IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

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 9:15 a.m. on Tuesday, November 9, 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.
TERI Y. KONDO, ESQ.
JOELLE K. CHIU, ESQ.
Watanabe Ing & Kawashima
23rd Floor
999 Bishop Street
Honolulu, Hawaii 96813

Attorney for Trustee Richard Sung Hong Wong:

DAVID Y. SUZUKI, ESQ.
Burke Sakai McPheeters Bordner Iwanaga & Estes
3100 Grosvenor Center
737 Bishop Street
Honolulu, Hawaii 96813

Attorney for Trustee Marion Mae Lokelani Lindsey:

JOSEPH A. WOLSZTYNIAK, ESQ.
Law Offices of Michael Jay Green
2nd Floor
345 Queen Street
Honolulu, Hawaii 96813

Attorney for State of Hawaii:

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

Attorney for Trustee Henry Haalilio Peters:

HARRY YEE, ESQ.
770 Pauahi Tower
1001 Bishop Street
Honolulu, Hawaii 96813

I N D E X

(Disclosure made available to all counsel.)

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MARION MAE LOKELANI LINDSEY,

called as a witness by and on behalf of the 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:

MR. ING: I'd like to have the next exhibit marked as Exhibit 106.

(Exhibit No. 106 marked for identification.)

EXAMINATION (Continuing)

BY MR. ING:

Q. Mrs. Lindsey, would you examine what has been marked as Exhibit 106, please.

A. I'm finished.

Q. Mrs. Lindsey, have you had a chance to review Exhibit 106?

A. I have.

Q. Is Exhibit 106 a set of copies of pages from your notes?

A. It is.

Q. Is Exhibit 106 in your handwriting?
A. Yes.
Q. Exhibit 106 consists of 11 pages and these are numbered at the bottom, the last four digits, 1960, 1961, 1962, 2115, 2116, 2229, 2254, 2255, 2256, and 2257 and 2258, correct?
A. It does include that.
Q. Is that correct, did I read those numbers correctly?
A. Yes.
Q. Is Exhibit 106 a fair and accurate copy of your notes?
A. Yes.
Q. With respect to the pages numbered at the bottom 1960, 1961 and 1962, when did you take those notes?
A. On May the 14th, 1996.
Q. Were those notes taken during the course of a trustees meeting?
A. Yes.
Q. Were those notes taken in your capacity as a trustee?
A. Yes, it was.
Q. Did you maintain a copy of your notes in your records?
A. In my records now?

Q. No, at the time you were serving as trustee.
A. Yes.
Q. With respect to the page numbered at the bottom 02115, when was that note -- I'm sorry, and 02116, when were those notes taken?
A. On May 15th, 1996.
Q. Do you know whether those notes were taken at a trustees meeting?
A. No, I don't, because it's not a complete set.
Q. Were pages 2115 and 2116 or the notes shown by those pages of Exhibit 106 taken in your capacity as a trustee?
A. Yes.
Q. Did you maintain copies of these notes in your records during the time that you served as trustee?
A. Yes.
Q. With respect to the page numbered at the bottom 2229, when did you take that set of notes?
A. June 25th, 1996.
Q. Was that taken at a trustees meeting?
A. Yes.
Q. Was that also taken during the course of an executive session?
A. Yes.
Q. Did you maintain a copy of those notes in your

records?
A. Yes.
Q. With respect to the pages numbered at the bottom 2254 through 2258, when were those notes taken?
A. July 16th, 1996.
Q. Were those taken during the course of a trustees meeting?
A. Yes.
Q. Were those also taken during the course of an executive session?
A. Yes.
Q. Did you take those notes in your capacity as trustee?
A. Yes.
Q. Did you maintain those notes in your records?
A. Yes.
Q. Mrs. Lindsey, could you refer to the page numbered at the bottom 2229 of Exhibit 106. Do you have that before you?
A. I do.
Q. At the bottom, it says "Dickie" with an underscore?
A. Yes.
Q. Does that refer to Trustee Wong?
A. It does.

Q. The note indicates that Trustee Wong will meet with Spencer Hecht regarding intermediate sanctions; is that correct?
A. That's correct.
Q. Do you know what the outcome of that was?
A. I don't remember.
Q. If you could turn to the page numbered at the bottom 2254. Do you have that before you?
A. Yes.
Q. There's a note at the bottom of that again, "Dickie" underscored. Does that refer to Trustee Wong?
A. It does.
Q. Would you read that note, please?
A. It says, "Review of intermediate tax sanctions, no colloquy" -- I hope I said it right -- "concerns re: Anti-Hawaiian attitude in Congress and Inouye's position."
Q. Does that refresh your recollection as to what Trustee Wong may have been meeting with respect to the Spencer Hecht people about?
A. No, it doesn't, because this -- I recall that there was an anti-Hawaiian attitude and I don't know if that was, had anything to do with Spencer & Hecht or not.

Q. Do you know what the proposed colloquy was with respect to intermediate sanctions in July of 1996?
A. No, I don't. I know that it was propose by Senator Inouye, but I don't remember the wording of it.
Q. Was it proposed by Senator Inouye at the request of the Verner Liipfert law firm?
A. I have no idea.
Q. How do you know it was proposed by Senator Inouye?
A. Because Trustee Wong told us it was.
Q. Do you know whether Senator Inouye proposed it as a result of an initiative?
A. I have no idea. I'm not privy to any of that.
Q. Do you know whether the Verner Liipfert law firm had a plan to propose a colloquy with respect to the committee report?
A. No, the only one I knew about proposing any colloquy was Senator Inouye.
Q. Do you know who initiated the colloquy --
A. No, I don't.
Q. -- strategy in Congress?
A. I have no idea.
Q. Does the note shown on page 2254 indicate to you that the colloquy strategy was not successful?

A. No, it doesn't, because that took on a life of its own for a while. They would say yes-no, yes-no, but I don't know when it actually became a final no.

MR. ING: Would you mark this as Exhibit 107.

(Exhibit No. 107 marked for identification.)

BY MR. ING:

Q. Mrs. Lindsey, will you examine Exhibit 107, please?

A. I'm finished.

Q. Mrs. Lindsey, have you had a chance to review Exhibit 107?

A. Yes, I have.

Q. Is Exhibit 107 copies from your notes?

A. Yes.

Q. Exhibit 107 consists of 16 pages numbered at the bottom 2281, 2287, 2288, 2289, 2290, 2291, 2292, 2296, 2309 through 2316; is that correct?

A. That's correct.

Q. Is Exhibit 107 a fair and accurate copy of your notes?

A. It is.

Q. Is Exhibit 107 in your own handwriting?

A. It is.

Q. With respect to the page numbered 2281, when did you make those notes?
A. August the 13th, 1996.
Q. Were those notes made during the course of a trustee meeting?
A. Yes.
Q. And were the notes taken in your capacity as trustee?
A. Yes.
Q. At the bottom of that sheet, it's noted that "Henry" with an underscore. Does that refer to Henry Peters?
A. Yes, it is.
Q. Below that, it's "Mark" underscored. Does that refer to Mark McConaghy?
A. Yes.
Q. With respect to the notes shown on pages 2287 through 2292, when did you make those notes?
A. August the 15th, 1996.
Q. Were those notes taken during the course of a trustees meeting?
A. Yes.
Q. Were those notes taken in your capacity as a trustee?
A. Yes.

Q. If you would look at page numbered 2287, please. About the middle of the page, it says "Mark" and then the letters "MC." Does that refer to Mark McConaghy?
A. Yes.
Q. Did Mr. McConaghy do a presentation on intermediate sanctions legislation?
A. Yes, he did.
Q. You noted at the bottom of page 2287 that, "Intermediate sanctions gave the Service" -- meaning the IRS -- "the right to sanction excess benefit transactions"; is that correct?
A. Yes.
Q. And that meant payback of what IRS considered excess plus a 25-percent excise tax; is that correct?
A. That's what Mark McConaghy said.
Q. On page 2288, your notes indicate that what you as trustees needed to do to be ready for the IRS if they came in and charged trustees with unreasonable compensation was to have a compensation study that results in a range; is that correct?
A. This is what Mark McConaghy said we had to do.
Q. Your notes also indicate that Mr. McConaghy advised that the trustees be looked at individually and separately based on individual responsibilities and qualifications; is that correct?

A. On this page, he did.
Q. If you would refer to page 2289, please. In the lower half of the page, there's an asterisk and it says, "Put in writing our fiduciary responsibility." Do you see that?
A. Yes.
Q. What was that a reference to?
A. We did not have a fiduciary manual at the time. In fact, we had never had any workshops on fiduciary responsibility and even though different things were mentioned at different times, it was felt that we had to put a fiduciary manual in place.
Jerry, Jerry Jervis was working on part of this, because we had been asking for it from Nathan Aipa for a long time. And so Mark McConaghy said we should have it in place, and as noted in my notes, it will definitely be to our advantage to have our process formalized.
Q. And subsequently it was; is that correct?
A. Subsequently, it was.
Q. If you could look at the top of page 2289, please. There's a note regarding five-headed CEO. What was that in reference to?
A. The trustees were always told from the time I came aboard that we were a five-headed CEO. Each one

of us were CEO's per the will of the Princess and we all had the power to make decisions; however, three out of five had to act on the decision. And this was just reiterating that and Mark was reiterating that we were a five-headed CEO and it should be formalized in the process.

Q. Who first told you that?

A. I think the first one who told me that was Matsi Takabuki, because I took his place, and I had to meet with him and he said to remember that we're a five-headed CEO.

Q. Would you refer to page numbered 2290. About midway down, it says, "Jerry wants to bring Mark into the loop on the trustees operations and fiduciary manual." What does that note refer to?

A. He wanted to make sure that Mark reviewed the trustees manual and make sure that what we had there was reviewed, I guess, by Mark to make sure it was in compliance with anything that we might be looking at.

Q. Was that out of a concern over the IRS challenging the trustees' compensation?

MR. WOLSZTYNIAK: I'm sorry, could I have that question back again, please?

(Record read.)

MR. WOLSZTYNIAK: You can answer that

question.

A. I'm not sure what it was a concern about. I think it was.

MR. WOLSZTYNIAK: If you're not sure, Mrs. Lindsey, don't speculate or guess. If you have a reasonable estimate, you can relate that to Mr. Ing. I just don't want you speculating or guessing. If you do have some basis for an answer to that question, you can go ahead.

A. Can you repeat the question again?

BY MR. ING:

Q. Yes. The effort to develop the fiduciary manual and to bring Mark McConaghy into the loop to review the trustee operations and fiduciary manual, did that effort result because of concerns if the IRS came in to examine or challenge trustee compensation that you would have these items properly documented?

A. I don't think it had anything to do with the compensation issue. I think that it had to do with the -- actually, our fiduciary responsibilities were the main focus and we started on that manual prior to this report from Mark McConaghy.

Q. If you would look at the bottom of page 2290. You have a note regarding excess benefit transaction --

A. Yes.
Q. -- and private inurement. Do you see that?
A. Yes.
Q. You also note that, "IRS won a case against John Marshall Law School"; is that correct?
A. That's correct.
Q. And that was told to you by Mr. McConaghy?
A. Yes, and he told us it's because they gave a non-interest loan and free houses that was not part of an individual's compensation package.
Q. Then if you go to the next page, 2291. At the middle of the page, you have a note, it says, "Under intermediate tax, $35 a month would be excess compensation." Do you see that?
A. Yes.
Q. And was that told to you by Mr. McConaghy?
A. Yes, and it referred to the previous statement that if you receive free parking and it's over $165, then the excess is taxable. And under the intermediate tax law -- it doesn't say law, but under intermediate tax, $35 a month would be considered excess compensation.
Q. What does that indicate to you?
A. He was just giving us an example. See the "i.e." in the box up there. For example.

Q. Did you understand that IRS -- based on that, those recommendations and that discussion with Mr. McConaghy, did you understand that if your compensation was $35 over what they felt was reasonable that they could consider that excess compensation?
A. No, it was if we paid $35 over what was reasonable for parking, then the $35 could be considered as excess compensation.
Q. Would you refer to page 2292, please. Again, at the bottom, there's a reference to "a disqualified person"?
A. Yes.
Q. Was it your understanding that trustees were disqualified persons?
A. A part of the disqualified persons' list.
Q. And there could be others in the Bishop Estate organization besides trustees who could be disqualified persons?
A. Yes, they said PE's and others, as noted on my notes on 2296.
Q. Now, you also note on page 2296 that Mr. McConaghy was to come in, meaning into Hawaii, on September 3, 1996?
A. Yes.

Q. If you could look at pages numbered 2310 through 2316. When were those notes taken?
A. September 3, 1996.
Q. Were those taken at a trustees meeting?
A. Yes.
Q. Was that also taken in executive session?
A. Yes.
Q. Did you take these notes in your capacity as trustee?
A. Yes.
Q. And did you maintain these notes in your records as a trustee?
A. Yes.
Q. Now on September 3, 1996, Mr. McConaghy was present in person in the boardroom; is that correct?
A. I believe so. I'm not sure, but I believe so.
Q. Is the information contained on sheets 2309 through the top half of 2310 from Mr. McConaghy?
A. 2309 to 2310?
Q. Yes.
A. I think it continues all the way through.
Q. But you have references to "Dickie" at certain places, for example, on 2310.
A. Yes, he was asking a question of Mark.
Q. So this was a question-and-answer period between

the trustees and Mr. McConaghy?
A. It was the first time we knew exactly what the Service was planning with regards to intermediate sanctions and he was giving us an overview, but it was not finalized.
Q. So where there's a notation, for example, "Dickie" underscored, that would be Trustee Wong?
A. Yes.
Q. Asking a question?
A. Yes.
Q. Otherwise, the person providing the information for which you had taken notes was Mr. McConaghy?
A. That's correct. And I note -- right after the question is asked, I note his name with the responses, so.
MR. ING: Mark the next exhibit as 108, please.
(Exhibit No. 108 marked for identification.)
BY MR. ING:
Q. Mrs. Lindsey, would you examine Exhibit 108, please.
Mrs. Lindsey, have you had a chance to examine Exhibit 108?
A. I have.

