



09/10/00

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Subject: draft report/bill comments - Hawaii

09/10/00

Dear members of the Resource Committee and Karen and Edward of the DOI:

My name is David Ingham, I have no financial interests or family ties to Hawaii. I was fortunate to have spent my early years living with Na Kanaka Maoli and developed a deep and abiding respect for these fine people.

I have read the draft report and the Akaka Bill ... I am compelled to comment.

The similarities between this report and the Akaka Bill make it obvious that Akaka's office and the offices that collaborated on this report are working hand in hand to advance a preconceived agenda. This draft makes it obvious that the agenda being advanced by the report/bill has little to do with justice, reconciliation, and the stated will of Na Kanaka Maoli but is rather an effort to protect the interests of the United States and the State of Hawaii by establishing a federally controlled Hawaiian Governing Body modeled after other federally established Native American governments. It is also obvious that the proponents of the report/bill have no intention of considering public testimony given last December and this summer where it conflicts with the pre-conceived agenda being advanced in this report and in the bill.

Last December 8th in Hilo Assistant Interior Secretary John Berry said "Judge us by what we do when we leave here." I have read and seen what you have done and are attempting to do, as have the Na Kanaka Maoli. This report is an insult to every Kanaka Maoli. The report would have Na Kanaka Maoli believe that official subjugation within the "framework of Federal law" and under the plenary power of the Federal Government is just reconciliation for having illegally and wrongly destroyed the government of their peaceful kingdom. The draft report packages this subjugation under the title "FROM MAUKA TO MAKAI: THE RIVER OF JUSTICE MUST FLOW FREELY." I can only judge any person who would attempt to convince another that this is justice as a scoundrel

of low moral quality and questionable intentions.

At the beginning of the Draft, in the description of the reconciliation process, the Draft states

"Reconciliation...requires action to rectify the injustices and compensation for the harm."

Where in this draft is the compensation for the independence and Sovereignty taken from Hawaiians? Surely the draft's authors can't believe self determination as defined by the Akaka Bill is equal to the independent and sovereign nation status that has been wrongfully taken from Hawaiians.

Page ii, paragraph 2, of the draft states **"This document...should be read merely as the next step."** Yet, in the very next paragraph, the ultimate result is clearly stated as follows: **"This reconciliation process should ultimately result in congressional confirmation of a political government to government relationship between native Hawaiians and the Federal Government pursuant to Congress' plenary authority over Indian Affairs."** I believe the authors of the draft have deliberately attempted to mislead the Hawaiian people into believing this report leaves the door open to restoration of the Hawaiian Kingdom. In reality, the draft and the Akaka Bill close the door on Sovereignty forever. The position of the Draft's authors on the subject of Hawaiian Independence needs to be stated clearly so that Hawaiians understand the full effect of the Bill and the Draft.

Page ii paragraph 2, goes on to state, **"the United States and Hawaiians (will) move forward in further dialogue."** Paragraph 3, page ii states, **"The nature of (the government to government) relationship and the particular entity dealt with by the United States should be determined by congress in consultation with native Hawaiians."** The authors of the draft have clearly shown the degree to which dialogue with Na Kanaka Maoli affects their considerations. By ignoring the bulk of testimony in public hearings received so far, Na Kanaka Maoli would be well advised to understand that the nature of the relationship will be determined by congress as stated above. Of course, congress will consult with Na Kanaka Maoli just as they consulted with Na Kanaka Maoli prior to issuing this draft.

Page 1, paragraph 1 of the Draft refers to Hawaiian culture in the past tense...Hawaiian culture is alive today and should not be referred to in the past tense. Roy Benham of Senator Akaka's office was recently quoted as saying he doubted many Hawaiians wanted to go back to living off the land.

The aina (land) is an integral part of traditional Hawaiian culture. Hawaiians have been forced into a culture they are not suited to and the overwhelming majority of Hawaiians have suffered as a result. Statistics bear this out. It is cultural deprivation fostered by the assumption that Hawaiians are better off under the culture of the United States/// that has been most responsible for their decline.

