IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

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

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 Thursday, October 21, 1999, pursuant to Notice.

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

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Memorandum dated 10/14/95 from J. Waihee, D. Dwyer, N. Wong to The Trustees

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Memorandum dated 11/13/95 from Dickie Wong to Senator Akaka

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Post-Veto Intermediate Sanctions Study

Deposition Exhibit No. 71 324
Memorandum dated 11/22/95 from Denis Dwyer to Bernhard, etc.

Deposition Exhibit No. 75 324
Memorandum dated 5/15/96 from N. Wong to R. Wong

(Disclosure made available to all counsel.)

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MR. KAWASHIMA: Glenn, did you folks consider what you're going to do on the privilege issue or taking the Fifth, I should say, on questions relating to at least some of the documents that I marked yesterday and there may be more? There are going to be more. What is your position on that, if you can tell me?

MR. SATO: As far as the documents you marked yesterday, you can examine him on that in terms of those documents, but in a broader area, we're going to instruct him not to answer based upon the Fifth Amendment right out of an abundance of caution.

We don't see anything right now, but it's such an important matter that I don't want to waive something, and I'm not his criminal lawyer in addition. So we're going to do that for now.

MR. KAWASHIMA: Anyway, maybe what we can do, Glenn, is as we go along, as I ask him questions, then you can take your position on instructing him not to answer based on the Fifth Amendment.

MR. SATO: That's fine.

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 previously sworn to tell the truth, the whole truth, and nothing but the truth, was examined and testified as follows:

EXAMINATION (Continuing)

BY MR. KAWASHIMA:

Q. Dickie, let me ask you this question based on a number of questions I asked you yesterday and answers you gave me. We essentially agreed yesterday that this controversy that's happening is not good for the Estate and for the schools, right?

A. Yes.

Q. And we also agreed that if it could end and then the schools could go on with its life and the Estate could go on with its life that it would be better for everybody?

A. Yes.

Q. The question I would ask you, Dickie, is, in light of that, our recognition of that -- and if we might set aside for the moment how we got here, in other words, who caused it, who's at fault, that kind of stuff, let's set that aside -- the question I would ask you is, how would it be in the best interests of KSBE for you, Richard Wong, to remain in this case or not resign, I should say? How would it be in the Estate's best interests for you to pursue this litigation and not resign?

A. Well, I think when I accepted the position of Trustee, I took an oath to defend the will itself. I think there are certain areas in there that I think some of the charges addressed it to, about our breach of fiduciary duty and our breach of loyalty to the Trust, and that's where I have my problem with this. There might be a difference of opinion, but basically that's where I'm coming from.

What's out there is out there and, like you said, what happened in the past is the past. We got to look forward to how we protect the institution and I really feel sincerely I have a duty to protect the Princess's will and some of the suggestions being made to me goes contrary to the will. That's where I'm coming from.

Q. But you've seen instances in the past where there have been changes, shall we call it, that you may not have agreed with, but were enacted primarily because the court approved them, right, changes? Such as, for example, hiring teachers from

non-Protestant denominations, you've seen that happen, right?
A. Yes, and that happened during my time, but prior to that, the will had not been approached in any manner. But during that time, that was a case of a French teacher who called and wanted a job and she said, "Are there any restrictions or conditions?"
They said, "Yes, you must be Protestant."
On that basis, she went to the EEOC and she got a ruling from the EEOC that was discriminatory and I think that practice is no longer continued at the school. And I think it's something that happened on my watch, but up to my watch, that was the first instance where a ruling was made in that manner.
And I think changes will occur, whether they occur with the new trustees, they got to deal with it, but I'm stuck with the will as it was proposed in 1884 and that's what I came in to understand when I became a Trustee. So that's where I'm coming from and I take exception to some of the suggestions being made.
Q. However, if a court of law should decide that there should be changes to the will, even if you were on watch, you would have accepted them, right?
A. Yes, I would, but.

Q. That's what might happen here, though. The Court might make rulings and you may not agree with them and you can actually register your objections to them, but the Court may make rulings as to changes to practices that have been ongoing for many years and we'd all have to accept that, right?
A. I don't know if I would accept it if I'm still on, but for now, I'm out. So I have no role in the Trust, because I've been interimly removed until the year 2000 and so I'm not there.

Whatever is put in place, whether it be new trustees or not, they will have to deal with the issue, but as for Dickie Wong, I'm kind of stuck on the will as it was proposed in 1884 with the exception of the fact that teachers be of the Protestant religion, which has been changed on my watch. And the law to me is the law and they've done it. Quite frankly, I think it's the first estate, but that's only my opinion.
Q. When you say you are not a trustee now and you've been temporarily removed, but even if you were a trustee, even if you were at the present time today a sitting trustee, if a court of law would rule in a way that even though you believed it was a change to the will, you'd accept it, right?

A. Yeah, I think it would go through the procedure of appealing it and that process, and at the end of the road, if whatever that level of court is and they make a ruling and it stands, then I don't think you have any choice, but I don't have to stay there --

I'm not there, first of all, to fight it. I would have approached this matter differently if I were still a remaining trustee. And the Interim Trustees were brought in as receivers. I can understand that. We're out and they're going to clean up the business and they're going to protect the will and do all these kinds of things.

Q. Really, who knows whether or not these changes would be for the betterment of the Estate or not?

A. I have no idea myself.

Q. Am I to understand then, Dickie, as far as the question I started with, a long question, but the bottom line was how does it help the Estate for you not to resign, and your answer I think is you need to be there to protect the will? Is that your answer? You, Dickie; not the Estate now.

A. No, I think my duty is to protect the will.

Q. That's why you feel that you have to attempt to get back into office rather than resigning, assuming you were the last person?

A. But that will be decided in a court of law on December the 13th whether you're permanently removed and you certainly have the remedies to appeal it, the decision of whatever the court says, but up until then, I just feel that that's my job, is to carry out what the intent and purpose of that will was, at least to bring the intent.

If any changes are made, at least it keeps it within the intent of what the Princess said, the closest to that. Whether it be selection or anything else, you just kind of got to be close to that line, and when I see something like that happen, then I might feel differently.

Q. Can you find Exhibit 35, Dickie. We were talking about it yesterday. Page 13. I think you might be there already. On that page, at least stipulation No. 14 starts.

We established yesterday that this stipulation and order filed on October 7, 1998 was signed by Bruce Graham on behalf of yourself, Lokelani Lindsey, Gerry Jervis and Henry Peters; is that correct?

A. That's correct.

Q. And I think I misspoke yesterday. I included Trustee Stender in that. It appears that actually Crystal Rose signed on behalf of Mr. Stender. Do you

see that?
A. Yes.
Q. Now, we also established that Bruce had the authority to sign this document, certainly had your authority and to your understanding the authority of Mr. Peters, Ms. Lindsey and Mr. Jervis, right?
A. That's correct.
Q. Now, one of the areas to which you stipulated to was stipulation No. 14 entitled a New CEO based Management System Shall Be Instituted, and the first sentence or first paragraph also reads, "The Trustees shall cease to employ the 'lead trustee' system of management administering the Trust Estate."
Again, this is the same concept we were talking about earlier. You agree not to follow that concept any further, right?
A. Yes.
Q. Then it goes on to talk about, "The Trustees shall adopt and implement a CEO based system of management for the Trust Estate consistent with the concept recommended in the Anderson Report and hire a CEO within 180 days after the date on which the Court enters its order approving this stipulation."
Do you see that?
A. That's correct.

Q. And it goes on. We don't need to necessarily go on at this point.

Although you authorized Bruce to sign this stipulation, specifically stipulation No. 14, approving that, you still have quarrels with this concept of having a CEO-based management system, don't you?

A. Yes.

Q. And that's because in your mind, as you interpret the will, the Princess wanted you, the trustees, to do the managing, not just the policy-making?

A. Yes.

Q. So that you folks -- "you folks" meaning you and Henry and Lokelani and maybe Gerry, I'm not sure if he was involved -- had real problems trying to implement stipulation No. 14 subsequent to October 2nd, 1998; is that correct?

A. Yes, I believe so.

Q. There was much discussion amongst yourselves at meetings; is that correct?

A. Yes.

Q. There were arguments -- there were differences of opinion; is that correct?

A. Yes.

Q. But bottom line you knew that at some point in time, 180 days after the date of that order, you had stipulated that you would do a certain thing and that is to hire a CEO; is that correct?
A. Yes.
Q. And you understood, though, we can go over it specifically, Dickie, but there was a certain process you needed to follow to hire the CEO, right?
A. Yes.
Q. And you had to get input from the Master and the Attorney General, right?
A. That's correct.
Q. All before you even hired someone?
A. And also to make a search for one.
Q. That's right. I'm not sure this stipulation mentions a search, but certainly you people rightfully decided that you would retain what you called them, you called them headhunters, but a consultant to assist you, a national consultant to assist you in finding a CEO and hiring one, right?
A. That's correct.
Q. Which company was this?
A. I've forgotten the name. It was a national company.
Q. Kornferry?

A. Kornferry.
Q. K-o-r-n, Kornferry. You actually retained them?
A. Yes, I did.
Q. Did they actually come up with recommendations?
A. No, I think we left that to Rodney Park. We didn't know what the timetable was.
Q. I see.
A. And there was some sense of urgency to do that.
Q. I believe the 180 days ended in April of 1999, early April?
A. Yeah, it could have been, yeah.
Q. Is it correct, Dickie, that after the passage of 180 days after October 2nd, 1998, you still had not hired a CEO?
A. Yeah. You know, maybe, Doug, just -- the answer is a short answer. There was some discussion with Mr. Graham of the firm of Ashford & Wriston and there was talk about extending the time to allow us to do this and that we went on. And, I guess, it was my take, that there was some assurance that the Master would be receptive to that.
However, after time had passed, we got word that the Master said no and that caused a problem for us. We thought -- we were given the impression that there was some kind of tentative agreement that the time

would be granted and that never occurred. For whatever the reason, the Master decided no, he was going to stick to the stipulation.
Q. Who gave you that impression, that there was a tentative --
A. Bruce Graham.
Q. And Mr. Graham gave you the impression that he had a tentative agreement with whom?
A. With Mr. Matsumoto, the Master, but, you know, the call was on the Master and they would file a petition to ask for that extension and the Master decided not to do that.
Q. Mr. Graham told you that he believed he could get an extension of time for you folks to hire a CEO?
A. He kind of suggested that the Master was kind of open, you know, on trying to understand what was being done, but for some reason the Master decided he wanted to go with the timetable.
Q. You understood that there were no guaranties?
A. Oh, no, no, we understood that, but, you know, the clock was ticking and we had these discussions.
Q. In fact, like, for example, Henry Peters felt even stronger than you about this issue of hiring a CEO, right?
A. I think it was more about process, about you

know what comes first, the chicken or the egg. I mean, do you have a plan, and when you fit the plan, then you know what the duties and responsibilities of the CEO are.

I don't think anybody gave thought to the idea that's being proposed today, that the CEO be the guy that does all the due diligence and the stuff and bring it to the Board and the Board would say something. I mean, that's a suggestion being made by the Interim Trustees in terms of what their concept of the CEO.

