

**Testimony re: "Political Status" and "Reconciliation"
by Donna Malia Scaff, Jack H. Scaff,
Sandra Puanani Burgess and H. William Burgess**

for hearings scheduled Dec 10 and 11, 1999 before

John M. Berry, Assistant Secretary, Department of the Interior
and

Mark Van Norman, Director of the Office of Tribal Justice

I. Introduction.

These witnesses are long-time residents of Hawaii. Donna Malia Scaff is a registered nurse of 17% Hawaiian ancestry. Her husband, Dr. Jack H. Scaff, is a cardiologist and founder of the Honolulu Marathon Clinic. Sandra Puanani Burgess, is a retired business person of 25% Hawaiian ancestry. Her husband, H. William Burgess, is an attorney who practiced law in Hawaii for 35 years until he retired in 1994. He was a delegate to the 1978 Constitutional Convention which created the Office of Hawaiian Affairs ("OHA").

"Reconciliation" sounds desirable but what is clearly intended (handing out hereditary political status or more money or land or privileges on the basis of race or ancestry) is not.

We believe that, if OHA with its separatist agenda and voting rights and giveaway of resources based on ancestry, is allowed to continue, it will eventually destroy three things in Hawaii: the spirit of Aloha; the democratic principle of equal justice; and the State's economic future.

We believe that OHA, the Hawaiian Homes Commission Act, the sovereignty movement and all federal and state programs that give special privileges or entitlements to Hawaiians, or to any other ethnic, racial or ancestral group for that matter, should be consigned to the dustbin of history with apartheid, white supremacy, ethnic cleansing and other discredited concepts based on racial discrimination.

That would allow us here at home to restore Hawaii's great gift to the

world, Aloha - true Aloha - Aloha without government-sponsored racism. It would allow us to again make Hawaii what President John F. Kennedy once said the rest of the world wants to become. It would allow us to make real the glowing statement of Governor Cayetano in his State of the State address, "The spirit of aloha is the glue that holds us together. It is the heart and soul of the Hawaii we all love today - the Hawaii we want to pass on to our children."

If people are in need, the social support systems of the state should be available to help them, without regard to race. That is the best answer, and it fits perfectly with both the aloha spirit and the idea of equal protection of the laws.

Now let us look at the justifications advanced by OHA and its allies to support giving them things denied to other citizens solely because those others are not of the proper ancestry: a "political relationship" between Hawaiians and the United States, "stolen lands", "indigenous people", "lost sovereignty", and "trust relationship".

II. "Political relationship"?

Unlike American Indians, Hawaiians, from the first contact with "Westerners", welcomed, intermarried with and assimilated them and their technology, weapons, materials, goods, genes, culture, language, literacy, land-tenure and economic systems, religion and governmental institutions. It was a mutually beneficial relationship in which Hawaiians and Westerners, rather than remaining separate and hostile, joined together as equals. See <http://www.angelfire.com/hi2/hawaiiansovereignty>

Hawaiians, defined by race or ancestry, are not governed by their own separate tribal government or by any kind of separate "political entity" at all and therefore can have no "political relationship" with the United States.

Office of Hawaiian Affairs ("OHA") Chairman Rowena Akana, and many other advocates for Hawaiian causes, claim that "Hawaiians" (defined by the OHA laws to mean any descendant of the aboriginal people who inhabited the Hawaiian Islands prior to 1778) are a "political entity" like an

Indian tribe or a foreign nation. They argue that Hawaiians therefore may, under the U.S. Constitution, receive preferential treatment, including Hawaiians-only election of certain State officials and entitlements not given to other citizens.

The group that they claim is like a tribe or nation is made up exclusively of these Hawaiians. OHA law requires that the State officials who administer the OHA program and the beneficiaries of the program must all be "Hawaiian", that is, every one of them must be a descendant, to some degree, of the aboriginal people inhabiting the Hawaiian islands before 1778. This definition, which is sometimes referred to as requiring at least "one drop of Hawaiian blood", will be followed when using the term "Hawaiian" in this testimony.

No tribe or nation meeting OHA's definition exists in Hawaii today; nor has any such political entity existed in Hawaii for at least 150 years.

Governor Cayetano acknowledges in his brief opposing certiorari filed in the U.S. Supreme Court in *Rice v. Cayetano* that, "The tribal concept simply has no place in the context of Hawaiian history." The Governor's statement is well supported by historical illustrations of the mutually beneficial intermingling and merging of the Hawaiian and Western people and their cultures and institutions.

For example, the Kingdom of Hawaii was itself established in part due to aid given to Kamehameha by Westerners whom Kamehameha rewarded by making them high-ranking chiefs and advisors in his government.

