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APPLICATION OF NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT IN THE STATE OF HAWAII

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

OVERSIGHT HEARING TO RECEIVE TESTIMONY ON THE APPLICATION OF THE NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT IN THE STATE OF HAWAII

DECEMBER 8, 2004
HONOLULU, HI

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APPLICATION OF NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT IN THE STATE OF HAWAII

WEDNESDAY, DECEMBER 8, 2004

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Honolulu, HI

The committee met, pursuant to notice, at 8:30 a.m., East West Center, 1777 East West Road, Honolulu, HI, Hon. Daniel K. Inouye (vice chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, VICE CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. The Committee on Indian Affairs of the U.S. Senate meets this morning to receive testimony on the application of the Native American Graves Protection and Repatriation Act, NAGPRA, in the State of Hawaii.

As some of you are aware, this act has its origins in a bill that was introduced in 1987, and was the subject of much discussion on this committee in February of that year. At that hearing, the Secretary of the Smithsonian Institution testified that the Smithsonian had in its possession 18,500 human remains of American Indians, Alaska Natives, and Native Hawaiians.

Although these numbers were shocking, the committee subsequently learned that there were museums and scientific institutions throughout this land that also had Native American human remains and sacred objects in their collections that were being held for purposes of scientific research.

The same bill was the subject of another hearing in May 1987, and at that time, the president of the American Association of Museums called upon the committee to delay further consideration of the bill, so that a national dialog could be initiated between Native Americans and the museums and scientific institutions that had an interest in retaining these remains and artifacts.

The committee did forebear on further action, and a year long national dialog proceeded in which many sensitive issues were discussed. Although the parties did not reach agreement on all matters, there was consensus developed on the set of principles and cultural artifacts.

Those principles formed a backdrop for the development of the bill that was enacted into law in 1990 as the Native American

Graves Protection and Repatriation Act. The act is designed to facilitate the repatriation by Indian tribes, Native Hawaiian organizations, and individual Native American lineal descendants of the remains of their ancestors, as well as funerary objects, sacred items, and objects of cultural patrimony.

It was several years before the Department of the Interior promulgated regulations under the act, and so we have now had approximately a decade of experience in seeing how well the application of the act achieves the objectives for which it was enacted.

In the State of Hawaii, because there was no counterpart of an Indian tribal government to serve as the principal agent for repatriation actions, the legislation contained a definition of a native Hawaiian organization, and the act's regulations define the term "lineal descendants."

As the Department of the Interior has applied the act, a lineal descendant must establish a direct and uninterrupted chain of legal title to human remains, sacred items, and funerary objects.

This is a very high standard to meet. But because the Department places a higher priority on the repatriation petitions of lineal descendants, higher than those of Indian tribes and Native Hawaiian organizations, it is a very critical, important standard. Because they are communally owned, the Department does not consider objects of cultural patrimony proper subjects of repatriation to lineal descendants.

The committee convenes this hearing today principally because of concerns that have been expressed to the committee, that the act's definition of Native Hawaiian organization may warrant further consideration and possible refinement.

Accordingly, through the oral testimony presented this morning and the written testimony that may be submitted to the committee before the record of this hearing closes on January 4 of next year, we hope to learn more about how well the act is working, as it is applied in the State of Hawaii; and whether, in addition to the definition of Native Hawaiian organization, there are other parts of the act that require amendment.

After the hearing record closes in January 2005, the committee will review all of the testimony that it has received, and will make the recommendations it has received available to the public, so that further input on suggested amendments of proposals may be fully aired.

The committee recognizes that various Federal and State agencies in Hawaii have done their level best to implement this act in the spirit in which it was intended. Along the way, there have been some bumps in the road, but it is clear that sincere people have dedicated considerable time and effort to assure that Native American human remains, and sacred items, funerary objects, and objects of cultural patrimony covered by the act find their proper resting place.

So with that, I would like to call upon the first panel. I have been told that all panel members are here. The deputy administrator of the Office of Hawaiian Affairs of Honolulu, Ronald Mun; Edward Ayau, speaking for Charles Maxwell of the Hui Malama I Kupuna O Hawaii Nei of Hoolehue, Molokai; the administrator of the State Historic Preservation Division of Kapolei, Melani Chinen;

and the chairman of the State Council of Hawaiian Homesteads, Waimanalo, Tony Sang.

May I first call upon Mr. Ronald Mun.

STATEMENT OF RONALD MUN, ESQUIRE, DEPUTY ADMINISTRATOR, OFFICE OF HAWAIIAN AFFAIRS, HONOLULU, HI

Mr. MUN. Thank you, Senator and members of your staff. My name is Ronald Mun. I am here on behalf Clyde Namu'o, who is the administrator of the Office of Hawaiian Affairs. We would first like to thank you for this opportunity to provide comments regarding the proposed amendment to the Native American Graves Protections and Repatriation Act.

The effort to hold hearings in Hawaii is very much appreciated, given the importance of this historic legislation in providing the means for the Native Hawaiian community to provide culturally appropriate care, management, and protection in effectuating our most sacred ancestral responsibilities.

It is our understanding that the committee is open to all recommendations for substantive changes to NAGPRA, but that there will be a special focus on the definition of "Native Hawaiian organization."

The definition of Native Hawaiian organization is a very important and very critical component of NAGPRA, as it often provides the only way for our Native Hawaiian community to make recognizable claims for Native Hawaiian remains, funerary objects, sacred objects, and items of cultural patrimony.

The unique circumstances surrounding Native Hawaiian burial practices, such as secreting burial site identification and utilizing communal burial areas such as sand dunes, can make claims on lineal descent very difficult to establish under the current act and associated regulations.

Current State of Hawaii law, chapter 6E, Hawaii revised statutes, sets forth, we believe, a more relaxed standard for the recognition of claimants in ancestral burial matters in recognition of the unique aspects of the Hawaiian culture pertaining to death and burial. There exists more emphasis on the individual and family claimants, rather than the Native Hawaiian organizations, in recognition of the important role the family maintains in the disposition and treatment of the deceased.

Given the importance of the definition of "Native Hawaiian organization" in implementing the act for the benefit of the Native Hawaiian community, we would hope the committee looks at the current definition and whether it meets the special and unique circumstances of our people.

I must emphasize that the Board of Trustees for the Office of Hawaiian Affairs has yet to take a formal position on any proposed changes to NAGPRA. A position regarding suggested amendments may become available prior to the January 4, 2005 deadline for the submission of such testimony, which is contingent, of course, upon the will of the Board.

Once again, I thank you for this opportunity to present testimony.

Senator INOUYE. I thank you very much, Mr. Mun. May I now call upon Edward Ayau.

STATEMENT OF EDWARD HALEALOHA AYAU, FOR CHARLES MAXWELL, HUI MALAMA I KUPUNA NEI, HOOLEHUE, HOLOKAI, HI

Mr. AYAU. Aloha, Senator Inouye and the staff of the Senate Committee on Indian Affairs. I'm here to testify on behalf of Charles Maxwell, of the Hui Malama I Kupuna O Hawaii Nei, Hoolehue.

The legislation is clear that the law is intended to rectify past problems committed against America's first peoples, including Native Hawaiians. Congress did not intend museums to claim cultural items as Bishop Museum attempted to do with the passage of its Interim Guidance.

Had Bishop Museum's Board and its director adopted the proposed interim Guidance as their Final Guidance, Hawaiian cultural values would have suffered, Congressional intent would have been undermined, and NAGPRA would have been turned on its head. Nonetheless, Bishop Museum's unsuccessful efforts help highlight the need to revise and strengthen the NAGPRA definition of Native Hawaiian organization.

Furthermore, the response from the National Park Service to the questions that you posed in your letter of August 5, 2004 relating to Bishop Museum's Interim and Proposed Final Guidance demonstrates that the broad language of the definition may be interpreted in ways that were not intended; in particular, the opinion of the NPS that a museum that designates itself as a Native Hawaiian organization may then become an eligible claimant to repatriate cultural items from other museums.

Both the Bishop Museum Interim Guidance and the response from the National Park Service establish the imperative need to amend the definition of Native Hawaiian organization. In our testimony, we provide both amendments for the committee's consideration.

I was on the staff back in 1990, trying to come up with a definition of a Native Hawaiian organization. I remember our thinking back then was to make it broad, so that it would be flexible.

In the amendments that we are proposing, we take the position that the definition should, in fact, be more narrow; and that one of the missing components in the original definition was the specific inclusion of Native Hawaiians in these Native Hawaiian organizations. Under the current definition, that's not a requirement.

So the definition that we propose reads as follows: "Native Hawaiian organization" means any organization which (A) has a primary and stated purpose, the practice of Native Hawaiian cultural values; (B) has a governing board comprised of a majority of Native Hawaiians and (C) has demonstrable expertise in Native Hawaiian cultural practices relating to the care of human remains, funerary objects, sacred objects, and cultural patrimony, and shall not include any federally-funded museum or Federal agency."

We include the last part to address the vision that was raised and the vision that was expressed. Also, in response to criticisms about our inclusion in our new definition, it's not important that we be specifically identified in the definition as a uniform organization. But what we want the focus to be on, rather than on organiza-

tions that represent general points, but on organizations who were organized for the specific purpose of cultural practice.

We believe this to be a more appropriate approach, based on Hawaiian value, [phrase in native tongue], which translates to, from the work, the knowledge; and from the knowledge, "the understanding."

The idea is that organizations who have been conducting this type of cultural practice, over time, gained the necessary understanding that is required in providing appropriate treatment.

We also think it is important that the definition make it clear that the organization be comprised of Native Hawaiians. I think for purposes of the Native Hawaiian definition, that probably is the extend of my oral comments.

The second amendment that we would want to propose has to do with civil penalties against Federal agencies. As you know, currently, NAGPRA does not provide for civil penalties against federally-funded museums. The statute says that the penalties are intended to be punitive.

That was included as a means by which to ensure compliance. But at the same time there were concerns about applying the same civil penalties and procedures to Federal agencies.

In our experience, we have had difficulties with Federal agencies, including the Hawaii Volcanoes National Park and the U.S. Army with respect to the Wai'anae Army Recreation Center.

Even though NAGPRA allows a Plaintiff to file a dispute against a Federal agency with the NAGPRA review committee, the committee's recommendations are advisory only. So the Federal agency could, if it wanted to, choose not to adopt the recommendations.

So short of going to court, which is considerably costly, we recommend that there be a discussion within the Federal agencies. This is not to say that all Federal agencies are not complying. I am not saying that at all. I am saying that there needs to be some kind of mechanism within NAGPRA for those Federal agencies that are not complying. Providing a civil penalties procedure is one such way for the committee to engage in a discussion with Federal agencies to try and develop language or a mechanism by which NAGPRA compliance can be had.

With that, I would conclude my comments. I just want to say, thank you, Senator Inouye for, what is it, 18 years of service on the Select Committee on Indian Affairs, that then became a full-fledged committee and for your commitment to not just Native Hawaiians, but to Indian country for all these years.

[Prepared statement of Mr. Ayau appears in appendix.]

Senator INOUYE. Thank you very much. May I now call on the Administrator, Melani Chinen.

STATEMENT OF MELANIE CHINEN, ADMINISTRATOR, STATE HISTORIC PRESERVATION DIVISION, KAPOLEI, HI

Ms. CHINEN. Good morning, Senator Inouye and the staff of the Committee on Indian Affairs. My name is Melanie Chinen, and I am the newly-appointed Administrator of the Department of Land and Natural Resources' State Historic Preservation Division.

Thank you for inviting me to participate in this important hearing in which your committee will consider testimony as to whether

or not the definition of "Native Hawaiian organization" contained in the NAGPRA should be amended.

The issue before the committee is whether or not the current definition allows those who should be eligible to assert claims under NAGPRA the right to do so. As currently written, Native Hawaiian organizations are defined as those that (1) serve and represent the interests of Native Hawaiians, (2) have the primary purpose of providing services to Native Hawaiians, and (3) have expertise in Native Hawaiian affairs. This definition precludes individual who are not associated with a Native Hawaiian organization from making claims under NAGPRA, unless they are able to provide sufficient evidence for their claims. We have already heard testimony this morning that that is a rare occasion.

Although Hawaii law and our administrative rules do not explicitly provide for the repatriation of human remains and burial artifacts, they do provide descendants the right to participate in discussions relating to historic burials when they are able to demonstrate either a cultural or lineal association to these burials. I will limit my testimony to the State's experience working within this broader definition of eligible claimants as it relates to burial matters.

The inclusion of individual descendants, specifically cultural descendants, in the discussion of burial matters often results in multiple claims and recommendations that at times have conflicted with each other in the State of Hawaii. This need not be viewed negatively as the inclusion of various viewpoints has helped to strengthen many of our burial plans.

However, the broad inclusion of cultural descendants, meaning those who are able to demonstrate that their ancestors lived in the Ahupa'a in which a burial is located, has caused many challenges to the decisionmaking process.

The Division is currently reviewing the strengths and weaknesses of our system in which individuals are able to assert claims under Hawaii's burial laws, and we are not prepared to formally recommend any amendment to NAGPRA at this time.

I would like to extend to you the offer to assist your committee as you also review your definition at the Federal level, and as you continue to examine how NAGPRA can best accommodate those who should be eligible for repatriation claims.

In conclusion, Senator, I would like to thank you for providing me the opportunity to testify and for bringing this important matter to the people of Hawaii for their consideration. The State Historic Preservation Division stands ready to assist and support your committee, and we look forward to working with you.

[Prepared statement of Ms. Chinen appears in appendix.]

Senator INOUYE. Thank you very much, Ms. Chinen. Now may I call on Chairman Tony Sang.

STATEMENT OF ANTHONY H. SANG, CHAIRMAN, STATE COUNCIL OF HAWAIIAN HOMESTEADS, WAIMANALO, HI

Mr. SANG. Aloha kakahiaka, good morning, Vice Chairman Inouye, members of the Senate Committee on Indian Affairs, and staff. Welcome home, Senator Inouye, and welcome to our visitors. On behalf of the State Council of Hawaiian Homestead Associa-

tions, mahalo, thank you very much for holding this hearing here in Hawaii.

I am Anthony Sang, and I am Chairman of the State Council of Hawaiian Homestead Associations, also known as the SCHHA. The SCHHA thanks you for this opportunity to testify before the Committee on Indian Affairs to share the mana'o of our 24 homestead associations, representing more than 30,000 homesteaders who are Native Hawaiian beneficiaries under the Hawaiian Homes Commission Act of 1920.

We thank you for including our recent testimony in the record for this hearing. But I would like to briefly share two stories that that put NAGPRA into conflict, and leave the remaining time for you to ask questions which you may have for us. I would also be happy to provide supplemental written testimony, if necessary.

My first story relates to how the 'ohana, our present day descendants and their families or kupuna, who have come and gone before us. They are unable to fulfill their kuleana, their responsibilities and duties to their iwi kupuna, to their ancestral remains.

NAGPRA gives top priority to only those descendants who can trace directly and without interruption to a known Native American individual. Most often, we will not have any information to identify the individual whose remains are at issue. Although there are some specific instances where a mo'olelo, a story, has been passed down through the generations, telling of the final resting place of some iwi kupuna, generally, there is no written or oral history of where of where na iwi of a specific individual has been buried.

The above standard almost guarantees that in the next priority level recognition, Native Hawaiian organizations will have top priority among all claimants. Thus, the 'ohana excluded above must now try to fit in to the definition of Native Hawaiian organization, perhaps creating a legal fiction, just for the purposes of NAGPRA, in order for the 'ohana to fulfill their kuleana to na iwi kupuna.

We believe that Congress intended to recognize and help perpetuate our Native Hawaiian cultural traditions. We do not believe that Congress intended to create new legal hurdles for our 'ohana. Thus, we recommend that the Committee insert the 'ohana priority level below, the meaning of descendent; and above, the Native Hawaiian organization.

We also suggest changes in the definition of Native Hawaiian organizations for the purposes of NAGPRA to ensure that such Native Hawaiian organizations have expertise in cultural and burial matters, and be comprised of and be composed of and control their records by Native Hawaiians.

My second story relates to land excavations and inadvertent discoveries on Hawaiian Homelands, which are classified as tribal lands under NAGPRA. We have had two recent inadvertent discoveries in the Hawaiian homestead communities. While the first discovery has been resolved, we are in limbo, without any updated information, on the status and proposed resolution of the second discovery.

While we wait for more information, we are asked many questions on what is it going to be. We cannot be responsible to our community and those who may have possible claims. We strongly

would encourage greater consultation, which would improve communication and cooperation. Otherwise, there is a greater feeling of discontent and mistrust, as people feel that they are being left out of the loop.

We, as Native Hawaiians, all have our respective kuleana to protect all iwi kupuna, our ancestors' remains, and to protect our island, our land. We urge you to consider our suggestions contained in our written testimony, so that through NAGPRA, the United States can help and respect our Native Hawaiian cultural traditions.

Mahalo again for this opportunity to testify on behalf of the State Council of Hawaiian Homestead Associations. We would be happy to answer any questions, supplement our testimony, engage in further discussions, and work with the Senate Committee on Indian Affairs and Congress to implement the above recommendations, as well as other changes identified by the members of our community and under consideration by the Senate Committee on Indian Affairs; mahalo.

[Prepared statement of Mr. Sang appears in appendix.]

Senator INOUYE. I thank you very much, Chairman Sang. Now if I may ask a few questions.

Mr. Mun, in your testimony, you have indicated that there is a growing need to accommodate family members to participate as equals with Native Hawaiian organizations in the process of NAGPRA. Does OHA have any rules or existing policies designed to accommodate the needs of family members?

Mr. MUN. Thank you, Senator; I think at one time it was envisioned that OHA, within the process, would be a placeholder. In other words, where families could not be located, or families were unaware that certain remains were discovered, I think OHA would be in the process and would be a placeholder for them. When and if they discovered or were made aware that certain remains were found, OHA would basically step aside and they could come into the shoes of OHA, which is the process.

So I think, yes, there was maybe not a formal policy, but that was the role that OHA would play in the process, as a placeholder for families that were either unaware or not located.

Senator INOUYE. All right, do you have any other policies that have been adopted by your Board; anything that could withstand scrutiny by the courts?

Mr. MUN. I am not aware of any formal policies. As I said in my testimony, we have not taken any formal position on any amendments. I am unaware of any formal policy. I will certainly, before January 4, present any materials that we may have on record to the committee.

Senator INOUYE. Have you had any family organizations approach OHA?

Mr. MUN. I occasionally have, Senator.

Senator INOUYE. And what have you done for them?

Mr. MUN. It is my understanding, Senator, that we have on occasion, when we were approached and they had the documentation or the lineage, attempted to assist them, to the limits of our resources.

Senator INOUYE. All right, thank you very much. I will be looking forward to your response to the question as to whether you do have policies that can withstand scrutiny by the courts.

Mr. MUN. All right.

Senator INOUYE. May I ask Mr. Ayau, what status would you give families as claimants under NAGPRA?

Mr. AYAU. Well, as we have seen in one of the cases with the U.S. Marines in Wai'anae, the Marine Corps, after the U.S. Navy, identified families as Native Hawaiian organization claimants.

You know, I can say that was something that was intended at the outset when the definition was drafted. Because the idea was, as you stated earlier in your opening comments, that in lieu of a formal tribal government for Native Hawaiians, the idea was to try and find a somewhat similar entity or a form of that. So the idea was to approach it from the perspective of an organizational structure.

But in that case, the Marines said, well, families are submitting claims. Although they are not able to establish the high standard of a lineal descendant, they nonetheless should be afforded recognition. So the families are recognized as Native Hawaiian organizations in that particular case.

I think maybe the best approach, and it was also pointed out in the testimony, is the term "relaxed standard" of lineal descendant under State law, under State regulation. The challenge here under NAGPRA is that lineal descendant, the definition, is so stringent for the smallest claims like that one.

I remember being in the community and wrestling with that. One, that in Hawaii, it would probably preclude a lot of Hawaiians from being able to make a claim, as long as you had to know the identity of the individual, and that was almost impossible. The Bishop Museum in on record as saying that it knew of only two individuals in its collection of human remains in which they knew the identity of the individual.

So maybe one of the approaches that the committee might want to take is to look at possibly relaxing the stringent standard of the Senate to allow that to qualify.

Senator INOUYE. Well, that is what we are here for. But as you may recall, the Department of the Interior insisted upon this high standard.

Mr. AYAU. Right.

Senator INOUYE. So we are now looking at it, after 10 years, to see if the changes are justified.

Now if the families are allowed as claimants, and there is a conflict between the families and Hui Malama as to certain protocols or practices or rituals, how would you resolve this?

Mr. AYAU. That is kind of up to them to demonstrate that these are their iwi kupuna. Then we have to defer. It is that straightforward. It is that simple.

