

TESTIMONY OF TRUSTEE HAUNANI APOLIONA
CHAIRPERSON, BOARD OF TRUSTEES
OFFICE OF HAWAIIAN AFFAIRS

United States Senate, Committee on Indian Affairs
Hearing on S. 344
Tuesday, February 25, 2003, 9:30 a.m.
Room 485, Russell Senate Office Building

Nā 'Ōiwi 'Ōlino

E ō e nā 'ōiwi 'ōlino 'eā
Nā pulapula a Hāloa 'eā
Mai Hawai'i a Ni'ihau 'eā
A puni ke ao mālamalama 'eā ē

Kū'ē au i ka hewa, kū'ē!
Kū au i ka pono, kū!
Kū'ē au i ka hewa, kū'ē!
Kū au i ka pono, kū!

Answer, O natives, those who seek knowledge
The descendants of Hāloa
From Hawai'i island in the east to Ni'ihau in the west
And around this brilliant world

I resist injustice, resist!
I stand for righteousness, stand!
I resist injustice, resist!
I stand for righteousness, stand!

INTRODUCTION

E nā alaka'i a me nā lālā o kēia Kōmike o nā Kuleana 'ilikini o ka 'Aha'ōlelo Nui o 'Amelika Hui Pū 'ia, aloha mai kākou. He loa ke ala i hele 'ia e mākou, nā 'ōiwi 'ōlino o Hawai'i, a he ala i hehi mua 'ia e nā ali'i o mākou, e la'a, 'o ka Mō'i Kalākaua, ke Kamali'iwahine Ka'iulani a me ka Mō'iwahine hope o ke Aupuni Mō'i Hawai'i, 'o ia ko mākou ali'i i aloha nui 'ia, 'o Lili'uokalani. A he nui nō ho'i nā Hawai'i i kūnou mai ai i mua o 'oukou e nānā pono mai i ke kūlana o ka 'ōiwi Hawai'i, kona nohona, kona olakino, ka ho'ona'auao a pēlā wale aku.

Ua pono ka helena hou a mākou nei a loa'a ka pono o ka 'āina, ke kulaiwi pa'a mau o ka lāhui 'ōiwi o Hawai'i pae'āina, 'o ia wale nō ka Hawai'i. No laila, eia hou nō ka 'ōiwi Hawai'i, he alo a he alo, me ka 'Aha'ōlelo Nui.

To the leaders and members of this Committee on Indian Affairs of the United States Congress, greetings. Long has been the road traveled here by Native Hawaiians who dearly embrace wisdom and justice, indeed a path tread upon by such royal nobility of the past as King Kalākaua, Princess Ka'iulani and our beloved last ruler of the Hawaiian Kingdom, Queen Lili'uokalani. And still countless other Native Hawaiians have humbled themselves before this body for your consideration on such critical native issues as housing, health, education and so on.

Again, we come before you urging consideration in affirming the rights of Native Hawaiians as the sole indigenous people of their ancient homeland, Hawai'i. We come together again face to face — Native Hawaiians and the Congress of the United States of America.

The United States has a unique legal and political relationship with the indigenous people of Hawai'i and that relationship is embodied in a hodgepodge of history, treaties, statutes, Executive Orders, and court decisions. Once again, the congressional delegation from the State of Hawai'i seeks, with the assistance of many of their colleagues, to achieve a formal recognition of the special status the indigenous people of Hawai'i have in the fabric of American political relationships. OHA supports, therefore, the intent and framework of S. 344 and its companion in the House of Representatives, H.R. 665.

HAWAIIAN SELF-DETERMINATION – A HISTORY OF DENIAL

The relationship between the United States and the State of Hawai'i and the Native Hawaiian people is a matter of written record. Congress itself provides a factual account of the illegal overthrow of 1893 and the annexation of 1898 in the Apology Bill, Pub. L. No.1 03-150, 107 Stat. 1510 (1993). The story is worth retelling, however, because it serves to underscore the legacy left by over a century of benign neglect of and sometimes open antipathy toward Hawaiian self-determination.

One hundred and ten years ago, diplomatic and military representatives of the United States triggered and led the overthrow of the Kingdom of Hawai'i through, in President Grover Cleveland's words, "an act of war on a friendly and confiding people". Later, without the consent of the indigenous people of Hawai'i, the illegitimate "Republic of Hawai'i" purported to cede both Hawaiian sovereignty and more than 1.8 million acres of Hawaiian crown and government land to the United States. This usurpation of the sovereignty and land of a people was undertaken without the consent of and without compensation to the Hawaiian people.

