

BLNR-CC-16-002
PREFILED TESTIMONY OF
FRANK TAMEHAMEHA KAMEHALOHA ANUUMEALANI NOBRIGA
KAHUNA OF THE TEMPLE OF LONO
October 8, 2016

This testimony is pre-filed testimony by FRANK TAMEHAMEHA KAMEHALOHA ANUUMEALANI NOBRIGA, Kahuna of the Temple of Lono, offered in the contested case regarding the application of the University of Hawai'i at Hilo (Applicant) to the State of Hawai'i Board of Land and Natural Resources for a permit to build the Thirty Meter Telescope (TMT) on the summit of Mauna a Wākea.

Q. Tell me some of your background and activities as the Kahuna of the Temple of Lono.

A: I became a student of Kahuna Nui Pali Ku Samuel Hoopii O Kalani Lono o Ka Makahiki Po Paki (Tahuna Sam Lono) in 1973. He trained me in the teachings and practices of the Temple of Lono until he passed away in 1985. Prior to his passing away, he designated me as the next Tahuna.

As the Tahuna, part of my *kuleana* (responsibility) is to share the teachings of the Temple with those who ask to learn. I also work as a tour guide and share the teachings with visitors who come to our islands.

I do not proselytize. Nor do I have a congregation, as I will explain later.

In 1996, as the Tahuna, I represented the Temple in the first lawsuit filed under the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA). Joining me in filing that suit were Sam Monet and Rubellite Kawena Johnson. Exhibit L1 is the Statement of Nahoa 'Olelo o Kamehameha submitted in the case by Rubellite Kawena Kinney Johnson.

The central question raised in that case was who would have the proper status to receive repatriated burials from the Bishop Museum in Honolulu. The court found that the Office of Hawaiian Affairs and the Island Burial Councils were State of Hawai'i agencies and not, therefore, qualified to receive such repatriations. The Court found that the lineal heirs and the Temple of Lono did qualify.

In her statement to the court, Rubellite Kawena Johnson said:

Finally, because the Office of Hawaiian Affairs and the Burial Councils are not organized kahuna priesthoods which, by traditional Hawaiian custom, practice the religion within the membership as such, they cannot effect the kahuna priesthood with those recognized credentials that is also a registered claimant in the **Temple of Lono [Frank Nobriga]**, that it would also be a violation of the constitutional separation of church and state to allow non-Hawaiian-priesthood (kahuna) agencies of the state, to preempt the Lono priesthood order which has for many years practiced Hawaiian rituals in the Ko'olauloa/Ko'olaupoko [Kualoa to Waimanalo] area.

Exhibit L1 at 7 (emphasis added).

There is a concerted effort to pronounce the traditional Hawaiian faith as no longer practiced. As an example, on December 17, 2015 – with the spiritual

challenge to the TMT a major obstacle to the telescope – a Trustee of the Office of Hawaiian Affairs wrote an article in which he said:

Validating a traditional and customary practice, especially a claim represented as “sacred” and rooted in past religious beliefs, becomes more complicated in the absence of the old priesthood.

...

So the entire [traditional faith] belief system went underground and was lost to many, if not most, Hawaiians. That left no recognized priesthood to validate traditions and practices, leaving us with the current day reliance on historian-scholars, ancient chant references and archaeologists.

“Let There Be Light on the TMT” by Peter Apo published in Civil Beat.

<http://www.civilbeat.org/2015/12/peter-apo-let-there-be-light-on-the-tmt/>

Exhibit L2 at 2.

I offer the evidence found in Rubellite Kawena Johnson’s legal declaration in part to document that that I am the Kahuna of the Temple of Lono, that the Temple is still a living practice, and that the Temple maintains the traditional faith of the Hawaiian people.

Furthermore, I was also recognized by Judge Samuel King, who wrote: Frank Nobriga is an active force behind the Temple of Lono movement which began in 1971. Their purpose is to maintain a spiritual land bank, with temples throughout the islands. The first temple was established on Kahoolawe in 1976, having been conceived as a result of the involvement of Hawaiians in recapturing that island for civilian purposes. At the time he spoke for the video tape, there were a total of four such temples. The Temple of Lono is rediscovering the elements of ancient Hawaiian religion, including a four-god concept.

Honorable Samuel P. King, United States District Court, “Hawaiian Sovereignty,” Hawaii Bar Journal, July 1999, <http://wetserver.net/hawaiimatters/old/king.pdf>.

Judge King did misspeak in saying that the Temple at Kaho’olawe was first established in 1971. That temple predated the arrival of Captain Cook and rededicated in 1971 by Tahuna Sam Lono. See Exhibit L3.

