

“A Rope of Sand:” A Documentary History of the Failure of the United States to Annex the Hawaiian Islands Part II

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Part II: The United States Disclaims Acquisition of the Hawaiian Islands

A. Overview

Justice Walter Frear of the Supreme Court of the Republic of Hawaii was a member of the five-person commission created by the Joint Resolution of 1898. That commission was charged with drafting the proposed legislation to assist Congress in enacting a law creating a government for the Territory of Hawaii.

In 1898 Frear, while in Honolulu, like other received newspaper reports about the Senate debates on the Joint Resolution. He must have been aware of the many voices in the Senate that opposed the Joint Resolution as absolutely incapable of acquiring the Hawaiian Islands. The Joint Resolution was a mere act of Congress not a treaty. Only a treaty of some kind between the Republic of Hawaii and the United States could provide for the annexation of the Hawaiian Islands.

As a Commission member, Frear had the task of producing a first draft of the Organic Act. He knew that the Joint Resolution could not acquire any of the Hawaiian Islands. In drafting the Organic Act, he was responsible for defining the boundaries of the future Territory of Hawaii. One assumes he knew that the Territory could not have any boundaries as there were no islands or waters within the Territory. He knew the Joint Resolution had passed and was the basis for annexation. He also knew that a Joint Resolution has no power to acquire the islands and waters of a foreign sovereign independent and equal to the United States.

Justice Frear did his job and did it quite well. He defined the boundaries of the Territory as those islands acquired by the Joint Resolution— even though he knew well that the Joint Resolution could not acquire any islands. He could not have done

much else. He could not provide a description naming the main islands for they had never been acquired. If sovereignty to those islands were challenged the United States could not produce a treaty of cession. The Joint Resolution was not a treaty. It had not been ratified by Hawaii. The Joint Resolution would not prove to any challenging the sovereignty of the United States to the Hawaiian Islands that the United States had good "title."

The definition he drafted for Section Two of the Organic Act would work over time. That is, it would simultaneously fool everyone not familiar with the impotence of the Joint Resolution and, at the same time, not actually make of sovereignty as to any islands or waters.

The McKinley administration, in their haste to annex Hawaii, never foresaw this problem—that the boundary description for Hawaii would be forever skewed because, well, frankly, the United States did not own Hawaii.

This is a description of the history of Justice Frear's odd description and the similar description created for the State of Hawaii. Both succeeded in deceiving the world for more than a century. Both exclude the Hawaiian Islands from the United States and the State of Hawaii. At the same time both fooled the people of Hawaii and the world into accepting the United States claim that Hawaii was territory of the United States.

President McKinley's haste to annex led to a long history of problems. Justice Frear's provision was so odd in comparison to other boundary descriptions that it could not do what boundary descriptions must do---draw lines as to where the sovereignty of one nation begins and ends.

The big test was in designing a boundary for the future state of Hawaii. The proposed Hawaii Constitution relied on Justice Frear's description in a shorter, more inane, form. When that description was presented to the Senate, there was shock and disbelief. The Senate, in 1959, years distant from the Senate debates of 189 had no idea that the boundary proposals presented were a deft compromise. Using careful legal language these proposals excluded all islands and waters from Hawaii while appearing to achieve the very opposite. The deception would last over a century. Never have so many been so deceived as to something so important.

The members of the Senate and House committees considering Hawaii statehood divided into two groups: those that knew the full story and those that were clueless. The clueless outnumbered those in the know.

Those in the know like Senator Clinton P. Anderson of New Mexico took charge of shepherding the state boundary description through to final enactment. Anderson would bear the brunt of ridicule, silly questions, and bewilderment from Senators

who were clueless. Anderson had the difficult task of improving on Justice Frear's compromise description--- making it even more deceptive while maintaining the core acknowledgement that the United States received nothing by the Joint Resolution. Anderson proved magnificently successful.

He diplomatically handled those who knew and those who were clueless. He had to balance state versus federal concerns as well. Thus, Senator Anderson's greatest achievement was in convincing the Hawaii delegation to give up the channel waters and Palmyra Island. Senator Anderson was a skilled actor. He made it appear that he had a personal grudge against Palmyra and its owners.¹ He made it appear that Hawaii's claim for the channel waters between the islands was simply too contrary to the federal policy of a limited three-mile territorial sea. One suspects that Anderson made these moves to avoid triggering any possibility of a challenge to any part of the State of Hawaii's future dominion. No nation was likely to ask how the United States obtained sovereignty over Oahu. On the other hand, it was possible that other nations would test the United States as to the channel waters and the island of Palmyra, 1100 miles south of Oahu.

Anderson presided over a final description of Hawaii that would be a longstanding triumph of deception. That boundary description deliberately avoided including the main islands by their names while excluding islands, by name that had never been part of the Hawaiian Island. This odd choice as to what islands to name was done to shield Palmyra from any suspicions. Palmyra was territory of Hawaii. It was also distant and unpopulated. By excluding other distant and unpopulated islands by name, Anderson presented a façade that the Senate simply had a grudge against unpopulated and distant islands. In truth, Anderson had a grudge against Palmyra remaining in the State of Hawaii.

¹ Senator Anderson. When they set out their legislative history, they took into consideration none of these areas. You can say there are no people living there, but there are places in Alaska that are covered by several feet, hundreds of feet of ice, but surely we would say if you start to divide Alaska into States, you would include that in some legislative group.

I explained, probably before you came in Senator Millikin, that because of the difficulties in which we find ourselves with reference to territorial waters, how far out these areas go, we will have trouble enough between the various islands without trying to settle the question of what happens going down to Palmyra and out across that archipelago if there were some way of leaving these uninhabited islands.

Statement of Senator Anderson, Non-public Hearing of the Senate Committee on Interior and Insular Affairs p. 216 March 17, 1953 Washington D.C.

Anderson must have had second thoughts about the role he compelled to play: He became the leader of the Senate Committee on Interior and Insular Affairs. He had knowledge that the Joint Resolution never acquired the Hawaiian Islands. He knew the Hawaiian Islands were not territory of the United States. He commissioned a report from the Congressional Report Service on the legal effect of the Joint Resolution. The report was written by Charles Tansill. The report contained a single quote which confirmed Anderson's suspicions. The quote was from a treatise of Law Professor Westel Willoughby, a constitutional scholar, Willoughby had written that that many in the Senate in 1898 had asserted that the Joint Resolution had no power to acquire the Hawaiian Islands. Moreover, Willoughby pointed out that the Joint Resolution was unconstitutional:

The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. . . .

Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force -- confined in its operation to the territory of the State by whose legislature it is enacted.²

When one examines the Anderson papers in the Manuscript Division of the Library of Congress, one finds that all of the documents relating to the Committee's work on boundaries were kept. When these documents are read as a whole; they are a road map that leads to one conclusion: The current boundary description of Hawaii was intentionally designed to deceive.

His papers and records are so meticulously kept that one suspects that Anderson expected, or hoped, that some historian of the future would uncover the deception. Anderson, a dentist, appeared, in all respects to be an average American. He worked, however, in a time of great danger to the United States. The United States was in a Cold War with the Soviet Union.

² 1 W. Willoughby, *The Constitutional Law of the United States* sec. 239, at 427 (2d ed. 1929).

It was the Soviet Union that annexed, invaded, and intervened in other nation's sovereign affairs; not the United States. The century-long occupation and illegal annexation of Hawaii could not become public in 1953. A letter from a State Department official reminded him of the importance of admitting Hawaii and Alaska as states.³ Both were on the United Nation's list of non-self-governing territories---a code word for "colonies." Hawaii must be admitted as a State.⁴ The world must

³ "The Department considers that the admission of this Territory into the Union would be in conformity with the traditional policies of the United States toward the peoples of organized Territories under administration of those who have not yet become fully self-governing. Furthermore, it is believed that favorable action on this proposed legislation by the Congress would enable this Territory to achieve the full measure of self-government contemplated in the United Nations charter to which the United States has subscribed.

It is significant to note that in the international sphere the United States can point with satisfaction to the fact that in the constitutional development of the territories administered by it, due consideration is given the freely expressed will of people of those territories.

This is of special significance in the case of Hawaii where proposals for statehood are based upon the will of a substantial majority of people as expressed in a popular referendum. The grant of statehood would thus serve to support American foreign policy and strengthen the position of the United States in international affairs."

See letter of March 6, 1953 from Thruston Morton, Assistant Secretary of State to Senator Hugh Butler, Chairman, Interior and Insular Affairs Committee, reprinted in the transcripts of the Hearing of the Committee of June 29, 1953, page 20.

⁴ "The harsh realities of this troubled tension filled world are such that the destiny of free men and of free nations, including our own, may well be determined by the two thirds of the world's population that inhabit the so-called Pacific Basin. Both the Soviet Union and Red China are cognizant that the balance of power lies in this vast area. Thus far, we have demonstrated our good faith and our belief in the self-determination of peoples. We granted independence to the Philippines as we promised. To the millions of dark-skinned people who predominate on earth regardless of our explanations, the only reason they understand to deny statehood to Hawaii is because there are so many persons of Asian and Polynesian ancestry resident there. This apparent discrimination is emphasized by Alaska's admittance last year into the sisterhood of States, leaving Hawaii as the only remaining incorporated Territory of our country."

never know the mistake made by the McKinley Administration in 1898. The impotency of the Joint Resolution of 1898 must never become public. Perhaps he believed or hoped that one day, long after the end of the Cold War with the Soviet Union was over---one day when the circumstances made it possible -the people of Hawaii and the world would learn the truth.

Clearly, Anderson took pride in achieving his goal---a deception that would last until today. In his papers is a note from the committee's chief counsel Stewart French where French celebrates the arrival of the final language for Hawaii's boundaries.

On the other hand, one suspects that Anderson had something of a conscience. He did what he did in the name of national security and patriotism. He did his duty but he must have had qualms: he left a paper trail of the artifice and deception by which future student or scholars would discover the real meaning of these two statutes.

That day has come. The deception was always right under our noses. The plain and clear language of the boundary sections of the Organic Act and the Admission Act are clear: The United States never acquired the Hawaiian Islands. This the United States admits in its own Statutes.

Today, as in 1953 when the Senate and House first confronted the issue, Hawaii is somewhat divided: there are those who know and those who are clueless. The clueless are in the vast majority—but hopefully not for long.

B. Under the laws of the United States Hawaii is not Part of the United States

The boundary statutes for the Territory [1900] and State of Hawaii [1959] are the "smoking guns" that the United States never acquired the Hawaiian Islands. Both statutes exclude the Hawaiian Islands by defining the boundaries of the Territory and State of Hawaii as only those islands acquired by the Joint Resolution of 1898.

See Testimony of Mike Masaoka U.S. Congress. Senate. The Subcommittee on Territories and Insular Affairs of the Committee On Interior and Insular Affairs 86th Congress 1st Session, hearings on S.50 "A Bill to Provide for the Admission of the State of Hawaii into the Union" February 25, 1959. 132 pp. at

Section two of the Organic Act, authored by Justice Frear of the Supreme Court of the Republic of Hawaii and a member of the Commission created by the Joint Resolution⁵, states as follows:

Section Two: Territory of Hawaii. That the islands acquired by the United States of America under an Act of Congress entitled "Joint Resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the "Territory of Hawaii."⁶

Section Two defines the islands and waters within the new Territory of Hawaii as those acquired by the Joint Resolution of 1898. Part I, above, shows clearly that the Joint Resolution had no power to acquire any islands or waters. As such, the Territory of Hawaii may exist as a political entity, but it is absolutely devoid of any islands or waters.

The legal effect of Section Two of the Organic Act was repeated with the enactment of Section Two of the Act of Admission in 1959. The Admissions Act defines the State of Hawaii as consisting of the following:

Section Two.

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.⁷

In order to determine what is within the State of Hawaii one must focus on the following language in Section Two of the Act of Admission.

⁵ Walter Frear, a Justice of the Hawaii Supreme Court of the Republic of Hawaii, drafted Section 2. A hand-typed draft of the Organic Act can be found in the papers of Justice Walter Frear State of Hawaii Archives.

⁶ From the Act Establishing a Government for the Territory of Hawaii, Section Two.

⁷ An Act to Provide for the Admission of the State of Hawaii into the Union" (Act of March 18 1959) Public Law 86-3, 73 Stat 4.

“The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters included in the Territory of Hawaii on the date of the enactment of this Act, . . .”

Section two of the Admission Act requires one to look back to Section two of the Organic Act. The islands included in the State of Hawaii, on the date of the enactment of the Act of Admission, are those islands that were in the Territory if they were acquired by the Joint Resolution. The Joint Resolution could not acquire any islands or waters. There are no islands in the Territory or in the State.

The Act of Admission simply repeats the test used in the Organic Act. Both acts thus exclude all islands and waters from the dominion of the United States [what was included in the Territory of Hawaii] and the State of Hawaii [included in the State of Hawaii].⁸

Congress labored intensively to disguise these statutes. Congress prepared six different drafts of the future boundaries of the State of Hawaii before settling on the final language. That final language was so important that the people of Hawaii were required to accept such changes as a condition of statehood.⁹

⁸ This is not to claim that there is no such entity as the State of Hawaii. Nor is his claim that Congress did not create a “Territory of Hawaii.” It is clear, however, that neither the Territory of Hawaii nor the State of Hawaii have any dominion

⁹The people of Hawaii were presented with three questions on June 27, 1959 as part of a so-called plebiscite. The first question of that plebiscite was whether the people approved of statehood. There was no need for this question as the approval of the people of Hawaii had already been given by ratification of the proposed Constitution for the State of Hawaii in 1950? The second question asked whether the people of Hawaii accepted the federal boundaries drafted by Congress to replace those originally in the proposed Constitution ratified by the People of Hawaii. That boundary was written with the intent of disguising the fact that the State of Hawaii would not include any of the Hawaiian Islands. There was very little discussion or information as to the effect of the boundary change. Newspaper articles urged voters to vote yes on all three questions. Question two was described as a housekeeping measure. Newspaper accounts declared that it would not change the boundaries of the State. That claim was true in an ironic sense. The boundaries of the Territory held no islands or waters. Similarly, by voting for the new boundary definition, the dominion of the state would be the same as that of the Territory—completely empty. All three questions were overwhelmingly approved by the people of Hawaii on June 27, 1959. Hawaii had met the terms set by Congress for Statehood. In August, the President signed the bill creating and admitting the State of Hawaii. See Text at , infra.

These statutes probably also reflect consequences that were never contemplated when the Joint Resolution was used to acquire Hawaii. This lack of foresight created problems long after 1898. Those problems still exist today.

The first of these problems is that the statutes defining the boundaries of the State are odd and unlike boundary statutes used elsewhere. In the following section, we examine other boundary descriptions---wholly unlike those used to describe the Territory of Hawaii and the State of Hawaii.

C. Other Boundary Descriptions

Other boundary descriptions rely on objective markers: metes and bounds, natural monuments, lines of longitude and latitude or political boundaries.¹⁰ The descriptions of territory acquired by one nation from another are contained in treaties and used thereafter as statutory definitions. Those descriptions are precise. The acquiring country must know exactly what it is receiving. The ceding nation must know exactly what territory it is giving up. Boundaries are the most fundamental agreements between nations. Boundaries define where the sovereignty of a nation begins and ends.

There was no treaty ceding the Nation of Hawaii to the United States. This eliminated any possibility of a treaty-based description which the United States could copy as the objective definition of the dominion of the Territory of Hawaii.

