

1 HAWAII STATE ADVISORY COMMITTEE TO THE U.S. COMMISSION  
2 ON CIVIL RIGHTS

3  
4 PLANNING MEETING

5  
6 WEDNESDAY, SEPTEMBER 5, 2007

7  
8 The meeting convened in the South Pacific Room,  
9 at the Hilton Hawaiian Village Beach Resort & Spa,  
10 2005 Kalia Road, Honolulu, Hawaii, at 10:00 a.m.,  
11 Michael A. Lily, Chairperson, presiding.

12 PRESENT:

13 U.S. Commission on Civil Rights:

14 Michael Yaki, Commissioner  
15 Barbara Delaviez, Civil Rights Analyst  
16 Evelyn Bohor, Support Staff

17 Hawaii State Advisory Committee:

18 Michael A. Lily, Chairperson  
19 Amefil "Amy" R. Agbayani  
20 Robert R. Alm  
21 Kheng See Ang  
22 Daphne E. Barbee-Wooten  
23 Jennifer A. Benck  
24 William H. Burgess  
25 Vernon F.L. Char  
Linda M. Colburn  
Michelle Nalani Fujimori  
Rubellite K. Johnson  
James I. Kuroiwa, Jr.  
Thomas J. MacDonald  
Paul M. Sullivan  
Wayne M. Tanna  
Jackie Young

1 ALSO PRESENT:

2 MORNING SESSION PANEL OF PRESENTERS:

3 Bill Hoshijo, Jennifer S. Rose, Francine Wai,  
4 Debbie Shimizu, Pat McManaman.

5 AFTERNOON SESSION PANEL OF PRESENTERS:

6 Kekuni Blaisdell, Haunani Apoliona, Robert G. Klein,  
7 Boyd P. Mossman, Jere Krischel.

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## P R O C E E D I N G S

1  
2 CHAIRPERSON LILY: I always like to start out  
3 on time. Although, today I'm glad to see all members  
4 are present, I believe.

5 MS. FUJIMORI: One's --

6 CHAIRPERSON LILY: One's coming.

7 And we are honored to have Michael Yaki, who  
8 is the Commissioner on the U.S. Commission on Civil  
9 Rights present today. Thank you for coming.

10 It's not quite -- it's not too far from San  
11 Francisco. Where -- I was just in San Francisco,  
12 where it was the Bay Area and up in the Sierra's,  
13 where it was up in the hundreds temperature. So it  
14 was great to come home where it was cooler.

15 I'm glad everyone's present here. Today  
16 we're going to have a half-hour of orientation. And I  
17 believe Barbara's going to be -- Barbara Delaviez, our  
18 excellent, smiling staff person who's so much help.

19 MS. DELAVIEZ: Have you started the meeting  
20 without me?

21 CHAIRPERSON LILY: Yes. I always like to  
22 start on time.

23 So she's going to give us some orientation,  
24 which we'd all like. Then following that, we have a  
25 planning meeting where we have some distinguished

1 folks are going to come and give us some ideas about  
2 what some of the pressing civil rights issues in our  
3 state are, from their perspective; and this will give  
4 us an opportunity as a committee to identify issues  
5 that we may wish to tackle and have subcommittees, and  
6 then ultimately have our committee address those  
7 issues that we feel as a committee are important for  
8 us to take up.

9 And then this afternoon, from two o'clock on,  
10 we have another distinguished panel that's going to  
11 provide a present -- comments, presentations to us on  
12 the Akaka Bill. So we look forward to that.

13 And without further ado, Barbara Delaviez,  
14 our esteemed staff person who we've all come to know  
15 and enjoy and thank for her great help.

16 MS. DELAVIEZ: Thanks, Mike. Good morning,  
17 everybody.

18 (General response: Good morning.)

19 MS. DELAVIEZ: Seems like 16 against one.

20 I --

21 COMMISSIONER YAKI: Barbara, you want to use  
22 the mike so she can hear you? (Off the record.)

23 MS. DELAVIEZ: And can everybody here hear  
24 me?

25 MR. MacDONALD: Yes, ma'am.

1 MS. DELAVIEZ: It's never been a problem for  
2 me.

3 I apologize that things seem very last-  
4 minute. Unfortunately, due to things beyond my  
5 control, I did not even arrive until very late last  
6 night. So hopefully we will be smooth sailing from  
7 here out.

8 Welcome. This is the first time the whole  
9 committee has been able to get together and meet, and  
10 so we're going to do a quick orientation.

11 ORIENTATION

12 MS. DELAVIEZ: Most of you know -- a couple  
13 of you do not -- I am Barbara Delaviez. I'm the civil  
14 rights analyst in the Eastern Regional Office,  
15 Commission on Civil Rights. I support the work of  
16 advisory committees on the East Coast. And as most of  
17 you know, I've been tasked to do the work of Hawaii  
18 for this -- for the time being.

19 And it's been a pleasure. It's been a  
20 challenge. The committee held its first planning  
21 meeting. And if I'm repeating something -- Mike says  
22 because I was out -- I apologize. It held its first  
23 planning meeting on the 15th. We held our first  
24 briefing on the 20th, and we had an open session on  
25 August 22nd at the Maui community center.

1           Once that transcript is available, it will be  
2 posted online so members can read it. Hopefully, once  
3 I can get a chance, I will try and draft a summary of  
4 it so members know what was said. But I encourage  
5 people to go and read it because we heard very  
6 interesting things, and I think the members here would  
7 agree that we heard quite interesting things.

8           As Mike said, we're going to start with an  
9 orientation. Then we'll have our planning committee.  
10 And the purpose of the orientation is so that  
11 everybody has an understanding of the rules and  
12 regulations that apply to State Advisory Committees.

13           I have put in everybody's packet a State  
14 Advisory Committee Handbook. It is draft. It was  
15 used regularly and then became a little outdated, but  
16 most of what's in here is very important and very  
17 applicable. The commission has changed some of the  
18 rules. One of the rules they changed is there's a  
19 ten-year term limit. That's five two-year terms.

20           But this gives you an idea of the structure  
21 of the Commission on Civil Rights. There are eight  
22 commissioners. Commissioner Yaki is here's joining  
23 us. He's in the center. Hopefully you all will have  
24 a chance to say hello and meet him.

25           We have a staff director. We have several

1 departments. There is the Office of Civil Rights  
2 Evaluation. There's the Office of General Counsel.  
3 We have six regional offices. Again, I'm in the  
4 Eastern Regional Office, and we all support the work  
5 of the commission.

6 So the handbook lays out what we do and how  
7 we do it. It talks about membership. It talks about  
8 what your work is, talks about the rules. And let's  
9 quickly talk about the rules so that we can then get  
10 started on our important work of the planning meeting.

11 There are several federal laws that are  
12 applicable to us. The first is the federal -- I'm  
13 sorry. Go ahead.

14 MS. YOUNG: What page are we on?

15 MS. DELAVIEZ: Actually, in here it's not  
16 numbered. That's how much of a draft it is. It's  
17 toward the end. But I'm just telling you.

18 COMMISSIONER YAKI: Laws affecting advisory  
19 committee operations.

20 MS. DELAVIEZ: It's -- thank you.

21 COMMISSIONER YAKI: It's about four from the  
22 back, four or five from the back.

23 MS. DELAVIEZ: And FACA -- it's called FACA,  
24 Federal Advisory Committee Act -- FACA was designed to  
25 create advisory committees. The agency is one of many

1 government entities that has advisory committees.

2 Our committees serve as the eyes and ears of  
3 the commission. And each state and the District of  
4 Columbia have members. It's 11 to 19 people that are  
5 selected. They plan, and then they carry out. It's a  
6 two-year term. And we usually try and meet when the  
7 funds are available twice a year. Yes?

8 COMMISSIONER YAKI: It's a four-year term.

9 MS. DELAVIEZ: When did that change?

10 COMMISSIONER YAKI: Last week.

11 MS. DELAVIEZ: It's a four-year term?

12 COMMISSIONER YAKI: Yes.

13 MS. DELAVIEZ: Okay. My notes from mine say  
14 otherwise. Okay, I will check on that. I'll send an  
15 e-mail correcting that. The charter is for two years.

16 COMMISSIONER YAKI: Yes. And the chair is  
17 for two years.

18 MS. DELAVIEZ: And the chair is for two  
19 years, and you can have a -- and that chair is allowed  
20 two terms.

21 The chair is appointed by the commissioners.  
22 And the SAC can appoint its own other officials: A  
23 vice chair, a secretary, others. We can do that at  
24 some point. This SAC has been moving along quite  
25 rapidly. So that has not been done. At some point,

1 we can do that.

2 And so, again, the goal is to meet at least  
3 twice a year and to complete a project during each  
4 two-year charter.

5 MS. BARBEE-WOOTEN: Is this a time to ask  
6 questions? I would like to know what the other SACs'  
7 projects are, if you could give me examples.

8 MS. DELAVIEZ: Sure. I can tell you what my  
9 SACs do, and that's -- you know, it's fine because,  
10 you know, I was close to finishing what we do.

11 Orientation tends to be something we do at  
12 the first meeting. And we've already had our first  
13 meeting, and then we go from there. And this handbook  
14 will be very useful for members about what the  
15 committee does.

16 I can tell you what I'm familiar with in  
17 terms of my committees and what I've heard about. And  
18 perhaps Commissioner Yaki can share -- I think you've  
19 been attending some of the SAC meetings. Yes?

20 COMMISSIONER YAKI: Some.

21 MS. DELAVIEZ: Yes. In Vermont, we took a  
22 look at immigration issues, and we had a briefing  
23 where we had people come and talk about immigration.

24 In Rhode Island, I had a briefing on the  
25 disparate treatment of minority youth in the justice

1 and education system. They met. Again, they bring --  
2 similar to what we did on the 20th, we bring experts  
3 in the field to come in and talk to us. And then the  
4 committee meets, and it talks about what it wants to  
5 do with the information that it gets.

6 Often it's a report. Sometimes it's other  
7 work products.

8 In Connecticut, we did a -- a briefing, all  
9 day long. It was quite a lengthy briefing, from 9:00  
10 to 6:00, on school choice, and heard from a  
11 representative of the governor, the mayor of Hartford,  
12 various superintendents, the board of education  
13 commissioner and others, who talked to us about the  
14 advantages and disadvantages of providing vouchers and  
15 other mechanisms of choice for schools.

16 So that's -- and, Commissioner Yaki, did you  
17 want to say some of the others that you heard?

18 COMMISSIONER YAKI: No. It's essentially up  
19 to the -- each individual SAC as to what interests and  
20 issues they want to pursue, and then the question is  
21 in what format do you pursue it.

22 MS. DELAVIEZ: So -- and so that's -- each --  
23 there are 51, the 50 states and the District of  
24 Columbia. The committees determine on their own, at a  
25 planning meeting, what they want to do.

1           In some states it's -- I don't want to say  
2 more obvious, but in some states there are issues that  
3 are more pressing. And so the committee -- and so  
4 what we're doing today at the planning meeting,  
5 hopefully, is hearing about the different civil rights  
6 issues that are emerging or that are persisting in  
7 Hawaii; and then the committee can at a point later in  
8 time, or depending on the time, decide which project  
9 it wants to pursue in its two-year term.

10           So that's -- yes?

11           MS. YOUNG: Excuse me. I don't know where it  
12 is in here. But what rule of order are we following?  
13 Is it Robert's?

14           CHAIRPERSON LILY: Robert's.

15           MS. YOUNG: Rules of Order? And is there a  
16 brief summary of the major rules so that for those of  
17 us who are a rusty on it?

18           MS. DELAVIEZ: No, and that's a good  
19 question. There are a couple -- in addition to the  
20 Federal Advisory Committee Act, which I can e-mail to  
21 everybody if everybody would like me to do it, the  
22 link to it so that you can review the rules, we also  
23 have the Freedom of Information Act.

24           CHAIRPERSON LILY: If you Google the Federal  
25 Advisory Committee Act, it'll come up very, very

1 quickly.

2 MS. YOUNG: Robert's Rules of?

3 CHAIRPERSON LILY: No, the Federal Advisory  
4 Committee Act. Robert's of Rules of Order, you don't  
5 have the current -- you can't get the current one on-  
6 line.

7 But you're our parliamentarian?

8 MS. DELAVIEZ: I am the designated federal  
9 official.

10 CHAIRPERSON LILY: Right. So --

11 MS. DELAVIEZ: And -- yes.

12 CHAIRPERSON LILY: So Barbara serves as our  
13 parliamentarian.

14 MS. DELAVIEZ: I serve as the designated  
15 federal official.

16 CHAIRPERSON LILY: Right, designated federal  
17 official who helps keep us on track on Robert's Rules  
18 of Order.

19 MS. DELAVIEZ: No, you raise a very good  
20 question. And a part of what's happening is that we  
21 are very understaffed, and so it's very difficult.  
22 And this is a -- this is a SAC that hopefully will be  
23 staffed shortly when they hire somebody for the  
24 Western Regional Office.

25 There is -- our procedures under 45 CFR 701,

1 703 set out the rules of this, how meetings run, how  
2 they go. Before us, once the SAC decides on what it  
3 wants to pursue as its project, the analyst, which  
4 would be me, presents a project proposal to the staff  
5 director. He signs off on it. And in the proposal, I  
6 set out how we're going to achieve what we're going to  
7 achieve and the work product that we want to  
8 accomplish through that, that -- the project proposal.

9 We also operate in the sunshine. It's the  
10 Government in the Sunshine Act; which means all of our  
11 meetings, unless there's a reason to go closed -- and  
12 there rarely is. There is at the headquarters level.  
13 But all of our meetings are open to the public, and  
14 they are announced in the Federal Register.

15 COMMISSIONER YAKI: Unless you decide that  
16 you're the vice president and you can belong to any  
17 branch of government.

18 CHAIRPERSON LILY: On that point, aside from  
19 the political thing, what -- under what issues can  
20 this committee go into executive session or non-public  
21 -- or is there any?

22 Are there any issues that would allow a  
23 committee to go into executive session or -- or is  
24 there none?

25 MS. DELAVIEZ: It has not -- in my history of

1 working with the SAC, that has not happened.

2 CHAIRPERSON LILY: Okay.

3 MS. DELAVIEZ: If they were to discuss  
4 something of a confidential nature, they could  
5 possibly could go in. And I'd have to review that, to  
6 be candid. It hasn't come up so far.

7 CHAIRPERSON LILY: Well, you know, in dealing  
8 with Sunshine rules locally -- and I'm not an expert  
9 on either, although I've done some litigation in the  
10 state or federal -- there are some issues, legal  
11 issues, if you want to confer with counsel or if  
12 there's right-to-privacy issues, there are some  
13 discreet things in the state law that allow you to go  
14 into executive session.

15 COMMISSIONER YAKI: Because you are a state  
16 advisory committee that is formed by operation of law  
17 of the U.S. government, you have no staff. Except for  
18 -- I mean, except for this entity of support staff  
19 designated by the office.

20 MS. DELAVIEZ: Okay.

21 COMMISSIONER YAKI: So there's no one free to  
22 hire and fire. So there's no executive session  
23 exemption for confidential personnel issues.

24 There is -- I do not know whether you have  
25 the standing to be sued in your own capacity or not.

1 But certainly if someone were to sue the advisory  
2 committee, I assume that might be one exemption under  
3 the traditional legal exemption that most committees  
4 have for closed session.

5 But other than that, this is, as Barbara  
6 said, to be operated pretty much in bright sunlight.

7 CHAIRPERSON LILY: Sure.

8 COMMISSIONER YAKI: And I understand that  
9 there are always going to be sensitivity issues; but  
10 that's always counterbalanced by the fact that you  
11 were put together for the purpose of being part of the  
12 public and being with the public, and therefore in the  
13 public eye.

14 MS. DELAVIEZ: Thanks.

15 CHAIRPERSON LILY: Excellent. Okay.

16 MS. YOUNG: Getting back to my original  
17 question about Robert's Rules of Order, is there a  
18 summary or a way? Could you explain to us exactly  
19 what some of the procedures are for this committee on  
20 motions and discussions and debates and -- and  
21 acceptance?

22 We've had several meetings that it's been, it  
23 seems, a little -- it's been rushed. And I haven't  
24 been clear as to the procedures. I just wanted to  
25 know if you could -- like at what point could the

1 chair rule over everyone else?

2 MR. BURGESS: Can I make a request? It's  
3 kind of hard to hear. So if the members would speak  
4 into the mike, it would make it a lot easier for those  
5 of us who have bad hearing.

6 MS. YOUNG: I'm sorry.

7 MR. BURGESS: Thank you.

8 MS. YOUNG: I was just asking about Robert's  
9 Rules of Order, if we could have a brief overview of  
10 it so that we're on task as far as when there's a  
11 motion and when we can have debate and how we vote on  
12 this. That's all.

13 CHAIRPERSON LILY: I don't come close to  
14 being an expert on Robert's Rules of Order; but it's a  
15 book the size of this (indicates), and it's very  
16 detailed.

17 MS. YOUNG: Oh, I understand.

18 CHAIRPERSON LILY: And so the question, I  
19 don't know that anybody could give a summary.

20 COMMISSIONER YAKI: I could.

21 CHAIRPERSON LILY: Could you give a summary?

22 COMMISSIONER YAKI: Okay.

23 CHAIRPERSON LILY: Michael Yaki's going to  
24 give us a Robert's summary.

25 COMMISSIONER YAKI: No, I'm not going to give

1 you a summary. What I'm going to say is that Robert's  
2 Rules has its own web site online. There's a cheat  
3 sheet, essentially, that you can -- as a PDF, that  
4 gives you basically the main -- the main types of  
5 motions.

6 The way to look at it is that there's a  
7 series of -- there's a hierarchy of motions in  
8 Robert's Rules. There is the -- what's called the  
9 original, or main, motion. There are privileged  
10 motions; there are nonprivileged motions; and there  
11 are superceding motions.

12 Privileged motions are motions, for example,  
13 if you have a -- if someone who's out of order, in  
14 terms of the rules of order, you ask for a point of  
15 order. You ask for a point of personal privilege as  
16 a -- in trying to seek clarification from something  
17 that someone else had said, the chair can recognize  
18 that's a point of personal privilege that takes  
19 precedence over the debate on the floor.

20 For example, if someone down there -- Paul --  
21 if Paul could not hear what Mr. Burgess said, he could  
22 say, "Mr. Chair, point of personal privilege."

23 He would say, "Yes."

24 "I didn't hear a darn thing he said because  
25 he wasn't speaking in the microphone. Could he speak

1 up again," that would take precedence over the debate  
2 at the time for the purposes of restating what was  
3 said before.

4 So there's point of order, point of personal  
5 privilege. Those are, they're called privileged  
6 motions. Non-privileged motions are amending  
7 something. You can -- and when you amend a motion,  
8 you have to get -- you have to get a vote on whether  
9 or not the motion can be amended. If the motion's  
10 amended, then you can vote on the motion as amended.  
11 If that fails, it goes back to the original motion.  
12 So those are the kinds of hierarchies that you could  
13 do.

14 There is the motion to call the question,  
15 which is -- which is to close debate. That is a --  
16 that is a privileged motion that can occur anytime  
17 during debate and cut off debate. But in order to do  
18 that, you need two-thirds vote of those present in  
19 order to cut off debate. That's why it's privileged,  
20 for the purposes of trying to end it. It's not -- but  
21 it requires two-thirds in order to stop, to stop it,  
22 to -- or to end debate.

23 There is also the basic -- I mean, that's  
24 basically sort of the guts of what -- of what you do.  
25 You have to -- you should always start off with

1 approving the agenda. If there are motions to amend  
2 the agenda, you can do that either subsequent to or at  
3 the time of the approving the agenda. And, you know,  
4 basically that's -- that's pretty -- the agenda, the  
5 minutes, that's sort of the rule, thing that you go  
6 through.

7 If you were going to be adding amendments to  
8 anything, generally you would need to state it  
9 clearly, have it in writing to give to whoever's  
10 recording it so that other people can understand what  
11 the amendment is all about. That's -- I mean, that's  
12 basically the general Robert's Rules. Pretty simple.  
13 Just raise your hand and be recognized by the chair.

14 MS. DELAVIEZ: Now, are there any --

15 CHAIRPERSON LILY: Thank you.

16 MS. DELAVIEZ: Yes. Thank you, Commissioner  
17 Yaki.

18 Are there any other questions? Because one  
19 thing I would like to do, since we have everybody  
20 together, is for everybody to -- I know people have  
21 been informally meeting, but for everybody to give a  
22 short introduction about themselves so that we can --  
23 yes?

24 MS. FUJIMORI: Sorry, I actually do have a  
25 request.

1 MS. DELAVIEZ: Sure.

2 MS. FUJIMORI: Based on the experience on  
3 Maui, I'm curious to know what the procedure to be  
4 used during our actual public statement hearing is  
5 because it seemed to be a little chaotic at times.

6 So I'm trying to figure out in terms of  
7 public testimony -- there were time limits. There  
8 were other types of things that were put into place --  
9 if we can get some clarity on exactly what we're going  
10 to be doing at some of these hearings.

11 CHAIRPERSON LILY: Today we're going to have  
12 speakers, so we're going to have speakers this morning  
13 talking about Hawaii issues. And this afternoon we  
14 have a panel that would be speaking on the Akaka  
15 Bill. And so there's not going to be any public  
16 testimony today.

17 MS. FUJIMORI: I realize that. But for our  
18 future meetings, if we could set those guidelines, it  
19 would be helpful for the rest of the committee.

20 MS. DELAVIEZ: Yeah, I'm going to -- one of  
21 the things I've been working on in all my spare time  
22 is a structure on how we're going to put that into  
23 place: Five minutes per person, some information for  
24 the committee members about, you know, not answering  
25 personal questions. And I hope to have that drafted

1     sometime within the next few days so that there is  
2     some type of structure in place to give everybody the  
3     information, so that we avoid some of the problems and  
4     pitfalls that we had at the Maui meeting. I think  
5     we've learned a lot from that meeting.

6             MS. BARBEE-WOOTEN: Is the time limit up to  
7     the commissioners to decide?

8             MS. DELAVIEZ: Committee members.

9             MS. BARBEE-WOOTEN: Committee members?

10            MS. DELAVIEZ: If the committee wants to  
11     discuss that right now, I'd be more than happy to  
12     discuss how they want the open sessions to run.

13            MS. BARBEE-WOOTEN: The U.S. commission has  
14     guidelines that they want us to follow? Is that what  
15     you're saying?

16            MS. DELAVIEZ: No, open sessions we -- the  
17     committee can decide they want it to be more than five  
18     minutes. We ended up ending early, if you remember.  
19     We ended at 6:15. So certainly limiting people to  
20     three to five minutes wasn't necessary.

21            If the committee thinks we should have a  
22     longer period of time, we can do that right -- we can  
23     decide that. We can have a discussion about that, if  
24     you'd like.

25            MS. FUJIMORI: Right. I mean, I think it

1 would be helpful only because when I showed up at the  
2 hearing, people were given their five-minute limits.  
3 There were some people giving away their five-minute  
4 limits, which was I'm not sure what the process was.

5 And there was actually no questioning of the  
6 members if we had any questions of people testifying,  
7 and I think that's critical and important to what  
8 we're doing in this process. And we really didn't  
9 have any of those opportunities.

10 So I think it's something we need -- we do  
11 need to address, especially if we are going to have  
12 open public hearings.

13 MS. DELAVIEZ: That's fine.

14 Do you have a recommendation?

15 MS. FUJIMORI: I think that following every  
16 person's testimony that the chair of that meeting  
17 should be asking the committee members if there are  
18 any questions with regards to the particular  
19 individual that has stepped up to the podium.

20 MS. DELAVIEZ: Well, and initially, so you  
21 know -- I know you did, you did arrive late -- we were  
22 doing that. And then when so many people came in, we  
23 thought we were going to run over and we wanted to  
24 make sure we heard everybody. So we stopped the  
25 question and answering from the committee members

1 because we thought we would have a time issue.

2 CHAIRPERSON LILY: All right. On our last  
3 open session at state capitol, if we had not adhered  
4 to time limits and -- and if we had opened it up to  
5 questions from the panel -- and this is a panel  
6 decision, not mine. But if we did that, I don't think  
7 we'd ever get out of there. We would not have been  
8 out of there that night.

9 MS. DELAVIEZ: No, we would not.

10 CHAIRPERSON LILY: It would just have been  
11 impossible to engage. And here, if we have 17  
12 members, whatever numbers, we have that many members  
13 present at this next session next week, it just  
14 depends on how many people are present.

15 So if it's a small number of people and  
16 there's plenty of time, then as far as I'm concerned,  
17 I don't have any issue about time limits. I -- as a  
18 chairman, I just want to make sure, No. 1, that every  
19 member of the public that comes before the committee  
20 has an opportunity to express themselves. If --

21 Every member should be given that  
22 opportunity. So if there's -- if there are hundreds  
23 of people, then we have to limit it. But if there's a  
24 smaller number then -- then the public should have --  
25 can have a longer opportunity to speak and we could

1 ask questions.

2 So it seems to me it's -- it's just a  
3 question of how we manage the number of people to  
4 ensure that everybody has a right to speak.

5 MS. DELAVIEZ: Let me add, I think the point  
6 is, is that had we done that at the briefing on the  
7 20th, we would not have heard from everybody because  
8 we --

9 CHAIRPERSON LILY: Yeah.

10 MS. DELAVIEZ: -- we ultimately, I think, ran  
11 out of time. And we had to go --

12 CHAIRPERSON LILY: Well --

13 MS. DELAVIEZ: We got close.

14 CHAIRPERSON LILY: I mean, technically we had  
15 more time; but we extended it to allow more people to  
16 speak. And as -- and because so many people went over  
17 their time limit, some people got upset and left,  
18 because they were way down the list. We did not hear  
19 from some people because some people were taking too  
20 much time to speak.

21 MS. DELAVIEZ: Well, and let me add, we have  
22 12 people coming next Wednesday to do open session.  
23 We have seven to the Hilo and six to the Kauai. It  
24 might be reversed, six and seven. And so if each  
25 person, if each member were to decide to ask a

1 question of each person, in Maui we certainly may have  
2 run out of time.

3 I think part of what's going to happen, a  
4 part of what has to happen is Jackie has already  
5 agreed to chair the Friday meeting. And I was going  
6 to ask somebody up here to chair the -- you're going  
7 to be there for Wednesday, and then we need somebody  
8 for Thursday to chair the meeting. And we're going to  
9 have to keep stricter limits.

10 That kind of spun out of control. Some  
11 people were taking five minutes; and then somebody in  
12 the audience was yelling out, "I'm giving my five  
13 minutes." And we have to try and put a stop to all of  
14 that. And so we'll have to develop some rules.  
15 Again, it's a learning experience.

16 MS. FUJIMORI: I guess my question for you  
17 is, given the other SACs that you're working on the  
18 mainland, what kind of process do they have for public  
19 statements?

20 MS. DELAVIEZ: I have never faced with any of  
21 my SACs what I faced with Hawaii and Maui. So it's  
22 not -- as I said, it was a learning experience. It  
23 really depends on how many people sign up.

24 At the -- at the 20th, it was clear we had 65  
25 people. In Maui, initially it looked like there are

1 only 10, and then suddenly 35 people were on the  
2 list. So it really -- and we have a web site -- I'm  
3 sorry. We have an e-mail address that people can make  
4 requests ahead of time to speak. But so far, only a  
5 couple people for each island have signed up.

6 My guess is a lot of people will show up and  
7 sign up at the process, at the time. So we won't know  
8 whether there are going to be five or 50. If there's  
9 50, it's not workable to have a Q&A after each  
10 person. Unless the committee wants to say we're going  
11 to limit everybody to three to four minutes and we're  
12 going to have question-and-answer. And if we don't  
13 get everybody, we just don't get everybody because we  
14 only have four hours.

15 But that again is something the committee can  
16 decide how it wants to proceed. Mike has indicated he  
17 wants to hear from everyone.

18 CHAIRPERSON LILY: One --

19 MR. MacDONALD: Mr. Chairman?

20 CHAIRPERSON LILY: I want to hear from  
21 everybody. One thing we can keep in mind, if we  
22 allowed everybody to speak, come up and -- just like  
23 we're going to do this afternoon. Everybody makes  
24 their presentation. And so everyone that came has an  
25 opportunity to speak.

1           And then if there's time, then I think it'll  
2 be good to open up to any commissioner has any -- I  
3 mean every -- any member of the committee wants to  
4 address. Because everybody comes up and gives their  
5 name, gives their comments. And then if everybody has  
6 spoken, every member of the public has spoken and then  
7 we have extra time, I'd say let's open it up. It's  
8 fine with me.

9           MS. DELAVIEZ: Well, I think that would be  
10 chaotic, to have people speak and put --

11           CHAIRPERSON LILY: Only if they're there and  
12 somebody has a question. But if -- but I just -- it  
13 just would have been unworkable at the state capitol.

14           MR. MacDONALD: Mr. Chair?

15           CHAIRPERSON LILY: Yes. Yes, sir?

16           MR. MacDONALD: May I suggest the Fort  
17 Benning solution to the problem? It's very clear that  
18 each situation is going to be different. And the Fort  
19 Benning solution is: The answer depends on the  
20 situation. And if at each meeting we could assess  
21 what it looks like it's going to happen that day and  
22 make the ground rules with the chair for that chair,  
23 rather than try to set one thing in concrete here,  
24 that might be a way of handling it.

25           COMMISSIONER YAKI: Mr. Chair?

1 CHAIRPERSON LILY: Yes, sir?

2 COMMISSIONER YAKI: I would agree with --

3 CHAIRPERSON LILY: Tom.

4 COMMISSIONER YAKI: -- Tom. I think that in  
5 -- if you ever want to come and see how public  
6 hearings are done in the most insane way, you should  
7 come to the mainland Board of Supervisors in San  
8 Francisco, where Athenian democracy never intended  
9 what we have going on in our committee hearings.

10 But I think it does depend on the individual  
11 circumstances. You may, for example, find out that  
12 you have a panel of speakers, eminent speakers, and  
13 then in the audience is someone who you look and you  
14 go, "Oh, my lord, how could we have forgotten this  
15 person to come up and say something?"

16 When they come up and say something, they  
17 then say the things that, you know, make you sit back  
18 in your seat and make you think, "I can't believe we  
19 completely blew this." And sometimes you say, you  
20 know, does the committee object to the fact that, you  
21 know, the person, A, has more time to speak and, B,  
22 there's probably some questions coming from the panel  
23 for that.

24 Those are the kind of situations where --  
25 where you have to agree to agree together to try and

1 work, to work on these kinds of issues.

2 It's going to be very fluid. It shouldn't be  
3 set in stone, especially in, in -- in a place like  
4 this, a place like Hawaii. I think that you would  
5 want to be as flexible as you can depending on the  
6 circumstances.

7 Obviously, if there's like two, three hundred  
8 people in line and you've only got the ballroom for  
9 three hours and the court reporter for three hours,  
10 you have to make some limits. There were times when I  
11 was a committee chair, and I would look at the line  
12 going out of the room and know that the combined body  
13 heat was going to set off a fire alarm, and realized  
14 that everyone was going to get just one minute.

15 And you either distribute it fairly or you  
16 make an arbitrary cutoff, or you say we're going to  
17 have to schedule some additional time at some other  
18 point. But these are the decisions we've got to  
19 make. Don't worry about it. We'll work it out.

20 MS. DELAVIEZ: Well, and I think the problem  
21 again, as I explained, was, in Maui, initially there  
22 were only five people signed up, or eight people. So  
23 we were allowing for question and answers. And within  
24 15 minutes, 30 people had signed up.

25 So if you want, if everybody can show up 15

1 minutes ahead of time to our open sessions, we can  
2 meet as a small group. The subcommittee can meet, can  
3 discuss what we think is going to happen; and then we  
4 can establish some ground rules of how we'll conduct  
5 those meetings.

6 Does that seem like a good solution for  
7 everybody?

8 CHAIRPERSON LILY: I think so. Unless we  
9 have something further -- yes?

10 MS. COLBURN: Could I make a motion to the  
11 effect that there is premeeting consultation with  
12 committee members to determine the protocol for the  
13 meeting, taking into account the number of  
14 participants, number of speakers, that that be  
15 articulated simultaneously to the committee members  
16 and the audience once it's been determined at the  
17 outset of the program?

18 MR. KUROIWA: I'll second that.

19 CHAIRPERSON LILY: Okay. We have a motion  
20 and second. Which is essentially parodying what we've  
21 been discussing and Commissioner Yaki had expressed.

22 Is there any discussion?

23 (No response.)

24 CHAIRPERSON LILY: No discussion. All in  
25 favor say "aye."

1 (Chorus of ayes.)

2 CHAIRPERSON LILY: All opposed?

3 (No response.)

4 CHAIRPERSON LILY: Okay. It carries.

5 Unless we have any further pressing  
6 discussions, we have a group of distinguished  
7 individuals that are here to meet with us at this  
8 time. So I'd like to bring them forward.

9 MS. DELAVIEZ: Should I call them?

10 CHAIRPERSON LILY: Yes. I guess we're all  
11 going to come up and -- Bill and all the rest.

12 (The panel of presenters is present.)

13 HAWAII CIVIL RIGHTS ISSUES BRIEFING

14 CHAIRPERSON LILY: We've got Bill Hoshijo of  
15 the Hawaii Civil Rights Commission, the Chair of the  
16 Hawaii Civil Rights Commission; Pat McManaman, Na  
17 Loio, Immigration Rights and Public Interest Legal  
18 Center; Alphonso Braggs of the NAACP -- I guess it's  
19 the Honolulu branch?

20 Jennifer Rose, University of Hawaii; Francine  
21 Wai, Disability and Communication Access Board; and  
22 Debbie Shimizu, National Association of Social  
23 Workers.

24 Welcome. So glad to have you all here with  
25 us.

1           We are very interested in hearing from you,  
2 from your perspectives, since you're all involved in  
3 civil rights issues involving Hawaii. This committee  
4 needs to hear from you what you perceive are some of  
5 the important civil rights issues because we need to  
6 come up with our own idea of what we're going to do,  
7 and we need your help in what we're going to do in the  
8 next two years with our charter.

9           So without further ado, we welcome you. I've  
10 got a list here. So I'll go down the list and start  
11 with Mr. Hoshijo.

12           MR. HOSHIJO: You've got a microphone?

13           CHAIRPERSON LILY: If you could just give us  
14 a brief introduction for yourself.

15           Glad to see you again. Thank you.

16           MR. HOSHIJO: Thank you.

17           Commissioner Yaki, Chair Lily, and Members of  
18 the Hawaii State Advisory Committee, my name is Bill  
19 Hoshijo. I currently serve as the Executive Director  
20 of the Hawaii Civil Rights Commission, or HCRC. The  
21 agency that enforces Hawaii's state anti-discrimina-  
22 tion laws, which prohibit discrimination in employment  
23 housing, public accommodations and state-funded  
24 services.

25           This is the third time I've appeared before

1 the State Advisory Committee to make a briefing,  
2 presentation on civil rights issues in Hawaii, having  
3 -- having been invited to do so in 2003 and 2006. I  
4 hope I can add to your discussion as the State  
5 Advisory Committee considers and plans the focus of  
6 its future work.

7 This morning I'll talk about some of the  
8 civil rights issues affecting the HCRC and its civil  
9 rights law enforcement mission. However, it's my  
10 understanding that I've been -- I've also been asked  
11 to address civil rights issues in Hawaii more  
12 generally, with an overview that might frame some of  
13 the more specific presentations that will follow.