I want to note that no one associated with the telescope ever contacted me to discuss any problems that the Temple of Lono might have with the telescope. Nor did Mr. Peter Apo ever attempt to contact me before declaring me non-existent.

Q. As a preliminary matter, I understand that you have some concerns about appearing as a witness in this proceeding. Why?

A. The Hearing Officer in this proceeding has sanctioned bigotry directed against the Temple. The University of Hawai’i at Hilo, Applicant in this proceeding, directed a libelous attack against the Temple, essentially accusing the Temple of being the equivalent of a terrorist religious organization, much like ISIS or ISIL. A copy of that attack accompanies this testimony as Exhibit L4 at 14-15 [DOC-135].

In response to the attack, because the time scheduled for the filing of pre-hearing motions had expired, the Temple requested permission of the Hearing Officer to file a motion out of time addressing the attack and its implications for the

question of whether the Applicant is qualified to receive the permit being requested in this proceeding. Exhibit L5 [DOC-179].

The Hearing Officer violated the Temple's right to be heard by denying the Temple's request to file a motion out of time. The Hearing Officer essentially gave the Applicant a pass, despite what the Temple considers proof of disqualifying character.

Not allowing the Temple to be heard on the disqualification issue is a Due Process violation similar to the one that led to the vacating of the permit sought in this proceeding by the Hawai'i Supreme Court, i.e. voting to grant the permit prior to holding the contested case allowing people to be heard who opposed the permit. In this case, the Hearing Officer essentially ruled that the attack by the Applicant was not disqualifying without giving the Temple the opportunity to argue the issue at all.

Later, the Temple submitted the issues that the Temple asserted should be heard in the contested case hearing. Exhibit L6 [DOC-265]. The Temple included the character of the Applicant as one such issue. *Ibid.*, Exhibit A at 1.

The Hearing Officer excluded that issue when deciding what issues will be heard. Exhibit L7 at 4 [DOC-281]. The Hearing Officer again violated the Due Process rights of the Temple.

The Hearing Officer compounded the Due Process violations by refusing to issue an order providing a reasoned explanation for excluding the issue. Without such an explanation, the Temple had no basis for preparing a motion for reconsideration, a motion which the Temple had the right to file under the rules. HAR §13-1-39.

The failure to provide a reasoned explanation for this ruling and many others excluding Temple issues also leaves the record on appeal incomplete. With no substantive reason given for a decision, an appellate body will have no choice other than remanding the issue back to the Hearing Officer for the required explanation to be made.

Still later, the Temple filed a motion asking the Hearing Officer to recuse herself based on her ruling that denied the Temple the opportunity to even file a motion based on the attack by the Applicant. Exhibit L8 [DOC-262].

The Hearing Officer ignored the motion and never scheduled the motion for briefing or decision. See Exhibit L9 [DOC-324].

Based on this history, the Temple considers the evidence to be clear that the Hearing Officer is not fair and impartial. I personally do not expect to be respected should I appear as a witness in this proceeding and do expect to be subject to abusive cross-examination without any recourse to assistance from a biased Hearing Officer.

Given the blatant violation of my Due Process rights by the Hearing Officer refusing to allow the Temple to even file a motion addressing the libelous attack, I also consider this proceeding to be legally meaningless. No decision granting the permit will withstand a legal challenge based on the failure to allow the Temple to be heard on the disqualifying implications of the Applicant's attack.

Despite my misgivings about appearing as a witness, I do so to at least ensure the Temple's views are part of the record and to share the knowledge of the Temple with a broader audience.

Q: You consider the University's attack on the traditional faith of the Hawaiian people as part of a long pattern of suppression. Can you elaborate on that history?

A: When people from foreign civilizations came to the Hawaiian Archipelago, they frequently failed to appreciate that they had encountered a highly sophisticated spiritual, social, economic, cultural, and scientific civilization.

For some of the foreigners, the nature of the Hawaiian civilization was irrelevant because their goal was simply to exploit the natural resources of Hawai'i and the Hawaiian people were an obstacle.

For others, the goal was destruction of the Hawaiian Kingdom and annexation of the Kingdom to the United States.

Later, some of the foreigners from the United States wanted to use the islands as part of a United States war against Spain, so they concocted a phony annexation of the islands to the United States.

These economic and geopolitical goals led the foreigners to do everything in their power to destroy the traditional Hawaiian civilization. A broad overview of the history leads to the conclusion that the foreigners enacted a plan of genocide. Exhibit L10 is a fictional document that illustrates the point I am making here.