Dominion and boundaries are extremely important. When two countries conclude a transfer of territory, the boundaries and dominion are meticulously described in the Treaty. This is true when a new nation is created by revolution. For example,

¹⁰ Consider the legal description of the boundaries for the territory of Idaho:

Sec. 66. All that part of the territory of the United States included within the following limits, to wit Beginning at a point in the middle channel of the Snake River, where the northern boundary of Oregon intersects the same; then follow down the channel of Snake River to a point opposite the mouth of the Kooskooskia or Clear Water River; thence due north to the forty-ninth parallel of latitude; thence east, along that parallel, to the twenty-seventh degree of longitude west of Washington; thence south along that degree of longitude, to the northern boundary of Colorado Territory; thence west, along that boundary, to the thirty-third degree of longitude west of Washington ; thence north, along that degree, to the forty-second parallel of latitude ; thence west, along that parallel, to the eastern boundary of the State of Oregon; thence north, along that boundary, to the place of beginning, is created into a temporary government by the name of the Territory of Idaho.

examine the Treaty that ended the American Revolution and established the boundaries of the United States:

TEXT:

Articles agreed upon, by and between [*2] Richard Oswald Esquire, the Commissioner of his Britannic Majesty, for treating of Peace with the Commissioners of the United States of America, in behalf of his said Majesty, on the one part; and John Adams, Benjamin Franklin, John Jay, and Henry Laurens, four of the Commissioners of the said States, for treating of Peace with the Commissioner of his said Majesty, on their Behalf, on the other part. . . .

ARTICLE 1st

His Britannic Majesty acknowledges the said United States, Viz New Hampshire, Massachusetts Bay, Rhode Island and Providence Plantations, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina and Georgia, to be free Sovereign and independent States; . . . It is hereby agreed and declared that the following are, and shall be their Boundaries viz

ARTICLE 2d

From the north west Angle of Nova Scotia, Viz that Angle which is form'd by a Line drawn due north, from the Source of St Croix River to the Highlands, along the said Highlands which divide those Rivers that empty themselves into the River St Laurence, from those which fall into the Atlantic Ocean, to the northwestern most Head of Connecticut River; thence down along the middle of that River to the 45th [*4] Degree of North Latitude; from thence by a Line due West on said Latitude, until it strikes the River Iroquois, or Cataraquy; thence along the middle of said River into Lake Ontario; through the middle of said Lake, until it strikes the Communication by Water between that Lake and Lake Erie; thence along the middle of said Communication into Lake Erie, through the middle of said Lake, until it arrives at the Water Communication between that Lake and Lake Huron; thence along the middle of said water communication into the Lake Huron; thence through the middle of said Lake to the Water Communication between that Lake and Lake Superior; thence through Lake Superior northward of the Isles Royal &

Phelipeaux, to the Long Lake; thence through the middle of said Long Lake, and the water Communication between it and the Lake of the Woods, to the said Lake of the Woods, thence through the said Lake to the most Northwestern point thereof, and from thence on a due west Course to the River Mississippi; thence by a Line to be drawn along the middle of the said River Mississippi, until it shall intersect the northernmost part of the 31st Degree of North Latitude. South, by a Line to be drawn [*5] due East, from the Determination of the Line last mentioned, in the Latitude of 31 Degrees North of the Equator, to the middle of the River Apalachicola or Chattahoochee; thence along the middle thereof, to its junction with the Flint River; thence strait to the Head of St Mary's River, and thence down along the middle of St Mary's River to the Atlantic Ocean. East, by a Line to be drawn along the middle of the River St Croix, from its Mouth in the Bay of Fundy to its Source; and from its Source directly North, to the aforesaid Highlands which divide the Rivers that fall into the Atlantic Ocean, from those which fall into the River St Laurence; comprehending all Islands within twenty Leagues of any part of the Shores of the united States, and lying between Lines to be drawn due East from the points where the aforesaid Boundaries between Nova Scotia on the one part and East Florida on the other shall respectively touch the Bay of Fundy, and the Atlantic Ocean; excepting such Islands as now are, or heretofore have been within the Limits of the said Province of Nova Scotia. . . .

Done at Paris, the thirtieth day of November, in the year
One thousand Seven hundred Eighty Two

SIGNATORIES:
RICHARD OSWALD
[SEAL]
JOHN ADAMS
[SEAL]
B. FRANKLIN
[SEAL]

Compared with the above treaty language, Sections Two of the Organic and Admission Act are not "positive" and "objective" in the same sense. Objectivity in description is not a problem with Island territories. Other island groups have been definitively and objectively defined by longitude, latitude or by name.

In the Treaty of Paris of 1898, ending the Spanish American War the United States acquired by cession the Philippine Islands, a colony of Spain. The United States accepted the Spanish cession of the Philippines. The Philippines were defined by a rectilinear box using lines of longitude and latitude.

The islands and the archipelagic waters within that box constituted the dominion to be ceded and thus acquired:

ARTICLE III n3

For a supplement to art. III, see convention of Nov. 7, 1900 (TS 345), post, p. 623.

Spain [*3] cedes to the United States the archipelago known as the Philippine Islands, and comprehending the islands lying within the following line:

A line running from west to east along or near the twentieth parallel of north latitude, and through the middle of the navigable channel of Bachi, from the one hundred and eighteenth (118th) to the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich, thence along the one hundred and twenty seventh (127th) degree meridian of longitude east of Greenwich to the parallel of four degrees and forty five minutes (4 [degrees] 45') north latitude, thence along the parallel of four degrees and forty five minutes (4 [degrees] 45') north latitude to its intersection with the meridian of longitude one hundred and nineteen degrees and thirty-five minutes (119 [degrees] 35') east of Greenwich, thence along the meridian of longitude one hundred and nineteen degrees and thirty five minutes (119 [degrees] 35') east of Greenwich to the parallel of latitude seven degrees and forty minutes (7 [degrees] 40') north, thence along the parallel of latitude seven degrees and forty minutes (7 [degrees] 40') north to its intersection with [*4] the one hundred and sixteenth (116th) degree meridian of longitude east of Greenwich, thence by a direct line to the intersection of the tenth (10th) degree parallel of north latitude with the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich, and thence along the one hundred and eighteenth (118th) degree meridian of longitude east of Greenwich to the point of beginning.

The United States will pay to Spain the sum of twenty million dollars (\$ 20,000,000) within three months after the exchange of the ratifications of the present treaty.

The United States and the Emperor of Russia resolved "the island problem" in the purchase of Alaska in 1867: The treaty names the islands to be included.

His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825, and described in Articles III and IV of said convention, in the following terms:

"Commencing from the point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 10 minutes north latitude, and between the 131st and the 133d degree of west longitude, meridian of Greenwich,) the said line shall ascend to the north along the channel called Portland channel, as far as the point of the where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean.

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood

"1st. That the island called Prince of Wales Island shall belong wholly to Russia," (now, by this cession, to the United States.)

"2d. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

"The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty, minutes 'north

latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Ratmanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly southwest, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a southwesterly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian."

Hawaii, an island nation recognized by the world in 1843 and 1844, had no problem describing its dominion. In 1846, Kamehameha III established the first boundaries for the Islands Nation of Hawaii by naming the Islands and waters to be included:¹¹

Section 1: The jurisdiction of the Hawaiian Islands shall extend and be exclusive for the distance of one marine league seaward surrounding each of the islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau; commencing at low water mark on each of the respective coasts of said islands.

The marine jurisdiction the Hawaiian Islands shall also be exclusive in all the channels passing between the respective islands, and dividing them, which jurisdiction shall extend from island to

In the second paragraph, Kamehameha adopted the archipelagic definition of the Hawaiian Islands. No one could pass through the channels of the main island without the King's permission. Other nations took note and accepted this claim—and that recognition established the boundaries of the Kingdom of Hawaii.

Justice Frear could not use metes and bounds, natural monuments, lines of longitude and latitude. He could not, in the description used in the Organic Act, name the main

¹¹ Citing Second Act of Kamehameha III, April 27 1846, Part I Chapter VI, Article I See Memorandum of the Hawaii Statehood Commission [testimony of C. Nils Tavares] Relating to Proposed Amendments to S.49 March 10 1953 page 1]

islands. Any claim that he made that objectively included an Island in the Territory of Hawaii could be challenged by a foreign sovereign. That would be disastrous.¹² The United States, having acquired the Islands by Joint Resolution could not show a treaty or other proof of the means of acquisition. The chain of sovereignty was broken in 1898. The Joint Resolution had no power to acquire the Hawaiian Islands. Thus, in drafting Section Two of the Organic Act, Frear did not have the option of using metes and bounds, natural monuments, rectilinear boxes or naming the islands. The United States had never acquired Hawaii and could not prove it ever had.

Justice Frear's task was thus to create a description that would deceive. Such a description must make it appear as if the United States had acquired the Hawaiian Islands when it had not. The best deception was the language he actually used---"the Territory of Hawaii consisted of those islands acquired by the Joint Resolution of 1898." Frear's language has worked. Native Hawaiians, Americans and the world have been fooled for more than a century.

Could Frear have successfully used a historical approach, relying on the doctrine of *Uti Possidetis*? Prior governments of the Nation of Hawaii did rely on the doctrine of *Uti Possidetis*?¹³ The Kingdom described its dominion by naming the main islands and channel waters. The Provisional Government implicitly relied on the doctrine. It claimed that by the doctrine of successful overthrow that it succeeded to the dominion of the Kingdom of Hawaii. The Republic of Hawaii explicitly relied on *Uti Possidetis* in its written Constitution:

The Territory of the Republic of Hawaii shall be that heretofore constituting the Kingdom of the Hawaiian Islands, and the territory ruled over by the Provisional Government of Hawaii, or which may hereafter be added to the Republic¹⁴

¹² If the United States claim over the channel water under the archipelagic theory were challenged by a foreign ship sailing those waters the United States could not produce a document by which it claims to have received those waters from the Nation of Hawaii. The Joint Resolution was not a Treaty

¹³ *Uti Possidetis* is a Latin term which means 'as you possess'. According to this principle of international law, the parties to a treaty can retain possession of what they have acquired by force during the war. . . . When a war ends a treaty formed can adopt the principle of *uti possidetis*, or the principle of *status quo ante bellum*, or a combination of the two. The principle of *status quo ante bellum* means 'the state of things before the war'. If a treaty consists of no condition regarding the possession of property and territory taken by force, the doctrine of *uti possidetis* will prevail.

¹⁴ From Article 15 Constitution of the Republic of Hawaii Adopted July 3, 1894.

Could Frear have written something similar-- such as the following?

Section Two: The boundaries of the Territory of Hawaii shall be that heretofore constituting the Kingdom of Hawaiian Islands, and the territory ruled over by the Provisional Government of Hawaii, or which may hereafter be added to the Territory.

No, he could not. The doctrine of *Uti Possedetis* still depends on the existence of a treaty of cession or its equivalent. *Uti Possidetis* merely suspends the need to describe the territory in detail. It does not negate the need for a document or act conveying sovereignty. The doctrine simply provides a "short-form" description to replace a longer description---like a quitclaim deed. One still needs a mode of conveyance from the ceding government to the successor government.

C. Problems during the Territorial Period 1900-1959

There were other problems during the Territorial problem. The question arose whether the Leeward Islands were part of the Territory. Frear sought to ameliorate this problem by drafting notes to Section Two which specifically named the Islands acquired. Thus, in the 1915 Revised Statutes for the Territory of Hawaii, one can find the following note immediately beneath Section two in the Revised Statutes:

The Hawaiian group consists of the following islands: Hawaii, Maui, Oahu, Kauai, Molokai, Lanai, Niihau, Kahoolawe, Molokini, Lehua, Kaula, Nihoa, Necker, Laysan, Gardiner, Lisiansky, Ocean, French Frigates Shoal, Palmyra, Brooks Shoal, Pearl and Hermes Reef, Gambia Shoal and Dowsett and Maro Reef. The first nineteen were listed in the Commission report transmitted to Congress by the message of the President, Senate Doc. 16, 55th Congress, 3d Session, 1898. U.S. Misc. Pub. 1898.

The notes added in 1915 and thereafter are not law; they are not part of the Organic Act. They have no legal effect. They are evidence of the problems created by Section Two.¹⁵

¹⁵ After World War II, the notes to Section Two were expanded to include the following:

"For history of Palmyra, see 133 F.2d 743; 156 F.2d 756; 331 U.S. 256. It has been a question whether Midway was acquired by Hawaii on July 5, 1859, and so is a part of the Territory, or was acquired by the United States independently on August 28, 1867; the latter was assumed in 182 U.S. 304. See 1933 report of

The ambiguity of Section Two of the Organic Act Hawaii created other problems. Courts seeking, for example, to define the boundaries of offshore fishponds had no definitive guidelines. The Territorial Supreme Court lamented that there was no description of the boundaries of the Territory:¹⁶

“Neither in the Treaty of Annexation nor in Newlands Resolution were the Hawaiian Islands and their dependencies explicitly defined. The Hawaiian Organic Act simply referred to the territory acquired from the Republic of Hawaii as “the Islands acquired by the United States of America under an Act of Congress entitled ‘Joint Resolution ... annexing the Hawaiian Islands * * * ‘approved, etc.’

The drive for Statehood gave Hawaii a chance to improve, that is, “clarify” its boundaries. In 1949, a Constitutional Convention convened to draft a Constitution for a future State of Hawaii. They finished their work in 1950. The delegates drafted new language describing the boundaries of the future state:

Section 1. The State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii.¹⁷

At first glance, this definition seems woefully inadequate—even worse than the Organic Act. In actuality, while shorter the definition in the proposed Constitution had the same meaning as Organic Act.

Hawaiian Historical Society, paper read by P. C. Morris, Dec. 14, 1933. It was assumed by Congress that Midway was not part of the Territory in the Act of August 13, 1940, c 662, 54 Stat 784, extending jurisdiction of United States District Court for Hawaii to include Midway Islands, also Wake, Johnston, Sand, and Jarvis Islands.

Territorial jurisdiction includes the military and naval reservations within the exterior boundaries of the Territory. 19 Haw. 200; 23 Haw. 61; of 4 U.S.D.C. Haw. 62. By the Act of April 19, 1930, the Hawaii National Park was removed from territorial jurisdiction except for certain purposes therein stated. This Act is set out in full following the U.S. Constitution.”

¹⁶Bishop v. Mahiko 35 Hawaii 608, 642 (1940)

¹⁷ Territorial Boundaries as Proposed by 1949 State Constitutional Convention Article XIII.

It said, in effect, what Section Two said: that the new State of Hawaii would consist of the islands and waters constituting the Territory of Hawaii. The islands and waters of the Territory were those that were acquired by the Joint Resolution. The Constitutional Convention discovered what Justice Frear knew; that there was simply no better language to describe the State that that used to describe the Territory.

D. Initial Congressional Reaction to the Description of Hawaii as described in the Proposed State Constitution of 1950.

The proposed boundary definition of the Hawaii State Constitution took Congress by surprise.¹⁸ It was unlike any they had seen before. It contained no positive referents such as metes and bounds, lines of longitude and latitude or political demarcations.¹⁹

¹⁸ It was clear that there was no official boundary description for Hawaii. See the letter of Assistant Attorney General J. Lee Rankin to Senator Guy Cordon:

“Chairman, Subcommittee on Territories and Insular Affairs, Committee on Interior and Insular Affairs, United States Senate, Washington D.C. January 13, 1954:

Dear Senator Cordon: This is in response to your recent request for comments on confidential committee print no. 3 of Senate Bill 49 to provide statehood for Hawaii with respect to submerged lands and boundary questions.

