

1 IN THE CIRCUIT COURT OF THE SECOND CIRCUIT

2 STATE OF HAWAII

3
4 STATE OF HAWAII,

5 vs.

6 KAIULA KALAWA ENGLISH

7 Defendant.

8
9 STATE OF HAWAII

10 vs.

11 ROBIN WAINUHEA DUDOIT

12 Defendant.

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) Crim. No. 14-1-0819
) TRANSCRIPT OF
) PROCEEDINGS
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) Crim. No. 14-1-0820
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14 TRANSCRIPT OF PROCEEDINGS

15 before the Honorable JOSEPH P. CARDOZA, Circuit Court
16 Judge presiding on Thursday, March 5, 2015. Defendant
17 English's Motion to Dismiss Criminal Complaints Pursuant
18 To HRPP 12(1)(b); Defendant Robin Wainuhea Dudoit's
19 Joinder In Defendant English's Motion to Dismiss Criminal
20 Complaint Pursuant To HRPP 12(1)(b).
21
22
23

24 TRANSCRIBED BY:
25 Beth Kelly, RPR, CSR #235
Court Reporter

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1 THURSDAY, MARCH 5, 2015

2 THE CLERK: Calling Criminal Numbers
3 14-1-0819, State of Hawaii versus Kaiula Kalawe English;
4 and Criminal Number 14-1-0820, State of Hawaii versus
5 Robin, Wainuhea Dudoit; for, one, defendant English's
6 motion to dismiss criminal complaints pursuant to HRPP
7 12(1)(b); and two, defendant Robin Wainuhea Dudoit's
8 joinder in defendant English's motion to dismiss criminal
9 complaint pursuant to HRPP 12(1)(b).

10 MR. PHELPS: Good morning, your Honor, Lloyd
11 Phelps appearing on behalf of the State for all matters.

12 MR. KAIAMA: Good morning, your Honor, Dexter
13 Kaiama on behalf of Kaiula English and Robin Dudoit. Mr.
14 English and Mr. Dudoit are present.

15 THE COURT: All right. Good morning,
16 Counsel. Good morning, Mr. English. Good morning, Mr.
17 Dudoit.

18 All right. This is the defendant's motion
19 and joinder. And so, Mr. Kaiama, is there anything you
20 wanted to present?

21 MR. KAIAMA: Yes, just first order of
22 business, your Honor. I just wanted to make sure, because
23 I filed Mr. Dudoit's joinder in the case --

24 THE COURT: You did?

25 MR. KAIAMA: -- to execute the same paper

1 and time for the Court. It's essentially the same motion.

2 But I just wanted it understood, and I
3 believe it is that Mr. Dudoit is bringing the exact same
4 argument and motion to dismiss as Mr. English is bringing
5 by his motion. Yes? Okay. Thank you.

6 Your Honor --

7 MR. PHELPS: State's understanding, your
8 Honor.

9 MR. KAIAMA: Okay. Yes.

10 Your Honor, actually as part of -- before we
11 make oral argument on the motion, your Honor, as I
12 understand, if this was scheduled for an evidentiary
13 hearing, I did retain and I do have an expert witness to
14 testify. And I would like to present his expert testimony
15 before we proceed with our oral argument.

16 THE COURT: All right. If you have a witness
17 to testify.

18 MR. KAIAMA: I would be calling Dr. Keanu
19 Sai.

20 THE CLERK: I'm sorry, sir. Can you please
21 stand and raise your right hand?

22 DR. DAVID KEANU SAI
23 was called as a witness by and on behalf of the Defendants
24 and after having been first duly sworn was examined and
25 testified as follows:

1 THE CLERK: So sworn. Please be seated.

2 THE COURT: You may proceed with your
3 examination of the witness.

4 MR. KAIAMA: Thank you, your Honor. Sorry, I
5 think I turned on my phone. Excuse me. Excuse me, your
6 Honor.

7 DIRECT EXAMINATION

8 BY MR. KAIAMA:

9 Q. Good morning, Dr. Sai. Would you please
10 state your name and your present occupation for the
11 record?

12 A. David Keanu Sai. I'm a lecturer at the
13 University of Hawaii, Windward Community College.

14 Q. Okay. Dr. Sai, before I ask you about your
15 testimony in this case, I'm going to ask you a few
16 questions about your qualifications. Is that okay with
17 you?

18 A. That's fine.

19 Q. Dr. Sai, can you please provide us a
20 background, your educational background from high school
21 to the present date?

22 A. I can. Well, got a high school diploma from
23 Kamehameha, 1982. An Associates Degree from New Mexico
24 Military Institute, a military college. A Bachelor's in
25 sociology from the University of Hawaii. That was 1987.

1 A Master's Degree in political science, specializing in
2 international relations, 2004. And a Ph.D. in political
3 science focusing on international relations and public
4 law, which includes international law, United States law,
5 and Hawaiian Kingdom law of the 19th century. And that
6 was 2008.

7 Q. Okay. Tell us a little bit about obtaining
8 your Ph.D., Dr. Sai. How did you go about doing that?
9 What's the requirements and what did you need to do? What
10 was the process of your getting that Ph.D.?

11 A. Well, you first need a Master's Degree. In
12 my case it was in political science specializing in
13 international relations.

14 A Ph.D. is the highest degree you can get
15 within the academy. And a Ph.D. is based upon something
16 original to contribute to the political science field and
17 law field, because my area's public law.

18 What takes place is you begin with a
19 proposal. You have to give a defense. And you have a
20 committee that -- I had a committee of six professors.

21 And you basically present what your research
22 is going to be. What they do is to ensure that this
23 research has not been done already by another Ph.D.. So
24 it's called a lit review or literature review.

25 My area that I proposed was researching

1 Hawaii's legal and political status since the 18th century
2 to the present and incorporating international relations,
3 international law, and Hawaiian Kingdom law and United
4 States law.