Q. Is Exhibit 108 copies of pages from your notes?
A. It is.
Q. Is Exhibit 108 in your handwriting?
A. Yes.
Q. Is Exhibit 108 a fair and accurate copy of your notes for those particular pages?
A. Yes.
Q. Exhibit 108 consists of four sheets numbered at the bottom 2382, 2414, 2415 and 2439; is that correct?
A. That's correct.
Q. With respect to sheet numbered 2382, when did you take those notes?
A. November 21, 1996.
Q. And the notes shown in Exhibit 108 are in your handwriting; is that correct?
A. Yes.
Q. Was that taken at a trustees meeting?
A. Yes.
Q. At the bottom of sheet 2382, there's a notation "Dickie". That refers to Trustee Wong; is that correct?
A. Yes.
Q. He made a report regarding intermediate sanctions?

A. Right.
Q. There's a notation there, "Representative Johnson got back in. She's going to give us trouble."
What was that with respect to?
A. All I know is she was a representative in Congress.
Q. What did you mean by "she's going to give us trouble"?
A. That's what he reported.
Q. That's what Dickie said?
A. That's what Dickie said.
Q. With respect to page numbered 2414, there's a note at the bottom, it says, "Jerry brought up the intermediate sanctions issue."
Would that refer to Mr. Jervis?
A. Yes.
Q. Would you look at sheet number 2415. If you examine sheets 2414 and 2415, does it appear to you that those sheets were consecutive?
A. It does. However, it would be -- I would be able to say with surety if I had the other pages that showed that the date of January 7th, 1997 was on the page preceding the page 2414 that says Trustees Executive Session, but it does appear to be.

Q. Looking at page 2415, when did you take those notes?
A. On January the 7th, 1997.
Q. Would it be fair to say that it would appear that the notes taken on 2414 were also taken on January 7, 1997?
A. It would appear that way, yes.
Q. Were those notes taken in your capacity as trustee?
A. Yes.
Q. Did you maintain copies of those notes in your records?
A. Yes.
Q. On page 2415, there's a reference to Henry. That would be Trustee Peters; is that correct?
A. Yes.
Q. And there's another reference to Jerry and that would be Mr. Jervis?
A. That's correct.
Q. With respect to the term "Mark" up at the top, would that refer to Mr. McConaghy?
A. Yes, but it was Jerry Jervis reiterating what Mr. McConaghy said. That follows what was on page 2414.
Q. Apparently Mr. Jervis had met with Mr. McConaghy

or spoke with him regarding inurement and unreasonable compensation?
A. It may be, but it also may be that he was reiterating what was said in a previous meeting.
Q. The notation under "Henry" says, "Federal government oblivious to the two percent the law allows." Do you see that note?
A. Yes.
Q. Was it your understanding that Mr. Peters was referring to the commission schedule in the statutes?
A. Yes, he definitely was.
Q. And then there's a question that follows that. It says, "If the study is lower than the law, what happens?"
A. Yes.
Q. Was that Mr. Peters' question or was that your question?
A. No, that was Mr. Peters' question.
Q. What was the response, if any, at the time?
A. I think Jerry came back with the response here that we agreed with the Probate Court to conduct a compensation study.
Q. That was in January 1997?
A. That's correct.
Q. Was a subsequent compensation study done with

the Probate Court?
A. I'm not sure, because early on, as I mentioned yesterday, the Probate Court and the Master recommended we do a compensation study and then we were -- at some point in time, we were to do a compensation study every three years. And I'm not sure if this was the one that was done for that period or not, but as I recall, it says one or more; and, hence, we had two.
Q. Would you turn to the page numbered 2439 in Exhibit 108. When did you take these notes?
A. January the 30th, 1997.
Q. Were these notes taken at a trustees meeting?
A. Yes, it was.
Q. Was it taken in executive session?
A. It was.
Q. Did you take these notes in your capacity as trustee?
A. Yes.
Q. Did you maintain a copy of these notes in your records?
A. Yes.
MR. ING: Would you mark this as Exhibit 109.
(Exhibit No. 109 marked

for identification.)

BY MR. ING:

Q. Mrs. Lindsey, would you examine Exhibit 109, please.

A. Okay, I read it.

Q. Mrs. Lindsey, is Exhibit 109 a copy of pages from your notes?

A. It is.

Q. Are the notes in Exhibit 109 taken in your own handwriting?

A. Yes.

Q. Is Exhibit 109 a fair and accurate copy of your notes of those particular pages?

A. Yes.

Q. Exhibit 109 consists of four pages numbered at the bottom 2521, 2528, 2640 and 2720, correct?

A. Correct.

Q. With respect to sheet number 2521, when did you take those notes?

A. April the 2nd, 1997.

Q. Was this taken at a trustees meeting?

A. Yes, it was.

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

A. Yes.

Q. Did you maintain a copy of this in your records?
A. Yes.
Q. At the top of page 2521, there's a notation of "Jerry" underscored. Is that Mr. Jervis?
A. Yes.
Q. Were you taking down notes of what he said?
A. Yes, what he did and said.
Q. In the middle of the page, there's a note that says "Henry". Would that refer to Trustee Peters?
A. Yes.
Q. The note indicates that Henry did not want to be restricted by the policy. Do you see that?
A. Yes.
Q. What did that refer to?
A. I think we were reviewing -- not I think. We were reviewing the KSBE Trust Administration and Fiduciary Handbook and there was a lot of concern about how restrictive a policy might be and Henry said he did not want to be restricted by the policy.
Q. And that fiduciary handbook was subsequently approved at a meeting in August of 1997; is that correct?
A. I'm not sure. I'd have to look at my notes, but it was subsequently approved.
Q. Wasn't it approved at or about the time the

strategic plan, the educational strategic plan was approved?

A. I'm not sure. I can't remember.

Q. Who was in charge of preparing the fiduciary handbook?

A. Nathan Aipa and Jerry Jervis.

Q. Were drafts of the fiduciary handbook circulated for trustee review?

A. I know we had input into it. I know we looked at some of the pages of it. I don't know if drafts is really what we saw. I don't know if we saw like this final copy and then we responded to that or if indeed we had drafts.

Q. Looking at your note, however, there was apparently at least a handout on April 2nd, 1997, regarding the fiduciary manual?

A. Yes, and I think that was the manual.

Q. Would you refer to the page numbered at the bottom 2528, please. When did you take these notes?

A. On April the 8th, 1997.

Q. Was it taken at a trustees meeting?

A. Yes, it was.

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

A. Yes.

Q. Did you maintain a copy of these notes in your records?
A. Yes.
Q. Would you refer to sheet number 2640, please. When did you take these notes?
A. On June 26, 1997.
Q. Were these notes taken at executive session?
A. Yes, it was.
Q. On that date and in that meeting were the fiduciary guidelines discussed?
A. Yes.
Q. Do you recall whether you had a copy of the fiduciary guidelines at that time?
A. No, I don't. It says we were discussing the fiduciary responsibilities process and I don't know if we had a copy of the manual or not.
Q. Refer to sheet 2720, please. When did you take these notes?
A. On September 3rd, 1997.
Q. These notes apparently concern the IDR's issued by IRS; is that correct?
A. Yes. I'm sorry, it may not. I think we just -- I put up here for my own information what IDR means.
Q. It does refer to the IRS audit, however?
A. It does.

Q. There's a reference to "Mark" and that would be Mark McConaghy again?
A. Yes.
Q. And the note is that he was trying to bring closure to the audit?
A. Yes.
Q. And as a part of the audit process, there were numerous IDR's that were issued; is that correct?
A. Yes.
Q. And the Estate was in the process of responding to those information document requests?
A. Some of them they had already responded to and some of them were still coming in.
(Exhibit No. 110 marked for identification.)
BY MR. ING:
Q. Mrs. Lindsey, I'm going to show you a copy of -- actually, it's one page out of Exhibit D522, which was entered in the trial before Judge Weil into evidence, and it is a log of a trustees meeting, but I'm going to show you one page from this log.
MR. WOLSZTYNIAK: That was D522, Doug?
MR. ING: I'm sorry?
MR. WOLSZTYNIAK: D522.
MR. ING: Yes, that was in evidence in the

prior trial.
BY MR. ING:
Q. This is page 93 from that log and I'm going to have it marked as Exhibit 110. I only have one copy of this, but I want to use it to refresh your recollection.
Would you take a look at this, Mrs. Lindsey. Take a look at the second entry from the top, August 12, 1997.
A. Yes.
Q. It refers to education plan 1996 - 2005?
A. That's correct.
Q. Then if you could look at the entry right about at the middle of the page, it says Trust Administration and Fiduciary Guidelines Handbook?
A. Yes.
Q. Do you see that?
A. Yes.
Q. Does that refresh your recollection as to whether or not the Fiduciary Guidelines Handbook was approved at that meeting in August of 1997?
A. No, I am certain the education plan was, but I am not certain that the Trust Administration and Fiduciary Guidelines Handbook was, because it doesn't note that it was approved here.

Q. Is it your recollection that at one point in time it was approved?
A. Oh, definitely.
MR. ING: Let's mark the next Exhibit 111.
MR. WOLSZTYNIAK: Excuse me, Doug. For the record, if I could get a copy of that when we get a chance.
MR. ING: We'll make a copy of Exhibit 110 during the break.
(Exhibit No. 111 marked for identification.)
BY MR. ING:
Q. Mrs. Lindsey, could you examine Exhibit 111, please.
Mrs. Lindsey, have you had an opportunity to review Exhibit 111?
A. Yes.
Q. Is Exhibit 111 copies of pages from your notes?
A. Yes.
Q. Are these fair and accurate copies of those pages from your notes?
A. Yes.
Q. Is Exhibit 111 also in your own handwriting?
A. Yes.
Q. Exhibit 111 consists of nine pages numbered at

the bottom 2727 through 2730 and 2736 through 2740, correct?
A. Yes.
Q. With respect to pages numbered at the bottom 2727 through 2730, when did you take those notes?
A. On September the 4th, 1997.
Q. Were those notes taken during the course of a trustees meeting?
A. Yes.
Q. Were you in executive session for at least part of those?
A. Yes.
Q. Did you take these notes in your capacity as trustee?
A. Yes.
Q. Did you maintain a copy of these notes in your records?
A. Yes.
Q. If you would look at sheet numbered at the bottom 2730, please.
In the left-hand margin, there's a note that says "Henry". Does that refer to Trustee Peters?
A. Yes.
Q. Your notes indicate there was a question raised, "Will the use of intermediate sanctions affect us?"

Do you see that?
A. Yes.
Q. Whose question was that?
A. Henry's.
Q. There was an apparent answer that says "yes" with an exclamation point?
A. Yes.
Q. Whose response was that?
A. I'm not sure. I'm really not sure who the response was from. I know that Gil Ishikawa was answering some of the questions and giving us some of the information, and I'm not sure if Gil Ishikawa is reporting on his meeting with the IRS and saying these things and giving us this or if someone else responded.
Q. Was it your understanding at that time, however, that intermediate sanctions would be effective from September 1995 going forward?
A. Yes, they told us repeatedly that it was retroactive to September 1995, although they also told us repeatedly they did not have any rules and regulations or anything else drawn up.
Q. There's a note below the reference to "Henry". It says "September 16, 1997." Do you see that?
A. Right.

Q. That note says, "Mark will bring Howie Sharnfelt"?
A. Yes.
Q. Is that a reference to Howard Sharnfelt?
A. No, it's whoever was -- I think Gil Ishikawa was sharing this information with us and saying that this is what he did.
Q. But September 16 would have been 12 days down the road from September 4, '97, when you took the notes, right?
A. Yes.
Q. Was there a plan to have Mr. McConaghy come into town?
A. Based on this, yes, on that date.
Q. If you refer to pages 2736 through 2740. When did you take these notes?
A. September 16, 1997.
Q. Were these notes taken during the course of a trustee meeting?
A. Yes.
Q. Were you in executive session when you took these notes?
A. Yes.
Q. Did you take these notes in your capacity as trustee?

A. Yes.
Q. And did you maintain copies of these notes in your records?
A. Yes.
Q. Up at the top, there's a note, "Mark McConaghy, Price Waterhouse, IRS audit, 1993 - 1996." Do you see that?
A. Yes.
Q. What is that a reference to?
A. The audit, because we had the audit going from 1990 to 1996 and he was addressing the second three-year phase.
Q. Was Mr. McConaghy present?
A. Yes.
Q. There's also a notation regarding "John & Howard." Who does that refer to?
A. Howard is the one listed on the previous page that was going to come and I'm not sure what John's last name was.
Q. Now you apparently took notes during the course of the discussions by Mr. McConaghy and whoever he brought with him?
A. Yes.
Q. Do the notes on that page as well as the following four pages refer to the presentation made

by Mr. McConaghy on September 16, 1997?
A. Yes.
Q. If you would look at the bottom of page 2736, there's a note that says -- there's a dash that says, "Intermediate sanctions just enacted." Do you see that?
A. Yes.
Q. You apparently wrote down that IRS has this ability to disqualify charitable tax-exempt status. Do you see that?
A. Yes.
Q. Was that advice given to you by Mr. McConaghy?
MR. WOLSZTYNIAK: At this time, I've got no problem laying the foundation for the particular document. As far as advice of Mr. McConaghy, if it's to the Board generally, I've got no problems.
If it's specifically regarding Mrs. Lindsey, I would instruct her not to answer on Fifth Amendment grounds. I have no objection without prejudice to clarification --
MR. ING: Let me rephrase the question.
BY MR. ING:
Q. Did Mr. McConaghy say during the course of that meeting that IRS had "this," meaning intermediate sanctions, plus the ability to disqualify charitable

tax-exempt status during the course of that meeting?
A.   I don't think -- I'm not sure whether Mark McConaghy said it or John or Howard said it. I have this listed, as you see, under John and Howard carrying on this discussion.
Q.   But one of those people said it?
A.   Somebody said it and all they were doing was giving us factual information.
Q.   Factual information about what?
A.   They just said the IRS has intermediate sanctions plus the ability to disqualify, because prior to that, there was some discussion that it would -- the IRS only had the power to disqualify you from tax-exempt status and this was supposed to give us intermediate steps and so it was like one or the other.
     Now he's saying it isn't one or the other. It's they have both, which was not our -- what we were led to believe in previous discussions.
Q.   So they were explaining to you that IRS has both the power to utilize intermediate sanctions as well as to disqualify the tax-exempt status?
A.   Yes.
Q.   If you would refer to page 2737, please. In the middle of the page, there's a bullet. It says, "IRS

does not believe State has effective state trust powers." Do you see that?

A. Yes.

Q. Was that information provided to you by either Mr. McConaghy or John or Howard?

A. Yes.

Q. There's also a note that says, "IRS has leverage, two schools of thoughts. Do whatever it takes to preserve the assets of the case so they settle. Other school of thought is zap them and set a precedence." Is that correct?