Senator INOUYE. We have a challenge here, as you know. The phrase, "lineal descendant" is not defined in the bill, in the law. The two words, "lineal descendant" have been defined in the regulations of the Department the Interior. So it poses a special problem and a special challenge for all of us here. If we are to change

that, we could legislatively do it. But at the present time, it is governed by regulations of the Department of the Interior .

So with that, may I ask another question? In your testimony, you suggest amending the definition of Native Hawaiian organization, making a claim under NAGPRA to have as a primary purpose the practice of Native Hawaiian cultural values.

In your view, how would a Federal agency or museum distinguish among several Native Hawaiian organization claimants, each holding to and practicing a different set of Native Hawaiian cultural values?

Mr. AYAU. Well, you are asking me how the agency itself distinguishes?

Senator INOUYE. No; they are all claiming that they are practicing Native Hawaiian cultural values, practices, and protocols. They may differ from yours.

Mr. AYAU. Right, but I would say, from the museum or Federal agency perspective, as long as they satisfy that condition, then you go on to the next one, to see if they satisfy them, as well. Then if they do, then you accord them a Native Hawaiian status.

Senator INOUYE. Well, obviously, these questions point out the complexity of the problem before us, and it will take a lot of work, and some collaboration. Otherwise, we will not get anywhere.

Mr. Ayau, in your testimony, you also stated that the definition of Native Hawaiian organization should also be amended to require that the organization also possess a proven history of expertise in Native Hawaiian cultural practices, specific to the care of the NAGPRA defined items, and not be a Federal agency or museum.

Now if NAGPRA were amended to allow families to make claims for remains, but does not satisfy the definition of lineal descendants, would you place this on these family members, as regards their proven history of expertise in Native Hawaiian cultural practices, as pre-conditions?

Mr. AYAU. But if they are family, then that is their expertise, in terms of caring of their kupuna. It is a given.

Senator INOUYE. So you would give greater weight to the claims of a lineal descendant or family member higher than a Native Hawaiian organization?

Mr. AYAU. If they are able to establish that, that these are their iwi kupuna, then yes. There is a difference between someone who is claiming that those remains are their kupuna, and someone who is able to demonstrate that they are.

Senator INOUYE. I thank you very much, Mr. Ayau.

Ms. Chinen, you have suggested that the State's definition of cultural descendance does not indicate, but you do not indicate whether the use of that definition is advantageous or disadvantageous; why?

Ms. CHINEN. As I stated in my testimony, we believe that their strength, it allows for input from the Hawaiian community. Because a lineal claim is so difficult to make, we do support the greater community having a say or having an opinion as how the burials in the State of Hawaii should occur.

But we have also asked, in meetings and numerous discussions, some of the very questions you are raising here this morning as to families that dispute. In our eyes, they are equal and they are all

cultural. If there is a lineal claim, our rules require us to give higher preference in decisionmaking to those family desires. But in most cases, those that come before us are equal in our eyes, in that they are related to cultural.

Very often, and right now, we are in the middle of a very controversial case, where there are two main family members that disagree on how to go about a burial. What we have tried to do is to listen to both sides. The question that you asked Mr. Ayau as to who would have priority when everybody is equal, we go back and we try to work with them to come to resolution.

For us, we have a little bit of an out, because of the way our rules are written. We are only required to get input and recommendations; the final decisionmaking, like we do with our burial consults, if it is a pre-determined burial, or with the State Historic Preservation Division if it is an inadvertent find.

So we try to look at what is culturally accepted to most and what is reasonable within our rules, because our rules also prescribe certain steps on how you go about working with some of these burials, and we always go back to look at that.

Senator INOUYE. How does the State process determine whether a family claimant is qualified to be a family claimant?

Ms. CHINEN. Well, there are two different processes. One would be, for the lineal, the definition of State law or State administrative rule is that they must be able to show a link to an ancestor. That would be part of our documentation. We would look at records of these.

We are also able to take into consideration oral history. The way our rules are written, the burden of proof upon the Department is a reasonable belief that there is a claim. So, again, we would look back to marriage records, birth records, death records, property right ownership, and what not. So we do have a process in place.

Senator INOUYE. Under your definition, do you give legal status to hanai-ed children?

Ms. CHINEN. For cultural, they could be considered; for lineal, because there would be a blood relationship, yes, if they are able to show the claim that that was their ancestor. The base argument is whether or not they would have to identify a particular individual that is related by name.

That is something that has been represented publicly and, I think, incorrectly, just so we could go and have a discussion with our attorney general's office on what does it mean to be a lineal.

What we got from our definition and what the courts would look at in interpreting that is that you must be able to show a link that is your family member, ancestor blood line. But you do have to state the specific individual by name. That has been something that has kind of been up in the air in the past, where people agreed they would have to identify the exact individual that had been disinterred from the site.

Senator INOUYE. So under your definition, in order to qualify, there must be some blood relation?

Ms. CHINEN. For lineal, and that's the difficult one. Very often, families may not have passed down the oral tradition or have records to support that.

Senator INOUYE. So if a family should adopt someone outside the family, that adoptee does not qualify?

Ms. CHINEN. Are you talking about where a grandmother may take her granddaughter or grandson away from them?

Senator INOUYE. An outright adoption.

Ms. CHINEN. An outright adoption—probably not, because our definition requires a genealogical link for lineal. But for cultural, as long as they affirm that area, as long as they can show that their family entered into the area, and often it is a pretty large land area. So very often, that is one of the dilemmas of the State.

We may have 50, 60, 70 people coming forward and making claims to burial rights. As I discussed, very often, because everybody has their own tradition, their recommendations may be in conflict with one another. That is something that we try to work with the family to resolve these.

Senator INOUYE. I thank you very much, Mr. Chinen. I think we had better work together on this.

Ms. CHINEN. Yes.

Senator INOUYE. Chairman Sang, why do you think it is crucial to include a definition of family members in the act in addition to lineal descendants or Native Hawaiian organizations?

Mr. SANG. Well, first off, Senator, I think I am able to answer that question. I think the citation that we make on the recommendation dealing with the family members having some kind of recognition from NAGPRA is very important.

Because there may be certain instances where the families are not sure about making a claim, but would like to. Although they are not from the area, they have been there as long-time residents; and because of the loss of oral history, they will not have that kind of information available.

But having a history of residing in the area for many, many years, the family themselves lack that expertise or lack that type of information to come forward and to make a substantial claim. I think it figures heavily.

In the two cases that I was involved in, that I know of, there was this whole tribal family that lived right across the street from where the remains were discovered, so it was advertently. These people, the whole family, prior to the Homestead interim, they were living on a beach, and this was a Hawaiian community living on a beach, and this was in the early 1900's; probably late 1800's.

So there may not have been variables. But those that were involved or those that had information on how fast, you know, my questions to some of the families, they have no information going back that far, to come forward and make claims for the iwi.

Senator INOUYE. In your testimony, you used the phrase "'ohana family." What is your definition of the 'ohana family?

Mr. SANG. Well, the 'ohana family—'ohana is the Hawaiian word for family.

Senator INOUYE. Oftentimes, in the use of that word, it is rather broad, is it not?

Mr. SANG. It could be as broad as you want to make it.

Senator INOUYE. So it could include family?

Mr. SANG. Yes; your immediate family.

Senator INOUYE. And it could family members who are not blood related?

Mr. SANG. Sometimes, yes, sometimes this can include someone not related by blood.

Senator INOUYE. Would it suffice if you said that a family member is one who can trace his or her ancestry through that area? Would that suffice, that he came from the waimanalo area?

Mr. SANG. Would that suffice to be able to make a claim?

Senator INOUYE. Yes.

Mr. SANG. I think, in some way, it should allow for that kind of provision. But I think there are certain steps that need to be verified, so that they can follow the correct procedure and process.

Senator INOUYE. Well, we have received testimony from the DHHL. Obviously, that department would have some important involvement in this process. Would you care, or would any one of you care, to send questions that I can submit to DHHL? It may be difficult for you to do that, but I can do that. Would you like to do that, so they can be part of the dialog here?

Mr. SANG. Well, I think if you want to send it to them, you are going to send it to them. The first case of inadvertent discovery occurred when the Department was involved in developing the Hula Housing in Lanen Hall. At that time, I think if I remember correctly, there were three sets of remains that were discovered. They went through the process, I guess, cultural and whatever.

We had a meeting, and the person in charge was an archeologist who said the bones were over 50 years old. Therefore, it came under restricted district law. The response for them to be re-interred was the responsibility of the Department of Hawaiian Homelands.

It was recommended by the chairman at that time, that the Department create a burial ground. I did not oppose that. I thought that was a very good idea. The only thing that I did oppose was the set of bones that the archeologist said was over 50 years old. At that time, I think if you go back, and I'm counting his time, it was back in the 1950's, in the early 1950's, I guess.

So my question to the person was, do you know exactly whether or not these bones are Hawaiian or are of Hawaiian origin? Do you have anything to support that question? He said he could not answer that question.

So my question to them was, well, if you are going to insert these bones into a Hawaiian burial ground, my intentions are very good. Do we know that they are interred Native Hawaiians, or could it be other ethnic races? They could not answer the question, but they went ahead with the process.

I think there should be a limit. Because the Hawaiian Homelands consists of 200-something acres. That is a lot of land, and with the Department's plan for land use and developing new homes and houses for our people, this is going to occur over and over and over. There should be a process, if it is under the authority of the Department of Hawaiian Homelands; therefore, it is considered tribal lands. So that process should be initiated to help individual families, too.

Senator INOUYE. Two of you have suggested that in order to qualify as a Native Hawaiian organization, Native Hawaiian mem-

bership in that organization should constitute a majority. I believe you said that, Mr. Ayau and Mr. Sang. How would that improve the process?

Mr. SANG. First of all, this was not an improvement issue, as much as it was to make clear that organizations who are not comprised of Native Hawaiians, who had very few Hawaiians, especially in their leadership capacity.

You know, NAGPRA is intended to address the concerns of native people: American Indians, Alaskan Natives, and Native Hawaiians. So that element that we are suggesting is consistent with, this is a law to rectify the rights of Native Hawaiians. We are not saying the entire organization. We are saying the leadership, the governing board or the governing body, should be comprised of Native Hawaiians. This is who this law is intended to help.

Senator INOUYE. I asked that question because at this moment, we are very heavily involved in the passage of what is known as the Akaka bill. If that bill becomes law, it could very well provide a level of sovereignty in which that sovereign entity, the Native Hawaiian Government, can determine who is a citizen and who is not a citizen, because that is the right of a sovereign.

Technically, I could be adopted or made a member of an Indian tribe. They can do that. I suppose, as a sovereign, the new Hawaiian Government can do that.

Now would that person who is not a Native Hawaiian, in blood or ancestry, would he qualify as a Native Hawaiian in your majority membership?

Mr. SANG. It is up to the choice of the organization. What we are saying is that whatever the organization's membership is comprised up, its leadership should be the majority.

Senator INOUYE. This shows we have got our work cut out for us. But we also, do not want to cause any undue problems in the Akaka bill.

Well, I have one more question for you, Chairman Sang, if I may ask. You have indicated a need for more consultation by the Department of Hawaiian Homelands with Native Hawaiians under NAGPRA, as it relates to their responsibilities to tribal lands defined in the act.

What is your view about the Department's execution of their present duties under the act, and why do you suggest there is a need for greater consultation?

Mr. SANG. I just want to go back to what I said earlier, that the Department's plans to accelerate housing for our people is a very broad, tremendous effort that is being put forth to our people. In developing these lands for homes or for agriculture or for whatever, it is going to involve excavation.

To give you an example, for myself, I do not even know what is buried under the ground. There is a possibility that more bones will be discovered. We feel that we need to have an open door communication between the Department and we who represent the members of our organization and future beneficiaries that may be coming on the land, as far as it relates to be able, under NAGPRA, to claim those people.

Senator INOUYE. As I indicated in my opening statement, the record will be kept open until January 4, 2005. May I suggest that

when we share with you the recorded testimony, that you look it over to see if you want to make changes to that.

Furthermore, if I may, I would like to submit to all of you questions, and I hope that you can respond to them. Because at this moment, there may be certain legal technicalities that may not be properly clarified. So we would like to do it after consultation with our legal staff. Would that be okay if we submitted questions?

With that, I would like to thank the panel for the assistance you have given us, and we invite you to submit supplemental testimony, if you so wish. I would suggest that when the hearing record is complete, we will share it with you and you look it over. Thank you very much.

Our next panel is made up of the following ladies and gentlemen: Van Horn Diamond, Lani Maa Laipilio, Laakea Suganuma, Cy Kamuela Harris, and Melvin Kalahiki. May I first recognize Van Horn Diamond.

STATEMENT OF VAN HORN DIAMOND, HONOLULU, HI

Mr. DIAMOND. Good morning, Senator. Thank you very much for this opportunity to provide testimony of behalf of the Van Horn Diamond Ohana, a NAGPRA-recognized claimant in regards to 84 items, artifacts, as well as the repatriated na iwi kupuna in Kokapu, Oahu.

In saying that also, I would like to underscore the point that the testimony being provided by us is only for our ohana. I think that is important to say.

With regard to the NAGPRA law, despite being well meaning, presently, it does not, in our opinion, fully address the needs of the Hawaiian people regarding the repatriation of Hawaiian artifacts and iwi.

First, NAGPRA doe not fully respond to the concept of Hawaiians position in society. Clearly, one such fact is the key of the importance of the family. Presently, this is happening, but not commensurate with its importance. So therefore, the need needs to be pushed.

Family kuleana is an essential principle for Native Hawaiians, especially with regard to caring for artifacts, hence their repatriation and reinternment, when reinternment is warranted. Accordingly, the law needs to focus on how to continue to advance the family, taking its rightful responsibility with regard to artifacts. NAGPRA must also provide incentives for Native Hawaiian organizations so they can use this process, as well.

One of the concerns is that the Native Hawaiian definition currently, from our perspective, is self-defeating, in that it is too broad. In the larger testimony, the comparison, the definition is such that it is broad enough to have side by side, a semi trailer, a hummer, three volkswagens, all passing through the definition at the same time.

Indicative of that presently is the Native Hawaiian organization definition, in terms of how persons have been recognized by the Native Hawaiian organizations. Using a good example would be, you have families like the Diamonds. You also have the Hawaiian Civic Club, all together being recognized as Native Hawaiian orga-

nizations. Yet, in terms of having to demonstrate that they are culturally affiliated, we are different.

So families are then having only co-equal status with organizations. Yet, from a perspective of being recognized, families ought to have a standard of being perceived organizations. Therefore, that is why we are stating with it this broad. I am not so sure that anyone can provide an answer as to how great the boundaries are, at this point, other to raise the awareness.

There at least is an indication of an effort to provide two definitions and two categories of descendants in the State law, one is individual and one is cultural, and they are not perfect. They need to be worked on. But at least in that arrangement and under the rules that identifies, for example, that yes, there is preference given to individuals.

Then there is cultural. Then there is another category which identifies the rules that, for example, an entity is an appropriate Hawaiian organization by virtue of how far, and any other organization would be recognized by their count in that category would be an appropriate Hawaiian organization.

Then there is a third one that the department has, and that is an appropriate ethnic organization, which is not limited to Hawaiians. But using an analysis, an appropriate ethnic organization within the Hawaiian community might be the Native Hawaiian Chamber of Commerce. Then you would have cultural descendants by virtue of the definition, at least by genealogy and by geography, that have a chance of having a standing that is separate from that limitation. It also kind of identifies where they are at.

Presently the law of NAGPRA puts all of these folks in one definition. I am hoping that in the discussions and whatever can come about, there will be an opportunity to have that.

The other advantage that I believe that is available under the state is that there is one place that everyone goes in order to achieve recognition. Under NAGPRA, for example, depending on where the artifacts or the remains happen to be, whoever is the repatriator assumes the responsibility of trying to determine whether or not someone is a Native Hawaiian organization, per the definition, and then has cultural solution status to be connected to that item. That is a two-prong thing. We all have to do that in order to qualify. So that is one piece.

The other thing that is a problem, I believe, is that because we are all lumped under that one definition, there is the opportunity that is one to repatriate, because we are all in the same category.

If they choose to, they do not have to go through the extra steps of really making the distinction between the people that are coming forward, once they are defined as a Native Hawaiian organization. They can just then make a determination that globally they are repatriated, and then play "Pontius Pilot" and that has happened already.

That happened at Kawaihae, and that also happened at Palau, because everybody was identified. Even though some families are challenging the determination by the Duckworth Museum, they still did that. They made a global determination, and then they said, this is it.

The other side bite to that is that around January and February in 2000, an advisory opinion was issued with regard to the *Park Service* v. *Hopi Indians.* In that determination, which we heard part of it in Washington, DC in September, it was determined that the Advisory Opinion also identified that consultation, for repatriation purposes, had to be one-on-one, with each one recognized by the claimant.

That did not happen with regard to Palau. All that happened was, it was globally. In other words, all those who were recognized came from discussions. There was not a one-on-one conversation with each and every one of them.

Now admittedly, there is admittedly a fact, and that is that with the rendering of that decision in January 2000, when some of us were involved. Still, by having all these categories of organizations, we have a problem.

So if I can summarize, the challenge for 2004 going forward is to see how we can accord the family standing beyond [inaudible], and that is very hard to do; and give them standing that is separate from this broad category in the final position; or do something, as well, within the Native Hawaiian organization definition. Because [inaudible] they are different from a Hawaiian Civil Club, who may be involved [inaudible] . So I thank you very much.

[Prepared statement of Mr. Diamond appears in appendix.]

Senator INOUYE. I thank you, Mr. Diamond. May I now recognize Lani Maa Lapilio.

STATEMENT OF LANI MAA LAPILIO, HONOLULU, HI

Ms. LAPILIO. Distinguished Vice Chairman Inouye and the Committee on Indian Affairs and staff, aloha kakahiaka kakou. It is with deep respect and great appreciation that I greet you and commend your leadership and sincere efforts in the drafting and implementation of the NAGPRA, and especially for your continuing concern for its proper implementation.

I am Lani Ma'a Lapilio, here today as an individual to offer a historical perspective on how the NAGPRA was administered by the Office of Hawaiian Affairs in the early 1990's as well as my thoughts on the definition of Native Hawaiian organization.

I was very fortunate to have worked with the Native Hawaiian Historic Preservation Council as their legal counsel for over 10 years. Much of the Council's work during this time focused on the implementation of the act, reviewing inventories, summaries, and filing claims.

The Council began as a statewide kupuna council that provided advise on cultural issues to the OHA Board of Trustees. This group, led by kupuna such as Aunty Namahana Maioho, Leon Sterling, Aunty Gladys Brandt and many others, some of whom are in this room, viewed this law as such a tremendous opportunity for all Hawaiians to finally bring our iwi kupuna and na mea kapu home from mainland and local institutions.

In the early 1990's, right after this law became effective, OHA and Hui Malama I Na Kupuna were very active in filing claims and pursuing repatriation from institutions nationwide. Many Hawaiians were still unaware of this law, and it was the mana'o of the OHA that they would undertake this responsibility as claim-

ants until families could come forward and represent themselves in this process.

OHA's primary role, as you heard earlier this morning from Ron Mun, was that of a placeholder, whereby OHA would file as a claimant Native Hawaiian organization, and allow families to be involved in the process without having to file as a Native Hawaiian organization. In this manner, OHA also acted to preserve the right of families to come forward and claim their kuleana at a later time.

Since then, more Native Hawaiian families have and continue to gain awareness, both of the law and of their kuleana, and are starting to get more involved in the process. They are filing claims and representing themselves, which was the goal of the OHA at that time.

With regards to the definition of Native Hawaiian organization, I understand the concern of those who feel the current definition is too broad. In general, I am in favor of keeping the law broad, so as not to preclude any potential claimant from entering the process. There were many people who thought long and hard about this law and regulations, and by keeping the law broad you are able to better meet challenges that are presented by increasingly complex conditions.

However, if it is true that families with close cultural affiliation are not being allowed to participate in the process, then I think the definition of Native Hawaiian organizations should be amended to include them. I believe that families should be accorded a proper place, perhaps even have priority over Native Hawaiian organizations, in the hierarchy of claimants with standing.

Under the current law, there are three entities that may be accorded standing: Lineal descendant, Indian tribe, and Native Hawaiian organization. Now that families are beginning to become more aware of the importance of their kuleana and are beginning to come forward to assert their claims under this law, it may be appropriate to specifically include them in the process by either expanding the current definition of Native Hawaiian organization; or, if more appropriate, to add a new category for Native Hawaiian families that wish to assert claims for iwi kupuna or certain NAGPRA-covered objects and items.

In closing, thank you for coming home to hold these hearings and listening to what the community has to say. I support any effort made by this distinguished committee to ensure that the NAGPRA program is administered with objectivity, cultural sensitivity, and in keeping with the spirit and intent of the act. Mahalo and thank you for the opportunity to testify.

