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A HEARING BEFORE

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

The Status of Native Hawaiian Civil Rights Five Years  
After the Passage of the Apology Bill

SATURDAY, AUGUST 22, 1998

Keoni Auditorum, East-West Center  
Hawaii Imin International Conference Center  
1777 East-West Road

MORNING SESSION

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APPEARANCES:

MEMBERS OF THE US COMMISSION ON CIVIL RIGHTS  
HAWAII ADVISORY COMMITTEE

Mr. Charles Maxwell, Sr., Chairperson

Mr. David Michael Forman

Ms. Faye Kennedy

Mr. Alan Murakami

Dr. Helen R. Nagtalon-Miller

Mr. Oswald Stender

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Mr. Tom Pilla

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Ms. Stella Youngblood

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## 1 PROCEEDINGS -- AUGUST 22, 1998

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3 CHAIRMAN MAXWELL: Mahalo. Good  
4 morning. This meeting of the Hawaii Advisory  
5 Committee to the United States Commission on Civil  
6 Rights will now come to order.

7 I am Charles Kauluwehi Maxwell, Senior, of the  
8 Hawaii Advisory Committee to the US Civil Rights  
9 Commission. The US Commission on Civil Rights is an  
10 independent bipartisan fact-finding agency first  
11 established under the Civil Rights Act of 1957.

12 By Congressional mandate, the Commission is  
13 directed to:

14 One, investigate complaints alleging that  
15 citizens are being deprived of their right to vote by  
16 reason of their race, color, religion, sex, age,  
17 disability, or national origin, or by reason of  
18 fraudulent practices.

19 Two, study and collect information concerning  
20 legal developments constituting discrimination or  
21 denial of equal protection of the laws under the  
22 Constitution because of race, color, religion, sex,  
23 age, disability, or national origin, or in the  
24 administration of justice.

25 Three, appraise federal laws or policies with

1 respect to discrimination or denial of equal  
2 protection of the laws.

3 Four, to serve as a national clearing house  
4 for information about discrimination and

5 Five, to submit reports, findings, and  
6 recommendations to the President and Congress.

7 Advisory committees like this one were  
8 established in each state and the District of Columbia  
9 in accordance with enabling legislation of the Federal  
10 Advisory Committee Act to advise the Commission on  
11 matters pertaining to discrimination or denial of  
12 equal protection of the laws because of race, color,  
13 religion, sex, national origin, age, disability, or in  
14 the administration of justice, and to aid the  
15 Commission in its statutory obligation to serve as a  
16 national clearing house for information on those  
17 subjects.

18 Commission regulations and the Federal  
19 Advisory Committee Act call for each advisory  
20 committee to:

21 One, advise the Commission in writing of any  
22 information it may have respecting any alleged  
23 deprivation of citizens' rights to vote, and to have  
24 the vote counted by reason of color, race, religion,  
25 sex, national origin, age, or disability, or that



1 citizens are being accorded or denied the right to  
2 vote in federal elections as a result of patterns or  
3 practices of fraud or discrimination;

4 Two, advise the Commission concerning legal  
5 developments constituting discrimination or a denial  
6 of equal protection of the laws under the Constitution  
7 because of race, color, religion, sex, national  
8 origin, age, disability, or in the administration of  
9 justice, and as to the effect of the laws and policies  
10 of the federal government with respect to equal  
11 protection of the laws.

12 Three, to advise the Commission upon matters  
13 of mutual concern in the preparation of reports to the  
14 Commission, to the President, and to Congress.

15 To receive reports, suggestions, and  
16 recommendations from individuals, public and private  
17 organizations, and public officials about matters  
18 pertinent to inquiries conducted by the State Advisory  
19 Committee.

20 Five, to initiate and forward advice and  
21 recommendations to the Commission about matters that  
22 the Advisory Committee has studied, and

23 Six, to assist the Commission in the exercise  
24 of its clearinghouse functions.

25 The purpose of this meeting today is to obtain

1 information and public comment regarding the status of  
2 civil rights of Native Hawaiians five years after the  
3 passage of Public Law 103-150, which acknowledge the  
4 one 100th anniversary of the January 17, 1893  
5 overthrow of the Kingdom of Hawaii, and to offer an  
6 apology to the Native Hawaiians on behalf of the  
7 United States for the overthrow of the Kingdom of  
8 Hawaii.