Page 1. Paragraph 2 of the draft fails to mention that these treaties are still in full force and effect. If this is not the case, the authors of the draft would be well advised to dispel the myth by citing how it is these treaties are no longer in effect and by what authority.

Page 1, paragraph three of the draft fails to mention that the acts of the Committee of Safety, Minister Stevens, and the United States military forces were illegal, fails to mention the circumstances and participants responsible for the bayoneted constitution, fails to mention that the crown and public lands were illegally appropriated by the Provisional Government. This paragraph fails to mention the Blount report and states that "President Cleveland initially opposed the overthrow." One could conclude that Cleveland changed his mind later...this is not the case. It would be far more accurate to state that the President opposed the overthrow, fired his Minister who conspired with the Committee of Safety, and demanded that the Crown be restored. Also not mentioned here are the two failed attempts by congress to annex Hawaii by two thirds majority vote. This paragraph goes on to state "Congress annexed Hawaii in 1898, without the consent of the Native Hawaiian people." This is misleading as well....It would be far more accurate to state here that Hawaii was annexed to the United States by joint resolution of Congress at the time of the Spanish American war in violation of international law and against the express will of the Hawaiian People as evidenced by the Ku'e petitions.

This authors of the Draft seek to reconcile, to seek justice, or so they say. Why then would such a white washed version of Hawaiian history be presented here? The wrongs, which have so conveniently been omitted in paragraph three, page 1 cry out for justice. They should, rightfully, be at the core of any reconciliation. Have they been omitted here out of shame? Can it be that the authors of the draft are attempting to minimize the damage that they seek to reconcile and so reduce the compensation? Are the authors attempting to avoid the truth in order to avoid having to compensate for these wrongs? The Draft needs to clearly state the wrongs that the Federal Government is responsible for and seeks to reconcile those wrongs through this Draft and the Akaka Bill. Rather than describing reconciliation in abstract terms the Draft would be far more credible and sincere if it were to cite each proposed reconciliation for each wrong committed.

Page 1. Paragraph 3 of the Draft fails to mention that these programs have been a dismal failure for all but a handful of Hawaiians in the 80 years of their existence. These failures too must be addressed in any genuine reconciliation.

Page 2, paragraph 1 of the Draft uses the term "quasi-governmental service providers." If this term is meant to describe the activities of sovereign Hawaiians, it is inflammatory. If the authors seek the cooperation of the Hawaiian people, they would do well to omit the demeaning words "quasi-governmental."

Page 2, paragraph 2 of the Draft fails to mention that these programs have met with only limited success and that these efforts pale in comparison to the compensation due Native Hawaiians. The United States stole their country, made their people second class citizens in their own land, destroyed their health, allowed 90% of their population to die, took away their land so they could not farm, imposed a culture on them to which they were not suited and never will be and in return, passed two significant bills and are working on a third, 100 years later. No justice here that any reasonable person could see. These bills may help the people of shallow conscience that are responsible for the Hawaiians' demise to sleep at night, but they have done little to resolve

the plight of Hawaiians.

Page 2, paragraph 3 of the Draft fails to mention demands for restoration of Hawaiian sovereignty made at the December 1999 hearings. The overwhelming majority of the speakers at the hearings demanded sovereignty. This Draft appears to deliberately understate demands of Na Kanaka Maoli made at the December 1999 hearings so that recommendations of the Draft appear to represent the wishes of Na Kanaka Maoli. The authors of the Draft do a great disservice to the Congress that passed Apology Bill and who made clear their intention to reconcile and who entrusted the authors to carry out their intentions. I'm hard pressed to believe the Congress of the United States would conclude this Draft even begins to address the degree of reconciliation called for in the Apology Bill.

Page 3, paragraph 2 of the Draft states, "American Indian and Alaska Native Peoples view the Federal Indian self-determination policy as recognizing their legitimate aspiration to transmit their distinct native values, traditions, beliefs, and aboriginal lands to their future generations."