The official marginalization of the Hawaiian people at the hands of the United States continued. In 1920, the United States divided our people by blood quantum, and through legislative fiat drew artificial lines between parent and child, grandparents and grandchildren and 'ohana (extended family) in a society

and culture knowing no such distinctions. In 1959, a continuation of this unwarranted division of the Hawaiian people became one of the conditions to Hawai'i's admission as the fiftieth state of the Union.

The Hawaiian people have endured the painful irony that they were made part of the American political family without being permitted to exercise one of the most basic principles of American political thinking – the right of self-determination.

The United States of America used its power to allow the overthrow of the legitimate government of Hawai'i and then withheld that power and refused to rectify that wrong. While claiming a special relationship with the indigenous Hawaiian people, arbitrarily re-defined what it means to be "Hawaiian". For too long, our ancestors and 'ohana have waited for the United States and its political agent, the State of Hawai'i, to make right the wrong that was committed in 1893, only to see the small steps taken for our benefit persistently attacked and maligned as being contrary to modern constitutional jurisprudence.

Reconciliation has been an option thus far denied.

HAWAIIAN RECOGNITION IS ABOUT FAIRNESS AND JUSTICE

Following the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893, the Provisional Government and then the Republic of Hawai'i seized management of all lands formerly controlled by Queen Lili'uokalani (the Crown Lands), Hawai'i Constitution, Art. 95. Sec. 262 (1894), as well as the lands controlled by the government of the Kingdom of Hawai'i (the Government Lands).

In 1993, the U. S. Congress acknowledged in the Apology Bill (Public Law 103-150), that this action was illegal and that it could not have been accomplished without the assistance of U.S. agents. The Apology Bill goes on to note that the subsequent "cession" of these lands to the United States in 1898 was "without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign government."

Whereas, without the active support and intervention by the United States diplomatic and military representatives, the [January 1893] insurrection against the Government of Queen Lili'uokalani would have failed for lack of popular support and insufficient arms;

* * *

Whereas the Republic of Hawai'i also ceded 1,800,000 acres of crown, government and public lands of the Kingdom of Hawai'i, without the consent of or compensation to the Native Hawaiian people of Hawai'i or their sovereign government;

* * *

The Congress —

(1) on the occasion of the 100th anniversary of the illegal overthrow of the Kingdom of Hawai'i on January 17, 1893, acknowledges the historical significance of this event which resulted in the suppression of the inherent sovereignty of the Native Hawaiian people. . .

(Public Law 103-150, emphasis added.)

The United States established the Territory of Hawai'i pursuant to the Organic Act of April 30, 1900, ch. 339, 31 Stat. 141 (without any vote of the citizens of the former Kingdom of Hawai'i). The Organic Act provided that all proceeds from the Public Lands (the former Crown and Government Lands) were to be applied by the government of the Territory of Hawai'i to "such uses and purposes for the

benefit of the inhabitants of the Territory of Hawai'i as are consistent with the joint resolution of annexation, approved July seventeenth, eighteen hundred and ninety-eight." When Congress enacted the Native Hawaiian Health Care Improvement Act Amendments of 1992, Congress found that the joint resolution of annexation (the Newlands Resolution) and the Organic Act established "a special trust relationship between the United States and the inhabitants of Hawai'i." (42 U.S.C. §1701(12).)

In the 1959 Admission Act, Pub. L. No. 86-3, 73 Stat. 4 (1959), the United States transferred about 1.2 million acres of the Public Lands, plus another 200,000 acres of Hawaiian Home Lands, to the State of Hawai'i. In 1992, Congress found that the Admission Act further "reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the exclusive power to enforce the [Hawaiian Home Lands] trust, including the power to approve land exchanges, and legislative amendments affecting the rights of beneficiaries under such Act." (Native Hawaiian Health Care Improvement Act Amendments, 42 U.S.C. §1701(15).)

Section 5(f) of the Admission Act explicitly provided that the lands granted to the State of Hawai'i upon admission were to be held by the State as a public trust. By this provision, again using the language chosen by Congress in 1992, the United States "reaffirmed the trust relationship which existed between the United States and the Hawaiian people by retaining the legal responsibility of the State

for the betterment of the conditions of Native Hawaiians under section 5(f) of the [Admission Act]." (42 U.S.C. §1701(16).)

