

TESTIMONY
Of
Louis Agard
Delegate to the Native Hawaiian Convention
To the December 1999 Reconciliation Hearings

My name is Louis Agard and I am making my comments Based in part on my experience with native Hawaiian issues and my Service with the Hawaiian Homes Commission as a former Commissioner.

The comments of John Berry made at Mauna Ala, and at the Queen Liliuokalani statue and also one at the Iolani Palace bandstand Are welcome. As the comments may indicate the status between the U.S. And the people of the nation of Hawaii. The people of the nation of Hawaii Enjoyed the declaration of a common interest in all of the lands of Hawaii Made by the nation founder Kamehameha I when he declared that, "all of The lands from end of the kingdom to the other belongs to the chiefs and People in common," which would include himself as the chief paramount. This declaration made by Kamehameha I was delivered after his seventh And last battle in 1795 when he had unified the islands as a kingdom.

A generation later the young son of Kamehameha I, Kauikeauoli or Kamehameha III during his reign would codify and record the native Peoples interest, now called a vested interest in all of the lands of Hawaii On more than one occasion. First, in the 1839 Amendment of Rights, then In the preamble of the first Constitution of 1840 and again in the Principles Of the 1848 Mahele land division. The native interest is expressed in these Documents and reinforces the original intent.

At times Hawaii's land system has been described as feudalistic. Hawaii differs from European feudalism in that there was recognized an Interest to the people while not being the case in Europe. And tenants were Frequently bound to a specific portion of land and may have to offer Military service to the European land owner.

In the 1848 Mahele land division, a further departure from feudalism Is seen where Kamehameha III would distribute lands and their resources To the native people, to the injury of his private purse. A feat not duplicated In any prior history.

Meanwhile, treaties were concluded between Hawaii and the U.S. And other world nations. An early treaty with the U.S. of 1826 professed Peace and commerce and later treaties called for amity in perpetuity.

At the time there were about 500 native American Indian tribes On the continent. Some 300 Indian nations had treaties with the U.S.

And all of those treaties were violated or breached by the U.S. There were Five treaties between the nation of Hawaii and the U.S. at the same time And all five were also breached by the U.S.

Hawaii's five treaties were broken in 1893 when the U.S. for A repeat time, chose to employ its military (Navy) to intervene with a Show of force into the affairs of a nation with whom it had treaties of Peace and friendship.

In 1892 the warship Boston stationed in Santa Cruz, California With the U.S. Pacific squadron was directed by Western Union telegram To go to Honolulu to aid in an annexation exercise. The USS Boston an Armored cruiser was to engage in gunnery practice between island ports And intimidate natives. While on board the warship the daughter of Resident U.S. minister Stevens carried a petition to circulate to support U.S. annexation. Whatever trust that may have existed during the periods Of treaty making had all been compromised.

The intervention into Hawaii's affairs in 1893 saw with the aid Of U.S. military and diplomatic forces the subjugation of Hawaii's government And its people to last for many generations.

In 1893 the aid of U.S. forces allowed its collaborators, the Provisional Government, the opportunity to seize the treasury and assets including the lands In which the people had the identified common and vested interests earlier Identified by the two Kamehameha's. In the unification declaration Of 1795 and the preamble of the first 1840 constitution respectively.

In an investigation of the events of the 1893 intervention and seizure U.S. president Grover Cleveland was to describe the event of landing marines As an "act of war." Which raises the question of whether or not the act of war Is an ongoing affair or the state of war exists without a settlement or treaty Being concluded.

After the 1893 U.S. Aided intervention, its collaborator, the Provisional Government or Republic of Hawaii was to sell off the seized assets and dispose Of some 600,000 acres of native kingdom lands to their co-conspirators during The six years from 1893 to the 1898 annexation. An average of 100,000 acres Per year was sold at questionable prices. Because the Republic of Hawaii Was in debt up to almost \$4 million and paid that amount by the U.S. for the Annexation. And allows the claim that the U.S. purchased Hawaii in the Annexation by the \$4 million payment.