Q. You didn't understand the concept to be that type of concept?

A. Oh, no, because I think the Princess was very clear that three to make decisions on all decisions.

Q. That's right.

A. You needed three people, and up until now, it's been a hands-on trust and, like I said, it's -- I don't think any trust of this size runs the way the KSBE runs. I mean 80, 90 times a year we meet. So hands-on, very hands-on.

Q. I understand that, but you're saying that there aren't trust organizations like KSBE?

A. I don't know of one that meets that often.

Q. I understand that, but you would agree all other trusts that you're aware of, foundations, charitable organizations such as KSBE operate with a CEO-based system?

A. Yeah, but, you know, Harvard is also a trust and Harvard has a Board of Trustees which set policy, but they also have an asset management company which does all of their investments and they work it out.

So the exception, what I'm talking about is in terms of the Trustees getting involved in operations. I mean, we're there five days a week and we meet twice a week and I think the average must be about 85 times a year that we meet, from the time I've been a trustee, anyway.

Q. But that's because of the manner in which you have chose to conduct your business?

A. Yes, because I think -- I would think that was our duty, to look over everything and to get up-to-date reports on every meeting by asking our key people, you know, is there something that we should know about, because I'm kind of worried about this investment over here or that thing and just to update us.

It wasn't something that they had to put in writing. They just merely reported what was happening in the school, what's happening with asset management and legal, what's happening over there. They report to us and we get these kind of reports.

That was the way the Trust was run since the day I came. Meetings were held every Tuesday and Thursday. Some Trustees could make it, some Trustees couldn't. Decisions were withheld. We had to have a quorum to start those meetings, anyway.

We were very hands-on and that's what I thought the Trust was doing prior to when I came. I don't know that for a fact, but they met on a regular basis.

And I think we had a good snapshot of the Estate and Royal Hawaiian was brought up when we needed them to explain to us. They would report, I think, quarterly to us about the activities of the nonprofit, but only reporting. And that's how we got information and the Trustees based on that carried out the regular function of investing and that's what we did.

Q. I'm not aware of what exactly, how the prior Trustees even back to the very first ones functioned, but, Dickie, you would agree that KSBE, the Estate, when it came into being on the passing of Princess Pauahi, the Trustees such as Charles Reid Bishop were faced with quite a different task than the trustees

today are faced with, right?
A. That may be true. The Estate is certainly different than it was in Pauahi's time.
Q. Probably a lot more complex?
A. Oh, very complex.
Q. And with times changing, things becoming more complex, you ought to look at the Trust and consider how you ought to be doing your business?
A. Sure.
Q. And one of the ways you might do that is to look at whether or not a CEO-based management system would be better for the Estate?
A. Yes, and I think the concept was you can have a CEO. I think you can put a CEO in place who reports back to the Board, but knowing the makeup of the Board, even before I came, it was very hands-on kind of stuff and I think over time it may change.

The changes have come much more rapidly than I would have anticipated in the Trust and just kind of caught everybody off-guard. For five years we were under the system of hands-on, kind of take a look at everything, get reports on a timely basis.
Q. Your way of conducting business, though, your understanding of the way you felt you were compelled by the will to conduct business, being hands-on as a

trustee, would then require you, for example, to be involved in hiring an employee for the art department, for example?

A. No.

Q. No? Why not?

A. Well, we leave that to the responsibilities of the respective PE's and they come with requests of personnel requirements and then it's in a budget that is presented.

We have an annual budget that's about three volumes thick and we go over that and we go over with each department and we finalize the budget. And we tell them what are your needs, what are your projected needs, and based on that, Trustees make decisions.

I guess the story of Henry Peters -- and again my lawyer is going to scold me -- when Henry first came in, the budget was about a five-page document and he told the Trustees at that time, "How can you guys know what's going on if it's only five pages?"

So as a result of that meeting in the '80s, when I came to Bishop Estate, there were volumes like the legislature. It's almost like line item.

And at the time I became chairman, I made it a point that we go through every department and then you say what you want to say and, "Trustees, do you agree or disagree?"

And so that's how the budget format was handled in the last three years at Bishop. And I don't think they were looking for who you going to hire. You just tell us what the needs of that particular department is and we'll say yes or no. That's all.

Q. If I were to tell you that President Chun, Dr. Chun, if he were to testify, would testify that based on past practices with the former Trustees, of which you are one, that he believed that before hiring a person for the art department he would have to come to the Board to get approval for that?

A. That's only if the item was not a budgetary item, because we meet on a regular basis. We told all the PE's, "There should be no need to wait for six or eight months. If you want somebody, we meet every Tuesday and Thursday and you can come in and ask for it."

And that was the standard practice at least when I was chairman, is that you afford the department as things change and situations change and we meet every week so we can take it up. We can take up supplemental budgets that you need extra money to go take an excursion and it's not in the budget that was submitted, you know, come talk to us.

We've done it. Trips to Rapa Nui and these kind of things which were not budgeted was brought back to the Board. "We've been invited to do this, invited to do this." The Trustees take a look at it and say it's okay, we vote yea or nay.

There weren't too many requests that were denied when they brought in that situation, but we didn't want them coming on a regular basis. You have to do planning way ahead of time and nobody can project, predict the future.

So we met every, twice every week. So any department who had a problem with an art director or a CPA, "You bring it to us and you tell us 'I need this position because of this, this, this." The Trustees will look it over. They say it's okay, it's done. And next year, put it in the budget and when you make the budget submittal, the position is covered."

And there's always contingencies. I mean, you don't expect an organization like KSBE -- I mean, it's huge. It's just huge.

So we have to rely on our people to do the best projection and it's a guesstimate at best, and if something comes up that's out of the ordinary, not budgeted, bring it back to us, because we're there Tuesdays and Thursday. There's at least three Trustees there every Tuesday and Thursday that we meet.

And we seldom missed a meeting. We seldom canceled a meeting. In fact, it was a practice everybody would be there. Whether or not people came early or late, that's a problem we had.

Q. There were always three Trustees, there had to be three Trustees, otherwise you couldn't have a meeting, right?

A. (Witness nodding head.)

Q. You have to answer "yes".

A. Yes.

Q. What I hear you saying or testifying to, though, Dickie, is that there are some responsibilities that you feel that you as a trustee can delegate to others, right?

A. Yes.

Q. Where do you draw the line as to what you can delegate and what you cannot as far as how you conducted yourself as a trustee?

A. We had people who are responsible for a unit in the KSBE family. They carry the burden of making the presentation and they have an opportunity. All know that we are available and there should be no problem with bringing up a problem to us and then the Trustees make their decision.

And I would say most of the time the requests were granted because the rationale was good, the reasoning was good and sometimes we said no. So I think we tried to balance that.

Our major problem in the Estate is that's operational, we understand that, but we've delegated a responsibility for you to be in charge of that particular unit and therefore you know the needs of that unit and things change. We don't work in the office. We don't know what's going on. Volume may increase, this may happen.

And, you know, that's understandable, but there is a mechanism that's in place with all of the operating departments that if it's not budgeted, come see us. If you can get internal savings and you can cover that, cover that with a notation, because we have variance reports on a quarterly basis that tells us what that budgetary budget was and what the expenditures were, and if they went over and they had to get something, they came back to the Trustees. They asked the Trustees for permission. If they could transfer funds from other kinds of sources to make -- as long as we noted that, they were free to do it.

But the variance reports were produced every quarter, so there was kind of a look-see. Each Trustee had it. Nobody else had those variance reports and so we could tell. And, you know, you don't really get down to the nitty-gritty things. The big items are the ones that concern us.

Like I said, I can't recall too many requests that we turned down. In fact, most of the them that were made were legitimate and justified and the Trustees felt that way and so we said, "Okay, go do it, but make sure next time you come in the budget to the best of your ability. Try to project what the needs would be for that particular group."

Q. Understanding what you feel about a true CEO-based system, what your philosophy is about that, what your belief is as to whether or not the will would allow it or not, notwithstanding that, if we were to insert within the system you had when you were there a CEO that would report to the Trustees, but then that CEO would be responsible for all the different areas such as education -- and Dr. Chun would be heading education, Dr. Chun would report to the CEO. Asset management, Rodney Park?

A. Rodney, yeah. Rodney is administration.
Q. Administration. Who is asset management?
A. Asset management is Randall Chang.
Q. Those two gentlemen, Mr. Park and Mr. Chang, would also report to the CEO, not to you folks.
Now if that were the case, understanding your understanding of the structure at KSBE, the complexity of the organization and its business, understanding all that, if that system were in place, you would agree that you probably wouldn't have to be a full-time trustee, would you? Understanding your feeling about the will, you would not have to be a full-time trustee?
A. Yeah, I would think that we would be heading in that direction and that one CEO would report to the Trustees. And I think it would be good system, but as I mentioned, Mr. Kawashima, the practice was hands-on.
Whether or not that's good or bad, we can debate that all year, but Trustees just -- I don't know how they feel. I really don't. I know how I feel. I feel I make the decisions. The Princess said, "You three guys to do -- you do it all, literally. You do it all. You can invest, you can sell, you can buy, you can exchange, you can lease."

These powers are very implied in the will, that this is a responsibility of the Trustees. At that time, they weren't thinking about a CEO and CFO and a COO. That's for sure.

Q. That concept probably was not in existence in 1984?

A. It wasn't around, but I assume that literally we still have to follow that will, and when something comes in that we may disagree on this issue -- and this issue was a split issue on the CEO.

Q. When you say "split issue"?

A. The Trustees, two people said we ought to have the thing; three people said no. If I understand the will correctly, all decisions are made from a majority of three. In order to do anything for the Estate, you have to have three people.

Now having said that, it doesn't stop the Master from doing what he's doing. Whether we agreed or we signed the stipulation or not -- I guess it was commented and I can't attribute it to anybody. The comment in the Estate during the time was what Colbert wants, Colbert gets.

And that was the tone and whether it was real or imagined or for real, that was the pervasive opinion, that whatever Colbert wanted, Colbert got. So whether you guys sign this thing or you don't sign this, you agree or disagree, he's going to take it to court and the chances are it will be approved.

So with that kind of condition, I mean, you can go the perfunctory thing and you can have your arguments, I wish we had more time, and then bring him in and say, "Colbert, what is it you're looking at" and maybe the concept you suggested that CEO would be this guy that would coordinate asset management and coordinate administration and then report to the Trustees, there may be a different take.

But I guess his consultants, Arthur Andersen, made recommendations and they took it to a direction that at least I'm concerned where I didn't want to go.

And so based on that, that was the pervasive thinking even among -- I don't know, you can poll them. I should speak for myself, that basically the Master had good relationships with the Court and he could pretty much write his own script, because if we said "no" to everything, he would just file the report anyway and then that would be up to a judge or the Court to say yea or nay.

And it was a reality that the Trustees had to look at. That's why I got to tell you about the CEO. We were a little encouraged by the fact that there was dialogue going on to try and get the Master to give us a little bit more time.

Unfortunately, he decided, "Well, I've given you guys enough time" or whatever the rationale and he said, "Okay, I'm going to do it anyway, so it's up to you guys."

So the signatures you see here, yes, is for lack of a better word, it's going to happen. So do you want to be part of it or do you want to say no and in violation of -- you know, the courts probably will rule that this is okay and that's the reality and I've been around town a long time and reality is reality and you do the best you can on the situation. You may not agree, but this is what was adopted by the Court, approved by the Court and it's all there.