A key element of the traditional Hawaiian civilization was the faith of its people. Part of the imperial attack on the Kingdom involved converting the Native Hawaiians to non-Hawaiian religions.

As part of that attack, the missionaries pushed for laws in the Kingdom that would outlaw traditional Hawaiian spiritual and cultural practices. A set of laws known as the Moe Kolohe laws outlawed such practices as multiple spouses, ancestor worship, and other traditional and customary practices of the Native Hawaiians.

Violation of those laws could lead to being sent to a penal colony.

Further discussion of contemporary examples of this suppression of the traditional faith is found in Exhibit L11 at 2-3.

The war on the traditional faith continues today as demonstrated by the bigoted attack on the Temple in this proceeding discussed above, which the Hearing Officer protected and sanctioned by denying the Temple the right to be heard on that issue.

Q: So let's talk about Faith, Religion, and Spirituality. How would those terms be defined in the context of the Temple of Lono?

A: First of all, the foundation of the pre-contact traditional Hawaiian faith was passed down orally from Mahea O Kalani Lono O Ka Makahiki and Kahuna Nui Pali Ku Samuel Hoopii O Kalani Lono o Ka Makahiki Po Paki to me.

This faith is not something learned by studying a book. Our faith is transmitted through an oral tradition. The oral tradition is the mo'olelo, the spoken word, which is a proverb based in the Temple knowledge. That tradition is based on colors, symbols, and thousands of years of observation.

The learning of the Faith is a matter pursued over many years. To be asked to summarize the Faith for a western Hearing Officer having no foundation for understanding the Faith is a challenging task, which can be made simple by thinking Hawaiian.

The traditional Faith of the Hawaiian people is based in Four Gods: Kanaloa, the Sun; Ku, the Ocean; Kane, the Fresh Water; and Lono, the Earth. From these four elements, all life emerges. From these four element emerges the first symbol of Hawaiian thinking – the square, the Pa Halau O Teatua, the foundation of the Gods.

From this foundation comes the breath – the Ha --for all living things, the second symbol, the circle.

One teaching that encapsulates that Faith is the following: Ocean, Sun, Earth, Fresh Water

Ku, the Ocean, the first giver of life and death, is heated by Kanaloa, the Sun and the water vapors rise to create the clouds. The third God, Lono, the Earth, the Mountain, draws the clouds that touch the top of the Mountain, and Kane, the Fresh Water, falls to flow back to the ocean completing the cycle. The Hawaiian chants translated into English would be:

Ku – oh ocean god you give life and you take life

Kanaloa – oh sun god heat the ocean, the forming of the clouds

Lono – you the god of Earth must provide the staff of life for the world

Kane - The tears of heaven are alive on earth, they touch the top o the mountain, and carve into the stone and meander back to the sea.

At the direction of Kahuna Sam Lono, I prepared a summary of these teachings for distribution publicly that provides more detail. That summary accompanies this testimony as Exhibit L12.

These teaching are based in science, as can be seen from the teaching of the hydrologic cycle just offered. While the presentation may be transmitted in a different form than the form used by western scientists, the Faith of the Four Gods is no less scientific. In fact, the traditional Hawaiian science had greater knowledge of the Earth's workings than did the westerners who arrived on Hawaiian shores in the 1700s. The foreigners chose to treat the Hawaiians as ignorant savages and missed the great gifts of knowledge that the Hawaiian had to offer.

Understanding the hydrologic cycle as a natural process essential to the survival of Humans engenders a deep respect for those elements. When the practitioner of the traditional faith offers food on the altar of the Gods, that is another completion – what the elements have provided is the staff of life. Part of the harvest is then offered back to the elements that made the production of food possible.

This foundation in the Four Gods producing the food needed for Human survival is one definition of the Faith.

Religion is how any given family expressed the foundation in their daily life. The altar in the home is the seat of the religion. There are no pews in the Temple because the religion is practiced in such diverse forms. The altar in the home of the fisherman will have different elements than the altar in the home of the canoe maker. For the western mind, thinking of the families as the churches where the religion of the faith is practiced may assist in understanding.

The focus for teaching also reflected the specialization of the family. For those who lived their lives in relationship to the ocean, learning the hundreds of names Hawaiians had for waves was essential.

From each family, a child would be selected to learn the secret to mastering an element of the religion. That child would be sent to the Temple for training by the Kahunas serving the Gods and be welcomed back home as a Kahuna, an expert in the family's secret traditions. That mastery passed as wisdom from generation to generation.