As you know, the only Territorial description of the new State contained in the bill is the provision of section 1, that “the State of Hawaii shall consist of the territory now included in said Territory of Hawaii.”

However, there is no existing authoritative designation of the area included in the Territory, and there is at least some degree of doubt as to the extent of interisland waters embraced in the territory and the inclusion of certain islands, particularly Johnston and Midway Atolls.

The Organic Act of the Territory, 31 Stat. 141, section 2, April 30, 1900 -- describes it merely as consisting of the islands acquired under the joint resolution of annexation. That resolution in turn refers merely to the Hawaiian Islands and their dependencies.”

¹⁹ Senator Jackson: Would not a longitude-latitude metes a bounds form of description meet the situation?

It simply stated:

Section 1. The State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii."²⁰

In 1953 the Hawaii Statehood Commission, chaired by C. Nils Tavares brought the proposed State Constitution and the new boundary description before the Senate Committee on Interior and Insular Affairs. The Senate Committee had never seen a boundary description like that proposed by Hawaii. What does it mean to say that Hawaii constitutes the islands and waters heretofore constituting the Territory of Hawaii? Delegate Farrington sought to justify the description as the established

Senator Smathers: That is the description we made the other day, which seems to me to be the only practical suggestion that we have a metes and bounds, longitude and latitude description.

Senator Cordon. Mr. Chairman, ... Jurisdiction is one thing. Boundary is quite another. Boundary is a continuous thing. There is no such boundary there.

Senator Anderson. What would be the effect if somebody, like myself introduced an amendment to this bill limiting the Hawaiian Islands to those eight islands and the little tiny island that are around them?

Senator Milikin: I repeat, did the Territory of Hawaii officially, as a governmental organization, ever define the limits of its territory?

Senator Cordon: In a single definition so far as I know – no.

Senator Milikin: That is the answer.

Senator Smathers: It seems to me that as a responsible committee we have a duty to try to give limits, to set some sort of practical understandable boundary to what is going to be in the new State of Hawaii.

The Chairman: We are trying our best. Mr. Jabulka do you have any description which is an official description of the Territory of Hawaii?

Mr. Jabulka: The question has never come up in just this manner where we were asked to describe what the Territory of Hawaii consisted of in the matter of islands.

Statements of Mr. Jabulka, the Chair, and Senators Milikin, Anderson, Smathers, Jackson and Cordon. Non-Public Hearing Senate Committee on Interior and Insular Affairs March 12, 1953 Washington D.C.

²⁰ Article XIII, section 1, the Proposed State Constitution

boundaries used by the Territory.²¹ "Heretofore" according to McMillan's dictionary

²¹ Mr. Farrington. The same language has been incorporated in every bill introduced since the law provided the admission of Hawaii to the Union as a State. It has been approved three times by the House of Representatives and twice by the Senate Committee on Interior and Insular Affairs.

The people of Hawaii have provided in the State Constitution that "the State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii."

The Administration recommends that "the islands now constituting the Territory of Hawaii be included in the State of Hawaii." Its position is set forth in a letter addressed by Assistant Secretary of the Interior Orme Lewis under date of April 29 to Chairman Hugh Butler of the Senate Committee on Interior and Insular Affairs and cleared by the Bureau of the Budget.

We of Hawaii strongly support this position. It is our belief that to adhere to these historic boundaries is clearly to the best interest of the federal government as well as to the State of Hawaii.

On the contrary, to depart from these boundaries will involve complications in the administration of these islands that are without any justification.

Hawaii consists principally of eight main islands that lie within a distance of about 350 miles and have a total land area of approximately 6400 miles. The entire population of the Territory, as well as the economy of all aspects of the life of the Territory is located within this group.

The Leeward Islands were part of the Republic of Hawaii and were brought into the United States in 1898 by reason of that fact. They are all unimproved except for a Coast Guard Loran station and an abandoned Navy airfield on French Frigate Shoal. They are all public without any private titles. In 1909 they were all set aside as a bird refuge by Presidential Executive Order. Under the provisions of the statehood bills now pending before the Committee, they would all become property of the United States.

The Leeward Islands are relatively unimportant at the present time. Yet there are many good reasons for their inclusion in the State of Hawaii.

They are geographically part of the Hawaiian archipelago.

They have consistently been regarded as part of the Territory of Hawaii and have been administered as such. Their exclusion would leave them in an ambiguous status which would require separate attention by the Federal Government.

means "until this time or before now." This description is about as precise as saying that Hawaii is what it "has been known as"—without describing what it that it has been "known as."²²

Senators were baffled, confused and even angry.²³ This confusion and annoyance

Joseph Farrington, "The Boundaries of the State of Hawaii" For Members of the Senate Committee ON Interior and Insular Affairs document 8 pages from the Anderson Papers Library of Congress.

²² The Chairman. You speak of historical background of obtaining the islands or by conquest or legislative means, but is there a legal description on record as to the boundaries of the new State?

From the transcript of the Hearing before the House of Representatives, Subcommittee on Territorial and Insular Possessions of the Committee on Interior and Insular Affairs, Mr. Saylor Chairman. Monday February 23 1953 in answer to a Statement of Mr. C Nils Tavares

²³The Chairman. Mr.Jabulka, do you have any description that is an official description of the Territory of Hawaii.

Mr. Jabulka. I think we have. In answer to Senator Jackson's query, the question has never come up in just this manner before where we were asked to describe what the Territory of Hawaii consisted of in the matter of islands. There was introduced in the record of previous hearings –and I would like to submit this to the chairman to show just what we think the territory of Hawaii consists of the number of rocks and shoals. We mention all of them because historically they are part of the archipelago.

Senator Jackson. What are you referring to now?

Mr. Jabulka. I have here the proofs of the House Hearings, which were concluded late last month. The hearings are being printed today.

Senator Jackson. What about prior to that? The House apparently did not pick it up?

Mr. Jabulka. I do not believe this question has ever risen in just this form.

Senator Anderson. In any form has it arisen?

Mr. Jabulka. I do not believe so. I believe it has always been taken for granted that the Territory of Hawaii's islands were sufficiently well known, at any rate—

Senator Anderson. You cannot overestimate the ignorance of a member of Congress. (Laughter). You must not do it that way. If you went to the House of Representatives, I doubt that you could find one person in the House who understands this well-known fact that you just referred, that the Territory of Hawaii runs from Palmyra 2600 miles up o Kure. Would you like to take gamble of some sort on that?

Mr. Jabulka. I think I could that that bet. We have had a lot of commissions out there. The city –county of Honolulu has very jocularly been referred to in the public press as a large county because it extends from the City and County of Honolulu to Palmyra by virtue of the fact, as I mentioned before, that the owners pay taxes into the county of Honolulu.

Senator Anderson. How much do they pay? You are well acquainted with that fact?

Mr. Jabulka. I can get that information for you sir. I do not know what the valuation, the assessed, valuation is, but I can provide it for you and have it here by tomorrow.

Senator Anderson. I would appreciate that very much.

Senator Jackson. Would read the description that appears in the House hearings?

Mr. Jabulka. It is rather lengthy.

Senator Jackson. Does it include what we were discussing?

Mr. Jabulka. Yes. It lists 19 islands, which have been included in the past, and then four or five shoals, which are popularly supposed to be a part of the Territory of Hawaii. When I say islands, I do not mean that they are islands in that they have land area. I have known or sailed by most of them, and some of them are merely just rock protruding above the water.

The Chairman. I think that perhaps it might be a good idea to include form the house hearings al that it has to say with reference to the extent of the Territory of Hawaii.

Senator Long. It seems to me, Mr. Chairman our committee report might well include a description of all these lands for certainty rather than spell it out in the bill. When Louisiana came into the Union there was some vague language. The only way we could settle that, even with the Eisenhower administration apparently is to try to get a tidelands bill through and then go to court and see just what the boundary was at the time we came in.

persisted, among the "clueless" for the next six years.

Even before that time, we had to go to court with the State of Mississippi about all these little mudflats and islands of Chandeleur sound and the Mississippi Sound. It would be well to settle that type of controversy so we will know what we are bringing in at the time.

Senator Millikin. Mr. Chairman, do we have anything official as to what the Territory of Hawaii claims is included within it?

Senator Cordon. Mr. Chairman, may I suggest the Senator was not here when this was discussed. At the time this matter of annexation was up, the Congress set up a commission to study the matter and report to the Congress. The commission made that report which is found in Senate Documents Volume 3, no. 16, the Hawaiian Commission Report a sizeable document, in which the commission reported on this matter. In there is a list by the commission of the Congress of the islands in question.

Senator Millikin. I was not talking about what the commission thinks the Territory of Hawaii consists of. I asked whether the Territory of Hawaii, as a governmental organization has made any claims to what belongs to it. Has that been done?

Senator Cordon. That is in that report for anyone who desires to read it. From time to time, there have been claims made by the monarchy over the years, the monarchy antedating the United States of America in time. The report is an official document, even though it be neither a legislative determination nor a judicial one.

Senator Millikin. I repeat, did the Territory of Hawaii officially, as a governmental organization, ever define the limits of its territory?

Senator Cordon. In a single definition, so far as I know, no.

Senator Millikin. That is the answer.

The Chairman. It is called the Hawaiian Islands. I think there is an insertion which should go in which will answer Senator Millikin's question, if you will insert it without reading it.

Statements of the Chairman, Senators Millikin, Cordon, Jackson, Anderson and Mr. Jabulka from Hawaii, Non-public Hearing of the Senate Committee on Interior and Insular Affairs March 17, 1953 Pages 210-11.

Dr. Miller. I am bringing it up because over in the other body, as you remember, they wanted to know how far out the boundaries might go and what the boundaries would be. It was kind of a tough one to solve apparently. It is one thing that bothered me with relationship to statehood as to where the boundaries of the new State might be²⁴.

Dr. Miler. I think there ought to be some place a legal description, either in the report, or in the bill or somewhere which says this is the boundary of the new State.²⁵

In 1959, six years after the problem was first presented Senators still could not figure out the boundaries of the future State of Hawaii:

Senator Church: I wonder whether it might be fruitful for these gentlemen to inquire between now and tomorrow morning as to whether there does not exist somewhere on the statute books an exact definition of the present boundaries of the Territory of Hawaii which would suffice to clear this question inasmuch as the bill in section 2 says that the State of Hawaii shall consist of all the island together with their appurtenant reefs and Territorial Waters included in the Territory of Hawaii on the date of the enactment of this Act. Perhaps there is no such clear and concise definition of the present boundaries of the Territory

Senator Stevens: Whether there exists any definition in terms of metes and latitude on the statute books, I am not aware of it. So far as I know that is the only complete description.

Senator Church: That is the best description of the actual boundaries of the Territory that we have?

Senator Stevens: That is my understanding yes.

Someone had to take leadership. Senator Clinton P. Anderson was that man. Senator Anderson of New Mexico took over the leadership of the Committee. He

²⁴ Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 166

²⁵ Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 167

knew the problem. There was nothing in the Territory. He learned this from a report he had commissioned from the Congressional Research Service. In that report, written by Charles Tansill, was the quote from a 1929 Constitutional Law treatise by eminent scholar. Professor Willoughby concluded that the Joint Resolution had no power to acquire any territory.²⁶ The Joint Resolution was not only unconstitutional. It is doubtful whether it could acquire territory. Anderson seemed to change after reading the Tansill memorandum. Prior to the memo Anderson was like many of the Senators. He was outraged and puzzled by the fact that Hawaii had such strange boundaries.²⁷ He kept asking for the "real" or "legal" definition of Hawaii. He tried to limit the new state to the eight main islands. Otherwise, "Hawaii" stretched for some 2400 miles.²⁸ Newspapers in Hawaii made fun of Anderson. They mocked him

²⁶ "The constitutionality of the annexation of Hawaii, by a simple legislative act, was strenuously contested at the time both in Congress and by the press. The right to annex by treaty was not denied, but it was denied that this might be done by a simple legislative act. . . . Only by means of treaties, it was asserted, can the relations between States be governed, for a legislative act is necessarily without extraterritorial force -- confined in its operation to the territory of the State by whose legislature it is enacted."

1 W. Willoughby, *The Constitutional Law of the United States* sec. 239, [*34] at 427 (2d ed. 1929)

²⁷ Senator Long: It seems to me, Mr. Chairman, our committee report might well include a description of all these lands for certainty rather than spell it out in the bill....Even before that time we had to go to Court with the State of Mississippi about all these little mudflats and islands off Chandeleur sound and Mississippi sound. It would be well to settle that type of controversy so we will know what we are bringing in at the time.

Stenographic Transcript of Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 "A Bill enabling the People of Hawaii to Establish a State."

²⁸ Senator Anderson. May I ask this question of Mr. Slaughter? What would be the effect if somebody, -- I am not asking for how it would be voted, up or down,--what would be the effect if somebody like myself introduced an amendment to this bill limited the Hawaiian Islands to those eight islands and the little tiny island that are around them. Is there any way that we could then provide for a study of their interest of this to decide if anything needed to be added to it? I think it is terribly difficult to explain that you are trying to take Palmyra in, a thousand miles away. I see that this suit was filed after the Government in 1938 tried to negotiate with the owners of a supposedly worthless strip of ground and could not do it. They went out there and to build this thing because they could not get a lease on the property.

and printed maps of Hawaii showing him the islands.²⁹

Senator Cordon. That might happen anywhere with privately owned land when the Government recognized the ownership.

Senator Anderson. Our Government without a shadow of title put on all these improvements apparently accepting what they thought they owned. They thought it was Federal property. I am just trying to avoid doing it on this little archipelago that runs out there. Midway might not be the only island that the navy is going to need or the Air Force is going to need. When we get into another struggle we will be in trouble again. Somebody will show up as the owner of one of these.

The Chairman. Will they have more difficulty getting it under Hawaii State than they do now under Hawaii territory?

Senator Anderson. I think if we limited Hawaii Territory to the eight principal islands that are the islands, and the boundaries of them, that that is all the territory they have, they would find there would be less difficulty.

Senator Millikin. Mr. Chairman, is it not the point to bring Hawaii in as a state of the Union and to bring everything Hawaii has into the Union? Is that not the point?

The Chairman. In the bill, that is about all it says. It admits the Hawaiian Islands.

Senator Millikin. I do not see that that the question of distance---the Hawaiian Islands themselves are how far from the United States?

Senator Cordon. Twenty four hundred miles.

Statements of Senators Anderson, Cordon, the Chairman, and Millikin, Non-public Hearing of the Senate Committee on Interior and Insular Affairs pp. 210-214 March 17, 1953 Washington D.C.

²⁹ An article in the Honolulu Advertiser was directed at Senator Anderson showing a map of the Hawaiian Islands:

Attention Senator Anderson—

“...charges that the proposed boundaries of the State of Hawaii were “vague and unclear” to him were made last week by Senator Clinton P. Anderson, New Mexico Democrat. Islands which would be part of the State are the same as those now making up the Territory. They are shown in capital letters. Those that will not be part of the State are in capital and lowercase letters with an arrow pointing to them.

To find the State—and present territorial boundaries, all you have to do is draw a three-mile circle around each included island. As an example of the distances involved, it is 922 nautical miles from Honolulu to Palmyra and 1149 miles from Honolulu to Midway.”