Q. Dickie, though, approved by the Court because the Court believed that you stipulated to it, you as Trustee?

A. Yeah, and again I have to explain the condition. Whether we think it's right or wrong, Mr. Kawashima, the fact of the matter was that whether or not we stipulated yes or no, he would file his report anyway, and that's his job, what he thinks is in the

best interest of the Trust. "If you guys don't want to sign off, I'm going to file it anyway."
Q. You signed this voluntarily, though, didn't you?
A. Yes.
Q. You also understand you did have the right to have the Court rule on the issue rather than stipulating and agreeing, right?
A. Yes.
Q. I mean, you've done that before?
A. Yes.
Q. You've gone all the way to the U.S. Supreme Court on some issues?
A. Oh, yeah.
Q. You know you can avail yourself of the court system and you have the right to appeal. However, I understand your explanation, Dickie, but you voluntarily entered into this stipulation?
A. The answer is yes.
Q. And you talked about talking to Colbert before that point in time when, as you say, Mr. Graham informed you that he believed that he could get more time from the Master. Did you invite the Master to come and discuss this concept with you?
A. No, we did not, because Bruce really handled most of the negotiations for us, because he

represented Bishop Estate.

Q. But I heard you say earlier that you were encouraged because you felt you could have a dialogue with the Master on the issue?

A. Yeah, but.

Q. Did you ever invite him to come and have that dialogue?

A. No, we did not, because when the recommendation came and to stipulate to that recommendation, I mean we would have liked to have the Master come and talk to us, but Bruce Graham was doing the negotiations, whatever you do with the Master, and he was trying to get that done without Colbert coming.

I would think that was Bruce's approach, because the Master, in all fairness to him, he's always said, "You guys want to talk to me, you talk to me."

A couple of times I called him on things and, you know, we have a right to disagree and, you know, and that was -- he was open to us.

Q. Part of the problem, Dickie, in terms of this one concept, CEO-based management system, as to why you probably could not or did not comply with the stipulated order was amongst yourselves you had difficulty accepting the concept and amongst yourselves coming to a consensus as to what exactly that concept meant, right?

A. I think that's a correct statement, yes.

Q. And that's kind of what took you folks so long?

A. Yeah, and, you know, the controversy itself, when you talk about the controversy, there were a lot of things going on outside of these reports that was happening in the community and I don't think the total concentration of the Board was just on this, because this was something the Master proposed and -- I shouldn't speak for the other Trustees.

To me, I think there's some credence to the fact that if Colbert recommended something, the probability is the Court would approve it.

So, you know, that's my take and I don't speak for anybody else. And I was resigned to that, but, you know, you can agree to something and, Dickie, whether you sign it or not, I shouldn't be a fatalist because I'm usually an optimist, but it was -- the atmosphere was not conducive to us doing anything, fighting in Court and I can imagine the headlines the next morning, "The Trustees disobeyed" or whatever, whatever.

Q. So you never got to the point, Dickie, where as was stipulated and ordered in this stipulated order that you sought comment from the Master and Attorney

General regarding the CEO-based management system and a formal governance policy? You never actually got to that point before the passage of 180 days, right?
A. No, I think that's correct. I think attempts were made, but whether or not they were successful or not, I have no idea.
Q. But notwithstanding all of that, though, you were aware that there was this court-imposed and stipulated-to requirement that there be or a CEO be hired within 180 days from October 2nd, 1998?
A. Yes.
Q. And that requirement was not met?
A. We did not meet the requirement and.
Q. After the passage of 180 days, there was an Order to Show Cause that was served on the Trustees ordering them to appear on May 7th, 1999 to answer to a number of areas, right?
A. Yes.
Q. One of the areas was as to why you had not hired a CEO, and the Board then took action in, for lack of a better term, hiring Gilbert Tam, Gil Tam who at that time was a senior executive with the Bank of Hawaii, and still is, I guess?
A. That's correct.
Q. How did that happen? What process did you folks

follow to hire Tam?
A. I guess the attempt was at least to show that, you know, we were going to have somebody in place, whether or not Gilbert remained there or not. And I didn't do the negotiations with Gil to get him aboard, anyway.
Q. Who did it?
A. I don't know. I really don't know.
Q. Really?
A. Yeah.
Q. One of you folks did?
A. Yeah, well, it could have been anybody. It could have been Bruce, it could have been Henry. It could have been --
Q. Loke?
A. Anybody else. No, I don't know about Loke. You know, I don't know.
Q. You left it to --
A. Gil Tam came in and was brought into the boardroom and my understanding there was an assenting vote on it and Gil Tam's name was recommended.
Q. You knew Gil Tam very well, quite well by that time?
A. I knew Gil well because -- and he was there when I came and I dealt with him a lot on administrative

things.
Q. He was with the Estate for quite a few years before he left to go to the Bank of Hawaii?
A. Yes.
Q. Quite knowledgeable about the affairs of the Estate?
A. We hated to lose him, but that was his decision to leave.
Q. And he was gone for how many years prior to May 6th, 1999?
A. Oh, Gil must have been gone for about two years, two-and-a-half years.
Q. Was it your understanding, Dickie, then the attempted hiring of Gil Tam was to attempt to comply with the stipulated order entered into on October 2, 1998?
A. For me, yes.
Q. My connections or contacts, I should say, with Gil Tam would result in my telling you that he's a very qualified, very intelligent, experienced-in-business type of person, but was he even interviewed for the job?
A. I think no. I think the name just came up.
Q. Somebody talked to him, somebody negotiated it, the name came up, you folks voted on it?

A. Right.
Q. In the course of answering some questions some minutes ago, you talked about the voting amongst the Trustees, that three Trustees are the majority, a quorum, would have to agree on any matter that the Trustees has to act on, right?
A. Yes.
Q. In fact, for the last two years, perhaps many of your decisions or I should say the decisions of the Board of Trustees were made on that basis of a three-to-two vote; is that correct?
A. Yes.
Q. In your mind, Dickie, is there a concept where a trustee such as yourself for an organization such as KSBE ought to have a collegial atmosphere?
A. Absolutely.
Q. And try to agree on everything?
A. Absolutely.
Q. At least by consensus agree so that hopefully all decisions are unanimous?
A. Yes.
Q. And not necessarily giving up your philosophies or your beliefs?
A. Yes.
Q. But trying to talk it out, agree and come to a

consensus and hopefully vote by acclamation so that there is no dissent?

A. Yes.

Q. But for two years, you folks couldn't do that, though; is that correct?

A. That's correct.

Q. Would you agree that that's not a good situation to have, where you have a Board of Trustees with as much responsibilities as you people were vested with to vote three-to-two every time a decision came up?

A. Yes, but in the context, two people were opposed to -- they were part of the controversy and they decided to go a different path than the majority of the Trustees and that is Trustees Stender and Jervis.

And on business matters, you would not believe, that's where unanimous consensus was arrived at in I would say 95 percent of the time. It was only on the legal side that there was a difficulty with the Trustees and that's why the entity theory began to creep up and all these kind of other things and there were two there and three here.

And I would say what caused that inability to bring consensus was more on the legal side and on the controversy. In those issues, there was very hard positions taken, but on all the issues pertaining to investments, to operations, to everything else, it was okay, and that includes the school too.

And so you have to separate that, Mr. Kawashima, in the context. I don't want to leave the impression that we never attempted to get consensus. I would say on all matters outside of the legal side, we had consensus in almost 95, 96 percent of the time. That's just a number I'm throwing out, but it was very high.

So there was no disagreement on what we were doing on that side, but there were huge differences on what the legal side was producing, and that's what was happening in the boardroom and that caused this three-two to be so pronounced. And when we came to the legal matter whether you should file or whether you should oppose this, whether you should go for it, this is where the area that we had the most difficulty.

And there were conversations that I had with both Oz and Gerry and tried to get them to say, hey, look, can we work something out that we can agree to it and I was unsuccessful. I thought there would be some success, but the legal thing was tied up with what was happening outside of the Estate; not internally, but externally. So I just want to give

that explanation.
Q. I understand. From the beginning, though, would you agree that one of the primary sticking points that made it difficult to agree on these legal issues had to do with Lokelani Lindsey and how she was conducting herself or not conducting herself at the schools?
A. I don't know if that, that was it, but this split came when one of the Trustees decided to go public and that caused a great deal of problems for the Estate. It had never been done before. And I guess we had a difficult time in coping with that in terms of what should we do and the rest is history, I mean.
Q. But you agree that the Trustee who decided to go public in his heart believed that that was his responsibility --
A. Yeah.
Q. -- to the Princess?
A. I don't fault him for doing that, but when I came aboard, I was told just basically that everything that's in the boardroom stays in the boardroom. We have a duty to do that, to protect the Trust.
One Trustee may have felt more the principle

aspect is much more involved and I don't fault him, but still yet, I think the boardroom was a congenial place where we could have our differences and yell and scream, but in the end, consensus was the mode.

And after that, the rest is history in what happened and it's sad, but whatever little skills I had was try to keep the thing there and you wash your laundry in your own house, that kind of philosophy.

So in answer to your question, yeah, the Trustee probably felt that, you know, that's what he had to do and the rest is history.

Q. Speaking of, and I know you didn't mean it that way, I'm just using it to ask you some other questions, but when you say yelling and screaming, would you agree that it is important that persons in a position as would be a trustee of Kamehameha Schools/Bishop Estate ought to treat people with dignity?

A. Yes.

Q. And not yell and scream at people?

A. Yes.

Q. Especially people who work for them?

A. Yes.

Q. Would you agree that Henry Peters as far as his conduct in the boardroom was not complying with that,

with what we just described?
A. Well, Henry is a very emotional person and all the instances that I've seen him do this, there's always been a period of time where he reflects on it, calls the person in and apologizes.
And even among the Trustees, when there were difficult times for the Trustees, I mean they would get together afterwards, talk story and I think -- I'm not vouching or trying to defend Henry. Henry has always been a very independent person in terms of his thinking. Even when he was in the legislature, you know, he was a tough guy, and he ran his shop the way he felt would be in the best interests of the shop.
He was a tough person. He's like that. He's vocal and he's not afraid to say what he feels. And we all differ in how we approach people.
Q. In fact, Dickie, there were times when Henry treated fellow Trustees in the manner we just described?
A. Yeah, I think he did. Sometimes I'd disagreed with him and he's yelled at me too, but I'll yell back at him and we'll sit down and talk story. It happens. I mean, personalities are very strong at the Estate. And Henry was a strong personality,

Lokelani was a strong personality. Oz was certainly a strong personality and so was Trustee Jervis. These guys are not "follow what I tell you" guys.
Q. I understand that, but none of these guys, including yourself, other than Henry, would attempt to intimidate, physically intimidate others, right?
A. Well, it happened, but, you know, it was resolved.
Q. I understand that, but you don't disagree with me that there were times, more than a few times where you saw Henry attempted to physically intimidate other Trustees and employees?
A. I don't know about Trustees. With me, I know we've had our differences and certainly he's had his differences with other Trustees.
Q. I guess the question I asked you, Dickie, is in light of the responsibilities with which a trustee of KSBE would be vested, would you agree that the manner in which Henry was cavorting himself in terms of physically intimidating others, yelling, screaming, albeit after a period of time regretting that, would you agree that is not the way a trustee of KSBE ought to act?
A. Yeah, I may not agree. That's not my style. Everybody has a difference in their style of how they

deal with people, but in defense of Henry, I think Henry has done well for this estate on the financial side. He was a tough negotiator and he did well for this estate.

