IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

---:---

In the Matter of the Estate of BERNICE P. BISHOP, Deceased.	EQUITY NO. 2048 VOLUME III

CONTINUATION OF DEPOSITION OF

MARION MAE LOKELANI LINDSEY

Taken on behalf of Robert K.U. Kihune, Constance H. Lau, Francis A. Keala, David P. Coon and Ronald D. Libkuman, Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased, at the law offices of Watanabe, Ing & Kawashima, 23rd Floor, 999 Bishop Street, Honolulu, Hawaii 96813, commencing at 10:18 a.m. on Saturday, December 4, 1999, pursuant to Notice.

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

APPEARANCES:

Attorneys for Robert K.U. Kihune, Constance H. Lau, Francis A. Keala, David P. Coon and Ronald D. Libkuman, Trustees under the Will and of the Estate of Bernice Pauahi Bishop, Deceased:

J. DOUGLAS ING, ESQ.
Watanabe Ing & Kawashima
23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813

--and-

MELVYN M. MIYAGI, ESQ.
Miyagi, Nohr & Myhre
1200 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

Attorney for Trustee Marion Mae Lokelani Lindsey:

DAVID J. GIERLACH, ESQ.
Law Offices of
Michael Jay Green
2nd Floor
345 Queen Street
Honolulu, Hawaii 96813

Attorney for Attorney General's Office:

DANIEL A. MORRIS, ESQ.
Deputy Attorney General
Department of the
Attorney General
425 Queen Street
Honolulu, Hawaii 96813

I N D E X

(Disclosure made available to all counsel.)

---oOo---

MARION MAE LOKELANI LINDSEY,

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

EXAMINATION (Continuing)

BY MR. ING:

Q. Mrs. Lindsey, this is a continuation of your earlier deposition session taken in the petition for permanent removal filed by the Interim Trustees. Do you understand that you're still under oath?

A. Yes, I do.

MR. ING: I'd like to have the next exhibit marked as Exhibit 133.

(Exhibit No. 133 marked for identification.)

BY MR. ING:

Q. Prior to the start of the deposition today, we had provided you with a copy of Exhibit 133 to review. Have you had a chance to review the exhibit?

A. Not the entire exhibit.
Q. Why don't you take a look at the rest of the exhibit then.
MR. GIERLACH: Exhibit 133 for the record is 88 pages long. We were provided it about 10 minutes ago. Take your time.
While Mrs. Lindsey is looking, let me put my objection on the record that the 88-page exhibit appears to be a series of copies from her handwritten notes. It seems to range from about March of 1998 until May of 1999.
It is not complete. There appear to be pages missing that might help her put matters that are here in context or otherwise refresh her recollection as to who was present and what was said and who raised particular issues, and those documents not being here, she will answer questions subject to her right to review those documents and perhaps have better testimony about these specific documents at a later time.
(Discussion off the record.)
BY MR. ING:
Q. Mrs. Lindsey, while we were off the record, did you have an opportunity to review Exhibit 133?
A. Yes, I did.

Q. Exhibit 133 consists of 88 sheets of paper which are numbered at the lower right corner and I will note for the record that those were placed on there by my office.

Are the pages that comprise Exhibit 133 in your handwriting?

A. Yes, they are.

Q. Are these accurate copies of these pages?

A. Yes, they're accurate, but there is pages missing.

Q. These do not contain all of the pages from your spiral notebooks; is that correct?

A. That's correct.

Q. So there are pages that would be in between the pages that have been selected for copying here?

A. Yes.

Q. Your practice was to note the date in the upper right-hand corner of each page; is that correct?

A. That's correct.

Q. And that date represents the date on which you took the notes; is that correct?

A. Yes.

Q. Where there was a trustees meeting in progress, you would note in the corner as well under the date that it was pursuant to a trustee meeting?

A. Yes.
Q. If the trustees went into executive session, you would also note in the corner or somewhere on the sheet "in executive session"?
A. Yes.
Q. Is it also accurate to say that these notes were taken during the course of the meeting if the notes were taken in a trustees meeting?
A. Yes.
Q. Since the time you took these notes, have you had a chance to review your spiral notebooks?
A. Not in its entirety.
Q. Have you had access to your spiral notebooks?
A. Could I go get them at any time?
Q. Yes.
A. I guess I could go get them at any time.
Q. Did you maintain these spiral notebooks in your records?
A. I guess in my records is where they were.
Q. During the time that you were sitting as a trustee at Kawaiahao Plaza, did you keep the spiral notebooks in your office?
A. Yes.
Q. And subsequent to May 7, 1999, did you move your records and documents from Kawaiahao Plaza?

A. Yes.
Q. Where were they maintained after May 7, 1999?
A. Some of them were in the attorney's office, some of them were at my house, some of them were in boxes that were in storage, some of them were at another attorney's office.
Q. The attorneys' offices in which your records or documents were located were who by name?
A. The Law Offices of Michael Green. Some of them were housed at the Law Offices of Billy Harrison and Keith Matsuoka. Some of them were used by other attorneys.
Q. Who were the other attorneys that used your notes or documents?
A. Glenn Sato.
Q. Mr. Sato is the attorney for Dickie Wong?
A. Yes.
Q. Did any other attorneys utilize your documents besides Mr. Sato and your own attorneys?
A. I'm not sure at this time.
Q. If you would refer to the page numbered 1 at the lower right-hand corner. I will just refer to the last two digits for purposes of page identification of Exhibit 133.
There's a note there that says "Nam". Does that

refer to Nam Snow?
A. Yes, it does.
Q. She's reporting on House Bill 2362, House Draft 1?
A. Yes.
Q. What bill was that?
A. I don't recall.
Q. Nam Snow was the head of the government relations department; is that correct?
A. That's correct.
Q. And her job during session was to monitor the activities at the legislature?
A. That's correct.
Q. This page 1 is dated in the upper right-hand corner March 10, 1998?
A. That's correct.
Q. That would have been during the course of the session?
A. Yes.
Q. Page 2 is dated in the upper right-hand corner March 17, 1998, and it indicates that this was -- these are notes taken during the course of a trustees meeting; is that correct?
A. Yes.
Q. There's a note there that says "Rodney". Does

that refer to Rodney Park?
A. Yes, it does.
Q. The note references a discussion of the compensation plan. What did that refer to?
A. The teachers' compensation and the employees' compensation plans that we had before us.
Q. If you would turn to the next page, 3. This also occurs on March 17, 1998; is that correct?
A. Correct.
Q. There's a note that says "Nam", again referring to Nam Snow; is that correct?
A. Yes.
Q. Is she reporting to the trustees?
A. Yes, she is.
Q. It says, "Trustees commissions still alive." Do you see that?
A. Yes.
Q. Is she reporting on the bill in the legislature regarding trustees' commissions?
A. Yes.
Q. Was she tracking that bill?
A. Yes, amongst the other ones listed here.
Q. Below that note under "Korn-Ferry," there's a note that says, "Rodney is following up on one thing for speaker."

A. Yes.
Q. Is that Rodney Park?
A. Yes, sir, it is.
Q. Was he following up on something for Henry Peters?
A. Yes, that would be a question that was brought up, I believe, in the course of the meeting and there was several issues that we were trying to get clarification on and so he was reporting back to us.
Q. Who is Korn-Ferry?
A. Korn-Ferry was selected to do some of our searches for top personnel in the institution and they conducted the actual search for candidates and screened candidates and brought into us a final list.
Q. In the time frame of March 1998, do you recall what Korn-Ferry was working on?
A. I'm not sure if that was the asset manager job or any other job. I'm just not sure at this time.
Q. When was Mr. Randall Chang hired?
A. I can't remember.
Q. If you would refer to page 4, please. In the upper right-hand corner, it notes April 6, 1998 and trustees meeting; is that correct?
A. That's correct.
Q. So these notes were taken on April 6, 1998 at a

trustees meeting, correct?
A. That's correct.
Q. Again, there's a reference to Nam Snow, correct?
A. Yes.
Q. And she is reporting to the trustees on the trustees' commission bill; is that correct?
A. Yes, and also on the mandatory conversion of commercial property.
Q. Did the trustees take a position before the legislature on the trustees' commission bill?
A. What do you mean by "take a position"?
Q. Did they submit testimony?
A. I don't remember if we submitted testimony as a group. I do remember Henry Peters testifying.
Q. Who drafted his testimony?
A. I don't know.
Q. Would you turn to page 5, please. The notes on page 5 of Exhibit 133 were apparently taken on April 14, 1998 at a trustee meeting, correct?
A. Yes.
Q. Nam Snow again reported on trustee compensation; is that correct?
A. That's correct.
Q. Your note indicates that she reported to the trustees that day that they gutted the bill and put

in "reasonable compensation"?
A. That's correct.
Q. In fact, did the bill turn out in that form?
A. Yes.
Q. If you would turn to page 6, please. These notes were taken at a trustees meeting on April 23, 1998, correct?
A. Yes.
Q. And at the very bottom, Nam Snow again reported on the trustees' compensation bill, correct?
A. That's correct.
Q. You have written there next to your note, "Senate conferees on the compensation bill (sic)" five names; is that correct?
MR. GIERLACH: On the compensation committee.
A. Six, six names.
BY MR. ING:
Q. I'm sorry, six names, okay. Who were these individuals?
A. Nam reported that these were the ones that would be on the compensation committee. And I missed a name. See there's a blank there.
Q. But these were from the Senate side; is that correct?

A. That's correct.
Q. So there was a Joint Conference Committee on the trustees' compensation bill that met during the course of the legislative session; is that correct?
A. I don't know. I don't remember at this time.
Q. What does it mean to you when it says "Senate conferees"?
A. What it means to me, there was a Senate group and these were the people that were named. I didn't put any other note there, so I'm not sure if it meant that they were the conferees in a joint committee meeting or they were the ones that were going to confer themselves.
Q. The individuals you have listed there include Ross Baker, correct?
A. Yes.
Q. Carol Fukunaga?
A. Yes.
Q. Avery Chumbley?
A. Yes.
Q. Matt Matsunaga?
A. Yes.
Q. Whitney Anderson?
A. Yes.
Q. And Mike McCartney?

A. That's correct.
Q. Did you know any of these individuals personally?
A. I knew almost all of them personally.
Q. Were they friends of Kamehameha as far as you were concerned?
A. I don't know. Sometimes they were and sometimes they weren't.
Q. Whitney Anderson is the husband of Henny Anderson; is that correct?
A. That's correct.
Q. Would it be fair to say that Henny Anderson is a good friend of yours?
A. Of mine?
Q. Yes.
A. We've been friends for 40 years.
Q. Look at page 7, please. The notes on page 7 were taken on May 5th, 1998 at a trustees meeting; is that correct?
A. That's correct.
Q. And there's a note at the bottom of the page under "Nam" again, referring to Nam Snow; is that correct?
A. That's correct.
Q. Your handwriting says, "Ed Case's 'yanking the

bill'"?
A. Right.
Q. What does that refer to?
A. I don't know.
MR. GIERLACH: Well, so the record is clear, "yanking the bill" is in quotation marks.
BY MR. ING:
Q. Turn to page 8, please. At the bottom of page 8, there's a reference to "executive session". Do you see that?
A. Yes.
Q. So your notes following that were apparently taken during the course of an executive session of the trustees on May 5, 1998, correct?
A. That's correct.
Q. One of the issues discussed was intermediate sanctions; is that correct?
A. That's correct.
Q. The next page, 9, again these notes were taken during the course of a trustees meeting on May 5, 1998, correct?
A. That's correct.
Q. In the middle of the page, it says "executive session"?
A. Yes, it does.

