is it in your handwriting?

23 A. It is.

24 Q. Were the notes shown in Exhibit 99 taken on or
25 about October 12, 1995?

- 1 A. They were.
- 2 Q. Was that at a trustees meeting?
- 3 A. It was.
- 4 Q. Is Exhibit 99 a fair and accurate copy of your
- 5 notes?
- 6 A. It is.
- 7 Q. There's a reference to "Dickie" and it's
- 8 underscored. Do you see that on the first page of
- 9 the exhibit?
- 10 A. Yes.
- 11 Q. Is that a reference to Trustee Wong?
- 12 A. It is.
- 13 Q. What was Trustee Wong's role as related to
- 14 intermediate sanctions?
- 15 A. He was the person in charge of working on
- 16 intermediate sanctions.
- 17 Q. Was he the lead person from the trustees on the
- 18 intermediate sanctions?
- 19 A. I've always opposed this idea of lead person,
- 20 because we weren't lead in anything when it started
- 21 out. It was just sort of a liaison, because all five
- 22 of us could not be in the same place at the same
- 23 time.
- 24 Q. How would you characterize Trustee Wong's role
- 25 as it related to intermediate sanctions?

1 A. He was a liaison between us and whatever else
2 was happening on the Washington front.

3 Q. Was he the person in contact with the Verner
4 Liipfert law firm?

5 A. Yes.

6 Q. Apparently Trustee Wong gave a status report on
7 the legislation then winding its way through
8 Congress; is that correct?

9 A. That's correct.

10 MR. ING: Would you mark the next Exhibit
11 100, please.

12 (Exhibit No. 100 marked
13 for identification.)

14 BY MR. ING:

15 Q. Mrs. Lindsey, would you examine Exhibit 100?

16 A. I have.

17 Q. Is Exhibit 100 a copy of a page from your notes?

18 A. It is.

19 Q. Is Exhibit 100 in your handwriting?

20 A. It is.

21 Q. What was the date on which you made the notes?

22 A. October 19, 1995.

23 Q. Were these notes made at a trustees meeting?

24 A. They were.

25 Q. Is Exhibit 100 a fair and accurate copy of your

1 notes?

2 A. Yes.

3 Q. There's a note under "Henry" here. Does that
4 refer to Mr. Peters?

5 A. Yes, it does.

6 Q. The note indicates that Trustee Peters was going
7 to be in charge of asset management until sometime in
8 the future; is that correct?

9 A. That is correct.

10 Q. Is that following the passing of Tony Sereno?

11 A. Yes.

12 Q. The next note indicates "Dickie". Does that
13 refer to Trustee Wong?

14 A. It does.

15 Q. There's a note, it references, "Update on
16 tax-exempt status"?

17 A. That's correct.

18 Q. Was that an update by Trustee Wong?

19 A. It was.

20 Q. Was that update given at the trustees meeting on
21 October 19, 1995?

22 A. Yes.

23 MR. ING: Would you mark the next Exhibit
24 101, please.

25 /////

1 (Exhibit No. 101 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, would you examine Exhibit 101?

5 A. I have already.

6 Q. Is Exhibit 101 a copy of a page from your notes?

7 A. It is.

8 Q. Is it a fair and accurate copy of a page from
9 your notes?

10 A. It is.

11 Q. Is Exhibit 101 in your own handwriting?

12 A. Yes.

13 Q. What is the date that you made these notes?

14 A. November 28, 1995.

15 Q. Were these notes made in a trustees meeting?

16 A. Yes.

17 Q. Were you also in executive session?

18 A. Yes.

19 Q. There's a reference to "Larry Wangler - Towers
20 Perrin." Do you see that?

21 A. Yes.

22 Q. Was Towers Perrin retained to do a compensation
23 study?

24 A. They were.

25 Q. And there's apparently a timetable there,

1 January - draft document; is that correct?

2 A. Yes.

3 Q. There's a note to use fiscal year '95 as a
4 cutoff for comparables; is that correct?

5 A. Yes.

6 Q. There's also an executive session with Nathan
7 and Yuki?

8 A. Yes.

9 Q. Who was Yuki?

10 A. Yukio Takemoto.

11 Q. And Nathan is Mr. Aipa; is that correct?

12 A. That's correct.

13 Q. Did Mr. Aipa report on intermediate sanctions
14 legislation?

15 A. Yes, he did.

16 MR. WOLSZTYNIAK: Off the record, Doug.

17 (Discussion off the record.)

18 MR. ING: Let's mark the next exhibit as
19 Exhibit 102.

20 (Exhibit No. 102 marked
21 for identification.)

22 BY MR. ING:

23 Q. Mrs. Lindsey, would you examine Exhibit 102,
24 please.

25 A. I have.

- 1 Q. Is it a copy of your notes?
- 2 A. Yes, it is.
- 3 Q. And is it in your own handwriting?
- 4 A. It is.
- 5 Q. Is it a fair and accurate copy of your notes?
- 6 A. Yes.
- 7 Q. When did you take these notes?
- 8 A. November the 30th, 1995.
- 9 Q. Were those notes taken during the course of a
- 10 trustees meeting?
- 11 A. It was.
- 12 Q. This indicates again "Dickie" and there's a
- 13 block drawn around it. Is that Trustee Wong?
- 14 A. It is Trustee Wong.
- 15 Q. Did he report to the trustees on intermediate
- 16 sanctions?
- 17 A. Yes, he did.
- 18 Q. And there's a reference to "Henry". Is that
- 19 Trustee Peters?
- 20 A. Yes, it is.
- 21 Q. There's another reference to "Mark." Is that
- 22 Mark McConaghy?
- 23 A. It is.
- 24 Q. There's a note down at the bottom, "Dickie's
- 25 kuleana and he will keep in touch with us"?

1 A. That's correct.

2 Q. What does that mean?

3 A. He was going to Washington, D.C. See that right
4 under Intermediate Sanctions, it says, "Dickie to
5 D.C."

6 So Dickie was going up there. And kuleana means
7 his job, using the term loosely, and he will keep in
8 touch with us because we all couldn't go to
9 Washington, D.C.

10 Q. But the reference to "kuleana" is with respect
11 to the progress of the intermediate sanctions
12 legislation?

13 A. That's correct.

14 Q. And reporting back to the trustees?

15 A. That's correct.

16 MR. ING: Would you mark this as
17 Exhibit 103.

18 (Exhibit No. 103 marked
19 for identification.)

20 BY MR. ING:

21 Q. Mrs. Lindsey, would you examine Exhibit 103,
22 please.

23 A. I have examined it. I'm finished.

24 Q. This exhibit consists of two pages numbered
25 01866 and 01867; is that correct?

1 A. That's correct.

2 Q. Is Exhibit 103 from your notes?

3 A. Yes, it is.

4 Q. Is it a fair and accurate copy of your notes?

5 A. It is.

6 Q. Is it in your handwriting?

7 A. It is.

8 Q. Are the notes reflected in Exhibit 103 from a
9 trustees meeting?

10 A. Yes.

11 Q. When did you take these notes?

12 A. February 22, 1996.

13 Q. Is Exhibit 103 a fair and accurate copy of these
14 notes?

15 A. Yes, it is.

16 Q. These notes apparently refer to a study being
17 performed by Towers Perrin; is that correct?

18 A. That's correct.

19 Q. And did you review a draft of the study at that
20 time?

21 A. I don't know if we reviewed a draft. I know he
22 gave us a status report. This is what I'm
23 reflecting.

24 MR. ING: Mark this next exhibit as 104.

25 /////

1 (Exhibit No. 104 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, would you examine Exhibit 104,
5 please.

6 A. I'm finished.

7 Q. Is Exhibit 104 a copy of your notes?

8 A. It is.

9 Q. Are these notes in your handwriting?

10 A. They are.

11 Q. Is Exhibit 104 a fair and accurate copy of your
12 notes?

13 A. Yes.

14 Q. When did you make these notes?

15 A. March the 21st, 1996.

16 Q. Were the notes reflected in Exhibit 104 done in
17 a trustees meeting?

18 A. Yes, they were.

19 Q. At the bottom of Exhibit 104, there's a block
20 that says Executive Session. Do you see that?

21 A. Yes, I do.

22 Q. There's a note there that says, "Rodney - Tower
23 Perrin report" and it's underscored?

24 A. Yes.

25 Q. It says below that, "Leave in draft until Loke's

1 questions are answered regarding defensibility."

2 Do you see that?

3 A. That is correct.

4 Q. Did you at that time have questions regarding
5 the defensibility of the Towers Perrin report?

6 A. I had questions regarding the range that they
7 had and how we were going to make sure this range was
8 accurate, an accurate range. So yes, in defending
9 that portion, I wanted to be absolutely certain that
10 that range was as accurate as it could be.

11 Q. Did you have any other concerns regarding
12 defensibility?

13 A. No, that's the only thing. I wanted to be sure
14 that what they said was accurate so we could use it
15 in defense if we needed to.

16 Q. Do you recall what that range was?

17 A. Not offhand. I know they had ranges and they
18 were talking about what percentage of that range we
19 would be looking at.

20 Q. Would you refer to Exhibit 103, please, at the
21 very bottom --

22 MR. WOLSZTYNIAK: Back to the last exhibit?

23 MR. ING: Yes.

24 A. I know what it says.

25 BY MR. ING:

1 Q. At the bottom of the first page of Exhibit 103
2 is a series of numbers?

3 A. That is correct.

4 Q. It says \$689,000 to \$760,000. And there's below
5 that separate numbers which say \$840,000 to 940,000.

6 Do you see that?

7 A. That's correct.

8 Q. Then there's a note that says "could go to"?

9 A. That's correct.

10 Q. What does that mean?

11 A. Well --

12 MR. WOLSZTYNIAK: Okay, at this juncture, as
13 it regards to compensation, I think she's testified
14 and laid the foundation for this exhibit and I
15 instruct her not to answer as to what any meaning has
16 to that particular statement on Fifth Amendment
17 grounds at this time.

18 MR. ING: Counsel, this does not refer to
19 her compensation. This refers to the Towers Perrin
20 report. I don't understand the --

21 MR. WOLSZTYNIAK: Let me ask her one
22 question.

23 (Dialogue between deponent and attorney.)

24 MR. WOLSZTYNIAK: I will withdraw that
25 instruction. You can go ahead and answer over that

1 instruction.

2 A. This was just their status report, and they were
3 saying that if they added these adjustments up here
4 together, this is where they think the range could
5 be. It had nothing to do with the final report, as I
6 recall.

7 BY MR. ING:

8 Q. Does that refresh your recollection as to what
9 range you were referring to when you made the note at
10 the bottom of Exhibit 104?

11 A. In the second report 3/21/96, it was a month
12 later and Rodney came back with more definitive
13 figures.

14 Q. The reference to "Rodney" refers to Rodney Park?

15 A. Rodney Park. He came in with the Towers &
16 Perrin draft.

17 MR. ING: Would you mark this next exhibit
18 as 105.

19 (Exhibit No. 105 marked
20 for identification.)

21 BY MR. ING:

22 Q. Mrs. Lindsey, would you examine what has been
23 marked as Exhibit 105.

24 A. I'm finished.

25 Q. This exhibit consists of two pages. The first

1 page doesn't have a number, but the second page has a
2 number of 01932; is that correct?

3 A. That's correct.

4 Q. Is Exhibit 105 a copy from your notes?

5 A. Yes, it is.

6 Q. Is it in your handwriting?

7 A. Yes, it is.

8 Q. Is it a fair and accurate copy of your notes?

9 A. Yes.

10 Q. When were the notes taken shown in Exhibit 105?

11 A. April the 9th, 1996.

12 Q. Were these notes taken at a trustees meeting?

13 A. They were.

14 Q. The note refers to information document request
15 by IRS; is that correct?

16 A. That's correct.

17 Q. Was the IRS audit underway at that time?

18 A. It was.

19 Q. If you would refer to the second page of
20 Exhibit 105, there's a note referencing lobbying; is
21 that correct?

22 A. That's correct.

23 Q. Is the information regarding lobbying coming
24 from Nathan Aipa?

25 A. Yes.

1 Q. There's also a note that says, "Self-defense" --
2 and it's underscored -- "conflict of tax sanctions
3 and trust law." Do you see that?

4 A. That's correct.

5 Q. What does that refer to?

6 A. As I understand it, there was a conflict between
7 the tax sanctions and what trust law says.

8 Q. This was told to you by Mr. Aipa?

9 A. Yes, it was.

10 Q. Under Federal Laws, it says, "Up to December
11 '95, lobbying is only when you make contact with the
12 legislators"?

13 A. That's correct.

14 Q. And then it says, "From January '96, everything
15 you do is lobbied"; is that correct?

16 A. That's what it says here. It's under the title
17 regarding lobbying. There were two laws and he went
18 on to explain the two laws.

19 Q. With respect to the second law, was it your
20 understanding that everything could be characterized
21 as lobbying?

22 MR. WOLSZTYNIAK: I'll object at this time.
23 First of all, it calls for a legal conclusion on the
24 part of the witness.

25 Secondly, I think we're getting into an area

1 where I'll instruct her not to answer on Fifth
2 Amendment grounds as to what her understanding of the
3 law was in light of the U.S. Government's
4 investigation.

5 MR. ING: And we will take that up with the
6 Discovery Master as well.

7 MR. WOLSZTYNIAK: Fair enough. 9 o'clock
8 tomorrow?

9 MR. ING: 9:00 tomorrow.

10 (Deposition was adjourned at 4:45 p.m.)

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1 I, MARION MAE LOKELANI LINDSEY , do hereby certify
2 that I have read the foregoing typewritten pages 1
3 through 147 , inclusive, and corrections, if any,
4 were noted by me; and that same is now a true and
5 correct transcript of my testimony.

6

7 Dated

8

9

10 MARION MAE LOKELANI LINDSEY

11

12

13 Signed before me this
14 day of , 19 .

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1 STATE OF HAWAII)
2) SS.
3)

4

5 I, Jolene C. Haneca, C.S.R., a Notary Public in
6 and for the State of Hawaii, do hereby certify:

7 That on Monday, November 8 , 1999 , at 9:10
8 o'clock, a.m. , appeared before me MARION MAE
9 LOKELANI LINDSEY , the witness whose testimony is
10 contained herein, that prior to being examined, the
11 witness was by me duly sworn or affirmed; that the
12 proceedings were taken in computerized machine
13 shorthand by me and were thereafter reduced to print
14 under my supervision; that the foregoing represents,
15 to the best of my ability, a correct transcript of
16 the proceedings had in the foregoing matter;

17 That the witness, if applicable, was notified
18 through Counsel, by mail, or by telephone to appear
19 and sign; that if the transcription is not signed,
20 either the reading and signing were waived by the
21 witness and all parties, or the witness has failed to
22 appear and the original is therefore kept on file
23 without signature pursuant to Court rules.

24 I further certify that I am not counsel for any of
25 the parties hereto, nor in any way interested in the
26 outcome of the cause named in the caption.

27 Dated: .

28
29 Jolene C. Haneca, C.S.R. #132
30 Notary Public, State of Hawaii
31 My Commission Expires: March 16, 2001

32

33

34

1 IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

2 STATE OF HAWAII

3 ---:---

4 In the Matter of the Estate) EQUITY NO. 2048

5 of) VOLUME I

6 BERNICE P. BISHOP,)

7 Deceased.)

8 _____)

9

10

11

12 DEPOSITION OF MARION MAE LOKELANI LINDSEY

13 Taken on behalf of Robert K.U. Kihune, Constance H.

14 Lau, Francis A. Keala, David P. Coon and Ronald D.

15 Libkuman, Trustees under the Will and of the Estate

16 of Bernice Pauahi Bishop, Deceased, at the law

17 offices of Watanabe, Ing & Kawashima, 23rd Floor, 999

18 Bishop Street, Honolulu, Hawaii 96813, commencing at

19 9:10 a.m. on Monday, November 8, 1999, pursuant to

20 Notice.

21

22

23

24 REPORTED BY: JOLENE C. HANECA, CSR #132
Notary Public, State of Hawaii

25

1 APPEARANCES:

2 Attorneys for Robert K.U. Kihune, Constance H. Lau,
3 Francis A. Keala, David P. Coon and Ronald D.
4 Libkuman, Trustees under the Will and of the Estate
5 of Bernice Pauahi Bishop, Deceased:

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7 JAMES KAWASHIMA, ESQ.
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12 Honolulu, Hawaii 96813

13 --oOo--

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Attorney for Attorney General's Office:

DANIEL A. MORRIS, ESQ.
Deputy Attorney General
Department of the
Attorney General
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1 I N D E X

2

3 EXAMINATION BY: PAGE

4 Mr. Ing 6

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6

7

8 EXHIBITS FOR IDENTIFICATION: PAGE

9 Deposition Exhibit No. 76 9

10 Subpoena to Testify Before Grand Jury

11 Deposition Exhibit No. 77 16

12 Letter dated 11/5/99 from

13 D. Ing to J. Wolsztyniak

14 Deposition Exhibit No. 78 60X

15 Handwritten notes 2/19/93

16 Deposition Exhibit No. 79 63

17 Handwritten notes 3/16/93

18 Deposition Exhibit No. 80 66

19 Handwritten notes 9/13/93

20 Deposition Exhibit No. 81 69

21 Handwritten notes 10/18/93

22 Deposition Exhibit No. 82 77

23 Handwritten notes 5/23/94

24 Deposition Exhibit No. 83 83

25 Handwritten notes 5/26/94

Deposition Exhibit No. 84 86

Handwritten notes 8/10/96 or 8/16/96

Deposition Exhibit No. 85 90

Handwritten notes 9/5/94

Deposition Exhibit No. 86 91

Handwritten notes 9/6/94

1	EXHIBITS FOR IDENTIFICATION (Contd):	PAGE
2	Deposition Exhibit No. 87	95
3	Handwritten notes 10/6/94	
4	Deposition Exhibit No. 88	98
5	Handwritten notes 12/1/94	
6	Deposition Exhibit No. 89	101
7	Handwritten notes 2/10/95	
8	Deposition Exhibit No. 90	104
9	Handwritten notes 4/13/95	
10	Deposition Exhibit No. 91	107
11	Handwritten notes 3/13/95	
12	Deposition Exhibit No. 92	109
13	Handwritten notes 4/25/95	
14	Deposition Exhibit No. 93	113
15	Memorandum from Waihee to	
16	Trustees 4/27/95	
17	Deposition Exhibit No. 94	116
18	Handwritten notes 5/9/95	
19	Deposition Exhibit No. 95	123
20	Handwritten notes 6/29/95	
21	Deposition Exhibit No. 96	126
22	Handwritten notes 7/19/95	
23	Deposition Exhibit No. 97	129
24	Handwritten notes 8/8/95	
25	Deposition Exhibit No. 98	130
26	Handwritten notes 8/10/95	
27	Deposition Exhibit No. 99	132
28	Handwritten notes 10/12/95	
29	Deposition Exhibit No. 100	134
30	Handwritten notes 10/19/95	
31	Deposition Exhibit No. 101	136
32	Handwritten notes 11/28/95	
33	Deposition Exhibit No. 102	137
34	Handwritten notes 11/30/95	

1	EXHIBITS FOR IDENTIFICATION (Contd):	PAGE
2	Deposition Exhibit No. 103	139
3	Handwritten notes 2/22/96	
4	Deposition Exhibit No. 104	141
5	Handwritten notes 3/21/96	
6	Deposition Exhibit No. 105	144
7	Handwritten notes 4/9/96	
8		
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1 (Disclosure made available to all counsel.)

2 ---oOo---

3 MARION MAE LOKELANI LINDSEY,

4 called as a witness by and on behalf of the Robert
5 K.U. Kihune, Constance H. Lau, Francis A. Keala,
6 David P. Coon and Ronald D. Libkuman, Trustees under
7 the Will and of the Estate of Bernice Pauahi Bishop,
8 Deceased, having been first duly sworn to tell the
9 truth, the whole truth, and nothing but the truth,
10 was examined and testified as follows:

11 EXAMINATION

12 BY MR. ING:

13 Q. Please state your name.

14 A. Marion Mae Lokelani Lindsey.

15 Q. What is your current residence address?

16 A. 5581 Kalaniana'ole Highway.

17 Q. Are you currently employed?

18 MR. WOLSZTYNIAK: At this time, as per prior
19 discussions, I will indicate to counsel Ms. Lindsey
20 has recently received a subpoena regarding bank
21 records on her Pioneer Savings & Loan/First Hawaiian
22 Bank.