How he treats people is an individual thing and he should know better, but, you know, I'm different than Henry and Loke is different than Henry and me and we have all individual personalities.

Each of us handled the situation of respect for other people in different ways. Some people think it's better to be feared than loved, other people want to be loved. I don't know what the reasons are, but, you know, all I could say about Henry Peters is that Henry Peters, I mean he's a hell of an assets management guy and there was a big vacuum when Masi Takabuki left the Estate in terms of knowledge and ability.

MR. KAWASHIMA: Let's take a break.

(Brief recess.)

BY MR. KAWASHIMA:

Q. One last thing before we leave this area of that stipulation, Dickie, stipulation No. 14 of the stipulated order entered on October 2nd, 1998.

You mentioned Arthur Andersen. They were the national accounting firm that had been retained by

the Master Colbert Matsumoto to assist him, right?
A. Yes.
Q. And they submitted a report that they gave to the Trustees; is that correct?
A. Yes.
Q. And in that report, they did describe a concept relating to the CEO-based system of management; is that correct?
A. Yes.
Q. That was the concept that you had stipulated to implement within 180 days after October 2nd, 1998; that was the system we were talking about, the one that was contained within the Arthur Andersen report?
A. Yes.
Q. You testified yesterday about the governmental relations department that was I guess headed, maybe is a term I want to use, by Namlyn Snow?
A. Yes.
Q. You also testified that she interfaced with all of the Trustees in the course of doing her work?
A. I would think she would do that.
Q. That's what you noticed, anyway? Observed, I should say.
A. Yes.
Q. She worked more, though, directly with Henry

Peters than any of the other Trustees?
A. I would say yes.
Q. Even though you were the trustee, the lead trustee for governmental relations?
A. That's correct.
Q. As far as the work that Nam did, I assume you people considered her to be a competent person in the work that she did?
A. Yes.
Q. I'm not suggesting this was the case, Dickie, but as far as how she conducted her business, she only did what she was authorized to do by the Trustees? Would you agree with that?
A. Yes.
Q. I mean what I'm asking is, was there any instance that you were aware of where one or more of the Trustees, again I'm not suggesting it happened, but said that Nam did something that they had not authorized? That never happened, right?
A. Not to my knowledge.
Q. From your knowledge of her, she is a type of person that would only do what her superior or her employer authorized her to do?
A. Yes.
Q. Earlier in the last two years, there were names

brought up as to legislators who were, the claim was, close to or employed by KSBE. Generally, you recall that, people like Terry Tom, Barbara Pease, right?
A. Yes.
Q. Actually, the ones who actually -- the ones that were discussed that were actually under the employment in some fashion, whether it be an actual direct employee or being an independent contractor or consultant, whatever it might be, which of those people were actually employed by KSBE?
A. Senator Holt and Bob Herkes.
Q. Now, how about Senator Tom or was it Representative Tom?
A. Terrance Tom?
Q. Yes.
A. Yes, I believe he was an independent contractor.
Q. Reb Bellinger, was he in any way related to KSBE?
A. Gee, I don't know about Reb. He may have, I don't know.
Q. How about Billy Swain from Kauai? I think Kauai. I may be wrong.
A. Billy is -- maybe his family may work for Kamehameha. I don't know. He's a graduate of Kamehameha, though.

Q. Donna Ikeda, Senator Ikeda?
A. Not that I know of.
Q. Joe Souki?
A. No.
Q. His name came up somewhere, though.
A. It came up with, I believe, something that happened on Maui with a contractor.
Q. Related to KSBE? No?
A. No, nothing to do with KSBE.
Q. How about Brian Kanno?
A. No.
Q. Frank Fasi, Jr.?
A. No.
Q. Whitney Anderson?
A. His wife worked for us.
Q. Is he a legislator that you consider to be close to KSBE?
A. I would say yes. He's Hawaiian and his grandson attended Kamehameha School. He's Hawaiian.
Q. Marshall Ige?
A. Yeah, I believe he was a friend of Bishop Estate, Henry Peters. A friend of Henry Peters, really.
Q. Was Marshall on any type of payroll at KSBE in terms of --

A. Not that I know of.
Q. -- consultant or anything like that?
A. Not that I know of.
Q. You understood him to be a friend of Henry Peters from when Henry was in the legislature?
A. Way back. They go back way.
(Exhibit No. 52 marked for identification.)
BY MR. KAWASHIMA:
Q. I'm going to hand you what we've marked as Exhibit 52 for identification and ask you to review that document.
MR. SATO: Let me take a break and review this with my client.
MR. KAWASHIMA: Sure.
MR. SATO: I haven't seen this before. I just want to talk to him for a few minutes.
MR. KAWASHIMA: Take your time.
MR. SATO: We'll be right back.
(Brief recess.)
MR. SATO: Let me put something on the record if I can. We discussed this document obviously in our conference and I'm willing to let Mr. Wong testify as long as you agree with me that we take it question by question and answer by question.

MR. KAWASHIMA: Yes.

MR. SATO: And that along the way you're not going to say I waived the entire area.

MR. KAWASHIMA: No.

MR. SATO: I'm willing to take it slowly like that and then see where the parameters are. So why don't you go ahead and ask your questions.

MR. KAWASHIMA: Thank you.

BY MR. KAWASHIMA:

Q. Dickie, have you had an opportunity to review Exhibit 52?

A. Yes.

Q. It purports to be a letter from Barbara Ankersmit, president of Q Mark. We talked about that yesterday when we looked at the other documents, the checks and requisition slips, but contained within this document are four what appear to be copies of statements that had been submitted to the Estate and not paid and then one page having what appears to be a listing of districts where primary and general election, there were polls for the primary and general election probably in 1996.

Does that look familiar to you? Have you ever seen this before, I guess is the question I should first ask you?

A. No, I have not.
Q. Let me ask you this, Dickie. If you look at the four statements, and I've done the arithmetic, they total $81,973.92. Would you look at Exhibit 50, please, five-zero.
A. Yeah.
Q. That is the check in the amount of $81,973.92 as you testified yesterday was signed by -- one of the people who signed it as an authorized signator was Henry Peters. Do you recall that?
A. Yes.
Q. And does it appear based upon the date of this Exhibit 52, June 25th, 1997, and then the date of check of the July 3rd of the same year that Exhibit 50, the check, is to pay for the statements that are contained within Exhibit 52?
A. The amounts seem to be identical.
Q. Based upon your understanding of the practices that would result in a trustee at KSBE back in 1997 signing a check, attached to the check that was sent to Mr. Peters on or about July 3rd, 1997, it would have had to have some backup with it, right?
A. I would assume that.
Q. Does it appear that the backup would be Exhibit 52, the letter and the statements?

A. It appears the same.
Q. If you then would focus, Dickie, on the third page, which is the listing of the various districts, House and Senate districts for the primary and general election.
A. Yeah, it appears to be that.
Q. Do you see that the bill there, the amount charged for various polls all total amounts less than $5,000?
A. Yes.
Q. Does it appear that the reason this was done was to stay under the limit of a check at KSBE where if it's less than $5,000, only one person needs to sign?
A. The policy is that, but, you know.
Q. Are you aware of any practices utilized by any of your suppliers where they would submit checks less than $5,000 so that there would only need to be one signature on that check?
A. I don't know that.
Q. If we look at the primary and general election polls sheet, Dickie, from your many years -- were you in the House or what?
A. Yes.
Q. The House and the Senate. Do these districts look familiar to you?

A. No, because they reapportioned it into a single-member district, so it's kind of a smaller component.
Q. If a poll had been run and paid for KSBE for House District 46 in August of 1996, were you aware that the candidates for that office were Reb Bellinger, Creighton Mattoon and Charles Tanoue, Jr.?
A. No, I wouldn't remember that.
Q. Are any of those names familiar to you in terms of them being friendly to KSBE?
A. Well, this is names by districts. I think you could glean the names by who at that time was in the district and then I could tell you more or less.
Q. That's the names I gave you, the three names.
A. Yes, these names, they're names on a poll.
Q. How about House District 12, were you aware that the candidates for that district were Mina Monta, M-o-n-t-a, and Billy Swain?
A. No.
Q. House District 47 was Terry Tom and Iris Catalani, C-a-t-a-l-a-n-i?
A. I know Terrance, I know the name. I don't know where the district is, but if you said Terrance Tom, I know Terrance Tom.
Q. House District 4, Big Island?

A. It could be, yeah, the lower numbers begin with the Big Island.
Q. Where Bob Herkes was running from that district at that time?
A. If that's his district, yeah.
Q. And Senate District 20, the candidates were, Democratic candidates were Brian Kanno and Frank Fasi, Jr. Again, I ask you, those names don't sound familiar to you?
A. Oh, they're familiar to me.
Q. In terms of being friendly to KSBE?
A. I don't know if they're friendly. Brian Kanno, I don't know the relationship with Brian, nor do I know the relationship with Frank, Jr.
Q. Senate District 14, were you aware that that race was between Suzanne Chun Oakland and Milton Holt on the Democratic side?
A. We would be familiar with Senator Holt.
Q. Was he employed by KSBE at that time?
A. I believe so, yes.
Q. Then in the general election again, House District 4 obviously would be Bob Herkes?
A. Uh-huh.
Q. Senate District 25, were you aware that in the general that Whitney Anderson was running as a

Republican against Jackie Young?
A. Yes.
Q. How about House District 46? Reb Bellinger was running again, were you aware of that?
A. Well, if he was in a district in the general election, yeah.
Q. House District 24, Samson Aiona was running against Jim Shon. Were you aware of that?
A. Yes.
Q. Why were you aware of that?
A. I think, if I remember correctly -- what was the young man's name?
Q. Jim Shon.
A. No, the other one.
Q. I don't think it was. Samson Aiona, he's a young man? I think he's a little older.
A. He's a young guy.
Q. I thought he was older.
A. I thought he was a young guy.
Q. He's running for Manoa, right?
A. No, he's a fairly young guy.
Q. What about him?
A. I think he upset Jim Shon. Very close to that.
Q. Do you have any understanding as to why KSBE might be interested in that race?

A. I don't know.
Q. Senate District 8, Republican Sam Slom was running against Democrat Donna Ikeda. Do you know the names? Any connection with KSBE that you know of?
A. No.
Q. Senate District 24, Marshall Ige was running as a Democratic candidate against Michael Liu, a Republican.
A. Yes.
Q. Marshall is a friend of the Estate?
A. Yes, I would say that.
Q. And then for House District 47, I already mentioned Terrance Tom was in that district. He was one of your consultants, was he not?
A. Yes, he was an independent contractor with Bishop Estate.
Q. Dickie, you've not seen this sheet before, have you?
A. No.
Q. And you're not aware of any polling for specific candidates that was done and paid for by KSBE, are you?
A. Not that I know of.
Q. You agree that if in fact there was any polling

done on behalf of specific candidates in specific districts paid for by KSBE, that would be something that would threaten KSBE's tax-exempt status? Would you agree?
A. Well, I don't know if I agree, if an organization should take a reading of what the environment looks like out there, you know. I mean, you want to find out who you got to deal with.
Q. Environment, I don't disagree with you. In terms of issues that are important to the Estate, right?
A. Well, I would think that we would like to have people who favor our particular persuasion, but it doesn't happen that way.
Q. Did you as a trustee, Dickie, the entire time you were at the Estate ever approve a poll for either a primary or general election of a specific district with specific candidates in it?
A. No.
Q. The polling that you approved had to do with issues, not candidates, right?
A. That's correct.
Q. So that if this type of polling was run and paid for by KSBE, as far as you're concerned, it was unauthorized?