Senator Anderson was also aware that the United States was in the midst of a cold-war battle for world leadership with the Soviet Union. Hawaii had been deemed a non-self-governing territory by the United Nations. The United States could hardly criticize the Soviet Union as long as it held non-self-governing colonies. A letter from the Department of State reminded him of the stakes. Statehood for Hawaii was a matter of national urgency.

The United States claim to Hawaii was a matter of national security. It could not be discussed in public. He and Senator Cordon, who probably was also aware of the Hawaii situation, called the subcommittee into a non-public private session. The Committee moved into secret hearings. Some Senators questioned the move to a secret hearing:

Senator Smathers. Mr. Chairman, is this an executive committee hearing or a public hearing

Mr. Chairman. I have been following the custom of making it executive when we meet in this room unless it is absolutely necessary. ... There is nothing being taken that is kept from the public. We make the records open to the public when the record is printed. They come in and look it over.

Senator Anderson. I will Say, Senator Smathers, I Just leaned over To Senator Butler a minute ago and said "why is this hearing executive?" For the life of me I cannot see why this is executive.

In the non-public hearing, Senators who did not understand the underlying problem persisted in questions that showed their annoyance with the Hawaii definition.

The Chairman. . . . but is there a legal description on record as to the boundaries of the new State?³⁰

Senator Millikin: Mr. Chairman, do we have anything official as to what the Territory of Hawaii claims is included within it?³¹

³⁰ From the transcript of the Hearing before the House of Representatives, Subcommittee on Territorial and Insular Possessions of the Committee on Interior and Insular Affairs, Mr. Saylor Chairman. Monday February 23 1953 Statement of Mr. C Nils Tavares

³¹ Hearings: Stenographic Transcript of Non Public Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 "A Bill enabling the People of Hawaii to form a

Senator Cordon: In a single definition, so far, as I know, No.

Senator Millikin: That is the answer.³²I repeat, did the Territory of Hawaii officially, as a governmental organization, ever define the limits of its territory?³³

The Chairman: It is called the Hawaiian Islands. I think there is an insertion which should go in which will answer Senator Millikin's question, if you will insert it without reading it.

These Senators were looking for something familiar—like the description of Kansas:³⁴

Constitution and State Government and to be admitted into the Union on an Equal Footing with the Original States", hearing of March 17, 1953

³² Hearings: Stenographic Transcript of Non Public Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 "A Bill enabling the People of Hawaii to form a Constitution and State Government and to be admitted into the Union on an Equal Footing with the Original States", hearing of March 17, 1953.

³³Hearings: Stenographic Transcript of Non Public Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 "A Bill enabling the People of Hawaii to form a Constitution and State Government and to be admitted into the Union on an Equal Footing with the Original States", hearing of March 17, 1953.

³⁴ CHAP. XX.

An Act for the Admission of Kansas into the Union. . . .

Be it enacted by the Senate and House of Representatives of the States of America in Congress assembled, That the State of Kansas shall be and is hereby declared to be one of the United States of America, and admitted into the Union on an equal footing with the original States in all respects whatever. And the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at a point on the western boundary of the State of Missouri, where the thirty-seventh parallel of north latitude crosses the same; thence west on said parallel to the twenty fifth meridian of longitude west from Washington; thence north on said meridian to the fortieth parallel of latitude thence east on said parallel to the western boundary of the State of Missouri; thence south with the western boundary of said State to the place of beginning; Provided, That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such right shall remain unextinguished by treaty . . ."

They wanted the "official" legal description of Hawaii. The representatives from Hawaii had none to offer. Senator Millikin could not believe this He thought there must be an official definition somewhere:

Senator Millikin: Mr. Chairman, do we have anything official as to what the Territory of Hawaii claims is included within it?³⁵

Senator Cordon. No. It just says the islands.

Senator Smathers. That is my point, should we not try somewhere to define what is the boundary? Should we not set up somebody or commission to determine what the boundary is, rather than leave it for obviously a lot of lawsuits and litigation to determine later as to what is the boundary?³⁶

There was endless criticism and some sarcasm.³⁷ Senator Smathers asked if there could be lines of longitude and latitude:

Senator Smathers: Mr. Chairman, is it impracticable to try to limit this by longitude and latitude?

Senator Cordon of Oregon insisted that the boundaries of the new State could be traced historically---back through the Republic, the Provisional Government to the Kingdom.

23 Hearings: Stenographic Transcript of Non Public Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 " A Bill enabling the People of Hawaii to form a Constitution and State Government and to be admitted into the Union on an Equal Footing with the Original States", hearing of March 17, 1953³⁵

³⁶ From the transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 19.

³⁷ Mr. D'Ewart. On page 1 of your bill it states [reading] that the inhabitants of the that part of the United States now constituting the Territory of Hawaii, as at present constituted, may become the State of Hawaii, hereinafter, provided. I hope you have some legal definition of the boundary of Hawaii before we are through.

From the transcript of the Hearing before the House of Representatives, Subcommittee on Territorial and Insular Possessions of the Committee on Interior and Insular Affairs, Mr. Saylor Chairman. February 23 1953

Senator Cordon. It is the line that was established by the Republic of Hawaii and adopted in the Organic Act. It does not, answering your question a little more specifically, specifically provide three miles outside a shore or coastline.

The Organic Act provides that the area in the Republic is now the Territory of Hawaii. We have not bothered that, except to the extent in the House bill—and I call your attention to the language, and that language may have to have attention at some other time, if there be some different antagonistic decision.³⁸

The Republic of Hawaii was simply a changing government. It was the Kingdom of Hawaii under a republican form of government. The kingdom of Hawaii under a Republican form of government became the Territory of Hawaii by annexation and an Organic Act adopting whatever those boundaries were. That is position is exactly the position of the 13 states.³⁹

Taking the hint, the delegation from Hawaii took the historical route and claimed that the proposed State Constitution's boundary description was a direct result of the historical succession of sovereignty from the Kingdom to the Territory. Farrington and Tavares distributed a memo as to the historical approach:

The people of Hawaii have provided in the State Constitution that "the State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii."

The Administration recommends that "the islands now constituting the Territory of Hawaii be included in the State of Hawaii. . . . We of Hawaii strongly support this position. It is our belief that to adhere to these historic boundaries is clearly to the best interest of the federal government as well as to the State of Hawaii.

On the contrary, to depart from these boundaries will involve complications in the administration of these islands that are without any justification.

³⁸ From the transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 17

³⁹ Statement of Senator Cordon transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 20

Mr. Tavares' Memorandum of March 10, 1953 went into historical detail:

Mr. Chairman. Hawaii was an independent country, first an absolute monarchy, then a limited monarchy from the time of George Washington until 1893. In that year a revolution overthrew the monarchy and a Provisional Government was set up, followed by the Republic of Hawaii, Article 15 of the Constitution of the Republic of Hawaii, adopted July 3, 1894, provided:

The Territory of the Republic shall be that heretofore constituting the Kingdom of the Hawaiian Islands and the territory ruled over by the Provisional Government of Hawaii, which may hereafter be added to the Republic.

Thereafter, the Hawaiian Islands were annexed by the United States, by the "Newlands Resolution," which being Public Resolution No. 51, 55th Congress 2d Session, approved July 7, 1898. This Joint Resolution provided among other things:

Whereas the Government of the Republic of Hawaii having, in due form, signified its consent, in the manner provided by its constitution, to cede absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies, and also to cede and transfer to the United States the absolute fee and ownership of all public, Government, or Crown lands, public buildings or edifices, ports, harbors, military equipment, and all other public property of every kind and description belonging to the Government of the Hawaiian Island, together with every right and appurtenance thereunto appertaining: Therefore

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That said cession is accepted, ratified, and confirmed, and that the said Hawaiian Islands and their dependencies be, and they are hereby, annexed as a part of the territory of the United States and are subject to the sovereign dominion thereof, and that all and singular the property and rights hereinbefore mentioned are vested in the United States of America.

The consent of the Government of the Republic of Hawaii, thus referred to in the preamble of the Newlands Resolution is that set forth in the Resolution of the Senate of Hawaii adopted by that Senate on

September 9, 1897, ratifying a treaty concluded at Washington on June 16, 1897. The Senate Resolution sets forth the treaty which in its pertinent parts reads as follows:

ARTICLE I: The Republic of Hawaii hereby cedes absolutely and without reserve to the United States of America all rights of sovereignty of whatsoever kind in and over the Hawaiian Islands and their dependencies; and it is agreed that all territory of and appertaining to the Republic of Hawaii is hereby annexed to the United States of America under the name of the Territory of Hawaii.

ARTICLE II. The Republic of Hawaii also cedes and hereby transfers to the United States the absolute title and ownership of all public, Government, or crown lands, public buildings, or edifices, ports, harbors, military equipments, and all other public property of every kind and description, belonging to the Government of the Hawaiian Islands, together with every right and appurtenance thereunto appertaining.

Then came the Hawaiian Organic Act, which by Section 2 (48 U.S.C.A. section 491) provided, in setting up a territorial government for the Hawaiian Islands:

Section Two: Territory of Hawaii. That the islands acquired by the United States of America under an Act of Congress entitled "Joint Resolution to provide for annexing the Hawaiian Islands to the United States," approved July seventh, eighteen hundred and ninety-eight, shall be known as the "Territory of Hawaii."

It will thus be seen that the transfer of sovereignty from the Hawaiian Kingdom through the Provisional Government to the Republic of Hawaii, thence to the United States of America, and then the organizing of the same area into the Territory of Hawaii were all accomplished, not by listing or attempting to define by metes and bounds, or other more specific description, the areas constituting the Hawaiian Islands and their dependencies, but by general reference to the pre-existing areas or boundaries.

In thus acquiring sovereignty, our then lawmakers appeared to be satisfied that these definitions by reference to areas held by the predecessors in title were sufficient for all purposes. It was but natural, therefore, that in attempting to set up the proposed State as successor to the Territory of Hawaii, the Hawaii State Constitutional Convention should follow the standard procedure theretofore invariably adopted, of merely defining the boundaries and jurisdiction of the proposed State by reference to the

Territory's pre-existing boundaries and jurisdiction. Thus, by Article XIII, section 1, the proposed State constitution. . . .

"Section 1. The State of Hawaii shall include the islands and territorial waters heretofore constituting the Territory of Hawaii."

Tavares was wrong as to the existence of a treaty in the form of the Joint Resolution between the Republic and the United States. The Republic never consented to or ratified the Joint Resolution. In fact, the Republic disagreed vehemently that the terms of the Joint Resolution were applicable. The Senators who were clueless had no sense that there was a deep legal problem in the descriptions of the Territory of Hawaii.⁴⁰ None of them were aware of the Senate Debate on the Joint Resolution in 1898 and that a Joint Resolution could not acquire Hawaii.

Farrington and Tavares had difficult task. They were speaking to a divided audience. Eventually, they would listen to those in the know and agree to change the language of the State Constitution's boundaries.

C. March 1853 to January 1854: The New Federal Boundaries

For Senator Anderson there was important work to be done. He created a task force. He asked for numerous reports. He kept his thoughts to himself. The important thing was to disguise the failure to acquire Hawaii. Claiming the channel waters, for example, was risky. Such a claim might invite a challenge to the sovereignty of the United States over the channel waters. If a ship or submarine of a foreign nation sought to travel between any of the main islands was the United States going to stop such passage?

If the United States did interfere, the foreign nation would demand proof that the United States had acquired the channel waters. Would the United States be able to show an unbroken chain of sovereignty and title that extended back to the original claim of Kamehameha III? No, any such claim would reveal a broken chain of sovereignty--- there is no basis by which the United States acquired the channel waters from the Republic of Hawaii.

⁴⁰ Senator Anderson. When you get to one that really defines them, will you call my attention to it?

Anderson wanted Hawaii to relinquish the claim to the channel waters. Tavares was reluctant. Eventually, he and the Hawaii Statehood Commission gave up the channel waters.⁴¹

Senator Jackson. The Kingdom of Hawaii was supposed to include the territorial waters.

Senator Anderson. That is correct. That is what kept the bill from coming up before.

Mr. Farrington. The waters between the islands are yours.

The Chairman. Well, that will settle it Senator. I think you will get another witness or two.

The same applied to Palmyra⁴². Palmyra was not part of the Hawaiian archipelago. It was 1100 miles to the south of Oahu. King Kamehameha IV commissioned Captain Daniel Bent to claim Palmyra in 1862 by the doctrine of discovery. No other nation had laid claim to Palmyra. Bent went to Palmyra, raised the Hawaiian flag and other nations acceded to Hawaii's claim of sovereignty.⁴³

⁴¹ From the hearing of June 29, 1953, before the United States Senate, Committee on Interior and Insular affairs, on "Statehood for Hawaii", Monday June 29, 1953, see pages 39

⁴² Senator Jackson. So the State of Hawaii, as described in S.49, now pending before the Committee, would include Palmyra, which is at least a thousand miles away from the main island group?

Mr. Slaughter. That is right.

The Chairman. And all other similar uninhabited islands?

Mr. Slaughter. Yes.

From the transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 61

⁴³ Senator Cordon. Mr. Chairman, just one moment, please. On the over-all question, Mr. Slaughter has gone into this matter a little bit further and in a memorandum on Palmyra Island he gives the location of the island, its size and so forth, in this statement:

The owners of Palmyra did not believe that Palmyra was part of the United States. Of course, it was not part of Hawaii.⁴⁴ Palmyra like all the islands and waters of Hawaii were never acquired by the United States, not by treaty, not by the Joint Resolution. During World War II, the United States sought to construct an airstrip on Palmyra. If Palmyra were territory of the United States, the Navy could have exercised eminent domain and condemned Palmyra. The Navy did not.⁴⁵ The Navy sought to buy Palmyra. The owners refused.⁴⁶ Anderson and others wanted Palmyra out of the new

"In United States v. Fullard Leo, 331 U.S 256, (1947) the Supreme Court of the United States held that the Palmyra Island became a part of Hawaii by virtue of an annexation made in 1862 by the Kingdom of Hawaii."

Statement of Senator Cordon, Non-public hearing of the Senate Interior and Insular Affairs Committee, March 17, 1953, Washington D.C.

⁴⁴ Senator Anderson. May I ask this question of Mr. Slaughter? What would be the effect if somebody, -- I am not asking for how it would be voted, up or down,--what would be the effect if somebody like myself introduced an amendment to this bill limited the Hawaiian Islands to those eight islands and the little tiny island that are around them. Is there any way that we could then provide for a study of their interest of this to decide if anything needed to be added to it? I think it is terribly difficult to explain that you are trying to take Palmyra in, a thousand miles away. I see that this suit was filed after the Government in 1938 tried to negotiate with the owners of a supposedly worthless strip of ground and could not do it. They went out there and to build this thing because they could not get a lease on the property.

Statement of Senator Anderson Non—public hearing of the Senate Interior and Insular Affairs Committee, March 17, 1953, Washington D.C.

⁴⁵ Mr. Slaughter: Didn't the United States acquire the title from them by condemnation? Commander Herrick: Not that I am I Know of.

Statement of Commander Herrick of the Navy and Mr. Slaughter of the Department of Interior, Non Public Hearing of March 17, Senate Committee on Interior and Insular Affairs, Washington D.C.

⁴⁶ Senator Jackson. What is on Palmyra?

Senator Anderson. It is privately owned, is it not?

Senator Jackson. I do not know whether the navy is using it right now, but it is an airstrip and it had nothing but defense possibilities. Is that not correct?