Q. Again, it notes that, "Ed Case's yanking of the bill. Heavy-duty discussion. Power play in the House." Do you see that?
A. Yes.
Q. Does that refresh your recollection as to which bill was referred to by your comment there?
A. No, I'm still not sure which it was at this time.
Q. Turn to page 10. The notes at page 10 were also taken during the course of a trustees meeting on May 5, 1998, during executive session; is that correct?
A. Right.
Q. At the bottom of the page, it says "intermediate sanctions issue," correct?
A. Yes, it does.
Q. And there is a reference to a handout, page 3?
A. That's correct.
Q. Do you recall what the handout was?
A. No, I don't.
Q. Your notes indicate there was a comprehensive briefing to the Board of Trustees; is that correct?
A. That's correct.
Q. And there's also a reference, I'm sorry, to fiduciary handbook?

A. That's correct.
Q. And the SCA study?
A. Right.
Q. And the tax compliance workshop?
A. That's correct.
Q. Does that refresh your recollection as to what was discussed that day?
A. Well, I assume these areas were discussed, but it doesn't -- I can't remember at this time what actually was discussed.
Q. What was the fiduciary handbook?
A. There was a handbook that was put together and I don't know when. I'm not sure about this at this time. I would have to see the handbook to refresh my memory.
Q. At the time the intermediate sanctions legislation was passed in 1996, Mark McConaghy had come to Hawaii to brief the trustees on the requirements of provisions of the intermediate sanctions legislation, correct?
A. He had briefed us on many occasions regarding what was happening with the intermediate sanctions bill, and at various times, he came to Hawaii and at other times he called us on the phone, and still at other times, Nathan would come and report on what

Mark McConaghy said or Gil Ishikawa would report on what Mark McConaghy said.
Q. But during the last session of your deposition, we had gone over notes, your notes of Mark McConaghy's discussions regarding intermediate sanctions in late July 1996, August 1996 and then again in September 1996. Do you recall that?
A. Yes, we did go over those, but I'm not sure of the dates, because I don't have the documents before me, but I recall going over those, his visits and his discussions.
Q. In those notes of your discussions with Mr. McConaghy, there were references to the fiduciary handbook. Do you recall that?
A. That's right.
Q. Was there a relationship between the fiduciary handbook and the compensation studies and intermediate sanctions?
A. Without seeing the fiduciary handbook, I can't remember at this time.
Q. Was the fiduciary handbook developed by Mr. Jervis?
A. He took the lead in the fiduciary handbook development and he worked with Nathan Aipa, as I understand on that, as well as others.

Q. Was part of the incentive to develop the fiduciary handbook the fact that the intermediate sanctions legislation had passed?
A. I don't know if that was part of the incentive or not. I know that we did not have a fiduciary manual. There were many questions being brought up about our fiduciary responsibilities and what it is we can and cannot do and many times we got conflicting opinions and so it was felt that we needed something a little more concrete.
Q. Did Mark McConaghy advise the trustees that as a result of the intermediate sanctions legislation, there was a need to document the duties and responsibilities of the trustees?
A. Yes, I believe at one time he did.
Q. Is one of the purposes of the fiduciary handbook to document the duties and responsibilities of the trustees?
A. I don't remember that at this time.
Q. Turn to page 11, please. Page 11 contains your notes from the trustees meeting in executive session on May 5, 1998, correct?
A. That's correct.
Q. Again, there is a discussion here about the intermediate sanctions legislation?

A. That's correct.

Q. Your notes indicate that it was retroactive to September 1995, correct?

A. That's right.

Q. Do you recall who was making the presentation here at this time?

A. No, I would have to see the rest of my notes to see who was present and that may help me recall.

Q. Do your notes indicate that excessive benefits were discussed?

A. That's correct.

Q. What was your understanding of excessive benefits?

A. We didn't have a clear understanding of excessive benefits, because there was no rules and regulations promulgated at this time regarding excessive benefits. It was just generally stated that the disqualified persons could be trustees or PE's, that there was a penalty tax as listed on this page for excessive benefits.

And we had a lot of questions, as I recall, regarding what constitutes an excess benefit, who's going to tell us what an excess benefit is. There was all kinds of things discussed in trying to clarify exactly what is meant by excessive benefits.

Q. You were aware, however, that there were certain penalties that could be levied against disqualified persons for taking excess benefits?
A. We were told this at this session, as I recall.
Q. And you have noted a series of tax penalties under the title Penalty Tax, is that correct, of your notes?
A. That's correct.
Q. Were you at least comfortable in your mind that trustees such as yourself would fall under the category of disqualified persons?
A. That's what we were told at that time, trustees and PE's and others that were not identified.
Q. Turn to page 12 of Exhibit 133, please. Your notes on this page indicate that these were taken during the course of a trustees meeting on May 14, 1998, correct?
A. Yes.
Q. Again, there's a reference to Nam Snow in the lower middle portion of the page?
A. That's correct.
Q. And the note says, "Legislature 'sign and died' per Larry Price." What does that note refer to?
A. She must have reported to us that Larry Price said this on the radio in the morning, because

sometimes she would do that.

Q. Was Larry Price at any time a consultant or independent contractor to the Bishop Estate?

MR. GIERLACH: Lacks foundation, calls for speculation.

A. Not that I know of.

BY MR. ING:

Q. Turn to page 13 of Exhibit 133, please. The notes at page 13 were taken on May 26, 1998, correct?

A. That's correct.

Q. These notes refer to compensation, correct?

A. That's correct.

Q. If you could take a look at these, please. There apparently was a discussion regarding tax-exempt versus being a private entity, correct?

A. That's correct.

Q. What was that discussion about?

A. I think it started with looking at Campbell Estate and other estates who had gone from being tax-exempt to being private entities.

Q. Private entities being entities that pay taxes?

A. Yes. And so the group was discussing the benefits, the merits of being tax-exempt versus the benefit or the merits of being a private entity and we were asking questions or someone was asking

questions. If I had the other page, I could tell you who was here and maybe refresh my memory of what actually took place, but I just have this page.
Q. Apparently one of the questions that had been raised was what were the tax consequences if the estate became a taxable entity; is that correct?
A. That's correct.
Q. In particular, what the tax consequences were under the intermediate sanctions legislation of becoming a taxable entity?
A. That's correct.
Q. Did anyone do any work to analyze these issues on or about May of 1998?
A. I really don't know, because we were concerned how this affected us as an institution, but I don't know if they did or not.
Q. Now, there's a series of bullet points; is that correct?
A. Yes.
Q. And the next bullet point says, "Plan to meet with SCA - Mark McConaghy"; is that correct?
A. Yeah.
Q. And "Bruce" being Bruce Graham; is that correct?
A. Right.
Q. Was there a meeting with SCA, Mr. McConaghy and

Mr. Graham?
A. I don't recall, but if it was, we would have had it reflected in our minutes.
Q. Had --
A. Excuse me. Let me add, there was meetings with these people. I don't know if it was individually or collectively. I only recall meetings with Mark McConaghy and Bruce Graham.
Q. Were those meetings related to the issue of being a tax-exempt or taxable entity?
A. No, I think they were more related to what I have listed under that first bullet point which says we wanted advice on, "Do we take our full amount, can we set aside the amount we waive in case we need to reimburse the estate, can we" and I didn't finish, because we went on -- sometimes they talk faster than I can write.
Q. Did that advice refer to compensation that the trustees were receiving?
A. Yes.
Q. Did it also relate to the fact that the compensation, trustee compensation bill had passed the legislature with the provision of reasonable compensation to take effect in 1999?
A. I don't know if that came up at that time or

not, because I don't know that the Governor had signed that bill or not.
Q. So at least you were concerned or there were questions raised as to whether or not the trustees should take the full amount of their compensation?
A. There were questions raised periodically regarding this.
Q. Under the Advice On bullet, it says, "Can we 'set aside'"?
A. Yes.
Q. Was that in reference to setting aside a portion of commissions?
A. Yes, because if you finish that, it says, "Can we 'set aside' the amount we waived in case we need to reimburse the estate."
Q. So that's all one concept?
A. That's one concept.
Q. Did you do that at any time?
A. Did we set aside anything?
Q. Yes.
A. No.
Q. Turn to page 14, please. Your notes on page 14 of Exhibit 133 were taken on June 4, 1998, at a trustees meeting, correct?
A. That's correct.

Q. There's two numbered -- you have Agenda written there and then you have two things that are numbered and underscored; is that correct?
A. That's correct.
Q. The second one refers to intermediate dormitory renovation?
A. That's correct.
Q. And there's a note under there that says, "Put in a bill to the courts for instructions on CIP projects"?
A. Right.
Q. Was that in reference to a petition for instructions on capital improvement projects?
A. I can't remember what it was in reference to.
Q. Was there a need to obtain court approval on the utilization of funds for CIP projects?
A. There was never a need before, and that was part of the frustration, as I recall, that somebody suggested that we go to the Court to get approval on every single solitary thing we did and the trustees felt that the Court would be running the Estate if we had to go to them for every single solitary expenditure.
Q. There's a note right below that in your handwriting that says, "Let's move from this town"

with exclamation points?
A. That's correct.
Q. Is that part of that frustration?
A. That was a lot to do with that frustration.
Q. There's also a question raised, "Why are we getting so much negative press"?
A. That's correct.
Q. Is that also part of that frustration?
A. Yes, it is.
Q. Then your note below that, "We" -- meaning KSBE -- "are the only ones putting money in the town"?
A. Right.
Q. What did that refer to?
A. It referred to that the construction industry was really down and there was no construction work available, and a lot of construction workers that worked were doing work on our campus because we were renovating these dormitories in a systematic manner, and each renovation cost about 2.9 to $3.1 million or thereabouts.
We were fixing the roads on campus, we were digging water wells. We were putting in new infrastructure. We were looking at rebuilding or had just renovated the Kekuhaopio Gym. We were going to

put in a swimming pool. We were looking at an entire athletic complex.

And in doing all this, in trying to stimulate the economy, knowing full well we needed to do the renovations and we were willing and we had the money, because they didn't have money prior to this to do this, we felt it was important for the students to have the best possible facilities they could have, we were getting blasted in the water.

Q. So despite the fact that KSBE was contributing to the Hawaii economy on the one hand, on the other hand in the press, there was a lot of bad press about KSBE?

