

Investigating the Educational Foundations of Doe Versus Kamehameha Schools Lawsuit, 1887-2007

By C. Kalani Beyer

Introduction

Today the Kamehameha Schools are widely known for excellent education. In part this is due to the almost \$9 billion dollar value of the Bishop Estate that funds and controls the schools. Unfortunately, its success has led to non-Hawaiians challenging its admissions policy, which has since its inception been based upon admitting Native Hawaiian students by preference. In June 2003, on the behalf of an unnamed non-Native Hawaiian student, identified only as John Doe, a civil-rights lawsuit disputing Kamehameha's admissions policy was filed.

The Doe versus Kamehameha Schools lawsuit, which challenged the Kamehameha Schools' admission policy, is just the most recent of a history of educational controversies surrounding the Kamehameha Schools. Since all previous controversies relate to the policies at the Kamehameha Schools, involving educating an historically disadvantaged group, this investigation

C. Kalani Beyer is dean of the School of Education at National University, La Jolla, California.

Doe Versus Kamehameha Schools Lawsuit

demonstrates the connectivity of the controversies to issues of White supremacy, subordination of People of Color, and the myth of American meritocracy. This study relies on the Critical Race Theory (CRT) to achieve its purpose.

CRT involves examining “the entire edifice of contemporary legal thought and doctrine from the viewpoint of law’s role in the construction and maintenance of social domination and subordination” (Grenshaw, Gotunda, Peller, & Thomas, 1995, p. xi). One aspect of CRT that is pertinent to this study is its assertion that White supremacists in their efforts to continue the subordination of People of Color have re-designed the meaning of equality in order to maintain their power in America. White supremacists have developed tactics based upon an ideology of equal opportunity and American meritocracy. CRT advocates believe in the “absolute centrality of history and context in any attempt to theorize the relationship between race and legal discourse” (Grenshaw et al., 1995, p. xxiv). CRT is concerned with “theoretical accounts of racial power that explain legal and political decisions which are adverse to People of Color as mere reflections of underlying White interest” (Grenshaw et al., 1995, p. xxiv). Finally, CRT asserts that White supremacists appeal to color blindness in order to create an ideological strategy that obscures efforts to redress historical acts of discrimination in order to sustain hierarchies of racial power (Grenshaw et al., 1995).

In order to provide the educational foundations for this controversy, this article investigates curriculum, admissions, and discrimination controversies involving the Kamehameha Schools from its inception in 1887 through the Doe versus Kamehameha Schools lawsuit, which was settled in May 2007. The earliest controversies centered on the curriculum of the Schools. The Kamehameha Schools were founded as manual training schools during the latter two decades of the nineteenth century (Beyer, 2007). As such, the curriculum was designed to prepare its students for employment, not advanced studies; it was often debated whether this was the best curriculum for Native Hawaiians. Due to the fact that the Kamehameha Schools were founded at a time when Christianizing and “civilizing” Hawaiians was still a major goal of schools for Hawaiians, religion and religious education were important to founders of the schools. Consequently, the policy that all employees of the Kamehameha Schools and members of the Board of Trustees had to be Protestant Christians led to controversies charging the Kamehameha Schools with discriminating against non-Protestant Christians. The one controversy, however, that continuously re-appeared throughout the entire history of the schools was the admissions policy.

This article is divided into four other sections. The first section deals with establishing the Kamehameha Schools, which includes establishing the impetus for founding the schools as manual training schools, the will of Bernice Pauahi Bishop, and the operation of the schools. The controversies discussed in this article are divided into two time periods due to the differing focus of the controversies. The second section relates the controversies prior to World War II, which primarily dealt with controversies revolving around whether the trustees were correctly

applying the will of Mrs. Bishop. The third section continues with controversies after World War II, which focused on accusations that the Kamehameha Schools practiced discrimination. The fourth section exclusively examines the events leading to and including the Doe versus Kamehameha Schools lawsuit.

Establishing the Kamehameha Schools

Before her death in 1884, Bernice Pauahi Bishop, heir to the vast lands of the Kamehameha dynasty, established through her will the design to create two private schools, one for boys and one for girls. According to Harold Kent, former President of the Kamehameha Schools from 1946 to 1962, “there is a remarkable clarity of direction, both in the will as thought out by the quartet consisting of Mrs. Bishop, her husband, eminent clergyman Dr. Charles M. Hyde and highly regarded lawyer Frederick M. Hatch and approved by the trustees” (Kent 1974, p. 15). The school was to be “...for the support and education of orphans and others in indigent circumstances, giving preference to Hawaiians of pure or part aboriginal blood” (Her dream, 1982, p. 10). At the time that Mrs. Bishop’s will was probated, the population of Hawaiians and part-Hawaiians was decimated by diseases and, consequently, was at its lowest ebb during the nineteenth century. Mrs. Bishop was worried that at some point there would not be enough Natives to take advantage of the education provided by the Kamehameha Schools. Thus, she inserted a clause, giving the trustees full power to regulate the admission of pupils. Kent postulated that Bernice Pauahi Bishop “expected her trustees to stay with the admission of native Hawaiians as long as, in their judgment, it was possible to find applicants qualified and willing to apply” (Kent 1974, p. 15).

