Museum's new artifact guideline makes false claims

By Dr. Guy H. Kaulukukui

Editor's note: Dr. Guy H. Kaulukukui is a former vice president for cultural studies at Bishop Museum. The views expressed in this community discussion column are those of the author and do not necessarily reflect the views of the Office of Hawaiian Affairs.

The Native American Graves Protection and Repatriation Act (NAGPRA) is a federal law intended to facilitate the return of human remains, funerary objects, sacred objects and objects of cultural patrimony to Native Hawaiians and Native Americans. The act corrects an imbalance that has favored museums, such as Bishop Museum, over Native Hawaiians for more than a century.

Bishop Museum made recent changes to its NAGPRA guideline, including controversial provisions that stretch the limits of key definitions and make false assertions regarding the contents of the museum's collection of Hawaiian cultural objects. The museum now asserts that it is a Native Hawaiian organization as defined by NAGPRA, and as such able to place claims on objects that are covered by the act. This is a weak assertion, because in a fair and impartial review, it will be difficult for the museum to prove that as a primary purpose it serves and represents the interests of Native Hawaiians in a manner distinguishable from its service to any other ethnic group.


Dr. Kaulukukui

The act defines a Native Hawaiian organization as a group that can demonstrate that it: a) serves and represents the interests of Native Hawaiians; b) has expertise in Native Hawaiian affairs; and c) has as a primary and stated purpose the provision of services to Native Hawaiians.

NAGPRA defines the cultural affiliation of a Native Hawaiian organization as applying to groups that can establish a connection to the items they are claiming by the following criteria: a) geographical; b) kinship; c) biological; d) archaeological; e) linguistic; f) folklore; g) oral tradition; h) historical evidence; or i) other evidence or expert testimony.

Bishop Museum asserts that it has a cultural affiliation to Hawaiian cultural items in its collection. Again, this is a weak assertion because the museum would have a difficult time demonstrating its cultural affiliation by any of the above criteria, except in the singular case of the objects in its founding collection. This collection is comprised of the personal belongs of Princess Pauahi, including bequests from members of the Kamehameha family that preceded her in death.

Also, the act describes sacred objects as having religious significance or function in the continued observance or renewal of a religious practice by present-day Native Hawaiians. The museum asserts that it does not have sacred objects as defined by NAGPRA in its collection. This is a false assertion because the Lono image in the museum's collection is a sacred object due to the renewal of the celebration of Makahiki and the worship of Lono. Other images of Hawaiian gods are also sacred objects if they are needed for worship. The museum cannot determine whether an item is or will be a sacred object. Native Hawaiians make this determination as we continue to renew the practice of our traditional religion and the celebration of our numerous gods. Bishop Museum must forever respond to our claims, and if it cannot demonstrate its right of possession over these images, the museum must repatriate them to the claiming organization.

The act defines right of possession as relating to an object obtained with the voluntary consent of an individual that had the authority to give the object away. Bishop Museum asserts that it has the right of possession of all unassociated funerary objects in its collection. This is another false assertion, because in order to make this claim the museum must demonstrate that the original acquisition of the unassociated funerary object was made from an individual that had the

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Experts validate legitimacy of international law case

By David Keanu Sai

Editor's note: David Keanu Sai served as lead agent for the acting Council of Regency in the Larsen case, and is presently a Ph.D. candidate in political science at UH Mānoa, specializing in international relations. The views expressed in this community discussion column are those of the author and do not necessarily reflect the views of the Office of Hawaiian Affairs.


Sai at the PCA

The 2000 *Larsen* case (*Lance Larsen v. the Hawaiian Kingdom*) held at the Permanent Court of Arbitration (PCA) in The Hague represents a genuine anomaly given today's assumption that Hawaiians lost their sovereignty and cannot access international proceedings. There are few people in the islands that can articulate, let alone adequately explain, the mechanics of this case. I don't know if it's because they really don't understand it or they really don't care to understand it.

Case in point: on OHA's call-in program *"Akaka Bill: Myth or Reality?"* that aired on KITV on June 21, a viewer posed a question to the panel on whether the *Larsen* case had any legal effect. One of the panelists, Melody MacKenzie, answered in the negative and stated that the case was dismissed—implying it was futile. But if any opinion were to be solicited, wouldn't it be prudent that it come from experts in the field of international law and international proceedings? It was evident that OHA's three panelists were not these experts, but rather their expertise centered on U.S. municipal laws and relationships between Native Americans and the federal government.

What many people don't know is that a qualified and independent opinion already exists regarding the *Larsen* case, published in the 2001 *American Journal of International Law*. The journal provides commentaries on international decisions by leading experts. One of the authors of the *Larsen* case commentary, David J. Bederman, is a professor at Emory Law School. He served on the journal's Board of Editors, and teaches public international law, torts and international institutions. Professor Bederman was also a legal assistant at the U.S.-Iran

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He Hoʻomanaʻo Aloha No

Elizabeth Nālani Ellis

1904-2004

By Manu Boyd

The term "hulu kupuna" expresses respect, esteem and aloha for an elder whose life is long, experiences are many, and contemporaries are few. For the late Elizabeth Nālani Ellis, who went home to ke Akua June 15 at age 100, "hulu kupuna" is a most fitting honor.