Although the Republic of Hawaii had nothing to give or cede to the U.S., the lands of Hawaii were apparently "quit claimed" to the U.S. in a Ceremony of annexation. The citizenship of the people of Hawaii was also



Claimed by the Republic to cede to the U.S. in the same ceremony.

Conversely, the record reflects, at least 38,000 petitioners opposed Annexation or just about all of the voting citizens of Hawaii in 1897. It is Clear that the native citizenship did not belong to the Republic of Hawaii, Because the natives by petition were voting against annexation and Maintaining their government and citizenship. The native people have had To first live under conditions of subjugation and then a military occupancy Thereafter.

The military presence maybe examined from the context of a famous Case. A Navy officer kidnapped a native accused of attacking his wife. The native is murdered and the officer is found guilty and confined for one Hour in the judges chambers and thereafter deportation. Meanwhile the Navy Advocates placing Hawaii and its people under a Commission form of Government and the Navy to be Commissioner. By the record natives can Expect minimal justice being administered under the Navy proposal.

Hawaii has often been the playground or R&R site for military Forces. In that context what have been the benefits to the native people? In 1941 the well fortified base of Pearl Harbor invited a Japanese surprise Attack, otherwise all other military locations remained secure. Hawaii was Placed under martial law and nowhere else. When the ensuring war ended The military opposed lifting martial law, and citizens had to endure the lack Of habeus corpus in Hawaii for longer than necessary.

The issue is, much of the material and personnel of the past wars have Passed through Hawaii. Hawaii has been well fortified but vulnerable. The Marines that landed in 1893 are still here at Kaneohe and have never left. During the 1960's Dr. Helen Caldicott said there were thousands of nuclear Devises stored at the Lualualei Naval magazine or enough fire power to Eliminate nearly all of the Oahu island population in the case of a single 20 megaton detonation.

On the other hand native people have not been afforded the right of Self determination. While their ancestral resources are assumed and Depleted and others degraded. And natives are expected meanwhile to Continue to support military efforts while they are taxed and denied In many instances. Self determination and sovereignty are the most Universally pursued privileges of the century worldwide, it is no different For the native people of Hawaii to continue to survive and make a Better future for themselves and theirs.

It is apparent that the subjects raised here fall beyond the ability Of the Justice and Interior departments to address, as both departments May only oversee domestic or internal affairs. And the native Hawaiian's

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Interest are more closely related to broader international affairs.

For this reason the accompanying Resolutions are being introduced
Into the NATIVE HAWAIIAN CONVENTION for further consideration
And appropriate action.

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RESOLUTION

THE NATIVE HAWAIIAN CONVENTION

Title

WHEREAS: To examine the RICE V. CAYETANO Case and to avoid a lengthy and wide ranging debate taking up Much time and unnecessary expense is the following approach
And

WHEREAS: In 1795 after Kamehameha I had brought the islands Essentially under his control except for Kauai which later ceded Sovereignty to him, Kamehameha I is recorded to have issued the Following declaration of intent, "all of the lands from one end of the Kingdom to the other belongs to the chiefs (to include himself as Chief paramount) and people in common" and

WHEREAS: Almost two generations later his young son, Kauikeaouli or Kamehameha III issued corroborating statements With the expression that, "there are but three persons who have a Vested interest in all of the lands of Hawaii. He then identified Them as 1) the King synonymous with the Crown, 2) the chiefs and 3) the tenants or people". They are the only three named common interest holders in all of the lands of Hawaii. Which indicates this is in effect the last will and testament of the Kamehameha's, and

WHEREAS: Kamehameha III had the common interest Declaration included and codified into the 1839 AMENDMENT OF RIGHTS, and the preamble of the 1840 CONSTITUTION Then into the 1848 MAHELE or the expression has been made Four times and is clearly the intent of those in authority and who Singularly had the authority to make such a designation and confirms The intent of the Kamehameha's. Because all land titles today Come from or emanate from the MAHELE, it follows that the Common and vested interest in all of the lands of Hawaii from one End to the other succeeds to the descendants or heirs of today and Additionally gives them alone the all important STANDING in The matters clearly affecting their now "estate" and

WHEREAS: the 1898 Resolution of Annexation is a supporting Action that recognizes the Kamehameha grants of a common and Vested interest in all of the lands of Hawaii to the identified, "But Three persons", 1) the King, 2) the chiefs and 3) the tenants" Exclusively, and as recited before on at least four occasions.