14 To the extent that my remarks are broader  
15 than the position of the HCRC, they reflect my  
16 individual perspective informed by my work in the  
17 civil rights arena, but not any official position of  
18 the HCRC.

19 That being said, I want to do two things.  
20 First, I want to talk about the historical context  
21 that informs your discussion, the discussion with  
22 current civil rights issues.

23 When construing the Constitution and Civil  
24 Rights Statutes, we are trained to look at the purpose  
25 of the enactment. That means we have to understand

1 the historical context and the harm, or wrong, that  
2 the protections are meant to prevent, or remedy.

3 That's a key inquiry that should inform our  
4 analysis of any current remedial or restorative  
5 efforts, and any discussion of civil rights issues in  
6 Hawaii. Then I'll address some of the civil rights  
7 issues and challenges that we face here in Hawaii.

8 Whenever I make a presentation on civil  
9 rights, I always point out that Hawaii has a proud  
10 civil rights history, our own civil rights movement  
11 that paralleled the civil rights movement on the  
12 continent.

13 Hawaii has a history of race- and ancestry-  
14 based segregation dating back to the Kingdom of Hawaii  
15 when American plantation owners brought in foreign  
16 laborers as contract laborers. Segregated plantation  
17 camps and ethnic wage schedules were the rule.  
18 Typically, haole, or white workers, were paid the  
19 highest, followed by Hawaiians and Portuguese,  
20 Chinese, Japanese and Filipinos.

21 Through World War II the private sector was  
22 segregated along lines similar to those imposed on our  
23 plantations. Schools, neighborhoods and private clubs  
24 were also segregated along racial and ethnic lines.  
25 Much of Hawaii's civil rights movement was directly

1 tied to the progress of organized labor and the ILWU,  
2 who in efforts to organize plantation workers won  
3 important victories securing the right to vote, the  
4 right to assemble and associate, the right to trial by  
5 jury of peers, the rights to free speech and due  
6 process. These hard-won rights, which we now take for  
7 granted, have benefited all of Hawaii's people.

8 As a result, Hawaii's moved from a segregated  
9 oligarchic plantation society to a more integrated and  
10 democratic society. But there's much work to be done,  
11 work for you to do.

12 This tradition continues. Our fair  
13 employment law predated Title VII, the Civil Rights  
14 Act of 1964. We were the first state to ratify the  
15 Equal Rights Amendment, and we have an ERA provision  
16 in our state constitution. Hawaii was the first state  
17 to recognize women's right to choose and, to our  
18 credit and consternation, the first to address the  
19 issue of same-sex marriage seriously.

20 And still, we struggle to reconcile this  
21 struggle for individual civil rights with the  
22 continuing consequences of the overthrow and  
23 colonization on Native Hawaiians. Our history  
24 reflects our values. We value fairness and equal  
25 opportunity. Discrimination prevents us from fully

1 developing our greatest resource, our people.

2           Discrimination diminishes productivity and  
3 hurts morale. And discrimination takes a heavy toll  
4 on those who suffer its impact. It affects their  
5 opportunity to perform and succeed. It can literally  
6 consume and destroy lives.

7           Now, I did want to just touch on three or  
8 four specific issues that -- and trends that I see.  
9 The Hawaii Civil Rights Commission, with the HCRC, we  
10 see a number of trends and issues. About 85 to 90  
11 percent of all of the complaints that come to us, and  
12 are filed with us, are equal employment discrimination  
13 complaints.

14           Of those, the largest number are sex  
15 discrimination complaints; and of those, the largest  
16 number are sexual harassment complaints, followed by  
17 pregnancy discrimination complaints. And this is over  
18 a long period of time. It's pretty consistent.

19           There are several noteworthy trends and  
20 issues. We have a high number of retaliation  
21 complaints in Hawaii, higher than -- way higher than  
22 the national numbers. We have an increasing number of  
23 housing discrimination complaints and an ongoing  
24 tension between our more protective state standards  
25 and federal standards in the areas of sexual

1 harassment and disability law.

2 Our state civil rights laws provide greater  
3 protection than federal laws in many respects,  
4 consistent with the constitutional mandate that no  
5 person be denied the enjoyment of their civil rights  
6 or be discriminated against in the exercise thereof  
7 because of race, religion, sex or ancestry, Article 1,  
8 Section 5 of our state constitution.

9 Just a couple of issues I did want to raise  
10 or mention. Others may address them more  
11 specifically.

12 In the area of language access, the State of  
13 Hawaii has enacted recently -- not this past session,  
14 the session before -- Hawaii Revised Statutes Chapter  
15 371, Part II, which ensures access to state and  
16 state-funded services for persons of limited English  
17 proficiency and sets up an Office of Language Access.  
18 The new state laws mirrors federal requirements under  
19 Title VI and Executive Order 13166. This is a  
20 monumental undertaking and one which Hawaii can and  
21 should, not only perform and -- its obligations, but  
22 take a leadership role.

23 And this language access issue is related to  
24 a number of other issues, including education and  
25 voting rights issues relating access -- or regarding

1 access for persons of limited English proficiency.

2 We continue to deal with issues of discrimi-  
3 nation on the basis of sexual orientation. Under  
4 state law, discrimination on the basis of sexual  
5 orientation is prohibited in employment, housing and  
6 public foundations.

7 However, the legislature's still struggling  
8 with the issue of civil unions or domestic  
9 partnerships, which would confirm persons in same-sex  
10 relationships most of the over 400 intangible,  
11 substantive and general benefits that state law confers  
12 on married persons. Those are the rights that were  
13 identified by I guess what's known as the Gill  
14 commission. The Gill commission, commission on sexual  
15 orientation.

16 The -- another issue has to do with prisons,  
17 incarceration and criminal justice. And, you know, I  
18 think we're all familiar with the issue on a national  
19 level. The number of African Americans in American  
20 prisons is a shocking disgrace. We have a similar  
21 crisis in the making in Hawaii, with dispro-  
22 portionate numbers of Hawaiians imprisoned by the  
23 state.

24 And just by way of illustration, this -- this  
25 data is repeated quite often in terms of the national

1 issue. Elicit drug use among blacks is not signifi-  
2 cantly higher than among whites. Blacks constitute 13  
3 percent of drug users but make up 35 percent of those  
4 arrested for drug offenses, 55 percent of those  
5 convicted for drug offenses and 74 percent of those  
6 sentenced to prison for drug offenses.

7 Black drug users are more likely to be  
8 arrested than their white counterparts. If arrested,  
9 they're more likely to be prosecuted; if prosecuted,  
10 are more likely to be convicted and, if convicted, are  
11 more likely to be sentenced to terms of imprisonment.

12 So nationally there's a crisis in the making,  
13 with 9 percent of all black adults under some form of  
14 correctional supervision and 13 percent of all black  
15 males disenfranchised.

16 Now, similarly here in Hawaii, although the  
17 data's as not well developed, from 1990 to 2004, the  
18 adult prison population in Hawaii rose from 2,625 to  
19 5,946, 145 percent increase. And as of February 2006,  
20 6,150 persons were incarcerated. I'm sure the  
21 number's much higher now. According to the Department  
22 of Public Safety, Native Hawaiians comprise 41.2  
23 percent of state prison population, though they make  
24 up 28 percent of the state population of 1.2 million.

25 Recent studies -- or a recent study has shown

1 that odds in favor of incarceration for Hawaiians were  
2 greater than their -- for non-Hawaiians for most  
3 felony offense types, that they were -- Hawaiians were  
4 less likely to have charges dropped or their cases  
5 removed from prosecution and were less likely to have  
6 their charges dropped in severity.

7 And in addition, Hawaiians were at a greater  
8 risk of being sentenced to prison and receive longer  
9 sentences than other groups when charge, severity and  
10 offenses were taken into account.

11 And of the more than 1600 inmates -- the  
12 number must be much higher now -- in privately run  
13 prisons on the U.S. mainland, nearly half of them are  
14 Native Hawaiian.

15 And I'm not going to take a lot of your  
16 time. And time to finish up.

17 We've also seen a number of issues that have  
18 come up over the years involving racial and other  
19 tension in our public schools, with violence and  
20 bullying in schools, and mainly based on race or  
21 sexual orientation. And there's a definite need for  
22 dialogue on these issues.

23 And the last thing is with Native Hawaiian  
24 rights, sovereignty, self-governance and recognition  
25 and challenges to Hawaiian programs and institutions.

1 And that's something that I won't expand on because I  
2 know that you have it squarely in front of you. So  
3 with that, I'll turn it over to the other panel  
4 members.

5 CHAIRPERSON LILY: Okay. What we're going to  
6 do is hear from each of the speakers, and then we'll  
7 open it up to questions from the panel. So thank you,  
8 Mr. Hoshijo.

9 Pat McManaman? Is Pat here? Okay.

10 Alphonso Braggs. Did I pronounce that  
11 correctly, Braggs?

12 MR. BRAGGS: You certainly did.

13 CHAIRPERSON LILY: Thank you.

14 MR. BRAGGS: Thank you.

15 Good morning, Commissioner and Mr. Chairman  
16 and the rest of the members of the State Advisory  
17 Committee. Thank you for allowing me a few minutes to  
18 brief you on the status of civil rights in the State  
19 of Hawaii.

20 The Honolulu branch of the NAACP is  
21 integrally involved in the tumultuous struggle to  
22 fight discrimination on behalf of the persons of  
23 African decent and other numerical minorities in this  
24 state. So we really do appreciate taking time from  
25 your busy schedules to hear us this morning.

1           Let me begin by first saying that I strongly  
2 echo the sentiments that have been expressed by the  
3 Chair of the Hawaii Civil Right Committee, and we find  
4 many of our cases parallel exact to what he just  
5 stated. Despite all the moving allusions and cheering  
6 accolades about living in paradise, I have the sad  
7 task of reporting to you this morning just the  
8 opposite.

9           There's a noticeable erosion of the spirit of  
10 aloha, and that's based on the number of alleged  
11 local, state and federal violations here in the state  
12 of Hawaii. And I just want to capitalize on a few of  
13 the -- the concerns and cases that we have.

14           Let me begin first with one that we reviewed  
15 whereas judicial conduct against attorneys handling in  
16 civil rights cases. We were just appalled that a  
17 circuit court judge handled the case of a foreign  
18 national who had complained of wrongful termination  
19 and discrimination against his former employer.

20           The judge ruled that the case was frivolous  
21 and then took the unusually bold precedent of ordering  
22 the plaintiff to pay the court cost. And he cited the  
23 Civil Rights Act of 1964 as his basis. And the  
24 concern that we have here is the fallout from this.  
25 It's -- it was creative injustice and it basically is

1 going to discourage other victims, as well as civil  
2 rights attorneys from taking particularly pro bono  
3 cases, or affordable cases, when individuals have  
4 already been disenfranchised and violated. And to  
5 have your case basically thrown out without some sound  
6 rule -- basis is not going to help an already  
7 marginalized group of individuals.

8           The other concerns that we have with that is  
9 that when these types of cases go forward, potentially  
10 the individuals know that the plaintiffs are unable to  
11 pay these particular cases. And having the court rule  
12 that the case is frivolous in essence sets up for the  
13 opposing counsel to basically try and go after the  
14 attorney. And so, you know, we -- we categorize that  
15 as creative injustice. And, you know, I'm hoping that  
16 -- that you all will look into these types of  
17 behavior.

18           That's just one incident within the court  
19 system. But we need a great amount of training, you  
20 know, of the proceedings within the court systems by  
21 the prosecuting attorneys as well as some of the rules  
22 by the judges.

23           And we find this to be very common among  
24 African Americans, Native Hawaiians and other indigent  
25 individuals. And in part because there's a literacy

1 factor that comes into play. Obviously, economics  
2 comes into play. If you cannot afford the best  
3 attorneys and -- and unfortunately, you know, it does  
4 have a reflection on public defenders. And while  
5 we're grateful for public defenders so that we can  
6 have a degree of due process, unfortunately statistics  
7 have proven that when you measure the cases out,  
8 individuals who have representation by court-  
9 appointed or public defenders are not as successful in  
10 their cases as those individuals who can afford  
11 attorneys. And that is not reflective of the means in  
12 which the scales of justice should balance out.

13 We have ongoing cases in the workplace of  
14 discrimination. It is very commonplace to have  
15 persons of African decent to be called the N-word by  
16 their supervisors. And when they file formal  
17 complaints all the way through, then we find that  
18 there's retaliation. We find that there's an  
19 incestuous behavior by not only the supervisors, but  
20 their associated friends and families who have some  
21 control over these individuals in the workplace.

22 And we have cases now where individuals,  
23 after filing complaints, have been given unfair shifts  
24 or additional workloads, or other employees have been  
25 shown preference. And basically it discourages them

1 from pursuing redress. And so collectively we've got  
2 to do a better job of enforcing the rules that are on  
3 the books, as well as informing the public of their  
4 rights to redress and following through to make sure  
5 that there's some compliance.

6 We have a concern. We've gotten probably in  
7 this year alone about five or six complaints,  
8 individuals who are suffering from a degree of mental  
9 illness within the judicial process system. And these  
10 individuals are being somewhat set aside, or they're  
11 not receiving what really is their full entitlement of  
12 a just process.

13 And we have a case right now where an  
14 individual is still in the State Hospital -- and I'm  
15 not sure. We don't need to go into that scenario  
16 there, but we need some greater oversight. And  
17 hopefully you will -- you will add to your agenda that  
18 that particular institution, and in particular the  
19 individuals who are involved in the judicial system  
20 over there. And he cannot get his determination,  
21 fitness for trial basically determined, you know,  
22 because of one delay in the process after another.

23 And this causes -- you know, it has a  
24 trickle-down effect. And so, you know, he's, with his  
25 abilities, written to the judge, to others. But the

1 individuals within that system really feel as though  
2 they're not just locked inside of a room and in a  
3 mental situation, but physically and -- and to a  
4 degree, they feel more hopeless than what their real  
5 situation is.

6 And there's another situation with respect to  
7 the prison system that I'm hoping we can do something  
8 about, and I'll give you just a quick scenario on that  
9 one. The Halawa correctional center will not accept a  
10 money order for inmates. They only accept a cashier's  
11 check.

12 Now, it's my layman's opinion that there's  
13 really no difference with respect to the guarantee on  
14 a money order and a cashier's check. But we further  
15 disenfranchise and punish the family, as well as the  
16 inmate, by making them go and spend eight or more  
17 dollars for a cashier's check when 95 cents or a  
18 dollar could be spent on money order. And that is  
19 nothing else except for systemic and the institution-  
20 alized punishment, not only of the inmate, but of  
21 others.

22 As has already been stated, many of these  
23 individuals come from indigent families and homes.  
24 It's enough for the families to scrape up money to get  
25 to these young men and women who are inside the prison

1 system and have to spend that money whenever you want  
2 to send them a little bit of change so that they can  
3 write home letters or get a book from the library,  
4 whatever it is to have some sense of livelihood in  
5 there.

6 And again, this has nothing to do with  
7 whether or not they're guilty or innocent. They're  
8 serving their time. But they're -- they're still  
9 entitled to the basic privileges of being a human  
10 being. And I think it is a grave injustice that the  
11 system does not allow, you know, a money order to be  
12 used.

13 Police misconduct is something again that  
14 warrants greater oversight. A typical example is a  
15 young man, who had some violations with the law, had  
16 an interaction with the authorities, went down to get  
17 -- got kind of roughed up by the cops -- went down to  
18 file a complaint. The responding officer, knowing --  
19 you know, and it is hard not to know people here in  
20 Hawaii -- knowing the individual and knowing the  
21 alleged offending officer, gave this individual a  
22 false police report number as well as a false name.

23 You know, now, this individual, not knowing  
24 as much as he probably should know under the law, you  
25 know, went to check into this. Finally he went down

1 to file a complaint with the police commission. He  
2 realized later, when they responded to his complaint,  
3 that he had missed their statute of limitations for  
4 filing a complaint. They in turn referred it to the  
5 police chief.

6           Once again, the police commission, who should  
7 be that kind of that -- you know, that set aside group  
8 that can kind of oversight there, it's right back in  
9 the police commission. Then they, as expected, did  
10 not find any fault or real misdoings. And so when the  
11 -- they looked at it, they said there wasn't  
12 sufficient evidence to uphold his complaint of being  
13 harassed.

14           And consequently this guy, when he was picked  
15 up and put in the system, he was beat up in the system  
16 and -- and eventually wound up in the State Hospital.

17           The local media, there needs to be again some  
18 call into question with respect to what is going out  
19 over the airwaves. And on more than one occasion  
20 we've had our own little situations here. I know that  
21 most of you all are familiar with the incident  
22 involving the state senator and a very popular talk  
23 show. But, also, a few weeks ago we had not so  
24 well-known talk show where their sports announcers  
25 basically decided on Friday the 13th to come up with

1 the list of the top 25 scariest athletes.

2 Now, an individual who is driving from the  
3 Ewa side of the island to town in rush hour, took  
4 about 45 minutes and noticed that during that whole  
5 time the majority, with the exception of two names  
6 mentioned, were African Americans. And the concern  
7 that the individual had was that this was supposed to  
8 be the scariest African Americans. But it had  
9 individuals who there was absolutely no need for their  
10 names -- no reason, no sound judgment why they're  
11 names would be on that list.

12 And then the commentators decided near the  
13 end there to change it, "Well, let's go with the  
14 ugliest athletes" -- athletes. And to kind of defray  
15 from the fact that they were actually singling out and  
16 profiling African Americans, and others, they then  
17 decided to add their names to the list just to, "I  
18 guess if we add our names to the list, it's okay."

19 So again, we need that kind of oversight and  
20 we need for the general public to know that  
21 individuals like yourselves and agencies like  
22 yourselves will stand strong in support of minorities,  
23 that this will just not be tolerated.

24 Community organizations that practice  
25 discrimination, a very well-known community choir here

1 chose to deny access and participation to an African-  
2 American student because he wore dreadlocks.  
3 Although, their mission and objective was to bring  
4 together diverse ethnicities together, under the  
5 auspices of music and teach them respect for different  
6 cultures. And there was no regard, no mention at all  
7 to this kid's ability to sing, appearance or  
8 anything. It was simply that they had an aversion to  
9 his dreadlocks, which was his family religious  
10 practice.

11 The way that they got around this for several  
12 months was they chose, the chairman and exclusive  
13 members of the board chose to keep our communications  
14 in this particular case to themselves until they got  
15 word that we were going to have a public press  
16 conference. And all of a sudden, you know, they outed  
17 the chair and others.

18 But again, we have to do a greater job of  
19 holding institutions and individuals accountable. The  
20 concern that I have with that is that that individual  
21 chose that type of creativeness to discriminate. And  
22 this individual runs a very large business here. And  
23 so that makes me concerned about how it is that this  
24 individual treats his employees as well as the  
25 customers that are catering to his company.

1           Let me wrap up with a case of racial  
2 profiling. Within the past month we had an incident  
3 on a military installation where the baggers, they --  
4 baggers got beat up. And when the authorities  
5 responded, they basically went after the first two  
6 African Americans that they saw in the parking lot.

7           And that -- I mean, they knew a physical  
8 description of the alleged offenders; however, they  
9 just simply chose to pick the first two. They threw  
10 them up against the shopping cart stall there. They  
11 paraded them around in handcuffs, kept them for an  
12 inordinate and unreasonable amount of time, paraded in  
13 front of the store there so that the community and  
14 people at large could see them even after it was known  
15 that these were not the two individuals.

16           That case is being pursued right now at the  
17 -- we're following on through it. But the point that  
18 I'm making with this is that, again, as much as we  
19 would like to think that we have all this harmony in  
20 paradise, we really have a tremendous amount of work  
21 to do to really say that we are living the spirit of  
22 aloha.

23           And, you know, in addition to those, there  
24 are a number of cases that I'm hoping that we will get  
25 to. You know, we have serious issues with affordable

1 living wages, affordable housing and homelessness,  
2 maltreatment, discrimination in housing rentals as  
3 well as purchasing, rights of Hawaiian -- and let me  
4 state for the record right now that the NAACP is  
5 unconditionally in support of the Akaka Bill. And I  
6 know that's a different session, but I wanted to get  
7 that in, as well as particularly the rights of our  
8 individuals who are incarcerated.

9 And I think thank you for this time.

10 CHAIRPERSON LILY: Thank you very much,  
11 Mr. Braggs.

12 Jennifer Rose? Welcome. Thank you.

13 MS. ROSE: Thank you for the invitation.

14 Thank you, Commissioner Yaki and Members of  
15 the State Advisory. I also had the privilege of  
16 testifying last year before this committee on language  
17 access issues. I'm happy to defer that to Pat  
18 McManaman, who is here.

19 I am going to make my comments on gender  
20 equity issues, particularly on sexual harassment.  
21 Officially, I am the gender equity specialist at the  
22 University of Hawaii at Manoa, and I have been doing  
23 violence against women's work for the last 16 years.  
24 I also wear the hat of Co-Chair for the HSBA Diversity  
25 and Equity Committee, as well as the Chief Justice's

1 committee on Equality and Access to the Courts.

2           So with those various lenses, I make my  
3 comments; and I will speak primarily about higher  
4 education and defer to Bill on other sexual harassment  
5 issues. But I'll also talk about some issues that  
6 I've seen in employment.

7           Many of you know that we made much progress  
8 in terms of particularly sexual harassment and gender  
9 discrimination, in large part due to some of the women  
10 that are sitting on this committee today, who I  
11 acknowledge, particularly Jackie Young and Amy  
12 Agbayani.

13           And, in fact, one -- our campus is, at UH-  
14 Manoa, is one of the only that has a gender equity  
15 specialist that focuses on primarily sexual  
16 harassment, sexual assault and stalking.  
17 Unfortunately, because of the position I'm in, I hear  
18 many horrible stories from student, staff and faculty;  
19 and I've only been in the position for less than six  
20 months.

21           My very first month of work, I had 18 cases.  
22 Many inquiries are even faculty versus faculty, female  
23 junior faculty versus male senior faculty. But in  
24 large part, the most vulnerable population has been  
25 graduate students who fear retaliation. As Bill

1 noted, retaliation is huge in Hawaii. And I believe  
2 that the university campuses systemwide mirror the  
3 state trend on retaliation. Unfortunately for  
4 graduate students, that means having scholarships  
5 taken away, unfair assignment of classes, the  
6 possibility of not having a career in Hawaii in  
7 academia.

8 And I think particularly women of color and  
9 indigenous women are disparately impacted by this, at  
10 least that's what I've seen anecdotally. We've also  
11 seen that women of color and ethnically identified  
12 indigenous women face extra burdens of having to  
13 mentor and take on extra committee work, which is  
14 often not credit towards tenure or promotion.

15 I think there has to be a closer look at  
16 although access to education has made great strides  
17 through Title IX, getting into the university doesn't  
18 necessarily mean graduating. And I also say that with  
19 the lens at looking at how sexual harassment has  
20 impacted many female students.

21 Just to give you some statistics, there was a  
22 recent study that was done nationally, through the  
23 National College of Health Assessment, that included  
24 University of Hawaii as one of the sample surveyants.  
25 And we've closely mirrored the national statistics,

1 except we're slightly higher, disturbingly, in areas  
2 of rape; for example, .5 percentage higher amongst UH  
3 students who reported attempted sexual penetration  
4 against their will, as well as those who reported  
5 actual sexual penetration against their will.

6           There is also a rise, I have seen  
7 anecdotally, in at least the number of reported  
8 stalking cases. And this might not have been a  
9 coincidence after the Virginia Tech incident, that  
10 more and more women started reporting stalking. And  
11 also in the context of sexual harassment and dating  
12 violence, so some of the stalkers were known to them.  
13 Some of them were just classmates, and some of them  
14 who were strangers who were on campus. I believe this  
15 reflect the statewide trend in our community colleges  
16 as well.

17           Stalking has taken very strange forms,  
18 particularly with the popularity of cyberspace. And  
19 so a lot of student, staff and faculty have --  
20 particularly females, are stalked and sexually  
21 harassed electronically. There are -- raise many  
22 different legal issues about proof and evidence and  
23 confidentiality, et cetera. And it's a pretty  
24 disheartening to see through e-mail and text messages  
25 threats of rape and threats to kill. And again, I

1 note that I've only been on campus for less than six  
2 months.

3           There's also, I think, a trend of date rape  
4 drugs, which has been reported through our counseling  
5 center; the use of various types of date rape drugs  
6 and a number of students who have had to seek  
7 counseling as a result of not -- both the trauma of  
8 the attempted sexual assault and sexual harassment, as  
9 well as the trauma of not quite knowing who and  
10 possibly knowing the perpetrator.

11           I also think that we'll be seeing a trend of  
12 transsexual victims of gender discrimination and  
13 sexual harassment, particularly with the lack of  
14 clarification amongst sexual harassment policy and  
15 state and federal law around this issue. I think  
16 that, although I'm not an expert, we'll continue to  
17 see some trends in that area.

18           Primarily, the victims are still women. As I  
19 reported, I am seeing a number of women of color,  
20 ethnically identified indigenous women, as well as a  
21 rise of immigrant women who are now reporting. And  
22 there are many cultural issues that they experience in  
23 their response of sexual harassment, how they define  
24 sexual harassment. Many have reported to me that they  
25 see sexual harassment as a white woman's issue.

1           Some respond culturally in terms of whether  
2 they seek intervention or choosing formal complaint  
3 remedies. As an example, an Asian immigrant, student  
4 client of mine, went through the entire process of the  
5 formal complaint and then withdrew after her religious  
6 elders advised her that this wasn't something that was  
7 acceptable, to work against the system in adversarial  
8 way as part of their culture and their religion.

9           And I don't judge her at all for that, but  
10 obviously the remedies that we have available at this  
11 time do create an adversarial process and a process  
12 that doesn't necessarily guarantee confidentiality.  
13 As you know, living with the coconut wireless, even in  
14 a university as large as University of Hawaii, people  
15 often find out, you know, the identity of a victim.  
16 And victims already experience so much trauma.

17           But the trauma of having their life  
18 publicized, being vulnerable to gossip, having their  
19 character defamed, particularly when they're trying to  
20 pursue their education, is quite devastating. It's  
21 caused the students who I've worked with to consider  
22 transferring, moving into a different college or a  
23 department, withdrawing altogether.

24           Again, retaliation and fear of backlash is  
25 huge, particularly in those situations where there is

1 a power dynamic, which you can analogize in the  
2 employment context as well.

3 And just very briefly, in that employment  
4 context, we are working through the HSBA on another  
5 survey of female attorneys. The last time we did this  
6 was ten years ago, and there were some disturbing  
7 results of some ethnic groups having had a -- having  
8 felt discriminated in terms of advancement in the  
9 legal profession as well as lower-ranked pay, less  
10 prestigious positions.

11 We're embarking on another statewide survey,  
12 which we hope to have out next month; and we'll be  
13 sharing results with the state advisory as well as the  
14 bar association.

15 Other emerging issues, particularly for  
16 immigrants, are -- and I hope, I think Pat may address  
17 them -- are sexual slavery is the ultimate form of  
18 sexual harassment. You may not be seeing many of  
19 those cases yet, criminally yet. We know that they're  
20 happening in Hawaii and that there is much sexual  
21 slavery and forced prostitution that's happening  
22 even -- and particularly with underaged, both local  
23 and immigrant targets of this kind of exploitation.

24 We're also seeing more and more immigrant  
25 women coming forward from the workforce, for example,

1 from the hotel industry and other sectors, because I  
2 think, fortunately, more education around sexual  
3 harassment and a better understanding of their rights  
4 around that field. But there is still much work to be  
5 done, even as Title IX celebrates its, what, 34th or  
6 35th birthday.

7 Those are some of just the few emerging  
8 issues that I see, and I'm happy to stay for  
9 questions. In fact, my car won't start, so I might be  
10 at the Tapa Bar or the lounge area for some time. So  
11 you can find me there if you have a question. Thank  
12 you.

13 COMMISSIONER YAKI: Is the most you can give  
14 her a jump?

15 MS. ROSE: I don't have any cables.

16 MS. McMANAMAN: I have cables.

17 (Off the record.)

18 CHAIRPERSON LILY: Well, I'm glad you're  
19 going to stick around because we have a lot of  
20 questions. And nobody's going to want to leave until  
21 somebody comes up with the stamp for their parking.  
22 So I'd ask: Where's the stamp? In fact, I said  
23 that's the most important issue here.

24 (Off the record.)

25 CHAIRPERSON LILY: Okay. What it means is,

1 if you get the stamp, you don't have to get a loan to  
2 get out of the parking garage.

3 Okay. Thank you very much. I have some  
4 questions on that, some of your issues.

5 So Francine Wai, welcome. So glad to have  
6 you here.

7 Thank you. Welcome.

8 MS. WAI: Thank you. I hope you can hear me,  
9 and I hope my voice holds out because I have severe  
10 sinus infection at the moment. So I'm living on  
11 Ricola cough drops at the moment.

12 Thank you very much. I do appreciate  
13 everybody being given a lei here. If you're wondering  
14 why, I'm allergic. Which is really terrible for a  
15 local girl to be allergic about 90 percent of the  
16 flowers here.

17 I appreciate the opportunity to speak to  
18 you. My name is Francine Wai. I'm the Executive  
19 Director of the Disability and Communication Access  
20 Board, which is a state agency. Our office has as its  
21 mission to ensure the full and equal access of persons  
22 with disabilities into society here in Hawaii. We are  
23 not an enforcement agency. We are what you would call  
24 voluntary compliance, information referral, technical  
25 assistance; and we do manage some programs within our

1 office: To credential sign language interpreters, to  
2 review state and county projects for facility access,  
3 and to administer the statewide parking program for  
4 persons with disabilities, among others. But those  
5 are some of the more noticeable and visible of our  
6 programs.

7 I've had the privilege of being in my job for  
8 a long time. And when I first started 25 years ago,  
9 we had one person, which was myself, in an office  
10 which was there to, quote, "promote the positive image  
11 of people with disabilities." This was called the  
12 Governor's Committee on Employment of People --  
13 actually at that time, it was called Governor's  
14 Committee on Employment of the Handicapped, which is  
15 no longer politically correct term.

16 Over the years, we have grown to a 19-member  
17 office, with the constant addition of various civil  
18 rights laws on the books ranging from the Americans  
19 with Disabilities Act, Federal Fair Housing Act, the  
20 Air Carrier's Access Act, the Individuals with  
21 Disabilities Education Act, several other  
22 institutional rights acts for people who -- with  
23 disabilities who are in long-term care institutions.

24 So I've seen, you know, the growth of our  
25 civil rights laws. What is very noticeable is that

1 many of the disability protection laws were the last  
2 to get on the books. We -- we built upon all of the  
3 other Title VI laws, race, sex, national origin,  
4 ancestry -- oh, and by the way, we shouldn't forget  
5 disability status. So we're sort of the new kid on  
6 the block.

7 As I go to my national counterpart meetings,  
8 of which I have chaired that organization for a few  
9 years and served on three U.S. Access Board federal  
10 advisory committees, I notice two very distinct -- I  
11 have two very distinct impressions about how we're  
12 doing here in Hawaii. And one is that on one end, we  
13 are so far ahead; and on the other hand, we're so far  
14 behind.

15 We, we -- we are quite ahead of the game by  
16 building upon our ohana here and our general tendency  
17 to be good and gracious to people. And we have had --  
18 we have a very good organizational structure here.  
19 But on the other hand, we -- we are so far behind in  
20 many aspects. And some of that I'd like to talk  
21 about.

22 If I could leave you with any one impression,  
23 it's that despite having all of these wonderful laws  
24 on the books, we have an awfully long way to go. And  
25 that's -- I believe that's not only because we're the

1 last kid on the block, but because there's some very  
2 unique things about disability discrimination that are  
3 very different than some of the other minority  
4 protected classes. And one is that disability is not  
5 a static condition.

6 So while one definitely has a characteristic  
7 about themselves which can be identified in terms of  
8 their race, sex, sexual gender, national origin,  
9 ancestry, in general, those -- those don't change over  
10 your lifetime. Whereas with the disability status,  
11 that can often change; and for the most part, many of  
12 us will go through an actual aging process where  
13 disability status is -- comes upon us.

14 So when you take a look at numbers, that  
15 number is going to be very fluid; and it's going to be  
16 increasing, particularly in Hawaii, with our aging  
17 population.

18 The other thing is that disability in many of  
19 the civil rights laws is a self-reported disclosed  
20 position. I can walk up to a person and -- and either  
21 know or guess their race or national or -- you know,  
22 there's -- we know whether a person usually is female  
23 or not. There's some things that may be a little bit  
24 more subtle. But for a significant portion of mental  
25 disabilities and serious chronic health conditions,

1 those are not identified until the person decides that  
2 they want to either take advantage of a benefit in  
3 society or somehow they feel as though they have been  
4 discriminated against, because that information has  
5 been made public.

6 Many people with disabilities are not willing  
7 to disclose the fact that they have epilepsy or that  
8 they have hemophilia or that they have some other  
9 condition that's not noticeable for fear of  
10 retaliation. That is a significant barrier here in  
11 Hawaii.

12 We are also grappling with the -- the  
13 self-disclosure with all of our other trends toward  
14 medical privacy and confidentiality, with HIPAA laws.  
15 So we can't and we shouldn't share and disclose a lot  
16 of information; but yet at the same time, if a person  
17 with a disability is going to be able to access  
18 services or reasonable accommodation, they need to  
19 also reveal something that's very personal and  
20 private.

21 I don't necessarily feel that revealing my --  
22 my race is -- is a private matter. I might feel  
23 sexual orientation is. But my disability, perhaps, is  
24 something I'm not willing to share until I very much  
25 have to do that.

1           In Hawaii, we have a relatively inactive  
2 disability community. It is not nearly as vocal as  
3 the advocacy groups on the mainland, and that has been  
4 a bit frustrating for some of our organized agencies.  
5 The local community here does not want to make waves.  
6 So in addition to the cultural overlay, the disability  
7 also impacts a person's willingness to speak out for  
8 themselves until basically a crisis happens. So  
9 people with disabilities here, in my opinion, tolerate  
10 an awful lot of low-level prejudice; which while it  
11 may not rise to the level of full-blown case in court,  
12 nonetheless, pervades people throughout their entire  
13 life.

14           We have a great ohana, and that system of  
15 taking care of people has been a double-edged sword  
16 for many people with disabilities. I have -- for  
17 example, I run into comments when we talk to landlords  
18 about an individual who wants to rent a place; and  
19 they can't even understand why a person would want to  
20 live on their own because all the rest of the kids in  
21 their families still live at home, so why would a  
22 person with a disability want to go out on their own.

23           The idea of letting go and giving someone  
24 their full dignity and choice is something that's very  
25 hard here because there's a lot of pressure to stay

1 within a very confining and very conforming social  
2 standard.

3           When we have issues relating to a deaf  
4 individual in a nonlegal situation, we are often faced  
5 with the reply of why doesn't a family member come and  
6 simply interpret for the individual. We haven't  
7 gotten yet to the stage where many individuals can and  
8 feel the ability to -- to go out on their own and to  
9 let their family go as a mark of sort of a right of  
10 passage. So that's -- that's a significant issue for  
11 us here in Hawaii.