From the earliest discussions by Bernice Pauahi Bishop and her husband, Charles Bishop, they were inclined to found schools based upon the manual training curriculum. This was in part due to their assessment of the successful use of manual training programs at the Hilo Boys’ Boarding School and the female seminaries for Hawaiians.

The Bishops were also impressed with the manual training system that Calvin Woodward and others were espousing in the United States. In part, this curriculum was intended to offer an alternative to the almost exclusively academic education common at this time in the United States. Woodward was particularly concerned that the usual method of education steered students away from employment requiring hard labor. Manual training schools were to provide real-life experiences and modify student conduct in accordance with predetermined aims and ideals (Woodward, 1890).

The will of Bernice Pauahi Bishop called for erecting two schools, each for boarding and day scholars, one for boys and one for girls, to be known as, and called, The Kamehameha Schools. She directed her trustees to invest the remainder of her “estate in such manner as they may think best, and to expand the annual income in the maintenance of said schools” (Her dream, 1983, p. A10). She wanted the

Doe Versus Kamehameha Schools Lawsuit

trustees “to devote a portion of each year’s income to the support and education of orphans, and others in indigent circumstances, giving preference to Hawaiians of pure or part aboriginal blood” (Her dream, 1983, p. A10). She also empowered the trustees to make all such rules and regulations as they may deem necessary for the government of the schools and to regulate the admission of pupils. Moreover, she directed her trustees not to sell any real estate, cattle ranches, or other property, but to continue and manage them, unless in their opinion a sale was necessary. The annual income of the Bishop Estate was to be used for the maintenance of the Kamehameha Schools. The trustees were required to submit an Annual Report. The Court of Equity was to appoint a Master to review the operations of the Bishop Estate each year. The will also called for five trustees, who were to be appointed by the majority of the Supreme Court, with the caveat that they must be Protestant Christians. Furthermore, she wanted her “trustees to provide first and chiefly a good education in the common English branches, and also instruction in morals and in such useful knowledge as may tend to make good and industrious men and women” (Her dream, 1983, p. A10). Finally, she left the decision of the curriculum to be used at the schools up to the trustees, stating that the trustees “shall have power to determine to what extent said school shall be industrial, mechanical, or agricultural; and also if tuition shall be charged in any case” (Her dream, 1983, p. A10).

The Kamehameha Schools were established in stages. The Kamehameha School for Boys was founded first. The site for the school was land that Bishop Estate owned at the foot of Kalihi Valley. Immediately after the trustees were picked for the schools, building commenced. The principle buildings were Bishop Hall, the Bishop Museum, and the dormitories (Kamehameha’s memorial, 1895). The entire schooling was done in the English language, with no attention paid to the Hawaiian culture. The three-year program included written and mental drill in arithmetic, algebra, and geometry, language exercises in dictation, original composition, oral and written use of idioms, synonyms, business forms, orders, bills, and accounts. Other academic pursuits included physical geography, historical narratives, reading, and penmanship. There was also an emphasis on moral instruction. The industrial programs included free-hand drawing and designing, mechanical drawing, source and manufacture of useful articles, and machine use. In addition, daily instruction was given in vocal music. Finally, the manual training department furnished a complete course of instruction in carpentry, black-smithing, piping, wood turning, stone-cutting, and press work (Kamehameha’s memorial, 1895).

A manual labor system was stressed (Richards, 1898). Initially, patrons sponsored boys who could not pay the expenses. Because the administrators of the school felt that those boys who received such aid did not value their education, the Trustees made scholarships available. The sponsors paid the tuition but the boys who received the scholarships had to work off the donation (Thompson, 1894). In 1888, military education was added to the programs of the school. The student body was organized into companies led by officers. Initially, it consisted of forming students into companies and teaching close order drill to facilitate their movement about

the campus. This practice was introduced as a result of the influence of Samuel Chapman Armstrong and Hampton Institute (Beyer, 2007).

Nearly all of the dominant class of White business and professional people in the neighboring communities were pleased with Kamehameha School for Boys as the possible solution for much of the labor problem. They believed that young Hawaiians would be trained to do all kinds of mechanical and office work. Even those who failed to graduate would make more intelligent laborers and citizens (Hudson, 1935).

In 1894, the second stage of establishing the Kamehameha Schools was accomplished when the Kamehameha School for Girls was begun. Its first principal was Ida Pope, who was recruited from Kawaiahaeo Female Seminary. Just like the Boys' School, the Girls' School followed a common school curriculum with manual training courses. Initially, the industrial program included dressmaking and domestic courses. Later, Normal and Nursing Departments were added. In an article appearing in *The Friend*, a daily journal published in Honolulu, in 1900, Ida Pope is quoted as stating that "the object of the school is to furnish a carefully arranged, practical education to Hawaiian girls of thirteen years or over, qualifying them for service at home, for wage earning in some handicraft, or as teachers in the Government schools" (Kamehameha School for Girls, 1900, p. 4).

