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 I

DEPOSITION OF RICHARD S.H. WONG

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 9:10 a.m. on Wednesday, October 20, 1999, pursuant to Notice.

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

APPEARANCES:

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ALSO PRESENT: Ken Schwartz (p.m. only)

I N D E X

(Disclosure made available to all counsel.)

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RICHARD S.H. WONG,

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

EXAMINATION

BY MR. KAWASHIMA:

Q. Please state your name and address.

A. My name is Richard S.H. Wong. The address is 728 Twin View Drive, T-w-i-n V-i-e-w, Drive, Honolulu, Hawaii, 96817.

MR. KAWASHIMA: Counsel, I understand you want to place something on the record.

MR. SATO: Number 1, that Mr. Wong is here in the sense of cooperation in terms of he's willing to sit here and answer questions about his role as a trustee at the Estate. However, we are going to object to questions in the area of possible criminal matters. Just out of an abundance of caution, we're going to do that and we want to let you know that up-front.

Also, that there is a Deputy Attorney General here, Mr. Morris. And nothing personal, Mr. Morris, but we have to put on the record that we've had a dispute as far as using civil proceedings to assist on criminal matters being done by the Attorney General's Office, and if this deposition is being used by, will be used by the criminal side or to assist the criminal side of the Attorney General's Office, we're going to object to that and seek whatever remedy is out there for us if that happens.

Counsel, thank you, for allowing me.

MR. KAWASHIMA: Mr. Sato, I understand that there's either an agreement or a stipulation -- I'm not privy to that -- between the different departments of the Attorney General's Office or there is a wall between the criminal side and the civil side and I believe that's why we're proceeding in this way with the Deputy Attorney General here.

MR. SATO: I understand there's supposed to be wall. I'm just saying that if the wall breaks down on this particular item, we're going to seek whatever remedy is out there.

MR. KAWASHIMA: Also may I ask, Glenn, when you say "criminal matters," obviously you're talking about the Kalele Kai matter that was the subject of an indictment and a dismissal of that indictment and that is now on appeal?

MR. SATO: That's correct.

MR. KAWASHIMA: Anything else?

MR. SATO: There's also the general matters of political campaigning that was subject, the subject of a referral to the Attorney General's Office as far as campaign spending violations and that's in general another subject matter.

There may be some issues as far as criminal tax issues. We'll take it as it comes. I don't have anything specific on that, but if there seems to be a line of questions that focus on some kind of criminal aspect on the tax part of this, then we'll object as we go.

MR. KAWASHIMA: Okay. So I understand at least as to the Kalele Kai transaction and what you broadly described as political campaigning, you are intending to instruct your client not to answer questions in those areas?

MR. SATO: That's correct. To clarify, you can ask him questions in terms of the lobbying effort on the intermediate sanctions. We're carving that out.

MR. KAWASHIMA: And other matters relating to change of domicile and change of tax-exempt status?

MR. SATO: That's correct.

MR. KAWASHIMA: By the way, I also want to place on the record, we had a meeting with the Discovery Master yesterday, as a result of which -- again, this is not to be made public until I believe a hearing tomorrow at 3 o'clock -- Henry Peters has agreed and will sign a stipulated order to the effect that in exchange for his not being deposed, he will not testify or allow himself to testify, in other words, being called by others, in the hearing that commences on December 13th or thereabouts.

Are you aware of that, Glenn?

MR. SATO: Yes, I was told of that and we do not intend to call Mr. Peters. So if we need to sign anything in terms of our commitment not to call Mr. Peters, we'll gladly do so.

MR. KAWASHIMA: Thank you.

BY MR. KAWASHIMA:

Q. Mr. Wong, you've been deposed before, haven't you?

A. Yes.

Q. You've testified in court?

A. Yes.
Q. You understand that you're under oath and that you should to the best of your ability tell the truth?
A. Yes.
Q. And as far as any questions I ask you, I want to be sure, Mr. Wong, that you understand them before you answer. Is that clear?
A. Yes.
Q. So that if there's any question I ask you that you don't understand, tell me and I'll repeat it or rephrase it to be sure that you understood the question before you answer it. Is that clear?
A. That's clear.
Q. So if you do answer my questions, Mr. Wong, I will assume you understood them. Is that also clear?
A. That is clear.

(Exhibit No. 58 marked for identification.)

BY MR. KAWASHIMA:
Q. I'm going to mark as Exhibit 58 for identification --

MR. KAWASHIMA: And my numbers, sorry, Counsel, are going to jump around just because I've marked them already and I intend to hopefully fill them all in by the time we're done.

BY MR. KAWASHIMA:

Q. Exhibit 58 for identification, Mr. Wong, is a Notice of Taking Depositions Upon Oral Examination, to which is appended a Subpoena Duces Tecum and that was served on your attorney.

Have you seen this before? I'm more focusing on the last two pages of the Subpoena Duces Tecum that is part of Exhibit 58.

A. It looks familiar.

Q. You've seen the petition and the amended petition in this case, haven't you, that has been brought by the Interim Trustees against yourself, Mr. Peters and Ms. Lindsey?

A. Yes.

Q. You've seen that?

A. (Witness nodding head.)

Q. Just generally you understand the counts that have been brought against you?

A. Yes.

Q. Do you have any documents of your own relating to anything in that amended petition?

A. I have a lot of documents. I don't know.

Q. How would you describe those documents?

A. Well, you know, they were memorandums and some

of the motions that were filed. Mainly most of these kind of documents.
Q. I'm not so much talking about -- let me lay some foundation. On or about May 7th of this year, you were temporarily removed by Judge Chang; is that correct?
A. Yes.
Q. And you were ordered to vacate the premises at KSBE and you did that. Do you remember how many days after May 7th that you actually physically left the facility?
A. I think within a matter of eight days.
Q. You cleaned up your office, took your personal belongings and left?
A. Yes.
Q. I'm only asking at or around the time you left, I'm not talking about this case now, in other words, the petition for permanent removal, I'm not going to ask you about documents related to that that you have, because those probably are subject to some kind of privilege, but documents relating to the history of your being at KSBE, the things you dealt with, you must have taken some of those documents with you when you left, didn't you?
A. Yes.

Q. Most of the documents you took, if you might describe them, are they more documents of a personal nature such as notes and such or --
A. Yes.
Q. -- or do they also include other types of formal memoranda, opinion letters, pleadings, things of that nature?
A. What I did do is I put into boxes material that I was to take and was personal. I called Rodney Park, who is our administrative person, and I asked him to come into my office and look at all the boxes before they left. And I think there was one box that contained memorandums from Ashford & Wriston and I wanted to take that and they said no.
And that's the extent of my movement out of Kamehameha Schools. So I had Rodney Park come and I said, "Rodney, I want you to look at all the boxes. What you see in there, what can I take and what can I not take?"
Q. How many boxes?
A. About seven.
Q. These are banker's boxes?
A. There's about seven of them.
Q. And one box Rodney did not allow you to take?
A. Yes.

Q. The other seven, he gave you permission to take?
A. Yes.
MR. SATO: Hold on. You got to wait until he finishes. Don't rush in with an answer.
BY MR. KAWASHIMA:
Q. You and I talk fairly fast, Dickie, so wait until I'm finished with my question and then you can answer.
A. Okay.
MR. KAWASHIMA: Are you going to make those documents available? I thought we had a deal, an agreement.
MR. SATO: Until he said it, I didn't know they existed. So we'll talk about it. I'll make them available. I don't think there's any secrets in there, probably.
MR. KAWASHIMA: I just need to see what they are and we'll work something out to look at them.
THE WITNESS: Okay.
BY MR. KAWASHIMA:
Q. Did you during -- when were you appointed trustee of KSBE?
A. January 1st, 1993.
Q. During the time that you were there, about a little over six years, did you keep a lot of notes?

A. No.

Q. You're not a note-taker?

A. Yes, I'm not a note-taker.

Q. I don't know if you noticed, but Lokelani Lindsey takes a lot of notes. Do you know that?

A. Yes.

Q. Have you ever reviewed any of the notes that she's taken during the course of the time she was at the Estate? Have you ever seen what her notes look like?

A. She has a pad, a yellow-green pad that she keeps notes on.

Q. I understand that, Dickie. What I mean is, have you had the occasion, I'm not suggesting you were peeking over her shoulder or anything, but at some point to look at the notes that she had taken during the course of a particular meeting just to be able to say, and maybe you can't, but just to be able to say that she takes good notes, accurate notes?

A. I may have looked at it on a number of occasions, but it's reflected, because at one time we had a lapse and she became secretary and she was taking notes. And when Trustee Jervis came aboard, he was made secretary and he kept almost everything, but she kept her own personal notes.

Q. During the time she was secretary, I mean how long was that period of time?
A. Until Trustee Jervis came aboard. So it must have been several months.
Q. Less than a year?
A. Yeah, less than a year.
Q. I see. What she would do as secretary is take notes when you folks were in executive session, maybe?
A. Normally notes are not taken in executive session. She may have taken notes, but generally speaking, the way the system is run, what we had in place when I came, we had Rodney Park and Nathan Aipa doing most of this stuff and coordinating with whoever the secretary was.
Q. But during the time that she was secretary, during the course of a regular meeting, you noticed that Ms. Lindsey would take her own, take notes of what was happening?
A. Yes.
Q. And you would then therefore in reviewing the minutes of that meeting be able to generally tell whether or not Ms. Lindsey was taking notes accurately?
A. Yes, I think there were, there were instances

where they referred to her to ask her what transpired. Either the person missed it or what, but she would just turn to her notes and say what happened.
Q. Is what we're concluding then, Dickie, that Lokelani took pretty good notes?
A. I would say yes.
Q. Accurate notes?
A. Yes.
Q. Complete notes?
A. Complete, but, you know, I don't know what format she uses in terms of how she translated it.
Q. Mr. Wong, let me ask you, what, if anything, did you do to prepare for this deposition today? Don't tell me -- if you talked to your counsel, don't tell me what you said.
A. Of course, I talked to Glenn about it. And I didn't know how to prepare for this depo, because I'm not sure where you people are coming from.
Q. Am I to understand then that you did not review any documents?
A. No, not really, but I read over some things that I thought you might be interested in, but that's about it.
Q. Can you tell me what those things -- before you

tell me what those things are, did those things refresh your recollection as to certain events that transpired in the past?
A. Well, yeah, but it just brought me up-to-date of what I felt I already knew.
Q. And those documents were what, if you might describe them for me?
A. Well, the will in particular. I reread the will and I reread the intermediate sanctions documents that were pertaining to that and that's about the extent.
Q. The intermediate sanctions documents you're talking about are the various letters and memos that went back and forth between the Estate and Verner Liipfert?
A. I read the Verner Liipfert report by Sue Temkin.
Q. You were the trustee that was assigned to monitoring the intermediate sanctions bill, were you not?
A. Yes.
Q. And I think I saw somewhere there was a declaration or affidavit you gave to that effect; that was your job, correct?
A. That is correct.
Q. So you do have familiarity with the bill?

A. Yes.
Q. And its stated goals?
A. Yes.
Q. And the progress of the bill through congress to its actually becoming law?
A. Yes.
Q. And looking at the Estate's records, there are a number of documents there. There are memos from the Verner Liipfert firm. There are letters, correspondence, for example, also. That's all part of the stuff that you looked at?
A. Yes.
Q. You didn't look at all the Verner Liipfert documents, though?
A. No.
Q. No? You're shaking your head.
A. No, I did not.
Q. Just some?
A. Just some of them.
Q. Was one of them a long letter or memo by Sue Temkin; do you recall?
A. Yes, I believe I read the Sue Temkin letter to -- I believe it was to Nathan Aipa. I'm not sure.
Q. Do you recall the gist of that letter?
A. Well, it just gave the background of the

intermediate sanctions legislation and what the role of the trustees were and how they were to swing it and basically giving a background of the bill itself and its provisions.

Q. That letter that was sent to Nathan from Ms. Temkin, I don't have it available here, but essentially that was a letter that was intending to justify the lobbying efforts of KSBE relating to the intermediate sanctions bill, right?

A. Well, I described it.

Q. I'm getting ahead of myself. I'll get back to that area and I have some documents we'll talk about later today or tomorrow.

Initially, at least initially, the goal of KSBE was to kill the intermediate sanctions portion of that Budget Reconciliation Act, right?

A. I don't know where this comes out from to kill. You know, this was the U.S. Congress and for me to think that, you know, I'm going to Washington, D.C., and KSBE is going to kill a bill is -- I don't know, I find that hard to accept.

Q. You had consultants working with you on matters relating to the intermediate sanctions bill, including attorneys at Verner Liipfert, correct?

A. Correct.

Q. And also, for lack of a better term, lobbyists connected with Verner Liipfert, a guy named Dwyer?
A. He is a member of the firm, yes.
Q. Is he an attorney?
A. I don't think Denis is.
Q. Would a lobbyist be a term or not?
A. No.
Q. I'm just using that.
A. My understanding Denis is not an attorney.
Q. But they were working with you folks on this, were they not?
A. They were working in Washington. I made several trips to Washington. Basically, they were doing all of whatever it takes to get to the congress or whomever they're supposed to talk to.
Q. Actually, the Verner Liipfert contact here in Honolulu was former Governor Waihee; is that correct?
A. That's my understanding.
Q. And you received a number of memos from Governor Waihee, did you not?
A. Yes.
Q. Relating to intermediate sanctions?
A. Yes, it could be. I don't know.
Q. I'll show them to you.
A. I would say yes.

Q. I'll show them to you later.
A. I would say yes.
Q. And your understanding was former Governor Waihee was also familiar with the intermediate sanctions bill and its stated goals, right?
A. I would think so.
Q. Do you recall -- again, I'll show you the documents later in the regular course of things, but you don't remember memos to you from Governor Waihee and others at Verner Liipfert in which it was specifically stated that initially the goal was to kill intermediate sanctions provisions in this Budget Reconciliation Act?
A. I don't remember ever seeing the word "kill" the bill. I think the words they used most often was to modify and clarify.
Q. How about remove the provision from the bill?
A. Well, I would say that would be to modify or bring clarification.
Q. How about, Dickie, remove the intermediate sanctions provision from the Budget Reconciliation Act? Do you consider that a modification?
A. Well, you know, if they use to say remove intermediate sanctions, I think it's logical because, first of all, the bill itself, the people that would

be affected by the bill didn't know what it contained. I think conceptually -- if I might go on, conceptually, we agreed with intermediate sanctions only because it offered two bites of the apple.

And by that I mean that the present existing law is that they yank your exemption and you're gone and this was an opportunity that you could have a second bite at the apple because they would place certain restrictions and sanctions.

But I think overall the problem we had with the bill was the provisions of the bill, the intermediate sanctions bill, because at least at KSBE, I can't speak for other nonprofit organizations, they didn't know what those things contained, and once they found out, I think the concept was good, but I think the implementation portion was to me very -- I'm trying to search -- very damaging to KSBE's operations and management of the trust.

Q. The intermediate sanctions legislation was intended to provide remedy other than the revocation of an organization's tax-exempt status, right?

A. That's correct.

Q. In other words, KSBE is tax-exempt now?

A. Right.

Q. If, for example, just using as an example, KSBE

paid its trustees excessive compensation, before the intermediate sanctions, one of the things that the IRS could do would be initiate proceedings to take away that tax-exempt status right, before this?
A. I suppose they could have if they wanted to.
Q. But with the intermediate sanctions legislation though, Mr. Wong, you say you have two bites of the apple. What you mean, I think, is that now the IRS doesn't have to move or initiate proceedings to take away KSBE's tax-exempt status. What it would do is to move directly against the people involved who were getting paid too much and try to stop that and get money back from them very generally, simply.
A. They could do many other things, but I think the provisions in the act were onerous to KSBE from an operational point of view and from a maintenance point of view of the organization and I think that's where we have the problem.

I mean the IRS, as far as the Trustees are concerned, and speaking for myself, I'm not sure what other Trustees think, that the only thing we had in place over here was state law and that none of us were ever deluded into thinking that the legislature could not move to modify the state law and would govern compensation.

At least with the state law, we had some degree of certainty here, that there was something in place outside of the court-ordered studies that were done over the course of the years as recommended by the Master and the Court, that we follow these studies and we try to fit ourselves within that parameter. My thinking is that, you know, until today I don't know what is reasonable.

Q. I guess people can differ on that, right?

A. They can surely differ. I mean and, you know, as a sideline, and my lawyer will probably cut me off, I think basically in Hawaii, the issues of compensation has always been the lightening rod for Bishop Estate and people have different feelings in the community when you get paid too much or paid too less, but we at least had a state statute in place that would give us some certainty as to what was happening, and the ultimate choice was the legislature. They could change it every year or they could totally eliminate the statute, which eventually they did, but in its place, that was the only guidance we had and.

Q. You're talking about the new bill that came into effect at the beginning of the year, right?

A. Yes.

Q. That bill again in a very general way changed the law to say that trustee compensation should be reasonable without defining what that meant, right?
MR. SATO: You got to answer yes or no.
A. Yes.
BY MR. KAWASHIMA:
Q. And you understood, though, Mr. Wong, that the legislation we're talking about right now was directed towards KSBE? You understood that, right?
A. Yes. I think it affected a lot of tax organizations.
Q. But as far as any direct focus of that bill, KSBE was the primary direct focus, wasn't it?
A. I don't know if it was primary, but we were certainly affected by it.
Q. In fact, that kind of a bill, that kind of legislation, it had been in the hopper for years; every year somebody would introduce legislation relating to that and it never passed until this year?
A. Now you're talking about locally?
Q. Locally, Dickie, right.
A. That's true.
Q. Getting back to intermediate sanctions, you agree with me that there was, again pre-1999, before 1999, there was a state statute that talked about

trustee commissions, right?
A. Yes.
Q. But you also understood, though, that that state statute that related to trustee commissions was not necessarily dispositive of what the IRS felt was reasonable, right?
A. I don't know what they felt, but obviously -- I mean, they can take any take on it, and as far as my take was, we were governed by that law. There was some certainty to it. They could change it any year they wanted to. They chose 1998 to do it and that's the end of the ballgame as far as I'm concerned. The legislature has that power.
Q. Effective 1999?
A. July 1st -- January 1st, correct.
Q. Getting back to intermediate sanctions, you testified just a couple of minutes ago, Dickie, that you felt that intermediate sanctions legislation was, maybe the word "harmful" wasn't used, but some word to that effect and it was onerous. Do you recall saying that?
A. Yes, it's onerous in its provisions. At least that's my take. I think people concurred with that.
Q. What do you mean when you say "onerous," Dickie? Onerous as to what?

A. Well, there were certain provisions in the bill that would have affected our operations. No question in my mind.
Q. Which ones?
A. Like disqualified person.
Q. That's you folks, right?
A. Well, I thought we were covered, but in the original bill, it talked about operational managers. Now we're not sure what that really meant and the fallout would be that these people would be covered too.
Q. Okay. What else, Dickie?
A. Oh, well, there were exit tax. To me, the onerous portion of the thing was an exit tax.
Q. Why was that onerous?
A. I think from the standpoint of that if a tax-exempt organization wanted to get out of the business, there was a penalty for doing that and that penalty was the lesser of the net assets of the estate or the aggregate of all the benefits that that organization had received during the course of their existence as a tax-exempt organization, but in there, included in there was if the IRS would -- how should I put it?
If the IRS was to revoke the status, the

tax-exempt status, they would be subject to this exit tax and I thought that was onerous. I mean the IRS, I'm sure they try to be fair, but if they weren't, this organization would suffer a huge penalty on the fact that it would be included.

If the IRS came in and for other reasons lifted the tax exemption, this exit tax would apply. And that was the interpretation given to us and I concur with that, that reading of the language. Fortunately, the exit tax was removed somewhere up in the Conference Committee somewhere, but I thought that was onerous.

Disqualified person was very confusing. We didn't know what they meant when they said operational managers and they had influence over the affairs of the institution. I think some of that was cleared up in the Conference Committee on the Budget Reconciliation Act.

And dissemination of information, administratively, it would have been a nightmare that everybody who requested a copy of our 990s and our 1023s, it would be just given it to it. And we're not sure what the requests would be out there. Right now, it's been provided by the IRS for those who want to seek it and we would be running all over the place.

There was some provisions on joint and several liability that certainly applied to trustees, but how they would apply to our so-called operational managers, we had no idea.

Q. But one of the concerns that you trustees had, though, with the intermediate sanctions legislation was its effect on your compensation, though, right, one of them? I'm not saying the major or the primary one, but one of them.

A. It might have been, but, you know, I think compensation was there, because I think they had a statute that said to do away with estate taxes and eventually that was resolved by saying that estate taxes may be a factor in determining compensation and they left -- the state law was still in operation when we were up in Washington in '95 and '96.

(Mr. Wolsztyniak enters room.)

BY MR. KAWASHIMA:

Q. Do you remember being told, Dickie, that -- while you were in the process of working on that legislation with Verner Liipfert people, do you remember being told that KSBE was one of the direct focuses of this intermediate sanctions legislation? Do you remember being told that?

A. Well, I don't know being told, but obviously, you know, I think I got to go back to the process. The process was, our people as soon as the provisions were made known tried to meet with the Senate -- I mean, the House Ways and Means people and to tell them that these were some of the problems that we're having and I think that's the first signal that came up that these people were not going to do anything.
Q. I understand that, Dickie, but do you remember being told that? I'll show you a memo later on.
A. I may have, but it's very obvious.
Q. And do you also remember being told of learning that KSBE was the only organization of its type in the entire country that was lobbying against the intermediate sanctions bill? Do you remember being told that?
A. Well, I may have been told that by the Verner Liipfert people. We didn't know what the scene was in Washington. We're in Honolulu, so we don't know what the Washington scuttlebutt is and we heard all kinds of rumors.
Q. But part of the process, Dickie, the intermediate sanctions process was Verner Liipfert was to try to go get support from other similar type institutions against this bill, right?

A. Yes, I think that was accurate. They tried to notify other people that this bill was there and that this may affect you, and I think that's perfectly correct.

Q. But it appears no other institutions saw fit to join you folks in this effort, right?

A. I don't know how many outfits joined us, but they certainly were made aware that this thing was happening, and I guess in the end, we had to carry the ball by ourselves. We had to carry it by ourselves.