9           The heart of this public law lies in its  
10 expression of commitment to acknowledge the  
11 ramification of Hawaii's overthrow, in order to  
12 provide a foundation for and to support reconciliation  
13 efforts between the United States and the native  
14 Hawaiian people.

15           It has been five years since the Apology Bill  
16 was signed into law. It is still not clear, however,  
17 what has been done to provide a proper foundation for  
18 and to support reconciliation efforts, if any, between  
19 the US and Native Hawaiian people.

20           In fact, the intent behind the language  
21 "reconciliation efforts" remains unclear. What is  
22 clear is that in the five years since the Apology  
23 Resolution was signed into law, more questions have  
24 been raised than resolved.

25           Participants in today's meeting have been

1 asked to provide information on the following issues:

2           What was the original intent of the Apology  
3 Bill? What is the full scope of the Apology Bill?  
4 What has been the impact of the Apology Bill on  
5 relationships between native and non-Native  
6 Hawaiians? What efforts have been made or are  
7 currently under way to insure that Native Hawaiians  
8 and non-Native Hawaiians receive equal protection  
9 under the laws while reconciliation efforts are under  
10 way?

11           With the Apology Bill's recognition of the  
12 denial of many fundamental civil rights to Native  
13 Hawaiians, what more, if anything, can be done by  
14 state and federal governments, educators, advocacy  
15 groups, as well as Native Hawaiians to effect and  
16 improve the underlying civil rights of Native  
17 Hawaiians?

18           Based upon information collected at this  
19 meeting, a summary report will be prepared for the US  
20 Commission on Civil Rights.

21           Other members of the Hawaii Advisory Committee  
22 in attendance during this meeting are Dr. Helen  
23 Nagtalon-Miller, Faye Kennedy, David Forman, Alan  
24 Murakami, and Oswald Stender.

25           Members who were not able to be in attendance

1 today are Julie Puzon, vice chairperson, Patricia  
2 Cook, Quentin Kawanakoa, and Anthony Vericella.

3 We would also like to acknowledge that we  
4 recently lost one of our most valuable long-term  
5 Advisory Committee members with the death of Marion  
6 Saunders. Marion was long active in the civil rights  
7 community in Hawaii, and her presence is sadly missed.

8 Also present with us today are Tom Pilla, Grace  
9 Hernandez, and Stella Youngblood of the Commission's  
10 western regional office in Los Angeles. Please seek  
11 these individuals out if you require assistance.

12 This meeting is being held pursuant to Federal  
13 Rules applicable to State Advisory Committees, and  
14 regulations promulgated by the US Commission on Civil  
15 Rights. All inquiries regarding these provisions  
16 should be directed to Commission staff.

17 I would like to emphasize that this is a  
18 fact-finding meeting and not an adversarial  
19 proceeding. Individuals have been invited to come and  
20 share information to the committee relevant to the  
21 subject of today's inquiries. Each person who will  
22 participate has voluntarily agreed to be here.

23 Since this is a public meeting, the press,  
24 radio, and television stations, as well as  
25 individuals, are welcome. Persons meeting with the

1 committee, however, must specifically request that  
2 they not be televised. In this case, we will comply  
3 with their wishes.

4 We are concerned that no defamatory material  
5 is presented at this meeting. In the unlikely event  
6 that this situation should develop, it will be  
7 necessary for me to call this to the attention of  
8 persons making these statements, and request that they  
9 desist in their action. Such information will be  
10 stricken from the record, if necessary.

11 Finally, many of you may have questions  
12 regarding why certain persons were invited to  
13 participate and others were not. The Committee would  
14 like to acknowledge that this has been a very  
15 important issue in this state, and many individuals  
16 possessing particular knowledge expertise and  
17 experiences have been involved in moving the  
18 discussion forward. This issue has many voices.

19 Because of the time and budget constraints  
20 under which we operate, the Committee simply could not  
21 accommodate everyone who wished to participate on  
22 scheduled panels today.

23 The Committee's goal in assembling the  
24 individuals was to ensure that information is obtained  
25 from the broadest and most diverse cross-section of

1 voices on the issue as possible. Each of the persons  
2 you will hear from today has a depth of knowledge on  
3 the Apology Bill and its implications which we felt  
4 were important to include in the record.