In 1839 Hawaii's first written Bill of Rights drafted by a Hawaiian scholar, revised by the Council of Chiefs and signed by Kamehameha III, recognized that all nations of man are "of one blood". The constitutions promulgated by Kamehameha III and subsequent monarchs gave naturalized subjects all the rights, privileges and immunities of natives. The monarchs conducted their government for the good of all their subjects. There was no separate government for those of Hawaiian ancestry and that ancestry alone gave persons no added rights, privileges or immunities.

By 1893, the year of the overthrow, the Hawaiian monarch, like the

Queen of England today, reigned but did not rule. The political power was held by a multi-ethnic oligarchy presiding over a heterogeneous population in which, like the population of Hawaii today, no ethnic or racial group was in the majority. Hawaiians, like each of the other groups, were in the minority. Unlike the American Indian or native Alaskan experience at the time, none of these diverse groups in Hawaii were governed by separate tribal governments.

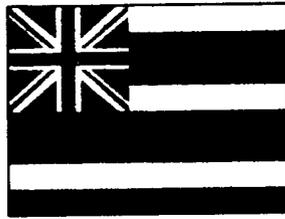
In 1900 when the Organic Act was passed and Hawaii became a Territory of the United States, Hawaiians were immediately granted American citizenship. At that time, tribal Indians (such as those on the mainland and Alaska) were not and could not become American citizens because they were citizens of "sovereign nations" beyond the Constitution. Rights of citizenship were only given to Indians generally by Congress statutorily in the 1920's - - - and theoretically still could be taken away by Congress.

In the 100 years from 1900 to today, there has been no tribal or governmental entity of any kind for Hawaiians, separate from that governing the rest of Hawaii's diverse, multi-ethnic, inter-marrying population.

Hawaiians don't live on reservations or in territorial enclaves. They live in the same kinds of houses in the same variety of neighborhoods, work in the same occupations, speak the same languages, eat the same kinds of food, wear the same styles of clothing, send their kids to the same schools, drive the same kinds of cars, endure the same traffic jams, follow and sometimes violate the same traffic and other laws, pay the same kinds of taxes, attend the same variety of churches, play and watch the same sports, enjoy the same types of entertainment and share the same hopes and ambitions, joys and sadnesses and ups and downs as the rest of the population.

In fact, "Hawaiians" as defined by OHA are not even predominantly Hawaiian. The vast majority are less than half Hawaiian, which means that most "Hawaiians", as defined by OHA, are mostly of non-Hawaiian ancestry.

The Hawaiian flag symbolizes the mutually beneficial merging of the ancestors of the Hawaiian people and the ancestors of many of the people of the United States.



The eight red, white and blue stripes represent the eight major Hawaiian islands. Imbedded in the left, top corner is the red cross of St. George, England's patron saint, the diagonal white cross of St. Andrew, Scotland's patron saint and the red diagonal within the white represents St. Patrick, the patron saint of Ireland. For approximately 185 years since being adopted by Kamehameha the Great, that flag has flown proudly in front of Hawaii's seat of government.

III. Lost sovereignty? Disenfranchised? Deprived of self-determination?

The Hawaiian advocates claim they lost their "inherent sovereignty" and right of self-determination as a result of the overthrow and annexation. OHA Chairman Akana, in her letter to the Washington Post of 11/3/99 says, "Disenfranchisement of native Hawaiians - - both cultural and legal - - continued well into this century."

The opposite is true. The Hawaiian people never had sovereignty under the monarchy. It was not "their" country; it was the monarch's country. Power did not come from the people; it resided in the monarch. That is what the constitution of the Kingdom said. That's what the Supreme Court of the Kingdom said in *Rex v. Booth*. That's what Kamehameha V and Liliuokalani said in their pronouncements on the subject.

Hawaiians got sovereignty in 1900 when they became citizens of two democracies, the Territory of Hawaii and the United States. Exercising this sovereignty through the vote, they dominated the legislatures of the Territory for decades. In 1903 the Territorial legislature, with a majority of over 70% Hawaiian members, voted unanimously to seek statehood. In the statehood

plebiscite in 1959 Hawaiian voters, along with all citizens, considered whether Hawaii should be admitted unto the Union as a state. The "yes" vote in favor of statehood was 94%.

Today, in the State of Hawaii, individuals of Hawaiian ancestry occupy positions of elected and appointed office at all levels, including, in recent years, those of governor, chief justice, speaker of the State house, and U.S. Senator. Far from disenfranchised, the Hawaiian people by voting have for almost 100 years wielded formidable political influence and power, vastly greater than they could have under the monarchy.

The concept of ethnic self determination, proclaimed by OHA, has no place in a modern, functioning multi-ethnic democracy - - and Hawaii has been one of the world's most envied. Look around at the communities dominated by the partisans of ethnic self-determination, Kosovo, Bosnia, central Africa, Chechnya, East Timor. Is that what we want in Hawaii or in the United States? Has any society ever profited from segregation based on the accident of birth or ancestry?