A. Yes.

Q. And did that information come from Mr. McConaghy or from John or Howard?

A. Yes, they said the IRS can do either one of these two things.

Q. Mrs. Lindsey, based on your notes, does the information being provided by Mr. McConaghy, Howard or John relate to the pending audit of KSBE and intermediate sanctions?

A. They started out just citing the pending audit, but then they went -- because we needed clarification on just exactly what this intermediate sanctions law that was just recently enacted does, they went into a discussion of the intermediate sanctions law.

Q. Did they also discuss the then recently initiated Attorney General's investigation?

MR. WOLSZTYNIAK: At this time, I'm going to instruct Mrs. Lindsey not to answer on Fifth Amendment grounds, subject to our determination of the scope of the U.S. Government's investigation pursuant to subpoena, without prejudice to any further foundation or questions in that area.

BY MR. ING:

Q. Mrs. Lindsey, if you could refer to page 2738.

Apparently either Mr. McConaghy, John or Howard did comment on the AG's approach to the investigation?

A. That's correct, they did.

Q. And the comments that you have under AG's Approach beginning at the middle of page 2738 record their impressions of the AG's investigation; is that correct?

A. It records Howie's impression -- Howard is called Howie -- because it says specifically, "After Howie read the AG's report, he felt" and these are what he said.

Q. So you're recording his statements regarding --

A. Right.

Q. -- his view of the AG's investigation?

A. Right.

MR. ING: We've been going about an hour. Let's take a short break.

(Recess from 10:36 to 10:51 a.m.)

MR. ING: Mark the next exhibit 112.

(Exhibit No. 112 marked for identification.)

BY MR. ING:

Q. Mrs. Lindsey, would you examine Exhibit 112, please.

Have you had a chance to review Exhibit 112?

A. Yes.

Q. Is Exhibit 112 copies of notes, of your notes?

A. Yes.

Q. Is it in your handwriting?

A. Yes.

Q. Are these fair and accurate copies of these pages from your notes?

A. Yes.

Q. Exhibit 112 consists of four pages numbered 03017, 03018, 03019 and 03067; is that correct?

A. Yes.

Q. With respect to pages numbered, the last four digits, 3017 through 3019, are those in your handwriting?

A. Yes.
Q. When did you make these notes?
A. On December 16, 1997.
Q. Were they made at a trustees meeting?
A. Yes.
Q. Did you make these notes in your capacity as trustee?
A. Yes.
Q. Did you maintain copies of these notes in your records?
A. Yes.
Q. If you would look at 3017, please.
A. Yes.
Q. There's a note that, "Nathan gave us a copy of our report to Pat Yim's report." Do you see that?
A. Yes.
Q. Does that refer to the trustees' response to Judge Yim's report?
A. I'm not sure.
Q. What does the note refer to then?
A. I'm not sure. I'm really not.
Q. Do you recall when Judge Yim's fact-finder report came out?
A. I believe it was in December of '97.
Q. Did the trustees prepare a response to Judge

Yim's report?
A. Yes.
Q. Did you prepare a separate response to Judge Yim's report?
A. Yes.
Q. If you would refer to page number 3018, please. There's a discussion about the IRS audit noted at the middle of the page; is that correct?
A. Yes.
Q. You also note that the AG, meaning the Attorney General, was issuing subpoenas?
A. Yes.
Q. On page number 3019, there's a bullet that says Venue Issue. Do you see that?
A. Yes.
Q. And there's a question, "Can we move the investigation to another jurisdiction because we can't get a fair hearing?" Do you see that?
A. That's correct.
Q. Who was the speaker to that note?
A. I'm not sure. I didn't know the speaker.
Q. But that fell under the discussion regarding the Attorney General's investigation; is that correct?
A. That's correct.
Q. Was there a discussion about trying to change

the venue of the investigation?
A. I think there was just a question asked regarding that.
Q. The next bullet says, "Henry - also wants to know if we can change our domicile."
A. Yes.
Q. Was there a discussion about changing domicile at that time?
A. I don't remember.
Q. Where it says "Henry" here under the bullet, does that refer to Mr. Peters?
A. Yes, it does.
Q. Did Mr. Peters during the course of that meeting raise the question about moving the domicile of the Trust?
A. He made this statement. He wants to know if we can. I think it was rather a statement but a question, probably directed at Nathan.
Q. Do you know what the response was?
A. No, I don't. Sometimes there was no response. Somebody just raised something and kind of just...
Q. But in this case, you don't know what the response was?
A. No, I don't.
Q. With respect to page 3067, when were those notes

taken?
A. On January the 15th, 1998.
Q. Was this taken at a workshop on trust law and standards?
A. Yes, the first workshop we ever had.
Q. First workshop ever or first workshop on trust --
A. First workshop on trust law and standards ever.
Q. Had you had other workshops in the past?
A. Yes.
Q. And had you had work retreats in the past in which trust responsibilities were discussed?
A. Yes, parts of trust responsibilities.
Q. Was this workshop directed at the request of either the Master or the Court?
A. I'm not sure.
Q. Do you recall whether the Master had issued a report in November of 1997 regarding the annual account for year 109?
A. I'm not sure when he issued the reports. He did issue reports for three years of annual accounting at various times.
Q. Do you recall whether there was a stipulation entered into regarding a workshop on trust law and standards?

A. I don't recall that at this time.
Q. Do you recall that Colbert Matsumoto had submitted two separate reports, one on the 109th account and a subsequent one called the Consolidated Report on the 109, 110 and 111 accounts?
A. I remember he issued reports, yes. I can't be certain as to how they were divvied up.
Q. Do you recall whether the trustees were criticized because of the way they managed the trust? By that, I mean reference to the lead trustee system --
MR. WOLSZTYNIAK: Objection.
BY MR. ING:
Q. -- criticized by the Master.
MR. WOLSZTYNIAK: Withdraw the objection.
A. I know they used the word "lead trustee system" and I know that he made some remarks about that, was not happy with it, would not accept our response that it was past practice.
BY MR. ING:
Q. Did Colbert Matsumoto criticize the trustees for partitioning the trust as between asset management, education, legal and government relations?
MR. WOLSZTYNIAK: I'll object on the grounds that it lacks foundation. You mean criticized

verbally or in reports? You can answer over it if you have an understanding if there was any criticism by Mr. Matsumoto.
A. I really don't know what you mean by the word "partitioning" the trust, because I don't think we partitioned anything.
BY MR. ING:
Q. What was the motivation for having a special workshop on trust law and standards?
A. They just put together a trust law and standards workbook, as I understand it. Much like we did the fiduciary handbook, we had a trust law and standards handbook instead of -- I'm sorry, I used the wrong term, and we were going to be -- Bruce Graham, our trust attorney, wanted to make sure that we had a full and complete understanding of trust law and standards.
Q. And this workshop was held down at the Hilton?
A. Yes, it was.
Q. Who was in attendance?
A. The trustees, Bruce Graham and Nathan Aipa.
Q. How long did the workshop last?
A. Well, we -- I don't remember when it started. I remember we broke for lunch, and after we broke for lunch, two of the trustees left and there were only

three of us still there.
Q. Which two trustees left?
A. Stender, Trustee Stender and Trustee Jervis.
Q. Were there written materials passed out during the course of the workshop?
A. There was.
Q. Did you maintain copies of those materials?
A. I don't think I have copies of them now. I had them for a while, but we had to turn back in so many things to the Estate when we left.
Q. Did the handouts concern duties and responsibilities of trustees?
A. As I recall, it was a handbook that had a lot of things in it, as I recall.
MR. ING: We'll have this marked as Exhibit 113.
(Exhibit No. 113 marked for identification.)
BY MR. ING:
Q. Mrs. Lindsey, I've handed you what has been marked as Exhibit 113. Would you just briefly look through these materials.
Mrs. Lindsey, I do not intend to ask you detailed questions about the content of the document. I just want you to look through and familiarize

yourself generally with the contents.
1993 would have been the first year that you served as a trustee; is that correct?
A. That's correct.
Q. During the course of that year, were there retreats conducted to educate and familiarize the new trustees, being you and Trustee Wong, with the Estate?
A. Not segregated from anyone else, no. These were regular, normal scheduled retreats.
Q. But that was -- well, were there retreats held in which all trustees were present?
A. Yes.
Q. Do you recall being at a retreat in July of 1993 at the Turtle Bay Hilton?
A. I do.
Q. I wonder if you could look at Exhibit 113 and the Bate's number M29279. Do you have that?
A. Yes.
Q. This is a letter from Mr. Aipa to the trustees?
A. Yes.
Q. Do you recall Mr. Aipa conducting a workshop on fiduciary investment standards at the retreat on July 19th, 1993?
A. No, I don't. I recall them talking about this

in relationship to a 10-year projection and I recall a great debate on how a 10-year projection should be formulated, and they had two different sets of criterion that they were working on and I think we got more into the 10-year projection than we did into this document here.
Q. Do you recall receiving document Exhibit 113?
A. Not specifically.
Q. Do you recall generally receiving it?
A. I'm a little confused, Doug, because if this was a meeting -- I wish I had an agenda -- where they also presented the arms'-length document, then we didn't get into this. And I'm not sure, so I'd rather not be specific as to whether I remember doing this or not doing this or getting this or not getting this.
Q. What was the arm's-length document?
A. It was a discussion of keeping an arm's length from our for-profit subs.
Q. Were those taken up at the same time?
A. That's what I'm not sure of. My memory is kind of hazy. This was kind of a long time ago, but I do remember that we had a real problem with a 10-year projection at one of those retreats and there was a difference of philosophy on how that 10-year

projection should be, or what criteria that 10-year projection should be based on. And I think that took precedence over a lot of other things, the arm's length and that 10-year, if indeed that was the meeting. So I'm real hazy.

Q. Do you recall receiving a set of documents regarding arm's-length transactions?

A. Not a set of documents regarding arm's-length transactions, but something like this regarding arm's length.

MR. WOLSZTYNIAK: When you say "like this," what are you referring to?

THE WITNESS: Something like a document that looks something like this --

MR. WOLSZTYNIAK: Exhibit 113?

THE WITNESS: -- that's arm's length instead of fiduciary investment standards on it.

BY MR. ING:

Q. You recall seeing a document like that?

A. Yes.

Q. Do you recall receiving the letter that is part of Exhibit 113 shown at page Bate's number 29279?

A. No, I don't recall it at this time.

Q. Do you recall receiving guidance of any sort regarding fiduciary investment standards?

A. I remember as we looked at things, there was guidance provided and advice provided by the attorneys on each investment we were looking at. Not each, but some of the investments we were looking at.
Q. 1993 would have been your first year as trustee, correct?
A. Yes.
Q. Were you curious at all about what your obligations were as a trustee?
A. I was curious and I read a lot of things.
Q. What are the things you read about your obligations as a trustee?
A. Anything I could get my hands on that was left to me my Matsi Takabuki.
Q. Anything else you recall?
A. Not specifically.
Q. Do you recall receiving materials from Mr. Aipa about what your obligations were as a trustee?
A. I remember getting a handbook with Pauahi's picture on the front of it that had some things in it.
Q. It was a Trustee Briefing binder; is that correct?
A. I'm not sure of the exact title, but I remember getting this binder.

Q. And there were materials contained in the binder?
A. Yes, and I remember it was given to me by Gil Tam.
Q. It was put together by Mr. Tam?
A. Well, it was also given by Mr. Tam to me to read.
Q. Did it contain information about fiduciary investment standards?
A. I don't recall everything that was in there. I do recall it started out with the will.
Q. Do you recall receiving anything from Mr. Aipa from time to time regarding what your obligations were as it relates to your fiduciary duties?
A. I recall him verbally telling us things in meetings at various times. I don't specifically recall this document at this time.
Q. Meaning Exhibit 113?
A. Right.
Q. You do recall being in attendance at the retreat, however?
A. Yes.
Q. Would it be fair to say that you took your duties and responsibilities as a trustee very seriously?

A. I worked very hard at it.
Q. Would it also be fair to say that you sought guidance and advice from legal counsel from time to time regarding your obligations?
A. From legal counsel and other trustees, depending on the issue.
MR. ING: Mark this as Exhibit 114, please.
(Exhibit No. 114 marked for identification.)
BY MR. ING:
Q. Mrs. Lindsey, have you had a chance to review Exhibit 114?
A. I have.
Q. What is it?
A. It's the first time I've seen it, but supposedly it's a memo to me from Denis Dwyer.
Q. Who is Denis Dwyer?
A. I don't know.
Q. Who is the Verner Liipfert Bernard McPherson Hand law firm?
A. That's a law firm we hired.
Q. Were they working on the intermediate sanctions?
A. They were.
Q. Who was Senators Pryor and Bumpers?
A. I guess they were senators in the U.S. Congress.

Q. Do you recall meeting with them or talking to them at any time?
A. No.
Q. Do you recall planning to meet with them to discuss intermediate sanctions?
A. No, I said that I was aware of who they were and I had met them previously, but I didn't meet with them regarding intermediate sanctions.
Q. Is it your testimony today that you've never seen the document identified as Exhibit 14?
A. It's my testimony, as far as I can remember, this is the first time I've seen this. It's interesting that it's not even signed.
Q. Were you aware that the Verner Liipfert law firm was working on lobbying for the Estate with respect to intermediate sanctions?
A. Yes.
MR. WOLSZTYNIAK: Objection.
BY MR. ING:
Q. Is it your testimony that you do not know who Denis Dwyer is?
A. At this moment, I don't remember who he is.
Q. Who at Verner Liipfert was working on the intermediate sanctions lobbying?
A. Norma Wong.

Q. Who else?
A. I think John Waihee.
Q. Anyone else?
A. There were people in Washington, D.C., but I didn't meet them. I only heard names as it was reported back by Trustee Wong.
Q. Did you receive memos from time to time addressed to the trustees from John Waihee, Norma Wong and Denis Dwyer regarding intermediate sanctions lobbying?
A. I don't remember who specifically wrote the memos, but there were memos.
Q. Memos from the Verner Liipfert law firm?
A. Yes.
Q. Were you curious as to what Verner Liipfert was doing about intermediate sanctions?
A. There were reports given to us on intermediate sanctions by Trustee Wong. So we were aware that they were working. We weren't given specific details on everything that they did.
Q. "We" being the trustees?
A. Being trustees, because Trustee Wong was the liaison and he worked with the Verner Liipfert firm.
Q. So your reports regarding intermediate sanctions came through Trustee Wong?