Spirituality is perhaps defined as finding sacred connections in the world beyond the five senses through proper understanding of how to make that connection using the five senses. Again, that is an individual pursuit and finds expression in a myriad of practices and beliefs.

Q: How do you view other religions as different?

A: First of all, by "different" I do not mean better or worse. I simply observe that other religions are different. The difference helps to understand the nature of the Temple's faith.

I would contrast the Hawaiian faith based on observation with other religions that are not grounded in the physical world. In one sense, I consider the other religions as "blind faith" because they are not connected to observation of the physical world.

Similarly, the rules found in other religions are often based on something other than Natural Law. In the Hawaiian civilization the thousands of years of observation produced the Kanawai, the laws governing all relationships between the Human Family and the rest of the Natural World, which must be followed to guarantee the survival of future generations.

Other religions not grounded in the Natural World have in some instances lost their connection to physical reality and given us a world that is on the verge of catastrophic destruction caused by ecological blindness or deliberate denial.

The Hawaiian Faith also expressed itself through sharing. That sharing could be a sharing of food. Or that sharing could be sharing child rearing in the hanai system, which the foreigners also outlawed with their Moe Kolohe laws.

Because the Hawaiian Faith focused on Human reliance on the rest of the Natural World for survival, the fundamental relationship was that the people served the 'Aina (living ecosystems).

Disconnected value systems treat the Earth as simply a resource for Human consumption and a trash can for Human waste. The predominant story today is being told by those who worship material wealth, the proverbial Golden Calf. Treating the Earth as a commodity is driving the Human species lemming-like over the cliff to self-destruction.

Q: Today the Temple has flags used as teaching symbols. Tell us about those flags.

A: Kahuna Nu Pali Ku Samuel Hoopii O Kalani Lono o Ka Makahiki Po Paki, known as Tahuna Sam Lono created the flags as a teaching tool.

The first flag had a green background and a red square, representing the Four Gods, the foundation of all life.

The second flag had a blue background and a white circle, representing the Ha, the breath of God that animated all creation.

The third flag had a purple background and a gold triangle, representing the hidden powers and the search for the truth of I Am that I Am.

To touch upon that third symbol for a moment, learning about one's self is very much a part of the spiritual journey within the Hawaiian Faith. That is one reason the Hawaiian Faith is a matter for years of study. Each day, the life of the individual offers opportunities for the individual to engage in self-examination, discover internal truth, and achieve self-realization.

Q: How did the Temple of Lono come to be involved in contemporary events surrounding Mauna Kea?

A: First of all, the triangle is the symbol of the Ancestors, the lineage going back to the first polyp of coral and emerging from the slime as documented in the Kumulipo. The Ancestors are the root of the entire civilization. Worship of the ancestors is a central practice in the Hawaiian Religion. As the largest triangle on the Island of Hawai'i, Mauna Kea is a sacred feature beyond compare.

As far as the Temple's contemporary involvement with Mauna Kea, that involvement emerges from the proposal back in 2006 to build extensions, known as outriggers, on the Keck Telescope located on Mauna Kea.

The Temple's involvement arose from the decision of a spiritual practitioner to build an ahu (altar) on Mauna Kea for purposes of making offerings to the Gods, petitioning for the Gods to intervene and prevent the construction of the outriggers.

State of Hawai'i officers objected to the construction of the altar.

A *haumana* (student) of the Temple of Lono brought the issue of the outriggers and the altar to me.

The *haumana* considered all the telescopes to represent desecration of the sacred Mauna.

He understood that traditionally only the Kahunas and families with direct lineal connection to the lands at the summit came into the peak area for ceremony and to visit ancestors buried on the Mauna.

He also understood that traditionally no permanent structures should be built on the sacred Mauna.

For many years, the University of Hawaii had been leasing lands at the peak for the construction of telescopes.

Those projects took place over the objections of the traditional faith practitioners.

The outriggers were just the latest violation of the sacred lands.

The *haumana* came to me to request assistance from the Temple of Lono.

I advised him that the appropriate place to petition the Gods for assistance was at the foundation of the Mauna (Mountain) in Pu'u'honua O Honaunau.

The proper order was to lay the foundation (Pu'u'honua) before putting on the roof (Mauna summit).

In the teachings of the Temple, the triangle is the highest symbol. Mauna Kea, emerging from the sea floor, is the largest triangle on Earth. Pu'uhonua O Honaunau is a sacred site of the traditional Hawaiian faith at the base of the Mauna.

Pu'uhonua O Honaunau is located within a national park created by the United States.

A Temple of Lono altar is maintained within the Hale O Keawe inside that national park.