A. That's correct.

Q. Below that note, it says "JP." Who does that refer to?

A. John Peterson.

Q. And Mr. Peterson is an employee with the Estate?

A. Yes.

Q. What is his position?

A. He's an asset manager.

Q. There's a note following that that says, "KSBE's contribution is the difference between 'recession and depression'"?

A. That's correct, and that was his comment.

Q. His comment, okay, thank you.
A. And I have the quote on "recession and depression".
Q. If you turn to page 15, please, of Exhibit 133. Again, this page contains your notes from a trustees meeting on June 4, 1998, correct?
A. That's correct.
Q. There is a discussion noted on that page under Executive Session, correct?
A. Correct.
Q. There was a proposed subsidiary reorganization plan discussed; is that correct?
A. That's correct.
Q. Would you briefly describe what that was?
A. We were looking at our subsidiaries being more efficient and making sure that they followed this, the three criteria noted here, that they had a valid business purpose, valid continuity of business enterprise, and valid continuity of shareholder interest, and we wanted to make sure that in each of the subsidiary organizations they de-reorganized, and that was per a handout that was given us.
Q. Then you have the word "discussion" underscored, correct?
A. That's correct.

Q. And there's a number 1 there that is circled. It says, "Did we ever consider changing the trust to a non-profit corporation"?
A. Yes.
Q. Had that been done?
A. Had that been done? That was brought up.
MR. GIERLACH: Excuse me, it's vague and ambiguous.
BY MR. ING:
Q. Did the trustees consider at sometime changing the trust to a nonprofit corporation?
MR. GIERLACH: It's still vague and ambiguous.
A. Did we consider?
BY MR. ING:
Q. Yes.
A. No, we discussed, and we discussed it based on what Bishop Museum did, as I have in my notes. And then we said we were going to do this.
If you look at the second bullet, it said "okay" and then it's scratched out and it said, "Nathan will look into this and not come back to the board. We will form a non-profit in Delaware."
Unfortunately, I didn't scratch out the whole thing. But then we said, "No, we're not going to do

this." So the "okay" was removed and I scratched out the first part. I should have scratched out all the way down, "We will form a non-profit in Delaware," because we weren't going to do this.

Q. But there was discussion about forming a nonprofit in Delaware?

A. This was all discussion. We felt it was important for us at every step of the way to discuss what was best for the Estate and to look at all options available to us and we discussed this and we said okay and we nixed it at the same time.

Q. The next bullet on page 15 of Exhibit 133 says Valuation and it's number 2 with a circle around the number 2, correct?

A. That's correct.

Q. And there was also a discussion on the valuation as it related to the reorganization; is that correct?

A. Yes, a reorganization of our subsidiaries. It goes right back up to the subsidiaries.

Q. In the reorganization of these subsidiaries, was the discussion of forming a Delaware nonprofit to oversee the subsidiaries?

A. Oh, I don't recall what it was for. I also don't recall spending very much time on that.

Q. If you could turn to page 17, please. Page 17

are your notes from an executive session of the Board of Trustees on July 23, 1998, correct?
A. That's correct.
Q. And at the lower half of the page, it says, "White paper on intermediate sanctions." Do you see that?
A. That's correct.
Q. What was that about?
A. There was a white paper done with regards to intermediate sanctions that gave, as I recall, some of the pros and the cons.
Colbert wanted this white paper and there was a discussion about giving it to him and we said we would give this to him. I don't remember what all was contained on the white paper.
Q. This was in connection with the Master's consolidated report; is that correct?
A. I'm not sure.
Q. "Colbert" refers to Colbert Matsumoto?
A. Yes, it does.
Q. Mr. Matsumoto was the Master for the 109th and 110th and 111th Annual Accounts?
A. Yes, he was, but he went beyond his scope.
Q. In what way did he go beyond his scope?
A. He looked at other years other than 109, -10 and

-11.
Q. So from your recollection, the white paper was given or authorized to be given to Mr. Matsumoto?
A. That's what my notes say.
Q. Turn to page 18, please. These are your notes from an executive session of the Board of Trustees on September 17, 1998; is that correct?
A. That's correct.
Q. At the middle of the page, it says "intermediate sanctions"?
A. Yes.
Q. And there's a series of numbers there. What does that represent?
A. I don't remember at this time.
Q. Do you recall what the trustees were compensated during the fiscal year 1998?
A. No, I don't.
Q. Do you know whether the number is 900 or close to $900,000?
A. I can't remember at this time.
Q. Right below the numbers is the name Sue Templeton?
A. Yes.
Q. Does that refer to Sue Temkin of Verner Liipfert?

A. Yes. You see I have the "spelling," because I didn't know if it was spelled correctly or not.
Q. The notes under her name, however, indicate that several matters were discussed and it begins with "safe harbor." Do you see that?
MR. GIERLACH: That misstates the document.
A. No, what it says was the time spent by Verner Liipfert was cut up to address safe harbor, state law footnote, compensation issues and the Lobbying Disclosure Act.
BY MR. ING:
Q. So what was that in reference to?
A. What they spent their time looking at with regards to the intermediate sanctions.
Q. And the "time" referred to the time the Verner Liipfert law firm spent?
A. That's correct.
Q. Were there allocations to these various areas that you have noted here, safe harbor, state law footnote, compensation issues, Lobbying Disclosure Act?
A. No, this is what they were actually doing, as I understand.
Q. But your note says the time was cut up to address those issues?

A. Because they --
Q. Is that correct?
A. That's correct, because they bill according to time spent, right, and so what we were told was that the time -- and I assume that means billable, but I'm not sure -- the time that they spent was cut up to address these issues, these four issues, at least these four.
And there was something else I was going to put there and I didn't finish and I scratched out was what they were looking at with regards to intermediate sanctions.
Q. But the safe harbor, state law footnote, compensation issues, Lobbying Disclosure Act all related to the intermediate sanctions efforts by Verner Liipfert?
A. That's correct.
Q. There's a number next to Lobbying Disclosure. It says 180,000 and six months. What does that refer to?
A. I can't remember.
Q. If you would turn to page 19, please. These notes were taken in executive session on September 24, 1998; is that correct?
A. That's correct.

Q. There is a note up at the top that says, "The so-called 'lead trustee' system has been abolished"; is that correct?
A. That's correct.
Q. And then the next sentence says, "A new estate CEO based management system will be instituted"?
A. That's correct.
Q. What does that refer to?
A. You see the number 14 before that, I believe that was Stipulation 14.
Q. Stipulation 14 of the Master's recommended stipulations?
A. Yes.
Q. Did the trustees intend to establish a CEO-based management system?
A. Under great duress, we were forced to sign off on the CEO management system.
Q. What was the form of the duress?
A. Whatever Colbert wants, Colbert got and that was absolutely clear to us. If we didn't, he got it any way.
Q. So the trustees agreed to institute a CEO-based management system; is that correct?
A. We were forced to agree to institute a CEO management system.

Q. The trustees were forced to agree to a CEO-based management system?
A. That's correct.
Q. Turn to page 20. Your notes on page 20 are from an executive session of the Board of Trustees on October 6, 1998, correct?
A. That's correct.
Q. There's a title or a subtitle that says Supplemental Responses 9-16-98, correct?
A. Right.
Q. Is that a reference to the supplemental filing by the Master?
A. I'm not sure.
Q. There are several bullets below that. One says intermediate or refers to intermediate sanctions; is that correct?
A. Right.
Q. You note here is that Colbert thought that the whole $900,000 was used to defend trustees' compensation; is that correct?
A. That's correct.
Q. Was there a review conducted at that time on the Master's supplemental report to the Probate Court?
A. Somebody must have been presenting this to us and this is what we were being told, and I would need

my other page to say who was in the meeting to refresh my memory as who was presenting this to us, because they were giving us this information and they were also telling us at a minimum we should say these things. So I'm not sure who was presenting this to us.
Q. If you would turn to page 22 of Exhibit 133, please. These were your notes from an executive session on November 12, 1998, correct?
A. Yes.
Q. In the middle of the page, your notes indicate that compensation was discussed?
A. Right.
Q. What does your note there discuss?
A. On compensation?
Q. Yes.
A. "Federal law and state law addressing this. Federal law prevails. Federal law more specific."
Q. Did that relate to trustees' compensation?
A. I think it was compensation for trustees and PE's for the disqualified persons and I don't know who was presenting this to us either.
Q. However, if you were to examine the minutes of the meeting on November 12, 1998, that may refresh your recollection?

MR. GIERLACH: Calls for speculation. They're not before her.
BY MR. ING:
Q. What would you need to refer to to refresh your recollection as to who was present?
A. Maybe the other pages of my notebooks and/or the minutes. But note also at the bottom of the page, I have "disqualified persons." So it ties in under compensation and also the Stipulation No. 15.
Q. Did that refer to compensation plan?
A. I don't know. I don't have the stipulation before me.
Q. Would you take a look at page 23 of Exhibit 133, please. These are also your notes from executive session of the Board of Trustees on November 12, 1998, correct?
A. That's correct.
Q. These notes also indicate a discussion regarding intermediate sanctions; is that correct?
A. That's correct.
Q. In the middle of the page, there's a reference to January 1, 1999. Do you see that?
A. Yes.
Q. You have notes below that, correct?
A. Yes.

Q. What does that refer to?
A. I guess there was a presentation made to us regarding the rules and regulations regarding intermediate sanctions, because there were no rules and regulations promulgated, which is why we've been having, we were having such a very difficult time with intermediate sanctions.
We were told by whomever that the intermediate sanctions rules and regulations should be decided by the middle of 1999, and we were in 1998, trying to guess what these things were.
And then it comes down to January 1st, 1999, where they talk about -- whoever was presenting it to us said that the state law kicked in and said the major trust companies are taking the money that they think is reasonable and will be prepared to refund any of it later per the Court.
What the major trust companies did was just to, as I recall, was just to take what they were already getting per the state law until such time as we knew what the rules and regulations were and what "reasonable" meant.
Q. Down at the bottom, there's a reference to the SCA study; is that correct?
A. Well, it goes back to the intermediate sanctions

and it says it kicks -- they're going to have -- I have in my notes, "Eventually intermediate sanctions kicks in around mid-'99." And then the interim period starts January 1, 1999, and what it says is, "What we have is a SCA study."
Q. If you could turn to page 24 of your notes, which follow from the previous page; is that correct?
A. That's correct.
Q. Again, this is taken during the course of an executive session on November 12, 1998, correct?
A. That's correct.
Q. Your notes indicate that the SCA study may solve state problems but not the fed's sanction. Do you see that?
A. That's correct.
Q. What is that in reference to?
A. Whoever was presenting this to us was saying that the SCA study may solve the state problems, but not the fed sanctions. And nobody knew what the fed sanctions would be based upon, because they didn't have any rules and regulations. And then the next thing --
MR. GIERLACH: Wait for him to ask you a question.
THE WITNESS: Okay.