Q. Do you recall a U.S. News and World Report article back in that period, '95, '96, where the reporter reported that KSBE was the only such institution lobbying against it?

A. I'm not privy to that article, but I just know that, you know, we were involved. I know we were involved. I'm not sure how they developed these relationships, but it would seem to me, if there was some effect, it would likely create more people, get more people involved, because I don't think intermediate sanctions considered trusts in that sense. We're a very unique trust and we kind of stood out like a sore thumb, you know.

Q. At some point, you tried to get educational institutions to have an exemption from the bill, right?

A. Well, I think in the end result, they're stuck with the problem today, the national association. And I think the ABA came out way back when, and the committee on tax-exempt organization, the ABA said this will have a profound effect and I think that's when people started to take notice.

Whether or not they tried to correct it through the rules and regs as promulgated by the IRS, I don't know. I don't know what their extent, but they really got upset. Not only that, the Council of Churches, the ecclesiastical bodies, in particular the Catholic church of the United States, everybody started jumping on board when the final product came out and said, "What the heck is this? What's happening?"

I think it's after the fact. I think if they had got involved earlier, maybe some of these problems may have been resolved, but how they managed to do this on the Verner Liipfert side and whatever people we could talk to locally, I mean, it seemed like nobody was interested.

Q. Dickie, again, I'm going to show you that later, but just the memos that went back and forth are mostly from Verner Liipfert under former Governor Waihee's name to the Trustees, you folks.

Although you were monitoring that effort relating to the intermediate sanctions legislation, would it be fair to say, Dickie, that those memos that came from Verner Liipfert would have been given to all of the trustees?

A. I would assume yes.

Q. In fact, you would assume yes because you recall when these memos came in and you reviewed them, you folks would discuss them as a body, would you not, in a general way?

A. Well, yeah, there was discussion on anything that was happening to intermediate sanctions, and even while in Washington, if there were discussions that I thought were important, then I called Honolulu and we had conference calls to all of the trustees. Whether they all attended or not, I don't know who was in attendance, but just to let them know on the progress of what was happening.

Q. You felt as far as you were concerned you did an adequate job of keeping your other trustees informed of the developments relating to intermediate sanctions?

A. I think I did, yes.

Q. Now, Dickie, the bill went into effect -- when was it effective? 1995 or -6?
A. '96.
Q. Here it is 1999. Up to the time you left the Estate, were there any problems with dissemination of information, for example, the 990s?
A. I don't know, they must have completed the last one.
Q. I guess what I'm asking is this, Dickie. You were concerned about the fact that there would be these forms 990 that would have information about the Estate and then people would come and ask for them and cause a problem with the dissemination of that type of information, right; is that correct?
A. Yeah, and I think those provisions were removed in the Conference Report as far as the dissemination of information and I think several concessions were made about electronically placing this around, but the real world is that somebody can get a copy today and put it on the Web or whatever, the Internet.
Q. What is the problem with that, Dickie? That's general information.
A. Well, to me it's moot, you know. At that time, there was a concern about everybody coming in and asking for information that was available to the IRS

on our 990s and 1023s and they had access to that and now they said you got to give it to everybody who asks for it and we thought that would be a problem for us administratively; and, two, the dissemination of putting it on the Web site, we may have had financial information in there we don't want anybody to know. It's there. It's in the 990s.
Q. You knew what was in the 990s even before this?
A. Yeah, but electronic -- just KSBE as an organization of what people asking you, harassing you and they want to find information and personally I thought it would be an administrative headache, but to me, it's going to happen anyway down the road, but I don't think because something is going to happen -- I think you got to slow it down until we can gear up as how to handle these kinds of requests.
Q. Am I to understand, Dickie, that while you were at the Estate, this intermediate sanctions legislation was the only piece of legislation where someone like you was assigned to monitor it and made multiple trips to D.C. to monitor it and work with your consultants and attorneys? Am I correct?
A. I would say yes, because, you know, the Estate is a five-day-a-week job, and when somebody takes off, I mean, you know, you spend time away from this.

Q. What I mean is that this was the only piece of legislation, and maybe there weren't any others that should have concerned you folks, but this was the only piece of federal legislation where such an effort was placed on monitoring it and working with it?

A. I would say yes, because of the nature of the provisions that we felt would damage the management and operations of this trust and I think that was the right take. And if the bill had passed without us doing anything, I think the Estate would be in much worse shape than it is today. That's my own personal opinion.

Q. I think I asked you a few minutes ago about whether or not compensation was one matter relating to intermediate sanctions that you people were concerned about.

I'm not saying it was the most important or even among the top ones, but compensation was a factor that was being considered when you looked at intermediate sanctions, right?

A. Well, yes, because, as I mentioned before, the problem was that we had a state statute in place and that was going to be eliminated.

Q. What would be wrong with that, necessarily?

A. Well, for Hawaii, I mean the only guidance for the Trust was the state law. At least it provided some certainty about what was happening and what you can get paid, whether you did studies, whether it fit within a range and -- I mean, I thought that was kind of reaching in the state. I don't think there were very many states that had the statute. I think there were 11, to the best of my recollection.
Q. You don't disagree with the concept that trustee compensation should be reasonable, do you?
A. I don't disagree with it and I think the trustees did that prior to even when I came here, because they were entitled to much more under the law that would have gave them much more, but they waived half of those commissions.
Q. When you say they were entitled to under the law, Dickie, what do you mean by that?
A. Well, capital receipts on some of the things, the sale of real estate and these things were all eliminated.
And when I came, they asked me to sign a waiver. And I said, "What's this waiver for?"
They said, "It's a waiver of certain kinds of things that were happening on capital receipts, on land sales, capital gains, whatever it was."

And I said, "Well, what are the other guys doing?"
"They're waiving it."
Under the law, they could have taken more, but they didn't. That was before I came.
Q. When you say under the law they could have, what you're saying, if we might put it in lay terms, is that using the formula in the Hawaii statutes, if you use that, they could have taken more compensation?
A. Yes.
Q. But you understand, though, Dickie, that the state statute, I guess, provides the maximum limit that you can take; is that correct?
A. That's correct.
Q. It doesn't say that whatever you take is reasonable, does it, until now?
A. Yeah, but the thing with me, if you read into it, then from my point of view is that you're entitled to do it, because there are certain things. Like tuition, you can collect from tuition, you can collect from capital gains, you can do all these kind of things and from leasehold, sale of leasehold and everything else. If you waive it, you've waived it and you're not entitled to it anymore.
Q. I understand, but you do agree with the concept

that whatever the state statute used to provide prior to January 1, 1999 was the upper limit, not necessarily what the state statute considered to be reasonable, right?

MR. YEE: Objection, calls for a legal conclusion and it's also argumentative.

BY MR. KAWASHIMA:

Q. Dickie, we're probably going to get into it later, but let me ask you now. Taking commissions on lease-to-fee sales, you say that was waived, right?

A. Yes.

Q. And the reason, though, that you folks waived that is because that's not something you earned, right?

A. Yes. And I agree with that, yes.

Q. And the land was there, it appreciated. Whether or not Dickie Wong or anybody was there, it appreciated just because of the overall, I guess, economic picture, right?

A. Yes. I think the trustees, and I believe in that, that it was something that was forced on us by government and, therefore, I thought the trustees were correct when they waived it.

Q. In other words, you people fought tooth-and-nail against that legislation, against selling that land,

right?
A. Yes.
Q. But, anyway, we don't disagree that conceptually, philosophically that you shouldn't take commissions based upon sales of lease-to-fee property?
A. And I think the trustees before my time made that decision and I concurred with that decision.
Q. The same thing with capital expenditures, Dickie, like capital expenditures at the school. Technically, you could take commissions, but you folks waived it?
A. Right.
Q. In fact, when you joined, you say they waived it?
A. I think it was waived before that, but I'm not sure. The makeup was that what we earned we should keep and that was the philosophy when I came. We're going to go earn it and this is what we're doing. I had no problem with that.
Q. What year? I'm sorry, you told me already.
A. '93.
Q. Do you know that you folks after 1993 did take commissions on final distributions of capital? Were you aware of that?

A. Yes. My understanding, yes, we did.
Q. How did you become aware of that?
A. I guess Trustee Peters brought it to the Board and he told us what they were doing and that he had checked with our attorneys and they said it was okay.
And we took no formal vote of any kind. It was just kind of like an announcement. And I don't think the gang was involved with whatever, how that thing came about.
Q. I'm sorry, when you say the gang was involved?
A. I mean the Trustees. It was just told to us that this is what we're doing and.
Q. My understanding, Dickie, was that with whoever else from the staff he worked with, Henry Peters was the one who made the decision and then brought it to the Board that you folks were going to take at least for a period of time commissions on final distributions of capital?
A. Yes.
MR. YEE: Objection, calls for speculation.
BY MR. KAWASHIMA:
Q. And you know this because Mr. Peters told you that, right? He told you that he had made the decision and was recommending to you folks --
A. He just told us that's what he did on FDOC and

he checked with our attorneys and our attorneys said it was okay.
Q. But you had already agreed, though, to waive commissions on FDOCs, hadn't you?
A. I don't know if it was in the waiver already. I'm not sure of the year, that's why.
Q. Was that a concern to you, though, when Mr. Peters came and made that recommendation?
A. No, it wasn't a concern for me.
Q. You agree that what he was proposing was something different than had been in place from the time you started, right?
A. Yeah. Well, I think that's a correct statement, but by the same token, the Trustees never sat around to talk about their commissions ever. You know, I never heard them talk about we should get more money or less money or whatever.
Q. Never?
A. No. You know, I'm talking about day-to-day operations. We don't bring that up as a matter of course of business.
Q. I understand that. You're not suggesting to me that in the course of the meetings that you attended from 1993 to 1999 that compensation was never raised?
A. Oh, no, but certainly on reasonableness and of

the bills that were there and in the congress.

Q. You folks believed that you were entitled to a million dollars a year, right?

A. As I understand, we went by studies that were ordered by the Court in which they set ranges and we fit in the ranges and I think that was okay with me. I mean, you know, that was something that came up before I came, there were studies made.

Q. We'll talk about that. Thank you. Are you finished with your answer?

A. Yes.

Q. Getting back to this FDOC thing, am I to understand that there was no formal action by the Board of Trustees to approve what Henry Peters was proposing, in other words, taking commissions on final distributions of capital, that it had not been done at any time prior to that from the time you started in 1993?

MR. YEE: Objection, the question calls for a mischaracterization of prior testimony of the deponent. He did not say it was a proposal before the Board.

MR. KAWASHIMA: Just make the objection, Counsel.

BY MR. KAWASHIMA:

Q. Go ahead. Answer, Dickie.
A. We were just told that by Trustee Peters. That's what he did and we checked with our attorneys and our attorneys said it was okay.
Q. The ultimate result of doing that, though, Dickie, was that you folks were going to get more income, compensation than you would have gotten had you not taken commissions on these final distributions of capital?
A. I don't know what the economics of how we were doing financially.
Q. I understand that. I mean, I'm not talking specifically about the economics of the situation right then, Dickie. I'm talking about the effect of what you were doing by waiving or, I should say, by not waiving commissions on final distributions of capital.
Just as a practical matter, it resulted in your folks getting more income or compensation than you would have gotten, right?
A. I would say yes.
Q. Do you recall that year that you folks might have been concerned about losses that you had sustained that would have resulted in your total compensation being less than it normally was and

that's why you folks looked at taking commissions on final distributions of capital?
A. I don't know about that aspect of the thing, you know, but -- you know, Henry was the treasurer. I'm not trying to lay it on him, but he came to us and he told us that's what he's going to do and I don't see anybody objected to it or anything else. We never took a vote. He just announced it and we went on with our business.
Q. Later on, though, you folks formally voted not to do what you just did or you did by taking commissions on FDOCs, right? Did the Board not later on formally resolve that they would not take commissions on --
A. Yes, that's correct.
Q. That's what I'm talking about.
A. It just came up and my understanding the Board was aware of that. But, you know, when somebody tells us that they checked it out with the legal stuff and it's okay, I mean, why would we have to go further.
Q. When you voted after that to not take, formally voted not to take commissions on final distributions of capital, do you recall why you voted to do that, what was the basis?

A. I really don't, but I guess you got to go back and find out.
Q. At that point in time, did it not occur to you that perhaps you shouldn't have been taking commissions on final distributions of capital as had been recommended by Henry Peters?
A. Well, I think all along that issue came up and I don't think we spent that much time with it. We just recommended that we go back to the old system and that's fine. I don't think it was a long discussion.
Q. It wasn't a matter of great concern to you? No?
A. No.
Q. I got sidetracked, but going back to --
A. I get sidetracked all the time.
Q. -- intermediate sanctions legislation, you talked about the question as to whether or not it would apply to operational managers, for example; there was that question?
A. Yes.
Q. In other words, the issue was whether or not operational managers would be considered, I guess the technical term is "disqualified persons", right?
A. Yes.
Q. Let me lay a little bit of foundation. You agree that generally it is good for the Trust Estate

that salaries be reasonable as a general proposition?
A. I think they should be reasonable.
Q. And, of course, the minute you pay someone more than they should be paid, that hurts the Trust Estate, right?
A. Well, as I said, the Trust when I came in already had done several studies on compensation.
Q. I know, Dickie. I'm not quarrelling with that. I'm talking about general concepts, that whether it be the trustees or operational managers, whoever would be defined under this broad term, quote, disqualified persons, end quote, was paid more than they should be paid, then it hurts the Trust Estate, right?
A. Yeah, I would say generally speaking, but disqualified person would mean that we would have to do all of the studies on our managers and everybody else and get them in line and.
Q. What's wrong with that, Dickie?
A. There's nothing wrong. Everybody should be paid reasonably.
Q. Sure.
A. And I think our pay was based on a formula and is really performance-based, you know, and I don't know how people quarrel with performance-based. If

you make a lot of money and you're on a commission, people sometime in the community, they're confused. They think this is a salary. It's a commission. And if we make more money and the law allows us to take the commissions, then I think it's perfectly right, but the expectation out there is that you guys are paid too much, but what do you know about what we do.

I mean, if a person -- and, again, I want to repeat, as I understood getting into Bishop Estate, that it was strictly commissions. There were no benefits for you. You're an independent contractor, you come in and it's performance-based. If you make money, your commissions will take care of that, the formulas. If you don't make money, what happens? You don't get paid.

I mean, I think there's a distinction that a lot of people out there don't understand. The general public, I don't blame them, but you know Bishop Estate is a very unique organization. I mean, it's probably the biggest organization in the state and probably one of the most successful.

I mean, how do you evaluate the Goldman Sachs deal? You make $3 billion, and based on a commission, what should you be getting?

Q. Dickie --

A. I might be rambling off the subject, but I'm just trying to put this in context of how I feel about it. I think salaries should be reasonable. They should be reasonable, you know.
Q. I hear you.
A. I think the Trustees made an attempt to do that by not taking what they were, quote, entitled to. Even though there was a cap, not taking to what they were entitled under the existing law, and I think they gave up half their commissions.
Q. But there were reasons for giving that up, Dickie, as we already talked about?
A. And I think the reason was a good one, I said. I said I thought trustees prior to my time started to do this before I came. And when I came, one of the first documents I signed was, "Here's a waiver." And I said, "What is this for?" And they explained the process.
Q. In talking, though, in talking about this -- you and I have been going back and forth about compensation for the last couple of minutes. I hear you talking about Goldman Sachs, I hear you talking about investments, I hear you talking about performance. In your mind, what is the mission of KSBE?

A. Education.
Q. Education of children of Hawaiian ancestry?
A. Correct.
Q. At Kamehameha Schools, wherever it might be in the state, right?
A. Yes.
Q. Would you think it fair, Dickie, that you folks be judged by how well you're doing your job educating Hawaiian children?
A. I think that's an accurate statement. I think we should be judged by that.
Q. Were you folks being judged by that as far as compensation was concerned?
A. I think it's a factor. I think we can get into beneficiaries, who is the beneficiary, you know. My feeling is I think the Estate has to generate the income, because, first of all, this is a private, nonprofit, educational charitable trust. It's a self-sustaining trust. That's very important. And the other one, it's a perpetual trust.
So, you know, to me, if you just follow that concept, that what this trust was created for, the purpose was education and I think KSBE did its job with its resources, but we knew at least before I came Kamehameha Schools back in the early part in the

'75s and '80s, they were broke. They couldn't pay the teachers, they couldn't do anything.
Q. That's because you were land rich, though?
A. Right, but cash poor. And, you know, I would say 98 percent of our lands are in conservation and agriculture, which draws very little income, and only two percent of our land produces 94 percent of our income and that income wasn't going to take care of Kamehameha Schools. So they had to invest, I mean make investments. I mean, they had to take risk.
Q. And they had to sell land?
A. No, we tried not to sell land. In fact, I think since I've been at the Estate, we've added land to the Estate.
Q. Wouldn't you agree, though, Mr. Wong, that the fact that the Estate is as wealthy as it is today and is as liquid as it is today is because land was sold, albeit because you were forced to do so, but land was sold? That's where you got your cash from?
A. There's no question. If you want to talk leasehold reform, they made about $800 million I'm told by the time I came in. They were really entitled to more than two billion. It depends on how you want to set the renegotiations period. I mean it just happened, but that was done. The government

came in.

There was value that Kamehameha Schools never appreciated, so they had to take the 800 million and go and invest it somewhere, and that's what they did. And the managers at that time in the '80s on leasehold reform, they made very prudent and wise decisions and they had to go out of Hawaii to do this.

Q. But, Dickie, you're talking about government coming in, you're talking about the statute that was passed that forced you folks to sell land under certain circumstances, right?

A. Yes.

Q. But you people, I mean the Estate did everything possible to make sure you got the best possible price for that land, didn't you?

A. Yes.

Q. And you went to court when you had to on a number of occasions to establish value, right?

A. I think that's our job. You have to enhance that asset. We don't hold an asset to have it go down.

Q. I don't disagree with you necessarily on that. What I'm saying is, though, I heard you saying that you didn't get as much as you should have.

You did everything within your power as a trustee and those before you, I think you would agree, to get the best possible price for the land that they had to sell, right?

A. Yes, and I don't think that was the case, but the case was government said -- we passed bills in the legislature in the '75 limiting the renegotiated price on the leaseholds and everything else, not tied to really market. But that's neither here nor there. To me, leasehold conversion is completed. Bishop Estate did make money. All I'm saying is it could have made more.

If you take Kahala as an example, people bought leases in Kahala for small money during the bubble time and they paid maybe 200,000 for the lease conversion. The house is worth 300,000 and they sold the house for 3 million.

I mean, you know, definition of tracts and stuff like that, when I look at the law, boy, a lot of things were done at the legislature. Like what qualifies for a tract, for example, either 50 percent or 25 owners in a tract and what they said there were two conditions you have to have, and that two conditions was intent to reside and be an owner-occupant.

Somebody in the legislature -- and I don't know who was at Bishop at that time; I was in the legislature, so I don't know what the heck happened -- somebody came and changed the word "and" to "or", intent to reside or be an owner-occupant. Before, it was both conditions before you qualify a tract for condemnation.

And I thought that was something wrong. Don't ask me. When I come to Bishop, I'm not going to point fingers at anybody, but somebody was asleep at the wheel. Intent to reside and be an owner-occupant and they changed the word "and" to "or".

And that contributed to value, that contributed to other things, but, you know, we can get into that argument. The phase of leasehold conversion is a law. It's well-accepted in Hawaii.

Bishop had to do that. We have a few things, when I left anyway, residential leases that we'd like to get out of. I think it was just a slow process of government wanted to do what -- it had its powers and they did it.

Q. By the way, Dickie, do you consider that a breaking of the will, being forced to sell the land?

A. Well.

Q. I'm just asking.

A. I think the Princess gave us discretion to do that in her will and we could have done it on our own, but we didn't.

I think the trustees before my time felt that land was very important and we should keep it as long as we can, as long as government doesn't force us to sell. Some day, you know, it's going to be worth much more money. And God created only so much land and that's what it is. So we're basically a land trust.

And as I mentioned, when I came in, I was very surprised at the number of acreage we had in ag and conservation and what was really producing income for this Estate, and it's two percent that produces almost 90 percent of the income.

Q. Back then?

A. Yeah, that they were running the schools with. And with the infusion of leasehold, and we can argue about value and everything else, I believe Bishop received in the neighborhood of about $800 million. That $800 million was then reinvested and we are where we are today because I think we've been very successful.

Q. Because of the $800 million that was reinvested, right?

A. Sure, there's no question. They were cash poor. They couldn't pay their bills in the '80s.

Q. So, ultimately -- maybe we shouldn't argue about this, it's not relevant, maybe, Dickie, but ultimately they would have had to sell land anyway at some point to become more liquid to be able to support the schools?

A. Or to renegotiate those leases to the market price, because the income derived from that was just about two percent, as I understood it, and people were getting CD's for five percent and it didn't make sense, but we were locked.

The Estate, KSBE, was locked into a lease, negotiated lease for a term of 15 years and it looked like that period was coming close and that's how leasehold began.

And, you know, again, I feel it's a done deal. I can have my own feelings about it wasn't right, we should have got more money, but it's done, you know.

And the next step for me personally is they will be approaching commercial. And that saddens me, because that's where the rest of the income -- that two percent produces a lot of income, and some day in the year 2015, whenever it might be, you will find commercial leasehold that Kamehameha will be forced to sell.

And that's sad, because either you shift your economic base someplace else in terms of investment or they're going to get to that commercial property. If you turn around and look over here, Kakaako is mostly Bishop Estate. And I can see it now. I probably won't be around, but the next step will be some, some attempt to take our commercial leases away from Bishop Estate.

And I think that would be sad for the Estate, but things change and politicians change and it's going to happen. It's sad, but you can't control the legislature or the government.

Q. I'm sidetracking, but getting to operational managers, you agree the operational people at KSBE ought to be paid reasonably, a reasonable compensation?

A. Yes.

Q. But at the time of the intermediate sanctions legislation, the highest operational person, the highest staff person, executive level person was being paid a fraction of what the Trustees were being paid, though, right?

A. That's correct.

Q. And there was no concern there that these guys were getting paid more than they should have back then? For example, the president of Kamehameha Schools, Dr. Chun, maybe the head of one of your divisions here, Mr. Park, or anyone, there was no concern that they were being paid too much, was there?