Pre World War II Controversies

The first controversy surfaced in 1891. By this year, the first class from Kamehameha Boys' School graduated. The twelve graduates were a measure of the success of the education program. The *Handicraft*, a publication produced by students and faculty, predicted that "the first graduates, whatever occupations they engage in, will take a manly stand and by industrious habits and upright living win for themselves and the school worthy records through all the years" (First graduates, 1901, p. 2). William H. Elkin, former Chaplain at the Kamehameha School for Boys, was critical of the low level of academic preparation at the school. A few Hawaiian voices were also critical of the low level of academics at the school. An unauthored article on the graduates appearing in *The Friend* stated that a prominent Hawaiian member of the Territorial House of Representatives made disparaging remarks about the Kamehameha Schools. The Representative was quoted as saying, "more graduates were seen as police officers and hack drivers than in the regular professions" (Kamehameha graduates, 1901, p. 75). The editors of the *Independent*, a Hawaiian newspaper published in English, also thought that Kamehameha Schools offered a low level of academics (New high school, 1895). They were concerned with the process whereby Native Hawaiian leaders were being replaced by White leaders, while young Natives attending the highly endowed Kamehameha Schools, who represented potentially the best of Hawai'i, were being trained for secondary positions in Hawaiian society. By the end of the century, the mixed reactions were widespread. It was clear from the inception of the plans for the school that it would

Doe Versus Kamehameha Schools Lawsuit

provide a common school manual training curriculum. However, it was also the intention of Bernice Pauahi Bishop that the school would train industrious men and women. Since the curriculum was never intended to train its graduates to continue their education, there was a potential conflict over the expected and intended results and the unanticipated consequences of a Kamehameha education.

The second time this controversy over the curriculum of the Kamehameha Schools arose was in the early 1930s. At this time, the trustees of this era began to stress a more academic education, offering both vocational and college preparation tracks. While in the past vocational education was focused on learning to work, under Principal Harold F. Barnes the vocational program was geared to preparing Native Hawaiians for skilled employment. According to Barnes, “a greater opportunity for higher scholastic achievements are a more equal adjustment of the teaching load between the academic and shop instructors are the two aims behind proposed changes at the Kamehameha Boys’ School for next year” (Kamehameha School explains, 1931, p. 5). The proposed changes were supposed to lead to preparing more boys for college education. Imbedded in these changes was also the plan to lessen the students’ adherence to their Hawaiian culture, which resulted in dropping the Hawaiian language program (Kamehameha School explains, 1931). As the education at the Kamehameha Schools led to graduating more successful students, there began to be discussions about implementing an “open door” admissions policy. The trustees argued that they were leaning towards a policy that would no longer exclude White students but provide a healthy competition between Native Hawaiian and other races and ethnicities for the education at the Kamehameha Schools (Open door, 1931).

Over the next twenty years, members of the dominant class periodically argued that Kamehameha Schools were serving the needs of Hawaiians, even attempting to prove that leaders were indeed coming from Kamehameha graduates. Based upon CRT, in reality, the establishment of the Kamehameha Schools was a part of a racist effort to deprive Native Hawaiians of the requisite education necessary to lead their nation. This controversy arose because trustees of the Bishop Estate (operating as White supremacists) were in charge of devising an education system at the richly endowed Kamehameha Schools, a school for People of Color that could have provided them with an education that produced leaders. Instead, the curriculum purposely trained its students to assume secondary positions in their own society while White youth received training at other private schools, which prepared them for leadership and, ultimately, control of Hawaiian society.

Thus, the second controversy based upon admissions standards was joined with the controversy over curriculum. Alternately and sometimes together, these two controversies would dominate the discussions related to the way the Kamehameha Schools would operate over the rest of its history. However, this was not the first time the question of whether the Kamehameha Schools should have an open admissions policy. On September 27, 1916, Circuit Judge Ashford appointed a committee of three to investigate Kamehameha Schools conduct and administration

of the schools in regards to admission, maintenance, discipline, and employment of the pupils at the schools. While the committee offered no advice that countered the way the schools were operated, the Kamehameha Alumni Association convened its own investigation. The Alumni Committee complained that the education at the Kamehameha Schools was not as high as the public schools and contended that the current education at the schools was lower than what it was twenty five years earlier (Hudson, 1935).

While the founding set of trustees stated it was best to operate the Kamehameha Schools as an institution to which industrious meant just teaching students how to work hard, its main purpose was to acculturate Native Hawaiian men and women to fit into a role that was secondary to Whites. The trustees after the 1930s seemed to want to use the vast resources to train leaders for Hawaiian society and only if Native Hawaiians could compete with the other races would they benefit from a Kamehameha Schools education. These later trustees argued that the “better” Hawaiians were not selecting Kamehameha, preferring to attend schools where they could mix with other races. Consequently, the trustees argued that it was time to follow a policy of open enrollment.

No action was taken at this time but a decade later, two Native Hawaiian Territorial Senators held hearings, investigating the admissions policy. The Senators were concerned because the admissions standards had become so demanding that fewer and fewer Native Hawaiians could get into the schools. The Senators also questioned the lack of courses relating to the Hawaiian culture and the minimal outreach to Native Hawaiian children not in attendance at the Kamehameha Schools (Kam School policies, 1943). Increasingly, the question was being asked whether Kamehameha Schools with all its vast resources was setting too high standards, and thus serving only ten per cent of Hawaiian students. These proponents of an “open door” admissions policy were calling for a policy of meritocracy whereby only students who met high scholastic standards would gain admissions. No doubt this change in admissions policy would benefit Whites, who had the family background that prepared them to meet these higher standards.