Elizabeth Nālani Mersberg Spencer MacMillan Ellis, known simply as Tūtū Mamma to many, was an educator, mentor, role model and an outstanding Hawaiian. Through the works of her daughter Betty Kawohiokalani Ellis Jenkins with the D.O.E. kupuna program and the Office of Hawaiian Affairs, Tūtū Mamma impacted many lives, long after her own retirement as an educator and administrator. A regular at OHA's ʻAha Kūpuna, Tūtū Mamma led Hawaiian language classes, easily sharing stories with other kūpuna, many of whom were years younger than her.

"She really helped to unlock memories of other kūpuna who didn't feel they had much to share. She was good at making others comfortable, and she really brought out the best in them." —Rona Rodenhurst

"She really helped to unlock memories of other kūpuna who didn't feel they had much to share," said longtime OHA staffer Rona Rodenhurst. "She was trained to teach; she knew educational theory and practice; and she was also mānaleo (a native speaker of Hawaiian) so she could really work wonders with the kūpuna. She was good at making others comfortable in the classroom, and she really brought out the best in them."

Tūtū Mamma was born at Pāʻauhau, Hawaiʻi, in 1904 — the hiapo, or eldest child, of Edward Poliʻahu Mersberg Spencer and Mary Kawohiokalani Kaʻanana. She married Richmond Kaliko Ellis of Nāwiliwili, Kauaʻi, and had a daughter and a son: Betty and Richmond Jr. Among her many grandchildren and great-grandchildren is moʻopuna Nālani Jenkins Choy, a member of the popular music group Nā Leo Pilimehana.

In services at Kawaiahaʻo Church on June 29, Hulu Kupuna Elizabeth Nālani Ellis was eulogized as an outstanding educator and aunt by her niece, Winona Ellis Rubin, and as a mentor by Dr. Paul Kaʻikena Pearlsall, who has applied Tūtū Mamma's values and philosophies at seminars around the world. Amid the presence of Hawaiian Royal Societies, ʻohana and scores of friends, associates and admirers, Tūtū Mamma was honored for a lifetime of learning, teaching, sharing and aloha. ■

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Claims Tribunal held at The Hague.

The *Larsen* case was not part of the Hawaiian sovereignty movement. It was a legal proceeding based upon sovereignty already achieved since the 19th century — especially when the United States was the first country to recognize the Hawaiian Kingdom as an independent nation-state on Dec. 19, 1842. The commentary correctly explained that at "the center of the PCA proceeding was … that the Hawaiian Kingdom continues to exist and that the Hawaiian Council of Regency (representing the Hawaiian Kingdom) is legally responsible under international law for the protection of Hawaiian subjects, including the claimant. In other words, the Hawaiian Kingdom was legally obligated to protect *Larsen* from the United States' 'unlawful imposition [over him] of [its] municipal laws' through its political subdivision, the State of Hawaiʻi. As a result of this responsibility, Larsen submitted, the Hawaiian Council of Regency should be liable for any international law violations that the United States committed against him."

The commentary adequately described the mechanics of the case, and after providing critical comments on strictly procedural matters, the authors admitted that the *Larsen* case was indeed legitimate. They stated, "because international tribunals lack the power of joinder that national courts enjoy, it is possible — as a result of procedural maneuvering alone — for legitimate international legal disputes to escape just adjudication. For example, in *Larsen*, the United States commanded an enviable litigation posture: even though the United States admitted its illegal overthrow of the Hawaiian Kingdom, it repeatedly refused to consent to international arbitration."

Consequently, the *acting* Council of Regency, who presently represents Larsen by agreement, is preparing to file a complaint, at a time of its own choosing, with the International Court of Justice in The Hague, so the United States can be engaged outside the limitations of arbitration. The *Larsen* case represents a stepping stone back into international relations, and, most importantly, a monumental step taken by a country whose international "legal" sovereignty was never extinguished.

For more information regarding the Larsen *case, visit online at www.HawaiianKingdom.org.* ■

Setting the record straight

Akaka Bill does not require global settlement

Recently, detractors of the Akaka Bill have claimed that it requires a "global settlement" of all Native Hawaiian claims in order to get federal recognition. This is not true. The Akaka Bill specifically states, "Nothing in this Act serves as a settlement of any claim against the United States." [Section 8(c)(1).] The wording is explicit that no claims are being settled by passage of the bill.

In addition, settlement of claims is not required to receive federal recognition. The timing of activities outlined in the Akaka Bill is clear: first, federal recognition is granted, then negotiations may begin between Native Hawaiians, the federal government, and the State of Hawaiʻi. [Section 8(b)(1).]

For the complete text of the Akaka Bill, please visit nativehawaiians.com. If you have questions about the Akaka Bill or other forms of self-determination for Native Hawaiians, feel free to call our Hawaiian Governance section at 594-0219. We are available to answer questions or make presentations with groups wanting more information.

This column is designed to address common misconceptions about OHA and its activities. If you would like to see a specific question addressed, please e-mail kwo@oha.org, or write to Ka Wai Ola*, attn:* "Setting the Record Straight," *Office of Hawaiian Affairs, 711 Kapiʻolani Blvd., Ste. 500, Honolulu, Hi 96813.* ■