MR. SATO: By him?
MR. KAWASHIMA: By Mr. Wong.
A. No, it wasn't authorized by me.
BY MR. KAWASHIMA:
Q. You're not aware of any candidates then that were given the results of polls such as are contained on this sheet that is part of Exhibit 52?
A. No, I don't know of any.
Q. Have you ever had dealings with Barbara Ankersmit?
A. No.
Q. Never in the past?
A. No.
Q. I asked you yesterday about when you became aware of the IRS reviewing trustee compensation of KSBE. I can't recall what your response was, but do you recall in 1993 Mark McConaghy, in October of 1993, briefing the Trustees about IRS plans to submit a technical advice request from the district office to the national office on trustee compensation?
A. I remember just coming aboard. I don't remember all of the details, but Mark did talk to us about an issue about compensation, but.
Q. October 1993, you were on board by then?
A. Yes.

Q. Do you recall an actual technical advice request being sent to the national office in 1994 along with a submission by KSBE that included an SCA compensation report?
A. That's probably true. I don't remember it, but I would think that's what the procedure would be.
Q. I've got the exhibits next-door. Let me grab them. I'll be right back.
(Brief recess.)
(Exhibits No. 37 through 40 marked for identification.)
BY MR. KAWASHIMA:
Q. Let me just mark these and give them to you in order and then we'll talk about them. I'll first give you Exhibit 37, which is a multi-page document under the Towers Perrin letterhead dated February 8th, 1996, Exhibit 37. Exhibit 38 is under the same letterhead dated March 13, 1996.
Exhibit 39 is a multi-page document entitled Kamehameha Schools Bernice Pauahi Bishop Estate Trustee Compensation with a date on it of March 15th, 1996. Exhibit 40 is another letter under Towers Perrin letterhead, just a two-page document dated March 27, 1996.
I give you that because I'm going to move into

it in about two minutes, but before we get into that, if you might, Dickie -- I'm not going to ask you questions about that for a few minutes. Okay?
A. Okay.
Q. I'm talking about -- I'm still down in the period of prior to 1996, in the period of 1995, and I know it's a long time ago, but do you recall briefings in March and April of 1995 where Mark McConaghy informed you folks that the national office wanted to see what SCA, your compensation consultant, had done with the education side of compensation, not just the investment side? Do you remember that?
A. Yes.
Q. Were you aware that the SCA report the Trustees submitted to the IRS relied on data from for-profit organizations, not just nonprofits?
A. And the comparisons?
Q. Yes.
A. Yes.
Q. Was that of significance to you, that they utilized for-profit organizations and not just nonprofits?
A. I would say yes, because we have a for-profit subsidiary.
Q. You have a number of for-profit subsidiaries?

A. Yes.
Q. But the primary organization, though, Dickie, is a nonprofit organization, is it not?
A. Yes, I understand.
Q. Let me ask you, Dickie, do you consider it appropriate that in trying to determine what trustee compensation should be for KSBE that they consider for-profit corporations?
A. I think the for-profits are structured in different ways and we have two components. I think one is the nonprofit and the other one is for-profit and I think what the SCA study tried to attempt to do is tried to relate all the things to administration, to governance, and there are a number of factors that they use.
Q. The primary purpose for KSBE is education, is it not?
A. Yes, I would say yes.
Q. The education as related to the Kamehameha Schools and any other educational component that you might have throughout the state?
A. Yes.
Q. The primary purpose for KSBE is certainly not in investment, is it?
A. No, I don't think it started out that way, but I

think in the end, as the institution grew, there were greater requirements for generating income. I think in the beginning they had a hard time starting it, the schools themselves, and I think they needed more income for the expansion to what it is today.

Q. But there is a primary difference, though, Dickie, in looking at for-profit organizations as opposed to nonprofits and that is that the for-profits have as a primary motive the making of a profit, right?

A. Yes, I would say that.

Q. And that's not your primary purpose in any way, is to make a profit, is it?

A. Well, I think it's our job to generate income to support the Trust purpose, which is education, and the school will grow or be diminished by the amount of funds that we can generate.

And you got to remember that I think the definition of nonprofit is that a lot of the nonprofit groups get donations and we don't entertain getting donations. So I think when you look at it, it's self-sustaining. So, you know, we've got to watch expenses and income.

Q. You know you mentioned that before, being self-sustaining and not soliciting contributions.

You, of course, as a 501-C3 organization have the ability to seek contributions, do you not?
A. I suppose so, but the Trustees chose not to do that.
Q. If you did, the contributors to KSBE would get a --
A. Tax write-ff.
Q. -- tax write-off for that, wouldn't they?
A. Yes.
Q. Do you know if the matter of soliciting contributions was considered by the Trustees and when it was, or maybe it was an ongoing thing? What's your knowledge?
A. I think it was never -- in the five years, as an example, in the five years I was trustee, we never raised tuition one dollar.
Q. I understand that. Did you consider raising tuition?
A. Yes, five times.
Q. Why did you not?
A. Because we thought we were doing better than we had expected and that we could cover the costs.
Q. Did you consider while you were trustee soliciting contributions?
A. No, I don't think it ever crossed our minds.

Q. No reason?
A. No.
Q. You could do it, couldn't you?
A. I don't know if you can, but I suppose you can, but under the 501-C3 on the charitable trust, educational trust, I don't think there were provisions that -- you know, we couldn't do it.
Q. Could not do it?
A. Yeah. I don't think the Trustees even considered that.
Q. I guess what I'm asking, though, Dickie, is why was that option not ever considered even?
A. I have no idea. I know we never considered it during the brief time I was at the Estate.
Q. Nothing in the will as you see it prevents the Estate from doing it, does it?
A. No, I don't see anything in the will, except that she just made reference to income and you can't spend more than half of the income to support the schools. So basically that was her cap.
Q. Focusing back to this '93 period where the tech advice was sought, what was the result of that seeking that tech advice; do you remember?
A. I believe they didn't take any action.
Q. The national office would not issue a technical

advice on trustee compensation and returned it to the district office for audit, right?
A. That's my understanding.
Q. So as of that time, at least as of 1995, you were aware that this matter of whether or not your compensation was reasonable was something that the IRS was considering; is that correct?
A. Yeah, I guess they considered a lot of issues.
Q. Based on their not, or based on your not securing technical advice from the national office in 1995, would you agree that the national office essentially was saying that they did not believe that your trustee compensation at that time was reasonable?
A. Well, they may not have believed that, but I believe there were other studies prior to that that set the tone of what was reasonable, which was court-ordered and which I think the Estate followed.
Q. Was anything done in light of the fact that the IRS was telling you in the spring of 1995 that they did not believe that your compensation was reasonable at least as of that time? Was anything done by the Trustees?
A. Yeah, again, you know, there was a court order by a master who recommended that studies be conducted

and I think the Estate has followed that ruling all the way up of getting studies every three years or whatever and I think that was the guideline that the Trustees used to determine what they felt was reasonable, to have some national organization set ranges and that's what they did. I think all of the studies set ranges.

Q. We're going to talk about that next.

A. Okay.

Q. Was the fact that you did not receive that technical advice from the IRS the reason why Towers Perrin was retained then in 1996 to do another study?

A. I don't think that was the reason.

Q. What was the reason?

A. I think SCA was also doing a study and I guess the Trustees at that time were told we could do one or more studies and so we took the opportunity, because at that time in '96, I guess, the question of compensation has always been the lightening rod for Kamehameha Schools/Bishop Estate.

As I understand the court order, and you can argue it both ways, but it said one or more, and two studies were done in '96.

Q. I noticed that. I noticed that SCA was retained again to do, I guess, an update and then Towers

Perrin was retained?
A. Right.
Q. To do a complete new study in a sense, right?
A. That is correct.
Q. The reason that was done was why, Dickie?
A. Well, I think if you submitted one study, there wouldn't be enough. They should act independently and see where they come out. At least our interpretation at that time, and people may interpret it differently, is we could have one or more studies and that's why the thing was commissioned and we did it then.
Q. You testified yesterday and today, I think, that your compensation was performance-based. Do you recall that?
A. I would say yes, because it's based on a commission.
Q. On a commission, but what is the performance, though, that you're basing your compensation on?
A. Earnings, income, you know.
Q. Versus losses?
A. Well, I think you have to minus losses, and whatever the income is, that's what your commission should be based on.
Q. Is return on your investments in terms of

whether it be commercial property or equities or whatever, is that considered return on your investments in your performance?
A. I would think so, rentals and other things, dividends.
Q. Do you recall, Dickie, every year from -- you started in 1993. Let's start with the year 1994 up to the end of the fiscal year for 1998. Do you remember what type of return you people realized on your investments?
A. It depends on who you talk to. We think we had a rate of 17 percent, 13 to 17 percent.
Q. How did you calculate that?
A. It was based on all the factors of the income and dividends and interest and everything else.
Q. Who did that calculation, though?
A. Basically, Wally Chin and these other people, comptrollers.
Q. I'm sure there were reports or documents to substantiate that claim that you had had that kind of return?
A. Yeah, and I think we had consultants to tell us.
Q. Who was that?
A. Cambridge and Associates and other people.
Q. Look at page -- look at Exhibit 38, Dickie.

This report is part of what Towers Perrin did for you in 1996, am I correct?
A. That is correct.
Q. And what Exhibit 38 seems to suggest, this letter of March 13th, 1996 to Rodney Park, that Towers Perrin believes that the most defensible starting point, or I should say the most defensible level of compensation was what, Dickie?
A. Well, it was adjusted median at the 75 percentile.
Q. First they give you the unadjusted median?
A. Yes.
Q. Which was $511,000 per trustee?
A. Correct.
Q. Which is much less than you received that year for the past year. Do you agree?
A. Less?
Q. Yes, $511,000 per trustee was much less than you received for the entire last, the year previous to 1996. We've got the figures, the number, I think. It was $823,706 for the fiscal year 1996?
A. That's correct.
Q. Then when they adjusted it, the adjusted median came to $683,000 to $758,000. Again, though, an amount that was less than the amount you actually

received for fiscal year 1996?
A. Yeah.
Q. You notice that Towers Perrin states that trustee compensation could be based upon preestablished performance targets?
A. Yes.
Q. Essentially, what they're saying is if you wanted to compensate yourself at the adjusted 75 percentile that there ought to be preestablished performance targets, and preestablished meaning previous to the start of the year; you ought to establish performance targets based upon which you could be compensated as high as over a million dollars if you met that target; is that correct?
A. That's correct.
Q. Were such preestablished performance targets ever established at KSBE?
A. Not targets per se, but in terms of our financial planning, in terms of making such investments, that harvesting time would take place in this period of time.
And based on that, I mean if you set targets, if this happens, this is what's going to happen, and I think you want to call them targets or objectives of what we wanted to do.