12           The, the -- of all the community -- I have to  
13 say, without necessarily getting into too many  
14 generalizations, I want to leave you with the  
15 impression, though, that in 25 years of working on  
16 committees, when you look at the disability community  
17 that's active and is willing to assert their rights,  
18 it is significantly dominated by individuals with  
19 disabilities who have moved from the mainland to  
20 Hawaii. And the local disability community, in  
21 particular Native Hawaiians, do not come out, do not  
22 participate.

23           They call our office one-on-one when  
24 something happens to them. And the local style is to  
25 reach out through your extended network, and I get

1 calls because I have a large family of people who'd  
2 say to call me. Not because of my position as the  
3 executive director of my organization, but because I'm  
4 related to somebody who is somebody and they thought  
5 that they could help.

6 And almost all the calls that I get from  
7 people who are born and raised here start out with, "I  
8 have a problem, but I really don't want to cause any  
9 trouble" and "If you can just sort of help me and  
10 solve it, that's fine. But I don't want to tell you  
11 my name, and I don't want you to tell them my name  
12 because I'm afraid." And it's -- it is very, very  
13 pervasive for individuals who grow up -- they --

14 They will tell me their name because they  
15 know maybe who I am. And if they tell me their name,  
16 they'll know that I won't reveal it. But they're very  
17 reluctant to do so. And I'm not sure that that's  
18 anything that we can necessarily turn around  
19 overnight, but it is an overriding sentiment that --  
20 in our office.

21 You know, the other thing that I would like  
22 to mention is that while we have excellent laws on the  
23 books, money has not followed for enforcement. And  
24 that is in both the area of the administrative offices  
25 like mine or Hawaii Civil Rights Commission. But

1 disability rights are being determined in the courts  
2 rather than administratively.

3 We have more likely with that somebody is  
4 going to find an attorney here in Hawaii and go to  
5 court and get a decision because we don't have the  
6 infrastructure for administrative remedies to the  
7 extent that I believe is -- is necessary.

8 In addition to money for enforcement agencies  
9 and voluntary compliance -- and to give you an  
10 example, my budget of about 1.5 million for my office,  
11 which a significant portion is pass-through money, of  
12 that, I have one federal grant for \$20,000; and I have  
13 one cooperative arrangement with the Department of  
14 Education, for about 200,000, for Individuals with  
15 Disabilities Education Act, outreach to parents for  
16 the rights of their children in the school system.  
17 The rest of that is state-funded.

18 And almost every state that I know of in my  
19 counterpart, we're all struggling with the fact that  
20 our state has to subsidize -- or not -- I don't know  
21 if subsidize is the right word. The state has to fund  
22 whatever is necessary to help the community to do  
23 voluntary compliance.

24 I'd like to talk just a little bit about a  
25 couple of key areas that I see emerging. One is in

1 the area of language access. As we -- as I mentioned,  
2 we often have a tendency in Hawaii to expect that  
3 family members will serve as interpreters. And Pat,  
4 I'm sure, is going to talk a lot more about language  
5 access issues. But we have a large problem here with  
6 people who are deaf, hard-of-hearing, for whom English  
7 is not their native language.

8           So we have problems providing equal access  
9 for them because they may not be able to understand  
10 spoken English, even with a traditional interpreter.  
11 And so one of the things that we have had to do in our  
12 office is to set up a test for sign language  
13 interpreters on local language proficiency with --  
14 with common words and names in Hawaii, and try to  
15 partner with foreign language interpreters. So that  
16 we may often need two interpreters in a situation, one  
17 for the foreign language component and one for the  
18 communication for lack of hearing.

19           The other area is accessible housing. And we  
20 have laws on the books to provide accessible housing,  
21 whether it be new construction under the Fair Housing  
22 Act. But one of our significant problems here is that  
23 accessible housing units go unfilled because they are  
24 simply out of our price range. And so people have had  
25 to -- have had extremely difficult time with land-

1 lords, finding housing and getting landlords to be  
2 receptive to making modifications to ensure -- to  
3 enable people with disabilities to live in those  
4 units.

5           Unlike many of the other discrimination laws,  
6 many of the provisions for people with disabilities  
7 involve money. Sign language interpreters, and real-  
8 time captioners, and putting items in Braille, and  
9 building ramps on street, they all -- they all cost a  
10 lot of money. And that's all right. It's just that  
11 we haven't really kept up in our appropriations to  
12 provide that civil right.

13           One of the areas that I hope we can make some  
14 inroads in is with Hawaiian homestead land. With the  
15 number of homes that are being constructed, none of  
16 the homes have any requirement as single-family homes  
17 for accessibility and modifications. And we have a  
18 significantly growing -- an aging population, kupuna.  
19 Many people wait so long to get on the list, by the  
20 time they are able to get housing, they have a  
21 disability and the -- there are very few provisions  
22 for them.

23           And last I'd like to mention is the area of  
24 emergency preparedness. With Hurricanes Katrina and  
25 Rita, we have gone into high gear in this state on

1 emergency preparedness. I attended a -- a briefing  
2 with a person who said to me, "You know, an emergency  
3 situation, a catastrophe is sort of like war. You're  
4 going to expect a certain amount of people to die" and  
5 "It's a matter of survival of the fittest. And if  
6 people with disabilities are not able to survive,  
7 well, I guess they're just going to be the proportion  
8 of people that die first," with no apologies that we  
9 needed to look at emergency shelters being accessible,  
10 that we have to look at this fact that we have a  
11 disproportionate number of high-rises that people need  
12 to get out but --

13 But I only mention that because it was  
14 striking to me in terms of the value of life that  
15 people placed on the individual with the disability  
16 and sort of accepting the fact that that individual  
17 was perhaps marginal and -- and I'm sure that that  
18 attitude pervaded into other aspects of that person's  
19 life.

20 Lastly -- and I should have said this at the  
21 very beginning -- when we're talking about the number  
22 of people in Hawaii, through the Census Bureau we were  
23 looking at a population of somewhere between a hundred  
24 ninety-nine thousand and 252,000 people in Hawaii,  
25 through the U.S. Census, as having been identified as

1 having disability. So we're talking about nearly 20  
2 percent of our population as having some type of  
3 physical disability, some type of mental disability,  
4 some type of chronic health condition that severely  
5 impacts their ability to function every day. That's a  
6 large -- that's a very large segment our society. And  
7 particularly in Hawaii, as I said with the aging  
8 population, that number is only going to get larger.

9 So I think with that, I'll end and turn it to  
10 the next person.

11 CHAIRPERSON LILY: Okay. Thank you very  
12 much, Ms. Wai.

13 Debbie Shimizu?

14 MS. SHIMIZU: Good morning, Members of the  
15 Hawaii State Civil Rights Advisory Committee. I'm  
16 Debbie Shimizu, the Executive Director of the National  
17 Association of Social Workers here in Hawaii.

18 NASW is the largest membership organization  
19 for professional social workers, and in Hawaii we have  
20 more than 980 members. Our mission is to enhance the  
21 professional growth and development of our members,  
22 create and maintain standards for the profession and  
23 to advance sound social policies for individuals,  
24 families and communities through our work and  
25 advocacy.

1           Thank you for this opportunity to share an  
2 issue of concern to social workers. Since social  
3 workers are employed in a variety of settings, such as  
4 hospitals, mental health clinics, schools, nonprofit  
5 social service agencies and prisons, to name a few,  
6 it's difficult to just limit it to just one issue.  
7 But for future meetings, I could refer some of our  
8 members of the association to address some of these  
9 other issues that may be of concern to your committee.

10           So I'm looking for what I could speak to this  
11 committee about. I stumbled upon a report that the  
12 U.S. civil rights commission published in August of  
13 2002, and it was called A New Paradigm For Welfare  
14 Reform: The Need For Civil Rights Enforcement. The  
15 commission felt that it was their goal to ensure that  
16 the civil rights protections were built into welfare  
17 reform because women and people of color were dispro-  
18 portionately affected by this policy.

19           Their recommendations fell into three  
20 categories: No. 1, facilitating the enforcement of  
21 civil rights laws; 2, safeguarding against  
22 discriminatory treatment; and, 3, preventing future --  
23 future disparate impact.

24           Just to give you a background, I know some  
25 people on the committee are very knowledgeable about

1 the welfare system. But for those of you who are not,  
2 I'll just give you a brief background.

3 In 1996, Congress passed the Personal  
4 Responsibility and Work Opportunity Reconciliation Act  
5 to end welfare as we know it. It changed our national  
6 public assistance program from an entitled program,  
7 which was called at that time Aid to Families with  
8 Dependent Children, or AFDC; and it was changed into a  
9 work program, which is now called the Temporary  
10 Assistance to Needy Families, or TANF.

11 The previous philosophy of AFDC was based on  
12 government providing a safety net for poor and  
13 vulnerable populations. The new policy, the TANF  
14 policy, changed to an assumption that poverty is  
15 temporary and the economy would provide the necessary  
16 work and income to alleviate poverty. The new policy  
17 instituted tough work requirements, restrictions on  
18 eligibility and imposed strict sanctions. Further-  
19 more, recipients could receive only five years, or 60  
20 months, of benefits in their lifetime.

21 In 2005, Congress passed the Deficit  
22 Reduction Act that reauthorized TANF, the TANF policy,  
23 to 2010. It was signed into law in February 2006.  
24 The new rules were effective August 2006. The  
25 reauthorization act substantially increased work

1 requirements, decreased funding for childcare and  
2 imposed stricter sanctions for states that did not  
3 meet the participation rates.

4           So why should we care? I believe the issue  
5 -- this issue warrants your consideration at this  
6 time because the concerns that the U.S. civil rights  
7 commission raised in 2002 have not been addressed by  
8 the 2005 DRA and are still relevant issues for  
9 consideration today. Basically, the commission's  
10 recommendations are ignored, and the discrimination  
11 and disparity that the commission identified five  
12 years ago continue today.

13           If attention is not given to the commission's  
14 recommendations, it will continue for another three  
15 years until the next reauthorization in 2010. And I  
16 hope that in your packet you have a list of those 16  
17 recommendations that were in the U.S. commission  
18 report.

19           In terms of Hawaii and its welfare program, I  
20 would like to raise five issues with specific to the  
21 Hawaii TANF program. Number 1 -- and I think a lot of  
22 people here on the panel today have also echoed the  
23 issue of language access. So this basically must be a  
24 big problem; and I'm glad our guru here on language  
25 access, Pat McManaman, will be addressing that.

1           But language access was identified as vital  
2 to welfare recipients. Immigrants need translation  
3 services and language access to be able to negotiate  
4 the welfare system and receive appropriate services  
5 and access to employment opportunities.

6           According to the 2000 census survey, 26.6  
7 percent of the people of Hawaii speak a language other  
8 than English. The 2006 legislature passed Act 290 to  
9 establish the Office of Language Access within the  
10 Department of Labor and Industrial Relations.

11           And I think there's a need to start looking  
12 at the Micronesian population in terms of language  
13 access because they're a new emerging group that needs  
14 assistance.

15           The Office of Language -- Language Access  
16 should be given adequate resources to be able to  
17 provide assistance so recipients can negotiate the  
18 welfare system; and additionally, information about  
19 benefits and applications for financial assistance  
20 need to be provided in different languages.

21           A second issue is post-secondary education.  
22 New regulations prohibit post-secondary education that  
23 leads to a baccalaureate or advanced degree from  
24 counting as a work activity or as vocational  
25 education, training, in the new TANF program. This

1 seems shortsighted since it is well documented that  
2 individuals with post-secondary or higher degrees have  
3 higher earnings and escape poverty. With individual  
4 -- than individuals with a high school diploma or  
5 associate degrees.

6 Hawaii established a very successful Bridge  
7 to Hope program that successfully helped 410 single  
8 mothers on TANF during its first three years of  
9 operation. Efforts should be made to maintain and  
10 expand this program, and Congress should be encouraged  
11 to include post-secondary education as a work activity  
12 within TANF.

13 A third issue is the poverty guideline, or  
14 federal poverty level. Several financial assistance  
15 programs, such as Head Start, food stamps, Children's  
16 Health Insurance Program, use the federal poverty  
17 level or a percentage multiplier for eligibility into  
18 the program. Other programs, such as TANF, use the  
19 guideline to calculate how much assistance a person  
20 will be given.

21 Historically, the federal poverty level was  
22 based upon the cheapest food plan, or the economy food  
23 plan, developed in 1965 by the Department of  
24 Agriculture; and it's revised annually by the  
25 Department of Human Services.

1           Using the poverty guideline to determine the  
2 eligibility or amount of assistance is grossly out-  
3 dated and inadequate because it only looks at the cost  
4 of food. It should be revised to more accurately  
5 reflect the extent of poverty today. It should take  
6 into account the cost of housing, the cost of  
7 transportation, childcare and other factors.

8           There have been several attempts to develop a  
9 different approach to determining the amount of  
10 assistance a family should be given. A self-  
11 sufficiency standard was developed by the University  
12 of Washington, by Diane Pearce, based on geographic-  
13 al location, family size and composition to determine  
14 how much a family needs to earn to be self-sufficient.

15           And in 1992, the National Research Council  
16 appointed a Panel on Poverty and Family Assistance to  
17 study poverty measure and recommendations for a new  
18 approach to determining poverty. These recommenda-  
19 tions should be reviewed and a new poverty measure  
20 should be adopted, on the federal level.

21           Here in Hawaii, we just changed our federal  
22 poverty level, which was based upon 1993. And we just  
23 changed it to be based upon the 2006 poverty level.  
24 So we're not even at the current poverty level in  
25 determining our assistance based upon that. It's

1 based upon 2006. And because it's static -- I mean,  
2 it's written in law to be 2006. Until that number is  
3 changed, it will always be based upon the 2006 federal  
4 poverty level and not the current federal poverty  
5 level.

6 Another issue in the Welfare Reform Act is  
7 the five-year time limit. Families on TANF are able  
8 to receive assistance for only five years in their  
9 lifetime. This was based upon the faulty assumption  
10 that the economy and job market can provide sufficient  
11 employment to produce necessary income for those who  
12 are receiving benefits.

13 However, the economic system and wage  
14 structure are changing rapidly, and it's inevitable  
15 that the families will be economically dependant.  
16 They should not be blamed or penalized for their  
17 economic predicament. Furthermore, other social  
18 problems, such as substance abuse, domestic violence,  
19 health issues and illiteracy, play a role in the lives  
20 of TANF recipients. Time limits should not be applied  
21 during the time that health, family violence and  
22 addiction problems are being addressed.

23 And lastly, leaver studies. Families who  
24 have been sanctioned or have reached their five-year  
25 limit and have left the TANF program should be

1 tracked. And right now, the Department of Human  
2 Services does not track them. In fact, they don't  
3 even know where they are, what they're doing.  
4 Department of Human Services do not consider these  
5 families clients any longer, so they have no  
6 responsibility for these families who have left the  
7 system.

8 I believe that the department should find out  
9 what happens to these families who have left the  
10 system and develop programs to continue to assist them  
11 with state funds. Data collection is essential to  
12 investigate long-term effects on welfare reform on  
13 poverty.

14 I think we need to ask the question: Are we  
15 doing better? It appears that the focus of the new  
16 welfare reform programs have shifted away from helping  
17 families to help meet federal rates, document  
18 participation, avoid harsh penalties and how to do  
19 this all with the same amount of funding. States  
20 receive the amount of federal funding to assist needy  
21 families as they did in 1996, when the Personal  
22 Responsibility Act was adopted. With inflation, the  
23 purchasing power of these funds declined  
24 substantially.

25 According to a February 2007 report by a

1 Center for Law and Social Policy, the basic TANF block  
2 grant is worth 23 percent less than in 1997, the first  
3 year that the states received a block grant. And by  
4 2011, the block grant will be worth just 71 percent of  
5 its 1997 value if it remains frozen. At that rate,  
6 will we be able to address poverty in our islands?

7 Because assistance is limited to five years,  
8 the number of families who receive assistance appear  
9 to be declining. But are families really doing  
10 better? Where are they? Our newspapers report that  
11 Hawaii has one of the lowest poverty rates in the  
12 country, but we know that the number of homeless  
13 families is increasing.

14 We see the families living on the beaches are  
15 growing. We know that people need to work two or  
16 three jobs to make ends meet. And we see housing  
17 prices out of reach, so families are doubling up and  
18 living together. I ask you: Are we doing better?

19 We need to be vigilant and continue to  
20 pressure Congress to make changes to the Personal  
21 Responsibility Act. Hawaii civil rights advisory  
22 committee can recommend to the U.S. civil rights  
23 commission to continue to address civil rights issues  
24 in welfare reform policies. Women -- women -- single  
25 women who are raising children are still the majority

1 of those who are on welfare.

2 And I urge you, your consideration, to  
3 revisit the 2002 commission report and reiterate your  
4 concerns about these issues until changes are made.  
5 Let's not keep this report on the shelf to do --  
6 gather dust. We cannot give up on people who are poor  
7 and discriminated against. Thank you for this  
8 opportunity.

9 CHAIRPERSON LILY: Thank you very much.

10 I want to give the court reporter a well-  
11 earned rest. So we'll take five.

12 (Break was taken.)

13 CHAIRPERSON LILY: Okay. We took a little  
14 more than five minutes. It's now almost 12:10, and  
15 we're going to hear from Pat McManaman. Look forward  
16 to it.

17 MS. McMANAMAN: Thank you.

18 CHAIRPERSON LILY: And then we'll open it up  
19 for questions. And I'd like to try and take a lunch  
20 break sometime shortly after 1:00. So we have close  
21 to an hour or 40-50 minutes to have lunch. So without  
22 further ado, Pat McManaman.

23 MS. McMANAMAN: Thank you.

24 CHAIRPERSON LILY: You're welcome.

25 MS. McMANAMAN: Thank you, members of the

1 commission, for your time. You're sitting here.  
2 You're listening to our testimony, and I'm sure it  
3 weighed on you the way it weighed on me earlier. But  
4 most importantly, I'd like to thank you for your voice  
5 because you are soon, I hope, to convene to listen to  
6 the lessons learned today and to make recommenda-  
7 tions. And therefore, you are powerful. You have an  
8 opportunity to effect change, and I'm very  
9 appreciative that you sit as members of the  
10 commission.

11 As you know, in 1964 the Civil Rights Act was  
12 passed; and Title VI of the Civil Rights Act requires  
13 all entities that receive federal funding to provide  
14 their services in a manner that's language  
15 accessible. This provision lay dormant until  
16 approximately 2000, when President Clinton signed an  
17 executive order declaring that the denial of language  
18 accessible services is in fact a denial of civil  
19 rights or national origin of discrimination. In his  
20 executive order in 2000, he then directed each of the  
21 federal departments to issue guidelines, language  
22 access guidelines.

23 And if you go to a web site, [www.lep.gov](http://www.lep.gov), you  
24 will see a wide array of federal bodies and entities  
25 that have indeed promulgated federal guidelines on

1 language access: From Department of Justice, which is  
2 a lead agency, to Department of Health and Human  
3 Services, to even agencies such as NASA. So at this  
4 juncture, the federal government is moving forward.  
5 It has been implementing language access initiatives,  
6 and it has been taking the lead.

7           There are still areas where the federal  
8 government is working, such as in the area of prisons  
9 and other entities, and immigration being one of the  
10 entities; but there's still room for improvement. But  
11 the federal government clearly has taken the lead.  
12 They declared in 2000, essentially, that all entities,  
13 as I indicated earlier, that receive federal funding,  
14 must provide their services in a manner that is  
15 language accessible.

16           To nobody's surprise and shock, Hawaii did  
17 not heed the call. The requirement to provide  
18 services that are language accessible went unheeded in  
19 the state of Hawaii. Two years ago in 2006, advocates  
20 from the community, including advocates who are seated  
21 at the table today, from Jennifer Rose to Bill  
22 Hoshijo, to my partner Francine Wai, to Amy Agbayani,  
23 all participated in hearings at the Hawaii State  
24 Legislature; and out of that was created the Office on  
25 Language Access. But before I get ahead of myself,

1 let me give you a little background about Hawaii.

2 We have the sixth largest per capita  
3 immigrant population in the nation. Approximately 27  
4 percent of our residents in Hawaii speak another  
5 language other than English at home. That's over a  
6 quarter. Seventeen percent of our population are  
7 immigrants.

8 Those numbers are stunning, and they're  
9 particularly stunning when you consider the lack of  
10 language accessible services existing in Hawaii. And  
11 I thought rather than my voice, I would share with you  
12 some of the comments of community members around the  
13 issue of language access.

14 Dr. David Derauf, Executive Director of  
15 Kalihi Valley Community Health Center, noted that he  
16 was deeply concerned that the policies, practices, and  
17 priorities in some health and social services agencies  
18 statewide do not reflect the urgent need for improved  
19 language access services.

20 Eighty patients at Kokua Kalihi Valley  
21 Community Health Center, when polled on language  
22 access, stated that they have experienced waiting in  
23 hospitals where hospital staffs ask patients in the  
24 waiting room to interpret for other patients, where  
25 children have been asked to interpret for their

1 relatives in emergency rooms, where they report  
2 waiting hours in emergency rooms for interpreter  
3 services, which may or may not arrive, and patient  
4 being issued prescription drugs and medications and  
5 instructions in English only.

6           The president of the Filipino Women's Civic  
7 Club noted, "Reaching underserved communities with  
8 limited English proficiency is of grave concern to  
9 us. It is imperative that the government services  
10 provide measures to overcome language barriers in  
11 order to prepare and protect communities whose first  
12 language is not English."

13           The president of the Filipino Business  
14 Women's Association stated, "As business leaders that  
15 manage a diverse workforce, the welfare capacity  
16 building of our employees who comprise a large section  
17 of people with limited English proficiency is a  
18 priority."

19           She requests that measures be implemented to  
20 ensure that public services to which our workforce  
21 contributes with their hard-earned taxes are  
22 accessible when needed with measures to overcome  
23 language barriers in a timely and culturally  
24 appropriate manner.

25           Let me give you a few examples to make

1 concrete the need for language access services in  
2 Hawaii. About three years ago we received a telephone  
3 call, and it was actually from a domestic violence  
4 social service provider. And we were informed  
5 essentially of what I'm about to share with you, and  
6 we have confirmed these facts.

7 The police were called to the scene of an  
8 incident; and when they arrived, they confronted a  
9 woman from the compact states of free association, an  
10 infant child, and a gentleman who spoke English. Just  
11 in terms of structuring this for the relationship the  
12 -- the gentleman who was present on the scene was not  
13 the father of the infant child.

14 So the gentleman on the scene proceeded to  
15 tell the police that the woman was suicidal. The  
16 police at that juncture did not provide her with an  
17 interpreter. Instead, the police called child welfare  
18 services.

19 Child welfare services arrived and did not  
20 provide the woman with an interpreter. She spoke no  
21 English and she read no English. Instead, they gave  
22 her a form in English-only asking her to voluntarily  
23 place her child with child welfare services. She was  
24 then taken by the police and escorted to the  
25 psychiatric ward of a local hospital. At that local

1 hospital, she was not provided with an interpreter.  
2 She was admitted to the psychiatric ward on the  
3 allegations that she was suicidal.

4           Approximately two days later, the medical  
5 staff determined that she did not appear to be  
6 suicidal, did not look suicidal, was exhibiting no  
7 overt indications of being suicidal. And at that  
8 juncture, she was provided with an interpreter.

9           She disclosed that she was not suicidal, she  
10 had never been suicidal, but she was in fact the  
11 victim of domestic violence. This woman was literally  
12 imprisoned in a psychiatric hospital for two days  
13 because three institutions, all of which received  
14 federal funding, did not provide her with an  
15 interpreter.

16           In a similar case, again, about two years ago  
17 now, there was a woman on Maui who was from the  
18 People's Republic of China, and she had been  
19 petitioned to the United States by a United States  
20 citizen and petitioned on a fiance visa. When she  
21 arrived, she arrived together with her two young  
22 daughters. Shortly thereafter, she discovered that  
23 her two young daughters were being sexually abused by  
24 the U.S. citizen, male; and child welfare services  
25 subsequently confirmed the sexual abuse.

1           In retrospect, I think the community agrees  
2 that she was actually profiled because she had two  
3 young children and was targeted and brought to the  
4 United States with a -- for the purpose of using and  
5 abusing these young girls.

6           She came to our attention because part of  
7 what Na Loio and Immigrant Rights and Public Interest  
8 Legal service does is we secure a legal status for  
9 undocumented individuals and individuals on  
10 conditional two-year cards, who are victims of sexual  
11 assault, domestic violence, crimes and other  
12 offenses. And during the course of that, we proceeded  
13 to gain or earn for her a provisional status. And at  
14 that juncture, she had been with her children in a  
15 domestic violence shelter on Maui for about six  
16 months. So by the time we were able to secure this  
17 provisional status, she was eligible to receive public  
18 benefits under special provisions for abused women.

19           We then contacted the Department of Human  
20 Services, told them that she spoke no English and  
21 would need an interpreter. The social worker from the  
22 shelter went to the first office visit with -- at the  
23 welfare office on Maui; and to nobody's surprise,  
24 there was no interpreter available. The appointment  
25 was then continued for another six weeks and, again,

1 no interpreter was available.

2 At this juncture, the social service worker  
3 decided, well, let's just see if we can get through  
4 this application form with some sign language,  
5 goodwill, high-fives, et cetera. By this time,  
6 actually, the worker had been able to collect a lot of  
7 anecdotal information about the client.

8 So they were able to complete the welfare  
9 form. At that juncture, the welfare worker decided  
10 that the client needed a Social Security number, which  
11 in fact she didn't. But she decided she need a Social  
12 Security number. And so, on a piece of paper,  
13 scrawled a message, put it in the mail to Social  
14 Security asking the Social Security Administration to  
15 provide this woman with a Social Security number.

16 Several weeks later Social Security provided,  
17 "well, gee, we'd be more happy to do so, but could  
18 you put this request on official state letterhead."  
19 Several more weeks go by. Our client still has not  
20 had any final review on her application for public  
21 benefits. She and her children remain living in a  
22 domestic violence shelter.

23 I don't know if any of you have peruse to a  
24 domestic violence shelter, but they're not wonderful  
25 places to be for weeks on end, particularly when you

1 have two minor children with you.

2 So at this juncture the welfare office  
3 supervisor was called, and we were told if we  
4 continued to bother them they would deny her welfare  
5 application. Two weeks later, we received a letter of  
6 denial from that welfare office; and grounds for  
7 denial was that our client did not have a Social  
8 Security number.

9 One of the hallmarks and tenets of Title VI  
10 is: Service delayed equals service denied. And I  
11 think we've heard that over and over again in terms of  
12 disability rights and other issues. If you delay in  
13 providing services, you have effectively denied those  
14 services.

15 In a welfare context, if you don't provide a  
16 translation, if you don't provide an interpreter in a  
17 timely matter, that means that family, who may be  
18 entitled to access welfare, is not going to receive  
19 welfare or food stamps or health care for another  
20 month, for another two months, for another three  
21 months.

22 So keep in mind when we talk about language  
23 access, access delayed, service denied -- access  
24 delayed is service denied.

25 A couple of more examples more recently about

1 where we're at in the state of Hawaii. I was recently  
2 in court -- and this falls on access services for the  
3 hearing impaired. Had an opportunity to look at a  
4 court calendar and noted that in a traffic matter a  
5 case had been continued six times because there was no  
6 sign language interpreter available.

7 Six times a deaf member of our community went  
8 to court only to be told to come back again on a  
9 traffic matter because we have no interpreter. I ask  
10 any one of you how many times you would be willing to  
11 go to court to answer to a simple traffic violation  
12 only to be told to come back six different times.

13 Language access continues to remain a problem  
14 in the state of Hawaii. Anecdotally, as I peruse  
15 state offices and city offices, I look for evidence to  
16 see that the State of Hawaii is in compliance with the  
17 language access law. I was recently at the state  
18 Department of Transportation driver's licensing office  
19 in Kapalama. There is no multilingual signage posted  
20 there telling individuals that they have a right to  
21 take a driver's license exam in a different language,  
22 in violation of federal law.

23 I was in the emergency room just yesterday,  
24 at a hospital, and did not see any signs noting that  
25 anybody has a right to language access. Indeed,

1 anecdotally we've just received information, but we  
2 haven't been able to confirm that an individual -- and  
3 this more reflects on the police -- an individual went  
4 to the emergency room, wanted to report domestic  
5 violence. The police were called to the emergency  
6 room, but the police officer left and said, "I don't  
7 have an interpreter." So a complaint was not taken.

8           Some services are more critical than others.  
9 Nevertheless, when I went to the Department of Land  
10 and Natural Resources several weeks ago to get a  
11 camping permit, there was no signage indicating, or  
12 any form indicating that those permits were available  
13 in any language other than English or that services  
14 would be provided.

15           So you can contrast the level of services  
16 from something that's integral, a driver's license,  
17 something go to court to access the court, where the  
18 court is ordering you to come back, to something like  
19 a camping permit; and still services remain  
20 unavailable to limited English-proficient purposes.

21           In 2006, the state responded. And I say, you  
22 know, the state responded; and I'm a little jaded and  
23 I'm a little cynical because I always keep in mind  
24 that this is a state that operates by consent decree  
25 only. And I think this commission knows that. Our

1 prisons, our mental health institutions, and our  
2 Department of Education have all the one time or  
3 another operated under consent decrees.

4 So although I want to say that I'm optimistic  
5 that the language on access office, language -- Office  
6 on Language Access is going to cure our problems, I  
7 think I'm just left to saying I'm hopeful. I'm  
8 hopeful. And that's good.

9 In 2006, we had nothing. In 2006, the state  
10 was not responding to language access. We now have an  
11 Office on Language Access. I'm hopeful. It took the  
12 governor, however, ten months to fill those  
13 positions. It was only, I think, with the threat of  
14 act -- organization and action by community members of  
15 the legislature that those positions were filled.

16 But again, that's merely anecdotal, and it's  
17 merely my suspicions. We do have an office. The  
18 community is waiting, and the community is watching.

19 If this commission can encourage the state to  
20 go forward to meet the unmet needs in the community,  
21 that would be wonderful. You have the voice. You  
22 have power. And you can certainly give and provide  
23 direction.

24 You know, couple of other things I want to  
25 talk about briefly. I was asked to speak on language

1 access, but only because they've come up anecdotally  
2 in other individuals' presentations.

3 At Na Loio we provide a broad range of legal  
4 services for the indigent community, and I do want  
5 this community to know that human trafficking is in  
6 fact a problem in the State of Hawaii.

7 In 2000, when the trafficking violence  
8 prevention act emerged, all the attorneys at Na Loio  
9 said, "Nah, we will never see a case here in Hawaii.  
10 We're going to see human trafficking out of New York,  
11 Chicago, you know, the meat centers of the world, the  
12 seamstress centers of the world; but we'll not see it  
13 in Hawaii." To my dismay, we've seen several  
14 trafficking cases that have emerged in the state of  
15 Hawaii.

16 There was a prosecution two years ago out in  
17 Waianae, where individuals from the Tongan community  
18 were held in labor servitude, beaten with chains,  
19 beaten even with sticks; and these are individuals who  
20 were building our rock walls, picking our coconuts and  
21 doing our landscape work in our yards. That gentleman  
22 was subsequently convicted.

23 We've had other trafficking cases which have  
24 not merited for a variety of reasons federal  
25 prosecution, but do involve, again, migrants from the

1 Pacific islands who have been working in our hotels  
2 here in Hawaii and essentially, in one case, forced to  
3 sleep under the owner's -- the business owner's house,  
4 was not even allowed to come in out of the rain, but  
5 slept rather on the dirt ground and was paid  
6 intermittently.

7 And many of these individuals are  
8 undocumented. They are told over and over by the  
9 handler that they will be deported or that their  
10 family will be harmed back in their home countries.  
11 And so we do have trafficking here in Hawaii, and I  
12 think it's something that this commission should just  
13 be aware of as it goes forward.

14 We also have what I call organized  
15 trafficking. And although at this juncture the  
16 government has not -- is for a variety reasons  
17 hesitant and reluctant to prosecute, we are aware of  
18 individuals which, well, maybe not technically  
19 constitute human trafficking under the federal law,  
20 certainly approach bondage under federal law.

21 And these are individuals who are brought  
22 over by labor groups here in Hawaii to do our  
23 agricultural work. And we've heard many occasions  
24 individuals from a broad variety of countries,  
25 including the Philippines and Thailand, different

1 countries, different work groups, different farms that  
2 they're working on, that they were required to pay  
3 finders' fees in their home country up to \$20,000 for  
4 the privilege of working in the United States on a  
5 two-year agricultural visa contract.

6 They come. They're not given the hours that  
7 they were initially told up front that they would  
8 receive. They're afraid to go home. Many individuals  
9 have mortgage. They've hui'd together, mortgage large  
10 family plots for this opportunity and privilege of  
11 working in America. They're afraid to go home because  
12 they in fact have not been able to save that money to  
13 reimburse the lenders for the \$20,000 that they have  
14 mortgaged. We've heard this more than once from  
15 different groups of individuals.

16 So I think we need to be vigilant about  
17 contractors coming in, vigilant about people who  
18 supply labor to meet the demands of agricultural and  
19 other industries in Hawaii.

20 Jennifer alluded, of course, to children who  
21 are sexually trafficked. There have been cases of  
22 U.S. citizen children, young women who have been  
23 sexually trafficked here in Hawaii. I'm quite frankly  
24 not that knowledgeable. We work with immigrants at  
25 our office. But the entire community, I think from

1 law enforcement to social service providers, realize  
2 that the day is coming soon; where we are going to, I  
3 think, finally penetrate that issue of children being  
4 sexually trafficked here in Hawaii. So that's another  
5 avenue or issue of concern in the future.

6 And finally, just very briefly, for  
7 immigrants. It should come as no shock. Nationally,  
8 we know that immigrants have the highest rate of  
9 injury on the job across the board nationally. And I  
10 think that there's some evidence of that occurring  
11 also in Hawaii. But what is also particularly  
12 troubling to me is each year -- and I think it's  
13 escalated anecdotally -- we see any number of people  
14 in our office who have been injured on the job, who  
15 are undocumented or who have some legal status that  
16 may be a little cloudy, who have not been advised or  
17 told by their employers of the right to workers'  
18 comp.

19 We've had individuals come in with severe  
20 burns on their hands. We've had individuals come in  
21 with broken bones, which they have set themselves, and  
22 who are stunned to find out there is such a thing as  
23 workers' comp in the state of Hawaii.

24 We recently had an individual from the  
25 People's Republic of China, who was a naturalized

1 citizen, who was limited English proficient, who had a  
2 broken arm, whose employer did not advise him of his  
3 right to workers' comp.

4 So, you know, again, that's part of that  
5 pattern and practice that we've heard from everybody  
6 of taking advantage of people who are the most  
7 vulnerable, who are the most isolated. And this  
8 commission again, I think that falls under national  
9 origin discrimination or race discrimination and  
10 certainly has the power to address some of these  
11 ills. With that, I'll combine by comments.

12 CHAIRPERSON LILY: Thank you very much.

13 I'm going to open it up for questions from  
14 the panel. I have a couple of questions, and then I  
15 think I'll just -- after I have asked, I think I'll  
16 just start, Linda, with you, if you have any  
17 questions. And we'll just go right down the panel.

18 QUESTIONS TO THE PANEL OF PRESENTERS

19 CHAIRPERSON LILY: Two things I'd like to --  
20 I'd like to address the -- all of you together, one  
21 thing that you've mentioned, a number of you have  
22 mentioned, has been the problem with retaliation. And  
23 in the years that I've done civil rights litigation, a  
24 lot of people will not come forward, as Francine Wai  
25 was saying, because their fear of retaliation.