[Prepared statement of Ms. Lapilio appears in appendix.]

Senator INOUYE. I thank you very much. May I now call upon Mr. Suganuma.

STATEMENT OF LA'AKEA SUGANUMA

Mr. SUGANUMA. Good morning, Senator, my name is La'akea Suganuma, and I am the president of the Royal Hawaiian Academy of Traditional Arts, wherein I carry the title of 'Olohe Aiwaiwa.

Our primary function involves the teaching and preservation of the Hawaiian fight art of ku-ialua, commonly referred to as lua. However, we are heavily involved in many other aspects of our cul-

ture and traditions, as many of our instructors and students, from all islands, are practitioners of numerous traditional disciplines.

My first encounter with NAGPRA began over 4 years ago, when the academy was recognized as a claimant in the ongoing Kawaihae Caves Complex, also known as Forbes Cave matter.

On the other hand, my education in the beliefs, spirituality, traditions, great wisdom, and dignity of our Hawaiian culture began shortly after birth, when I was given to my grandmother, Mary Kawena Puku'i to raise, in the household of George and Pat Namaka Bacon, my foster parents. There is no one, absolutely no person, who honors, respects, and has unconditional aloha for our ancestors and culture more than I do.

I believe that NAGPRA was enacted with good intent, to address the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations, to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. My observation is that it has worked well with Native American and Native Alaskan tribes, but it has not worked well in Hawaii.

The primary purpose of this hearing is to examine proposed changes to the definition of Native Hawaiian organization, which are necessary. There are differences between our culture and Native American cultures that also warrant revisiting the definitions used to categorize the various types of objects.

However, the primary reason that NAGPRA is not fulfilling its intent in Hawaii is the fact that all federally-recognized tribes have a governing body that is authorized to represent and make decisions on behalf of the members of the tribe. Hawaiians were never organized in tribes and, at this time, have no governing body that speaks for our people.

In other words, if an object is determined to be of a certain tribe, it is repatriated to the tribe, whose leaders decide its fate. It can be left where it is, as has happened, placed in a tribal museum, given to a particular family, et cetera. The key here is that the decision is made by a recognized governing authority of the tribe.

Here in Hawaii, because we are not tribal, nor do we have a government, actual and legal ownership has been transferred to a few, without regard for the Hawaiian people as a whole. Two organizations, in particular, were named in the act itself, and must be removed to eliminate any further appearance of favoritism.

Because of this naming, one organization, whose spokesman was involved in the development of NAGPRA, was formed for the express purpose of taking advantage of its provisions and has dominated NAGPRA-related activities without regard for the wishes and beliefs of all others, including those with familiar ties, which is contrary to our traditions.

This group has arbitrarily imposed their beliefs on everyone else, while getting paid for their services and receiving substantial sums in the form of grants and reimbursements from the Federal Government. We view their motivation as financial rather than cultural.

The decision of a few has fostered tragic consequences. In the case of Kanupa Cave, its so-called permanent seal was breached and precious ancient objects appeared in the black market for sale.

We would ask for your assistance, Senator Inouye, in looking into the investigation that ensured and whose results have seemed to have been quietly shelved.

While Native American tribes are building museums to house their treasures, repatriation has been depleting what little we have left and exposing them to deterioration and/or theft. Moreover, ownership has been transferred to a few, who can do whatever they want to do, including selling these treasures.

The U.S. Census 2000 reported a total Hawaiian population of 401,162, of which 60 percent or 239,655 of us live here in Hawaii. Yet, the fate and ownership of what should be considered national Hawaiian treasurers is being given to a small handful of individuals.

Although we Hawaiians value these cultural objects much differently, the fact is that some of these items, which are literally prices and worth unimaginable sums of money to international collectors, now below to and are controlled by a few.

Ancient bowls, gourds, spears, images, kapa, et cetera, are now owned by those who took advantage of the provisions of NAGPRA. The acquisition of some of these items would make a thief instantly wealthy, a very tempting situation. I am sure this was not the intent of NAGPRA. Thus, NAGPRA, as well intended as it was, has had a devastating effect on the Hawaiian people.

I believe that this damage must and can be undone, or minimized, by recalling all previously repatriated objects, not iwi, to be held in trust until these matters are resolved. There should and will someday be a museum controlled by Hawaiians, where our treasures would be housed, protected, cherished, and loved, with pride in the accomplishments of our ancestors. Thank you.

[Prepared statement of Mr. Suganuma appears in appendix.]

Senator INOUYE. I thank you very much, Mr. Suganuma. May I now call on Mr. Harris.

STATEMENT OF CY KAMUELA HARRIS, KEKUMANO OHANA, HONOLULU, HI

Mr. HARRIS. Aloha, Senator Inouye and committee members. I would like to thank you for the opportunity to present my feelings and thoughts on this matter regarding NAGPRA, its administrative rules, and how they do not apply to Hawaiian burial beliefs and practices.

My name is Cy Kamuela Harris, and I represent my family, the Kekumano Ohana, which is a recognized NAGPRA claimant in Mookapu, and Kawaihae claims, as well as Waikiki on the State level. I submit to you these ideas to balance the word of the law and some of its definitions regarding Hawaiian burials in the NAGPRA process.

First, remove the names of Hui Malama and OHA from being used as examples of Hawaiian organizations. The intentions of these Hawaiian organizations, which may have been noble and selfless in the beginning, have changed. It seems to me that this honor is best served by other Hawaiian organizations who are better examples or not listed at all.

The reason for this is, it makes them an authority by association with the definition. It gives them an unfair advantage in the proc-

ess, and it gives the impression of a rubber stamp of approval. The families are coming forward to accept this responsibility, as well.

Second, change the definitions to include the Hawaiian Perspective of Burial Customs and Practices. Ohana or family values are not unique to only Hawaii and Hawaiians. It is a principle which insures the respectful treatment of burials at the very least. This feeling of family is missing in the spirit of NAGPRA and its administrative rules and definitions.

I believe the current definitions do not fit Hawaiians. Hawaiians are trying to fit the definitions. There are many definitions which do not reflect Hawaiian ways of thinking, but I think the most important one is lineal claimant.

This idea of family most of all is what is lacking and is the root of Hawaiian thinking. The definitions need to include this perspective in the rules in order for lineal claims to take the lead as the rules are presently written.

The common element in mind is families, not native Hawaiian organizations, to make the final decisions with regard to burials. If this is not changed, then the definition of Hawaiian organization becomes very important, as this will be the highest level of NAGPRA claim any Hawaiian will receive with regards to Hawaiian burials, based on a lineal history.

This inadequacy is putting the decisions into the hands of Hawaiian organizations like OHA and Hui Malama, instead of the Native Hawaiians families that should rightfully decide these matters.

The effect of this has caused a delay to thousands of families iwi from being put to rest; not because Hawaiians cannot get together and make a decision. It is the system failing from the definition or lack thereof. You could also argue that this is an example of how a Hawaiian organization refuses to relinquish the decision to families.

On the NAGPRA level, the Mookapu iwi are still waiting patiently for their turn to be interred, because there are no recognized lineal claimants. Even claimants who base their claim on genealogy are only considered Hawaiian organization status, fighting against organizations.

Some of these organizations push their protocols and burial practices with total disregard for family opinions or decision capabilities, and have their own agenda based on Federal grant money, not Hawaiian principles.

Hawaiian burial practices have always been based on family and decided by family; which is to say that not all knowledge comes from one source, but many. This has been an issue in dealing with organizations instead of money.

I am sure I do not have to tell you how Hawaiians are related to each other. But if family steps forward with genealogy to claim connections to iwi, you can bet the percentages are high that they are family. Their intentions are honorable to do the right thing and prevent the wrong thing.

Kawaihae Cave or the Forbes Cave is an example of how a Native Hawaiian organization was allowed to do the wrong thing. I am speaking about what has become public knowledge through the media, that one claimant has decided the matter for all.

Hui Malama, along with the cooperation of the past administration of the Bishop Museum, attempted to circumvent the NAGPRA process. In the museum's attempt to correct its public image without changing the outcome, and ignoring the results of a vote taken by the majority of claimants, it lied. After agreeing to the recovery of sacred objects and iwi, the museum informed us that repatriation had taken place, and if we wished to take this further, then we could do so in a court of law or through the NAGPRA review process.

Fortunately, the current administration is more understanding of NAGPRA and its rules. So began the quest by Laakea to correct the wrong. The rest is history. The decision that the museum rectifies this wrong is on the right track, but far from over.

From the perspective of Ohana, the correct thing to do is to bring the family, to show our aloha, to malama them and have the chance to decide where and how they should be treated for burial.

But most organizations do not believe this is necessary. The fact of the matter is, the families never had a chance for closure, let alone the participation in the burial process.

These sacred objects were meant to be found and shared for all the people of Hawaii to cherish and admire at the very least, not buried in a cave or being sold on the black market; their security always in question. The system cannot allow one organization to make a decision of this magnitude, ever. Thank you very much, Senator.

[Prepared statement of Mr. Harris appears in appendix.]

Senator INOUYE.I thank you very much, Mr. Harris. Now may I call on Mr. Kalahiki.

STATEMENT OF MELVIN KALAHIKI, NA PAPA KANAKA O PUUKOHOLA HEIAU, KANEOHE, HI

Mr. KALAHIKI. Aloha ka kou a pau loa, Senator Inouye and committee members; Mahalo piha for the opportunity to share my mana'o with you. My name is Melvin Lonokailohia Kalahiki. I represent Na Papa Kanaka o Pu'ukohola Heiau and I sit on the Council of Chiefs.

This heiau at Kawaihae, island of Hawaii, was built by Kamehameha I. Today, it is known as the Temple of State, for it was here that the unification of the islands began. It is presently under the care of the National Park Services.

The mission of Na Papa Kanaka is to preserve and protect the history and culture of the heiau. Each August we come together in full ancient ceremony and protocol, and this puts life back in the heiau.

I was raised in this area by my grandfather, William Pauo Mahi Naule Akau, I was raised with Hawaiian values in a setting that was surrounded by Hawaiian history. I have devoted the major portion of my life to working within my culture.

It is my feeling that NAGPRA should be amended to include those organizations that have a valid claim. This does not need to be a complicated procedure and the results should be very simple, keeping in mind that the Hawaiian people are not structured in the same fashion as American Indians or Alaskan Natives.

On the other side, we should be made aware of the criteria for selecting a claimant. If genealogy is used, be sure it reflects the birth origin.

A few years ago, I was attending a meeting up in Waimea that was called by Hawaiian Homelands, the Department of Land and Natural Resources, and the Bishop Museum. The topic was in regard to the Honokoa Cave artifacts.

At that time, the Honokoa Cave artifacts were still in the Bishop Museum, and the iwi kupuna were in Hilo. Everyone there had a strong opinion regarding the artifacts. At the meeting, I remember that Papa Awai felt strongly that the iwi kupuna in Hilo should be returned to their resting place in Kawaihae, and the majority of kupunas agreed. I am very sorry to say that Papa Awai has since passed away.

Also, Auntie Marie Solomon of Kohola voiced her mana'o of the artifacts. She said that they should and must be seen by future generations; to see them and to take pride in their workmanship.

She felt saddened that her parents were never able to see such beauty created by their ancestors. She said that the powers that he that were in that room would not listen to her mana'o. Now Auntie Marie has been lost to us, too. Both Papa Awai and Auntie Marie asked that I remember their words and speak for them wherever I go.

I also gave my mana'o that night. I felt, and still feel, that the artifacts must be kept out and safe. I worried that they may fall into the hands of grave robbers and appear on the open market. I feel they will be safe at Bishop Museum for awhile until there is a suitable place to malama them.

True to the worries and concerns of Auntie Marie and me, the worst has come true. A loan was given and they were returned to Honokoa, sealed and delivered, ignoring all concerns of the kupuna of Kawaihae, Kohala, and Waimea. Hawaiians have a word for all of this. It is the word maha'oi. The kupunas have spoken to the wind. This is exactly why NAGPRA needs to be amended to address this type of concern.

On behalf of the Na Papa Kanaka o Pu'ukohola Heiau, we thank you for this meeting, and we appreciate your time.

Senator INOUYE. I thank you very much, Mr. Kalahiki. Before proceeding with the questions, I would like to once again advise all of you that the hearing record will be kept open until January 4, 2005.

Those of you here in the audience, if you wish to submit testimony on your own, feel free to do so, provided you get it to us before January 4, 2005. I can assure you that it will be made part of the hearing record.

May I now proceed with a few questions here. Assuming that the Akaka bill is successfully enacted into law and a Native Hawaiian Government is formed, a sovereign entity is formed, under the provisions of that law, what standing, if any, should this Government have in the NAGPRA process? I think all of you have touched upon specifically Hui Malama or OHA. Should this Government, made up of Hawaiians, receive special recognition under the act, Mr. Diamond.

Mr. DIAMOND. Based on the intent of the Akaka bill, and what I understand would enable the Hawaiian people to come together and then to assist them in what they need to put together, that would provide the catalyst for self-government. It would seem to me that it moves to the emergency and would take shape. It would probably become a government entity; and if so, it would have [inaudible] NAGPRA.

Senator INOUYE. Would it be a status equal to a family or superior to a family?

Mr. DIAMOND. I would think that if it's government, then it would [inaudible]. I would hope that it would be responsive to the Hawaiian people, and that it would accord the regard for the kuleana of families.

Senator INOUYE. Ms. Lapilio, do you have any views on this?

Ms. LAPILIO. Thank you, Senator, I agree with Van Diamond's comments, that there would be a great need for families to also assist this new government and be a part of the process; and that families would be accorded the first involvement and participation for their relatives and ancestors under the intent and spirit of NAGPRA, as it was intended.

So I believe that there is a role for the Government, and there will also be a very important role to assist in the process of repatriation, the same as it is now.

Senator INOUYE. Mr. Suganuma, would you care to share your thoughts?

Mr. SUGANUMA. Yes, Senator; I agree. I think that if there is a representative body of the people with the authority, then they would take that position. I would think if it was a truly Hawaiian entity, that they would indeed work with the families, because that is a very important part of our culture. The people would expect and demand that that happen. So I would hold the position that relative to the tribal governments that exist now, we should make the administration in NAGPRA different.

Senator INOUYE. Mr. Harris.

Mr. HARRIS. Well, I would have to agree with everyone. As long as they kept it the same way, what we were talking about as far as family comes first, I do not see any problem.

Senator INOUYE. Mr. Kalahiki

Mr. KALAHIKI. I would agree. I think if the entity was voted in by the Hawaiian people, I do not think Hawaiian people would have any disagreement as to the laws of NAGPRA. It would come down to the Hawaiian entity, I think. But I no negative feelings on what we are doing here, to date.

Senator INOUYE. The Akaka bill, as drafted, sets forth a definition of Native Hawaiian. What is your definition of a Native Hawaiian? Must he have a blood quantum of 50 percent or more?

Mr. KALAHIKI. Senator, I posed that question some time back with my grandfather. His answer was just like this. He told me, you know me. You know my mother. You know my grandfather, and that was all. He did not want to reveal his genealogy. The statement he made after that was, genealogy, some day it is going to split.

For that, I found out that there were other Hawaiians that felt the same way, you know, about genealogy. He also made a state-

ment that, you are known by your works, you know, by what you do. So that was his comment, and I agree with him.

Senator INOUYE. Would any of you like to comment on that?

Mr. HARRIS. Yes, Senator; I disagree with this blood line. I think it is very divisive, and it is not a basic Hawaiian principle. If you look at true Hawaiian principles, they do not believe in this type of blood dividing.

What I was taught is, as long as you have one drop of Hawaiian blood, then you are Hawaiian; and if you are [native language] then you are Hawaiian. Because you take on the family [native language] under their protection, and that is what makes a family, thank you.

Senator INOUYE. Mr. Suganuma.

Mr. SUGANUMA. I agree with Mr. Harris that as long as you have a descendant from anyone, anytime you have Hawaiian blood, as far as Hawaiians are considered, you are Hawaiian, period; 50 percent is unacceptable.

Mr. DIAMOND. A while ago, like about 1982 or so, was went I went to work for [inaudible]. It was right after the constitution was amended to enable the Office of Foreign Affairs to be established.

If I recall correctly, one of the things that came about in discussion was that the blood quantum was an invention, and an invention of the Western model, and not necessarily Hawaiian. One of the things that the Congressional delegation was doing, from about 1978 or even a little bit earlier, going forward, there was a definition that did not attack blood quantum. It established a cut-off time with regard to being able to use one family genealogy to [inaudible].

If anyone was able to show that connection to the Hawaiian people before that time line, then regardless of quantum, they would be Native Hawaiian or Hawaiian. It provided the support. Going forward, it provided the basis for the funding.

So the blood quantum in that particular instance was not what you thought it was, although it was [inaudible]. So even there, there is always the historical effort.

Even historically, if I recall correctly, there was an effort to have the [inaudible], back in the 1920's. So blood quantum, per say, is not a magic word.

Senator INOUYE. Well, I made a slight error here. A lineal descendant, under the Akaka bill, would be one who can trace his ancestry to a Native Hawaiian who was eligible to reside on lands set aside under the Hawaiian Homes Commission Act of 1921. The alternative threshold to come within the definition of Native Hawwiian is that if you can trace your descendency to a Native Hawaiian who resided in Hawaii as of January 1, 1893.

But as you know, if a Native Hawaiian Government is reorganized constitutions can be amended. At the present time, if you can trace lineal descendancy to someone who was a Native Hawaiian before or on January 1, 1893, you would qualify as Native Hawaiian under the definition in the to Akaka bill.

Well, I have a few other questions. Mr. Diamond, you suggest that the law should be amended to provide families a higher status than a Native Hawaiian organization. Do you believe that there is

a consensus of Native Hawaiians in Hawaii on this proposed status?

Mr. DIAMOND. I do not know. I cannot answer that. I would hope that it would be. I am operating on the premises of what I understand from my own family; that a family and kuleana and the responsibility to move forward. In viewing with other entities, that responsibility, you know, we need to pursue and do the best we can to achieve it.

Part of the precedent though, I understand, is going back to the State law, where lineal the descendant and cultural descendant has first call. Absent a lineal descendant and a cultural descendant, in terms of preference, you should be an appropriate Hawaiian organization, under the definition. We will move forward in that regard.

So from that perspective, I would suggest and I would hope that people would want to give to families that opportunity to make the move, and then there will be support. An organization can support it, and I would think they have a corresponding responsibility to articulate why.

In fact, there was this conversation involving a couple, when there was some disagreement and there was an organization that was taking a particular stand. Some of us indicated, if that organization had a different point of view and they feel strong enough about it, it is incumbent upon them to try to educate those of us who do not understand it, in order for us to see whether or not we can accomplish that.

I would hope that in exchange, organizations would be supportive of them and their kuleana; and if they cannot, then that exchange will help reach it.

Senator INOUYE. Do the other members of the panel wish to comment on this? Should families have a superior standing to a Native Hawaiian organization, or would you disagree?

Mr. Suganuma.

Mr. SUGANUMA. I think in our culture, the family is most important. One of the remarks I made to the Kawaihae claimants, when we had a meeting, is that if anyone could step forward and show that they are a direct descendant, and family is involved, then all bets are off. Everybody step back, because the family takes precedence, always.

Mr. HARRIS. I would have to agree totally that family should definitely be a higher rank than Native Hawaiian organizations.

Senator INOUYE. Ms. Lapilio, do you have any other views?

Ms. LAPILIO. I think that that is the beauty of the consultation process under this act. If it is a fair and open process, then when these views are exchanged, I believe that our cultural principles of ohana, as first and foremost, will surface, prevail.

You know, that is, I think, one of the special things about this law. It does provide for that process, and if it works well, that is where you can come forward and present your affiliation and your evidence of the cultural affiliation that is provided for under this act.

Senator INOUYE. Mr. Kalahiki.

Mr. KALAHIKI. I also agree. I belonged to many organizations over the years. We all worked together for the common good of Hawaiians.

But I think when things come down, you know, a group of Hawaiians should make the decisions. In the overall, it is their responsibility for that decision to be made.

Senator INOUYE. Ms. Lapilio, in your testimony, I believe you stated that we should leave the definition of Native Hawaiian organization as is. Is that correct?

Ms. LAPILIO. Well, what I meant to say was that I would ask that there be great caution exercised in amending the act. If there was a way to include the Native Hawaiian organization and Native Hawaiian families, perhaps that is just a very simple approach. But if that would be workable, that was my suggestion.

I am in favor of including Native Hawaiian families. However, you know, I just wanted to have some kind of reassurance that it would not cause any consequences as a result of amending the law.