A. No, but we had studies done on their comp.

Q. But, again, that's a positive step, wasn't it?

A. Well, I think you got to pay people well, you know. And after all, you know, we were highly dependent on the staff. We were kind of hands-on kind of managers.

We're not like other trusts where we meet once every quarter. We meet -- I don't know how many meetings we've had. In one year, I think the average would be about 90 times a year that we meet and we demand a great deal of our staff, competent staff. I think we pay them fairly.

When they go to the table and they deal and the Trustees are sitting there and we're doing a deal with Goldman Sachs as an example, you know, the guy sitting across the table is making one-million-and-a-half and they're making 190. I'm sorry, but that's the way it is. That's what they pay their people in negotiating a contract.

So my feeling is I think the pay was reasonable and, you know, personally I have some thoughts about it, you know, that I think Bishop Estate is good for them and.
Q. And, likewise, good for Bishop Estate?
A. There's no question. We had very competent staff.
Q. When you say hands-on board, what you mean is I guess there's a concept of -- we'll talk about that again when I pull out the report, but concept of you folks being five CEO's, right?
A. Yes.
Q. In other words, there was a study that was done where you five trustees were considered to be doing the work in a regular corporate for-profit context of a CEO, COO, CFO, treasurer and member of the board, all those five wrapped together. All you folks were doing every one of those, right?
A. I would say yes.
Q. We'll talk about that. I just want to cover exit tax and then we'll take a break.
A. Okay.
Q. The concern for the exit tax, was that because you folks were considering voluntarily going from a tax-exempt organization to become a taxable one?

A. I think that was discussed certainly around the Board about, "Gee, why are we taking all these hits and everything else and maybe we ought to do this." But the end result, we're a nonprofit and that's where we stayed.

Q. I understand. Would you agree that the Estate is as wealthy as it is today because of its tax-exempt status?

A. Oh, certainly there are advantages. No doubt in my mind.

Q. But you folks did spend money, though, Dickie, looking at this issue as to whether you could become a taxable rather than tax-exempt and what would be the ramifications of that? You spent money paying Verner Liipfert to look at that for you folks, didn't you?

A. Well, I would think part of our fiduciary duty is to look at options.

Q. One of them was to become taxable as opposed to tax-exempt?

A. Sure. I think the way we were running our organization here, I mean, you know, we're not a -- we're a fairly large organization and I think as Trustees we have -- another duty is to look at options that would benefit this estate.

Q. And that was one of the ones that you felt you had a fiduciary duty to look at?

A. I don't know what other options, but we looked at -- we should be looking at all kinds of options. I think as Trustees, we have to be very careful about these kinds of things only because that I think wherever it brings the advantage to the Estate and makes the Estate stronger, I think we ought to consider. Even if it's moving from a nonprofit to a for-profit and what are the consequences and what are the tax ramifications, I think trustees should be looking at these kinds of things.

I'm not saying we did. I don't think we did anything about the Verner Liipfert recommendation. I mean we asked them to do it and they did it and my understanding is no action was taken on it.

To me, I put it on the shelf, and maybe future trustees that come in, they may want to take a look at the issue.

But I think in Hawaii, there's no question in my mind, Bishop Estate is right up-front with everybody. And everybody feels the power of Bishop Estate and money and power and all this kind of stuff, which I come from a political world, so I can understand that and somehow -- I mean, there are certain jealousies and certain positions people take in the community, but, you know, we're not here to run a business, we run a school.

We don't ask for donations from the general public in any way, manner, shape or form. It's all self-sustaining. It's off of our income. The school costs us maybe over a hundred million dollars, whatever it is a year.

We're expanding our services to neighbor islands to get satellite schools. I think those plans hopefully will be completed in the year 2015 and we're expanding the reach of the schools and I think we're doing a public service.

And everybody keeps telling us, "You guys should educate all Hawaiians." I don't think that's possible within the Trust. I think the job of educating children of Hawaii is a state responsibility, whether it be Hawaiian, Chinese or Portuguese and Kamehameha is merely supplementing what the state is doing.

I just look at what is happening and I can see that maybe the direction is moving that we should take care of more Hawaiian children, and that's okay too. The question is do you have the resources to pay the expenses.

And I know we're very, very liquid, we're very successful in our investments and I think that's got to take, be taken into consideration, but I don't know how one would pay us for perpetuity.
Q. Dickie, how would it be to the advantage of KSBE to be taxable as opposed to tax-exempt?
A. I don't know what the ramifications are. We have a for-profit subsidiary, which is Pauahi Holding, and we pay taxes and our nonprofit side doesn't and there's advantages and disadvantages. I've never seen somebody lay it out for me and tell me there's some good and some bad.
I think this is more exploratory and I think probably the Trustees were just kind of looking around and saying, "You know, we're pretty good guys in this community and maybe we're not being treated right," you know.
Not that we're looking for praise, you know. We're just like anybody else, but we have a purpose. That purpose is education. We're trying to do that. People may disagree at the pace that we're setting, but it's all a matter of income versus expenses.
Q. When you say, I quote, "You know, we're pretty good guys in this community and maybe we're not being treated right," that's one of the ways you looked at

it back then, that you felt you folks were good guys and doing a good job, but perhaps not being appreciated by others in the community?
A. I don't think we're in the job of getting appreciation.
Q. I know that. I'm asking you, that's kind of what you're saying, right? You're saying that you felt you guys were doing a good job, you're good guys, but somehow people weren't recognizing that and they seemed to be, for lack of a better word, attacking you folks, right? I mean that was your feeling, wasn't it?
A. My feeling is, if you're going to do business in Hawaii, you know, I think KSBE has made its contribution to the state government over and over again and I think we've tried, Trustees and prior to me, have tried to be accommodating with the state and tried to assist the state in whatever they wanted to do.
For example, Hanauma Bay, Fort DeRussy, all these kinds of things were condemned from Bishop Estate. You talk about the Convention Center, where they should place it. It should be placed at Fort DeRussy, 47.2 acres, and today it's a parking lot and the federal government has it and they paid $12,000

for it.

I'm just saying that that's -- Hanauma Bay is also a contribution, Sandy Beach, whatever the issues were. And for us to be at conservation, to maintain 169,000 acres, I mean that's -- we pay taxes too and we have to maintain it and it's mostly watershed.

I mean, there are many contributions that KSBE has made. Unfortunately, I don't think the Trustees went out and told the story that we really want to be good citizens here. We belong in Hawaii. This is the Princess who established this trust and we want to keep --

Q. Why then would you look at changing your domicile to somewhere on the mainland, Dickie? Why would you do that? You belong here.

A. Well, there might be tax reasons why. We may get better tax considerations.

Q. But do you think, looking at the Princess's will, that she ever anticipated in any stretch of her imagination that the Estate would move its domicile to another state on the mainland?

A. No, I don't think she anticipated that. When the Princess left, she had $18,000 in her account. She had a lot of land.

And the question to me is, you know, I think trustees have a duty to look at what other places have to offer. I understand -- I don't think this will ever happen, that it will move here, but you still got to take a look at where you want to go in terms of if you really want to help the Trust out in terms of taxes or any kind of thing.

If you go to a community where they welcome you and they do a lot of things for you and you make money for the Trust, I think that's important too, because we're a self-sustaining trust and people forget that we don't take contributions.

Q. Those considerations, Dickie, to convert from being a tax-exempt organization to taxable, to change domicile from Hawaii to some other place in the country, was one of those reasons to escape supervision by the state government and by the IRS?

A. If we're going to move, it's going to be moved for a good business purpose and it's got to be a prudent decision. But, like I said, it was like anything else. You get ideas whether you should do this, shouldn't do this. Go get a study, go find out whether you should do it. And as far as I know, to the time we were removed on May 7, 1999, that issue never came up. There was never formal discussions about it. And we do studies and we do things and

they never turned out and so we don't do anything.
Q. Do you recall in correspondence that you received from the Verner Liipfert firm that one of the areas that was considered as far as changing domicile or changing from tax-exempt to taxable status was that you would not be, you would not have oversight by the state government and/or the IRS? Do you remember that being discussed at least?
A. Yeah, that may have been discussed, but I think the general consensus was what options are there if we wanted to go in that direction. I mean, they talked about it off and on over the five years I was there. Nothing moved, so I figured nothing is going to happen anyway.
Q. Dickie, they also spent almost a million dollars in legal fees on those issues. Do you know that?
A. Many issues. It wasn't only the domicile. It was educational issues. It was all kind of things.
Q. My understanding, Dickie, and neither you nor I can confirm it right now, is that money spent on intermediate sanctions, lobbying, on looking at change in domicile, looking at going from tax-exempt to taxable, the total amount you folks paid to professionals for that was in the area of a million dollars?

A. I think you're correct.
Q. And you think that was prudent to spend money on that, on those issues?
A. Personally, I think it was worth it. I don't know how much they spent on intermediate sanctions, but we had educational issues, technology issues. We had domicile issues; we had many issues.

In fact, even the right-of-first-refusal, and now I'm getting back to Fort DeRussy, what we were saying that if the purpose for which the taking occurred is no longer valid, then you should go back to the landowner and give him the first-right-of-refusal.

It sounds logical to me, but when people started tossing numbers for 47.2 acres at Fort DeRussy at one billion, Bishop Estate has to take a look at it and say is it worth that they took it for 12 and now you're going to pay a billion.

These are decisions that have to be made and we should find out. I think the Estate should have all these kinds of weapons available to them. Weapons in the sense of saying, hey, I think first-right-of-refusal is correct.

If the purpose for which the taking occurred no longer exists and you still have that property in the form in which the taking was for, then you should offer it to the landowner.

Now whether the landowner wants to pay today's prices, we don't expect to go pay 47.2 acres for $12,000. It's not going to happen.

I thought the Convention Center would be a perfect place for that. I was in the legislature. I wasn't a trustee. If Bishop had gotten that 47.2 back, the Convention Center would have been right there.

MR. SATO: Good time for a break?

MR. KAWASHIMA: Good time for a break.

(Brief recess.)

MR. KAWASHIMA: Before I go on, Mr. Wolsztyniak, we placed on the record before you came an issue relating to our discovery conference yesterday that for some reason you could not attend.

Again, it's not for public consumption right now, but Henry Peters has agreed he will sign a stipulated order to the effect that he will not testify at the hearing in any way in exchange for not being deposed.

Mr. Sato has agreed on behalf of Mr. Wong and I'm asking that you agree on behalf of Lokelani Lindsey to sign on to the stipulation also.

MR. WOLSZTYNIAK: Let me confirm at noontime. It's my understanding -- I can't absolutely confirm right now. I have to check with -- actually, I have to check with David at lunch time to be certain, but I do not believe we're going to be calling him, but I can't sign on until I do that, but I will do that and get back to you this afternoon on it.

MR. KAWASHIMA: Thank you.

MR. WOLSZTYNIAK: You're welcome.

BY MR. KAWASHIMA:

Q. Dickie, you know when we were talking about the FDOC's a while back, you said that Henry represented to you folks that he had talked to the attorney or an attorney and had obtained, I guess, approval to do it, to take commissions on final distributions of capital. Do you recall that testimony?

A. Yes.

Q. Who was that attorney he was referring to; do you know?

A. It must have been Bruce Graham.

Q. When you say "it must have been," why do you say that?

A. He was the Trust side and handled most of all the Trust matters.

(Exhibit No. 54 marked
for identification.)
BY MR. KAWASHIMA:
Q. Let me go kind of far back, Dickie. I got sidetracked five minutes into this deposition. I was meaning to ask you some questions about your background and experience.
Let me hand you what has been marked as Exhibit 54 for identification. That is a one-page document that purports to be a discussion of your background, education, experience. Do you see that, sir?
A. Yes.
Q. In the interest of time, does Exhibit 54 accurately and completely set forth your qualifications and education?
A. Yes.
Q. Do you know why this document was created back in 1996? Was it part of a compensation study perhaps?
A. It could have been, yes.
Q. I need to ask you this, Dickie. We talked about you folks fulfilling the duties of five different positions in a corporate context.
You had not, though, functioned in any of those

capacities before coming to KSBE, had you? And any of those capacities, I mean as CEO, COO, CFO, treasurer of a large organization or board of directors of a large organization.
A. That's correct, except for my own real estate company. I was all of the above, if you want to classify that.
Q. That real estate company, give me an idea of the nature, the size of it.
A. One-man operation, basically.
Q. In other words, you were the principal broker and everything?
A. Yes.
Q. When you were appointed trustee in 1993, am I to understand that you came directly from being president of the Senate to KSBE?
A. Yes.
Q. And you were selected by the justices of the Supreme Court?
A. Yes.
Q. When you were appointed trustee, Dickie, did you consider that to be an honor?
A. Absolutely.
Q. Did you consider that to be a privilege?
A. Yes.

Q. You agree back then when you were appointed that you did not have any right to be appointed, did you?
A. Yes.
Q. As you have continued in the position up to being temporarily removed on or about May 7, 1999, you continued to consider being a trustee an honor and a privilege?
A. Yes.
Q. Again, not a matter of as a right that you could be a trustee?
A. That's correct.
Q. In terms of your duties to the Trust Estate, Dickie, if there is any situation where your personal interests are in conflict with the Trust Estate's personal interests, that you as a trustee must take the Trust's interests first above your own?
MR. SATO: I want to at least place an objection that your question is as to his understanding rather than as to any legal conclusion?
MR. KAWASHIMA: Yes.
MR. SATO: If that's the case, then I'll let him answer that question. Sorry to --
MR. KAWASHIMA: That's an appropriate objection.
BY MR. KAWASHIMA:

Q. I'm asking your understanding as a trustee, as you were a trustee, and let me state it again, because I put a word in there I shouldn't have. I'll give Mr. Sato the same objections that he's already --

MR. SATO: Why don't I state I have the same objection, so I don't have to interrupt. Go ahead, Counsel.

BY MR. KAWASHIMA:

Q. The question I asked you, Dickie, in terms of your duties to the Trust Estate, if there is any situation where your personal interests would be in conflict with the Estate's interests, that you as a trustee must take the Trust's interests first above your own interests?

A. Yes.

Q. And you believe you've done that during the time you were a trustee at KSBE?

A. To the best of my ability, yes.

Q. Would it be a fair statement that that is your understanding of what "fiduciary duty" means?

A. Yes.

Q. Now, Dickie, in a general way, going back to two years ago in 1997, and just to use as some parameter or point of reference, when this Broken Trust article

came out -- of course, you remember that, yes?
A. Yes.
Q. -- and all the things that have happened up to now, would you agree that it has been harmful to Kamehameha Schools?
A. Well, yes. I would have to say yes.
Q. It's clear, you've heard children, you've seen students write to various places, including the Estate, to newspapers, expressing concern over what was happening at the Estate, right?
A. Yes.
Q. Obviously, it's going to affect these children, these students to see people fighting like that and not being able to come to some type of agreement, obviously, right?
A. Yes.
Q. Would you agree that also reflects badly on the schools?
A. I would say yes.
Q. So that in the best interest of the school, the best thing that could happen is for this thing to end and the Estate and the schools go on with its collective life?
A. Yes, I guess that would be one conclusion.
Q. Dickie, would you agree your resigning would

assist that process, your voluntarily, unconditionally resigning would help that process?
A. It might, but, like I said, you know, we also have a duty as trustees, because the greater community, allegations are being made out there, that we have a duty to defend the Trust also.
Q. I don't disagree with that, Dickie. I don't disagree with your feeling as to the duty, but you can defend the Trust whether you're a trustee or not, right?
A. It's a little more difficult. If I were a trustee, I think things would have been handled differently.
Q. It may be, but as you sit here today, as Mr. Peters sits where he is today, you can try to defend the Trust in any way you see fit, right?
A. Yeah, and I think we're doing it. I think we want to have an opportunity to tell our side of the story, because I don't think it's been told.
Q. But what you're looking at, though, Dickie, is telling your side of the story, your side, Henry's side, Loke's side; that's what you want to do, right?
MR. SATO: Object. That's not what he stated. Mischaracterized his testimony.
MR. WOLSZTYNIAK: Join Glenn's objection.

BY MR. KAWASHIMA:
Q. Let me rephrase it. What you're saying is you want to tell your side of the story?
A. Well, I think the only forum that I have left is the legal forum and that's where hopefully we'll have a chance to explain our actions much more clearly.
Evidently from a private perspective, we haven't been treated that fairly. That's my opinion and that's where I'm coming from.
Q. I understand that. You are going to have an ability to place this before a legal forum if you wish, but, again, Dickie, getting back to what you want to do, you're trying to vindicate yourself? Would that be a fair statement?
A. Well, I want to be judged on, you know, whatever is out there and have an opportunity to tell my side and that's it and let whoever makes that kind of decision make the decision.
Q. And "your side" meaning you want to explain why you did certain things or did not do certain things that you should have done, right?
A. Well, basically, just an opportunity to say this is what I did as trustee and you be the judge, will you listen to what I have to say.
Q. What you did as trustee was or, I should say, is

something that's personal to you; am I correct?
A.   Well, for me. I mean, I can't talk about other Trustees, but yeah, I would say it's personal to me.
Q.   In other words, what you want to do in terms of telling your story, you wouldn't be telling the Estate's story; you'd be telling Dickie Wong's story, right?
A.   I would be telling Dickie Wong's story as he was a trustee.
Q.   But, again, you agree that as far as the Trust Estate is concerned, nobody needs to tell that story right now, right?
A.   I think there is. Unfortunately, it's not being printed, but that's not my choice to make.
Q.   Would you agree with me, Dickie, that as far as anything or anybody being under attack, nobody is attacking KSBE itself as an organization, right?
A.   Well, I think it's obvious to me that they want the five Trustees out.
Q.   That's right.
A.   Whatever it takes to do it, they're going to do it and my feeling is you shouldn't, because as I sit here today, I don't know what I did wrong. Tell me what I did wrong and, hey, maybe resignation is, and the interest of the Trust should come first, but up

until now, because people make allegations, even the IRS, doesn't make it right, you know. I take that as an example.

I'm just saying that to this point, I just want an opportunity. For now, obviously, we don't have the community input and I think people generally in the state after two-and-a-half years have made up their minds, but I want to know legally what I've done wrong to damage the Estate.

Q. People in the state, you mean the general population?

A. Yes.

Q. Why do you think they've reached that conclusion?

A. In all of my life in Hawaii, and I've been in politics and everything else, I've never seen any attack like this.

Q. Why do you think that happened, Dickie?

A. Because -- I don't know how people do these kind of things, but they -- I mean, they've got everybody convinced that we're bad guys and I don't know how you change that. If we give our side of the story, they print what they want and I think it's wrong, but that's the real world.

Q. Didn't you have an opportunity to give your side

before May 7, 1999?
A. Oh, absolutely, and every attempt to try to do it, they didn't cover it. So that's their decision to make as the media.
Q. I'm just curious, this is probably an argumentative question, but are you saying that this general population, all these people who said things that reflect on you as not being a good guy, are you saying they're all wrong and you're right?
A. No, I'm not saying that. I think there's a duty out there to balance this. I don't think it's balanced. That's my own personal opinion. It's just not balanced and we expected better fairness. Never got it. That's my opinion.
Q. Do you agree that you folks probably didn't respond quickly and adequately enough to people's concerns and that's one of the reasons why they feel you're not a good guy?
A. No, I think we attempted to do it. We had a PR person, Lisa Yadao, and she was the spokesman for Bishop and she wrote a lot of things. Never got printed and, hey, that's the way the world goes. They have a choice.
Q. Well, you people also, you also ran ads at some point in time, didn't you?

A. Yes, one ad maybe twice a week and where the papers and the media is coming at you every day. I mean, there's a difference. If people don't recognize that difference, I'm sorry. I disagree with them.
Q. From a media standpoint, you folks also back in the early '90s, mid-'90s ran polls on issues that were germane or important to the Estate, right?
A. Yeah, I think we did a lot of those things, but unfortunately we weren't able to deliver the message and the other message was a better message.
Q. Dickie, let me kind of move to another area and that is once you became trustee. At some point in time after 1993, in fact probably after 1994, after Lokelani Lindsey became a trustee -- am I right, sometime in '94, Loke?
A. Loke was '93.
Q. Loke was '93 also, same time as you?
A. Two months later.
Q. And then Gerry Jervis was January '95?
A. Yeah, about a year later.
Q. At some point in time, there was a decision and not necessarily a considered or formal one, but a decision that each trustee would have a certain area that they would focus on, specialize in, for lack of

a better term; not to say that you'd give up your obligations in other areas, but there were certain areas carved out for I think at least four of the five Trustees where they would focus on that area and bring back information to the entire Board in those areas?
A. Yes.
Q. For lack of a better term, they used the phrase "lead trustee." Do you remember that?
A. They used that. I do.
Q. That's what it was, it was kind of a lead trustee system?
A. My take was they were a liaison, because they had to report back to the Board as a whole. I think, Jim, that was in existence before we came.
Q. You just kind of carried it on?
A. Yeah, we just kind of went with what was the practice.
Q. You feel more comfortable using the term "liaison"?
A. Yeah, I feel more comfortable.
Q. You were the liaison as to government relations?
A. Yes.
Q. Henry was the liaison as to asset management?
A. Yes.

Q. Gerry Jervis was the liaison as to legal affairs?
A. Yes.
Q. And Lokelani was the liaison as to education?
A. Yes.
Q. Tell me, your position as liaison of government affairs, what types of things did you do in that capacity?
A. Basically, I looked over the bills that came that affected the Estate and other kinds of bills that KSBE had an interest in, looked at it.
Q. "Bills" meaning legislation?
A. Legislation.
Q. Anything else?
A. No. And intermediate sanctions was one of the things that they said, "Well, since you're head of this, why don't you handle it, because we can't do it" or whatever the reasons were.
Q. Did you interface with legislators as part of your duties?
A. Actually, I didn't. We had a governmental relations person that I talked with that was the late Nam Snow.
Q. What was her position?
A. She was director of governmental relations.

Q. What does that job entail, to your knowledge?
A. Monitoring both the county, the county governments and the state government and whatever they pick up in terms of federal legislation.
Q. Who worked directly with Nam? You as the liaison to government relations or someone else? If anyone worked directly with her, who would it have been?
A. Alika Thompson, people on her staff.
Q. What is Alika, what position did he have?
A. Alika was handling more of governmental relations in terms of the counties and those kinds of people.
Q. But Nam, the late Nam Snow, wasn't working for Alika, was she?
A. No, she was the director.
Q. Who would you consider to be Nam's direct report, direct supervisor?
A. Actually, all of the Trustees, but, you know, as far as legislation was concerned, that's the most active time I got involved with her, looking over the bills, what was there and segregating them into different areas. Basically, that's it. I never personally lobbied at the legislature, because we had her in place.