The 1898 RESOLUTION in the altered Article II states that All of the income from the ceded lands shall be used solely for The educational and public purposes of the inhabitants which Confirms the intent of the Kamehameha's earlier grant actions, or That "the lands shall descend to the heirs forever". Who are the "inhabitants", as all residents of Hawaii consider themselves to be inhabitants? The dictionary describes an inhabitant to be a permanent resident not transient. Natives have resided in Hawaii since time immemorial and are the permanent residents or inhabitants and

WHEREAS: The native common vested interest is again Recognized or confirmed in 1921 when the natives are solely Recognized by being granted some 200,000 acres for their Rehabilitation in the Hawaiian Homes Commission Act of 1920 and

WHEREAS: In 1959 the Admissions Act or STATEHOOD Is granted to Hawaii. In the STATEHOOD Compact Agreement The native (Hawaiian) is again clearly identified as being a special Inhabitant and beneficiary of the all of the ceded lands of Hawaii to Confirm again the terms of the 1898 ANNEXATION and supports The earlier Kamehameha declarations and

WHEREAS The State Constitution Art. XVI-Sec 7 explains the COMPLIANCE WITH TRUST terms as follows, "Any trust provisions Which the Congress shall impose, upon the Admission of this State, In respect of the lands patented to the State by the United States or the Proceeds therefrom, shall not diminish or limit the benefits of native Hawaiians under Section 4 of Article XII". The Compact's terms for The enjoyment of Statehood have not been fulfilled, and a review or Revision of the 1959 Statehood Compact is reasonable and

WHEREAS: Section 4 of Article XII of the State Constitution Requires that lands granted under Section 5(b) of the ADMISSIONS ACT, which are included within Section 5(f), be held by the State as a Public Trust for native Hawaiians and the general Public. Natives Are again recognized for their vested interest in all of the lands of Hawaii's lands and this now becomes an extension of the trust first Created by the Kamehameha's in their earlier grant actions and

WHEREAS: In 1993 the U.S. issues the APOLOGY BILL and Seeks reconciliation with the native people of Hawaii specifically. Not with all of the people or residents living in Hawaii, partly due To the fact that only native people have a common vested interest That has not been fulfilled. The APOLOGY BILL defines the native

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Hawaiian and recognizes their common vested interest in all of the Lands of Hawaii.

WHEREAS: In general due to the foregoing conditions it appears That "Freddy" Rice of the RICE V CAYETANO litigation does not Have STANDING to sue in the Supreme Court. And is engaging in An apparent filing of a frivolous lawsuit. Because Rice does not have A common vested interest in all of Hawaii's lands as decreed by The authority of Kamehameha I the founder of the nation and the later Recording of the peoples interest in documents by Kamehameha III His young son, in three following cases.

THEREFORE BE IT RESOLVED: That the RICE litigation Has gone through three steps. Having lost the case in the lower Courts and moved to the Ninth Circuit Court of Appeals in San Francisco and now before the U.S. Supreme Court. Should Rice Lose this time he should be obliged to pay for all of the court Cases he has caused to be brought forth without prevailing. Rice has essentially discriminated against native people for a third time. While he has enjoyed pro-bono services from his attorney which suggests that he should pay for the costs of OHA having to defend the interest of the beneficiaries while being forced to expend the natives trust monies in the process.

Be it further resolved that the native people of Hawaii (Hawaiians) carry on with their sovereignty pursuit with added vigor. To address the constant decline and loss of their homelands lands, resources and rights, like the challenge to their right to vote in an election of their chosen trustees to represent them.