I won't attempt to debate what American Indians think about Federal Indian policy in these comments. However, the above statement implies that the federal policies recommended by the report include transferring Ka Pae Aina (the Hawaiian Archipelago) to future generations of Na Kanaka Maoli. The statement implies aboriginal lands of Native Americans are to be transmitted to their future generations.

In reality both the bill and the draft avoid the issue of specific recommendations with respect to land. The issue of land is paramount to any reconciliation with Na Kanaka Maoli and needs to be clearly stated in any legislation. If the disposition of aboriginal lands is to be left to the ultimate discretion of the Federal Government that fact needs to be clearly stated in the bill.

Page 3 Paragraph 3. states "A Native Hawaiian Governing Body, organized against a background of established precedent, would serve as a representative voice for the Native Hawaiian people..."

Presumably the established precedent mentioned above refers to Federal Indian policy. However, established policy could be presumed to mean policies of international law. Under international law Na Kanaka Maoli are a Sovereign and independent people. Under the recommendations of this report Na Kanaka Maoli would become wards of the Federal Government. Common sense would dictate that the representative voice of Na Kanaka Maoli would be better represented without any assertion or control from Federal Indian policy. The "background of established precedent" referred to above, needs to be defined and clearly stated.

This Paragraph further states the "United States should assist the native Hawaiian people by supporting reorganization efforts and clarifying its unique legal and political relationship."

The recommendations in the report seek to assert and expand Federal Indian policy and the plenary power of Congress over Na Kanaka Maoli. The above sentence could be misinterpreted to mean that some kind of "unique relationship" already exists and the report is simply

recommending that the relationship be clarified. The recommendations in this report are far reaching and radically modify any existing relationship between Na Kanaka Maoli and the Federal Government including establishing the plenary power of Congress over Na Kanaka Maoli and should not be characterized as a clarification.

Page 3 Paragraph 4 (Recommendation 1)

This paragraph states "The Hawaiian people should have self-determination over their own affairs within the framework of Federal law." This theme, "within the framework of Federal law", is present throughout the drafts of the bill and the report.

My understanding of Federal law is extremely limited. However there is widespread belief among Na Kanaka Maoli that a joint resolution of Congress, such as the joint resolution that provided for the annexation of Hawaii to the United States is invalid, as joint resolutions of congress apply only to the domestic policy and cannot assert the policies of the Federal Government on those of another sovereign government.

Assuming this to be true, and also assuming the illegal actions of the United States Minister to Hawaii and the illegal acts of the United States Military lead to the present demise of the Hawaiian government. Would it not be "within the framework of Federal law" to restore the Hawaiian Government to its rightful constituents as recommended by President Cleveland? If my understanding, and that of many Na Kanaka Maoli with respect to the effect of a Congressional Joint resolution is incorrect, it would serve the authors of the draft bill and the report to dispel the myth by stating clearly in the bill and the report by what authority the United States has legal jurisdiction over the Hawaiian islands and Na Kanaka Maoli.

Page 4 paragraphs 1, 2, and 3 (Recommendations 2, 3, and 4)

The recommendation of this report, simply stated, is that the affairs of Na Kanaka Maoli become subject to the plenary power of Congress and that the affairs of Na Kanaka Maoli become administered by the Interior Department and the Justice Department through the BIA. The recommendation of this report, further simplified, is that Na Kanaka Maoli suffer the same fate as that of all other indigenous people in the United States. Indeed the Recommendation and the draft hold up these relationships as an example of their intentions. The adoption policies to establish the relationship between Na Kanaka Maoli and the United States should be fair and equitable. However, the interests of the United States and Na Kanaka Maoli are juxtaposed. The recommendation of this report, that Na Kanaka Maoli become subject to the plenary power of Congress, is obviously unfair and weighted heavily in the interests of the United States. The recommendation that the relationship be administered as a domestic concern by the Department of the Interior is demeaning to a people with a distinct culture and government, and cannot be considered by any rational person as a fair relationship between two peoples. The relationship between the United States and Na Kanaka Maoli should be that of equals not of master and ward. As such, the report and the bill would do well to recommend and establish offices in the State Department rather than the Interior Department to administer the United States relationship with Na Kanaka Maoli.