Post World War II Controversies

After World War II, the Kamehameha Schools was still promoting a mixed curriculum of vocational and college preparation. Where in the past, suggestions were made to alter the admissions policy and the curriculum of the Kamehameha Schools, in 1957, a new form of this old controversy began—accusing the Kamehameha Schools of practicing discrimination. Retired Territorial Supreme Court Judge James Le Baron, commissioned to do the review of the Bishop Estate, charged that the admissions policy of the Kamehameha Schools was based upon racial discrimination. Le Baron raised the segregation question based upon a United States Supreme Court decision affecting Philadelphia’s Girard College. The school had been founded to finance a school for poor, White, male orphans. The Supreme

Doe Versus Kamehameha Schools Lawsuit

Court ruled the city of Philadelphia, trustee of the college, had put the state in a position of practicing racial discrimination by barring Blacks from the college. Le Baron explained, “whatever be the consideration for it, the [Bishop Estate] trustees have been led into the untenable position of practicing both racial segregation and racial discrimination at the schools wholly unwarranted by Mrs. Bishop’s will” (Racial discrimination, 1957, p. 1). Le Baron argued that the exclusive admissions policy for children of Hawaiian blood injures non-Hawaiians by excluding them. He also stated that from the inception of the schools, the Bishop Estate trustees misinterpreted the will of Bernice Pauahi Bishop. He proposed that the schools should charge a reasonable tuition and open it to all who met high admissions standards. For those Native Hawaiians who qualified, they would benefit by the “honorable rivalry with other races” (Racial discrimination, 1957, p. 1). Albert F. Judd, a former trustee and descendent of missionaries, was cited as supporting this position. Judd would also state that “sooner or later the schools will have to be opened to all non-Hawaiians” (Mrs. Bishop’s, 1958, p. 1). After judicial review of Le Baron’s charges, the courts ruled in favor of the Bishop Estate.

This controversy epitomizes the general hostility that Critical Race theorists find today against policies that would redress historic and contemporary patterns of racial inequality. Just when the Kamehameha Schools actually began to use its vast resources to provide Native Hawaiians with an excellent education, White supremacists began to attempt to eliminate this privilege, calling for everyone being treated fairly, as equal competitors in a regime of equal opportunity.

In the early 1960s, perhaps because of the new direction the Le Baron charges had taken, the trustees of the Bishop Estate appointed Dr. James W. Bushong as the new president of the Kamehameha Schools. He revised the curriculum, with the emphasis less on vocational and technical arts and more on academic, business, and technical fields. As a result of this new emphasis, college attendance soared (New trends, 1962). Kamehameha Schools was becoming the elite school that many members of the dominant class had been pursuing since the 1930s, but it was an elite school for Native Hawaiians, not for other races. Consequently, non-beneficiaries of the education at the Kamehameha Schools were more involved in attacking the Kamehameha Schools and/or the Bishop Estate.

This new form of controversy surfaced when Attorney General Bert T. Kobayashi of the Territory of Hawai’i challenged that the Kamehameha Schools discriminated in its employment practices (Kam should, 1963). Throughout the history of the Kamehameha Schools, the trustees had interpreted the will of Bernice Pauahi Bishop to assert that only Protestant Christians could be employed as teachers or trustees. The Kamehameha Schools were to be religious schools but non-denominational. President Bushong argued that the school was exempt from this law since it was a practicing religious institution (Kam emphasizes, 1963). In spite of this argument, the Attorney General declared that according to the new Fair Employment Act, the Kamehameha Schools discriminated by only employing Protestants (Judge rules, 1965).

On October 21, 1965, Circuit Judge Ronald B. Jamieson ruled that Kamehameha Schools may no longer require all its teachers to be Protestants. The attorneys for the Bishop Estate, J. Garner Anthony and John H. R. Plews, appealed the ruling, contending that Judge Jamieson misconstrued the state's fair employment practices in ruling on Kamehameha Schools' hiring policies (First setback, 1965). The appeal brief argued that Kamehameha should be exempt from the fair employment law because the schools are operated in connection with religious organizations. Moreover, Plews argued that the fair employment laws permit discrimination in employment by a religious organization and adds further specificity by providing that any organization operated for charitable or educational purposes, which is operated by or in connection with a religious organization, is to be treated as a religious organization (Kam Schools appeal, 1966). Attorney General Bert T. Kobayashi concurred with Judge Jamieson, ruling that the Kamehameha Schools are not religious institutions or religious in nature, so may not exercise discrimination in hiring teachers of secular subjects (State attacks, 1966). On September 21, 1967, the Hawai'i Supreme Court unanimously reversed former Circuit Judge Jamieson's ruling that Kamehameha Schools were violating the law by hiring only Protestant teachers. The court's ruling exempted Kamehameha Schools from Hawai'i's Fair Employment Practices Act (Kam wins, 1967).

Twenty-three years later, the EEOC filed a complaint against Kamehameha Schools/Bishop Estate challenging the estate's practice of hiring only Protestant teachers. The EEOC's planned action was prompted by another woman, Carole Edgerton, who applied to be a substitute teacher at Kamehameha Schools, but was turned down because she was not Protestant. The five member commission stated that the Kamehameha Schools could not claim a religious exemption from the Civil Rights Act (Bishop Estate sued, 1990; Bishop Estate challenged, 1991). However, once again, Kamehameha Schools hiring practice based on religion was upheld. Federal Judge Alan Kay said it was clear that religion "is an integral part of the child's daily life" at the school and the schools' curriculum "is directed toward the propagation of a particular religion"—Protestant Christianity. Thus, the school is exempt from the landmark U.S. Civil Rights Act of 1964, which prohibits religious discrimination on the basis of religion (It's Protestant, 1991, p. 1).