1           If you bring a case, it's now in the public.  
2       So you can have job losses from the future, or you  
3       don't even -- you don't even know why. It's  
4       unstated. So it's -- there's -- there is impact to  
5       coming forward. And yet on the books, we have  
6       retaliation as -- it's punishable. So a lot of times,  
7       for me, I have a client come in and we -- we bring a  
8       civil rights claim; and then six months later we bring  
9       a retaliation claim, because they retaliated.

10           Is there something that needs to be done in  
11       the retaliation area? Is there a way that the laws  
12       can be strengthened to be improved, not just in Hawaii  
13       but nationally, so that retaliation is -- so that we  
14       can enforce it? Or what can we --

15           Does anybody have some ideas? What can we do  
16       in the retaliation area so that people -- and this  
17       goes -- whistle blowers have the same problem. As  
18       soon as you're a whistle blower, as soon as you're a  
19       person who files a complaint, you're marked. And yet  
20       we have laws on the books that say that's illegal and  
21       punishable.

22           So is there something more we can do? If  
23       anyone has any ideas. Yes?

24           MS. McMANAMAN: Well, with respect to  
25       immigrants, there's the Hoffman Plastics case. And

1 Bill might have the cite on this. I'm not sure. It's  
2 maybe about five years old, six years old.

3 Hoffman Plastics essentially said to  
4 undocumented immigrants, "You don't have the right to  
5 organize." If you organize, it's not a protected  
6 activity; and it's fair game for the employer to  
7 essentially let you go and fire you. You have no  
8 rights or protections.

9 So certainly for individuals with a status  
10 that's not certain, the State of Hawaii could in fact  
11 enact state legislation which would protect those  
12 injured -- those particular workers, give them  
13 protected rights and put them on the same footing as  
14 citizens. Because after all, we are just talking  
15 about basic workers' rights protections.

16 CHAIRPERSON LILY: Okay. Thank you.

17 Jennifer, yes?

18 MS. ROSE: I'm not sure if it would address  
19 the real fear they could experience as far as their  
20 perception what would happen if they come forward.  
21 But I think what is helpful is to have strong  
22 statement prohibiting retaliation; and, you know,  
23 whatever the employee policy, or situation, university  
24 policy, they include -- just make examples of what  
25 retaliation looks like.

1           As I've done training, I think a lot of  
2 employers and supervisors are very unclear about what  
3 retaliation looks -- they think it means they can be  
4 fired. In what I believe is now the second stage or  
5 second generation of sexual harassment, where it's  
6 much more cloaked, that also includes much more  
7 cloaked retaliation and much more veiled threats; for  
8 example, in academics not getting to teach the courses  
9 that -- you know, unfair evaluation, very subtle. So  
10 you know you deserve an A, but you got a B-minus. But  
11 B-minus is still good.

12           So I think depending on the context of the  
13 work or educational setting, there should be specific  
14 examples and it should be clear as to what, you know,  
15 what's actually prohibited in terms of retaliation.

16           CHAIRPERSON LILY: Good.

17           MS. McMANAMAN: I just have to echo Jennifer  
18 on that. I think educating for frontline workers,  
19 those individuals who have direct personal contact  
20 with consumers, is very important.

21           So, for example, about a year ago I took a  
22 client who was mentally ill to welfare to apply for  
23 welfare. Because of his mental illness, he couldn't  
24 do it. So we physically took him down. And we asked  
25 if they would provide an interpreter. He was

1 Filipino. And the clerk looked at me and said,  
2 looking at my Filipino said, "The Chinese know they're  
3 supposed to bring their own interpreter."

4 So, you know, a lot could be done if we  
5 educate the frontline workers about discrimination,  
6 what it looks like.

7 CHAIRPERSON LILY: Okay. Bill?

8 MR. HOSHIJO: You know, in the areas of our  
9 jurisdiction, in employment in particular, I think in  
10 answer to your question can something be done or  
11 should something be done, the simple answer has got to  
12 be yes because we have such a high number of  
13 retaliation complaints.

14 CHAIRPERSON LILY: Yes.

15 MR. HOSHIJO: In terms of what's getting at  
16 the root cause, I think that's a little tougher. And  
17 we have the data. I'm not sure -- and we talked about  
18 why. I don't know we -- I think part of it has to do  
19 with Honolulu being a small town of a million people,  
20 and just sort of somebody mentioned the coconut  
21 wireless. And some industries the reality is,  
22 regardless of prohibition against retaliation, someone  
23 comes forward and files a complain, people are going  
24 to know about it and you're going to suffer  
25 consequences.

1           And, you know, I think if someone, if a  
2 complainant goes to a private attorney, someone comes  
3 in your door with an intake, a new case, that you can  
4 tell them that there's protection against  
5 retaliation. But they're also going to be tempering  
6 about real-world advice about what happens.

7           Now, somebody comes to our door, the  
8 enforcement agency, we take those complaints. So we  
9 see them on the back end.

10           In terms of what can be done in addition to  
11 educating frontline people, I think in -- with all of  
12 these types of discrimination, a lot of it comes from  
13 top down. So if you see in industries and with  
14 particular employers that if they create a culture  
15 where people aren't afraid, you know, they emphasize  
16 that no one should be afraid to come forward and you  
17 see it where there's a mechanism, say in union shops,  
18 where there is a mechanism for coming forward and  
19 filing a grievance, and protection, people are more  
20 secure in doing that.

21           So there's a short answer; which is, yes,  
22 something should be done.

23           CHAIRPERSON LILY: Yeah.

24           MR. HOSHIJO: The how and how you go about  
25 doing that, I think, is much tougher.

1 CHAIRPERSON LILY: Yes, sir?

2 MR. BRAGGS: Let me say I agree. I think  
3 it's a two-part answer. One, it has to be both  
4 education as well as try to strengthening the existing  
5 laws. Until we're able to break down the -- the fear  
6 factor that most low income or middle income employees  
7 have of losing their job, particularly with an at-will  
8 employment law on the books -- and as we've alluded  
9 to, you're here. You can't have a situation on your  
10 job that, you know, three or four jobs around the  
11 block doesn't know about and you face some degree of  
12 retaliation.

13 So I think that there needs to be a greater  
14 encouragement to make an example of those cases that  
15 we are successful in bringing to trial. And, also,  
16 agencies, like all of us, have got to do a greater job  
17 of educating their public in the redress process and  
18 being there to support those individuals who are being  
19 retaliated against.

20 CHAIRPERSON LILY: Thank you.

21 I had one follow-up with you, Pat. The issue  
22 about the undocumented immigrants, it seems to me --  
23 and this is just personal observation that the -- the  
24 guest worker program got stalled because the debate  
25 over citizenship and so nothing happened.

1           Would -- if we had a guest worker program  
2 where people were able to come in as workers, would  
3 that help solve the issue? If we had a legal status  
4 to be here as a worker, a guest worker, and therefore  
5 you presumably would have state and federal rights,  
6 including perhaps organization, would that help solve  
7 that problem?

8           MS. McMANAMAN: Well, I think first they have  
9 to come to grips with the fact that we have 11 to 12  
10 million undocumented people in the United States who  
11 are already here. Guest worker presumes that they  
12 will be either a very recent entrance to the United  
13 States or they will be entering the United States.

14           So I think there's a multi-prong approach. I  
15 think first you have to deal with the 11 to 12 million  
16 undocumented in the United States in a way that's  
17 logical, coherent and makes sense. Under the  
18 proposals that were pending in front of Congress, it  
19 would take 12 to 13 years for anybody to permanently  
20 acquire firm legal status in the United States under  
21 those bills.

22           The -- speaking to the guest worker program,  
23 it's very controversial provision of the law. Unions  
24 were divided on it. Immigrants were divided on it.

25           One of the problems with the guest worker

1 program, as it presented to Congress recently, was  
2 that it required individuals to go back, let's say  
3 after one year of being here in the United States.  
4 You would have to go back, then you would have to  
5 re-enter. You weren't able to bring your family  
6 members here to the United States. It was only for a  
7 limited duration of time.

8 If your company folded -- let's say you're  
9 brought in as a guest working for ABC corporation.  
10 Let's say the company went belly up. You would not  
11 necessarily be able then to transfer that guest worker  
12 status to another.

13 There were some concerns about the ability of  
14 guest workers to organize, to unionize and whether or  
15 not in essence we were creating, you know, a work-  
16 force without much right or protection.

17 So while some form of a guest worker  
18 provision may be workable, I think given the split in  
19 the community with the last proposal that was filed, I  
20 think a lot of work needs to be done.

21 CHAIRPERSON LILY: Okay. I'm going to turn  
22 questions from Linda Colburn.

23 MS. COLBURN: First of all, I'd like to thank  
24 you for taking the time to address us today with your  
25 brief presentations.

1 I'd like to ask a question sort of at the  
2 30,000 foot level. When you -- if you were in our  
3 shoes, asked to consider a vast array of compelling  
4 topics, and if you were asked to make a decision about  
5 which one would be most important to address out of  
6 that array of options, I'm curious as to what advice  
7 you have to offer us about whether you would look at  
8 things based on if it's heinous or insidious, the most  
9 statistically or pervasive condition, the most easily  
10 remedied because of political ripeness; or would you  
11 look at the most systemic interventions that could  
12 have the most impact?

13 What advice would you offer us in how to  
14 weigh these various issues given that you've each  
15 dedicated your professional careers to the topics  
16 you've chosen? Help us decide.

17 MS. ROSE: I'll go first. And surprisingly,  
18 even though I'm speaking to gender equity, if I had to  
19 say one issue it would be language access. I don't  
20 want to take away from Alfonso's testimony -- (Off the  
21 record) -- but it's really also clear that language  
22 access is across the board an emerging issue whether  
23 we like it or not. (Off the record.)

24 I'm sorry. It's kind of --

25 CHAIRPERSON LILY: We need to get the

1 microphone. We need to get the microphone.

2 MS. ROSE: Sorry. That was it.

3 CHAIRPERSON LILY: Well, some of it we want  
4 the court reporter to --

5 MS. ROSE: Oh, I'm sorry. I just said that  
6 despite my topic was gender equity, if I had to say  
7 one issue, it would be language access. It's clear  
8 from the testimony that you've heard from the  
9 panelists today, as well as what is the Hawaii  
10 demographic and what it will continue to be, that  
11 it -- as you mentioned, one of the factors is this  
12 systemic issue across the board, that I think  
13 intersects with other issues, such as poverty, access  
14 to all types of institutions, including access to  
15 justice in the courts, health care, you know, basic  
16 needs. And so that is important.

17 Although, I have ideas about gender equity,  
18 if you are also interested in that issue. But I don't  
19 envy any of you.

20 MS. McMANAMAN: Are we each answering this  
21 question?

22 CHAIRPERSON LILY: No. If you have a  
23 response. I think she's asking does anyone have any  
24 prioritization that they might help us with.

25 MS. SHIMIZU: Well, I guess I would like to

1 know what power you have as an advisory committee.

2 CHAIRPERSON LILY: We just -- we can make  
3 recommendations. We can investigate and receive  
4 information on issues. We advise the Commission on  
5 Civil Rights, United States Commission on Civil Rights  
6 on civil rights issues in Hawaii. We can advise state  
7 agencies. We educate the public.

8 MS. SHIMIZU: So I guess it would be back to  
9 Linda, what kind of impact do you want to have. Do  
10 you want to have an impact on the U.S. commission; or  
11 is it something you just want to have an impact here  
12 in Hawaii?

13 And I was surprised, I guess, you know, based  
14 upon everybody's presentation today, I was surprised  
15 that the number of people who did mention language  
16 access as a problem. And so I agree with Jennifer;  
17 that if you're looking at an issue that cuts across  
18 many other issues, or intersects with many other  
19 issues, it would be language access as one.

20 MS. WAI: I have a comment. I'm not  
21 necessarily going to repeat the topic that I think is  
22 more pressing. I feel that's like asking which of  
23 your children do you love the most or the least, you  
24 know. But I do want to respond to something about the  
25 prioritization.

1           At least in the area that I'm familiar with,  
2 many of the federal agencies, and even locally, tend  
3 to pick cases where they believe that they can have a  
4 -- they can set an example. Some -- for instance,  
5 with the U.S. Department of Justice in the area of  
6 disability access, they are looking at the Hiltons or  
7 the Holiday Inns, or somewhere where they think they  
8 can get a lot of bang for the buck with a case.

9           And a lot of the ones that are not so glaring  
10 just sort of get -- they're not ignored. They're put  
11 to the back burner, and they never get to the front  
12 burner. Or they're given right-to-sue letters to go  
13 to court. And I -- I would like to see somewhere  
14 where we could have more emphasis on providing  
15 guidance, whether the guidance is in terms of sexual  
16 harassment or disability discrimination, so that we  
17 don't have to go to court as much as or we have -- or  
18 we don't have to continually wait for a huge case to  
19 come and set an example.

20           Many of you heard recently in the news,  
21 probably, about the deaf boy who was denied an  
22 interpreter in the Pony League. And that was taken by  
23 the National Association of the Deaf and, I mean, got  
24 a lot of headlines, one, probably because it was  
25 pretty obviously blatant. But many of the deaf people

1 that I've spoken to said, "Hooray, but my case and the  
2 kinds of things that I deal with in the workplace  
3 aren't so obvious and aren't so glaring"; and we need  
4 to have ways in which we can address that whole layer  
5 below -- below the surface of the big cases.

6 MS. COLBURN: Thank you.

7 MR. BRAGGS: May I? I think that if we  
8 really want to effect change and make a difference, I  
9 believe you have to touch -- find an area that's going  
10 to touch the entire community. And I think that there  
11 needs to be more focus on the youth. We need to take  
12 a real hard look at our youth and juvenile justice  
13 system, disparities with respect to health, homeless-  
14 ness and disparities in education. And that needs to  
15 be a real investment.

16 Because if we lose the young people, we  
17 really are losing the future. And if we do more  
18 advocacy and put a lot more investment in the youth,  
19 then there is a chance that you can really educate  
20 them on how to really advocate for civil rights and  
21 human rights. And there is a change -- a chance that  
22 we can really help them bring about changes, real  
23 changes within our communities.

24 Because we no longer have neighborhood or  
25 villages, as we say. And so the only hope that we

1 have is the kids go from playing together on the  
2 schoolyard to not playing together in the community.  
3 And adults are responsible for that. And that's  
4 because the adults are too busy trying to earn a  
5 living wage.

6 So if we can do more investment in our youth,  
7 then we will touch all of those areas that affect us  
8 because we will deal with disabilities. We will deal  
9 with language, and we will address how it is that we  
10 respect diversity and gender equity, whatever the  
11 area. So I think it needs to be youth.

12 MS. McMANAMAN: Just a quick comment. In  
13 framing how you want to look at issues, you might  
14 think broadly in terms of race or class, for example.  
15 So you can frame -- you can take a broad platform; and  
16 then within that broad platform you can say, you know,  
17 this is our overriding concern and then we're going to  
18 focus specifically on youth, or language access, or  
19 gender equity. Because it's such a broad umbrella,  
20 and most of the people you are going to touch, given  
21 this commission, are going to have issues relating to  
22 class or poverty and/or race, national origin, slash,  
23 race.

24 MR. HOSHIJO: Linda, I guess my response to  
25 you is -- to your question is it's a more general

1     <sup>R</sup>  
response.

2             Given your -- your role where you -- you can  
3 hold public hearings and make recommendations and  
4 address the policy issues, and basically you are in  
5 this advisory kind of capacity, it strikes me that,  
6 you know, while on the one hand I would really urge  
7 you to -- not to decouple civil rights from justice  
8 and -- you know what I mean, broad strokes -- but on  
9 the other hand, there are some issues that, I mean,  
10 you have to look at what your role is and what your  
11 capacity is, how you're going to be most effective in  
12 this advisory capacity.

13             So there's some issues that are going to be  
14 left to the courts and the legislature and Congress to  
15 decide, and you can weigh in. But, you know, if -- if  
16 you really want to have an impact, I think you choose  
17 an issue -- and I've heard it said up and down the  
18 panel, that you choose an issue where there's an  
19 impact in Hawaii, that it matters to people, that it  
20 -- people with identify with the fairness argument.

21             But in addition to that, I think if you take  
22 on an issue and you're in this advisory capacity and  
23 it's an issue where you don't have -- you're not  
24 speaking with strong voice and you're divided or  
25 you're speaking from a position where it's a very

1 clear majority and minority, and with minority reports  
2 and all of that, that really, in your advisory  
3 capacity, how effective can you -- you be?

4 And, you know, not that in a group of strong  
5 civil rights types that you're ever going to have a  
6 consensus, but I think that you'd be more effective if  
7 you'd pick issues where you can speak with, if not one  
8 voice, at least a strong voice.

9 MS. COLBURN: Thank you.

10 CHAIRPERSON LILY: Okay. We're going to be  
11 running out of time. So it's about one minute -- five  
12 minutes to 1:00.

13 MR. KUROIWA: Real fast. I really don't have  
14 a question. I do represent a major construction  
15 union, and I like the comments because we struggle  
16 with those kind of problems every day. I also belong  
17 to an SCC, an elementary school; and I know that  
18 education is very, very important. And from our  
19 standpoint, we want to get involved in trying to reach  
20 that issue. And thank you very much for sharing.

21 CHAIRPERSON LILY: Mr. Burgess?

22 MR. BURGESS: Mike, do I understand that we  
23 have until one o'clock?

24 CHAIRPERSON LILY: Well -- it's almost 1:00.  
25 And I -- and I thought we could go a little after, but

1 we do want to take a break.

2 MR. BURGESS: Okay, well, I do have a  
3 question. I'd like to limit it just to Bill Hoshijo,  
4 if I may. It's kind of a specific question.

5 Mr. Hoshijo, you mentioned the disproportion-  
6 ate number of Hawaiians in incarceration. I have a  
7 question. In the data, if a person has, say, 1  
8 percent Hawaiian ancestry and 99 percent something  
9 else, Japanese, Chinese, Caucasian, whatever, in those  
10 -- the statistics that you mentioned, would that  
11 person be counted as a Native Hawaiian?

12 MR. HOSHIJO: I -- my understanding of the  
13 Hawaii data -- and it's -- and this may or may not be  
14 correct because, you know, it -- in different context  
15 in terms of Department of Correction, or public safety  
16 and the studies, they may be looking at definitions  
17 differently but --

18 MR. BURGESS: Well, the one on incarceration  
19 as far as your current.

20 MR. HOSHIJO: Okay. My -- I think they rely  
21 on the Department of Public Safety. It may be by  
22 self-identification. That would be my first instinct,  
23 as opposed to someone assigning. And it would include  
24 full or part-Hawaiians.

25 And that's -- I've been told that it's

1 probably -- even that disproportioned number is  
2 probably an undercount because of the fact that it's  
3 by self-identification. And people who actually work  
4 in the corrections system qualitatively say the  
5 numbers are probably much higher than that. So that's  
6 sort of a -- that's the best I can do in answer to  
7 your question.

8 MR. BURGESS: Okay. And how about a person  
9 that's, say, a Caucasian, that's listed as a  
10 Caucasian? Would it -- if that person had, you know,  
11 1 percent -- if that person having 1 percent Caucasian  
12 ancestry but 99 percent something else, would that  
13 person be counted as a Caucasian?

14 MR. HOSHIJO: It's an interesting question,  
15 and I'm going to try to answer it directly. You know,  
16 with -- with census data and all of these racial  
17 classifications, there are two sides to look at it  
18 from. One is how classifications are drawn. There's  
19 a lot of controversy in that.

20 But the other part of it is that's -- the way  
21 that person would be identified is by self-identifica-  
22 tion. Because I don't know that there's a person  
23 anywhere in these data gathering systems that eyeballs  
24 someone and says, "You belong in this category."  
25 That's my understanding.

1 MR. BURGESS: So you don't know if it's  
2 self-identification or some other system, but it could  
3 be one or the other?

4 MR. HOSHIJO: Yeah, you know, my -- my guess  
5 at this point -- and again, depending on which --  
6 who's gathering the data. But I think in most of  
7 these instances, the data's gathered by self-  
8 identification. And the way that I -- the reason I  
9 think that is that in the employment discrimination  
10 area, that's how employers gather data. They look at  
11 their applicant pool. And federal contractors have to  
12 keep data on the race, sex, other characteristics of  
13 their applicant pool. And the way that they gather  
14 the data is they ask.

15 MR. BURGESS: Okay. Now, the citations that  
16 you made on disparities, you acknowledge, I think,  
17 that disparities can be an indication of civil rights  
18 violations. But disparities can also signify simple  
19 choice by the people involved.

20 For example, you know, if we looked at the  
21 statistics on NBA players, they obviously wouldn't be  
22 proportionate to the population of the United States.  
23 But there's obviously a racial disparity in the NBA.  
24 But that doesn't mean that there's necessarily civil  
25 rights violation in the selection of NBA players.

1           So in the statistics that you were citing, is  
2 there any indication that the disproportionate  
3 imprisonment or incarceration of Native Hawaiians is a  
4 result of racial discrimination?

5           MR. HOSHIJO: Let me answer it in two parts  
6 going back to my illustration. You know, the first  
7 part with the widely cited data on the incarc -- the  
8 incarceration rate of African Americans for drug  
9 offenses --

10          MR. BURGESS: Oh, no, I'm talking about  
11 Native Hawaiians.

12          MR. HOSHIJO: Yeah, I'm going to do a little  
13 comparison in terms of the meaning and how you  
14 interpret the data.

15           You know, that data had come from a Human  
16 Rights Watch study and report. And the thing is, that  
17 what that data shows is that while there's not --  
18 there's no evidence of a disparity in unlawful drug  
19 use between African Americans and whites, that at  
20 every stage in the criminal justice system, with  
21 arrests and prosecution, conviction, sentencing and  
22 incarceration, that African Americans do worse, at  
23 every stage.

24           Now, the thing is, with the Hawaii data, when  
25 I was looking for it and at it, it's -- it's a little

1 -- the data's not there for every step of that  
2 analysis. I think -- in fact, if you look at the OHA  
3 web site on arrest rates, the disparity in the arrest  
4 area is not -- it's not as significant. But what it  
5 tends to show is that: If Hawaiians are not  
6 disproportionately being arrested for these types of  
7 offenses, but they're more likely to be convicted,  
8 more likely to be prosecuted, more likely to be  
9 convicted, more likely to be sentenced to imprisonment  
10 and actually to be incarcerated, then that's where I  
11 think in interpretation you'd be looking at the data.

12 Now, I can give you the citation for the one  
13 study. I think that it's an area that you could  
14 really look at because I do think it's a -- it's a  
15 crisis in the sense that you have this disproportion-  
16 ate number of Hawaiians in prison, if you -- if you  
17 would draw the analogy to the data on African  
18 Americans nationally, you have people who are being  
19 disenfranchised because they can't vote.

20 But, you know, it's an area that a committee  
21 like this, you could -- you could actually dig a  
22 little deeper and look at the data. I will give you a  
23 citation for the study that I referred to. It was  
24 Asian and Pacific Islander Prisoner Reentry: A  
25 Profile of Characteristics, Issues and Programs, by

1 Angela Oh and Karen Umemoto. So --

2 MR. BURGESS: My question --

3 CHAIRPERSON LILY: Okay, Bill. Bill, we're  
4 not going to be able to get out of here before a break  
5 so --

6 MR. BURGESS: All right. I didn't mean to  
7 extend the discussion. But my question really was:  
8 Do you claim or do you suggest by citing that  
9 statistic --

10 MS. BARBEE-WOOTEN: Point of order. I'm  
11 sorry, Mr. Burgess. Point of order. Other people  
12 want to ask questions, and you've asked about five.  
13 Could we please allow --

14 CHAIRPERSON LILY: We're going to run out of  
15 time.

16 MS. BARBEE-WOOTEN: -- others equal time?

17 CHAIRPERSON LILY: I have some prerogative as  
18 chairman. Bill, we've got to move on.

19 MS. BARBEE-WOOTEN: I mean, I think you can  
20 ask him after the session's over.

21 CHAIRPERSON LILY: Your questions are  
22 important, but I think we've got to move on.

23 COMMISSIONER YAKI: Mr. Tanna?

24 CHAIRPERSON LILY: Otherwise we're going to  
25 run out of time. And the court reporter needs another

1 break. Okay. So --

2 COMMISSIONER YAKI: Mr. Tanna?

3 MR. TANNA: There was a lot a talking about  
4 language access. It seems very clear that there's a  
5 lack of interpreters for language purposes. One of  
6 the things that I was curious about is in particular a  
7 point was made by Mr. Braggs about the fitness to  
8 proceed in the State Hospital.

9 The idea is there a shortage or is there a  
10 denial of rights because of inability to find other  
11 professionals that also can give voice to people, like  
12 if the -- you know, the fitness to proceed question is  
13 not being able to be answered in a quick fashion, is  
14 it because there's a lack of psychiatrists that are  
15 qualified, or able or available to make a  
16 determination?

17 MR. BRAGGS: We can unequivocally say that  
18 due to the shortage of health care professionals in  
19 the state of Hawaii that across the board -- not only  
20 in the State Hospital, but we find it also at the  
21 military hospital and in the private sector -- that it  
22 is creating a disparity for the citizens in the state.

23 It becomes a lot more crucial when we talk  
24 about individuals who are indigent and those in the  
25 criminal justice system. In the particular case that

1 I cited, language is not a barrier. However, it is  
2 the lack of support individuals who can process a  
3 little bit more expediently his particular case and  
4 also, I will add, that there are a number of cases  
5 that we bear witness to where individuals are having  
6 their rights violated. It is a civil rights violation  
7 because delayed justice or deferred justice is still  
8 injustice.

9 CHAIRPERSON LILY: Okay. Jennifer Benck?

10 MS. BENCK: Thanks, everybody. It was  
11 really, really interesting this morning. I'll limit  
12 to two questions, one to Mr. Braggs and one to  
13 Ms. Rose, if I can.

14 You indicated that out of everything, you  
15 would think that youth advocacy would be something  
16 really worth our time. And I was wondering could you  
17 select -- I've heard education, or are you also  
18 telling about youth -- (Off the record). Can you even  
19 bring it down to what age groups you want?

20 MR. BRAGGS: Well, I don't mean to say that  
21 your core topic simply needs to be youth. But if  
22 you're trying to figure out how it is that you can  
23 effect a greater change and really be a stronger  
24 advocate for other people and advise in a greater  
25 capacity, you certainly would want to include youth in

1 anything that you're looking at.

2 Because whether you're looking at youth and  
3 the juvenile justice system, whether you're looking at  
4 health disparities, whether you're looking at home-  
5 lessness and affordable housing, whether you're  
6 looking at disparities in education and violence,  
7 bullying, every language gender respective -- right  
8 now we have more cases in the school system where  
9 sexual preference and choices are more prevalent than  
10 they were 20, 30 years ago.

11 The legal system and the advocate -- civil  
12 rights advocacy system must address that. And we must  
13 make it okay to have these open discussions and  
14 forums. And so if you really want to advocate and  
15 really want to show that you have the proceed power  
16 that you say that you have, then youth must be an  
17 integral part of whatever it is that you choose to  
18 move forward on.

19 MS. BENCK: Ms. Rose, if I could just ask  
20 you, too, it sounds like you're doing a lot of  
21 research. What you were saying was really interesting  
22 to me. I'm wondering what could we do for you.  
23 You're doing the research. What could this commission  
24 do that would further your work?

25 MS. ROSE: Well, I mean, obviously funding is

1 always an issue. You know, perhaps pressure for  
2 legislative support or an audit. I think one thing is  
3 that efforts to implement gender equity programs are  
4 oftentimes sporadic. And, you know, if you don't have  
5 particular fearless leaders at the helm, who have  
6 power, then it gets ignored for some time. And yet  
7 you heard the statistics from me that -- some of them  
8 so disturbing after 30 years, the progress that we've  
9 made, as Francine conceded, and yet how far behind we  
10 still are.

11 Perhaps a funding for public awareness media  
12 effort for -- I'd like to talk about younger people,  
13 younger scholars, the judiciary, about how the problem  
14 is historic and continues to persist -- not just in  
15 academia, but also in employment -- I think is a good  
16 use of the commission's time. And you're in that  
17 position that you could really influence legislatively  
18 as well as possibly funding.

19 And I think there are different states that  
20 are looking at using congressional pressure to  
21 reauthorize certain types of funding, particularly for  
22 women in STEM areas. That's science, technology,  
23 math, education. Because the -- there's such  
24 disproportion- ate -- I mean, there are not female  
25 scholars in this area, and that could be something

1 that would be considered -- and I appreciate that you  
2 recognize it has to go alongside with continued  
3 research.

4 MS. ANG: Hi. Thank you all for coming. I  
5 think everybody agreed that language access is a  
6 problem. And my question to you is: What do you  
7 think are the barriers? And how can this committee  
8 help you overcome those barriers?

9 MS. McMANAMAN: I mean, the barriers are  
10 numerous. I mean, one is the will of the state. So  
11 far, you know, if we look at a law, a clear  
12 interpretation of the law that passed in 2000, it was  
13 only with a great deal of community effort at the  
14 legislature that we were able to create the Office on  
15 Language Access in 2006.

16 So, one, I think the state has to demonstrate  
17 leadership around this issue. I'm not sure that they  
18 have demonstrated that leadership yet.

19 Two, there's the issue of capacity building  
20 that we've alluded to. Let me explain to you what  
21 that means in the context of language access.

22 If you had a recent immigrant population, for  
23 example, our most recent immigrant group to arrive in  
24 Hawaii are individuals from the compact states of the  
25 -- the compact states are the Marshall Islands, Palau

1 and the Federated States of Micronesia. They are  
2 stretching -- the need for language access services is  
3 stretching our ability to provide the same.

4 I think that our universities have a great  
5 role to play in helping us achieve parity in terms of  
6 language access; and that is, developing programs at  
7 the university, whether it's at our community colleges  
8 or at the UH-Manoa, developing those programs,  
9 expanding them and funding them so that we are  
10 teaching individuals how to translate, how to  
11 interpret and what that role means, and providing,  
12 also, language access expertise.

13 I say that because the example that we always  
14 hear and we all shudder at is using children to  
15 translate in a medical situation or taking the HGEA  
16 janitor up to Hawaii State Hospital to translate for  
17 somebody in acute clinical crisis. It's just simply  
18 inappropriate. We know that. But we have to create  
19 the capacity through training.

20 Individual institutions, not only the  
21 university, but individual institutions can be  
22 addressing those capacity issues.

23 So, for example, Na Loio did a training last  
24 year for workers who worked in -- with or with victims  
25 of domestic violence and sexual assault. And so part

1 of that training, what was done is that the language  
2 was captured in a variety of institutions.

3 So for example, an individual went to the  
4 court, monitored the court. What words were used?  
5 Habeus corpus, temporary restraining order,  
6 restraining order. And it created an English language  
7 dictionary defining those terms.

8 In a medical setting for sexual assault, for  
9 example, we spoke with emergency room medical  
10 providers: Speculum, how does that translate?

11 So we created an English language dictionary  
12 across the board for judicial, social service, medical  
13 intervention, that captures unique words and phrases  
14 that an interpreter who is not well-trained may not  
15 understand.

16 So, for example, there may be countries where  
17 there is no -- where speculums aren't used, for  
18 example. What is that? If you bring in an  
19 interpreter who is from another country, how are they  
20 going to translate and interpret speculum? And I know  
21 that's kind of an extreme example, but I'll go back to  
22 the history of trying to have a -- I'm sorry,  
23 Mr. MacDonald. I'm almost finished.

24 We all go back to the history of a case where  
25 -- for the Long (phonetic) family where the young

1 child had a cancer. And the interpreter was unable to  
2 explain chemotherapy and simply said, "They will put a  
3 fire in you."

4 So I ask what kind of legitimate choice that  
5 family had when they were told the treatment is "we  
6 will put a fire in your child." They, of course,  
7 refused treatment.

8 So building capacity in many ways, whether  
9 it's the university, whether it's institutions such as  
10 judiciary and hospitals, and lending, certainly,  
11 financial resources, providing interpreters, the state  
12 can put forth a more positive effort to hire multi-  
13 lingual people, work with the labor unions to re-  
14 classify those job positions so that we adequately pay  
15 people in state government, for example, that we're  
16 also asking to interpret and translate. I can talk  
17 separately, but there's any host of remedies.

18 CHAIRPERSON LILY: Thank you very much.  
19 We're really running over time. So Ms. Agbayani?

20 MS. AGBAYANI: First of all, I want to thank  
21 everybody who made a presentation. I don't have a  
22 question. I just would like to say that there are  
23 many issues, many critical issues, and I would like  
24 our commission -- our SAC to continue this discussion  
25 and make sure that we have the time to deliberate and

1 come up with recommendations for us. So I would  
2 suggest that we have another opportunity to work with  
3 these presenters.

4 CHAIRPERSON LILY: Thank you. Ms. Fujimori?

5 MS. FUJIMORI: I don't have any questions.

6 CHAIRPERSON LILY: Okay. Ms. Young?

7 MS. YOUNG: I just --

8 CHAIRPERSON LILY: Ms. Young?

9 MS. YOUNG: I have partly a statement. I  
10 really appreciate Bill -- thank you, everyone. I  
11 appreciate, Bill, your expressing the anguish that is  
12 in the community apparently about perception of the  
13 committee not being able to move forward without  
14 consensus. And I'm hearing today, which is  
15 encouraging, that consensus that language access is  
16 the vulnerability of every single issue we have before  
17 us.

18 And I have this job with gender equity  
19 background, like Jennifer. But I see if you cannot  
20 access the system, whether you are a youth because you  
21 don't have the same rights as an adult, if you can't  
22 speak out or your voice is not heard because you're an  
23 immigrant or you're disabled, then clearly, you know,  
24 you are at a disadvantage in our society.

25 If we were to proceed on this or were we to

1 get a consensus on this, Bill, how would you see us  
2 effectively moving forward on this issues is?

3 MS. ROSE: Besides what Pat said -- and I  
4 echo all of that just for the sake of time -- one of  
5 the things that we keep mentioning is the challenge of  
6 working with Palau, Marshall Islands and the Federate  
7 States of Micronesia. I was lucky enough to recently  
8 have just trained all of those judges. And the chief  
9 justice of the Federated States of Micronesia had  
10 stated concern over their community being over-  
11 represent -- or starting to become overrepresented in  
12 the civil and criminal justice system without any kind  
13 of interpretation.

14 In terms of capacity building on competency  
15 and quantity of interpreters, I don't know if I'm  
16 speaking out of turn; but, I mean, I know that DOI  
17 money exists. I mean, maybe it's a matter of the  
18 commission recommending what are some of the funding  
19 sources that can be accessed. Because it is a huge  
20 money issue. Even if you have model programs like Pat  
21 suggested, work through the university or building  
22 capacity of community interpreters, the money will  
23 always be there.

24 California has experienced a similar  
25 problem. So maybe there needs to be more

1 investigation, if that leadership could be provided.  
2 You know, we'll be holding our breath if the state  
3 does it themselves.

4 MR. HOSHIJO: I guess in terms of what you  
5 can do as we struggle towards consensus --

6 MS. YOUNG: The mike.

7 MR. HOSHIJO: In terms of what you can do as  
8 you try to reach a consensus and move forward and have  
9 -- be most effective in your efforts, I think there  
10 are a couple parts to this.