In response to the *haumana's* request, I authorized the *haumana* to submit a letter to the United States National Park Service stating the intention of the Temple of Lono to perform a ceremony at the altar.

This ceremony had not been performed at that altar for more than 150 years as a result of suppression of the traditional faith.

The haumana wrote a letter to the National Park Service announcing the intention of the Temple.

The National Park Service responded by sending the haumana an application for a permit to hold an event at the national park.

Upon the advice of an attorney that we did not need to request permission to exercise our First Amendment right to hold a ceremony at our sacred site, we ignored the permit application.

On the appointed date, I convened a group of practitioners at the Pu'uhonua O Honaunau.

The next day, the practitioners performed a ceremony that began with a procession through the Pu'uhonua with the pū sounding continuously to call the ancestors to witness the ceremony.

At the site, we raised the flags of the Temple and bound the poles to the fence around the altar site.

We then entered the Hale O Keawe to pray and leave offerings of the fruits of the 'Aina.

This display of the flags was only the second time they had been raised since Kahuna Sam Lono created them.

When the ceremony was complete, the practitioners left the Hale, closed the gate, and formed a procession back to our campsite.

We left the flags flying at the Hale.

The pū sounded repeatedly as we processioned back.

Soon thereafter, two Park Rangers came to ask whether we had put up some flags on the Hale O Keawe.

They said that the flags looked very contemporary and not like a traditional spiritual practice.

I reminded them that the Catholic Church used to hold mass in Latin and now used English.

The Rangers left.

Subsequently, the Outrigger Telescopes were cancelled.

<http://www.newscientist.com/article/dn9702-judge-reverses-permit-for-new-hawaiian-telescopes.html#.VS4hXGa4NcQ>

Q: What further involvement has the Temple had with the Mountain?

A: The public uprising against the Thirty Meter Telescope brought the Temple back into the issues surrounding the construction of telescopes on lands considered sacred by the traditional faith.

After hundreds of people blockaded the road leading up to the TMT construction site, the Office of Mauna Kea Management (OMKM) issued a set of rules to govern spiritual practices on the Mauna.

I considered these rules to constitute a fundamental violation of the rights of those engaged in spiritual practice on the Mauna and authorized suit to be filed by the Temple against OMKM. Exhibit L4, Exhibit 2.

Shortly after the suit was filed, the Board of the Department of Land and Natural Resources issued rules that further restricted spiritual practices on the Mauna.

The Temple amended the suit to include those rules.

Shortly thereafter, OMKM withdrew its rules.

Soon after that, a separate court struck down the DLNR rules.

Q: Beside the Temple's involvement with the Mauna, are there other significant involvements of the Temple that are relevant to this proceeding?

A: As I mentioned above, the altar of the Temple of Lono within the Pu'uhonua O Honaunau is located within a United States national park under the jurisdiction of the United States National Park Service.

The land underneath the altar is the sacred land base of the Temple that the Temple is seeking to reclaim. As part of that reclamation process, the Temple submitted a statement to the United States Supreme Court at the time the court was considering a case involving the lands of the Kingdom taken by the United States. Exhibit L13.

One important aspect of the Pu'uhonua is the inextricable link between the Pu'uhonua and the High Chief, later known as the King. In its message to the United States Supreme Court, the Temple highlighted this relationship with the story of a request from the High Chief on Maui to the High Chief on Oahu to be given the Pu'uhonua at Kualoa. Ibid. at 4.

The Kahuna objected to such a transfer because relinquishing the Pu'uhonua would mean relinquishing sovereignty over the Island of Oahu. Id. The Pu'uhonua was the foundation of the political legitimacy of the High Chief. As the Temple stated to the United States Supreme Court:

This history provides a window into the complexities of the sovereignty concept within the Hawaiian civilization. The most relevant historical aspect here is that the chiefs accepted the Kahuna's position that the independent political status of Oahu revolved around the sovereignty over Pu'uhonua Lehua at Kualoa. The Pu'uhonua was the seat of sovereignty. The kuleana for that Pu'uhonua rested in the hands of the kahunas.

Ibid. at 5.

King Kamehameha I understood that link. When he established his seat of government, he did so within the Pu'uhonua O Honaunau where he had an altar constructed that was dedicated to the God Lono.

While the Pu'uhonua was an essential element in the Hawaiian civilization, the Pu'uhonua has no recognition in the contemporary civilization. Even the historical functions of the Pu'uhonua are hidden by the National Park Service designation of the park as the City of Refuge. Providing a place of refuge to someone being pursued by the High Chief's warriors was one small function of an institution that served as the foundation of the Hawaiian civilization.