Senator INOUYE. I suppose this depends upon legislative intent and interpretation. But the law, as enacted, in defining Native Hawaiian organization, does not require membership of Native Hawaiians. Should that be changed?

Ms. LAPILIO. I have just one thought, Senator. I am not sure that we have passed this through the Department of Justice, which was my initial concern about having a membership requirement of Native Hawaiian. However, you would know that better than we would. I understand the concern. But again, I am hopeful that in the consultation process, this will all be worked out and factored in.

Senator INOUYE. I do not suppose that you would go so far as to say that the interpretation should be that an organization which practices Native Hawaiian culture and rituals, but not made up of Native Hawaiians, would qualify?

Mr. SUGANUMA. I think probably that is more of a legal question, because it depends on the definition and the court system.

I would think that under the circumstances, any organization that would be involved in these things, I would hope, would be Hawaiian. I do not know of any organization made up of non-Hawaiians who practice traditional Hawaiian traditions, et cetera. I am not aware of any.

But I believe that this question itself is more of a legal question, rather than a cultural question. You know, under the kingdom, there were a lot of citizens of the kingdom that were not Hawaiian. They spoke Hawaiian, practiced the culture. So it is an interesting question, but I think it is a conflict between culture and legal.

Senator INOUYE. I asked that question because it is not altogether unrealistic. Because when the Kuhio bill was enacted into law and the Hawiian Homes Commission was formed, if you look back, most if not all of the commission members were non-Hawaiian. But that organization was looked upon by others as being a Native Hawaiian organization.

Mr. HARRIS. Senator, personally, I would have to agree that if an organization is virtually doing things that are Hawaiian, then they should be recognized as a Hawaiian organization. From my teach-

ing, there is a principle that if you are a living, speaking Hawaiian, then you are a Hawaiian organization. To me, it is that simple.

Mr. DIAMOND. If you are looking and applying it to the NAGPRA law, one of the things that I go back to, that I think all of us had to qualify to, it is two prong. The first step of it, the definition of a Native Hawaiian organization, and that we know.

But the second piece, which should have co-equal standing or value, is the organization has to demonstrate that it has a direct cultural affiliation with whatever item it is. Now given what the advisory meeting rendered back in 2000, it is for each item that would be subject to repatriation.

So it is not simply the competition of the organization, per se, and how it is structured and its membership. It also has to go to the next step. It has to be connected culturally with the item. If it is not, then it is not going to happen. If the object is for repatriation purposes, then it is both.

Senator INOUYE. How did you react to OHA's statement that it served as a placeholder for families?

Mr. HARRIS. I fail to see any example of that. I do not have any example of OHA being a placeholder for families.

Senator INOUYE. Do all of you agree with that?

Mr. KALAHIKI. Well, just to shed some light on OHA, I put that in perspective, because Hawaiian people want to do what is right within the system. I would like to say that I was involved in that process, the legislation process.

But you know, we sat around a table and defined this. So at the legislative hearing, we had a room up on the first floor. So we were looking for the best. They had only 20 percent. We were asking 75 or 50.

So what I am saying is that the organization was still on the premise that it would represent us. That is the straight-away on that, on the idea. But today, that is the only thing we have.

I would like to say something pertaining to Hawaiian organizations. There was a Hawaiian organization that was working with a legal firm. But we had some problems that we needed overcome. What they did was, apuno, apuno. Do you understand what is a apuno? It is making light in Hawaiian. All the things that were revealed stayed on the table.

But the director of apuno, did not understand the process, and we told him about this. He went off and used that for him. What happened, everybody on the table went for him and got him out of his job. He lost his job because of it. He did something that was against Hawaiian tradition. So I think I would say that in a Hawaiian organization, Hawaiians should be completely up front.

Senator INOUYE. Mr. Suganuma, I believe in your testimony, you stated that repatriation rights should not be transferred to a Native Hawaiian organization that does not speak for all Hawaiians. Do we have any organization that speaks for all Hawaiians?

Mr. SUGANUMA. No; well, the thing is, the differences we have here, between us and the other Native Americans and Native Alaskans who are covered by the act, are particularly in that area. Currently, there is no entity or body that speaks for Hawaiians. That is what I see as the major problem.

Senator INOUYE. If the Akaka bill becomes a reality, would the sovereign entity created under that law qualify as one that speaks for all Hawaiians?

Mr. SUGANUMA. I would think, if it is set up properly and the people were involved in the election process and everything else, they would be the governing entity of the people.

Senator INOUYE. Do you have any disagreement?

[No response.]

Senator INOUYE. Mr. Kalahiki, in what situation, if any, would you support hiding cultural objects from being available to Hawaiians to view and experience their power and beauty and manao?

Mr. KALAHIKI. You know, I know the concerns about the artifacts. In fact, I went up to [inaudible] four times. My last trip up there was August 25.

We are in the process of putting together a plan for housing. But it is in the planning stages. I feel that it should be seen, for those artifacts.

In our family in Hawaii, we have artifacts, and we are proud of them. So to answer your question, I think it should be kept, for when a family wants to see it, it is there.

Senator INOUYE. Mr. Suganuma, you stated, I believe, that tragic consequences resulted from the recognition of certain organizations as Native Hawaiian organizations. What are the tragic consequences you speak of?

Mr. SUGANUMA. The tragic consequences were based on the decision made by the organizations that were recognized. They made the decision to put everything back into the cave where they came from. As a result of that, thieves broke in and took the items. They were thought to be on the black market for sale.

We still do not know what happened to the investigation. It just kind of disappeared. We do not know as to how many were sold or not sold. What I am saying is that there was a decision made by a minute fraction of the population to do this, which resulted in very tragic consequences, that were not represented to other people.

I would like to also say something else about your question. To me, it is not a question of showing the artifacts or displaying the artifacts. It is a matter of truly respecting the wishes of the ancestors, because nothing can be discovered without their permission. On a higher level of understanding, they made the decision for their descendants that these things be there. Otherwise, they would not be there.

So it is not a matter of our deciding to show these things. It is a matter of their deciding that they should be shown. It is also a matter of Hawaiian is a state of being. I know many that believe that blood is placed in men. I will repeat the language. It is a state of being, and if you function with the aloha, that should be given much consideration.

Senator INOUYE. In defining those tragic consequences or giving an example, for the record, who conducted the investigation?

Mr. SUGANUMA. As far as we know, it was sort of joint State and Federal Government. But I think Federal investigators took precedent, and the State was just assisting.

Senator INOUYE. What is the status now?

Mr. SUGANUMA. Nobody knows.

Senator INOUYE. Can any of you enlighten us?

[No response.]

Senator INOUYE. Mr. Harris, you spoke of the family, saying that the family should have a status superior to that of Native Hawaiian organization. Could you give me some examples of how a family member claimant group might view the burial and other issues differently than a Native Hawaiian organization like OHA or Hui Malama?

Mr. HARRIS. Well, yes, I can, Senator. Take, for instance, Mokapa. An organization has suggested that the burial process be with kapa. They also wanted to have the burial mount or platform built.

Now our family decided that this is not necessary; that the iwi could be wrapped in muslim, and that would be sufficient, and placed in a cave. This is still being discussed.

Now the organization did not step aside for the family to go ahead and make this decision. They are still pushing their plan for a platform. There is a great cost for them to not just make kapa, but bring kapa from the tonga or some other type of kapa. This is not Hawaiian kapa. As well as making all this, it would take a lot and the cost is tremendous, according to their figures.

But as far as the muslim goes, there is very little cost involved; and, in fact, the families could themselves pay for the cost. All that would be needed would just be the bodies to be moved.

Senator INOUYE. Before adjourning this hearing, do any of you have a final statement to make, any closing remarks? Mr. Van Horn Diamond.

Mr. DIAMOND. Thank you very much; first of all, I would thank you very much for inviting us all and providing us the opportunity to provide testimony and respond on this particular matter, the Native Hawaiian organization definition and all that relates to that, as a result.

I also want to thank you very much. This comment, I really did not plan on saying, but I choose to. We all appreciate your caring for the people of Hawaii. Moreover, we are mindful and have not forgotten, when you help enable the families to repair and heal themselves. We will always be thankful for that.

Then with regard to this one simple basic fact, I would like to summarize where I am coming from. The goal of today, with our participation with regard to this, is to protect and perpetuate our essence, thought the proper use of repatriation. So I thank you very much for that opportunity for us to share that. We hope we have contributed. I think we have all learned a lot today, and we will try to add to our remarks before January 4th; thank you very much, Senator.

Senator INOUYE. Thank you.

Mr. Harris.

Mr. HARRIS. Senator, it seems to me like you have received all of this here with an open heart. I really appreciate this opportunity.

I think that you already are on the right track, just hearing some of the questions that you had for some of us. I think you know the

direction that we need to go in. I really appreciate this opportunity; thank you.

Senator INOUYE. Mr. Suganuma.

Mr.SUGANUMA.I think it has already been said, but we really appreciate you allowing us to share with you, and I know that you have an understanding of these things; thank you.

Senator INOUYE. Thank you.

Ms. Lapilio.

Ms. LAPILIO. Mahalo, Senator, for being here and for hearing from our Native Hawaiians; and also for your care and compassion for our people. Also, for the other organizations in this room, we encourage them to please provide testimony. You have heard the concerns and we need your help. Please put forth your manao into the record; thank you very much.

Senator INOUYE. Mr. Kalahiki.

Mr. KALAHIKI. I, too, Senator, want to thank you for coming in to bring a change and for making a way for us to come together on behalf of the people of Hawaii. I will be submitting more ideas before the deadline. We all need to work together. We need each other more than anything for our people; thank you.

Senator INOUYE. Before adjourning, I would like to once again remind all of you that if you wish to submit testimony for the hearing record, you may do so. But please do so before January 4, 2005.

I would like to thank the participants today from this panel and the first panel for your candor and your passion. The committee appreciates it very much. We will do our very best to work through all of the different views and come up with hopefully a solution that all of us can agree upon. With that, mahalo to all.

[Whereupon, at 10:40 a.m., the Committee was adjourned.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MELANIE CHINEN, ADMINISTRATOR, DEPARTMENT OF LAND AND NATURAL RESOURCES' STATE HISTORIC PRESERVATION DIVISION, HONOLULU, HI

Good morning Senator Inouye and members of the Senate Committee on Indian Affairs. My name is Melanie Chinen, and I am the newly appointed administrator of the Department of Land and Natural Resources' State Historic Preservation Division [SHPD]. Thank you for inviting me to participate in this important hearing in which your committee will consider testimony as to whether or not the definition of "Native Hawaiian organization" contained in the Native American Graves Protection and Repatriation Act [NAGPRA] should be amended.

The issue before the committee is whether or not the current definition allows those who should be eligible to assert claims under NAGPRA the right to do so. As currently written, Native American organizations are defined as those which: No. 1, serve and represent the interests of Native Hawaiians; No. 2, have the primary purpose of providing services to Native Hawaiians; and No. 3, have expertise in Native Hawaiian Affairs. This definition precludes individuals who are not associated with a Native Hawaiian organization from making claims under NAGPRA.

Although Hawaii law and administrative rules do not explicitly provide for the repatriation of human remains and burial artifacts, they do provide descendants the right to participate in discussions relating to historic burials when they are able to demonstrate either a cultural or lineal association to these burials. I will limit my testimony to the State's experience working with this broader definition of eligible claimants as it relates to burial matters.

The inclusion of individual descendants in the discussion of burial matters at both the cultural and lineal level often results in multiple claims and recommendations that at times conflict with each other. This need not be viewed negatively as the inclusion of various viewpoints has helped to strengthen many of our burial plans. However, the broad inclusion of cultural descendants, those who are able to demonstrate that their ancestors lived in the Ahupa'a in which the burial is located, has caused challenges to the decisionmaking process. The SHPD is currently reviewing the strengths and weaknesses of our system in which individuals are able to assert claims under Hawaii's burial laws and is not prepared to formally recommend any amendments to NAGPRA at this time.

I would like to extend an offer to assist your committee as you review the current Federal law and continue to examine how NAGPRA can best accommodate those who should be eligible for repatriation claims.

Thank you for providing me the opportunity to testify and for bringing this important matter to the people of Hawaii for their consideration. The SHPD stands ready to assist your committee and looks forward to working with you.

Before the
United States Senate Indian Affairs Committee
Honorable Senator Daniel K. Inouye

Testimony of Edward Halealoha Ayau, Esq.
On Behalf of
Charles Kauluwehi Maxwell, Po'o
Hui Mālama I Nā Kūpuna O Hawai'i Nei

Proposed Amendments to the
Native American Graves Protection and Repatriation Act

December 8, 2004
Honolulu, Hawai'i

Inter alia, the Native American Graves Protection and Repatriation Act (NAGPRA) authorizes American Indians, Alaska Natives and Native Hawaiians to claim ancestral human remains, funerary objects, sacred objects, and cultural patrimony from federally-funded museums and federal agencies.[1] As one who help draft the original definition of 'Native Hawaiian organization' in NAGPRA, I recall several challenges and the competing forces that mold the final wording. In the absence of a Native Hawaiian sovereign entity akin to a tribal government, the focus shifts naturally to service organizations representative of Native Hawaiian interests. The language is intentionally broad in order to provide flexibility and

[1] *See*, Repatriation Efforts Successfully Undertaken By Hui Mālama I Nā Kūpuna O Hawai'i Nei 1990-Present (**attachment A**).

centers on an organizational structure to help address concerns raised regarding race-based classifications of Native Hawaiians.

NAGPRA implementation in Hawai'i results in interpretations not readily foreseen by this NAGPRA drafter. For example, families identify themselves as a 'Native Hawaiian organization' and submit NAGPRA claims in the absence of effective evidence to establish themselves as 'lineal descendants'. In one such case, the U.S. Navy and U.S. Marine Corps recognize 12 Hawaiian families as 'Native Hawaiian organizations'[2] able to claim iwi kūpuna (human remains) and moepū (funerary objects) that originate from Mōkapu Peninsula.[3] In that same case, the Marine Corps also recognizes a group represented by non-Hawaiians.[4] In a third case, the Bernice Pauahi Bishop Museum, who is federally-funded, recognizes itself for a brief period of time and for purposes of NAGPRA, as a 'Native Hawaiian organization' able to claim cultural items in its own collections.[5]

The Need to Amend NAGPRA

The legislative history of NAGPRA is clear that this law is intended to rectify past wrongs committed against America's first peoples including Native Hawaiians. Moreover, Congress did not intend museums to claim cultural items as Bishop Museum attempts to do with the passage of its Interim Guidance. Had Bishop

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[2] *Federal Register*, Vol. 63, No. 168, August 31, 1998 at 46237 (**attachment B**).
[3] *See*, "Final Repatriation of the Mokapu Collection of Native Hawaiian Human Remains in the Possession and Control of Marine Corps Base Hawaii (MCBH) and the Bernice Pauahi Bishop Museum (BPBM) to the Registered Claimants" Letter from Arnold Fields, Brigadier General, U.S. Marine Corps Commanding General, April 19, 1999 (**attachment C**).
[4] *Id.* at **attachment B** and **attachment C** in identifying the Temple of Lono as a claimant in the Mōkapu case.
[5] *See*, 'Bishop Museum Interim and Proposed Final Guidance Native American Graves Protection and Repatriation Act June 30, 2004' which has been repealed in favor of the Final Guidance (October 7, 2004) in which the museum does not designate itself a 'Native Hawaiian organization'.

Museum Director William Brown and the Board of Directors adopted the proposed Interim Guidance as the Final Guidance, Hawaiian cultural values would have suffered, congressional intent undermined, and NAGPRA turned on its head. Nonetheless, Bishop Museum's unsuccessful efforts help highlight the need to revise and strengthen the NAGPRA definition of 'Native Hawaiian organization'.

Furthermore, the response from the National Park Service to the questions posed in your August 5, 2004 letter relating to the Bishop Museum's Interim and Proposed Final Guidance demonstrates that the broad language of the definition may be interpreted in ways that are not intended, in particular, the opinion of the NPS that a museum that designates itself a 'Native Hawaiian organization' may become an eligible claimant to repatriate cultural items from other museums.

Both the Bishop Museum Interim Guidance and the response from the National Park Service establish the imperative need to amend the definition of 'Native Hawaiian organization'.

Proposed Amendments to Definition of 'Native Hawaiian Organization'

The current definition of "Native Hawaiian organization" in NAGPRA provides as follows:

> "Native Hawaiian organization" means any organization which (A) serves and represents the interests of Native Hawaiians, (B) has a primary and stated purpose the provision of services to Native Hawaiians, and (C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei."

Hui Mālama I Nā Kūpuna O Hawai'i Nei proposes the following series of amendments to the current definition of 'Native Hawaiian organization' as follows,

> "means any organization which (A) has a primary and stated purpose the practice of Native Hawaiian cultural values, (B) has a governing board comprised of a majority of Native Hawaiians, (C) has demonstrable expertise in Native Hawaiian cultural practices relating to the care of human remains, funerary objects, sacred objects and cultural patrimony and shall not include any federally-funded museum or federal agency."

First, we propose the following revision to section (A) of the definition of 'Native Hawaiian organization' as follows,

> "means any organization which (A) has a primary and stated purpose the practice of Native Hawaiian cultural values,"

The proposed new language of section (A) places the focus squarely where it should belong--on the practice of Hawaiian cultural values. Moreover, it requires that a 'Native Hawaiian organization' must state that Hawaiian cultural practice is a central purpose for which the group organized itself. This amendment is intended to steer away from the original definition's focus on organizations that serve and represent broad Native Hawaiian interests and to recognize instead that with NAGPRA, it is specific cultural and spiritual knowledge and values that are most necessary for effective implementation. This proposal is based on the Native Hawaiian value,

> Ma ka hana ka 'ike, ma ka 'ike ka maopopo.
> From the work the knowledge, from the knowledge the understanding.

In other words, organizations-- especially long-standing organizations-- that practice Hawaiian cultural values gain knowledge from their practices and over time, gain the understandings that comes with continuing the practice correctly. Our kumu Edward and Pualani Kanahele taught us that we possess the knowledge and memories of our ancestors and by practicing our culture, we are able to

reconnect to this ancestral knowledge and memories passed to us through our DNA. Furthermore, when these reconnections are made, we are enlightened with regard to our cultural practices as we release knowledge and memories otherwise held dormant within our Hawaiian psyche. More importantly, it is a principle means by which our ancestors live on through us. Therefore, the practice of cultural values is essential for the high level of performance that repatriation and reburial work requires.

Secondly, we propose the following new language to section (B), which provides as follows,

"(B) whose governing board comprises a majority of Native Hawaiians,"

This issue was raised in the Bishop Museum Interim Guidance matter as the Bishop Museum Board of Directors is not comprised of a majority of Native Hawaiians. Hence, NAGPRA decisions by the museum were being made by a predominantly non-Hawaiian governing entity. In addition, this very issue was raised when the U.S. Marines recognizes standing in the Temple of Lono in the Mōkapu case. This proposed amendment is intended to compliment and build upon the cultural practice requirement by requiring Native Hawaiian leadership of the organization. This also helps assure that the organizations that would be considered for standing under NAGPRA are comprised of Native Hawaiians, a requirement that is not currently provided for in the law.

Thirdly, we propose the following new language to section (C) that provides the last two requirements for the 'Native Hawaiian organization' as follows,

> (C) has demonstrable expertise in Native Hawaiian cultural practices relating to the care of human remains, funerary objects, sacred objects and cultural patrimony and shall not include any federally-funded museum or federal agency."

The third component of the definition seeks to require that the organization also possess a proven history of expertise in Native Hawaiian cultural practices specific to the care of NAGPRA-defined cultural items. This will help assure that organizations that are most expert in dealing with NAGPRA cultural items are recognized as having standing to claim such items under the law for purposes of proper disposition. In addition, we propose new language that prohibits museums and federal agencies from attempting to declare themselves as a 'Native Hawaiian organization' as the Bishop Museum tried to do earlier this year.

Furthermore, due to unfair criticisms lodged against Hui Mālama I Nā Kūpuna O Hawai'i Nei due to its specific inclusion in the definition of 'Native Hawaiian organization', we would agree to delete our name and that of the 'Office of Hawaiian Affairs' in favor of a prohibition against any museum or Federal agency claiming to be a 'Native Hawaiian organization' under NAGPRA.

Finally, on July 14, 1994 I testified before you and this Committee relating to S.2269 the 'Native American Cultural Protection and Free Exercise of Religion Bill'. In that testimony in Washington, D.C., Hui Mālama I Nā Kūpuna O Hawai'i Nei suggested a definition for 'Native Hawaiian organization' that includes,

> "1) a requirement that the hui be composed exclusively of Native Hawaiians and 2) a requirement that the hui be led by a kumu (source; foundation) who is Native Hawaiian, fluently speaks the Hawaiian language, and is trained in traditional beliefs and practices."[6]

[6] *See* Testimony of Edward Halealoha Ayau, Esq. July 14, 1994 (**attachment C**).