State of Hawaii.⁴⁷ The owners of Palmyra could not be trusted. After World War II, they forced the United States Navy by a private bill in Congress to clean up the islands. Palmyra became part of the County of Oahu. The Senate Committee on Interior and Insular Affairs was obsessively concerned with Palmyra.⁴⁸

Commander Herrick. That was true up until a short time ago, and there was an Executive Order that took that out from under naval jurisdiction but the inference was that it went back to the Territory of Hawaii.

Senator Anderson. Whose island is it? Is it individually owned?

Commander Herrick. Fullard-Leo is the one who is supposed to have title to the land, privately owned lands.

Mr. Slaughter. Didn't the United States acquire the title from them by condemnation?

Commander Herrick. Not that I know of.

Statements of Mr. Slaughter, Senator Anderson and Commander Herrick, Non-public Hearings of the Senate Interior and Insular Affairs Committee page 178.

⁴⁷ Mr. Saylor. That, Mr. Taylor, is the present boundary of the Territory of Hawaii?

Mr. Taylor. No sir, it is not. The present boundary of Hawaii includes Palmyra, but this one does not.

Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 166

⁴⁸ Senator Barrett. My question is this. It appears now that Palmyra is part of the city of Honolulu. Since they have a right, as citizens of that community, I assume that they have the benefit territorial courts as well as the federal courts for the disposition of their judicial business down there, Senator. The question that occurs to me is this: assuming that, with the consent of the territory of Hawaii, we exclude Palmyra from the state, when we could, I assume set up a provision whereby the federal courts would have jurisdiction down there in Palmyra, so it is in the territory. Are they going to be prejudiced in any way by reason of the fact that the state courts do not have any jurisdiction down there? That is the point I am raising. Are we running into any difficulties by excluding them from the state?

The Chairman. I would rather get Senator Cordon's view of that question

Senator Cordon. As far as the Senator from Oregon is concerned, he is expressing only his views. Palmyra can be excluded and full jurisdiction ceded to the United States, if you desire to do it. The United States, as it desires can set up any special jurisdiction. It can include it within the jurisdiction of its district court in Hawaii as it has done with Johnston and midway. It can do anything it wants to do. If none of those are done. Palmyra will be a part of the state of Hawaii and subject to the jurisdiction of the state of Hawaii.

(discussion off the record)

Senator Barrett. I agree with the answer that that Senator gave as far as the jurisdiction of the federal court. Evidently, this community of Palmyra has some reason for being incorporated within the city and county of Honolulu. I do not know what benefits accrue to them by reason of that fact. But they would lose that if we excluded them from the state of Hawaii.

Senator Cordon. Right.

Senator Barrett. What benefits do they have and what would we be taking from them?

Senator Cordon. I do not know. There is an island down there owned by alone family a thousand miles away. I suspect that the main benefit they have is the right to the courts in case their particular domain should be invaded.

Senator Barrett. Can Mr. Jabulka answer that question?

Mr. Jabulka. I did not get the question.

Senator Anderson. What is the advantage of belonging to the city and county of Honolulu for the people on this island? Why do they want to be assigned to the city and county of Honolulu? Is that the question Senator Barrett?

Senator Barrett. Yes, what would they lose if they were excluded from the state of Hawaii?

Mr. Jabulka. It might be a question of jurisdiction as residents and citizens of the territory of Hawaii now.

Senator Anderson. Do they live on that island?

Mr. Jabulka. On Oahu.

Senator Anderson. What would they lose if we cut Palmyra off? They would still live on Oahu, not on Palmyra. What would they lose?

Anderson and wanted to strip anything from Hawaii that might invite a challenge to United States jurisdiction.⁴⁹ This surely included the channel waters, Johnston

Mr. Jabulka. I do not know what they would lose, but the city country or the territory of Hawaii would lose jurisdiction.

Senator Anderson. What harm would that be?

Mr. Jabulka. We would lose a certain amount of tax.

The Chairman. Mr. Emil Sady who is with the department of the interior represents that territory.

Mr. Sady. I would like to point out sir, on this question, there was a commercial fishing operation established in Palmyra by residents in Honolulu and they had Transair Hawaii ship fish up from Palmyra, and that operation was operating profitably for some time. They wanted to extend their operation down to Christmas Island and I believe the cost of that extension in large part perhaps resulted in the suspension of the commercial operation. But they have a good airstrip and it is a place that is abundant in fish, and I suspect with the development of information about pacific fisheries the fish and wildlife service has recently discovered that Palmyra, Christmas and other islands in that general area would be important commercial fishing centers for American fisheries. With that development there is going to be an extreme need for all civil law and criminal laws founded in American institutions to be applied to these islands. There are other islands, which are not within territory jurisdiction, such as Canton Howland Jarvis and Baker Island.

As Mr. Slaughter mentioned, merely the application of the laws relating to the high seas to those islands provides no basis for the civil law.

Senator Anderson. Distinguish between Johnston island and Palmyra island if what you have said applies to Palmyra does it not apply to Johnston?

Mr. Sady. Not in quite the same way because Johnston is the site of MATS air base.

Senator Jackson. Yes, but Palmyra up until just recently, when the Executive order was issued was also the site of a mats base, and they used it as a large runway under the jurisdiction of the navy since the time of Pearl Harbor. It is all a matter of what might happen in the future. They could just as well move in later if the world situation should warrant. Is that not correct?

Statements of Various Senators and Others, Non-public Hearing of March 17th 1953, Senate Committee on Interior and Insular Affairs, Washington D.C.

⁴⁹ Senator Anderson. That is why I am thinking maybe some of the other islands are in the same category and that Hawaii might be as anxious to have added to their

Island,⁵⁰ Palmyra^{51 52} and even, for a time, the Leeward⁵³ Islands⁵⁴ to the Northwest of the main islands.

territory as a state as we might think I do not see any great advantage in their having those little bits of sand out there. Maybe they do. It would seem to me that it would simplify the problems a great deal if we just dealt with those nice, respectable looking yellow islands there that we recognize as the Hawaiian Islands. I think we will have all the trouble we can take care of trying to define the limits of territorial waters between those islands, without going into the question of whether the territory waters extend from the Big Island of Hawaii down to Palmyra, a thousand miles.

Statement of Senator Anderson, Non-public Hearing of the Senate Interior and Insular Affairs Committee March 17, 1953 Washington, D.C.

⁵⁰ Senator Jackson. Didn't someone live on Johnston Island prior to the war?

Mr. Sady. There were I believe if anything there, nothing more than colonists.

Senator Jackson. I know, but that is all you had on Palmyra.

Mr. Sady. Colonists only to protect United States claims. I am not sure they were on Johnston. They were on Howland, Jarvis, Baker and Canton.

Senator Jackson. Let me ask you this. What was the difference from the standpoint of population, Palmyra as compared to Johnston Island Prior To World War II

Mr. Sady. I do not believe there was any difference, sir,

Senator Jackson. I was on the island of Johnston months ago, and I think as time goes on Johnston islands will be less and less of military importance because with longer range aircraft there is no need to stop at Johnston. We are using it primarily because of the Korean picture at the moment. With long-range aircraft it is just an alternate airstrip'

Senator Cordon. In that event the government could, as it did in the Gadsden Purchase, annex it to Hawaii.

Senator Kuchel. Mr. Chairman, it seems to me that basically this is a question of whether or not the territory of Hawaii, to use the language of the bill "as at present described," will be admitted to the union as a state. The territory of Hawaii as presently described must have some legal definition. Apparently, this island of Palmyra is included in that legal definition. The island of Johnston and Sand Island and Midway are not. I suppose, from listing here, the Congress can add to the territory of Hawaii if it want to, and create a state larger than the territory of Hawaii;

or on the other hand, it can take a piece of the territory of Hawaii as presently described, away from the territory and make a state out of something less than what has been considered legally the territory of Hawaii.

Basically it seems to me that there ought to be some element of good faith in determining what, if any part of the territory of Hawaii ought to be taken away and if there is not any overriding reason to take piece of the territory away why should we not proceed on the theory that we are going to make a state out of what for 54 years or more has been considered the territory of Hawaii.

If an island is part of the city, there may be some reason why it should not be, but if it is part of the city certainly, it is part of the territory. I do not understand why, in determining what will be a state, we should eliminate from what has been a territory unless there is a reason. For example, the Defense Establishment suggested that there was a need for a complete federal supervision over part of what is now acknowledged to be a part of the territory of Hawaii, then perhaps we ought to exercise jurisdiction by providing that a State will be created out of something less than the Territory, but in the last several bills which you gentlemen have considered in prior sessions, you have had always the same language. You have been considering making the State out of the "Territory of Hawaii, as at present described," Now; if we are to consider making the state out of something less than the territory, it seems to me that we should have some reason. If there is a reason then we should cut off part of the territory.

Contrariwise, if there is a reason to add to the territory and we are advised that there is a sound reason, the perhaps we ought to consider making a state out of more than the territory of Hawaii.

Basically its seems to me that we ought to proceed on the theory that what was the territory of Hawaii for 54 years, including al the taxing jurisdiction and all other incidents of whatever sovereignty attaches to a territory, ought to be the base on which we decide what is going to be a State. It seems to me that makes sense.

Senator Anderson. I can help you a bit, I think. I sat in those hearings, as I remarked the other day, and Senator O'Mahoney came I had to preside a while. I have just sent for the hearings again. This is the first time in my limited experience that I have heard anything about Palmyra. This is the first time I ever knew that Hawaii claimed clear out past Midway. I suspect when we get though, if we ever take in Alaska as a state, we will find they claim part of Japan before we finish. I am a little bit upset that all of a sudden we being to find that these things do as my state motto is, "They Grow as they Go."

Non-public Hearing of the Senate Committee on Interior and Insular Affairs p. 197
March 17, 1953, Washington D.C.

⁵¹ Senator Jackson. So the State of Hawaii, as described in S.49, now pending before the Committee, would include Palmyra, which is at least a thousand miles away from the main island group?

Mr. Slaughter. That is right.

The Chairman. And all other similar uninhabited islands?

Mr. Slaughter. Yes.

Statement of Senator Jackson, the Chairman, and Mr. Slaughter Non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 61

⁵² Mr. Sisk: The prime objection, I understand to the inclusion of Palmyra was the distance from the central island.

Mrs. Farrington. That is correct.

Mr. Sisk. In other words, it is not being excluded for any other reason.

Mrs. Farrington. No. It is actually, I think 950 miles south.

Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 149

⁵³ The Leeward Islands are relatively unimportant at the present time. Yet there are many good reasons for their inclusion in the State of Hawaii. They are geographically part of the Hawaiian archipelago. They have consistently been regarded as part of the Territory of Hawaii and have been administered as such. Their exclusion would leave them in an ambiguous status which would require separate attention by the Federal Government.

Joseph Farrington, "The Boundaries of the State of Hawaii" For Members of the Senate Committee on Interior and Insular Affairs document 8 pages from the Anderson Papers Library of Congress.

⁵⁴ Mr. Slaughter. This law was passed in 1846 and dealt with the eight big inhabited islands. From time to time after that, Hawaiian sea captains sailing under authority of the Kingdom or the Republic of Hawaii found little islands here or there, maybe 200 or 300 miles away from the main islands and claimed jurisdiction over it in the name of the Republic of Hawaii. In some cases, there were disputes between Hawaii and

The real work began between April of 1953 and January of 1954. The Senate Committee produced and examined five different versions of a boundary.

Committee Print No. 2 was the boundary proposed by the people of Hawaii in the State Constitution. That description was put in bill form on March 17, 1953, the last day of non-public secret hearings:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the citizens of the United States who are bona fide inhabitants of all that part of the United States now constituting the Territory of Hawaii, as at present described, are hereby authorized to form for themselves a constitution and State government, with the name aforesaid "State of Hawaii," which State when so formed, shall be admitted into the Union and that the ~~said~~ State of Hawaii shall consist of all the territory now included in the said Territory of Hawaii, all as hereinafter provided.⁵⁵

Confidential Committee Print No. 3 was issued shortly thereafter. It contained the same description as Print No. 2

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That the citizens of the United States who are bona fide inhabitants of all that part of the United States now constituting the Territory of Hawaii, as at present described, are hereby authorized to form for themselves a constitution and State government, with the name aforesaid "State of Hawaii," which State when so formed, shall be admitted into the Union and that the ~~said~~ State of Hawaii shall consist of all

the United States as to particular islands. For example, the Island of Midway is not a part of Hawaii because the United States took possession first, . . .

From the transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 59

⁵⁵ Committee Print no. 2 March 17 1953, S.49, 83rd Congress, 1st session, January 7, legislative day January 6, 1953, Amendments by House of Representatives and by Full Senate Committee, together with others suggested by Senate Subcommittee House passed amendments in italic, Senate Committee and Subcommittee amendments in bold face. "A Bill to enable the people of Hawaii to form a constitution and State Government and to be admitted into the Union on an equal footing with the original States."

the territory now included in the said Territory of Hawaii, all as hereinafter provided.⁵⁶

Committee Print No. 4 represented a radically different approach. Print 4 drew boundaries around the Hawaiian Islands by longitude and latitude, All the islands and their territorial waters within that "box" would be the State of Hawaii. That bill was introduced after much study and debate six months later, in January of 1954.⁵⁷

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, . . .

The State of Hawaii shall consist of all the territory now included in the said Territory of Hawaii (except the atoll known as Palmyra Island together with its appurtenant reefs and territorial waters), more particularly described as follows:

All the islands and other bodies of land exposed at low tide that form the Hawaiian Archipelago together with the reefs and territorial water appurtenant to such islands and other bodies of land, except the Midway Islands together with their appurtenant reefs and territorial waters. For the purpose of this provision the Hawaiian Archipelago is defined as the islands and other bodies of land exposed at low tide, whether now or hereafter existing, that lie within the following line: Beginning at the intersection of the meridian of longitude 154 degrees west with the parallel of latitude 25 degrees north; thence west along said parallel to its intersection with the

⁵⁶ Committee Print no. 2 March 17 1953, S.49, 83rd Congress, 1st session, January 7, legislative day January 6, 1953, Amendments by House of Representatives and by Full Senate Committee, together with others suggested by Senate Subcommittee House passed amendments in italic, Senate Committee and Subcommittee amendments in bold face. "A Bill to enable the people of Hawaii to form a Constitution and State Government and to be admitted into the Union on an equal footing with the original States."

⁵⁷ 83d CONGRESS 1ST SESSION S. 49 FOR USE AS A WORKSHEET BY THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS IN THE SENATE OF THE UNITED STATES January 7 (legislative day, January 6) 1953 A BILL To enable the people of Hawaii to form a constitution and State government and to be admitted into the Union on an equal footing with the original States

meridian of longitude 166 degrees west; thence north along said meridian to its intersection with the parallel of latitude 27 degrees north; thence west along said parallel to its intersection with the meridian of longitude 175 degrees west; thence north along said meridian to its intersection with the parallel of latitude 29 degrees north; thence west along said parallel to its intersection with the meridian of longitude 179 degrees west; thence south along said meridian to its intersection with the parallel of latitude 24 degrees north; thence east along said parallel to its intersection with the meridian of longitude 169 degrees west; thence south along said meridian to its intersection with the parallel of latitude 21 degrees north; thence east along said parallel to its intersection with the meridian of longitude 161 degrees west; thence south along said meridian to its intersection with the parallel of latitude 18 degrees north; thence east along said parallel to its intersection with the meridian of longitude 154 degrees west; thence north along said meridian to the place of beginning; all of said meridians of longitude being described by reference to the number of degrees west of Greenwich, and all of said parallels of latitude being described by reference to the number of degrees north of the Equator. For the purposes of this provision, territorial waters are defined as all inland waters, all waters.