Respectfully submitted by

Louis Agard

Louis Agard

Delegate, Honolulu Moku

THE NATIVE HAWAIIAN CONVENTION AND JUSTICE

FOURTEENTH & FIFTEENTH AMENDMENTS

Title

WHEREAS: The practice of applying the Fourteenth and Fifteenth Amendments
To native people who have come through no fault of their own, to be located
On their homeland which was many times taken from them, by being overwhelmed
And

WHEREAS: There follows the theory that all peoples who now reside on the
Original natives homeland become treated as equals by the terms of the Fourteenth
And Fifteenth Amendments and there would be no discrimination, between the parties
Of the newcomer and the original inhabitant and

WHEREAS: This theory is faulty to the extent that the natives already have a homeland
And its benefits, while the newcomer is searching for a homeland and its benefits.
It follows, that in this case, there is an unequal STATUS, and

WHEREAS: Such STATUS means that the native has earned by generations of working
The land and making it productive a common vested interest in the homeland over and
Above a newer arrival seeking equal treatment under the Amendments, and

WHEREAS: The frequent and consistent efforts to attempt to place native people in the
Position of being "racist" in their pursuit to managing by means of an electoral process
the electing of only native trustees to OHA, is an error. Because only natives possess a
common vested interest in their homeland and its resources, and

THEREFORE BE IT RESOLVED: that the Fourteenth and Fifteenth Amendments are
Not applicable to native people, and not discriminatory, nor racist due to the natives
Common and vested interests in their ancient homeland. And as each individual has an
Original homeland in which they also have access to a common and vested interest like
The natives.

Respectfully submitted

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Delegate, Honolulu Moku

RECONCILIATION RESOLUTION

WHEREAS: The traditional and evolving government of Hawaii was Overthrown and its operating functions assumed by an oligarchy aided By United States diplomatic and military agencies in the coup of 1893
And

WHEREAS: There were five treaties proclaiming peace, commerce And perpetual amity existing between the parties at the time of the 1893 armed intervention and

WHEREAS: The 1893 coup was followed about five years later with The suspect 1898 RESOLUTION OF ANNEXATION with an Accompanying nearly \$4 million to the Republic of Hawaii For the costs of operating their government after the 1893 coup
And

WHEREAS: President Grover Cleveland was to first withdraw the Proposed 1893 annexation after his investigation, showed that such was Not the will of the native people and

WHEREAS: The Republic of Hawaii professed to have the citizenship, Loyalty, and consent of the native people of Hawaii to give or cede the Natives interest to the United States in the 1898 ceding of lands and Native citizenship and

WHEREAS: The Republic of Hawaii did not have the consent or interest In Hawaii's lands to convey to the U.S. rather quit claimed what interest They claimed in Hawaii, its resources and natives citizenship to convey By quit claim to the U.S. and

WHEREAS: Conversely a "Giant Petition" was forwarded to the U.S. Congress containing some 38,000 signatures or essentially all of the Native people of Hawaii opposing annexation and preferring their own Traditional government in 1897 and

WHEREAS: The Giant Petition delayed a normal annexation, or acquiring Of territory by the constitutional mandated treaty process until the following Year of 1898 and

WHEREAS: The delay resulted in the Congress imposing the 1898 RESOLUTION OF ANNEXATION that required only a simple majority To pass the congress. The Resolution was disliked by President Benjamin Harrison for its haste and lack of a ratification process for the native People of Hawaii to accept and confirm the terms thereof and

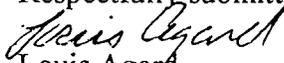
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THEREFORE BE IT RESOLVED: That treaty making practices be Reviewed for appropriateness between the two parties. And that a new Treaty be concluded between the parties to permit the occupancy of Hawaii by U.S. Marines who first landed in Hawaii in 1893 and have Remained in Hawaii ever since with other U.S. agencies and

Be it also resolved, that the \$4 million forwarded to the REPUBLIC OF HAWAII in the 1898 Annexation was in effect a grave error, as The Republic had essentially nothing to give in the ceding of Hawaii's Lands, its government or citizenship, rather issued a quit claim, which Should be defended by the issuers and receivers and

Be it further resolved that the \$4 million extended to the REPUBLIC OF HAWAII, as an error and improper payment, be now deposited into The Treasury of the being restored NATIVE HAWAIIAN GOVERNMENT Via the Native Hawaiian Convention (NHC) process. That the NHC Might proceed to help evolve the exercise of self determination on Behalf of its native constituency.

Respectfully submitted


Louis Agard

Delegate, Honolulu Moku