The aforementioned components of a proposed definition of 'Native Hawaiian organization' are presented herein for informational purposes and consideration by the Committee. The focus that our organization maintains is grounded in traditional cultural beliefs and practices. It is hoped that the amended definition of 'Native Hawaiian organization' as proposed would evolve into a similar framework based on cultural practice and expertise in caring for cultural items.

Civil Penalties Against Federal Agencies

Currently NAGPRA does not provide for civil penalties against a Federal agency for failure to comply with NAGPRA. Instead, civil penalties may be assessed by the Secretary of Interior only against federally funded museums. This is problematic when a Federal agency fails to comply with NAGPRA, as has happened with two Federal agencies in Hawai'i including Hawai'i Volcanoes National Park for moepū from Forbes Cave in Kawaihae and the U.S. Army for iwi kūpuna and moepū from the Wai'anae Army Recreation Center. In both cases, neither Federal agency has complied with NAGPRA in terms of publishing a notice of Intent to Repatriate Cultural Items in the Federal Register with regard to cultural items in the possession and control of both agencies.

Although disputes may be filed against a Federal agency with the NAGPRA Review Committee, because the findings and recommendations are advisory only, the Federal agency can merely ignore any unfavorable recommendations. A 'Native Hawaiian organization' would have to take the Federal agency to court to enforce compliance, which for many is cost prohibitive. The ability to effectively

implement NAGPRA must be provided for in the statute itself and the assessment of a civil penalty, which NAGPRA currently provides is intended to be punitive in nature, is the most effective means by which a claimant can encourage a Federal agency to comply with the law.

The Senate Indian Affairs Committee is respectfully urged to consult with representatives of Federal agencies and to give careful consideration to crafting language that would authorize the Secretary of Interior to assess a civil penalty against a Federal agency for failure to comply with NAGPRA.

Mahalo for the opportunity to address the Committee on these important cultural and legal matters. We commend you Senator Inouye for your unwavering support of Native Hawaiian cultural interests and thank you for years of service to our people while a leader of the Senate Indian Affairs Committee.

Ola nā iwi,

Edward Halealoha Ayau, Esq., Member
On Behalf of Charles Kauluwehi Maxwell, Po'o

Testimony of Anthony H. Sang, Chairman
State Council of Hawaiian Homestead Associations
33 South King Street, Suite 520
Honolulu, Hawai'i 96813

Oversight Hearing before the
U.S. Senate Committee on Indian Affairs
on the Native American Graves Protection and Repatriation Act (NAGPRA),
Proposed Changes to the Definition of "Native Hawaiian organization"
and Other Suggested Amendments to NAGPRA.

Wednesday, December 8, 2004
8:30 a.m.
Jefferson Hall, Imin Conference Center
East-West Center, Honolulu, Hawai'i

Aloha kakahiaka, good morning, Vice Chairman Inouye, members of the Senate Committee on Indian Affairs and staff. We welcome home our esteemed Senator Inouye and extend a warm welcome to our visitors.

I am Anthony Sang and I am the Chairman of the State Council of Hawaiian Homestead Associations, also known as the SCHHA. With me here today is our Executive Director, Pikake Pelekai. On behalf of the State Council of Hawaiian Homestead Associations, *mahalo nui loa*, thank you very much, for holding this hearing here in *Hawai'i nei* and affording all of us this opportunity to testify before you so that you may engage in-person with our community and experience the strong and deep passion with which we address these issues before you. Often times, the written English word is insufficient to convey our passion, the depth of our convictions and our resolve to protect *nā iwi kupuna*, our ancestral remains, and cultural resources.

The SCHHA thanks you for this opportunity to testify before the Senate Committee on Indian Affairs to share the *mana'o*, which includes the thoughts, ideas, beliefs, opinions, suggestions and desires, of our 24 member homestead associations representing more than 30,000 homesteaders who are native Hawaiian beneficiaries under the Hawaiian Homes Commission Act enacted by the United States Congress in 1920.

As qualified "native Hawaiian" beneficiaries under that more stringent definition contained in the Hawaiian Homes Commission Act, we are descendants of the aboriginal people who, prior to 1778, occupied and exercised sovereignty over the islands which now constitute the State of Hawai'i and thus qualify as "Native Hawaiian" under the NAGPRA and its implementing regulations. In addition, our homesteads are located on the trust lands managed by the State of Hawai'i through the Department of Hawaiian Home Lands which are included by definition under NAGPRA and its regulations as "tribal land" which includes "any land administered for the benefit of Native Hawaiians

pursuant to the Hawaiian Homes Commission Act, 1920, and section 4 of Public Law 86-3 [the Hawaii Admission Act]." Thus, we have a very strong interest in the protection of *nā iwi kupuna* and our *'āina*, our land, and offer the following suggestions to continue our community's dialogue with you about how we may work cooperatively and collaboratively to implement and enforce the protections intended, but not effectively achieved under the current language of the Native American Graves Protection and Repatriation Act.

Our testimony will focus on: 1) the priority and definition of who has standing to make a claim; 2) the definition of "Native Hawaiian organization"; and 3) the consultation of Hawaiian homestead communities as well as lineal descendants, *'ohana* and Native Hawaiian organizations when intentional excavations and inadvertent discoveries occur within "tribal lands" as discussed above.

The Current Priorities and Definitions of Who Has Standing
Excludes Most, If Not All, Descendants and Families

NAGPRA establishes a priority of claims which fails to recognize our Native Hawaiian cultural traditions which honor and recognize the *kuleana*, the responsibility and the necessary privileges, rights and authority to fulfill such responsibility, of the *'ohana*, the descendants, family and kin group, of *nā iwi kupuna*. Instead, NAGPRA gives priority to only those descendants who can trace "directly and without interruption" by "traditional kinship system" or "the common law system of descendence" to "a known Native American individual" – with the last phrase requiring that the human remains be specifically identified so that descendants can be traced. Although there are some specific instances where a *mo'olelo*, a story, has been passed down through the generations telling of the final resting place of some *iwi kupuna*, generally there is no written or oral history of where *nā iwi* of a specific individual have been buried.

The above standard almost guarantees that the next priority level pertaining to Native Hawaiian human remains, funerary objects, sacred objects and objects of cultural patrimony, the level of Native Hawaiian organizations, will have top priority among all claimants. Thus, the *'ohana* excluded above must now try to fit into the definition of "Native Hawaiian organization", perhaps creating a legal fiction just for the purposes of NAGPRA, in order for the *'ohana* to fulfill their *kuleana* to *nā iwi kupuna*. We believe that Congress intended to recognize and help perpetuate our Native Hawaiian cultural traditions. We do not believe that Congress intended to create new legal hurdles for our *'ohana*.

We Urge Congress to Add an *'Ohana* Priority Level

We believe that our *'ohana* are excluded from the definition of "Native Hawaiian organization" or must create a legal fiction by becoming one because that definition promotes service organizations in that the statute and regulations define "Native Hawaiian organization" as any organization that: "(A) serves and represents the interests of Native Hawaiians" and "(B) Has as a primary and stated purpose the provision of

services to Native Hawaiians" in addition to requiring that the organization "(C) Has expertise in Native Hawaiian affairs." Therefore, we conclude that another priority level recognizing our *'ohana* should be inserted following after lineal descendants and before Native Hawaiian organizations.

We Also Suggest that Congress Change
the Definition of "Native Hawaiian organization"

In addition to adding the *'ohana* priority level, we recommend that Congress amend or replace the definition of "Native Hawaiian organization" in order to more effectively accomplish the intent of NAGPRA. The last requirement that the organization have "expertise in Native Hawaiian affairs" should be specific to "expertise in Native Hawaiian cultural and burial matters." We recommend adding two requirements that the organization: "(D) prescribes that more than 50% of the voting membership of its Board of Directors be Native Hawaiian; and (E) prescribes that more than 50% of its membership is Native Hawaiian, if the organization is a member organization."

We believe that it is important to reiterate that the current definition of "Native Hawaiian organization" is too broad and must not remain within a revised definition because it would otherwise invite mischief from organizations whose intent may be to avoid Native Hawaiian cultural traditions and burial practices in order to promote their own interests rather than honor *nā iwi kupuna*.

Lastly, We Encourage Greater Consultation With Respect to
Intentional Excavations and Inadvertent Discoveries
on Trust Lands Managed Under the Hawaiian Homes Commission Act

We encourage greater consultation with the SCHHA and Hawaiian homestead communities, as well as the lineal descendants, *'ohana* and Native Hawaiian organizations discussed above, when intentional excavations and inadvertent discoveries occur on the trust lands managed under the Hawaiian Homes Commission Act. More than 209,000 acres of such lands exist throughout *Hawai'i nei* with much of the land undeveloped and planned for development in the near future. We envision that greater consultation will encourage communication, cooperation and identification of the appropriate members of the Native Hawaiian community to determine the disposition of human remains and cultural items. We recognize that the historical displacement and relocation of many of our *'ohana* will often require cooperation among residents of a community and non-resident *'ohana* whose *iwi kupuna* are located there. We believe that we all have reciprocal obligations throughout our Native Hawaiian community and all of *Hawai'i nei* to honor and respect all *iwi kupuna*.

Mahalo again for this opportunity to testify on behalf of the State Council of Hawaiian Homestead Associations. We would be happy to answer any questions, supplement our testimony, engage in further discussions and work with the Senate Committee on Indian Affairs and Congress to enact the necessary changes discussed above as well as other changes identified by members of our community and under consideration by the Senate Committee on Indian Affairs.

Malama pono. A hui hou.

A. VAN HORN DIAMOND
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Telephone (808) 943-8675
6 December 2004

Honorable Senator Campbell, Chairperson
Honorable Senator Inouye. Vice-Chairperson
Honorable Members of the Committee on Indian Affairs
United States Senate
Washington, District of Columbia

Subject: Testimony re/ NAGPRA & the Native Hawaiian
Public Hearing --- 8 December 2004, 0800 a.m.
Jefferson Hall, East-West Center
University of Hawaii, Manoa Campus
US Senate Committee on Indian Affairs

Testimony by: A. Van Horn Diamond
Principal Representative & Spokesperson
Van Horn Diamond Ohana
NAGPRA Recognized Claimant to;
(1) Repatriated Na Iwi Kupuna(ancestral remains),Mokapu, Oahu
(2) 84 items (artifacts) loaned to and buried by Hui Malama I Na Kupuna O Hawaii at Kawaihae, Hawaii Island. [These artifacts are also known or called the Forbes Cave and/or Kawaihae items. Further, whether these items have or have not been repatriated is at issue between and among its 13 NAGPRA recognized claimants as well as between 8 of 13 claimants and the retired "Duckworth/ Duarte/Kaulukukui" regime of the Princess Bernice Pauahi Bishop Museum. N.B. This matter may be resolved during the March meetings of the NAGPRA Review Committee here in Hawaii Nei. Also, the 2003 Museum Board of Directors and Administration seemingly did not concur with the "pro-completed/concluded repatriation" stance of the Duckworth/Kaulukukui regime --- as did

an advisory opinion & findings of the NAGPRA Review Committee (May 2003). The 2004 NAGPRA Committee will rehear this matter in its March 2005 meetings in Hawaii Nei.]

With profound respect and sincerity, Aloha Kakou (greetings to all and each of you). Equally important, Mahalo (thank you) for coming to Hawaii to receive testimony. i.e., our manao(thoughts), regarding NAGPRA, including its administrative rules and/or regulations, especially with respect to how the law serves the Native Hawaiian. Indeed, conducting this public hearing here is very much appreciated. Not many of us can readily provide face-to-face input in Washington, D.C.
Before proceeding, please permit this Diamond Ohana to extend its testimony to this Senate Committee on Indian Affairs by the deadline established, i.e. 4 January 2005. Thank you.

Most importantly, for myself personally and this Diamond Ohana, we extend our heartfelt aloha to the ranking member of the Senate Committee on Indian Affairs, Senator Daniel K. Inouye, its Vice-Chairman.

We know first-hand your caring for the people of Hawaii. Moreover, we are mindful and remember the help you provided which enabled a family member to repair and heal. We know you didn't have to do what you did. We will always wish you much good fortune and cheer. Thank you so very, very much.

For this hearing, we have tried to provide comment and insight regarding NAGPRA as it seeks to respond to the content and context of the Native Hawaiian situation. However, these remarks reflect our limited knowledge about NAGPRA insofar as we (Diamond Ohana) participated in and experienced the law and as applied. Please note certain parts of this testimony, will reflect what we may have observed regarding NAGPRA in comparison with Hawaii's state law governing the reinterment of Iwi. [This

latter point is due to this speaker's awareness, albeit limited, of the state law governing Native Hawaiian reinterment.]

Please know. Throughout, we do not speak for the Hawaiian people in this hearing. We communicate only the manao of the Van Horn Diamond Ohana. Furthermore, we affirm that not all knowledge resides or emanates from one source within the Hawaiian Community. Equally important, we do not presume to speak "ex cathedra" on this subject. In turn, we do not recognize or accept such omniscient utterances by/from any individual, organization, or organization spokesperson--- no matter the track record, real or imagined or promoted.

Let me begin with the view that the current NAGPRA provisions regarding two definitions pertinent to the Native Hawaiian requires updating and upgrading. These NAGPRA provisions do not fully respond to the contemporary context of the Native Hawaiian, in particular, concerning the repatriation of both artifacts and/or Iwi.

We are referring specifically to two (2) NAGPRA definitions. "lineal descendant" and "Native Hawaiian Organization".

First, the history of NAGPRA shows there are very few native Hawaiian persons who achieve " lineal descendant" status. Second, the "Native Hawaiian Organization (NHO) definition is too generous, too open, enabling it to be the "be-all".

The NHO definition has been depicted as so broad that, figuratively speaking, a huge Semi (trailer), a Hummer, a Blue Bird Bus, plus 3 VWs can drive through this definition --- side-by-side!

Presently, other than the rarity of achieving lineal descendant status, all other Native Hawaiians are, in effect, lumped under the NAGPRA definition of Native Hawaiian Organization. Hence, all

family, i.e. "Ohana"claimants, e.g. Kekumano Ohana. Keohokalole Ohana, Olds Ohana, Van Horn Diamond Ohana, all government agency claimants, e.g. Office of Hawaiian Affairs, Hawaiian Community-based Non-Profit Organizations, e.g. Hui Malama I Na Kupuna O Hawaii Nei, Na Papa Kanaka O Pu'u Kohola, the Royal Hawaiian Academy of Traditional Arts, Community Associations, e.g. Koolauloa Hawaiian Civic Club, Prince Kuhio Hawaiian Civic Club, Trade Associations, e.g. Native Hawaiian Chamber of Commerce, Hawaiian religion organizations, e.g., Temple of Lono, the Four Royal[Alii] Societies, i.e., Daughters & Sons of Hawaiian Warriors – Mamakakaua, Hale O Na Alii O Hawaii, Ahahui Ka'ahumanu, the Royal Order of Kamehameha, each is or would be deemed a Native Hawaiian Organization, pursuant to NAGPRA.

The foregoing identifies the predicament of the NAGPRA definition. That is, it covers too much and fails to respond to the realities of the 2004 Native Hawaiian. Further, this lumping together fails to accord delineations appropriate for recognition, for affirming Hawaiian societal organization & structure; familial/genealogical ties; tradition, values, priorities and traditional ways.

Clearly, the history of this law and its development provides the genesis of the current situation.

Next we understand when this law was enacted participation within the Hawaiian Community was limited. Hence, the legislation responded, in part, to the active participants of the Hawaiian Community. At this point, the Washington, DC perception was (1) Hui Malama I Na Kupuna O Hawaii Nei as the active social-cultural entity within the Hawaiian Community, presumably the result of its role in the repatriation of the Iwi Kupuna from the Smithsonian Institute (2) the Office of Hawaii Affairs was likely seen prospectively as the emerging "tribal"-like governing entity---

further affirmed with its role in the Smithsonian repatriation effort. But, simultaneously, we sense a sincere, continuous and consistent undercurrent desirous of encouraging the family (Ohana) to reassume its rightful responsibility (Kuleana) for the care, custody and reverence due artifacts (funerary, patrimonial, sacred/spiritual objects/items) and/or Iwi Kupuna --- Na Kau a Kau ('Til Eternity Ends). Accordingly, the Ohana taking responsibility for repatriation/reinterment purposes is the significant fact of the Native Hawaiian NAGPRA content 2004.

Both the Mokapu Repatriation (1999) and the current controversy as to the 83 Kawaihae items being repatriated or not underscores (1) the emergence of Ohana, (2) the need to provide a schema enabling Ohana, government agency, community organization participation with clear delineations as to recognition, protocol, interface, roles, decision-making, and responsibility preferably with balance throughout.

Here are some live observations and experiences resulting from the present lumping together of all the afore cited "persons" other than lineal into NAGPRA's Native Hawaiian Organization classification. The Repatriating Entity exploits the "lumping" so to avoid choosing specific claimants who might be the appropriate repatriatee(s). Instead, repatriation is then globally conferred. Furthermore, rightly or wrongly, such an approach enables avoiding, without much creativity, one-on-one consultation per recognized claimant too.

The consequence of this approach is the repatriating entity marginalize its responsibility and accountability for its inaction. [This is what the Diamond Ohana notes is a consequence of what the Duckworth/Duarte/Kaulukukui regime did in the Kawaihae situation. The Junta did a "Pontius Pilate" by declaring the repatriation completed and concluded. But, the "Lumping" is the cause of the controversy.

Another facet and fact of the lumping together is Ohana claimants have only co-equal standing with non-Ohana claimants, e.g. government and community-based entities. But, the primary Kuleana is Ohana; is family. Further, except for the reinterment of the Iwi in Waikiki, pursuant to Hawaii state law, Native Hawaiian Organizations have not stepped back and supported Ohana claimants taking responsibility for the care, custody of the iwi. We recall one exception. It was when the Temple of Lono deferred to Ohana claimants' reinterment initiatives at Mokapu (1999-2001inclusive).

This placement of families (Ohana) as a Native Hawaiian Organizations makes family (Ohana) relationships, e.g. geneology, kinship, history, tradition etc., irrelevant for repatriation purposes. This deters NAGPRA from enabling family having the responsibility to which it is entitled --- unless the family is deemed lineal. But, NAGPRA's lineal definition does not advance native Hawaiian interests regarding repatriation. The definition responds and promotes a Native American tribal content and context --- not the Native Hawaiian.

The present Native Hawaiian Organization definition also did not respond to testimony provided at the outset of NAGPRA. We understand testimony was provided, we believe by the Temple of Lono. (It is a traditional Hawaiian religious organization founded by Kahuna Sam Lono (1978) of Haiku Valley, Kaneohe, Oahu.) In said testimony, an honest effort to communicate the importance of fundamentals with regard to basic traditional Hawaiian practices, protocols etc. was made. Presumably the intent was to provide clarity so that the legislation would be more responsive to the ways of the Native Hawaiian. Unfortunately, it appears those remarks were not heard or failed to register with those responsible, staff-wise, at the time.

For example, we understand that there was testimony, perhaps again from the Temple of Lono. It was recommended not to identify any specific organization(s) in the NAGPRA provisions regarding the Native Hawaiian Organizations. It was felt such an identification might deter other native Hawaiian organizations and Ohana from seeking NAGPRA organization/claimant recognition.

The identification of Hui Malama I Na Kupuna O Hawaii Nei and the Office of Hawaiian Affairs within the definition of Native Hawaiian Organization is said to be for purposes of example. Earlier in this testimony we described what prompted the additional motivation for their inclusion. However, based on this Diamond Ohana NAGPRA experiences, observations, and hearsay, we ask whether or not the inclusion, within the NHO definition, of OHA or Hui Malama or both enabled either or both to achieve claimant status without demonstrating "cultural affiliation"? If this has happened or might take place, equity and integrity strongly suggests no organization be cited in the law. This begins with deleting Hui Malama and OHA from the NHO definition.

Both the Mokapu and Kawaihae NAGPRA experiences has indicated that an Ohana claimant is at a disadvantage --- unless it is assisted in understanding the process by some person (corporate, governmental, individual etc.) available and accessible to educate and inform anent NAGPRA. Presumably, such a resource is officially situated in the National Park Service /NAGPRA operation in either Denver, CO. or Washington, D.C. But, shouldn't such assistance be readily available here in the state of Hawaii? perhaps from the local office and staff of the National Park Service? provided funding is appropriated and released? Moreover, with such staffing proximate, prospective and recognized NAGPRA claimants could be better apprised and assume greater responsibility and be more knowledgeable.