Q. Did Henry also work directly with her?
A. Yes, I would say Henry was close to her. She was at one time aide.
Q. That's right, way back?
A. Way back.
Q. So all the Trustees at one time or the other worked with Nam, but you certainly did because of your position as liaison for governmental relations and also Henry because, I guess, of his concern and his having worked with her before?
A. Yes, that's the way the system worked. The bills came on my desk that related to the Estate and I kind of looked through them and segregated them and tried to tell her what was the take on this.
Q. You know, for example, when we talked about that earlier, about doing polls on issues that were important to the Estate land issues, maybe water issues, things of that nature, Nam would be responsible for doing what was necessary to get those polls completed?
A. Yes.
Q. Who, if anyone, would work with her on that? You or Henry?
A. No, governmental would do it.
Q. The results would be given to whom?

A. We were told about the results of the issues and everything else.
Q. "We" meaning the --
A. The Trustees.
Q. The Trustees in trustee meetings?
A. In trustee meetings, she would say this is what's happening, this is what's going on.
Q. However much was spent doing that type of work, that was authorized by the Trustees?
A. I would say yes.
Q. I guess, you know, in the last four years maybe at the Estate, Henry signed or, I should say, reviewed most checks over a certain amount, right?
A. I think he reviewed every check.
Q. Every check, that's right. Over how much?
A. Whatever, whatever checks were out there. I mean he was very tight-fisted.
Q. I understand. I thought there was some minimum amount.
A. There are minimum things where people can sign off.
Q. About 5,000 or 10,000 --
A. There were limits, yeah. In fact, the Trustees signed. Even in his absence, they signed with invoices and everything else, but Henry was the

treasurer and that was his kuleana.
Q. When you say tight-fisted, you mean that Henry would be sure that whatever check was being or bill was being paid with a check, that it was something that should have been paid, right?
A. That the amount was correct and the amount of work done.
Q. In other words, it was a reasonable amount that was being paid for the service rendered?
A. Yes.
Q. Or the product purchased?
A. Whatever you did and it was over that amount which we have, the thing would trigger Henry.
Q. What kind of things would Henry do if he didn't agree with the amount that was being charged?
A. I think he would put a note on it and say, "Can I talk to you about this billing" or whatever.
Q. Did he ever do that to a bill that was generated as a result of work that you authorized?
A. No, but what I do is, if I happen to be in the office and the bills would come, then I would look at them, and if I questioned it, I would send a note also, I want to know more about this thing.
Q. For example, bills submitted by Verner Liipfert during this period that you were monitoring the

intermediate sanctions legislation, do you recall having any discussions with Henry relating to the Verner Liipfert bills and their size, for example?
A. Yeah, I think what happened was that Nathan would get them and they would send the bills to him and Nathan would talk to Henry.
Q. You wouldn't talk to him because of your being the monitor of that assignment?
A. Well, I guess I wasn't that concerned about bills, but I certainly knew they were paying them money.
Q. I'm just trying to determine what the protocol was.
A. I don't understand the question, yeah.
Q. Since you were monitoring intermediate sanctions and Verner Liipfert was doing a substantial amount of work on it, if Henry did question a Verner Liipfert bill, I'm just asking whether he would actually call you and talk to you about it as opposed to Nathan or anyone else?
A. I don't recall that, but, anyway, he may have.
Q. Did you anticipate Lokelani Lindsey in being a lead trustee or liaison for education actually having a presence, in other words, having an office up on campus?

A. She never had an office on campus.
Q. She did not?
A. No.
Q. I thought she did.
A. No.
Q. Did she stay up there from time to time as opposed to being in her office at the Estate?
A. She may have.
Q. You don't know?
A. I don't know.
Q. So if people were to testify that she actually had an office there close to Dr. Chun's, you didn't know that?
A. I know what you're talking about. You're talking about -- Lokelani Lindsey never thought it up. That was by Trustee Jervis. He wanted us to be present on the campus.
Q. It was the Trustees' office?
A. Trustees' office. I never saw it. I don't know where it is. I've never been in it. I don't think any of the Trustees were.
Q. Maybe we'll ask Trustee Jervis this himself, but did you understand Gerry, when he wanted to have this Trustees' office up at the campus at Kapalama Heights that there would be a trustee in attendance in that

office every day?
A. No.
Q. It was an occasional thing, whenever a trustee needed to be up there on business, that office could be used and so the people would know the Trustees would come up there from time to time?
A. Any trustee. And I think Trustee Jervis, the intent was good and the Board supported him that they thought it ought to be made available to people who wanted to talk to him on any particular day. I'm not sure what the other Trustees did as far as utilization.
Q. You did not learn later on, any time later on up to today that in fact Lokelani Lindsey from a period in the late '94 period on actually occupied that office almost on a daily basis?
A. I don't know that.
Q. You don't know that?
A. (Witness shaking head.)
Q. You know, I'm not going to trick you, Dickie. You've given testimony before in a deposition and in trial. I believe you've testified that you had heard rumors about problems being created by Lokelani Lindsey being up there on campus?
A. Oh, yes.

Q. But I also understand, though, you did not do anything about those rumors in terms of initiating an investigation yourself or having others initiate an investigation?
A. No, I did not. I met with a group of teachers at one time, but that's about it.
Q. That was kind of later on in the process, though?
A. Yeah, but, you know, people would call me up and I'd tell them, "Tell me what your name is" and they didn't want to talk about it. So as far as I'm concerned, it's a rumor.
Q. Back then when these rumors were going on, did you feel that you had an obligation as a trustee to monitor your fellow trustees?
A. No.
Q. No?
A. (Witness shaking head.)
Q. What if a fellow trustee was doing something that was harmful to Kamehameha Schools? Don't you feel that you have an obligation to stop that from happening?
A. Yes.
Q. Maybe that's what I'm saying in a different way.
A. You're asking with reference to Loke?

Q. Yes.
A. Well, the understanding for us was that Loke was to go up to school to take a look at the program and report back to the Board and she reported back to the Board. And this was infrequent. It wasn't like every Tuesday she would report back to us. That's how it was left.
Q. But once you heard the rumors, Dickie, about her being a problem being up there on campus, did you feel that you ought to look into it as a part of your obligation as a trustee?
A. No, because I thought the responsibility that the Trustees gave to Loke was to report anything that happened at the school. If she thought it was important, she should report it.
Q. But you didn't expect Loke to report that she was causing problems on campus, did you?
A. I don't expect her to come back and tell me everything is peaches-and-cream, but we were waiting for a report from her. And I guess maybe people for whatever the reason was, they didn't want her on campus. It's okay, but that's what the Trustees told her to do. How she did it, we didn't get into the mechanics of how she did it.
Q. You did learn at some point in time there were a

number of people who objected to the way she conducted herself on campus?

A. Yeah, I met with the president on a pretty regular basis and asked him, "You got anything to say?" We were in the boardroom and maybe he hadn't heard about it.

Q. The "president" being Mike Chun?

A. Yes, Dr. Chun. At every meeting, I would go around the room and ask in their subject matter areas, "Could you tell us what's happening?" No time did I detect anything from Dr. Chun or Dr. Freitas of anything that was wrong there.

"How you guys doing?" "We won football, we one volleyball." It was interesting, but to me, one of the first guys that would know it would certainly be the president.

Q. But you're talking, though, Dickie, about an atmosphere or a context of a regular biweekly trustee meeting?

A. Yes.

Q. Where all the Trustees would be present?

A. Yes, most of them.

Q. And all the operational managers would be present?

A. Yes.

Q. And you would go around asking each operational manager to make a report?
A. Yes.
Q. But would you agree it might be difficult for Dr. Chun and Dr. Freitas to tell you that Lokelani Lindsey was causing a problem on campus when she was sitting in that meeting with you folks?
A. That might be a problem for Dr. Chun, but I think Dr. Chun has a responsibility too. He sits on campus and Rocky sits on campus. They must know what's going on up there more than we are. We're sitting at Kawaiahao. And you would think they would know and they would come and talk to me or talk to any trustee and say, "You know, Loke is misbehaving. She's doing all this kind of stuff and there's morale problems."

I mean, this is every meeting. It's all -- it's not documented even. You go around the table and say, "How's the kids doing? What's happening at the school?" Everything was, "Oh, it's okay."

Maybe they may not know. I don't know, that's just speculation on my part on how they felt what was happening at campus. They didn't report it to the Trustees. And some years we met 96 times, other times 87 times during this period of time and nothing

came to the Board.
Q. What was your understanding of this concept of governance while you were a trustee there at KSBE?
When I say "this concept of governance," I'm talking about the role that the Board of Trustees played on the one hand as opposed to the operational managers played on the other hand, such as Dr. Chun, who was the president of the schools. What was your understanding as to the relationship that they would have as we frame it or call it governance?
A. The president reports to the Board. The Board sets the policy.
Q. And the president goes and implements the policy, carries it out?
A. Absolutely, yes.
Q. In other words, the president is the operational person?
A. Yes.
Q. And the Board is the policy person?
A. Yes.
Q. Policy body. And the Board should not get into operations?
A. Well, yeah, but, you know, if you -- like I said, as far as Lokelani Lindsey was concerned, the Board decided to send her to the school as a trustee.

Q. But would you agree with me, Dickie, when you folks sent her to the school, as you say, you did not expect her to usurp Dr. Chun's position, did you?
A. I don't think she did, but obviously the presence of the trustee on campus, you know, must have caused some kind of problems with some people, but that's what the Board asked her to do.
The Board asked her to go there and look at the school and to give us a report and to give us timely reports about what was going on and that was her charge, assignment from the Board.
Q. But again, though, Dickie, the charge from the Board to Lokelani was not to go up there and handle operational matters that should have been handled either by Dr. Chun or Dr. Freitas, right?
A. Yeah, and I think that was true until her report came out and it sheds a different light on what was happening at the school.
Q. Which report?
A. Lokelani's -- I forget the name. Her Change report, Imperative to Change or something that she wrote.
Q. Is that the report that she published, she made public just before Pat Yim, Judge Yim issued his fact-finder report? Is that the one you're talking

about?
A. I think it's called Imperative for Change or something. I don't know.
Q. Do you know what I'm talking about where you, meaning you as the Trustees of KSBE, petitioned the Probate Court to name Judge Yim as an impartial fact-finder?
A. Yes.
Q. You were part of that decision, were you not?
A. Yes.
Q. And you believed Judge Yim was a fair-minded person?
A. Yes.
Q. And he did a study that took a number of months and he completed what he called the Final Report of Fact-finder?
A. Yes.
Q. And he came to talk to you Trustees before he issued that report?
A. Yes.
Q. And as a result of that meeting, Lokelani asked to tell her side of the story. Do you remember that?
A. Yes.
Q. And you gave her approval to do that?
A. Yes, the Board did.

Q. "The Board did" meaning who?
A. All, all five members of the Board.
Q. Os Stender gave her authority to do that?
A. Yes.
Q. Gerry Jervis did?
A. Yes.
Q. Did you -- I'm asking you, Richard Wong -- did you understand that she was going to publish a report, whatever it's called?
A. No, but it stands to logic that was her story.
Q. It may be.
A. That's what I think for me.
Q. But, Dickie, you have seen that report obviously, right?
A. Yes.
Q. And you agree that report is harmful to the students at Kamehameha?
A. I think whenever you deliver a message, that's not good for the school or any institution, you know. It's her message, what she found as her so-called profession.
Q. Are you vouching for that report, saying that that is a completely accurate and truthful report?
A. Well, it was a report that was given to the Board and that was her recommendations of what was

taking place and her take and that's what the Board did.
Q. I understand, Dickie, but you're not vouching for that report? That report could have a lot of false information in it for all we know.
A. There might be, but.
Q. You just accepted it, is what you're saying?
A. She came with the report and she presented it to the Board and my feeling is --
Q. Let me ask you, Dickie, if you had that report, would you have published, made that report public?
A. No, I wouldn't, unless -- you know, I mean it's an internal document.
Q. That's right.
A. But it was her choice to make. I don't know how she, what she did, but she decided. I guess there was an interview that came in the paper and my understanding is that the report was already given to the Trustees.
Q. I understand that, and it was supposed to be a confidential report?
A. Our problem is there's not too much confidentiality with Bishop Estate.
Q. Maybe not, but the specific instructions that were given to the Trustees by Lokelani when she gave

you the report was that it remains strictly confidential?

A. Right, yeah, but it's her work product and my feeling is -- I'm not here to defend her. That's what she said, "This is my work product. What do you guys think?"

And everybody in that room told her, "Go tell your story." The question was -- they never said, "How you going to tell your story?" They said, "Go tell your story."

Q. Certainly you never expected her to go publish that entire report?

A. You know, for me, "go tell your story" is everybody else was talking outside of the Estate. You know, what was her story and her story was Imperative for Change.

And nobody said, "Hey, you can't do this, you can't do that." It's her work product, authorized by the Board.

And, you know, actually, I got to share this, and my lawyer tells me, "Don't talk too much, Dickie," but that meeting was really a difficult meeting to handle, because it started off with Yim was going to talk about other things and all of a sudden, he jumped on Trustee Lindsey and he said, "You, you're out."

And this started a whole controversy in the boardroom. And when the things settled down, Judge Yim was asked the question, "Judge, I have your permission to tell my sorry?" And Judge Yim said, "Yes."

Q. You don't anticipate --

A. But how -- I don't know what the thinking was as far as Loke, but I think that's an option if she wants to take it. "Go tell your story, man." Since the stories were all being leaked all over the Estate on other kinds of issues, "Go tell your story."

I think it gave Trustee Lindsey an opportunity to pick the media for which she wanted to go. I mean either keep it quiet or go take it out, but the Board said "Go tell your story" very distinctly.

Q. Notwithstanding Loke's right to tell her story, Dickie, would you agree with me that she had an obligation as a fiduciary, as a trustee of Kamehameha Schools/Bishop Estate not to do anything that would be harmful to the students at Kamehameha?

A. I don't want to get into the semantics war, because up until that, she had remained very quiet. There were other Trustees who took it out of the boardroom, business of the Estate, and I think this

is how the controversy started. You're talking about the Broken Trust. Anyway, I don't want to get into that.
Q. Would you agree with me, though, that she had that obligation not to do anything that would be harmful to the students at the schools?
A. She may have thought it wasn't harmful.
Q. I understand, but you agree she should not have?
A. I don't. I took that meeting with Judge Yim to be the message that, "Go take your story out."
Q. I'm sorry, I think because of the way I phrased the question you misunderstood it.
What I mean is that notwithstanding everything else, what permission was given or whatever, that Lokelani Lindsey had an obligation not to do anything that would be harmful to the students, as the publishing of that report might have been?
A. I don't know. It may have made things better for the students at Kamehameha.
Q. Did it?
A. Well, there were incidents -- and I don't want to get involved in it, but I mean she may have found things that were detrimental to the kids and she may have thought this would help the kids.
I mean, there's other takes on it except the

negative side. There must have been -- there is a positive side to those things in terms of curriculum, test scores, continuum, and I don't want to get involved in all those things.

She thought the schools should have been run better and, you know, that's her take and it could have been beneficial, not to the students that were affected in the controversy, but maybe for future students.

And I don't think -- I think she's been a professional educator all her life, in defense of her. And that's all I can talk about Loke, is that I just felt that, you know, a report comes out, it's critical of something and all of a sudden it's a bad report. Why is it a bad report? Because you found facts that were contrary to what was existing and you made it better?

Why wouldn't the spin be put on that, that this is going to help Kamehameha Schools going forward, that we're not going to make the same kind of mistakes with our children that we made during this period of time under examination.

So, you know, it's in the eyes of the beholder who takes it as positive and who takes it as negative. That's the way I look at it.

Q. If, in fact, though, Dickie, that the facts in Lokelani's report were all accurate, right?
A. I'm not saying they were all accurate.
Q. I'm not saying you're saying that. What I'm saying is that the statement you just made was based upon all of the statements in that report that Lokelani published were accurate?
A. Well, I would say yes, I took it that the evidence presented were checked out and she reached certain conclusions and that was her work product. That's all I'm trying to say.
Q. So just to get it clear, Dickie, neither you nor anyone else at your direction went to study that report to make sure it was entirely accurate? You didn't do that, did you?
A. I think they accepted her report for what it was and the Trustees were looking at it, and before we knew it, I mean Judge Yim had made his decision.
Q. But you also know that Dr. Chun submitted a very lengthy response, if you might call it?
A. I read about it in the paper, right.
Q. Do you have any evidence to establish that Dr. Chun was wrong in his response?
A. You know something? We never even got to that report and that's part of the problem. Like I said,

the way things were moving, they were moving very rapidly at this stage and my feeling was -- I read about Dr. Chun's report in the paper and so my feeling is, you know, it should have been with the Trustees, but that's neither here nor there. It's not Dr. Chun's fault. They printed a lot of copies and some copies got disseminated and it happens in any organization.

Q. Dickie, it's only fair that that report be published if Lokelani's report was published?

A. Well, if that's the rationale, why not, but I'm just saying that Loke's report, whatever factual information, she did it, she reached certain conclusions and that was based on that.

And we wanted a time to get everybody together and we could never get the five Trustees to discuss Dr. Chun's report, because one guy would be out of town, one guy can't make it, and all five Trustees should have been in the room and we never acted. I don't think until today they acted on Dr. Chun's report, as we sit here.

Q. But there were others who looked at the schools, though, even after Pat Yim did, right? I'm talking about the WASC, Western Association of Schools and Colleges' team. They also looked at the schools,

right?

A. Yes.

Q. And do you have any reason to believe that the report submitted by the WASC team was incorrect in any way, inaccurate?

A. No, I think the board accepted it and I mean there wasn't anything you could do about it, but they came to us and said, "This is the report."

And we thought there was going to be ongoing discussions with us, but they didn't do that. They just came up to tell us that, "We're going to publish this report. Here's the results and it's coming out."

I expected that if the WASC group had worked with the school administration, some feedback would come to the Trustees. They just came in a meeting, all of the WASC people, they all sat down, and I think a day or so later they released the report.

Q. Do you know, Dickie, that the WASC committee as part of their standard process, whenever that committee -- obviously the people of the committee, the makeup changes, but that committee, as part of their protocol always invites a member of the Board of Trustees of any school that they study to become involved with the study?

A. I don't know that.
Q. Do you know that they actually made that, extended that invitation to Kamehameha?
A. They may have.
Q. And what happened was, whoever it was, probably it was Lokelani, declined that invitation to become involved?
A. I don't know that.
Q. Would you agree that if you knew that there was such an invitation that you would have made sure somebody would have been involved with the process?
A. I would think so.
Q. Statements made by the WASC committee -- for example, I'm looking at the entire report, but there's a statement that, "The self-study of governance was complicated by the lack of trustee involvement in the process; one trustee was invited to serve but declined."
Do you have any knowledge that that is not correct?
A. No, not from what you're reading, if that's the report.
Q. The WASC committee's findings that -- again, I'm reading from the report -- "There was a perverse application of top-down decision-making which has

openly undervalued if not scorned the professional expertise, talent and commitment of the nonadministrative staff and has produced an oppressive, intimidating and fearful professional climate in this school."

Do you have any evidence to establish that this statement is not correct?

A. That sounds like Judge Yim.

Q. So they both agreed, obviously?

A. I guess they did or they reached the conclusion at the same time; I have no idea.

Q. You agree with the statement that the expertise of the Kamehameha Schools administrative school regarding program improvement is a tremendous strength of the school?

A. Yes.

Q. And that the faculty and staff also have the outstanding ability and strong desire to follow through on implementation of the action planned?

A. Yes.

Q. And that the school has a history of refining its quality programs?

A. I would say "yes" to all of those. I think we have dedicated teachers at Kamehameha.

Q. Do you have any understanding, Dickie, as to why

this WASC committee consisting of very experienced educators for both public and private schools would have concluded all of the things that they did about Lokelani if they were not correct?
A. Obviously they went opposite to what Loke was saying and I said, you know -- I mean, she was sent there to do her job. She did her report and what was contained in there wasn't good, you know, and she presented one perspective and the school presented another perspective, because they didn't talk to us, the WASC people, the policy guys. They talked more with the school. The school was already embroiled in a controversy already.
So I don't know what the outcome would have been and I don't want to second-guess anybody. The way I look at it was WASC came, gave us accreditation for three years and put it on hold and that was discussed with Michael and Michael said they would, they would do the job.
Q. That accreditation, the three-year accreditation, you understand that to be not a favorable result?
A. Well, it's not, but it just -- the problem is it caused a great deal of problems for the school, because they had to take about 18 months in order to

go do this. And, like I said, Mr. Kawashima, we have very good teachers at Kamehameha Schools.

Q. I agree with you.

A. I think the way the system was working, at least from Dickie Wong's perspective, we weren't doing what we were supposed to do.

Q. Who is "we"?

A. Me, meaning me.

Q. Why do you say that?

A. Well, again, my lawyer is going to kill me after this, but I received a letter from Waianae from a mother who works in a supermarket. Her husband is in construction.

And she wanted -- she called, she wrote me a letter and said, "How come my kid can't get into the 7th grade?" Because we have testing at the 7th grade level. "He's been at Kamehameha from kindergarten and how come at 7th grade, you guys tell him he's out? Nobody told me he was having all this trouble."

And that's when I kind of got involved. Out of a total class of sixth graders going up, 80 of them, you know 38 of them failed to make it into the 7th grade that were students from kindergarten.

And I thought that was a problem and so I started the process by telling Trustee Lindsey, "I don't understand this. I mean, why is it almost 50 percent of the class that started with Kamehameha at kindergarten can't get into Kamehameha at 7th grade level?"

She said, "I'll go find out, Dickie." And she went and found out a lot of things were happening over there.

But these studies -- I didn't know then, but these studies were up at the school for the past eight years, that these results were the same, that at the 7th grade level, almost 40 percent of the kids were failing.

Now there's something wrong over here. For me personally, you don't tell a Hawaiian child at 7th grade you're not good enough for this school and we've had six years at him.