5 That proposal was passed. Then you have to
6 go into what is called the comprehensive exams.

7 So comprehensive exams is where each of your
8 professors, in this case, six of them, would provide two
9 questions to test my comprehension of the topic of the
10 research -- of the proposed research.

11 And they would pose two questions each. I
12 would have to answer one of the two. Each question
13 average about 30 pages. Okay.

14 You're given one week to complete from
15 Monday -- from Monday to Monday. It's a pass or fail.
16 It's not graded.

17 During that process I successfully completed
18 the comprehensive exams. And then you move to what is
19 called all-but-dissertation. That's when you begin the
20 writing of your dissertation through the research.

21 The title of my doctorate dissertation was
22 the continuity of the Hawaiian Kingdom, beginning the
23 transition from occupied to restored state or country.

24 Successfully defended that before my
25 committee. And it was submitted in time for me to

1 graduate in 2008.

2 Q. Okay. Would you be able to tell us, and just
3 for the record, who was on your committee, Dr. Sai?

4 A. My chairman was Neal Milner. He's a pretty
5 famous political pundit on Channel 4 news. His area is --
6 background is law and judicial behavior.

7 Katharina Heyer, political scientist, public
8 law.

9 John Wilson, sovereignty, goes back to the
10 Greek Polis states through Hobbes, Rousseau, political
11 science and law regarding sovereignty.

12 Then I had a Professor Avi Soifer, the Dean
13 of the Law School. His background is U.S. Constitutional
14 law.

15 I also had as an outside member, Professor
16 Matthew Craven from the University of London, who
17 teleconferenced in for my defense. His background is
18 state sovereignty and international law.

19 And then I also had as the final professor,
20 Professor Kanalu Young from Hawaiian Studies, whose
21 background was Hawaiian Chiefs. But he regrettably passed
22 away before my defense. So Professor Jon Osorio stepped
23 in from the Hawaiian Studies Department.

24 They made up my committee.

25 Q. And again, it's obvious, Dr. Sai, you did

1 pass your dissertation defense?

2 A. And that's what I want to -- ensure a clear
3 understanding. When you defend your dissertation, you're
4 not arguing your dissertation. You have to defend it
5 against the committee members who try to break it. And if
6 they're not able to break it, then you're awarded the
7 Ph.D. and that becomes your specialty.

8 Q. Okay. And it's clear in this case and it's
9 of particular interest to me that the Dean of the law
10 school was on this committee; correct?

11 A. Yes.

12 Q. Okay. And he had an opportunity to so-called
13 challenge or break your dissertation defense as well?

14 A. That's part of the academic process.

15 Q. Okay. And did he come to any conclusion
16 concerning your dissertation?

17 A. They couldn't deny what I proposed and what I
18 argued. Because if they could deny it, I wouldn't have my
19 Ph.D.. They would find a hole in the argument or the
20 research.

21 Q. Okay. Thank you, Dr. Sai.

22 Since the obtaining your dissertation
23 defense, have you had any publications that's been -- any
24 articles that have been published in, I guess, relevant
25 journals or journals of higher education?

1 A. Law review articles. One was published in
2 the University of San Francisco School of Law, Journal of
3 Law and Social Challenges. Another one at the University
4 of Hawaii, Hawaiian Journal of Law and Politics, which is
5 published on HeinOnline, which is a legal publication,
6 Hawaiian.

7 Q. I also understand and, Dr. Sai, just so you
8 know, we did provide as Exhibit 1 in the motion, your
9 curriculum vitae. And so it does provide much of the
10 information that you're testifying about, but I wanted to
11 ask you about, besides publication, I know you also
12 have -- or tell me, you've also written education
13 material?

14 A. Yes.

15 Q. Can you explain that?

16 A. Actually I have a history text that is used
17 in the high school and college levels. It's actually a
18 watered down version of my doctorate dissertation. Much
19 more user friendly for teaching the legal and political
20 history of Hawaii that begins with Kamehameha I and brings
21 it up-to-date.

22 So it is used to teach. It's part of the
23 curriculum. And it is actually required reading at the
24 University of Hawaii Maui College, the community colleges,
25 the University of Hawaii at Manoa. And I did find that

1 it's actually required reading and used in NYU, New York
2 University, and University of Massachusetts at Boston.

3 Q. Okay. And what is the name of that education
4 material, Dr. Sai?

5 A. Ua mau kea ea Sovereignty Endures.

6 Q. Thank you. In addition to publications, Dr.
7 Sai, I understand that you've made a number of
8 presentations. In fact, most recently presentations at
9 facilities or educations -- higher educational facilities.
10 Can you give me a little bit of background or other kinds
11 of presentations that you've made and what the topics of
12 those presentations were?

13 A. I've been invited quite often to present to
14 conferences, to the universities. This past April I was
15 giving guest lectures at the University of NYU, New York
16 University; Harvard; University of Massachusetts at Boston
17 and Southern Connecticut State University.

18 Other universities that I've given
19 presentations to as well span across here in Hawaii, the
20 colleges, the high schools.

21 Just recently I was invited as a guest
22 presenter in a conference at Cambridge University History
23 Department in London. And the conference is focusing on
24 non-European states in the age of imperialism.

25 Q. Very good. And, Dr. Sai, again, all of this,

1 both your publications, your educational materials, as
2 well as your presentations, is in your area of expertise;
3 correct?

4 A. Yes.

5 Q. And just for the record again, can you tell
6 us what that area of expertise is?

7 A. The continuity of the Hawaiian state under
8 international law.

9 Q. Okay. Very good. And, Dr. Sai, you have --
10 have you been qualified as an expert or to testify as an
11 expert in any other proceedings?

12 A. Yes. There was a case in Hilo, Judge
13 Freitas. Tamanaha -- it was a lender versus Tamanaha, I
14 believe. I can't recall the exact case.

15 Q. And you were qualified as an expert and you
16 were allowed to provide your expert opinion in that case
17 concerning your area of expertise?

18 A. Yes.

19 MR. KAIAMA: Your Honor, at this time we
20 would ask that Dr. Sai be qualified as an expert witness
21 to testify about matters concerning our motion to dismiss.