The present NAGPRA definitions of lineal descendancy and Native Hawaiian Organization is truly indicative of a well-intended statute which missed its mark. The definitions do not meet the needs of the Hawaiian people regarding the repatriation of Iwi and/or artifacts. Therefore, the Diamond Ohana recommends consideration of the approach manifested in the Hawaii Revised Statutes, Chapter 6E and the attendant Administrative Rules of Chapter 13-300 concerning Native Hawaiian reinternment.

The State of Hawaii has two (2) categories for family (Ohana) to achieve recognition for purposes of reinterment of Iwi: (1) Lineal Descendancy and (2) Cultural Descendancy. The former is conferred, based similar to the NAGPRA approach for recognition purposes. However, we have been informed that recognition per the state statute seemingly is enabled provided lineal descendancy can be effectively demonstrated. But, how this is applied is unclear.

Whereas, Cultural Descendent recognition seemly takes place when it can be shown the individual, by his/her geneology, land title etc. is connected to the land on which the Iwi were discovered or proximate to where the remains were found. Such a individual cannot, as an example, show a specific tie to the discovered/found remains e.g. to identify the remains.

The advantage of the State definitions (within the state law and administrative rules) is (a) Family (Ohana) recognition has two categories, i.e. lineal and cultural --- with priorities associated with each category. (b) Recognition exists for "appropriate Hawaiian organizations." These are organizations with certain organizational characteristics associated with knowledge regarding the care, custody and reinterment of Iwi etc.
(c) There is also an appropriate "ethnic" Hawaiian organization which is likely where a Native Hawaiian Chamber of Commerce might achieve recognition. (d) There is some uniformity in the

recognitions under state law. There is a specific staff position which analyzes, assesses and recommends recognition of descendants. This is a process utilized statewide. If properly funded, this process etc. could develop into a registry for recognized descendants; organizations. It could also appraise & research to recognize. Interconnecting the state and NAGPRA laws and processes might advance the mission of both federal and state laws. Moreover, it could assist in advancing the kuleana of Ohana and its standing vis-à-vis the Native Hawaiian Organization(s). N.B. The Hawaii law and administrative rules regarding the reinterment of Iwi, including its recognition provisions, are not perfect. In fact, there is much work needed in this arena. But, it does indicate what NAGPRA ought to consider and explore so to become responsive to the Native Hawaiian --- so that NAGPRA moves away from trying to force fit a Native American model and approach.

CONCLUSION--- The fore going indicates that NAGPRA presently assists the Native Hawaiian with difficulty. In part, this is attributable to time passing and people growing more savvy about matters; that change has and is taking place---hence change produces discomfort. At the core, Ohana kuleana is emerging.

Pivotal to having NAGPRA responsive to the current and prospective context and content of the Native Hawaiian is the notion of family kuleana. It is an essential principle of the Native Hawaiian. Accordingly, the law and attendant rules, procedures and administrative responses of NAGPRA needs to focus on how to continue to advance the family (the Ohana), taking its rightful, sovereign kuleana or responsibility with regard to artifacts and Iwi. NAGPRA also needs to provide incentives and support for Native Hawaiian Organizations so that they can kokua the Ohana in meeting their responsibility.

With this as the starting point, it is hoped the shortfalls of NAGPRA will be corrected. For sure, progress in this regard would be affirmed when NAGPRA uses Native Hawaiian law from the Hawaiian Monarchial nation-state and even Pre-Western Contact to support the Native Hawaiian.

Once again, the Van Horn Diamond Ohana thanks you most sincerely for permitting us testify as well as convening this hearing here in Hawaii Nei.

Finally, resulting from our NAGPRA experiences, we choose to close by sharing these additional points with you.

[1] Repatriation must not be permitted to be deemed closed and/or concluded when prospective and especially recognized claimants are unable/prevented from inspecting the items of possible repatriation. Further, consultation needs to occur pre/post inspection per recognized claimant, in particular, both individually and globally --- to enable the fullest possible use of information in determining the object(s) being patrimonial, spiritual, funerary etc.

[2] Repatriation must be deemed incomplete and not concluded when the repatriating entity loans the prospective repatriated items; fails to recover & have de facto custody and control of the loaned items. Further, if the loaned items are not actually and physically turned over to the repatriatee(s) by the repatriator, there is no repatriation. Restated, Repatriation requires de facto deaccession.

[3] Recognition of the Temple of Lono, E Nana Pono, and the Honolulu Chapter of Hale O Na Alii O Hawaii was denied by the Princess Bernice Pauahi Bishop Museum during the regime of Dr. Donald Duckworth and his principal staff, Messrs. Duarte and Kaulukukui. The first two seemed to have been disqualified because each appeared not supportive of the Museum's determination regarding the type of objects the 83 items were. Whereas, Hale O Na Alii was not recognized because it did not

provide adequate information about itself. But, Hale O Na Alii has publicly reported the request for more information was couched so to be construed as not warranting additional data. Throughout, the point here is NAGPRA needs to require "culturally sensitive communication" to prevail in all stages of the repatriation process ---from application to recognition through consultation to repatriation/deaccession and closure.

[4] NAGPRA needs to hold jurisdiction over all international repatriations; and, wherever possible, enable state government participation for Native Hawaiian artifacts and Iwi. Presently, both the US government and Hawaii's state government are without explicit authority in this area.

[5] NAGPRA definitions/descriptions of lineal descendant, funerary objects, cultural patrimony; intentional excavation & removal...after consultation, or consent; relinquishment; ownership & lineal descent etc. all include "Native Hawaiian Organization". Perusal of each of these descriptions/definitions confirms conceptually that the Native Hawaiian Organization (NHO) was seen as a tribe and treated as such. This reaffirms the diminution of the pivotal role and function of the family (Ohana). But, in 2004 and beyond, NAGPRA must serve the kuleana of the real Ohana --- not an NHO structured per a conventional western model(s).

[6] A Native Hawaiian Organization (a) serves & represents the interests of Native Hawaiians (b) has as a primary & stated purpose the provisions of services to Native Hawaiians; (c) has expertise in Native Hawaiian affairs. Such a description clearly points to a westernized form of corpus. Moreover, strickly applied, only families with Alii lineage is most apt to qualify as a Native Hawaiian Organizations. All others would not qualify. This stresses the importance of amending NAGPRA to support greater Ohana participation throughout as well as to tweak this definition so to produce clearer delineations as to what is Lineal, Ohana and what is NHO. Until this occurs, the likelihood of dissatisfaction

will occur. Above all, role, responsibility, function will continue to lack clarity, consistency etc.

NAGPRA needs to be responsive to how it fulfills its public purpose and/or mission with regard to the Native Hawaiian people. Presumably, this begins with insuring Ohana kuleana is respected and supported; that certain specific Native Hawaiian Organizations are, by virtue of their standing, especially in terms of their uninterrupted, continuous connection to the past as well as their pertinent protocols and rituals are respected; likewise, the Alii. There should also be a place at the public table for those with a more contemporary genesis. Together, with respect and balance, Native Hawaiians can articulate how NAGPRA support might be manifest. The goal is to protect and perpetuate our essence through the proper use of repatriation.

Mahalo (thank you) for your patience, interest, and favorable response to our effort to communicate with you.

ALOHA, ALOHA KA KOU !

United States Senate Committee on Indian Affairs Hearing
Wednesday, December 8th, 2004
8:30 a.m. Jefferson Hall
Honolulu, Hawai'i

Testimony of Lani Ma'a Lapilio
Principal of Ku'iwalu, a consulting company

Distinguished Vice Chairman Senator Inouye and the Committee of Indian Affairs,
Aloha kākahiaka kākou. It is with deep respect and great appreciation that I greet you and commend your leadership and sincere efforts in the drafting and implementation of the Native American Graves Protection and Repatriation Act (NAGPRA) and especially for your continuing concern for its proper implementation. Mahalo nui loa for all your honorable work on behalf of Native peoples to help make this a better world for our future generations.

I am Lani Ma'a Lapilio, here today as an individual to offer a historical perspective on how the NAGPRA was administered by the Office of Hawaiian Affairs (OHA) in the early 1990's as well as my thoughts on the definition of "Native Hawaiian Organization".

I was very fortunate to have worked with the Native Hawaiian Historic Preservation Council (Council) as their legal counsel for over ten years. Much of the Council's work during this time focused on the implementation of the NAGPRA law, reviewing inventories, summaries and filing claims. The Council began as a statewide kūpuna council that provided advice on cultural issues to the OHA Board of Trustees. This group led by kūpuna such as Aunty Namahana Maioho, Uncle Leon Sterling, Aunty Gladys Brandt and many others, some of whom are in this room, viewed this law as such a tremendous opportunity for all Hawaiians to finally bring our iwi kūpuna and nā mea kapu home from mainland and local institutions.

In the early 1990's right after this law became effective, OHA and Hui Mālama I Nā Kūpuna were very active in filing claims and pursuing repatriation from institutions nationwide. Many Hawaiians were still unaware of this law and it was the mana'o of the OHA that they would undertake this responsibility as claimants until families could come forward and represent themselves in this process. The Council guided OHA in the filing of claims for hundreds of objects

and items that were culturally affiliated and held many educational workshops throughout the community on this very important legislation for Native peoples.

OHA's primary role at this time was that of a placeholder whereby OHA would file as a claimant Native Hawaiian Organization and allow families to be involved in the process without having to file as a Native Hawaiian Organization. In this manner OHA also acted to preserve the right of families to come forward and claim their kuleana at a later time. Since then, more Native Hawaiian families have and continue to gain awareness both of the law and of their kuleana and are starting to get more involved in the process. They are filing claims and representing themselves which was the goal of the OHA at that time. The burden of accepting responsibility for the proper care and repose of long-separated relatives and culturally significant objects as you know is an immense one for all Native peoples yet is also a tremendously fulfilling experience.

With regards to the definition of "Native Hawaiian Organization", I understand the concern of those who feel the current definition is too broad. In general, I am in favor of keeping the law broad so as not to preclude any potential claimant from entering the process. There were many people who thought long and hard about this law and regulations and by keeping the law broad you are able to better meet challenges that are presented by increasingly complex conditions.

However if it is true that families with close cultural affiliation are not being allowed to participate in the process then I think the definition of Native Hawaiian organizations should be amended to include them. I believe that families should be accorded a proper place, perhaps even have priority over Native Hawaiian organizations, in the hierarchy of claimants with standing. Under the current law there are three entities that may be accorded standing; lineal descendant, Indian tribe and Native Hawaiian organization. Now that families are beginning to become more aware of the importance of their kuleana and are beginning to come forward to assert their claims under this law, it may be appropriate to specifically include them in the process by either expanding the current definition of Native Hawaiian organization or if more appropriate to add a new category for Native Hawaiian families that wish to assert claims for iwi kūpuna or certain NAGPRA covered objects and items.

In closing, thank you for coming home to hold this hearing and listening to what the community has to say. As you know, it is always better to get community input versus letting legislators or other outsiders dictate how to define our organizations and our people.

I support any effort made by this distinguished committee to ensure that the NAGPRA program is administered with objectivity, cultural sensitivity, and in keeping with the spirit and intent of the Act.

Thank you very much for the opportunity to testify. I would be happy to respond to any questions you might have.

Testimony of
LA'AKEA SUGANUMA
President
Royal Hawaiian Academy of Traditional Arts

My name is La'akea Suganuma and I am the president of the Royal Hawaiian Academy of Traditional Arts wherein I carry the title of 'Ōlohe Aīwaīwa. Our primary function involves the teaching and preservation of the Hawaiian fighting art of ku'ialua, commonly referred to as lua. However, we are heavily involved in many other aspects of our culture and traditions, as many of our instructors and students, from all islands, are practitioners of numerous traditional disciplines. My first encounter with NAGPRA began over four years ago, when the academy was recognized as a claimant in the ongoing Kawaihae Caves Complex aka Forbes Cave matter. On the other hand, my education in the beliefs, spirituality, traditions, great wisdom and dignity of our Hawaiian culture began shortly after birth, when I was given to my grandmother, Mary Kawena Puku'i, to raise, in the household of George and Pat Namaka Bacon, my foster parents. There is no one, absolutely no person, who honors, respects and has unconditional aloha for our ancestors and culture more than I do.

I believe that NAGPRA was enacted with good intent, to address the rights of lineal descendants, Indian tribes, and Native Hawaiian Organizations to certain Native American human remains, funerary objects, sacred objects, or objects of cultural patrimony with which they are affiliated. My observation is that it has worked well with Native

American and Native Alaskan tribes, but it has not worked well in Hawaii.

The primary purpose of this hearing is to examine proposed changes to the definition of Native Hawaiian Organization, which are necessary. There are differences between our culture and Native American cultures that also warrant revisiting the definitions used to categorize the various types of objects. The primary reason that NAGPRA is not fulfilling its intent in Hawaii is the fact that all federally recognized tribes have a governing body that is authorized to represent and make decisions on behalf of the members of the tribe. Hawaiians were never organized in tribes and at this time have no governing body that speaks for our people. In other words, if an object is determined to be of a certain tribe, it is repatriated to the tribe, whose leaders decide its fate. It can be left where it is (as has happened), placed in a tribal museum, given to a particular family, etc. The key here is that the decision is made by a recognized governing authority of the tribe.

Here, in Hawaii, because we are not tribal, nor do we have a government, actual and legal ownership has been transferred to a few, without regard for the Hawaiian people as a whole. Two organizations, in particular, were named in the Act itself and must be removed to eliminate any further appearance of favoritism. Because of this naming, one organization, whose spokesman was involved in the development of NAGPRA, was formed for the express purpose of taking advantage of its provisions and has dominated NAGPRA related activities without regard

for the wishes and beliefs of all others, including those with familial ties, which is contrary to our traditions. This group has arbitrarily imposed their beliefs on everyone else, while getting paid for their services and receiving substantial sums in the form of grants and reimbursements from the federal government. We view their motivation as financial rather than cultural.

The decision of a few has fostered tragic consequences. In the case of Kanupa Cave, its so-called permanent seal was breached and precious ancient objects appeared in the black market for sale. We would ask for your assistance, Senator Inouye, in looking into the investigation that ensued and whose results have seemed to have been quietly shelved.

While Native Americans tribes are building museums to house their treasures, repatriation has been depleting what little we have left and exposing them to deterioration and/or theft. Moreover, ownership has been transferred to a few, who can do whatever they want to do, including selling these treasures. The U.S. Census 2000 reported a total Hawaiian population of 401,162, of which 60% or 239,655 of us live here in Hawaii, and yet the fate and ownership of what should be considered national Hawaiian treasures, is being given to a small handful of individuals. Although we Hawaiians value these cultural objects much differently, the fact is that some of these items, which are literally priceless and worth unimaginable sums of money to international collectors, now belong to and are controlled by a few. Ancient bowls, gourds, spears, images, kapa, etc. are now owned by those who took advantage of the provisions of

NAGPRA. The acquisition of some of these items would make a thief instantly wealthy, a very tempting situation. I'm sure that this was not the intent of NAGPRA. Thus, NAGPRA, as well intended as it was, has had a devastating effect on the Hawaiian people.

I believe that this damage must and can be undone, or minimized, by recalling all previously repatriated objects, not iwi, to be held in trust until these matters are resolved. There should, and will someday, be a museum controlled by Hawaiians, where our treasures would be housed, protected, cherished, and loved, with pride in the accomplishments of our ancestors.

C. Kamuela Harris
822 21st Avenue
Honolulu, Hawaii 96816

December 8, 2004

To: Senate Committee on Indian Affairs

Testimony regarding the inadequacy of the rules of NAGPRA regarding Native Hawaiian Burial practices.

Aloha Senator Inouye and Committee Members.....

Thank you for the opportunity to present my feelings and thoughts on this matter regarding NAGPRA, its administrative rules and how they don't apply to Hawaiian burial beliefs and practices. My name is Cy Kamuela Harris and I represent my family the Kekumano Ohana, which is a recognized NAGPRA claimant in Mookapu, and Kawaihae claims, as well as Waikiki on the State level.

I submit to you these ideas to balance the word of the law, and some of its definitions regarding Hawaiian burials in the NAGPRA process.

First: Remove the names of Hui Malama and OHA from being used as examples of Hawaiian Organizations. The intentions of these Hawaiian organizations, which may have been noble and selfless in the beginning, has changed. It seems to me that this honor is best served by other Hawaiian Organizations who are better examples, or not listed at all.

Reasons:
a. Makes them an authority by association with the definition.
b. Gives them an unfair advantage in the NAGPRA process.
c. It gives the impression of a rubber stamp approval.
d. Families are coming forward to accept the responsibility.

Second: Change the definitions to include a Hawaiian Perspective of Burial Customs and Practices. Ohana or family values are not unique to only Hawaii and Hawaiians. It is a principle, which insures the respectful treatment of burials at the very least. This feeling of family is missing in the spirit of NAGPRA and its administrative rules and definitions. I believe the

current definitions do not fit Hawaiians. Hawaiians are trying to fit the definitions. There are many definitions which do not reflect Hawaiian ways or thinking, but I think the most important one is Lineal Claimant. This idea of family most of all is what is lacking and is the root of Hawaiian thinking. The definitions need to include this perspective in the rules in order for lineal claims to take the lead as the rules are presently written. The common element in mind is families, not native Hawaiian organizations, to make the final decisions with regard to burials. If this is not changed then the definition of Hawaiian organization becomes very important, as this will be the highest level of NAGPRA claim any Hawaiian will receive with regards to Hawaiian Burials based on a lineal history.

Presently there is no way for Hawaiian families to qualify as lineal claimants, without DNA testing, the way NAGPRA and its rules are written. The closest qualified definition would be as a native Hawaiian Organization. Because Hawaiian burial customs, based on the traditional beliefs of ancestral worship, that the bones of family were hidden to prevent spiritual and physical misuse. Therefore these burials had no markings to identify the family. The only exceptions were the royal mausoleums like Hale O Keawe that cared for the iwi of the chiefs of Kona until Kaahumanu. All knowledge of this was passed down orally within the family or lost. But these burial grounds are not treated like Native American Indian burial grounds, or the memorials we visit today.

Traditional Upheaval

Due to generations of colonization and re-education, Hawaiians have been forced into hiding their traditional beliefs because of past prosecution by Alii and missionaries who turned the chiefs and people towards Christianity, banishing the Kahuna into hiding. This leaves many Hawaiians today who are only now realizing their heritage, and in trying to come forward to claim responsibility for their family, through genealogical history, only to be categorized as Native Hawaiian Organization. This presents a confrontation with organizations like OHA, and Hui Malama, who are being allowed to decide the fate of family, as well as sacred objects. This amounts to the mortician deciding where and how a non-family member is buried. This would be unacceptable. NAGPRA and its rules were intended to set the correct parameters, in that the lineal claims are first and foremost in these decisions of burial. But according to the present rules, proving this as Hawaiians is like putting a square peg into a round hole, it does not fit with

out force. And this inadequacy is putting the decisions into the hands of Hawaiian organizations like OHA and Hui Malama instead of the native Hawaiian families that should rightfully decide these matters. The effect of this has caused the delay to bury thousands of family iwi from being put to rest. Not because Hawaiians can't get together to make a decision, it is the system failing from the definition or lack thereof. You could also argue that this is an example of how an organization refuses to relinquish the decision to families.

Some examples of success and failure with in the NAGPRA process:

Waikiki on the State level, the recognized families took the lead and with the cooperation of the City were able to come to a positive result. A memorial was built and the iwi of Waikiki interred there.

On the NAGPRA level, the Mookapu iwi are still waiting patiently for their turn to be interred, because there are no recognized lineal claimants. Even claimants who base their claim on genealogy are only considered Hawaiian Organization status, fighting against organizations. Some of these organizations, which push their protocols and burial practices, with total disregard for family opinions or decision capabilities, have their own agenda based on federal grant money, not Hawaiian principles. Hawaiian Burial practices have always been based on family, and decided by family. Which is to say that not all knowledge comes from one source but many. This has been at issue in dealing with organizations instead of family. I am sure I don't have to tell you how Hawaiians are related to each other. But if family steps forward with genealogy, to claim family connections to iwi, you can bet the percentages are high that they are family. Their intentions are honorable and to do the right thing and prevent the wrong thing.

Kawaihae Cave or the Forbes Cave is an example of how a native Hawaiian organization is allowed to do the wrong thing. I am speaking about what has become public knowledge through the media, that one claimant has decided the matter for all. Hui Malama, along with the cooperation of the past administration of the Bishop Museum, attempted to circumvent the NAGPRA process. In the Museums attempt to correct its' public image without changing the outcome, and ignoring the result of a vote taken by the majority of claimants, lied. After agreeing to the recovery of sacred objects and iwi, the Museum informed us that repatriation had taken place and if we wish to take this further then we could do so in a court of law or the

NAGPRA Review process. Fortunately the current administration is more understanding of NAGPRA and its rules. So began the quest by Laakea (Suganuma) to correct the wrong. The rest is history. The decision that the Museum rectifies this wrong is on the right track, but far from over.