23 I have a copy of that subpoena which I will
24 tender, which I'd like marked as an exhibit, and I
25 will make it available to all counsel.

1 Basically, at this time I'm going to be
2 instructing my client to not answer any other
3 questions, invoking her Fifth Amendment rights. This
4 is not to say that this will be done in the future.

5 At this time -- we first learned of this on
6 Friday afternoon. Mr. Green has been in touch with
7 Mr. Les Osborne and has requested an appointment with
8 him to determine what the scope of this investigation
9 is.

10 At this time, we would be willing under Rule
11 30 (d) of the Hawaii Rules of Civil Procedure to
12 terminate the deposition proceeding so we may
13 determine what the scope of the subpoena is to
14 determine which questions, if any, we'll be
15 instructing Ms. Lindsey to invoke her Fifth Amendment
16 rights on or we can proceed and I will just instruct
17 her at this time to invoke the Fifth Amendment on any
18 questions.

19 We do want to cooperate. We are fully aware
20 of -- I was at the discovery conference with Mr.
21 Matsui. At this time, we are not indicating we will
22 not answer any questions on Fifth Amendment grounds.
23 We are just indicating that until such time as
24 Mr. Green can make a determination with Mr. Osborne
25 as to the scope of this investigation, there is no

1 way I can properly advise my client as to which
2 questions it would be proper to invoke the Fifth
3 Amendment and which questions it would not.

4 Therefore, under the circumstances, I would
5 request that the deposition be adjourned and
6 reconvened after Mr. Green has discussed this matter
7 with Mr. Osborne to determine which questions, if
8 any, will require the invocation of the Fifth
9 Amendment or we can proceed with the understanding I
10 will just be advising my client not to answer any
11 questions on Fifth Amendment grounds, subject to
12 answering them later once a determination is made as
13 to the scope of this investigation.

14 MR. ING: Counsel, did you want this marked?

15 MR. WOLSZTYNIAK: Yes, please, Exhibit 1, if
16 you would. I would be either happy to get copies to
17 all counsel or if you could be so kind to make
18 copies, I would see that counsel gets a copy of this
19 document as we sit here today.

20 MR. ING: I'll have copies made. Since
21 we're using a master exhibit list, we're going to
22 mark this the next exhibit in order, which would be
23 Exhibit 76.

24 MR. WOLSZTYNIAK: That would be fine.

25 MR. ING: Why don't we have this marked and

1 have copies made so that all counsel can take a look
2 at it.

3 (Exhibit No. 76 marked
4 for identification.)

5 MR. ING: Just for the record, in response
6 to your statements regarding the subpoena and the
7 Fifth Amendment, we sent you a letter on Friday
8 explaining our position with respect to that your
9 client does not have a right to assert a blanket
10 Fifth Amendment response.

11 You've had adequate time to make the
12 determination as to what the scope of the
13 investigation was. The current FBI investigation,
14 federal investigation regarding Mrs. Lindsey as well
15 as other former trustees has been in progress and
16 underway since last summer.

17 We see no need for further delay. If there was
18 any lack of diligence in determining the scope of the
19 investigation, that is your fault and not ours, and
20 we want to proceed with the deposition and we will do
21 so today.

22 MR. WOLSZTYNIAK: We are here to answer
23 questions, but we will be taking the Fifth Amendment.
24 We didn't find out about this until Friday afternoon.
25 It did not give us time.

1 Mr. Green attempted to contact Mr. Osborne
2 immediately to determine the scope of this
3 investigation. Mr. Osborne was not available.
4 Mr. Green requested a call back from Mr. Osborne's
5 office so that he could meet personally with him.

6 I know Mr. Green is in trial in Hilo for the
7 next three days on the Silva matter. I'm not sure if
8 he's going to be speaking to Mr. Osborne
9 telephonically to discuss what the scope of this is
10 or meet with him personally, but in any event, it's
11 my understanding he will be in touch with him in very
12 short order and we'll be making that determination so
13 that we can either make the determination to limit
14 the scope of what the invocation of the Fifth
15 Amendment rights will be or determine if it's proper
16 to make any Fifth Amendment objections at all.

17 I would also note, Mr. Ing, that the return date
18 for this is not even until tomorrow morning at 9
19 o'clock a.m. in Federal Court.

20 MR. ING: I note that this document was
21 apparently signed by the clerk on October 19th, 1999,
22 and there is a notation in the upper right-hand
23 corner that shows 10/27/99, 8:50 a.m. What is that,
24 Counsel?

25 MR. WOLSZTYNIAK: I do not know.

1 MR. ING: From whom was this document
2 obtained?

3 MR. WOLSZTYNIAK: I obtained it from Mrs.
4 Lindsey.

5 MR. ING: Will you inquire of Mrs. Lindsey
6 what that notation is?

7 MR. WOLSZTYNIAK: No, nothing other than,
8 nothing other than her name and address until we
9 determine the scope of what this investigation
10 entails so that we can properly advise her as to
11 whether or not any questions would impinge upon the
12 scope of the examination.

13 MR. ING: Are you instructing her not to
14 respond to questions regarding the --

15 MR. WOLSZTYNIAK: Yes, I am.

16 MR. ING: -- the notations on this document?

17 MR. WOLSZTYNIAK: Yes, I am.

18 BY MR. ING:

19 Q. Mrs. Lindsey, do you intend to comply with your
20 counsel's recommendation?

21 A. Yes.

22 Q. I'm sorry, you're going to have to speak up
23 louder.

24 A. Yes. I'm sorry, I have a cold.

25 MR. ING: Any other counsel wish to put a

1 statement on the record regarding Exhibit 76?

2 BY MR. ING:

3 Q. Mrs. Lindsey, are you currently a member of any
4 board of a nonprofit organization?

5 A. Excuse me.

6 MR. WOLSZTYNIAK: I'd advise my client not
7 to answer that question on Fifth Amendment grounds
8 until we can determine the scope of the FBI
9 investigation.

10 BY MR. ING:

11 Q. Mrs. Lindsey, do you have a response to that
12 question?

13 A. I'm going to comply with the attorney's request.

14 Q. Mrs. Lindsey, are you currently associated or
15 affiliated with any profit or not-for-profit
16 organization?

17 MR. WOLSZTYNIAK: Same instruction.

18 BY MR. ING:

19 Q. Mrs. Lindsey, are you going to answer that
20 question?

21 A. No.

22 Q. You were served with a subpoena for certain
23 documents. Do you recall receiving a subpoena?

24 MR. WOLSZTYNIAK: Same instruction.

25 MR. ING: Counsel.

1 MR. WOLSZTYNIAK: Same instruction.

2 MR. ING: The same instruction being that
3 you're going to recommend to her that she not answer
4 the question on the grounds of Fifth Amendment?

5 MR. WOLSZTYNIAK: Correct.

6 BY MR. ING:

7 Q. Mrs. Lindsey, did you bring my documents today
8 in response to a subpoena served upon you or your
9 counsel?

10 MR. WOLSZTYNIAK: Same instruction.

11 MR. ING: And that instruction being,
12 Counsel?

13 MR. WOLSZTYNIAK: That she's not to answer
14 anything on Fifth Amendment grounds until we can
15 determine the scope of the FBI investigation.

16 MR. ING: Counsel, is it your intent to
17 recommend that Mrs. Lindsey not respond to each and
18 every one of my questions?

19 MR. WOLSZTYNIAK: Yes, Counsel, it is, until
20 such time as we can determine the scope of the FBI
21 investigation.

22 MR. ING: And is the basis for that
23 recommendation the Fifth Amendment again?

24 MR. WOLSZTYNIAK: Yes, sir.

25 BY MR. ING:

1 Q. Mrs. Lindsey, do you intend to follow those
2 instructions?

3 A. Yes.

4 MR. ING: Counsel, it's our position that
5 this matter has already been ruled upon by the
6 Discovery Master that it is the law of the case that
7 you cannot make a blanket assertion of the Fifth
8 Amendment.

9 This is a civil proceeding. We're entitled to
10 seek and obtain a response to each and every
11 question, and if it is your intent to assert the
12 Fifth Amendment as a grounds of refusing to answer on
13 each and every question, then I would like you to so
14 state and we will terminate the deposition and seek
15 further instruction from the Discovery Master.

16 MR. WOLSZTYNIAK: What my intentions are is
17 until such time as I can determine what the scope of
18 this investigation is and since -- until I determine
19 the scope of what this investigation is, I cannot
20 reasonably and professionally advise my client as to
21 which questions would fall within the scope of the
22 investigation and which would not.

23 I will instruct her not to answer any of the
24 questions on Fifth Amendment grounds until such time
25 as we determine the scope of the investigation, at

1 which time we will then only raise Fifth Amendment
2 grounds on any issues related to the scope of the
3 investigation, if any.

4 At that time, if the scope is narrow, all other
5 questions will be answered properly, and if the
6 situation warrants it, she will not be invoking the
7 Fifth Amendment grounds on any question, but until
8 such time as I determine what the scope of this
9 investigation is, I cannot properly advise her and
10 would advise her to take the Fifth Amendment this
11 time without prejudice to answering these questions
12 in the future once Mr. Green has made that
13 determination, which he has undertaken to reasonably
14 do in very prompt order. In fact, he called Mr.
15 Osborne within minutes of finding out about the
16 subpoena in an attempt to determine that scope and
17 move these proceedings along in a prompt manner. So
18 yes, my answer is yes at this time.

19 MR. ING: And, Counsel, you are in receipt
20 of our letter of Friday, explaining our position with
21 respect to assertion --

22 MR. WOLSZTYNIAK: Which one, Mr. Ing? I've
23 received one. How many letters did you send? Let me
24 see if -- I can tell you if I got it. It depends
25 what time it was sent. Thank you.

1 No, I did not. I do believe Mr. Gierlach got
2 it, though. He did call and advise me about
3 receiving a letter. I don't know if it was this one
4 or not, but he did call me.

5 Basically, I don't want to assert the Fifth
6 Amendment grounds in a blanket fashion. I'm aware of
7 Mr. Matsui's ruling as to Trustee Peters. We don't
8 intend in a blanket fashion to assert the Fifth
9 Amendment. What I'm trying to do is determine what
10 the scope is so I do not have to assert the Fifth
11 Amendment in a blanket fashion, but I am
12 acknowledging receipt of that letter right now today.

13 MR. ING: Fine. I'd like to have this
14 marked as Exhibit 77.

15 (Exhibit No. 77 marked
16 for identification.)

17 MR. ING: Based on your instructions to your
18 client, we will terminate the deposition. I will
19 advise you that we will seek relief from the
20 Discovery Master as early as this afternoon.

21 MR. KAWASHIMA: Why don't you stay.

22 (Discussion off the record.)

23 (Mr. Matsui is present
24 via telephonic conference.)

25 MR. ING: Clyde?

1 MR. MATSUI: I'm here.

2 MR. ING: Douglas Ing. I'm here present
3 with Mrs. Lindsey, her attorney, Joe Wolsztyniak,
4 Harry Yee, I believe, although I haven't met him.

5 MR. SUZUKI: David Suzuki.

6 MR. ING: I'm sorry, David Suzuki. Dan
7 Morris, Mel Miyagi, and Jim Kawashima was here and
8 just stepped outside, and Teri Kondo of my office.
9 We are on the record and the court reporter is
10 present.

11 This deposition has been scheduled for several
12 weeks now. Just by way of background, I received a
13 call Friday afternoon from Mr. Wolsztyniak and he
14 left a voice-mail message on our phones indicating
15 that Mrs. Lindsey, or he had just learned that Mrs.
16 Lindsey received a subpoena, which has now been
17 marked as Exhibit 76 to the deposition -- it is a
18 subpoena to Pioneer Savings & Loan/First Hawaiian
19 Bank, Custodian of Records, to testify before a grand
20 jury and the return date is November 9, 1999; the
21 document is signed by the Clerk of the Court on
22 October 19th, 1999 -- and that because Mr.
23 Wolsztyniak had just become aware of the subpoena,
24 Mrs. Lindsey was not going to be showing up for
25 purposes of deposition until they had made a

1 determination of the scope of the subpoena and she
2 would not be responding to questions other than name
3 and address.

4 We sent a letter indicating that by your prior
5 rulings, which had only been issued last week, the
6 written portion of it, that there was no right to
7 assert a blanket privilege, Fifth Amendment
8 privilege, and that they had already had adequate
9 time to investigate this and that this was lack of
10 due diligence on their part, if anything, and in any
11 event, we would proceed with the deposition.

12 I did have a telephone conversation with Mr.
13 Wolsztyniak on Saturday afternoon as well. He did
14 indicate at that time that they would be showing up
15 for the deposition, but that she would only, Mrs.
16 Lindsey would only be responding to general
17 questions.

18 We have proceeded with the deposition. I have
19 asked her a series of questions beyond just her name
20 and address, which she did respond to, and Mr.
21 Wolsztyniak has instructed her not to answer based
22 upon Fifth Amendment grounds and she has thus refused
23 to answer.

24 It is our position that you've already made a
25 ruling that they're not entitled to a blanket

1 assertion of the Fifth Amendment. Mr. Wolsztyniak
2 has indicated that he will assert the Fifth Amendment
3 to each and every question that I ask and I think
4 we'd like a ruling from you on compelling her to
5 respond to her deposition questions.

6 MR. WOLSZTYNIAK: Mr. Matsui.

7 MR. MATSUI: Let me hear from you.

8 MR. WOLSZTYNIAK: Mr. Matsui, this is Joe
9 Wolsztyniak. What we've got here is, we received
10 this subpoena. Mrs. Lindsey advised us while we were
11 discussing various matters with her on Friday
12 afternoon. Mr. Green was also there. Mr. Green is
13 obviously the lead attorney on this case and
14 representing her on all other matters.

15 Mr. Green indicated that -- he immediately at
16 that time attempted to contact Mr. Les Osborne, the
17 Assistant U.S. Attorney, that caused that subpoena to
18 be issued so he could determine the scope of that
19 subpoena or the scope of the investigation to
20 determine which questions, if any, would be subject
21 to invoking the Fifth Amendment.

22 Mr. Green was unable to contact Mr. Osborne and
23 make arrangements to discuss this matter with
24 Mr. Osborne as soon as possible so that we may
25 determine what the scope of this FBI investigation

1 is.

2 At that time, we contacted Mr. Ing as per your
3 rulings. We did produce Mrs. Lindsey here today.
4 However, until such time as -- at this time, our
5 intention is to discuss the matter with the U.S.
6 Government to determine the scope so that we'd have
7 to determine whether or not we have to object or
8 instruct Mrs. Lindsey not to answer any questions on
9 Fifth Amendment grounds, but until such time as we
10 can determine from Mr. Osborne what the scope of this
11 investigation is, I don't know which questions would
12 fall within the scope and which ones wouldn't.

13 I have suggested and requested from counsel that
14 we postpone or adjourn the deposition until such time
15 as we can make this determination, because I would be
16 hopeful that we would have to raise the Fifth
17 Amendment on no questions, but at this time, until I
18 know what the scope of the investigation is, I really
19 can't make a determination which questions are proper
20 and which are not.

21 This is not the same situation with Mr. Peters
22 where there was criminal charges pending, where he
23 would certainly be invoking the Fifth Amendment
24 privilege on at least some of the questions.

25 This is a situation where we hope to get this

1 matter cleared up so that Mrs. Lindsey will either
2 have to invoke the Fifth Amendment on only a very
3 limited number of questions within the scope of the
4 investigation or, hopefully, not have to invoke the
5 Fifth Amendment on any questions, but I can't make
6 that determination until Mr. Green meets or discusses
7 this with Mr. Osborne, which he is presently
8 attempting to do in an expeditious manner.

9 MR. MATSUI: Let's examine this a piece at a
10 time. This thing about not knowing the scope of the
11 investigation, let's assume that to be true.

12 Now, there are matters which are properly the
13 subject of this discovery deposition and should be
14 answered which obviously are outside that scope.

15 For example, the things testified to in previous
16 depositions, why would that at all be the subject of
17 some claim of self-incrimination when responses have
18 already been given to those question areas? Let's
19 start with that.

20 MR. WOLSZTYNIAK: Well, under the
21 circumstances -- right now, I'm in a position where
22 Mr. Green represents Mrs. Lindsey on all matters, but
23 on matters relating to anything outside of the civil
24 actions, Mr. Green exclusively represents her and has
25 requested she not answer any questions until he

1 determines the scope.

2 As far as -- you would have to ask Mr. Green
3 that question, but I can say one of the reasons would
4 be that obviously anything she says regarding any
5 prior, any prior deposition testimony that is
6 possibly inconsistent could be used to impeach her in
7 any criminal proceeding that may be brought. We
8 don't know at this time. All I'm trying to do is see
9 what I'm looking at.

10 MR. MATSUI: Wait a minute. That's outside
11 the privilege. That something that may be
12 inconsistent and thus impeach her is not matters, are
13 not matters protected by the privilege and the right.
14 It is a privilege and right not to state anything
15 which in its nature is self-incriminating. I don't
16 know what's so hard about figuring out what could and
17 could not be self-incriminating.

18 Number 2, you're not suggesting that the reason
19 she cannot answer is because you have the wrong
20 lawyer at this deposition?

21 MR. WOLSZTYNIAK: No, I'm handling the civil
22 matter, but Mr. Green would be handling any matters
23 that relate to the FBI investigation. I'm not
24 handling that matter at all.

25 MR. MATSUI: I will say this. The answer is

1 not that because he is not here, she cannot answer.
2 That is not how this works.

3 MR. WOLSZTYNIAK: Absolutely not.

4 MR. MATSUI: If you represent her in this
5 matter, then you should segregate that which may tend
6 to be self-incriminating. Granted it's very broad,
7 but be cooperative to the extent of answering that
8 which is obviously not self-incriminating.

9 For example, how does a historical presentation
10 of her association with Bishop Estate impact upon the
11 criminal matter such as being self-incriminating?
12 Those are matters of record.

13 What I'm saying -- what I'm suggesting is there
14 will be a broad-brush interpretation of your right to
15 claim self-incrimination, but not to say that
16 everything might be and, therefore, we won't answer.
17 It takes a little bit more art and skill than that
18 and we've been through this one time before.

19 MR. WOLSZTYNIAK: Mr. Matsui, I know we've
20 been through it with Mr. Peters, but with Mr. Peters,
21 there was a definite line where we were going because
22 there were actually charges brought.

23 In this case, we don't have a clue why the
24 subpoena was filed by the FBI. We're trying to find
25 that out. Hopefully, I won't be raising the Fifth

1 Amendment on anything, but at this time, since I
2 don't know what is going on, it is extremely broad,
3 and at this juncture, I would not want her answering
4 anything that might have a potential to incriminate
5 her when I don't know what the subpoena is about, why
6 they did it, why they issued the subpoena.

7 MR. MATSUI: Well, your good faith and that
8 of your deponent in this deposition requires that you
9 then not color everything as being self-incriminating,
10 answer those things which you feel are appropriate to
11 answer, and then to say that "We don't know where
12 they're coming from" doesn't mean that every question
13 therefore becomes potentially self-incriminating.
14 There are areas of background that can be covered in
15 the time available.

16 Let's do this: If you are going to persist in
17 this position, then, Doug, make your record. Make it
18 as clean as you can. Ask the questions, take the
19 denial. Ask the subject areas you prefer, take the
20 denial.

21 It's going to take some effort in identifying
22 that which is benign and that which is malignant on
23 the standpoint of self-incrimination. Anything short
24 of that will be viewed as bad faith in terms of this
25 deposition.

1 We have gone through it before. I understand
2 what you're saying about a subpoena uncharged, but it
3 should be done the way, for example, Dickie Wong's
4 lawyer asserts the privilege. He says, "We won't
5 answer questions in these two particular areas."