This time the Kamehameha Schools would not prevail. On March 31, 1993, the Ninth Circuit Court of Appeals rendered a decision directing the Kamehameha Schools to end their Protestant-only hiring policy for teachers. This ruling was sustained when on November 8, 1993, the U.S. Supreme Court decided to let stand the Ninth Circuit Court's decision that says religiously oriented private schools that are not controlled by a church or denomination cannot discriminate against employees because of their religion (Kamehameha Schools' teacher, 1993; Kamehameha's hiring, 1993; Pauahi's will, 1993; Kamehameha Board, 1993).

Coinciding with this hiring discrimination controversy, an admissions discrimination controversy surfaced on October 15, 1971, when two women whose children were denied admittance to the Kamehameha Schools filed suit in Circuit Court to

Doe Versus Kamehameha Schools Lawsuit

reverse the school's admission policies. According to the lawsuit, the Kamehameha Schools' admission policy favored youngsters with high social or economic status. The suit prepared by the Legal Aid Society of Hawai'i claimed that "the admissions selection criteria discriminated against the intended beneficiaries of the estate of the Princess Bernice Pauahi Bishop" (Keller, 1971, p. 8). The plaintiffs, Mrs. Priscilla Saballa and Mrs. Rosie Stone, both part-Hawaiians, alleged that three of their children were denied admittance to Kamehameha Schools over the last two years. The women asked the court to order the Kamehameha Schools to admit their children and to order the administrators "to actively encourage the application for admission of orphaned and indigent children...The children accepted for admission constitute an academic elite and are high achievers who would do well in any school" (Keller, 1971, p. 8). The lawsuit also contended that it was not the intent of Mrs. Bishop to limit the admission to those of high social or economic status. The current admissions policy established a quota system of admissions to assure a geographically representative group but nothing has been done to assure a socially representative group. Moreover, the lawsuit charged that the school administrators established an admission policy that discriminated against the culturally disadvantaged by basing the qualification of an applicant on mental maturity tests, interviews, and language minimums, which are culturally based. As a result, "those socially and economically deprived children who are denied admission...are relegated to school regimes which are not equipped to accommodate the peculiar needs of the deprived Hawaiian and part-Hawaiian child" (Gee, 1971, p. 2). Furthermore, the lawsuit charged the Kamehameha Schools administration with economically supporting the college education of its graduates, practices that denied space and lessened the money available to help Hawaiian children from social and economic disadvantaged backgrounds. Finally, the suit alleged that the schools were directed toward college preparation and ignored the manual training subjects, contrary to the intent of the will of Mrs. Bishop (Keller, 1971; Gee, 1971).

Richard Lyman, president of the Bishop Estate board, stated that there was no merit to the claim made by the lawsuit, contending that Hawaiian children of social and economic disadvantaged backgrounds are accepted regularly (Kam Schools deny, 1971). Circuit Judge Yasutaka Fukushima dismissed the complaint on November 22, 1971, stating that the women did not have standing to sue and that they failed to state a complaint upon which relief could be granted (Judge rejects, 1971).

James W. Bushong, president of the Kamehameha Schools, defended the schools' admissions policies, arguing that the trustees have honored the intent of the will of Bernice Pauahi Bishop. In reference to the tough admissions standards, Bushong quoted the will to justify the current policy: "Such qualifications will be required for admission as will make it an honor and a prize for any public school scholar to secure the highest privileges of these advanced schools" (Kam admissions, 1971 p. E6). Bushong admitted that the Kamehameha Schools cannot handle all the applicants, citing that for every available spot there are eight applicants. According to Bushong, the Bishop Estate provides financial assistance to nearly twenty per cent

of the present student body, supporting the education of 523 orphans, indigents, and others to the amount of more than one and a half million dollars annually (Kam Schools can't, 1971).

Nearly six years later, the issues related to the admissions of social and economically disadvantaged children at the Kamehameha Schools which were raised by Mrs. Sabala and Mrs. Stone led to a change in the schools' admissions policy. Lyman announced a new policy of admitting Hawaiian and part-Hawaiian children of a wide range of abilities beginning with the Kindergarten class in September 1979. He stated that the admission change is in reaction to the charge that Kamehameha Schools admit only the most able Hawaiian and part-Hawaiian students. It was to be phased in, one grade each year, for the elementary school only. Jack Darvill, president of the Kamehameha Schools, said the new policy will reserve at least twenty five per cent of the available spaces for orphans and students with special financial needs. However, instead of automatically moving from sixth to seventh grades, students would have to take a test and qualify to move on to seventh grade ("Kam eases," 1978). In part this change in policy was connected to the results from an experimental program, the Kamehameha Early Education Program (KEEP), which since 1971 had been developing teaching strategies that addressed the needs of Hawaiian children who generally performed poorly in school. According to test results, the researchers had success, particularly with lower income children. In light of these results, school officials decided to use the teaching methods developed by KEEP in the regular classrooms (Kam adopts, 1981). By 1986, the lottery system for Kindergarten was upheld. While only sixty four per cent of the first set of lottery students passed the entrance exam (only thirty per cent of those who passed accepted the move to seventh grade), the policy would continue (Verpleegan, 1986).