The Pu'uhonua was first and foremost a garden. The spiritual responsibility of the Temple of Lono was to feed the people.

The Pu'uhonua also served as a back up for all the other land sectors. If they lost their crops due to flood, drought, or war, the Pu'uhonua would supply replacements.

With its political connection to the High Chief/King severed and its land base stolen, the Temple has found refuge only within the restored Kingdom of Hawai'i. Exhibit L11 at 2-3. The Temple included the continued existence of the Kingdom and the existence of a restored Kingdom Government in the Temple's list of issue to be heard. Exhibit L6, Exhibit A at 2, Category 4.

The Hearing Officer excluded those issues. Exhibit L7 at 4-5.

As described above, the Temple has returned to its spiritual land base at Pu'unonua O Honaunau to hold ceremony. Yet access to that sacred land base has been a constant struggle with the United States National Park Service. Exhibit L11 at 3.

The details of that struggle are posted at www.KingdomofHawaii.info/documents in the Restoring Sacred Lands to the Traditional Practitioners section.

Q: Earlier, you mentioned that there is a concerted campaign to portray the traditional Hawaiian faith as no longer practiced. Can you elaborate on that campaign?

A: There are really four different lines of attack directed towards the traditional faith.

First is the attempt to portray the faith as no longer existing.

Certainly one of the leaders of that campaign is Mr. Peter Apo as demonstrated by the portions of his article that I quoted above claiming there is "no recognized priesthood."

Let me return to something Mr. Apo said in the article I cited:

The centuries-old system of religious rule influenced by a priesthood hierarchy that held great sway over the ruling class could not survive a monarchy hostile to the traditional religion.

So the entire belief system went underground and was lost to many, if not most, Hawaiians.

Exhibit L2 at 2.

Mr. Apo pretends to fundamentally misunderstand the traditional faith. As I explained above, the faith of the four Gods was the foundation held by the Kahunas and the religion was the practice of the faith by the families, each with their own, (hidden knowledge).

While the religious schism created by the missionaries did result in suppression of the Kahunas of the traditional faith, the people did not give up their religion. While the temples of the Kahunas may have been destroyed, the people did not take their altars out of their home. In many instances, while attending Christian churches, the people also continued traditional spiritual practices privately.

Mr. Apo tries to demean the important role of the families in maintaining the traditional faith. According to him, “[T]here are also the oral traditions passed down within each family; but these are less reliable.”

For Mr. Apo, there are no Kahunas and family oral history is unreliable. That opens the door for Mr. Apo to cobble together whatever story he wants to present regarding the nature of the traditional faith.

Any attempt to portray the religion as disappearing because the Kahunas were publicly absent, however, is a false narrative.

The second line of attack is to claim that, if there is a faith, that faith is an unreasonable one. In the Apo article cited, he plants the seeds for the later attack by the University. Exhibit L4. For example, Mr. Apo states:

In the case of the TMT, “sacred” means there can be no real discussion and the protectors have made it clear that compromise is not possible; thou shall not build it.

Id.

Later, we find the Applicant characterizing the Protectors of the Mauna “absolutist.” Exhibit L4 at 14.

The commitment to protect a sacred site is thus converted into charges that those protecting the site are part of a fundamentalist, dogmatic religion.

The problem with fundamentalism in religion – **any religion** – is its intolerance and inability to compromise. Fundamentalist religion when confronted with a conflict between cooperation and conformity to doctrine invariably chooses the latter, regardless of the harm it brings to the society of which it is a part.

Id. (emphasis in the original).

This attack fails to acknowledge that the Native Hawaiian community has seen thirteen telescopes built on their sacred mountain over their objections.

This attack fails to acknowledge the pain inflicted on those who have reverence for the Mauna because they have been unable to protect the Mauna from the astronomers’ onslaught.

This attack also fails to acknowledge that there are alternative sites for the Thirty Meter Telescope. There is no major opposition to the project at those sites.

The Temple put the issue of alternative sites on its list of issues for the Contested Case Hearing. Exhibit L6, Exhibit A, Category 6.

The Hearing Officer excluded that issue from being heard. Exhibit L7 at 4.

Those sites may not be quite as good scientifically, so choosing the alternative location would represent a compromise. For now, it is TMT that has made it clear that “compromise is not possible” by insisting on pursuit of the permit in this case, when it is obvious to all concerned that such a pursuit is damaging our community.

Mr. Apo led the charge toward demonizing those seeking to protect the Mauna from yet one more telescope. That demonization reached a pinnacle in the University attack on the Temple of Lono. L4 at 14-15.