6 Now, if you don't have the benefit of an
7 indictment, if you don't have the benefit of a
8 charge, then broaden your scope a little bit as to
9 what you're going to object to, but you cannot sit
10 there and say everything past name and address is
11 objectionable. It cannot be so. You're going to
12 have to make the effort of hearing the question,
13 making the determination and stating the objection.

14 Now, I pointed this out to Renee Yuen the last
15 time. The jeopardy you run if you permit her to
16 answer is that there may be a statement tending to be
17 self-incriminating, but there will be questions the
18 parties are definitely entitled to answers as a
19 matter of discovery and those you're going to have to
20 answer.

21 So the jeopardy on one side is potential harm to
22 the criminal proceeding and the jeopardy on the other
23 side is sanctions in the civil proceeding. If that's
24 an easy decision for you, then make the easy
25 decision.

1 MR. WOLSZTYNIAK: One of the situations
2 here, Mr. Matsui, is if we make -- if we're able to
3 make the determination from the U.S. Government what
4 the scope is, it will be very simple because we will
5 know the scope. It would be a much more prudent way
6 of proceeding for me to determine the scope as soon
7 as possible.

8 There may be no questions which warrant the
9 invocation of the Fifth Amendment rights once I make
10 that determination what the scope is, and even if
11 there are some, they will be very, very limited in
12 scope, so that we don't have to be objecting to 99
13 percent of the questions, because, as you indicated,
14 without the luxury of an indictment or charges in
15 this case, just having received a subpoena for
16 records such as we have that we learned about on
17 Friday, it would just seem more prudent to allow us
18 just a couple of days at the most to determine what
19 the scope of this investigation is and we might not
20 be advising the client to invoke the Fifth Amendment
21 on any questions.

22 At this juncture, it just seems to be an
23 imprudent way to proceed, to sit here, and even if
24 I -- obviously, I have a very broad-brush stroke here
25 since I don't have an indictment in front of me or

1 charge in front of me.

2 I would think the vast majority of the questions
3 even under those guidelines would require me to
4 advise her to invoke the Fifth Amendment, which I
5 would rather not have to do. I would rather
6 determine that there is no danger of those answers
7 causing self-incrimination and allow her to answer
8 the questions honestly and directly. That's my
9 position.

10 MR. MATSUI: Let me ask you this. On what
11 basis do you believe that the process of finding out
12 the scope of the investigation is a matter which will
13 involve at most two days?

14 MR. WOLSZTYNIAK: Because I know Mr. Green
15 attempted all Friday afternoon to contact Mr. Osborne
16 to determine what this was about and I know Mr. Green
17 and the rest of the firm is in trial over in the
18 Silva case in front of a jury right now, but I
19 believe he's still trying to contact Mr. Osborne from
20 Hilo, as far as I know.

21 I will try to contact him myself today if
22 Mr. Green is unable to make contact with him to find
23 out what this is about so we -- I would rather not
24 have to invoke the Fifth Amendment on any questions
25 and that's what I'm trying to do, is get to a

1 situation where I can just say, "Okay, there's no
2 problem, go ahead and answer everything," but I don't
3 know that right now and I would be remiss if I
4 allowed my client to answer the vast majority of the
5 questions without knowing at least what's going on.
6 I don't have a clue why they filed this subpoena.

7 I'm just trying to be practical here and say,
8 "Hey, I don't really want to invoke the Fifth
9 Amendment, but under the circumstances, I've got no
10 choice."

11 I would rather find out what the subpoena is all
12 about, make a determination as to the scope of it.
13 If there is a danger, just object to the questions
14 that are within the scope. If there's no danger,
15 allow my client to answer all questions without
16 invoking the Fifth Amendment. That's where I'm
17 coming from right now.

18 It just seems like a waste of time to instruct
19 her to answer 99 percent of the questions that "I'm
20 not going answer on Fifth Amendment grounds" when we
21 can possibly come in here in a few days and answer
22 everything without that onus hanging over everybody's
23 head. That's all.

24 MR. MATSUI: Let's assume you or Mr. Green
25 make contact and they choose not to tell you. Where

1 are we? Does that mean that the deposition then
2 cannot go forward?

3 MR. WOLSZTYNIAK: It will, but then at least
4 I know that and I wouldn't be saying this is a waste
5 of time. I can come here and know I'm going to have
6 to object on these grounds because I know -- or not
7 object, but instruct her not to answer on these
8 grounds because I know they're not going to tell me.

9 What I'm saying is it's been past history in our
10 office's relationship with Mr. Osborne that it's been
11 a good relationship where they will normally at least
12 let us know what is going on in the case and not keep
13 us in the dark, especially under the circumstances.

14 MR. MATSUI: Doug, where are you in terms of
15 your cycle of discovery?

16 MR. ING: Well, I believe we have the next
17 two weeks to complete discovery and we have other
18 depositions scheduled. I think pursuant -- we will
19 learn today whether or not Mr. Peters will be
20 tendering any expert witnesses and receive their
21 reports. They would be presented for deposition next
22 week. We do have other -- and if they do have
23 experts, we will take their depositions next week.

24 We do have other witnesses that need to be
25 deposed between now and the end of the discovery

1 period, which is November 29th. We have set aside
2 two days this week, today and tomorrow, to take Mrs.
3 Lindsey's deposition. Others to be deposed include
4 Trustee Jervis, John Waihee, Doug Adler and there may
5 be others as well. Gil Tam.

6 MR. WOLSZTYNIAK: I believe -- is anything
7 being filled in with Mr. Jervis's spot on Wednesday
8 and Thursday, which was planned and moved back? I
9 don't believe anything has been moved in those two
10 dates, which are open.

11 MR. ING: Well, let me just respond to what
12 Mr. Wolsztyniak said earlier. His office and
13 Mr. Green's office as well has been aware of the
14 federal grand jury investigation regarding Mrs.
15 Lindsey and Mr. Peters and Mr. Wong since it leaked
16 last summer. There was an article in the newspaper
17 discussing that.

18 In my telephone discussion with Mr. Wolsztyniak
19 on Saturday, he even indicated that yes, they were
20 aware of that grand jury investigation.

21 It appears to us that this is simply dilatory
22 and they're trying to put off the deposition, because
23 they were certainly under an obligation at that time,
24 and if they weren't aware by virtue of the subpoenaed
25 documents, they were certainly aware by way of the

1 story in the newspapers that this investigation in
2 the federal grand jury was proceeding, seeking
3 records of all three of those trustees.

4 They had a duty at that time to make the
5 inquiry, because they certainly knew that she was
6 going to be deposed. She's been identified on our
7 witness list since at least September.

8 MR. MATSUI: Joe, I'd like to note this on
9 the record. If you were aware of the investigation,
10 is the only change of circumstance that the subpoena
11 has issued?

12 MR. WOLSZTYNIAK: Yes, this is what gave us
13 immediate pause. We were aware an investigation had
14 taken place. Nothing had come of it. At that time,
15 I don't want to say we thought matters were resolved,
16 but there was nothing to give us pause, and then out
17 of the blue after months, we receive a subpoena for
18 bank records.

19 That, obviously, was in our estimation a
20 significant event that gave us pause which would
21 cause us to obviously want to discuss with the U.S.
22 Attorney why they want Mrs. Lindsey's bank records.

23 I mean, I'm sure if the FBI subpoenaed any one
24 of our bank records sitting here, we'd all be
25 given -- I'd be worried if the FBI started

1 subpoenaing my bank records. If there's a general
2 investigation as to lawyers in Honolulu, it would
3 certainly make me considerably more nervous if I got
4 a subpoena for my records where other people had not.
5 That's my main concern.

6 Had it not been for this subpoena, we were
7 ready, willing and able to proceed with this
8 deposition. It was this particular subpoena which
9 gave us immediate pause and at least put us in a
10 position where we immediately wanted to find out what
11 this was about before we went allowing our client to
12 testify in a deposition.

13 Like I indicated, I'd just as soon not have to
14 invoke the Fifth Amendment on any questions, but when
15 I get -- when I find out within several business
16 hours before my client's deposition is taken in a
17 case of this scope that she gets an FBI subpoena
18 regarding her bank records, I think that if any of us
19 had got that for one of our clients, we would at
20 least want to know what was going on before we went
21 helter-skelter and allowed questions to be answered.

22 MR. MATSUI: I'm not getting it and,
23 frankly, I'm not buying it. Are you suggesting that
24 if this deposition went forward last week Thursday
25 that there would be responses to questions? Now that

1 a subpoena has issued, granted I give you that the
2 subpoena might turn up the heat a little, but it does
3 nothing to change the scope of the investigation and
4 the potential that an investigation would lead to
5 some criminal proceeding.

6 MR. WOLSZTYNIAK: At that point, I wouldn't
7 necessarily agree, because -- I haven't done all that
8 much criminal work lately, but I did years ago and
9 usually grand juries don't go issuing subpoenas for
10 specific individual's records of any sort, especially
11 bank records, without meeting or focusing in one
12 particular area with that particular individual.

13 MR. MATSUI: We have the positions of the
14 parties stated. Does anyone else have a position to
15 state?

16 MR. SUZUKI: No position for Trustee Wong.

17 MR. MORRIS: None, Your Honor. Clyde,
18 sorry. This is Dan Morris.

19 MR. MATSUI: Then we have to do it this way.
20 Doug, you go ahead and make your record, either
21 particular questions or ask in areas, and you might
22 start with determining whether Mrs. Lindsey's counsel
23 will take the position that no, nothing further will
24 be answered. In which case, state the question areas
25 that you feel are not within the protection.

1 That's a hard thing to do. I'll understand when
2 I see the transcript that it's not all encompassing,
3 but more by way of example state those. That has to
4 be done. I wish we could do it the easy way. Do
5 that first. If possible, get those records over to
6 me today and I will be in the office this afternoon.

7 How long was this deposition supposed to go?
8 How long was it scheduled?

9 MR. ING: Today and tomorrow, two days. It
10 just depends on whether -- I'm sure we would have
11 taken the whole day today and probably most of
12 tomorrow.

13 MR. MATSUI: Then we would not be wasting
14 time if I were to have all counsel present in the
15 room make yourselves available at about 2 o'clock.

16 MR. ING: Where would that be? At your
17 office?

18 MR. MATSUI: It may not occur at all. Let
19 me see what develops through the making of this
20 record and just give that over to me in any form.

21 MR. ING: Okay.

22 MR. MATSUI: Unless, of course, there is
23 acquiescence on the part of the party taking the
24 deposition that your preference would be to commit it
25 to two days from today, if that time frame is

1 available to everyone. In other words, Wednesday and
2 Thursday. That I need to know anyway. Is everyone
3 available Wednesday and Thursday?

4 MR. WOLSZTYNIAK: No, we can't do it
5 Wednesday or Thursday.

6 MR. MATSUI: Okay, all we can do is permit
7 the deponent to state her position and then deal with
8 it.

9 I can tell you, Joe, that, as I said, we've been
10 through this once before. I think there's clearly
11 identifiable areas where questions and responses are
12 in order in this discovery deposition in this civil
13 case.

14 Doug, you make your record and the other counsel
15 make your record and let me have it as soon as
16 possible.

17 MR. ING: Thank you. We will proceed.

18 MR. MATSUI: Just for matters of
19 housekeeping, Joe, I can tell you that this effort to
20 resolve is not wasted. I am ordering that you follow
21 the guidelines which were laid down when we discussed
22 the Peters deposition and that you adhere to them and
23 that a blanket refusal to answer is not proper and
24 will be sanctioned. As long as that is clear. Is
25 that clear?

1 MR. WOLSZTYNIAK: That's clear.

2 MR. MATSUI: Then you make your choice.

3 Anything else?

4 MR. ING: Nothing further. Thank you. We
5 will proceed and have a copy of the transcript to you
6 as soon as possible.

7 MR. MATSUI: Good luck. Thank you. Bye.

8 MR. ING: Let's take a short recess.

9 (Recess from 9:45 to 10:28 a.m.)

10 MR. WOLSZTYNIAK: At this time, you can go
11 through the general areas. I've got a call -- I'd
12 like to break if I get a call. I'm waiting for an
13 emergency call back. In the meantime, we'll go
14 through the areas and I'll be indicating whether
15 we'll be answering questions in that area or not.

16 MR. ING: The first area I intend to go into
17 is her background and work experience.

18 MR. WOLSZTYNIAK: Let me confer with my
19 client on this one. Let's go through the areas
20 first. Why don't I do -- if it's okay with you,
21 Counselor, if we can go through the areas and take a
22 very short break and I'll discuss it with my client
23 and come back and indicate which areas we'll discuss
24 and which ones we won't. Work experience.

25 MR. ING: The subpoena that was served and

1 the documents that we had requested. Preparation for
2 this deposition, primary purpose.

3 MR. WOLSZTYNIAK: Primary purpose for what?

4 MR. ING: Neglect of the primary purpose,
5 and I will refer you to paragraphs 51 through 66 in
6 the amended petition. That covers everything from
7 the mission of the school, the WASC report, the
8 Peterson report, strategic planning.

9 MR. WOLSZTYNIAK: Anything else?

10 MR. ING: Governance of the Estate, which
11 was discussed at length in the trial before Judge
12 Weil.

13 MR. WOLSZTYNIAK: Okay.

14 MR. ING: Fiduciary duties, intermediate
15 sanctions.

16 MR. WOLSZTYNIAK: Anything else?

17 MR. ING: Lobbying, political activities,
18 change in domicile, change in tax-exempt status,
19 trustee compensation.

20 MR. WOLSZTYNIAK: Any other areas?

21 MR. ING: CEO-governance system. That's
22 Count III of the petition. Risk, creating a risk of
23 the tax-exempt status. That's Count I. Failure to
24 resign. Obviously, the IRS audit. That is the 5701s
25 to the Estate. Those are the areas.

1 MR. WOLSZTYNIAK: Okay, let me confer with
2 my client briefly. I'll be back in a couple of
3 minutes.

4 (Recess from 10:33 to 10:40 a.m.)

5 MR. WOLSZTYNIAK: Mr. Ing, there are three
6 areas which I will allow my client to testify subject
7 to specific objections within those areas.

8 Obviously, those other areas which I will not
9 allow her to testify at this time are clearly -- if
10 we determine in the very near future, which we hope
11 to do, that they're not the subject of the
12 investigation, we will allow her to answer those
13 questions in those areas at a future date.

14 The three areas we'll go ahead with questions at
15 this time are work experience, preparation for the
16 deposition, and the change in domicile.

17 MR. ING: Is it your intent with respect to
18 all the other areas to instruct her not to answer
19 based upon Fifth Amendment grounds?

20 MR. WOLSZTYNIAK: Yes, as of today. Like I
21 said, subject to if we determine, which we hope to,
22 that it's not the subject of the investigation,
23 she'll be allowed to answer questions in those areas
24 once we make the determination that it's outside the
25 scope, which I've been trying to effectuate just

1 before we walked back into the deposition room.

2 MR. ING: How about with respect to the
3 documents we requested of you?

4 MR. WOLSZTYNIAK: No, she will not be
5 answering questions on that due to the fact that the
6 subpoena was for financial documents and the like.
7 As far as the documents themselves, I don't want her
8 answering any questions regarding documents until we
9 can determine what documents the FBI is reviewing at
10 this time.

11 We will -- by the way, in the meantime, I'd
12 attempt to get what documents you do need as far as
13 questions we wouldn't be answering.

14 MR. ING: When is it your intent to complete
15 your, I guess, assessment of the scope of the
16 examination here and tender her for her deposition?

17 MR. WOLSZTYNIAK: I would hope within the
18 next couple of days.

19 MR. ING: Meaning sometime this week?

20 MR. WOLSZTYNIAK: In fact, I was trying --
21 right now, I've been trying to -- as far as our
22 decision as to when to allow her to testify, what to
23 allow her to testify to, I was -- you know, we're
24 attempting to do that as we speak.

25 We hope to get it sometime this week. Because

1 of the fact that the other firm, the entire group of
2 lawyers I'm working with on this case are in trial in
3 Hilo and have been for several weeks and will be for
4 several more weeks, makes it a little more difficult,
5 but I'm attempting to do that in spite of that fact.
6 So I still hope to do that this week sometime, by the
7 end of the week.

8 BY MR. ING:

9 Q. Mrs. Lindsey, are you currently employed?

10 MR. WOLSZTYNIAK: As far as any current
11 employment, I'm going to object on Fifth Amendment
12 grounds as it relates to financial information that
13 may be the subject of the FBI investigation.

14 As to work experience, as you indicated, I have
15 no objection to her getting into work experience as
16 it relates up to and including the time that she was
17 removed as a Bishop Estate trustee.

18 MR. ING: Counsel, I'm just trying to
19 determine whether she is currently employed. I
20 haven't asked any questions about what she is
21 earning.

22 MR. WOLSZTYNIAK: Okay, I will allow her to
23 answer that question as to whether or not she is --
24 you mean on somebody's payroll employed at this time?

25 MR. ING: Yes.

1 MR. WOLSZTYNIAK: You can answer that
2 question.

3 BY MR. ING:

4 Q. Mrs. Lindsey, are you currently employed?

5 A. On someone's payroll at this time, no.

6 Q. Are you employed in any other capacity besides
7 being on someone's payroll?

8 A. Yes.

9 Q. How are you so employed?

10 MR. WOLSZTYNIAK: I won't let her answer
11 that. I instruct her not to answer that on Fifth
12 Amendment grounds, as the FBI subpoenaed related to
13 financial documents and we don't know whether or not
14 this investigation relates to any money she has
15 received from any other sources at this time. I'd
16 instruct her at this time to not answer that
17 question, subject to determining whether or not it's
18 within the scope.

19 BY MR. ING:

20 Q. Mrs. Lindsey, are you currently a member on any
21 board of a for-profit or not-for-profit organization?

22 MR. WOLSZTYNIAK: Same objection, same
23 instruction -- not objection. Same instruction.

24 MR. ING: What are the same instructions?

25 MR. WOLSZTYNIAK: Same instructions to not

1 answer at this time, as any financial records or
2 financial information may be related to the FBI
3 investigation, subject, of course, to withdrawing
4 that instruction if we determine it's outside the
5 scope.

6 MR. ING: Without saying it every time you
7 assert the objection, my understanding is that you're
8 instructing her not to answer based upon Fifth
9 Amendment grounds?

10 MR. WOLSZTYNIAK: Right, yes, sir.

11 MR. ING: It's our position that that is
12 not -- the answer to that question would not tend to
13 incriminate her.

14 MR. WOLSZTYNIAK: I understand that, Mr.
15 Ing. I understand your position.

16 BY MR. ING:

17 Q. Mrs. Lindsey, have you in the past held any
18 professional licenses or certifications in the area
19 of investment management?

20 A. No.

21 Q. Mrs. Lindsey, have you in the past held any
22 professional licenses or certifications in the area
23 of accounting?

24 A. No.

25 Q. Have you in the past held any professional

1 licenses or certifications in the area of finance?

2 A. No.

3 Q. Have you in the past held any professional
4 licenses or certifications in the area of real estate
5 management?

6 A. I'm a real estate salesperson with my license
7 inactive at the moment.

8 Q. Were you at one time a licensed real estate
9 salesperson?

10 A. I'm still a licensed real estate person with an
11 inactive status.

12 Q. When did you first become a licensed real estate
13 person?

14 A. Gosh, I'm not sure. Probably the early -- late
15 '70s, early '80s.

16 Q. Were you actively employed at any time as a real
17 estate salesperson?

18 A. I was.

19 Q. With whom?

20 A. With Marlene's Realty and I also worked for a
21 company in Maui. I can't remember it now.

22 Q. Is Marlene's Realty a company that is still
23 active?

24 A. Yes.

25 Q. In which county or counties?

- 1 A. Oahu, City and County of Honolulu.
- 2 Q. Do you recall the name of the company that you
3 worked for as a real estate salesperson on Maui?
- 4 A. No, and the reason is I didn't work long,
5 because they ruled that as district superintendent, I
6 could not sell real estate to anybody I even remotely
7 supervised, which included students and their parents
8 and stuff. So to avoid a conflict, I put my license
9 on inactive status.
- 10 Q. What year was that?
- 11 A. I can't remember.
- 12 Q. When did you become superintendent of the --
- 13 A. 1982.
- 14 Q. Was it during the time that you were district
15 superintendent that your license became inactive?
- 16 A. I believe so, but it may have been the time that
17 I was also a principal at a school or in an
18 administrative position at a school, because that
19 same conflict rule applied.
- 20 Q. But it was during the time that you were on
21 Maui?
- 22 A. Yes, I believe so.
- 23 Q. Prior to moving to Maui, you were employed on
24 the island of Oahu?
- 25 A. Yes.