Page 4 paragraph 4 (Recommendation 5)

This paragraph states "While the Departments are not able at this time to recommend a precise outline for these efforts..." If it is safe to assume the efforts to reconcile will mirror reconciliation with American Indians as recommended in the report, the outline has already been established and is a matter of record. I submit to the authors of the report that based on precedent, i.e., the United States treatment of Native Americans over the past 200 years, is the reason an outline has been omitted from this report. I submit to those who consider the recommendations of this report that the intention of the bill and this report are an effort to establish United States control over the affairs of Na Kanaka Maoli first and then to implement policy as the United States sees fit.

This paragraph goes on to state "the Executive Branch, Congress, the State of Hawaii, and the Native People must develop an appropriate process to ensure true reconciliation" One might conclude from this statement that the authors of the report are recommending direct dialogue between the branches of the United States Government mentioned above and Na Kanaka Maoli. The Draft bill makes it clear the Hawaiian Governing Body will not be dealing directly with the United States Government except through a designated representative of the Department of the Interior. There will be no direct liaison between Na Kanaka Maoli and Congress, the Executive Branch, Congress, or any other United States Government agency other than the designated representative for the Department of the Interior. The authors of the report would be far more accurate if they stated here that Na Kanaka Maoli participation in the reconciliation process will be conducted through a representative of the Interior department who will make his recommendation to the various branches of the United States Government who will ultimately decide what constitutes fair and equitable reconciliation.

Page 4 Paragraphs 5,6 and 7

The effect of these paragraphs is to recommend that the plenary power of the Congress be established over Na Kanaka Maoli prior to recommending any specific rights or reconciliation action.

This paragraph recommends accept that the United States holds all the trump cards before the hands are dealt.

Page 5 Paragraphs 1 and 2

This paragraph states "The report does not address whether, in extending Federal recognition to Native Hawaiians, Congress should address any general or specific claims that Native Hawaiians that Native Hawaiians may potentially assert with respect to the United States, the State of Hawaii, or other persons."

This report is titled "Mauka to Makai, the River of Justice Must Flow Freely" how can any report so titled not recommend specifically that Congress address the general and specific claims of Na Kanaka Maoli? How is the Justice the report titles it's self after supposed to occur if these claims are not addressed by those responsible? Surely the report isn't recommending the

United States serve as Judge and Jury in the determination of compensation for wrongs committed.

Page 14

Senator Akaka is Quoted as declaring in December of 1999 "Reconciliation was never intended to be unilaterally determined by the Federal Government. Reconciliation or healing involves a multitude of issues, the outcome of which will be determined by the Native Hawaiian Community." This was either a lie or the authors of this report have taken it upon themselves to recommend that reconciliation take place under the plenary power of the Congress in consultation with Na Kanaka Maoli in contravention of Senator Akaka's declaration.

John Berry of the Department of the Interior is quoted as stating "We come with open minds, open ears, and open hearts to pursue these tasks" in referring to reconciliation. John Berry's statement was either a lie or the authors of the report have acted in contravention of John Berry's statement by failing to provide accurate statistics and documentation or summaries of public input at the December hearings. Public comment was overwhelmingly opposed to federal recognition and pro sovereignty and restoration of Na Kanaka Maoli independence. The authors of the report have not listened to the will of Na Kanaka Maoli. Open minds and ears kept alive by a heart of stone have no place in an effort to reconcile.

Page 15

John Berry is quoted as commenting "There is great ignorance on the mainland to the history of Hawaii, to the history of the sorry treatment of Native Hawaiians by the United States, and that needs to be elevated. We need to be about educating Americans, because Americans are justice loving people."

What efforts have been made by the DCI to educate Americans as to Hawaiian History?