In Section 5(f) of the 1959 Admission Act, Congress stated explicitly that the transferred lands were to be held as a "public trust" by the State and that the revenues generated by these lands and the revenues were to be used for five specific purposes: "for the support of the public schools and other public educational institutions, for the betterment of the conditions of native Hawaiians as defined in the Hawaiian Homes Commission Act, 1920, as amended, for the development of farm and home ownership on as widespread a basis as possible[,] for the making of public improvements, and for the provision of lands for public use." Until Hawai'i's 1978 Constitutional Convention, the State interpreted this provision as allowing it to use the revenues for any one of these purposes. The State devoted all revenues to public education, and allocated none of these revenues specifically to benefit native Hawaiians.

Because of the decades of neglect, the delegates to the 1978 Constitutional Convention proposed a series of constitutional amendments that were subsequently ratified by the voters and added to Hawai'i's Constitution. These amendments affirmed that the State "held" the Ceded Lands as a Public Land Trust, with native Hawaiians as one of the two named beneficiaries and the general public as the other (Article XII, Section 4). These constitutional amendments established the Office of Hawaiian Affairs (OHA) (Article XII,

Section 5) and required the State to allocate a pro rata share of the revenues from the Public Lands to OHA to be used explicitly for the betterment of native Hawaiians (Article XII, Section 6).

Throughout all of these years, despite all of the reaffirmations of the “special relationship” between the United States and the indigenous people of Hawai’i, despite the number of times our people have come to Congress seeking reconciliation – the historic wrongs forced on our people have been allowed to continue without redress. The right of self-determination has been extended to the indigenous people of every other state in the union save one – the Hawaiians.

S. 344 and its House companion H.R. 665 are initial but significant steps on the path in the direction of reconciling historic wrongs to Hawaiians and advancing Hawaiians toward a political relationship with the United States of America.

THE PROCESS OF HEALING MUST CONTINUE

We are not unmindful of the efforts that have been made by the federal government and the State of Hawai’i to try to alleviate the conditions faced today by the indigenous people of Hawai’i. Congress has, for example, repeatedly found that the health of native peoples is tied to their relationship to land. More specifically, Congress has found that this is indeed true for Hawaiian people.

The Apology Bill specifically finds that: "Whereas the health and well-being of Native Hawaiian people is intrinsically tied to their deep feelings and attachment to the land. . ." (107 Stat. at 1510.) The social and economic changes in Hawai'i which resulted from contact with the west had a "devastating" effect on the Native Hawaiian population and on their "health and well-being." (Apology Bill, 107 Stat. at 1512.) Foreigners brought new diseases to Hawai'i, and the Native Hawaiian population plummeted.

The condition of Native Hawaiians deteriorated to a point that in 1920 territorial representatives sought assistance from Congress. Noting that Hawaiian people had been "frozen out of their lands and driven into the cities," and that "Hawaiian people are dying," the representatives recommended allotting land to the Hawaiians so that they could re-establish their traditional way of life. (H.R. Rep. No. 839, 66th Cong., 2d Sess. 4 (1920).) The Secretary of the Interior echoed that recommendation, informing Congress that Native Hawaiians are "our wards . . . for whom in a sense we are trustees," that they "are falling off rapidly in numbers" and that "many of them are in poverty." (Id.) Those recommendations led to the enactment of the Hawaiian Homes Commission Act which designated 200,000 acres of lands for homesteading by "native Hawaiians," which was defined as descendants of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

Since Hawai'i's admission into the Union, Congress has assisted in addressing

the well-being of Native Hawaiians. Congress has established special Native Hawaiian programs in the areas of health care, as well as education, employment, and loans. (See *e.g.*, Native Hawaiian Health Care Improvement Act, 42 U.S.C. §§11701-11714; Native Hawaiian Education Act, 20 U.S.C. §§7901-7912; Workforce Investment Act of 1998, 29 U.S.C. §2911; Native American Programs Act of 1974; and others.) These statutes are premised on Congressional findings that the conditions of Native Hawaiians in such areas as health and education continue to lag seriously behind those of non-natives, 42 U.S.C. §11701(22); 20 U.S.C. §7902(17).

The U.S. Congress and President committed themselves to pursue a reconciliation between the United States and the Native Hawaiian people in the 1993 Apology Bill and the State of Hawai'i has committed itself to a similar process.