The Kamehameha Schools now opened the door to more students from social and economic disadvantaged backgrounds. In the 1970s, education absorbed ninety six per cent of the funds available from the Bishop Estate trust. During the 1980s, as Bishop Estate income grew, the campus program was maintained at a steady level and additional revenues went to expand beyond the campus. The Kamehameha Schools accomplished this by offering college scholarships, experimenting with counseling expectant Hawaiian and part-Hawaiian mothers, testing new means for teaching reading in public schools, creating outreach schools for young people unable to adjust to conventional school settings, and engaging in cooperative work with varied governmental and private agencies (Noble goals, 1981).

In spite of the setback regarding the religious issue and the need to address the admissions inequity issue, as recent as 1993, the Hawaiians-only admission policy appeared safe. After the Le Baron challenge in the 1950s, the only challenge came in the 1960s, when a White mother attempted to enroll her daughter. The child was not admitted. However, in 1972, Hawai'i Supreme Court Justice Kazuhisa Abe issued an informal position that said admitting only children of Hawaiian ancestry and hiring only Protestant teachers at Kamehameha Schools was unconstitutional

Doe Versus Kamehameha Schools Lawsuit

(Tangonan, 1993; Much-debated, 1993). No official challenge of the admissions policy materialized from this opinion.

Over the rest of the 1990s, most of the controversies surrounding the Kamehameha Schools focused on the trustees of the Bishop Estate, mainly dealing with the way they managed the investment portfolio of the Kamehameha Schools. Occasionally, the trustees were embroiled in controversies related to academic issues until the Doe versus Kamehameha Schools lawsuit (Study Kam, 1971; Sen. Holt, 1987; Kamehameha Schools under, 1987; What would, 1993; Rath, 2006).

Doe Versus the Kamehameha Schools Controversy

The omen of challenges to come arose in a case in 1996, brought by Harold Rice, a White rancher on the island of Hawai'i. He challenged a state restriction allowing only Native Hawaiians to elect trustees to the Office of Hawaiian Affairs (OHA), which dispensed tens of millions of dollars for the betterment of Native Hawaiians. OHA was created in 1978 to help Hawaiians, using mainly revenues from ceded lands—one million eight hundred thousand acres taken by the U.S. government after annexation. That land was later transferred to the state to be held in a trust for the benefit of Native Hawaiians. Specifically, Rice claimed that OHA's elections violated his constitutional right to equal protection under the law and his right to vote regardless of his race. The state had contended that because Native Hawaiians were the sole beneficiaries of OHA, only they should vote for its trustees. John Goemans, one of the two attorneys who would later represent the plaintiff in the Doe vs. Kamehameha Schools case, represented Harold Rice. Rice sued the state in United States District Court, contending that OHA's restricted elections violated equal voting rights guaranteed in the Fourteenth and Fifteenth amendments. In 1997, United States District Court Judge David Ezra ruled against Rice. In 1998, the Ninth Circuit Court of Appeals upheld Ezra's ruling. Rice appealed to the United States Supreme Court and in March 1999, the United States Supreme Court granted certiorari, agreeing to hear the case on appeal. The United States Supreme court heard oral arguments on October 6, 1999 and in February 2000 ruled in favor of Rice (High court hears, 1999).

By 2002, it was clear that a new environment existed in which the Kamehameha Schools/Bishop Estate, a trust valued at \$9 billion, would need to be more forceful in defending its tax-exempt status and its Hawaiian-preference policy. At that time, lawyer John Goemans was considering filing a class-action suit against Kamehameha Schools to overturn its Hawaiian-preference admission policy. Goemans had sued the estate over its admission policy in 1997, but later withdrew the case. However, once George W. Bush became president, Goemans filed administrative charges with the Bush administration and the United States Department of the Treasury, urging them to yank the trust's tax-exempt status since its admission policy is racially discriminatory and unconstitutional (Daysog, 2002).

In June 2003, on the behalf of an unnamed non-Hawaiian student, identified

only as John Doe, attorneys Goeman and Eric Grant filed a civil-rights lawsuit disputing Kamehameha's admissions policy. In November, United States District Judge Alan Kay decided against John Doe, ruling that Kamehameha Schools can continue its Hawaiians-preference admissions policy because of its unique and historical circumstances. Goeman and Grant charged that the policy is discriminatory on its face because it gives students with Hawaiian blood preference over applicants who are not Hawaiian. Grant argued that "allowing Kamehameha to continue its Hawaiians-preferred policy would be akin to letting all-White schools bar the admission of nonWhite students" (Kamehameha wins, 2003). On the other hand, constitutional law expert Kathleen Sullivan, who represented Kamehameha, stated that "the admissions policy amounts to an affirmative-action plan, one designed to help offset historical inequities that have plagued Hawaiians for more than a century" (Kamehameha wins, 2003). Judge Kay sided with Sullivan, saying the school's admissions policy seeks to address cultural and socioeconomic disadvantages that have beset Hawaiians since the 1893 overthrow of the Hawaiian monarchy. Although, Judge Kay admitted that the courts have struck down "race-conscious" programs that give one ethnic group priority over another in an attempt to make up for past injustices in job opportunities or advancement practices, or in admissions to publicly financed schools, he explained that the Kamehameha case involved a set of "exceptionally unique circumstances." He repeatedly stressed that the school is entirely privately financed, receives no taxpayer money, and has space for only about 4,800 of the estimated 70,000 students of Hawaiian ancestry in grades K-12. He found that a special trust relationship exists between the federal government and Hawaiians, and that as recently as 2002 Congress endorsed the school's efforts via the Native Hawaiian Education Act. This law calls upon Kamehameha to redouble its effort to educate children of Hawaiian ancestry (Kamehameha wins, 2003).