11 One is that you need to decide what -- what  
12 you want to do. And you've heard in terms of barriers  
13 to providing effective language access that the will,  
14 the political will is a really big issue. And once --  
15 I think that's one thing that any recommendations from  
16 this committee, from the State Advisory Committee,  
17 could add to -- to that political will, help to build  
18 it.

19 The other thing is, the thing that flows from  
20 that is resources, because it's not a cheap  
21 proposition. I mean, it's something that it's an  
22 obligation. It's the right thing to do. And then  
23 once the state makes that commitment, it will cost  
24 money. And so you kind of put the whole thing  
25 together. And if you lend your voice with the -- with

1 community input and make recommendations, I think that  
2 adds to the momentum.

3 And, you know, in terms of the importance of  
4 consensus, I think you can probably draw an analogy to  
5 a court decision; that if it's a five-four decision,  
6 it carries less weight than a unanimous or a big  
7 majority.

8 MS. YOUNG: Thank you.

9 CHAIRPERSON LILY: Mr. Alm?

10 MR. ALM: Pass.

11 CHAIRPERSON LILY: Ms. Barbee-Wooten?

12 MS. BARBEE-WOOTEN: I do have a question.  
13 I'd like to thank all of the panelists. It's very  
14 educational and informative.

15 My question has to do with the criminal  
16 justice system in Hawaii. I know other states have  
17 done studies on sentencing disparities based upon  
18 race, sex, national origin and economics.

19 Do any of the panelists know of any similar  
20 studies that have been done in Hawaii which studied  
21 the various comparative sentences; for example, a  
22 sentence given to an African American versus sentence  
23 given to a Hawaiian man, versus sentence given to a  
24 Filipino man, who speaks English, versus given a  
25 Filipino man who speaks Ilocano?

1           Have there been any of these studies? And if  
2 they have, would you direct me to these studies,  
3 direct the panel to these studies?

4           MR. HOSHIJO: Short answer is no, except the  
5 one that I was told about, which is this Sandra Oh  
6 study on Asian and Pacific Islander Reentry: Profile  
7 and Characteristics, Issues and Programs. By Karen  
8 Umemoto. But it's -- I don't know of a comprehensive  
9 study for what you're asking.

10           MS. BARBEE-WOOTEN: What year was that report  
11 made?

12           MR. HOSHIJO: Let me see. You know, the text  
13 I have doesn't have the year of the study. But I -- I  
14 can give you the authors and the title.

15           MS. BARBEE-WOOTEN: Thank you.

16           CHAIRPERSON LILY: Mr. Char?

17           MR. CHAR: No questions.

18           CHAIRPERSON LILY: Okay. Ms. Johnson?

19           MS. JOHNSON: Later.

20           CHAIRPERSON LILY: Mr. MacDonald?

21           MS. JOHNSON: I pass.

22           MR. MacDONALD: Yeah, I agree. I have  
23 several questions, but we ought to talk with some of  
24 these people again in the future.

25           CHAIRPERSON LILY: Do you have any questions,

1 Mr. Sullivan?

2 MR. SULLIVAN: Not at this time.

3 CHAIRPERSON LILY: Okay. So we will adjourn  
4 until two o'clock. Thank you very much.

5 (Lunch break was taken.)

6 A F T E R N O O N S E S S I O N

7 CHAIRPERSON LILY: Can I have your attention,  
8 please?

9 I'd like to bring the session to order. And  
10 I want to welcome everyone to this briefing of the  
11 Hawaii Advisory Committee to the U.S. Commission on  
12 Civil Rights. The meeting will come to order. And  
13 before we get into further business, I have a  
14 statement I need to read.

15 I think there's a motion. Linda Colburn has  
16 a motion.

17 MS. COLBURN: Thank you, Mr. Chairman.

18 I have concern that we may have for a variety  
19 of reasons, we may have limited opportunities to  
20 interact with resource persons. And it occurred to me  
21 that it takes a lot of concentration to continually  
22 track what's going on. So I'd like to make a motion  
23 that we select a vice chair, who might provide relief  
24 to the chair and assist in the leadership  
25 responsibilities so that we can continue dialogue with

1 resource persons perhaps longer.

2 CHAIRPERSON LILY: And does your motion have  
3 a person in mind?

4 MS. COLBURN: No. I'm just going for the  
5 concept of getting a vice chair.

6 MS. BARBEE-WOOTEN: I second the motion.

7 CHAIRPERSON LILY: Well, you're going to  
8 break it up into two motions then.

9 MS. YOUNG: You're going to amend your  
10 motion?

11 MS. COLBURN: I didn't presume to have the  
12 full committee's support, and so I first wanted to go  
13 for the first motion.

14 CHAIRPERSON LILY: All right. There's a  
15 motion, move to second that we have a vice chair. Is  
16 there any discussion?

17 All in favor?

18 (Chorus of ayes.)

19 CHAIRPERSON LILY: All opposed?

20 (No response.)

21 CHAIRPERSON LILY: Okay, the motion carries.  
22 Now, would you like to propose somebody?

23 MS. YOUNG: I would.

24 CHAIRPERSON LILY: Jackie Young would like to  
25 propose somebody by motion.

1 MS. YOUNG: As a returning member, I'd like  
2 to nominate Nalani Fujimori, who is also a returning  
3 member.

4 CHAIRPERSON LILY: Is there a second?

5 MS. BARBEE-WOOTEN: I second it.

6 MR. SULLIVAN: I do.

7 CHAIRPERSON LILY: Okay. We have a motion  
8 that Nalani Fujimori become vice chair, and it's been  
9 seconded. And is there any discussion?

10 Okay. All in favor?

11 (Chorus of ayes.)

12 CHAIRPERSON LILY: All opposed?

13 (No response.)

14 CHAIRPERSON LILY: Congratulations, Nalani.

15 By the way, I have a pressing engagement --  
16 all right

17 INTRODUCTION

18 CHAIRPERSON LILY: For the benefit of those  
19 in the audience who were not here earlier, we have --  
20 the people are filtering in. My name is Michael  
21 Lily. I'm the chairperson of the Hawaii Advisory  
22 Committee. And I'd like to have all of the members  
23 present identify themselves, and I'll start with Paul  
24 Sullivan on my left.

25 MR. SULLIVAN: My name is Paul Sullivan.

1 MR. MacDONALD: Tom MacDonald.

2 MS. JOHNSON: Ruby Johnson.

3 MR. CHAR: Vernon Char.

4 MS. BARBEE-WOOTEN: Daphne Barbee-Wooten.

5 MS. YOUNG: Jackie Young.

6 CHAIRPERSON LILY: And we have Commissioner  
7 Michael Yaki of the U.S. Commission on Civil Rights,  
8 and I'll introduce him in a minute.

9 MS. FUJIMORI: Michelle Nalani Fujimori.

10 MS. AGBAYANI: Amy Agbayani.

11 MS. SEE ANG: Kheng See Ang.

12 MS. BENCK: Jennifer Benck.

13 MR. TANNA: Wayne Tanna.

14 MR. BURGESS: Bill Burgess.

15 MR. KUROIWA: Jim Kuroiwa.

16 MS. COLBURN: Linda Colburn.

17 CHAIRPERSON LILY: And Robbie Alm is in the  
18 back there. We are really pleased to have present one  
19 of the commissioners of the U.S. Commission on Civil  
20 Rights, Michael Yaki, who is here on my right to  
21 observe today's proceedings.

22 Also here to support our efforts is the ever  
23 energetic Barbara Delaviez. You probably all met  
24 her. She's probably in the back working, Civil Rights  
25 Analyst from the commission's Eastern Regional Office,

1 and Evelyn Bohor of the Rocky Mountain Regional  
2 Office. She's outside, too, I believe.

3 This is our second briefing to examine the  
4 legal and policy implications of the proposed Native  
5 Hawaiian Government Reorganization Act of 2007, known  
6 as the Akaka Bill.

7 Last month our committee held a briefing on  
8 the subject in which we heard excellent testimony in  
9 favor of the Akaka Bill from Mark Bennett, the  
10 Attorney General of Hawaii, and an opposition from  
11 Roger Clegg of the Center for Equal Opportunity.

12 The briefing was held at the state capitol  
13 and was followed by an open session, when we received  
14 several hours of public comments. And the event was  
15 standing room only, indicating a significant community  
16 interest in the topic, and certainly education is one  
17 of our charters.

18 On August 22 a subcommittee of this committee  
19 held an open session on Maui, where additional  
20 testimony from the public was received. As most  
21 residents of Hawaii are aware, there is significant  
22 controversy surrounding the proposed legislation. And  
23 in order to gather as much input as possible about  
24 this important topic, the members of this committee  
25 have decided to have additional public sessions next

1 week, from September 12th through 14. And I'm just  
2 going to let you know those dates and where.

3 September 12th, we have an open session at  
4 the state capitol from 1:00 to 5:00 p.m., in the  
5 capitol auditorium. On September 17, we go to Hilo  
6 and we have an open session from 12:30 to 4:30 at the  
7 State Office Building, in Conference Rooms A, B and  
8 C. State Office Building is located at 75 Aupuni  
9 Street in Hilo.

10 And we'll wrap up our open sessions on  
11 September 14 in Kauai at the Kauai Community College  
12 Performing Arts Center, which is located at 3, dash,  
13 1901 Kaumualii Highway in Lihue.

14 And I want to express my great appreciation  
15 to the -- for the financial and the staff assistance  
16 that the commission has provided us.

17 And the members of the public who wish to  
18 comment on this topic may sign up upon arrival at the  
19 open session. Just walk in and sign up. Or you could  
20 contact the U.S. Commission on Civil Rights, Western  
21 Regional Office, at (213) 894-3437, or get ahold of  
22 Barbara, who's here, or Evelyn -- I think she's  
23 outside. They can also give you the e-mail address.

24 And if you're going to make a -- if you want  
25 to submit written comments, please try to do so by the

1 9th.

2 At the outset, I want to remind everyone  
3 present of the ground rules. This is a public  
4 briefing open to the general public and the media, and  
5 the proceedings are being record by a public recorder,  
6 stenographer. I may take a break once in a while to  
7 relieve all of us, including the stenographer.

8 We have a full schedule, so I want to try and  
9 adhere to the time limits as much as possible; and so  
10 that not only can everyone provide their presentation,  
11 comments, but also the committee members will have an  
12 opportunity to ask questions.

13 Since we're opening, having a session in the  
14 capitol next week, this is not going to be a time for  
15 public comment. It's a time for the committee to  
16 receive the briefings that have been scheduled for the  
17 day.

18 My goal -- and it's one I believe that's  
19 shared by the committee -- is to ensure that we have  
20 as broad a public input as possible from Hawaii  
21 citizens on all the issues that come before this  
22 committee.

23 I want to emphasize, as I did last time, that  
24 this is not an adversarial proceeding. Individuals  
25 have been invited to come and share with the committee

1 information relevant to the topic. All issues that  
2 come before the committee are important; and we value  
3 the input of speakers and members of the public, as  
4 well as the committee members themselves.

5 People have strong views, pro and con, on the  
6 topic. I was gratified that at our last session the  
7 participants, not just the people speaking, but also  
8 the members of the public, maintained and professional  
9 decorum while views were presented, regardless of  
10 their views. And every member of the public certainly  
11 has a right to express those views.

12 I ask that all speakers solely address the  
13 merits of the Akaka Bill. There'll be no defamatory,  
14 scurrilous or personally derogatory material; and I  
15 will exercise prerogative if we go in that direction,  
16 which I doubt will happen.

17 I ask that everyone give due respect to each  
18 speaker and members of this committee and maintain the  
19 dignity of these proceedings as if you were in a court  
20 of law, or you were in Congress or before a government  
21 agency. Please do not express audible or visible  
22 reactions or outbursts of emotion during these  
23 proceedings. I may have to step in if such occurs.

24 In order to ensure that all aspects of the  
25 issues are represented, knowledgeable persons with a

1 wide variety of experience and viewpoints have been  
2 invited to share information with us here today.

3 Our participants today are Dr. Kekuni  
4 Blaisdell and, from OHA, Haunani Apolonia --  
5 Apolonia. You know, I promised you I was going to  
6 pronounce it correctly. And then I practiced and I  
7 blew it again -- Apolonia, Boyd Mossman, and Justice  
8 Robert Klein. And then the last speaker is Jere  
9 Krischel.

10 We also had Thurston Twigg-Smith scheduled to  
11 appear today; but he sent us an e-mail at the last  
12 minute informing us that he was stuck in the after-  
13 math of a huge forest fire in Sun Valley, and he can't  
14 return to Honolulu in time.

15 So without further ado, I'd like to --  
16 Haunani, would you and Boyd and Justice Klein please  
17 come up?

18 (The panel of presenters is present.)

19 AKAKA BILL BRIEFING

20 CHAIRPERSON LILY: Okay. We're going to hear  
21 from Dr. Blaisdell, and then everyone is going to give  
22 their presentations. And afterwards, we'll start with  
23 questions. And this time I'm going to start the  
24 questions from Paul Sullivan. And I'm going to ask  
25 that we have one question per committee member until

1 we get to the end. And then if you have another  
2 question, we'll keep going until we run out of time.  
3 Okay?

4 So without further ado, Dr. Blaisdell, we're  
5 honored to have your presence. Thank you.

6 DR. BLAISDELL: (Hawaiian spoken.)

7 I am Kekuni, Kekuni Blaisdell, a kanaka  
8 maoli, committed since 1984, for over 23 years, to  
9 ku'oko'a, restoration of our independent nation in our  
10 homeland of ka Pae'aina.

11 Thus, in an important sense I am not an  
12 American. I am kanaka maoli. That is our ancestral  
13 name for ourselves. It means human being; that is,  
14 coming from the aina, the land, of the aina, returning  
15 to the aina. Aina meaning that which feeds. We also  
16 honor aina as Papa, our earth mother, as we honor her  
17 complementary mate, Wakea, the atmosphere and cosmos  
18 beyond, our sky father.

19 However, I am compelled to be an American to  
20 survive in my island country. Once a neutral,  
21 peaceful island/ocean nation, officially recognized in  
22 the Family of Nations until invaded by the United  
23 States military in 1893.

24 The result of conspiracy by a treasonous  
25 local haole -- that is, white -- haole oligarchy,

1 mostly American settlers, who in a coupe d'etat  
2 orchestrated by Washington, D.C., overthrew our Queen  
3 Lili'uokalani, to whom the local haoles had pledged  
4 their allegiance.

5           These crimes were acknowledged and apologized  
6 for by the United States Congress and U.S. President  
7 William Clinton in 1993. They also asserted that  
8 these crimes were violations of treaties and  
9 international law.

10           Aka -- however -- America has yet to admit  
11 and undo its 1898 military occupation and forced,  
12 illegally purported annexation of our country; and its  
13 1959 fraudulent statehood process with secretive,  
14 deceptive misrepresentation to the United Nations  
15 resulted in removal of our country from the United  
16 Nations list of non-self-governing territories  
17 eligible for decolonization.

18           We have had to teach ourselves the foregoing  
19 history, during the past 20 or so years. This is  
20 because, especially since the American occupation of  
21 1898, we kanaka have been coercively assimilated,  
22 indoctrinated victims of the crime of cultural  
23 genocide, ethnocide.

24           No laila -- therefore -- our independence  
25 movement for each person begins with a strong and

1 clear self-identity as kanaka maoli; commitment to  
2 mental, emotional, cultural and historical  
3 decolonization; and concerted ku'e, resistance, to  
4 foreign domination, subjugation and exploitation, a  
5 basic human right under international law.

6 U.S. civil rights usually refer to protection  
7 under United States civil rights law, from  
8 discrimination, such as due to race, color, gender,  
9 religion, national origin, age or disability.

10 In 1983, United States Congress Native  
11 Hawaiians Study Commission Report documented the long,  
12 grave, political, social, economic and health plight  
13 of our kanaka maoli people compared to the other  
14 ethnicities in our homeland. Thus, evidence of  
15 persistent discrimination and violation of our civil  
16 rights as a distinct the people in our homeland.

17 However, correction of such civil rights  
18 violations of U.S. law will not grant us de facto  
19 sovereignty from the United States and U.S. de-  
20 occupation of our homeland.

21 Our case against the Akaka Bill follows: We  
22 view the bill as, first, the product of a top-down  
23 process, initiated by the U.S. government officials,  
24 in Wakinekona -- Washington -- who cannot represent us  
25 pro-independence nationalists of a separate and equal

1 people and nation. Thus, this bill for seven years is  
2 being rubber-stamped and pushed by insiders, without  
3 community hearings and people input, without public  
4 education and workshops on all of our peopled islands,  
5 in our homeland.

6 Secondly, a U.S. -- the Akaka Bill is the  
7 United States mechanism to create a puppet government  
8 under the United States Department of Interior. Thus,  
9 like American Indians, we become wards of a domestic,  
10 dependent nation, under the plenary power of the  
11 United States Congress. And permanently surrender all  
12 claims to our lands and waters and, thus, our sacred  
13 separate nationhood.

14 Three, the third reason for opposing the  
15 Akaka Bill, it is a deceptive and contradictory  
16 document that falsifies history and violates our  
17 inherent sovereignty and right to full self-  
18 determination. Such as by calling us, in quotations,  
19 "Native Hawaiians," end of quotation; misdefining us  
20 as, in quotations, "indigenous, native people of  
21 United States," which we are not.

22 It also predetermines -- "predetermines" in  
23 quotation -- and I quote, "special political and legal  
24 responsibility to the United States to promote the  
25 welfare of Native Hawaiians." Thus, assuring wardship

1 dependence.

2           Moreover, we do not, as the bill says, "give  
3 expression to our rights as a native people to self-  
4 determination and economic self-sufficiency, through  
5 the provisions of the United States and State of  
6 Hawaii government services to Native Hawaiians," end  
7 of quotation.

8           No laila, our recommendations to the United  
9 States civil rights commission are the following:

10           In 1893, our queen asked the United States to  
11 reinstate the Hawaiian state when the facts became  
12 known to the United States. President Grover  
13 Cleveland at that time acquired the facts, as  
14 presented in the Blount Report; but he did not prevail  
15 in his attempt to restore the authority of the  
16 Hawaiian state.

17           In modern times, this documentation was  
18 resumed in the November 1993 United States Congress  
19 Apology Resolution, Public Law 103, dash, 150.

20           More of the basic facts are currently being  
21 revealed to your civil rights commission. The added  
22 facts embody civil and human rights of our kanaka  
23 maoli, that have been violated.

24           What are these rights? First, our right of  
25 inherent sovereignty over our Hawaiian territory,

1 which the Apology Resolution acknowledges, and  
2 acknowledges that right was suppressed by the United  
3 States;

4 Two, our right to self-determination, which  
5 Public Law 103, dash, 150 acknowledges was deprived,  
6 taken from our people; No. 3, our right to restitution  
7 of our nation under international law.

8 Now, aware of the facts, including our  
9 rights, we call upon the United States government,  
10 whose representatives sit before us here, for your  
11 kako'o, support, as officials of your government to:

12 No. 1, reinstate the authority of our  
13 Hawaiian government and end the U.S. illegal  
14 occupation of our Hawaiian territory; 2, support, with  
15 international community oversight, restitution of the  
16 government of our sovereign Hawaiian state; and, No.  
17 3, oppose passage of the Akaka Bill.

18 Mahalo. Mahalo hou no keia manawa ku pono.

19 (Hawaiian spoken.)

20 E ola, e ola, e ola na kini e.

21 Mahalo to you all for this opportunity, to  
22 testify.

23 CHAIRPERSON LILY: Mahalo very much,  
24 Dr. Blaisdell. And we'll be -- we have some questions  
25 after everyone has spoken. So Chair --

1 COMMISSIONER YAKI: Second try at her last --

2 CHAIRPERSON LILY: I'm going to try, Haunani  
3 Apoliona.

4 MR. KLEIN: Apoliona.

5 CHAIRPERSON LILY: Apoliona. And I got it.  
6 So aloha. Welcome.

7 MS. APOLIONA: I give you a thumbs-up that  
8 time.

9 "Ke aloha (pumehana e) na oiwi olino, e na  
10 kupuna, e na makua a me na opio mai Hawai'i a Ni'ihau  
11 a puni ke ao malamalama a me ko kakou makamaka i  
12 ho'akoakoa mai nei (e) keia halawai e pili ana ka  
13 ho'ola ana a me ke ho'ala ana o ko kakou oiwi  
14 Hawai'i. Aloha e na kama'aina a me na malihini kekahi  
15 me ka na'au ha'aha'a a me ka mana'o pono. Aloha no  
16 kakou." Aloha.

17 My name is Haunani Apoliona, Trustee and  
18 Chairperson of the Board of Trustees of the Office of  
19 Hawaiian Affairs. And joining me this afternoon in  
20 presenting our joint testimony are the Office of  
21 Hawaiian Affairs Maui Trustee and retired State of  
22 Hawaii Circuit Court Judge Boyd P. Mossman and Robert  
23 G. Klein, retired Associate Justice of the Hawaii  
24 State Supreme Court and, since 2003, counsel to the  
25 OHA Board of Trustees.

1 OHA, established in 1978 by amendment to the  
2 Constitution of the State Hawaii, is a quasi-  
3 independent agency governed by nine trustees elected  
4 by all voters in Hawaii. We at OHA work to better the  
5 conditions of Hawaiians; and our duties as trustees  
6 are delineated in the Hawaii Revised Statutes.

7 The OHA Board of Trustees supports and  
8 advocates passage of the Native Hawaiian Government  
9 Reorganization Act of 2007, also referred to as the  
10 Akaka Bill. The Native Hawaiian Government  
11 Reorganization Act, when enacted, will reaffirm that  
12 Native Hawaiians are unique and distinct indigenous  
13 people with whom the United States has a special  
14 political and legal relationship; that the United  
15 States has a special political/legal relationship with  
16 Native Hawaiian people, which includes promoting the  
17 welfare of Native Hawaiians; and also reaffirm that  
18 Native Hawaiians have an inherent right to autonomy in  
19 their internal affairs, an inherent right of self-  
20 determination and self-governance and the right to  
21 reorganize a Native Hawaiian governing entity, and the  
22 right to become economically self-sufficient.

23 Enactment of NHGRA of 2007 will establish a  
24 process for a U.S. federal recognition of our  
25 reorganized Native Hawaiian representative governing

1 entity consistent with the laws governing the United  
2 States and the State of Hawaii.

3 During the August 20, 2007 hearing on the  
4 bill at the state capitol, I heard Mr. Roger Clegg  
5 base his opposition on two premises: 1, the bill as  
6 unconstitutional and, 2, the bill as bad policy.

7 Mr. Clegg candidly admitted that this was his  
8 first trip to Hawaii and that he knew nothing of our  
9 history, yet he proceeded to speak as the final  
10 authority on our Native Hawaiian self-determination  
11 legislation. His policy argued and predicted that the  
12 bill would disintegrate or bulkanize Hawaii into  
13 racial enclaves.

14 It is ironic that following Mr. Clegg's  
15 speech the president of the Alaska Federation of  
16 Natives, Ms. Julie Kitka, spoke to advise the HSAC  
17 that similar predictions of doom plagued the federal  
18 recognition debate relating back to Alaska Natives  
19 back in 1970 -- in the 1970s.

20 She noted Congress did enact federal  
21 recognition for Alaska Natives. And now, 30-plus  
22 years after passage, none of those dire predictions  
23 fanned by the scare tactics of opponents ever  
24 manifested into the reality.

25 Passage of the Native Hawaiian Government

1 Reorganization Act will finally give official and long  
2 overdue recognition to Native Hawaiians, many of who  
3 will still suffer from the adverse social, economic,  
4 environmental, spiritual, cultural impacts of the  
5 United States' overthrow of our world-recognized  
6 sovereign Hawaiian government more than a century ago.

7 To mute and buffer early attempts to  
8 eliminate Hawaiians, similar to efforts to erase  
9 native peoples from the continental U.S., Native  
10 Hawaiians quietly reconciled living in two worlds:  
11 The first world, the Hawaiian, the Hawaiian world  
12 rooted deeply in our culture and traditions, in  
13 balance with all of nature, all of humankind and our  
14 higher power; the second world, the western,  
15 self-imposed for economic survival. Do not confuse  
16 functioning or even functioning well in the western  
17 world as absorption or extermination of the Hawaiian.

18 Failing to support the bill because you  
19 harbor the belief that Hawaiians are make, or dead, is  
20 subscribing to cultural genocide and is morally  
21 repugnant. As Native Hawaiians, we have lived with  
22 institutional barriers and negative repercussions to  
23 Hawaiian expression and practice, blatant in the past  
24 and more subtle in the present.

25 Yet our dual existence does not sit well with

1 Mr. Clegg and those he represents, who deceive  
2 themselves and would deceive you into the belief that  
3 Hawaiians have been completely assimilated,  
4 marginalized or rendered legally extinct.

5 The Akaka Bill, on the other hand, is  
6 worthwhile in its undeniable recognition that  
7 Hawaiians continue to exist as the aboriginal, native,  
8 indigenous people of this land.

9 Any HSAC panel members and others who share  
10 Mr. Clegg's misconceptions about Hawaiians will be  
11 enlightened by reviewing the paper, quote, Income  
12 Distribution And Poverty Alleviation for Native  
13 Hawaiian Community, of May 2007, by Dr. Seiji Naya,  
14 Distinguished Visiting Senior Fellow, East-West  
15 Center, and Emeritus Professor with the University of  
16 Hawaii and former Director of the State of Hawaii  
17 Department of Business Economic Development and  
18 Tourism, and also reviewing the Native Hawaiian Data  
19 Book, 2006 Edition, copies of which we have provided  
20 for you.

21 If you simply look around you, you will  
22 notice a distinct Hawaiian community with its own  
23 values, priorities, institutions, leadership, and  
24 desire to fully express self-determination.

25 The Hawaiian community is not defined by

1 particular small land boundaries. All of Hawaii is  
2 our homeland.

3           Hawaiians at home and on the continent talk  
4 about it all the time: Hawaii, the source of our  
5 culture, our values, our language, our spirit, our  
6 mo'oku'auhau, ancestral connections, genealogy, all  
7 unify our distinct Hawaiian community, past, present,  
8 and future.

9           The Native Hawaiian Government Reorganization  
10 Act is unyielding in its undeniable recognition that  
11 in reality Hawaiians remain as a distinct community in  
12 this land, firmly rooted as the aboriginal, native,  
13 indigenous people of Hawaii.

14           The bill, the Akaka Bill, represents  
15 reconciliation for wrongs done that Congress and the  
16 President acknowledged in the 1993 Apology Bill,  
17 Public Law 103-150.

18           Why would Congress and the President  
19 apologize if no wrongs were committed? If wrongs were  
20 committed against the Hawaiian people, it stands to  
21 reason that Hawaiians exist today as a people.

22           Otherwise, to whom would Congress be apologizing?

23           What are the wrongs done by which -- for  
24 which Congress apologized? The wrong of the grossly  
25 undemocratic, some say unconstitutional, overthrow of

1 our sovereign government by the show of military  
2 force; the wrong of appropriating, ceding, some say  
3 stealing, our native lands; and the wrong of depriving  
4 Hawaiians and indigenous sovereign people of their  
5 rights to self-determination.

6 Senator Ted Stevens of Alaska, Republican and  
7 cosponsor of the Akaka Bill, along with Senator Lisa  
8 Murkowski of Alaska, made the following June 2006  
9 remarks in a senate debate. Senator Stevens notes,  
10 and I quote, "The United States government has a  
11 responsibility to Native Hawaiians, as it does to all  
12 indigenous people under the Constitution. The  
13 Constitution vests Congress with the authority to  
14 promote the welfare of all Native American people and  
15 to help foster their success. Our federal policy of  
16 self-determination and self-governance has not been  
17 formally extended to Native Hawaiians. This omission  
18 unfairly singles them out for disparate treatment from  
19 our federal government. It deprives them of the  
20 processes by which other native groups may negotiate  
21 and resolve issues with the federal and state  
22 governments. In my judgment, it is time to right this  
23 wrong. The time has come to fulfill the commitment to  
24 these indigenous people and to address the needs of  
25 Native Hawaiians. We can no longer deny our nation's

1 responsibility to promote their welfare, in as much as  
2 we have promoted the welfare of Indian people and  
3 Alaska native people. The Native Hawaiian Government  
4 Reorganization Act is a step towards meeting our  
5 federal government's commitment to Native Hawaiians,"  
6 unquote.

7 It will be healing for our communities and  
8 our nation to unburden itself of their past  
9 destructive inequities towards the Hawaiian people by  
10 granting Hawaiians a small measure of redress and  
11 political reconciliation under the Akaka Bill, a good  
12 first step for which a longer journey of  
13 reconciliation must start.

14 If one wants to concoct doom and gloom  
15 scenarios, visualize the social disruption that  
16 undoubtedly follow if Mr. Burgess and his comrades in  
17 litigation should one day succeed in having the  
18 federal courts overturn the Hawaiian homelands and  
19 ceded lands trust and eliminate federal resources and  
20 programs now alleviating social needs in the Hawaiian  
21 community.

22 It means a loss of approximately \$70 million  
23 in federal dollars dedicated to assisting Hawaiians  
24 eliminate disparities in health, housing, education,  
25 business and economic development. Factor in the

1 impact of no Hawaiian Home Lands, no Office of  
2 Hawaiian Affairs, and zero out the Native Hawaiian  
3 trust assets they oversee and grow.

4 Hawaii as a whole will experience clear,  
5 irreparable damage to a fragile existing social and  
6 economic safety net, a net that state taxpayers will  
7 have to patch and fix. The question is: Are you  
8 willing to lay the groundwork for the advent of that  
9 day?

10 Our community in Hawaii, represented by  
11 virtually every elected official at every level of  
12 government, clearly favors passage of the bill.  
13 Republican Governor Lingle, Attorney General Mark  
14 Bennett completely understand the ramifications for  
15 Hawaii and Native Hawaiians if the bill fails. They  
16 have tirelessly worked for its passage, as has the  
17 Office of Hawaiian Affairs Board of Trustees and our  
18 Hawaiian Congressional Delegation, Senators Akaka and  
19 Inouye and Representatives Abercrombie and Hirono.

20 The Hawaii state legislature, senate and  
21 house members, our county councils support passage of  
22 the Akaka Bill. Aren't these elected leaders the ones  
23 who know and understand what policies are best for our  
24 people in Hawaii? Or will that distinction be given  
25 to Mr. Clegg, a non-Hawaii resident, not elected to

1 represent the citizens of Hawaii?

2 Exhaustive analytical reports over time have  
3 addressed the very same issues that this HSAC feels  
4 compelled to only superficially review. Recent  
5 authoritative poll numbers continue to show that local  
6 residents by and large support the bill. With the,  
7 quote, "rumored," unquote, HSAC report, will this  
8 rumored HSAC report reflect this majority or reject  
9 their voice?

10 Ward Research, in a poll commissioned by OHA,  
11 contacted Hawaii residents between August 15th and  
12 27th this year by phone. Ward Research is a highly  
13 reputable professional polling company that has also  
14 polled for media outlets such as the Honolulu  
15 Advertiser. The sample size of 380 obtained through  
16 the scientific methodology used by Ward Research is a  
17 cross-section representative of the Hawaiian -- Hawaii  
18 population with a plus or minus 5 percent error rate.

19 The preliminary analysis indicates the  
20 following: The scientific poll finds that 7 out of 10  
21 Hawaii residents support federal recognition. The  
22 scientific poll indicates an overwhelming majority of  
23 resident in Hawaii do not agree with conservative  
24 critics who say Native Hawaiians are a race not an  
25 indigenous people.

1           A clear majority also believes Hawaiians have  
2 a right to make decisions about their land, education  
3 and health, cultural and traditional practices. The  
4 scientific poll found overwhelming support for  
5 federally funded programs for Hawaiians.

6           A clear majority agree that organizations  
7 like Kamehameha Schools, the Department of Hawaiian  
8 Home Lands and OHA should be protected from the  
9 litigation through federal recognition of Hawaiians as  
10 an indigenous group.

11           This recent Hawaii poll, along with other  
12 scientific polls in the past, proves that the majority  
13 of Hawaii residents have long supported the Akaka  
14 Bill. The bottom line is that support for federal  
15 recognition and programs that serve Hawaiians has  
16 remained consistent in Hawaii. Even in the wake of  
17 the blizzard of misinformation and unreliable push  
18 polls designed to manipulate public opinion rather  
19 than measure it.

20           Mr. Burgess, in his October -- August 27 hot  
21 seat appearance, states that's these push polls were  
22 conducted by the Grassroot Institute, the group in  
23 which several members of this HSAC hold membership.

24           These HSAC members, actively assisting  
25 anti-Hawaiian groups, continue to repeat false and

1 divisive phrases, such as race-based discrimination,  
2 to oppose federal recognition and its enactment.

3 But as you can see from this scientific poll,  
4 the clear majority of Hawaii's residents aren't buying  
5 their propaganda.

6 For entry into the record -- and I ask our  
7 staff to bring it forth -- we'd like to share with  
8 you, Chair Lily, copies of 2,000 letters of support  
9 for Hawaiian recognition that we have gathered over  
10 the past few years.

11 And also for entry into the record of this  
12 session, we present, also want to share with you the  
13 document representing 2,000 brave people, Hawaiian and  
14 non-Hawaiian, who added their names in a public list  
15 in support of Hawaiian recognition published in the  
16 Honolulu Advertiser in 2005.

17 We have seen only a handful of letters from  
18 detractors. Such an insignificant minority should not  
19 appear to have an equal voice on the issue.

20 Akaka is not based on race. It's based on  
21 the fact that Native Hawaiians, like the American  
22 Indians and Alaska Natives, are the aboriginal and  
23 indigenous people whose ancestors settled and  
24 exercised sovereignty in these lands predating the  
25 founding of the colonies and the United States.

1           Authors of the U.S. Constitution acknowledged  
2 the existence of sovereign indigenous nations of these  
3 lands and provided Congress authority to legislate for  
4 these native nations and indigenous people in  
5 Constitutional language.

6           The Native Hawaiian Government Reorganization  
7 Act is about fairness. Enactment of this federal  
8 policy codifies the United States recognition of this  
9 special legal and political relationship with Native  
10 Hawaiians, as it has done previously with American  
11 Indians and Alaska Natives.

12           It is time for the U.S. policy toward the  
13 indigenous, native, aboriginal people of Hawaii to  
14 reflect parity. We ask HSAC to reflect the will of  
15 Hawaii and continue its support for the Native  
16 Hawaiian Government Reorganization Act of 2007.  
17 Mahalo.

18           CHAIRPERSON LILY: Thank you very much, Chair  
19 Apoliona. And Justice Robert Klein?

20           MR. KLEIN: Good afternoon, Mr. Chairman, and  
21 now we have Madam Vice Chair of the commission.

22           I'm going to leave out my impressive Hawaiian  
23 language introduction, go straight to the English.

24           Momentum for the passage of the Akaka Bill  
25 has been mounting since November 1993 with the

1 enactment of Public Law 103-150, the federal Apology  
2 Bill, followed by the October 2000 completion of the  
3 Mauka to Makai report, Let the River of Justice Flow  
4 Freely of the Department of Justice and the Department  
5 of Interior, favoring the U.S. reconciliation with  
6 Native Hawaiians, in part by the passage of the  
7 federal recognition act for Hawaiians.