22 MR. PHELPS: The State has no objection, your
23 Honor.

24 THE COURT: All right. There being no
25 objection, the Court will so receive the witness as an

1 expert as offered.

2 MR. KAIAMA: Thank you, your Honor.

3 BY MR. KAIAMA:

4 Q. Dr. Sai, based on all of your research, based
5 on your background and your education and this specialty,
6 you understand that on behalf of my clients I am bringing
7 a motion to dismiss for lack of subject matter
8 jurisdiction?

9 A. Yes.

10 Q. Based on all of your research and your
11 expertise in this area, Dr. Sai, have you reached any
12 conclusions about this, and can you tell us what your
13 conclusions are?

14 A. That the Court would not have subject matter
15 jurisdiction as a result of international law.

16 Q. And if you can explain or perhaps expand on
17 that explanation and tell us why the Court does not have
18 subject matter jurisdiction in this case?

19 A. Sure. Well, it goes back to what the status
20 of Hawaii was first, not necessarily what we are looking
21 at today.

22 So when you look at Hawaii and its political
23 and legal status on November 28th, 1843 Great Britain and
24 France jointly recognized Hawaii as an independent state.

25 July 6th, 1844 Secretary of State, John C.

1 Calhoun, also recognized formally the independence of the
2 Hawaiian Kingdom.

3 Now, to determine dependence under
4 international law applies to the political independence,
5 not physically independent.

6 From that point Hawaii was admitted into the
7 Family of Nations.

8 By 1893 it had gone through government reform
9 whereby it transformed itself into a constitutional
10 monarchy that fully adopted a separation of powers since
11 1864.

12 By 1893 the Hawaiian Kingdom as a country had
13 over 90 embassies and consulates throughout the world.
14 The United States had an embassy in Honolulu. And the
15 Hawaiian Kingdom had an embassy in Washington D.C.. And
16 Hawaiian consulates throughout the United States, as well
17 as U.S. consulates throughout Hawaii.

18 So in 1893 clearly Hawaii was an independent
19 state.

20 Now, under international law there is a need
21 to discern between a government and a state. The state is
22 what was recognized as a subject of international law, not
23 its government. The government was merely the means by
24 which that recognition took place in 1843 and 1844.

25 Now, a government is the political organ of a

1 state. What that means is it exercises the authority of
2 that state. Every government is unique in its
3 geopolitical, but every state is identical under
4 international law. It has a defined boundary. It has
5 independence. It has a centralized government. And it
6 has territory -- people within its territory and the
7 ability to enter into international relations.

8 What happened in 1893 on January 17th, as
9 concluded by the United States investigation, presidential
10 investigation, is that the Hawaiian government was
11 overthrown, not the Hawaiian state. Okay.

12 Now, this is no different than overthrowing
13 the Iraqi government in 2003. By the United States
14 overthrowing the Iraqi government that did not equate to
15 the overthrow of Iraq as a state.

16 That situation is what we call an
17 international law occupation. Okay. Occupation is where
18 the sovereignty is still intact, but international law
19 mandates the occupier to conform as a proxy, a temporary
20 proxy of a government to temporarily administer those laws
21 of that particular country.

22 Now, prior to 1899, which is we're talking
23 about 1893, the illegal overthrow of the government,
24 customary international law would regulate the actions
25 taken by governments that occupy the territory of another

1 country.

2 Those customary laws are the law of
3 occupation is to maintain the status quo of the occupied
4 state. The occupier must administer the laws of the
5 occupied state and can not impose its own laws within the
6 territory of an occupied state, because sovereignty and
7 independence is still intact.

8 So by 1899, we have what is called the Hague
9 Conventions. Later 1949, the Geneva Conventions. The
10 Hague Conventions merely codified customary international
11 law, fully recognized. And 1949 again codified customary
12 international law and the gaps that may have been in the
13 Hague Conventions.

14 So when we look at 1893, it is clear the
15 government was overthrown, but it is also clear that the
16 State wasn't, because the United States did not have
17 sovereignty over Hawaii. The only way that you can
18 acquire sovereignty of another state under international
19 law is you need a treaty. Okay, whether by conquest or by
20 voluntary transfer.

21 An example of a voluntary transfer that
22 United States acquired sovereignty would be the 1803
23 Louisiana Purchase. An example of a treaty of conquest
24 where the United States acquired territory through a war,
25 1848, Treaty of Guadalupe Hidalgo, Mexican America War

1 making the Rio Grande the dividing point.

2 You didn't have that in 1893. In fact, you
3 had an attempt to do a treaty, but President Cleveland
4 withdrew that treaty in 1893 in March and investigated the
5 situation. Never resubmitted that treaty. In other
6 words, in the alternative he entered into another treaty
7 with the Queen to reinstate the Hawaiian government. And
8 that's called a sole executive agreement. That took place
9 on December 18th, 1893. All part of the record in the
10 State Department.

11 So what we have there from 1893 is a
12 situation of a governmental matter, not a state or a
13 sovereignty.

14 As we move forward into 1898 there still is
15 no treaty, but the Spanish American War breaks out and
16 that's in April of 1898. The United States is waging war
17 against the Spanish, not just in Puerto Rico and Cuba in
18 the Caribbean, but also in Guam and the Phillipines.

19 And Captain Alfred Mahan from the U.S. Naval
20 War College and General Schoffield gave testimony to the
21 House Committee on Foreign Affairs in May 1898, that they
22 should pass a law, called a joint resolution, to annex the
23 Hawaiian Islands because of necessity called war. They
24 need to seize Hawaii, as stated by those given testimony,
25 in order to protect the west coast of the United States

1 and to reinforce troops in Guam and the Phillipines.

2 The problem we run into is a joint resolution
3 of Congress has no effect beyond the borders of the United
4 States. It's a municipal legislation. It's not
5 international law.

