

University of Hawaii at Manoa

School of Law

KSK
20

MEMORANDUM

To: John Berry
Assistant Secretary of the Interior
Department of the Interior
1849 C Street
Northwest Mailstop 6117
Washington D.C. 20240

From: Eric K. Yamamoto *Eric K. Yamamoto*
University of Hawai'i Law School
2515 Dole Street
Honolulu, HI
Ph: 808-956-6548
Fx: 808-956-5569

Cc: Charles Maxwell
Fx: 808-572-0602 (Maui)

Date: December 23, 1999

Re: Testimony U.S.-Hawaiian Reconciliation

Thank you for the opportunity to present written testimony. I am doing so at the suggestion of Charles Maxwell. Mr. Maxwell suggested that I turn my interview comments during the Hawaiian Educast on December 19th into formal testimony.

Brief Personal Background. I have been a Professor of Law at the William S. Richardson Law School, University of Hawai'i, for 15 years. My teaching, scholarship and activism focus on civil rights and racial justice. I have participated in and assessed several recent reparations and reconciliation efforts.

I was co-counsel to Fred Korematsu in the lawsuit that provided the legal basis for \$1.6 billion reparations for Japanese American citizens interned by

the U.S. during WWII solely on account of their race. I assisted in the four-year United Church of Christ reconciliation effort with Native Hawaiians for the Church's participation in the 1893 overthrow – which recently resulted in apologies and several million dollars in reparations and the return of lands. I served co-counsel in Ka'ai'ai v. Drake – the case which prompted the State of Hawai'i to restore \$600 million to the Hawaiian Homelands Trust. I am currently working with the TransAfrica Institute in Washington D.C. on redress for African Americans and have closely studied and written about South Africa's Truth and Reconciliation Commission.

My recent book **INTERRACIAL JUSTICE: CONFLICT AND RECONCILIATION IN POST-CIVIL RIGHTS AMERICA** (NYU Press 1999) addresses the possible benefits and pitfalls of reparations and reconciliation efforts – with a special focus on Native Hawaiians. I understand that both Haunani Apoliona (OHA Trustee) and Harriet Sullivan/Kehaulani Lum are submitting the book as part of their testimonies.

Testimony

Point 1: A FRAMEWORK FOR GUIDING AND ASSESSING RECONCILIATION EFFORTS.

There are many misconceptions about reconciliation. Reconciliation between groups does not mean simply “getting back together”, or “smoothing things over” – “we said we're sorry so get over it”. This is “cheap or false reconciliation”. Intergroup reconciliation is genuine only when it is preceded by justice. And that justice cannot be quick or marked by words alone. It must result both in psychological healing and the repairing of actual harms to group life. Thus meaningful reconciliation through justice comes in stages.

For short-hand I call those stages of reconciliation process the four “Rs”. Those “Rs” can help guide and assess U.S. and Hawaiian reconciliation efforts. They can help guide future efforts by suggesting carefully crafted steps in a reconciliation process. They can help assess on-going efforts by providing a structure and language for critiquing the likely effectiveness of those efforts. (The four “Rs” are explained in depth in Chapter 8 of my book and are applied in Chapters 9-11).

The first stage is “Recognition”. This entails recognition of the harms suffered by group members and the damages to the social and economic fabric of group life – both historical and contemporary -- in terms of culture, physical health, spirituality, families and environment. It also entails recognition of the ways governments, institutions and individuals, often well-meaning, can contribute to the subordination of a group over time. The U.S. apology resolution recognized some of these harms to Hawaiians and partially acknowledged the role of the U.S. in causing them. It did not address Hawaiian interactions with Hawai`i’s racial and ethnic groups.

The second “R” is “Responsibility”. This means accepting responsibility for the harms inflicted and also for the ways one’s own group has benefited from keeping another group down. It also means accepting responsibility for healing, regardless of who is to blame. Again the U.S. apology resolution did this in part concerning historical wrongs -- but not for continuing ones.

The third stage of reconciliation is “Reconstruction”. This entails taking active steps (beyond words) to rebuild group life. This means concrete actions that might involve language, land practices, health, education and self-governance. Here’s where the U.S.-Hawaiian reconciliation process now rests. This is the real test. Will there be meaningful “reconstruction”? This key question requires Hawaiians to organize and demand specific reconstructive actions; it also requires the Justice Department and Department of Interior, the President and Congress to respond in concrete fashion. Without reconstruction, reconciliation is all surface – false grace.

The fourth “R” is “Reparation”. It specifies a major aspect of reconstruction. It means “repairing” the tears in the society’s fabric, in part through apologies and monetary and land reparations. These acts of repair are both material and symbolic. They are often essential to generating genuine healing – the kind of healing that engenders the release of enmities, the capacity to move forward.

What these four “Rs” in a reconciliation process point to are “restorative justice”. Without restorative justice there can be no genuine reconciliation. And without reconciliation there can be no real peace, and no real social progress.

Point 2: MULTIRACIAL INTERACTIONS.

Native Hawaiian interaction with Hawaii's racial and ethnic groups is the most significant not-talked-about dimension of recent sovereignty and reconciliation discussions. It is significant because U.S. and state negotiations with Hawaiians are not occurring in a vacuum. How Hawaii's Japanese, Chinese, Koreans, Filipinos, Samoans, African Americans, among others, respond to Hawaiian justice claims will likely influence what is politically possible and economically achievable in this kapukahi environment – where groups are interspersed and intermarried.

But we don't talk about intergroup interaction – and thus multiracial support for Hawaiian justice – because doing so raises deep, difficult issues. First, support for Hawaiian claims entails more than simple agreement that the state and federal governments have done wrong. It also means that Hawai'i's racial and ethnic groups must closely examine the extent to which, since the overthrow, they have been complicit in keeping Hawaiian people down – through cultural stereotypes, through land practices, through politics and the schools. This means acknowledging that while those racial and ethnic groups struggled against Hawai'i's white oligarchy, they also slowly lifted themselves up, as groups, sometimes at the expense of Native Hawaiians. Only when Hawai'i's racial and ethnic groups dig deep and look hard at themselves, only when we acknowledge complicity where it exists and accept responsibility for repairing the resulting harms, will there be an enduring foundation of multiracial support for Hawaiian claims.

Second, intergroup relations are fragile because many Hawaiians want to focus on relations with state and federal governments. This is understandable. Yet it leaves many others in Hawai'i asking “how will this all affect us” and “what's my role in Hawaiian justice?” It is thus incumbent on Hawaiians and Hawai'i's racial and ethnic groups to build bridges so that while Hawaiian people remain the focus, everyone else feels a stake in Hawaiian justice.

We need to make these difficult discussions a critical part of the process.