BY MR. ING:
Q. The next thing in the middle of the page, it says, "Suggestion use marketable compensation." Do you see that, and it's underscored?
A. That's correct.
Q. Would you read your notes below that, please?
A. It says, "Why wouldn't other trustees compensation, i.e., Campbell Estate be part of 'reasonableness'. Court ordered us to have a study every three years regarding compensation."
Q. Did the discussion suggest using the SCA study to defend what was reasonable compensation after January 1, 1999?
MR. GIERLACH: I object. The only foundation is there's been a presentation and not a discussion.
BY MR. ING:
Q. Was there a discussion, Mrs. Lindsey, about using the SCA study to defend compensation following January 1, 1999?
A. At this meeting?
Q. Yes.
A. I don't recall.
Q. At any time?
A. It was used in part. As I recall, the SCA study

was only one portion of the discussion, of a discussion, and the reason is that there were many, many other factors, including state law, and we were following the laws of the land up until December 31st, 1998.

MR. ING: This might be an appropriate time to take a break.

(Recess from 11:45 to 11:53 a.m.)

BY MR. ING:

Q. Mrs. Lindsey, could you turn to page 28, please, of Exhibit 133. Your notes at page 28 were taken on December 17, 1998, correct?

A. Yes.

Q. There is a series of numbers on that page beginning with 4, correct?

A. Yes.

Q. What is the note numbered 4 on page 28 of Exhibit 133?

A. It says, "December 16, 1998, memo to trustees from Nathan."

Q. And it says, "Attached - Mark McConaghy's." And then it says, "Reference meeting with Janet Hughes in Seattle"; is that correct?

A. That's correct.

Q. Then below that, it says "proposes revocation"?

A. That's correct.
Q. What was that in reference to?
A. I'm not sure. I'd have to see what the memo says.
Q. Did Mark McConaghy brief the trustees in late December 1998 as to what IRS was thinking about doing with respect to its audit?
MR. GIERLACH: You mean personally? Personally or threw a memo or writing?
BY MR. ING:
Q. In any way, whether a conference call or personally or through a memo.
A. I don't recall when he did it.
Q. Did IRS subsequently propose revocation of the KSBE exempt status?
A. That's correct.
Q. If you would turn to page 29 of Exhibit 133, please. These are also notes taken on December 17, 1998, correct?
A. That's correct.
Q. You have on this page of your notes the word "compensation" underscored?
A. That's correct.
Q. Below that it says, "Stay within a range of 3-1/2 to 5-1/2 per SCA studies." Do you see that?

A. Yes.
Q. What does that refer to?
A. I don't recall at this time.
Q. Then it says, "Trustees will stay with status quo"?
A. That's correct.
Q. Is that in reference to trustees' compensation?
A. That's correct.
Q. What was the status quo at that time?
A. What state law said.
Q. What did the state law say?
A. I can't quote it specifically, but it gives the percentage amount the trustees can take as compensation in several areas.
Q. Roughly that approximates two percent; is that correct?
A. Roughly.
Q. And that's two percent of the revenue received during the course of the year?
A. That's correct.
Q. So was a decision made for the trustees to stay with what they had been receiving for the past year?
A. That's correct.
Q. In terms of the trustees' compensation, trustees were provided with a memo from Wally Chin each month

showing what the trustees would receive in commissions for the prior month; is that correct?
A. That's correct.
Q. Did the trustees receive this each month?
A. Yes.
Q. Were the checks for trustees' commissions cut based upon the numbers and figures shown in those monthly summaries?
A. Yes.
Q. Turn to page 30 of Exhibit 133, please. Page 30 is a copy of handwritten notes from December 23, 1998, correct?
A. That's correct.
Q. At the middle of that page, you have "intermediate sanctions" underscored, correct?
A. Yes.
Q. What was the discussion regarding intermediate sanctions or what does your note refer to as it relates to intermediate sanctions?
MR. GIERLACH: Again, my objection is to foundation as to whether there was a discussion or a presentation.
A. I think this was some of the areas that were being presented to us by someone and I would need the rest of my notes to determine who that someone was.

BY MR. ING:
Q. At the bottom of page 30, there is the word "trustee compensation" and it's underscored, correct?
A. That's correct.
Q. What does that note refer to?
A. That it was filed in court, Bishop Estate is the biggest and best organized, and other trusts may be looking for us to take the lead.
Q. If you could turn to page 31. Up at the top, is that a continuation of the prior note?
A. I'm not sure. It may be.
Q. At the bottom of page 31 -- page 31 is, however, a copy of your notes taken on December 23, 1998, correct?
A. Right.
Q. At the bottom, it says, "CEO issue versus strategic plan"; is that correct?
A. Yes.
Q. Can you review your note there and tell me what that discusses?
A. What it does -- I don't believe we were discussing this. I believe somebody was presenting this to us. However, I'm not sure.
Q. What does it --
A. It says, "CEO issue versus strategic plan.

Should it be postponed or should we have a CEO on an interim basis - strong management structure for an estate."

Q. Did this refer to the agreement that was forced upon the trustees regarding the CEO-based management structure?

A. That's correct.

Q. What, if anything, had been done to implement a CEO-based management structure at least as of the end of the year 1998?

A. We were looking at strategic planning, and it says it right above. In strategic planning, we were looking at the CEO issue.

It says, "CEO issue versus strategic plan." And the question was do we put in a CEO before you have a strategic plan or do you have a strategic plan before you put in a CEO.

Q. Was any decision made along that regard?

A. No, this was presented to us as something we should consider.

Q. But either prior to that or subsequently, did the trustees ever make a decision as to whether they should proceed with hiring a CEO prior to completion of strategic planning or to proceed with completing strategic planning and then retaining a CEO?

A. I don't remember when we made a decision on that.
Q. Turn to page 33, please. Page 33 contains your notes taken on January 14, 1999, correct?
A. That's correct.
Q. And this was in an executive session?
A. Yes.
Q. Of the Board of Trustees?
A. Yes.
Q. You have a note there "Nathan"; is that correct?
A. Yes.
Q. Was Nathan doing the presentation?
A. Yes.
Q. Were you taking notes of the presentation made by Nathan Aipa?
A. Yes.
Q. Apparently there was a series of charts, as you have "chart No. 1" off to the left side of that, correct?
A. That's correct.
Q. During this presentation, was Nathan discussing the 5701s that had been received by the Estate?
A. Nathan shared with us at this time he got the 5701s on January 4th, 1999, as stated in my notes, and he told us these were the steps that would be

taken to respond to the 5701s.
Q. If you could look at page 34, please. This is a continuation of your notes from page 33; is that correct?
A. That's correct.
Q. Would you look at page 35 and 36 as well. These pages are also a continuation of your notes at that same executive session on January 14, 1999, correct?
A. That's correct.
Q. These notes continue on to page 37 as well, correct?
A. Yes, 37.
Q. Thirty-seven, yes. Page 38 also reflects your notes of January 14, 1999, correct?
A. That's correct.
Q. In this case, you have "Henry" underscored. Is that Henry Peters?
A. Yes, it is.
Q. So were you taking notes of what he was reporting or saying to the Board?
A. Yes.
Q. Below that there is "Jerry". Does that refer to Jerry Jervis?
A. Yes, it does.
Q. You have noted down his comments at that

meeting; is that correct?
A. Yes.
Q. If you could look at pages 39 through 45 of Exhibit 133 and tell me whether those were notes that were also taken during the executive session on January 14, 1999?
A. Thirty-nine to what page?
Q. Forty-five.
A. Yes.
Q. Just so that the record is clear, Mrs. Lindsey, pages 39 through 45 of Exhibit 133 are also your notes taken at the executive session of the Board of Trustees conducted on January 14, 1999; is that correct?
A. That's correct.
Q. Could you look at pages 46, 47 and 48 of Exhibit 133 and tell me whether these notes of yours were taken on January 20, 1999?
A. Yes.
Q. These notes relate to conflict of interest of the Incumbent Trustees as it related to the IRS audit; is that correct?
A. Can you repeat the question?
Q. Do the notes reflected on pages 46, 47 and 48 of Exhibit 133 refer to a conflict of interest of the

Incumbent Trustees as it related to the IRS audit?
A. Can I speak to him outside?
Q. Yes.
(Recess from 12:09 to 12:11 p.m.)
A. Can you repeat the question one more time?
BY MR. ING:
Q. Mrs. Lindsey, do your notes on pages 46, 47 and 48 of Exhibit 133 refer to a conflict of interest of the Incumbent Trustees as it related to the IRS audit?
A. It refers to a discussion of the conflict of interest.
Q. You note on page 46 that, "Mark and Nathan declared a conflict on Thursday, January 14, 1999;" correct?
A. That's correct.
Q. And that "Mark" refers to Mark McConaghy?
A. That's correct.
Q. And "Nathan" refers to Nathan Aipa?
A. That's correct.
Q. Did they advise the Board of Trustees on January 14, 1999, that they believed there was a conflict of interest between the Board of Trustees and the handling of the IRS audit?
A. No.

Q. Would you take a look at your second bullet on page 46 of Exhibit 133?
A. That's correct.
Q. Would you read that bullet, please?
A. It says, "Mark and Nathan declared a conflict on Thursday, January 14, 1999."
Q. What does that refer to?
A. Colbert informed us that Nathan and Mark said there was a conflict on January 14th, 1999. We had no idea a conflict had been declared.
Q. Could you read the bottom section of that same bullet on page 46?
A. It says, "Nathan said there is definitely a conflict; there are varying degrees of conflict as it applies to individual trustees and its global."
Q. Again, does that note refer to a conflict of interest between the Board of Trustees and the handling of the IRS audit?
A. There was a discussion on it, yes.
Q. At the top of page 47 of Exhibit 133, it says "Nathan" underscored. Does that mean that Nathan was the speaker?
A. Yes.
Q. Under that, it says, "Trustees are the ones to determine conflict"; is that correct?

A. That's correct.
Q. What was that in reference to?
A. That's in reference to us.
Q. Was that Nathan speaking or is that your note?
A. Usually, when I put the name at the top underlined, it's Nathan speaking.
Q. So that's the first bullet. The second bullet says, "Proposed sanctions of the IRS are adverse to the Estate." Do you see that?
A. That's correct.
Q. Is that Nathan speaking again?
A. I believe so.
Q. And then there are four sub-bullets below that; is that correct?
A. Yes.
Q. Those are references to areas that are adverse to the Estate?
A. Yes, they are.
Q. Would you read those, please?
A. "Unreasonable compensation, private inurement, private benefits, primary process, and admissions policy."
Q. Turn to page 48, please. There are additional bullets that refer to private benefits, primary purpose, and primary purpose again; is that correct?

A. Yes.
Q. Were you taking notes of what Nathan was presenting?
A. I believe that's what I was doing. Just to verify it, I would have to have the other pages to show who was there and who was speaking.
Q. Referring to the other pages of your notes?
A. Yes, or to the minutes.
Q. Under Private Benefits, it says, "Giving contracts to benefit outsiders." Do you see that?
A. Yes.
Q. What was your understanding as to what that referred to?
A. I don't remember at this time.
Q. If you could turn to page 49 of Exhibit 133, please. These are notes taken at a trustees meeting on April 22, 1999, correct?
A. Yes.
Q. At the bottom, it says "Rodney". Does that refer to Rodney Park?
A. Yes, it does.
Q. What does your note below Rodney indicate?
A. It indicated we stipulated that we would have a CEO in place. We filed a petition with the Court asking for it and then 90-day extension.