6 That was then taken up for a vote in the
7 house. Congressmen were making points on the record that
8 this is illegal. You can not pass laws that can effect
9 the sovereignty of another country. But the argument was
10 it's necessity. We're at war.

11 On July 7th, after the House and Senate made
12 the record, but was not able to get -- what they did was
13 they passed by majority, July 6th, 1898, joint resolution
14 of annexation and then it was President McKinley on
15 June -- July 7th, 1898 that signed it into law.

16 It was that U.S. law that was used to seize
17 another country in the occupation. And the occupation of
18 Hawaii began formally on August 12th, 1898. Formal
19 ceremonies at Iolani Palace where the Hawaiian flag was
20 lowered and the American flag risen before a full regalia
21 of U.S. military in formation.

22 What has happened since then is that now
23 research is showing that there was a deliberate move to
24 basically denationalize the inhabitants in the public
25 schools that actually began formally in 1906 where they

1 began to teach within the schools American history. You
2 can not speak Hawaiian. And if you do speak Hawaiian and
3 not English, you get disciplined. We hear those stories
4 from our kupuna.

5 And that began what we call in international
6 law, attempts to denationalize the inhabitants of occupied
7 territories. Which since World War I and World War II has
8 been categorized as a war crime.

9 So what we have today is we have in 1900,
10 after 1898, in 1900 the United States Congress passed
11 another law called the Organic Act creating a government
12 for the Territory of Hawaii.

13 In that Organic Act it specifically says that
14 the Republic of Hawaii, which was called the provisional
15 government which President Cleveland called self-declared,
16 is now going to be called the Territory of Hawaii.

17 And then in 1959 the Statehood Act basically
18 stated that what was formerly the Territory of Hawaii is
19 the State of Hawaii.

20 Now, looking at the limitation of U.S. law it
21 has no effect in a foreign state. You still need a
22 treaty.

23 But what's interesting is in 1993 the United
24 States Congress passed a law apologizing for the illegal
25 overthrow of the Hawaiian Kingdom government. What was

1 important in there is that in one of the whereases it
2 stated specifically, that whereas the self-declared
3 Republic of Hawaii ceded sovereignty to the United States.

4 We have a problem there because self-declared
5 means you're not a government. Which is precisely what
6 President Cleveland, in his investigation, called its
7 predecessor the provisional government.

8 So in that genealogy, if the provisional
9 government was self-declared, then the Republic of Hawaii
10 is self-declared, then the Territory of Hawaii was
11 self-declared, then the State of Hawaii self-declared.

12 Now, I fully understand the ramifications of
13 this information and history and the applicable law. I'm
14 a retired captain from the Army, you know. So this is not
15 a political statement. But it's part of my research that
16 clearly shows that I can not find how the State of Hawaii,
17 a court, could have subject matter jurisdiction on two
18 points.

19 First, U.S. law is the Statehood Act is
20 limited to U.S. territory. Second, the State of Hawaii is
21 a successor of the Republic of Hawaii, which was admitted
22 to be self-declared in 1993 by the U.S. Congress.

23 So that's -- that's why I've come to the
24 conclusion where there is what is called a presumption of
25 continuity of the Hawaiian Kingdom as a state, not as a

1 government, but as a state under international law.

2 Q. Can you expand on that, the presumption of
3 continuity just a little bit, so that the Court
4 understands that or I can understand better what
5 continuity means in the context of international law?

6 A. Well, the word presumption is a conclusion
7 based upon facts. Assumption is a conclusion based upon
8 no facts.

9 But what is more important about the
10 presumption is that it shifts the burden. So no different
11 than there is a presumption of innocence because of the
12 fact the person has rights. You have, under international
13 law, a presumption of continuity, because the state itself
14 has rights under international law.

15 So the presumption of continuity is a very
16 well recognized principle of international law. That's
17 what preserves the State's continuity despite the fact
18 that its government was overthrown.

19 Now, there are two legal facts that need to
20 be established on the presumption of continuity of an
21 independent state. The first legal fact has to be that
22 the entity in question existed at some point in time in
23 history as an independent state. That's the first thing.

24 Now, clearly Hawaii's history shows that it
25 was an independent state, but what's more important there

1 was dictum in an arbitration award out of the permanent
2 Court of Arbitration in 2001 published in international
3 law reports out of Cambridge. Which basically says
4 paragraph 7.4, that in the 19th century the Hawaiian
5 Kingdom existed as an independent state, recognized as
6 such by the United States of America, Great Britain and
7 various other states. That right there, that dictum
8 verified and accomplished that first rule. Hawaii was an
9 independent state.

10 The second legal fact that would have to
11 apply, now that the United States which has the burden to
12 prove is that there are intervening events that have
13 deprived that state of its independence under
14 international law.

15 What we have as far as the historical record
16 from the United States of America is that all it has, as a
17 claim to Hawaii, it's not a treaty, but a joint resolution
18 of annexation, which is a U.S. law limited to U.S.
19 territory not recognized by international law. And that
20 the Statehood Act of 1959 is still a U.S. law not
21 recognized by international law.

22 So there are no intervening facts that would
23 deprive or rebut the presumption of continuity.

24 In fact, in 1988 the Office of Legal Counsel,
25 Department of Justice, in a legal opinion looked into that

1 very issue and it stated regarding the joint resolution,
2 it is therefore unclear which constitutional power
3 Congress exercised when it acquired Hawaii by joint
4 resolution. Therefore, this is not a proper precedent for
5 the United States president to follow.

6 And they made reference to the Congressional
7 records of Congressmen and Senators who was saying U.S.
8 laws have no effect beyond our borders. We can not annex
9 a foreign country by passing a joint resolution.

10 So in 1988 the Office of Legal Counsel,
11 Department of Justice, stumbled over that. Therefore,
12 there are no clear evidence that can rebut the presumption
13 of continuity. And that's why my research and my
14 expertise is in that area that the Hawaiian state
15 continues to exist under international law.