On August 2, 2005, by a vote of two to one, the Ninth Circuit Court of Appeals ruled that the Kamehameha Schools discriminated on the basis of race. The three-judge panel of the Court concentrated mostly on whether Kamehameha's preference for Hawaiian students was part of a valid affirmative action plan to remedy historic socioeconomic and educational difficulties with the Hawaiian community. The court ruled the policy illegal under an 1866 federal law that was aimed at ending racial discrimination against blacks in the South and was later amended in the modern civil-rights era. However, a week later, the same three judges denied a request by John Doe to be admitted in the fall, pending an appeal by the school. On February 22, 2006, the Ninth Circuit Court granted Kamehameha's request for an en banc hearing of its August decision, essentially throwing out that decision pending a review by a larger panel of fifteen judges. On December 5, 2006, in an eight to seven decision, the full Ninth Circuit Court ruled that the admissions policy does not violate a federal civil rights law first enacted in 1866 to prohibit discrimination in contracts against newly freed slaves. Though the supporters of the Kamehameha Schools have celebrated this victory, this case was not over yet. Based upon the success the leading lawyer, John Goeman, had in getting the Supreme Court to

Doe Versus Kamehameha Schools Lawsuit

over rule previous rulings, involving the voting rights of non-Hawaiians in selecting officers for the Office of Hawaiian Affairs organization in the Rice vs. Cayetano case, it was assumed that the Supreme Court would eventually adjudicate this case. However, in May 2007, the Kamehameha Schools trustees settled with the family of John Doe through payment of an undisclosed amount of money. As a result, the plaintiff withdrew his petition, resulting in the Ninth Circuit Court's ruling upholding Kamehameha's admissions policy (KS settles, 2007).

Conclusion

The controversies that occurred during the pre-World War II period have for the most part been resolved. Where the curriculum of the Kamehameha Schools was a major concern during this period, today the Kamehameha Schools offer its students a college preparation that makes the schools one of the elite private schools in the nation. However, there are Native Hawaiians, many are alumni of the Kamehameha Schools, who believe that the Kamehameha Schools have become too elitist. Challenges that seek to have the Kamehameha Schools return to the balance that existed in the 1960s when President Bushong first took over the reins at the Schools may surface in the future.

However, the Post World War II controversies, which mainly focused on attempts to end all "race conscious" programs that make up for past injustices against historically disadvantaged groups, are on the rise. White supremacists are increasing their attempts to end all "race conscious" programs that make up for past injustices against historically disadvantaged groups. Several other trusts established by Hawaiian Royalty to serve the needs of Native Hawaiians are now facing similar attacks as the Bishop Estate. The proponents of these attacks consider all programs meant to serve the needs of Native Hawaiians as unconstitutional, charging these institutions with racism and couching their arguments in the myth of meritocracy. They pronounce the playing field as being even for all races and ethnicities in the United States. For over three decades, they have used this argument against affirmative action programs, portraying them as unconstitutional because they favor certain groups over others. On the one hand, these "race conscious" programs are generally challenged by Whites who feel discriminated against. On the other hand, attacks on "race conscious" programs like the admissions policy of the Kamehameha Schools are challenges based on the fact that not just Whites but other non-Whites are discriminated against.

Based upon the long history of controversies surrounding the admissions policy of the Kamehameha Schools, challenges in favor of an open admissions policy will continue to occur. The Kamehameha Schools now consist of two additional K-12 schools: Kamehameha Schools Maui and Kamehameha Schools Hawai'i. The combined enrollment of the three campuses is 5,400, making it the largest independent school in the U.S. Even with these three campuses, there are thousands of Native Hawaiians who are not able to gain admissions to any of these campuses due to

the fact that those seeking admissions far outweigh the space available. Thus, it is safe to say that as long as the courts do not overturn the Hawaiian preference admissions policy, there will continue to be sufficient Native Hawaiians wanting an education at the Kamehameha Schools.