Q. As of April 22, 1999, what had been done by the trustees to comply with the forced stipulation to establish a CEO-based management structure?
A. We had to write up an RFP, as I recall, or some position paper and we had to get the approval of the Master and the Attorney General before we could go forward.
And we kept going back and forth with the Master and the Attorney General and they wouldn't approve it or one would approve and one would make corrections and the other would not approve it. So we were in this Catch 22 for a long period of time and we were not able to meet the deadlines, which is why we asked for an extension.
Q. Had anything else been done?
A. I believe we contacted Korn-Ferry to start a search and we had some things in place that also had to be approved and we were really in a Catch 22.
Q. Is page 50 a continuation from page 49 of your notes taken at the Board of Trustees meeting on April 22, 1999?
A. Yes, it is.
Q. On that page, you note that Henry spoke up regarding the management audit and the CEO-based structure; is that correct?

A. That's correct.
Q. And that refers to Henry Peters?
A. Yes, but he was explaining Holders' testimony regarding the management audit.
Q. And who was Holder?
A. He was an expert that was brought in to testify on this issue, as I recall.
Q. At the hearing that was before Judge Hirai?
A. I'm not sure what judge it was before.
Q. If you could turn to page 51. This is also a continuation of your notes of the trustees meeting on April 22, 1999, correct?
A. Yes.
Q. Would you take a look at the upper half of page 51 of Exhibit 133 and tell me what that refers to?
A. Because we were still in limbo with regards to the 90-day extension, we wanted to meet with Bruce Graham regarding deferral of the CEO issue until the plan, the strategic plan is completed and Rodney to talk to Korn-Ferry regarding the CEO job description.
Q. Had you received a job description for a CEO as of April 22, 1999?
A. I'm not sure when we received it, but I know that that also had to be approved by the AG and the Master and we had problems with getting that

approval.
Q. Would you take a look at pages 52, and the next page is not numbered, the page following 52. I wonder if you could take a look at that page and verify it.
A. Fifty-two?
Q. No, the page following 52.
A. It has no number.
MR. GIERLACH: Right.
BY MR. ING:
Q. Why don't we just label that as 52-A. If you could take a look at page 52 and 52-A, 53, 54, 55, 56, 57, 58, 59, 60, 61 and tell me if those were your notes taken at an executive session of the Board of Trustees on April 27, 1999?
A. Yes, except that I believe the 60 and 61 is 4-29-99.
Q. So the --
A. I mean 60, and that may have been just a mistake on my part, but I'm not sure unless I see the book.
Q. Page 60 indicates 4-29-99; is that correct?
A. Yes, it does.
Q. Up at the top. That may be a mistake or it may be accurate?
A. That's correct.

Q. But 60 was either taken on April 27th or April 29th, 1999?
A. That's correct.
Q. Anyway, the executive session that was held on April 27, at least according to your notes, involved a discussion about the IRS's position that the trustees be removed; is that correct?
A. I believe this was a presentation to us, not a discussion.
Q. A presentation was being given by Mr. Hare?
A. Yes.
Q. If you could refer to pages 63 through 73 of Exhibit 133. Are those pages of your notes taken during a Board of Trustees meeting in executive session on April 29, 1999?
A. What is the last page you cited?
Q. Seventy-three.
A. Yes.
Q. And these notes reflect a discussion of Mr. Stender's filing, as well as the Master's report regarding IRS's position that the trustees resign or be removed?
MR. GIERLACH: Lacks foundation.
BY MR. ING:
Q. Is that correct?

A. Could you repeat the question?
Q. Yes. Take a look at page 63 first. Up at the top it says Discussion underscored; is that correct?
A. That's correct.
Q. It says, "Number 1, Oz's filing"?
A. Yes.
Q. That refers to a filing made by Mr. Stender regarding the IRS position?
A. Right.
Q. And, number 2, it says "compensation issue"?
A. Yes.
Q. "Will accept 600,000 as a salary." What does that refer to?
A. Oz's filing.
Q. Take a look at page 64. Your note says Executive Session. Below that it says, "Discussion: Masters report"?
A. Yes.
Q. Do those notes reflect the discussion regarding the Master's report on the IRS's position that the trustees resign or be removed?
A. I think this says, "Discussion: Masters report," but it says, "Same agency" -- referring to the IRS -- "that had to apologize to the American people for its abusive tactics."

And then again, "Same agency" -- referring to the IRS -- "that accused us of discrimination and threatened us with revocation of tax-exempt status."

I don't know if it really came under the heading of Masters Report or just the IRS.

Q. But if you look at page 65, you have various headings on there: "Jerry" and then followed by "Henry" and then followed by "Jerry"?

A. That's correct.

Q. That would reflect in the way in which you take notes a discussion by these individuals; is that correct?

A. Right.

Q. And you are recording here statements by Mr. Jervis and then by Mr. Peters and then by Mr. Jervis; is that correct?

A. That's correct. And I'm convinced that 4-29 on this other one belongs in here, that page 60 is out of context.

Q. So page 60 of Exhibit 133 should go where?

A. I don't know, but I think we need to verify it with my steno pads.

Q. We'll do that at the time of trial. You will have your original steno pad with you at the time of trial.

If you would just look at pages 65 through 73 and tell me whether your notes for those pages of Exhibit 133 reflect the discussion about the Master's filing and IRS's position regarding the removal and/or resignation of trustees?
A. I don't believe it only included the removal and/or resignation of trustees.
Q. What else was included in the discussion?
A. We talked about process and procedure. We talked about Oz's filing. We talked about what is it the IRS can or cannot do. We talked about Verner Liipfert, and we talked about who should coordinate this, and we talked about the revocation and we talked about who was or who was not at a meeting on April 19th.
And we talked about whether or not the -- we talked about the IRS suspending communication with us and whether or not Carroll Taylor was at the meeting and our decision regarding Bruce Graham and McCorriston. And Bruce Graham also made a presentation to us. That's it.
Q. At the end of that discussion, it was decided that Mr. Graham and Mr. McCorriston would handle the matter for the trustees; is that correct?
A. Not at the end of the discussion.

Q. Or as part of the discussion?
A. It was decided prior to Bruce Graham making a presentation to us. So maybe it was the end of the discussion.
Q. If you could look at page 70, please. At the bottom of that page, it says, "Trustees decided" underscored?
A. Yes.
Q. And then it says Bruce Graham and McCorriston would handle the matter; is that correct?
A. They would prepare a document to file.
Q. That would be a document filed with the Probate Court?
A. I'm not sure if it's the Probate Court or with the IRS at this time.
Q. Do you recall whether the trustees filed anything with the Probate Court after April 29, 1999 and prior to May 7, 1999?
A. I don't recall.
(Mr. Miyagi enters deposition room.)
BY MR. ING:
Q. Would you refer to pages 78 through 83, please.
Are your notes reflected in pages 78 through 83 of Exhibit 133 taken at a trustees meeting on May 4, 1999?

A. Yes.
Q. Part of the agenda for that day involved the Charles Reed Bishop Trust; is that correct?
A. Yes.
Q. If you could refer to page 81, please, in that series. At the bottom of that page, your note says, "Concern raised, re: Should we waive our commissions." Do you see that?
A. Yes.
Q. Was that a reference to the trustees' commission for the year 1999?
A. No, it was a reference to the trustees' commissions from the Charles Reed Trust.
Q. Did the trustees decide to waive those commissions?
A. I don't recall.
Q. Page 82 of Exhibit 133, there's a reference to Governance in the middle of the page, correct?
A. Yes.
Q. And the trustees approved the beginning of a search for an internal auditor; is that correct?
A. Yes.
Q. Is that approval on that particular day? In other words, was that approval made on May 4, 1999?
A. I think so.

Q. After that it says "expedite". What does that refer to?
A. To do it in a hurry.
Q. Why was that?
A. I don't remember.
Q. Turn to the top of page 83, please. Again, this is in reference to your notes taken during the course of an executive session on May 4, 1999, correct?
A. That's correct.
Q. Up at the top of that page, it says "Oz"?
A. Right.
Q. There's some quoted remarks; is that correct?
A. That's correct.
Q. Would you read that, please?
A. "It's too bad we are going through all of this, but the IRS is going to do this to us. They are going to take us out on excessive compensation."
Q. That was in reference to statements made by Mr. Stender?
A. Yes.
Q. Below there's a reference to "Henry" and that's Henry Peters, correct?
A. That's correct.
Q. What was his statement?
A. He said, "It's good that we earn commissions and

not a salary."
Q. Did he explain that?
A. I don't recall.
Q. Below that there's another statement. Would you read that?
A. "None of this is fair - they keep on doing it to us."
Q. Was that your statement?
A. No.
Q. Whose statement was that?
A. I think it's Henry's.
Q. Turn to page 84 and 85. These notes were taken on May 5th, 1999, correct?
A. Yes.
Q. Would you turn to page 86. If you could look at pages 86, 87, 88. Were your notes on those pages of Exhibit 133 during the course of an executive session of the Board of Trustees on May 6, 1999?
A. Yes.
Q. At the bottom of page 86, you have "CEO issue" underscored?
A. Yes.
Q. And there's a discussion about Gil Tam; is that correct?
A. That's correct.

Q. Did the trustees decide during the course of that meeting to offer Gil Tam an interim position as a CEO?
A. Yes.
Q. Whose idea was that?
A. It had been talked about before, but I brought it up as an issue on that day.
Q. Had you at that time received the description of the CEO position from Korn-Ferry?
A. I don't remember.
Q. Did the trustees have before them at that meeting on May 6, 1999 a position description of a CEO or an interim CEO?
A. I don't recall.
Q. When you look for a CEO candidate, what qualities and/or qualifications do you look for?
A. We asked Korn-Ferry to come up with a job description for us and he listed down -- they were going to do this initial search. Our frustration was trying to be in compliance with the Court.
Q. But what qualifications did you look for when hiring an interim CEO or a CEO?
A. What qualifications did we look for when hiring an interim CEO which is what we are discussing, was someone who new the organization, someone who had

experience in all facets of business, someone who could come in and take over for a short period of time only until we could pick a CEO per the job descriptions that had all of the qualifications that we needed.

Q. With respect to the permanent position of CEO, were you relying upon Korn-Ferry to come up with a description of the position?

A. To some degree, because they would give us draft copies and we would make our input, as they did with the asset manager. Korn-Ferry would come in and interview us as a group and then individually and then we would all have our input and come up with a draft.

Q. Were you also relying upon Korn-Ferry to come up with recommended qualifications for CEO candidates?

A. I think we were going to put in some of our recommended qualifications and they would bring to the table some of theirs.