A. Yes, as noted in my notes.
Q. Did you ever participate in any of the lobbying efforts for intermediate sanctions?
MR. WOLSZTYNIAK: Objection. At this time, I'm going to instruct my client not to answer on Fifth Amendment grounds because we're getting into a specific area regarding lobbying, which I indicated we would be invoking the Fifth Amendment until such time as we can determine the scope of the U.S. Government.
This is without prejudice, however, for other questions in the area regarding this particular document, foundation or otherwise, referring to Exhibit 114.
BY MR. ING:
Q. Mrs. Lindsey, did you travel to Washington, D.C. during the year 1995?
A. I might have. I'm not sure.
Q. You have filled out lengthy IDR's regarding your travel, haven't you?
A. Yes.
Q. In connection with that travel, you had to identify to IRS the business purpose of those travels; is that correct?
A. That's correct.

Q. So you completed a number of forms regarding your travel and entertainment expenses; is that correct?
A. That's correct.
Q. And you attached receipts to them?
A. Yes.
Q. Do you recall completing information in response to an IDR request regarding travels to Washington, D.C.?
A. I traveled to Washington, D.C. quite a few times. I'd have to look at the travel documents to refresh my memory.
Q. Did you travel there on Estate business?
A. Yes, I did.
Q. Do you recall meeting with any of the congressmen during the course of your Estate business in Washington, D.C.?
A. Yes, we were invited to some social parties. We were invited to some of the openings and things like that, invited to hear discussion on the floor of both the House and the Senate.
Q. Did you have discussions with either representatives or senators of Congress other than the Hawaii delegation from time to time?
A. Yes, I have.

Q. Did you make notes of those meetings on your IDR business expense forms?
A. I don't remember. I'd have to look at them.
Q. Did you have a direct line at your offices at Kamehameha Schools?
MR. WOLSZTYNIAK: You mean direct phone line?
MR. ING: Yes.
A. Yes.
BY MR. ING:
Q. What was the number to the direct line?
A. I don't know, because I hardly used it. You know, we had a private line and then we had our regular line that came in that people could dial directly or you went through the operator. Is that the number you're asking me for?
Q. Yes, a direct dial number.
A. 523-6207.
Q. And did you have a -- whose number was 6324?
A. I don't know.
MR. ING: Mark this as Exhibit 115, please.
(Exhibit No. 115 marked for identification.)
THE WITNESS: Can I speak to him, please?
MR. ING: Sure.

(Recess from 11:29 to 11:30 a.m.)

MR. WOLSZTYNIAK: Just for the record, Mr. Ing, Mrs. Lindsey said she did remember the number 6324 and she would like to disclose that at this time.

A. It's Ernella, Trustee Wong's secretary.

BY MR. ING:

Q. Thank you. Mrs. Lindsey, I had an exhibit marked as Exhibit 115. Would you examine that, please.

A. Yes.

Q. Mrs. Lindsey, if you could look at Exhibit 115. Do you recall receiving a copy of this?

A. Yes, I do.

Q. There's a note at the upper left-hand corner of the first page of Exhibit 115. Is the note on that page in your handwriting, Mrs. Lindsey?

A. Yes, it is.

Q. Would you read the note, please?

A. It says, "May the 28th, 1997. Henry, I'm okay with this at the adjusted 75th percentile level."

Q. What was that in reference to?

A. Remember the minutes you showed me, showed me the other day when I asked if this was defensible?

Q. Yes.

A. And I wanted to make sure we could defend what they were talking about as the range that we would be looking at. When I got this -- and note that this is 5/28/97. This is dated March 13, 1996. I just wanted to put that to closure.
Q. What did the adjusted 75th percentile level refer to?
A. This second thing on page 2 where, you know, he went through you could defend it as -- you go from page 1. There's a bullet point, the second bullet point. Third bullet point, it says we could defend it at that level based on all of the things he has here.
Q. So you were okay with the adjusted 75th percentile, which meant a range of $921,000 to $1,021,000 per trustee?
A. That's what we were discussing in the previous meeting. That's where I questioned the defensibility of it. I said can we defend this and, you know, what factors would you use. And so when it came back that we could, I said okay, because I was holding out at that meeting.
Q. So when the note on page 1 says "I'm okay at the adjusted 75th percentile," you were referring to the adjusted 75th percentile level at the top of page 2

of Exhibit 115?
A. Right.
Q. And that referred to compensation per trustee of between 921,000 to 1,021,000; is that correct?
MR. WOLSZTYNIAK: Objection. The document speaks for itself, but you can answer over the objection.
A. Yes, it does.
BY MR. ING:
Q. Did the trustees establish at any time benchmarks for their performance?
A. Benchmarks meaning what?
Q. Any kind of benchmarks for performance.
MR. WOLSZTYNIAK: You mean the trustees as a whole, as a board?
MR. ING: The trustees as a group, the trustees as a whole, the trustees as a majority.
MR. WOLSZTYNIAK: Okay, you can answer that question, if you know.
A. I'm trying to figure out what he means by benchmarks.
BY MR. ING:
Q. Well, Mrs. Lindsey, in the education strategic plan and in the strategic planning process, were there benchmarks that were established for the

performance of the school?
A. Yes.
Q. Benchmarks are a common way to judge the performance of your principal executives; is that correct?
A. I don't know if it's a common way. It was one way.
Q. Did the trustees establish benchmarks for the performance of the president of the school as well as for other key employees?
A. No.
Q. There were no benchmarks?
A. Not until we started this strategic planning process, and that was an attempt to start making sure that education was a core and we had benchmarks there and we would move out from there.
Q. So there were benchmarks established in the strategic planning process for the performance of the school?
A. Yes.
Q. So the trustees as a group had a notion of what benchmarks were in terms of performance? Would that be a fair statement?
A. Yes, I guess so.
Q. Were there any benchmarks established by the

trustees for their own performance as a group?
A. Not formally, but there were benchmarks with regards to us making sure that the students got the best education and we were trying to put this into place. We met with a lot of resistance as we tried to do this.
Q. Were the benchmarks for the performance of the trustees ever put into writing?
A. No.
Q. Where would one go to determine what these benchmarks were?
A. I think you have to -- I'm not even sure where you would go, because not everything was put into the minutes of our meetings. They were very lean and mean and we didn't have a lot of things in there, but I know that we looked at two specific areas.
One, to improve the school and to make it accessible for more Hawaiians on a full-time basis. And the second was to make sure that we had the asset base to continue the expansion of the schools and the programs. And that was our benchmark for performance, to make sure that these things were happening.
Q. Did the trustees ever establish any financial benchmarks for performance?

A. They established in that 10-year projection what was needed, what we needed to do in order to carry on the programs.

Q. I'm sorry?

A. They didn't establish benchmarks per se for their own performance. We were working toward establishing that.

Q. If you could refer to Exhibit 115, please. If you will look at the first paragraph under the adjusted 75th percentile bullet.

The second sentence says, "In particular, it is not unusual to target incentive compensation at the 50th percentile for achieving goals and at the 75th percentile for significantly exceeding preestablished performance goals." Do you see that sentence?

A. Yes.

Q. Did the trustees establish any performance goals for themselves?

MR. WOLSZTYNIAK: Objection, asked and answered. You can answer over it.

A. I said no, but can you look at the next sentence? If you have increased your asset base and if you have provided more students an opportunity, aren't you exceeding the performance of the previous year? I think so.

BY MR. ING:

Q. Was that performance goal written down anywhere?

A. I said no, it wasn't, but there was a clear understanding among the trustees of what it was we were going to do.

Q. What was that clear understanding?

A. That we were going to make the educational opportunities available to more full-time Hawaiians on -- I mean, more Hawaiians on a full-time basis and that we were going to increase our endowment so that we could make sure that we could fund this in to perpetuity, and we worked very hard at these two things.

Q. What was going to be the level of increase? Is an increase in one dollar an increase in the endowment?

A. I think if you look at the endowment, you will see that it is increased significantly over the past years.

MR. WOLSZTYNIAK: Mrs. Lindsey, listen to Mr. Ing's question and specifically answer exactly the question he asks.

BY MR. ING:

Q. Is an increase of one dollar an increase in the endowment?

A. It is.
Q. Were there any preestablished performance goals for increase in the endowment by the trustees?
A. The asset group had some preestablished goals.
Q. What were those preestablished goals?
A. I don't recall at this time.
Q. Were those goals preestablished for the asset management group or was that preestablished for the trustees themselves?
A. For both, because we wanted to make sure that the endowment grew and that's why the 10-year projections.
Q. Did the trustees then examine their performance based upon what that preestablished goal was of asset management?
A. I don't think trustees ever examined their performance per se, except at looking at strengths and weaknesses, overcoming weaknesses and providing for the strengths of the Trust.
Q. So the trustees never measured themselves against the preestablished performance that was maintained by the asset management group; is that correct?
A. There was no formal measurement process in place.

Q. Where in asset management was the preestablished performance goals set forth?
A. They were set forth by the person in charge, Tony Sereno, when he was in charge, and it would be approved by the trustees. And then Randall Chang when he came aboard, Henry Peters in the interim. It was all brought back to the trustees.
Q. What's your recollection of what those preestablished goals were?
A. I can't, I can't remember at this time.
Q. Was it in writing?
A. Yes, it was.
Q. Was it in terms of financial performance?
A. Yes, it was in terms of financial performance.
Q. What were the financial benchmarks?
A. I can't remember at this time.
Q. Can you characterize them at all in any way?
A. I can only characterize them on a 10-year projection scale. And every year, this projection was reviewed, and on an annual basis, you looked at where we were and what we were able to -- how much we were able to accrue in a given year and we were looking at changing these, to use the term loosely, benchmarks for the next year and to factor out a 10-year plan in order to meet the needs of the

school.
Q. So there was a 10-year plan; is that correct?
A. Ten-year projection plan.
Q. Ten-year projection, okay. But the trustees never judged their performance against meeting the goals established in that 10-year plan?
A. Not formally, but there were a lot of informal directions, I mean discussions on whether we were meeting our goals or not.
We attempted to put that whole thing together in the strategic plan. Unfortunately, it took us too long to get an educational strategic plan put together, because that is the heartbeat of everything else we were going to do.
Q. Was there ever a financial strategic plan?
A. I believe there was.
Q. During the time that you were trustee?
A. I believe there was.
Q. Who prepared it?
A. The asset management group.
Q. Was it formally adopted by the trustees?
A. I do recall it said in 1993. That was one of the things I remember. There was a difference in philosophy of how to lay this 10-year projection out.
Subsequent to that, there was an agreement on

how it should be laid out and there were formal approvals for various aspects of that financial plan.
Q. But was the financial strategic plan adopted by the Board of Trustees?
A. Approved, possibly. I don't know if I would use the word "adopted" per se.
Q. So I could go to Neil Hannahs and ask him for the trustee-approved financial plan and he would be able to produce that?
A. Not Neil Hannahs. He wasn't in charge of that.
Q. Who would be the person?
A. Randall Chang or Henry Peters or -- well, you can't go to Tony Sereno. In fact, when we left, Randall Chang was revising the entire document and going to propose a different document and reporting system to us.
Q. Did the trustees ever disclose to the Master or to the Probate Court what their performance goals were for asset management?
A. I don't know that.
Q. At the time the trustees went in for approval of their compensation, did they ever advise the Court that they had met their performance goals for financial management?
A. No, I don't think compensation was ever tied to

meeting our financial goals per se, because we were following the statute. And even in following the statute, which says we could take two percent -- and it characterizes it in the different areas, some of it not quite two or a little more than two -- we gave back a lot of our money. So we did not take all we were allowed to take per the statute.

Q. So what you utilized as guidance for determining your compensation was the state statute regarding trustee commissions?

A. Yes.

MR. ING: Mark this as Exhibit 116, please.

(Exhibit No. 116 marked for identification.)

BY MR. ING:

Q. Mrs. Lindsey, would you take a look at Exhibit 116.

A. Do you want me to read the whole thing?

Q. No, just look through it generally.

A. I know what this is.

Q. What is this document?

A. This is the one I was referring to earlier when you gave me the fiduciary investment standards.

MR. WOLSZTYNIAK: Referring to Exhibit 113.

A. We had a retreat on July the 19th, 1993, and this documents the arm's-length relationship with KSBE corporate affiliates that we discussed at that retreat.

BY MR. ING:

Q. Do you recall discussing arm's-length relationships between the Board of Trustees and the Estate and the for-profit subsidiaries?

A. Yes, I do.

Q. Were the materials contained in Exhibit 116 given to you regarding the arm's-length transactions?

A. Yes, they were.

Q. I take it that you took these materials seriously?

A. Well, I took the presentation seriously of the materials.

Q. Did you separately review the materials yourself?

MR. WOLSZTYNIAK: You're talking about Exhibit 116?

MR. ING: Yes.

A. We looked at this at that time.

BY MR. ING:

Q. I'm sorry, "we" being?

A. The trustees. The PE's were also in attendance when we had a discussion on this. And this took a

lot of time at that retreat. There were a lot of questions, a lot of discussion on this very document.
Q. "This document" being Exhibit 116?
A. Exhibit 116.
Q. Who were the trustees that participated in the discussion regarding the materials contained in Exhibit 116?
A. All of the trustees listed. Myron Thompson, Oswald Stender, Richard Wong, myself and Henry Peters.
Q. If you could look at the Table of Contents.
A. Yes.
Q. Under number 1, it says Introduction, Piercing the Corporate Veil, Tax-exempt Status, Tax Liability: Disregarding the Corporate Fund. Do you see that?
A. Yes, I do.
Q. Were those subject matters discussed at the retreat?
A. I remember piercing the corporate veil very, very distinctly. The other ones, I'm not too sure about.
Q. Now the retreat that you talk about was the July 19, 1993 retreat at Kuilima?
A. That's correct.
Q. Or Turtle Bay, I'm sorry.

