

Native Hawaiian Claims, 1974 - 1984: General (2 of 2)

Senator Daniel K. Inouye Papers

Native Hawaiian Issues, Box NH11, Folder 2

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Calendar No. 133.

67TH CONGRESS, }
1st Session. }

SENATE.

{ REPORT
No. 123.

AMENDING AN ACT PROVIDING A GOVERNMENT FOR THE TERRITORY OF HAWAII.

JUNE 17, 1921.—Ordered to be printed.

Mr. NEW, from the Committee on Territories and Insular Possessions,
submitted the following

REPORT.

[To accompany S. 1881.]

The Committee on Territories and Insular Possessions, to whom was referred the bill (S. 1881) to amend an act entitled "An act to provide a government for the Territory of Hawaii," approved April 30, 1900, as amended, to establish an Hawaiian homes commission, and for other purposes, having considered the same, report favorably thereon with the recommendation that the bill do pass with the following amendments:

On page 4, line 23, in the word "Keaaupaha" strike out the letter "p" and insert in lieu thereof the letter "k."

On page 6, line 19, after the word "except," insert the words "by further authorization of Congress and."

On page 7, line 20, strike out the word "two" and substitute therefor the word "three."

On page 25, line 1, add "s" to the word "Street" and place a comma thereafter.

On page 27, line 6, strike out the word "irrigated."

On page 27, line 21, strike out "1915" and substitute therefor "1910."

On page 28, line 8, strike out "1915" and substitute therefor "1910."

On page 36, line 7, strike out the word "two" and insert in lieu thereof the word "three."

On page 36, after line 14, insert the following:

SEC. 108. The board of harbor commissioners of the Territory of Hawaii shall have and exercise all the powers and shall perform all the duties which may lawfully be exercised by or under the Territory of Hawaii relative to the control and management of the shores, shore waters, navigable streams, harbors, harbor and water-front improvements, ports, docks, wharves, quays, bulkheads, and landings belonging to or controlled by the Territory, and the shipping using the same, and shall have the

authority to use and permit and regulate the use of the wharves, piers, bulkheads, quays, and landings belonging to or controlled by the Territory for receiving or discharging passengers and for loading and landing merchandise, with a right to collect wharfage and demurrage thereon or therefor, and, subject to all applicable provisions of law, to fix and regulate from time to time rates for services rendered in mooring vessels, charges for the use of moorings belonging to or controlled by the Territory, rates or charges for the services of pilots, wharfage, or demurrage, rents or charges for warehouses or warehouse space, for office or office space, for storage of freight, goods, wares, and merchandise, for storage space for the use of donkey engines, derricks, or other equipment belonging to the Territory, under the control of the board, and to make other charges, including toll or tonnage charges on freight passing over or across wharves, docks, quays, bulkheads, or landings. The board shall likewise have power to appoint and remove clerks, wharfingers and their assistants, pilots and pilot-boat crews, and all such other employees as may be necessary, and to fix their compensation: to make rules and regulations pursuant to this section and not inconsistent with law; and generally shall have all powers necessary fully to carry out the provisions of this section.

All moneys appropriated for harbor improvements, including new construction, reconstruction, repairs, salaries, and operating expenses, shall be expended under the supervision and control of the board, subject to the provisions of law. All contracts and agreements authorized by law to be entered into by the board shall be executed on its behalf by its chairman.

The board shall prepare and submit annually to the governor a report of its official acts during the preceding year, together with its recommendations as to harbor improvements throughout the Territory.

On page 36, line 15, strike out "Sec. 106" and insert in lieu thereof "Sec. 107."

Amend the title of the act by inserting after the word "Commission" the following words: "Granting certain powers to the board of harbor commissioners of the Territory of Hawaii."

The basis of this bill is a series of concurrent resolutions passed by the Legislature of the Territory of Hawaii during the sessions of 1919-1921 proposing various amendments to the organic act of the Territory. During the session of 1921 the legislature of the Territory, by concurrent resolution, authorized the Government to appoint a legislative commission of the Territory to come to Washington and assist the Territorial Delegate to Congress in the presentation of any measures formulated in pursuance of the resolutions passed by the legislature.

This bill seeks to rehabilitate the Hawaiian race by placing Hawaiian families back on the land. A considerable portion of land once known as the "Hawaiian Crown land," lying in five islands and now at the disposal of the United States Government, is available for lease to Hawaiians for homestead purposes. This bill provides the conditions under which the Government lands may be leased by Hawaiians.

The Hawaiian race is fast declining. Statistics indicate that within the course of a few years the race will become extinct unless some method can be adopted to check the decrease. The Hawaiian Legislature and civic organizations have spent years in the study of this situation and have unanimously indorsed the methods set forth in this bill as practicable for rehabilitating the Hawaiian race.

During the last session of Congress a bill on this subject was introduced in the Senate but objections in certain quarters, and lack of time for further consideration, led the committee to defer reporting it at that session.

The present bill, embodying the same principles as the first one, but eliminating certain provisions formerly objected to, was sub-

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mitted to the Hawaiian Legislature, which approved it and memorialized Congress to pass it. The bill now before the Senate differs from the measure introduced at the last session in that it limits those entitled to its benefits to Hawaiians of full blood and part Hawaiians of not less than half blood. The present bill also limits the plan of settlement to two of the islands instead of five in order that the plan can be tried before the entire area set apart is occupied by homesteaders.

Section 315 amends the Hawaiian organic act by adding three additional sections including the regulation of the employment of labor on public work carried on by the Government of the United States to citizens of the United States or those eligible to become citizens; grants certain powers to the board of harbor commissioners of the Territory; and makes these provisions a part of the Hawaiian organic act.

The amendment embodying section 106 grants to the board of harbor commissioners of the Territory, in addition to their general powers over wharves and landings, the right to levy a toll or tax on freight passing over wharves and landings belonging to the Territory.

The present bill as redrafted and amended has the approval of the Legislature of Hawaii, the governor of Hawaii, the governor designate, the legislative commission, the Chamber of Commerce of Honolulu, the Hawaiian Civic Association, leading business interests and ranch owners and the majority of Hawaiian citizens, and the Hawaiian Delegate to Congress.

O

GRAM FOR HAWAIIAN NATIVES BROADLY SKETCHED

CASE
HAWAIIAN
NATIVES

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BACKGROUND

The Hawaiian Native people together with the American Indian and Alaska Native people are generally regarded as the only aboriginal peoples indigenous to ~~the~~ the land mass of the United States.

The American Indian throughout their history have been comprised of some 400 different tribal groups whose aggregate can be identified generally as the Indian and Alaska Native people but not politically as an "Indian Nation" with a structured political process of government with diplomatic relations with world governments and which exercised "de jure" and "de facto" political and territorial jurisdiction over the U.S. land mass they occupied.

The Hawaiian Native people to the contrary, are culturally homogeneous, developed their own kingdom and nation-state based upon their own institutions not the least of which was a monarchical government which shared political power with the Hawaiian Natives through elected representation, entered into diplomatic relations with world governments and exercised both "de facto" and de jure political and territorial jurisdiction over the Hawaiian Island land mass.

The American Indian and Alaska Native tribal groups entered into over 400 treaties with the United Government to insure that federal assistance would be provided for the surrender of Indian land and the restriction of "de facto" Indian territorial jurisdiction. ^{defined the existing process as a legal constitutional}

The Hawaiian Native people possessing "de facto" and "de jure" political and territorial integrity exercised through government transferred that integrity and power to the U.S. government as a result of a clandestine maneuvering of an "enlightened" minority of 3,000 (2% of population) american and european Hawaiian residents who overthrew the existing government by threat of force. Consequently no treaties were entered into between the monarchy and the U.S. government to provide assistance to the Hawaiian Native people. There was no formal "guid pro quo" as with the American Indian tribal groups. But there ^{was} implied "guid pro quo": political and territorial integrity was transferred for the implied commitment and promise that the orderly development of the potentiality of the Hawaiian Native people could be achieved through the American institutional processes. ^{by a small group}

The cultural disintegration that has been visited on each people as a result of american cultural and institutional intrusion has been phenomenal. For a century it was assumed that the dominant american institutions would provide the opportunity and accessibility for all the american people to determine and pursue their destiny on an equal footing.

The fact of the matter is that both the Indian and Alaska Native people and the Hawaiian Native people enjoyed a culture, a way of life, distinctly different from each other and that of the dominant american culture and institutions and were not prepared to compete within the framework of american institutions. The cultural breakdown of the aborigine peoples was so massive that it resulted in dislocation and disorientation of these people leaving them to pursue their destiny in a culture alien to their way of life.

The American Indian and Alaska Native was given a mechanism for making the transition in the form of the Bureau of Indian Affairs, Dept. of Interior. In recognition of federal government commitment, resources of over \$10 billion have been made available for education, health, land, and economic and development since 1900 through the Bureau. As a consequence, much has been and is being done to help bridge the cultural transition between the Indian and Alaska Native way of life and that proscribed by American institutions.

The Hawaiian Native people, on the other hand, have been left unaided to make the same cultural transition without benefit of resource or assistance even though the commitment and promise to do so was implied. No federal assistance or special emphasis has been provided to acquaint the Hawaiian Native with the market mechanism of the free enterprise system which displaced the economic activity of his culture; no federal assistance was provided to build the health facilities and deliver health services to combat disease brought to the islands from the outside and, which in the main, has resulted in a reduction in the Hawaiian Native population from over 400,000 in 1800 to the 100,000 of today. No federal assistance has been provided to purchase building material for houses made necessary by external population intrusion, environmental hazards and economic deprivation.

While the American Indian and Alaska Native have been provided technical assistance to effect the transition to a technological oriented culture and insure their well-being the Hawaiian Native been left to his own devices to effect the same transition; without land or resource.

OBJECTIVE

To provide through legislation an authorization under a Hawaiian Native Development Act which would provide Federal assistance to the Hawaiian Native People for economic development, housing, and comprehensive health care including health services delivery and construction of necessary health related facilities.

STRATEGY (CONTENT)

A proposed "Hawaiian Native Development Act" would serve as the basis for authorizing a program of some \$80-90 million a year to be administered and managed by the Hawaiian Native people themselves (Incorporated Hawaiian Native Organization) for the express purpose of providing economic development and assistance, housing, comprehensive health care including health facilities construction for their people, although the programs would be administered by the Hawaiian Native people the resource provided under the Act would be monitored through an Administration in the Department of Commerce to protect the federal commitment and interest.

The Act would provide for a limited federal bureaucracy, "Hawaiian Native Affairs Administration," under the Department of Commerce to monitor and control financial activities and provide necessary technical assistance to the "Grantee" Incorporated Organization of the Hawaiian Native people.

The Act would provide that the Hawaiian Native people themselves would be responsible for the administration and management of the programs delineated under the act. Consequently, the federal bureaucracy function would serve only as the mechanism for providing technical assistance and channelling appropriated monies to the Hawaiian Native people (Incorporated

Organization with a Board of Govenors) which it would monitor and control. Almost the entire recurring appropriation of \$90 million would be channelled by letter of credit or some other mechanism from the Hawaiian Native Affairs Administration(federal bureaucracy) to the bank handling the account of the incorporated organization representing the Hawaiian Native people.

The Corporation itself would staff the personnel to carry out the programs. The Corporation would be responsible for structuring and organizing itself to perform policy, administrative management and program functions. The Corporation would perform the task of personnel recruiting and benefit program, supply services, project contracting, program planning, overall general administration and management as it related to the various categorical programs authorized in the Act.