Q. From that, you would come up with a final set of qualifications?

A. Yes.

Q. What were your ideas about what a qualified CEO candidate is?

A. What were my ideas personally?

Q. Yes.
A. I personally felt that a qualified CEO should be able to implement the strategic plan. I personally felt that the strategic plan should be in place before we hired a CEO, that it is important to know where we were going to go, what we were going to do, and make sure that person fit what our, what we wanted to accomplish in, say, five years, 10 years based on the strategic planning document.
Q. Did a CEO candidate need to have other qualifications besides the ability to comply with or carry out a strategic plan?
A. It depends on what the strategic plan called for.
Q. In what sense? Would you explain that, please.
A. For example, if the strategic plan was a plan just to maintain what was in place at that time, then you would look for a CEO that could maintain what was in place.
If you had a very aggressive strategic plan which said to expand real estate investments so that they met certain benchmarks or criteria, you would look for someone who was successful in this arena.
If you were, the strategic plan called for an expansion of the educational models throughout the

state and maybe even include the mainland areas where there's a population of Hawaiians, you would look for a CEO who had these qualifications.

Q. As of May 1999, what did the strategic plan call for as it related to senior management of the Estate?

MR. GIERLACH: The strategic plan speaks for itself.

BY MR. ING:

Q. You may answer, if you understand the question.

A. We were still in the process of having a completed comprehensive strategic plan.

Q. A strategic plan at least as of that date had not been completed; is that correct?

A. We had completed an educational strategic plan. We were in the process of putting the other parts to it.

Q. Parts to a strategic plan for the Estate as a whole; is that correct?

A. That's correct.

Q. Was any other candidate considered for the interim CEO position besides Mr. Tam?

A. Not at that meeting.

Q. Was anyone else considered for the interim CEO position at any time besides Mr. Tam?

A. I don't recall.
Q. You apparently called Mr. Tam to extend him an offer; is that correct?
A. I was -- I asked him if he would be willing to come. I didn't extend him an offer. And I asked him, if he were willing to come, what would be the criteria that he would accept and that's what I took to the Board.
Q. Did you offer a position to Mr. Tam?
A. Did I offer it?
Q. On behalf of the Board.
A. I don't think I made that call. I'm not sure.
Q. Did the Board offer a position, the interim CEO position to Mr. Tam?
A. The Board voted four-to-one to offer Mr. Tam the interim CEO position to be in compliance with the court order.
Q. Was it the Board's understanding that if it made that offer to Mr. Tam that it would be in compliance with the Court's order?
A. It was the Board's position, yes, per advice from our attorneys.
Q. I take it that the Board followed that advice?
A. Yes.
Q. Who was the attorney that gave the Board that

advice?
A. I don't recall if it was Nathan or Bruce, but there was discussions with them.
Q. So either Nathan or Bruce in your mind advised the Board that if they hired an interim CEO, it would be in compliance with the Court's forced stipulation regarding the CEO-based management system?
A. When our 90-day extension was turned down, then we wanted a two-week extension to try to come up with an interim CEO, per my notes, and that was not granted. The judge wouldn't hear it because it was a stipulation -- I mean it was a status conference.
We were between a rock and a hard place and the discussion that we could be in compliance if we did this.
Q. The Board could be in compliance if it hired Mr. Tam as an interim CEO?
A. If we hired an interim CEO. Mr. Tam was a result of that, as I recall.
Q. So the Board's conclusion as a result of those discussions and the inability to get any further extensions was that if the Board hired an interim CEO, it would be in compliance?
A. Yes, that's correct.
MR. ING: Off the record.

(Discussion off the record.)

(Luncheon recess from 12:51 to 1:32 p.m.)

(Mr. Miyagi is no longer present.)

MR. ING: I'd like to have the next exhibit marked as Exhibit 134. These have page numbers as well, which have been put on by my office, pages 89 through 116.

The next exhibit I'd like to have marked is Exhibit 135. Exhibit 135 also has page numbers which have been marked at the bottom right-hand corner by my office, 117 through 132.

I'd like to mark the next exhibit as Exhibit 136. Exhibit 136 consists of pages in the lower right-hand corner marked 133 through 135.

I'd like to mark the next exhibit as 137. Exhibit 137 consists of pages 136 through 138.

I'd like to mark the next exhibit as 138. Exhibit 138 consists of pages 139 through 145.

I'd like to mark the next exhibit 139. Exhibit 139 consists of pages 146 through 149.

I'd like to mark the next exhibit 140. Exhibit 140 consists of pages 150 through 165.

I'd like to mark the next exhibit as 141. Exhibit 141 consists of pages 166 through 169.

/////

(Exhibit No. 134 marked
for identification.)

BY MR. ING:

Q. Mrs. Lindsey, could you take a look first at what has been marked as Exhibit 134. For the record, if you could refer to the one that has been marked by the court reporter, please.

A. All right.

Q. I will represent to you that we obtained Exhibit 134 from your documents that were made available to us at Mr. Gierlach's office.

I want you to take a look at Exhibit 134. I'm not going to ask you detailed questions about it, but see if you recall receiving these documents.

A. Do I recall receiving them? No, I don't.

Q. If you could look at page 90 of Exhibit 134.

Earlier in your testimony, you indicated that Mr. Peters had submitted testimony on the trustee compensation bill that was before the Hawaii legislature during the 1998 session. Do you recall that?

A. I believe I said he testified, but if I didn't, that's what I meant, that he testified.

Q. Could you take a look at pages 90, 91 and 92 of Exhibit 134. You have seen Mr. Peters' signature, of course?

A. Oh, yes.

Q. If you could look at page 92, does that appear to be his signature?

A. Yes.

Q. Did Mr. Peters tell you that he would be testifying before the Hawaii legislature or submitting testimony regarding the trustees' compensation?

A. I don't remember him telling us.

Q. Would you take a look at these pages and see if that refreshes your recollection as to whether or not you've seen the copy of testimony prepared by Mr. Peters?

A. I may have.

Q. Did you attend any of the legislative committee meetings regarding the trustee compensation bill?

A. No, I don't believe I did.

Q. Earlier when we were looking at Exhibit 133, I had asked you about a House bill on page 1 of Exhibit 133, House Bill 2362, House Draft 1, and you indicated that you could not recall whether that related to trustee compensation; is that correct?

A. That's correct.

Q. If you could look at page 93 of Exhibit 134

through 98 and tell me if that refreshes your recollection regarding House Bill 2362?
A. It says it's a bill for an act related to charitable trusts.
Q. And did that bill address trustees' compensation?
A. Yes.
Q. Did Nam Snow provide you with copies of House Bill 2362?
A. I'm not sure, but she may have.
Q. She did provide trustees with reports from time to time in the spring of 1998 regarding the progress of that bill through the legislature; is that correct?
A. She provided reports on the progress of all bills that affected us.
Q. Included among those bills was House Bill 2362, correct?
A. Yes.
Q. Is it your testimony that she may have provided you with copies of that document?
A. She may have, but I'm not sure.
Q. If you could take a look at page 100 of Exhibit 134. In the left-hand corner, there's a note that says "file." Is that your handwriting?

A. Yes.
Q. Would that refresh your recollection as to whether or not you received pages 100 and 101 of Exhibit 134?
A. Yes.
Q. If you could look at page 114 of Exhibit 134.
On page 114 in the upper left-hand corner, it has the word "file" written on it. Is that your handwriting?
A. Yes, it is.
Q. Was it your practice to write the word "file" when you received documents and you wanted those filed?
A. Yes.
Q. So you would have given this to your secretary, Emilia?
A. That's correct.
Q. And she would have filed it?
A. Yes.
Q. Do you recall having a file on trustee compensation bill that was in the legislature in 1998?
A. Not a file on trustee compensation bill per se.
Q. How about a file on House Bill 2362?
A. No, a file on government relations.

Q. You would have filed it under government relations?
A. Yes.
Q. If you'd look at page 114 through 116, do you know who prepared this document?
A. No, I don't.
Q. Do you know why you received it?
A. No, I don't.
(Exhibit No. 135 marked for identification.)
BY MR. ING:
Q. Would you take a look at Exhibit 135. Exhibit 135 is also a document that was obtained from your files through your attorneys.
Would you take a look at it and see if this refreshes your recollection regarding whether or not SCA submitted testimony before the Hawaii legislature regarding House Bill 2362?
A. Yes, they submitted testimony.
Q. Did you have an opportunity to review this testimony prior to the time it was submitted?
A. No, not that I recall.
Q. Do you recall Mr. Hourihan being present in the boardroom to discuss his testimony prior to the time that he went in to testify?

A. I know people from SCA were present in the ballroom, boardroom. I remember them discussing their analysis at one time. I don't remember specifically them discussing this. They may have.
Q. Do you know whether the SCA was paid for its presentation before the Hawaii legislature on House Bill 2362?
A. Do I know when they were paid?
Q. No, whether they were paid.
A. No, I don't.
Q. Did the Board of Trustees retain SCA Consulting to make a presentation before the Hawaii legislature regarding House Bill 2362?
A. All I remember is we retained them to do the strategic planning analysis regarding compensation, and that's all I remember.
Q. Who handled the contact between the Board of Trustees and SCA?
A. Probably our PE's.
Q. Which one of the PE's?
A. It would be a combination of either Rodney Park and/or Nathan Aipa.
Q. Have you met Mr. Hourihan?
A. I'm not sure. There's so many of them that came through.

Q. Do you recall reading the SCA testimony at any time?
A. No, I don't recall that at all.
(Exhibit No. 136 marked for identification.)
BY MR. ING:
Q. Exhibit 136 also has a handwritten note at the top. Is that in your handwriting?
A. Yes, it is.
Q. Does that indicate to you that you had received this document at some point in time?
A. Yes.
Q. Would you take a look at it and tell me, please, if you can identify what this is?
A. These were pre-convention reports from the 1996 Democratic convention.
Q. And these are resolutions; is that right?
A. Yes.
Q. The first one says Reso No. GOV.41 in the lower right-hand corner?
A. Yes.
Q. Below that, it says page 133 of Exhibit 136; is that correct?
A. Yes.
Q. This resolution says, "Resolution to cap

payments to Bishop Estate trustees." Do you see that?
A. Yes.
Q. Was that taken up during the course of a Democratic party convention?
A. I don't know. I didn't sit on the government committee.
Q. How is it that you came about to have a copy of this resolution?
A. They circulated all resolutions.
Q. Did you keep all resolutions or just certain ones?
A. Just the ones that pertain to Bishop Estate.
Q. Were you concerned in any way about the resolution to cap payments of the Bishop Estate trustees?
A. Was I concerned about it?
Q. Yes.
A. Yeah, yes, I was.
Q. Why was that?
A. Because I didn't know what was discussed in the various committees and I didn't know what happened to this resolution.
(Exhibit No. 137 marked for identification.)