1 Q. I believe you worked as a vice-principal; is
2 that correct?

3 A. I was principal of Kaimuki High School
4 immediately before going to, becoming the
5 superintendent in Maui district.

6 Q. So do you recall for how long a period your
7 license was active on Maui; that is, your real estate
8 salesperson's license?

9 A. I can't remember. It's been so long ago.

10 Q. Was it more or less than a year?

11 A. I can't remember.

12 Q. Your license was inactive -- I'm sorry, you went
13 on inactive status sometime in the 1980s while you
14 were district superintendent; that is, inactive on
15 your real estate license?

16 A. I believe so, but I'm not sure. As I stated
17 earlier, it may have been when I was in an
18 educational administrative position in the schools.

19 Q. Would you like some water?

20 A. I'm just really sick. I've been sick for over a
21 week-and-a-half. I had walking pneumonia. I'm
22 afraid if I drink water, I'll cough more.

23 Q. If you'd like water, you're welcome to it.

24 A. Thank you.

25 Q. Now since going on inactive status in Maui, did

1 you activate -- did you subsequently activate your
2 real estate license?

3 A. No. I've just been very, very interested in
4 real estate and have followed the trends of real
5 estate and talked to people regarding real estate.

6 Q. Since 1990, have you sold any real estate?

7 A. No, except my own.

8 Q. I mean as a real estate licensed salesperson.

9 A. No.

10 Q. Were you ever licensed as a real estate broker?

11 A. No.

12 Q. Did you ever take the test to become licensed as
13 a real estate broker?

14 A. No, I did not.

15 Q. Do you have any professional licenses or
16 certifications in the area of property management?

17 A. No.

18 Q. Do you hold any professional licenses or
19 certifications in the area of investment banking?

20 A. No.

21 Q. Have you ever held any such license in the past?

22 A. No.

23 Q. Have you ever been employed as the CEO of any
24 company?

25 A. No.

1 Q. Have you ever been employed as the chief
2 operating officer of any company?

3 A. No.

4 Q. You understand when I say CEO, I'm referring to
5 chief executive officer?

6 A. I know exactly what you mean.

7 Q. Have you ever been employed as a chief financial
8 officer of any company?

9 A. No.

10 Q. Have you ever been employed as a treasurer of
11 any privately held company?

12 A. No.

13 Q. Prior to becoming a Bishop Estate trustee, what
14 was the maximum that you earned in any year through
15 employment?

16 A. I can't even remember what the maximum was as
17 district superintendent. Somewhere 70,000 plus.

18 Q. Is there an SR rating to that or the equivalent
19 of an SR rating?

20 A. No, it's not an SR rating. It's an exempt
21 position and the salaries of the district
22 superintendent is contingent upon the salary of the
23 governor. If they get a raise, those people at that
24 level get raises. If the governor refuses his
25 raises, we don't get a raise.

1 Q. The last full year that you served as district
2 superintendent was the calendar year 1992; is that
3 correct?

4 A. They go on a different -- they don't go on a
5 calendar year and I went into the next calendar year.
6 They go on a fiscal year for us. So we start on July
7 1st and go to July 1st, June 30th.

8 Q. The last fiscal year would have been fiscal year
9 1992, which ends on June 30, 1992; is that correct?

10 A. No, I worked past that. I worked till February
11 of 1993.

12 Q. But the last full fiscal year that you served as
13 district superintendent in Maui would have been
14 fiscal 1992?

15 A. Right.

16 Q. And then you served a portion of fiscal 1993?

17 A. That's correct.

18 Q. Would that have been the year that you earned
19 the most or the highest level of earnings prior to
20 becoming a Bishop Estate trustee?

21 A. Possibly. We didn't get a raise for like five
22 or six years because the governor refused to take a
23 raise.

24 Q. Who was the governor at that time?

25 A. Well, I think John Waihee.

1 Q. Have you ever served as a member of the board of
2 a publicly traded company?

3 A. No.

4 Q. In preparation for your deposition today, did
5 you review any written materials?

6 A. No, I didn't. I've been too sick.

7 Q. Have you had a chance at any time to read the
8 petition for removal in this proceeding?

9 A. The petition, that great big thing?

10 Q. Yes.

11 A. Not all of it.

12 Q. Did you read the petition itself, excluding the
13 exhibits for the moment to the petition?

14 A. Some of it. I can't remember what all I read.

15 Q. Do you recall --

16 A. Excuse me, I'm sorry.

17 Q. Do you recall when you were served with that
18 petition?

19 A. When I was served with it?

20 Q. Yes.

21 A. No, they got it, the lawyer's office, and I
22 don't know when they got it.

23 Q. Do you recall when you first looked at it?

24 A. No, I can't even recall for sure the day that it
25 was filed.

1 Q. The file mark stamp on it is, I believe, August
2 24th of this year. Does that refresh your
3 recollection?

4 A. Yes, it does.

5 Q. When you first saw it, would it --

6 A. That would have been a couple of weeks after
7 that, maybe.

8 Q. Since reviewing the petition for removal in this
9 proceeding, have you reviewed any documents related
10 to the allegations or claims in the petition?

11 A. Have I reviewed any documents?

12 Q. Yes.

13 A. A couple.

14 Q. What did you review?

15 A. I reviewed some of the things that happened in
16 the other trial.

17 Q. Can you explain for us what those documents
18 were?

19 A. I don't remember specifically now. I just was
20 going through the boxes and looking at things.

21 Q. The boxes that you were going through were
22 located where?

23 A. Their office.

24 Q. "Their office" being Mr. Wolsztyniak's office?

25 A. Yes.

1 Q. Whose documents were contained in those boxes?

2 A. Everybody's documents.

3 Q. Everybody's, identify who you mean by
4 "everybody".

5 A. Well, some of the things that were filed in
6 court.

7 Q. So these were boxes of documents held by your
8 attorneys?

9 A. Yes.

10 Q. In those boxes were documents relating to things
11 that were filed in this proceeding or other
12 proceedings?

13 A. No, not this proceeding. In what happened in
14 other proceedings and some of the things before Judge
15 Chang.

16 Q. What were the subject areas of the documents
17 that you reviewed?

18 A. I have no idea now. I was just thumbing through
19 documents.

20 Q. In preparation for your deposition today, did
21 you speak to anyone about the deposition or matters
22 related to the petition for removal in this
23 proceeding?

24 A. Just Mr. Wolsztyniak.

25 Q. Anyone else?

1 A. No.

2 Q. Did you review transcripts of your deposition
3 taken in the prior removal proceeding, the one that
4 went to trial before Judge Weil?

5 A. No, and I wish I could have.

6 Q. Did you review any of the transcripts of your
7 testimony in the proceeding before Judge Weil?

8 A. No. As I said, I've been really sick for a
9 while.

10 Q. When did you learn that your deposition was
11 going to be taken today?

12 A. About a week-and-a-half ago.

13 Q. Since that time, is it your position that you
14 have not reviewed any documents?

15 A. Uh-huh.

16 Q. Is that correct?

17 A. That's correct, I have not reviewed anything.
18 I've been flat out in bed.

19 Q. You testified in deposition and in the Lindsey
20 trial that you had taken notes during the course of
21 various trustee meetings in the past?

22 A. I did.

23 Q. Isn't that correct?

24 A. That's correct.

25 Q. Did you review any of those notes at any time

1 since May 7, 1999?

2 A. Since May 7th?

3 Q. May 7 would have been the date of the removal
4 order.

5 A. I may have.

6 Q. What was the purpose of your review?

7 A. Just to see what was written down.

8 Q. As best as you can recollect, when was that?

9 A. I'm not sure. I know I looked at them. I'm not
10 even sure when it was.

11 Q. During the time that you were on the Board of
12 Trustees, did you serve as secretary of the Board?

13 A. I did. I did.

14 Q. When was that?

15 A. From the time Pinkie Thompson left, which would
16 be around maybe November, December of '94. Somewhere
17 around there, right after that, they had a
18 restructuring of the officers on the Board, because
19 he was the chair until -- I'm not sure, Mr. Ing.

20 Q. Do you recall how long the period was that you
21 served as secretary of the Board?

22 A. It wasn't a very long period, but I don't recall
23 the length.

24 Q. Would it be noted in the minutes of the Board
25 somewhere?

1 A. A lot of things were left out of the minutes of
2 the Board, but it would have been noted by when I
3 stopped signing things.

4 Q. If we were to go to the minutes of the Board of
5 Trustees, the secretary is the one who signs the
6 minutes; is that correct?

7 A. That's correct.

8 Q. So we could determine the period of time that
9 you served as secretary to the Board by examining the
10 dates and times that you would sign the minutes?

11 A. That's correct, because soon after Mr. Jervis
12 came on, there was another change in the makeup of
13 the Board.

14 Q. The notes that you took during the course of
15 these trustee meetings were on spiral notebooks; is
16 that correct?

17 A. Most of them were on spiral notebooks.
18 Sometimes I didn't have the spiral notebook with me
19 and I used notepads, or if it was anything else, I
20 might have used just regular lined paper.

21 Q. What was the purpose of these notes?

22 A. I didn't like the fact that so many things were
23 left out of the proceedings of the meetings and they
24 were not included in the minutes. A lot of the
25 discussions was not included in the minutes, and I

1 was in the habit of taking my own notes so that we
2 would have at least some discussions logged and what
3 led up to a decision. The minutes were very prim and
4 proper, for lack of a better term, and it just said
5 the decision was made and did not for me give me
6 enough background information.

7 Q. Did you try to take accurate notes?

8 A. I tried to. Sometimes I was speaking and
9 couldn't put some of the things down because I was
10 busy participating, but I tried to take accurate
11 notes.

12 Q. Was the purpose of these notes to refresh your
13 recollection as to what the discussions were during
14 the course of the Board of Trustees meetings?

15 A. Sometimes, but it's sometimes just for my own
16 edification of what took place.

17 Q. Did you take notes on these spiral tablets
18 during the entire time that you were, that you served
19 on the Board of Trustees?

20 A. Except when I wasn't at the meetings. I was
21 trained to do this as an administrator and I've
22 always done it. I have notes on everything that
23 happened in the DOE since I became an administrator
24 and sat in meetings.

25 Q. So then you were appointed as a trustee, I

1 believe, in February of 1993?

2 A. That's correct.

3 Q. And you took notes from February of 1993 up
4 through, I guess, the week of May, the week prior to
5 May 7, 1999?

6 A. I don't want to say I took notes from February
7 '93 to May. I may not have, because I didn't
8 understand what transpired and what minutes would
9 reflect and so forth, but at sometime, I started
10 taking notes on a regular basis.

11 Q. But this practice continued during the entire
12 time that you served as a trustee?

13 A. That's correct, but there were also times when
14 they told me, "Don't write anything down."

15 Q. "They" being whom?

16 A. Nathan Aipa.

17 Q. Was that during the course of an executive
18 session?

19 A. Sometimes during the course of an executive
20 session. Sometimes when it was confidential
21 material. So you'll see some lapses because some
22 things are not documented.

23 Q. But if you felt that the subject matter merited
24 taking of notes and if there was no instruction from
25 Mr. Aipa not to take notes, then it was your practice

1 to take notes?

2 A. That's correct.

3 Q. The notes that you took were taken during the
4 course of the meeting; is that correct?

5 A. For the most part, but sometimes we had a
6 discussion where I didn't take notes during the
7 meeting, in which case I would immediately go to my
8 office and write down what transpired during the
9 meeting.

10 Q. Immediately after the meeting?

11 A. Usually immediately after the meeting.

12 Q. So you either took notes during the course of
13 the meeting or immediately after the meeting?

14 A. That's correct.

15 Q. If you were going to take notes?

16 A. That's correct.

17 Q. Did you refer to these notes from time to time
18 during your course of your services as trustee?

19 A. Sometimes I did. It depends on if I put down
20 that I was responsible for doing something or
21 somebody was supposed to come back and give us
22 information when it wasn't forthcoming. I would
23 always go back and check the notes to see if there
24 was anything due at any time.

25 Q. Now in preparation for the deposition today or

1 subsequent -- strike that. Let me re-ask the
2 question.

3 Since May 7 of 1999, do you recall what
4 particular areas of your notes you reviewed?

5 A. No, I don't.

6 Q. You indicated that occasionally you'd be
7 instructed by Mr. Aipa not to take notes?

8 A. That's correct. He said, "I don't want you to
9 put anything down."

10 Q. Do you recall specific occasions when you were
11 so instructed by Mr. Aipa?

12 A. No, I don't.

13 Q. The notes that you did take, that is, those
14 spiral notepads and other materials, where were they
15 maintained?

16 A. In my office.

17 Q. Do you have possession of those notes today?

18 A. No, I don't.

19 Q. Where are they?

20 A. In the attorney's office.

21 Q. The "attorney's office" being Mr. Green's office
22 or Mr. Gierlach's office?

23 A. I'm not sure where they are in the building.

24 Q. The last time you saw them, they were in the
25 possession of your attorneys?

1 A. Yes.

2 Q. When was that?

3 A. Gosh, I guess a little bit after the trial that
4 I had.

5 Q. The trial before Judge Weil?

6 A. Yes.

7 Q. Do you recall taking notes containing
8 discussions of intermediate sanctions?

9 A. Some of them, yes.

10 Q. Do you recall taking notes regarding change in
11 domicile?

12 A. Change in domicile, it's interesting, because I
13 don't recall some of the stuff I read in that
14 newspaper article ever happening.

15 MR. WOLSZTYNIAK: Mrs. Lindsey, just listen
16 to the question carefully and answer only the
17 question Mr. Ing has asked.

18 A. I didn't take any notes of it.

19 BY MR. ING:

20 Q. Do you recall taking any notes regarding change
21 in domicile?

22 A. No, I don't at all.

23 Q. Do you recall taking any notes regarding trustee
24 compensation?

25 A. I believe so.

1 Q. Do you recall taking any notes regarding the
2 changes or the form of governance or the change in
3 the form of governance at the Estate?

4 A. Meaning? What do you mean by the change in the
5 form of governance?

6 Q. Form of governance, do you recall-- let me
7 rephrase the question.

8 Do you recall using the term CEO as it relates
9 to the form of governance utilized at the Estate?

10 A. I recall that.

11 Q. So when I speak of the form of governance, I'm
12 talking about CEO form of governance or the form of
13 governance that people have loosely called the lead
14 trustee system.

15 Now with that understanding, do you recall
16 taking notes regarding the form of governance at the
17 Estate?

18 A. I recall taking notes with form of governance.

19 MR. ING: I'd like to have this marked as
20 Exhibit 78.

21 (Exhibit No. 78 marked
22 for identification.)

23 BY MR. ING:

24 Q. Mrs. Lindsey, have you had an opportunity to
25 look at what has been marked as Exhibit 78?

1 A. That's correct.

2 Q. Is that your handwriting?

3 A. It is my handwriting.

4 Q. Are those notes that were taken during the

5 course of a trustee meeting?

6 A. No. I wasn't a trustee at that time.

7 Q. Had you been appointed at that time?

8 A. Yes, I was appointed, but I didn't take office

9 until -- using that term very loosely, because I

10 wasn't to take office until February 26th or

11 something.

12 Q. You were advised of your employment sometime in

13 December of 1992; is that correct?

14 A. That's correct.

15 Q. And you were sworn in on or about the 26th of

16 February 1993?

17 A. Give or take a few days.

18 Q. And this would have been just prior to the time

19 you were sworn in?

20 A. That's correct.

21 Q. What was the purpose of this note?

22 A. I received information from Oz Stender that he

23 wanted us to consider a CEO. He was lobbying us at

24 the time and wanted us to come aboard with him to

25 change the structure of the institution, that he

1 didn't believe that the Trustees should be following
2 the will of the Princess, and he wanted to change the
3 will of the Princess so that the Trustees would not
4 have full power as she stated in her will, but to go
5 to a CEO-management system. And he also wanted to
6 name the CEO, as I recall.

7 Q. What was your position with respect to the CEO
8 form of governance?

9 A. I didn't know enough about it at the time. I
10 didn't know what he intended. I only knew that's
11 what he wanted and that's just exactly as it says.

12 Q. There's a note there that says, "Henry is
13 Matsi's protege"?

14 A. That's what Oz told us.

15 Q. And there's a subsequent note that says, "Ozzie
16 said 'Matsi is taking me around'"?

17 A. That's right.

18 Q. What was that in reference to?

19 A. I can't remember. I don't know if it was taking
20 Oz around or taking me around.

21 Q. The notation on Exhibit 78 states that, "Ozzie
22 wants Dickie and I to consider a CEO for Bishop
23 Estate"; is that correct?

24 A. That's correct.

25 Q. Were you in a discussion with Trustee Wong --

1 A. No.

2 Q. -- and Mr. Stender at the time?

3 A. I don't recall.

4 Q. Do you recall whether Trustee Wong was present
5 at the time you made this note?

6 A. I believe -- I believe that was when I went to
7 my first observation of what was going on at Bishop
8 Estate and kind of a pre-orientation to my coming in.
9 I don't recall if Dickie was present there.

10 Q. Was Mr. Stender present at the time you made
11 this note?

12 A. He talked to us about that on several occasions,
13 so I'm not sure, but one of the occasions was in the
14 hallway right outside the trustee meeting room and it
15 may have been this time.

16 Q. You talked to Oz about the CEO form of
17 governance on several occasions; is that correct?

18 A. No, Oz talked to us about changing the CEO
19 governance because he wanted a CEO like Campbell
20 Estate and he promoted it from the day I became a
21 trustee.

22 MR. ING: I'd like to have this next exhibit
23 marked as Exhibit 79.

24 (Exhibit No. 79 marked
25 for identification.)

1 BY MR. ING:

2 Q. Mrs. Lindsey, would you examine Exhibit 79,
3 please.

4 A. Okay.

5 Q. Have you had a chance to review Exhibit 79?

6 A. Yes, I have.

7 Q. Is that in your handwriting?

8 A. Yes, it is.

9 Q. There's a date that appears there. What is that
10 date?

11 A. March 16th, 1993.

12 Q. And that would have been subsequent to the time
13 that you became a trustee or were sworn in as a
14 trustee?

15 A. I believe so.

16 Q. At the top, there's a note that says "Trustees
17 meeting"?

18 A. Yes.

19 Q. And below that, would you read the entry below
20 that under "arm's length"?

21 A. "KS/BE - when this -- when they KS/BE
22 subsidiaries for-profit operate autonomously."

23 And then number 2, "KS/BE as a tax-exempt
24 nonprofit cannot." And I didn't finish the sentence.

25 Q. What was the thought there?

1 A. What is that?

2 Q. What was the purpose of this comment?

3 A. I guess in the discussion the issue of arm's
4 length --

5 MR. WOLSZTYNIAK: I instruct you not to
6 guess. If you know, you can testify. If you have an
7 estimate or a general area or reason to know, you can
8 testify, but do not guess or speculate.

9 A. Somebody must have said something about arm's
10 length.

11 BY MR. ING:

12 Q. What does "arm's length" mean?

13 A. That you have to keep a distance from the
14 for-profit subsidiary.

15 Q. Do you recall who had raised this during the
16 course of the trustee meeting?

17 A. No, I don't.

18 Q. Over the years, have you had discussions about
19 arm's-length transactions or maintaining arm's length
20 from the for-profit subsidiaries?

21 A. Yes.

22 Q. What is the purpose of the maintenance of an
23 arm's-length distance between trustees at the Estate
24 level and the for-profit subsidiaries?

25 A. As explained, was that the group of trustees

1 should not be involved in the for-profit subsidiary
2 operations.