16 Q. Thank you, Dr. Sai.

17 MR. KAIAMA: I just wanted to let you know,
18 and for the record, the executive agreements that you
19 refer to between Queen Liliuokalani and President Grover
20 Cleveland has been attached to my client's motion to
21 dismiss as Exhibit 7 and 8, your Honor. So those are the
22 diplomatic records and negotiations, communications
23 between President Grover Cleveland when he comes to that
24 conclusion based on his investigation.

25 BY MR. KAIAMA:

1 Q. Dr. Sai, I also wanted you to confirm, I know
2 you spoke earlier and you testified that the joint
3 resolution, the Territorial Act, as well as the Statehood
4 Act was of Congressional Legislation, which has no force
5 and effect beyond its own territory or borders.

6 And you're referring to U.S. law. And I can
7 speak to that. But it's also true that that same rule of
8 law applies in the international realm as well; right? So
9 no country can occupy other countries by way of joint
10 resolution. That's a -- that's a common -- well, a well
11 established understanding under international as well; is
12 that correct?

13 A. International law is able to distinguish what
14 is international law and what is national law. So
15 national law's applied to states as an exercise of their
16 sovereignty.

17 International law is a law between states.
18 And between states is based upon agreements. And those
19 agreements are evidenced by treaties.

20 Q. Based on your conclusion that the continuity
21 of the Hawaiian Kingdom still exists, Dr. Sai, what are
22 the consequences of that -- of your opinion, your expert
23 opinion about that? Especially particularly with respect
24 to, respectfully, the Court's exercise of jurisdiction in
25 this case?

1 A. When we're looking at this issue within the
2 framework of international law what resonates is, number
3 one, sovereignty is still intact and it remains with the
4 state under occupation. Okay.

5 Now, that because sovereignty is still intact
6 and it's not a part of the United States, then
7 international law regulates that phenomenon or that
8 situation. And that is what we call the law of
9 occupation. And that's called the Hague Conventions of
10 1899, which was amended in 1907. And then we also have
11 the Geneva Conventions of 1949.

12 Now, specific issues regarding occupations
13 are pretty much the substance of Hague Conventions Number
14 Four of 1907, as well as Geneva Conventions Number Four
15 that deals with the civilian population during
16 occupations.

17 After World War I -- well, toward the end of
18 World War I is when war crimes began to be brought up as a
19 possible issue to be addressed with the Germans and the
20 access powers.

21 And they came up with a list of war crimes.
22 And one of those war crimes in 1919 was put out by the
23 United Nations Commission. Now, United Nations, back
24 then, I'm not talking about 1945 United Nations, but they
25 called like the United Front.

1 Attempts to denationalize inhabitants of an
2 occupied state, failure to provide a fair trial, those
3 issues, although they were not successful in prosecution
4 of individuals for war crimes after World War I because
5 there was still that issue of state immunity that people
6 were acting on behalf of the state, so they're not
7 personally liable or criminally liable. The State still
8 carried that.

9 Once World War II took place, it became a
10 foregone conclusion that individuals will be prosecuted
11 for war crimes.

12 There is a similar history that Hawaii has
13 with regard to war crimes in a country called Luxembourg.
14 In 1914 the Germans occupied Luxembourg, which was a
15 neutral country, in order to fight the French. The
16 seizure of Luxembourg under international law was not a
17 justified war, but it was called a war of aggression.
18 That led to war crimes being committed. So from 1914 to
19 1918 Germany occupied Luxembourg even when Luxembourg did
20 not resist the occupation.

21 They also did that same occupation in 1940 to
22 1945. Now 1940 to 1945 they began to attempt to
23 denationalize Luxembourgers into teaching the children
24 that they're German. They began to address the schools,
25 the curriculum.

1 What was also happening, not just in
2 Luxembourg, as a war crime was unfair trials. Germany
3 began to impose their laws and their courts within
4 occupied territories. And that became the subject of war
5 crime prosecutions by the allied states, but a prominent
6 tribunal that did prosecute war crimes for unfair trial
7 and denationalization was the Nuremberg trials.

8 And that set the stage, after the Nuremberg
9 trials, to address those loopholes in the conventional --
10 the Hague Conventions of 1907 which prompted the Geneva
11 Conventions in 1949.

12 And the Geneva Conventions specifically
13 stated as the experience -- as they acquired the
14 experience from World War II, Article 147, unfair trial is
15 a grave breach, which is considered a war crime.

16 So that's where the issue of not providing a
17 fair trial is a war crime according to the Geneva
18 Conventions and customary international law.

19 Q. Is it true, Dr. Sai, that the United States
20 is a party to that Geneva Conventions?

21 A. Yes.

22 Q. So it is obligated under the terms of Geneva
23 Conventions?

24 A. The United States acknowledges customary
25 international law and the law of occupation during the

1 Spanish American War, as evidenced by their written
2 manuals to the military. In administration of justice
3 within occupied territories came to be known as General
4 Order Number 101. Okay. Direction of the president on
5 how to administer the laws of former Spanish territory
6 until a peace treaty is signed where they can acquire the
7 territory themselves.

8 And they're also a party to the 1899 Hague
9 Conventions, the 1907 Hague Conventions, and the 1949
10 Geneva conventions.

11 Q. As part of their obligation as a contracting
12 party to those conventions, including 1949 Geneva
13 Conventions, did the United States create domestic
14 legislation that covered the commission of war crimes,
15 including deprivation of a fair and regular trial?

16 A. That would be in 1996 called the War Crimes
17 Act, which is Title 18, Section 2441, United States Code.

18 Q. Okay. You know, Dr. Sai, you answered all my
19 questions. Thank you. I appreciate it.

20 Is there -- I'll be honest, I think I covered
21 everything I need to cover, but I'm not sure. I'm not the
22 expert. Is there any other area that you would like to
23 provide us some insight that we don't have about the
24 status of Hawaii or about perhaps subject matter
25 jurisdiction?

1 A. I think there's a particular important case
2 here regarding subject matter jurisdiction. That dealt
3 with Guantanamo Bay, Gitmo. And this is a case that went
4 before the United States Supreme Court, Hamdan versus
5 Rumsfeld. Okay.