8 This body held community forums in August  
9 1998 September 2000, in which speakers addressed the  
10 federal Apology Bill and the U.S. Supreme Court's Rice  
11 versus Cayetano decision, respectively. Information  
12 presented at these forums was summarized in this  
13 committee's 2001 report, Reconciliation at a Cross-  
14 roads.

15 Why should the findings that led to HSAC's  
16 2001 position relating to the present Akaka Bill be  
17 second-guessed today? Given the current litigious  
18 environment, there's even more reason to reaffirm  
19 these findings and recommendations, including support  
20 for the Akaka Bill. Hawaiian programs require  
21 protection from political and legal attack, even from  
22 a member of this commission, who actively litigates  
23 against such programs and whose clients would benefit  
24 if the Akaka Bill fails.

25 The driving force behind passage of Senate

1 Bill 310, the Akaka Bill, is not discrimination based  
2 on ancestry, as some have described it. That attack  
3 point ignores the fact that Congress has recognized  
4 and established special relationship with the Hawaiian  
5 people through numerous pieces of legislation,  
6 including the Admissions Act, and because of that  
7 special relationship, it can exercise the power vested  
8 in Congress to grant Hawaiians political recognition.

9 United States Supreme Court Chief Justice  
10 John Roberts, in his legal briefs to the United States  
11 Supreme Court, the Rice versus Cayetano, argued that  
12 Congress has recognized a, quote, "special  
13 relationship" with Hawaiians and, quote, "in  
14 recognition of that special relationship" has extended  
15 the Native Hawaiians the same rights and privileges  
16 accorded to American Indian, Alaska Native, Eskimo and  
17 Aleut communities. As such, Congress has established  
18 with Hawaiians the same type of, quote, "unique legal  
19 relationship," unquote, that exists with respect to  
20 the Indian tribes who enjoy the same rights and  
21 privileges accorded Hawaiians under these laws.

22 Quote, "That unique legal or political  
23 status, not recognition of tribal status, under the  
24 latest executive transmutation of what that means, is  
25 a touchstone for application of Morton versus Mancari,

1 when, as here, Congress is constitutionally empowered  
2 to treat an indigenous group as such."

3 In Mancari; the Supreme Court laid down the  
4 following rule with respect to the Congress's special  
5 treatment of Indians. Quote, "As long as the special  
6 treatment can be tied rationally to the fulfillment of  
7 Congress's unique obligation towards the Indians, such  
8 legislative judgments will not be disturbed."

9 Clearly, the Akaka Bill can be rationally  
10 tied to Congress's discharge of its duties with  
11 respect to the native people of Hawaii.

12 Will the Akaka Bill pass constitutional  
13 muster? This is a legal determination that only a  
14 court can make and should be irrelevant to this  
15 discussion. It is not your call. However, there is a  
16 strong argument subscribed to by legal scholars such  
17 as Professor Viet Dinh, formerly a member of the Bush  
18 Justice Department, state Attorney General Mark  
19 Bennett, among many others, that Congress is  
20 constitutionally empowered to deal with Hawaiians.

21 The Constitution gives plenary power to  
22 Congress to regulate commerce among the Indian  
23 tribes. Neither the word "Indian" nor the word  
24 "tribe" can be crimped to exclude Hawaiians. The  
25 term "Indian," at the time of the framing of the

1 Constitution, simply referred to the aboriginal  
2 inhabitants of our frontiers. And the term "tribe" at  
3 that time simply meant a distinct body of people as  
4 divided by family or fortune or any other  
5 characteristic. Native Hawaiians easily fit within  
6 both definitions.

7 Commerce has been defined broadly by  
8 Congress, and numerous Supreme Court opinions except  
9 its breadth. Certainly congressional power over  
10 Indian commerce includes the power to grant federal  
11 recognition to the native people of Hawaii. Some have  
12 argued that Congress has never created a tribe and  
13 then extended political recognition to it. However,  
14 that issue is in inapt to the situation in Hawaii.

15 Hawaiians are the only native, indigenous  
16 people of this archipelago, and they easily fit within  
17 the definition of Indian tribe. There can be little  
18 doubt that had the founding fathers encountered  
19 Hawaiians as their next-door neighbors, they would  
20 have quickly established the political relationship  
21 with them and called them the Hawaiian tribe or  
22 tribes. The Supreme Court, in its Lara decision  
23 observed that, quote, Congress has restored previously  
24 extinguished tribal status by re-recognizing a tribe  
25 whose tribal existence it previously had terminated,"

1 citing to the Menominee Restoration Act in 25 U.S.C.  
2 Section 903.

3 And the court cited the -- cited in that  
4 case, the Lara case, the 1898 annexation of Hawaii as  
5 an example of Congress's power to modify the degree of  
6 autonomy enjoyed by a dependent sovereign that is not  
7 a state. Thus, when it comes to the sovereignty of  
8 Indian tribes or other domestic dependant nations, the  
9 Constitution does not prohibit Congress from changing  
10 the relevant legal circumstances, i.e., from taking  
11 actions that modify or adjust the tribes' status, and  
12 is not for the federal judiciary to second-guess the  
13 political branch's own determinations in that regard,  
14 citing again the Lara case.

15 In United States versus John, in 1978 US  
16 Supreme Court case, further support for a  
17 congressional authority to recognize reconstituted  
18 tribal governments was laid out. There, Congress'  
19 power to legislate with respect to the Choctaw Indians  
20 of Mississippi was challenged on the grounds that  
21 since 1830, the Choctaw residing in Mississippi become  
22 fully assimilated into the political and social life  
23 of the state and that the federal government long ago  
24 abandoned its supervisory authority over these  
25 Indians. It was thus urged in that case to, quote,

1 "recognize the Choctaws in Mississippi as Indians  
2 over whom special federal power may be exercised would  
3 be anomalous and arbitrary."

4 The court unanimously rejected the argument,  
5 quote, "We do not agree that Congress and the  
6 Executive Branch have less power to deal with the  
7 affairs of the Mississippi Choctaw than with the  
8 affairs of any other Indian group." The, quote, "fact  
9 that federal supervision over them has not been  
10 continuous, according to the court, does not destroy  
11 the federal power to deal with them."

12 Congress exercises established authority to  
13 restore the government, the government relationship  
14 with the Menominee Indian tribe of Wisconsin; it can  
15 do the same here. Indeed, the Akaka Bill process  
16 closely resembles that prescribed by Menominee  
17 Restoration Act.

18 Thus there is no constitutional impediment to  
19 congressional federal recognition of Hawaiian people,  
20 given Hawaii's history, including historical  
21 relationship to the United States. Again, citing  
22 Mr. Roberts' brief, quote, "The Constitution in short  
23 gives Congress room to deal with the particular  
24 problems imposed by the indigenous people of Hawaii.  
25 And at least when legislation is in furtherance of the

1 obligation, Congress has assumed to those people, that  
2 legislation is no more racial in nature than  
3 legislation" -- "legislation attempting to honor the  
4 federal trust responsibility to any other indigenous  
5 people. In sum, it is not racial at all."

6 Because the Akaka Bill does not  
7 discrimination based on ancestry, but only furthers  
8 the political relationship Congress has already  
9 fostered with Hawaiians, through numerous pieces of  
10 federal legislation, this body should recommend  
11 support for the measure to the United States civil  
12 rights commission. And I would urge you to do so.  
13 Thank you very much.

14 CHAIRPERSON LILY: Thank you, Justice Klein.

15 Judge Mossman? (Off the record.)

16 Judge Mossman?

17 MR. MOSSMAN: All right. Thank you,  
18 Mr. Chair, members of the committee. Before I get  
19 started, I just wanted to say that when I left Maui  
20 this morning I had on aloha shirt. I came over here;  
21 I thought, well, you know, I'm going to be the only  
22 one not wearing an -- a shirt. So I put my coat and  
23 tie on, and I guess I was wrong in that respect.

24 But I also do know that I am right with OHA,  
25 sitting here in the middle, and I thank you for

1 allowing the three of us to present testimony. We're  
2 always contending with those on our right here, who  
3 are against the Akaka Bill because it's race based,  
4 and those on our left there, who are against the Akaka  
5 Bill because it doesn't go far enough for them.

6 DR. BLAISDELL: Right.

7 MR. MOSSMAN: So I hope that you will accept  
8 our testimony as coming from OHA as the middle ground,  
9 and knowing that we have to contend with both sides on  
10 a regular basis. And with that, may I thank you for  
11 your patience in allowing me to present my thoughts  
12 regarding this bill.

13 Although I may be an elected trustee of the  
14 Office of Hawaiian Affairs, I speak as a Hawaiian who  
15 is concerned about the future of the Hawaiian people.  
16 Our continued existence is at risk. Most of the  
17 voters of Hawaii recognize this and have supported  
18 federal recognition vicariously through their votes  
19 for OHA trustees, through their votes for all other  
20 elected officials in Hawaii, who support nearly  
21 unanimously federal recognition, and by the continued  
22 existence of OHA and state and federal laws, which  
23 support the recognition of Hawaiians as a people.

24 As a Hawaiian whose ancestors also came from  
25 England, Germany, Scotland and Portugal, while Hawaii

1 was a nation ruled by Hawaiians, I pay allegiance to  
2 the United States, but I also acknowledge my  
3 Hawaiian. Hawaiians share the same history, culture,  
4 spirit, traditions, language and heritage of self-  
5 governance within their homeland for almost 2,000  
6 years.

7           Hawaiians for recognition are not seeking  
8 independence, neither do they want dependence. They  
9 seek self-determination and interdependence, wherein  
10 they can partner with all others in Hawaii to work  
11 together for solutions to problems that affect all yet  
12 are found predominantly in the Hawaiian population,  
13 i.e., crimes and prisons, welfare and homelessness,  
14 unemployment and poverty, chronic disease and illicit  
15 drugs, illiteracy and ignorance.

16           Hawaiians have lived and died here for  
17 centuries. Their bones are in the soil. Their blood  
18 and sweat nourished the land. Their spirit pervades  
19 despite the immigration of so many foreign groups who  
20 overwhelmed the Hawaiians with disease, with despair  
21 and with defeat.

22           It is to secure for our people their heritage  
23 and culture, as well as to return a degree of  
24 sovereignty, that we seek federal recognition, not  
25 racial segregation. We're not separatists. We're not

1 asking for more government funding. We are not asking  
2 for a return of all ceded lands. We are not seeking  
3 to violate the laws of the United States or State of  
4 Hawaii. We do, however, seek reconciliation, in  
5 accordance with the federal guidance via the Apology  
6 Bill and Department of Interior. And we also seek  
7 justice and fairness from the United States.

8 In 1893, the United States, through its  
9 agent, John Stevens, collaborated and conspired with a  
10 tiny group of missionary descendants and businessmen  
11 to overthrow the lawful government of Hawaii.  
12 Hawaiians had no vote in the overthrow or annexation  
13 and, in fact, nearly unanimously opposed both.

14 There is no other indigenous group from  
15 Hawaii. Hawaiians came from Hawaii. Japanese from  
16 Japan, Chinese from China. English from England.  
17 Hawaiians are of this land. This is the home of our  
18 ancestors, regardless of the amount of Hawaiian in our  
19 blood.

20 We can all trace our roots to noble chiefs,  
21 hard working maka'ainana and even lowly kauwa. We are  
22 proud of our heritage, but also proud of our other  
23 non-indigenous ethnicities. It is our indigenous  
24 standing, however, that distinguishes us politically  
25 from every other ethnic group; and we are now having

1 to fight for that distinction in order to defeat the  
2 attempt at terminal assimilation being forced upon  
3 Hawaiians by use of the 14th Amendment's Equal  
4 Protection Clause, which would be tantamount to an  
5 ethnic cleansing and would remove from the law books  
6 any reference to Native Hawaiian and Native Hawaiian  
7 rights.

8           What the Grassroots organization, to which I  
9 presume many of you belong, seeks is a complete  
10 assimilation of Hawaiians into the rest of society.  
11 They talk of the threat of balkanization presented by  
12 the Akaka Bill in a community where immigrants have  
13 been warmly received by the Hawaiian people since  
14 Captain Cook and where Hawaiians have always been the  
15 essential fabric that has held Hawaii together. Their  
16 color-blind Hawaii would have Hawaiians become  
17 invisible and disintegrate the essence of Hawaii's  
18 indigenous people.

19           We Hawaiians are asking only for justice, not  
20 racial separation or discrimination. Racism has not  
21 happened in Hawaii, except for the overthrow itself by  
22 the haole revolutionaries and the oligarchy they  
23 forced upon the Hawaiian people. Our antagonists,  
24 including Mr. Conklin and Mr. Clegg, ridicule us by  
25 accusing us of having magic blood and the one-drop

1 rule.

2 We believe in equal rights for all. We don't  
3 need to distinguish ourselves by blood quantum because  
4 we are an indigenous people, and Congress has a  
5 plenary authority to recognize us. Rubellite Johnson  
6 is a Hawaiian who believes the Akaka Bill is race-  
7 based, and I respect her stand. What she doesn't  
8 recognize is her unique political standing as a  
9 descendant of the aboriginal, indigenous, native  
10 people of this land.

11 The Constitution allows Congress to decide on  
12 Indian matters, which we submit means indigenous  
13 matters. Captain Cook called us Indians, the same  
14 word used by white explorers to describe natives  
15 around the world. There were no others here. We are  
16 not Native Americans or Alaska Natives. We are  
17 Hawaiians. But the three of us make about the  
18 indigenous people of America, and there are no others.

19 Congress has a constitutional authority to  
20 pass this bill and has the power and it is plenary.

21 The issue of race is raised by those who  
22 believe that somehow extending the recognition given  
23 Indians and Alaskans to Hawaiians is discriminatory.  
24 Are not Indians and Alaskan groups given benefits  
25 available -- not available to others? Do their roots

1 not mirror ours? Is their political existence not  
2 dependent upon Congress? Did they not suffer  
3 historically from the wrongdoing of the United  
4 States? Did they not lose their homelands to the  
5 American government?

6           They never argued race. And indeed, the 560  
7 recognized tribes have different membership  
8 requirements, from no tribal blood to 100 percent.  
9 Neither do we argue race. It is a red herring that  
10 confuses and alienates, and this commission should  
11 find so and make no ruling on this matter or simply  
12 dismiss consideration of the Akaka Bill from your  
13 docket.

14           If you find S.310 to be race based, then will  
15 you find the law supporting 560 Indian tribes and all  
16 of the Alaskan groups likewise to be race based?

17           Under the laws of our nation and court  
18 rulings to date, the issue is not one of equal rights  
19 and racial discrimination as is the rallying cry of so  
20 many of you, but simply whether or not Hawaiians are  
21 indigenous; and, if so, should they be recognized as  
22 the Indians and Alaskans, thereby achieving not only  
23 justice but parity.

24           The need for Congress to protect and secure  
25 the well-being of the Hawaiian people has been

1 recognized over and over, from the Hawaiian Homes Act  
2 to the Akaka Bill, which received 56 votes in a  
3 cloture hearing in 2006. A minority of the senate,  
4 whose sympathies and political philosophies reflect  
5 those of the U.S. civil rights commission, have been  
6 able to bottle up the bill for seven years and not  
7 give it the benefit of an up or down vote on the  
8 senate floor. I have heard and seen enough of the  
9 race-based legislation hysteria, including from those  
10 on this panel and the main panel on the mainland.

11 This is not the issue. We are a people whose  
12 roots are of the aina. There are no others. We are  
13 a people whose ancestors fought, lived, died and  
14 sailed here for centuries; we have always had their  
15 mana and genealogy to comfort, guide and help us in  
16 our survival as a people.

17 We don't resent the non-Hawaiians who came to  
18 Hawaii, for they are some of our ancestors as well.  
19 We don't believe in racial discrimination. Look at  
20 us. Look at the kids in Kamehameha Schools. We are a  
21 picture of the rainbow, yet continue our existence as  
22 an indigenous people through our unbroken connection  
23 to our aina, through our ancestors and through our  
24 memory of our Hawaiian nation, which was literally  
25 stolen from us.

1           Look at those who attack us. They argue  
2 assimilation, but don't practice what they preach.  
3 They argued equal treatment but deny Hawaiian parity  
4 with the Indians and Eskimos. Where is their  
5 political justification? What homeland and culture do  
6 they have to lose? What language do they have to give  
7 up? They say aloha for all, but only take and have  
8 none to give. They claim that to be American you  
9 cannot be Hawaiian.

10           The bottom line is that race is not relevant  
11 to this bill. You should not be hearing this bill.  
12 You should be moving on and taking up issues which are  
13 actually based on race discrimination here in Hawaii.

14           The decision of the U.S. civil rights  
15 commission has already been made, and I understand  
16 they have stated that they won't be changing that. So  
17 rather than waste everyone's time with a newly  
18 appointed local committee, which includes some of the  
19 harshest critics of the Akaka Bill in the nation, and  
20 present to the public another reason to complain about  
21 government ineptitude, corruption and unfairness, this  
22 matter should be put to rest. The main body so  
23 advised, and the congressional action allowed to go  
24 forward as provided by law.

25           The question is a political one, which

1 Congress had the authority to decide under Article 1,  
2 Section 8 of the United States Constitution. Should  
3 Congress pass this bill, and the president sign it,  
4 the United States Supreme Court will likely not only  
5 uphold the bill, but will put to rest any further  
6 racial attacks against our people.

7 The report of the Department of the Interior  
8 in 2000, Mauka to Makai, expressly recommended that  
9 the United States reconcile with the Hawaiian people  
10 the wrongs done to them and their government in 1893.  
11 SB 310 fulfills that recommendation and does so in a  
12 deliberate, planned, reasoned manner, to allow  
13 Congress to ensure compliance with its directives.

14 This bill would not create anything different  
15 from today as regards Hawaiians and their relationship  
16 to the rest of the community, but would improve our  
17 community by allowing Hawaiians to focus on their own  
18 problems as a nation within a nation, would keep it in  
19 place all that is presently provided, would allow  
20 Hawaiians to keep their identity and would not require  
21 any significant funding from Congress.

22 Indeed, benefits-wise Hawaiians actually have  
23 much more to lose by failure of the Akaka Bill than  
24 they have to gain by its success. But then it is not  
25 benefits alone that we seek to preserve; it is our

1 identity, our heritage, our culture, our legal  
2 existence.

3 Hawaii's future is unequivocally tied to its  
4 past. The misdeeds of the past must be corrected in  
5 order for our state, the people of our state and the  
6 aboriginal, indigenous people of Hawaii to continue to  
7 live in peace, harmony and prosperity. Twisting  
8 political recognition of a formerly independent nation  
9 into race discrimination does nothing to help Hawaii  
10 or the United States.

11 We're not seeking any affirmative action.  
12 We're not asking for race-based preferences. We're  
13 not holding ours to be a superior race, like the U.S.  
14 senators of 1898. We are merely seeking justice. In  
15 1893, it was the white minority who deprived the brown  
16 majority of their vote and participation in the  
17 provisional government and the republic. For two  
18 percent of the population to dictate their will on the  
19 rest of them, with the assistance of the United  
20 States, was clearly a travesty of justice. That  
21 cannot be allowed again.

22 You have heard arguments on two different  
23 levels of constitutional law: Congressional powers on  
24 the one hand and equal rights on the other; Indians on  
25 the one hand, other ethnic groups on the other;

1 indigenious on the one hand, immigrants on the other.  
2 These are separate and distinct tracks and should not  
3 be intermixed. Everyone in Hawaii is of some race,  
4 including Hawaiians. No one in Hawaii is indigenious,  
5 except the Hawaiians.

6 My remarks are focused both directly and  
7 indirectly upon two words: Jurisdiction and justice.  
8 As regard to these hearings, neither has been  
9 established; and thus, these hearings should be  
10 concluded and ended.

11 The composition of this committee is  
12 inordinately weighted to one side, not representative  
13 of our community, and precludes your ability to be  
14 fair, open-minded or just. I question whether this  
15 committee can distinguish between the race card and  
16 the truth card. The issue here is not civil rights,  
17 but human rights.

18 Like the kalo in the lo'i and the ohia lehua  
19 in the wao kele, Hawaiians belong here and will always  
20 belong here. The Akaka Bill helps secure this. May  
21 the life of this land, its sovereign people be  
22 perpetuated in righteousness. Ua mau ka ea o ka aina  
23 i ka pono. Mahalo.

24 CHAIRPERSON LILY: Mahalo. Thank you very  
25 much, Judge Mossman. (Off the record.)

1 MS. APOLIONA: Before you move from the OHA's  
2 side, can I for the record ask that we place the OHA  
3 poll that I referenced in my comments into the record  
4 as well for your decision?

5 CHAIRPERSON LILY: Sure. Of course.

6 MS. APOLIONA: Thank you. (Off the record.)

7 CHAIRPERSON LILY: Let's take a short break,  
8 five-minute break, and then we'll hear from Jere  
9 Krischel.

10 (Break was taken.)

11 CHAIRPERSON LILY: I have your attention?  
12 May I have your attention, please?

13 Okay, we'll reconvene. Thank you very much.  
14 And now we'll hear from Jere Krischel.

15 MR. KRISCHEL: Aloha, members of the  
16 committee, and thank you for inviting me and giving me  
17 this opportunity to share my mana'o on this topic  
18 close to my heart. Also, aloha to the esteemed  
19 Mr. Mossman, Ms. Apoliona, Mr. Blaisdell, and  
20 Mr. Klein.

21 I have great respect for all of them and  
22 their many accomplishments, even though I believe they  
23 are wrong on particular issues. I'm very grateful for  
24 this opportunity to share my thoughts and also to hear  
25 theirs.

1 I have several themes in my presentation  
2 today: First, a discussion about the historical basis  
3 for the Akaka Bill, or any form of race-based  
4 government; a short side trip into a discussion of  
5 individual and collectivist civil rights; some notes  
6 about the dramatic difference between what's proposed  
7 in the Akaka Bill and current Native American/Alaskan  
8 tribal recognition law; the history of the Akaka Bill  
9 and efforts to obtain and retain race-based benefits;  
10 and finally, some words about the dangers of dividing  
11 our interconnected people by race and some thoughts  
12 about considering everyone in Hawaii as Hawaiian.

13 First, some ancient history. Much has been  
14 made of the supposed parallel between Native Hawaiians  
15 and Native Americans and Alaskans. The argument that  
16 it is only fair to treat Native Hawaiians the same way  
17 we treat some groups of Native Americans and Alaskans  
18 has been eloquently put forth by Akaka Bill supporters  
19 on several occasions. On its face, this appears to be  
20 a simple matter of protecting what seem to be self-  
21 evident and reasonable special privileges. However,  
22 the truth is more complex.

23 One could argue that there are concrete  
24 differences in the ancient history of Native Americans  
25 and Alaskans and Native Hawaiians, but the more

1 important differences are post-contact. Although all  
2 of the groups suffered from diseases they were exposed  
3 to by contact with the larger world, Native Hawaiians  
4 share none of the history of total oppression, total  
5 subjugation or political and cultural devastation that  
6 was common in the North American narrative.

7 We are all very familiar with the story of  
8 the initial contact in Hawaii. Captain Cook,  
9 initially mistaken for a god, was killed in battle on  
10 the Big Island as he tried to recover some stolen  
11 goods. The narrative gets a bit fuzzy when it comes  
12 to Kamehameha. We all learned in school that he  
13 conquered the island, pushed people over the Nu'uau  
14 Pali. But we rarely hear of his close advisor and  
15 in-law, John Young, a British sailor who was central  
16 to Kamehameha's military success and the government of  
17 the Unified Kingdom.

18 Where historical fact completely falls apart  
19 in the common perception, especially in the past 30  
20 years of aggressive historical revisionism, is the  
21 fall of the Hawaiian monarchy.

22 Although well covered by Kuykendall and Russ,  
23 two prominent historians of Hawaii in the 20th  
24 century, the Hawaiian kingdom and the Hawaiian  
25 revolution had been reinterpreted and misinterpreted

1 time and time again over the past 30 years, both by  
2 activist scholars as well as some of our most powerful  
3 politicians. The 162 U.S. peacekeepers landed during  
4 the revolution have gone from passive albeit  
5 sympathetic observers of the local rebels to a full-  
6 scale invasion force and part of a deep conspiracy.

7           The letter of Grover Cleveland to Congress on  
8 December 18, 1893, proclaiming the overthrow an act of  
9 war, is made prominent and definitive. Ignoring his  
10 referral of the matter to Congress, the results of  
11 their investigation exonerating the U.S. troops from  
12 any misconduct, and his acceptance of the new Republic  
13 of Hawaii as the lawful government of the Hawaiian  
14 islands, the imprisonment of Queen Liliu'okalani,  
15 instead of being known as a reaction to her  
16 involvement in the 1895 counterrevolution against the  
17 Republic of Hawaii, is blamed on the United States  
18 instead and even mistakenly dated to the 1893 over-  
19 throw.

20           Here are some undisputed historical facts  
21 that are often glossed over: The Hawaiian Islands  
22 were unified by Kamehameha with non-Native Hawaiian  
23 aid and advice, most prominently by John Young; and  
24 this kingdom was not race based in its inception;

25           The Hawaiian Kingdom, under Kamehameha III in

1 1840, established equal rights regardless of race,  
2 with the first constitution declaring all men of one  
3 blood;

4 In 1887, in response to the corruption of  
5 Kalakaua, a new constitution was forced on the  
6 Hawaiian Islands by kingdom residents and subjects,  
7 primarily haoles, and leaders of the business and  
8 political establishment, the first constitution which  
9 limited voting by race in the history of Hawaii.

10 If you were to guess that Native Hawaiians  
11 were those forbidden to vote because of race, you'd be  
12 wrong. It was Asians who were disenfranchised and  
13 Asians who did not regain their full rights until well  
14 after annexation to the United States;

15 The groups which organized the anti-  
16 annexation petitions in 1898 later embraced joining  
17 the United States, establishing the Hawaiian  
18 Independent Party, sending both Robert Wilcox and  
19 Prince Kuhio to Congress during the Territorial  
20 period;

21 And in 1959, over 94 percent of the people in  
22 Hawaii voted for statehood, including the vast  
23 majority of Native Hawaiians.

24 This steady increase in political power for  
25 ordinary Native Hawaiians, this continuous exercise of

1 the individual right to self-determination through the  
2 ballot box and civic participation hardly speaks as a  
3 history of suffering as described by Akaka Bill  
4 proponents. Queen Liliu'okalani herself acknowledged  
5 in her later years that the best thing that could  
6 happen to Native Hawaiians was to belong to the United  
7 States.

8           Moving on from history, let's talk about what  
9 civil rights really are. Although certainly the  
10 United States Commission on Civil Rights is dedicated  
11 to the protection of civil rights, this term has  
12 become ambiguous over the years. At first, the idea  
13 of equality was an individual one, that an individual  
14 person could not be treated differently and that each  
15 individual deserved the full protection and exercise  
16 of their civil rights.

17           The United Nations Declaration of Human  
18 Rights of 1948 represents one such codification of  
19 individual rights stating, quote, "All human beings  
20 are born free and equal in dignity and rights," end  
21 quote. This is a commitment to equal treatment of  
22 every individual.

23           Another idea about civil rights has emerged  
24 since then, one that is inherently in conflict with  
25 the idea of individual civil rights, the idea of

1 collective civil rights. The current Draft  
2 Declaration of the Rights of Indigenous Peoples, which  
3 has not been ratified by the United Nations, states,  
4 quote, "Indigenous peoples have the right to the full  
5 and effective enjoyment of all of the human rights and  
6 fundamental freedoms which are recognized in the  
7 Charter of the United Nations and in the human rights  
8 law," end quote.

9 One can argue whether or not such treatment  
10 of individuals according to what peoples they belong  
11 to is a good or a bad thing. But one cannot avoid the  
12 inherent conflict between trying to treat each  
13 individual equally, but treating groups of people  
14 unequally. And how does this relate to the Akaka  
15 Bill?

16 In the question before us, even if you were  
17 to whitewash all the history, ignore all the precedent  
18 and accept every claim made by the Native Hawaiian  
19 activists, is one between a collective idea of civil  
20 rights and an individual idea of civil rights.

21 John R. Bowen in Anthropology Today wrote,  
22 quote, "The trope of indigenous/foreigners has been  
23 invoked to justify violence. Christopher Taylor  
24 points out that some of the Rwandan Hutus, in  
25 justifying their violence against Tutsi people, drew

1 on narratives that depicted the Hutus as Rwanda's  
2 indigenous people who had been conquered by the  
3 Tutsis," end quote.

4 At what point does the collective right of  
5 the Hutus as indigenous people trump the individual  
6 right of an non-indigenous Tutsi? When the concepts  
7 of individual civil rights and collective civil rights  
8 come into conflict, which one should hold sway? At  
9 what point does a collective right of people who share  
10 even the smallest bit of genetic background trump the  
11 individual civil rights of their cousins, aunts,  
12 uncles and neighbors?

13 Moving on to individual rights versus  
14 collectivist rights, let's talk about the dramatic  
15 difference between the Akaka Bill and current Native  
16 American/Alaska tribal law.

17 Hawaii Attorney General Mark Bennett has  
18 argued that the Akaka Bill is not race based, a common  
19 refrain that simply does not stand up to strict  
20 scrutiny, nor the judicial record. Both Rice v.  
21 Cayetano and the United States Commission on Civil  
22 Rights report of May 4th, 2006 make it clear that,  
23 quote, "descendants of the native indigenous people,"  
24 unquote, is simply a proxy for a race.

25 Mark Bennett has also argued that the Akaka

1 Bill simply asks, quote, "to be treated the same way  
2 all other indigenous people are treated in this  
3 country," end quote. Yet the Akaka Bill notably lacks  
4 any -- any of the seven criteria required by the  
5 Bureau of Indian Affairs for Tribal Recognition.

6 Membership in Native American and Alaskan  
7 tribes is not given to anyone who has any amount of  
8 Native American or Alaskan blood. But the Akaka Bill  
9 would create a new government for anyone with even the  
10 smallest racial tie to pre-1778 immigrants to Hawaii.  
11 Far from asking for parity with Native Americans and  
12 Alaskans, the Akaka Bill goes much further, obliterat-  
13 ing all qualifications except for race.

14 So why are we here talking about separating  
15 Native Hawaiians apart from their neighbors,  
16 colleagues and family to form their own separate  
17 government? A cynical person might say it's all a  
18 matter of money and self-interest. Ever since the  
19 Alaska Native Claims Settlement Act in 1971, which  
20 awarded 40 million acres and nearly \$1 billion,  
21 thought has been given to getting that same kind of  
22 prize for Native Hawaiians.

23 I've recently been given the opportunity to  
24 research the presidential papers regarding the Native  
25 Hawaiian Study Commission held during the Reagan

1 administration through a Freedom of Information Access  
2 request at the National Library in Simi Valley. The  
3 records of notes, meetings and memos have shown that  
4 the Native Hawaiian Study Commission Act of 1980 was  
5 strongly promoted by Hawaii politicians, with the hope  
6 of reaping reparations.

7           However, the Native Hawaiian Study Commission  
8 report of 1983, after significant deliberation,  
9 concluded, and rightfully so, that there was no basis  
10 for any reparations. Needless to say, the report was  
11 a disappointment to many, who thought that money and  
12 land were just around the corner.

13           A decade later, after three years of cunning  
14 legislative maneuvering, in 1993, the Apology  
15 Resolution, P.L. 103-150, was passed and signed by  
16 Bill Clinton, ignoring the findings of the Native  
17 Hawaiian Study Commission and providing the foundation  
18 for future claims.

19           Akaka himself stated, on September 4th, 1999,  
20 quote, "I wanted the United States to admit liability  
21 for the 1893 overthrow to neutralize the 1983 Native  
22 Hawaiian Study Commission's Majority Report conclusion  
23 that the U.S. government was not liable for the loss  
24 of sovereignty or lands of the Hawaiian people in 1983  
25 overthrow," end quote.

1           And now, for the past seven years, Akaka has  
2           tried to leverage that symbolic resolution into  
3           concrete legislation protecting and extending special  
4           race-based privileges.

5           Mr. Mossman here has been rather blunt about  
6           it himself, flatly stating that the Akaka Bill is  
7           meant to protect against equal rights lawsuits, to  
8           preserve both the benefits and entitlements received  
9           by Hawaiians today, end quote.

10           So why does this bill seem so dangerous, so  
11           offensive to the spirit and culture of Hawaii? Hawaii  
12           is a particularly special place in the world. It has  
13           been the quintessential melting pot, with a wonderful  
14           mix of cultures and immigrants from all over this  
15           planet throughout its history. It is probably one of  
16           the most absolutely human places on this earth.  
17           Thanks to the basic view held forth by the first  
18           constitution of the Kingdom of Hawaii that all people  
19           were of one blood, Hawaii has been the birthplace of  
20           new, quote, "indigenous" groups of people with mixed  
21           ancestry, with no other homeland or ancestry but in  
22           the Hawaiian Islands.

23           Where else besides Hawaii can you find a  
24           homeland for someone who is Japanese, Chinese, German,  
25           Irish, Spanish, and Filipino; and where else in the

1 world can you find a homeland for someone who is  
2 Japanese, German, Native Hawaiian, and English? And  
3 why would you dare to treat those two people  
4 differently simply because of a fractional part of  
5 their ancestry?

6 Race is a terribly divisive, pernicious  
7 concept. Asians, who were once considered so foreign  
8 that they could never be anything but alien in United  
9 States, much less Hawaii, on July 26, 1894, regarding  
10 the refusal of the vote to Chinese in Hawaii, the  
11 Advertiser wrote, "Chinese is an alien in Hawaii, as  
12 he is everywhere away from the land of his birth. He  
13 brings the orient with him," end quote.

14 Champ Clark, congressional representative  
15 from Missouri, said in 1898, protesting the thought of  
16 the annexation of Hawaii, quote, "How can we endure  
17 our shame when a Chinese senator from Hawaii, with a  
18 pigtail hanging down his back, with his pagan joss in  
19 his hand, shall rise from his curule chair and in  
20 pidgin English proceed to chop logic?"

21 Today we recognize as self-evident the lunacy  
22 of asserting that a given racial group is so foreign  
23 as to never be truly American. Such attitudes are  
24 those of xenophobic racial supremacists living in  
25 isolation from others, with a distinctly twisted

1 concept of American identity.

2 Why then do we blithely accept the  
3 implication that every other racial group in Hawaii  
4 except for those with the smallest bits of pre-1778  
5 immigrant blood are so foreign as to never be truly  
6 Hawaiian? Hawaii is a place, not a race. And the  
7 insistence that anyone that does not have the proper  
8 pre-1778 immigrant bloodline cannot be truly Hawaiian  
9 is just as vile as aspersions made against other  
10 immigrant groups in the past and present.

11 Though it may be considered impolite to  
12 mention, most Native Hawaiians are not mostly Native  
13 Hawaiian. According to OHA's own research, only 10  
14 percent of people with partial Native Hawaiian  
15 ancestry have 50 percent or more Native Hawaiian  
16 ancestors. This high rate of intermarriage is a  
17 direct function of treating people as equals and not  
18 discriminating by race in matters of love.

19 I assert that this is what we should aspire  
20 to, not some racial separatism, as well-intentioned  
21 though it may be. One particularly disturbing aspect  
22 of the idea of splitting our state into native and  
23 non-native is the fact that most Native Hawaiians are  
24 only part-Native Hawaiian. People speak of Native  
25 Hawaiians as oppressed and endangered, somehow worthy

1 of special treatment because of their past. But  
2 within most Native Hawaiian ancestry are all the other  
3 races asked to have lesser privileges and lesser  
4 rights.