Representative Abbott found the rectilinear approach the most accurate:

Mr. Abbott. Congressman Pillion, the language on page 2, line 3 "now included in the Territory of Hawaii, " in the view of all of the best advice obtainable to the committee is to be construed as making applicable the definition as contained in the description which resulted in this rectilinear perimeter that has been indicated on that map. That, of course, is based in my understanding on the historic interpretation of the treaty of annexation together with some judicial decisions since. And that is perhaps as accurate a description as can be arrived at by reference here in the bill to that area which is "now included in the Territory of Hawaii."⁵⁸

Committee Print No. 5 adopted the framework that would become the eventual boundary description:

A Bill, to enable the people of Hawaii to form a constitution and State government and to be admitted into the Union on an equal footing with the original States.

⁵⁸ Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 173

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That ~~the inhabitants of all that part~~ citizens of the United States who are bona fide inhabitants of all that part of the United States now constituting the Territory of Hawaii, ~~as at present described,~~ are hereby authorized to form for themselves a constitution and State government, with the name ~~aforsaid~~ "*State of Hawaii*," which State, when so formed, shall be admitted into the Union ~~and that the said State of Hawaii shall consist of all the territory now included in the said Territory of Hawaii,~~ all as hereinafter provided.

The State of Hawaii shall consist of all the islands (together with their appurtenant reefs and territorial waters) now included in the Territory of Hawaii, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.⁵⁹

Finally, late in January 1954, Committee Clerk Stewart French wrote to Senator Anderson the good news, they had found the language that would be used:

Senator Anderson:

Behold the Hawaii Statehood bill in substantially its final form for reporting by the Committee. Permit me to call your attention the working of the boundaries section page 2, lines 5-10, and the public land grants, page 7, ET sequenti. I'm drafting a letter for the Chairman's signature referring the particular provisions to the Department of Justice (lands division) and the Dept. of the Interior, in accordance with your suggestion.

Stewart [signed]

Stewart French, Counsel to the United States Senate Committee on Interior and Insular Affairs had just received Committee Print No. 6---this was it!

83rd Congress 2nd Session. Amendments adopted the Committee are shown in italic

⁵⁹ 83rd Congress 2nd Session.

A Bill, to enable the people of Hawaii to form a constitution and State government and to be admitted into the Union on an equal footing with the original States. . . .

The State of Hawaii shall consist of all the islands (together with their appurtenant reefs and territorial waters) now included in the Territory of Hawaii, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.

After much work and debate, the final draft retained the essence of Section Two of the Organic Act: The islands within the State of Hawaii would be those islands and their appurtenant waters that were acquired by the Joint Resolution. Committee Print No. 6 accomplishes this by stating that the State shall include islands within the Territory.

In the end, Tavares reversed his position on both Palmyra and the channel waters. Palmyra was explicitly excluded. The channel waters were also excluded. The named islands, Johnston Island, Sand Island (offshore from Johnston Island) and Kingman Reef were never within the dominion of Hawaii. They were excluded to mask the exclusion of Palmyra⁶⁰—which was part of Hawaii. The official explanation was that all four were being excluded because they were "far away" from the main islands and unpopulated. This does not explain the decision to keep the Leeward Islands in the State of Hawaii. They too are far from the main islands and lightly populated.⁶¹

⁶⁰ Mr. Sisk. Might I ask, what is the thinking of the people in Hawaii themselves with reference to exclusion or inclusion? I direct that to Mrs. Farrington.

Mrs. Farrington. Of course, the people of Hawaii would very much like to have Palmyra included. It is now a part of the Territory of Hawaii, but because there was such disagreement in the other body, the Senate, the individuals who own the island of Palmyra were very generous indeed. The Hawaiian Statehood Commission feels if that is all that will prevent us from having this bill passed we certainly would be willing to forgo the ownership of Palmyra,

Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 148

⁶¹ Senator Smathers: All these other uninhabitable islands, then, presumably by reason of that, are now no longer included technically in the Hawaiian Islands.

Committee Print Six would go through some cosmetic changes. It became the template for Section Two of the Act of Admission⁶²:

Section 2. The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include the Midway Islands, Johnston Island, Sand Island (offshore from Johnston Island), or Kingman Reef, together with their appurtenant reefs and territorial waters.

There was one change between Committee Print Six and the final language of the Act of Admission. Midway was specifically excluded from the State of Hawaii. Again, this was odd, for Midway was never part of Hawaii.⁶³ It too was far from the

Senator Cordon: I do not think that follows at all. I am in complete disagreement with you George. The land is a part of Hawaii. There is no boundary around them because, as unquestionably was the King's view, the republics and the territory's view, and as I have been told --I have not been on them; I have been told —that they are practically no use at all except that they should be comprehended in the State so there would be no basis of any foreign claim. Beyond that. None.

Senator Scathes asserted that the small, Leeward Islands were always in Hawaii. They were listed in the reports:

Senator Scathes: Let me say that I would certainly agree that they should be included as a part of the State. My point, however, is that I can see by having named eight islands and having drawn the limit on them, and then in your legislation here referring back to the Hawaiian Islands as they were recognized and established and claimed by the republic, the territory and so forth you limit it by that language.

Hearings: Stenographic Transcript of Non Public Hearings before the Committee on Interior and Insular Affairs, United States Senate, 83rd Congress 1st and 2nd sessions, on S.49 and S.51 "A Bill enabling the People of Hawaii to form a Constitution and State Government and to be admitted into the Union on an Equal Footing with the Original States", hearing of March 12, 1953.

⁶² "The Admission Act," An Act to Provide for the Admission of the State of Hawaii into the Union Act of March 18, 1959 Public Law 86-3 73 Stat 4

⁶³ Mr. Slaughter. This law was passed in 1846 and dealt with the eight big inhabited islands. From time to time after that, Hawaiian sea captains sailing under authority of the Kingdom or the Republic of Hawaii found little islands here or there, maybe 200 or 300 miles away from the main islands and claimed jurisdiction over it in the name

main islands and virtually unpopulated. The exclusion of Midway would help to disguise the exclusion of Palmyra.⁶⁴

of the Republic of Hawaii. In some cases there were disputes between Hawaii and the United States as to particular islands.

For example, the Island of Midway is not a part of Hawaii because the United States took possession first, .

From the transcript of the non-public hearing of the Senate Insular and Interior Affairs Committee March 12, 1953 Page 59.

⁶⁴ Senator Jackson. Mr. Chairman, I have this question: after all the time that has been spent on statehood by the Hawaii Statehood Commission, I am surprised that there has been a complete failure to set out either in the hearings or any information given to the committees in the past, the territorial boundaries of the land that should be included in statehood.

I would like to ask the representatives of the Statehood Commission why they failed and neglected to do that. If you are going to turn over some real estate to somebody you give him or her a metes and bounds description so they know what they are buying. I think the Senate and the Congress has a right to know. I am really surprised about that.

The Chairman. I will interpose this remark before Mr. Jabulka makes a reply to you question, Senator. There are several instances in the history of our country were States thought their boundaries were so and so and the Supreme Court later decided that they were not. So I do not believe it is physically possible, legally possible or possible in any other way, for us to determine for all the future questions that are going to come up from the legal standpoint in Hawaii or elsewhere.

Senator Jackson. Mr. Chairman, let me ask you this: Would it not come as almost a mortal shock on the floor of the Senate if we carried this bill on the floor and some Senator should ask, "Is Palmyra, a thousand miles from the Hawaiian group, included?" and we would have had to say: "We do not know. We will have to look it up?" I wonder how ridiculous.

The Chairman. The answer to that is that it is all in the hearings.

Senator Jackson. It is now, but I mean before these inquiries were made.

Senator Anderson. It never was in any hearing before. There is not in this little subcommittee hearing anything about the importance of it. It arose sort of accidentally I thought.

The Committee had worked hard. Many contributed. Rhoda Lewis of the Hawaiian Statehood Commission submitted numerous reports from various sources as to the islands of Hawaii. She suggested the use of a parallelogram as in Committee Print No. 4.⁶⁵

"Suggested description of the area for the State of Hawaii--
. . . shall consist of all the Islands lying between 18 degrees and 29 degrees north Latitude, and 154 degrees and 177 degrees West Longitude -- Palmyra and Kure Islands. Waters seaward three miles from each of the islands."

Success, at last! There was, however, one problem. The language of the boundary section as drafted by the people of Hawaii markedly from the new federal definition. The language from the State Constitution looked stupid. It would not fool anyone. The Senate Committee had worked hard to devise a boundary description that would continue the ongoing deception that Hawaii had been acquired by the United States.

Senator Anderson realized that the language of the proposed State Constitution would have to be conformed with the new Federal boundaries.⁶⁶

May I just say I was much attracted to what Senator Cordon said a minute ago? As I understood him I thought he said that if we passed a bill that defined the limits in a certain way and required the State of Hawaii to accept that limitation that would be binding forever after. I am not trying to say that I quoted him correctly, but that is what understood was embraced by his remark. I am very sympathetic to taking in those eight islands, which I thought were the Hawaiian Islands. But after what I have been through in the tidelands squabble, I am completely against anything that takes in Palmyra on one side and Kure Island on the other, 2,600miles in the open ocean.

The Chairman. Mr.Jabulka, do you have any description that is an official description of the Territory of Hawaii?

Statements of Senators Anderson, Jackson, the Chairman and Mr. Jabulka of Hawaii, Non-public Hearings of the Senate Committee on Interior and Insular Affairs, March 17, 1953.

⁶⁵ See telegram from Rhoda Lewis to C. Nils Tavares [Hawaii State Archives]

⁶⁶Senator Anderson. It is not true that you are going to have to amend your constitution if we would do what we are proposing?

See Hearing of before the Committee on Interior and Insular Affairs 83rd Congress 1st Session on S.49 and other related bill "Statehood for Hawaii" June 20, 1953 pages 130 to 132

There could not be two descriptions. The Senate would have to require the Territory of Hawaii to amend its Constitution.⁶⁷ The definitions in the Constitution and the Admission Act must be the same. Clark Clifford, a trouble-shooter for the President and a later Secretary of Defense, wrote a confidential letter to Senator Clements. Clifford wrote:

As outlined more fully below, it is concluded that in the event a bill passes Congress admitting Hawaii to the Union but designating different boundaries from those set forth in the proposed constitution heretofore adopted by the people of Hawaii, such a change would constitute a rejection of the constitution under the terms of the Enabling Act now being considered. As such, it would have to be referred back to the Hawaiian constitutional convention, a revised constitution adopted, an election held to vote upon such constitution and, if approved, resubmitted to Congress.

....

It is assumed, therefore, the conflict heretofore suggested would probably result from the passage of an act of admission pursuant to the Enabling Act which approves the constitution, but establishes different boundaries. If such is the case, unless the procedures outlined in H.R. 3575 and S. 49 are changed, the constitutional convention of Hawaii would have to be reassembled, and a new constitution would have to be formed in respect to the changed boundaries, and would have to be resubmitted to a vote of the people as the original was ratified.

...

Although there are no specific cases on the subject it seems clear that the passage of an admission act providing for state boundaries differing from those established in the proposed constitution would be a disapproval of the constitution in respect of such boundaries. In my opinion this would constitute a legal rejection of the constitution. . . . The change made by Congress regarding the boundaries of the new state must be resubmitted to the Hawaiian constitutional convention and to the vote of the electorate of Hawaii. This would, of course,

⁶⁷ See Hearing of before the Committee on Interior and Insular Affairs 83rd Congress 1st Session on S.49 and other related bill "Statehood for Hawaii" June 20, 1953 pages 130 to 132:

Senator Anderson. It is not true that you are going to have to amend your constitution if we would do what we are proposing?

entail considerable delay both in respect to the adoption of a new constitution and its subsequent approval by the Congress.

Respectfully submitted,
Clark M. Clifford

Mr. Clifford's legal opinion was that the constitutional convention that enacted the proposed State Constitution must be reconvened. That convention must adopt the new federal boundaries as proposed by the Senate Committee and the people must approve the new boundaries in a plebiscite.

It would be impossible to reconvene the constitutional convention. Some of the delegates to the convention had died. The people of Hawaii would have to change their constitution—but not by the rules stated in the Constitution.

In the Act of Admission Congress set forth the procedure by which the people of Hawaii must adopt the new federal boundaries. The failure to adopt the new federal boundaries would deny Hawaii admission as a State.

The importance of adopting new boundaries was to be hidden in an election that would be held in June 1959. There would be three questions. The first would be whether the people of Hawaii desired statehood. The second question would be whether the people approved of the new boundaries as set by the Senate Committee. The third dealt with the question of public lands. This would amend the Hawaii Constitution. In fact, it was not the legal procedure for amendment. However, it would have to do.

Thus, the so-called "plebiscite" held on June 27, 1959 is popularly misunderstood. It is seen today by many as a plebiscite by which the people of Hawaii, Native Hawaiians in particular, overwhelmingly voted for Statehood. This plebiscite supposedly erased any legal questions as to the legality of annexation.

In truth, the plebiscite of June 27, 1959 had nothing to do with obtaining consent and affirmation for statehood. Congress did not need the approval of the people as to statehood. Approval by the people was established when the people of Hawaii ratified the State Constitution. The real purpose of the plebiscite was to amend the proposed State Constitution such that the Hawaiian Islands would be excluded from the State of Hawaii---excluded by the very act that created that state.

In short, the people of Hawaii had to approve a boundary which excluded the Hawaiian Islands. If they did not approve the new boundary, Hawaii would not be

admitted as a State. Section 7(b) of the Act of Admission set forth the condition by which approval of the new boundaries was a condition of statehood.⁶⁸

Section 7(a) provides details concerning the election mentioned above. The primary election will be held on October 4, 1958, and a general election on November 4, 1958.

Subsection 7(b) requires the following two propositions to be submitted to the voters for adoption or rejection:

(1) the boundaries of the State of Hawaii shall be as prescribed in the act of Congress approved [date of approval of this act], and all claims of this State to any areas of land or sea outside the boundaries are hereby irrevocably relinquished to the United States.

(2) All provisions of the act of Congress approved . . . [date of approval of this act]. , reserving rights or powers to the United States as well as those prescribing the terms or conditions of the grants of lands or other property therein made to the State of Hawaii are consented to fully by said State and its people.

If the propositions are adopted by the people the State constitution will be deemed amended to include each of such propositions. If the two propositions are not adopted by a majority of the voters the act will cease to be effective.

The act does not designate a date for the election at which these propositions must be submitted to the people, but the proposed new State cannot be admitted into the Union until the election has been held and both propositions adopted.

Subsection 7 (c) provides that upon a finding by the President that the propositions previously mentioned have been duly adopted, and upon certification of the returns of the election described in section 7 of the act, the President shall issue his proclamation announcing the results of the election. The State of Hawaii will thereupon, subject to section 1(b) be deemed admitted into the Union.

⁶⁸ U.S. Congress, House. Committee on Interior and Insular Affairs, "Hawaii Statehood," Report no. 2700, to accompany H.R. 49, 85th Cong., 2d sess., Aug. 23, 1958: describing H.R. 49.

The subsection also provides that all officers of the Territory including the delegate to Congress shall continue in their offices until the new State is admitted.

The people of Hawaii would never know the significance of the vote of June 27, 1959. The vote and the approval of the new federal boundary which excluded the Hawaiian Islands were necessary to perpetuate the existing deception that the United States owned Hawaii.