How? / In effect, the Hawaiian Native people through their Corporation would be administering and managing an "enterprise" directly employing some 2,000 professionals, allied professionals and skilled employees. In addition this "enterprise" would stimulate employment in the construction and service industries. The directly employed personnel would: (1) administer the business and commercial enterprise development and assistance programs; (2) administer and staff the comprehensive health services program(staffing of hospitals and clinics) including health facilities(hospitals and clinics) and sanitation facilities construction;and (3) administer a housing authority program related to housing construction.

The "Hawaiian Native Services Administration" established as part of the Department of Commerce would (1) provide highly specialized technical assistance to all programs of the Corporation and (2) protect the Federal interest by monitoring and controlling the annropriated monies channelled to the bank of the Corporation.

o need
o equity
JUSTIFICATION

The justification for the Hawaiian Native Development Act will rest on the comparison of the federal assistance programs to the American Indians and Alaska Natives with the absence of such federal assistance programs to the Hawaiian Native people. Other federal assistance such as the programs authorized for the Office of the Territories might also be included.

The justification would point specifically to the fact that the cultural transition occasioned by the transfer of political and territorial integrity has had the effect of submerging rather than enhancing the promised development of the potentialities of the Hawaiian Native people. That is to say that an implied promise has not been kept because the Hawaiian Native was not given the "cultural tools" to compete in an alien highly technological culture. This view would be supported on the basis of the comparison of the Hawaiian Native people community profile to relevant parameters in the general U.S. population. These comparisons would point out health deficiencies, housing deficiencies, economic disadvantage, education deficiencies, income disadvantage etc. If need be disadvantage and deficiencies would be created where no viable statistical data is kept.

For illustration purposes a few indicators in support of this view would be exhibited as follow:

	<u>State Population By Year</u>		
	<u>1800</u>	<u>1900</u>	<u>1970</u>
Hawaiian Native	95%	70%	10%
All Others	5%	30%	90%

	<u>Land Ownership By Year</u>		
	<u>1800</u>	<u>1900</u>	<u>1970</u>
Hawaiian Native	100%	95%	5%

	<u>Education Level</u>		
	<u>College</u>	<u>Graduate School</u>	<u>Post Graduate</u>
Hawaiian Native	15%	5%	1%
All Others	85%	95%	99%

Employment Opportunity

	<u>Hawaiian Native</u>	<u>All Others</u>
Professionals	15%	85%
Skilled	20%	80%
Agriculture	60%	40%
Laborer	70%	30%

Business Enterprises (OWNED)

	<u>Hawaiian Native</u>	<u>All Others</u>
Business above \$1 million gross	-0-	100%
" \$500,000-\$1 " "	1%	99%
" \$250,000-\$500,000 "	7%	93%
" \$100,000-\$250,000 "	15%	85%

Mortality Incidence
per 100,000 Population

	<u>Hawaiian Native</u>	<u>U.S. All Races</u>	<u>Ratio t All Rac</u>
Tuberculosis	45.0	15.0	3 times gre
Gastritis	15.0	.5	30 "
Pneumonia	60.0	20.0	3 "
Diabetes	30.0	20.0	1½ "
Senility	60.0	10.0	6 "
Maternal Mortality	40.0	10.0	4 "
Infant Mortality	30.0	15.0	2 "
Infectious & Parasitic Disease	60.0	5.0	12 "

Median Family Income

Hawaiian Native	\$4,000
All Families	
Total	\$8,000

Home Ownership

	<u>Hawaiian Native</u>	<u>All Others</u>
Adequate Single Dwelling	10%	90%
" Apartment "	5%	95%

Since the Hawaiian native people have not received Federal assistance, a comparison of the shameful neglect of zero to the \$10 billion in resources appropriated to the American Indian and Alaska native since 1900 would be very dramatic without discounting for inflation. State by state, this resource might be distributed as follows:

<u>State</u>	<u>Indian Population</u>	<u>Resources Since 1900</u>
Alaska	45,000	\$1,000,000,000
Arizona	100,000	2,000,000,000
California	20,000	50,000,000
Minnesota	25,000	100,000,000
Montana	30,000	400,000,000
Oregon	15,000	200,000,000
Oklahoma	80,000	2,000,000,000
New Mexico	30,000	1,000,000,000
South Dakota	20,000	500,000,000
North Dakota	10,000	100,000,000
Washington	15,000	200,000,000
HAWAII	100,000	-0-

* * * * *

Additional data and charts could be added to point out the whole range and magnitude of the Hawaiian Native ^{problems} ~~which~~ compared with the U.S. general population. The preceding figures and data are not actual but used for methodology purposes only.

Advantages

Advantages

1. Enhance the economic well being and development of the Hawaiian native people by allowing them to organize their own affairs in business, commerce, housing, and health. Corollary to that, development would be the employment of some 2,000 people to provide the necessary services indicated under the Act, plus additional employment and business that would be created to service such a wide range operation.

2. The influx of such a fixed resource would have the effect of releasing whatever state resource is directed for like programs for the Hawaiian native people. It could mean a \$20 million savings to the State plus the addition of state tax revenue on new employment.

3. The program would not require an extensive Federal bureaucracy. Only 300 Federal personnel would be employed compared to the 2,000 administering similar programs for Indians. The bulk of the employment would be by the Hawaiian people.

4. The health program could be extended to cover other citizens of the community with the cost borne by third party contractors, thus improving the health services within the State.

5. If authorized under the Department of Commerce, such an Incorporated Organization would be free to bid for D/HEW, D/Labor, D/HUD, and D/Interior resources made available by contract or grant thereby enlarging the Corporation resource base and service delivery capability whether in health, business, housing or human resources development.

6. This type of program would lend itself to the President's budget strategy for FY 1974 which is institutional change and non-dependency. There is no Federal program that has been authorized to be administered and managed by the community on this scale. OEO does sponsor some of lesser magnitude.

7. Political--regardless of years or days.

PROGRAM PLAN (Broadly Sketched)

The Hawaiian Native Development Act would provide authorization for appropriated monies in three general areas:

- (1) economic/commercial and business enterprise development and assistance;
- (2) Housing construction; and
- (3) comprehensive health services including health services delivery (staffing of hospitals and clinics) and health facilities construction (hospitals and clinics)

In addition monies would be authorized for administration both for the Hawaiian Native Incorporated Organization and a federal bureaucracy and for sanitation facilities construction.

I. Economic/commercial and business enterprise development and assistance - \$10 million

These funds would support the development of business and commercial enterprises. Types of loans etc. and guarantees would be identified in Act. The number of enterprises and business that would be affected would depend on the language restrictions in the Act.

II. Housing construction -- \$20 million

General criteria would have to be determined. However, cost of current programs carried out for American Indians and Alaska Natives by the Bureau of Indian Affairs and HUD vary from \$7,000 to \$20,000 per house. That cost suggests that a \$20 million authorization would provide 1,000 to 1,500 housing units per year at a median cost of \$15,000 each.

III Comprehensive health services -- \$110 million

A. Construction (one time cost) -- \$70 million

Accepted criteria determines that it takes a 40 bed health facility with outpatient services to provide comprehensive health services to a population of 10,000 people. Based on that criteria the provision of health services to 100,000 Hawaiian Natives would take a minimum of 10 comprehensive health facilities. Construction cost for a 40 bed comprehensive health facility is \$6-\$7 million or a total construction cost of \$60-\$70 million. Since this type of facility would not include highly specialized surgical, chemotherapy, and radiology services etc. there would be a need to contract for such services in a more technical competent hospital such as Queen's at a cost of \$5 million

B. Health services delivery operating cost - \$40 million

Contract hospitalization and services - \$5 million

Highly specialized services referred to above

Direct operation of health facilities -- \$35 million

Each health facility would provide comprehensive health services including clinical, preventive and rehabilitative health services. Accepted standards would require 150 employees at each facility. This standard would produce an operating cost of \$3.5 million per facility for a total cost of \$35 million which would be a base recurring cost with all ten facilities constructed and operating.

IV. Sanitation facilities construction - \$5 million

Sanitation facilities construction would include individual water systems and waste disposal systems as well as community water systems and waste disposal systems when justified. Cost would depend on magnitude of project if a small community system and going rate for individual systems.

V. Hawaiian Native Incorporated Organization -- \$7 million

The employment of some 300 personnel to perform line and staff functions in the overall direction, management, and administration of all programs authorized in the Act would require at least \$7 million.

VI. Hawaiian Native Affairs Administration -- \$6 million

The resources required for the establishment of a highly specialized technical assistance group in all aspects of the programs authorized in the Act and the staff necessary to monitor and control the financial activities of the "Grantee" Hawaiian Native Incorporated Organization would be \$6 million.

STRATEGY (PROCESS)

1. Congressional

1200
It is suggested that the proposed "Hawaiian Native Development Act" would be brought before one of the legislative committees for Commerce because the Act is substantively a bill of "initiative" and "enterprise".

The Act authorizes a range of programs. If it were the intent to create Federal bureaucracies to administer, manage, and deliver the services of each of the programs then it would be appropriate to request authorization for each of the programs contained in the Act from the generic committee that considers those types of programs; Labor/HEW, Commerce etc. However the intent of the Act would be to create "initiative" by allowing those people most affected by the legislation to manage the programs contained therein. The management concept expressed by the act would be quite different and a departure from the way the organized Federal bureaucracy operates. Of equal importance is the fact that such an Act is "enterprising" in that the totality of the Act as applied represents an "enterprise" of great proportion and substantial resource that will impact on the economic life of the community and stimulate the growth of new business "enterprises" to service the larger operations

Though this concept of initiative and enterprise is a departure from most all of current Federal executive bureaucratic practice, it may well fall in line with the President's 1974 budget strategy which is based on (1) institutional change and (2) non-dependency.

A matter of practical importance is that such an Act authorized to be administered by the Commerce Department would allow the Incorporated Organization created under the Act to compete for grant and contract monies in the Dep'ts of Labor/HEW/HUD etc.

SUMMARY

	<u>Amount</u>
1. Hawaiian Native Incorporated Organization	\$7 million
2. Economic/commercial & business enterprise development and assistance	10 million
3. Housing construction	20 million
4. Comprehensive health services incl. construction	110 million
1. Construction(one time cost) - \$70 million	
2. Health services delivery - \$40 million	
5. Sanitation facilities construction	5 million
6. Hawaiian Native Affairs Administration(Federal).	<u>6 million</u>
 Total	 158 million
Non-recurring construction cost..	less <u>70 million</u>
 Recurring yearly program	 88 million

check out in Hawaii re Hawaiians:

rate of infectious diseases.

rate of parasitic diseases

rate of home ownership

rate of small business ownership —

United States Senate

MEMORANDUM

To: Senator

From: Laurie

Re: Hawaiian Native Claims

Attached is copy of the bill which will be amended to include the study commission act. The measure has been referred to the Energy Committee Subcommittee on Parks, Recreation, and Renewable Resources. Matsunaga's office reports that hearings will be scheduled during the first two weeks of June. The claims bill will be attached ~~in~~ ⁱⁿ Markup, hopefully toward the end of the month.

Senator cc Laurie, ✓ Robbie

from Eiler

5/19

Cong. Phil Burton called to tell us that the House is now sending over the vehicle, H.R. 7217, a Hawaii Parks bill, to which we will add the Hawaii Native Claims Commission legislation. You will recall his earlier discussion of tactics which provide for the House having only one vote on the question.

Cong. Burton suggests that we hold a hearing on the bill and then attach our Native claims legislation either in its strong form or work out a weaker version which would be acceptable to the House. If the stronger version is preferred for our purposes back home then the House will cut it back and send it back over here for final approval requiring one more step.