From the perspective of Ohana, the correct thing to do is to bring the family home, to show our aloha, to malama them and have the chance to decide where and how they should be treated for burial. But most organizations don't believe this is necessary. The fact of the matter is; the families never had a chance for closure, let alone the participation in the burial process. These sacred objects were meant to be found, and shared for all the people of Hawaii to cherish and admire in the very leas - not buried in a cave; or being sold on the black market; their security always in question. The system cannot allow one organization to make a decision of this magnitude – ever!

Questions and answers;

Who are the real losers in all of this? What are the true intentions of organizations like Hui Malama, what is their motivation driving them in this direction? I don't really know, but I am certain it is not Hawaiian, nor is it Ohana.

We lose our family heritage passed on to us from our Kupuna.

We lose the ability to share our Aloha and Mana with each other, our Ohana past and present.

We lose the spiritual right to show our reverence for the sacred ways and things of the past, and bridging the future in this world and the next.

WE ALL LOSE!

From: william aila [ailaw001@hawaii.rr.com]
Sent: Monday, December 06, 2004 5:40 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: NAGPRA HEARING
Aloha members of the U.S. Senate Committee on Indian Affairs!

My name is William J. Aila Jr.and here are some suggested amemdments to the definition of Native Hawaian Organization as it pertains to section 11 of NAGPRA.

Section 11 should read:

(11) "Native Hawaiian organization" means any oranization which (A) serves and represents the interests of Native Hawaiians, (B) has a primary and stated purpose the provision of services exclusively to Native Hawaiians, and (C) is goverened by a board comprised primarily of Native Hawaiians, and (D) has expertise in Native Hawaiian affairs, and shall include the Office of Hawaiian Affairs and Hui Malama I Na Kupuna O Hawai'i Nei and shall not include the Bernice Pauahi Bishop Museum or any other musuem.

Mahalo for the opportunity to provide testimony. If you need any futher information please feel free to contact me at:

86-630 Lualualei Homestead Road, Wai'anae, Hawai'i 96792.

MAHEALANI CYPHER

January 27, 2005

Honorable Ben Nighthorse, Chair
Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Subject: Testimony on NAGPRA Definition of Hawaiian

Dear Senators Nighthorse, Inouye and Members:

Aloha mai!

Thank you for this opportunity to comment during your consideration of the definition of "Native Hawaiian Organization" as contained in the Native American Graves Protection and Repatriation Act.

I offer these comments out of concern and puzzlement that this matter continues to be a subject of debate and controversy. I am saddened that it could not be resolved in a more culturally appropriate way, that Hawaiians among themselves could not come together and regard the question as our kupuna kahiko might have done.

My testimony may, at times, seem contradictory to you. Like many other Hawaiians, I am troubled that the United States government must once again define what is or is not Hawaiian. Or, in this case, what is or is not a Hawaiian organization. Certainly, any one of us with the koko – ancestral blood – knows that we are Hawaiian. No book or body of law can tell us different. But because this matter deals with the right to claim objects found with ancient *iwi*, or burials, it is of concern to the United States government.

I have always found it troubling to see reports of how the tombs of the Egyptian pharaohs are opened for all to see, the contents of these tombs removed and sold or exhibited in museums around the world. These are burial places, with the precious and beautiful objects they contained clearly meant to be held in the tomb for the use

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of the Pharaoh in his or her next life. Isn't it sacrilege, at least in terms of the ancient Egyptian religious belief, to remove those objects from the tombs?

This issue before us today begs the same question. In the case of the Pharaohs, there may be clear records to indicate that the objects were meant to be kept in the tomb as part of the deceased's household in the afterlife. In the case of Hawaiian *iwi*, however, we are not all sure. Some of us believe the artifacts are *moe pu* and, like that of the Pharaohs, meant to be left in place for the benefit of the deceased. Some of us believe that these objects were meant to be retrieved and preserved for all to view until eternity.

The fact that archaeologists, museums, and even big business considers it "no big thing" to exploit the objects contained in the burials of ancient Egypt offers us insight into whether we should consider the same advantage for a museum in Hawai'i. I must confess that I, too, have been enthralled when viewing a traveling exhibit of the objects found in a Pharaoh's tomb. They were beautiful, magnificent, extraordinary to behold. Yet, in fact, I also feel that I am being *maha'oi* – intrusive – to look upon something that was meant to be held fast in a private place for a person who had died so long ago.

This is such a deep conflict, one that strikes to the *na'au* for concerned Hawaiians. We need to hold reverent the remains of our ancestors. We need to take care not to exploit their bones, their burial places, their memory with the actions we take today.

Should the Bishop Museum – established by Charles Reed Bishop – be considered a "native Hawaiian organization"? If we say *ae*, yes, are we not acting in the same way as those who exploited the ancient tombs of Egypt, desecrating the final burial places of kings?

To answer this question for myself, I turned to the traditional Hawaiian approach – to *pule*, or prayer. I sought answers from the only place I could, from the ancestors buried where these objects have been found. I had to take myself back in time, in a way, to consider how these matters would have been seen <u>through Hawaiian eyes</u>.

Even in 1889, when Charles Reed Bishop first established the Museum, I am certain there were Hawaiians who shook their heads and disagreed with some of what he did. But even then, there were many who felt that the cultural remnants of

our heritage needed a safe place to be stored, to be protected and to help generations to come see how it was in times *kahiko*, ancient times.

I think that is our dilemma today. Can we place ourselves in the malo of the kahuna of 1604, caring for the dying chief, preparing the precious things that would be laid to rest with the bones of his leader? Do we know which things needed to be kept with the *iwi*, and which things were added later, for safekeeping?

The answer I received from my prayer is this: what was done in ancient times was *pono*, righteous, correct for the people of that day. None of us dispute that. With the coming of western civilization came tremendous changes in the use of our land, and many burials have been disturbed as well. Also with these changes came people who would be most *maha'oi*, intruding into the burial caves to take things that may have either been left with the chiefs who died, or which were left there for safekeeping.

Rather than disturb the dead again to return such objects, these things should be preserved, protected, safeguarded in a place where Hawaiian generations to come can learn from them and celebrate our magnificent heritage.

But should the Bishop Museum itself be the repository of those objects precious to our people? Can you or I declare that the Museum is "native Hawaiian"? I say, "*A'ole*", No. Not until its Board of Trustees is controlled by native Hawaiians, and its management is controlled by native Hawaiians, can we consider this institution as a "native Hawaiian organization."

It pains me to say this, because as I offer this testimony to you today, I am also working on an effort to build a bridge with the museum to celebrate the heritage and culture of ancient Hawaiians who lived in Ko'olaupoko. That's one of the hardest things I have ever had to do in my life, to try to find common ground with a Museum which I feel has betrayed the trust of Hawaiians so much over the past 30 years. This museum took federal dollars and misrepresented the history and culture of my people to allow the construction of a major federal highway, destroying so many *wahi pana*, *wahi kapu*, the sacred places of antiquity.

I have no problem agreeing with the Museum to allow them to attain to the definition of "native Hawaiian organization", but it should be conditioned upon the restructuring of its Board to ensure a majority (and Chair) are of native Hawaiian ancestry, and that its management should also have at its head a person of native Hawaiian ancestry.

That is the answer to my *pule*, my prayer to our ancestors.

Mahalo for this opportunity to comment.

Sincerely,

MAHEALANI CYPHER

P. O. BOX 4749 • KANE'OHE, HI • 96744
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Indian-Affairs, Testimony (Indian Affairs)

From: rubellite johnson [rubekawena@yahoo.com]
Sent: Tuesday, December 07, 2004 4:31 PM
To: Indian-Affairs, Testimony (Indian Affairs)
Cc: apio@hawaii.rr.com; aumakua@aloha.net; michael guard sheehan
Subject: December 8, 2004 hearing on NHO definition in NAGPRA

To: Daniel K. Inouye, Vice Chairman
United States Senate
Committee on Indian Affairs
Washington, D.C. 20510-6450

From: Princess Nahoa 'Olelo o Kamehameha Society
by Ms. Rubellite K. Johnson
1019 Maunaihi Place #102
Honolulu, HI 96822

Dear Senator Inouye:

I thank the Committee on Indian Affairs for this invitation to send my opinion, however, at the most recent meeting held at the Kamehameha Schools in November (2004), I spoke in response to Mr. Timothy McKeown and Ms. Patricia Zell regarding the classification of Hawaiian Homelands in the NAGPRA law (1990 amended) as "tribal" lands.

Mr. McKeown replied that "for the purposes of the act" Hawaiian homestead lands, beginning in 1990 and thereafter, categorize the DHHL lands for " Hawaiian Homes" (1959 Statehood Commission Act) as "tribal", which the audience present would have understood is necessary to combine the substantive clauses in that act to more or less comply with "aboriginal" status of Native Americans which in the 1990 NAGPRA Act recognized Hui Malama i na Iwi Kupuna and OHA (Office of Hawaiian Affairs) as priority claimants (lacking any other claimants who would have qualified for claims, for the purposes of repatriation to the "tribe", i.e., Native Hawaiians by definition in two separate levels of statutory law, one qualifying Native Hawaiians under the 1920 federal law defining beneficiaries to Hawaiian homestead lands in the Territory of Hawaii as 50 to 100 % blood quantum, and Hawaiians as also beneficiaries of OHA with less blood quantum).

In addition to the above, might I add, not as a claimant for anything else in recent years, since Nahoa 'Olelo o Kamehameha, as one of six claimants who were awarded repatration by General Bice for the repatriation of the Mokapu Bones collection (Bishop Museum), was defeated after a period of four years (1993-1997) by Ka 'Ohana Nui (OHA + Hui Malama) due to a revote by Ka 'Ohana Nui as separate family claimants increasing their vote from 1 to 7 versus the 6 previous awardees who based their claims on (a) lineal descent, and (b) cultural affiliation, backed up extensive genealogical qualification by each of the six claimant groups (Nahoa, Po'ohina, Monet, Mahi, Nobriga [for Kealanahele, and Kepano]. Nahoa would have persisted but for two reasons:

(1) Its members supported the larger Kamehameha group, Mo'opuna o Kamehameha, with a separate charter, and(2) Its kupuna elders and leaders died, namely two uncles, and my older brother, between the years 2000 and 2001, and

(2) The collection was transferred to Hui Malama some years ago.

Nahoa 'Olelo o Kamehameha presented its statement in court when judgment was rendered against our claims by both the State of Hawaii and the Bishop Museum, in which I detailed the reason for Nahoa's claims in the first place years ago. I asked the claimants for the Mokapu Bones (and artifacts) collection in the museum to allow for DNA analysis of four skeletons in the collection which had been competently identified as non-native Polynesian/Hawaiian bones excavated from a stratigraphic depth of about 1400 B.C. on the Kailua side of Mokapu Crater. That date says that the four skeletons were of some other immigrant race that had chanced into Kaneohe and Kailua before any 16th century

inmigration of Spaniards or other so-called "haoles", and I, specifically, wanted to know what their genetic code was before reinterment, after which reinterment could occur, pointing out again and again that federal NAGPRA regulations do not disallow or prohibit DNA analysis of bone material, that only state NAGPRA regulations disallow DNA analysis of Hawaiian bones retrieved from stratigraphic excavation.

So there are two things I would say against NAGPRA, rather than against the definition of NHO as it applies both to Hawaiian lands, which were feudal, not tribal, and the unscientfic calibre of spokesman for Hui Malama and OHA which refuses to allow DNA or haplotype studies to clarify such serious claims as "lineal" descent or even, or "aboriginal" kanaka maoli race definitions without trustworthy genetic proof, for as you are aware, pre-contact Hawaiian marriages were multiple partners and also between generations, neither monogramous nor intra-generational.

My "beef", as it were, with NAGPRA is that it makes us all liars unless "cultrual patrimony" honors the fact that other racial groups, called menehune, were also here, and although Hawaiian traditions defend their existence here, NAGPRA (Hawaii) discourages knowing the wherefrom of their presence because Hui Malama and OHA, priority claimants, wrote into the state law disallowing DNA research into Hawaiian bones from stratigraphic excavations and donated samples to the Bishop Museum.

aloha kaua,

Rubellite Kawena Johnson
Emeritus Professor, Hawaiian Languages and Literature,
Retired, University of Hawaii-Manoa.

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Indian-Affairs, Testimony (Indian Affairs)

From: rubellite johnson [rubekawena@yahoo.com]
Sent: Wednesday, December 08, 2004 7:05 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: corrected copy/Nahoa

testimony@indian.senate.gov
CC: apio@hawaii.rr.com, aumakua@aloha.net, "michael guard sheehan" <hanaleiriver@outdrs.net>

To: Daniel K. Inouye, Vice Chairman
United States Senate
Committee on Indian Affairs
Washington, D.C. 20510-6450

From: Princess Nahoa 'Olelo o Kamehameha Society
by Ms. Rubellite K. Johnson
1019 Maunaihi Place #102
Honolulu, HI 96822

Dear Senator Inouye:

The text below in my original email to you has the wrong date of 1400 B.C. for the Mokapu bones on the Kailua side of the peninsula.
I meant 1400 A.D.,
i.e., 15th century A.D. What is important is that the burial site would then predate Spanish voyaging through the Pacific between the Marquesas and the Philippines in the 16th century and the later arrivals, such as that of Captain James Cook into Hawai'i in the late 18th century (1778-1779 A.D.).

mahalo nui,

Rubellite K. Johnson

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TESTIMONY BEFORE THE
UNITED STATES SENATE COMMITTEE ON INDIAN AFFAIRS
AT THE OVERSIGHT HEARING ON NAGPRA IMPLEMENTATION

DECEMBER 8, 2004

The Department of Hawaiian Home Lands (DHHL) appreciates this opportunity to submit written testimony to the U.S. Senate Committee on Indian Affairs regarding the Native American Graves Protection and Repatriation Act (NAGPRA). I regret that I will not be able to personally attend the hearing.

The purpose of the hearing is to clarify whether the definition of "Native Hawaiian organization" contained in NAGPRA should be amended to assure that the definition is neither overly broad, nor too narrow in scope.

The Hawaiian Homes Commission Act (HHCA) was passed by the U.S. Congress and signed into law by President Harding on July 9, 1921 (42 Stat. 108). The federal government set aside over 200,000 acres of public land for the use and benefit of native Hawaiians under the aegis of the Hawaiian Homes Commission.

With Statehood in 1959, the State of Hawaii entered into a compact with the United States to assume the management and disposition of the Hawaiian home lands. The HHCA was adopted as a provision of the State Constitution. The State and its people reaffirmed this compact in a provision in the Constitution whereby they accepted specific trust obligations relating to the management of Hawaiian home lands.

The Hawaiian Home Lands Recovery Act of 1995 (Public Law 104-42) further defines federal government oversight responsibility and authority over the HHCA, including the requirement that Congress consent to certain amendments to the HHCA and the Secretary of the Interior approve all land exchanges.

The Hawaiian Homes Commission is the specific state entity obligated to implement the fiduciary duty under the HHCA on behalf of native Hawaiians. The Hawaiian Homes Commission is responsible to properly plan, develop, use, manage, and protect the Hawaiian home lands, including iwi kupuna and cultural items associated with these lands. The Hawaiian Homes Commission meets the criteria of "Native Hawaiian Organization" pursuant to Section 2(11) of NAGPRA. Further, Section 2(15) of NAGPRA defines "tribal land" to include Hawaiian home lands. Section 3 of NAGPRA

:s the Hawaiian Homes Commission priority, after lineal descendants, recognizing
ɔonsibilities over Hawaiian home lands (i.e., the "tribal land").

ɔrder to carry out its responsibilities under the HHCA and NAGPRA, we recomm
: the Hawaiian Homes Commission be designated as the exclusive Native Hawa
anization with respect to matters related to Hawaiian home lands.

: Hawaiian Homes Commission will implement the NAGPRA and HHCA. We
st in finding lineal descendants and work with them. We will carry out th
ɔonsibilities based on proper notifications and consultations with Native Hawa
anizations. We will continue to rely on the Office of Hawaiian Affairs, Hui Malan
Kupuna O Hawaii Nei, State Burial Councils, and many other groups, famil
fessionals, and cultural experts for advice and direction. Ultimately, the Hawa
nes Commission will carry out its kuleana, make and implement the decisions involv
vaiian home lands.

thank the U.S. Senate Committee on Indian Affairs for the opportunity to prov
ıments at these hearings on NAGPRA.

Respectfully submitted,

Micah A Kane, Chairman
Hawaiian Homes Commission

Testimony of

Abigail Kinoiki Kekaulike Kawananakoa
President, Na Lei Alii Kawananakoa
420 Kekau Place
Honolulu, Hawaii 96817
Telephone: 808-523-3570
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For inclusion into the record of the

U. S. Senate Committee on Indian Affairs Hearing

held on Wednesday, December 8, 2004,
Jefferson Hall, Imin Conference Center,
East-West Center, Honolulu, Hawaii

Concerning the
Native American Graves Protection and Repatriation Act
(NAGPRA)

Submitted on January 4, 2004

NAGPRA, despite its flaws, has been a partial benefit to the Hawaiian people particularly in allowing for ancestral remains to be returned and put to rest. At this stage, however, the problems outweigh the benefits.

NAGPRA was designed specifically for the Native Americans and Hawaiians were added to the law in some ways as an afterthought without the necessary additional provisions to reflect their culture. Hawaiians were never a tribal people, yet NAGPRA in fundamental ways assumes that they are and therein lies the failing in the law.

Na Lei Alii Kawanankoa calls for an immediate moratorium on further repatriations of everything other than human remains. Furthermore, all previously repatriated objects, **excluding** human remains, must be immediately recalled and placed in the custodial care of a appropriate facility pending the determination of true "ownership." As President of Na Lei Alii Kawananakoa, I am personally, deeply concerned about the artifacts, not iwi, that have been taken from the Bishop Museum. Their recovery, preservation and protection are of paramount importance.

NAGPRA, if it is to meet the needs of Hawaiians, must be changed fundamentally. The best way to identify areas in which change is needed is to solicit information from qualified experts on Hawaiian history and culture to comprehensively examine NAGPRA and recommend amendments to the law. The Abigail K. Kawananakoa Foundation has for over 25 years been working on genealogical and historical documentation and would be willing to assist in any manner.

Some areas are obvious as the following few examples show:

1. NAGPRA FAILS TO PROPERLY RECOGNIZE THE INTERESTS OF HAWAIIAN FAMILIES

The Hawaiian culture recognizes and cherishes familial ties. The live testimony provided by Panel II, particularly Mel Kalahiki, Cy Harris, La'akea Suganuma and Van Horn Diamond, stressing the importance of 'ohana (family) should be carefully considered.

As written, NAGPRA denigrates and denies Hawaiian families their proper role in repatriations. NAGPRA confers automatic claimant status on a

single private group and a single public group to the detriment of family claimants.

In the case of Kawaihae Cave, for example, one non-familial claimant has consistently disregarded the rights and wishes of those other claimants with familial ties to the area in question and who, along with other claimants, make up a majority of the whole. The Hawaiian concept of 'ohana (family) binds generations back to the beginning of time with love and aloha and in this particular case, families are being ignored by a claimant who not only has no ancestral ties, but claims compensation for their efforts under this Act.

2. NAGRPA'S TRIBAL FOCUS HAS LED TO THE LOSS OF HAWAII ARTIFACTS

Under NAGPRA, certain favored groups and individuals have been treated as if they were the legitimate representatives of the Hawaiian people. Their treatment has been as if they are the leadership of recognized tribal nations.

However, under Hawaiian culture and society these individuals and organizations would have had no rights of ownership. Indeed, their involvement would be contrary to the core values of Hawaiian traditions.

The result of NAGPRA has been to allow those without legitimate standing to take possession of priceless Hawaiian treasures. They are further permitted to treat them as personal property without any accountability to those with valid claims or the Hawaiian people as a whole.

3. THE NAGRPA REVIEW COMMITTEE HAVE BECOME INCONSISTENT AND UNFAIR IN DEALING WITH NATIVE HAWAIIAN ISSUES

The NAGPRA review process is being inconsistently operated with apparent bias. It is clear that the "loan" of Hawaiian artifacts from Kawaiahae Cave was a violation of NAGPRA and that repatriation was never completed.

This was determined by the NAGPRA Review Committee at its May, 2003, meeting in St. Paul, Minnesota. However, the new members of the current Review Committee have, in violation of its own procedures, decided to hold

that decision in abeyance and to rehear this matter with the intent, we feel, of overturning the St. Paul decision. This raises the question of, "Why give attention to amending NAGPRA when it is not adhered to by its Review Committee?"

More troubling, however, is what appears to be a movement of the Review Committee and its staff from being neutral to being advocates for favored groups and individuals.