So either something is lacking. Either the curriculum is bad, either the school facilities are bad, either the teachers are bad or somebody is not paying attention. And that's the issue for me. And that's partially Loke's report, that she found this out.

And that bothers me a lot, Mr. Kawashima. You know, like this mother said, "I trusted you with my child and this is what you did, did to him."

Q. You agree as trustee that the ultimate responsibility lies with you, right?
A. Yes, but they never bring those problems to us. I mean, you know, the only thing we get is when we go on our talk-story things, people ask about the school more than anything else. They don't ask about our investments or anything. It's, "How can you guys take more students?"
Q. Do you remember Dr. Chun raising that issue and wanting to have a process at least where hopefully that wouldn't happen at the sixth grade; in other words, to do testing down in K?
A. I think it's more than testing. I would think -- I'm not an educator, but you got to look at curriculum. There's something going wrong over here, that there should be a continuum and we should be able to evaluate kids up the line, second grade, fourth grade or whatever and then we could be able to detect that these kids were in trouble.
And I think one of the first steps -- like I said, I don't have anything do with education -- is some kind of a remediation program so we can catch them at the lower level and bring them all the way up, and at the end if they fail, then it's not our fault. We provided all the remediation we can.

Q. Dickie, you agree that Kamehameha Schools is a selective school; they don't take everybody who applies?
A. Yeah, I agree with that.
Q. You know that. Not to say the children, not to say that the children who get rejected are not good kids or maybe smart kids, but they're just not at the level of the other students who are accepted, right?
A. Yes, I agree with that too.
Q. Was it ever reported to you folks that before you looked into that issue, as you say, that K, applicants into K were taken purely on a quota basis? Do you remember that?
A. Yes.
Q. In other words, not by testing of the merits --
A. Selective enrollment.
Q. And that might have been part of the problem?
A. Sure, it might, but even if they were part of the problem, to me, when you talk about 40 percent of the kids not making it, that's a large group of people and that should include those children that are not that are academically gifted.
I'm saying you take Oahu and you cut it into districts, usually Waianae doesn't do as well. So the kid scores 75 in Waianae and the kid from Hawaii

Kai scores 95. The kid at Waianae gets into Kamehameha and the kid in Waianae doesn't make it and then the parents get very upset.

Q. The kid in Waianae doesn't make it?

A. I mean from Waianae. So we have the quota system because we knew that if you lump everybody together in the whole island at one time, then the smart kids are going to make it.

Q. You're not suggesting you have the answer to the question as to why these kids never make it into the 7th grade, do you?

A. No, but it was very shocking to me that if the percentages were that high, that something has got to be wrong at the school. Maybe the teachers are not good, maybe the curriculum is not good, and maybe the facilities are not good and we should change that. I mean, whatever it takes to do that we ought to do it, because that's a high percentage of kids even on a nonselective process.

Q. Is it your understanding or was it your understanding that Kapalama Heights campus was a college preparatory campus?

A. Yes.

Q. So they should prepare students to go to college?

A. Absolutely.
Q. I know you have a very high percentage that go, which is commendable, but that's the idea of it?
A. Yes.
MR. SATO: Are we at a point we can break?
MR. KAWASHIMA: Yes.
MR. SATO: We're coming back at 2 o'clock.
(Luncheon recess.)
BY MR. KAWASHIMA:
Q. Dickie, we were talking about a question about resignation and I know you asked or you made a statement that or maybe an inquiry, "Tell me what I did wrong." Do you remember that? Yes?
A. Yes.
Q. Have you read the expert reports that our expert submitted? There are a lot of them, long reports. Have you looked at those reports?
A. I looked at some of them, not all.
Q. How about Professor Langbein, the Yale Law School professor?
A. On trust, yes.
Q. You read his report?
A. Yeah, kind of. I don't remember everything.
Q. I'm not asking you to remember everything, but I'm asking you whether or not, having read his

report, do you have at least an idea of what we're saying you did wrong?
A. Yeah.
Q. Do you agree or disagree with Dr. Langbein's opinions?
A. He's a law professor, I'm just a trustee, and from what I can glean from it, I think I did the right thing and we'll put our arguments together at the right time.
Q. Dickie, I'm not suggesting that you don't think you did the right thing; however, you see where someone who is knowledgeable in the area has an opinion quite different from yours?
A. Quite understandable.
Q. Let's go back to talk about intermediate sanctions for a bit, Dickie. Do you remember when the issue of intermediate sanctions was first raised at KSBE?
A. Yeah, I think there was some concern raised by Mr. Mark McConaghy of Price Waterhouse.
Q. What did you consider Mark McConaghy to be in terms of his professional relationship to the Trustees and the Trust Estate?
A. He was basically our tax person and he was our person in Washington just kind of watching over the

scene for us as kind of an ancillary job he was doing for the Estate. We had no permanent person located in Washington, and maybe we should have, but we didn't.
Q. Am I to understand that Mark McConaghy had already been serving as a consultant to KSBE even before you came on board? Yes?
A. Yes.
Q. And once you came on board, do you remember that he briefed the Trustees about this issue of intermediate sanctions; is that correct?
A. Well, only after the legislation became known.
Q. Do you recall Mark McConaghy briefing the Trustees back in 1993, after you came on board, relating to hearings held by Congressman Pickle?
A. Yes.
Q. Relating to trustee compensation?
A. Yes.
Q. And do you remember Mark informing you folks that at the hearings that Congressman Pickle held, there was a discussion of trustee compensation at Bishop Estate?
A. I think it was reported about what the Pickle hearings were about in Washington.
Q. But do you recall that it was reported to you

that specifically the issue of trustee compensation at Bishop Estate was discussed during these congressional hearings in Washington, D.C.?
A. It could have happened, yes.
Q. So obviously you folks knew then that the level of compensation you were receiving even back in 1993 was a matter of interest to a number of people, right?
A. A great number of people.
Q. Including the IRS?
A. Including the general public, including the IRS, yes, certainly.
Q. And so subsequent to that, do you remember receiving any other types of briefings by Mark relating to intermediate sanctions?
A. Not particularly.
Q. I think we kind of talked about this, Dickie, but let me lay some foundation before I ask you some more questions about it.
Prior to the intermediate sanctions legislation being proposed, the only remedy that was available to the IRS in case of abuses, I'm not suggesting there was or was not, but in cases of abuses, would be to revoke the tax-exempt status of that organization, right?

A. Yes.
Q. In other words, there's no in-between, you either were okay and nothing happened to you or you get your tax-exempt status revoked; that was the way it was before this intermediate sanctions?
A. That's the way it was.
Q. And the intermediate sanctions then was intended to sort of have an in-between result where the Estate would not have to suffer for what its Trustees did, the Estate would not lose its tax-exempt status; the Trustees, assuming now they did something wrong, they would be in a sense punished for what they had done?
A. Yeah.
Q. And there would be an exit tax and penalties that would be, I guess, invoked on them, used on them?
A. That may be one of the remedies, yes.
Q. You agree that the concept of intermediate sanctions would be really generally good for a trust estate such as KSBE, the concept?
A. Conceptually, yes, I would agree that the concept of two bites at the apple instead of just one would be beneficial to us should an occurrence take place where we were found to be delinquent in some condition that the IRS set, that at least we had a

chance to still keep our tax-exempt.
Q. Because we have agreed, I think, Dickie, that tax-exempt status is very important to KSBE, right?
A. Yes, I think it's important to KSBE.
Q. In fact, by statute, you as a trustee are duty-bound to protect that tax-exempt status, right?
A. Yes.
(Exhibit No. 60 marked for identification.)
BY MR. KAWASHIMA:
Q. Let's look at a couple of exhibits. I've marked Exhibit 60 for identification. Look at Exhibit 60. Take a few minutes to look at it and I'll ask you some questions about it.
MR. KAWASHIMA: While you're reading that, Joe?
MR. WOLSZTYNIAK: Yes, we will.
MR. KAWASHIMA: You will enter into that stipulation?
MR. WOLSZTYNIAK: Yes, we will.
MR. KAWASHIMA: Thank you.
A. Uh-huh.
BY MR. KAWASHIMA:
Q. In looking at Exhibit 60, Dickie, that's a memorandum, three-page document that purports to be,

or a four-page document that purports to be a legal memorandum from the Verner Liipfert firm. It actually says from John Waihee, Denis Dwyer, D-e-n-i-s, Dwyer, Norma Wong to KSBE Trustees, re:, Status of Interim Sanctions Legislative Proposal.

We're talking about intermediate sanctions, are we not?

A. Yes.

Q. This was about the time you started your lobbying efforts relating to that law, that provision in the tax bill, right?

A. That's correct.

Q. And this document here, Exhibit 60, came from the Verner Liipfert law firm files and purports to be a memo that was sent to you.

Do you recall receiving something like this on or about September 22, 1995?

A. I don't know, but it's here. We have it somewhere and generally I think the contents speak for itself.

Q. What was former Governor Waihee's involvement with this lobbying or this effort?

A. I don't know what he did in the lobbying. Most of the time, it was handled with the Verner Liipfert firm, with Sue Temkin in particular.

Q. At that time, John had just stepped down from being two-term governor; is that correct?
A. '95, yeah, maybe a year later.
Q. And he left the governorship and became a partner with this Verner Liipfert firm, who then opened an office here in Honolulu?
A. That's my understanding, yes.
Q. How was it that KSBE came to retain former Governor Waihee's law firm to assist you in legal matters?
A. I guess his name came up and it was decided. We checked with Nathan Aipa and some people and I guess the Waihee firm was chosen to do the work.
Q. Was it because of any special expertise they had in congressional matters? Do you recall why?
A. We were told that they were one of the most influential firms, but they had an orientation of being on the Democratic side of the ledger and I think since then diversified. I don't know what happened, but they were recommended to us that some of the partners were key people who knew the President and other kind of people throughout their whole political life. They've been more Democratic than they were Republican. That's what we were told.
Q. The congress, our congress, our House of

Representatives, Federal House of Representatives and the U.S. Senate in terms of how bills, I guess, go through the various bodies are somewhat similar to the one we have in Hawaii, right?
A. Yes, except in this particular case, if I recall, there were no public hearings held in either the Senate or the House of the Congress, and as such, that's all we knew at that time and.
Q. What I was referring to -- I should have been more specific, Dickie -- the Federal House of Representatives has a Ways and Means Committee and the U.S. Senate has a Finance Committee much like our legislature?
A. That's correct.
Q. And they both may consider the same type of legislation at the same time, pass their form of it and then it goes to the Joint Conference Committee and they hammer that out and that then comes out, it may come out as law that is sent to the President for his either signing into law or vetoing, right?
A. That's the procedure.
Q. At this point in time, in September of 1995, Dickie, that was when the intermediate sanctions provision of this tax bill was moving through both Houses of Congress, right?

A. In '95?
Q. 1995.
A. No, I think the House had it, the Senate was silent and the House attached the bill, I mean the issue of intermediate sanctions to a Budget Reconciliation Bill, which did not have public hearings, and the Senate had no position and that's how the legislation got out.
You know, in the context, Mr. Kawashima, I think at that time the focus of the Congress was not so much on intermediate sanctions per se. We have been, may have been told by people that this would have an impact on the organization.
It was a large bill. It was a budget-raising bill and they were talking about $11.4 trillion that they were going to raise and they were going to give tax breaks to families and businesses to the tune of 300-plus million and tax-exempt organizations would be raising through this in seven years about $30 million or something to that effect.
But the bill in comparison to what the revenue-raising section was, I don't think many organizations knew that this was happening and I guess it cost the nonprofit organizations. They were surprised when the bill appeared in the budget bill

that was sent to the President.
Q. That's what we were discussing this morning, Dickie, when you said that although you folks tried to get support for your lobbying with relation to the intermediate sanctions bill that nobody else wanted to join you? Is that what you were talking about, nobody else knew about it?
A. Yeah, I don't know -- there was a joint effort to try to find out from other organizations that might be affected, and whether or not they were successful or not, I think they got some interest, but people just felt, well, you know, it's okay with us, but our attempt -- you know, I think a lot of times I get from different people that we were out to kill this bill. You know, intermediate sanctions was but a small portion. It wasn't even on the screen. I mean it was a big revenue-raising bill and that's what the focus of the Congress was.
Q. Understandably, but as far as KSBE was concerned and Verner Liipfert was concerned, though, Dickie, you were not concerned with that multi-trillion dollar bill from a revenue standpoint; you were concerned about the intermediate sanctions provision of that bill, weren't you?
A. Yes, and mainly for what they were trying to

accomplish in this big bill, just some input about what the tax, non -- the tax-exempt portion would supply to this bill.

And that was just a number. I don't know what it was. Thirty, 25 million they're going to raise over seven years or something. And I didn't think that was that significant. We have many nonprofit organizations, but certainly intermediate sanctions got our attention.

Q. In fact, looking at Exhibit 60, Dickie, the first sentence in the first paragraph, that paragraph or that two paragraphs entitled Status, it says, "The intermediate (sic) sanctions amendments are part of the House tax bill that have been reported out of Ways and Means Committee. Similar measures have been supported by the House in the past, and we do not expect that there is any opportunity to kill the measure there."

Now John or whoever it was that wrote this was talking about killing the intermediate sanctions amendments in the house, right?

A. Well, the way I read it is, as far as they were concerned, I don't know if they would kill it in the House because it was part of the bigger bill, but -- I don't know how you do that. You're not going to kill the Budget Reconciliation Bill of 1996 just because you want to save intermediate sanctions. It's just not going to happen.

Q. There was discussion about that?

A. You can discuss what you want, but for me from a practical perspective, intermediate sanctions was such a small, manini part of this large Budget Reconciliation Bill.

Q. But that's what you folks were trying to kill, though, that part of it, right?

A. People use the term loosely with kill. I don't know what they're talking about, kill, but my take as a politician is that you have this large bill that's going to benefit the whole country and then you get one that aims at nonprofits or small groups over here.

In order to kill this measure, you have to kill the Budget Reconciliation Bill, because that's what was attached to the House Ways and Means recommendations.

And as I understand it, when the bill became known, what happened is that there was an attempt to meet with the staff of the Ways and Means. I think -- I remember his name distinctly. His name was Tim Hanford. He was under the chairman of one of the finance committees I think in the House, the Ways and Means House.

And the people tried to talk to him about these things and he wouldn't have anything to do with it and that was the end of it and the bill as proposed went straight up to the President, because the Senate took no position on the bill and it went up to the president and he vetoed the bill.

Q. Not because of intermediate sanctions, right?

A. I think for a number of reasons, but certainly intermediate sanctions wasn't the number one priority on a big budget bill of 11.4 trillion.

Q. I understand.

A. I don't understand why people keep saying going to kill the bill. How are we going to kill the bill? It's part of a larger bill, and in order for you to kill the intermediate sanctions, if the House doesn't want to make the amendment, you got to kill the Budget Reconciliation Bill and we don't have that kind of muscle.

Q. I see what you're saying, but you can try to kill the amendment, though, right?

A. What you can go do is modify or try to hit the Ways and Means to understand the particular problems that KSBE had with the bill and take that into

consideration and maybe make minor amendments and then it will be okay, but the House committee on Ways and Means refused to do anything and so that thing went straight up to the President as is, okay.
Q. I understand what you're saying.
A. It's a procedural thing and I hear about this, "Hey, Dickie, you guys out to kill the bill." Give me a break.
Q. Wait a minute now.
A. I don't buy that.
Q. I'm not saying necessarily you're trying to kill the Budget Reconciliation Bill, Dickie, but at that time in September of 1995, you would agree that John Waihee, Denis Dwyer and Norma Wong were knowledgeable in the ways of the legislature both State and Congress?
A. I would say, yes.
Q. And they understand the type of language that would be used in those contexts?
A. I would say yes.
Q. And they wouldn't say they wanted to kill the amendment if they didn't really want to kill it but just modify it, right?
A. I don't think -- after they had the meeting with the Senate Ways and Means staff, it was obvious that

the Senate Ways and Means staff was not going to listen to anybody's argument and the thing was going to go.

Q. I may agree with you.

A. But they can say whatever, they want to kill this, amend this. The truth of the matter is nothing was amended or changed. It is set up in totality.

People in the legislative vernacular, they always use kill this, kill that, kill the amendment, and my feeling was that for me at least, and I don't speak for the rest of the guys, is you're not going to do this with this bill. It's going to be whatever the Ways and Means -- unless the Senate comes in and does something and they put an amendment up.

The Senate had no position on intermediate sanctions and only House Ways and Means. And how they got through without public hearings, irrespective of Representative Pickle, and they have raised all kind of questions, but it's the first time that something like this had happened.

Q. Could it be that they didn't have public hearings because they didn't feel the public would object to anything like that?

A. But, you know, in good legislation, even in our small, little world called the state legislature, we have public hearings on bills and we allow people to come in and, you know, sometimes it's wasted, sometimes it doesn't, but this is a bill that is going to affect so many people.

In particular, it is going to effect Bishop Estate. If we think it's wrong, I think we ought to do what is necessary for us to try and convince people that this is not the right thing to do.

Q. Do you realize, Dickie, if they had public hearings, Bishop Estate probably would have been the only organization to testify against the legislation?

A. Maybe, but at least the community outside would have known about it, because there were many nonprofits who were not aware of the provisions provided in the intermediate sanctions.

I think they took the position, well, we got two bites of the apple and whether or not they extended that to the next level, which is how it's going to be implemented -- you know, my feeling about legislation, if you pass a bill, the government, whether it be state or federal, I think you have to show the people who are going to be affected by the bill how to best comply with the new law, and if you don't do that, then I think it's wrong, you know.

And I don't know how the Congress does it. I mean, they speak for the nation. I mean, if these guys didn't want to get aboard and they tried to get them aboard, I didn't think it was a wasted thing. "Hey, this is going to affect you." The guy says, "No, it's not going to affect us. We're not interested." Okay, it's over with.

And to carry that load in Congress, I mean I don't expect Dickie Wong from Honolulu to go over there and convince the Congress that it's not. So you hire people who you think can go in and reason with people and try to seek modifications and clarifications of what is going to affect this organization should the measure pass.

I think the person that is going to be affected by the legislation should know how to comply with the new law, and I think that's where we run into a lot of problems with intermediate sanctions, because the definitions were not clear about disqualified people. You know, I think it put the Estate at risk and.

Q. Why at risk?

A. Well, because I think out of that would come excess benefits, excess transactions and you got to --

Q. To whom?

A. To anybody who didn't fall under the definition

of a disqualified person.
Q. But you clearly were a disqualified person?
A. Absolutely.
Q. No question about that?
A. No question about it.
Q. So your only question was whether your operational people might be considered disqualified persons?
A. Yes.
Q. But they weren't getting paid very much at that time, Dickie?
A. You know, they still would be charged excess benefit if they participated in it and this would cost the organization. You know, to me the perspective from this is protection of your staff. I think Trustees did not ever -- I didn't hear them say they were not disqualified people.
We have substantial -- they changed the language from influencing to substantial influence over the affairs of the Estate, but till today, it's still not clear what they're talking about, our disqualified people being some of our PE's or anybody else, but it's the excess benefit part that is the danger part.
Q. Has that excess benefit part caused the Estate since the statute went into effect any problems up to

today, KSBE?

A. No, and the reason for that, the promulgation of rules and regulations by the IRS is not forthcoming even on compensation. You talk about reasonableness. It could be reasonable to one guy, not reasonable -- the IRS is supposed to set the standard. They haven't done it.

This bill was signed in 1996. This is 1999 and they still haven't determined what is reasonable and how do you expect organizations to follow this when they will be setting the lead for what is reasonable compensation. And right now the tax-exempt organizations, to me, including Bishop Estate, we're just floating around because people keep throwing at out it's got to be reasonable. What is reasonable.

Q. You know what they do?

A. What?

Q. Are you aware that the IRS has made any kind of demands on any entity other than KSBE that its trustees must resign or be removed, any other organization, Dickie?

A. It's not that -- it's unheard of that the IRS should say we have a tax problem over here, you sign this agreement, bring it to closure, and if you do that, you've got to take the next step. You got to permanently remove trustees and you got to set up a selection process, and if you don't do that, then the closing agreement is null and void.

I never heard that in any community. That's extortion. Just between you and me, Mr. Kawashima. I mean, you know, you go on the merits. If it's a tax problem and we've committed something wrong in the taxes, we deserve to get hit in the okole.

I've never heard of any place in this country where the IRS, the Service -- the tax issue is between the taxpayer and the Service. It shouldn't involve any other people.

We were there. If you want to charge us for drop-downs, you want to charge us for private inurement, you want to do all these things, then you tell us, but we're the taxpayer, the Trustees are the taxpayer and the Service is the Service. That's how the relationship should be maintained, but we brought in Interim Trustees. In the wisdom of the judge, he felt you folks have conflicts of interest, you folks have this kind of stuff, we ought to bring in a board. That's the judge's call.

Q. You fought that, though? You fought that decision; you didn't go along with it?

A. Well, I don't think we had any choice. The

judge -- you know, we argued it and the judge ruled differently, and he's the judge.
Q. Don't you agree you would have a conflict in that situation, you having to deal with the IRS about problems that the IRS was saying you among others had done wrong?
A. You know, because the Service makes an allegation against this trust and I'm a trustee, I'm not to run away. I have a duty. Because someone makes an allegation -- these are allegations to be proven in court, and I'm saying that as a trustee, I have a fiduciary duty to defend this trust.
Q. Wait now. The allegation is not against the Trust, Dickie; it's against you folks?
A. I understand that, but, you know, we represent the Trust.
Q. So be it.
A. So we're the taxpayers. So if you have a tax problem, you deal with the taxpayer. In the case, we were the taxpayer. "Service, let's sit down in a room. You lay it down for us and you tell us what's wrong." But till today, I don't know outside of the counts in the various charges.