He said the parks bill is relatively non-controversial although there is some dispute over some matters affecting the City of Refuge and a small boat harbor.

Emi Hurt Kert: 5/16 -
appropriate legislation
forthcoming - ↑

H. R. 7217

To enact certain provisions relative to units of the National Park System in the State of Hawaii, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 30, 1980

Mr. PHILLIP BURTON (for himself, Mr. AKAKA, Mr. HEFTEL, and Mr. JOHNSON of Colorado) introduced the following bill; which was referred to the Committee on Interior and Insular Affairs

A BILL

To enact certain provisions relative to units of the National Park System in the State of Hawaii, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I

4 SEC. 101. The Congress finds that the Kalaupapa set-
5 tlement constitutes a unique and nationally and internation-
6 ally significant cultural, historical, educational, and scenic
7 resource.

8 SEC. 102. The purposes of this title are—

1 (1) to preserve and interpret the Kalaupapa settle-
2 ment for the education and inspiration of present and
3 future generations, and

4 (2) to provide that the preservation and interpre-
5 tation of that settlement be managed and performed by
6 patients and Native Hawaiians to the extent practical,
7 and that training opportunities be provided such per-
8 sons in management and interpretation of the settle-
9 ment's cultural, historical, educational, and scenic
10 resources.

11 SEC. 103. In order to provide a well-maintained com-
12 munity in which the Kalaupapa leprosy patients are guaran-
13 teed that they may remain at Kalaupapa as long as they
14 wish; to protect the current lifestyle of these patients and
15 their individual privacy; to research, preserve, and maintain
16 the present character of the community; to research, pre-
17 serve, and maintain important historic structures, traditional
18 Hawaiian sites, cultural values, and natural features; and to
19 provide for limited visitation by the general public; there is
20 hereby established the Kalaupapa National Historical Pre-
21 serve (hereinafter referred to as the "preserve"). The bound-
22 aries of the preserve shall include the lands, waters, and in-
23 terests therein within the area generally depicted on the map
24 entitled "Boundary Map, Kalaupapa National Historical Pre-
25 serve", numbered P07-80023, and dated February 1980,

1 which shall be on file and available for public inspection in
2 the Office of the National Park Service, Department of the
3 Interior. The Secretary of the Interior (hereinafter referred to
4 as the "Secretary") may make minor revisions in the bound-
5 ary of the preserve by publication of a revised boundary map
6 or other description in the Federal Register.

7 SEC. 104. (a) Within the boundary of the preserve, the
8 Secretary is authorized to acquire those lands owned by the
9 State of Hawaii or any political subdivision thereof only in
10 the event such lands or interests are voluntarily offered by
11 the owner. In such case, acquisition is authorized through
12 donation or exchange. Any such exchange shall be accom-
13 plished in accordance with the provisions of sections 5 (b) and
14 (c) of the Act approved July 15, 1968 (82 Stat. 354). Any
15 property conveyed to the State or a political subdivision
16 thereof in exchange for property within the preserve which is
17 held in trust for the benefit of Native Hawaiians, as defined
18 in the Hawaiian Homes Commission Act, 1920 shall, as a
19 matter of Federal law, be held by the grantee subject to an
20 equitable estate of the same class and degree as encumbers
21 the property within the preserve; and "available lands" de-
22 fined in section 203 of the Hawaiian Homes Commission Act
23 may be exchanged in accordance with section 204 of said
24 Act. The vesting of title in the United States to property
25 within the preserve shall operate to extinguish any such equi-

1 table estate with respect to property acquired by exchange
2 within the preserve.

3 (b) The Secretary is authorized to acquire privately
4 owned lands within the boundary of the preserve by donation,
5 purchase with donated or appropriated funds, or exchange.

6 (c) The Secretary is authorized to acquire by any of the
7 foregoing methods except condemnation, lands, waters, and
8 interests therein outside the boundary of the preserve and
9 any other unit of the National Park System but within the
10 State of Hawaii and to convey the same to the Department
11 of Hawaiian Home Lands in exchange for lands, waters, and
12 interests therein within the preserve owned by that Depart-
13 ment. Any such exchange shall be accomplished in accord-
14 ance with the provisions defined in subsection (a).

15 SEC. 105. (a) The Secretary shall administer the pre-
16 serve in accordance with the provisions of the Act of August
17 25, 1916 (39 Stat. 535), the Act of August 21, 1935 (49
18 Stat. 666), and the provisions of this Act.

19 (b)(1) With the approval of the owner thereof, the Sec-
20 retary may undertake critical or emergency stabilization of
21 utilities and historic structures, develop and occupy tempo-
22 rary office space, and conduct interim interpretive and visitor
23 services on non-Federal property within the preserve.

24 (2) The Secretary may enter into cooperative agree-
25 ments with the owner or owners of property within the pre-

1 serve pursuant to which the Secretary may preserve, protect,
2 maintain, construct, reconstruct, develop, improve, and inter-
3 pret sites, facilities, and resources of historic, natural, archi-
4 tectural, and cultural significance. Such agreements shall be
5 of not less than twenty years duration, may be extended and
6 amended by mutual agreement, and shall include, without
7 limitation, provisions that the Secretary shall have the right
8 of access at reasonable times to public portions of the proper-
9 ty for interpretive and other purposes, and that no changes or
10 alterations shall be made in the property except by mutual
11 agreement. Each such agreement shall also provide that the
12 owner shall be liable to the United States in an amount equal
13 to the fair market value of any capital improvements made to
14 or placed upon the property in the event the agreement is
15 terminated prior to its natural expiration, or any extension
16 thereof, by the owner, such value to be determined as of the
17 date of such termination, or, at the election of the Secretary,
18 that the Secretary be permitted to remove such capital im-
19 provements within a reasonable time of such termination.
20 Upon the expiration of such agreement, the improvements
21 thereon shall become the property of the owner, unless the
22 United States desires to remove such capital improvements
23 and restore the property to its natural state within a reason-
24 able time for such expiration.

1 (3) Except for emergency, temporary, and interim activ-
2 ities as authorized in paragraph (1) of this subsection, no
3 funds appropriated pursuant to this Act shall be expended on
4 non-Federal property unless such expenditure is pursuant to
5 a cooperative agreement with the owner.

6 (4) The Secretary may stabilize and rehabilitate struc-
7 tures and other properties used for religious or sectarian pur-
8 poses only if such properties constitute a substantial and inte-
9 gral part of the historical fabric of the Kalaupapa settlement,
10 and only to the extent necessary and appropriate to interpret
11 adequately the nationally significant historical features and
12 events of the settlement for the benefit of the public.

13 SEC. 106. The following provisions are made with re-
14 spect to the special needs of the leprosy patients residing in
15 the Kalaupapa settlement—

16 (1) So long as the patients may direct, the Secre-
17 tary shall not permit public visitation to the settlement
18 in excess of one hundred persons in any one day.

19 (2) Health care for the patients shall continue to
20 be provided by the State of Hawaii, with assistance
21 from Federal programs other than those authorized
22 herein.

23 (3) Notwithstanding any other provision of law,
24 the Secretary shall provide patients a first right of re-
25 fusal to provide revenue-producing visitor services, in-

1 cluding such services as providing food, accommoda-
2 tions, transportation, tours, and guides.

3 (4) Patients shall continue to have the right to
4 take and utilize fish and wildlife resources without
5 regard to State and Federal fish and game laws and
6 regulations.

7 (5) Patients shall continue to have the right to
8 take and utilize plant and other natural resources for
9 traditional purposes in accordance with applicable
10 State and Federal laws.

11 SEC. 107. The following provisions are made with re-
12 spect to additional needs of the leprosy patients and Native
13 Hawaiians for employment and training. (The term "Native
14 Hawaiian" as used in this policy, means any descendant of
15 the race inhabiting the Hawaiian Islands previous to the year
16 1778.)—

17 (1) Notwithstanding any other provision of law,
18 the Secretary may give first preference to qualified pa-
19 tients and Native Hawaiians in making appointments
20 to positions established for the administration of the
21 preserve, and the appointment of patients and Native
22 Hawaiians shall be without regard to any provision of
23 the Federal civil service laws giving an employment
24 preference to any other class of applicant and without

1 regard to any numerical limitation on personnel other-
2 wise applicable.

3 (2) The Secretary shall provide training opportu-
4 nities for patients and Native Hawaiians to develop
5 skills necessary to qualify for the provision of visitor
6 services and for appointment to positions referred in
7 paragraph (1).

8 SEC. 108. (a) There is established the Kalaupapa Na-
9 tional Historical Preserve Advisory Commission (hereinafter
10 referred to as the "Commission"), which shall consist of
11 eleven members each appointed by the Secretary for a term
12 of five years as follows:

13 (1) seven members who shall be present or former
14 patients, elected by the patient community; and

15 (2) four members appointed from recommendations
16 submitted by the Governor of Hawaii, at least one of
17 whom shall be a Native Hawaiian.

18 (b) The Secretary shall designate one member as the
19 Chair. Any vacancy in the Commission shall be filled in the
20 same manner in which the original appointment was made.

21 (c) A member of the Commission shall serve without
22 compensation as such. The Secretary is authorized to pay the
23 expenses reasonably incurred by the Commission in carrying
24 out its responsibilities under this Act on vouchers signed by
25 the Chairman.

11 (e) The Commission shall expire twenty-five years from
12 the date of enactment of this Act.

13 SEC. 109. At such time when there is no longer a resi-
14 dent patient community at Kalaupapa, the Secretary shall
15 reevaluate the policies governing the management, adminis-
16 tration, and public use of the preserve in order to identify any
17 changes deemed to be appropriate.

18 SEC. 110. There is authorized to be appropriated such
19 sums as may be necessary to carry out the provisions of this
20 title.

21 TITLE II

22 SEC. 201. (a) The Act entitled “An Act to designate
23 and establish that portion of the Hawaii National Park on the
24 Island of Maui, in the State of Hawaii as the Haleakala Na-
25 tional Park, and for other purposes”, approved September

1 13, 1960 (74 Stat. 881; 16 U.S.C. 396b and following), is
2 amended by—

3 (1) striking out section 2 thereof;

4 (2) inserting the following after the period in the
5 first sentence of the first section thereof: “The bound-
6 ary of the park shall be as generally depicted on the
7 map entitled ‘Boundary Map, Haleakala National
8 Park’, numbered 162-80,023, and dated March 1980,
9 which shall be on file and available for public inspec-
10 tion in the office of the National Park Service, Depart-
11 ment of the Interior.”; and

12 (3) inserting the following at the end in the first
13 section thereof: “Notwithstanding any other provision
14 of law, the Secretary of the Interior may acquire lands,
15 waters, and interests therein within the boundary of
16 the park by donation, purchase with donated or appro-
17 priated funds, transfer from any other Federal agency,
18 or exchange except that any property owned by the
19 State of Hawaii or any political subdivision thereof
20 may be acquired only by donation or exchange. In ad-
21 dition to sums appropriated before the date of the en-
22 actment of this sentence, there is authorized to be ap-
23 propriated such sums as may be necessary to carry out
24 the provisions of this Act.”