5 This is not to say that others do not have  
6 opinions and have you points that are just as  
7 important. This is simply to say that as a group we  
8 have attempted to do the best we could, under the  
9 circumstances.

10 In an effort to hear from others of differing  
11 points of view, we have allocated time between 4:00  
12 and 6:00 to hear from everyone who wishes to share  
13 specific information with the committee about the  
14 specific issues that are under consideration today.  
15 At that time, each person or organization will be  
16 afforded a brief opportunity to address this  
17 committee.

18 Those wishing to participate in the open  
19 session must contact Commission staff before 1:00  
20 p.m., who is situated outside in the entry to this  
21 area.

22 In the event that we will not be able to hear  
23 from you in the open session, the record of this  
24 meeting will remain open for a period of 30 days  
25 following its conclusion. The committee welcomes



1 additional written statements and exhibits for  
2 inclusion in the record. This item should be  
3 submitted to the Western Regional Office of the United  
4 States Commission on Civil Rights, 3660 Wilshire  
5 Blvd., Suite 810, Los Angeles, California, 90010.

6 Any member of Commission staff should be able  
7 to assist you in the process for submitting  
8 information. Mahalo nui loa ka ko. Let us proceed.

9 I would like to welcome now the Overview --  
10 Public Law 103-150, Purpose and Meaning.

11 And I would like to introduce Esther Kiaaina,  
12 Legislative Assistant to US Senator Daniel K. Akaka;  
13 Reverend Kaleo Patterson, Associate Pastor Kaumakapili  
14 Church, and Executive Director of Hawaii Ecumenical  
15 Coalition; James Mee, attorney at law; Kekuni  
16 Blaisdell, MD, Convener of the Kanaka Maoli Tribunal  
17 Komike.

18 And I would like each person to introduce  
19 themselves as they are called in that fashion, and you  
20 have ten minutes. And David Forman will be the  
21 time-keeper. He has several cards that he will hold  
22 up. And because of federal constraints we are -- we  
23 have to keep on time.

24 So, Esther.

25 MS. KIAAINA: Aloha, and good morning.

1                   CHAIRMAN MAXWELL:    Welcome.

2                   STATEMENT OF ESTHER KIAAINA

3                   My name is Esther Kiaaina, and I am a  
4 legislative assistant for Senator Akaka in Washington.

5                   On behalf of Senator Akaka, I would like to  
6 commend the Hawaii Advisory Committee to the US  
7 Commission on civil rights for holding today's hearing  
8 on the status of Native Hawaiian civil rights since  
9 the enactment of the Apology Resolution in 1993.

10                  The Senator welcomes any effort which seeks to  
11 educate the public and policymakers on the civil  
12 rights of Native Hawaiians, and to improve the  
13 relationship between the federal government and the  
14 Native Hawaiian people.

15                  The legislative history and background of the  
16 Apology Resolution is reflective of the impediments  
17 and challenges that Native Hawaiians face at the  
18 federal level. And that is, when dealing with the  
19 efforts surrounding the 1893 overthrow or the  
20 political status of Native Hawaiians, the federal  
21 government doesn't know what to do with Native  
22 Hawaiians.

23                  The Apology Resolution was introduced four  
24 times during the span of three Congresses, and was  
25 referred to three different Senate committees upon

1 introduction and reintroduction.

2 The Apology Resolution was first introduced  
3 during the 101st Congress. SJ Res. 360 was introduced  
4 by Senators Akaka and Inouye on August 3, 1990, and  
5 referred to the Senate Governmental Affairs  
6 Committee.

7 The resolution offered a US apology to Native  
8 Hawaiians for the 1893 overthrow, and declared a trust  
9 relationship between the US government and Native  
10 Hawaiians. No action was taken on the resolution  
11 before sine die adjournment of the 101st Congress.

12 During the 102nd Congress there were actually  
13 two versions of the Apology Resolution that were  
14 introduced. First, SJ Res 68 was reintroduced by  
15 Senators Akaka and Inouye on February 6, 1991, and  
16 referred once again to the Senate Governmental Affairs  
17 Committee. The resolution was the same as the joint  
18 resolution introduced in 1990.

19 In 1992, legislative strategy for the Apology  
20 Resolution shifted. On the one hand, it was clear  
21 that the trust relationship language in the original  
22 Apology Resolution was problematic for congressional  
23 passage and executive branch approval, because of the  
24 lack of understanding of where Native Hawaiians fit  
25 legally or politically.