Specifically, I would have liked to sit with the Interim Trustees and say, "Dickie, this is what is

happening. Okay? This is what we've got and this is why we think you ought to resign." I haven't been given that courtesy. I'm going to be in court.
Q. Have you read our petition?
A. Yeah.
Q. You obviously don't agree with what's in the petition?
A. No, I don't, because it's very general in its application or in its instruction. I'm saying, okay, if you got this issue, tell me what I did wrong.
Now maybe you tell me, "I got a videotape and you're doing this and you're doing that." Now let me make a decision whether I should resign in the best interests of the trust.
I think I'm entitled to due process. I'm going to be removed. In fact, I am interimly removed, but now they're going to kick me out of my job and I still want to know today. Put down the facts relating to Dickie Wong.
If I've committed all these things that you guys have said I've done, then let's go with this and if it comes out and it says that's true, then, "Dickie, you better think twice about protecting this trust and resigning."
Q. Dickie, you lobbied against this intermediate

sanctions bill, right?
A.   We lobbied to make modifications and changes.
Q.   You spent almost a million dollars of Trust Estate money paying Verner Liipfert to do various types of work for you, a great part of which was the lobbying with relation to this intermediate sanctions bill?
A.   Absolutely.
Q.   And if we look, though, at the bottom on page 1 in Exhibit 60, the sentence there where it says, "In the past, the Senate has used the 'we haven't had hearings on this measure' as the reason to kill the amendments. However, there has been a flood of publicity on tax-exempt organizations in general over the past year" -- that's not good, I guess -- "and we cannot count on a technical reason to kill the amendments this time around."
     They're talking about killing amendments, not the bill?
A.   But, you know, I don't think you separate that, you know.
Q.   But these are knowledgeable people writing this, Dickie, not just novices.
A.   I'm saying to Verner Liipfert that the bigger bill is the Budget Reconciliation Bill. This is

merely a part of that bill.

You can go have modifications and clarifications and I think that's a logical extension of trying to clear up whatever is bothering Bishop Estate or other tax-exempts. They chose not to do this. As far as I'm concerned, you cannot kill intermediate sanctions because it's not a separate measure. It's tied to a Budget Reconciliation Bill.

Q. One thing you can do is -- turn the page, Dickie -- as part of your strategy it says, "The strategy is simple: (1) Target key senators on the Finance Committee to ensure that the Senate version has no interim" -- I assume they mean intermediate -- "sanctions language in the bill."

That was one of your folks' strategy, right?

A. Okay.

Q. "Prepare the way for a fight in Conference Committee." Right? Fight to keep the intermediate sanctions amendment out, right, right? Yes? You have to answer yes, Dickie.

A. Yes, I'm sorry.

Q. And, "By keeping the votes 'no' in the Senate."

A. That would be the strategy, because the Senate has no position.

Q. Then, "Softening up the House members to the extent possible so that they are ready to deal; and preparing an acceptable fallback position."

Again, Dickie, they're not talking about killing the Budget Reconciliation Bill; they're talking about killing the intermediate sanctions language or amendments to a bill that may or may not come out of the Senate, right?

A. Yeah.

Q. That was what they're working for?

A. And it's okay. I mean, if you can't get it in the House -- there are two houses in Congress -- you got to go to the other House. I mean, you just got to.

Q. But they're trying to kill it in the Senate, not have it be in the bill at all; not with modifications?

A. Unfortunately, the Senate didn't have a position, but in the end, the Senate went along with the House position. So how successful were we? You can stop it in the first stages of the bill's movement, but how do you do it?

I mean, in the end, in the conference draft, some of the modifications and clarifications that we sought were put into the conference and then the taxpayer's bill of rights followed and that's when we had an opportunity to try and clear up more language.

We supported the bill in December of 1995 because no matter what we did, that was a way out. The bill was already up. It had gone to the President. It had come back and what the President did, he put intermediate sanctions in his bill and that bill became the taxpayer's bill of rights too under Senator Roth, and inside there we still tried to make clarifications and we still were not successful.

So whether you say kill or no kill, we weren't successful in both places. In the end, we were, we got some results, but some of the things were left out.

Q. Dickie, that doesn't mean that you folks didn't try at the beginning to kill the amendment?

A. I think there's got to be an alternative. If you talk to the House and the House won't make a move, you only got the other body. It's like the state legislature.

You go to the House and they make an amendment. You go to the Senate. You don't like the amendment, you try to change it in the Senate. Then it becomes a matter of a Conference Committee.

That's what they did with this bill. They went to the Conference Committee. And the Senate going up to the President, they had no position, but they had a conference draft. They went up and came back down and some of the modifications and clarifications were made. I think that's as far as we could get. Now, as far as they want to kill the bill, I mean, it became the law.

Q. No, kill the amendment.

A. Okay, kill even the amendment. You know, the intermediate sanctions was not an amendment. It was really a bill.

Q. It was part of another larger bill?

A. Absolutely. So as a part of that bill, you can always amend a bill and this is part of it. If you could get that out, that's calling it amending something, but the possibility we were told early up in the game is the House is not going to change its position.

Where should Bishop Estate go? We shouldn't stop at the House, because evidently they were the only ones that had it and the Senate had no position.

So you might as well work for a guy whose mind is open and you go walk into his office and if he had no feelings about intermediate sanctions, that's where I think you get the best results, because in the House, you're not getting anywhere. The guy is not listening to you.

It's that simple on the intermediate sanctions bill. I mean, what is the Estate supposed to do if lawyers and these kind of advisors tell us this is going to impact the organization, that the House won't move? Where else do you go? You have to go to the Senate.

I mean, it's logical to me that that's where you go, because they have no position, and if they have no position, then you have a better likelihood of sitting down with them and say, "Hey, can you do this?" And they know about the House version. Their staff is on top of the bill. They just had no position.

But I think, you know, when you really come down to this, Mr. Kawashima, the problem with this bill, it has so many things in it that organizations were not aware of, and if they had a public hearing, even if it was Bishop Estate that was out there, we could have sent the trumpet out at least to organizations in similar situations that, "You better pay attention to this bill, because if you don't, it's going to affect you."

And if the American Bar Association comes out and says if these things pass, this will have a profound -- the American Bar Association --

Q. Did it pass? Did those things pass that you're referring to?

A. No, some of them were out, but I'm saying they said it would have a profound effect on operations, maintenance and of all the 500,000 nonprofits. To me, I'm not part of the ABA, and that's a tax-exempt organization trying to tell the Congress, "Hey, this is the problem we're having." Until today, those problems have not been resolved.

Q. The bill is in effect. Has it been causing those problems that you're aware of?

A. You know why? Because the rules and regs are not drafted as to how organizations that would come under this bill can comply.

All I'm saying, Mr. Kawashima, is I think when you pass a piece of legislation that affects a group, that group has to know how best they can comply with the new law. I think that's basic in any governmental legislative body.

Q. You don't disagree -- I think we've already agreed that you don't disagree with the basic purpose of that bill, do you, of that amendment, do you, that there will provide intermediate sanctions?

A. Yes, conceptionally, I think the bill --
Q. Conceptually, it is good for an organization such as KSBE to have that so they don't have to lose the tax-exempt status just in case the Trustees are guilty of wrongdoing, right?
A. Yeah, two bites of the apple.
Q. That purpose, that goal, you're comparing that with concerns you had for the effect on operational managers, you were concerned about dissemination of information, you were concerned about joint and several liability; those concerns overruled the purpose of the bill in your mind?
A. No, what it did, it would affect the Estate and my job is, whatever affects the Estate, I have to be cognizant of it as my duty. I cannot expose this Estate. Not so much me. I mean me, they're going to -- whatever they want to get me for, they're going to get me for, the IRS.
Q. How does it expose the Estate? It helps the Estate.
A. Well, because the excess transaction portion of it can place a heavy liability on this trust.
Q. But in this case, though, in terms of the operational managers becoming disqualified people and whether they get paid too much, you would make that

decision, right?
A. Yeah.
Q. So you would be sure that they get paid reasonably, not too much?
A. Yeah, but the fact that people didn't understand what it meant from a trust perspective, not from what we got paid and what they got paid. The issue was on the excess transaction, that these things would affect this organization.
I mean, some of the things about what if you had a list. We do so many transactions. We have to report the event, all flowing, all the money flowing to it and we have to now qualify our managers, whoever took part. If we miss somebody, that's grounds for the IRS to come in and yank our exemption.
Q. You mean after they pass the intermediate sanctions bill?
A. Yes, sure, even to today.
Q. Who told you that?
A. That's my interpretation of the bill.
Q. Did you ask any tax attorney to give you advice as to whether or not you were right on that interpretation?
A. Well, to me, if I read Verner Liipfert things

and other things, the excess benefit portion was the thing that disturbs this Estate.

As a more clear example is the exit tax and that was bad. That was bad from every perspective. It shouldn't have been in the bill. It was knocked out, but when it was in there, if we had left it the way it was, we would be in trouble.

Q. If you lost your tax-exempt status?

A. But that's to be determined by the IRS, if for some reason they want to do that, because it only applied that if you come from a nonprofit and you take it out of the nonprofit and let's say you go for for-profit, you guys going to get a problem.

It's the lesser of the net assets of the Estate will be the penalty or an aggregate of all the benefits the nonprofit receives from its inception to the present time. If we talk about --

Q. Why is that unfair, Dickie? Why is that unfair?

A. Well, in that situation, it's okay, but it doesn't prevent the IRS that if they should come in and for some reason yank it for another reason, you're subject to this thing.

Q. What if you did wrong and therefore you should have your tax-exempt status revoked?

A. If you do something wrong at the Estate, you should get penalized, but my feeling is why would we want to do that to this organization. We've been in existence for 114 years.

Q. But, Dickie, you folks lobbied to have that exit tax language modified or amended to read only for flagrant abuses should you be assessed exit tax, right; flagrant, not just wrongdoing?

A. But at the end of the road, they threw out that thing, so I felt good.

Q. You wanted the flagrant language in there, didn't you?

A. We didn't want the bill.

Q. That's what I was trying to establish, Dickie.

A. I have no problem with it, because we agreed with the concept of the bill, but we disagree on its implementation.

And I think it's a reasonable position to take, you know, if it was straight up and they listened and they didn't give us everything we want but the thing was balanced.

I just think that the Congress totally -- I mean they would have avoided a lot of problems in particular for Bishop, in our little kuleana, that basically you had public hearings. Pickle had it. He had a public hearing. He brought out all the organizations. They argued to-and-fro it, and in the end, they didn't move it out of the House.

And the problem with this bill is this bill now was signed in '96, this is '93, and the thing is retroactive to 1995. And normally that doesn't happen, when I check with people, but that's what they did.

Q. They had the right to do that?

A. I'm not saying they don't have the right. I'm just saying that the bill on September 14th is retroactive to September 14th, 1995. We're now in 1999 and this all goes back.

Hey, that's part of the game. We can live with that. I don't think it's right, but that's when the bill went up and that's the law of the land and there's no way Bishop Estate was going to change that.

The effective date of this act is September 14, 1995. The signing date is 1996 and we're in 1999 and they still have no rules out. There is still no definition of what is reasonable compensation. How are organizations supposed to comply with this law.

I mean, I'm just speaking for myself. I'm not sure what the other guys think, but this expectation that we should know what is reasonable, the IRS is supposed to set the standard and they haven't done it today. And the state just abolished the law that gave some certainty to us about our pay and now they said reasonable.

Okay, what may be reasonable to one person may be totally unreasonable to another and I don't know how we supposed to set the standard when the standard in all practical purpose under intermediate sanctions, the IRS going forward will take over what Trustees get paid.

And that's the reality of the situation, because they will set the standards for how trusts like us will be paid and that's unfortunate, but that's the law of the land.

Q. Dickie, you agree with the concept that you as a trustee ought to be accountable?

A. Yes.

Q. And you agree with the concept of oversight?

A. Yes.

Q. Do you agree that the IRS is providing oversight to some extent as far as what reasonable compensation is?

A. Well, whether I care or I don't care, that is the law of the land as it stands today.

Q. There's nothing wrong with that, right?

A. I have it -- I mean, I thought we were a local entity running in a local place. We were under state law. That's gone. The IRS now is in the driver's seat and they will not only set compensation for Bishop Estate, they will set it for all the nonprofits throughout the whole United States. And I think that's fair, everybody is in the thing. All we looking for them is and all we've been looking for them is tell us what is reasonable so we don't get ourselves in trouble.

Q. You did ask them for tech advice on reasonable, on whether your compensation was reasonable. They wouldn't give it to you, right?

A. Absolutely, because if the agency in charge of the implementation of this program, which is the IRS, has not set down through their rules and regs what is reasonable, how do you expect the organizations to follow. What do they pay their trustees, whatever their trustees are.

Q. Dickie, this tech advice you folks requested was when? Before the bill was passed?

A. Yeah, and there's no doubt in my mind -- I don't know, I haven't seen the tech advice, but there was a tech advice and we were told that's what the IRS did, but they didn't do anything with it.

Q. They didn't give you an opinion that you requested?
A. They have not until today.
Q. You had a consultant do a study for you, did you not, back then when you requested the tech advice?
A. It might be in '92. I'm not sure.
Q. Way back then?
A. Before my time.
Q. Might it have been in '93?
A. I don't think so. If there's another study, I don't know about it.
Q. SCA?
A. The SCA study I think was in '92 and '96.
Q. Before your time?
A. Before my time.
MR. SATO: The first one before your time.
A. There was one more.
BY MR. KAWASHIMA:
Q. Maybe, Dickie, we're not disagreeing. Okay?
A. Okay.
Q. So let me ask it this way and you can agree with me or not, and we don't have to use this exhibit here.
Going forward to the end of November 27, 1995, would you agree that Bishop Estate's number 1 goal

was the elimination of the intermediate sanctions provision? Yes or no?
A. Not the provision.
Q. Not the provision?
A. I don't think all of them, but I don't recall, but when you say elimination.
(Exhibit No. 72 marked for identification.)
BY MR. KAWASHIMA:
Q. Let me hand you Exhibit 72.
A. Let me take a look.
Q. And that is a two-page document. It starts with a fax transmittal sheet from Hecht, H-e-c-h-t, Spencer & Associates.
They were one of your consultants, were they not?
A. Yes, they were.
Q. And the fax transmittal is to Dickie Wong?
A. Yes.
Q. From Stu Spencer dated 27 November '95, re: Balanced Budget Reconciliation. The memorandum is the second page and go down to the third paragraph where it says, "Bishop's number 1 goal is elimination of the interim sanction provisions. This will be my mission with Senator Dole. The reasons I will give

him for elimination are fairness, extreme powers for the IRS and the Republican philosophy of states rights. This may be a very difficult if not impossible task." Do you see that?
A. Yes.
Q. That's what Bishop Estate's goal was even towards the end of November of '95, to eliminate, not modify, not amend, eliminate the intermediate sanctions provision, right?
A. Yes.
Q. Down at the bottom, do you see where they talk about safe harbors?
A. Yes.
Q. What was that about, safe harbors?
A. Some place to go to. If you pass something, that there should be some degree --
Q. Of certainty?
A. Yeah, and reasonableness.
Q. But what we're talking about is, for example, for trustee compensation what you people were concerned with was being able to have an independent consultant come in and tell you your level of compensation was reasonable and that would be a safe harbor for you from the provisions of the intermediate sanctions law, right? That's what you

were looking for?
A. I think, because it was offered -- you know, it was offered to organizations throughout the country.
Q. But only you folks were doing this, Dickie?
A. I don't know what the other guys were doing, because I don't think they were doing very much.
Q. You were the ones doing it?
A. We were doing the work, yeah.
Q. I'm saying you were interested in having a safe harbor provision inserted into the legislation if in fact intermediate sanctions were to become a reality, right?
A. Yes.
Q. Again, that safe harbors has to do with compensation, doesn't it?
A. Yes, it has to do with compensation for the expectation that we should have rebuttable presumption included and we were not successful in the end. They didn't put it in. I wish I could tell you we won some fights, but we didn't.
So all the discussion and all the strategies didn't accomplish our mission here. Yes, we did do it because we thought that was the thing to do, that we ought to have a safe harbor to go to. At that time, state law was still present. It didn't go out

until 1998.
Q. State law didn't go out; it just was changed?
A. What happened is, came December 31st, they said there have no state statutes anymore pertaining to the commission and everything, so it's out.
And so beginning January 1st, you had no state statute, you have no IRS determination of what is reasonable. So the Trustees presently or us doing time that we were there until May, I mean Judge Chang said that you guys aren't going to get paid anymore as of May 7th or whatever that date was and I don't know --
Q. I thought there was a state law that went into effect January 1 of this year that essentially said that compensation, trustee compensation must be reasonable?
A. Yeah. And, again, there are no guidelines to what is reasonable or -- I mean to me, Mr. Kawashima, I think in the end, after we get through all of these discussions, what's going to take place, the IRS is going to be the first guys to say, "This is what you got to do." Okay?
And the problem we have with this is that no matter what you and I are going to say, the final determination will be made by the Service. I think

what KSBE attempted to do was to have us in the safe harbors provision to give us the opportunity to how you set up studies and these kind of things and don't treat the nonprofits like a second-class citizen.

The problem with compensation with KSBE, it's really a court-ordered thing, anyway. We have court orders in place that say every three years, we should have studies.

Q. You don't disagree with that concept, do you?

A. No, no, because I think the studies that I've been able to see left ranges. At least they gave ranges where you fit into the ranges. And there must have been three or four studies on that. I think it's by court order we got to do it, anyway.

Q. Do you believe the IRS should come out with guidelines, rules and regs that would provide guidelines to tell you what is reasonable under what circumstances, I mean that specific?

A. No, but I think they ought to have safe harbors where you can go to in terms of not only studies. You got to submit two studies, one study, get this, get that.

There's no guidance except to say reasonable and we're saying what is reasonable to you, Mr. Service. What do you think is reasonable for a trustee, a

trust of this size and what do you think we should be making as compared to Life Foundation.
Q. Obviously, they don't agree that you should be making a million dollars a year, right?
A. I don't blame them, because I don't think there's another trust like this that make the kind of money we make, you know.
And there was a formula in place and it's out, so now what is reasonable to the Trustees of Bishop Estate. I mean, I hear all the stories outside, you know, they should be paid a hundred thousand, twenty thousand, some should work for free and it's a privilege to work for the trust, but the liability end of it becomes very apparent to Dickie Wong.
Dickie Wong, you have been making all this money throughout these years, but a lot of that money has gone into attorneys' fees to defend me because I'm being accused of doing something wrong and I have to go defend myself.
If I don't have a job, the money comes out of my pocket. So all the earnings over the previous years are used to pay my defense, because I really want to clear my name. That's all.
Q. When you talk about liability, you weren't talking about just attorneys' fees, were you?

A. No.
Q. You could be exposed to other liability?
A. And I think comes with that risk is every deal we do is subject to something going wrong.
Q. But the Estate bought $75 million of insurance for you folks to protect you against liability?
A. Yeah.
Q. So what is your potential personal liability? Over 75 million I guess you've got to be concerned, but at least up to 75 million, you're protected?
A. That's providing my insurance company helps to defend me and helps to cover the surcharges, if there are any.
I mean, you know, my problem is I don't have 75 million. What are you going to take from me? I hate to say this, bring it up on insurance companies, but my insurance company, my lawyer sitting over here, I hope he gets paid, but in the meantime, other kind --
Q. I know he's high-priced.
A. I don't know, but I'm just saying that it's a combination of things. Yes, we have coverage and yes, some of those contingencies are covered. I hear figures all over town from 750 million to 900 million and I don't know where these numbers comes back.
They just float around and people take it as,

"Oh, these guys, man, they got whole plenty money." No sense talk about $9 million -- I mean 900 million. Let's start with nine million.

MR. KAWASHIMA: Let's take a break.

(Brief recess.)

BY MR. KAWASHIMA:

Q. Dickie, we were talking about -- earlier this morning we were talking about your duties as the governmental relations liaison person on the Board of Trustees. Do you remember discussing that? And you talked about what your activities were in that capacity.

I believe we agreed that one of the things you did was to be mindful of legislation that had any type of effect on KSBE, right?

A. Yes.

Q. You would not consider it appropriate, though, for you as a trustee to get involved in any actual political maneuvering relating to the retention or acceptance of any political person in a high political office such as the Attorney General?

A. Yes.

Q. You do recall earlier, of course, this year there was a matter of Attorney General Margery Bronster's retention as Attorney General? Do you

recall that?
A. Yes.
Q. And it was in the news a lot and ultimately -- well, ultimately she was not retained; is that correct?
A. Yes.
Q. And there were questions as to whether or not the fact that she was not retained had anything to do with the fact that she had brought claims, criminal and civil claims against Bishop Estate and certain Trustees, right?
A. Yes.
Q. And you, I believe, were quoted as saying as far as you were concerned her retention had nothing to do with KSBE. Is that a correct statement?
A. Yes, I guess to a point. I mean, obviously she was very much involved with the Estate and I have a different take than everybody else. I thought a lot of this could be avoided if she had come in just as parens patriae and she chose not to do that and that was her right to do so.
Q. I don't follow you. What do you mean?
A. I think when the controversy first developed, it was over she wanted to take a look at Bishop Estate.
And as I understand it, I don't know where the

word came down, but it was part of a campaign committee, as my understanding was, that the Governor wanted to take a look at Bishop Estate and she just followed his instruction or whatever was consummated and she came into Bishop Estate and we thought she was going to come in as parens patriae.
Q. You don't believe she did come in as parens patriae?
A. She came in as a prosecutor.
Q. As far as the criminal indictments against Henry Peters and you, right?
A. I think it's the whole approach to the Estate itself. As parens patriae, she has a duty to care what happens to this trust and if she thinks the five of us children are misbehaving, she can come in and get any records she wants as parens patriae.
Q. But she tried to get records, Dickie.
A. I remember we had discussions with Nathan to ask her to come in as parens patriae. She chose not to do that.
Q. You don't recall that the Attorney General was trying desperately to get documents from you folks and they couldn't get it, get them?
A. I don't know why they would have prevented her, because she's parens patriae, and when she makes that

known to us, we have to give it to her.

And that's what I was told by Nathan. If they came in as parens patriae and she wanted stuff, we should have gave it to her. If we didn't, maybe that's why she came in as a prosecutor with subpoenas. I don't know. I leave that up to her. She made the decision.

(Exhibit No. 74 marked for identification.)

BY MR. KAWASHIMA:

Q. Let me hand you some documents, a document marked for identification as Exhibit 74 and ask you to look at that for a few minutes.

A. Uh-huh.

Q. This is a two-page document with what appears to be copies of message sheets or two pages from a book that retains message sheets of a certain form, right?