1 (b) The Act entitled "An Act to change the designation
2 of that portion of the Hawaii National Park on the island of
3 Hawaii, in the State of Hawaii, to the Hawaii Volcanoes
4 National Park, and for other purposes", approved September
5 22, 1961 (75 Stat. 577; 16 U.S.C. 391d), is amended by
6 inserting the following at the end thereof: "The boundary of
7 the park shall be as generally depicted on the map entitled
8 'Boundary Map, Hawaii Volcanoes National Park', numbered
9 124-80,049, and dated March 1980, which shall be on file
10 and available for public inspection in the office of the Nation-
11 al Park Service, Department of the Interior. Notwithstanding
12 any other provision of law, the Secretary of the Interior may
13 acquire lands, waters, and interests therein within the bound-
14 ary of the park by donation, purchase with donated or appro-
15 priated funds, transfer from any other Federal agency, or ex-
16 change, except that any property owned by the State of
17 Hawaii or any political subdivision thereof may be acquired
18 only by donation or exchange. In addition to sums appropri-
19 ated before the date of the enactment of this sentence, there
20 is authorized to be appropriated such sums as may be neces-
21 sary to carry out the purposes of this Act."

22 (c) The first section of the Act entitled "An Act to add
23 certain lands on the island of Hawaii to the Hawaii National
24 Park, and for other purposes", approved June 20, 1938 (52
25 Stat. 781; 16 U.S.C. 391b and following), is amended by

1 changing the semicolon in the second paragraph numbered
2 "15." to a period and deleting the remainder of the section.

3 SEC. 202. Notwithstanding any other provision of law,
4 no fee may be charged for entrance or admission to any unit
5 of the national park system in the State of Hawaii.



Laurie

December 24, 1980
MEMORANDUM

TO: File

FROM: Robbie

RE: Signing of Native Claims bill

Gregg Kakesako of the Star-Bulletin called and asked for the Senator's comments on the signing of H.R. 7217, which includes the Native Claims Commission. After talking to the boss, I gave Gregg the following:

The signing of this measure by the President brings to a close the first phase of this quest for Justice by the Native Hawaiians. The important phase will now begin; the selection of the Commission members, the investigation and hearings, and recommendations to Congress. The third and final phase will be the reaction of Congress to the Commission's recommendations.

Although I am an optimist, this is not the time to celebrate. There is too much work that remains to be done.

I also confirmed for Gregg that the bill had indeed been signed after checking with the White House bill clerk.

I issued no other press release since the bill was actually signed Monday and by the time we got something out to the other media it would have been too late. Attached is the Kakesako article that appeared yesterday afternoon.

Coen
Goldwater
Dunne
Andrews

1. BULLETIN, TUESDAY, DECEMBER 23, 1980

- *** a. Carter Signs Bill Establishing Native Claims Commission-Front Pg--SeeTelArt.
- *** b. Anderson Names Two, Loses One in Her Incoming Cabinet-Front P SeeTelArt.
- c. Fijian to Lead E-WC Center-A-2--James V. Makasiale, a sr. govt. official from Fiji has been appointed interim administrator of EW Ctr. Pacific Islands Development Program until February.
- d. Forecaster Hopeful for Christmas-A-2--Weather forecasts are not prepared to be too positive about it, but they indicate that prolonged Kona weather over Oahu will clear in time for Santa to make his rounds.
- e. Matayoshi Has Degree in Business-A-3--Mayco Matayoshi recd. MBA on Sunday. He begun taking courses in Hilo since early 1970s in order to take mind of county affairs--his wife, Mary, director of Coll. of Continuing Education at UH-Hilo made arrangements in early 1970s for Manca profs to fly to Hilo on wkends to teach non-degree, graduate level business courses.
- f. Sen Yee Says Fish Law is Working Well-A-9--Wads Yee says 1976 Fishery Conservation and Mgt. Act. is working out well as far as Hawaii, Guam and American Samoa are concerned.
- *** g. Rep. Tony Kunimura Heads Finance Panel-A-12--SeeTelArt.

Carter Signs Bill Establishing

By Gregg K. Kokesako
Star-Bulletin Writer

Without fanfare, President Carter yesterday signed into law legislation that will establish a presidential commission to determine whether the U.S. government should pay for Hawaii lands it took when the Hawaiian monarchy was overthrown in 1893.

But U.S. Sen. Daniel K. Inouye today cautioned that there is still much to be done before any reparations can be made.

"Although I am an optimist, this is

not the time to celebrate, there is too much work that remains to be done."

The nine-member commission is supposed to begin its deliberations within 90 days and will have a year to come up with a draft of its recommendations. The federal law establishing the Native Hawaiian Study Commission allows only three of its nine members to be residents of Hawaii.

The draft recommendation will be circulated for public comment for six months before a final version is

sent to Congress and the White House.

ULTIMATELY, it will be up to Congress to determine whether native Hawaiians will be compensated for the lands seized by the United States.

Inouye added that the signing of the native claims bill by the president "brings to a close the first phase of this quest for justice by the native Hawaiians."

"The important phase will now begin: the selection of the commission members, the investigation and hearings and the recommendations

Native Claims Commission

to Congress. The third and final phase will be the reaction of Congress to the commission's recommendations."

Gov. George R. Ariyoshi expressed pleasure over what he described as "the president's historic decision" and said he was grateful for the efforts of Hawaiian's congressional delegation.

The governor also said that "this was the first step in gathering all the facts in order for Congress to make a determination regarding reparations to the Hawaiian people."

Hawaiian activists, who at one

time were demanding \$1 billion in cash and the return of 2.5 million acres of land valued at \$34 billion, began the move for congressional legislation six years ago.

SINCE THEN, the Hawaiian reparations bill has undergone several modifications to appease congressional critics.

In its present form the new federal law does not admit that the U.S. government participated in the revolution that overthrew the Hawaiian monarchy. The size of the commission and its composition also have been cut down.

At one time the native claims commission was supposed to comprise 15 members with a majority of them being native Hawaiians. Sending to congressional criticism of such a "stacked" panel, the bill was rewritten.

The bill finally cleared the Senate Dec. 4 when Sen. Spark Matsunaga was able to attach it to a measure that would establish the Moiokele Kalaupapa leprosy settlement as a national historic park and allow federal funding for the Falls of Clyde Lighthouse as long as it remains in Hawaii.

United States Senate
ROOM 722, HART SENATE BUILDING
WASHINGTON, DC 20510
(202) 224-3934

M E M O R A N D U M

DATE: October 16, 1985

RE: NATIVE HAWAIIANS -- Legislation concerning native Hawaiians considered by the U.S. Senate during the 1st Session of the 99th Congress (January 3, 1985 to December 31, 1986). Prior to becoming public law, these bills must be considered by the U.S. House of Representatives and signed by the President.

I. Native Hawaiians are expressly mentioned and included in the Fiscal Year 1986 Appropriations Bill for the Departments of Labor, Health and Human Services, and Education (H.R. 3424). [Senate Report 99-151, Passed the U.S. Senate October 22, 1985]

DEPARTMENT OF LABOR

TRAINING AND EMPLOYMENT SERVICES:

1. Native Americans -- These programs are designed to improve the economic well-being of disadvantaged native Americans (Indians, Eskimos, Aleuts, and native Hawaiians) through vocational training, work experience, and other services aimed at getting participants into permanent, unsubsidized jobs. [p.11]

HEALTH AND HUMAN SERVICES:

HEALTH RESOURCES AND SERVICES ADMINISTRATION:

1. Maternal and child health block grant --

Last year the Committee directed the Bureau of Health Care Delivery and Assistance to work closely with officials of the Kamehameha Schools/Bishop Estate to ensure that the pressing needs of native Hawaiians were addressed under the 15-percent set-aside for programs of national significance. The committee understands that preliminary discussions have been held and, further, that an initial planning project has been awarded. The committee was pleased to learn of this progress and remains very concerned about these native American people. Accordingly, the department is directed to continue to give priority to their needs this fiscal year. [p.29]

2. Nursing special projects -- This program

provides grants and contracts to nursing schools and other institutions to develop innovative nursing methods, especially for treating high-risk groups such as the elderly, children, pregnant women, and native Hawaiians and other Pacific islanders. The program is also designed

to increase educational opportunities for individuals from disadvantaged backgrounds to enter the nursing profession, to upgrade the skills of licensed practical nurses, nursing assistants, and other paraprofessional nursing personnel, and to address other areas emphasizing primary care. [p.41]

NATIONAL CANCER INSTITUTE:

1. The Committee was very pleased to learn that the President's cancer panel held hearings in Honolulu, HI, to review the efforts of NCI to address the pressing needs of native Hawaiians. The Committee understand that native Hawaiians continue to have one of the highest incidents of cancer of any segment of our population and, accordingly, urges NCI to continue to work with the Cancer Center of Hawaii to ensure that sufficient priority is given to their unique needs. [p.61]

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION:

1. The Committee reiterates its directive that NIAAA give special attention to the pressing needs of native Hawaiians. These are native American peoples and, as such, there is a special Federal responsibility involved. The

Committee has made sufficient funds available for NIAAA to support research projects addressing the unique situation surrounding native Hawaiians. [p.123]

OFFICE OF HUMAN DEVELOPMENT SERVICES:

1. The Committee expects the Office of Human Development Services to assist the Kamehameha Schools/Bishop Estate in its efforts to establish a series of parent-child centers throughout the State to address the pressing needs of native Hawaiian children and their families. This year the Committee again received testimony stressing the extent to which these native Americans are disproportionately represented among those with serious social problems. Accordingly, the Committee again directs HDS to make this a high priority. [p.151]

DEPARTMENT OF EDUCATION

SPECIAL PROGRAMS:

1. The Committee continues to be interested in the efforts of the Department to encourage innovative efforts targeted toward gifted and talented children, including those of Native

American and native Hawaiian families. The Committee encourages the Department to provide it with information on its efforts to support such projects during this fiscal year, either under this account or any other program within the Department. [p.162]

VOCATIONAL AND ADULT EDUCATION:

1. At the Federal level, the Department of Education reserves 1.25 percent of the basic grant appropriation for grants to Indian tribes and 0.25 percent for a new program of grants for Hawaiian natives. [p.180]

HIGHER EDUCATION:

1. The Committee has received testimony that native Hawaiians are significantly underrepresented in institutions of higher learning. For example, native Hawaiians account for only 6.8 percent of those enrolled in postsecondary educational programs, although they represent nearly 20 percent of the State's population. Given the native American status of these peoples and following up on the Department's recent report to the Congress, the Committee urges the Department to explore how it can be of assistance to native Hawaiians in

increasing their enrollment in institutions of higher learning. [p.185]

2. Developing Institutions -- For the past several years the Committee has urged the Department to give special attention to the unique and very pressing problems of native Americans (including native American Pacific Islanders) under the authority of the Developing Institutions Program. The Committee was pleased to learn of the Department's efforts last year to be especially responsive to these pressing problems and urges the Department to continue to make these peoples a high priority. [p. 186]

LIBRARIES:

1. Public Library Services -- Approximately 2 percent of the funds appropriated for this program, for public library construction, and for interlibrary cooperation must be reserved for discretionary programs initiated in fiscal year 1985 benefiting Indian tribes and native Hawaiians. A total of \$2,360,000 would be reserved, which includes \$1,500,000 from this program. [p.193]

2. Interlibrary Cooperation -- Grants support library resource sharing projects involving all types of libraries, including school and other academic libraries, public libraries and various other special libraries. An amount of \$360,000 would be reserved for programs for Indian tribes and native Hawaiians. [p. 193-194]

3. Public Library Construction -- Under this program, grants are made to the States for new public library construction, as well as expansion, remodeling, and alterations of existing library facilities. Construction or remodeling projects to remove architectural barriers and to reduce energy consumption are also allowable, and States and communities must match the Federal contribution on a per capita income basis. An amount of \$500,000 would be reserved for programs for Indian tribes and native Hawaiians. [p.194]