6 And basically the argument that was presented
7 by a JAG as a Public Defender was that the military
8 tribunals were not properly constituted which was a direct
9 violation of the Geneva Conventions. Therefore, his
10 client could not get a fair trial.

11 Now, these military tribunals were determined
12 by the United States Supreme Court to be illegal because
13 the United States president can not establish -- can not
14 establish military tribunals within U.S. territory because
15 that would undermine the authority of Congress which has
16 plenary power.

17 Guantanamo Bay was not foreign territory
18 where the president could create military tribunals. It
19 was actually part of the United States.

20 Now, the United States President does have
21 the authority under Article 2 to create military tribunals
22 in occupied territories. He did that in Japan after World
23 War II. In Germany after World War II, as well as after
24 World War I.

25 And these military tribunals administer the

1 laws of the occupied state. What was brought up in this
2 case with Hamdan versus Rumsfeld, the president could not
3 create a military tribunal within U.S. territory and it
4 was not justified by necessity.

5 So the Court ruled that the Court's are
6 illegal and then turned over to Congress to pass a law,
7 because it's within U.S. territory, to keep it up.

8 Now, what's important is there was a Justice
9 Robertson, I believe, of the Supreme Court. He was
10 addressing the secondary argument that people were not
11 getting a fair trial within these military tribunals. And
12 Justice Robertson, if I'm not mistaken his name, he stated
13 it is irrelevant whether or not they were given a fair
14 trial, because if they're not properly constituted, they
15 can't give a fair trial.

16 Q. Okay. And so is it fair to say, is it
17 your -- I think I understood this, but I just want to be
18 clear. The Hamdan case also stands for the president does
19 not have authority in U.S. territory, then he is the one
20 that has authority in foreign territory?

21 A. And these courts called military tribunals
22 are also referred to as Article 2 courts.

23 Q. Okay. And is that your opinion with respect
24 to Hawaii, those are the courts that should be
25 administering the laws of the Hawaiian Kingdom?

1 A. Yes.

2 Q. Okay. Thank you. And just to give you a
3 quick correction. It was actually Justice Kennedy who
4 said that.

5 A. Kennedy. My apologies.

6 Q. No. Thank you, Dr. Sai. Is there anything
7 else that you'd like to add?

8 I'd actually like to ask you about how we
9 resolve the situation, but I think that would be something
10 for --

11 A. I can quickly state to that because this
12 information is quite perplexing. All right.

13 My committee members on my doctorate
14 committee could not refute the evidence. All they asked
15 is how do you fix the problem? So Chapter Five of my
16 dissertation is how do you begin the transition in this
17 process.

18 And actually the transition is quite simple.
19 I think this issue is not hard to understand. It's just
20 hard to believe. I mean to understanding, and once you
21 understand, things can take place.

22 So what we have to ensure for myself as a
23 professional, I am not an anarchist. I'm a person to
24 maintain civility. I still am inherently a retired
25 captain.

1 There is a way to fix this problem, yeah.
2 And that is clear, but the rule of law has to apply. But
3 there is a doctrine called necessity under international
4 law that can resolve over a hundred years of noncompliance
5 to the law. And that's what I cover in Chapter Five. But
6 that's another issue.

7 Q. And perhaps one of the first places we can
8 start is with the proper courts administering the proper
9 law; is that correct?

10 A. It's really just the court administering the
11 proper law so that people have a fair trial.

12 MR. KAIAMA: Thank you, Dr. Sai. I have no
13 further questions.

14 THE COURT: Any cross-examination?

15 MR. PHELPS: Your Honor, the State has no
16 questions of Dr. Sai. Thank you for his testimony. One
17 Army officer to another, I appreciate your testimony.

18 THE WITNESS: 13 echo.

19 THE COURT: Thank you. You are excused.

20 Mr. Kaiama.

21 MR. KAIAMA: Thank you, your Honor. And I
22 will try to be brief.

23 As you can see, your Honor, we did file the
24 motion to dismiss for lack of subject matter jurisdiction
25 and I also did file a supplemental memorandum.

1 In the motion in the supplemental memorandums
2 I did provide exhibits. And the exhibits include Dr.
3 Sai's curriculum vitae, and expert opinion briefs that
4 he's written concerning much of what he's testified today.

5 Essentially our argument is this, your Honor.
6 That with the exhibits that's been presented and the
7 testimony of Dr. Sai, we now have met the requirements set
8 forth under State of Hawaii versus Lorenzo.

9 We have provided the courts now with a
10 factual and legal basis to conclude that the Hawaiian
11 Kingdom continues to exist. Because we've met that burden
12 under Lorenzo, we respectfully submit that the State has
13 failed to meet its burden that this Court has jurisdiction
14 under Nishitani versus Baker.

15 And given that we've met our burden and the
16 State, respectfully, has not met theirs, our position
17 simply, your Honor, is that the Court has no other
18 alternative but to dismiss the case for lack of subject
19 matter jurisdiction.

20 In the motion itself we did provide the Court
21 with additional arguments. We did present the Court with
22 the legal arguments as to the limits of Congressional
23 enactments, and we've provided both Supreme Court cases.
24 Curtiss-Wright versus United States Export (sic). I may
25 have said that wrong. But talking about the limits, and

1 basically confirming that the joint resolution which
2 attempted to annex the United States is not lawful and has
3 no force and effect on Hawaiian territory.

4 And because of that, neither the Organic Act
5 which formed the territory, or the Statehood Act which are
6 both Congressional legislations, also have no force and
7 effect on Hawaiian territory.

8 That being the case, your Honor, the United
9 States never lawfully acquired a sovereignty over the
10 Hawaiian territory.

11 In addition with Dr. Sai's testimony, his
12 expert testimony, we've proven or clearly established that
13 the Hawaiian Kingdom, in fact, was recognized as an
14 independent nation as of 1843 and concluded a number of
15 treaties. I believe over 90 treaties -- 46 treaties, a
16 little over 90 countries, to further affirm its position
17 as an independent nation.