3 Q. Why was that?

4 A. Because we were -- we could have a conflict.
5 However, they also said that it is okay for a trustee
6 to sit on the board of for-profit subsidiaries, and
7 as a board member, providing there were other board
8 members, they could have some direct input into the
9 for-profit entities. And we had a workshop on this.
10 Not until a couple of years after this. Maybe three
11 or four.

12 Q. When you said "they said," who were you
13 referring to?

14 A. Our legal counsel.

15 Q. And that was whom?

16 A. Well, we had -- at various times, we had various
17 people.

18 Q. Who were among the various people?

19 A. Basically, Mark McConaghy, Nathan Aipa, Bruce
20 Graham, Mike Hare.

21 MR. ING: I'd like to have the next exhibit
22 marked as Exhibit 80.

23 (Exhibit No. 80 marked
24 For identification.)

25 BY MR. ING:

1 Q. Mrs. Lindsey, would you examine Exhibit 80,
2 please.

3 Mrs. Lindsey, did you have a chance to look
4 through the pages that comprise Exhibit 80?

5 A. Yes, I did.

6 Q. Just for the record, there are eight pages; is
7 that correct?

8 A. Yes, but I notice it doesn't finish the sentence
9 on the last page of page 8. So there may have been
10 more pages. I'm not sure.

11 Q. But at least with respect to the portion of the
12 pages that are contained in Exhibit 80, these are
13 numbered at the bottom with the Bate's style number
14 LL 00413 consecutive through LL 00420; is that
15 correct?

16 A. That's correct.

17 Q. Are these notes taken in your handwriting?

18 A. These notes are taken in my handwriting.

19 Q. So you took these notes?

20 A. Yes, I did.

21 Q. Are these an accurate representation of your
22 notes at least for the pages that are included in the
23 exhibit?

24 A. They are.

25 Q. Up at the top, you have, "Purpose of the

1 meeting - Mark," I believe?

2 A. That's right. This is a meeting that Mark
3 McConaghy chaired and Mark McConaghy told us almost
4 everything I have written here.

5 Q. And this was -- what is the date?

6 A. September the 13th, 1993.

7 Q. So that would be reflective of the day that Mr.
8 McConaghy held the meeting?

9 A. That's correct.

10 Q. So you were taking notes of his conversation?

11 A. Of his advice to us and of him telling us what
12 to do in all of these areas and what the IRS was
13 looking at and what we needed to look at and how we
14 needed to do things in order to be in compliance with
15 the law.

16 Q. Was this at a trustees meeting?

17 A. I'm not sure, and the reason I'm not sure is I
18 don't know if he came here or we went to Washington.
19 I'd have to check.

20 Q. Where would you go to make that determination?

21 A. I'd have to see -- I'd have to see if there was
22 a trustee meeting scheduled on September the 13th,
23 1993 per the minutes of the Board, and if it was, it
24 was in a trustees meeting.

25 Q. Who was present with you during the course of

1 this discussion?

2 A. I don't recall.

3 Q. Do you recall whether other trustees were
4 present?

5 A. I don't know, because it may have been listed on
6 a previous page that you don't have here, which would
7 have said it was a trustees meeting and might have
8 said who was present, but I don't have the previous
9 pages, so I can't tell you at this time.

10 Q. We'll obtain that page and see if we can verify
11 that after the break.

12 MR. ING: Off the record for a second.

13 (Discussion off the record.)

14 MR. ING: I'd like to have the next exhibit
15 marked as Exhibit 81.

16 (Exhibit No. 81 marked
17 for identification.)

18 BY MR. ING:

19 Q. Mrs. Lindsey, would you examine Exhibit 81,
20 please.

21 Mrs. Lindsey, have you had a chance to examine
22 Exhibit 81?

23 A. Yes, I have.

24 Q. Is this in your handwriting?

25 A. Yes, it is.

1 Q. Are these your notes?

2 A. Yes, they are.

3 Q. Are these a fair and an accurate reproduction of
4 those pages of your notes that are reflected in the
5 exhibit?

6 A. Yes.

7 Q. Were these notes taken during the time that you
8 were trustee?

9 A. Yes.

10 Q. Do they involve Estate, Bishop Estate business?

11 A. Yes, they do.

12 Q. What was the date that these notes were taken?

13 A. October the 18th, 1993.

14 Q. This exhibit consists of seven pages, correct?

15 A. Yes.

16 Q. And these pages are numbered consecutively at
17 the bottom LL 00486 through -492; is that correct?

18 A. That's correct.

19 Q. Do you recall what the purpose of these notes
20 are?

21 A. I'd have to see again the pages preceding the
22 notes to see if there was a trustee meeting. And I
23 remember some of these notes referred to investments
24 that were made by and actions taken by the former
25 trustees and they were discussing the tax issues

1 surrounding them at that time.

2 I note in the notes that Gil Ishikawa is
3 mentioned here, as is Mark McConaghy, and they are
4 our tax advisors, Mark McConaghy being our tax
5 counsel.

6 Q. If you would look at Bate's number at the bottom
7 LL 00488. Do you have that page before you?

8 A. Yes, I do.

9 Q. At the bottom, there's a note that says, "Big
10 issue." And then it's underscored and it says, "Tech
11 advice from national office regarding compensation
12 issue"?

13 A. Right.

14 Q. Did I read that correctly?

15 A. That's correct.

16 Q. What was that about?

17 MR. WOLSZTYNIAK: At this time, you're
18 getting into a compensation issue. I have no problem
19 with laying foundation or having my client testify as
20 to various aspects of what's in the document, but the
21 issue of trustee compensation, I believe because of
22 the fact that the subpoena relates to finances and
23 the trustee compensation relates to finances, at this
24 time, I would instruct her not to answer on Fifth
25 Amendment grounds as to anything that is outside the

1 scope, the foundation for the document, stating what
2 the document says, who was present, without prejudice
3 to answering at a later date or to answer any other
4 questions regarding that document that don't relate
5 to an area that I believe gets into the possible
6 privilege of Fifth Amendment.

7 BY MR. ING:

8 Q. Mrs. Lindsey, could you refer to the sixth page
9 of Exhibit 81.

10 MR. WOLSZTYNIAK: What's the Bate's number
11 on that?

12 MR. ING: The Bate's number at the bottom
13 is, the last three digits, 491.

14 BY MR. ING:

15 Q. Do you have that before you?

16 A. I do.

17 Q. Up at the top, I'm sorry, there's a reference to
18 a meeting with Mr. McConaghy?

19 A. That's correct.

20 Q. If you could just for a minute focus on the
21 spelling of Mr. McConaghy's name.

22 A. It's wrong.

23 Q. It's wrong?

24 A. Yeah, it's definitely wrong. I had a hard time
25 coming up with how you actually spell it, having

1 never seen it in writing.

2 Q. The notes that you have here, however, refer to
3 a performance-based compensation system; is that
4 correct?

5 A. That's correct.

6 Q. I take it that that related to trustee
7 compensation?

8 A. That's correct.

9 Q. Did the trustees ever establish a
10 performance-based compensation system for the Estate?

11 A. I'm not sure. I know that --

12 MR. WOLSZTYNIAK: Mrs. Lindsey, listen to
13 the question. Just answer only the question and
14 don't go any further and answer Mr. Ing's specific
15 question.

16 A. But I really want to say this. We wanted to do
17 the right thing.

18 MR. WOLSZTYNIAK: Please listen to Mr. Ing's
19 question. Just answer only the question, please.

20 THE WITNESS: Okay.

21 BY MR. ING:

22 Q. Was a performance-based compensation system set
23 up for the trustees at any time?

24 A. I'm not sure.

25 Q. Where would you go to determine whether or not

1 that was done?

2 A. There were so many times that this was discussed
3 that I'm not sure even where I would go to determine
4 what was done, because there were subsequent Court
5 orders.

6 Q. Did you ever see a performance-based system for
7 trustees written down in writing?

8 MR. WOLSZTYNIAK: You mean whether it was
9 passed or not? Just whether there was a model,
10 whether there was a proposal?

11 BY MR. ING:

12 Q. In any form, whether it was a proposal, whether
13 it was acted upon, whether it was revised or whether
14 it was actually utilized in determining compensation.

15 A. I'm not sure, because the Master made some
16 recommendations and then we had to -- based upon
17 that, we had to go and get a consultant to look at
18 compensation and we had to report it to the Court and
19 then we had to review it every three years. So a lot
20 of things that started out being what we would want
21 to do ended up changing based on a Master's report
22 and orders from the Court.

23 Q. Do you recall which Master's report in
24 particular or do you recall any in particular that
25 referred to that; that is, the trustee compensation

1 system?

2 A. That referred to a trustee compensation system?

3 Q. Yes.

4 A. I don't recall exactly which Master at this
5 time. I do recall that the judge said that we had to
6 get one or more consulting firms, and maybe I'm using
7 the wrong word, one or more firms to review
8 compensation and to come in with a range based on
9 some of these things that we have here in these
10 notes. And it was discussed and it was reported to
11 the Court, and then three years later, we had to do
12 it again. That's my recollection.

13 Q. There is at the bottom of the page a reference
14 to, "Performance base compensation, independent board
15 to decide" and then it has "\$ compensation"; is that
16 correct?

17 A. That's correct.

18 Q. Was an independent board ever established to
19 decide compensation for the trustees?

20 A. No, because the judge's --

21 MR. WOLSZTYNIAK: Mrs. Lindsey, listen to
22 Mr. Ing's question. Answer only his question that
23 elicits a yes or no answer. Just only go as far as
24 what the information requested is and go no further,
25 please.

1 A. No.

2 BY MR. ING:

3 Q. Would you turn to the last page of the exhibit
4 numbered at the bottom 492, the last three digits.
5 There's a reference to Omnitrak and in parenthesis
6 "Nam". What is that reference?

7 A. Omnitrak was going to do -- how do I want to
8 say? It was going to get some information for us
9 regarding this leasehold issue, because it was a
10 critical issue and Nam was going to be in charge of
11 doing a marketing study regarding leasehold and then
12 do some informational meetings on it.

13 Q. And "Nam" refers to whom?

14 A. Namlyn Snow. She was in charge of government
15 relations.

16 Q. What was her position at the time?

17 A. I guess director of government relations.

18 Q. Who does she report to?

19 A. Gil Tam initially and then Rodney Park.

20 Q. Do you recall whether a marketing study was
21 completed at any time?

22 A. There was several studies completed and I don't
23 recall specifically.

24 Q. Who was the person at Omnitrak who was
25 contracted?

1 A. I don't recall.

2 MR. ING: I'd like to mark the next
3 exhibit as 82.

4 (Exhibit No. 82 marked
5 for identification.)

6 BY MR. ING:

7 Q. Mrs. Lindsey, would you examine Exhibit 82,
8 please.

9 Mrs. Lindsey, have you had a chance to review
10 what has been marked as Exhibit 82?

11 A. I did.

12 Q. This exhibit consists of four pages, correct?

13 A. Yes.

14 Q. And these are Bate's-numbered at the bottom,
15 last three digits, 835 through 838, correct?

16 A. No. I'm sorry, yes.

17 Q. Are these a copy of your notes?

18 A. Yes, it is.

19 Q. Does Exhibit 82 represent an accurate copy of
20 your notes for these particular dates and on these
21 pages?

22 A. That's correct.

23 Q. Do you recall what the occasion was that you
24 were taking these notes?

25 A. Not unless I have the previous pages.

1 Q. What date did you take these notes on?

2 A. May 23rd, 1994.

3 Q. There's a reference to Mark McConaghy at the
4 top?

5 A. That's correct.

6 Q. This time I believe his name is spelled
7 correctly?

8 A. Yes, it is.

9 Q. And there's a phone number associated with that?

10 A. That's correct.

11 Q. Does that refresh your recollection as to
12 whether you were talking to him on the phone or
13 whether he was there in person?

14 A. No.

15 Q. Having reviewed the information in Exhibit 82,
16 does that refresh your recollection as to what the
17 subject matters were that were discussed?

18 A. It does.

19 Q. What were those?

20 A. We were talking about our commissions and what
21 we have a right to do with them and how we would be
22 taxed on them and how this would affect the
23 operations of the Estate and asking him for advice on
24 what we were to do.

25 Q. As a result of this discussion, do you recall

1 taking action as a trustee?

2 MR. WOLSZTYNIAK: At this time, I'm going to
3 instruct my client not to answer on the grounds it
4 gets into the area of trustee compensation. In light
5 of the subpoena for her records relating to income
6 and compensation, I would instruct her not to answer
7 on Fifth Amendment grounds as to that area, without
8 prejudice to any other questions regarding the
9 foundation in that document or other areas which are
10 outside of the area I just objected to or just
11 indicated was possibly a problem with the Fifth
12 Amendment rights.

13 BY MR. ING:

14 Q. Mrs. Lindsey, just looking at your notes, one of
15 the issues that was discussed apparently was what you
16 refer to as the diminimus rule?

17 A. Yes.

18 Q. What was the diminimus rule?

19 A. Diminimus rule was a rule that says we cannot
20 spend more than 49 percent, I believe. We cannot
21 spend the majority of our money on outside
22 activities, in education or any other arena, and
23 specifically to education.

24 And so we were asking what would keep us safe,
25 because a lot of money was going into community

1 programs that were not directly related to the school
2 and we were told that the diminimus rule meant it had
3 to be our school, our teachers, our curriculum and
4 our students and we could not be subsidizing all
5 these other programs that were in the community, if
6 it indeed went over the amount, over -- if it's over
7 49 percent, was kind of what it is.

8 And Mark McConaghy also advised us that 49
9 percent is pushing it to the limit. We were advised
10 that only 20 percent of our money should be used in
11 this diminimus setting and 80 percent of it should
12 not be.

13 And the rule of thumb was to spend only
14 approximately 20 percent on activities that did not
15 fall within those four criteria, meaning our school,
16 our buildings, our teachers, our curriculum and our
17 students directly related to Kamehameha Schools.

18 We found that Kamehameha Schools itself was in
19 100 percent compliance with the diminimus rule
20 because it met all four criteria and we found that
21 many of our other programs did not fit into that
22 criteria, and as a result, maybe we should re-look at
23 what we were doing. We wanted to --

24 MR. WOLSZTYNIAK: Mrs. Lindsey, just answer
25 only the question that Mr. Ing has inquired of and

1 stick to the question and answer only that question,
2 please. Thank you.

3 A. The diminimus rule is that, and --

4 MR. WOLSZTYNIAK: You've stated the
5 definition of the diminimus rule. Thank you.

6 BY MR. ING:

7 Q. As applied, did the Board of Trustees ever
8 authorize expenses for non-core areas which totalled
9 greater than 20 percent of the funds spent?

10 A. I don't remember at this time, because I'd have
11 to go look at the amounts spent in that report that
12 was done for us.

13 Q. Do you recall whether these notes, that is the
14 notes comprising Exhibit 82, were taken during the
15 course of a trustee meeting?

16 A. Again, without having the preceding pages, I'm
17 not sure.

18 MR. WOLSZTYNIAK: Doug, it's about five
19 minutes of 12:00. I've got -- I'm trying to squeeze
20 my appointments in. With everybody gone during the
21 noon hour, I do have some other things I have to do
22 regarding a deposition I've got to move around,
23 because I don't know how long we're going to go this
24 afternoon. I'm just inquiring. Is this going to be
25 a short one?

1 MR. ING: Let me look and I'll tell you.

2 MR. WOLSZTYNIAK: Thank you.

3 MR. ING: This can wait.

4 MR. WOLSZTYNIAK: Pardon?

5 MR. ING: We can take a break.

6 MR. WOLSZTYNIAK: I want to go off the
7 record.

8 (Luncheon recess 11:53 a.m. to 2:05 p.m.)

9 MR. ING: During the lunch hour or extended
10 lunch hour, the Discovery Master called to find out
11 whether we were going to get together at 2 o'clock
12 and I had told him that based on the progress we had
13 made and the fact that you had agreed to answer
14 questions in a certain set of areas that we would
15 continue on today and we'd get him a copy of the
16 transcript of whatever occurred today and try to set
17 up a time tomorrow, and he said that was fine. He
18 preferred to do it at 1:30. He's tied up in the
19 morning. If that's okay, we can take up whatever
20 remaining issues that are to be taken up tomorrow.

21 MR. WOLSZTYNIAK: Do you want to continue
22 with Mrs. Lindsey's depo through tomorrow as well?

23 MR. ING: Yes, until I exhaust the areas
24 that you've agreed to testify.

25 I think, Mrs. Lindsey, the last exhibit that we

1 had gone through prior to the break for lunch was
2 Exhibit 82.

3 MR. WOLSZTYNIAK: Correct.

4 MR. ING: I'd like to have the next exhibit
5 marked Exhibit 83.

6 (Exhibit No. 83 marked
7 for identification.)

8 BY MR. ING:

9 Q. Mrs. Lindsey, could you examine Exhibit 83,
10 please.

11 Mrs. Lindsey, have you had a chance to look at
12 Exhibit 83?

13 A. Yes, I have.

14 Q. Is this exhibit in your handwriting?

15 A. Yes, it is.

16 Q. Is that a fair and accurate representation of
17 your notes that day at least as it relates to the
18 particular page that has been copied?

19 A. Yes.

20 Q. There is a note that begins with "Dickie" and
21 it's underscored. Do you see that?

22 A. Yes.

23 Q. What was the purpose of that note?

24 A. I don't remember.

25 Q. Who is Richard Post?

- 1 A. That's not Richard Post.
- 2 Q. There's the name Richard there followed by --
- 3 maybe I just can't read it, but would you read the
- 4 second dot?
- 5 A. Richard Port.
- 6 Q. Port, I'm sorry. Who is Richard Port?
- 7 A. He was the head of the Rainbow Coalition.
- 8 Q. What was the Rainbow Coalition?
- 9 A. I don't know how to define it. It's a group of
- 10 people within the Democratic party.
- 11 Q. What was it associated with? Hawaii politics,
- 12 national politics?
- 13 A. This is local politics.
- 14 Q. There's a series of bullets or dots. Do you see
- 15 that?
- 16 A. Yes.
- 17 Q. The third bullet reads, or maybe you should read
- 18 it. Read it for us, please.
- 19 A. The one starting with "if"?
- 20 Q. Yes.
- 21 A. "If the rezos are killed in committee, nothing
- 22 will happen."
- 23 Q. What rezos did that refer to?
- 24 A. I don't remember.
- 25 Q. The next bullet says, "Russell & Gary will walk

1 with us." Do you see that?

2 A. Yes.

3 Q. Who is Russell?

4 A. I'm not sure.

5 Q. Could that refer to Russell Ogata?

6 A. I don't know.

7 Q. Who is Gary?

8 A. I don't know. I don't remember now.

9 Q. What was the date of this note?

10 A. 5/26/94.

11 Q. Do you recall what the issue was as it related

12 to the Democratic party convention?

13 A. No, I don't.

14 Q. Did you attend any of the Democratic party

15 conventions?

16 A. I did.

17 Q. During the time that you were trustee?

18 A. I did.

19 Q. Do you recall which ones you attended?

20 A. I think all of them, because I was precinct

21 chair for Maui.

22 Q. Were there any issues regarding Bishop Estate

23 which came up during the course of the Democratic

24 party convention?

25 MR. WOLSZTYNIAK: At this time, I'm going to

1 advise Mrs. Lindsey to -- or, I'm sorry, can I hear
2 the question again?

3 (Record read.)

4 MR. WOLSZTYNIAK: Of which she's aware of
5 being at the convention? You may answer that
6 question.

7 A. Yes, there were.

8 BY MR. ING:

9 Q. What were those issues?

10 A. I don't remember.

11 Q. Do you have any records or documents related to
12 any of the Democratic conventions that you attended
13 locally?

14 A. No, I don't.

15 Q. I'm sorry, did I ask you what the date of this
16 note was?

17 A. Yes, I believe you did. It was May 26, '94.

18 MR. ING: Mark the next exhibit in order as
19 Exhibit 84.

20 (Exhibit No. 84 marked
21 for identification.)