II. Native Hawaiians are expressly mentioned and included in the Indian Health Care Amendments of 1985 (S. 277).

[Reported from the Senate Select Committee on Indian Affairs on May 16, 1985, Senate Report 99-62]:

1. Native Hawaiians are deemed eligible for the Health Professions Scholarship Program.

* * Amendments to title I provide for the inclusion of Native Hawaiians in the Health Professions Scholarship Program that is administered by the U.S. Public Health Service, subject to the availability of additional appropriations for that purpose. (p.5)

* * Section 104 also amends section 338G of the Public Health Service Act to make Native Hawaiians eligible for scholarship assistance from the health professions scholarship program, subject to the availability of additional appropriations for that purpose. Indians would still be accorded preference in the award of scholarships. [p.9]

* * Section 104 amends to section 338G of the Public Health Service Act further provide that the active duty service obligation of a Native Hawaiian health professions scholarship recipient is to be

fulfilled by service in the Indian Health Service, in a program conducted under a contract entered into under the Indian Self-Determination and Education Assistance Act; in a program assisted under title V of the Indian Health Care Improvement Act; or in the private practice of the applicable profession if, as determined by the Secretary of the Department of Health and Human Services, in accordance with guidelines promulgated by the Secretary, the private practice is situated in a physician or other health professional shortage area and the practice addresses the health care needs of a substantial number of Indians or Native Hawaiians. Section 104 also amends section 338G of the Public Health Service Act to define the term "Indian" to conform to the meaning given the term "Indian" by section 4(c) of the Indian Health Care Improvement Act and to include the individuals described in clauses (1) through (4) of section 4(c) of the Indian Health Care Improvement Act. Section 104 additionally amends section 338G of the Public Health Service Act to define the term "Native Hawaiian" to mean any individual who

has any ancestors that were natives, prior to 1778, of the area which now comprises the State of Hawaii. (p.9-10)

* * ...to provide scholarships under the Scholarship Program to provide physicians, osteopaths, dentists, veterinarians, nurses, optometrists, podiatrists, pharmacists, public health personnel, and allied health professionals to provide services to Indians and, subject to available appropriations, Native Hawaiians. Such scholarships shall be designated "Indian Health Scholarships" and shall be made in accordance with this subpart, except as provided in subsection (b).

(b)(1) The Secretary, acting through the Indian Health Service, shall determine the individuals who shall receive the Indian Health Scholarships, shall accord priority to applicants who are Indians, and shall determine the distribution of the scholarships on the basis of the relative needs of Indians and, subject to available appropriations, Native Hawaiians for additional services by specific health professions. [p.46]

* * (B) The active duty service obligation prescribed in the written contract entered into under this subpart shall be met by a Native Hawaiian recipient of an Indian Health Scholarship by service --

(i) in the Indian Health Service;

(ii) in a program conducted under contract entered into under the Indian Self-Determination and Education Assistance Act;

(iii) in a program assisted under title V of the Indian Health Care Improvement Act; or

iv) in the private practice of the applicable profession if, as determined by the Secretary, in accordance with guidelines promulgated by the Secretary, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians or Native Hawaiians. [p.47]

2. HHS shall conduct a comprehensive study of the unique health care needs of Native Hawaiians and other Native American Pacific Islanders.

* * Title VII authorizes the Secretary of the Department of Health and Human Services to conduct a study of the health care needs of Native Hawaiians and other Native American Pacific Islanders. [p.8]

* * Section 708 amends title VII of the Act to add a new section 718. Section 718 directs the Secretary of the Department of Health and Human Services to conduct a study of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders. In conducting the study, the Secretary is to consult with the Commissioner of the Administration for Native Americans, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Indian Health Service, leaders in the field of health care, and representatives of Native Hawaiians and other Native American Pacific Islanders.

The Secretary is to submit a report on the study to the Congress by no later than the date that is one year after the date of enactment of the Indian Health Care Amendments of 1985. The report is to

include an assessment of the access of and barriers to Native Hawaiians and other Native American Pacific Islanders in receiving physical and mental health care services, an assessment of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders, and specific recommendations for the development of a national strategy to address such needs. [p.35-36]

* STUDY OF HEALTH CARE NEEDS OF NATIVE HAWAIIANS AND OTHER NATIVE PACIFIC ISLANDERS --

SEC. 718. (a)(1) The Secretary shall conduct a study of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders.

(2) In conducting the study required under paragraph (1), the Secretary shall consult with the Commissioner of the Administration for Native Americans, the Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, the Director of the Indian Health Service, leaders in the field of health care, and

representatives of Native Hawaiians and other Native American Pacific Islanders.

(b) By no later than the date that is 1 year after the date of enactment of the Indian Health Care amendments of 1985, the Secretary shall submit to the congress a report on the study conducted under subsection (a). Such report shall include

--

(1) an assessment of the access of, and barriers to, Native Hawaiians and other Native American Pacific Islanders in receiving physical and mental health care services.

(2) an assessment of the physical and mental health care needs of Native Hawaiians and other Native American Pacific Islanders, and

(3) specific recommendations for the development of a national strategy to address such needs. [p.88-89]

3. Health Promotion and Disease Prevention Center --

* Title VII also authorizes the Secretary of the Department of Health and Human Services to establish a health promotion and

disease prevention demonstration program in conjunction with the University of Hawaii School of Medicine to serve Native Hawaiians. The focus of the program is to emphasize maternal and child health care, prevention of alcoholism, and prevention of child abuse, as well as general health promotion and disease prevention activities. [p.8]

* Section 708 further amends title VII to add a new section 719. Section 719 directs the Secretary of the Department of Health and Human Services to establish as a demonstration project in the State of Hawaii, a Native Hawaiian program for health promotion and disease prevention for the purpose of exploring ways to meet the unique health care needs of Native Hawaiians. The program is to provide necessary preventive-oriented health services, including health education and mental health care; develop innovative training and research projects; establish cooperative relationships with the leadership of the Native Hawaiian community; and ensure that a continuous effort is made to establish programs that can be of direct benefit to other Native American people.

The Secretary is authorized to enter into contracts with Native Hawaiian organizations recognized by the Governor of the State of Hawaii and institutions that serve the needs of Native Hawaiians for the purpose of assisting the program in meeting the objectives described in section 719(b)(1). The Secretary is to submit an annual report to the Congress for each of the fiscal years 1986, 1987, and 1988 on the status and accomplishments of the program during each fiscal year. There is authorized to be appropriated \$500,000 for each of the fiscal years 1986, 1987, and 1988 for the purpose of carrying out the provisions of section 719. [p.36]

* DEMONSTRATION PROJECT FOR NATIVE HAWAIIAN
HEALTH PROMOTION AND DISEASE PREVENTION --

SEC. 719.(a) The Secretary shall establish in Hawaii, as a demonstration project, a Native Hawaiian Program for Health Promotion and Disease Prevention (hereinafter in this section referred to as the 'Program') for the purpose of exploring

ways to meet the unique health care needs of Native Hawaiians.

(b)(1) The Program shall --

(A) provide necessary preventive-oriented health services, including health education and mental health care;

(B) develop innovative training and research projects;

(C) establish cooperative relationships with the leadership of the Native Hawaiian community; and

(D) ensure that a continuous effort is made to establish programs which can be of direct benefit to other Native American people.

(2) The Secretary is authorized to enter into contracts with --

(A) Native Hawaiian organizations recognized by the Governor of Hawaii, and

(B) institutions which serve the needs of Native Hawaiians, for the purpose of assisting the Program in meeting the objectives described in paragraph (1).

(c) The Secretary shall submit to the Congress an annual report for each of the fiscal years 1986, 1987, and 1988 on the status and accomplishments of the Program during such fiscal year.

(d) There are authorized to be appropriated \$500,000 for each of the fiscal year 1986, 1987, and 1988, for the purpose of carrying out the provisions of this section. [p.89]

4. Definitions:

* * Section 104 additionally amends section 338G of the Public Health Service Act to define the term "Native Hawaiian" to mean any individual who has any ancestors that were natives, prior to 1778, of the area which now comprises the State of Hawaii. [p. 9-10]

* * Section 719 also amends section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603) as amended by section 203(b) of the Indian Health Care Amendments of 1985 to add the following new definitions. The term "Native Hawaiian" means any individual who has any ancestors that were natives, prior

to 1778, of the area that now comprises the State of Hawaii. The term "Native American Pacific Islander" means any Native Hawaiian; any of the indigenous people residing in Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or any individual whose direct ancestors are from Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands. [p.36]

* * (m) "Native Hawaiian" means any individual who has any ancestors that were natives, prior to 1778, of the area that now comprises the State of Hawaii.

(n) "Native American Pacific Islander" means --

(1) any Native Hawaiian,

(2) any of the indigenous people residing in Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands; or

(3) any individual whose direct ancestors are from Guam, American Samoa, the Trust Territory of the Pacific Islands, or the Northern Mariana Islands. [p.43-44]

** (2) The term "Native Hawaiian" means any individual who has any ancestors that

were natives, prior to 1778, of the area
which now comprises the State of Hawaii.

[p.47]



The Library of Congress

Congressional Research Service

Washington, D.C. 20540

November 7, 1977

TO: The Honorable Daniel Inouye
Attn: Laurie Lounis

FROM: Lisa Nickerson, Analyst
Government Division

SUBJECT: Representation of Native Americans on reparations or Indian
claims committees, commissions, panels, or boards.

Out of a total current authorized staff of 44 on the Indian Claims Commission, there are two Native American employees: one staff attorney and a secretary to one of the commissioners. In addition, one of the current five commissioners is an Indian.

No figures on composition of past Indian claims commissions or boards are available. According to Louise Perkins of the Office of Tribal Government Services in the Bureau of Indian Affairs, to her knowledge no such figures have ever been collected or compiled. Staff members of the Indian Claims Commission were also unaware of any such statistics.

If I may be of further assistance, please call me at 426-5821.

LN/gta

December 24, 1980
MEMORANDUM

TO: File
FROM: Robbie
RE: Signing of Native Claims bill

Gregg Kakesako of the Star-Bulletin called and asked for the Senator's comments on the signing of H.R. 7217, which includes the Native Claims Commission. After talking to the boss, I gave Gregg the following:

The signing of this measure by the President brings to a close the first phase of this quest for Justice by the Native Hawaiians. The important phase will now begin; the selection of the Commission members, the investigation and hearings, and recommendations to Congress. The third and final phase will be the reaction of Congress to the Commission's recommendations.

Although I am an optimist, this is not the time to celebrate. There is too much work that remains to be done.

I also confirmed for Gregg that the bill had indeed been signed after checking with the White House bill clerk.

I issued no other press release since the bill was actually signed Monday and by the time we got something out to the other media it would have been too late. Attached is the Kakesako article that appeared yesterday afternoon.

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- e. Matayoshi Has Degree in Business-A-3--Mayor Matayoshi recd. MBA on Sunday. He begun taking courses in Hilo since early 1970s in order to take mind of county affairs--his wife, Mary, director of Coll. of Continuing Education at UH-Hilo made arrangements in early 1970s for Manca profs to fly to Hilo on wkends to teach non-degree, graduate level business courses.
- f. Sen Yee Says Fish Law is Working Well-A-9--Wade Yee says 1975 Fishery Conservation and Mgt. Act. is working out well as far as Hawaii, Guam and American Samoa are concerned.
- *** g. Rep. Tony Kunimura Heads Finance Panel-A-12--SeeTelArt.