BY MR. ING:
Q. Take a look at Exhibit 137, please. Exhibit 137 is a memo from Mr. Alika Thompson to the trustees, including yourself?
A. That's correct.
Q. Do you recall receiving this?
A. Not specifically, but I know he gave us a lot of memos.
Q. This memo enclosed the Government Message No. 145, correct?
A. Yes.
Q. And that message was the reappointment of Margery Bronster to the position of Attorney General; is that correct?
A. That's correct.
Q. Did the Board of Trustees follow Margery Bronster's confirmation hearings?
A. What do you mean by did we follow?
Q. Was it reported to you by members from GRD, like Mr. Thompson?
A. Mr. Thompson would keep us informed of anything that happened in the legislature after Nam Snow passed away or got ill and wasn't able to come to work anymore.
Q. Did you receive copies of all Governor's

messages regarding appointments or just certain ones?
A. I don't recall.
Q. Do you recall discussing from time to time Margery Bronster's confirmation hearings or the progress of her confirmation hearings?
A. I remember they updated us on it, yes.
Q. "They" being who?
A. Alika Thompson.
MR. GIERLACH: This document doesn't appear to be complete with respect to the Governor's message on page 137.
(Exhibit No. 138 marked for identification.)
BY MR. ING:
Q. Would you take a look at Exhibit 138, please.
Exhibit 138 appears to be a memo from you to the trustees; is that correct?
A. Yes.
Q. And your signature appears next to your name on page numbered 139 at the bottom?
A. Yes.
Q. This memo attached letters from the Wexler Group and from the Hecht Spencer law firm; is that correct?
A. That's correct.
Q. Did the Board of Trustees extend its contract

with the Wexler Group in 1985?
A. I can't remember.
Q. Did the Board of Trustees enter into a retainer with the Hecht Spencer law firm?
A. Law firm? They're not a law firm.
Q. I'm sorry, Hecht Spencer Consulting Firm.
A. I'm not sure they're a consulting firm.
Q. What kind of firm are they?
A. I think they're a public relations firm.
Q. Did the Board of Trustees enter into an agreement with the Hecht Spencer firm?
A. Yes, at sometime they did, but I'm not sure of the date.
Q. What kind of work did Hecht Spencer do for the trustees?
A. Well, they initially came in with a proposal as outlined here, but as we met in retreats, it changed and it was narrowed in scope and I'm not sure what all it entailed after that, because they dealt with the public relations arm of the institution.
Q. Were you the liaison trustee for the public relations arm of the institution?
A. I was.
Q. Did the Hecht Spencer firm assist the trustees with respect to intermediate sanctions legislation?

A. I don't recall specifically, because I didn't -- I wasn't the liaison for intermediate sanctions.
Q. Who monitored the work of Hecht Spencer?
A. That was kind of interesting, because I'm not really sure what happened after we had a session at Turtle Bay.
Q. When was that?
A. I don't recall, but they came to make a final proposal to us, and I can't remember all of the details of that, but I know we didn't buy into their entire package. So I can't remember much about it at this time.
Q. Do you remember being the liaison person for Hecht Spencer?
A. I remember meeting with them in Los Angeles and I remember several phone calls between them, but I don't remember having that much involvement after the Turtle Bay retreat.
(Exhibit No. 139 marked for identification.)
BY MR. ING:
Q. Take a look at Exhibit 139. Exhibit 139 consists of pages 146, 147, 148 and 149.
A. Yes, it does.
Q. Are these handwritten notes in your handwriting?

A. Yes, they are.
Q. Were these handwritten notes taken during the course of a trustees meeting on October 31, 1994?
A. Yes.
Q. Would you explain to me what the items refer to on page 146?
A. Notice that it has tab 5, which means a support -- I mean, a binder was provided to the trustees to act on recommendations that came from the staff and tab 5 said, "Develop a training module on KSBE history."

They had alternatives. Alternative 3 was discussed and we approved a budget of 25,000 implemented in '95-96 school year. Staff report to come in ASAP by the end of November.

Tab 6, development and implement a semester course on KSBE history. Grades 9 and 10 would be Hawaiian culture is required for all students. Grades 7 and 8, a part of the Hawaiian culture class, a part of the Hawaiian culture, and grades 11, 12 -- I guess it means all of these, I'm sorry, because of the bracket.

It says, "Hawaiian culture is required for all students. A part of the Hawaiian culture class is being used for KB history. Total class hours 125 hours. Decision: To develop a 135 hours of content on KSBE history from seven to 12."

Q. So the tabs refer to some kind of a binder that was passed out to the trustees?

A. Yes, it's usually a binder from the PE's indicating areas that they wanted us to review, look at and make decisions on and they would have sometimes options for us, sometimes not. But they would ask us to review this and then we would go through it, discuss it and sometimes make a decision, sometimes defer, and sometimes ask for more information.

Q. Was this conducted at a retreat?

A. Yes.

Q. Do you recall where this retreat was held? This would have been in October of 1994.

A. At Turtle Bay. Most of our retreats were held at Turtle Bay.

Q. If you could turn to page 149, please. At the very end of the page or at least the handwritten portion on the page says, "Lobbying - we will not lobby"?

A. That's correct.

Q. Did you trustees make a decision at that retreat to not lobby?

A. I think this is in reference to a specific item, but I can't remember what it was. It wasn't a general "we will not lobby."

Q. Do you recall being given a presentation on exempt organizations and lobbying and political activities as it relates to exempt organizations at that retreat?

A. No, I don't. I would have to have something to refresh my memory.

Q. Do you know whether Mr. Aipa had given a presentation on lobbying activities as it relates to exempt organizations and/or 501(c)(3) organizations?

MR. GIERLACH: At this retreat or ever?

MR. ING: At any time.

A. Yes, I do.

BY MR. ING:

Q. Normally, when he made presentations on areas like that, would that be during the course of a retreat?

A. It could be during the course of a retreat or during the course of a trustees meeting or in executive session.

(Exhibit No. 140 marked for identification.)

BY MR. ING:

Q. Take a look at Exhibit 140, please. Exhibit 140 consists of several pages beginning with 150 and ending with 165.

Would you take a look at 150, please. This appears to be a fax transmittal from the Verner Liipfert law firm, correct?

A. Yes.

Q. It's addressed to Ernella Kam; is that correct?

A. Yes. Are you saying it's from Verner Liipfert, because it has their thing at the -- I mean their letterhead?

Q. Yes.

A. Because I can't tell by this Xerox telecopy.

Q. No, from the letterhead.

A. Okay, got it.

Q. But it's addressed to Ernella Kam, correct?

A. Yes, it is.

Q. It appears to be from Norma Wong?

A. Yes.

Q. Did Norma Wong work for the Verner Liipfert firm?

A. Yes.

Q. Was Norma Wong working on the intermediate sanctions legislation?

A. Yes.

Q. Who was Ernella Kam?
A. Dickie's Wong secretary.
Q. Was Mr. Wong the liaison trustee for government affairs?
A. Yes, yes.
Q. Was he the liaison trustee for intermediate sanctions?
A. Yes.
Q. Turn to page 151 of Exhibit 140, please. This appears to be a memo from Mark McConaghy and Denis Dwyer to the trustees dated November 2, 1995?
A. Yes.
Q. Do you recall receiving this memo?
A. No, I don't.
Q. Do you recall receiving memos from time to time regarding the intermediate sanctions lobbying efforts?
A. Most of the time, we just had discussions on things. I don't recall receiving memos from time to time. I may have.
Q. Do you recall having discussions on issues like safe harbors?
A. Yes.
Q. Do you recall having discussions on various options as it related to safe harbors and

intermediate sanctions?
A. Do I recall having?
Q. Discussions.
A. No, I recall having presentations and recommendations on what we should do with regards to intermediate sanctions.
Q. Do you recall having presentations from Verner Liipfert and/or Price Waterhouse regarding the safe harbor portion of the intermediate sanctions legislation?
A. Yes.
Q. If you could turn to page 156. This page references statutory language and in particular the exit tax provisions.
Do you recall any presentations by any of the consultants to the Estate regarding exit tax provisions in the intermediate sanctions legislation?
A. I don't really recall at this time.
Q. Do you know what the term "exit tax" refers to?
A. Yes.
Q. What does it refer to?
A. It refers to if a person wanted to exit from a tax-exempt organization, they would be taxed accordingly.
Q. Did the Verner Liipfert firm attempt to remove

or modify language relating to the exit tax during the course of its work for the trustees on intermediate sanctions legislation?
A. I'm not sure, because I didn't know what Verner Liipfert was really doing.
Q. Who from the trustees was aware of what Verner Liipfert was doing?
MR. GIERLACH: Calls for speculation.
A. Dickie was the liaison, but I don't know if he was aware of everything Verner Liipfert was doing.
BY MR. ING:
Q. Who was keeping the Board advised of what Verner Liipfert was doing with respect to intermediate sanctions legislation?
A. Sometimes Dickie Wong and sometimes Norma Wong.
Q. Take a look at Exhibit 141, please.
A. Could I talk to David?
Q. Yes.
MR. ING: Let's take a short break.
(Recess from 2:08 to 2:09 a.m.)
A. In reference to your other question, I also wanted to add "and also Mark McConaghy". Sometimes Dickie Wong, sometimes Norma Wong and sometimes Mark McConaghy.
BY MR. ING:

Q. Referring to your answers to who had kept the Board of Trustees advised with respect to intermediate sanctions lobbying efforts; is that correct?
A. Yes.
(Exhibit No. 141 marked for identification.)
BY MR. ING:
Q. Could you take a look at Exhibit 141, please.
Exhibit 141 has in the upper left-hand corner a note that says "file". Is that your handwriting?
A. Yes, it is.
Q. Do you recall receiving this memo from John Waihee and Sue Temkin?
A. I don't recall it, but I must have. It's addressed to me.
Q. This memo discusses a Wall Street Journal article from March 20, 1995?
A. Yes.
Q. Was there a concern about the information in the Wall Street Journal article, and that would be a concern to the Bishop Estate trustees?
A. Yes.
Q. What was the concern?
A. Well, the concern was with regards to some of

the allegations that were made in the Wall Street Journal and also how they could have gotten this information.

Q. Did the trustees retain the Verner Liipfert firm to assist it with a national strategy regarding the information that had been contained in the Wall Street Journal article?

A. Would you please repeat the question?

Q. Yes. Did the trustees retain the Verner Liipfert firm to assist it with the national strategy regarding the information contained in the Wall Street Journal article?

A. I don't think that's why we retained them, but I'm not sure.

Q. Do you recall former Governor Waihee making a presentation to the Board with respect to the Wall Street Journal article?

A. Do I recall that?

Q. Yes.

A. Not off the top of my head, no.

Q. On page 166 of Exhibit 141, there's a subtitle called Private Inurement. Do you see that?

A. Yes.

Q. What was your understanding of private inurement?

A. What was my understanding of private inurement?
Q. Yes.
A. My understanding of private inurement was to have something for a private benefit, to use something for a private benefit.
Q. If you could look at the top of page 167. It states that, "If private inurement exists, the Internal Revenue Service has the power to revoke the organization's exempt status."
A. Yes.
Q. Was that your understanding?
A. Not until this memo or until a discussion on this very subject.
Q. Was private inurement an important subject as it relates to exempt organizations and KSBE?
A. As it became an issue with intermediate sanctions, it became a subject.
Q. Was it an important subject?
A. It was an important subject.
Q. Did you understand at some point in time if private inurement did occur that it was grounds for revocation of the organization's exempt status?
A. Yes, at some times it might be grounds for it.
Q. Exhibit 141 also discussed in addition to private inurement unrelated business income?