5 If someone's great-grandmother was Native  
6 Hawaiian but their other three great-grandmothers and  
7 four great-grandpas were all haole, why are they given  
8 credit for the sufferings of one of the eight but not  
9 blamed for the oppression dealt out by the other  
10 seven? Why is it that non-Native Hawaiian cousins,  
11 who only differ from their native counterparts in the  
12 smallest amount, must bear the burden of their own  
13 ancestry as well as the 7/8s left over?

14 This one-drop rule, reminiscent of Jim Crow  
15 laws in the segregated South, is pernicious in its  
16 application now as it was then.

17 If your grandma was an annexationist and your  
18 grandpa was a royalist, should you be blamed for the  
19 overthrow, should you be given reparations for the  
20 overthrow? Take Strom Thurmond. Should his  
21 part-black daughter be given special privilege because  
22 her ancestors were slaves, or should she be made to  
23 pay because her ancestors were slave owners?

24 Although at one point in time the people  
25 living in Hawaii could be considered fairly

1 distinctly, this moment is far in the past. Whereas  
2 we were once easily categorized into just Japanese,  
3 Chinese, Portuguese, Filipino, Caucasian and Native  
4 Hawaiian, those lines have blurred over the centuries.

5           Like a jar of different-colored sand, layered  
6 upon one another, once shaken can never be separated  
7 back into those layers. We of Hawaii, of all races  
8 are one people. We are sisters, brothers, aunties,  
9 uncles, calabash cousins, children, parents, tutus,  
10 wives, husbands, schoolmates, neighbors and friends.  
11 Even when we don't share the same blood, we share the  
12 same heart. To divide us by our genetic lineage is  
13 counter to the very essence of Hawaii.

14           My mother went to school with Ms. Apoliona.  
15 I went to the same school as Mr. Twigg-Smith, right  
16 across the street from their school. Twigg-Smith  
17 fought in the name war as Senator Inouye. My father  
18 sailed with Nainoa Thompson with the Hokule'a from  
19 Hawaii to Tahiti in 1985 on the escort vessel Dorcas.  
20 My cousins had gone to Kamehameha Schools. And even  
21 Senator Akaka is related to me, an only slightly more  
22 distant cousin.

23           We are all related, all intertwined. And I'd  
24 bet that nobody in this room is much more than a few  
25 degrees separated by each other, from each other, by

1 marriage, by blood or by hanai.

2 Akaka Bill supporters and supporters of  
3 collectivist rights for Native Hawaiians often insist  
4 that their motivation is to help improve the  
5 demographic statistics for health, wealth and  
6 education for Native Hawaiians.

7 However, they are confounded by the high rate  
8 of intermarriage and the low rate of blood quantum,  
9 and the imprecise application of the infamous one-drop  
10 rule of the Jim Crow era, a time when a white woman  
11 could give birth to a black child, but a black woman  
12 could never give birth to a white child. Today the  
13 claim seems to be that a Japanese woman can give birth  
14 to a Native Hawaiian child, but a Native Hawaiian  
15 woman could never give birth to just a Japanese  
16 child.

17 Worse than that, the social ills they're  
18 attempting to remedy are directly harmed by the  
19 imprecise nature of racial classification. What we  
20 need in Hawaii is targeted help, based on need, to  
21 those who need it. Using race as a proxy for need  
22 only misdirects resources that could be used to attack  
23 the problems cited by racial collectivists.

24 When we use the one-drop rule to measure the  
25 demographic performance of a given group, we must be

1 careful not to confuse correlation with causality.  
2 Although as a group Native Hawaiians may have more  
3 needs than other groups, it does not mean that they  
4 have those needs because they are Native Hawaiian.

5 About the only thing that can be said in  
6 favor of the Akaka Bill is that if the new race-based  
7 government was able to wrest reparations from the  
8 federal government, the other 49 states might be  
9 forced to pay and contribute to the economy of the  
10 islands.

11 Another stated premise of the Akaka Bill is  
12 to protect existing race-based programs and therefore  
13 protect and preserve Hawaiian culture. But how can  
14 you separate out the contributions of all the non-  
15 Native Hawaiians to the culture of Hawaii for the past  
16 200 years?

17 The highest example of Hawaiian cultural  
18 revival, celestial navigation, was reintroduced by a  
19 white man and a Micronesian sailor. Even the  
20 preservation of the Hawaiian language itself owes deep  
21 debts to the missionaries who helped codify the  
22 Hawaiian alphabet and worked tirelessly to expand  
23 literacy in the Hawaiian kingdom.

24 The preservation of culture, any culture, is  
25 not dependent on racial boundaries or classifications;

1 and this is especially true for a group which, since  
2 the moment of contact in 1778, embraced all humans as  
3 equals.

4 Hula does not require special blood.  
5 Honoring Pele does not require special blood.  
6 Speaking olelo Hawaii does not require special blood.  
7 Having a deep spiritual connection to the lands and  
8 the waters of our islands does not require special  
9 blood. Eating fish and poi do not require special  
10 blood. There is nothing, absolutely nothing about  
11 Hawaiian culture that requires us to divide ourselves  
12 by race in order to preserve it.

13 Every program of OHA, every class taught at  
14 Kamehameha Schools, every plot of land leased by DHHL  
15 would be just as effective at preserving the Hawaiian  
16 culture if they did not discriminate by racial back-  
17 ground.

18 A Portuguese homesteader with a cheap lease  
19 can work the land just as effectively as his part-  
20 Hawaiian cousin. A Japanese student can learn and  
21 study ancient Hawaiian song, dance and religion just  
22 as well as their part-Hawaiian cousin could. A  
23 Filipino man can just as easily learn to be a  
24 professor of Hawaiian language and pass on the ancient  
25 tongue of Hawaii just as well as his part Hawaiian

1 brother-in-law.

2           The Honorable Boyd Mossman seems to conflate  
3 the ideas of race and culture and has spoken of the,  
4 quote, "the people who make Hawaii Hawaii," unquote.  
5 He has spoken of, quote, "people whose home, whose  
6 aina, whose spirit these islands are," unquote. He  
7 has fretted that without the Akaka Bill, quote,  
8 "Hawaiians will be no different from Californians,  
9 Georgians or New Yorkers," end quote.

10           But what is wrong with being a Californian or  
11 a Georgian? Why is Hawaii not the home, not the aina,  
12 not the spirit of the fourth, fifth and sixth  
13 generations that immigrated to Hawaii after 1778? Why  
14 aren't all Hawaiians, regardless of race, the people  
15 who make Hawaii Hawaii? Why do we need to set up  
16 racial hierarchies like they did in the plantation  
17 days, and put Native Hawaiians above Portuguese,  
18 Chinese, Japanese and Filipino?

19           The Native Hawaiian population in 1778 has  
20 been estimated to be upwards of 300,000. It reached  
21 its nadir in the late 1800s with only 39,000. Since  
22 annexation and statehood, it has blossomed to over  
23 400,000, spread all across the United States and the  
24 rest of the world. By the end of this century, there  
25 will be over 4 million if the trend continues.

1           Although at one time an argument could have  
2 been made that Native Hawaiians were on the brink of  
3 extinction, this is absolutely no longer true. Native  
4 Hawaiians are thriving and growing, prominent in both  
5 industry and government in the Hawaiian Islands and  
6 the United States.

7           One of the fears expressed by Akaka Bill  
8 supporters is that somehow without a focus on race the  
9 culture of Hawaii will somehow be diminished or lost.  
10 They seem to be of a belief that without the proper  
11 bloodline, somehow the culture and practices aren't  
12 genuine; akin to believing that Mozart can only be  
13 properly played by Austrians, or French only spoken by  
14 those of native Gallic descent, or that the Pope must  
15 be Italian.

16           Not only is this fear unfounded, but it  
17 threatens to drive the culture they wish so  
18 desperately to preserve to extinction. Culture  
19 survives by expanding its reach, not by limiting it.

20           The future of olelo Hawaii will be bleak if  
21 we can teach it only to part-Native Hawaiian  
22 children. On the other hand, if every child in the  
23 state of Hawaii was required to take at least a year  
24 of Hawaiian language, olelo Hawaii would be  
25 strengthened and preserved in perpetuity. Same thing

1 with hula or celestial navigation. We preserve the  
2 culture by making sure that everyone is exposed to it  
3 and enriched by it.

4 Limiting our target audience to those with  
5 the proper bloodline only serves to retard the growth  
6 and advancement of the you culture.

7 Hawaiian music is a particularly apt  
8 example. Although we have some ancient Hawaiian song,  
9 chants and music, today Hawaiian music is much more  
10 than the product of a single race. The guitar  
11 Mrs. Apoliona plays on was brought here by Europeans.  
12 Same thing with the ukulele played by Bruddah Iz. The  
13 influence of blues, reggae, rock, pop, classical,  
14 jazz, they all have become part and parcel of Hawaiian  
15 music.

16 So is Hawaiian music any less Hawaiian if  
17 played by a Filipino? Is it any less Hawaiian when  
18 sung by a Japanese person? Is it any less Hawaiian if  
19 it uses instruments, scales and chords imported from  
20 abroad? Of course not.

21 To preserve these things, we shouldn't  
22 discriminate. Hawaiian culture, Hawaiian language,  
23 Hawaiian music, Hawaiian dance are not race based.  
24 They don't discriminate. Having the proper bloodline  
25 doesn't make you better at them, nor does having the

1 wrong bloodline make you any worse.

2           It has been clearly admitted that the Akaka  
3 Bill is an attempt to protect existing race-based  
4 programs from legal challenge. Unable to convince the  
5 courts to ignore the 14th and 15th Amendment,  
6 proponents of race-based programs hope to legislate  
7 their way out of their inherent constitutionality.  
8 And why? What is it about race-based programs to make  
9 them any more effective than race-blind programs?

10           Let us for a moment imagine that OHA served  
11 anyone in Hawaii, regardless of race. Imagine for a  
12 moment that their programs to improve the health,  
13 wealth and education were open to all people in need,  
14 rather than just a single racial group. Would this  
15 prevent OHA from helping needy Native Hawaiians? Of  
16 course not. A health program would be just as  
17 effective in helping a part-Native Hawaiian family to  
18 avoid diabetes if it included helping their Portuguese  
19 neighbors.

20           A program to help jump-start small businesses  
21 would be just as effective in helping a part-Native  
22 Hawaiian entrepreneur if it included helping their  
23 Japanese cousin. A program to help improve literacy  
24 and education would be just as effective at helping a  
25 part-Native Hawaiian dropout if it included helping

1 their haole friend.

2 Now, I understand that there are a hundred  
3 sixty federal programs which have had "Native  
4 Hawaiian" tacked onto them and that this federal pork  
5 may only be available to the State of Hawaii when it  
6 plays the race card. Getting the U.S. Congress to  
7 fund race-blind programs in Hawaii may be a harder  
8 sell than preying upon some sense of white guilt they  
9 may have. Maybe this is the only good reason for the  
10 Akaka Bill. But this is a dangerous path to follow.

11 Although this federal money may seem like it  
12 comes for free, it costs us our soul. To get this  
13 money, we need to divide ourselves by race, deny our  
14 brothers, sisters and cousins and forsake the values  
15 which have made Hawaii into the special place that it  
16 is.

17 My family has been in Hawaii for over a  
18 hundred years. My extended family has been in Hawaii  
19 since before 1778, and all of my family deserves to be  
20 treated equally. That is what we should mean when we  
21 talk about civil rights. Civil rights are the rights  
22 we all share. Civil rights do not discriminate. I  
23 pray that the Hawaii advisory committee helps protect  
24 the civil rights of all humans in the state of Hawaii  
25 and that the U.S. Commission on Civil Rights does so

1 as well. Mahalo.

2 CHAIRPERSON LILY: Thank you very much,  
3 Mr. Krischel.

4 QUESTIONS TO THE PANEL OF PRESENTERS

5 CHAIRPERSON LILY: What we're going to do, we  
6 have about an hour until 5:00. And I'm going to be  
7 starting with Mr. Sullivan on the left, one question,  
8 and then we'll just keep going until we have used up  
9 our time.

10 I do have -- I will start out with my  
11 question, however, my prerogative. I want to ask -- I  
12 want to ask --

13 COMMISSIONER YAKI: Vice chair is second,  
14 right?

15 CHAIRPERSON LILY: When I'm not presiding.

16 COMMISSIONER YAKI: No, no, no.

17 CHAIRPERSON LILY: Judge Mossman, I'm going  
18 to ask you the same question I asked Mark Bennett at  
19 the last meeting. And when I -- there are a lot of  
20 programs, state and federal, for Hawaiians that  
21 Mr. Krischel even was referring to.

22 And based on the testimony that Mr. Bennett  
23 gave, it appeared that there was a strong legal  
24 justification that even in the -- that they did not  
25 need the Akaka Bill to ensure that those programs stay

1 in place, that there was a strong argument legally  
2 that those programs were not in jeopardy if the Akaka  
3 Bill, for example, failed.

4 And so I asked him -- I asked him that  
5 question and he said, "Well, yes, I think that there's  
6 a strong argument that they won't fail, but there's  
7 always the risk." So I'm going to ask you the same  
8 question.

9 MR. MOSSMAN: I agreed with the attorney  
10 general. And, actually, the better guy to answer this  
11 is our counsel, who can be more specific.

12 But the way I look at these -- and I'll just  
13 take a second, 30 seconds to answer this -- these  
14 bills that have been passed, 160 bills, they have not  
15 been passed --

16 CHAIRPERSON LILY: One hundred sixty bills.

17 MR. MOSSMAN: One hundred sixty bills and the  
18 Hawaiian Home Lands act were all passed because  
19 Congress, with its plenary power, recognizes -- and  
20 recognized -- that Hawaiians as a specific group of  
21 people as identified in the Hawaiian Homes act and all  
22 these acts, as a native, indigenous, aboriginal people  
23 of this land, deserve and needed this assistance in  
24 the way of whatever kind of assistance it has been  
25 over the past almost 80 or 90 years. So in that

1 respect, Congress has already taken a stand.

2 Whether we can succeed in court on that basis  
3 against the race-based allegations and attacks of  
4 Mr. Burgess and his -- his followers, I don't know.  
5 But if we had the Akaka Bill, I say we would clearly  
6 succeed. And if I could just have Justice Klein  
7 respond.

8 MR. KLEIN: You are the chair.

9 CHAIRPERSON LILY: I asked him the question,  
10 but if you -- I want to give everybody a chance to  
11 speak.

12 MR. KLEIN: Short answer.

13 CHAIRPERSON LILY: If you have something,  
14 yes, go ahead.

15 MR. KLEIN: Short answer.

16 CHAIRPERSON LILY: I never cut off a justice.

17 MR. KLEIN: Good. I'll talk forever.

18 You know, the Akaka Bill is, it is, if you  
19 have the Akaka Bill, you continue to have the  
20 programs. If you don't, then the programs can be  
21 taken down by successful lawsuits. The lawsuits have  
22 not been successful thus far. But that's a short  
23 answer.

24 CHAIRPERSON LILY: Thank you.

25 Mr. Sullivan?

1 MR. SULLIVAN: Thank you, Mr. Lily.

2 I'd like to start by noting that in the most  
3 recent OHA newsletter it was pointed out that I work  
4 for the Navy. So I need to start out momentarily with  
5 a disclaimer that I'm not here as a Navy representa-  
6 tive. I don't represent the University of Hawaii, on  
7 whose adjunct faculty I'm a proud member. I don't  
8 represent any of the organizations I'm in, and so far  
9 they haven't tossed me out. But you never know. I'm  
10 here just speaking for myself, and my opinions may not  
11 reflect those of any organization of which I'm a  
12 member.

13 I have a question for all of the panel  
14 members, or whoever might like to respond, and that  
15 has to do with the word "indigenous." The term  
16 "Native Hawaiian" is defined in the Akaka Bill. But  
17 could you offer your definition of "indigenous,"  
18 particularly in the context of the Akaka Bill and  
19 people of Hawaiian ancestry? How do you decide that  
20 someone today comes under the category of indigenous?

21 MR. KRISCHEL: My short answer, I'm going to  
22 quote a great person, Ruby Johnson. "I believe that  
23 we are all indigenous to this earth."

24 MR. MOSSMAN: Indigenous is -- is native,  
25 it's native to the land. And that's what I believe

1 that indigenous refers to. Indians are indigenous to  
2 the land. Alaskans are indigenous to their land.  
3 Hawaiians are indigenous to their land. Japanese are  
4 indigenous to their land.

5 So the group that has lived there, died there  
6 and been there for -- for the -- for the longest time,  
7 back into history, in my mind, is an indigenous group.

8 MR. KLEIN: That's what I -- that's my  
9 belief.

10 DR. BLAISDELL: I am Kekuni. Indigenous is a  
11 term that does not have, in my opinion, uniform,  
12 agreed-upon definition. So that the United Nations  
13 even now, in its declaration for the rights of  
14 indigenous people, does not have clear, specific  
15 definition that all the parties agree to.

16 The term itself, as I understand it, although  
17 I'm not a linguist, refers to originating within.  
18 "Gen" is arising or originating. "In" means within.  
19 So indigenous means arising within.

20 And in our context, it refers to, as has been  
21 said, arising within a particular place. And the  
22 place in our conversation here is our homeland. So we  
23 consider this our homeland.

24 Another term that is used in order to make  
25 that distinction is "first people." So indigenous

1 peoples, not only called indigenous, aboriginal, but  
2 also first people. So we are the first people who  
3 came here to this homeland.

4 So it seems to me it's very clear who we  
5 are. Others who come later make their claims, as we  
6 hear at this table. But to me, there should be no  
7 doubt but who came first, and that's who we are. We  
8 are ancestors of the first people.

9 Another point, I prefer and believe that all  
10 of us should prefer not to use the term "race" at  
11 all. Because it's so emotional and because it leads  
12 to the kind of pilikia we hear right here.

13 I prefer to use the term "ancestry,"  
14 "ancestral," and very clear: Those who begot and  
15 begotten by, begot generation after generation. So we  
16 claim our ancestry to those who first came here. Very  
17 clear, to us. So I hope that's helpful.

18 MR. SULLIVAN: Thank you. Thank you, Doctor.

19 If I might just ask for clarification from  
20 Judge Mossman and Justice Klein, I --

21 For living people, would indigenous --

22 CHAIRPERSON LILY: Wait.

23 MR. SULLIVAN: -- include the same  
24 definitions as Native Hawaiian in the bill?

25 CHAIRPERSON LILY: You know, Paul, we'll wait

1 to come around. If you want to use up that  
2 question --

3 MR. SULLIVAN: Fair enough.

4 CHAIRPERSON LILY: Mr. MacDonald?

5 MR. MacDONALD: Okay. The latest round in  
6 the battle of the public opinion polls came out in the  
7 Advertiser this morning, and Chairman Apoliona quoted  
8 parts of it in her presentation today.

9 But it seems as though there is a declining  
10 percentage of approval as the questions move from  
11 recognition of Hawaiians as a distinct indigenous  
12 group, with 70 percent public approval. But when you  
13 get down to asking whether Hawaiians should have their  
14 own government entity, you only get 51 percent  
15 approval, which is hardly a wild majority. And I  
16 notice Ms. Apoliona did not mention that result.

17 What do you suppose would happen if the  
18 public, who is being queried on this, understood that,  
19 as Congressman Abercrombie recently said it, the  
20 bottom line on this is it's about land and it's about  
21 money? Where would that 51 percent go to if the  
22 public were truly educated on the potential  
23 consequences of this bill?

24 MS. APOLIONA: I'll let you go, then I'll go.

25 MR. KLEIN: Who knows? I think you're

1 suggesting the answer, though. Perhaps you don't want  
2 to hear the answer from us. I think your question was  
3 more of an answer.

4 MR. MacDONALD: Okay.

5 MR. KLEIN: I don't understand your question  
6 because there's no question mark at the end of it.

7 MS. APOLIONA: I think, you know, the polls,  
8 the response is clearly, as I say in my comments, the  
9 community understands that Native Hawaiians have a  
10 special, distinct status. That's strong.

11 Native Hawaiians believe -- the community of  
12 Hawaii believes Hawaiian programs serving Hawaiians.  
13 That's strong. They believe the programs such as OHA  
14 and DHHL, Kamehameha Schools should not be subject to  
15 litigation. That's strong.

16 I think your comment about Representative  
17 Abercrombie's comment about this is just about land  
18 and money, that's Representative Abercrombie's  
19 comments. I think the potentials of the Native  
20 Hawaiian community going forward in the future, given  
21 the assets that are with the Department of Hawaiian  
22 Home Lands and the assets that are with the Office of  
23 Hawaiian Affairs, stand logical reason, logical  
24 thinking that these assets could down the road, in the  
25 future, become the beginning assets of the Native

1 Hawaiian entity, by which those assets could be used  
2 to continue to serve and improve and better conditions  
3 for Hawaiians.

4 So when you use the term "land and money,"  
5 that conjures up in some people very negative  
6 feelings. But we presently, as the Office of Hawaiian  
7 Affairs and Hawaiian Homelands, as two of the public  
8 trusts, we currently administer and grow these assets,  
9 land and, in the case of Office of Hawaiian Affairs,  
10 land and resources, monetary resources.

11 So it's not something to fear, I don't  
12 think. It's Representative Abercrombie said what he  
13 said. He only qualified further by -- if a reporter  
14 asked him in more detail. But what is being taken by  
15 his statement is that, "oh, this is sinister." Not  
16 sinister at all.

17 Hawaiian Homes, the Office of Hawaiian  
18 Affairs, as two public trusts, serving Hawaiians in  
19 the future as part of this governing entity, will very  
20 likely be able to consolidate and move these assets  
21 forward with the governing entity to serve Hawaiians  
22 from this generation and generations to come.

23 So as far as the comment you made about  
24 seeming weak support for the governing entity, perhaps  
25 you could speculate that. Perhaps with a very strong

1 support for recognition and a strong support for the  
2 fact that, yes, Hawaiians should have a chance to --  
3 to organize themselves, the governing entity question  
4 is an outcome of a process. Nothing predetermined.  
5 We can see examples around this country. We can see  
6 some examples around this country. But in this room,  
7 there's probably as many opinions about what that  
8 outcome will be.

9 So perhaps when you see in the still majority  
10 response of the community, perhaps it's that  
11 uncertainty or that process that we'll still lead to  
12 move forward that does not have a predetermined end,  
13 that maybe people are less -- less sure or less clear  
14 about. But that doesn't mean the governing entity is  
15 not something appropriate to move towards because  
16 that's part of the process. But that process will be  
17 determining the outcome.

18 CHAIRPERSON LILY: Okay. Ruby Johnson?

19 MS. JOHNSON: This question is for any of the  
20 panelists, or all the panelists who cares to answer.

21 But as we realize -- and I think we all  
22 realize the fact that the idea of recognition, all  
23 right, recognition for the Native Hawaiian nation is  
24 based on the concept of reconciliation; reconciliation  
25 meaning the responsibility of you might call the

1 invading government, which is the United States in  
2 1893 overthrow; having done it, now needs to reconcile  
3 with the Native Hawaiians of this generation and on  
4 that basis create now the new nation based on the  
5 definition of property. All right, the nation's  
6 property. In the first paragraph, identifying what  
7 those land tenures were in aboriginal Hawaii, calling  
8 it communal tenders before 1778 A.D.

9 So what I want you to define for the group  
10 here, people in attendance and for the committee, the  
11 difference between, one, tribal land tenures per  
12 MacHiggins (phonetic); two, communal land tenures;  
13 and, three, feudal tenures. Okay?

14 Please define for this civil rights advisory  
15 committee the difference. Because on that definition  
16 or redefinition of Hawaiian lands being returned to  
17 the Native Hawaiian sovereign government, it's on the  
18 basis of communal tenures being restored before 1778  
19 A.D. Okay?

20 MR. KLEIN: I'm just a lawyer.

21 MS. JOHNSON: You've got to define the  
22 difference because you're arguing to the United States  
23 Congress that it has to reconcile by recognizing those  
24 of us of any percentage Hawaiian blood that had  
25 ancestry here before 1778 is justified to be

1 recognized as a separate nation, with control of all  
2 those communal tenures again.

3 MR. MOSSMAN: Ms. Johnson, I don't even know  
4 what you're talking about when you're talking about  
5 communal tenures and all that. I cannot define them,  
6 so I'm not going to try to. But I can tell you that  
7 the purpose of this bill is it's not race based, which  
8 is why we're here today.

9 MS. JOHNSON: I'm not asking about --

10 MR. MOSSMAN: I'm telling you --

11 MS. JOHNSON: I'm trying -- asking you on the  
12 basis of the land, ceded lands means -- which Haunani  
13 Apoliona told us last time we were here.

14 MR. MOSSMAN: The ceded lands issue is one  
15 that is ongoing. That we at OHA receive \$15 million a  
16 year from 20 percent of the receipts of land from  
17 leaseholds.

18 MS. JOHNSON: Okay, Judge Mossman,  
19 remember --

20 MR. MOSSMAN: So we have ceded lands  
21 already.

22 MS. JOHNSON: -- the amended Constitution,  
23 1978, State of Hawaii, states, "OHA shall hold all  
24 real and personal," held title to all real and  
25 personal property of Native Hawaiians.

1 MR. MOSSMAN: That they --

2 MS. JOHNSON: Not just the 20 percent.

3 MR. MOSSMAN: That they come in contact with,  
4 that is given to them or they purchase. We have  
5 purchased two parcels. That's all we own.

6 MS. JOHNSON: All right. That's on the basis  
7 of definition before 1778 A.D. of communal land  
8 tenures, which didn't exist in feudal Hawaii.

9 MR. MOSSMAN: But, you know, frankly, as far  
10 as I'm concerned, that's irrelevant to the issue that  
11 we are discussing here today.

12 MS. JOHNSON: I'm sorry. It's in S.310 that  
13 the ceded lands based and goes to the new nation will  
14 get all of this.

15 MR. MOSSMAN: There will be only the lands  
16 that are negotiated with that will be given, and that  
17 will be dependent upon the federal and the state  
18 governments' decisions primarily.

19 MS. JOHNSON: With the interagency committee,  
20 which is provided for in S.310. I rest my case.

21 MR. KRISCHEL: I don't know if this is -- is  
22 a direct answer to what you're asking, but it seems to  
23 me that the question about communal and feudal tenure  
24 is one of whether or not we acknowledge that there was  
25 Hawaiian kingdom.

1           Before 1778, you know, we had -- we didn't  
2 have Hawaiians. Well, we had Hawaiians in the Big  
3 Island. But we had Kauaians, and we had Molokaians  
4 and Oahuans. You know, everybody had their own little  
5 space. Once you accept that there was a Hawaiian  
6 kingdom, a kingdom which -- which did its civil rights  
7 in the first constitution they did in 1840, over a  
8 hundred years before we had our civil rights movement,  
9 you have to acknowledge the fact that -- that that  
10 existed, that that was a real internationally  
11 recognized government.

12           And I think that -- I think maybe part of the  
13 confusion that we have here is because we conflate the  
14 prehistory period with the history of a -- a long-  
15 standing multicultural, multiracial nation that  
16 existed independently all the way up till 1898. So I  
17 think that was part of what you were asking. I hope  
18 -- I hope maybe that clarified it a bit.

19           CHAIRPERSON LILY: Okay, thank you.

20           Mr. Char?

21           MR. CHAR: I pass.

22           CHAIRPERSON LILY: Okay. Daphne Barbee-  
23 Wooten?

24           MS. BARBEE-WOOTEN: Okay. My question is to  
25 Mr. Krischel. You mentioned the Jim Crow laws of the

*Handwritten notes on a yellow sticky note:*  
- Not  
- Comm.  
- Unbiased

1 South, which came after the Civil War  
2 to African Americans predominantly.

3 And I have read the Akaka Bill  
4 read Jim Crow laws, and I don't see  
5 don't see that the Akaka Bill will lead to slavery,  
6 will lead to second-class citizenry. I don't see  
7 segregation. I don't see where people have to sit on  
8 the back of the bus. I don't see any of that.

9 Do you admit that the Akaka Bill is not  
10 really comparable to the Jim Crow laws?

11 MR. KRISCHEL: Yeah, I'm sorry if I wasn't  
12 clear. I don't intend to say that the Akaka Bill is  
13 equivalent to a Jim Crow law.

14 CHAIRPERSON LILY: You said that.

15 MR. KRISCHEL: I did not say that the Akaka  
16 Bill is equivalent to a Jim Crow law. What I was  
17 saying was that the usage of the one-drop rule to  
18 identify someone as a specific race is what drove the  
19 Jim Crow laws that existed back then. You know, it  
20 was a time and place where if you were, you know, a  
21 black woman, you could never have a white baby, you  
22 know? As long as you have one drop, you counted. And  
23 in Jim Crow era, you counted for -- for discrimination  
24 against you. Akaka Bill is the inverse of that. It's  
25 discrimination for you.

1           But I think that the big problem with the  
2 idea of the one-drop rule is that it does not  
3 effectively tell us who we are. We are -- we are not  
4 just one bit of who we are. We were all whole  
5 people. And especially in Hawaii, where we have such  
6 incredible mixes. I don't think that it's appropriate  
7 to -- to try to classify ourselves, our brothers, our  
8 neighbors, each other, you know, as being, you know,  
9 something that is just one fraction of what we are.

10           CHAIRPERSON LILY: Okay. Thank you.

11           Mr. Alm?

12           MR. ALM: Mr. Krischel, I really appreciated  
13 the passion that you -- you have and the dilemma that  
14 you spoke of. It's probably somewhat similar to a  
15 dilemma or two that -- to the fear I have for the  
16 future of Hawaii and -- and we come down, I think, on  
17 difference places perhaps on it.

18           You spoke of having multiculturals, multi-  
19 cultural backgrounds. I'm Danish, Norwegian,  
20 Scottish, Irish, very proud of my ancestors. One  
21 thing I know is that I can go and visit that Denmark;  
22 I can go and visit Norway; and I go and visit  
23 Scotland. And I have visited all. I didn't visit  
24 Ireland, and I will one day.

25           And -- and if you will breathe deep of that

1 ancestry and understand what it means to be Norwegian,  
2 what my Viking ancestors did and, you know, why I  
3 should be proud of that heritage and, you know, I was  
4 born here. You know, you were born here. I -- I left  
5 a job once because they required I moved to the  
6 mainland, and I have no connection to the mainland.  
7 So I stayed here.

8 Do you have any fear or do you have any sense  
9 that if there are not institutions that bear some  
10 distinctly Hawaiian piece to which Hawaiians can have  
11 reference that we will ultimately lose the strength of  
12 that culture?

13 MR. KRISCHEL: I think that's an excellent  
14 question. I think that if anything, you know, drives  
15 the determination to pass the Akaka Bill, it's the  
16 good intentions of all of us here who want to preserve  
17 the culture and the history and the language of our  
18 homeland, regardless of what our racial background is.

19 I think that -- I want to answer your  
20 question in two ways. For one, even though I'm not  
21 Norwegian or Danish, I must say that I -- I feel just  
22 as much pride in the culture of the Vikings and  
23 Norwegians and Danes, even though I'm not related to  
24 them, as perhaps you would. I think that -- that  
25 those cultures are human cultures and part of our

1 common shared history, regardless of our bloodline.  
2 There are influences from those cultures in American  
3 culture today.

4 And even though I may not have a direct tie  
5 to your family back in, you know, Norway, I still, you  
6 know, feel just as a part of the human family that we  
7 are together.

8 So to answer your question, the second part,  
9 the Hawaiian culture, as I think I stated before, is  
10 something that is important, critically important to  
11 preserve. I think that it is -- it is unique. It is  
12 incredible and that it deserves attention and it  
13 deserves recognition for what it is.

14 That being said, I believe the best way to  
15 preserve that culture is to spread it like a virus.  
16 You know, imagine one day when they're speaking olelo  
17 Hawaii in England. Imagine one day when they're  
18 playing slack key guitar in Moscow. You know, that's  
19 when Hawaiian culture will have conquered the world.  
20 So I see it in the opposite direction. I'm -- I'm  
21 more worried about how we share our culture to  
22 preserve it than how we isolate our culture to  
23 preserve it.

24 CHAIRPERSON LILY: Thank you very much.

25 Ms. Young?

1 MS. YOUNG: I have a bit of a different  
2 question. We had -- we spent this morning listening  
3 and hopefully many of us agreeing to the fact that  
4 language access was a key civil rights issue for us to  
5 look at because it renders people vulnerable when we  
6 don't understand what it is you're saying.

7 And we were privileged to have Dr. Blaisdell  
8 begin his remarks with Hawaiian and Chair Apoliona  
9 begin her remarks in Hawaiian, and it doesn't look to  
10 me like it matches what the English was after that. I  
11 recall at the state capitol -- I came late -- but I  
12 was there in time for a speaker who was speaking only  
13 in Hawaiian. I have been on a panel with her, and I  
14 know speaks English also. But the fact is that I  
15 remember the transcriber standing up and wildly waving  
16 her arms and saying, "I can't" -- "I don't know what  
17 she's saying."

18 And I was embarrassed, personally, that we  
19 were in Hawaii, in the state capitol, and -- and the  
20 panel -- panel except maybe for Ms. Johnson there,  
21 could not understand what she was saying. And I'm  
22 sure, you know, whether it was for or against -- it  
23 sounded like it was against. But the idea is that we  
24 did not have access to what she said at the moment and  
25 neither did the transcriber.

1           And I'm looking at the words that Chair  
2 Apoliona said and -- and I hear the words that  
3 Dr. Blaisdell said, and they're usually quite poignant  
4 in their opening. And I'm wondering if you would say  
5 them to us, because we don't have a translator here,  
6 if you could tell us what you did open your remarks  
7 with.

8           DR. BLAISDELL: Well --

9           MS. YOUNG: Yes?

10          DR. BLAISDELL: I'm Kekuni. My initial --  
11 (Off the record.) Initially, my remarks were a  
12 greeting and expressing gratitude.

13          (Hawaiian spoken) -- to you all.

14          (Hawaiian spoken) -- for this opportunity.  
15 For this opportunity to is my presentation.

16          (Hawaiian spoken.) So I was just saying in  
17 our language, expressing appreciation for this  
18 invitation.

19          At the end, I also not only thank you but  
20 referred to e ola, e ola. E ola na kini e.

21          Onipa'a kakou. Onipa'a kakou. A lanakila na  
22 kini e ola. E ola. E ola na kini e.

23          Onipa'a means to persevere. That was the  
24 motto of our queen. So I was invoking her image and  
25 her memory here by beginning with those words, which

1 comes from a song composed by our colleague, Liko  
2 Martin, one of the founders of our movement back here  
3 in the '70s, with words by Aunty -- the late Aunty  
4 Pilahi Pahi. But referring to our people of movement,  
5 our lands and our struggles, our land struggles.

6 The song refers to particular sites in our  
7 homeland where there have been struggles, such as  
8 Kahoolawe. And reminding us that we kanaka maoli,  
9 because we are kanaka maoli -- and I haven't explained  
10 that either. Kanaka means human being. Maoli means  
11 true, real, coming from the land, belonging to the  
12 land, returning to the land. And the land is aina,  
13 aina that feeds us. So all of that is part of our  
14 culture.