A. Yes.

Q. You recognize that form, don't you?

A. Yes.

Q. That is the book, message book that your secretary kept?

A. Yes.

Q. And that is her writing, her handwriting that you recognize?

A. It looks like it's hers.
Q. On two pages?
A. Yes.
Q. What was her name?
A. Ernella Kam.
Q. Is that the EK -- on what appears to be EK, is that her initials as she writes them?
A. Yes.
Q. When she writes messages to you, it's one of these tear-offs where she gives you the original that she writes and then this copy remains in the book?
A. Yes.
Q. Looking at first page at the top there, it says, "To DW." That's how she addressed you, as DW, meaning Dickie Wong?
A. Yes.
Q. And there's a message on the top, and I'll represent to you that this appears to have been written, these messages, this year 1999 and the date would be January 22nd from a Larry, phone number 537-5938?
A. Yes.
Q. Do you know who that Larry is?
A. Yes.
Q. And that's whom?

A. Larry Mehau.
Q. And the number that he left there, 537-5938, that's the number of his business here in Honolulu?
A. It looks familiar, yes. I would say yes. I don't know if it's 5529. I'm not sure.
Q. How did Larry get the security contract up at the campus?
A. My understanding is we had a problem with drugs on the campus and they were looking for tighter security and he was recommended to be there.
Q. Was it a matter of putting it out to bid or looking at a number of providers or what?
A. There was no bid. I think the problem existed on campus at that time. As I understood, we had a drug problem at the school and people were running into the school and supplying drugs and one time there was some incident involving some young kid was going to shoot somebody or something, and as a result of that, Hawaii Protective Association was asked to come in.
Q. Do you know what the amount of that contract was?
A. Gee, I don't know. Two hundred thousand. I don't remember.
Q. Do you know what the scope of that agreement was

as to where they would provide security, for what?
A. My understanding is it was going to be at the gates of Kamehameha.
Q. Just at the gates?
A. Yes.
Q. Does $50,000 a month sound familiar to you?
A. It might be, yes.
Q. Do you consider that to be a reasonable amount to provide just gate security?
A. If you do it 24 hours, yeah, I would say. I don't know what the terms are.
Q. What are you using as a basis for that belief that it's reasonable?
A. Well, there's two gates and they maintain it at all times and I don't know what else HPA does.
Q. What I'm asking, did you folks look into what it would cost if another supplier or provider provided the same services?
A. I think they did a cost analysis and I think --
Q. Who did?
A. I think it was Rocky Freitas, I'm not sure, on behalf of the president. That's all I know.
Q. He did a cost analysis? Did he compare what HPA was offering with other providers to see whether or not the price was reasonable?

A. He must have, yeah.
Q. Now, you are a personal acquaintance of Larry Mehau?
A. Yes.
Q. You've known him for years?
A. Many years.
Q. And then looking at that same day, Larry first tells you he's going back to the Big Island and then it appears he calls again, a matter of minutes later, not even an hour later and tells you, the message is, "Thinks they have the votes to stop appointment. Would like to meet next week someplace private. Will call to let you know time and date."
Do you recall this message?
A. Yeah, I recall the message.
Q. Do you recall which appointment he was talking about?
A. I think he was talking about Bronster.
Q. Why would he be talking to you about Bronster, Dickie?
A. I don't know. He's a Kamehameha School graduate and he's a close personal friend and he must think he's going to help me.
Q. You were trying to stop Bronster's appointment?
A. No, I didn't know how we could do it.

Q. Why would Larry tell you then he thinks they have the votes to stop appointment of Bronster if you were not involved with it?
A. I was not involved with Larry Mehau on Bronster. He just called me to tell me this message.
Q. Were you involved in any way in stopping or attempting to stop Margery Bronster's retention?
A. How would I do that?
Q. I'm just asking you, Dickie. You can say yes or no.
A. No.
Q. Then we go down and we see a message from Senator." Matsuura's office. Do you see that?
A. Yes.
Q. Haunani called and said, "Senator Matsuura would like a lunch appointment with you sometime next week. Also to be present will be Senator Hanabusa."
Do you see that?
A. Yes.
Q. Then we go on, the same day, January 22nd, and then we go on to the next page where at the bottom is another message to you from Haunani at Senator Matsuura's January 25th, three days later, in which the message is, "Wednesday for breakfast - Jonathan Chun, Colleen Hanabusa, Jan Buen" -- B-u-e-n; that's

Jan Yagi Buen, right?
A. Uh-huh.
Q. -- "David Matsuura and Larry. What time and where?" Do you see that note?
A. Yes.
Q. So there was trying to be arranged a meeting between yourself, Larry Mehau and I guess we would call these a number of freshman senators?
A. Yes.
Q. Do you know that every one of these freshman senators voted against Ms. Bronster's retention?
A. Let me see. Yes.
Q. Do you recall actually having that breakfast with Larry and Senators Chun, Hanabusa, Buen and Matsuura?
A. I don't know if we had a breakfast, but we had a meeting.
Q. In that meeting, did you discuss working against Ms. Bronster's retention?
A. The breakfast meeting dealt with they were just newly elected senators and they wanted to know the lay of the land. But Bronster's appointment didn't come up until later on. I don't know when. When is this, January?
Q. January 25th.

A. Early meeting. They wanted to know -- Buen is -- her father was a good friend of mine and they sat down and we talked about the legislature.
Q. Do you recall in that breakfast meeting talking about Ms. Bronster's retention?
A. No, I think they may have said that as far as Margery Bronster was coming up and maybe some mention about Bishop Estate, but we never talked in detail about what to do about Ms. Bronster.
Q. Do you consider these senators friendly to KSBE?
A. I don't know if they're friendly, but of all of them, there's only one that I can come close, that I knew, was David Matsuura.
Q. Why do you say that?
A. Because of his dad.
Q. Umikoa Ranch maybe, the license you folks had with them?
A. No, just basically with Dickie, because I served with him in the Senate.
Q. So let me ask you, it is your testimony that there was discussion, maybe not in detail, but there was discussion in this breakfast meeting you had with Senators Chun, Hanabusa, Buen and Matsuura and Larry Mehau, there was discussion about Ms. Bronster's retention?

A. Yeah, I think there was a general feeling about how the Senate felt.
Q. But you just testified earlier, though, this was really early on, her retention hearing didn't come up until about April of this year, right?
A. Yeah.
Q. And you folks were talking about it in January?
A. Well, why not? I mean, you know, I think the word was out. What was happening to Bishop Estate affected a lot of the senators. And this controversy hadn't just started in that particular year. It started way before that.
Q. Were you as a trustee of Bishop Estate against Ms. Bronster's being retained?
A. I didn't agree with how she was coming at the Estate, yes.
Q. So you were against her retention?
A. I don't know about retention, but I was against what she was doing and I thought it was wrong.
Q. When her retention came up, were you against her retention?
A. I would say I would. I think she acted improperly as far as Bishop Estate is concerned. That's only my feeling. I don't speak for anybody else.

Q. Did you lobby in any way against her retention?
A. No, I did not.
(Exhibit No. 51 marked for identification.)
BY MR. KAWASHIMA:
Q. Dickie, I'm going to hand you what we've marked as Exhibit 51 for identification.
MR. SATO: I'm going to place an objection on the record. I read the morning paper. There's supposed to be some new witnesses. I haven't seen an amended witness list, so I don't know if it's true what's reported in the papers or not, but I'm going to -- I recognize the name Hookano and Q Mark and they're talking about some kind of improprieties as far as doing some work for a political candidate.
So out of an abundance of caution, you know, I'm going to object to this area of questions in terms of his right against self-incrimination and instruct him not to answer any questions in this area.
MR. KAWASHIMA: Glenn, are you saying that you're not going to let him answer any questions whatsoever or are you going to try and deal with it on a question-by-question basis?
MR. SATO: The problem is I haven't talked to him about this area at all. So what I run into

the danger of is that, not being able to read Mr. Wong's mind, if he says something that I should have objected to, simply because I didn't know what the subject area was -- I hate to do this to Mr. Wong. I know he's come here and he wants to finish this deposition and get on with it, but out of an abundance of caution, I'm going to instruct him not to answer under his constitutional right.

If you can make an offer of proof, we can discuss it overnight and maybe come back tomorrow and we'll go forward with the questions. I can discuss his possible responses overnight with him.

MR. KAWASHIMA: That might be a fair resolution. You haven't seen our amended list?

MR. SATO: If you've done one and it's not reached my desk -- I don't profess to know every piece of paper in this litigation.

MR. MIYAGI: It went out on Monday. I will get one.

MR. SATO: If you can have someone send one over.

MR. YEE: I can give you a copy. I have a copy with me.

MR. KAWASHIMA: We did do one on Monday. I thought we sent it to you, but maybe you didn't get it.

MR. SATO: Off the record.

(Discussion off the record.)

BY MR. KAWASHIMA:

Q. Dickie, you do remember when I asked you earlier today whether or not there was some polling done on issues that were germane to the Estate? Do you remember that? Yes?

A. Yes.

Q. And you said yes, there were?

A. (Witness nodding head.)

Q. And I think I asked you, and you agreed, that some of these issues were land issues and water issues, for example?

A. Yes.

Q. If I didn't ask you, I'm going to ask you -- and this is where maybe your counsel will direct you not to answer and that's fine, we can deal with that -- about polling for other than these types of issues; in other words, polling for specific political candidates. I'm going to ask you about those areas. That's where I'm going to go next.

MR. SATO: Then we're going to object to it and I'm going to instruct him not to answer under his constitutional right.

The document I see involves water issues. So, I don't know, you can ask about this document, we can do that, but as far as polling for political candidates, we're going to refuse to answer on that subject area.

MR. YEE: Can I talk to you for a minute?

MR. KAWASHIMA: If you want to talk, that's fine. What I was actually going to do is introduce a bunch of exhibits that he may want to look at overnight. That might be helpful to you.

MR. SATO: Sure.

MR. KAWASHIMA: But before I do that, though, I just need to authenticate this document, authenticate it.

MR. SATO: You can authenticate it.

BY MR. KAWASHIMA:

Q. Dickie, Exhibit 51, does that look familiar to you, that requisition form?

A. No.

Q. No? Okay. You've never seen anything like that before?

A. No.

Q. Okay, that's fine.

(Exhibit No. 41 marked for identification.)

BY MR. KAWASHIMA:
Q. Let me hand you -- again, my numbers are all screwed up -- Exhibit 41 for identification. That purports to be a copy of a front and back of a check, KSBE check written on August 11, 1994. The payee is Omnitrak Group, Inc. The amount of the check totalled $19,531.31.
Authentication, is that your signature there on the second line of the Authorized Signature lines?
A. Yes, it is.
Q. You don't remember this check, right?
A. No, but there must have been an invoice with it, because in absence of the treasurer and whoever is in the office when the billings come in, the Trustees look it over, look at the invoice and sign. So you're going to find signatures of five different Trustees signing checks.
(Exhibit No. 42 marked for identification.)
BY MR. KAWASHIMA:
Q. Let me hand you what has been marked as Exhibit 42 for identification, which is another similar type document check. This time the same payee and in the amount of $48,552.24.
Again, is that your signature on the Authorized

Signature line of that check on Exhibit 42?
A. Yes, it is.
(Exhibit No. 43 marked
for identification.)
BY MR. KAWASHIMA:
Q. Exhibit 43, a similar document, the same type of check drawn on the same account, same payee, the amount being $41,760.55.
That's your signature there on the line there?
A. Yes, sir, it is.
(Exhibit No. 44 marked
for identification.)
BY MR. KAWASHIMA:
Q. The next one, Exhibit 44 for identification, drawn on the same account, same payee in the amount of $21,622.47, your signature isn't on this, Dickie, but do you recognize the signature on the Authorized Signature line, the second line, the bottom line?
A. Yes.
Q. And that is whose signature?
A. Trustee Peters'.
Q. You recognize his signature by having seen it on other documents in the past?
A. Yes, I have.
Q. And the top signature is who?

A. I think one is Luan Crabbe.
Q. I'm sorry, just the one on Exhibit 44.
A. Number 44. Wally Chin.
MR. YEE: Can we get copies?
MR. KAWASHIMA: I'm sorry.
(Exhibit No. 45 marked for identification.)
BY MR. KAWASHIMA:
Q. Exhibit 45, another check. This time, though, the payee -- it's drawn on the same account, but the payee is Q, one letter, Mark, M-a-r-k, Research and Polling.
Do you know that the person involved with doing the polling for Omnitrak Group was the same person that was doing the polling for Q Mark Research?
A. No, I don't know that.
Q. Barbara Ankersmit, does that sound familiar to you?
A. I'm sorry?
Q. Barbara Ankersmit, A-n-k-e-r-s-m-i-t.
A. No.
Q. You never met that person?
A. Not to my knowledge.
Q. Exhibit 45, though, Dickie, the bottom Authorized Signature line, do you recognize that

signature?

A. That's Lokelani Lindsey's signature.

Q. Again, because you've seen her signature in the course of business as a trustee at KSBE, you do recognize that as being her signature?

A. Yes.

(Exhibit No. 46 marked for identification.)

BY MR. KAWASHIMA:

Q. Exhibit 46 for identification is another check drawn on the same account to Q Mark Research, dated December 14, 1995 in the amount of $29,315.83.

Again, do you recognize the bottom signature on that check?

A. Yes.

Q. And that is whose signature?

A. Wally Chin and Trustee Peters.

(Exhibit No. 50 marked for identification.)

BY MR. KAWASHIMA:

Q. Let me then hand you what has been marked as Exhibit 50 -- I'm jumping here -- for identification, which is another similar check drawn on the same account made payable to Q Mark Research and Polling, a division of Starr Seigle McCombs, Inc., dated July

3rd, 1997. This one is in the amount of $81,973.92.
Do you recognize the second signature there, the bottom signature, Dickie?
A. Yes.
Q. And whose signature is that?
A. Trustee Peters and Wally Chin.
Q. On the top, okay.
MR. KAWASHIMA: Am I to understand then, Glenn, that any further questions in this area you're going to direct him not to answer until you discuss the matter with him overnight?
MR. SATO: Yes, and if you can give me some idea generally. You know, I don't want you to give away secrets, but what's the parameters of your questions in this area?
MR. KAWASHIMA: I'm going to ask him about knowledge, and he may not have it, but about specific polling that was done for specific candidates for office.
MR. SATO: Done by KSBE?
MR. KAWASHIMA: At least paid for by KSBE.
MR. SATO: I'll discuss that overnight and we'll come back to it first thing tomorrow morning.
MR. KAWASHIMA: But, again, you're not going to let him answer questions about that today?

MR. SATO: Not at this time.
MR. KAWASHIMA: All right.
BY MR. KAWASHIMA:
Q. Moving to another area, Dickie, this matter of having, you called it a liaison. I see it referred to in many locations the issue of having a lead trustee as to certain areas.
That issue in terms of the public arose when Judge Yim issued his report in 1997, right?
A. That's correct.
Q. You had an arrangement for a matter of years prior to Judge Yim issuing his report, you called it trustees being liaisons in certain areas. Judge Yim and others referred to it as the lead trustee system, but that was in effect even before Judge Yim made it public, right?
A. Yes.
Q. Judge Yim disagreed with that arrangement that there be lead trustees or liaisons in these specific areas; is that correct?
A. Yes, that's correct.
Q. As a result of that, the Trustees through their attorney at that time, Bruce Graham, I believe, entered into a stipulation not to have that type of system any longer. Do you recall that?

A. Yes.
Q. And that was a stipulation entered into in December of 1997; is that correct?
A. Yes.
Q. Do you remember the date of that stipulation being on or about December 19th, 1997?
A. I don't know. I remember there was a stipulation. I don't know for certain, but there was an agreement.
Q. Did in fact you Trustees as of the time or after the time you entered into that stipulation in December of 1997 in fact stop using the lead trustee system or did it continue to some extent until later on in 1998?
A. No, I think they discontinued and then we didn't do it anymore.
Q. I'm sorry, what just continued, Dickie?
A. We discontinued the liaison type of relationship. I think by that time, Loke had already stepped down voluntarily or something.
Q. She left the campus?
A. Yeah, or whatever.
Q. You knew by that time that essentially she was keeping an office up there at the campus, right?
A. No, I never knew she had an office up there.

Q. Even up to that time?
A. There was an office for the Trustees there, but it wasn't Lokelani's office.
Q. I understand. Let me phrase it correctly then.
You knew by that time that the Trustees' office up at the campus was being occupied on a very regular basis by Lokelani Lindsey?
A. No, I didn't know that.
Q. You still didn't know that?
A. No.
Q. When Lokelani Lindsey agreed to step down as a lead trustee for education, what did you understand that to mean then? What was she going to do or not do?
A. Well, I think according to Judge Yim that's what happened, that we gave up the office and they shut down the office and one of his -- I think one of his findings was you get rid of the office and you get rid of the parking stall that was on campus.
Q. She had her own parking stall?
A. I disagreed with him on the parking stall.
Q. Why is that, Dickie?
A. You know, the Trustees go up there quite often. Not so much only Loke, but my understanding is Trustee Stender and Trustee Jervis made regular trips

there. I think Henry and I didn't, but the occasions I did go there, you can't find parking space over there. There should be one for visitors or whatever you want to call it.

Q. They have spaces for visitors.

A. But if it's full, where do you park? You park on the road and walk down the mountain.

Q. But you didn't understand Trustees Jervis or Stender to request a reserved parking space for Trustees, did you?

A. No, I think most guys on the campus know the Trustees and try to make accommodations.

Q. But in any case, Dickie, after entering into that stipulation, the trustee, the Master, Colbert Matsumoto, issued his account for -- I guess we should call it the 109th annual account. He issued his accounting, right, of the Estate; is that correct?

A. Yes.

Q. And, again, as a result of that, you the trustees had a response to that, the report, right?

A. Yes.

Q. And as a result of that, the Trustees through their attorney Bruce Graham entered into stipulations concerning Colbert Matsumoto's recommendations and

that stipulation was filed on October 2nd, 1998; is that also correct?
A. That's probably correct.
(Exhibit No. 35 marked for identification.)
BY MR. KAWASHIMA:
Q. Let me hand you, Dickie, what's been marked as Exhibit 35 for identification. Do you recognize that document? Have you seen that document before?
A. I probably saw it, but I don't remember everything.
Q. I'll point you to what I want you to talk about.
A. Okay.
Q. You generally recognize that document, don't you?
A. Yes.
Q. That's kind of what we're looking for, actually. I phrased it improperly. Stipulations Concerning Master's Recommendations (109th, 110th and 111th Annual Accounts) and Order. That's the stipulation you're talking about? Do you remember that now?
A. What stipulation was that?
Q. The one in front of you, Exhibit 35. That's for the 109th, 110th and 111th annual accounts, right? That's the one. You're looking at it.

A. What page is that?
Q. At the very front.
A. This one? Okay.
MR. SATO: Exhibit 35.
THE WITNESS: Oh, Exhibit 35.
BY MR. KAWASHIMA:
Q. Would you turn to page 13, Dickie, stipulation No. 14. You again, the Trustees again ceased to, agreed to cease to employ the lead trustee system; am I correct?
A. The liaison, okay, lead trustee system.
Q. By the way, I notice that Robert B. Graham, Jr., Bruce Graham as we know him, signed on behalf of the Trustees of KSBE at that time, one of which was you. Do you see that?
A. Yes.
Q. As far as you were concerned, you Richard Wong, you authorized Mr. Graham to sign this document, did you not?
A. Yes.
Q. And as far as you know, based upon discussions had at KSBE at various meetings with other Trustees, all of the other Trustees agreed and authorized Mr. Graham to sign this document, Exhibit 35?
A. Yes.

Q. And do you recall if any of the Trustees had any quarrels with any portion of the stipulations contained on Exhibit 35?
A. Yeah, I think there was some heavy disagreement on stipulation 14.
Q. In what sense?
A. I think there was a great deal of debate and discussion over this one issue. There was a difference in approach. Some of the Trustees felt that you should have a strategic plan laid out for what you want to see or to do and then hiring the CEO, instead of hiring the CEO and then develop a plan. So basically that continued on for a while.
Q. You know, I'm getting sidetracked. Let me cover this before I forget.
The petition that you people, the Trustees had presented to the Probate Court to have retired Judge Patrick Yim named as a fact-finder, that was something that was authorized and agreed upon by all of the Trustees of KSBE, right?
A. Yes.
Q. That was not something you were forced to do; you did it voluntarily?
A. Voluntarily.
Q. And you trusted that Judge Yim would do a fair

and complete job?
A. Yes.
Q. And that he would not be biased in any sense?
A. Yes.
Q. And you do understand that he spent a lot of hours in doing his investigation and then ultimately generating his final report?
A. Yes.
Q. You disagreed with his final report?
A. Well, I don't know if I disagreed with it. He took many testimonies, he sent out many polls, he did a lot of interviewing, as I understand it, and I think his report was one-sided. I think he talked to a lot of teachers, he talked to a lot of students, he talked to a lot of parents.

My understanding is Napua set up a whole organization of inviting people out there before they met with Judge Yim to go through that process and I think this was said publicly as to what they did and I think he adopted the principle of preponderance of evidence and not clear and convincing or whatever the burdens of proof are and I think he got too much on one side of the story. That's what I feel personally, but we did hire him and we felt that he would, he would be objective and he told us he would

be.
Q. In your mind, was he not objective?
A. Well, I don't know what nonobjective is.
Q. Was he not objective, is what I asked you.
A. I think he's a judge and he had a tremendous reputation and I believed in that reputation that he would be fair and he was unanimously agreed to be the one to do it. He was recommended by Trustee Jervis, I think, and all of us had deep respect for the judge.
I mean for me, I don't speak for the other Trustees, I was a little disappointed in how he was handling the information he was receiving and I thought maybe it was kind of one-sided, but he made his judgment, we accepted his report, and I don't know what else to say.
Q. In fact, it was in discussions about whether or not the person to be recommended to be fact-finder, it was discussed amongst you that he was in some way related to Henry Peters, right?
A. That is correct.
Q. And that was another factor that was a plus, a positive factor?
A. Yeah, but -- well, from the judge's reputation, is that he's always been one person who kind of calls

it like it is and I think we all accepted that.
Q. In your mind, he called it like as he saw it, right?
A. Uh-huh.
Q. Yes?
A. Well, there was some things in there that bothered me, but, you know, he made a report, we accepted his report and we accepted his recommendations. So that's the end of the tale. I may disagree, but in the end, that's what he said and that's what we agreed to.
Q. He said a lot of, a number of things relating to the manner in which Lokelani Lindsey was conducting herself up at the campus, right?
A. Yes, he made a reference to her.
Q. In fact, those same types of references as to the conduct of Lokelani Lindsey were in fact confirmed by another judge, Judge Bambi Weil, right, after a trial?
A. Yes.
Q. The same type of criticisms of the manner in which Trustee Lindsey conducted herself up at the campus and relating to the schools?
A. Yes, I think that's how the trial came out.
Q. Would you agree based upon a person such as

retired Judge Yim having investigated the situation and issued certain findings, a judge such as Bambi Weil, having presided over a multi-month trial with many, many witnesses then issuing findings of fact and conclusions of law that essentially supported Judge Yim's findings, would you agree that the likelihood is that those findings both of Judge Yim and Judge Weil are correct and accurate?