Carter Signs Bill Establishing

Bull. 12/23/80 Frank P.

By Gregg K. Kakesako
Star-Bulletin Writer

Without fanfare, President Carter yesterday signed into law legislation that will establish a presidential commission to determine whether the U.S. government should pay for Hawaii lands it took when the Hawaiian monarchy was overthrown in 1893.

But U.S. Sen. Daniel K. Inouye today cautioned that there is still much to be done before any reparations can be made.

"Although I am an optimist, this is

not the time to celebrate, there is too much work that remains to be done."

The nine-member commission is supposed to begin its deliberations within 90 days and will have a year to come up with a draft of its recommendations. The federal law establishing the Native Hawaiian Study Commission allows only three of its nine members to be residents of Hawaii.

The draft recommendation will be circulated for public comment for six months before a final version is

sent to Congress and the White House.

ULTIMATELY, it will be up to Congress to determine whether native Hawaiians will be compensated for the lands seized by the United States.

Inouye added that the signing of the native claims bill by the president "brings to a close the first phase of this quest for justice by the native Hawaiians."

"The important phase will now begin: the selection of the commission members, the investigation and hearings and the recommendations

Native Claims Commission

to Congress. The third and final phase will be the reaction of Congress to the commission's recommendations."

Gov. George B. Ariyoshi expressed pleasure over what he described as "the president's historic decision" and said he was grateful for the efforts of Hawaii's congressional delegation.

The governor also said that "this was the first step in gathering all the facts in order for Congress to make a determination regarding reparations to the Hawaiian people."

Hawaiian activists, who at one

time were demanding \$1 billion in cash and the return of 2.5 million acres of land valued at \$34 billion, began the move for congressional legislation six years ago.

SINCE THEN, the Hawaiian reparations bill has undergone several modifications to appease congressional critics.

In its present form the new federal law does not admit that the U.S. government participated in the revolution that overthrew the Hawaiian monarchy. The size of the commission and its composition also have been cut down.

At one time the native claims commission was supposed to comprise 15 members with a majority of them being native Hawaiians. Sending to congressional criticism of such a "stacked" panel, the bill was rewritten.

The bill finally cleared the Senate Dec. 4 when Sen. Spark Matsunaga was able to attach it to a measure that would establish the Moikoi Kalaupapa leprosy settlement as a national historic park and allow federal funding for the Falls of Clyde park as long as it remains in Hawaii.

MEMORANDUM

November 19, 1980

TO: Senator

FROM: Laurie

RE: Chronology/Native Hawaiian Claims Legislation

93rd Congress

H.R. 1566 - Matsunaga/Mink - providing for a final monetary settlement of Native Hawaiian claims against the United States.

June 27, 1974 - Introduced and referred to the House Interior Committee

No further action

94th Congress

S.J. Res. 155 - Inouye/Matsunaga - providing for the establishment of a Native Hawaiian Claims Settlement Study Commission.

December 18, 1975 - Introduced and referred to the Senate Committee on Energy and Natural Resources

September, 1976 - Reported to the Senate Floor

No further action before adjournment

95th Congress

S.J. Res. 4 - Inouye/Matsunaga - Hawaiian Native Claims Commission Act

January 10, 1977 - Introduced and referred to Senate Energy Committee (Identical House bill, H.J. Res. 526, introduced Oct. 27, 1977, referred to House Interior Committee)

July 6-7, 1977 - Joint House/Senate Hearings in Hawaii

October 17, 1977 - Reported to Floor by Senate Committee

October 20, 1977 - Passed Senate by a voice vote

January 31, 1978 - Reported to House Floor

May 23, 1978 - Failed to receive 2/3 majority required under suspension calendar

July 12, 1978 - Rule Resolution reported to Floor

September 8, 1978 - Final Floor Action - ordered recommitted to the Committee by a vote of 190-148

96th Congress

S. 2131 - Matsunaga/Inouye - Hawaiian Native Claims Study
Commission Act
H.R. 8311 - Burton - Keith Sebellius Lake

November 11, 1980 - Johnson amendment to Hawaii National
Parks bill accepted by House Interior
Committee
November 12, 1980 - Matsunaga amendment (Johnson version)
rejected by Senate Energy and Natural
Resources Committee
December 4, 1980 - Matsunaga ~~amendment~~ offered to Hawaii
National Parks bill on floor and accepted
December 5, 1980 - Amendment accepted by full House
December 22, 1980 - Hawaii National Parks bill signed by
the President (Public Law 96-565)

H.R. 15666	Would have provided \$50 million a year for 20 years to a "Native Hawaiian Corporation" Based on the Alaska Native Claims bill.
S.J.Res 155	Would have established a 15 member commission with 8 native Hawaiian members Three year study period
S.J.Res 4	Same basic bill as above when it passed Senate House amended to allow only 7 native Hawaiian members Preamble was subject of much dispute in the House because it arguably admits U.S. liability.
Present Commission	Nine members Native claims become native Hawaiian needs 1½ year study Expenditure not set out in statute

Note: This was a compromise worked out by
Rep. Jim Johnson (R.-Colo.). It was in-
troduced as a bill in both the House and
Senate as a precaution. An attempt to add
it to the Hawaii National Parks bill in
Committee failed, but it was accepted on
the floor. The House then accepted it
as an amendemnt to the Parks bill which
had originally come form there (H.R. 7217)



University of Hawaii at Manoa

Hawaiian Studies Program

Porteus Hall 432 • 2424 Maile Way

Honolulu, Hawaii 96822

Telephone (808) 948-6825 / Cable Address: UNIHAW

18 August 1980

To: Senator Daniel K. Inouye
105 Russell Senate Office Building
Washington, D.C. 20510

Abraham Pi'ianai'a
From: Abraham Pi'ianai'a, Director and *Kiyoshi Ikeda* Kiyoshi Ikeda, Chair, Program Committee

Subject: Some Notes and Suggestions Concerning the Work of the Native
Hawaiian Education Commission.

Both Kiyoshi and I have discussed with much care the question of how we in the University (through the Hawaiian Studies Program and through the Social Science Research Institute within the National Institute of Mental Health Research Training Program) can aid in the development of the highest quality research findings to assist the Commission to complete its legislative mandates. We note the following considerations in suggesting both a structure and process of commissioning the research work, such that it would benefit the Native Hawaiian children and the community in major ways. We first detail the institutional charge to the Hawaiian Studies Program in assisting in review of educational and research efforts involving Native Hawaiian concerns. We then will detail the commitment of both the Hawaiian Studies Program and the NIMH-SSRI Program in Research Training in fostering the kind of research and development training and outcomes of value to the Native Hawaiians. Finally, we propose a structure and process to assist the work of the commission in developing and completing its research-based missions for acting in behalf of Native Hawaiian children and their quality education.

Suggestions/Recommendations for Native Hawaiian Education Commission Work. Given the legislative mandate for the Native Hawaiian Education Commission, we recommend the following arrangements to ensure the highest quality research outcomes to inform the final recommendations emerging from the Commission:

1. Recognition of Hawaiian Studies Interest in Native Hawaiian Education Work. As per documentation of the institutional charge of the Hawaiian Studies Program at the University of Hawai'i at Manoa, the Commission should be represented by person(s) who have invested directly in the development of quality educational programs and opportunities in behalf of Native Hawaiian children and their families. The best representative, in this view, would be the Director of the Hawaiian Studies Program (or the Director's representative when required) to enable University-Community-Legislative support and coordination where required.

2. Appointment of a Technical Advisory Board to Complete Mandated Research. We recommend a Technical Advisory Board be appointed to begin the review of the research mandates and the technical feasibility of completing research-based mandates within the legislated period of commission work and its completion. In addition, this Advisory Board can assist in drafting Requests for Proposals and in reviewing submitted Proposals for technical quality and organized research support. We propose that the First Convener without compensation (to assist formation of the Advisory Board and to set Specific Goals and Assignments for Research) be the Principal Investigator of the National Institute of Mental Health Research Training Program (Kiyoshi Ikeda). This recommendation is based on the detailed background work which has co-involved the Hawaiian Studies Program staff and faculty and the participants in the Research Training Program in targeting directly on Native Hawaiian Education/Training/Employment Needs and Outcomes. Professor Ikeda, as Chairperson of the Hawaiian Studies Program Committee, also is the direct link to drawing together Hawaiian Studies faculty, staff, graduate students, and students who can contribute technical expertise and labor where qualified and required to complete Commission research mandates. A major effort should be to assure that qualified Native Hawaiians continue to be educated/trained/employed in research affecting educational outcomes. The NIMH Program continues to make an affirmative co-commitment with Hawaiian Studies and the Social Science Research Institute at the University to develop both research of quality and research training and education of quality in behalf of Native Hawaiians and other populations of need in Hawai'i.

3. Funding on Native Hawaiian Education Commission Research be Housed in the University with Hawaiian Studies-Social Science Research Institute Oversight. In relation to past developments and contributions to house the cumulative data series bearing on Native Hawaiian Quality of Life Indicators in the Social Science Research Institute (with Hawaiian Studies interest and oversight in forwarding such efforts), we recommend that research funding for both in-house and contracted research involving Commission research be housed in the University with Hawaiian Studies-SSRI oversight.

SSRI has the staff and software capability to archive, retrieve, and analyze major base-line and new data series in organized fashion. Through the NIMH Program, faculty, postdoctoral and predoctoral fellowship holders, and undergraduates in the Hawaiian Studies Program are organized and trained to undertake specific Commission review and where qualified, targeted research efforts in comprehensive, systematic fashion.

Through the Technical Advisory Board, major reviews and decisions can be made regarding those research assignments which can be contracted out for completion and those which can be completed in-house. The advantages of this set of arrangements are as follows:

a. The University and the Specific Programs/Research Units Represent the Most Objective, Technically Skilled Shop for Commission Research. The basic mission of the organized units in question is to produce knowledge and research training of the highest quality, whether basic or applied.

b. These Units Will Assure Effective Training and Placement of Qualified, Trainable Native Hawaiians to Evaluate Educational Outcomes of Direct Interest. The Hawaiian Studies Program is committed to affirmative education of Native Hawaiian students at the same time that it encourages co-education with all interested faculty and students. The NIMH Research Training Program and the Social Science Research Institute has been and is committed to increasing the base of qualified Native-Hawaiian researchers to co-research quality of life investments and outcomes involving Native Hawaiians and others in Hawai'i.

c. These Units Have the Technical Infrastructure and Support Staff to Implement Commission Mandates for Research. The cumulative technical experience and focused work in behalf of improvement of Native Hawaiian Education/Training/Employment and related Quality of Life Programs and Impacts can be documented in detail upon request. Moreover, we have principal administrative-executive staff capability to coordinate cooperatively with all State and private agencies and organizations involved in the schooling of Native Hawaiian children, such that the extremely sensitive matters of good faith compliance in meeting mandated/legislated educational programs efforts can be evaluated with care. Moreover, such staff and supportive advisory bodies and parties focus less on the problem of "blame" for assumed/documented "shortfalls" in quality education, but more on the development/maintenance of effective approaches to quality education involving Native Hawaiian children. What may work in the case of such children may very well assist all other children within this diverse polycultural setting.