The popular press exhorted the people to vote "Yes, Yes, Yes" at the election. In an article in the Honolulu Star Bulletin titled "Vote Yes, Yes, Yes, for Statehood," on June 21, 1959, the Director of the Tax Foundation for Hawaii, Fred W. Hennion, urged the people to vote yes, particularly as to the second question⁶⁹:

The danger lies in the possibility that the voter, having answered the first question in the affirmative ["Shall Hawaii be admitted immediately into the union as a state,"] may leave the other two propositions unanswered. A majority vote approving all three is required. One "No, on any of the questions is equivalent to a vote against statehood. A blank on any of the three also is a "No" vote.

The second and third queries are phrased in legal language: however, they can be answered with a "Yes" with the same assurance as No. 1.

In simplest terms, No. 2 merely asks "Do you approve of the new boundaries of the state as fixed by the statehood bill?" The voter should have no objection to the boundaries. They are practically the same as for the territory. All eight major islands are included. The major exclusion is the privately owned island of Palmyra.

Question No. 3 is more comprehensive. It requests approval of numerous provisions of the statehood act. The most important of these pertains to dispositions of land owned or controlled by the United States.

Mr. Hennion went on to state that by approving question two the people of Hawaii would automatically amend their constitution. Yet, this was not the means of amendment required by the Constitution itself. On one level, the election sought to compel the people of Hawaii to give up their understanding of the existing boundaries—to exclude the channel waters and Palmyra. To do so required amending the State Constitution—in the manner contrary to that set forth by the Constitution itself. At another level, the purpose of the plebiscite was to compel the people of

⁶⁹ Honolulu Star Bulletin, June 21, 1959, "Vote "Yes" "Yes" "Yes" for Statehood."

Hawaii themselves to ratify the longstanding deception that the Hawaiian Islands were never part of the United States---and secretly would remain as such.

D. The Channel Waters

The new Federal boundary description approved in the plebiscite was obtuse and confusing. Few people in Hawaii would ever read that description. All would continue to assume that the Hawaiian Islands were included within the State of Hawaii. The reality of day-to-day life guaranteed that no one carefully examine the language of the boundary description in Section Two of the Act of Admission. The same was true for Article XV of the State Constitution. No one read it carefully.

Nonetheless, the People of Hawaii were never informed that the channel waters were now excluded—that is if one took the boundary description to include any islands or waters. This would create problems. The exclusion of the channel waters was a non-negotiable condition subsequent of statehood for Hawaii.

Initially, some Senators thought that the channel waters included the expanse between Oahu and Palmyra---1100 miles. Tavares corrected that misunderstanding. The channel waters claimed by Kamehameha III were only those between the main islands—not between all islands—such as between Oahu and Palmyra. The Senate Committee still objected. The archipelagic claim was inconsistent with U.S. policy that limited the territorial claim to three miles. The Senate Committee on Interior and Insular Affairs clearly excluded the channel waters.

No one told the people of Hawaii. Many people in Hawaii persisted in believing the channel waters were still part of the new State. As a matter of history, the channel waters were always part of Hawaii. No one in Hawaii seemed to know that Mr. Tavares, who had first claimed the channel waters, relinquished it when Senate objected.⁷⁰

⁷⁰ Senators balked when they first heard of Hawaii's claims to the channel waters.

Senator Watkins. Did not the old Kingdom out there make these claims historically to the area between the islands and territorial waters

Senator Cordon. They claimed them. Those claims, of course, are going to be modified to the extent of the decisions of the court.⁷⁰

Some Senators saw the historical logic of the claim.

Senator Jackson. Here is the summary of what we are talking about, the way the record stands now. In the hearings on March 12, 1953, in

The real reason for the exclusion of the channel waters was avoid a challenge to United States jurisdiction, over the channel waters and the whole of the Hawaiian Islands. As was asked in the Senate, what would happen, if the channel waters were in the State of Hawaii, if a Russian submarine sought to traverse the waters between two of the main islands?

Senator Smathers. Under the agreement that Farrington is talking about, that he is willing to make, would that permit, for example

those we were discussing the question of boundary lines—the overall boundaries which included the title areas. This is what Senator Cordon had to say:

Senator Cordon: I am reading from what is set out here as part 1 chapter VI article I of the Second Act of King Kamehameha of the Kingdom of Hawaii, promulgated April 27, 1846. I begin with the quotation again:

“The jurisdiction of the Hawaiian Islands shall extend and be exclusive for the distance of one marine league seaward surrounding each of the islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau; commencing at low water mark on each of the respective coasts of said islands. The marine jurisdiction the Hawaiian Islands shall also be exclusive in all the channels passing between the respective islands, and dividing them, which jurisdiction shall extend from island to island.”

This is the significant part. This is Senator Cordon speaking now:

That is the language of the King, and he was claiming the water. Whatever he claimed that a sovereign could claim the Republic succeeded to. Whatever the Republic succeeded to was annexed to the United States. Whatever was annexed to the United States was organized into a Territory. We seek now to create a state out of the organized Territory. That would seem to be the logical sequence.

In other words, the way the bill appeared before the committee on that date it was that we were including in the Territory everything back in 1846.

Russian submarines to come up between those two little islands on the far left end of that map, . . . ?⁷¹

If the United States intercepted that submarine, Russia would demand proof of United States over the channel waters. The United States has no basis for a claim—the Joint Resolution did not acquire the channel waters or any of the Hawaiian Islands.

The Soviet Union could easily point out that no legislative act of the United States could acquire any foreign sovereign territory, whether waters or islands. This would put the United States claim to the whole of Hawaii under suspicion. Was claiming the channel water worth inviting such a possible test and the resulting exposure from a foreign power? Thus, the inclusion of the channel waters was a risk the United States was not willing to take.⁷² Thus, Congress excluded the channel waters.⁷³ Yet, the overall campaign of deception was so successful that the continuing belief that the channel waters were part of Hawaii would live on and eventually land in Court.

Island Airlines, believing that the channel waters were land bridges between the islands sought to fly interisland and claim that its flights never left Hawaii. Island Airlines, a discount air carrier sought lower plane fares for inter island travel.⁷⁴ The

⁷¹ From the hearing of June 29, 1953, before the United States Senate, Committee on Interior and Insular affairs, on "Statehood for Hawaii", Monday June 29, 1953, see pages 39

⁷² In short, there was a possibility, however slim it might be, that such nations may assert "quo warranto"—"by what right" do you claim sovereignty?

⁷³ Dr. Miller. It is rather nebulous as to where the State might be.

Mr. Abbott. On that point in two different places in the bill it is made clear from the standpoint of the territorial jurisdiction, the 3-mile limit establishes territorial jurisdiction around each islands area. And, in addition to that, the Submerged Lands Act of 1953 is made applicable, so in two places we have that reference.

From the standpoint of legislative history, it may be well to include in the committee's report on the legislation this specific description that it is the understanding of the committee in reporting this legislation.

Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on "H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 167

⁷⁴ "The defendant, Island Airlines, Inc. (Island), on May 20, 1960, filed an application with the Public Utilities Commission of the State of Hawaii (PUC) for

flights were solely within the dominion of Hawaii.⁷⁵ Therefore, they argued would not be subject to federal regulation under the CAB and their fares would be lower. The brought their claim to the Federal District Court of Hawaii.

authorization to fly a cut-rate, 'sky-bus' type of air transportation of passengers between the various major islands comprising the State of Hawaii (State), which proposed routes included flights between Honolulu, on the island of Oahu, and the island of Kauai, and between Honolulu and the islands of Molokai, Maui, and Hawaii."

See C.A.B. v. Island Airlines 235 F.Supp. at 990 (1964)

⁷⁵ "Island has urged that the channels between the islands of the State of Hawaii are within the boundaries of the State and therefore that flights between the islands are flights over the territorial waters of Hawaii and not through the airspace over any place outside of the State.

The Statehood Act itself § 2, 73 Stat. 4) says:

'The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial waters, included in the Territory of Hawaii on the date of enactment of this Act.' . . .

Both Island and State now maintain that, because of its historical claims and hence right to the same when Hawaii was annexed by the United States in 1898, 30 Stat. 750, the channels between the islands, from Niihau to Hawaii, were within the boundaries of the nation of Hawaii (both of the Kingdom and succeeding Republic); that those same boundaries of the nation became the boundaries of the Territory of Hawaii; and that upon statehood being granted the Territory, that area which was within the boundaries of the nation of Hawaii thereby came within the boundaries of the new State. These claims first arise out of the Second Act of Kamehameha III (Statute Laws of 1846, Vol. I, Chap. VI, Art. I, Sections I, II and III.):"

See C.A.B. v. Island Airlines 235 F.Supp. 990, 997 (1964)

Island Airlines sued in the Federal District Court of Hawaii seeking a ruling that its flights did not leave the United States or the State of Hawaii. Thus, Island Air was not subject to the regulation of the FAA.

The action was before Federal District Court Judge Martin Pence. Judge Pence held that Kamehameha's 1846 boundary proclamation⁷⁶ had been repealed:

Four years later, the Privy Council of the Kingdom, by a Resolution of August 29, 1850, repeated the claim (3 Privy Council Record, p. 425):

'Resolved, that the rights of the king as sovereign extend from high water mark a marine league to sea, and to all navigable straits and passages among the Islands, and no private right can be sustained, except private rights of fishing and of cutting stone from the rocks, as provided and reserved by Law.'

Judge Pence reversed himself as the Privy Council in 1859 had no power of repeal or legislation.⁷⁷

⁷⁶ See *C.A.B. v. Island Airlines* 235 F Supp 990 ()

"These claims first arise out of the Second Act of Kamehameha III (Statute Laws of 1846, Vol. I, Chap. VI, Art. I, Sections I, II and III)."

'SECTION I. The jurisdiction of the Hawaiian Islands shall extend and be exclusive for the distance of one marine league seaward, surrounding each of the islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai and Niihau; commencing at low water mark on each of the respective coasts of said islands. The marine jurisdiction of the Hawaiian Islands shall also be exclusive in all the channels passing between the respective islands, and dividing them; which jurisdiction shall extend from island to island.

'SECTION II. It shall be lawful for his Majesty to defend said closed seas and channels, and if the public good shall require it, prohibit their use to other nations, by proclamation.

'SECTION III. All captures and seizures made within said channels or within one marine league of the coast, shall be deemed to have been made, and shall be deemed to have entered in His Majesty's waters. The civil and criminal jurisdiction shall be coextensive with the one maritime league, and the interisland channels herein defined. And the right of transportation and transshipment from island to island shall exclusively belong to Hawaiian vessels duly registered and licensed to the coasting trade, as in the two succeeding articles prescribed.'

⁷⁷The resolution of the Privy Council of 1850 (supra, p. 12) came up for specific consideration in *Ter. of Hawaii v. Liliuokalani*, 14 Haw. 88, 91-92, and on March 11, 1902, the Supreme Court of the Territory ruled that the 'privy council had no power to enact laws.

"The only power they had at the time of the passage of this resolution was to advise with the

Williamson Chang, "A Rope of Sand:" A Documentary History of the Failure of the United States Annexation of Hawaii," Law 530-006 April 12, 2015, Copyright 2015 Williamson Chang, Do not Distribute, Page 59

In reaching his decision, Judge Pence first noted that the 1854 neutrality proclamation the King accepted a three-mile limit. In the words of Judge Pence:

On May 16, 1854, the King issued the Kingdom's neutrality proclamation:

Be it known, to all whom it may concern, that we, Kamehameha III, King of the Hawaiian Islands, hereby proclaim our entire neutrality in the war now pending between the great maritime Powers of Europe; that our neutrality is to be respected by all belligerents, to the full extent of our jurisdiction, which by our fundamental laws is to the distance of one marine league surrounding each of our islands of Hawaii, Maui, Kahoolawe, Lanai, Molokai, Oahu, Kauai, and Niihau,.⁷⁸ .commencing at low-water mark on each of the respective coasts of said islands, and includes all the channels passing between and dividing said islands from island to island; that all captures and seizures made within our said jurisdiction are unlawful; and that the protection and hospitality of our ports, harbors, and roads shall be equally extended to all the belligerents, so long as they respect our neutrality.'

Second, Judge Pence ruled that the Kingdom of Hawaii had abandoned its claim to the channel waters by various legal acts. In the 1849 case, *The King v. Parish*, 1 Haw. The Hawaii Supreme Court for the Kingdom of Hawaii had limited the jurisdiction of the Kingdom of Hawaii to the usual three-mile limit under the law of nations.

Third, Judge Pence again turned to a neutrality declaration, the Neutrality Proclamation of 1877 as evidence that the Kingdom limited its claim to three miles. Judge Pence stated:

"Now, therefore, we, Kalakaua, by the grace of God, King of the Hawaiian Islands, do hereby declare and proclaim the neutrality of this Kingdom, . . . in the war now existing or impending between the Great Powers of Europe; that the neutrality is to be respected by all belligerents to the full extent of our jurisdiction including not less than one marine league from the low-water mark on the respective coasts of the islands composing this Kingdom,. . .⁷⁹

Fourth, Judge Pence held that although the Joint Resolution acquired the channel waters, the Organic Act of 1900, Section Two excluded such waters:

king. * * * The legislative power was in the house of nobles and House of Representatives, and only by their combined action and assent could laws be passed. We find no power given by any statute empowering the Privy Council to enact laws."

⁷⁸ (Crocker, *Extent of the Marginal Sea* (1919 ed.), pp. 595-596).

⁷⁹ (Crocker, *Extent of the Marginal Sea* (1919 ed.), p. 596)"

The detailed analysis of the status of 'Hawaii's historical claim' to the channels is necessitated by the Joint Resolution of the United States Congress of 1898 providing for annexing the Hawaiian Islands to the United States whereby the United States acquired every right and claim of the nation of Hawaii.¹³

The Hawaiian Organic Act of April 30, 1900, supra (31 Stat. 141, c. 339) providing a government for the Territory of Hawaii states:

'Chapter I * * * 2. Territory of Hawaii. That the islands acquired by the United States of America (under the Joint Resolution, supra) * * * shall be known as the Territory of Hawaii.' (At p. 17, R.L.H.1955.) . . .

It must be noted that nowhere in the Organic Act does the Territory of Hawaii gain anything more than control over the islands and their shores. The channels are unmentioned.

Finally, Judge Pence discussed the legislative history of the Act of Admission, noting that the channel waters claim, while included in the proposed State Constitution was dropped by the delegation from Hawaii:

The channels between the islands remained unclaimed until the Constitutional Convention of the State of Hawaii in 1951.¹⁵ The Constitutional Convention Standing Committee by its Report 56, p. 259, stated:
'The words 'territorial waters' are meant to include those rightful areas as incurred in the Hawaiian Organic Act * * * which includes not only the three-mile limit but the territorial waters between the named islands.'

Fifth, in 1953 the Hawaiian delegation to Congress relinquished the channel waters claim.

At the 1953-54 hearings before the Committee on Interior and Insular Affairs of the United States Senate, 83rd. Congress, on S. 49, S. 51 and H.R. 3575 . . . all three [representatives from Hawaii] jointly and severally stated positively and unequivocally that Hawaii made no claim for control of ocean waters beyond the traditional three-mile limit.⁸⁰

Ultimately, Judge Pence ruled that the channel waters were not within the State of Hawaii. His opinion was mostly based on his conclusion that the Organic Act excluded the channel waters. He cites no support for this conclusion. It is true however, that the Joint Resolution excluded all islands and all waters. The Island Airlines decision is critical in that it perpetuated the assumption that the Joint Resolution did acquire some islands and some waters. The decision also continued the ongoing perception the Act of Admission of 1959 does include the Hawaiian

⁸⁰(Hearings, supra, Part 2, pp. 40-4, 47-8, 51-2, 121-4, 132, 265.)