It is apparent that the review process lacks accurate information about Hawaiian history and culture. One alternative that should be considered is to modify the process so it is specific to Hawaiians rather than treating them as if their culture is the same as that of Native Americans.

CONCLUSION

Na Lei Alii Kawanakoa requests that the members of the Senate Indian Affairs Committee, especially Senator Inouye, take prompt action in the new Congress to address the defects in NAGPRA. Delay will only foster controversy and division and the further loss of what little has been preserved of the authentic Hawaiian culture.

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Kealoha Kuhea
P. O. Box 894030
Mililani, HI 96789

Testimony

Aloha to this Military board of inquiry, it's well Recorded in the Hawaiian history of 1893 January 17, that the Foreign Government of the United States of the America, was the major force in this unlawful and illegal overthrow of my Queen Liliuokalani, who was the legal heir to this land that was stolen by this arm forces of America.

The Kingdom of Queen Liliuokalani was stolen by American citizens with the help of the American armed forces of a foreign Government, the Government of the United States. This foreign government then proclaimed that the King should be a white man from the government of the Americas, the same white man who was one of the murderers of my Queen Liliuokalani.

The president of this foreign government was one of the key players in the plot to the murder of Queen Liliuokalani's government. We all know that this De-Facto government that was put in power was illegal. Stanford B. Dole was a murderer of the Hawaiian policeman who was killed by an American Citizen, whose name was Keloha, who was shot in the head in downtown on the island of O'ahu, where the illegal overthrow took place.

This foreign government of the United States of the America had broken every treaty that was made with Native Indian Tribes and the same thing happened to the Native Hawaiian Government, when the Treaty of 1850 was signed between King Kamehameha the Third of this here Hawaiian island, and the President of the America, President Zachary Taylor. This Treaty was called the Treaty of Friendship, Commerce and Navigation.

Liuokalani was deposed by the foreign Government of the United States of the Americans, and its band of revolutionary Citizens of this foreign Government, called "America". This was just pure bloody Murder of a friendly Nation.

Then on the 17th day of January, 1893, Queen Liliuokalani was deposed by a group of Revolutionary Citizens of America. And they had called themselves the "DE-FACTO" Government of Stanford B. Dole, that I yield to the superior forces of the United States of America, whose minister plenipotentiary excellency John L. Stevens, has caused United States troops to be landed at Honolulu and declared that he would support the new provisional government.

Queen Liliuokalani had protested this illegal act by the United States of America, she then protested in the court of claims on the 20th day of November, 1909. Queen Lilioukalani asked the representative of the United States to reinstate her with full power as a constitutional sovereign of the Hawaiian Islands.

I, Kealoha Kuhea, by the grace of God and under the constitution of the Hawaiian Kingdom, do hereby solemnly protest against any and all acts done against myself and the constitutional government of the Hawaiian Kingdom, by certain persons making a claim to this 1.8 million acres of land that was stolen from the government of the Hawaiian Kingdom, and under the constitution of the Hawaiian Nation, I, Kealoha Kuhea, hereby proclaim his right by birth as the true legal heir and next of kin to Queen Liliuokalani, last ruling Ali'i.

Kealoha Kuhea

KE-ALOHA KUHEA
Hawaiian Citizen

12-20-04

RE:REPARATION FOR THE 1893 OVERTHROW OF QUEEN LILIUOKALANI

Aloha Mai Ms. Noe Kalipi as you may already know that I have given my testimony to Senator Daniel Akaka's office last week and that I had asked them to fax it to your office in Washington, D.C. This is what I, Kealoha Kuhea will testify to as far as to the illegal overthrow of Queen Liliuokalani's monarchy and of the Hawaiian Government.

In 1999 a resolution was signed by your President William J. Clinton; later it became the bill 103-150, which became the apology bill from the Government of the United States of the America.

Ms. Kalipi as you and I know and the rest of the nation know, the only true reparation ? is to call out the heirs and next of kin to Queen Liliuokalani , blood relatives as only they will make the decision about which form of reparation the Ohana of Queen Liliuokalani would want?

We feel that any DE-FACTO Government agency who said that they have right to this land that was stolen from my aunt Queen Liliuokalani will be an act to plot against the real true heirs of the Royal Ohana as it has shown in the 1893 overthrow of aunt Queen Liliuokalani last ruling ALI'I.

The only real solution is that all American citizen will have to leave the Kingdom of Hawai'I and return to their country of origin which they came. As this foreigner was brought to Hawai'I by the plantation as migration workers for the foreign plantation company, namely the sugar and pineapple.

IT WAS QUEEN LILIUOKALANI'S LANDS THAT WAS STOLEN FROM HER AND NOT LANDS OF THE CITIZENS WHO HAD LIVED HERE IN HAWAI'I NEI..SO I, KEALOHA KUHEA WILL DEMAND THAT YOUR GOVERNMENT RETURN THIS STOLEN LANDS TO ME AND THAT ALL REPARATION BE PAID TO ME AND NOT TO SOME PHONY DE-FACTO GOVERNMENT AGENGY OF THE FOREIGN GOVERNMENT OF THE AMERICA.

Ke Aloha Kuhea

KE-ALOHA KUHEA, Hawaiian Citizen
P. O. Box 894030
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12-20-04

TESTIMONY

SECTION 1. SHORT TITLE
This Act may be cited as the "Native American Graves Protection and Repatriation Act."

SECTION.2.DEFINITIONS:OPPOSE ANY CHANGES IN THIS ACT AS DEFINITION STATED

A22 • Sunday, October 24, 1999 The Honolulu Advertiser

Lab to receive remains from Korean War

ADVERTISER STAFF

The remains of four U.S. soldiers killed during the Korean War are to arrive at Hickam Air Force Base tomorrow for possible identification by the Army's Central Identification Laboratory-Hawaii.

The remains were discovered during a search mission last spring in North Korea. The soldiers are thought to have died during the battle of the Chongchon River in November 1950 in which nearly 400 soldiers were unaccounted for, said Maj. Christy Samuels, a spokeswoman for the U.S. Pacific Command in Hawaii. The Army's 2nd Infantry and 25th Infantry divisions fought the battle.

Since 1996, 32 sets of remains have been excavated from North Korea but only three have been identified to date.

A joint repatriation ceremony will be held in Pyongyang, North Korea, tomorrow and the remains will be flown to Yokota Air Base in Japan where a U.N. Command arrival ceremony will take place.

The remains will be flown to Hawaii for a 1 p.m. ceremony. Veterans groups are invited to attend.

U.S. officials to visit Isles, discuss Hawaii reparations

GANNETT NEWS SERVICE

WASHINGTON — Officials from the Interior and Justice departments will be in Hawaii Dec. 4-13 for public meetings and discussions on reparations called for in the 1993 resolution signed by President Clinton apologizing for overthrowing the Hawaiian monarchy.

John Berry, assistant secretary at Interior, and Mark Van Norman, director of the Justice Department's Office of Tribal Justice, will discuss such issues as the political status of Hawaiians and the ceded lands, including about 1.8 million acres taken by the U.S. government after Hawaii was annexed.

Two public meetings have been scheduled so far: Dec. 10 and 11, from 8 a.m. to 6 p.m. at the East-West Center on the University of Hawaii campus.

Public meetings are also planned on the Neighbor Islands.

Boat crew hurt in blast recovering

ADVERTISER STAFF

Two crewmen injured Friday when an ammonia canister exploded aboard a fishing boat are recovering.

One man listed in critical condition at the Queen's Medical Center was upgraded to guarded condition yesterday. A second crewmember was upgraded from guarded to fair condition yesterday and moved out of the hospital's intensive care unit, a nursing supervisor said.

Both were aboard the fishing boat Icy Point during the 4:40 p.m. explosion at Pier 13, which created a white cloud of poisonous gas.

Seven other people suffered minor injuries from the explosion, which is under investigation.

A second ammonia canister on the boat was damaged when the blast blew it onto the pier.

Fishing boats use ammonia canisters for refrigeration. The canisters aboard the Icy Point had a capacity of 150 pounds of ammonia.

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STATE OF HAWAI'I
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAI'I 96813

December 3, 2004

The Honorable United States Senator
Ben Nighthorse Campbell
Chairman

The Honorable United States Senator
Daniel K. Inouye
Vice-Chairman

Committee on Indian Affairs
108th Congress, 2nd Session
United States Senate
836 Hart Office Building
Washington, DC 20510

Re: Testimony of the Office of Hawaiian Affairs Regarding Proposed Amendments to the Native American Graves Protection and Repatriation Act of 1990, Public Law 101-601; 25 U.S.C. 3001 et seq.

Dear Chairman Campbell and Vice-Chairman Inouye:

Thank you for this opportunity to provide comments regarding the proposed amendments to the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), and for the notice of the upcoming committee hearings to be held concerning this issue, on December 8, 2004 at the East West Center in Honolulu, Hawaii.

The effort to hold hearings in Hawaii is very much appreciated given the importance of this historic legislation in providing the

means for the native Hawaiian community to provide culturally appropriate care, management, and protection in effectuating our most sacred ancestral responsibilities.

It is our understanding that the committee is open to all recommendations for substantive changes to NAGPRA, but that there will be a special focus on the definition of "Native Hawaiian organization", which currently reads:

> *(11) "Native Hawaiian organization" means any organization which:*
> *(A) serves and represents the interests of Native Hawaiians,*
> *(B) has a primary and stated purpose the provision of services to Native Hawaiians,*
> *(C) has expertise in Native Hawaiian Affairs, and shall include the Office of Hawaiian Affairs and Hui Mälama I Na Kupuna O Hawaii Nei.*

The definition of "Native Hawaii organization" is a very important and critical component of NAGPRA as it often provides the only way for our native Hawaiian community to make recognizable claims for native Hawaiian remains, funerary objects, sacred objects and items of cultural patrimony. The unique circumstances surrounding native Hawaiian burial practices, such as secreting burial site identification and utilizing communal burial areas such as sand dunes, can make claims of lineal descent very difficult to establish under the current Act and associated regulations.

Current State of Hawaii law, Chapter 6E, Hawaii Revised Statutes, sets forth a more relaxed standard for the recognition of claimants in ancestral burial matters in recognition of the unique aspects of the Hawaiian culture pertaining to death and burial. There exists more emphasis on the individual and family claimant, rather than the native Hawaiian organization, in recognition of the important role the family, or *'ohana*, maintains in the disposition and treatment of the deceased.

Given the importance of the definition of "Native Hawaiian organization" in implementing the Act for the benefit of the native Hawaiian community, we would hope the committee looks at the current definition and whether it meets the special and unique circumstances of our people.

The Board of Trustees for the Office of Hawaiian Affairs has not yet taken a formal position on any proposed changes to NAGPRA. A position regarding suggested amendments may become available prior

to the January 4, 2005 deadline for the submission of such testimony, contingent upon the will of the Board.

Once again, thank you for this opportunity to provide *manaÿo* on the upcoming committee hearings on proposed amendments to this historic and valuable legislation.

Respectfully submitted,

Clyde W. Nämuÿo
Administrator

Cc: Board of Trustees

From: Earl Neller [neller@elltel.net]
Sent: Tuesday, January 04, 2005 4:21 AM
To: Indian-Affairs, Testimony (Indian Affairs)
Subject: NAGPRA Oversight Hearing 12/08/04

Native American Graves Protection and Repatriation Act, Oversight Hearing Before the Senate Committee on Indian Affairs, December 8, 2004, Honolulu, Hawaii.

Comments from Earl Neller, 1561 Game Farm Road, Ellensburg, WA 98926

509-962-1852 neller@elltel.net

The recovery, study, and care of ancient skeletal remains are scholarly endeavors, important in American culture and history. A keystone of this tradition is that we are all stewards of our heritage. NAGPRA runs counter to this American tradition. Another keystone is that we do not allow particular religious beliefs to intrude on the affairs of government, or education. NAGPRA runs counter to this tradition.

In Hawaii it has been our tradition, for 100 years, to call on archaeologists and the Bernice Pauahi Bishop Museum to care for human bones when they have been found washing out at the beach, or during construction. People of Hawaiian blood have been a part of this tradition. That is, the archaeologists in Hawaii, and the people who have worked at the Bishop Museum, and the people who have cared for our ancient bones, have been as mixed in ancestry as our Hawaiian society itself. NAGPRA runs counter to this Hawaiian tradition.

NAGPRA is a law that has created new traditions, and grief, much grief. The system for handling human bones in Hawaii, prior to NAGPRA, was better than the system created by NAGPRA. This federal law has turned friends into foes, family against family, scholar against scholar. NAGPRA inserted a wedge into our local Hawaiian cultural mosaic, shattering our rainbow community into splinters. Following the passage of NAGPRA, sovereign Hawaiian nations fell from the sky like rain. Malama I Na Kupuna O Hawaii Nei is one such group, never involved in caring for human bones prior to NAGPRA, not even existing prior to NAGPRA. Rather than healing the sickness of the past, they have entered our Hawaiian community like a band of lepers, debilitating both body and spirit.

People of Native American blood, and many other ancestries, live in harmony and hope throughout America. Their numbers are far greater than the small populations empowered by NAGPRA to speak on behalf of ancient graves. The governments of the federally recognized tribes do not speak for the majority of people with Native American blood in our country. The Office of Hawaiian Affairs is the only native group I know of that has made a reasonable attempt to maintain a registry of all Americans who also have Hawaiian ancestry. NAGPRA disenfranchises the vast majority of Native Americans, those who choose, and whose ancestors chose, not to live on a reservation. There are millions.

NAGPRA created the principle of repatriation, as if America were a foreign country, as if museums were somehow non-Indian. This is not true. Somehow Congress chose to embrace the racist rhetoric of the global indigenous movement, and by passing NAGPRA Congress ignored the many accomplishments and sacrifices of those in our community who have cared for our American heritage throughout our history. Native Americans have always been a part of the mix.

NAGPRA is a law that has crippled American society in many ways. Rather than change the law to reflect the special interests of Malama I Na Kupuna O Hawaii Nei, Congress should take a good, hard look at this law and all that it has spawned. I would be glad to help in any way I can. Aloha.

Earl Neller
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Senator Daniel K. Inouye
Vice Chair Committee on Indian Affairs
United States Senate 836 Hart Senate Office Building
Washington D.C. zip code 20510

December 7, 2004

Subject: Amendments to NAGPRA

Dear Senator Inouye:

Thank you for your assistance in this important matter regarding Amendments to the NAGPRA law. Glen Kila and I have testified at the NAGPRA Review Committee meeting at the Turtle Bay Hilton in February 1993.

Mr. Kila and I testified that it is correct for Hawaiian customs to take precedence over American customs. **That means that Hawaiian families have rights over any unrelated organizations.**

Significantly, it should be amended that NAGPRA Act recognizes **Hawaiian family based organizations** such as our family organization **Koa Mana** which is a philosophy of our ancestors for more then 2,000 years that consists of **families with genealogical ties** to burial sites in the Waianae Moku (District).

We testified in 1993, that Hawaiian families from different areas have different customs with regards to burials; it is thus possible for a Hawaiian to tell its family affiliation to the remains by examining were it was located and how it was buried.

What should not happen again! Regarding the kidnapping of our Keawaula family remains in 1999 by Hui Malama's (Eddie Ayau). Mr. Ayau's new found organization made claim to our family remains in the Bishop Museum under NAGPRA and the Oahu Island Burial Council as co-claimant. We, as the family organization put our clams directly to the OIBC but the former OIBC Chair Ayau determined to excluded our family's claims in favor of Hui Malama unrelated organization and member's claim as the closest connection to the families of our family remains from Keawaula. In June 1999, we requested Ayau to step down as Chair of OIBC for being in conflict of interest by taking unfair advantage of Federal and State Laws for **denying** lineal descendants and family organizations of their rights of lineal descendants preference to family remains. The kidnapping of our Keawaula iwi has not been resolved. Our hope is that NAGPRA will stop Ayau and his unrelated organization from doing any further damage to our family and other families with genealogical ties to family remains.

Once again **thank you**, Senator **Inouye** for assisting us in amending the **NAGPRA Law to include recognized lineal descendant organizations such as ours, Koa Mana**. Mahalo nui.

Aloha and sincerely submitted,

Alika Silva

Alika Silva, Koa Mana, Kahu Kulaiwi, Kupukaaina, Waianae Moku, Oahu
Mailing address, 85-140 Maiuu Rd. Waianae Hi.96792 Ph. 6960041

Glen Kila

Glen Makakauali'i Kila, Kupuka`aina Kahu Kula`iwi, Wai`anae Moku

cc: Lance Foster. OHA Director of Native Rights Culture and Land

Senator Daniel K. Inouye
Vice Chair, Committee on Indian Affairs
United States Senate 836 Hart Senate Office Building
Washington, D.C. 20510-6450

December 8, 2004

Subject: Amendments to NAGPRA

Dear Senator Inouye,

Thank you for this most important opportunity for us to comment and seek your support for our concerns regarding the Native American Graves Protection and Repatriation Act (NAGPRA).

Kukaniloko, "to anchor the cry from within" is the ***Piko*** of our ***Hawaiian*** families and we tie to its origin, genealogically. The lands that support and protect the privileges of ***Kukaniloko*** encompass an area of 36,000 acres, demarcated by ***ka'anani'au***, and was designed to make an impression upon those who have attained status (***kulana***), highest of them all (***iku pau***), the fire (***ahi***), the heat (***wela***), the god (***akua***) the recognized descendant of ***Kane*** (***ho'ali'i***) and their ***Lo-ali'i*** lands of ***Lihue, Wahiawa, Halemano, Mokupuni Oahu.***

Our beliefs are maintained through practice and our privileges guarded by ***kapu.*** It has become apparent that the Act be amended to recognize ***Hawaiian*** family based organizations, who have for time immemorial, been responsible for our places for secreting the bones of our ancestors (***wahi huna kele***). It is imperative that our ***Hawaiian*** family based organizations have rights over any unrelated organizations.

Senator Inouye, thank you again for this recognition of our family and the opportunity to seek your support to amend the Native American Graves Protection and Repatriation Act (NAGPRA) to recognize ***Hawaiian*** family based organizations, lineal descendants of ***Kukaniloko..***

On behalf of our benevolent and respected ***Kupukaaina,***

Tom Lenchanko, Kahu ko laila Kukaniloko, Koa Mana, Kupukaaina Unukahi and Kahuakahi Ohana, Waianae Moku, Mokupuni Oahu, eo Hawaii loa eo.

Cc:
Lance Foster, OHA, Director of Native Rights, Land and Culture

Senator Daniel K. Inouye
Vice-Chair, Committee on Indian Affairs
United States Senate 836 Hart Senate Office Building
Washington, D.C. 20510-6450

January 3, 2005

Subject : To recognize ***Kukaniloko'Aha*** (council)and our ***mokupuni*** (island) representatives.

Dear Senator Inouye,

Thank you for this most important opportunity for us to seek your support for the recognition of ***Kukaniloko 'Aha***, our ***mokupuni*** representatives and our descending position to sovereign entity with respect to Native American Graves Protection and Repatriation Act (NAGPRA).

Kukaniloko 'Aha:
To recognize ***Kukaniloko 'Aha*** – ***Hawaii*** island, ***Molokai*** island, ***Kauai*** island, ***Niihau*** island, ***Maui*** island, ***Lanai*** island, ***Kahoolawe*** island, ***Oahu*** island and the ***Northwest Pacific*** islands – who shall have a minimum of two (2) island representatives of lineal descent.

Declaration:

(1) ***Kukaniloko 'Aha*** recognizes the ***Hawaiian Kingdom*** within Region (2) the Tropical Zone between Cancer and Capricorn – territory of the ***Hawaiian Kingdom***, concerning the protection of our inherent and birth right to the aforementioned location.
(2) Global recognition that ***Kukaniloko 'Aha*** shall be consulted with in regard to all matters pertaining to our (a) culture (b) geographic location (c) burials (d) beliefs (e) natural resources/environment (f) history.
(3) ***Kukaniloko 'Aha data base*** shall be accessed as a requirement to limit and/or minimize the negative impact to our ***'aina*** (family).

Resolution for Support:

(1) Family alignment of lineal descent to the ***piko, Kukaniloko,*** to present the ramping up of 400,000 people – the lesser of the ***Hawaiian Kingdom.***

Senator Inouye, thank you again for your support and recognition of ***Kukaniloko 'Aha.*** We extend an invitation to you, to meet and share our responsibility to the traditional and historical integrity of ***Kukaniloko. Mahalo nui loa.***

Sincerely,
Tom Lenchanko, Kukaniloko 'Aha waha olelo (spokesperson) for
Butch Richards, Solomon Kaopuiki, Paulo Fujishiro, Kalama Makaneole, Alika Silva, Glen Kila, Kamoa Quitevis...

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