BACKGROUND DETAIL IN JUSTIFICATION OF SUGGESTIONS/RECOMMENDATIONS

1. The Charge of the Hawaiian Studies Program. The program, through its Director/Staff and through the advisory Hawaiian Studies Program Committee makes every effort to enable quality research and scholarship/policy developments to occur within the Manoa campus and allied units. Specifically, it takes the following charges with serious intent:*

"A major point of contact between the community and the university in matters concerning Hawaiian affairs and inquiries, and thereby serving as an informed participant within the university in matters requiring attention in some form." (page V)

"Development of Institutional Capacity to Aid in Problem-Solving. To establish a clear focal point within the University through which the community, especially Native Hawaiians, can participate in and express their concerns (in academically structured forms) in the preservation, study, and elaboration of Hawaiian culture and history.

To aid in development of research and development capacity for community problem-solving and for systematic assessment of problem-solving efforts within best available analytical work and methodologies." (page 2)

"High Level, Basic Research - Scholarly and Community-Oriented. To encourage and facilitate a continuing program of high level basic research in the area of Hawaiian Studies, including that required by community organizations." (page 5)

There are several reasons for this interest and effort.

a. Continuing Review of DOE and Related Educational/Training/Employment Program. A major reason for encouraging such arrangements is that the Director and the program are in a critical position to recommend and to assist interested parties who wish to improve the educational and related quality of life outcomes involving Native Hawaiians to meet with the best trained/best qualified faculty and staff within the University to assure quality work. We take this responsibility as critical in assuring that work is grounded in full and relevant knowledge of past work which bears on present efforts and also will be able to focus best talents for work. Abe, for example, is charged by the Department of Education in assisting in the review of Hawaiian education programs established and being reviewed for adoption within the DOE. The trust given to assure quality review by the Director and the Program participants, where called for, indexes the kinds of review functions involved.

b. Continuing Development of Student Talent/Skills for Research/Program Development. Another factor in developing such review arrangements is the continuing interest in developing a base of trained and skilled students who will later be able to replace us older participants in the development of both knowledge and educational and related social programs of benefit to Native Hawaiians and to others who reside in Hawai'i. Through pilot-seed monies in the Hawaiian Studies Program, we have been able to assist faculty and staff to train undergraduate and graduate students (and through the NIMH

* From A PROPOSAL TO ESTABLISH THE HAWAIIAN STUDIES PROGRAM AT MANOA.
Approved by the Board of Regents, November 1979.

Research Training Program) post-doctoral fellowship holdees to pay direct and intensive attnetion to long-standing needs involving the Native-Hawaiian community.

(1) The Chief Justice's "Social Role of the Courts" Project. We have been instrumental in providing the critical mass of resources and faculty-student and community interest and committment to begin the needed and long-term work in examining how, why, and where the legal system in Hawai'i has been changing into over time. The number of Native-Hawaiian and local students and faculty who have become involved and committed to examining the fate and status of Native Hawaiians and others who have served in the judiciary or have been served the courts over time (from 1850 onward) is very large. These participants are becoming more fully grounded in the enduring qualities of the Native Hawaiian community in influencing and transforming the legal system at the same time that new concepts, structures, and processes have been imposed upon that community. Students in the law, in the language and arts of Hawaiians, in the social sciences and natural sciences, have become more fully prepared to do skilled research at both qualitative and quantitative levels because of this type of effort. Abe serves as Advisory Board member to this project to assist the Chief Justice's project staff and the participating faculty and students from the University.

(2) Development of Quality Research Related to Native Hawaiian Educational and Training/Employment Needs. In addition to assisting the Univeristy and the Native Hawaiian Community to re-examine its heritage and history through the above-described project and related kupuna assemblies/conferences and Symposia, the Hawaiian Studies Program has been directly involved in directing students, faculty, and community persons to assist in projects of research and research training involving the NIMH Program within the Social Science Research Institute. The most direct research training outcomes related to the NIMH-SSRI effort has been the continuing work-study employment of Native Hawaiian background students in both studies of Native Hawaiian Educational and Training/Employment Needs (copies for your information) and in the Follwo-Up of University and High School Students. Earlier efforts to recruit interested and potential graduate students of Native Hawaiian heritage to be trained directly for such efforts and for the legal studies project above did mean early attention and development at the Undergraduate level. Changes in plans have precluded such placements at this time. With the projected commission research mandate, we would be able to provide research training opportunities to both undergraduate and graduate/post-graduate persons of Native-Hawaiian backgrounds and interests.

Work Focused Directly on Commission Mandate(s). Preliminary work on the level and type of expenditures involving Federal funding in school districts/schools with high concentrations of Native Hawaiian children are already collected and are being prepared for tabulation and analysis. (See draft proposal attached.) Ikeda also is in touch with persons/research shops which have been focusing on those kinds of Federal educational programs intended to assist lower income Native Hawaiian and other children in the public schools. Moreover, there is now trained capability to target in ESSA and Title I and Special Education project funding and outcomes at both the postdoctoral and predoctoral levels. In addition, we have been exploring the development of data base development and management which would be both

comprehensive and provide person-based monitoring to examine both short and long-term impacts of educational and other training/employment. With such a data base, routine and special reports and analyses can be made to assist educators and those parties involved in setting policies and funding to evaluate outcomes.

Attachments (in separate packet):

- 1) Proposal to Alu Like re Federal and State Supplemental Expenditures Targeted At Schools with High Concentrations of Native Hawaiians -Jackson-GIkeda
2. Illustrative Vitae of Selected NIMH Postdoctoral Awardees - Hennesy, Jackson, George Ikeda (no relation to Kiyoshi Ikeda)
3. A Report on Educational, Employment, and Training Needs of Native Hawaiian Youth - NIMH/Alu Like Project, GIkeda and J. Jackson
4. Proposal For the Hawaiian Studies Program (approved by the University of Hawaiian Board of Regents, November, 1979) A. Pi'anai'a, Director, Kiyoshi Ikeda, Chair of Advisory Committee

TO: File

FROM: Robbie

It is CRS' opinion that the President does have the authority to dismiss the Commission.

According to CRS, the President has complete authority, subject to Civil Service laws to dismiss executive branch employees. An attempt by Congress to restrict the executive power may be unconstitutional.

On the other hand, independent agencies like the FTC, can be handled differently. Congress may require that dismissal be "for cause" only, as an example.

The difficulty comes when the statute is silent, as is the case here. The matter is further complicated by the hybrid nature of the Commission--it has both legislative and executive attributes. However, CRS feels that the final result will be that the power to appoint implicitly includes the power to dismiss. If the President does not have this power, who does?

CRS is expecting a lot of these questions because apparently the President is moving to dismiss a number of Commissions.

NOTE: In my view this is a very conservative opinion and ignores the issues surrounding the conflicts between two branches of government.

Raymond Natter 287-7965

United States Senate
Office of the Democratic Leader
Washington, D.C. 20510

March 19, 1981

The Honorable Daniel K. Inouye
United States Senate
Washington, D.C. 20510

Dear Danny:

I received your letter of March 16, expressing your concern about President Reagan's discharging the members of the Native Hawaiians Study Commission and the possibility that he is letting the Commission expire. In view of this, I asked Michael Davidson, the Senate Legal Counsel, to review Section 302 of Public Law 96-565.

According to the Legal Counsel, President Reagan has the discretion to terminate the memberships on the Commission that President Carter appointed shortly before leaving office. However, as you know, Section 302(e) of Public Law 96-565 requires the President to call the first meeting of the Commission not more than ninety days after the date of enactment of this title (which was December 22, 1980). The nine former members, appointed by President Carter, had never had a meeting.

President Reagan is statutorily required to call the first meeting by March 22, 1981. The statute itself does not specify whether the first meeting must be held by that date or whether he must merely announce the time of the first meeting in the future by that date. In either case, it would seem to be self-evident that the President must appoint the nine members in order for them to meet.

If the President does not act by March 22, then it seems to me it is incumbent upon the Senate to explore the legal remedies available to it.

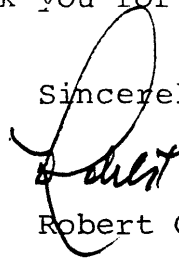
In view of the shortness of time, I would suggest that the Chairman and Ranking Minority Member of the Energy and Natural Resources Committee quickly send the President a letter expressing the following:

1981 MAR 19 PM 4:14

(1) that the Committee trusts the President will appoint the nine members to that Commission by March 22, 1981, to satisfy its statutory mandate; (2) that the President is required by Section 302(e) of Public Law 96-565 to call the first meeting of the Commission by March 22, 1981; and (3) that the Committee is very interested in the final report and recommendations which the Native Hawaiians Study Commission is required by law to submit to two Congressional committees.

I share your concern about the dangerous precedent that would be set should the President be permitted to ignore statutory requirements and terminate the Commission by failing to appoint members. Thank you for bringing this matter to my attention.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Byrd", is written over the typed name. The signature is fluid and cursive.

Robert C. Byrd



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-202482

April 7, 1981

The Honorable Spark M. Matsunaga
United States Senate

Dear Senator Matsunaga:

We refer to your letter of March 12, 1981, in which you ask whether the President's dismissal of the nine members of the Native Hawaiians Study Commission was improper.

The Native Hawaiians Study Commission was established by Title III of Public Law 96-565, December 22, 1980, 94 Stat. 3321, 3324. The purpose of this Commission is to conduct a study of the culture, needs and concerns of Native Hawaiians. You advise us that on January 19, 1981, President Carter duly appointed the Commissioners and designated the Commission's Chairman and Vice-Chairman. You further advise that President Reagan dismissed the nine Commissioners on March 11, 1981, and you ask whether such dismissal is improper.

President's Removal Authority

With regard to appointments Article II, Section 2, clause 2, of the United States Constitution provides in pertinent part as follows:

"* * * [The President] shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments."

The Constitution is silent concerning the President's power to remove civil officers. However, it is well established that the President's power to remove executive officers is generally incident to his power of appointment. Shurtleff v. United States, 189 U.S. 311 (1903) and Myers v. United States, 272 U.S. 52 (1926). As stated by the Court in Myers at 117:

"The vesting of the executive power in the President was essentially a grant of the power to execute the laws. But the President alone and unaided could not execute the laws. He must execute them by the assistance of subordinates. * * * As he is charged specifically to take care that they be faithfully executed, the reasonable implication even in the absence of express words, was that as part of his executive power he should select those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible. * * *"

The Court in Myers further states at 119 that the reason for this long-standing principle of constitutional and statutory construction, that the power of removal is incident to the power of appointment, is that those in charge of and responsible for administering the functions of Government who select their executive subordinates, need to have the power to remove those whom they appoint in order to meet their responsibility. Thus, in Myers, the Court held that the Congress could not limit the President's removal power by requiring that the Senate assent to the President's removal of postmasters who had been appointed by the President, by and with the advice and consent of the Senate. The Court in Myers did not answer the question as to whether by placing the power of appointment in the President alone, the Congress could make the President's removal power more subject to congressional restriction. However, the Court stated that if this issue were addressed it might be difficult to avoid a negative answer. Myers at 161-162. In Humphrey's Executor v. United States, 295 U.S. 602 (1935) the Supreme Court limited the application of the Myers case to all "purely executive officers." The Humphrey case involved the President's removal for political reasons of a member of the Federal Trade Commission (FTC). The act creating the FTC provided for appointment of the FTC members by the President, by and with the advice and consent of the Senate. The act also provided for a specific term of office and expressly provided that any commissioner "may be removed by

FTC

the President for inefficiency, neglect of duty, or malfeasance in office* * *." The Court stated that the language and legislative history of the act demonstrated the congressional intent to create a body which would be independent of executive authority, except in its selection, and free to exercise its judgment without the leave or hindrance of any other official or department of the Government. In holding that Myers only extended to all "purely executive officers" so that such case would not control its determination, the Court in Humphrey stated at page 627:

"The Office of a postmaster is so essentially unlike the Office now involved that the decision in the Myers case cannot be accepted as controlling our decision here. A postmaster is an executive officer restricted to the performance of executive functions. He is charged with no duty at all related to either the legislative or judicial power. The actual decision in the Myers case finds support in the theory that such an officer is merely one of the units in the executive department and hence, inherently subject to the exclusive and illimitable power of removal by the Chief Executive, whose subordinate and aid he is. * * *"

The Court found that in making investigations and reports thereon for the information of Congress the FTC acts like a legislative agency and, that under its authority to act as a master in chancery, it acts as an agency of the judiciary. The Court further found that to the extent that the FTC exercises any executive functions--as distinguished from executive power in the constitutional sense--it does so in carrying out its quasi-legislative or quasi-judicial powers or as an agency of the legislative or judicial departments of the Government. The Court held that the authority of Congress, to create quasi-legislative or quasi-judicial agencies to discharge duties independent of executive control could not be doubted, and that such authority included the power to fix the period during which the individuals appointed to those agencies continue in office and to forbid their removal except for cause. Thus, the Court ruled that the Congress had the authority to condition the

President's power to remove members of the FTC so that the President's removal action was improper. However, the Court refused to set forth a general rule concerning the President's removal power and stated that between the decision in Myers sustaining the unrestrictable power of the President to remove purely executive officers, and its ruling that such power does not extend to removal of FTC members, there remained a field of doubt. Cases falling within that field of doubt were for future consideration.