22 MR. WOLSZTYNIAK: Doug, just for the record,
23 this seems to be a little rough copy. Is it my copy
24 or are they all a little bit off?

25 MR. ING: They all appear to be similarly

1 rough.

2 BY MR. ING:

3 Q. Mrs. Lindsey, could you examine Exhibit 84,
4 please?

5 A. Yes.

6 Q. Mrs. Lindsey, have you had a chance to review
7 Exhibit 84?

8 A. Yes, I have.

9 Q. Is this a page from your notes?

10 A. Yes, it is.

11 Q. Is it in your handwriting?

12 A. Yes, it is.

13 Q. When did you make these notes?

14 A. Well, it's either dated August 16 or August the
15 10th, 1996.

16 Q. Could you read the notes as best you can?

17 A. Yes, it says, "Call Henry. Questions." Bullet
18 point 1, "Value of the Estate. We all said 1.6
19 million" with a question. "What would we do to
20 increase the income stream" with a question.

21 "Why should we have a tax-exempt status,
22 compensation, selection process. Why don't we invest
23 more money at home? Why did we take this offshore?
24 How are the assets managed? Ask about RE on a" -- it
25 looks like -- I can hardly read that last word.

1 "Goldman Sachs, they want to talk to someone there."

2 Q. Do you recall what this note is in connection
3 with?

4 A. No, I don't.

5 Q. Who did "Henry" refer to?

6 A. I -- Henry Peters.

7 Q. Were there discussions at any time amongst the
8 trustees about the tax-exempt status of the Bishop
9 Estate?

10 A. There were.

11 Q. Do you recall what the substance of the
12 discussions were as it related to the tax-exempt
13 status of the Estate?

14 MR. WOLSZTYNIAK: I object and I'll instruct
15 the witness not to answer on Fifth Amendment grounds
16 the question in that form as it's overly broad, vague
17 and ambiguous as to her involvement and time frame,
18 things of that sort.

19 So I can't really tell if there's any Fifth
20 Amendment problems or not. In a more refined or
21 reduced scope question, I would very possibly not
22 instruct the witness not to answer. I just have a
23 major problem with that question in its present form.

24 I don't have a problem with her testifying as to
25 what discussions or what was said about tax-exempt

1 status. As far as any statements she made regarding
2 tax-exempt status, I would have a Fifth Amendment
3 problem. I'm just concerned. Because of the broad
4 scope of the question, I'm having difficulty with
5 determining whether or not there would be a Fifth
6 Amendment problem without prejudice to any other
7 questions along that line.

8 MR. ING: Counselor, I'm going to reserve my
9 right to re-ask the question following a ruling by
10 the Discovery Master.

11 MR. WOLSZTYNIAK: Of course.

12 MR. ING: But I will rephrase the question
13 in an attempt to take advantage of the time we do
14 have available.

15 BY MR. ING:

16 Q. Mrs. Lindsey, did other trustees besides
17 yourself raise the issue of the tax-exempt status of
18 Kamehameha Schools/Bishop Estate?

19 A. I think we all did, because of the
20 discrimination case that was before us.

21 Q. Was the discrimination case still active in
22 August of 1996?

23 A. I believe it was.

24 Q. Do you recall any discussions on or about August
25 1996 about whether or not KSBE should have a

1 tax-exempt status?

2 A. I don't recall that.

3 MR. ING: I'd like to have the next exhibit
4 marked as Exhibit 85.

5 (Exhibit No. 85 marked
6 for identification.)

7 BY MR. ING:

8 Q. Mrs. Lindsey, could you examine Exhibit 85,
9 please.

10 A. Yes.

11 Q. Have you had a chance to examine Exhibit 85?

12 A. Yes.

13 Q. Is this a copy of the page of your notes?

14 A. Yes, it is.

15 Q. Is it in your handwriting?

16 A. Yes, it is.

17 Q. What is the date of the notes?

18 A. September the 5th, 1994.

19 Q. Was there a gubernatorial race that year?

20 A. Yes.

21 Q. Except for the large watermark running across
22 the page, is this a fair and accurate copy of the
23 page of your notes?

24 A. Yes, it is.

25 Q. What was the purpose of the notes on this page?

1 A. My girlfriend Susan Halas, she used to make
2 predictions about upcoming races. She was the writer
3 in Maui and she called or I talked to her and
4 documented what she said.

5 MR. ING: Mark the next exhibit as 86,
6 please.

7 (Exhibit No. 86 marked
8 for identification.)

9 BY MR. ING:

10 Q. Mrs. Lindsey, would you examine Exhibit 86.

11 Have you had a chance to examine Exhibit 86?

12 A. Yes.

13 Q. This exhibit consists of two pages marked with
14 Bate's numbers at the bottom 01050 and 01051; is that
15 correct?

16 A. That's correct.

17 Q. Are these copies of your notes?

18 A. Yes, it is.

19 Q. What is the date of the notes?

20 A. September the 6, 1994.

21 Q. Is this in your handwriting?

22 A. Yes, it is.

23 Q. Is this a fair and accurate copy of the notes
24 for those particular days?

25 A. Yes.

- 1 Q. For the pages represented?
- 2 A. Yes.
- 3 Q. This set of notes has under the date "trustees
4 meeting." Do you see that?
- 5 A. Yes.
- 6 Q. Does that indicate to you it was taken during
7 the course of a trustees meeting?
- 8 A. Yes, it does.
- 9 Q. And who was Barbara Ankersmit?
- 10 A. She was one of the people that worked on a
11 survey for us from Omnitrak.
- 12 Q. Was she present in the boardroom?
- 13 A. Yes, I believe she was.
- 14 Q. Are these notes made from one of her
15 presentations?
- 16 A. Yes.
- 17 Q. How many occasions do you recall Barbara
18 Ankersmit making a presentation on matters such as
19 what are contained in Exhibit 86 to the Board in the
20 boardroom?
- 21 A. Maybe a couple.
- 22 Q. During election years?
- 23 A. No, I don't know when they took place.
- 24 Q. But there were other occasions or at least one
25 other occasion in which Barbara Ankersmit made a

1 presentation to members of the Board?

2 A. I think so.

3 Q. Do you recall whether Nam Snow was present at
4 the time?

5 MR. WOLSZTYNIAK: I'm sorry, who?

6 MR. ING: Nam Snow.

7 A. No, I don't.

8 BY MR. ING:

9 Q. Do you recall seeing a report prepared by
10 Omnitrak or Barbara Ankersmit regarding the issues
11 discussed in Exhibit 86?

12 A. I do.

13 Q. Would you describe for me what that looked like?

14 A. Physically what it looked like?

15 Q. Yes.

16 A. It was a book like that with some (indicating)
17 black binding on it, I believe. It was a report to
18 the board.

19 Q. Referring to what was marked as Exhibit D522 in
20 the trial before Judge Weil. This happens to be a
21 log of KSBE minutes, but I think you're referring to
22 the spiral, the black spine?

23 A. Right. I'm not saying that specific document.
24 I said something like that. It was put together in a
25 very formal package.

1 MR. WOLSZTYNIAK: About three-quarters of an
2 inch or so thick.

3 BY MR. ING:

4 Q. Did you retain a copy of that?

5 A. I don't believe so.

6 Q. Do you recall why it was prepared?

7 A. Yes, we wanted to find out what the issues were
8 facing Hawaiian people so that we could be readily
9 able to address them and wanted to find out what they
10 thought of Kamehameha Schools in the whole context.

11 We focused specifically on what the Hawaiian
12 people comments were as opposed to the general public
13 comments to see if there was congruence or if there
14 was a large separation in the way they looked at some
15 of these issues.

16 We wanted to be more cognizant of what the
17 community thought about issues, what the Hawaiian
18 people specifically thought about issues and how we
19 could in their education address these issues.

20 BY MR. ING:

21 Q. Was the report that was prepared by Barbara
22 Ankersmit that you looked at that you described as
23 looking like a formal report with a spiral-bound
24 backing done under the government relations division,
25 communications division or someone else?

1 A. I'm not sure, but it was usually government
2 relations or communications.

3 Q. Whether it was government relations or
4 communications, were there moneys in the budget for
5 that purpose; that is, for these studies, surveys?

6 A. It is my understanding there was.

7 Q. Do you recall how much that was?

8 A. No, I don't.

9 Q. This particular study apparently was done on or
10 about September 1994, correct?

11 A. No, that's when she reported it to us and they
12 usually take months before that to do a study.

13 Q. Do you recall whether there was a budget for
14 studies of this nature in other years besides 1994?

15 A. I'm not sure.

16 MR. ING: Mark the next exhibit in order 87.

17 (Exhibit No. 87 marked
18 for identification.)

19 BY MR. ING:

20 Q. If you could examine Exhibit 87, please.

21 Mrs. Lindsey, have you had a chance to examine
22 Exhibit 87?

23 A. Yes, I did.

24 Q. Is this a copy of a page from your notes?

25 A. Yes, sir, it is.

1 Q. Is it in your handwriting?

2 A. Yes, it is.

3 Q. What is the date of the notes or note?

4 A. October 6, 1994.

5 Q. If you would look halfway down the page right
6 where the word "document" begins on the watermark.

7 A. Yes.

8 Q. There's another date there also.

9 A. I can hardly see it. Maybe October 7, 1994.

10 Q. There's a name written under-- there's a name
11 written about halfway down the page. It says "David"
12 and I can't make out the last name.

13 A. Neither can I.

14 Q. Now there's a further note that begins, "As of
15 10:30 a.m." Do you see that?

16 A. Yes.

17 Q. And then there's a series of bullets below that?

18 A. Yes.

19 Q. Would you read that, please.

20 A. I think it says, "White House has been
21 contacted, so they don't object. Senator Inouye is
22 meeting with Representative Conyers. Bill is
23 included in the House EFC bill."

24 A bracket that says something about, "Within the
25 next hour Senator Inouye is keeping the bill on the

1 Senate bill; he's pretty optimistic it's going to
2 happen. Representative Mink and Abercrombie are
3 going to Representative Conyers."

4 Q. Who was Representative Conyers?

5 A. I have no idea.

6 Q. There's an arrow that points to the word "bill"?

7 A. Right.

8 Q. And there's a double-underscored note up above.
9 Would you read that, please?

10 A. It says, "EFC bill did not contain our
11 provision." And it has "Conyers" underneath it.

12 Q. Who was Representative Conyers?

13 A. I don't know.

14 Q. What was this in reference to?

15 A. You know, I really don't know. I see over here,
16 it says something about Title 4 where it has
17 Confidential Document and I don't know what Title 4
18 includes at this time.

19 Q. What was Title 4?

20 A. I don't know.

21 Q. Is Title 4 written on Exhibit 87?

22 A. Yes, right where you have these arrows right
23 here. It says Title 4. And we have Title 1,
24 Title 2, 3 and 4 and some of those things are
25 government funding grants for educational purposes,

1 but I don't know at this time what this applies to at
2 all.

3 Q. Do you know what the initials EFC stand for?

4 A. Not now, I don't. Can I correct that?

5 Q. Yes.

6 A. I just thought of something it may be.

7 Educational Finance Committee.

8 MR. ING: Can I have the next exhibit marked
9 as Exhibit 88.

10 (Exhibit No. 88 marked
11 for identification.)

12 BY MR. ING:

13 Q. Mrs. Lindsey, would you examine Exhibit 88,
14 please.

15 Mrs. Lindsey, have you had a chance to look at
16 Exhibit 88?

17 A. Yes.

18 Q. Exhibit 88 consists of 10 pages numbered at the
19 bottom 03259 consecutively through 03268; is that
20 correct?

21 A. That's correct.

22 Q. Are these copies of pages in your notes?

23 A. Yes, it is.

24 Q. Is it in your handwriting?

25 A. Yes, it is.

- 1 Q. What is the date of these notes?
- 2 A. December 1, 1994.
- 3 Q. Was it taken at a trustees meeting?
- 4 A. Yes.
- 5 Q. There's a notation that says "conference call"?
- 6 A. Yes.
- 7 Q. What does that indicate to you?
- 8 A. We're in the trustee meeting and a conference
- 9 call was made by Mark McConaghy and Dale Snape to us
- 10 or we conferenced them.
- 11 Q. And who is Mark McConaghy and who is Dale Snape?
- 12 A. Mark McConaghy was our tax attorney out of Price
- 13 Waterhouse at the time, now known as Price Waterhouse
- 14 Coopers Lybrand. And I can't remember what Dale
- 15 Snape was doing, but he was out of a firm in
- 16 Washington, D.C. also.
- 17 Q. Out of the Coopers firm or Price Waterhouse?
- 18 A. I don't believe so, but I'm not sure what firm
- 19 at this time.
- 20 Q. Is this an accurate and fair copy of your notes?
- 21 A. Yes, it is.
- 22 Q. What was purpose of the discussion with Mr.
- 23 McConaghy at that time?
- 24 A. There was an article, I believe, that appeared
- 25 in the National Enquire that talked about Bishop

1 Estate and all the money we were getting and we were
2 teaching kids how to do cultural things, throw
3 different things at each other and it was really a
4 nasty article. It was picked up in part by some of
5 the national media and it mentioned the IRS and there
6 was a whole bunch of things.

7 And all of a sudden, it was reported to us that
8 CNN and 60 Minutes and all of these various big TV
9 entities, shows were going to send people to Hawaii
10 to display Kamehameha Schools/Bishop Estate in a very
11 bad light because we were getting federal moneys and
12 using it for the school and our school was the
13 richest school in the nation and why would we be
14 doing this.

15 It came up on the House, I believe, at this
16 time. I hope I'm getting all the dates in the right
17 order. And as a result of that, we had a conference
18 call to these two people. We were looking at some of
19 the things that were supposedly leaked to or from or
20 made reference to the IRS and they were advising us
21 on what we had to do because some inquiries might be
22 made of the IRS, and they would reply in a generic
23 way, and we didn't want to take the bashing, which we
24 ultimately received, but at this time from the
25 Washington scene.

1 Q. Do you recall whether there was any follow-up to
2 this discussion?

3 A. There was a lot of follow-up to the discussion.
4 And I don't know if it was CNN or Money Line. One of
5 them actually came down and had a TV series that
6 lasted possibly a week, so many minutes on their show
7 and a culmination, as we anticipated they would.

8 MR. ING: Mark the next Exhibit 89, please.

9 (Exhibit No. 89 marked
10 for identification.)

11 BY MR. ING:

12 Q. Mrs. Lindsey, have you had a chance to review
13 Exhibit 89?

14 A. Yes.

15 Q. Is this a copy of a page from your notes?

16 A. Yes, it is.

17 Q. Is it in your handwriting?

18 A. Yes, it is.

19 Q. Except for the watermark, does it appear to be
20 an accurate copy of a page from your notes?

21 A. Yes.

22 Q. What was the date of the note?

23 A. February the 10th, 1995.

24 Q. There's a note that says "Henry" about the
25 middle of the page?

- 1 A. Right.
- 2 Q. Would that be Henry Peters?
- 3 A. Yes, it would be.
- 4 Q. Would you read the note, please.
- 5 A. "Legal people checking with moving the Trust
6 that is far more friendly."
- 7 Q. What does that note refer to?
- 8 A. I don't know. It's probably what he said.
- 9 Q. Was there any discussion about moving the Trust
10 from the jurisdiction of Hawaii at any time?
- 11 A. From the time I came aboard, there was
12 discussion about moving the Trust as a, as a takeoff
13 from other people in Hawaii moving their entities out
14 of the state.
- 15 Q. Was the discussion about moving the Trust out of
16 the state of Hawaii similar to other businesses
17 having relocated their headquarters from Hawaii to
18 other jurisdictions?
- 19 A. Basically, it was looking at like what the First
20 Hawaiian Bank did with going to New Jersey, what Dole
21 Company was doing, what Amfac was doing and seeing if
22 there was anything in that or any reason, business
23 reason that would benefit the Trust.
- 24 Q. Who was involved in that discussion or those
25 discussions about moving the Trust?

1 A. I know it was -- I guess the trustees at
2 sometime or another.

3 Q. Was anyone hired to do any work in connection
4 with any due diligence or further investigation about
5 moving the Trust out of the state of Hawaii?

6 A. Not that I know of.

7 Q. Were you aware at any time of consultants to
8 KSBE working on changing the domicile of the Trust
9 Estate?

10 A. No.

11 Q. Referring back to that same note on Exhibit 89,
12 do you recall what in particular caused you to make
13 the note that you did regarding Mr. Peters on
14 February 10, 1995?

15 A. Repeat the question.

16 Q. Yes. Why did you make the note that you just
17 read to us on Exhibit 89?

18 A. It was probably a piece of information given to
19 me. I just noted it. I don't remember anything else
20 about it.

21 Q. When you wrote "legal people" here, who were you
22 referring to?

23 A. Probably our legal staff.

24 Q. And that would consist -- do you know which
25 person from the legal staff was assigned to that

1 particular issue?

2 A. No, I don't.

3 (Telephonic interruption.)

4 A. Excuse me, I'm sorry.

5 MR. ING: Would you mark the next exhibit

6 Exhibit 90, please.

7 (Exhibit No. 90 marked

8 for identification.)

9 BY MR. ING:

10 Q. Mrs. Lindsey, would you examine this exhibit.

11 Mrs. Lindsey, have you had a chance to review

12 Exhibit 90?

13 A. Yes, I have.

14 Q. Exhibit 90 consists of 21 pages from numbers at

15 the bottom 01510 through 01530; is that correct?

16 A. That's correct.

17 Q. Is Exhibit 90 a copy from your notes?

18 A. Yes, it is.

19 Q. Is it in your handwriting?

20 A. Yes, it is.

21 Q. When were these notes made?

22 A. On April the 13th, 1995.

23 Q. Were these notes made during the course of a

24 trustees meeting or an executive session of a

25 trustees meeting?

- 1 A. Executive session.
- 2 Q. Of a trustees meeting?
- 3 A. Of a trustees meeting.
- 4 Q. Do you recall who was present?
- 5 A. The trustees, Nathan.
- 6 Q. Anyone else?
- 7 A. And Senator Inouye at the outset at least.
- 8 Q. Was Mr. McConaghy present at any time either in
- 9 person or by phone?
- 10 A. Yes.
- 11 Q. In person?
- 12 A. I'm not sure. You said either in person or by
- 13 phone and I'm not sure.
- 14 Q. So if it wasn't in person, then it would have
- 15 been by phone; is that correct?
- 16 A. Yes.
- 17 Q. If you look at the page with the Bate's number
- 18 01526. I'm sorry, this is not a Bate's number, but
- 19 the printed number 01526.
- 20 A. Right.
- 21 Q. Up at the top, it says "Mark McConaghy". Below
- 22 that, it says "Gil, Nath, Mark & Gary"?
- 23 A. Right.
- 24 Q. Who does that refer to?
- 25 A. Gilbert Ishikawa, Nathan Aipa, Mark McConaghy

1 and Gary, whatever his name is, from SCA.

2 Q. Would that be Hurihan (phonetic)?

3 A. It could be. I'm not sure.

4 Q. Did you have a discussion with anyone from SCA?

5 A. We had several discussions with the people from
6 SCA.

7 Q. Who were the individuals from SCA that met with
8 the trustees from time to time?

9 A. I can't remember.

10 Q. Do you recall whether in April of 1995 there was
11 a discussion about technical advice on trustee
12 compensation?

13 A. I'm not sure.

14 Q. Did the IRS regional office seek a technical
15 advice from the IRS national office regarding trustee
16 compensation during certain periods of time during
17 which the tax returns of the Estate were under audit?

18 A. I'm not sure if they sought a technical advice
19 from the national office.

20 Q. Do you know whether there was a request made to
21 the national office for a technical advice?

22 A. I don't remember at this time.

23 MR. ING: Would you mark the next exhibit
24 91, please.

25 /////

1 (Exhibit No. 91 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, could you review what has been
5 marked as Exhibit 91.