15 But how much of that is known here? And how  
16 much of that is practiced here, even at this  
17 particular forum? We have prominent people here who  
18 refer to the mainland. What did they mean by "the  
19 mainland"? They're talking about their mainland,  
20 their homeland. And that land is their mainland. And  
21 yet they live in our homeland, our mainland. And who  
22 want to take, to share our homeland.

23 Be kanaka, the essence of it is sharing and  
24 is caring. And that's what we do. And that's what we  
25 have done. And what is a result? We are landless in

1 our homeland. That's a result. So that's why our  
2 movement for independence is to be independent.  
3 Otherwise we are dependent, and we refuse to be  
4 dependent. We insist on being ku'oko'a, independent,  
5 to stand separately. That's what ku'oko'a means.

6 And we want to continue to care and share,  
7 but we've learned that others take and take and take.  
8 So that's our plight. And that's our challenge. So  
9 if you really want to be Hawaiian, practice caring and  
10 sharing from those from which you have taken so much.

11 (Hawaiian spoken.)

12 MS. APOLIONA: (Hawaiian spoken.) Okay.

13 Kinohi, kinohi.

14 My greeting was recognizing the generations,  
15 the elders, the makua, the young, from Hawaii, across  
16 this Hawaii to Niihau and across this brilliant world,  
17 oiwi oline, the Native Hawaiians, and those who come  
18 as friends, who are gathered as friends at this  
19 meeting, in which we will talk about the well-being  
20 and the awakening for our Hawaiians.

21 It was also a greeting to those born and  
22 raised kamaaina, children of the land, as well as the  
23 visitors. But not just any ol' kamaaina and visitor;  
24 kamaaina and visitor that come with good, good spirit  
25 and good thought for us. And that was my greeting.

1 MS. YOUNG: Thank you.

2 CHAIRPERSON LILY: Thank you very much.

3 Ms. Fujimori?

4 MS. FUJIMORI: I have a question for any of  
5 the OHA representatives. Do you think that there are  
6 -- is there any reconciliation between  
7 Dr. Blaisdell's position and the Akaka Bill in your  
8 reading of the Akaka Bill?

9 MR. KLEIN: It's political, you're talking  
10 about?

11 MS. FUJIMORI: Yeah.

12 MR. KLEIN: Dr. Blaisdell's position is  
13 complete independence, to return Hawaii to pre-  
14 annexation, pre-overthrow days, when there was a  
15 recognized sovereign Hawaiian kingdom, as I  
16 understand. That's not what the Akaka Bill does.

17 The Akaka Bill is much like in my testimony.  
18 I talked about the restoration of the Menominee Indian  
19 tribe. There's precedent for that. This is precedent  
20 for that, I should say.

21 And so when you say the reconciliation,  
22 there's two distinct -- distinct situations, his view  
23 and the view that the Akaka model is much like the  
24 model that's followed in Indian country.

25 MR. MOSSMAN: That question, I think,

1 represents a lot of the misunderstanding sometimes  
2 about the Akaka Bill, because we sometimes get lumped  
3 into the independence groups who are asking for  
4 complete independence. And that's why I think on that  
5 poll question, as Trustee Apoliona already explained,  
6 where we got 51 percent on the question, "Do you  
7 support Native Hawaiian governing entity," it's --  
8 people don't know what that entity's going to be.

9           They hear people yelling all the time about,  
10 you know, kings and queens and so forth taking over;  
11 and they're a little bit cautious, and they're a  
12 little bit concerned. And I just wanted to comment on  
13 that.

14           MS. APOLIONA: Just a short statement.

15           Clearly, the legislation is to establish a  
16 government-to-government relationship. It's clearly  
17 written. It's noted in the legislation. I don't  
18 think the Congress could legislate anything beyond the  
19 United States Constitution so -- so I -- you know, and  
20 I think as Justice Mossman said earlier, as we talk  
21 about the Akaka Bill, its point of view, it's too  
22 much; and others' point of view, it's not enough. And  
23 so we -- we have this responsibility to -- to deal  
24 with this political and contemporary arena, always  
25 challenged.

1                   CHAIRPERSON LILY:   Okay.   Dr. Blaisdell, did  
2 you have a -- did you have a comment?

3                   DR. BLAISDELL:   May I also comment, please?

4                   Our position is ku'oko'a, independence.  
5 Judge Klein has referred to the kingdom.   That's one  
6 option.   But there are other models for independence.  
7 Haunani Apoliona here has referred to -- I think you  
8 said something about all options are open.   There's no  
9 definite goal.   And that's proper definition of self-  
10 determination.

11                   All right, self-determination means that we,  
12 we, selves, determine whatever that is.   Under  
13 international law, the decolonization, there are three  
14 options:   Independence; remaining incorporated or  
15 integrated within the mother country, so-called mother  
16 country, the United States; or something in between,  
17 free association, like some of the Micronesian  
18 states.

19                   That right, that right as a right of  
20 self-determination was granted to us by the United  
21 Nations in the year after its founding, in 1946, when  
22 our homeland was inscribed, put on the list of non-  
23 self-governing territories, colonies eligible for  
24 decolonization.

25                   But in 1959, after the fraudulent statehood

1 process, the United States deceptively, secretly  
2 reported to the United Nations that that act, the  
3 statehood process, was an act of self-determination  
4 and, therefore, the United Nations should remove our  
5 homeland from the list of non-self-governing  
6 territories eligible for decolonization. And that  
7 needs to be clearly in the record and clearly  
8 understood by all the members of this panel.

9           So while the United States has apologized for  
10 its armed invasion, overthrow of our queen, taking of  
11 our lands, in violations of treaties and international  
12 law, the United States has yet to undo and correct the  
13 fraud of statehood.

14           So I'm asking that this be part of the record  
15 and clearly understood when we're talking about our  
16 position of independence. And it is not secession.  
17 It is not secession, which is a term that has also  
18 been used by prominent people, including those in this  
19 room.

20           Secession implies that we willingly joined  
21 the United States. We did not, as has also been  
22 clearly said. We resisted. We continue to resist.  
23 The issue is not one of secession. The issue is one  
24 of the United States withdraw from its illegal  
25 occupation of our homeland, under international law,

1 and our assuming our sovereignty, our control over all  
2 of our lands. Thank you.

3 CHAIRPERSON LILY: Thank you, Doctor.

4 Ms. Agbayani?

5 MS. AGBAYANI: Thank you. Thank you, all,  
6 for your presentations. I just wanted to get your  
7 comments on -- I don't want to confuse everyone but  
8 I'm -- some people see the Akaka Bill as race-based  
9 discrimination. I don't actually think that that's  
10 the case, and I was going to ask you your comment on  
11 the -- did other's political status that clearly are  
12 not race based, and I wanted your comments on that.

13 For example, I was born in the Philippines  
14 and I became -- was a permanent resident, non-alien  
15 for a while, then I became a citizen. And so there  
16 are benefits for being American-born U.S. citizens and  
17 being non-citizens.

18 For example, Arnold Schwarzenegger will not  
19 be allowed to run for president because that's in the  
20 Constitution, and so that's not discrimination. It's  
21 based on where he was born. And so there are these  
22 kinds of situations and -- and that I think a lot of  
23 people may be able to understand that the Akaka Bill  
24 is not race based. It's based on a political  
25 definition of one's status, such as being a citizen or

1 a non-citizen, a native or a non-native.

2 So which I just wanted to comment on that and  
3 illustrate that there are certain kinds of so-called  
4 discrimination -- or different benefits based on a  
5 political status and not based on race.

6 I also wanted to ask any of you to comment on  
7 how you think the civil rights laws of the United  
8 States can be helpful to the different ethnic groups  
9 in Hawaii and whether or not Hawaiians can also be  
10 protected under the civil rights laws.

11 If you have any comments on -- on those. I  
12 believe that a certain person can have multiple  
13 definitions. You can be, you know, a certain gender;  
14 you can be a certain ethnicity; and you can be a  
15 citizen, non-citizen, and so forth. And so I just  
16 thought that some of those issues might help clarify  
17 for some people why they can support both civil rights  
18 as well as the Akaka Bill.

19 MR. MOSSMAN: This -- this committee is here  
20 for one reason and one reason only, and that's to plan  
21 for and listen to statements and to investigate issues  
22 regarding civil rights, which affect everybody  
23 Hawaii. So male, female, Hawaiian, haole, whatever,  
24 whatever issues come up, all of us are subject to the  
25 laws in the United States.

1 I -- I'm not quite sure what -- what you were  
2 referring to. But if you were referring to should  
3 this Akaka Bill pass, would Hawaiians still be subject  
4 to the same laws, et cetera, as everyone else, my  
5 answer would be yes. We'd still be subject to equal  
6 rights protection and so forth, with the understanding  
7 that should this bill pass, it is passed because of a  
8 political decision by the Congress.

9 Congress has a lot of power, and we call it  
10 plenary. It means complete. It's not absolute, but  
11 it's very, very strong. And it's historically been  
12 shown with the Indians and the Alaskans. All we are  
13 doing as Hawaiians is saying put us in that political  
14 arena. You here, this committee, should not even  
15 touch that. Let Congress make that decision. Your --  
16 your role here is to look at issues that you have  
17 brought up, Ms. Agbayani, that need the attention of  
18 this body.

19 CHAIRPERSON LILY: Thank you.

20 Do you have a comment?

21 MR. KLEIN: I just wanted to say thank you  
22 for that question because it assumes that there are  
23 Hawaiians still today and -- and I think that's a good  
24 point of reference because I don't think some people  
25 think there are. They think they're all gone, they've

1 been assimilated. And so the answer to that would be  
2 if you're totally assimilated, then there would be no  
3 civil rights for Hawaiians because Hawaiians wouldn't  
4 be here. They wouldn't exist.

5 So I thank you for your question. I think  
6 Hawaiians should get the full measure of civil rights  
7 that other people get.

8 And I think your -- your point about Governor  
9 Schwarzenegger not being entitled to run for president  
10 is because it is under the Constitution. I support  
11 the Constitution of the United States.

12 I think in this case, the Constitution and  
13 laws of the United States provide a solution to the  
14 problem. It may not be some people's preferred  
15 solution, but it is the -- the option that is most  
16 possible and best under all the circumstances today.  
17 That's where I differ from some other people.

18 But if you look at the Constitution, it does  
19 provide different sorts of rights and remedies for  
20 Indians, for example, under the Indian Congress laws  
21 and actually under the 14th Amendment.

22 And it is really clear to me that Hawaiians  
23 have the opportunity to be recognized just like  
24 Indians and Alaska Natives have. Because despite what  
25 I hear about history, history was very similar. And

1 if you look at it, you'll -- you'll see the  
2 similarities.

3 So I look to the Constitution and the laws of  
4 the United States to solve this problem. You're part  
5 of that process. And I hope you -- you also support  
6 the process that would lead to full civil rights for  
7 -- for Hawaiians, who do continue to exist today as a  
8 people, not totally assimilated and gone, no matter  
9 what their blood quantum, which is a particularly  
10 western concept, by the way.

11 Blood quantum was important in 1920s. Fifty  
12 percent Hawaiians had the opportunity to participate  
13 in Hawaiian homelands. But the United States  
14 separated 200,000 acres of former Hawaiian land anyway  
15 and allowed 50-percenters to homestead that land.  
16 Blood quantum came from the western concept.  
17 Hawaiians know who are Hawaiians, and blood quantum  
18 isn't part of that.

19 In Indian country, Indians decide who joins  
20 the tribe, after the tribe is constituted, based in  
21 part by blood quantum. But after that, they all have  
22 the same rights. So I thank you for your question.

23 CHAIRPERSON LILY: Mr. Krischel.

24 MR. KRISCHEL: I also think that was a very  
25 good question. I believe -- I'm not a lawyer. But I

1 believe what you're referring to about being born  
2 somewhere is called jus soli, you know, the rights  
3 that you get for being born in a certain place.

4 And frankly, if the Akaka Bill simply said  
5 anybody born in Hawaii, you got to be a part of this  
6 new Akaka tribe, I probably wouldn't have a problem  
7 with it. If you were even to go so far as, as to say  
8 that -- that the Hawaiian kingdom was your cutoff  
9 point.

10 The whole reason why we're here is because in  
11 1893 there was a revolution. We had 162 troops  
12 onshore, and that seemed to make the difference --  
13 even if you were to put it at that point and just say,  
14 well, you know, anybody with ancestry to people who,  
15 through jus soli, were born in the Kingdom of Hawaii  
16 and therefore got the rights and citizenship as  
17 subjects of the Kingdom of Hawaii, then I think I also  
18 wouldn't have any problem with it.

19 The difference between Arnold Schwarzenegger  
20 not being able to run for president because he wasn't  
21 born here is significantly different than saying no  
22 Austrians can ever be president of the United States.

23 And I think that once we split ourselves up  
24 by saying this person's native, this person's non-  
25 native, you know, into perpetuity, there is no gaining

1 of those civil rights for all people.

2 I think that Mr. Klein spoke of blood quantum  
3 as being a western concept, and I agree with him. I  
4 agree with him that is a divisive concept. The idea  
5 of measuring people by blood is -- is not right.

6 I think that the only disagreement that I  
7 have with him is that he'll go all the way down to,  
8 you know, one percent, and I'll go all the way down to  
9 zero percent. So if the Akaka Bill didn't mention,  
10 you know, race or ancestry, if it included the hanai  
11 children, you know, cousins that are born, raised in  
12 Hawaii, I would have no problem with it at all.

13 CHAIRPERSON LILY: Okay. We've got 15  
14 minutes. How are we doing?

15 Okay, we've got 15 minutes. You're going to  
16 have a lot to say. Can you make it brief? Because  
17 I've got all these panel members with questions, and  
18 I've got 15 minutes. (Off the record.)

19 CHAIRPERSON LILY: Ms. See Ang? (Off the  
20 record.)

21 MS. SEE ANG: In Ms. Apoliona's statement,  
22 you were saying that the Native Hawaiian Government  
23 Recognition Act will confirm that -- it will confirm  
24 the right of Hawaii government to the economically  
25 self-sufficient.

1           And my question is: How do you plan to do  
2 that, and how will it affect the rest of the non-  
3 Hawaiians?

4           MS. APOLIONA: You're referring to, I guess  
5 page 2.

6           MS. SEE ANG: Page 2.

7           MS. APOLIONA: Talking about from the section  
8 in the bill --

9           MS. SEE ANG: Right.

10          MS. APOLIONA: It talks about after the  
11 enactment, among the many things confirming that  
12 inherent right to autonomy, referring to decision  
13 making on general affairs, self-determination, and  
14 self-governance, the right to reorganize and the right  
15 to become economically self-sufficient.

16           I think ultimately the -- the assets and  
17 programs and people that move this governing entity  
18 into some realization, the leadership and its  
19 members, we'll need to continue to focus on the  
20 sustainability, sustaining the Native Hawaiian  
21 governing entity, the nation if you will.

22           As I said earlier to Mr. MacDonald,  
23 referencing when he was talking about the -- the  
24 entity question on our poll, it's -- from my point of  
25 view, as I see it, and others who have also shared

1 this thinking, the public trust that we are a part of,  
2 Hawaiian Home Lands and the Office of Hawaiian  
3 Affairs, we currently oversee, administer, and we grow  
4 our assets.

5           These assets I see, from my point of view, as  
6 becoming the beginning of the assets that the  
7 governing entity will oversee, administer and grow as  
8 well. And the members that are a part of -- that are  
9 part of this governing entity, the beneficiaries of  
10 this governing entity can benefit and will benefit  
11 from the use and development of these assets.

12           So economic self-sufficiency is a -- will be  
13 an important pillar on which to not only begin  
14 building or launching the nation, but sustaining the  
15 nation.

16           And so it's going to take assets, and it's  
17 going to take wise use of those assets. And it would  
18 also take the -- the use of these assets to benefit  
19 Hawaiians. But remember, the Hawaiians, Native  
20 Hawaiians that are in Hawaii, our successful and  
21 strategic use of these assets will benefit all of  
22 Hawaii as well. Because we live here. And  
23 partnerships will develop and grow. And some of them  
24 have already started to. In our own public trust  
25 agencies, you can see partnerships having been

1 established and, and -- and benefits derived not only  
2 for natives but those that are from the communities of  
3 Native Hawaiians and the community of Hawaii.

4 So I guess, you know, we hear the -- the  
5 chief executive of our state say what's good for  
6 Native Hawaiians is for Hawaii. And so part of that  
7 is this economic self-sufficiency and the creativity  
8 and strategies that will -- that will emerge from the  
9 use of these assets in this way.

10 CHAIRPERSON LILY: Okay. Thank you.

11 Ms. Benck?

12 MS. BENCK: Thanks to each one of you for  
13 coming today and for speaking with us. I have got a  
14 question I'd like each one of you to answer, but I  
15 first want to confirm my understanding with Judge  
16 Mossman because what I'd like to reference is the top  
17 of page 13 of the OHA written testimony. It's a  
18 sentence that begins, "So rather than waste everyone's  
19 time with the newly appointed local committee."

20 I wanted to confirm, following your advice in  
21 that sentence, would that be a satisfactory result of  
22 this committee's, let's -- process here on the Akaka  
23 Bill that we just --

24 MR. MOSSMAN: Yeah.

25 MS. BENCK: -- step back?

1 MR. MOSSMAN: Yes.

2 MS. BENCK: And so then, now that I've  
3 confirmed that that's what Judge Mossman's interested  
4 in, can I ask each one of the panelists to say if they  
5 would be happy with that result as well, starting with  
6 whomever?

7 MR. KRISCHEL: Sure. I think I can safely  
8 say no. I would not be happy with that result.

9 I think that what you've heard today are many  
10 people with different perspectives on, you know, the  
11 history, the reasons, the rationale for moving forward  
12 with the Akaka Bill. And I think that this may be the  
13 first real time that we've been able to have this  
14 discussion. I think it's an important discussion,  
15 even as I disagree with these -- these people, I think  
16 that it's valuable to hear what they have to say.

17 The Akaka Bill is -- is big news in Hawaii.  
18 It's going to make a big difference, if it happens or  
19 if it doesn't happen.

20 So I would hope that we continue to have more  
21 talk from all sides so that we can, you know, work out  
22 our differences. I think that if we just stop talking  
23 about it, I think we really risk leaving out bridges  
24 that we can build between, you know, Kekuni, all the  
25 way on the left, and me all the way on the right. So

1 my hope is that we continue talking about it.

2 MR. MOSSMAN: Just to clarify what I had said  
3 here, I'm telling you to put to rest this whole  
4 issue. It's -- it shouldn't be before you. I have  
5 claimed lack of jurisdiction and lack of justice.

6 Mr. Krischel here, his entire 20-minute or  
7 plus argument was based on race. That's not the  
8 reason we're here today. We're here today on a  
9 political question.

10 We don't even -- you don't even need to  
11 address race. You should allow this matter to proceed  
12 in the Congress and in the courts. This has nothing  
13 to do with race.

14 MS. APOLIONA: If you're suggesting that  
15 perhaps this HSAC will proactively say, "Hey, we don't  
16 belong in this discussion" and you decide that, "Let's  
17 go on and discuss other things," I think that would be  
18 a very monumental step. I think to really make it  
19 count, the Hawaii State Advisory Council should  
20 educate the United States civil rights commission  
21 because they don't belong in this discussion either.

22 CHAIRPERSON LILY: You've got a brief  
23 comment, Doctor?

24 DR. BLAISDELL: Yeah. Thank you for the  
25 question, ninau. I think it's essential that your

1 committee and the commission take a position. And if  
2 you can't take one, take two. If you can't take two,  
3 take three.

4 Because our position, our position has been  
5 represented by only one person, myself, on this  
6 panel. Outnumbered by the others. So I'd like to  
7 officially file this complaint.

8 I think it also needs to be clearly stated,  
9 the membership of your committee as well as the  
10 commission and who they represent, and why we, our  
11 position for independence, is not represented on your  
12 committee, or on the commission. We are compelled to  
13 be Americans. So we're asking you to abide by civil  
14 rights law and give us an equal voice, but we have  
15 not. Our position for independence has not been given  
16 an equal voice, right here, in your own committee.

17 So, please, I'd like that to be officially  
18 recorded in your records.

19 CHAIRPERSON LILY: Thank you, sir.

20 Mr. Tanna?

21 MR. TANNA: I have no questions.

22 CHAIRPERSON LILY: Okay. Mr. Burgess?

23 MR. BURGESS: Yes, I do have some questions.

24 CHAIRPERSON LILY: You can have one

25 question. You have six minutes.

1 MR. BURGESS: Under the kapu system that was  
2 in effect in 1778, when Captain Cook happened upon the  
3 Hawaiian Islands, the maka'ainana had no rights.

4 They were subject to the whim of the chiefs.  
5 They had no ownership in property. The fruit of their  
6 labor could be taken from them at the whim of the  
7 ali'i, their lives. The kapu system practiced  
8 infanticide to preserve the purity of the ali'i  
9 bloodlines. Human sacrifice was practiced. Human  
10 slavery was practiced.

11 But in 1819, shortly after the death of  
12 Kamehameha the Great, as I understand it, Hawaiians  
13 themselves decided to abolish the kapu system. And  
14 from 1819 until -- until annexation in 1898, there was  
15 a gradual movement from subjugation to freedom, to  
16 individual liberty on the part of -- of the  
17 maka'ainana.

18 And for the first time the people of Hawaii,  
19 the Native Hawaiians achieved self-determination was  
20 in 1900 when they were made, in the Organic Act, full  
21 citizens of the United States.

22 Now, my question is this. You are now  
23 seeking a return, Dr. Blaisdell, as I understand it,  
24 you are seeking a return to something like the pre- or  
25 the 1778 version of the Hawaiian kingdom in which

1 kanaka maoli, or the maka'ainana, basically had no  
2 rights. And yet today, kanaka maoli have the full  
3 rights of American citizenship. They have more  
4 self-determination than they ever had under the  
5 kingdom. They have more freedom and more opportunity  
6 for prosperity than they ever had under the kingdom.

7 So how do you justify seeking a return from  
8 individual liberty, going back to subjugation as it  
9 was under the kingdom?

10 CHAIRPERSON LILY: Dr. Blaisdell.

11 DR. BLAISDELL: Thank you for the ninau,  
12 question.

13 Mr. Burgess, may I just briefly say for the  
14 outset that I've disagreed with all of your points  
15 except that our ancestors at one time did practice  
16 human sacrifice. Not uniformly, but it was practiced  
17 under certain circumstances, in certain places. And  
18 that practice was brought to our homeland from a  
19 distant homeland in the South Pacific. All right.

20 But prior to that time, we did not practice  
21 human sacrifice. So it's important to be very clear  
22 that you qualify that. All right? And I -- I contest  
23 the other points that you also make.

24 You began by referring to the maka'ainana.  
25 The term itself, as taught to me by my professor

1 there, Rubellite Johnson, means maka. Maka is the  
2 eyes. Aina, the land. The eyes of the land. Aina is  
3 in that word. Aina is what feeds us. Maka, eyes of  
4 the land. These were the workers of the land, the  
5 watchers of their land, the producers of food, the  
6 produce, for the nation.

7 They were not slaves. They had to be  
8 protected and honored and nurtured because the chiefs  
9 knew that without them there was no food, there were  
10 no provisions. And then we have to consider that even  
11 before there was the stratified system, all people  
12 within the ohana being practiced before there was the  
13 ali'i system.

14 So I -- I just wanted to be sure that it's  
15 very clear. All right?

16 You referred to infanticide. Oh, that's  
17 another one. Another historic note that has been  
18 perpetuated but clearly refuted by the researchers of  
19 David Standard (phonetic), for example, in his war --  
20 in his book Before the War. So I would -- at another  
21 time I would like to systematically discuss each of  
22 these points.

23 You have said that the people, the  
24 maka'ainana, had no rights. And yet in the first  
25 constitution that was drafted under Kamehameha the

1 Third, mm-hmm, and in which American missionaries  
2 participated, it refers to all other people having  
3 equal rights.

4 So I'd just like to put on record that  
5 there's much that has -- has to be corrected and mis-  
6 information by others regarding our history and our  
7 culture.

8 CHAIRPERSON LILY: Thank you. And I know  
9 from personal experience if you sit down with  
10 Dr. Blaisdell, expect to spend a long time, from  
11 personal experience.

12 Okay, we've just got two minutes. Actually,  
13 we're just over. Mr. Kuroiwa?

14 MR. KUROIWA: Thank you, Mr. Chair. I'd like  
15 to thank all of the panel that provided us some  
16 excellent information and sharing all, I guess, yeah,  
17 what you believe. But this, the question primarily is  
18 for Justice Klein.

19 For me, I'm Japanese, Yonsei, fourth  
20 generation. I visited Japan two hours on my way back  
21 from Vietnam, combat duty, 101st Airborne. I belonged  
22 to the unit called -- a reserve unit, 100th/442nd. A  
23 board meeting directors tonight that after this I'll  
24 be attending.

25 I was one of the 12 individuals that got

1 involved in stopping the sale of the Japanese Cultural  
2 Center and was involved in the visionary committee to  
3 come up with a new vision of the Japanese Cultural  
4 Center; where we changed the vision to include all the  
5 people, all the cultures of Hawaii and -- and the -- I  
6 can say that the end result of that was the Hali'a  
7 (phonetic) going to Yokohama. That was a -- the kind  
8 of decisions that we looking that we reach out to  
9 everybody else.

10 I'm also -- I also get very annoyed about the  
11 Apology Bill. I'm a past moderator of a United Church  
12 of Christ church, major church. And I was one that  
13 was against the church apologizing for being complicit  
14 in the overthrow of the queen, because it wasn't  
15 true. There was no historical evidence to say it was  
16 true. And I've been -- I wrote pieces about that, so  
17 it's on the record.

18 My question to Justice Klein: Being myself  
19 Japanese and, similar to Jere, that the whole family  
20 goes back nearly a hundred twenty years in Hawaii, my  
21 only roots Hawaii, and yet you leave us out. How --  
22 how do you reconcile that kind of a situation?

23 MR. KLEIN: You sound really busy.

24 MR. KUROIWA: I am very busy. Thank you.

25 MR. KLEIN: Then you should spend less time

1 suing us and more in your other pursuits. But --  
2 because they sound very worthy.

3 I don't think anybody's trying to leave you  
4 out, and I think that's -- the us/them mentality  
5 that's been created in your mind doesn't exist.

6 The point is not to leave people out; the  
7 point is to honor the fact that there were people here  
8 called Hawaiians, who are indigenous to Hawaii, the  
9 native people who, if you look at the history  
10 carefully -- and I know you do -- you might stumble  
11 across the concept of injustice. And the Akaka Bill,  
12 rather than leaving people out, is an attempt by I  
13 would hope the civil rights commission to afford  
14 Hawaiians some measure of justice. It really comes  
15 down to that. It's a policy decision.

16 You know, in answer to Ms. Benck's question,  
17 which I didn't get a chance to answer -- I'm sorry --  
18 I don't think the commission here has, you know, any  
19 real business determining whether a congressional act  
20 should be supported by a civil rights commission on a  
21 local level or not. That's a matter for Congress to  
22 introduce. There's a process. People speak for it or  
23 against it, and it goes through the political  
24 process. And then it's either passed or not.

25 But the effect of that bill, if it does pass,

1 is to resolve an injustice to the Hawaiian people.  
2 Apparently you don't think that happened because  
3 you're not willing to apologize. You thought as a  
4 church member that your church was wronged, therefore  
5 the government was wronged, therefore nothing  
6 happened.

7 The fact of the matter is, Congress did pass  
8 an apology resolution. And as Chair Apoliona stated,  
9 why do you apologize if there is no wrong? And why do  
10 you apologize to Hawaiians if there's no Hawaiians?  
11 It is a public law. Congress is on record. So, you  
12 know, your position did not prevail on that.

13 And so I say I honor the system. You know,  
14 if the system produces an apology bill, then I think  
15 instead of undermining it, it needs to be followed.  
16 And -- and if you follow it, you find justice for the  
17 Hawaiian people. If you don't, you won't. That's my  
18 answer.

19 CHAIRPERSON LILY: Thank you.

20 We have -- we are over, but we have one last  
21 question, from Linda Colburn.

22 MS. COLBURN: Thank you, Mr. Chair. I've  
23 been told on numerous occasions that there is an  
24 inextricable link between language and culture. And  
25 it's also been my impression that the Hawaiian

1 language was on the brink of extinction in the late  
2 '70s and that it was through the advocacy of Hawaiian  
3 organizations, the creation of new Hawaiian programs  
4 utilizing primarily Hawaiian trust resources that the  
5 Hawaiian language became the second official language  
6 of the state and enjoyed a resurgence.

7 I guess the question I would put to anyone  
8 who cares to respond is: Were it not for these  
9 dedicated resources, would the Hawaiian language be  
10 enjoying the resurgence that it is today?

11 And secondly, would we continue to see an  
12 erosion of our culture and cultural practices in part  
13 because of the loss of that language?

14 How would the Akaka Bill affect a matter of  
15 that nature?

16 MS. APOLIONA: Resources and advocacy went --  
17 go hand in hand to the revitalization and the growth  
18 and growing participation and extension of Hawaiian  
19 language.

20 With Hawaiian language must also come their  
21 values, because that is the -- that's part of the  
22 culture, how we look at the world, how we deal with  
23 all around us, how we deal with each other and  
24 recognizing the power, the higher power, as my  
25 comments say.

1           If -- if advocates and resources were not  
2 available and the -- the generation that stepped  
3 forward to revitalize the speaking of the language  
4 were not there, I don't think the system would have  
5 provided for.

6           Further, I think with the enactment of the  
7 Native Hawaiian Government Reorganization Act, we can  
8 only look for more commitment, uplift and opportunity  
9 to, to -- to extend and expand what is Native  
10 Hawaiian.

11           People speak of Hawaii as being -- and Hawaii  
12 culture. I mean, for obviously we are referred to as  
13 the Aloha State. But Hawaii, as generations before us  
14 have said, Hawaii has much to offer the world. And it  
15 is this -- this culture, it is this spirit, spiritual  
16 relationship with this place and with our higher power  
17 and with our environment that can serve as a beacon  
18 for how the rest of the world lives.

19           It is the Hawaiian culture that is that  
20 pulse, is that heartbeat. It is -- it is the Native  
21 Hawaiian culture. It is those generations, the  
22 families and the -- the elders before them, the elders  
23 before them and those that will come after.

24           That is the lifeblood of the future and what  
25 Hawaii and our Hawaiian culture can bring not just to

1 Hawaii, the nation, but the world.

2 Because of the nature of the reconciliation  
3 and the opportunity to right some of these wrongs, it  
4 will only serve to heal, begin to heal and -- and the  
5 generations yet to come will benefit. The Native  
6 Hawaiian generations and all of Hawaii will benefit.

7 CHAIRPERSON LILY: Mr. Krischel?

8 MR. KRISCHEL: I -- I can't speak to exactly  
9 specific programs. I was a very young child in Hawaii  
10 back in the 1970s. But I do want to make this  
11 statement: That the language of Hawaii, olelo Hawaii,  
12 does not require a specific ancestry and should not  
13 require a specific ancestry. And I would be happy,  
14 very happy if for all the children of Hawaii, you  
15 know, not only those in immersion schools, not only  
16 those, you know, at Kamehameha Schools, but for all  
17 the children Hawaii if Hawaiian language teaching was  
18 part of their standard curriculum.

19 And I think that, you know, my problem with  
20 the Akaka Bill and -- and dividing those resources  
21 into, you know, just one ancestry stock -- I want to  
22 respect Dr. Blaisdell, speak of ancestry instead of  
23 race. But I think that -- I think that takes away  
24 from us.

25 I think that, you know, Mr. Klein has talked

1 about, you know, the Hawaiians disappearing because  
2 they're all assimilated. I see it the other way. Why  
3 don't the Hawaiians assimilate all of us? You know,  
4 why don't we all become Hawaiians? Why don't we all  
5 speak that language? Why don't we all have that  
6 special connection to the land, you know, the spirit  
7 of the islands?

8 I think that -- I think that --

9 MR. MOSSMAN: Okay --

10 MR. KRISCHEL: I think that it's something  
11 that can be shared with everybody.

12 MS. COLBURN: I guess my point was it was  
13 specific resources set aside to benefit Hawaiians that  
14 saved the language from extinction so that it can be a  
15 part of instruction and shared more broadly.

16 And so I just wanted to understand what the  
17 implications of that measure, political measure would  
18 be with regard to Hawaiian culture, Hawaiian  
19 language. Thank you.

20 CHAIRPERSON LILY: Well, this has been a  
21 tremendous session. You -- you're all passionate. I  
22 thank you for your demeanor and your presentations on  
23 behalf of the committee. I know we've all been  
24 enlightened, and I appreciate it very much.

25 Did you have a comment?

1 MS. APOLIONA: Yes. One final comment.

2 CHAIRPERSON LILY: Okay.

3 MS. APOLIONA: Kekuni said I can make a final  
4 comment because he's not going to.

5 On behalf of all of us and especially the  
6 team from the Office of Hawaiian Affairs, I want to  
7 thank you all. I think for me, anyway, our experience  
8 on August 20th is a whole different experience today.  
9 So I have gained a -- a little bit more insight into  
10 some of the personalities that make up this advisory  
11 committee. And some of my opinions have changed, some  
12 have not. But thank you very much.

13 CHAIRPERSON LILY: Thank you very much.

14 Don't go away. We're still in session. (off  
15 the record.)

16 We're still on the record. I want to thank  
17 you, everyone, all the panelists, members of the  
18 public and the press. This is an important session.  
19 We're educating the public as well as ours. I want to  
20 thank the staff of the Commission on Civil Rights  
21 who -- there she is, Barbara Delaviez, and Evelyn.  
22 And Michael Yaki, thanks for coming all the way across  
23 the ocean to our shores.

24 COMMISSIONER YAKI: I didn't bring my golf  
25 clubs.

1 CHAIRPERSON LILY: He didn't bring golf  
2 clubs. And this has been a tremendous session.

3 Do we have a motion to adjourn?

4 MS. BARBEE-WOOTEN: Motion to adjourn.

5 CHAIRPERSON LILY: I have a motion to  
6 adjourn.

7 MS. YOUNG: I second.

8 MS. FUJIMORI: Second.

9 CHAIRPERSON LILY: Second. Any discussion?

10 MS. COLBURN: Could we prevail on upon of our  
11 members, Ruby, to help us with a closing pule?

12 I know it's bad form to ask you in this  
13 fashion. And that said, it's even worse form not to  
14 ask it.

15 CHAIRPERSON LILY: Would you like to do that  
16 after we've voted?

17 MS. JOHNSON: Sure.

18 CHAIRPERSON LILY: Okay. So all in favor?

19 (Chorus of ayes.)

20 (Pule.)

21 (Concluded at 5:15 p.m.)

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STATE OF HAWAII )  
 ) SS.  
CITY AND COUNTY OF HONOLULU )

I, ANN B. MATSUMOTO, CSR NO. 377, a Notary Public in and for the State of Hawaii, do hereby certify:

That I reported in machine shorthand the proceedings had in the matter entitled a upon the first page hereof; that the foregoing pages contain a full, true, and correct statement of the proceedings had in said matter, and a true, full, and correct transcript of my machine stenographic notes taken of the proceedings.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my seal this 13<sup>th</sup> day of

October 2007  


ANN B. MATSUMOTO, CSR NO. 377  
Notary Public, State of Hawaii  
My Commission Expires 10/16/07