These Justice loving Americans are directly responsible for the plight of Na Kanaka Maoli. Where has the justice been over the last 100 and more years? Where were these Justice loving people when Lilioukalani plead for them to restore her to her throne? Where were these justice loving Americans when Hawaii was annexed to the United States against the wishes of Na Kanaka Maoli? Where were these justice loving people when 90% of the Hawaiian population died as a direct result of American policy? Where were these justice loving people when the Bayonet constitution was foisted upon the Kanaka Maoli government? Where were these justice loving people when their minister acted without congressional authority to conspire with these justice loving American Businessmen to overthrow the government of Na Kanaka Maoli? Where were your justice loving Americans when Na Kanaka Maoli mortality, dropout, disease, divorce, health, land ownership, and other vital statistics plunged to the lowest in their own land as a direct result of American policy? Where were your justice

loving Americans Mr. Berry? Where are they now? Don't feed any more of your justice loving American crap to Na Kanaka Maoli they've been choking on it for more than a hundred years.

Page 16 paragraph 1

What is the web address where the statements referred to in this paragraph are posted? I searched the DOI site and found no statements.

Page 16 Table

This information is of little value without including statistical information on the percentage of testimony pros and cons on Sovereignty, Nation within a nation, Self Determination, Anti reconciliation, and land and natural resources. Does the 29% here represent pro sovereignty, anti sovereignty, or what? Do the Land and natural resources here represent people who wanted native land restored to its rightful owners, people who were concerned with keeping the land they stole or what? It seems the authors of the report and the DOI have gone to great lengths to conceal the fact that testimony at both the December 1999 hearings and the August/Sept. 2000 hearings was overwhelmingly anti recognition and pro sovereignty.

Page 17 paragraph 2

Here the report states "Far and away the greatest number of statements received concerned Native Hawaiians' desire to have greater control over their present lives and their destinies as well as the lives and destinies of their children. The Departments believe that these goals can be achieved through recognition by the United States of a Native Hawaiian governing body similar to Native American tribes." It would be far more accurate to state here that far and away the greatest number of statements received concerned native Hawaiian demands for restitution for wrongs committed by the United States and the Restoration of Hawaiian independence. Recent reports in the media have quoted Federal officials as downplaying the significance of the testimony as that of a vocal minority. This calls into question the sincerity of the bill's proponents, and their willingness to consider the wishes of Na Kanaka Maoli. The call for sovereignty and restitution is the voice of the vast majority of Na Kanaka Maoli. What prudent person would opt for Federal wardship over Sovereignty and Restitution? Why do the report's authors believe the stated desire of Na Kanaka Maoli to gain greater control over their own destiny is better served by Federal wardship than by Sovereignty and restitution? Surely the dismal record of Native Americans under Federal wardship can't be cited as evidence to support the report's recommendation in this regard.

Page 17 paragraph 3

The report states "Because of the role of United States officers in the dissolution of the Native

Hawaiian monarchy, many people testified that the Federal government should assist with the creation of a native Hawaiian entity that may apply for recognition. I will need to review the testimony to verify what constitutes "many people" to the authors of the report. It's interesting to note that the report's authors are quick to cite an instance where testimony concurs with the recommendations of the report, yet ignore the majority of testimony that conflicts with their recommendations. Specifically the call for Hawaiian sovereignty and restitution for past wrongs committed by the United States.

Page 18 paragraph 2

The report states, in reference to existing tribal forms consistent with federal law, "In addition, Congress adopted a corporate form that exists for Alaskan Natives for the limited purposes of holding certain assets provided in settlement of land claims." By implying this form of government might suit Na Kanaka Maoli, the report contradicts the disclaimer on page 4 of the report which states "The report does not address whether, in extending Federal recognition to Native Hawaiians, Congress should address any general or specific claims that Native Hawaiians that Native Hawaiians may potentially assert with respect to the United States, the State of Hawaii, or other persons."

This paragraph goes on to say that: "Native Hawaiians and Congress should develop the appropriate model." This report and the bill make it abundantly clear that existing Federal policy is to be the model for the Native Hawaiian governing body. This paragraph appears to be designed to deliberately mislead Na Kanaka Maoli into believing they will be an equal in the process. Is this an example of the justice John Berry meant when he referred to justice loving Americans? Perhaps it is the style of these justice loving Americans to mislead unsuspecting people to this justice they love so much. That would explain a great deal.