Further, the United States has recognized that Native Hawaiians, as aboriginal, indigenous, native peoples of Hawai'i, are a unique population group in Hawai'i and in the continental United States and has so declared in Office of Management and Budget Circular 15 in 1997 and Presidential Executive Order No. 13125, dated June 7, 1999.

On July 28, 1999, the United States filed an amicus brief supporting the State of Hawai'i and the Native-Hawaiian-only vote for OHA Trustees in the case of Rice vs. Cayetano, U.S. Supreme Court No. 99-818. In its brief, the United States,

through its Solicitor General, affirmed that it has a trust obligation to indigenous Hawaiians. The Solicitor General wrote, “The United States has concluded that it has a trust obligation to indigenous Hawaiians because it bears a responsibility for the destruction of their government and the unconsented and uncompensated taking of their lands.” (See Brief of United States filed July 28, 1999 at p. 21.) The United States further explained that “Congress does not extend benefits and services to Native Hawaiians because of their race, but because of their unique status as the indigenous people of a once-sovereign nation as to whom the United States has a recognized trust responsibility.” (*id.* at 27.)

In 1993, Congress, led by the Hawaii congressional delegation, concluded that a century of national silence and neglect was enough. In 1993, it enacted Senate Joint Resolution 19, popularly known as the Apology Bill. In that Bill, the Congress acknowledged America's illegal role in destroying the legal government of the Hawaiian people and urged President Clinton to support reconciliation efforts between the United States and the Native Hawaiian people. Six years passed before the federal executive branch, at the urging of Senator Daniel Akaka, appointed representatives to initiate the reconciliation process called for in the Apology Bill. In December of 1999, a series of community meetings on all five major islands of Hawai'i were held by the Federal Reconciliation Delegation. Those meetings represented a first step in the long-delayed journey toward reconciliation between the United States and the indigenous people of Hawai'i. These meetings resulted in the publication of a joint Department of the Interior

and Department of Justice report entitled *Mauka to Makai: The River of Justice Must Flow Freely*. The report recommends that the indigenous people of Hawai'i be given right to the full expression of self-determination and calls for federal recognition of a native Hawaiian government.

HAWAIIAN CULTURE AND PEOPLE DESERVE RECOGNITION

The culture, society, governmental organization and religious traditions flourished in the archipelago known as Hawai'i since the time of Christ – long before the first contact with the West in 1778. With more than 200 years of settlement by European explorers, American missionaries and businessmen, plantation workers from Asia and others from every corner of the world, Native Hawaiians, faced with cultural assimilation and cultural genocide, have tenaciously maintained a myriad of traditional practices that have their origins in pre-Western Hawai'i: Religion and spirituality, celestial navigation, wood carving, exquisite feather work, language, poetry, dance, chant, surfing and other sports, lei making, healing arts, traditional martial arts, fishing, farming, weaving and more. These cultural practices are integral to the lifestyle of the Native Hawaiian, and are enjoyed by kama'āina (residents) and malihini (visitors, newcomers) alike.

The inseparable connectedness between the Native Hawaiian and his natural environment – the land, ocean, plant and animal life – goes far beyond the western ideologies of control, manipulation and ownership. An ancient

cosmogonic chant known as the *Kumulipo* or “source from the dark” teaches us that the ocean and land were born first as elder siblings, followed by plant and animal life. Later, man emerges as the younger sibling, ingraining in the Hawaiian an innate kinship with his environment. ‘Āina or land was not a commodity. Rather, it was regarded as the elder sibling which commanded respect and the appropriate behavior of “mālama ‘āina” (to care for the land). Man cared for the land, and in turn, the land sustained the lives of man.

Cultural practices of the Native Hawaiian are inextricably attached to his land base and natural resources. Traditional methods of healing, including the use of native herbs and plants (*la’au lapa’au*), are being studied by Western medical experts as effective alternatives to chemical-based treatment modalities. Social and behavioral scientists are adopting aspects of traditional conflict resolution techniques (*ho’oponopono*) as a means of successful intervention therapies and prevention of family and domestic violence.

The hula, or traditional dance, perhaps the “best known” of Hawai’i’s cultural and spiritual practices, also requires the gathering of symbolic flora from regions ranging from the high rain forests to the shoreline. In honor of the gods, these materials are fashioned in adornments and costuming that pay honor and respect to those gods, the *ali’i* or rulers and lesser chiefs, important historical events, and the myriad island districts, geophysical features and islands that make up Hawai’i. Yet over time, the hula was trivialized by westerners who, through

ignorance and lack of sensitivity, reduced this time-honored tradition to pretty girls, cellophane skirts and coconut bras. Today, the hula in its traditional form is widely popular in Hawai'i, and has brought about a heightened consciousness of the need for protection and preservation of our culture, land and natural resources as well as renewed pride in our Hawaiian identity.