The third line of attack on the traditional faith – and perhaps the most insidious – is to constantly refer to the faith as “culture.”

A recent example are the regulations proposed by the Office of Mauna Kea Management (OMKM). On the Board’s Agenda for Tuesday, October 4, 2016 in Hilo, Hawai’i. were the following items:

"VI. NEW BUSINESS

...

B. Action Item CR-5 Develop and Adopt Guidelines for the **Culturally Appropriate Placement and Removal of Offerings**

C. Action Item CR-8 Develop and **Adopt a Management Policy** for UH Management Areas **on the Scattering of Cremated Human Remains**

D. Action Item CR-7 Determination of the **Appropriateness of Constructing new Hawaiian Cultural Features**

E. Action Item CR-9 Management Policy for the **Cultural Appropriateness of Building Ahu [altar] or 'Stacking of Rocks.'**"

Exhibit L15 (emphasis added).

Actions that are clearly spiritual practices; such as placement and removal of offerings, scattering of cremated remains, constructing offering towers, or building an altar; are all treated as cultural activities. The words religious, spiritual, and faith are all missing.

The submersion of the faith beneath the waves of culture is a deliberate strategy to avoid such obstacles as the First Amendment to the United States Constitution because a culture is not a constitutionally-protected faith under United States law.

Cultural practitioners can proclaim themselves representatives of the traditional faith without having any exposure to or training in the traditional faith. They can define policies for what is culturally acceptable that are then adopted by the State of Hawai’i to regulate faith.

The astronomers repeatedly refer to the traditional Hawaiian faith as a culture. I am aware that in one of the public meetings hosted by the astronomers, their presenter, brought in to explain to everyone what the term sacred meant, was asked the following question: If Christianity is a religion, why is the traditional

Hawaiian faith a culture? Their presenter had no answer for that question.

When I discovered what the OMKM had on its agenda, I again authorized suit.
Id.

After the Temple's representative served the Board members present at the meeting on October 4, the OMKM Board decided to defer the discussion of those items and refer the matter back to their cultural advisory committee.

The idea that a State agency would claim the right to define what constitutes an acceptable form of spiritual practice is so far out of alignment with the Constitution and laws of the United States as to be inconceivable.

For the traditional Hawaiian faith, this claim is the pinnacle of suppression.

The fourth line of attack is found in the many publications claiming to provide information about the traditional Hawaiian civilization that distort or misrepresent the history leading to confusion among the people as to their own history.

You will not find any substantive history of the Kahunas. You will find descriptions of the traditional faith that alter the truth, even to changing the names of the Gods, again creating confusion.

Q: How do you see the Office of Mauna Kea Management as intruding into religious practice in an unacceptable way?

A: Examining an excerpt from what the Office of Mauna Kea Management started to consider at their Board meeting illuminates the inappropriate nature of what they were trying to do.

“Maunakea Comprehensive Management Plan Action:

CR-5 Develop and adopt guidelines for the culturally appropriate placement and removal of offerings.

Hawaii State Constitution

The Hawaii State Constitution states in Article XII, Section 7 that:

“The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes and possessed by ahupua'a tenants who are descendants of native Hawaiians who inhabited the Hawaiian Islands prior to 1778, subject to the right of the State to regulate such rights. [Add Const Con 1978 and election Nov 7, 1978]”

While traditional and cultural rights are recognized as an important aspect of our political heritage the Hawaii State Constitution also tasks the state with the regulation of these rights.

Mauna Kea Cultural Resources Management Plan

The “Mauna Kea Cultural Resources Management Plan” (CRMP), along with the “Mauna Kea Comprehensive Management Plan” (CMP) outline the types of management actions to be implemented by the Office of Maunakea Management (OMKM) on the University of Hawaii’s (UH) managed lands on Maunakea.

The CRMP makes the following observations:

“There are a number of cultural practices that could potentially affect historic properties. One practice that has become a major management problem in many places in Hawai`i, including many State Parks, are those involving offerings placed on shrines. At a number of religious sites and culturally significant places in Hawai`i, accumulations of offerings have become obtrusive and distracting to the point that they can have an adverse effect on historic properties. Organic offerings become a problem as they deteriorate or are dispersed by winds, while inorganic offerings, such as stones or objects made of modern materials, remain at the site for considerable periods of time unless removed.” (CRMP 4.1.2.3)

The CRMP also makes the following specific recommendations:

“Establish protocols

1. A culturally trained staff person or a specially designated individual shall be responsible for the culturally appropriate removal of offerings.
2. Establish culturally appropriate means of handling the removal of non-food offerings.
3. Food offerings shall be removed immediately following the ceremony.” (CRMP 4.2.1.3)”

Exhibit L15.