18 With Dr. Sai's testimony, again once
19 independence is established, it is the burden in this case
20 of the United States or the State of Hawaii to prove that
21 that continuity has been extinguished.

22 There is no evidence, and in all honesty,
23 your Honor, in the four years that I've been arguing this
24 motion there has not been any evidence to rebut the
25 presumption of that continuity.

1 Finally, your Honor, I think it is important,
2 and I do say this in all respect, that because of the
3 evidence provided in this situation that the Court not
4 only should be -- the Court should be dismissing the case
5 for lack of subject matter jurisdiction, but also the
6 argument is that, respectfully, the Court is not lawfully
7 constituted under Hamsden -- Hamden versus Rumsfeld,
8 because it is not administering the laws of the Hawaiian
9 Kingdom.

10 Because we continue to be under a state of
11 occupation, the rule of law which applies is the law of
12 occupation. And the United States, in this case,
13 presently as the occupier, should be administering
14 Hawaiian Kingdom law.

15 By virtue of the fact that the prosecutor's
16 office and the State has brought this case and sought to
17 confer jurisdiction on the Court by Hawaii Revised
18 Statutes, that the Court's retention of jurisdiction, with
19 all respect, in light of the evidence that's been provided
20 would, in fact, deprive my clients of a fair and regular
21 trial, and would be a violation of the Geneva, the Hague,
22 and other conventions that has been testified to by Dr.
23 Sai.

24 Again, with all respect, your Honor, we think
25 we've met our burden. We do not believe, in fact we are

1 certain, that the State has not met its burden to prove
2 that this Court has jurisdiction.

3 And we would respectfully request -- I would
4 respectfully request on behalf of my clients, Kaiula
5 English and Mr. Robin Dudoit, that the Court dismiss their
6 cases for lack of subject matter jurisdiction. Thank you,
7 your Honor.

8 THE COURT: Mr. Phelps.

9 MR. PHELPS: Your Honor, the State will be
10 brief.

11 We're going to ask that obviously you deny
12 the defense motion to dismiss for lack of subject matter
13 jurisdiction. We're going to submit on the memorandum
14 that we submitted in opposition to it.

15 But the State will simply point out, we
16 appreciate Dr. Sai's testimony. It was one of more
17 impressive dissertations I've heard in awhile. And I do
18 respect some of the points he's made.

19 But the case law is fairly clear on this,
20 your Honor. This isn't a new argument. This isn't a
21 novel argument. Courts have ruled that basically
22 regardless of the legality of the overthrow of the
23 Hawaiian Kingdom, Hawaii, as it is now, is a lawful,
24 lawful state with a lawful court system and a lawful set
25 of laws.

1 That anybody who avails themselves of this
2 jurisdiction, they fall under the law, whether they want
3 to claim to be a member of a sovereign kingdom or not, the
4 law applies, your Honor. And for those reasons, we feel
5 that you have no other choice but to deny this motion,
6 your Honor.

7 I believe that the case law on this is fairly
8 clear as laid out in our memorandum. All due respect to
9 Mr. Kaiama and everybody who's here, we believe the courts
10 have spoken, and we're simply going to ask that you take
11 judicial recognition of the U.S. Constitution, the Hawaii
12 Constitution, the Hawaii Revised Statutes, every law that
13 basically this Court is mandated to follow, and deny his
14 motion -- motions, actually.

15 THE COURT: Thank you.

16 MR. PHELPS: Thank you, your Honor.

17 MR. KAIAMA: Yes, your Honor. Briefly in
18 response.

19 I know that the cases that the prosecutor
20 relies on, your Honor, as a point of order, all of those
21 cases in those decisions deal with personal immunity and
22 personal jurisdiction.

23 So the question of subject matter
24 jurisdiction has not been raised before this Court or
25 before the appellate courts or nor has it been addressed.

1 I can tell you, your Honor, that I believe in
2 2012 I did take two cases up on appeal, bringing the same
3 question before the Court and presenting the same legal
4 analysis.

5 The ICA did not address the legal analysis in
6 this case, and I don't know why. I might say they refused
7 to address it, and, in fact, in both cases issued just a
8 two page summary disposition order, really relying on the
9 Kauwila case -- Kaulia case, excuse me. And the entirety
10 of the Court's analysis or the holding in that is
11 essentially what the prosecutor said. Is that despite or
12 regardless of lawfulness of its origins, this is the proper
13 State of Hawaii.

14 Your Honor, I'm asking that this Court
15 transcend that, and actually look into the analysis, and
16 based on the analysis realize that what we're asking is
17 the predicate question. Did the United States ever
18 establish lawful acquisition of sovereignty here? And if
19 they did not, then none of this legislative enactments can
20 have any bearing on this Court.

21 And, essentially, Dr. Sai and the evidence
22 that we provided has proved that. There is no dispute
23 that the claim for statehood here of Hawaii is by way of a
24 joint resolution. That's not undisputed. That's part of
25 Congressional records.

1 It's also clear, based on the law, both the
2 Supreme Court, by testimony by representatives and
3 Congressmen in Congress at the time of 1898, and the
4 testimony of the Attorney General in 1998 as well, I
5 believe it was Douglas Kmiec, all call into question -- in
6 fact, they don't call into question, basically affirm the
7 fact that the Congress has no legislative powers beyond
8 its own borders.

9 So what I'm asking the Court, your Honor, at
10 this time, is that under its own law, Lorenzo is still the
11 prevailing case.

12 So it still requires us to present that
13 evidence for the Court to conclude relevant factual and
14 legal evidence for the Court to conclude that the Hawaiian
15 Kingdom continues to exist.

16 We've done that now. So we're presenting the
17 Court with that analysis it hasn't had before, and we're
18 asking the Court to transcend the lack of -- and I don't
19 know how to say it, but I wish to say, respectfully, the
20 lack of courage on the part of the Intermediate Courts of
21 Appeals to actually address it and to address the legal
22 analysis.