A. Yes.
Q. What was your understanding of the concerns as it related to unrelated business income?
A. My understanding is that unrelated business, U-B-I-T, you know --
Q. UBIT.
A. -- what we usually used, had some bearing on us if some of those commercial activities were deemed to be improper.
Q. Were there concerns raised from time to time about the Estate's unrelated business income?
A. Yes.
Q. And the Estate is subject to a tax on that; is that correct?
A. That's correct.
Q. Even though the Estate is an exempt organization?
A. That's correct.
Q. Was the Estate paying taxes on unrelated business income?
A. It's my understanding we were.
Q. What were the kinds of unrelated business income that the Estate had?
A. Well, there were dividends, interest payments. There were income from securities, I believe. I

can't remember all of it, but there was something to do with our sale of our leasehold land, that sort of thing.

Q. Were you aware in March of 1995 that there was interest at the national level in KSBE and its tax-exempt status?

A. Yes.

Q. And what resulted from the Wall Street Journal article was some of the nationally televised television shows, like 60 Minutes, for example?

A. We were first aware of it because of the admissions policy. That's where the revocation of tax-exempt status became a focal point for us.

Q. The national media was also concerned about it because of the fact that the trustees were highly compensated?

A. Yes.

MR. GIERLACH: Calls for speculation.

BY MR. ING:

Q. Mrs. Lindsey, did you believe that the national media was interested in KSBE because of the compensation received by the trustees?

A. In part.

MR. GIERLACH: Assumes facts not in evidence.

BY MR. ING:
Q. Did the Wall Street Journal article in 1995 discuss the compensation received by trustees?
A. Yes.
Q. Did it also raise the fact that this was a tax-exempt organization?
A. Yes.
Q. During the course -- are you familiar with the Pickle hearings?
A. Vaguely.
Q. Do you recall Congressman Pickle conducting hearings?
A. Yes, I do.
Q. And those hearings resulted in legislation from time to time; is that correct?
A. That's correct.
Q. And those hearings eventually resulted in the intermediate sanctions legislation; is that correct?
A. Yes.
Q. Would one of the concerns expressed in those hearings be the level of compensation received by the trustees?
MR. GIERLACH: Lacks foundation, calls for speculation.
MR. ING: To the extent she's aware.

A. I'm not sure.

BY MR. ING:

Q. Did you ever believe or arrive at an understanding that the trustees for the Bishop Estate were the target of legislation at the national level?

A. Yes.

Q. How did you arrive at that understanding?

A. Because the Intermediate Sanctions Act was focusing in part on Bishop Estate.

Q. Was that focus at least as you understood that focus centered on the level of compensation of trustees?

A. No.

Q. What was the focus?

A. I think it became a focus when we tried to be included in the Intermediate Sanctions Act.

Q. In what sense?

A. Prior to that, there was only -- there was an all-or-none law. Either you had tax-exempt status or your tax-exempt status was revoked.

It was our understanding that intermediate sanctions would give you intermediary steps and not have just revocation as a possibility for the IRS and we wanted to be included in these intermediary steps.

Q. Bishop Estate wanted to be included in the

intermediary steps?
A. Yes.
Q. So that sanctions could be taken against disqualified persons as opposed to against the tax-exempt status?
A. At the time that we were discussing this, we didn't know that it was going to be against disqualified persons. Remember, those things evolved.
Q. But you were looking for -- you as a trustee were looking for a way to have intermediate sanctions imposed as opposed to revocation?
A. As a possibility, yes. We wanted a safe harbor.
Q. Was the intermediate sanctions legislation in your mind beneficial to the Estate?
MR. GIERLACH: Vague and ambiguous.
BY MR. ING:
Q. Mrs. Lindsey, you indicated that Bishop Estate wanted to be included in the intermediate sanctions legislation?
A. That's correct.
Q. When Bishop Estate sought to be included in intermediate sanctions legislation, the focus shifted onto the Bishop Estate at the national level?
A. I think partially it did.

Q. In your explanation as to why Bishop Estate wanted to be a part of the intermediate sanctions legislation, you indicated that it would provide an alternative to revocation of the tax status; is that correct?
A. That was our understanding. That's what we were led to believe.
Q. So to that extent, was intermediate sanctions legislation beneficial to the Estate?
A. It was not beneficial in the long-run to the Estate.
Q. Why was it not beneficial in the long-run?
A. Because they didn't follow their own internal procedures, they had no rules or regulations promulgated, and yet I think they used Bishop Estate as the entity to establish rules and regulations.
Q. So as you sit here today, you believe that the intermediate sanctions legislation was not beneficial to the Estate?
A. That's correct.
Q. When did you arrive at that belief or feeling?
A. When we were, when we were targeted without the promulgations of rules and regulations, we had many questions about whether or not, what applied, who had authority to do what to whom, who had the power to do

what to whom, and was this power all encompassing in the IRS when there were no rules and regulations that an entity, be it Bishop Estate or anyone else, would be able to follow and say, "Yes, we're doing this right" or "No, we're not doing this right" or "No, we need to change in order to be in compliance with something," and there is nothing there.
Q. Was the Verner Liipfert law firm retained to assist the Estate in becoming a part of the intermediate sanctions?
A. That was my belief.
Q. Was it during the course of Verner Liipfert's activities on behalf of Bishop Estate that the focus turned onto Bishop Estate?
MR. GIERLACH: Calls for speculation.
A. I'm not sure.
BY MR. ING:
Q. When did the focus turn onto Bishop Estate?
A. Can I talk to him?
Q. Yes.
(Recess from 2:23 to 2:24 p.m.)
BY MR. ING:
Q. Do you have an answer to my question? The question was when did the focus turn onto Bishop Estate?

A. The focus turned onto Bishop Estate when Oz Stender got in touch with the Wall Street Journal and gave them information about Bishop Estate and started a campaign against Bishop Estate.
Q. When was that?
A. It started in 1995.
Q. The Wall Street Journal article referenced in Exhibit 141 refers to March of '95?
A. That's correct.
Q. Does that refresh your recollection as to when the Wall Street Journal article came out?
A. Yes.
Q. Was it shortly after that time that the focus turned onto the Estate?
A. Yes.
Q. Once the focus turned onto the Estate, it's your belief that intermediate sanctions legislation was not beneficial to the Estate; is that correct?
A. No, I didn't say that.
Q. Was the intermediate sanctions legislation beneficial to the Estate?
MR. GIERLACH: Vague and ambiguous, calls for speculation.
A. Can I answer?
BY MR. ING:

Q. Yes, you can answer.
A. Would you repeat the question?
Q. Was intermediate sanctions legislation beneficial to the Estate?
A. I think I said in the long-run, it was not.
Q. You said that because the focus turned onto Bishop Estate; is that correct?
MR. GIERLACH: Argumentative, asked and answered, misstates her testimony.
BY MR. ING:
Q. You may respond.
A. I believe I said in the long-run it did not benefit the Estate, because no one had a clear understanding of what the rules and regulations were. There were none promulgated by the Service or anyone else. We were trying to answer questions based on allegations that had no foundation for which we could respond.
Q. You indicated Mr. Stender had contacted the Wall Street Journal?
A. That is correct.
Q. What is the basis for that understanding?
A. The telephone logs that showed he called them and his admission that he did.
Q. Did you review telephone logs that showed that

Mr. Stender had called the Wall Street Journal?
A. Yes.
Q. When did you obtain those logs?
A. Way back when, when this incident happened.
Q. Back in 1995?
A. Uh-huh.
Q. Answer yes or no, please.
A. Yes.
Q. Who obtained those logs for you?
A. I don't recall.
Q. How did you obtain a copy of those logs?
A. I think we all had them.
Q. Who is "we all"?
A. The trustees, but I'm not sure.
Q. Would you describe for me what those logs look like?
A. It gives the telephone number, who you're calling, and what extension it was called from and how long you talked. That's what I recall about it.
Q. So it's like a line item on a telephone bill; it shows the extension number the call is placed from, the phone number to which the call is placed and the duration of the call?
A. Yes.
Q. That would have been a long-distance call?

A. Yes.
Q. So someone figured out that the number on there was the number to the Wall Street Journal?
A. Yes.
Q. Who figured that out?
A. I don't know who figured it out, but I know that the Wall Street Journal left calls for a lot of us after that and there was a number readily available on our messages.
Q. Which was the Wall Street Journal number?
A. Oh, I can't remember. I'm sorry.
Q. What was the information that you believed Mr. Stender leaked to the Wall Street Journal?
A. I don't know what he leaked to the Wall Street Journal. I only know he talked to them.
Q. So you assume that he provided them confidential information?
A. No, he admitted he talked to them from the office and from home.
Q. What is your understanding as to what he said to the Wall Street Journal?
A. I don't have an understanding of what he said. I just know he did.
Q. But you believe that as a result of his discussions with the Wall Street Journal that the

focus shifted onto Bishop Estate?
A. In part.
Q. Did the focus on the Bishop Estate have to do with the level of compensation of the trustees?
MR. GIERLACH: The article speaks for itself.
BY MR. ING:
Q. I'm seeking your understanding, Mrs. Lindsey.
A. I think it had to do with a whole bunch of issues.
Q. Was trustee compensation one of them?
A. Possibly. I don't have the article before me.
Q. What was your understanding of the article?
A. I really can't remember all that much about it at this time.
Q. Do you recall Stipulation No. 14 of the Master?
A. Yes.
Q. What was Stipulation No. 14?
A. Stipulation No. 14 was the CEO, I believe.
Q. Was there any other aspect to Stipulation No. 14 besides the CEO?
MR. GIERLACH: If you're holding it, instead of giving her a memory test, maybe she could just look at it.
MR. ING: Let's have this marked as

Exhibit 142.

(Exhibit No. 142 marked
for identification.)

BY MR. ING:

Q. Would you take a look at page 13 of Exhibit 142.
Mrs. Lindsey, page 13 of Exhibit 142 sets forth Stipulation No. 14; is that correct?

A. That's correct.

Q. If you could take a look at the second full paragraph on page 13. The second sentence of that paragraph says, "The system shall incorporate a formal governance policy which more clearly defines the roles of the Board of Trustees and that of the CEO." Do you see that?

A. Yes.

Q. As of April 29, 1999, had the Board of Trustees developed a formal governance policy which more clearly defined the roles of the Board of Trustees and the CEO?

A. No, we didn't.

MR. ING: Thank you. That's all I have.

(Deposition concluded at 2:35 p.m.)

---oOo--

I, MARION MAE LOKELANI LINDSEY , do hereby certify that I have read the foregoing typewritten pages 294 through 402 , inclusive, and corrections, if any, were noted by me; and that same is now a true and correct transcript of my testimony.

Dated

MARION MAE LOKELANI LINDSEY

Signed before me this
day of , 19 .

C E R T I F I C A T E

I, Jolene C. Haneca, C.S.R., in and for the State of Hawaii, do hereby certify:

That I was acting as shorthand reporter in the foregoing matter on the 4th day of December , 1999;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print under my supervision; that the foregoing represents, to the best of my ability, a correct transcript of the proceedings had in the foregoing matter;

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

Dated: .

Jolene C. Haneca, C.S.R. #132
Certified Shorthand Reporter