Page 18 through Page 19

In any reasonable call by Congress to reconcile with the people of a nation that have suffered as Na Kanaka Maoli have suffered at the hands of the United States should be made the responsibility of the State Department. The recommendation of this report to place responsibility reconciling damage done to the people of an independent nation with the Department of the Interior does more to legitimize the wrongs committed than it does to reconcile them. The draft bill which was made public during the time for comments on the draft report states that the bill represents the "first step" in reconciliation. The sincerity of the authors of the bill and the report has to be called into question by the proposal to have the admittedly illegal overthrow of a legitimate government and the abuse of its people reconciled by the Interior Department. The first recommendation of the Department responsible for this report should be to recommend the responsibility be turned over to the State Department, not in the interest of ducking responsibility but in the interest of the pursuit of justice.

Page 20 (Recommendation 5)

The report states "case by case litigation would not be the most productive avenue for reconciliation" This paragraph could easily be construed as a recommendation that Na Kanaka Maoli rights to a trial by jury be replaced by an "appropriate process" developed by "the Executive Branch, Congress, the State of Hawaii, and the Native Hawaiian people" where the plenary power of Congress over Na Kanaka Maoli presides over the development of any such process. Justice Loving Americans. What a concept! I apologize for the sarcastic tone here, but really, who the hell came up with this brilliant piece? See: "Bill of Rights" available in any American History book. Sheesh! What a dope who came up with this! Oh but wait... If this means Na Kanaka Maoli are not entitled to protection under the Bill of Rights as they are not Americans I'll take it! But you need to state that reason here.

Pages 21 through 55 (A Brief history of Hawaii)

A fairly accurate history is presented here. However, the disposition of Hawaiian Lands is presented from the United States and the State of Hawaii's point of view without mention Na Kanaka Maoli documented claims and no recommendation is made in the report or the draft bill as to how the land issue is to be settled. Na Kanaka Maoli would be well advised to understand that no specific guarantees are recommended by the report or addressed by the bill. Land is the most critical issue in any reconciliation with Na Kanaka Maoli as the deprivation of land is the action most responsible for the dismal status of Na Kanaka Maoli. It needs to be made clear that the authors of the report are recommending the resolution of land issues will be made by the Federal government in consultation with Na Kanaka Maoli where the Federal government has plenary power over any conclusions reached.

Somewhere in this Draft, I read that the Constitution did not provide for the State of Hawaii to part from the Union. Na Kanaka Maoli have no interest in the United States relationship with its states. Na Kanaka Maoli do have an interest in the reconciliation and redress of grievances. It's hard for me to imagine that anyone who has a conscience and has read the history presented in the report could present the recommendations in the report and label them as justice. Is the Justice Americans love justice without conscience? Perhaps this is the difference between Pono and Justice.

Appendix C.

I wish to distribute my comments on the Draft report to those who participated in the December 1999 hearings and the August/Sept 2000 hearings on the draft bill. The conspicuous absence of information in Appendix C, the absence of statements and testimony on the DOI web site, the cancellation of outer Island hearings on the draft bill, the absence in the report of statistical information on opinions voiced at the hearings, and public comments by officials intended to diminish the significance of testimony, all these actions by proponents of the bill, make me wonder whether the authors of the report and proponents of the bill are attempting to quash discussion and influence public opinion to advance their agenda.

Pono....John Berry used a lot of Hawaiian language in addressing Na Kanaka Maoli. There is Hawaiian language scattered here and there throughout the report. Pono.... learn the word live the word.... to be a Justice loving person. American or otherwise, you must understand Pono.... When you understand...come back and see Na Kanaka Maoli and talk Pono.. Until then it's best you take your bill back to the justice loving Americans you represent and explain you have failed miserably....Na Kanaka Maoli have had too much of Justice loving Americans already....Na Kanaka Maoli have no use for a bill that is not Pono....

mahalo for listening

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