A. Yes.
Q. Besides the arm's-length transactions, what else was discussed at the retreat that you recall?
A. As I mentioned, the discussion on the 10-year projection. There were quite a few other items that were discussed, and I don't think we had enough time to really delve into a lot of the areas, which is why I don't remember Exhibit 113, but we did spend considerable time on this, on Exhibit 116.
Q. Mrs. Lindsey, besides the retreat on July 19, 1993, in which the arm's-length transactions was discussed at length, did you at any time subsequent to that review the materials contained in Exhibit 116?
A. I don't recall.
Q. Did you consider it important for you as a trustee to maintain an arm's-length relationship between the Estate and the for-profit subsidiaries?
A. I considered it important, and at that time, I was just learning about the in-depthness of an arm's-length relationship and I also understood at that time that the trustees could serve on these boards and that would not be considered arm's length.
Q. But the Service could not amount to control over the board and over the day-to-day operations of the

taxable subsidiaries; is that correct?

MR. WOLSZTYNIAK: Just for clarification, are you talking about the IRS, the Service?

MR. ING: Yes.

MR. WOLSZTYNIAK: This question as it relates to -- since we have the subpoena out from the IRS, it relates to her impressions as to what the relationship was of this to the IRS and I instruct her not to answer that question on the Fifth Amendment grounds, without prejudice to any other questions regarding this document.

MR. MORRIS: Off the record for a second.

(Discussion off the record.)

BY MR. ING:

Q. Mrs. Lindsey, what was your understanding of the consequences of not observing the arm's-length relationship between the Estate and the for-profit subsidiary?

MR. WOLSZTYNIAK: I'll object as it calls for a legal conclusion. However, I will allow Mrs. Lindsey to answer that question over the objection.

A. I don't think we talked as much about consequences as we talked about each of the different for-profit subsidiaries that we had and who sat on them and how many people constitute a majority, and if these people were employees of KSBE, are they treated the same as if they were trustee -- I mean, did they fall in the same category where you have too many people, so you don't have arm's length.

It was more on the practical implementation of the arm's length and what was actually happening in each of the for-profit subsidiaries rather than on the consequences of arm's length.

BY MR. ING:

Q. Did you at any time have an understanding of what the consequences were for failure to maintain an arm's-length relationship?

A. The exact consequences?

Q. However you want to characterize it.

A. Or just general consequences?

Q. If you know it specifically, fine. If you know it generally, fine.

A. I just know general consequences.

Q. What were the general consequences of not maintaining the arm's-length relationship between the Estate and the taxable subsidiaries?

A. If you didn't maintain an arm's-length relationship, and I'm using that term generally, because there's many nuances of arm's-length relationships, then you could put the Estate at risk.

Q. How would you put the Estate at risk?
A. You'd put it at risk by not keeping a clear line between the two entities, the nonprofit and the profit.
Q. What was the risk, as you understood it, to the Estate?
A. At that time, I'm not sure. I understood it more later on, but at that time, I was not sure of the risk, because...
Q. What did you understand later on the risk to be?
A. Well, later on, it became evident through the discussion on intermediate tax sanctions, and I think that it became clearer to all of us, but in 1993, there was not even a discussion on intermediate tax sanctions or the heavy-handedness of the IRS that could exert itself on an institution such as ours. In fact, there was no clear-cut look-see at that area at all until the United Way problem surfaced.
Q. The United Way problem being?
A. The IRS going after the United Way.
Q. Was one of the risks to the Estate loss of its tax-exempt status?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.
A. Even though it's listed here, we really didn't

get into that.

BY MR. ING:

Q. Did you have an understanding that one of the risks to the Estate was a potential loss of its tax-exempt status?

A. Not at that time.

Q. Did you --

A. Later on, yes.

Q. Later on, you did gain an understanding that --

A. That's true.

Q. -- that was one of the risks?

A. May.

Q. May be loss of the tax-exempt status; is that correct?

A. That's correct.

Q. And when did you gain that understanding?

A. In one of our sessions with Mark McConaghy. And he said it was very remote, because the IRS had to go through a whole process before they could take away your tax-exempt status and he generally explained that entire process to us.

Q. As a result of Mr. McConaghy's explanations to you later, you understood that the IRS may revoke the tax-exempt status for failure to observe arm's-length transactions; is that correct?

A. Yes, but he also said it was remote, very remote.

Q. Did you maintain a copy of Exhibit 116 in your records?

A. I don't know.

Q. You would have to go to your records to examine --

A. Oh, I don't have it now.

Q. I know, but your attorneys have your records, correct?

A. No, but I don't think I have this in my records either. I think this is one of the things I gave back. We had them in file folders and I returned entire folders to Nathan prior to leaving.

Q. So if you had it, it would be in the documents that you left behind at the time you left the Estate?

A. It may be. I don't know.

MR. ING: Counsel, the next exhibit I'm going to introduce was the subpoena that was served and was I going to inquire as to whether Mrs. Lindsey brought any of the documents in the subpoena.

MR. WOLSZTYNIAK: Okay, I can represent to you we have -- for the record, it was Mr. Gierlach and I working on this together.

It was my understanding we had produced in the

Stender petition all the documents in our possession along with any privilege logs.

At this time, we have those documents. They're subject to be reviewed at our office. We did not bring them with us to the deposition, but we do stand ready, willing and able, since I got your letter, indicating you no -- it's my understanding, Mr. Ing, and correct me if I'm wrong, that you indicated those documents went to the Bays Deaver firm and not to your firm.

MR. ING: That is correct, and we do not have them.

MR. WOLSZTYNIAK: So you have no copies from my understanding of your advice of any of the Bays Deaver records. However, I note these handwritten notes of Mrs. Lindsey, I know are part of the documents we have as well.

MR. ING: We have copies of some of the materials that were produced by you that were introduced as exhibits or considered for introduction as exhibits during the course of the removal problem before Judge Weil. We don't have the universe of those documents that were produced.

MR. WOLSZTYNIAK: Because, as you know, this entailed dozens of banker's boxes of documents and we produced during the course of the Stender trial every document in our possession, with the exception of the documents contained in the privilege log to the then at the time your client, Mr. Stender.

If there's any documents of that group -- I guess what I'm looking for is we know certain documents have been produced and some haven't. We at one time or another produced all the documents we have. I mean, if you want us to produce another dozens of banker's boxes, that's what I'm looking for.

MR. ING: Because the scope of the review at the time of the Stender petition was different from the scope of the review with respect to this petition, we're not going to accept whatever was done in the Stender petition for purposes of this petition.

MR. WOLSZTYNIAK: We have nothing further other than those documents. That's all we have.

MR. ING: Okay, fine then, but in the context of this proceeding filed by the Interim Trustees, we need to examine those documents.

MR. WOLSZTYNIAK: We can arrange for that. In fact, I know not tomorrow, but Thursday and Friday -- I know Mr. Gierlach had been and I had been working on that, but he had undertaken that portion of it. He will be available Thursday and Friday and I will talk to him tonight and make sure as to where they're specifically at.

MR. ING: But for purposes of the deposition today, you have not produced any of those documents; is that correct?

MR. WOLSZTYNIAK: No. Obviously, I see some of those that we have are as exhibits already in the deposition. None other than that. I'm not certain how those came about. I know those were in the group of documents we produced, which you indicated were at the Bays Deaver firm.

By the way, just for the sake of simplicity, do you know if the Bays Deaver firm retained those documents, that Crystal kept those documents?

MR. ING: I don't know, but we can find out.

MR. WOLSZTYNIAK: I'm just trying to make this as painless for everybody as possible. I mean, if they're not in use, if they could be transferred, it might save a lot of trees. We're all aware as to how many exhibits were in that trial. I think we injured the backs of several young gentlemen who were hauling them back and forth every day.

MR. ING: Just for the record, we did check with the Discovery Master's office and the meeting at 1:30 is at his offices.

MR. WOLSZTYNIAK: That's fine.

MR. ING: We did provide him with a transcript of the portions that he had requested at the end of the day yesterday, I believe.

MR. WOLSZTYNIAK: Do we intend to proceed later today with Mrs. Lindsey's deposition? I'm just trying to get as much in as possible right now.

MR. ING: Well, my understanding of the areas that you have indicated that you were going to be responding to questions, I think I covered those areas. I would have to go from here to the other areas.

MR. WOLSZTYNIAK: There are some areas we might discuss, especially in discussions with Mr. Matsui at 1:30. There's a couple of areas I went over last night where we might be willing at this time -- prior to speaking or to having Mr. Green meet with Mr. Osborne, there are a couple of more areas that we might be willing to open up at this time. In very closely scrutinizing the areas that we restricted the questioning to, there are a few more that we may be willing to go into, fill in this afternoon so we don't waste any time.

MR. ING: Have you had a discussion with Osborne yet?

MR. WOLSZTYNIAK: I haven't discussed it with him yet. Michael has talked to him once, but he has, I believe, a face-to-face meeting scheduled with Mr. Osborne. I'm not sure when, though, because I haven't spoken to Michael. I've only spoken to David.

MR. ING: Fine. We can go off the record.

MR. WOLSZTYNIAK: Sure.

(Luncheon recess from 12:07 to 2:32 p.m.)

BY MR. ING:

Q. Mrs. Lindsey, did you as a trustee have fiduciary duty to preserve the tax-exempt status of KSBE?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. You can answer over that objection.

A. I had a fiduciary duty to protect the will of the Princess.

BY MR. ING:

Q. Did you have a fiduciary duty to preserve the tax-exempt status of KSBE?

MR. WOLSZTYNIAK: I'll object on the same grounds. Instruct the witness to answer. However, listen to the question carefully and give a direct answer, if she is able, to the question. And asked and answered. You can answer.

A. I'm confused. What am I doing?

MR. WOLSZTYNIAK: You can answer that question if you can. You've already given an answer. Mr. Ing has asked the same question over again. I'm objecting on the grounds it's asked and answered. I'm objecting on the grounds that it calls for a legal conclusion. I'm communicating to you that you may answer over that objection if you are able to, if understand the question.

A. I still believe my primary responsibility is to -- my fiduciary responsibility is to the will of the Princess and not to the IRS.

BY MR. ING:

Q. Mrs. Lindsey, I'm asking you whether or not you had any understanding about a specific duty. Okay? The question is, did you as a trustee have a fiduciary duty to preserve the tax-exempt status of KSBE?

A. And my answer is, my primary fiduciary duty is to preserve -- I mean to uphold the will of the Princess. That's what I took an oath to. Not to uphold the IRS's tax-exempt status in any way, shape

or form.
Q. In upholding the will of the Princess, was there a duty as far as you understand for the trustees to preserve the tax-exempt status of KSBE?
A. That is not --
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead answer the question.
A. That is not stated in the will.
BY MR. ING:
Q. That's not the question, Mrs. Lindsey. The question is, did you as trustee in upholding the will of the Princess have a duty to preserve the tax-exempt status of KSBE?
MR. WOLSZTYNIAK: Same objection, calls for a legal conclusion. Go ahead and answer over the objection. And asked and answered as well. You may answer over if you may, if you can.
A. My responsibility and my duty was to make sure that the Trust was intact. If anything impinged on that trust, then my duty is first and foremost to the Trust and not to any subsequent perceived duty.
BY MR. ING:
Q. Is it your testimony that you did not have a fiduciary duty to preserve the tax-exempt status of KSBE?

MR. WOLSZTYNIAK: That calls for a legal conclusion, objection. Go ahead and answer.
A. My testimony is that my fiduciary duty first and foremost is to the will of the Princess and to protect the trust.
BY MR. ING:
Q. But you need to answer the question, Mrs. Lindsey.
A. I answered it. It's not --
Q. You have not answered the question.
MR. WOLSZTYNIAK: First of all, if there's any question pending, I will either object. If it's not privileged or Fifth Amendment, I will instruct my client to answer over. As far as instructions, I will make sure I give her instructions. Is there any question pending?
COURT REPORTER: There's no question pending.
MR. ING: Counselor, it's my position she has not answered the question and I will seek a motion to compel to answer my question.
MR. WOLSZTYNIAK: There has been an answer given. I want to see what the last question was, Doug. I want to see if there was a question pending.
Would you care to totally clarify the question

so we make sure we have a record as to what the question is?

BY MR. ING:

Q. Mrs. Lindsey, is it your testimony that you do not have a fiduciary duty to protect the tax-exempt status of KSBE?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. You may answer over.

A. Can I speak to him a minute?

(Recess from 2:37 to 2:39 p.m.)

MR. WOLSZTYNIAK: Mrs. Lindsey has indicated she chooses not to answer that question and -- I take that back. She chooses not to answer any further. She believes she has answered the question properly and therefore chooses not to restate the answer again.

BY MR. ING:

Q. Was KSBE tax-exempt by virtue of the benefits accorded by Section 501-C3 of the Internal Revenue Code?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

At what point in time, Doug?

MR. ING: At any point in time when she was a trustee.

MR. WOLSZTYNIAK: Same objection, but you can answer over the objection.
A. It was tax-exempt from 1939, I believe.
BY MR. ING:
Q. What does that mean to you, that it was tax-exempt?
MR. WOLSZTYNIAK: Same legal conclusion objection, but you can go ahead and answer.
A. It meant that we didn't have to pay taxes on the portion that was nonprofit.
BY MR. ING:
Q. Was that of benefit to the Estate?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.
A. It was a benefit to the Estate in some ways and it was a liability in other ways.
BY MR. ING:
Q. In what ways was it of benefit to the Estate?
A. We didn't have to pay taxes on the for-profit entity -- I mean, the not-for-profit entity, the nonprofit entity.
Q. Did that amount to a substantial amount over a period of time --
A. Yes, sir.
Q. -- during the time that you were a trustee?