IV. "Stolen lands?"

Certainly not, if they are referring to the ceded lands. Although some Hawaiians claim the lands were, are or should be "theirs", those claims don't hold water. Two federal studies have found that.

In 1983, the Native Hawaiians Study Commission examined the claims of Hawaiians to ceded lands. In a thorough and detailed analysis, the majority concluded that there was no valid basis for these claims.

Twelve years later, the issue came up again when federal officials prepared an environmental impact statement for new usage of Bellows Air Station. The EIS, prepared without reference to the 1983 study, nevertheless came to the same conclusion as the earlier work: that Hawaiians do not have and never had special rights to ceded lands different from the rights of other subjects of the kingdom or citizens of successor governments.

These two studies were the products of fact-finding investigations,

unlike the 1993 "Apology Resolution" which was passed without public hearings, evidence-taking or investigation, as a courtesy to Hawaii's Congressional delegation and upon the assurance of Hawaii's senior Senator that it was "just an apology".

Congress, although it has great power, cannot change historical fact. The historical fact is that the ceded lands were not "stolen" from the Hawaiian people or taken from them without compensation. Under the Kingdom of Hawaii and every government of Hawaii since then, the lands referred to as "ceded lands" were, and still are, public lands held for the benefit of all Hawaii's citizens without regard to race or ancestry. See <http://aloha4all.org>.

V. "Indigenous people?"

Not if we are talking about persons of Hawaiian ancestry today. They are neither "indigenous" nor a "people." Their ancestors were "indigenous," perhaps, at least in the sense of being here for a long time. But, as George S. Kanahale said in *The New Hawaiians, Social Process in Hawaii, Vol 29, 1982*, "Modern Hawaiians are vastly different from their ancient progenitors",

Not only are present-day Hawaiians a different people, they are also a very heterogeneous and amorphous group. While their ancestors once may have been unified politically, religiously, socially, and culturally, contemporary Hawaiians are highly differentiated in religion, education, occupation, politics, and even in their claims to Hawaiian identity. Few commonalities bind them, although there is a continuous quest to find and develop stronger ties. In short, they are as diverse in their individual and collective character as any other ethnic population.

VI. A "special trust responsibility"?

Indeed there is a public land trust whose beneficiaries are all the inhabitants of Hawaii, not just Hawaiians. In 1898 the public lands of Hawaii were ceded to the United States on the condition that, except for the parts needed for the civil, military and naval purposes of the U.S., they be held "solely for the benefit of the inhabitants of the Hawaiian Islands for

educational and other public purposes.”

At that time, Hawaiians made up only about 30% of the inhabitants of the Hawaiian Islands. This was the beginning of the Public Land Trust. Attorney General Opinion 7/17/95, fn 1. The trust was and is for the benefit of all the inhabitants, not just those of Hawaiian ancestry. Even under the Kingdom of Hawaii, naturalized foreigners and all persons born in Hawaii had all the rights, privileges and immunities of natives.

The Hawaiian Homes Commission act of 1920, Section 5(f) of the Admission Act in 1959 and the OHA Constitutional provisions of 1978 and the statutes that implemented OHA, all violate the equal protection clause of the U.S. and Hawaii Constitutions and, in addition, breach the fiduciary duty of the U.S. and the State of Hawaii to all the inhabitants of Hawaii. See Amicus Brief filed by us in *OHA v. State* May 27, 1999 in the Hawaii Supreme Court.

VII. Conclusion

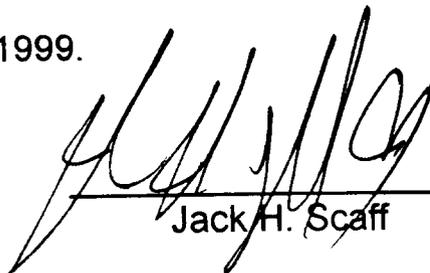
Thus, none of the reasons offered to support giving, under the banner of “reconciliation”, hereditary political status or more money, land or other entitlements to Hawaiians, has any constitutional, historical or moral validity. It is integration, not segregation - aloha, not divisiveness - that we need now.

The best hope for Hawaii, the nation and the world is the triumph of democratic pluralism and rights-based individualism where ethnicity is one of the least considerations. In short, the Aloha Spirit.

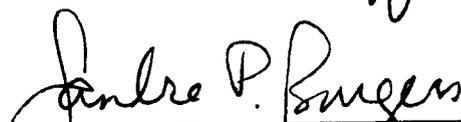
Dated at Honolulu, Hawaii, November 13, 1999.



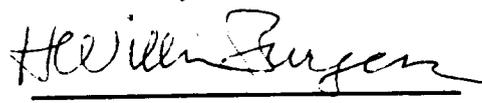
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