References

- Beyer, C. K. (2007). The connection of Samuel Chapman Armstrong as both borrower and architect of education in Hawai'i. *History of Education Quarterly*, 4(1), 23-48.
- Bishop Estate sued for bias. (1991, July 13). *Honolulu Star Bulletin*, p. A1.
- Bishop Estate challenged on Protestant hiring policy. (1991, May 29). *Honolulu Star Bulletin*, p. A4.
- Daysog, R. (2002, July 21). To adjust as courts redefine native entitlement rights. *Honolulu Star Bulletin*, p. A1.
- First graduates. (1891). *The Handicraft* III(6), 2.
- First setback for Kam policy came in 1965. (1974, November 8). *Honolulu Advertiser*, p. A5.
- Gee, H. (1971, October 16). Two mothers of indigents sue Kam on admissions. *Honolulu Star Bulletin*, p. A2.
- Grenshaw, K., Gotunda, N., Peller, G., & Thomas, K. (Eds.) (1995). *Critical race theory: The key writings that formed the movement*. New York: The New Press.
- Her dream, her will, her legacy, 100 years later. (1983, October 30). *The Sunday Star Bulletin & Advertiser*, p. A10.
- High court hears OHA issue. (1999, October 7). *Honolulu Advertiser*, p. A1.
- Hudson, L. (1935). *History of the Kamehameha Schools*. Unpublished master's thesis, University of Hawaii, Honolulu, Hawaii.
- It's Protestants only at Kamehameha. (1991, August 6). *Honolulu Advertiser*, p. A1.
- Judge rejects suit on Kam, indigents. (1971, November 23). *Honolulu Advertiser*, p. A10.
- Judge rules against Kam School. (1965, October 21). *Honolulu Star Bulletin*, p. A1.
- Kam admissions rulings defended. (1971, December 8). *Honolulu Advertiser*, p. E6.
- Kam adopts new entrance policy that broadens student spectrum. (1981, January 18). *Sunday Star Bulletin & Advertiser*, p. A7.
- Kam eases admissions policy. (1978, March 9). *Honolulu Star Bulletin*, p. A16.
- Kam emphasizes similarity of Christian faiths" (1963, November 28). *Honolulu Advertiser*, p. 16.
- Kam School policies probed by Senators. (1943, April 13). *Honolulu Advertiser*, p. 1.
- Kam Schools appeal ruling on bias. (1966, April 15). *Honolulu Advertiser*, p. D4.
- Kam Schools can't handle all applicants. (1971, December 7). *Honolulu Star Bulletin*, p. A16.
- Kam Schools deny student favoritism. (1971, October 19). *Honolulu Advertiser*, p. A9.
- Kam should open hiring, state says in court motion. (1963, December 2). *Honolulu Advertiser*, p. 1.
- Kam wins its case on hiring" (1967, September 22). *Honolulu Advertiser*, p.1.
- Kamehameha Board studies options after court defeat. (1993, November 9). *Honolulu Advertiser*, p. A1.
- Kamehameha graduates. (1901). *The Friend*, 59(4), 75.
- Kamehameha's hiring policy struck down. (1993, November 8). *Honolulu Star Bulletin*,

Doe Versus Kamehameha Schools Lawsuit

- p. A1.
- Kamehameha's memorial. (1895). *Paradise of the Pacific*, 69-70.
- Kamehameha School explains new plans. (1931, May 26). *Honolulu Star Bulletin*, p. 5.
- Kamehameha School for Girls. (1900). *The Friend*, 58(11), 4.
- Kamehameha Schools' teacher-hiring rule nullified. (1993, April 1). *Honolulu Advertiser*, p. A1.
- Kamehameha Schools under fire. (1987, August 31). *Honolulu Star Bulletin*, p. B1.
- Kamehameha wins admissions case. (2003, November 18). *Honolulu Advertiser*, p. A1.
- Keller, M. (1971, October 16). Two women sue Kam Schools. *Honolulu Advertiser*, p. B8.
- Kent, H. (1974, April 5). What the princess intended. *Honolulu Star Bulletin*, p. A15.
- KS settles admissions lawsuit. (2007, Summer). *Imua*, p. 3.
- Mrs. Bishop's will had no race rule: Le Baron. (1958, January 10). *Honolulu Star Bulletin*, p. A1.
- Much-debated admissions policy. (1895, May 1993). *Honolulu Advertiser*, p. A2.
- New high school. (1895, July 2). *Independent*, pp. 1-4.
- New trends At Kamehameha. (1962, October 21). *Honolulu Star Bulletin*, p. 16.
- Noble goals for Kamehameha Schools. (1981, November 28). *Honolulu Star Bulletin*, p. A1.
- Open door for Kam criticized as grads meet. (1931, May 28). *Honolulu Star Bulletin*, p. 1.
- Pauahi's will now open to new challenges? (1993, November 9). *Honolulu Advertiser*, p. A10.
- Racial discrimination charged in Kam School. (1957, December 19). *Honolulu Star Bulletin*, p. 1.
- Rath, A. J. (2006). *Lost generations: A boy, a school, a princess*. Honolulu, HI: University of Hawai'i Press.
- Richards, T. (1898). *Annual Report of the Principal of the Kamehameha School for Boys*. Honolulu, HI: Kamehameha School for Boys, Midkiff Archive Collection.
- Sen. Holt latest official to go on Bishop payroll. (1987, September 1). *Honolulu Star Bulletin*, pp. A1-A2.
- State attacks Kam Schools' hiring policy. (1966, June 11). *Honolulu Star Bulletin*, p. 1.
- Study Kam Schools tax status. (1971, July 28). *Honolulu Advertiser*, p. A1.
- Tangonan, S. (1993, May 2). Hawaiians-only admission policy appears safe. *Honolulu Advertiser*, p. A1.
- Thompson, U. (1894). Scholarship. *Handicraft* VI(6), 2.
- Verpleegan, H. (1986, November 11). Kamehameha Schools policy upheld. *Honolulu StarBulletin*, p. A12.
- What would Pauahi say? (1993, October 10). *Honolulu Advertiser*, p. B2.
- Woodward, C. M. (1890a). *Manual training in education*. London, UK: Walter Scott.