Q. Objectives, when I -- if we say targets and objectives, we're trying to be as objective as possible. For example, you may establish a 17-percent target?
A. Yeah, as a target.
Q. Seventeen-percent return on your investments as a target, for example. Nothing like that was ever done?
A. No.
Q. Is that correct?
A. Yes.
Q. So that really, if we use the phrase preestablished performance targets, nothing like that was established at KSBE upon which your salary was based? Your compensation was based, I'm sorry.
A. Yeah, I would agree with that.
Q. So that in the absence of these preestablished performance targets then, accepting the compensation that you did, it would have exceeded the range that Towers Perrin established as the range you should use, right?
A. Yeah, but it's -- 75 percentile is of the median, so that's the high point, right.
Q. Except that 75 percent percentile, they're telling you, though, that you should have

preestablished performance targets, which you didn't have?
A. Well.
Q. Right?
A. I think in '96, if I'm correct, we did very well.
Q. You may have, Dickie.
A. Whether or not you want to say we had targets or we didn't have targets, and they're saying that if you had targets, this is what you should be paid.
My feeling is we met that unwritten target and I know, I know what you're trying to get at. You have the targets and you aim at it, and if you get it, hey, there's no problem there. That's what I understand your --
Q. Yes, that's right.
A. -- your answer. No, we didn't, we didn't have those, but I think our performance was at that level in '96, if I remember correctly. It did very well.
Q. You believe that the return that you realized that year merited the amounts you got paid, but if you use Towers Perrin and their guidelines and say that to place yourself within that 75 percentile, you should have preestablished performance targets, you did not have that and therefore just according to

this report you were paid more than Towers Perrin would have recommended?
A. Yeah, okay. I think there's some reference maybe in the report where there may be times you go under or over. It fluctuates based on income.
Q. The report itself, the March 15th report, we kind of touched upon it yesterday, but if you might go to page 7, Dickie. The numbers are in the upper right-hand corner of each page.
A. That's on Exhibit 39? Are we looking at 39?
Q. Yes.
A. Page 7, okay.
Q. The second item down, "Trustees assume more personal liability than is typical in other organizations, whether public or private."
These areas there on that page 7 appear to be information that Towers Perrin obtained from the Trustees? Would you agree with that?
A. They could have for whatever their basis was.
Q. For example, saying the Trustees are dedicated full-time to KSBE activities, they obviously received that from either Trustees or someone from the Estate gave them that type of information?
A. I would say yes, but I would say it's fairly accurate.

Q. The second item, though, the fact that the Trustees assume more personal liability than is typical in other organizations, whether public or private, do you agree with that statement?
A. I don't know how we are in comparison to other public or private, but I do know after this experience with the controversy there's a great deal of personal liability involved, a great deal.
Q. If we might first except out the controversy, up to that time, there had not been any monetary judgments against you as a trustee of KSBE, had there?
A. That is correct.
Q. In fact, that's what KSBE does, they insure against such monetary judgments so that if there is a judgment over your self-insured retention, the insurance company will pay for it? That's the plan, right?
A. That seems to be the concept, but in actuality, it doesn't happen that way.
Q. When you say "in actuality," you're talking about your experience now, though?
A. Yes.
Q. So we've moved to experience now, though?
A. But I always felt there was a heavy liability

because of the kind of decisions we made. I mean, we make major decisions. We've had a lot of personal liability and the insurance company wouldn't cover it, like a deal like Goldman Sachs.
Q. Sure, sure.
A. The liability for us worked both ways, you know. If Goldman Sachs had not panned out, I'm sure somebody would have thought of something.
Q. Did you consider Goldman Sachs to be a risky investment?
A. Well, I think all investments are risk and that was calculated risk and sometimes I guess it's better to be lucky than right, but in this case, we were both lucky and right.
Q. Did you have anything to do with Goldman Sachs?
A. Yes.
Q. The first investment?
A. No.
Q. The second one?
A. Yes.
Q. The first one was made when Masi was with the Board?
A. That's correct.
Q. That was in the amount of 250 million, and then when you came on after that, not because you came on,

but after you came on, they increased the investment another $250 million to a total of about half a billion dollars; is that correct?
A. Yes.
Q. Was that a difficult thing for you to do, to increase it to $250 million?
A. To me, it was.
Q. Did you consider that $500 million or half a billion dollars was too large an amount to place on one investment as a fiduciary?
A. That was my feeling.
Q. However, you went along with the decision?
A. I argued it and they allowed me to argue because I was concerned about derivatives and what place Goldman was in at position. I prepared myself as best I could on derivatives. It's very complicated. I argued my points. We went to New York and talked to them and I just got wiped out.
Q. So everyone else wanted to go forward with adding another 250 million?
A. It was just me. I had my concept. My concept in investment was that was a lot of money, fully realizing --
Q. The size of it was too much for one investment?
A. It's big, but there are risks. And they were

diversified, which is important. They were involved in all kind, commodities, they were in the marketplace.
Q. You mean Goldman Sachs?
A. Goldman Sachs, yes.
Q. But did you consider, though, aside from the fact that you were putting too much into one single investment, the fact that Goldman Sachs was a risky investment for a fiduciary?
A. The rate of return on the first 250 million to me convinced me they were doing well, but you can't be lucky that long.
Q. What were the rate of returns on the first 250?
A. I think around 34 percent, 33 percent on 250 million.
Q. That was an investment, though, that was made after due diligence and consideration and you didn't want to do it, yet you were informed of it; that was an investment decision that was made by the Trustees, right?
A. Yes, the whole Board.
Q. You considered that a matter of concern for you as far as personal liability is concerned, making a considered investment decision?
A. Yes, I did. They addressed the concern about

the diversity, of diversifying that 250 million the second time and they explained to me -- and I really didn't know the operation of Goldman Sachs and we went to New York and I had a couple of days talking with the investment people and they were showing me the portfolio, what they were involved in and all the different kinds of activities and that kind of convinced me it was okay, but I was still concerned. At that time, I guess the talk in the marketplace was derivatives, depending on the yen, whether it goes up or down.

They assured me that they were not that deeply involved in derivatives, because I remember the case in California. I forgot whether it is one of the counties that had problems with the same thing.

And when I came aboard, I read up on these things and I had my feelings and they allowed me to do that. They allowed me an opportunity to talk with the Goldman people and to argue my case and they assured me they were not heavy into derivatives and I was kind of happy. That was a buzz word.

Q. Did you vote against that investment?

A. No.

Q. You voted for it?

A. Yes.

Q. So in light of your --
A. My objections, yes.
Q. Notwithstanding your concerns and objections after having gone to New York City and discussed the matter with the management people there, you decided that it was a proper fiduciary investment for KSBE and you voted for it?
A. Yes.
Q. You knew, obviously, you had the right to vote against it?
A. Absolutely.
Q. You had the right to abstain?
A. Yes.
Q. You had the right to go to Probate Court if you wanted to get instructions on the matter?
A. Yes.
Q. But you made a decision that you were going to go forward with it?
A. Yes.
Q. Understanding that, though, were you concerned about that type of liability when you came on the --
A. Any investment, but you make decisions and you have to live by them, and I just knew that the liabilities were heavy in this Estate in terms of us. Every time we signed a piece of paper, we have

exposure.
Q. You were generally aware of the prudent investor rule, weren't you, back then?
A. Yes.
Q. You felt that what you did, your due diligence on this investment, would have placed you within the prudent investor rule?
A. It might have, but I think other factors were important to help me decide that this was a prudent investment in that they covered some of the concerns I had about diversification and they handled truly --
I guess in my mind too, you're a gambler. For me, it was okay, they're doing well, that's good with the 250. Let's see what happens. Dickie, you're going to shoot the dice.
And I was hoping for an IPO from Goldman. I really was. I thought they were the only investment bankers left on Wall Street and they had a good track record.
And there was a lot of talk in the Estate at that time when I just came in, I mean, that they were going to go public and stuff like that. So that's kind of attractive to me in terms of our stake in Goldman, and as it turned out, it was good for the Estate.

And there was also a downside. I mean if that investment had gone bad, I could imagine the news. You wouldn't need a controversy. They probably would come, taking the same about the prudent man rule and would you invest your money in something without regard to speculation but trying to preserve the assets of the Estate and that kind of stuff. But there was a risk and I think every investment that we do is a risk, so that's the nature of the game.

Q. Whatever position you take as a trustee, Dickie, you agree that there's that kind of risk?

A. Yeah.

Q. You try to alleviate the risk by doing your due diligence, by trying to place yourself within this prudent investor rule when you make decisions, right?

A. Yes.

Q. If you do, you're generally protected on investment decisions?

A. I would say yeah, but there are other factors here that, you know, have liability.

Q. Certainly there are other factors and I think that's what you were talking about, you were concerned about personal liability?

A. Oh, absolutely. We could make all this money, but if we did something wrong and it was proven so, it all comes back.

Q. Wouldn't you agree that if you did do something wrong that you should be held accountable?

A. Sure, and that's why you make decisions and tough decisions. The calls have been mostly good for us.

Q. Getting back to today, we started talking about today and your beliefs today based upon what may have transpired over the past two years. I hear you saying that you had concerns, you have concerns now because of, I guess, your dealings or relationship with your insurance carrier, right?

A. Yes.

Q. Is it your understanding, Dickie, that your insurance carrier informed you that they would not cover any claims, I'm not saying they are valid claims, but any claims relating to a breach of your fiduciary obligation, fiduciary duty?

MR. SATO: I want to object. I don't know what the relevance is in a removal action where there's no surcharge being claimed, that as far as a money claim, why the coverage here as far as the insurance policy would have any relevance.

MR. KAWASHIMA: Okay, I understand your objection, Glenn. The reason I'm asking is because in the issue of excessive compensation, they relied on a number of reports, one of which was this Towers Perrin report.

Contained within that report appears to be a position that the Trustees assume more personal liability than is typical in other organizations, whether public or private, and I believe that information came from one or more of the former Trustees.

That being the case, that's what I'm exploring here, as to whether or not there really is personal liability or more personal liability than is typical in other organizations, public and private.

MR. YEE: I'm going to join in the objection, because I believe that there may be an assumption of fact which isn't correct on the part of Mr. Kawashima, because the portion which he's reading from which he gathers that understanding from in the Towers Perrin report is entitled Findings. There's been no showing that the information is not anything but a finding of Towers Perrin.

MR. SATO: Just so that we may be able to move on here, I assume you've got all the coverage letters?

MR. KAWASHIMA: I don't.

MR. SATO: As far as, you know, the KSBE being a named insured here?

MR. KAWASHIMA: I do not. I have none of them, in fact.

MR. SATO: Then I was mistaken, because my understanding is Ms. Kam gets copies of all that stuff and maybe I was wrong.

MR. KAWASHIMA: She does; I don't.

MR. SATO: You don't get them?

MR. KAWASHIMA: Yes, she deals with Jeff Sia, I think, who is representing the Estate on insurance issues. We're not involved in any and so we don't get -- we're not privy to any of that.

MR. SATO: I will let this go on for a bit. If it gets into specific coverage letters, then I may object again.

MR. KAWASHIMA: I don't intend to get into that.