A. Yes, it did.
Q. Can you quantify that amount in any degree?
A. No, I can't, not at this time.
Q. Did anyone tell you what the amount of financial benefit was?
A. At one time.
Q. Let me rephrase the question. Did anyone explain to you the financial benefit of the Estate's tax-exempt status during those years you were trustee?
A. They did.
Q. What did they say about it?
A. That we saved a substantial amount of money.
Q. By "substantial," was it more than a million dollars?
A. Yes, but I don't know what the figure is.
Q. Is it more than $10 million?
A. I'm not sure. I don't want to answer, because I'm not sure what the figure is.
Q. What other benefits did the tax-exempt status provide to the Estate besides the financial benefit of not having to pay taxes on the nonprofit entities?
A. Well, that's the major benefit.
Q. Were there any others?
MR. WOLSZTYNIAK: Objection, calls for a

legal conclusion. Go ahead and answer.
A. I'm not sure at this time.
BY MR. ING:
Q. What were the liabilities of the tax-exempt status?
MR. WOLSZTYNIAK: Same objection, legal conclusion. Answer over.
A. That everybody else had a say in the management of the Estate and some of those things were detrimental to the will of the Princess and our primary fiduciary responsibility to the Trust.
BY MR. ING:
Q. When you say everyone else had a say in the management of the institution, who specifically are you referring to?
A. I shouldn't have said everyone. I should have said others had. Government entities, the courts, the legislature, congress. We would not be under that scrutiny were we not a tax-exempt entity.
As a result, people other than the trustees were making decisions for the Estate, sometimes much to the detriment of the Estate and much to the detriment of our schools.
Q. Let's go back for a minute. In response to my question as to what were the liabilities of the

tax-exempt status, you responded that others had a say in how the Estate was managed; is that correct?
A. Yes.
Q. And you defined others to include government, the courts, the legislature and congress; is that correct?
A. Right. I forgot the Attorney General's Office.
Q. Is there anyone else that you would include in the description of "others," meaning those others who had a say in the management of the Estate as a result of the tax-exempt status?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.
A. I can't think of any right now. I may later.
BY MR. ING:
Q. Would you include the Internal Revenue Service in that?
A. I thought they were included in government.
Q. Okay. You also indicated that if the Estate was not tax-exempt, it would not be under the scrutiny that it found itself in; is that correct?
MR. WOLSZTYNIAK: Calls for a legal conclusion, objection. Go ahead and answer. Asked and answered as well.
A. I believe so.

BY MR. ING:

Q. What was the scrutiny that you were referring to when you said that?

A. I'm referring to people from any one of these entities coming in and mandating that we do things that were not in accordance with the will of Bernice Pauahi. The political overtones were massive.

We were actually cited in the Wall Street Journal and in other national publications because we were the richest school and we were administrating federal funds. If we weren't administrating federal funds and if we didn't have this endowment, we would probably not be here today.

Q. Did you have discussions with other trustees about what the liabilities were of retaining the tax-exempt status?

A. We talked briefly about that, but mainly we were talking about things like the will of the Princess said not to sell the land and we were forced by the courts and the legislature and the political entities to sell our land, and we had to sell the land. That caused us to lose approximately $2 billion because we weren't selling it for the price, the market value at the time.

We had a ceiling placed on the amount that we could sell our land for and yet the landowner, or the leaseholders who bought the land in fee could do back-to-back sales and get a lot of money.

One in particular that was bandied around for a long time was a councilman bought his land for a very reasonable amount and could do a back-to-back sale and turn around and sell it for $3.1 million on Kahala Beach and we could not sell it for the market value. Thereby, it was a liability to us and it was against the will of the Princess. And there's many things like that.

Q. What were other examples?

A. Another example is the will says that the teachers should be Protestant and a teacher who didn't even go through -- a person who wanted to work at the school who didn't go through the application process ended up not only suing us, but we had to go through to the Ninth Circuit Court of Appeals and we lost and had a whole laundry list that we had to adhere to if we wanted to continue as a school without having a church head of that school.

I mean, Doug, you know the history as well as I do, that time --

MR. WOLSZTYNIAK: Mrs. Lindsey, even though Mr. Ing knows the history as well, he's just trying to make a record. So if there's any statements to make on the record, you can do so, but keep it to Mr. Ing's questions, and realize that even if Mr. Ing knows, he doesn't have it on the record and he has to elicit that.

THE WITNESS: Okay.

BY MR. ING:

Q. Is it your position that if the Estate was not tax-exempt that it would not have been subjected to the Land Reform Act, which forced the Estate to sell land?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. You can answer.

A. It may not have been, but that was a political football. So politics entered into the management of the Estate, as it has on many occasions.

BY MR. ING:

Q. But if the landowner happened to be a for-profit entity like Campbell Estate, Campbell Estate to your understanding is subject to condemnation under the Land Reform Act?

A. It depends on what point in history we're talking about. I'm not sure that they were --

Q. In the 1980s.

MR. WOLSZTYNIAK: Mrs. Lindsey and also Mr.

Ing, we have a situation where the court reporter can only take down one person talking.

So, Mrs. Lindsey, you must wait until Mr. Ing is finished with his question before you answer the question, otherwise I can't object, you don't know what the question is and the court reporter will get ticked off eventually. I'm sure Mr. Ing will also do the same thing regarding your answers.

MR. ING: Of course, I will.

MR. WOLSZTYNIAK: Is there a question still pending?

MR. ING: Let me ask another question.

BY MR. ING:

Q. Is it your understanding, Mrs. Lindsey, that eliminating the tax-exempt status would protect the Estate against the Land Reform Act which allowed lessees to petition for condemnation of the land?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, but you may answer the question.

A. You asked me for examples of liabilities to the Estate.

BY MR. ING:

Q. Yes.

A. I'm giving you an example of a liability to the Estate where the Estate lost a lot of money, not because of the Land Reform Act per se, but because of the ceiling put on Bishop Estate in the selling of the land.

Now this -- Campbell Estate, none of the other trusts as far as I know went up to the Supreme Court to fight for a statement that was embedded in the will of Bernice Pauahi Bishop, which says do not sell the land. The Bishop Estate prior to my being a trustee did just this.

As a result, they had a ceiling placed on them on how they could sell their land. I'm not aware of Campbell Estate's status in the community with regards to that Land Reform Act. I don't know what they did about it, but I do know what happened to Bishop Estate.

Q. But your statement -- we got into this discussion because we're trying to determine what you meant when you said that the tax-exempt status of the Estate brought with it some liabilities.

A. That's true.

Q. So you had given the examples and I was looking for examples of the liabilities that resulted from the tax-exempt status and you gave me an example of the forced condemnation resulting from the Land Reform Act and I was trying to determine from you why you felt that that was attributed to the tax-exempt status.

(Telephonic interruption.)

MR. WOLSZTYNIAK: Can we take a break? It's five to 3:00.

MR. ING: Yes.

(Recess from 2:53 to 3:27 p.m.)

MR. WOLSZTYNIAK: Do we have a question pending, Doug?

MR. ING: We had a question pending, but let me re-ask the question.

BY MR. ING:

Q. Mrs. Lindsey, is it your understanding that if KSBE were not a tax-exempt entity, it could avoid forced sales of its lands due to the Land Reform Act?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, but you may answer the question.

A. Not necessarily.

BY MR. ING:

Q. So the forced sales from the Land Reform Act were not a liability that is attributed to the tax-exempt status; is that correct?

A. That may be correct, yes.

Q. Is it your understanding that if KSBE were not tax-exempt, it could hire only Protestant teachers?

MR. WOLSZTYNIAK: Same objection, calls for a legal conclusion and same instruction. Go ahead and answer.

A. It's my understanding that KSBE received unwarranted attention because of the tax-exempt status.

BY MR. ING:

Q. Could you give me examples of the unwarranted attention?

A. For example, the newspaper articles that caused the politicians in Washington to look at us differently, that caused people in the House of Representatives to use this as one of their agenda items.

It caused our own delegation to have to stand up and speak on our behalf and then subsequently lost some of the issues that were raised. It caused Senator Inouye to try to get us made a Hawaiian status like the Indians had. It caused a whole series of things to play out.

Q. The newspaper articles that you referred to, was one of those the Wall Street Journal article in April 1995?

A. Yes.

Q. Were there other newspaper articles besides that?

A. Oh, there were many in the next couple of years, national and local.

Q. Those national and local newspaper articles caused people in government and elected representatives to more closely examine and look at KSBE; is that correct?

A. That's correct.

Q. As a result of that, there was legislation that was not in the interests of the Trustees or the Estate?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

A. Basically not in the interests of the Estate.

BY MR. ING:

Q. Have you read the 5701s?

A. Yes.

Q. Was revocation proposed as an adjustment in the 5701s?

MR. WOLSZTYNIAK: Objection, the documents speak for themselves, calls for a legal conclusion, vague and ambiguous as to which 5701s. It's my understanding there were numerous 5701s.

If you understand the question, you may answer over that objection.

A. I understand the question, but I can't remember, because I read them so long ago.
BY MR. ING:
Q. When did you first read them?
A. I only read them once and that was right after they were delivered to us. For a period of time, we were not allowed to get the 5701s, and then when we were able to get them, I read them.
Q. Do you have an estimate as to when that time was that you actually read it? By that, I mean what month and the year it was.
A. It was in 1999 and I first learned about it in January, I believe. Possibly April or May.
Q. Do you recall reading the 5701s prior to Judge Chang's order on May 7, 1999, which removed the trustees temporarily?
MR. WOLSZTYNIAK: Objection as to vague and ambiguous. You mean any 5701s or any specific 5701s?
MR. ING: Any of the 5701s related to the Estate.
A. Yes, I did.
BY MR. ING:
Q. So it was prior to May 7th?
A. Yes.
Q. In any of those 5701s to the Estate, was

revocation proposed?
A. I can't remember.
Q. Did anyone tell you that revocation was proposed in the 5701s?
A. I really don't remember as it relates to 5701s.
Q. What is a 5701?
A. A 5701 is an allegation made against the taxpayer by the IRS.
Q. Are you familiar with the term Notice of Proposed Adjustment?
A. Yes.
Q. Is that the title of the 5701, the Form 5701 document itself?
A. Oh, I don't know. I just refer to it as 5701.
Q. What is a Notice of Proposed Adjustment?
MR. WOLSZTYNIAK: Objection, it calls for a legal conclusion. Go ahead and answer.
A. I'm familiar with the term, but I didn't know -- I don't know for sure if that applies to a 5701 or not. I'm not sure at this time.
BY MR. ING:
Q. Did you at any time have an understanding that IRS had proposed revocation of KSBE's tax-exempt status?
A. Yes, I did.

Q. When did you have that understanding?
A. I'm not sure when I had it.
Q. Was it 1999?
A. I'm not sure, because they proposed revocation on many occasions. They did it with the allegation that we discriminated in our admissions policy and that was the first time I heard of revocation of tax-exempt status.
Q. As it relates to tax-exempt status, what was your understanding as to what your obligations were?
A. Regarding the tax-exempt status?
Q. Yes.
A. I'm not sure I understand the question.
Q. Did you believe you had any obligations as it relates to tax-exempt status of the Estate?
A. I believed that we had an obligation to go through the whole process that was afforded us by the IRS's own internal documents and procedures, policies and procedures, and we should do everything we can to go through that process to come to some conclusion at the end, and if we didn't like that conclusion, we had other options in front of us.
Q. Is that your only understanding as to what your obligation was with respect to the Estate's tax-exempt status?

MR. WOLSZTYNIAK: Can I hear that question again, please?

BY MR. ING:

Q. Is that your only understanding as to your obligation with respect to the Estate's tax-exempt status?

MR. WOLSZTYNIAK: You can answer the question over an objection it calls for a legal conclusion, but you can answer.

A. I felt that our obligation regarding the tax-exempt status was tied back to our obligation to the Trust. If the tax-exempt status was benefiting the Trust 100 percent, then we should be looking at it that way. If it was hurting the Trust in any way, we had to constantly evaluate that tax-exempt status.

BY MR. ING:

Q. So what was your conclusion as to whether or not the tax-exempt status was benefiting or hurting the Trust?

A. I don't know. The lawyers kept giving us all of this different information with regards to our tax-exempt status, and at the time that they were talking about revocation based on discriminatory practices, we were told to go all the way through it and make sure that they outlined, the lawyers outlined the various steps and gave us updates on where it was, and that if the national office ruled against us, then we could go to the tax commissioner and right on up the line.

They had it all down and I don't know the exact steps in order. So when there was a threat of a tax revocation with regards to what was happening in the 5701s, we went through all of the steps again.

Q. Did you arrive at a conclusion as to whether or not the tax-exempt status benefitted the Estate or did not benefit the Estate?

A. I don't think we ever talked about it that way.

Q. Did you?

A. Did I personally arrive at a conclusion?

MR. WOLSZTYNIAK: At this time, I'll just object on the grounds it calls for a legal conclusion, but you my answer the question over that objection.

A. I constantly assessed whether or not it was beneficial or not internally myself.

BY MR. ING:

Q. What was your conclusion?

A. I didn't have a conclusion. I was constantly assessing, you know, based on the incident and what was happening at that time. It wasn't a blanket conclusion that yes, it's the greatest thing that ever happened, because I felt that you had some things on one side and some things on the other and whether it was helpful or hurtful depended on the incident and what the lawyers were discussing with us.

Q. But based on all of the input you received from various consultants, lawyers and individuals regarding the tax-exempt status, your testimony today is that you had arrived at no conclusion at any time as to whether or not the tax-exempt status was beneficial; is --

A. No, I said --

MR. WOLSZTYNIAK: Wait until the question is finished being asked. Object on the grounds of legal conclusion. Answer over.

A. I felt sometimes it was very good for us and I felt sometimes it wasn't. I said I based it on the issues that were presented before us. I did not make a blanket overall assessment.

BY MR. ING:

Q. As it relates to the 5701s, did you arrive at a conclusion as to whether or not the tax-exempt status was beneficial?

A. No.

MR. WOLSZTYNIAK: Objection, vague and ambiguous. There were numerous 5701s. Is there any one specifically or are you asking if she came to a conclusion on any of the 5701s, and if so, which ones?

MR. ING: Any of the 5701s.

MR. WOLSZTYNIAK: You can answer over the objection.

A. After I read the 5701s, I felt that we would have an opportunity to speak to the IRS like we had in the past, that we had an opportunity to go through this, I believe it was a nine-step process and that we would be able to assess it every step going along like we had in the past. Unfortunately, that is not what happened.

BY MR. ING:

Q. Mrs. Lindsey, as it relates to the tax-exempt status of the Estate, you came to a conclusion as to whether or not it was beneficial to the Estate based upon individual issues; is that correct?