Despite the largely Westernized way of life most Native Hawaiians live today, their culture, language, religion and traditions live on and, in many respects, thrive. These traditional practices are well-recognized and are embodied in the laws of the State of Hawai'i. Article XII, Section 7, of the Hawai'i State Constitution recognizes Native Hawaiians' right to exercise customary and traditional practices for subsistence, culture and religious purposes. (*See also* Haw. Const., Article X, Section 4 (mandating the promotion of the study of Hawaiian culture, history and language) and Article IX, Section 9 (granting state power to preserve and develop ethnic cultural, creative and traditional arts) These rights have received judicial affirmation, as well. (*See Public Access Shoreline Hawai'i vs. Hawai'i County Planning Commission*, 79 Haw. 425, 903 P.2d 1246 (1995).)

Our culture and language is perpetuated now by our children and grandchildren. In the fall of 2002, the Office of Hawaiian Affairs sponsored an essay contest for elementary, middle and high school students. The topic, "What it Means to be Hawaiian", generated numerous entries and a representative sampling of their

essays, written in both English and in Hawaiian, are provided along with this testimony.

In short, our culture, history, language, religion and traditions live on today despite over two centuries of contact with the West and despite more than a century of domination by an alien culture. Our traditional practices, recognized by the State of Hawai'i, deserve recognition and protection from the federal government as well.

As native people giving voice to our ancestors, we are descendants of traditions and values indigenous to this Hawai'i. Our Native Hawaiian elders (kūpuna), wayfinders and navigators, established and developed a sophisticated and efficient society in the middle of the vast Pacific Ocean. Our lifestyle and survival were guided by respect and honor for God, man and nature; stewardship of land and natural resources and careful attention to the balance of human use of a fragile ecosystem. These considerations are as important now in this 21st century as they were 1,000 years ago.

We know we don't stand alone. We stand with the two other indigenous peoples of America. Federal policy on self determination and self governance currently extends to Alaska natives and Native American Indians. Native Hawaiians, the third indigenous people in these 50 states, seek such inclusion. While Queen Lili'uokalani may have stood alone in the 19th century in pursuit of reconciling

history for her people, Native Hawaiians in the 21st century are joined by Native American Indians and Alaska natives who stand with us in our pursuit of federal recognition and reconciliation. For this, we Native Hawaiians are grateful.

IT IS NEVER TOO SOON FOR JUSTICE AND FAIRNESS TO BE DONE

There are those who contend that the legislation relating to federal recognition for Hawaiians is premature; that a Hawaiian government should be formed first. We could not disagree more. The legislation before you affirms the fundamental principle which has been so long denied to Hawaiians – the right of self-determination. It is never too early for justice to be done and the time is now for Hawaiians to be treated fairly. We seek the same treatment afforded to the other indigenous peoples of the United States of America – a right too long denied us.

I appear before you as an elected Trustee of the Office of Hawaiian Affairs, as one of nine people duly selected to represent the interests of the Hawaiian people, but most importantly, I appear before you as a guardian of my people's right to self-determination. I am a Hawaiian. He Hawai'i au.

No laila, eia au ma ka palena pau o kēia noi ha'aha'a a ha'aheo, e ho'olohe mai a e nānā mai i ka 'ike a me ka maopopo pono o kūlana 'ōiwi o ka Hawai'i i ko mākou 'āina kulaiwi mai ke au kahiko loa a ka wā pau 'ole. He pono kēia 'ōlelo i mua o 'oukou i 'ōlelo 'ia me ka ikaika a me ka mana a me ke aloha o nā kūpuna i

hala, nā Hawai'i he lehu o kēia au a me nā hanauna e puka a'e ana nō. Mahalo nui, ke aloha nō ...

Therefore, as I approach the conclusion of this humble and cherished testimony, I ask that you listen and look upon us with wisdom and understanding of the status of the Native Hawaiian in our ancient homeland. What is said to you is offered in truth, and is uttered with the strength and power and love of our forebears, our nearly 400,000 Native Hawaiians in Hawai'i and the continental U.S. today, and generations hence. Respectfully submitted ...

Trustee Haunani Apoliona
Chairperson, Board of Trustees
Office of Hawaiian Affairs