BY MR. KAWASHIMA:

Q. I'm going to ask it more in a general way, Dickie, and then even more general than that your understanding, because I'm not asking for any legal conclusions or an interpretation of any reservation of rights, letters, anything of that type. I understand that those letters were transmitted and received, but I'm not privy to them and I don't want to talk about it, frankly.

What I do want to ask you, though, is to inquire more about this claim that the Trustees assume more personal liability than is typical in organizations of its type. I just need to know your understanding as to why that might be the case, if in fact personal, if in fact liability is covered by a substantial amount of insurance, you see.

So let me ask you, do you understand that if in fact there is a finding of a breach of a fiduciary duty, that is not covered by insurance?

A. Yeah.

Q. And that should not be covered by insurance?

A. I would say yes.

Q. But any other type of liability, personal liability that you incur, you would agree up to the limits of the insurance policy that's covered by insurance, right?

A. Yeah, but, you know, I'm only privy to what I hear publicly. There's exposure of 900 million, 750 million. I don't know where these numbers are coming from, but it would scare the hell out of anybody and I know we don't have that kind of coverage, you know, or anything like that.

It scares the heck out of me, but, you know, they're numbers, but they're out there and you hear it every week, 800 million, 750 million, 900 million, you know.

And I think it's talk, but it's there and that's a perception. And, I don't know, if people can find something wrong, they'll find it to make sure that it becomes 900 or 850 million. Then I don't think our coverage goes that far.

Q. No, it doesn't.

A. I know that. I quickly know that. Okay.

Q. Dickie, are you aware that if Towers Perrin had used educational institutions, large private educational institutions, universities like Harvard or Stanford, those types of organizations and you looked at what their top executives were being paid and their Trustees -- of course, we know most of them weren't being paid, but if we use that as a criteria -- the salaries or compensation that you would have received would have been much less than what you actually did?

A. I think it's to the contrary. I think Harvard is an example. I believe I read a Wall Street Journal article where the investment side of it made $46 million in compensation among five or six people and the trustees to me serving at Harvard serve in a different capacity than they do at Bishop Estate. They're there for a purpose, because they can raise money, they gave a building or did something. This management, as I understand, made $46 million.

Q. The financial management side?

A. Right, and I think our rate of return is comparable to Harvard.

Q. But in terms of the Trust -- I'm sorry. The trustees at Harvard, though, they function differently from the standpoint that they only deal with policy matters, not operational?

A. Absolutely. I think that's how it was designed. In the beginning, they must have dealt with what it cost for books and what it cost for rent and everything else, but I think in that kind of institution, it's totally different than Bishop Estate.

I mean, they are probably the "who's who" in America who are asked to sit on or Harvard graduates who have done successful things and they sit as trustee and they overlook the thing, but they don't want to get involved with the raising of money and so that's why they have this management team there. To me, I think the number is correct. $46 million among

five people, that's a lot of money.
Q. But these were not Trustees, of course, right?
A. No, they were management people, yeah, sure.
Q. At least as we -- well, if we look at the trustees at Harvard or any of those larger universities, they perform a policy-making role, right?
A. Sure.
Q. They don't get into operations, correct?
A. (Witness nodding head.)
Q. Would you agree that in that situation where a trustee performs only a policy-making role and supervision of the operational side that they should not be compensated anywhere near a million dollars a year?
A. No, that's up to the trust, but I would say I think most of them serve without pay, but I think that's more honorary to your resume if you say you're a trustee of Harvard.
Q. I think we agreed earlier that if in fact there was a CEO-based management system at KSBE and the CEO did all of the operational work and made recommendations to the trustees, which the trustees could approve or reject or ask for more information, that the trustees then would be in a part-time

position? Do you remember discussing that?
A.   Yeah.
Q.   In terms of these others organizations, though, educational organizations, it seems that all of them function with a board of trustees that performs only policy-making roles?
A.   I think they have an easier job. They go get the donations and people make contributions to the stuff. We go generate our own money to operate our education.
Q.   In your mind, do those trustees have the same personal liability that you have?
A.   They may have. I don't know, but they must be covered by something.
Q.   As you are?
A.   Yeah, but I'm saying they all get donations and that's what happens. You got to consider that as part of the base. It's much harder to go be self-sustaining than it is to go get donations.
Q.   But in looking at what they use for select universities, though, Dickie, the last page, I think page 5, it says 5 of 5, the very last page on Exhibit 39.
A.   Yeah.
Q.   When they looked at select universities, the

aggregate governance costs were $1.26 million. Do you see that?
A. Yeah.
Q. Are you aware of the fact that this information, that aggregate governance costs figure was not utilized by Towers Perrin in coming to its conclusions?
A. Yeah.
Q. Wouldn't this appear to be the type of educational side information that the IRS was looking for when they refused to issue the technical advice in 1995?
A. I don't know that this is a factor, but, you know, the numbers are there. If they used it, I don't know.
Q. If I might move to another area, Dickie, for a little while.
A. Okay.
Q. We touched on this. I just want to make sure I covered everything I needed to cover on this matter of change in domicile and change in tax status.
Were you in charge of that too in terms of working with the attorneys?
A. No.
Q. That was Gerry, right?

A. Yeah.
Q. So your involvement was merely discussing it in the boardroom with the other Trustees?
A. I think there was general discussion and Gerry took it to wherever he took it to get some information.
Q. Do you know how much was expended by the Trust Estate for legal costs, accounting costs, consultant costs in pursuing a review of this area of change in domicile and/or tax status?
A. You know, I think the domicile may have been separate from the cost of the lobbying effort, because I think we were told by Mr. McConaghy that in terms of the lobbying, as an example, for intermediate sanctions and issues connected with education that we had a self-defense exception under the Rule 4911, I guess, of the code, which we were told that we fell within that range and we could use this money for self-defense. And intermediate sanctions would be definitely a self-defense issue for this Estate, as far as I was concerned, and that any other issue may have come out from our legal fund. I don't know how Gerry did it.
Q. Did you consider -- looking at change in domicile and/or tax status, that's different from

self-defense exception, right?
A. Yes, but when you talk about intermediate sanctions, which is a tax issue, basically, and so to me -- I mean I'm just trying to separate, because I know numbers have been thrown around that we spent millions on trying to stop the intermediate sanctions. That's not what --
Q. The figure I saw was something like $900,000, not millions.
A. What you get out there, they spent two million. That's not under your control or my control.
Q. But intermediate sanctions, when you were working on that, Dickie, that was in the period of 1995, 1996?
A. Yeah, '96 too.
Q. It started in '95, though?
A. Yeah, it started -- well, yeah, and the bill was not signed until '96.
Q. It was signed in 1996?
A. Yeah.
Q. Made effective what?
A. Retroactive to September 15th -- September 14th, 1995.
Q. So 1995, 1996, you were working on intermediate sanctions. Wasn't the work that Verner Liipfert was

doing as to a possible change in domicile and/or tax status being done at about the same time?
A. I don't think so, but I don't know for a fact.
Q. If not at the same time, maybe shortly after a passage of the intermediate sanctions bill?
A. It could be. I don't know.
Q. Was that a concern of the Trustees, the passage of that bill such that you felt compelled to look at a possible change in domicile and/or tax status?
A. No, I think in the hallways it was discussed about business climate and talking about all this kind of stuff and it culminated into going to Verner Liipfert.
Q. Maybe it never got to this point, Dickie, but was it considered by the Trustees as to how, I guess, mechanically you would effect a change in domicile, moving to somewhere on the mainland, I think an Indian reservation was even considered --
A. That's what I heard.
Q. -- with Kamehameha Schools up here, Kapalama campus, with a campus on Maui and a potential campus on the Big Island, how you would administer the operations of the school?
A. It makes no difference than having a regional office here, an office here, which is Kawaiahao. You

administer everything here. We would have a staff here; you could work out of there.

But, you know, the thing was discussed, it was researched, it was an option, and the Trustees chose not to do anything and that's the bottom line. So, you know.

Q. Yes, I guess that --

A. I think exploring, I think we should do that, we should look for options on -- any time it involves the Estate, I think if the Trustees feel that there needs to be some other thing to do, you ought to just research it out and that's all it is.

Q. But there ought to be a cost benefit kind of analysis, right?

A. For exercising options, you pay a cost. You may not use the option, but it doesn't necessarily mean that it's wasting money.

Q. When I say "cost benefit," though, Dickie, what I'm saying is, changing domicile, I think we may have agreed yesterday or maybe not, but that the Princess never ever considered that KSBE as a trust would move out of the state of Hawaii, her state of Hawaii, right?

A. She wanted to maintain the schools in Hawaii. I think you're right. I think in her thought process -- like you said, times are changed, the will may change, and I think organizations like KSBE with that kind of vast resources and everything else is that we have to look at options where if we can go to a place that is going to give us a better deal and we pay less taxes or we do whatever, that it ought to be considered.

I mean, you know, I'm not saying that that's what they're going to do. I think they have a hard time moving out of Hawaii, but I'm saying that if it would make a good prudent business decision as well as an economic benefit to the Estate, I think you have to consider those options. You've got to have options. I don't think you should just stay where you are.

And that's my take as a trustee, that I should look at all options that would benefit this institution. Whether they're controversial or not and whether they entail bad PR or everything else, I think it's my duty to examine, you know, what is in the best interests of the Estate, you know, and if another state offers a better deal, I think we as trustees, me as a trustee, I have to seriously consider whether that's in the best interests of the Estate to move it to another domicile where your tax

treatment is better. Whatever, whatever it is, I think that's my duty to do that.
Q. But you also realize that it would have been your duty to get approval from the Attorney General and the Probate Court to do anything like that?
A. That's the irony what the discussion that I hear of. We can't just tomorrow go do that. We got to go to the Court. And, you know, it's not going to be an easy road if we decide to go to California. We have a court system. You have to get approval.
And that's why I said the issue, when I look at domicile, it's exercising and finding out about an option and we know the procedure is you got to go file a petition in the court to go do that.
Q. I understand.
A. You know, today, the thing wouldn't even get out of the Estate door, but maybe some time in the future, a court may look at it and after all the arguments may say, "Hey, I think this is good for the Estate and it's okay." But, you know, that's not my decision.
Q. Whenever that would have been, you agree that would be way into the future, probably, if that should come to pass?
A. The way things are moving now, the Trust will be

changed forever, you know. And I don't know if I'm resigned to that, but, you know, being philosophical, I mean the CEO system, whatever system you put in place now is, personally for me is erosion of the will. And that's my take, Doug, and that's where I'm going to be.

I was sworn to do that, to protect the will. And in my own way, I may interpret it wrong and the courts may say, "You're totally wet, Dickie, and this is the way it's going to be." And that's the way it's going to be, but I'm not going to walk away from it.

Q. I'm smiling because you called me Doug.

A. I was in a room with Doug Ing for two weeks. Anyway, Jim, I mean I'll try and answer the question. Glenn is kicking me under the table.

Q. I understand what you're saying, Dickie, but practically, you know realistically, did you folks ever believe that the Attorney General and the Probate Court of the state of Hawaii would allow you folks to move even if you wanted to?

MR. YEE: Objection, calls for speculation. How does Mr. Wong know what's in the mind of the Attorney General.

MR. SATO: You're asking for his thoughts, right?