Williamson Chang, "A Rope of Sand:" A Documentary History of the Failure of the United States Annexation of Hawaii," Law 530-006 April 12, 2015, Copyright 2015 Williamson Chang, Do not Distribute, Page 61
Islands.

E. The Deception Persists: The 1978 Amendment to the State Boundary Description

In the 1978 Constitutional Convention in Hawaii delegates changed the federal definition of Hawaii and reclaimed the channel waters as territory of the State of Hawaii. The change was ratified by the people of Hawaii. Thus, Article XV now differs from the definition provided at admission. The State Constitution includes the archipelagic waters as part of the State. The Act of Admission deliberately excluded those waters. The amended description in the State Constitution read as follows:

The State of Hawaii shall consist of all the islands, together with their appurtenant reefs and territorial and archipelagic waters, included in the Territory of Hawaii on the date of enactment of this Act, except the atoll known as Palmyra Island, together with its appurtenant reefs and territorial waters, but said State shall not be deemed to include Johnston Island, Sand Island (offshore from Johnston Island) or Kingman Reef, together with their appurtenant reefs and territorial waters.⁸¹

This action of the 1978 Constitutional Convention was deliberate and well debated. The legislative history indicates that delegates simply had no understanding why the channel waters had been excluded by the 1959 Act of Admission.⁸²

Delegate Izu was the first to speak as to enlarging the boundaries of Hawaii to include the archipelagic or channel waters:

DELEGATE IZU: Mr. Chairman, I rise to speak in favor of Section 1 of Committee Proposal No. 2. If I may, I'd just like to reiterate some of the comments made in Standing Committee Report No. 30. We realize that the State of Hawaii cannot change, its boundaries through constitutional amendment. However, there is some ambiguity and uncertainty with respect to the boundaries of our State. We believe that further clarification of our boundaries by including the word "archipelagic" will serve to set forth our understanding of the boundaries of the State of Hawaii.

There is historical evidence that the boundaries of our State were very early considered archipelagic, as cited in the committee report. I won't reiterate

⁸¹ Article XV Constitution of the State of Hawaii Section 1

⁸² Debates in Committee of the Whole on State Boundaries, Capital, Flag and Motto, Committee Proposal No. 2, (Article XV [XIII]) Chairman Delegate Les Ihara, Wednesday, August 16, 1978, Afternoon Session.

these. However, I believe there are considerable and potential benefits for Hawaii to realize, should international acceptance of the archipelagic concept come about. For example, the State could assume control in regulating its local commerce and trade, and would also be able to utilize ocean resources acquired through the archipelagic status. Therefore, I ask my fellow delegates to look favorably upon Section 1 of Committee Proposal No. 2. Thank you.

Delegate Sterling spoke next:

DELEGATE STERLING: I rise to speak in favor of the motion. May I take this opportunity to commend the chairperson and committee members, especially Delegate Uyehara Who spent many hours with me discussing the question of boundaries of our State, and my compliments to the committee staff for their diligence.

My Proposal No. 8, which is incorporated into this report, addresses itself to the exterior boundaries of the State of Hawaii. The records indicate that the question has been discussed many times as to specific and precise boundaries, but was never decided. This is indicated in records of the joint committee hearings prior to the Admission Act of 1959, when definitions by latitude and longitude were discussed but not decided upon. It was understood from the beginning that any action in this direction could and would precipitate legal action. However, jurisdiction over channel waters, resources of the water columns and seabeds must be resolved. These are resources of the State of Hawaii, whether they be fishing resources or mining resources such as manganese--so essential to steel production--cobalt, etc., as well as the various forms of coral.

In anticipation of possible legal action, I offer these additional comments for the record. The names of the islands used in Proposal No. 8 were taken from the report of the original commission appointed by the President under the Joint Resolution of Annexation of July 7, 1898, for the purpose of identifying the transfer of the sovereignty of Hawaii to the United States of America. The legal point being, what did Hawaii lose in the period between the time of the kingdom going to the republic and the annexation and statehood or Admission Act? Secondly, in our argument, we advance a scientific basis of proper boundaries by proposing a midocean archipelago or archipelagic concept, noting that discussion of the archipelago has been actively avoided by the leading nations of international community.

This must be done. We have conflicting jurisdictions within our State--the Public Utilities Commission, Federal Maritime Commission, Civil Aeronautics Board, and theoretically, the waters of our channels are now considered international. We have great wealth within our seas. These resources belong to our children. This is their heritage, to take care of and to pass on. We must control the problems and find solutions for waste disposal. We must be biologically

sound, without hurting our ecosystems. These are economics--major economics. Jobs and income for a growing Hawaii; controlled by Hawaii. I urge your support.

Thank you.

Delegate Sterling was followed by Delegates Alcon and others:

DELEGATE ALCON: Mr. Chairman, if we adopt this section of the proposal, does that mean the Russian fleet cannot go through Lahaina and the other channels?

CHAIRMAN: I believe so, but would the chairman of revision and amendment wish to respond right now?

DELEGATE UYEHARA: May I speak? CHAIRMAN: Go ahead.

DELEGATE UYEHARA: This is only a concept of the boundary lines which is basically on the archipelagic waters. Probably one of the defenses of our nation or preferably of our State at the present time, which is located at the middle of the Pacific Ocean, is monitored by other countries as they come close to our waters--and yes, they have even come through the channels between Maui and the Big Island, to monitor some of our defense means throughout our State.

We like to set this boundary internationally, as well as clearly in our State's and country's mind, that this is part of our waters and any foreign vessels coming through our waters should be monitored, should be patrolled and, if they are fishing in our waters, I believe there even should be taxes like the kingdom did during the time of Kamehameha III. And with that we would like to set forth--since there are no nations right now trying to impose their boundary line upon us, and it is good in a way that we are so far away from all the nations interested in our waters--with this I hope to answer Delegate Alcon's inquiry'

Delegate Chung noted the importance of larger boundaries as to the future economy of Hawaii:

DELEGATE CHUNG: I speak in favor of the motion. I just want to share some information which is very pertinent. This is in respect to what John Craven told us at our committee hearing. As you know, John Craven is State Marine Affairs Coordinator and a renowned authority on marine affairs, and he advocated that we insert the word "archipelagic"--particularly because, in case of future litigation in relation to the determination of the Law of the Sea which is still pending and in conflict in relation to the United Nations' concern for the development of Third World countries with the possibility of great wealth in the ocean estimated to be over \$30 trillion, and he strongly felt that Hawaii's share in the future in economic development in sea mining must be preserved.

This is why he strongly advocated that this word be inserted to protect us if anything or any litigation should happen maybe 20 years from now. But as all of you have observed, we recently had a conference in Hawaii on this manganese sea-mining program. So perhaps all of these benefits shall be upon us sooner than

we expect. Therefore, this particular amendment is very important for the future of Hawaii. Thank you.

CHAIRMAN: Does the committee wish to further consider Section 1? Delegate Tam.

DELEGATE TAM: Mr. Chairman, I would like to address a question to the Committee on Revision and Amendment. Is it the intent of the committee to allow our police department and other law enforcement bodies to pursue criminals and prosecute all crimes in archipelagic waters?

CHAIRMAN: Delegate Sterling.

Delegate Izu spoke for the second time. She emphasized that the problems was one of uncertainty. The original boundaries of the Kingdom included the channel waters. The channel waters were excluded by the federal definition in 1959. There was no explanation as to that exclusion.

CHAIRMAN: Delegate Izu.

DELEGATE IZU: Mr. Chairman, I speak for the second time on this. What the committee proposes to do by this is to set out the State's understanding of our boundaries. We are not changing our boundaries. If Congress or the United Nations--or whatever international law comes out in the future--says that we do not rightfully own these waters between the islands, then we do not rightfully own them and cannot do anything about it,

However, as was mentioned by previous speakers, there is ambiguity, there's uncertainty about what our boundaries are. We would like, by adopting this amendment in our present Constitution, to set forth what we believe our boundaries are. I don't believe that there will be any drastic or immediate change in what we presently do within the State as far as policing the waters, as far as taxing whoever comes through these waters. But we are saying that in the future should there be a need to tax whatever industry goes on in these waters, that we can say, through this amendment, that we understand these to be our boundaries. But let me reiterate that we unilaterally cannot change our boundaries.

Delegate Kaapu reiterated the point that the real problem was one of confusion:

CHAIRMAN: Thank you. Delegate Kaapu.

DELEGATE KAAPU: May I speak in response to Delegate Harris' point. I would like to believe that former Congresswoman Mink meant that what we are discussing here and others have said, that there would be no immediate effect of adoption of such language. But I do know, from the experience of having done a great deal of research in connection with the Hawaiian Native Claims and other claims such as in Alaska, that when Hawaii became a part of the United States, Congress in the Organic Act stated that all laws pertaining to land which were in existence prior to that time should continue and remain in effect until Congress

Williamson Chang, "A Rope of Sand:" A Documentary History of the Failure of the United States Annexation of Hawaii," Law 530-006 April 12, 2015, Copyright 2015 Williamson Chang, Do not Distribute, Page 65

should otherwise legislate, thereby establishing and freezing and maintaining concepts of Hawaiian land law that were not in existence throughout the country or even throughout the Western or European world. Now this became important later, even in the Alaskan case. When it was to be determined which lands belonged to the aboriginal Alaskan natives, the traditional practices and view of the land played heavily in the decision of Congress to grant to them some 10 million acres of land in their settlement.

Now, in the research done by our attorneys, Stewart Udall and his associates, I learned something that I was not even aware of. That in these matters of international law and the determination of rights and of territorial concepts, tradition plays an important part. While Patsy Mink may be correct--if that's what she meant--that passage of this would not bring us any immediate benefit, it could possibly bring us great benefit in the future if that body sat down to consider what has been our traditional view of our land. And from that standpoint, I hope that these views can be reconciled and Dr. Craven and Mrs. Mink can be happy.

The actions taken by the 1978 delegates to the Constitutional Convention⁸³ was based on legal uncertainty—a legal uncertainty arising from their ignorance of the true reason that Congress excluded the channel waters in 1959. The delegates in 1978 did not realize that the real problem lay in a more basic question of whether Hawaii was territory of the United States. The debate and their ultimate action is evidence that the continuing campaign of deception has succeeded.

⁸³ CHAIRMAN: Delegate Shon.

DELEGATE SHON: Mr. Chairman, I'd like to speak in favor of the motion. I'd just like to add a note of further clarity here. It is not a matter of interpreting some document, but that we have and always will recognize that the waters between the channels--the waters of the archipelago--are part of the State of Hawaii, that we always have, and we do now, and we will in the future. It's very important that the Convention go on record as stating that we do declare this has always been part of the State of Hawaii, not just an interpretation we're making at this point in time. I just wanted the record to reflect--at least I feel that they always have been part of the State of Hawaii, always will be, and we are simply reasserting that.

CHAIRMAN: Delegate Barnes.

DELEGATE BARNES: I just sat through a course on ocean law at the University with the Sea Grant Program. They did a research project on the archipelago, on this specific point, which is available at the Sea Grant Program. Choon Ho Park, an international expert from Harvard, along with Dr. Craven, who is an acknowledged expert in marine law, agree that, I would think, this would be a good idea for the State of Hawaii.

Debates in Committee of the Whole on State Boundaries, Capital, Flag and Motto, Committee Proposal No. 2, (Article XV [XIII]) Chairman Delegate Les Ihara, Wednesday, August 16, 1978, Afternoon Session.

The amendment of the Constitution including the channel waters in the State of Hawaii created enormous legal problems. Those problems have not been resolved to this day.

First, there are now two official descriptions of the State of Hawaii---one in the Act of Admission of 1959 which excludes the channel waters and one in the 1978 amended State Constitution which includes the channel waters. By the amended State Constitution, Hawaii is larger than the Hawaii Congress admitted as a State. This cannot be. Which Hawaii is your Hawaii? The larger or the smaller?

Second, the act of amending the State Constitution to include the channel waters violated the condition subsequent of Section 7(b) of the Act of Admission. The 1978 amended definition constituted a repeal or rejection of the federal boundaries required by the Act of Admission. By the terms of the Act of Admission, the rejection of the federal boundaries denied Hawaii admission as a State in the Union.

Senator [unknown:] . . .there is set out a procedure which provides that if the propositions [the new Federal boundaries] are approved in the general election, then, the constitution shall be deemed amended accordingly. Such action would be in the nature of a condition subsequent to approval of the bill before the committee now; failure to fulfill this condition subsequent would operate to nullify all of the provisions of H.R. 2535.⁸⁴

The people of Hawaii in 1978 had no idea that Hawaii had been never been acquired by the United States. The persistence of this misunderstanding was a result of the deception used in defining to the faux federal boundaries used in the Admission Act. The people and these delegates were never informed that Section Two of the Admission Act excluded the Hawaiian Islands from the State of Hawaii. They never realized that by their approval of that plebiscite they relinquished the Channel waters.

F. Conclusion:

Section Two of the Organic Act, Section Two of the Act of Admission and Article XV of the State Constitution are laws and statutes of the United States and the State of Hawaii. By these laws the Hawaiian Islands were intentionally excluded from the United States and the State of Hawaii.

These three statutes, along with the Joint Resolution of 1898 and the failed Treaty of 1897, are the primary instruments of a psychological war the United States waged not only against the people of Hawaii but against the people of the World..

⁸⁴Hearing before the Committee on Interior and Insular Affairs of the House of Representatives 84th Congress 1st sess. on " on H.R. 2535, H.R. 2536, "Hawaii-Alaska Statehood," January 25, 28 and 31 and February 2, 4, 7, 8, 14, 15 and 16 1955 at page 155

The occupation of Hawaii was achieved by massive deception, denationalization, and the day-to-day use of official state violence to support this massive illusion. This one hundred year hidden "occupation" is unprecedented in terms of its length and success. There are enormous legal questions presented: from the hypocrisy of a United States that preaches the rule of law to other while defiling it in Hawaii. The United States, as to Hawaii has completely abandoned the principles of the American Constitution and International law.

The United States never acquired Hawaii. A Joint Resolution cannot acquire the Hawaiian Islands. Yet, the United States claim to the Hawaiian Islands is officially defined as the islands acquired by that impotent Joint Resolution.

There is no better evidence of the lack of sovereignty than these two statutes. There is no better evidence than a confession--particularly in the form of a law enacted by the representatives of the American people--the United States Congress.

It is not a confession derived under duress or derived without thought. It is a confession carefully crafted after long deliberation. It is a confession that has served a deliberate American goal. Taking Hawaii was the beginning of the expansion and growth of America into a global power.

It began in 1893. It continues today by means of the myth of annexation. It is a myth that has burrowed into the American consciousness as a reality. It is a myth legally protected by the unwillingness of the United States to apply the rule of law to itself. It is protected by a Supreme Court the employs the political question doctrine to avoid unambiguous violations of international law. It is maintained by official neglect. It is maintained by the institutional refusal of Hawaii's Federal and State Courts to examine the most basic statute of the State of Hawaii: the law of Congress in the Act of Admission that's defines the State's boundaries--the official beginning and end of American power in this part of the Pacific.

This taking of a sovereign nation has been achieved not by the gun but by legal coercion enforcing an oppressive fiction—that conquest by deception is the ordinary state of affairs in Hawaii.