A. One would lead to that conclusion. I'm not a lawyer in terms of how you weigh the evidence and how you reach your findings of fact based on evidence that is produced in a trial.

You know, I think the trial was reported from the perspective that it wasn't a positive thing for Trustee Lindsey and the way the trial was being reported, I mean people form impressions and perception is reality.

My personal thing is, I wasn't at the trial every day, I don't know what transpired, it lasted a long time, but her findings of fact my understanding are on appeal and perhaps that's the proper place to argue the legal fine points of evidence and things like that. I'm not qualified to judge that.

Q. Dickie, you mentioned earlier preponderance of the evidence as opposed to clear and convincing. Do

you have an understanding of what the burden should be? I'm not sure why you used those terms. That's why I'm asking.
A. Because preponderance -- I use an example for myself. You got five people. If three people say something is wrong, then that's preponderance as a standard. I mean, I don't know how legally you treat it, but I think you got to -- it's more than that. I'm just oversimplifying it.
Like, for example, one of the things that disturbed me in Judge Yim's report is the reporting that there was a red dot system in operation at the school on the admissions policy and we never had a chance to ask him what was this red dot system and he made the statement based on, my understanding, some individuals who reported that and he made that as part of, one of his findings, and I think that was -- I mean, outside of the other things, I think that was dangerous to Kamehameha Schools. It's like if there is a system like that, it should be stopped.
Q. Did you not understand the system to be applicable to students applying for admission into Kamehameha?
A. Yes.
Q. Where if there was a red dot next to that

student's, potential student's name, that that student would be given preferential treatment. In other words, all things being equal, if that student were in competition with another for a slot, that the one with the red dot would get it every time. Did you understand that's what it was claimed to be? I'm not saying it was, but claimed to be.

A. He didn't say that and we wanted to ask him the question, you know. If it's by an individual at the school, then I have a problem with it, because the rule at Kamehameha Schools is that for every student we take into Kamehameha, we turn down seven people, and I don't think you should have any kind of system.

If it's to evaluate that this guy is on the borderline and you use a red dot, then that's how it is, you go on a waiting list just like everybody else.

And, you know, I thought that would be disastrous to Kamehameha. If people found out Trustees were involved, if school personnel were involved, they don't belong there, because we turn down seven kids for every one kid we take at Kamehameha.

So that constituent out there is not very happy with Kamehameha Schools, especially when you are so rich and you have so much money. How come you can't take care of everybody? One out of seven, if I'm a politician running for office, I'm not going to get elected. It's just that simple.

That's what bothered me, I mean how he reported it, because he interviewed the people, I wasn't there, and he formed his own conclusion. When the report came out, we accepted his report and followed his recommendations and that's the bottom line. We can have feelings of we thought it wasn't fair or it was fair, but the Trustees, as I know, took action and accepted Judge Yim's report.

Q. By the way, just to be sure, the red dot system had to do with students who were in some way connected or related to trustees, right? I mean that's what it was claimed to be. I'm not saying it was or it's a proper thing. I'm just saying that's what the claim was.

A. Well, if that was the claim, then, you know, he should have pursued it. That's all I'm saying. Whoever those trustees are, I mean my take is you shouldn't be doing that.

Q. Dickie, let's move back then to Exhibit 35. I got sidetracked. Let's get back to now we're talking about the Master and his 109th, 110th, 111th annual accounts and ultimately stipulations that were entered into concerning those annual accounts, all of which are incorporated within Exhibit 35.

Then we were talking about stipulation No. 14, which is entitled a New CEO Based Management System Shall Be Instituted.

You testified earlier there was much discussion about this issue, right, because the Trustees, at least some of the Trustees believed that the Trustees were the CEO and therefore there shouldn't be a CEO other than the Trustees; is that correct?
A. Yeah, I think the Trustees are CEO's, CFO's, and COO's and that's how the Princess envisioned it. She didn't want her will to have a CEO.
Q. How do you know the Princess envisioned that?
A. Because she said, "I want five trustees and three shall make decisions."
Q. I understand that, but did you not consider that the Princess was referring to trustees acting in their capacity as trustees making policy decisions, not operational ones?
A. If I follow the will, she gave tremendous powers for operations of the Trust, for governance of the Trust. She left to the trustee even down to what the tuition was going to be and whether the school was

going to be industrial, mechanical, agricultural.

I think sometimes in the controversy what has slipped out is that the trustees are in charge of governance and this is total, full discretion to act, and she never mentioned -- I think she left it up to the trustees to determine what they needed, but to me, she wanted a hands-on kind of trust and that's what she said. "I want five people and it's going to take three to make it work." She had a vision, that -- she didn't talk about a CEO.

I mean, you got to remember this is 1884. We're in 1999. Things have changed. And I think the Trustees would like to have had a person in charge, but we thought we had the organization structured pretty well. We had administration, we had schools, we had the president, we had legal, we had asset management, we had the expertise there.

Now, if you want to put an overseer -- I think if the Trustees really wanted to, they can call the guy a CEO, but now as I understand, and if I'm wrong, I'm wrong, that the new CEO would be the guy recommending investments and other kinds of things to the Trustees and they will just merely act on it and they can say no or they can say yes. That's my understanding of what the concept as the Master

envisioned and I don't think that's the way it should work. That's my own personal opinion.
Q. That's your personal opinion?
A. Yeah, I think trustees are trustees and you do these kinds of things. You can have a CEO if that's what you want, but he reports. The ultimate decision rests with the board.
Q. I don't disagree with that, Dickie, but do you agree that trustees have the ability, the authority under law to delegate certain responsibilities?
A. Absolutely.
Q. They can delegate the right to consider which investments ought to be entered into on behalf of the Trust, right?
A. Yes, and I think that's why you have an asset management group under our present structure where all requests for interviews with the Estate are directed to asset management if it concerns investment. And we have certain criteria and certain procedures in place that if it doesn't fall within this given criteria, we don't even consider it. Just write them a letter and tell them, "Thank you very much for considering us and maybe we can do something next time."
But we have that system in place today where

investments are not handled by individual trustees. They come to us, it comes through the mail. We give it to asset management. Does it meet the criteria for fixed income and if they say, "Yeah, this looks good, can you guys pursue it," we'll take a look.

I think the -- well, the CEO, as I understand it now, and I can be off because I don't know what all the details are, the CEO will make recommendations to the board and the board can either reject or accept.

Q. Do you have any quarrels with that?

A. Yeah, because I think the Trustees should be there and they should come up, look at the investments and they should say I think we ought to invest in oil today and gas tomorrow.

And that's why I say part of the discussion in the discussion of this stipulation 14 was in the area of what comes first, you know. If we have a financial plan going forward of what we want to do in the 21st Century, we should lay it out and find the best person to fit that thing rather than get the person without a plan.

And so are we saying in effect the CEO is going to draw up all the investment plans for the five Trustees and they're merely to stamp their approval or disapproval? I think the Princess in her will

wanted us to be active.
Q. Who?
A. The Princess.
Q. Why do you say that?
A. In the will. I mean giving discretion to buy, sell real estate, reinvest the proceeds from the real estate and to invest in such a manner that my trustees deem best.

I think when she said in such manner, she gave us tremendous latitude. The will is very open, full discretion over the schools. And it was clear to what we wanted to do, use half of the income that you take in for the school but don't use more than half, but if it deemed expedient, you know, my trustees in the best interest they feel.

So the Trustees had tremendous powers to move things around with the organization. That's what she envisioned her people to do. I don't know, from what my reading of the will, and it might be subject to challenge, she made it very clear that the Trustees run the place and she made certain exceptions, even about real estate, that if they had to do with cattle ranching and these kinds of things, you're not to go sell it, but outside of that exception, we have the right to ample powers, to sell, lease, to rent, do all these kind of things.

And now, unless the trustees, whoever the new trustees will be -- I mean they will make those kind of decisions, but as I gather from what's being said, the CEO will recommend what investment and what they think and it's up to the board, whoever those trustees are, to say yea or nay.

Q. Yea or nay or we'll go back to --

A. Go back to the drawing board.

Q. Do more due diligence, for example?

A. Well, I don't know where this all comes out to, but she wanted five active trustees, and when she gave these kind of powers, she made it very clear, you guys can do all this stuff.

Q. You understood it to mean, Dickie, that she wanted you folks to be CEO, CFO, COO and all that?

A. I don't think at that time they had these kind of positions, at the time in which the will was written. I think times have changed, but we have external managers as well as internal managers for investment and we call upon them to do things for us and to invest for us.

I think the matter of a strategic plan to meet the goals, whatever you want to do is -- I mean, we have Cambridge to tell us where we should be in terms of asset allocation. In terms of expenditures for the school, they talk about financial equilibrium, income versus expenses, and in the school system, we all know that what happens at some point in time, the line separates between expenses and income.

And under this proposal as I see it, I mean, like I said, it may be in the 21st Century we may have to turn to our assets, because they feel we should divest a lot of things and this and that. It's only my personal thing.

Q. Let's not debate that right now, Dickie. I don't think we need to.

I thought we agreed earlier today that you understood this concept of having a Board of Trustees such that the Board of Trustees would be responsible for policy matters?

A. But, you see, the will, the will goes beyond that.

Q. No, maybe we didn't understand each other. I just want to clarify it. I'm not arguing with you, Dickie.

So what you're saying is in the case of Kamehameha Schools/Bishop Estate, though, Princess Pauahi, the way you interpret her will, wanted you folks not only to be the policy-making body but also

the operational body, both?
A. Yeah, I think she wanted us to run her trust.
Q. You could run her trust, Dickie, as a trustee and not an operational person?
A. Yeah, you don't have to do that and I think we made the separation at least when I came to Bishop there was a for-profit subsidiary with its own board, with its own president, and we were on the PE level and I thought we kept that relationship as far as that and not by an arm's length relationship and I thought it was a good thing for the trust that we have a nonprofit as well as for-profit.
Q. Arm's length, was it arms-length, Dickie?
A. Sure.
Q. You didn't have folks serving on a number of those boards and actually running those companies, like Henry running Pauahi?
A. You got to -- no, you got to remember that we served in an advisory capacity. We weren't regular directors of boards. At least for me. I don't speak for the other Trustees. We're just advisory. We have a partnership interest, we come and we listen and we take off, like Hiteman and Associates.
Q. I thought, I could be wrong, but I thought Henry was on a bunch of those boards?

A. Henry sat on the boards, but not us.
Q. Well, yes, but --
A. He's assigned to Pauahi, Pauahi Holding.
Q. And you didn't understand him to be actually operating that company?
A. No, that should be operated from the president, which is Richard S.H. Wong.
Q. I understand that, but you didn't understand Henry Peters to be running that for-profit subsidiary, which he shouldn't have been doing?
A. But he's the guy assigned over there and he has to take a look at it and that's what it is and so the for-profit entity, whatever you want to say, separated from us, and we never sat on -- I mean, I should not say "we." I am not a director of a bank or insurance company or whatever.
Q. I know, I understand.
A. It was just an advisory capacity and advisory means you just go there and listen and they tell you whether they're hitting their targets or they're not hitting their targets and that's the extent of our -- but I think it's good to watch over their shoulders.
Q. As you said earlier, you agreed with the concept of oversight, right?
A. I think we practice it.

Q. Let me ask you, Dickie, if you folks as trustees not only serve as trustees but as operational people, such as CEO, CFO, COO, all of them, who has oversight over you?
A. Nobody. Us. Well, the government and --
Q. The government has oversight? They should have oversight, right?
A. They do. According to the new agreement, if I read the closing agreement, now we will have partners in the boardroom along with the Attorney General's Office.
Q. Why is that?
A. Well, because whatever actions we take, we have to notify them.
Q. What's wrong with that, Dickie?
A. This is a private trust. That's my take.
Q. No, but you take, you avail yourselves of the tax-exempt status, right?
A. Yes.
Q. We've agreed that's a very important reason why KSBE is as wealthy as it is, right?
A. I don't see any place else that I can put my finger on --
Q. That's what I'm saying.
A. -- where this is happening.

Q. Dickie, look, you avail yourself, KSBE avails itself of the tax-exempt status, and as a result of that, therefore the state as parens patriae has oversight responsibilities over you. You don't quarrel with that concept, do you?
A. No, the parens patriae always had control over us as parens patriae.
Q. And the federal government, because of the tax-exempt status, the IRS has oversight responsibilities over you also?
A. I hope they're not going to go to every boardroom of the 500,000 tax-exempt organizations with this kind of requirement.
Q. You mean remove the Trustees?
A. Yes.
Q. We talked about that.
A. I don't want to get into it, but if you take it to the end, I mean I don't know where this thing stops. That is a private, nonprofit, charitable educational, self-sustaining trust.
Now we're going to have -- they should be. The parens patriae was always there. It's just that I guess the administration, Attorney General felt compelled to do what she wanted to do, but that was her choice. She could have come in as parens

patriae, but she chose not to do that. And you gave me the reason. We went over all that. So I understand that.

What I'm trying to say -- this is Dickie Wong talking, okay? -- I have some strong feelings about issues, but these things like the CEO, I was just trying to bring it to your attention there was a great deal of discussion about it and how --

Q. We're going to talk about that probably first thing tomorrow morning. We're almost pau today. Let me cover one more area quickly.

A. I'm sorry.

Q. No, that's all right. It's relating to what we're talking about, because you've been talking about the will. It appears that you believe, and rightfully so, I think, that the will is the all important document that governs the actions of a trustee of KSBE? I mean it just goes without saying, right?

A. It's more than that. It's more than Trustees.

Q. It may be more, okay. We don't disagree. I think the point I'm trying to make at this point, Dickie, is that that will as a document was written in 1884 and then codicils, a couple of them were drafted subsequent to that.

Now, here we are in the 1990s, you know, over a hundred years later. You understand that that will has to be interpreted by others; am I correct?
A. Yes.
Q. And sometimes people disagree as to how that will ought to be interpreted; is that correct? Yes?
A. Yes.
Q. And there are those who keep referring to the will being broken. Every time someone suggests that an action ought to be taken a certain way, they say you're breaking the will, but you agree the will doesn't speak to every possible situation with which the Estate is faced, right?
A. That's true.
Q. And how do we decide then, I'm curious to know, how do we decide or who is to decide how that will ought to be interpreted?
A. I think it's going to be eventually decided in a court of law somewhere.
Q. And you have no quarrels with that concept, do you?
A. I have a quarrel, but that's what it's going to be.
Q. You would live with it, in other words?
A. Well, I think a will is sacred and it should

never be tampered with and that's my feeling. It's a will like there's a private person. I think that person wanted certain things to happen and I think the law and the people and society has to see that that occurs.

In the case of Pauahi, I think it was made in 1884, but I think her heart was in the right place. She wanted to keep this trust, and the way I look at it -- you know, when I look at the closing agreement and they talk about, you know --

Q. Spending policy?

A. Yeah. You know, the will to me is what I was charged when I swore in 1993, January or maybe prior to that when I was sworn in. That's what I have to stick with. Times may change, things may change, but I got to keep my focus on that will as it stood in 1984. Now I understand society has changed and rules change and it's probably going to happen some day. I hope not.

Q. But there were changes, Dickie, that you folks didn't agree with that you felt ought not to be made and therefore you fought these changes in some cases all the way up to the U.S. Supreme Court, right?

A. Yes.

Q. For example, that all teachers should be

Protestant, that issue was taken up to the United States Supreme Court, correct?
A. Correct.
Q. Selling the land, that was taken up, the lease-to-fee was taken all the way up to the Supreme Court?
A. Yes.
Q. But there are changes to the will, though, Dickie, that you have acquiesced in, haven't there, or you don't seem to be challenging?
A. What is that?
Q. How about co-education?
A. We did that.
Q. Don't you agree that her will provides for other than co-education? It says there shall be a school for boys and a school for girls, and when you were young, it was called Kamehameha School For Boys and Kamehameha School For Girls and they changed that to become a co-ed school?
A. And I think it's okay in the operational level in terms of the school, because she wanted to build separate schools and I don't think she envisioned that things would change.
Q. How do you know that, though, Dickie?
A. I got to believe that in the society in which

she lived in, there was a separation between men and women and I think her husband was Caucasian or from the mainland and he got a different viewpoint of how they were doing it on the mainland and I guess he suggested that that's what should be done and she said, "Yeah, why not."

But then after co-ed, it just mixed, Kamehameha Schools is still there. That was her thrust. And she even said in her codicil, "If you don't have enough money, you build a boys' school first. Whatever you got left over, then you build a girls' school."

So we knew where she was heading on the co-educational basis and there's going to be an argument on education whether it's co-educational versus separated kind is good or bad and I don't want to get into that, because I don't know.

Q. What about the matter of compensation? That never was mentioned in her will, was it?

A. No, I don't think she did that because she expected that when you pick trustees, I mean they weren't going to work for free.

Q. Where do you get that?

A. I don't get that anywhere.

Q. But you know the first trustees were never paid,

right?
A. Yeah, and I think that's how sometimes a trust starts off. It may start off very small and the trust has grown ever since then and there were laws passed to govern how you administer compensation to trustees, whether it was by law or by --
Q. State law?
A. State law, yeah.
Q. But that state law didn't necessarily focus only on KSBE, right?
A. It focused on everybody, foundations to trusts.
Q. Somebody must have decided or some group of people in their infinite wisdom must have decided, "Hey, there's this law we can get paid, let's pay ourselves," and they paid themselves, interpreting the will to allow that because the will doesn't speak to compensation in any way, right?
A. Absolutely.
Q. That is a changing of the will, isn't it?
A. It's a change from her time to where it is until finally something happened. Somewhere before Dickie Wong came aboard, they said they were entitled to get paid something. Whoever made that decision said, "We're going to pay something. We're making income. This is what we have. In order to get people to run

it, you got to hire certain guys and they will come and run the Trust."

Q. I'm not trying to make a joke or anything, Dickie, but do you believe that Princess Pauahi anticipated that a trustee would be paid a million dollars a year?

A. No, I don't think she ever dreamt that that day would happen. I think she was more interested in her people and providing an educational opportunity for them and I think that's the purpose of her Estate and the real trust purpose -- I mean, I remember coming to Bishop Estate even when I was in the legislature, who's the beneficiary of Bishop Estate.

Q. The other area of change, Dickie, is the mandatory or the agreed upon retirement age of 70, right? There's no normal rule to that extent, am I correct?

A. Yes.

Q. It's sort of like a gentleman's, gentlewoman's agreement when you were appointed that at age 70 you would step down, right?

A. Yes.

Q. Again, that's a change to the will, isn't it?

A. It's a change in the term of office of the trustees.

Q. Because it was supposed to be for life, right?
A. They were supposed to be for life, but like you said, those kind of provisions were to be changed over time, but it was made by the Supreme Court who decided to do that.
Q. I guess the point is, Dickie, how do we decide which ones should be changed over time and which ones shouldn't be changed over time?
A. I don't know. That's for the courts. And I'm sure what's happening today has just been accelerated and it's come to the forum, we'll have to face it, and I don't know what the future holds for the trust, but all I know is her will was very specific in how many trustees she wants, and you want to go argue compensation after that, fine.

It should be five. She wanted the selection to be done by the Supreme Court. That's what the will says, and as long as I'm a trustee, I have to defend that until the federal law or whatever laws in existence changes that.
Q. You understand that a will cannot compel the Hawaii Supreme Court to do anything, right?
A. Yeah, they can't. It was really on an individual basis and that's how they accepted the position. It was their community service.

Q. So that now at least four of these justices have decided not to do it?
A. Well, that's their --
Q. And that's their prerogative?
A. They act as an individual and not as justices, they can accept it or reject it, but I don't think that should break the will that other new people to the Supreme Court are not going to be bound by what these four people did. They may change their mind and come back and say, "No, we want to pick."

I mean, you guys are much better experts at the will. I just know the basic things of the will that what she envisioned was she wanted five people and she made that very clear. That's one thing.

She wanted the courts to pick it. Now that may not be clear. The guys excused themselves. They're out of it. Can one guy pick? I don't know, that's a legal question. One guy remains. The other four guys say no and then he's one of -- he's a Supreme Court member, but they say you got to be a majority.

Those are legal problems to be figured out in the future. I just know that the basic document of the will itself gives these kind of powers to the trustees. I think the way the CEO concept, that's my own opinion, goes contrary to this because I think the way the trust has been run, it's been hands-on for the past 10, 15 years.

MR. SATO: Are we pau for today?

MR. KAWASHIMA: Good time to take a break, Dickie. 9 o'clock.

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

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I, RICHARD S.H. WONG , do hereby certify that I have read the foregoing typewritten pages 1 through 216 , inclusive, and corrections, if any, were noted by me; and that same is now a true and correct transcript of my testimony.

Dated

RICHARD S.H. WONG

Signed before me this
day of , 19 .

STATE OF HAWAII)

) SS.

)

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

That on Wednesday, October 20 , 1999 , at 9:10 o'clock, a.m. , appeared before me RICHARD S.H. WONG, the witness whose testimony is contained herein, that prior to being examined, the witness was by me duly sworn or affirmed; that the proceedings were taken 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;

That the witness, if applicable, was notified through Counsel, by mail, or by telephone to appear and sign; that if the transcription is not signed, either the reading and signing were waived by the witness and all parties, or the witness has failed to appear and the original is therefore kept on file without signature pursuant to Court rules.

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
Notary Public, State of Hawaii
My Commission Expires: March 16, 2001