As noted earlier, OMKM is referring to a spiritual activity – making offerings – as a cultural activity. OMKM has already crossed into dangerous territory with that mistaken reference. To the extent OMKM proceeds to regulate spiritual practices, OMKM is exercising authority it does not have. The “right to regulate rights” found in the Hawai`i Constitution allows the State to take actions or adopt policies that do not unduly burden the affected faith. That regulatory right does not include making determinations about what constitutes or does not constitute an appropriate practice.

Reading the observations and recommendations, it is easy to see that OMKM is expressing its values and attempting to enforce them on the traditional faith. Organic offerings are offensive because they decay, so OMKM would require their removal “immediately following the ceremony.” OMKM someone determines that a practice which calls for leaving the offering on the altar for sufficient time to conclude the offering has been accepted by the Gods is only permissible if “sufficient time” means immediately.

When I was young, we would place a dead animal on the altar and leave it to rot. The smell of death would remind us of the value of life and strengthen our dedication to protecting the natural world. That spiritual practice would clearly be forbidden by OMKM as inappropriate. That does not mean that OMKM has the right to forbid my practice. In fact, to the contrary, the example demonstrates that OMKM has no business trying to dictate what is appropriate and what is not.

OMKM should hardly be surprised that people showed up at their Board meeting very upset that OMKM would dare to be so intrusive. Nor should they be surprised that I authorized a second suit against them.

I opened this testimony with a quote from Rubellite Kawena Johnson, who is considered a “national treasure,”

<https://scholarspace.manoa.hawaii.edu/handle/10125/21366>.

In her declaration, she was addressing an attempt by State of Hawai'i agencies to usurp the traditional Kahuna authority over spiritual matters, an attempt that the Ninth Circuit rejected. Twenty years later, history is repeating itself.

Q.: Do you have other concerns regarding the telescope?

A: I have a very profound concern about the military uses of the TMT. While the spokespeople for the project repeatedly say that there are no military applications, they are also proud of the advanced adaptive optics that allow them to create very clear maps of the stars. <http://www.tmt.org/observatory/adaptive-optics>

A simple Google of “adaptive optics” and “targeting satellites” brings up information about how the very clear star maps produced by adaptive optics enable very precise targeting of satellites for destruction.

The use of Mauna Kea as a platform for military action in space is totally opposite to the Mauna being revered as sacred. While legally the permit being sought is to desecrate a sacred area, spiritually the project appears to be an abomination.

The Temple attempted to raise the issue of the military uses of the telescope. Exhibit L6, Exhibit A at 2, Item 5.

The Hearing Officer excluded the military usage issues. Exhibit L7 at 4.

The military applications of the TMT also have the impact of increasing the likelihood that the Island of Hawai'i will be targeted should hostilities break out involving the United States. The proponents of the TMT have repeatedly refused to include a discussion of such impacts when discussing the project. *See e.g. DOC-000 R-1 passim; DOC-000 R2 passim, DOC-000 R3 passim, DOC-000 R4 passim, DOC-000 R-4 passim*

Q: Do you have closing thoughts you would like to share?

A. Before sharing my closing thoughts, I express my appreciation to Lanny Sinkin, a nice Jewish boy originally from Texas, for his able representation of the Temple in this proceeding and his invaluable assistance to me in preparing this testimony.

Mr. Sinkin has lived as a guest in my home for the past nineteen months. Almost every day when one or the other of us was not away, we discussed the history of the Temple and the teachings of the Temple. We also shared observations about what was taking place in our community, including the events surrounding the TMT.

In relationship to the Temple, Mr. Sinkin has been very much like a *haumana*, as I was to Tahuna Sam Lono.

As far as closing thoughts, I am grateful to serve as the keeper of the faith. Every day is a new opportunity to listen and to learn. Those who attempt to portray the Temple of Lono as some kind of fanatical organization are either ignorant of the Temple's teachings and practices or deliberately creating a false narrative. The God Lono is the God of Peace. He feeds the people. He is the garden feeding seven generations.

The traditional Hawaiian faith has four Gods – the Ocean, the Sun, the Earth, and the Fresh Water. If you remove any one of those elemental forces, the living systems cease to exist. Surely such important forces are worthy of Human worship.

At the same time, when the Pu'uhonua is restored, all faiths will be welcome to establish their sacred space within the Pu'uhonua as long as they observe the protocols for protecting the next seven generations.