6 Mrs. Lindsey, have you had a chance to review
7 Exhibit 91?

8 A. Yes, I have.

9 Q. Is Exhibit 91 a copy of pages from your
10 notebook?

11 A. Yes, it is.

12 Q. Is Exhibit 91 a fair and accurate copy of pages
13 from your notebook?

14 A. Yes, it is.

15 Q. Is it in your own handwriting?

16 A. Yes, it is.

17 Q. When were the notes on Exhibit 91 made?

18 A. March 13, 1995.

19 Q. Exhibit 91 consists of three pages numbered at
20 the bottom 1467 through 1469; is that correct?

21 A. Right.

22 Q. Would you refer to the page numbered at the
23 bottom 1468, please. There's a note that begins
24 "tech advice" and it's underscored.

25 A. Right.

1 Q. Do you see that?

2 A. Yes.

3 Q. I wonder if you could read that and the
4 following page, please, just to yourself.

5 Mrs. Lindsey, does this note refresh your
6 recollection as to whether or not a tech advice was
7 sought on or about March of 1995?

8 A. I don't know if it was sought in March of 1995.
9 It talks about a tech advice. I'm not sure if it was
10 from the local office or the national office. It
11 says here, "Tech advice, non-conclusive," but I don't
12 know what tech advice they're referring to.

13 Q. Does your note indicate that the tech advice
14 itself was not conclusive?

15 A. It does.

16 Q. Was SCA involved in a compensation study at the
17 time?

18 A. Yes.

19 Q. Your note also indicates that IRS was concerned
20 with precedence setting; is that correct?

21 A. That's correct.

22 Q. Your note also indicates that IRS did not like
23 the formula under the statute?

24 A. Yes.

25 Q. And that would be the state statute; is that

1 correct?

2 A. Yes, that's correct.

3 Q. Further down, your notes indicate that, it says,
4 "It's clear IRS feels they can preempt the state
5 statute"?

6 A. That's correct.

7 Q. Was this information being provided to you by
8 Mr. McConaghy?

9 A. I believe so. It comes under his name on the
10 page marked 01468.

11 MR. ING: I'd like to mark the next exhibit
12 as Exhibit 92.

13 (Exhibit No. 92 marked
14 for identification.)

15 BY MR. ING:

16 Q. Mrs. Lindsey, would you examine Exhibit 92,
17 please.

18 Mrs. Lindsey, have you had an opportunity to
19 examine Exhibit 92?

20 A. Yes, I have.

21 Q. Exhibit 92 consists of seven pages numbered at
22 the bottom 1546 through 1552; is that correct?

23 A. That's correct.

24 Q. Is Exhibit 92 a copy of certain pages from your
25 notes?

- 1 A. It is.
- 2 Q. Is it in your handwriting?
- 3 A. Yes, it is.
- 4 Q. When were these notes made?
- 5 A. April the 25th, 1995.
- 6 Q. Is Exhibit 92 a fair and accurate copy of those
7 pages from your notes?
- 8 A. Yes, it is.
- 9 Q. Mrs. Lindsey, did these notes represent the
10 notes taken during the course of a trustees meeting?
- 11 A. Yes.
- 12 Q. Was Mr. McConaghy present either in person or by
13 phone?
- 14 A. I'm not sure.
- 15 Q. There's a reference to "Mark" at the middle of
16 page numbered at the bottom 1546. Do you see that?
- 17 A. Yes, I do.
- 18 Q. Does that refresh your recollection as to
19 whether Mr. McConaghy was present?
- 20 A. No, it really doesn't.
- 21 Q. Did the subject of the Wall Street Journal
22 article come up during the course of this meeting?
- 23 A. Yes, it did.
- 24 Q. Did these notes pertain to the Wall Street
25 Journal article?

1 A. Yes, and the advice from Mark McConaghy.

2 Q. I'm sorry, and?

3 A. And advice from Mark McConaghy.

4 Q. With respect to the Wall Street Journal article,
5 what was the advice from Mr. McConaghy?

6 A. Based on what's written here.

7 Q. Which specific pages are you looking at?

8 A. Well, I'm looking at all of the notes that I
9 took on the pages marked, last three digits, 546,
10 547, and on 548, "advice" at the bottom of the page.

11 This was advice or advise regarding comments and
12 our comments should be we have to manage a business
13 as well as a school. We're forced to sell our land
14 holdings. Got a lot of cash that had to be invested.
15 We deal with an organization forced upon us by the
16 Supreme Court when we had to sell our land. Our
17 fiduciary duty is to maximize returns. We grew fast
18 and we continued to grow. More complex putting
19 things in perspective.

20 Q. Was part of the concern about the Wall Street
21 Journal article the fact that trustees who were
22 decision-makers from a charitable institution were
23 earning substantial sums of money?

24 MR. WOLSZTYNIAK: Objection, lacks
25 foundation, but you can answer over that objection.

1 BY MR. ING:

2 Q. Mrs. Lindsey, you may answer the question if you
3 understand it.

4 A. I do, but up here, it says -- on page 546,
5 "Discussion - Wall Street Journal. Three things
6 require a response." One was the school
7 announcement, how they calculate it.

8 I didn't finish that, but as we go through this,
9 they're talking about the corporation. They're
10 talking about the IRS person, Howard Shone, I guess,
11 and I put a question about that.

12 There's a reference to, "Most lawyers would wish
13 their clients would go to the IRS to get rulings.
14 This is prudent."

15 They talk about Royal Hawaiian Shopping Center.
16 I don't have here listed anything about compensation.
17 That doesn't mean it wasn't put in the article. It's
18 just that I don't recall what it had in the article,
19 other than what is noted in these notes.

20 Q. Did Mr. McConaghy advise you that IRS would be
21 looking closely at the Estate as a result of the
22 issues raised in the Wall Street Journal article?

23 MR. WOLSZTYNIAK: Just -- go ahead and
24 answer that question.

25 A. It says here that Mark McConaghy said that this

1 is going to mean a close look by the Service at some
2 of the things stated in the article.

3 BY MR. ING:

4 Q. And the reference to "Service" is the Internal
5 Revenue Service?

6 A. That's correct.

7 MR. WOLSZTYNIAK: Just checking with the
8 court reporter and Mrs. Lindsey. We've been going
9 about an hour-and-a-half, close to it. I just was --

10 MR. ING: Do you want to take a short break.

11 (Recess from 3:22 to 3:38 p.m.)

12 MR. ING: We'll have this marked as
13 Exhibit 93.

14 (Exhibit No. 93 marked
15 for identification.)

16 BY MR. ING:

17 Q. Mrs. Lindsey, did the Estate hire John Waihee in
18 his capacity as an attorney for Verner Liipfert?

19 A. I believe the Estate hired Verner Liipfert.

20 Q. And was John Waihee one of the attorneys from
21 Verner Liipfert that worked on matters for Bishop
22 Estate?

23 A. Yes.

24 Q. Do you recall John Waihee having a discussion
25 with the trustees at any time regarding a Wall Street

1 Journal article that had appeared?

2 A. No. In fact this is the first I'm seeing this.

3 Q. Why don't you take a look at Exhibit 93, please.

4 Mrs. Lindsey, have you had a chance to review
5 Exhibit 93?

6 A. Yes, I have.

7 Q. This appears to be a memo from John Waihee to
8 the Trustees; is that correct?

9 A. It appears to be.

10 Q. Were Verner Liipfert and John Waihee retained to
11 assist the Estate with respect to potential national
12 exposure of the Estate as a result of the Wall Street
13 Journal article?

14 A. Not that I know of.

15 Q. Do you know whether John Waihee sent the Estate
16 a bill for the services he performed in connection
17 with reviewing the Wall Street Journal article and
18 preparing this memorandum?

19 A. No, I don't.

20 Q. Did you as a trustee have any discussion with
21 John Waihee regarding the Wall Street Journal
22 article?

23 A. No, I didn't.

24 Q. Were you aware at the time that there would be
25 expanded interest in KSBE as a result of the Wall

1 Street Journal article at the national level?

2 A. Only based on my notes regarding Mark McConaghy
3 and his concern.

4 Q. Do you know whether that concern was expressed
5 by John Waihee as well?

6 A. If it was, I wasn't privy to it.

7 Q. Did you have any occasion to meet with John
8 Waihee at it related to work performed by the Verner
9 Liipfert law firm for the Estate?

10 A. Did I -- repeat that question. Did I?

11 Q. Yes, did you on any occasion meet with John
12 Waihee as a trustee regarding work performed by the
13 Verner Liipfert law firm for the Estate?

14 A. I don't remember.

15 Q. You don't remember any occasion where John
16 Waihee met with the trustees?

17 A. Not off the top of my head. I'd have to review
18 notes.

19 Q. Do you know whether the Verner Liipfert law firm
20 sent Bishop Estate bills totalling in excess of
21 \$900,000 in connection with certain matters appearing
22 or that were at issue before Congress?

23 A. Yes, I do.

24 Q. Do you know what that work involved?

25 A. I thought it involved intermediate sanctions.

1 Q. Was John Waihee involved in representing the
2 Estate as it related to intermediate sanctions?

3 A. He must have been as part of the law firm.

4 MR. ING: Mark this as Exhibit 94, please.

5 (Exhibit No. 94 marked

6 for identification.)

7 BY MR. ING:

8 Q. Mrs. Lindsey, would you examine Exhibit 94.

9 Mrs. Lindsey, have you had a chance to review
10 Exhibit 94?

11 A. Yes.

12 Q. Exhibit 94 consist of nine pages at the bottom
13 running from 01567 through 01575; is that correct?

14 A. That's correct.

15 Q. Is Exhibit 94 a copy of pages from your
16 handwritten notes?

17 A. Yes, it is.

18 Q. Is it in your handwriting?

19 A. Yes, it is.

20 Q. Is Exhibit 94 a fair and accurate copy of your
21 notes?

22 A. Yes.

23 Q. When did you take these notes?

24 A. May the 9th, 1995.

25 Q. Was this taken at a meeting of the Board of

1 Trustees?

2 A. In the executive session.

3 Q. But it was a meeting of the Board of Trustees?

4 A. Yes, it was.

5 Q. What is executive session?

6 A. When only the trustees and -- well, there's
7 several kinds. There are situations where there's
8 only the five trustees, there's situations where it's
9 five trustees and their lawyers, and there are
10 situations where we have outside counsel coming in or
11 outside investors coming in where the details are to
12 be confidential.

13 Q. Were the notes represented by Exhibit 94 taken
14 during the course of an executive session?

15 A. They were.

16 Q. Did they pertain to Estate business?

17 A. Yes, it did.

18 Q. Did you take these notes in your capacity as
19 trustee?

20 A. Yes, I did.

21 Q. Was Mr. McConaghy present for that executive
22 session?

23 A. I'm not sure.

24 Q. There's a note here that says "Mark McConaghy"
25 up at the top?

1 A. It does.

2 Q. On the first page of Exhibit 94?

3 A. Yes.

4 Q. Was it your practice to indicate who the speaker
5 was in connection with your notes?

6 A. Yes, it usually is.

7 Q. Does that indicate to you that Exhibit 94, at
8 least with respect to the numbered points in these
9 notes, that Mr. McConaghy was the speaker?

10 A. Usually it indicates Mr. McConaghy was the
11 speaker.

12 Q. Do you recall whether these notes reflect a
13 discussion with Mr. McConaghy following his meeting
14 with IRS and Mr. Barrett of IRS in particular?

15 A. Well, I believe it says that in point number 2.
16 "Chuck Barrett did not want us to meet with him at
17 this time."

18 And I don't know if Mark himself met with Chuck,
19 although in number 8, it says, "Mark assured Chuck
20 that we are looking at this positively and are trying
21 to catch up with all that we need to do."

22 So I'm not sure if he wrote a letter to Chuck
23 Barrett or if he talked to Chuck Barrett or what
24 transpired.

25 Q. If you take a look at what's been stamped at the

1 bottom as page 01571, please. There's a reference to
2 "Chuck & Mark" at the top.

3 A. Yes, there is.

4 Q. Does that refresh your recollection as to
5 whether or not Mr. McConaghy was reporting to the
6 trustees at the time the substance of a meeting that
7 he had had with Mr. Barrett?

8 A. It could have been. I'm not sure.

9 Q. If you could look at the very next page numbered
10 01572, please. This page of your notes includes a
11 discussion regarding reasonable compensation; is that
12 correct?

13 A. Yes, it does.

14 Q. You note under point 2 is "Reasonable
15 compensation law"; is that correct?

16 A. That's correct.

17 Q. There's a note there that says, "Presently" --
18 with a double-underscore -- "the only option they
19 have is to take away the tax exemption for the
20 institution." Do you see that?

21 A. Right.

22 Q. That refers to "they," the IRS?

23 A. Yes.

24 Q. And tax exemption for the institution would mean
25 or would refer to tax-exempt status under 501-C3; is

1 that correct?

2 MR. WOLSZTYNIAK: Just hold it. I'm going
3 to object and instruct her not to answer on Fifth
4 Amendment grounds.

5 I don't have any problem with laying foundation
6 for the document as the trustee and secretary for the
7 Board, but getting into this area, I believe,
8 warrants my advising Mrs. Lindsey not to answer on
9 Fifth Amendment grounds that particular question,
10 without prejudice to any other questions relating to
11 this document

12 BY MR. ING:

13 Q. Point 3 of your notes on that same page, Mrs.
14 Lindsey indicate that, "They" -- meaning IRS -- "had
15 difficulty with the compensation for." And then it
16 says, "Charitable compensation should be less than
17 those that are in the private business."

18 Do you see that note?

19 A. Uh-huh, that's there.

20 Q. What did that mean?

21 MR. WOLSZTYNIAK: Just for clarification --
22 I'll object, vague and ambiguous. Do you mean what
23 was her understanding or where did she get that? I
24 guess I just don't understand the question.

25 If you understand the question, you can answer

1 over my objection on the grounds vague and ambiguous,
2 but you can answer if you do understand the question.

3 A. Can you repeat the question?

4 BY MR. ING:

5 Q. What did that note mean to you?

6 A. That Mark McConaghy was telling us that the IRS
7 was having difficulty with our compensation, that
8 they believed charitable compensation should be less
9 than those that are in private business, and we had a
10 problem because only one part of our, of KSBE was
11 charitable. The other one was for profit.

12 Q. Continuing on to the next page, 01573, there's a
13 notation regarding inurement and private benefit; is
14 that correct?

15 A. That's correct.

16 Q. And then there's separate bullets, one for
17 private benefit and another one for inurement; is
18 that correct?

19 A. That's correct.

20 Q. In this case, you were taking down notes
21 regarding Mr. McConaghy's discussion about these
22 issues?

23 A. That's correct.

24 Q. What was your understanding of private benefit?

25 A. As noted here, it says, "Officers, directors and

1 decision-makers of the organization. IRS can find a
2 significant amount of inurement." Even though it's
3 listed under private benefit, they talked about
4 inurement and not cancel the exempt status.

5 Then under Inurement, "Can find a small amount
6 and cancel the exempt status." So he was showing
7 both sides of the coin.

8 Q. So in the case of private benefit, there may be
9 substantial private benefit, but IRS may not cancel
10 the exempt status; is that correct, that was your
11 understanding?

12 A. No, but I put over here "significant amount of
13 inurement" even though it's listed under Private
14 Benefit. So I think that what he was trying to do is
15 show us they can find inurement and not cancel the
16 tax-exempt status or they could find a small amount
17 and still cancel it.

18 Q. So your second note indicates that IRS,
19 according to Mr. McConaghy, IRS can find a small
20 amount of inurement and cancel the exempt status?

21 A. That's correct.

22 Q. Then on the following page, Mrs. Lindsey, number
23 01574, there's also a discussion by Mr. McConaghy
24 about two cases, one in Florida and one regarding the
25 Herman Hospital; is that correct?

1 A. That's correct.

2 MR. ING: Let's have this marked as
3 Exhibit 95.

4 (Exhibit No. 95 marked
5 for identification.)

6 BY MR. ING:

7 Q. Mrs. Lindsey, would you examine Exhibit 95,
8 please.

9 Have you had a chance to examine Exhibit 95?

10 A. Yes, I have.

11 Q. This exhibit consists of three pages, correct?

12 A. Yes.

13 Q. It's marked at the bottom 01670 through 01672,
14 correct?

15 A. That's correct.

16 Q. Is Exhibit 95 a copy of your notes?

17 A. Yes, it is.

18 Q. Is it in your handwriting?

19 A. Yes, it is.

20 Q. Were these notes taken at a trustees meeting?

21 A. Yes, they were.

22 Q. Do the notes concern Estate business?

23 A. Did it concern Estate business?

24 Q. Yes.

25 A. I guess so.

- 1 Q. Do you recall who was at the meeting?
- 2 A. No, I don't.
- 3 Q. Was there anyone besides trustees who were
- 4 present?
- 5 A. I have noted here Nathan made a report.
- 6 Q. What does that indicate to you?
- 7 A. That Nathan was present.
- 8 Q. And Nathan is Mr. Aipa?
- 9 A. Yes.
- 10 Q. Are these a fair and accurate copy of your
- 11 notes?
- 12 A. Yes.
- 13 Q. The subject of this discussion was what, Mrs.
- 14 Lindsey?
- 15 A. His meeting with the joint committee on
- 16 taxation.
- 17 Q. Do these notes involve the intermediate
- 18 sanctions legislation?
- 19 MR. WOLSZTYNIAK: I'll object. The document
- 20 speaks for itself, but as far as any recollection as
- 21 to discussions, you can answer over the objection.
- 22 BY MR. ING:
- 23 Q. Mrs. Lindsey, you may answer the question if you
- 24 understand it.
- 25 A. I'm not sure if it meant intermediate sanctions

1 at that time, because it says here that they were --
2 the issues covered were questions from the Wall
3 Street Journal and they were talking about
4 legislation, but I'm not sure when intermediate
5 sanctions actively started. I do know when it
6 concluded, it went back to, retroactive to September
7 of '95, but I don't know if this was intermediate
8 sanctions as we know it today at this time or not.

9 Q. What was the date of these notes?

10 A. June 29th, 1995.

11 Q. Is that the date of the meeting?

12 A. Yes.

13 Q. If you would refer to the second of the three
14 pages. Up at the top line, it says, "Interim
15 sanctions and inurements may be a part of legislation
16 in September"; is that correct?

17 A. Yes, it does.

18 Q. Does that refresh your recollection as to
19 whether or not this note refers to intermediate
20 sanctions legislation?

21 A. I'm not sure, because I didn't use the term
22 "intermediate sanctions". I used the term "interim
23 sanctions" and I'm not sure if they were one and the
24 same.

25 Q. If you could refer back to the first page. The

1 last item that's noted with a bullet on that page, it
2 says, "Legislation may come out in September" and
3 there's an arrow drawn to "trustees commissions".

4 Do you see that?

5 A. Yes.

6 Q. Your notes indicate that legislation may come
7 out in September regarding trustees commissions,
8 meaning trustee compensation?

9 A. Yes, but it also includes all these other.

10 Q. Do you know whether "interim sanctions" was used
11 interchangeably with "intermediate sanctions"?

12 A. I don't know, and if it were, then we would be
13 talking about intermediate sanctions.

14 MR. ING: Mark the next exhibit as 96,
15 please.

16 (Exhibit No. 96 marked
17 for identification.)

18 BY MR. ING:

19 Q. Mrs. Lindsey, could you examine Exhibit 96.

20 A. I have.

21 Q. Is this a copy of a page from your notes?

22 A. Yes, it is.

23 Q. Is it in your handwriting?

24 A. Yes, it is.

25 Q. When did you take these notes?

- 1 A. On July 19, 1995.
- 2 Q. Were these notes taken at a trustees meeting?
- 3 A. Yes, they were.
- 4 Q. Is Exhibit 96 a fair and accurate copy of your
- 5 notes of that particular meeting?
- 6 A. It is.
- 7 Q. Do these notes regard matters of concern to the
- 8 trustees?
- 9 A. Yes.
- 10 Q. If you look down about two-thirds of the way
- 11 down, there's a line that says "Nathan"?
- 12 A. Yes.
- 13 Q. Do you see that?
- 14 A. Yes.
- 15 Q. Does that refer to Nathan Aipa?
- 16 A. It does.
- 17 Q. It references requested an executive session be
- 18 held; is that correct?
- 19 A. That's correct.
- 20 Q. And the executive session was to be held
- 21 regarding legislation on intermediate sanctions?
- 22 A. Yes.
- 23 Q. On excessive compensations; is that correct?
- 24 A. Yes.
- 25 Q. And excessive compensations mean compensations

1 of highly paid employees?