A. Me personally?

Q. Yes, you personally.

A. Yes.

Q. With respect to the 5701s, any of the 5701s, did you arrive at a conclusion that the tax-exempt status

was beneficial?
A. Some of them, yes; some of them, no.
Q. Which ones resulted in your decision that the tax-exempt status was beneficial?
A. Some of the -- in fact, I'm not really sure which ones, because I felt personally that the 5701s were flawed in many areas.
Q. With respect to which 5701s did you decide that the tax-exempt status was not beneficial?
A. I can't remember, Doug. There's a whole box of them.
Q. But the 5701s covered specific areas; is that correct?
A. Specific areas, but there's pages and pages and pages.
Q. Do you recall reading in the 5701 on primary purpose?
A. Yes, I do.
Q. With respect to the 5701 on primary purpose, was the tax-exempt status beneficial?
MR. WOLSZTYNIAK: I'll object, calls for a legal conclusion. You may answer over that objection.
A. Yes, because it benefitted the school.
BY MR. ING:

Q. Do you recall reading a 5701 on excess compensation?
A. Yes.
Q. With respect to the 5701 on excess compensation, was the tax-exempt status beneficial?
MR. WOLSZTYNIAK: Objection. I'm going to instruct the witness not to answer that question on the Fifth Amendment grounds, without prejudice to further questioning along those lines.
BY MR. ING:
Q. Mrs. Lindsey, do you recall reading a 5701 on inurement.
A. Yes.
Q. With respect to the 5701 on inurement, was the tax-exempt status of the Estate beneficial to the Estate?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion on the part of the witness, but she can answer over that objection.
A. I didn't feel that the IRS was fair in listing that, and the reason I didn't was because there was no rules and regulations promulgated. There was only an overall, broad law called intermediate sanctions, and under that overall, broad law, they were coming down with specific things.

I felt that the IRS had a bone to pick with this Hawaiian, Native Hawaiian land-based trust, that they were going to use us as the model for intermediate sanctions.

BY MR. ING:

Q. In that case, your conclusion was that the tax-exempt status was not beneficial? Is that a fair statement?

A. Possibly a fair statement. I'm not sure it was just the tax-exempt -- I have a hard time tying it to tax-exempt status. What I'm tying it to is the actual procedures, processes used by the IRS and they didn't follow their own policies and I had a very difficult time with that.

So I had a mind-set at that point and I didn't go beyond it to talk about whether tax-exempt status was benefitted by this or not. I just felt that if you don't know the rules or regulations and they've not been promulgated or acted upon or adopted, how can you possibly go out and get a person for speeding when you don't have any signs saying that you can't go more than 35 miles an hour. I just had a very difficult time with that.

Q. But going back to your testimony about whether or not the tax-exempt status was beneficial, you said

that depended on the issue; is that correct?
A. I did.
Q. Among the issues that impacted the tax-exempt status were the 5701s; is that correct?
A. Among the issues may have been the 5701s.
Q. And within the group of 5701s, there was a set of 5701s that dealt with inurement; is that correct?
A. Yes.
Q. And the question was, did you arrive at a conclusion based upon your review of the 5701s on inurement as to whether or not the tax-exempt status was of benefit to the Estate?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.
A. No, I didn't, because I said I had a mind-set about what they were doing and I didn't go beyond that.
BY MR. ING:
Q. What issues regarding the tax-exempt status did you arrive at a conclusion that the tax-exempt status was not beneficial to the Estate?
MR. WOLSZTYNIAK: Same objection. Go ahead and answer.
A. I don't know if I've ever thought about it in that light. I don't think I've come to any

conclusions on that. I just know that what they were saying and what they were doing, in my opinion, was completely contrary to their own policies and procedures.

BY MR. ING:

Q. As you sit here today looking back at the years in which you were a trustee, do you have a position as to whether or not the Estate's tax-exempt status was beneficial to the Estate?

A. Partially and partially not.

Q. What is the basis and reasons for your statement?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

A. I think I've said it over and over that there were some things that were very good about the tax-exempt status and there were some things that were not, and one of the things clearly was not is this attack that we've had from the IRS at this time.

BY MR. ING:

Q. Did you at any time arrive at a conclusion as to whether or not you as a trustee should attempt to protect the tax-exempt status?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

A. I felt that if we could follow the procedures that were outlined by the IRS in going through that nine-step process and we actually had input into that process, it was worthwhile to go after protecting the tax-exempt status as it applied to the school.

I didn't feel that the IRS was giving us a fair shot and I didn't feel that we were going through their own internal procedures. Therefore, I felt that the IRS was just here to break up the Trust, and I still feel that today. I feel the IRS went completely against the will of the Princess and their whole motive was to break up the Trust.

BY MR. ING:

Q. How was IRS trying to break up the Trust?

A. It doesn't go hand and glove with what the Princess says and my duty and loyalty would have been to the Princess and her will.

Q. As a result of your belief that the IRS is attempting to break up the Trust, did you decide that you should not attempt to protect the tax-exempt status?

A. If I had a choice between protecting the tax-exempt status and protecting the will of Pauahi, my first and foremost primary obligation would have been to protect the will of Pauahi and the trust that

she saw fit to establish for the Hawaiian people.
Q. The question was, as a result of your belief that the IRS was attempting to break up the Trust, did you decide you should not attempt to protect the tax-exempt status?
A. Did I decide it myself?
Q. Yes.
A. No, I didn't decide that, but I did go on to say that my first and foremost responsibility would be to the Trust and not to anyone else.
Q. Do you have a position today as to whether or not you as a trustee should protect the tax-exempt status?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. You can answer over that objection.
A. Only if it doesn't impact on the trust of Bernice Pauahi.
MR. WOLSZTYNIAK: You mean the will.
A. I mean the will of Bernice Pauahi.
BY MR. ING:
Q. And if it does, your position is that you should not be protected?
A. My position is that I defend the will of Pauahi.
Q. Is it your position that you should not protect

the tax-exempt status of the Trust if it offends the will of Pauahi?

A. If it breaks the will of Pauahi, I would be obligated by my sworn oath in court to protect her will at all costs.

Q. Did in your mind the tax-exempt status go against the will of Pauahi?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

A. Some of the things in the 5701s that they held in guise of using against us in order to say the revocation would take place is against the will of Pauahi.

BY MR. ING:

Q. And therefore with respect to those items, you would not protect the tax-exempt status; is that correct?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, vague and ambiguous. The status is protected or it's not.

You can go ahead and answer over that objection, over those objections. If you understand the question, you can answer it.

A. I understand the question, but I know this much. We weren't even given the opportunity to delve into that answer of what we would or we would not do because we were removed.

BY MR. ING:

Q. Mrs. Lindsey, you stated that some of the things in the 5701s went against the will of Pauahi; is that correct?

A. That's correct.

Q. And that is your belief; is that correct?

A. That is correct.

Q. As a result of that belief, did you feel that the tax-exempt status should not be protected?

MR. YEE: Objection, calls for speculation. Also mischaracterizes the facts.

MR. WOLSZTYNIAK: I'll join in those objections and it also calls for a legal conclusion. Since it never had the opportunity, it does call for speculation, but if you can answer over it, you may answer over it. However, do not guess or do not speculate. Only if you have specific, specific belief or specific facts in place, answer that question.

A. I would be speculating if I answered the question.

BY MR. ING:

Q. So you have no position as to whether or not the tax-exempt status of the Estate should be protected; is that correct?

MR. WOLSZTYNIAK: Objection. That isn't what she said. Basically she indicated in prior answers that -- I think she stated at least a half a dozen times what her position was. It was a very specific question about whether the tax-exempt status should be foregone based upon the 5701s the IRS had proposed or had propounded and I believe the answer stated that it would be speculating to answer that question. I think that was her answer.

So it mischaracterizes the testimony of the witness. I don't know how she could answer that question. She can try if she can, but that's without prejudice to answering another question clarifying that last question.

MR. ING: Counsel, I'm just asking her whether she has a belief as to whether or not the tax-exempt status should be protected based upon what she read in the 5701s.

MR. WOLSZTYNIAK: What I'm getting --

MR. ING: How could that be speculation? It's her own belief.

MR. WOLSZTYNIAK: No, the thing is she never had the opportunity to weigh the whole thing with counsel and the other items. It would be speculation, number 1.

Number 2, you talked generally about whether or not she believed the tax-exempt status should be protected and then you asked a specific question about those 5701s and I believe she answered she was removed before they had the opportunity to make that determination and, therefore, she indicated it would be speculation.

If she has an answer to the question that isn't speculative, she can give it. Otherwise, she should so note that it would be speculative.

Mrs. Lindsey, you may answer if you can. If you can't, please advise Mr. Ing that you are unable to do so or need the question clarified.

A. I thought I said I would be speculating if I answered the question at this point in time, because I was removed and was not in regular discussions about the issues, all of the issues in the 5701s.

BY MR. ING:

Q. So is it fair to say that you have formed no opinion as to whether or not the tax-exempt status should be protected?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, but you may answer that question.

A. I have formed no opinion on whether or not it should be protected based on those 5701s.

MR. ING: Off the record for a second.

(Discussion off the record.)

BY MR. ING:

Q. Mrs. Lindsey, did you have a duty to monitor the activities of your co-trustees?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. Go ahead and answer.

A. Yes.

BY MR. ING:

Q. Mrs. Lindsey, did excess compensation create a risk to the Estate's tax-exempt status?

MR. WOLSZTYNIAK: Excess compensation is the area I'm going to instruct my client not to answer on Fifth Amendment grounds.

BY MR. ING:

Q. Mrs. Lindsey, do you have a duty to receive only reasonable compensation as a trustee?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion.

MR. YEE: Also, the term "reasonable" is vague and ambiguous in this context.

MR. WOLSZTYNIAK: I agree. It's also vague and ambiguous. However, I will allow her to answer

it. You can go ahead and answer over that objection.
A. What was the question again?
BY MR. ING:
Q. Mrs. Lindsey, do you have a duty to receive only reasonable compensation as a trustee?
MR. WOLSZTYNIAK: Same objection.
A. I don't believe reasonable compensation has ever been defined as it pertains to trustees.
MR. WOLSZTYNIAK: Mrs. Lindsey, also listen to the question very carefully that's been propounded by Mr. Ing. I've made several objections to it. Therefore, just listen to the question carefully, and if you can answer it, do so. If you cannot, advise Mr. Ing you are unable to do so, if you're not able to understand it.
BY MR. ING:
Q. Mrs. Lindsey, what is your understanding of your duty as a trustee as it relates to your own compensation?
MR. WOLSZTYNIAK: I'm going to object on the grounds that it calls for a legal conclusion, but you can answer over that objection.
A. I believe my duty was to follow the state law, which we did, and because of the state law, we took our compensation accordingly and also gave back

almost half of it to the institution.
BY MR. ING:
Q. Did you have any discussions with your fellow trustees as to what your duties were as trustees with respect to compensation?
A. No, I think we all followed past practice and followed the law.
Q. When you say "followed the law," were you referring to the state law?
A. The state law.
Q. What did the state law provide with respect to trustee compensation?
A. It provided -- well, it depends on which trustees you're talking about, because trustees of other entities got five-percent generally speaking per the statute and the trustees of Bishop Estate got two-percent generally speaking, because there's little nuances in there that make it go a little higher or lower, depending on the line item that we're looking at. And that's what we followed and that's what had been followed for years before I came aboard.
Q. Was it your understanding that you as a group of trustees were to follow that state statute which generally provided for two-percent commissions?

MR. WOLSZTYNIAK: Objection, calls for speculation. You can answer over.
A. Yes, it was, because we followed the laws of the land and also we gave back.
BY MR. ING:
Q. Were there any other laws besides the state law providing generally for two-percent commission which affected trustee compensation?
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion. You can answer over the objection.
MR. YEE: Also the question asks for a very broad answer. Any laws? Are we talking about federal law? Are we talking about --
MR. ING: Counsel, state your objection.
MR. YEE: -- trust law? That's my objection. I'm trying to get you to clarify the question.
MR. WOLSZTYNIAK: I'll join, vague and ambiguous, but you can still answer over the objection if you know.
A. Could you restate the question?
BY MR. ING:
Q. Mrs. Lindsey, were there any other laws besides the state laws which provided for generally two-percent commissions which impacted trustee

compensation?

A. Not that I was aware of at the time.

Q. Did the use of Trust Estate funds to lobby against intermediate sanctions legislation create a risk to the tax-exempt status?

MR. WOLSZTYNIAK: I'm going to instruct my client not to answer that question on Fifth Amendment grounds.

BY MR. ING:

Q. Did the use of Trust Estate funds to examine a change in the Trust Estate's domicile create a risk to the Trust Estate's tax-exempt status?

MR. WOLSZTYNIAK: I'm going to instruct my client not to answer that question on Fifth Amendment grounds, without prejudice to answering other questions in that line of questioning.

BY MR. ING:

Q. Mrs. Lindsey, I take it by your nonresponse that you will be complying with your counsel's instructions?

A. Yes.

Q. And that would be true of the prior question as well?

A. Yes.

MR. WOLSZTYNIAK: And, Mr. Ing, I would also give you an ongoing, if you would like, from Mrs. Lindsey that she will be complying with all of my instructions so you don't have to take time with that question. We'll stipulate to that, if you'll accept same.

BY MR. ING:

Q. How was trustee compensation determined?

A. By state law.

Q. How was it actually done at the Estate?

MR. WOLSZTYNIAK: Just an objection as to do you mean at any time during her tenure? I guess lack of foundation is my objection, but if you can answer that question based upon the way it was stated, you may do so.

A. The comptroller took in the figures for the previous month and applied the state formula and also subtracted the amount that the Trustees agreed we would not take commissions on and gave us a final figure.

BY MR. ING:

Q. Who was the controller or were the controllers during the time that you were trustee?

A. Rodney Park and then Wally Chin.

Q. So he would apply the state formula to the funds received by the Estate during the month and come out

with a calculation of what trustees were to receive?
A. No, you've missed a step in there. He would apply the state formula to the funds that were received and he would subtract those that the Trustees said they would not take commissions on and then come out with the amount that the Trustees would receive.
Q. Was that done every month?
A. That was done every month.
Q. Did you receive a calculation?
A. Yes.
Q. Did the Trustees or did anyone review and approve the calculation before the checks were cut?
A. I can only speak for myself. I didn't. I'm not aware that anyone else did.
Q. Who was the treasurer for the Estate?
A. Henry Peters.
Q. What was his role in connection with the computation of trustee compensation?
A. I have no idea, because I thought it was all done by the controller, comptroller.
Q. Do you know whether he had any role?
A. No, he signed the checks if he was there, and if he wasn't there, it was left to anyone who was there to sign.

Q. Generally, Mr. Peters would sign the checks?
A. Generally.
Q. Was Mr. Peters the treasurer during the entire time you were on the Board of Trustees?
A. Yes.
Q. If Mr. Peters was there, he would sign the trustee compensation checks?
A. That's correct.
Q. Did you receive a calculation from time to time regarding the amount of your compensation for the fiscal year?
MR. WOLSZTYNIAK: Just for clarification, you mean the year-to-date?
MR. ING: Yes.
A. I don't recall -- I recall receiving a projection of compensation for the year and then -- and it was projected, and then as we received our checks each month, the projection for the month we received our checks became actual and so you'd get it on a monthly basis with the update.
BY MR. ING:
Q. So every month there would be a calculation of the trustees' compensation, and for that month and months earlier, the sheet would show the actual compensation paid for the particular month?