War Claims Commission

In Wiener v. United States, 357 U.S. 349 (1958) the Supreme Court considered the President's removal, for political reasons, of a member of the War Claims Commission established by the War Claims Act of 1948. The act provided that the Commissioners were to be appointed by the President, by and with the advice and consent of the Senate. The limitation on the Commission's life, 3 years after the expiration of the time for filing claims, was the mode by which the tenure of the Commissioners was defined and the act contained no provision for the removal of a Commissioner. The Court stated the essence of the Humphrey case was that it drew a sharp line of cleavage between those officials who were part of the executive establishment and were thus removable under the President's constitutional powers, and those who are members of a body "to exercise its judgment without the leave or hindrance of any other official or any department of the government." Humphrey at 625-626. The Court further stated that this sharp differentiation arises from the difference in functions between those officials who are part of the executive establishment and those whose duties require absolute freedom from executive interference. In view of the legislative establishment of the War Claims Commission as an adjudicatory body "not subject to review by any other official of the United States or by any other Court* * *" the Court held that the Constitution did not provide the President with the power of removal of the Commissioners on the basis that he desired his own appointees to serve and that such power could not be implied simply because the War Claims Act was silent on the matter of removal.

While the holdings in Humphrey and Wiener were based on the particular statutes under consideration these cases established that the President's unrestricted removal power is clear only with regard to "purely executive officers."

The Native Hawaiians Study Commission

An examination of the pertinent provisions of the Native Hawaiians Study Commission shows that, except for its selection, the Commission is independent of control or influence by the President and that its function is essentially as an aid to the legislative power in that it is to gather information and make recommendations to the Congress.

Section 302 of Public Law 96-565, supra, provides that the Commission shall be composed of nine members appointed by the President who shall also designate the Chairman and Vice-Chairman of the Commission at the time of appointment. Furthermore, this section provides that the President shall call the first meeting of the Commission not more than 90 days after the date of enactment of Title III. The law contains no provision with regard to the removal of the Commissioners or the filling of vacancies on the Commission.

Subsection 303(a) provides that the Commission is to conduct a study of the culture, needs, and concerns of the Native Hawaiians. Subsection 303(b) directs the Commission to conduct hearings and take such other actions it considers necessary in order to obtain full public participation in its study. Subsection 303(c) provides that within 1 year of its first meeting, the Commission shall publish a draft report of the study's findings and shall distribute copies of the draft report to appropriate Federal and State agencies, Native Hawaiian organizations and, upon request, to members of the public. It is to solicit written comments from those who receive the draft report. Subsection 303(d) provides that after taking into consideration any comments submitted, the Commission shall issue a final report of the study, together with copies of all written comments submitted, to the President and to the Senate Committee on Energy and Natural Resources and to the House Committee on Interior and Insular Affairs. Section 304 provides that except as provided in subsection (b) of section 307, upon the expiration of 60 days after the submission of its report, the Commission shall cease to exist. Subsection 307(b) provides in pertinent part that a reasonable portion of the funds appropriated for the Commission's study is to be reserved for the purpose of paying the transportation, subsistence, and reasonable expenses of the Commission members in testifying before Congress with respect to their duties and activities while serving on the Commission or on matters

involving the study's findings after the expiration of the Commission. Subsection 303(e) provides that the Commission shall make recommendations to the Congress based on the findings and conclusions of its study.

Your remarks on the floor of the Senate during its consideration of Title III of Public Law 96-565 clearly support the view that the essential purpose of the Native Hawaiians Study Commission is to provide the Congress with information which would provide a basis for taking appropriate action with regard to Native Hawaiians. 126 Cong. Rec. S. 11567 (December 4, 1980). Also during the consideration of Title III in the House of Representatives, Representative Burton stated that it was his sincere hope that the findings and recommendations of the Commission relative to the past and present problems of Native Hawaiians would enable the Congress to establish a base upon which the Congress could decide on the best possible approach to assist the Native Hawaiians. 126 Cong. Rec. H. 12137 (December 5, 1980). The limited legislative history of Title III does not contain any other comments concerning the function of the Commission.

We note that since Title III vests in the President alone the power to appoint the Commissioners and since Title III is silent as to the removal of the Commissioners or the filling of vacancies, it may be argued that the Congress intended that the President have broad authority to determine the composition of the Commission and that such authority would necessarily include the power of removal. However, in the absence of legislative history which would support such a view, we are not persuaded that the Congress intended that the President have the power to remove the Commissioners. Accordingly, we believe that in view of the express provisions of Title III and the pertinent legislative history, it can be concluded that the role of the Commission is to act as an aid to the Congress and that except for the manner of selection thereto, the Commission is essentially independent of the President. Title III provides that the Commission shall provide copies of its draft report to appropriate Federal agencies, which presumably includes executive branch agencies, and that it shall solicit written comments therefrom. However, in context, these provisions do not subject the Commission to executive branch control. In addition, the Commission's providing the President with a copy of its final report may be viewed as no more than a courtesy by the Congress since Title III does not provide that the Commission will make recommendations to the President.

Davidson -
CRS view

GAD view

Although Buckley v. Valeo, 424 U.S. 1 (1976) did not involve the issue of the President's power of removal, it serves to support the position that the nature of the functions performed by the Commission are in aid of the legislative power so that the Commission may be viewed, at the least, as acting in a quasi-legislative capacity. The Buckley case involved the validity of appointments to the Federal Election Commission where the Federal Election Act provided that only two voting Commission members were to be appointed by the President and the remaining voting members were to be appointed by the designated congressional officers. The court held at 137-138 that the Commission as constituted could properly carry out the following functions which it viewed as merely an aid of the legislative function.

"Insofar as the powers confided in the Commission are essentially of an investigative and informative nature, falling in the same general category as those powers which Congress might delegate to one of its own committees, there can be no question that the Commission as presently constituted may exercise them. Kilbourn v. Thompson, 103 U.S. 168 (1881); McGrain v. Daugherty, 273 U.S. 135 (1927); Eastland v. United States Servicemen's Fund, 421 U.S. 491 (1975). As this Court stated in McGrain, supra, at 175:

'A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information--which not infrequently is true--recourse must be had to others who do possess it. * * *'

We note that it may be argued that the members of the Native Hawaiians Study Commission are not "Officers of the United States" but are individuals carrying out an exclusively legislative function. Such a view would appear to further cast in doubt the President's power to remove the Commissioners.

In Buckley, the Court stated at 125-126 as follows:

"We think that the term 'Officers of the United States' as used in Art. II, defined to include 'all persons who can be said to hold an office under the Government'* * * is a term intended to have substantive meaning. We think its fair import is that any appointee exercising significant authority pursuant to the laws of the United States is an 'Officer of the United States,' and must, therefore, be appointed in the manner prescribed by § 2, cl. 2, of that Article."

To the extent that the Election Commission's functions fall in the same general category as those powers Congress may delegate to one of its own committees, the Court held that the Commission's functions did not involve the powers of "Officers of the United States" who were defined as those who exercise "significant authority under the laws of the United States." Furthermore, in Buckley the Court stated at pages 138-139 as follows:

"Congress may undoubtedly under the Necessary and Proper Clause create 'offices' in the generic sense and provide such method of appointment to those 'offices' as it chooses. But Congress' power under the Clause is inevitably bounded by the express language of Art. II § 2, cl. 2, and unless the method it provides comports with the latter, the holders of those offices will not be 'Officers of the United States.' They may, therefore, properly perform duties only in aid of those functions that Congress may carry out by itself, or in an area sufficiently removed from the administration and enforcement of the public law as to permit their being performed by persons not 'Officers of the United States.'"

Accordingly, under Buckley Congress may provide the method of appointment to "offices" in the generic sense. Presumably this includes appointment by one of the modes set forth in Article II, Section 2, Clause 2, of the Constitution. In the light of the functions of the Commission it is possible to regard the Commissioners as not being Officers of the United States so that the Congress, if it so chose, could have vested

in itself the exclusive power to appoint the members of the Commission. Such a view would appear to compel a restrictive view of the President's power to remove the Commission members. We note that in B-194074, March 26, 1979, we held that the National Commission on Air Quality was a legislative rather than an executive branch agency notwithstanding that 7 of its 11 members were appointed by the President. The basis of this decision was that its reporting and advisory responsibilities are exclusively to Congress and that it has no regulatory or executive powers.

Since the Native Hawaiians Study Commission's duties and responsibilities are to aid the Congress by providing information on the needs and concerns of Native Hawaiians and to make recommendations thereon and since Title III does not provide the President with the authority to direct the action of the Commissioners, it appears that the Commissioners are not "purely executive officers" such as those over whom the President would enjoy an unrestricted power of removal.

We must note, however, that the decisions in Humphrey and Wiener were based on the particular statutes there involved and that while those decisions cast considerable doubt on the power of the President to remove officials who are essentially exercising non-executive powers independent of the executive departments, the Supreme Court has not established a general rule with regard to the President's removal power. In fact, the court cautiously restricted the decisions to cases involving similar facts.

As indicated above the Native Hawaiians Study Commission is appointed by the President alone with no provision for congressional participation. Nor is any provision made for removal of members or for the filling of vacancies. Although this might be viewed as a delegation of authority to the President to control the composition of the Commission, we know of no court case which would support the application of such a conclusion to individuals appointed to perform a legislative function.

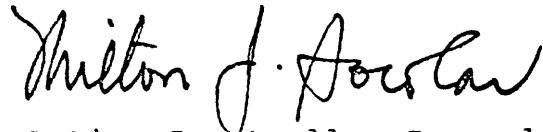
Finally, the President apparently has not appointed members to the Commission to replace those removed. Especially, in view of the requirement that the Commission meet within 90 days of the enactment of Public Law 96-565, the removal of the Commissioners appears to have thwarted, at least temporarily,

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the purpose of the legislation. However, the ultimate result of the President's action is not clear at this time.

We trust that the above information serves the purposes of your inquiry.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Eisenhower". The signature is written in dark ink and is positioned above the typed name.

Acting Comptroller General
of the United States