MR. KAWASHIMA: Yes, your understanding, your thoughts.

MR. SATO: If you had any thoughts in this area, you can answer.

A. We never even thought about that process. That was an up-the-road process. The first one is do you have an option, and if the option is good and if you think it's worthwhile, take it to the court.

But we never acted on anything. The study came back and nobody did anything. It was just shelved. It was a good thought and yes, we did spend some asset money on it. I think it was a prudent expenditure of money to look at an option, and if you're not going to exercise the option, then you want to say it was wasted money, it depends who you talking to.

Q. Did you folks, though, Dickie, put a budget to this number as to how much you wanted to spend to research this?

A. No, we didn't. Like I said, Gerry dealt with Verner Liipfert, I think, and he was the legal guy and it was approved and he could go ahead with it.

But it was never ever said, "Hey, this is what we want, we want an opinion that says yeah, we can do it," and all this kind of stuff. "Just research it and come back and talk to us." And they did and the Trustees never did anything.

MR. SATO: Can we take a short break.

(Luncheon recess.)

(Mr. Levitt is in attendance and Mr. Wolsztyniak is no longer present.)

MR. KAWASHIMA: Just for the record, I think I'll be done not too long, but when I quit today, it will be subject to looking at the documents that you're going to make available to us, and only if there's something in there that should require us to inquire any further, I'm not going to question him anymore.

MR. SATO: Agreed upon.

BY MR. KAWASHIMA:

Q. Dickie, did you folks -- well, let me go back.

We went through some messages yesterday where Larry Mehau was calling you and giving you messages, and I think I asked you and you said you did know Larry fairly well; is that correct?

A. Yes.

Q. Were there any business trips you folks took, you, Larry and Eric Martinson to China on KSBE business?

A. Yes.
Q. What was that?
A. Investment in China.
Q. What were the circumstances of the visit? What happened?
A. Well, we visited some real estate that was available next to the China Wall. I forgot what the name of the place was, but we took a look at that and we met with business leaders in China. We have an investment in China.
Q. I know you do. Was that what it was about?
A. Well, no. Basically, it was just to look for ourselves because the Trustees hadn't been there. And when we talked to Eric about this trip, Eric thought it was a good idea, because we had an investment interest in China on fabrication of steel and other kinds of things. And we went there, took a look and we spent a few days in China and then we came home.
Q. This was on Estate business?
A. Yes.
Q. So that the Estate paid for the trip?
A. Yes, my trip. My portion, mine and Eric's.
Q. How about Larry?
A. No, he paid his own.

Q. Why was Larry on that trip?
A. Because he knew a Dr. Sheldon Liu, who he had connections in China, and we thought it would be a good idea to meet some of the officials over there.
And we did have an opportunity to meet some of the top officials in China and basically they talked about our bank, Xaimen Bank in China, and they thought we were good people.
Q. You already had the investment when you went on this trip?
A. Yeah, with Xaimen Bank.
Q. I'm sorry, you said they thought what?
A. They thought we were good people.
Q. Why were you --
A. We had 25 percent made up of five people, I think, Sumitomo and several partnerships. We have a partnership in a bank interest in China. I think one of the very few foreign people who have ownership with -- the central government controls 75 percent and we were given each five percent a piece.
Q. So, in other words, by approval by the Chinese government, you became a part-owner?
A. Yeah. You know, it was how you get into China and whether or not they relaxed their regulations, on how you get money out of China if you were

successful. And it was a partnership with about five people. Sumitomo is one of them.
Q. What was the amount that was contributed by KSBE?
A. Five million.
Q. Do you know how that investment is doing? I'm curious.
A. I think the bank is doing well. The last time I looked at the other investments, some were doing well. It's a number of activities that we did in China, for fabrication and they were going into electric bikes and this kind of stuff. I don't know where it is now.
Q. Who did the due diligence on those?
A. I think Eric and Bruce Nakaoka.
Q. Did you on behalf of the Estate have any business dealings with Sukarman Sukamto?
A. No.
Q. Not at all?
A. Not at the Estate level. I knew of him.
Q. Did you have any personal dealings with him?
A. No.
Q. Any trips to Las Vegas with him?
A. I've been to Las Vegas when he was there.
Q. Not with him?

A. I think one time he was there, I was with him.
Q. When you say "with him," what do you mean?
A. I was in the same hotel.
Q. Did he pay? Was he responsible for your charges?
A. He took care of it.
Q. What is the reason why that happened?
A. I don't know, he's a rich man and if he wants to pay for my tab, it's fine.
Q. Was he attempting to do business with the Estate at any time that you can recall?
A. Not that I know of.
Q. Nobody brought any dealings relating to Sukamto to the Board of Trustees?
A. Not to my knowledge.
MR. KAWASHIMA: It looks like a lot, but it ain't. Don't get excited, Glenn. I need to authenticate some documents. I don't need to ask questions about them necessarily. What I think I'm going to do is identify them all and then go through them. So wait until I'm done and then you can start looking at them, whatever you want.
I'll mark as Exhibit 61 -- hopefully, this will fill in the numbers for identification -- a three-page document dated September 24, 1995, to

Governor from Norma, Re: Status of KSBE Tax Issue Project. That's Exhibit 61.

Exhibit 62 is a similar document, however, much thicker, dated September 27, 1995, to KSBE Trustees from John Waihee, Denis Dwyer and Norma Wong. Exhibit 62 for identification.

Exhibit 63 for identification is a similar document dated October 2, 1995 to KSBE Trustees from the same three individuals I named previously.

Exhibit 64 is a similar document dated October 4, 1995, to KSBE Trustees from the same three individuals.

Exhibit 65 is a similar document dated October 5th, 1995, to KSBE Trustees from the same three individuals.

Exhibit 66 is a similar document dated October 12, 1995, same addressees, from the same three people. That's Exhibit 66.

Exhibit 67, under Verner Liipfert's letterhead, one-page document to the Trustees from the same three people. Exhibit 67.

Exhibit 68 is a memorandum to Senator Akaka from Dickie Wong, Re: Intermediate Sanctions, dated November 13, 1995. Exhibit 68.

Exhibit 69 is a memo to the Trustees from John

Waihee, Denis Dwyer, Sue Temkin, T-e-m-k-i-n, and Norma Wong dated November 21, 1995. Exhibit 69.

Exhibit 70 is entitled Post-Veto Intermediate Sanction Strategy. Exhibit 70.

Exhibit 71 to many addressees from Denis Dwyer, dated November 22nd, 1995. Exhibit 71.

Then the last one, Exhibit 75, addressed to Trustee Richard Wong from Norma Wong, dated April 15th, 1996. Exhibit 75.

(Exhibits No. 61 through 71 and 75 marked for identification.)

BY MR. KAWASHIMA:

Q. Dickie, I just want to ask you some questions to hopefully authenticate these documents. I'll represent to you that these documents were obtained either from Verner Liipfert or from KSBE's files.

Some are self-explanatory, but if you might start at Exhibit 61. It's not necessarily addressed to you as a trustee, but you may have received a copy of it. It's a September 24, 1995 memo to the Governor -- I assume that means Waihee -- from Norma regarding Status of KSBE Tax Issue Project.

Does this appear to be the type of document you would have received on or about September 24th, 1995 from Verner Liipfert?

A. Yes. I don't know about this Exhibit 61.
Q. You don't remember exactly seeing it, though?
A. No.
Q. Exhibit 62, though, is addressed to the KSBE Trustees. The date is September 27th, 1995.
Does it appear that you received a memo such as this?
A. No, we may have because it's addressed to Trustees. So any material that came from Verner Liipfert or anybody else was under, for all the Trustees, generally.
Q. And would have been circulated to all the Trustees?
A. Yes.
Q. At some point at one or another Trustees meeting, it would have been discussed?
A. If they cared to discuss it, but it was just telling them what the status was, keeping them informed.
Q. The same with the October 2nd memo, Exhibit 63, do you recall receiving that?
A. We received so much stuff from different sources.
Q. It appears to be the type of document --
A. I would say this is an updating by Verner

Liipfert, which is represented by Dwyer and Wong and Waihee. I think it was an updating -- I think I could say that for all the memos.
Q. All of the memos?
A. Well, relating to when you see the signature John Waihee, Denis Dwyer and Norma Wong.
Q. We can make that easy, maybe.
A. I think they all came from their firm to the Trustees.
Q. All of these up to Exhibit 75?
A. Yeah, except for the letter, my letter to Congressman Akaka and that -- I remember this one. The rest is mainly to Trustees and the last memo, I guess, is from Norma to me. This is after the bill had been -- they were going to have hearings on the taxpayer's bill of rights too.
Q. And these documents, memos were to update the Trustees about what was happening relating to intermediate sanctions?
A. Yes.
Q. This document 70, though, do you recall receiving that?
A. Seventy?
Q. It's entitled Post-Veto --
A. I don't know where it's from. That's why I was

trying to look for where this came out of.
Q. This came out of the Verner Liipfert files, I can represent to you.
A. I don't know. We had so much memos from all different people. I don't recall that, but it's there someplace. I don't know who they sent it to.
Q. If it says the Trustees, the likelihood is that the Trustees of KSBE received it?
A. This I can recognize, because that's part of the Verner Liipfert team.
Q. "This" pointing to the numerous memos that are addressed to the Trustees, right? Is that what you're talking about?
A. Exhibit 70.
Q. Exhibit 70 is the one you're not sure where it came from?
A. Yeah. The rest is pretty clear and they did give status reports on an as-needed basis to keep us abreast.
MR. KAWASHIMA: With that understanding -- well, one last area I was wanting to inquire into has to do with a rather sensitive subject, and that is Dickie Wong's divorce, and I would like to ask him some questions in that regard.
MR. SATO: We're going to object to any

questions in the area of his divorce. The divorce papers have been sealed with the Divorce Court and we're going to object to this area as not being relevant to the issues as far as removal and I instruct my client not to answer.

MR. KAWASHIMA: Let me make this offer, Glenn. If in fact at some future time before or during the hearing in this case I find it necessary to pursue the issue, would you agree at that time to allow me to pursue it? You may still instruct him not to answer at that point, but then I don't want to waive my right to go further by not moving right now, in other words.

MR. SATO: Yes, we're not going to say that you have waived any rights to move on this issue, get a court order to compel his testimony simply because you have not done so immediately after this deposition. We agree that the deposition is open for that issue when and if you get a legal court order to get into that area.

MR. KAWASHIMA: With that understanding, I have no further questions. Thank you, Dickie.

THE WITNESS: Thank you.

MR. SATO: Wait for the other questions. There's other people here.

MR. YEE: I'm not going to ask any questions.

MR. MORRIS: I'm going to take a short break.

MR. KAWASHIMA: Okay.

(Brief recess.)

MR. MORRIS: Without waiving the Attorney General's right to conduct Mr. Wong's deposition in any other pending proceeding, the Attorney General doesn't have any questions at this time.

MR. KAWASHIMA: Thank you, Dickie.

(Deposition was adjourned at 1:30 p.m.)

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I, RICHARD S.H. WONG , do hereby certify that I have read the foregoing typewritten pages 219 through 329 , 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 .

C E R T I F I C A T E

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

That I was acting as shorthand reporter in the foregoing matter on the 21st day of October , 1999;

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

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

Dated: .

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