A. Not for that particular month, for the month preceding, because they did all of the calculations after the end of the month. So if it was May, the sheet would show the actuals for April even though we were in the month of May, and then from May on, May forward would be projected.
Q. So the sheets would show a one-year time frame?
A. A projection for a one-year time frame.
Q. But as the months went by and you received actual checks, the sheet would be updated for the receipt of the actual checks?
A. Yes, for the month preceding.
Q. At any time during the time that you were serving as a trustee, did the calculation of the trustees' compensation change from the method you had described previously?
A. Not that I know of.
Q. Did you at any time request that the manner in which the trustees' compensation was computed be changed?
A. Did I request?
Q. Yes.
A. No, I did not.
Q. Did you as trustee waive commissions at any time?

A. We waived commissions.
Q. What did you waive commissions on?
A. We waived commissions on any moneys coming into the school. We waived commissions on moneys from land sales. And when I referred to we gave back, it is actually what we waived. And we waived -- I forgot. Those are the two I remember specifically.
Q. The moneys coming in to the schools would be sales at the schools' store and tuitions received?
A. That's my understanding.
Q. And the moneys from the land sales were the receipts from the forced land sales as a result of the Land Reform Act; is that correct?
A. That is my understanding, but I'm not 100 percent sure at this time.
Q. Were these waivers put in writing?
A. Yes, they were, but they were put in writing like after the fact. Nathan Aipa, our general counsel, did not have us sign them in a timely manner.

Although the moneys was taken out and they were waived, the signatures on the waiver may be signed like in 1997, but we had been waiving in 1996 or whenever it was that this waiver applied to. There was, I don't know, several times that we had to sign

a waiver and several times it was like after the fact.
Q. Did you at any time rescind any waiver of commissions?
A. Not that I know of.
Q. What does Pauahi's will provide with respect to compensation?
MR. WOLSZTYNIAK: I'm going to object, calls for a legal conclusion, but you may answer.
A. It doesn't.
BY MR. ING:
Q. When you say it doesn't, is it your understanding that the will is silent on compensation?
A. Yes, it is.
Q. If the will is silent on compensation, how did the trustees arrive at a conclusion as to how trustees would be compensated?
MR. WOLSZTYNIAK: I'll object at this time on the grounds it's vague and ambiguous. Which trustees are you talking about? These trustees, prior trustees, how things historically would be done? What historic time frame are you referring to in that question?
BY MR. ING:

Q. With respect to the time frame, Mrs. Lindsey, the time frame during which you were serving as a trustee.

MR. WOLSZTYNIAK: Calls for a legal conclusion, but you can go ahead and answer over that objection.

A. Even though it's a time frame when I was serving as a trustee, it was set into motion way before I became a trustee and it was historically set in motion from the very beginning, as I understand it, and we just followed past practice. I don't know for sure when the law was enacted, but when that law was enacted, the trustees complied with the law.

BY MR. ING:

Q. During the time that you are a trustee, was trustee compensation based on performance?

A. Trustee compensation was based on the law. We had a performance measure, as I testified to earlier. We wanted to increase the benefits, as I said, to the school, and to do so, we had to increase the endowment, but up until December of 1998, when that law was repealed, trustee compensation was based on law.

Q. Is it your testimony then that the compensation that you actually received was not based on a review of how the trustees had performed over the prior fiscal year?

A. I would --

MR. WOLSZTYNIAK: One moment. I'm going to instruct my client not to answer that question on Fifth Amendment grounds.

BY MR. ING:

Q. Mrs. Lindsey, you indicated that trustee compensation was based on law, but you had a performance measure which you testified to earlier today; is that correct?

MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, asked and answered, but you may answer over the objection.

A. I said we had a projected performance, a 10-year plan rolled out, if you recall.

BY MR. ING:

Q. That was going to be my question. What was the measure?

A. We had a 10-year projection of how much money we would need each year in order to do what we had to do at the school and that was to enhance our endowment so we could provide for the students at Kamehameha and also expand our services to Hawaiian students on a full-time basis.

Based on that, we constantly looked at our performance in making sure we met those, the goals that we set. However, our pay was based on the law and we felt that we should give back to the Estate and we felt that we should not take commissions on those areas that I mentioned and another one, but I'm not sure what it is at this time, or maybe two more, but that's what we based it on and that's what it was historically based on.

Q. What I wanted to clarify is that your pay was not contingent upon meeting the projections contained in the 10-year plan; is that correct?

MR. WOLSZTYNIAK: Wait a minute. You can answer that question.

A. In essence, it was performance-based, using that term quite loosely, because if we didn't make a lot of money for the endowment, we weren't going to get a lot of money irrespective of what the law said. If absolutely no money came in to the Estate, we would get zero commissions.

So if you look at a true test of performance-based measures, the law just gives you two percent of what you earned for the Estate. So if you don't earn anything, you don't get anything. If you earn money for the Estate, you get commissions.

Therefore, after all is said and done, I would say it is performance-based and the law set the percentages.

BY MR. ING:

Q. But the performance that you just described does not relate to whether or not you met the projections contained in the 10-year plan; is that correct?

A. We always met projections. In fact, many times we exceeded projections.

Q. But was there a connection between the 10-year plan and the amount of compensation that you received?

A. Loosely speaking, yes, because if we said we're going to earn X-amount of dollars this year, just for the sake of talking, $10,000 this year and we made our $10,000, then we knew we would get two percent of that 10,000 given the flux in the formula.

But many times, we exceeded that amount. If you look at the history of Bishop Estate, if you're talking performance-based, the endowment just went up, up, up, up, it increased every single year, and there was a huge increase in the endowment in the years I was there.

Q. Mrs. Lindsey, I'm trying to determine how your pay was connected to the performance that relates to the 10-year plan. You had earlier described a

worksheet that was utilized by the comptroller to
compute that you were paid; is that correct?
A. I guess "pay" is the wrong word. What we received in commissions. Technically, we should say that, even though I started using pay.
Q. Was there any line on that computation sheet which took into account whether or not trustees had met the performance figures or the benchmarks or the projections that were shown on the 10-year plan?
A. No, there was nothing on that sheet.
Q. So at the time the commissions were calculated on a monthly basis and submitted to the trustees, there was no provision on the calculation sheet for whether or not the trustees met projections in the 10-year plan; is that correct?
A. That's correct.
Q. Do you recall what you earned annually during the years that you were a trustee?
A. Not specifically.
Q. How would you go about determining what you actually earned as a trustee?
A. Going back and looking at all those sheets or looking at what I deposited in my checking account.
Q. Do you feel that you were overcompensated at any time during the time you were a trustee?

MR. WOLSZTYNIAK: Objection. I'm not going to let her answer that on Fifth Amendment grounds.

BY MR. ING:

Q. Do you feel that you were underpaid at any time during the time you were a trustee?

MR. WOLSZTYNIAK: I'm not going to let her answer that one on Fifth Amendment grounds either.

BY MR. ING:

Q. Mrs. Lindsey, during the time you were trustee, was trustee compensation adequate?

MR. WOLSZTYNIAK: I'm going to object, vague and ambiguous, calls for a conclusion, but I'll let her answer that one over the objection.

A. Adequate based on what? What would you compare it to?

BY MR. ING:

Q. Adequate in your own mind.

A. Adequate in my own mind?

Q. Yes.

A. Yes.

Q. At the time you became a trustee in 1993, did you learn that the Internal Revenue Service was concerned about compensation that trustees were receiving?

A. I learned that the community, the Internal

Revenue Service and everybody was concerned about it for years prior to my becoming a trustee.
Q. What was your understanding as to what that concern was?
A. I don't know specifically. I just know that they were concerned.
Q. Did IRS have an audit ongoing at the time you became a trustee in 1993?
A. I'm not sure when they started the audit. I don't know if it was ongoing or they came in later and said, "We will audit from 1990 to 1996." Those were the years of the audit, as I understand it, but I don't know when it commenced.
Q. When did you become aware of the audit?
A. I can't remember.
Q. Was trustee compensation one of the issues in the audit?
A. Initially?
Q. Yes.
A. I'm not sure.
Q. Who was advising you with respect to the audit?
A. Mark McConaghy.
Q. Anyone else?
A. Nathan Aipa, Gil Ishikawa, and at some point Myron Mitsuyasu and sometimes Mike Hare.

Q. Did you ever have or gain an understanding as to what level of compensation was acceptable to the IRS that is compensation for trustees?

MR. WOLSZTYNIAK: I'm going to object on the grounds it calls for a conclusion, calls for speculation, vague and ambiguous, but you can answer over that objection. No, I'm going to instruct her not to answer on Fifth Amendment grounds on top of all the other objections.

BY MR. ING:

Q. Were you advised at any time by the Estate lawyers that trustees could delegate their duties?

A. We were -- I don't know that that's what we were advised or not.

Q. Did you have an understanding that you could not, you as a trustee could not delegate your duties?

A. We had several discussions on that very idea, and I say "idea" because it wasn't merely delegation of duties, but every time that we had a discussion, we were advised that we are ultimately responsible per trust law and that there are some things we could and could not do. And it was always a sliding scale back and forth, so there was never any real concrete overall answer. Instead, we started asking questions based on specific need to do something.

Q. So was it your understanding that you could delegate certain duties?
A. I don't know if that was my understanding or not overall generally. I can't, I can't testify that it was. It just went back and forth.
Q. What was your understanding as to what your duties were with respect to delegation?
A. I don't have a clear understanding at this point. I never thought of that question.
Q. What, if any, duties could you delegate as a trustee?
A. I think there was some administrative things that could be delegated. I don't like the word "delegated" in the context that we're using it, but the trustees had to make decisions on these things.
There were times when in just the short six years I was there, almost six, that yes, it was okay to do something and then another time, another situation would crop up and they would say no, it wasn't okay, and that's why I say it slides back and forth.
I can't remember specifically an example to give you at this time, but I just know that there was always a question with regards to delegation and there was a question with regards to delegation of

duties as opposed to delegation of authority.
Q. What was the difference?
A. I don't know. It went back and forth. That's what I'm saying. It was a discussion and we were advised different things in different situations.
Q. Were there duties that could not be delegated?
A. The duty of loyalty to the Trust.
Q. Any other duties?
A. I can't think of any specifically right now.
Q. What is the duty of loyalty to the Trust?
A. That you should be loyal to the Trust.
Q. What does that mean in terms of compensation?
A. It didn't have anything to do with compensation per se. Compensation came out of all these laws that are enacted, because the Trust is based on the will of Pauahi and Pauahi is silent on compensation.
Q. So the duty of loyalty does not apply to trustee compensation?
A. I don't know that.
MR. WOLSZTYNIAK: Objection, calls for a legal conclusion, argumentative. You can answer over it, if you can.
A. I don't know.
BY MR. ING:
Q. You don't know whether the duty of loyalty

applies to trustee compensation?
A. No, I don't think it's ever been discussed in that light.
Q. Whether it was discussed or not, did you have an understanding as to whether or not the duty of loyalty applied to trustee compensation?
MR. WOLSZTYNIAK: Objection, calls for a conclusion, argumentative. You can answer over those objections, if you can.
A. I really don't know at this time.
BY MR. ING:
Q. Did you as a trustee delegate certain duties at any time?
A. Did I as a trustee delegate?
Q. Yes.
A. I don't know. Some of the duties and responsibilities for various individuals was written up before I ever came aboard and how these were written up was determined prior to my being aboard.
Q. So do you have an understanding as to whether or not you delegated duties during the time you were a trustee?
A. It depends on what we're talking about when we say "duties". I'm not sure that I can clearly define that to give you a succinct answer.

Q. You're not sure whether you can define the duty of delegation?
A. No, I don't -- I'm not sure what duties you're talking about. Is there a specific duty that you're talking about that I could respond to?
Q. Mrs. Lindsey, my question was, did you during the time that you were trustee delegate any duties, any duties?
A. Any duties, yeah, yes, I did.
Q. What duties did you delegate?
A. I don't know at this time. I never thought of it in that light.
Q. During the time that you were trustee, did you hire any consultants to perform compensation studies?
MR. WOLSZTYNIAK: Objection. Do you mean her personally or as a part of, in her capacity as a trustee and member of the Board?
MR. ING: I'll rephrase the question.
BY MR. ING:
Q. Mrs. Lindsey, during the time that you were trustee, did the trustees hire consultants to perform compensation studies?
A. Yes, per the request of the Master and the Court.
Q. Who did you hire to perform these studies?

A. SCA and Towers & Perrin.
Q. What was SCA asked to do?
A. To do a compensation study.
Q. During the time that you were trustee, did they submit a report to the trustees regarding a study that they had performed or studies that they had performed?
A. Yes.
Q. Did you review those studies?
A. At that time, yes.
Q. Did you retain a copy of those studies?
A. I don't think I have it now. I did at one time.
Q. Did SCA arrive at a range of compensation levels?
A. They did.
Q. Do you recall what the range was?
A. No, I don't.
Q. What is a CEO?
A. Chief executive officer.
Q. Did you perform any duties as chief executive officer at the Estate?
A. We all did.
MR. WOLSZTYNIAK: Objection, calls for a conclusion on the part of the witness. She can answer over that objection.

A. Each trustee did.

BY MR. ING:

Q. Would you give me some examples of what you did as a CEO?

A. We set policy, we had hands-on management, we reviewed the budget, we made decisions with regards to budget personnel, expanding the school. We asked people to be accountable in their various areas. We set salary scales. We did all of the duties that a CEO does.

We looked at where we wanted to be 10 years from now, 15 years from now, five years from now, what we wanted to do in the next year. We planned, organized, we implemented plans. We did everything that a CEO does.

Q. How much time per week did you spend doing activities that a CEO would do?

A. I felt I spent almost all my time doing activities and I probably spent many more hours -- let me speak for myself. I probably averaged 10 to 12 hours a day.

Q. Out of that 10 to 12 hours per day, how much of that time was spent doing activities of a CEO?

A. Almost all of it, I felt.

MR. WOLSZTYNIAK: Off the record.

(Deposition was adjourned at 4:35 p.m.)

I, MARION MAE LOKELANI LINDSEY , do hereby certify that I have read the foregoing typewritten pages 150 through 291 , 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 9th day of November , 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