23 We're asking this Court to take a look at
24 that and, again, once the Court is required or takes a
25 look at that analysis, we assert and we firmly believe

1 that there is no other course but that my clients should
2 prevail. Thank you, your Honor.

3 THE COURT: All right. Well, before the
4 Court today is defendant English's motion to dismiss a
5 criminal complaint pursuant to Hawaii Rules of Penal
6 Procedure 12(1)(b) and the joinder that was filed by Mr.
7 Dudoit joining in Mr. English's motion.

8 And as has been outlined by Mr. Kaiama,
9 essentially the argument here, is that this Court lacks
10 subject matter jurisdiction. As has also been pointed out
11 by Mr. Kaiama in his remarks to the Court, he has brought
12 this issue to our appellate courts in the past and has not
13 achieved the result that he has sought through those
14 arguments.

15 And, of course, as I'm sure everyone would
16 acknowledge, this Court is a trial court and is subject to
17 the rulings of our appellate courts. And what our
18 appellate court has said, as has been acknowledged in Mr.
19 Kaiama's arguments, has in (inaudible) stated that
20 individuals claiming to be citizens of the Kingdom of
21 Hawaii and not the State of Hawaii are not exempt from
22 application of the laws of the State of Hawaii.

23 And Mr. Kaiama has argued on behalf of Mr.
24 English and Mr. Dudoit that he's not of the view that the
25 Court has -- the appellate courts have addressed the issue

1 that they wish to have addressed.

2 But, at any rate, these identical issues
3 having been presented in the past, and the Court having
4 ruled, and the appellate courts having ruled in a certain
5 fashion, in the Court's view, at least for purposes of a
6 trial court, resolves the question presented by the motion
7 and joinder.

8 And, respectfully, the Court is of the view
9 that based on everything that's been presented, that the
10 Court does have subject matter jurisdiction and will --
11 will ask the question though. And that is that in your
12 pleadings, although it was not discussed today, you asked
13 the Court to take judicial notice of various documents,
14 but you never said anything about it today.

15 MR. KAIAMA: Actually, your Honor, I would
16 ask -- and thank you -- I would ask, because we did make
17 the request and it's provided for in the motion itself, as
18 well as the authorities, that the Court take judicial
19 notice of the matters that were presented in the motion
20 itself.

21 And that being, and a number of those are
22 actually treaties between the Hawaiian Kingdom and United
23 States, and they are part of the Congressional records to
24 begin with.

25 And I think it's fairly clear from the law

1 that these kinds of treaties, there is a -- an obligation
2 to take judicial notice of those treaties. That
3 essentially was most of the request.

4 Now, we did also ask that the Court take --
5 request judicial notice of the Hague Conventions of 1907,
6 the Geneva Conventions of 1949. Again, those are treaties
7 that the United States is a contracting party to and it is
8 part of U.S. law and part of Congressional records
9 there. And --

10 THE COURT: Well, it -- I'm sorry, I thought
11 you were finished.

12 MR. KAIAMA: Yeah. And, finally, the other
13 parts that we did ask was that the Court take notice of
14 the agreement -- assignment agreement with Liliuokalani
15 and Grover Cleveland, as well as the restoration agreement
16 between the the United States President and the Queen.
17 Again, those are part of the Congressional records.

18 And, finally, we did ask the Court to take
19 judicial notice of particular court rulings, that being
20 Larsen versus the Hawaiian Kingdom, and that is part of
21 the international law reports, and that's stated there.
22 As well as the U.S. Supreme Court decisions in U.S. versus
23 Belmont, U.S. versus Curtiss-Wright Export Corp, and State
24 of Hawaii, which is -- State of Hawaii versus Lorenzo,
25 which is the prevailing law in Hawaii.

1 Finally, I did ask the Court to take judicial
2 notice of Dr. Sai's expert memorandum, which was attached
3 as an exhibit. I still make that request, although I am
4 aware that the courts have not necessarily granted the
5 request, but I would still make the request on behalf of
6 Mr. English and Mr. Dudoit.

7 THE COURT: The matters that you've requested
8 by way of your written presentation to the Court are set
9 forth in page 12 of the memorandum; correct?

10 MR. KAIAMA: Let me just double -- yes, I
11 believe that is correct. That is on pages -- yes, page
12 12. Yes, page 12 of the memorandum.

13 THE COURT: Yeah, okay. What's the
14 prosecution's position?

15 MR. PHELPS: No objection, your Honor.

16 THE COURT: All right. The Court will
17 take -- there being no objection, the Court will take
18 judicial notice as requested in writing on the documents
19 and the matters requested on the last paragraph of page 12
20 of the memorandum in support of motion filed on February
21 6th, 2015.

22 And having considered all of that, the Court
23 at this time is going to deny the motion and joinder to
24 dismiss the criminal complaint in these cases.

25 And I'll ask Mr. Phelps to prepare the

1 appropriate order.

2 And thank all of you, your report and
3 presentation today.

4 MR. KAIAMA: Thank you, your Honor.

5 MR. PHELPS: Thank you, your Honor.

6 THE CLERK: All rise, court stands in recess.

7 THE COURT: You know, actually we were --
8 yesterday during a pretrial, we were talking about the
9 trial date.

10 MR. KAIAMA: Yes.

11 THE COURT: And --

12 MR. KAIAMA: My clients did sign the waiver.

13 THE COURT: You've done that already?

14 MR. KAIAMA: Yes.

15 THE COURT: Okay. Thank you.

16 (At which time the above-entitled proceedings
17 were concluded.)

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C E R T I F I C A T E

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I, BETH KELLY, a Court Reporter do hereby
certify that the foregoing pages 1 through 46 inclusive
comprise a full, true and correct transcript of the
proceedings had in connection with the above-entitled
cause.

Dated this 20th day of March, 2015.

BETH KELLY, RPR, CSR #235
Court Reporter

Beth Kelly, CSR #235
Court Reporter