2 MR. WOLSZTYNIAK: At this time, I'm going
3 to -- I'm sorry, are you finished with the question?
4 Do you want to see what it is before I object to it?
5 I may have interrupted it.

6 MR. ING: Yes, I had finished the question.

7 MR. WOLSZTYNIAK: Therefore, I'll instruct
8 Mrs. Lindsey not to answer on Fifth Amendment
9 grounds.

10 I have no problem with any foundational
11 questions regarding the document, but this is into an
12 area where I indicated she would not be answering
13 questions until we can determine the scope of the
14 investigation of the U.S. Government.

15 BY MR. ING:

16 Q. Do you recall whether an executive session was
17 held on that issue, Mrs. Lindsey?

18 A. No, I don't.

19 Q. Your next note indicates that, "We" -- meaning
20 the trustees -- "must get." And then there are two
21 firms mentioned there; is that correct?

22 A. Yes.

23 Q. Possibly three. One was Spencer & Hecht?

24 A. Right.

25 Q. H-e-c-h-t?

1 A. Right.

2 Q. And the other one is Verner Liipfert?

3 A. Yes.

4 Q. And it also requested a briefing by Mark,

5 meaning Mark McConaghy?

6 A. That's correct.

7 MR. ING: Mark the next exhibit number 97.

8 (Exhibit No. 97 marked

9 for identification.)

10 BY MR. ING:

11 Q. Mrs. Lindsey, would you examine Exhibit 97,

12 please.

13 A. Yes, I'm finished.

14 Q. Is Exhibit 97 a copy of pages from your notes?

15 A. Yes, it is.

16 Q. Is it a fair and accurate copy of pages from

17 your notes?

18 A. Yes.

19 Q. Is it in your own handwriting?

20 A. Yes, it is.

21 Q. When were these notes taken?

22 A. August the 8th, 1995.

23 Q. Were these notes taken during the course of a

24 trustees meeting?

25 A. Yes, it was.

1 Q. Exhibit 97 consists of two pages numbered at the
2 bottom 01722 and 01723, correct?

3 A. That's correct.

4 Q. In Exhibit 97, you refer to arm length policy;
5 is that correct?

6 A. That's correct.

7 Q. There's also a reference to individual
8 guidelines. Do you see that?

9 A. Right.

10 Q. What were the individual guidelines?

11 A. I don't remember right offhand right now, but
12 this is our first attempt of having an arm's-length
13 policy manual, because heretofore, there was none.

14 Q. Apparently the trustees at that meeting approved
15 the policy?

16 A. That's correct.

17 MR. ING: Mark the next Exhibit 98.

18 (Exhibit No. 98 marked
19 for identification.)

20 BY MR. ING:

21 Q. Mrs. Lindsey, would you examine Exhibit 98,
22 please.

23 A. I've finished examining it.

24 Q. Is Exhibit 98 a copy of your notes?

25 A. Yes, it is.

- 1 Q. Is it a fair and accurate copy of your notes?
- 2 A. It is.
- 3 Q. On what date did you make the notes reflected in
- 4 Exhibit 98?
- 5 A. August 10, 1995.
- 6 Q. Were those notes made at a trustees meeting?
- 7 A. Yes.
- 8 Q. Was there also an executive session?
- 9 A. It was in executive session.
- 10 Q. The notes refer to, "Loke passed out." Is that
- 11 in reference to yourself?
- 12 A. That is correct.
- 13 Q. Did you pass out something from Hecht & Spencer?
- 14 A. Yes, I did.
- 15 Q. Do you recall what that was?
- 16 A. My notes --
- 17 MR. WOLSZTYNIAK: Okay, go ahead.
- 18 A. My notes say it's a memo regarding prohibition
- 19 on lobbying
- 20 BY MR. ING:
- 21 Q. There's a date associated with that as well?
- 22 A. August the 7th, 1995.
- 23 Q. Do you recall what was contained in that memo
- 24 from Hecht & Spencer regarding prohibition on
- 25 lobbying?

1 MR. WOLSZTYNIAK: At this time, I'm going to
2 instruct Mrs. Lindsey not to answer on Fifth
3 Amendment grounds as we're getting into an area that
4 may fall into the purview of the investigation of the
5 U.S. Government, without prejudice to any question
6 regarding foundation on this document.

7 BY MR. ING:

8 Q. Mrs. Lindsey, are you going to follow your
9 counsel's advice?

10 A. Yes.

11 MR. ING: Mark this Exhibit 99, please.

12 (Exhibit No. 99 marked
13 for identification.)

14 BY MR. ING:

15 Q. Mrs. Lindsey, would you review Exhibit 99.

16 A. I'm finished.

17 Q. Mrs. Lindsey, have you had a chance to review
18 Exhibit 99?

19 A. Yes, I have.

20 Q. Is Exhibit 99 is copy of pages from your notes?

21 A. It is.

22 Q. Is it in your handwriting?

23 A. It is.

24 Q. Were the notes shown in Exhibit 99 taken on or
25 about October 12, 1995?

- 1 A. They were.
- 2 Q. Was that at a trustees meeting?
- 3 A. It was.
- 4 Q. Is Exhibit 99 a fair and accurate copy of your
- 5 notes?
- 6 A. It is.
- 7 Q. There's a reference to "Dickie" and it's
- 8 underscored. Do you see that on the first page of
- 9 the exhibit?
- 10 A. Yes.
- 11 Q. Is that a reference to Trustee Wong?
- 12 A. It is.
- 13 Q. What was Trustee Wong's role as related to
- 14 intermediate sanctions?
- 15 A. He was the person in charge of working on
- 16 intermediate sanctions.
- 17 Q. Was he the lead person from the trustees on the
- 18 intermediate sanctions?
- 19 A. I've always opposed this idea of lead person,
- 20 because we weren't lead in anything when it started
- 21 out. It was just sort of a liaison, because all five
- 22 of us could not be in the same place at the same
- 23 time.
- 24 Q. How would you characterize Trustee Wong's role
- 25 as it related to intermediate sanctions?

1 A. He was a liaison between us and whatever else
2 was happening on the Washington front.

3 Q. Was he the person in contact with the Verner
4 Liipfert law firm?

5 A. Yes.

6 Q. Apparently Trustee Wong gave a status report on
7 the legislation then winding its way through
8 Congress; is that correct?

9 A. That's correct.

10 MR. ING: Would you mark the next Exhibit
11 100, please.

12 (Exhibit No. 100 marked
13 for identification.)

14 BY MR. ING:

15 Q. Mrs. Lindsey, would you examine Exhibit 100?

16 A. I have.

17 Q. Is Exhibit 100 a copy of a page from your notes?

18 A. It is.

19 Q. Is Exhibit 100 in your handwriting?

20 A. It is.

21 Q. What was the date on which you made the notes?

22 A. October 19, 1995.

23 Q. Were these notes made at a trustees meeting?

24 A. They were.

25 Q. Is Exhibit 100 a fair and accurate copy of your

1 notes?

2 A. Yes.

3 Q. There's a note under "Henry" here. Does that
4 refer to Mr. Peters?

5 A. Yes, it does.

6 Q. The note indicates that Trustee Peters was going
7 to be in charge of asset management until sometime in
8 the future; is that correct?

9 A. That is correct.

10 Q. Is that following the passing of Tony Sereno?

11 A. Yes.

12 Q. The next note indicates "Dickie". Does that
13 refer to Trustee Wong?

14 A. It does.

15 Q. There's a note, it references, "Update on
16 tax-exempt status"?

17 A. That's correct.

18 Q. Was that an update by Trustee Wong?

19 A. It was.

20 Q. Was that update given at the trustees meeting on
21 October 19, 1995?

22 A. Yes.

23 MR. ING: Would you mark the next Exhibit
24 101, please.

25 /////

1 (Exhibit No. 101 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, would you examine Exhibit 101?

5 A. I have already.

6 Q. Is Exhibit 101 a copy of a page from your notes?

7 A. It is.

8 Q. Is it a fair and accurate copy of a page from
9 your notes?

10 A. It is.

11 Q. Is Exhibit 101 in your own handwriting?

12 A. Yes.

13 Q. What is the date that you made these notes?

14 A. November 28, 1995.

15 Q. Were these notes made in a trustees meeting?

16 A. Yes.

17 Q. Were you also in executive session?

18 A. Yes.

19 Q. There's a reference to "Larry Wangler - Towers
20 Perrin." Do you see that?

21 A. Yes.

22 Q. Was Towers Perrin retained to do a compensation
23 study?

24 A. They were.

25 Q. And there's apparently a timetable there,

1 January - draft document; is that correct?

2 A. Yes.

3 Q. There's a note to use fiscal year '95 as a
4 cutoff for comparables; is that correct?

5 A. Yes.

6 Q. There's also an executive session with Nathan
7 and Yuki?

8 A. Yes.

9 Q. Who was Yuki?

10 A. Yukio Takemoto.

11 Q. And Nathan is Mr. Aipa; is that correct?

12 A. That's correct.

13 Q. Did Mr. Aipa report on intermediate sanctions
14 legislation?

15 A. Yes, he did.

16 MR. WOLSZTYNIAK: Off the record, Doug.

17 (Discussion off the record.)

18 MR. ING: Let's mark the next exhibit as
19 Exhibit 102.

20 (Exhibit No. 102 marked
21 for identification.)

22 BY MR. ING:

23 Q. Mrs. Lindsey, would you examine Exhibit 102,
24 please.

25 A. I have.

- 1 Q. Is it a copy of your notes?
- 2 A. Yes, it is.
- 3 Q. And is it in your own handwriting?
- 4 A. It is.
- 5 Q. Is it a fair and accurate copy of your notes?
- 6 A. Yes.
- 7 Q. When did you take these notes?
- 8 A. November the 30th, 1995.
- 9 Q. Were those notes taken during the course of a
- 10 trustees meeting?
- 11 A. It was.
- 12 Q. This indicates again "Dickie" and there's a
- 13 block drawn around it. Is that Trustee Wong?
- 14 A. It is Trustee Wong.
- 15 Q. Did he report to the trustees on intermediate
- 16 sanctions?
- 17 A. Yes, he did.
- 18 Q. And there's a reference to "Henry". Is that
- 19 Trustee Peters?
- 20 A. Yes, it is.
- 21 Q. There's another reference to "Mark." Is that
- 22 Mark McConaghy?
- 23 A. It is.
- 24 Q. There's a note down at the bottom, "Dickie's
- 25 kuleana and he will keep in touch with us"?

1 A. That's correct.

2 Q. What does that mean?

3 A. He was going to Washington, D.C. See that right
4 under Intermediate Sanctions, it says, "Dickie to
5 D.C."

6 So Dickie was going up there. And kuleana means
7 his job, using the term loosely, and he will keep in
8 touch with us because we all couldn't go to
9 Washington, D.C.

10 Q. But the reference to "kuleana" is with respect
11 to the progress of the intermediate sanctions
12 legislation?

13 A. That's correct.

14 Q. And reporting back to the trustees?

15 A. That's correct.

16 MR. ING: Would you mark this as
17 Exhibit 103.

18 (Exhibit No. 103 marked
19 for identification.)

20 BY MR. ING:

21 Q. Mrs. Lindsey, would you examine Exhibit 103,
22 please.

23 A. I have examined it. I'm finished.

24 Q. This exhibit consists of two pages numbered
25 01866 and 01867; is that correct?

1 A. That's correct.

2 Q. Is Exhibit 103 from your notes?

3 A. Yes, it is.

4 Q. Is it a fair and accurate copy of your notes?

5 A. It is.

6 Q. Is it in your handwriting?

7 A. It is.

8 Q. Are the notes reflected in Exhibit 103 from a

9 trustees meeting?

10 A. Yes.

11 Q. When did you take these notes?

12 A. February 22, 1996.

13 Q. Is Exhibit 103 a fair and accurate copy of these

14 notes?

15 A. Yes, it is.

16 Q. These notes apparently refer to a study being

17 performed by Towers Perrin; is that correct?

18 A. That's correct.

19 Q. And did you review a draft of the study at that

20 time?

21 A. I don't know if we reviewed a draft. I know he

22 gave us a status report. This is what I'm

23 reflecting.

24 MR. ING: Mark this next exhibit as 104.

25 /////

1 (Exhibit No. 104 marked
2 for identification.)

3 BY MR. ING:

4 Q. Mrs. Lindsey, would you examine Exhibit 104,
5 please.

6 A. I'm finished.

7 Q. Is Exhibit 104 a copy of your notes?

8 A. It is.

9 Q. Are these notes in your handwriting?

10 A. They are.

11 Q. Is Exhibit 104 a fair and accurate copy of your
12 notes?

13 A. Yes.

14 Q. When did you make these notes?

15 A. March the 21st, 1996.

16 Q. Were the notes reflected in Exhibit 104 done in
17 a trustees meeting?

18 A. Yes, they were.

19 Q. At the bottom of Exhibit 104, there's a block
20 that says Executive Session. Do you see that?

21 A. Yes, I do.

22 Q. There's a note there that says, "Rodney - Tower
23 Perrin report" and it's underscored?

24 A. Yes.

25 Q. It says below that, "Leave in draft until Loke's

1 questions are answered regarding defensibility."

2 Do you see that?

3 A. That is correct.

4 Q. Did you at that time have questions regarding
5 the defensibility of the Towers Perrin report?

6 A. I had questions regarding the range that they
7 had and how we were going to make sure this range was
8 accurate, an accurate range. So yes, in defending
9 that portion, I wanted to be absolutely certain that
10 that range was as accurate as it could be.

11 Q. Did you have any other concerns regarding
12 defensibility?

13 A. No, that's the only thing. I wanted to be sure
14 that what they said was accurate so we could use it
15 in defense if we needed to.

16 Q. Do you recall what that range was?

17 A. Not offhand. I know they had ranges and they
18 were talking about what percentage of that range we
19 would be looking at.

20 Q. Would you refer to Exhibit 103, please, at the
21 very bottom --

22 MR. WOLSZTYNIAK: Back to the last exhibit?

23 MR. ING: Yes.

24 A. I know what it says.

25 BY MR. ING:

1 Q. At the bottom of the first page of Exhibit 103
2 is a series of numbers?

3 A. That is correct.

4 Q. It says \$689,000 to \$760,000. And there's below
5 that separate numbers which say \$840,000 to 940,000.

6 Do you see that?

7 A. That's correct.

8 Q. Then there's a note that says "could go to"?

9 A. That's correct.

10 Q. What does that mean?

11 A. Well --

12 MR. WOLSZTYNIAK: Okay, at this juncture, as
13 it regards to compensation, I think she's testified
14 and laid the foundation for this exhibit and I
15 instruct her not to answer as to what any meaning has
16 to that particular statement on Fifth Amendment
17 grounds at this time.

18 MR. ING: Counsel, this does not refer to
19 her compensation. This refers to the Towers Perrin
20 report. I don't understand the --

21 MR. WOLSZTYNIAK: Let me ask her one
22 question.

23 (Dialogue between deponent and attorney.)

24 MR. WOLSZTYNIAK: I will withdraw that
25 instruction. You can go ahead and answer over that

1 instruction.

2 A. This was just their status report, and they were
3 saying that if they added these adjustments up here
4 together, this is where they think the range could
5 be. It had nothing to do with the final report, as I
6 recall.

7 BY MR. ING:

8 Q. Does that refresh your recollection as to what
9 range you were referring to when you made the note at
10 the bottom of Exhibit 104?

11 A. In the second report 3/21/96, it was a month
12 later and Rodney came back with more definitive
13 figures.

14 Q. The reference to "Rodney" refers to Rodney Park?

15 A. Rodney Park. He came in with the Towers &
16 Perrin draft.

17 MR. ING: Would you mark this next exhibit
18 as 105.

19 (Exhibit No. 105 marked
20 for identification.)

21 BY MR. ING:

22 Q. Mrs. Lindsey, would you examine what has been
23 marked as Exhibit 105.

24 A. I'm finished.

25 Q. This exhibit consists of two pages. The first

1 page doesn't have a number, but the second page has a
2 number of 01932; is that correct?

3 A. That's correct.

4 Q. Is Exhibit 105 a copy from your notes?

5 A. Yes, it is.

6 Q. Is it in your handwriting?

7 A. Yes, it is.

8 Q. Is it a fair and accurate copy of your notes?

9 A. Yes.

10 Q. When were the notes taken shown in Exhibit 105?

11 A. April the 9th, 1996.

12 Q. Were these notes taken at a trustees meeting?

13 A. They were.

14 Q. The note refers to information document request
15 by IRS; is that correct?

16 A. That's correct.

17 Q. Was the IRS audit underway at that time?

18 A. It was.

19 Q. If you would refer to the second page of
20 Exhibit 105, there's a note referencing lobbying; is
21 that correct?

22 A. That's correct.

23 Q. Is the information regarding lobbying coming
24 from Nathan Aipa?

25 A. Yes.

1 Q. There's also a note that says, "Self-defense" --
2 and it's underscored -- "conflict of tax sanctions
3 and trust law." Do you see that?

4 A. That's correct.

5 Q. What does that refer to?

6 A. As I understand it, there was a conflict between
7 the tax sanctions and what trust law says.

8 Q. This was told to you by Mr. Aipa?

9 A. Yes, it was.

10 Q. Under Federal Laws, it says, "Up to December
11 '95, lobbying is only when you make contact with the
12 legislators"?

13 A. That's correct.

14 Q. And then it says, "From January '96, everything
15 you do is lobbied"; is that correct?

16 A. That's what it says here. It's under the title
17 regarding lobbying. There were two laws and he went
18 on to explain the two laws.

19 Q. With respect to the second law, was it your
20 understanding that everything could be characterized
21 as lobbying?

22 MR. WOLSZTYNIAK: I'll object at this time.
23 First of all, it calls for a legal conclusion on the
24 part of the witness.

25 Secondly, I think we're getting into an area

1 where I'll instruct her not to answer on Fifth
2 Amendment grounds as to what her understanding of the
3 law was in light of the U.S. Government's
4 investigation.

5 MR. ING: And we will take that up with the
6 Discovery Master as well.

7 MR. WOLSZTYNIAK: Fair enough. 9 o'clock
8 tomorrow?

9 MR. ING: 9:00 tomorrow.

10 (Deposition was adjourned at 4:45 p.m.)

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1 I, MARION MAE LOKELANI LINDSEY , do hereby certify
2 that I have read the foregoing typewritten pages 1
3 through 147 , inclusive, and corrections, if any,
4 were noted by me; and that same is now a true and
5 correct transcript of my testimony.

6

7 Dated

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10 MARION MAE LOKELANI LINDSEY

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13 Signed before me this

14 day of , 19 .

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1 STATE OF HAWAII)
2) SS.
3)

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5 I, Jolene C. Haneca, C.S.R., a Notary Public in
6 and for the State of Hawaii, do hereby certify:

7 That on Monday, November 8 , 1999 , at 9:10
8 o'clock, a.m. , appeared before me MARION MAE
9 LOKELANI LINDSEY , the witness whose testimony is
10 contained herein, that prior to being examined, the
11 witness was by me duly sworn or affirmed; that the
12 proceedings were taken in computerized machine
13 shorthand by me and were thereafter reduced to print
14 under my supervision; that the foregoing represents,
15 to the best of my ability, a correct transcript of
16 the proceedings had in the foregoing matter;

17 That the witness, if applicable, was notified
18 through Counsel, by mail, or by telephone to appear
19 and sign; that if the transcription is not signed,
20 either the reading and signing were waived by the
21 witness and all parties, or the witness has failed to
22 appear and the original is therefore kept on file
23 without signature pursuant to Court rules.

24 I further certify that I am not counsel for any of
25 the parties hereto, nor in any way interested in the
26 outcome of the cause named in the caption.

27 Dated: .

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30 Jolene C. Haneca, C.S.R. #132
31 Notary Public, State of Hawaii
32 My Commission Expires: March 16, 2001

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