1           This was reaffirmed during a February 6th 1992  
2 Senate Energy Committee Hearing on the Hawaiian Home  
3 Lands program, in which the Interior Department  
4 testified that the federal government did not have a  
5 federal trust relationship with Native Hawaiians under  
6 the Hawaiian Homes Commission Act.

7           On the other hand, the centennial of the 1893  
8 overthrow was around the corner, and Senator Akaka was  
9 concerned that the occasion would pass without any US  
10 recognition of the significance that this event had on  
11 Native Hawaiians.

12           As a result, Senator Akaka redrafted the  
13 Apology Resolution to take advantage of the centennial  
14 occasion, with the goal of educating the American  
15 public and the Congress on the history of the US  
16 involvement in the 1893 overthrow and its aftermath.

17           He also wanted to have the US admit liability  
18 for the 1893 overthrow to neutralize the 1983 Native  
19 Hawaiians Study Commission Majority Report, which  
20 concluded that the US government was not liable for  
21 the loss of sovereignty of lands of the Hawaiian  
22 people in the 1893 overthrow.

23           SJ Res 335 was introduced by Senators Akaka  
24 and Inouye on August 12th, 1992, and referred to the  
25 Senate Judiciary Committee. The resolution declared

1 that the Congress: 1) on the occasion of the 100th  
2 anniversary of the Kingdom of Hawaii on January 17,  
3 1893, acknowledges the historical significance of this  
4 event which resulted in the suppression of the inherit  
5 sovereignty of the Native Hawaiian people;

6 2) Commence efforts of reconciliation  
7 initiated by the state of Hawaii and the United Church  
8 of Christ with Native Hawaiians;

9 3) Apologizes for the overthrow and the  
10 deprivation of the rights of Native Hawaiians to  
11 self-determination; and

12 4) Expresses its commitment to acknowledge the  
13 ramifications of the overthrow, in order to provide a  
14 proper foundation for reconciliation between the US  
15 and the Native Hawaiian people; and

16 5) Urges the President to acknowledge the  
17 ramifications of the overthrow and to support  
18 reconciliation efforts.

19 Due to the concerns that no Hawaii  
20 congressional member was sitting on the Judiciary  
21 Committee, and because of the lack of interest by any  
22 one particular member of the committee to move the  
23 Apology Resolution forward, Senator Akaka sought to  
24 get the resolution referred to the Senate Indian  
25 Affairs Committee where both Senators Inouye and Akaka

1 were members.

2           Although difficult to achieve, SJ Res 335 was  
3 eventually discharged by the Senate Judiciary  
4 Committee on October 2nd 1992, and referred to the  
5 Senate Indian Affairs Committee. It was subsequently  
6 reported out of committee on October 3rd, and passed  
7 by the Senate by unanimous consent, or voice vote, on  
8 October 7th.

9           Due to the sine die adjournment of the  
10 Congress, the resolution was not considered by the  
11 House of Representatives in time for the centennial of  
12 the 1893 overthrow.

13           SJ Res 19, which would eventually be enacted  
14 as Public Law 103-150, was reintroduced by Senators  
15 Akaka and Inouye on January 1st 1993, and referred to  
16 the Senate Committee on Indian Affairs at the outset  
17 of the 103rd Congress, which was a significant step  
18 forward legislatively. The resolution was the same as  
19 the resolution which passed the Senate during the  
20 102nd Congress.

21           SJ Res 19 was reported out of the Senate  
22 Indian Affairs Committee on July 29th, 1993, and  
23 passed the Senate by role call vote of 65 to 34.

24           The reason for the roll call vote was that  
25 Senator Gorton from Washington state had concerns over



1 the implications that the Apology Resolution would  
2 have for the federal government.

3 The resolution subsequently passed the House  
4 of Representatives under suspension of the rules which  
5 requires two-thirds vote, on November 15th 1993, and  
6 was signed by President Clinton on November 23rd  
7 1993.

8 Since the enactment of the Apology Resolution,  
9 there has been a lot of misunderstanding as to what  
10 the Apology Resolution achieved, as well as what it  
11 has triggered.

12 From the senator's standpoint, the Apology  
13 Resolution was a necessary step toward establishing a  
14 positive relationship between Native Hawaiians and the  
15 federal government to reconciliation efforts. Such a  
16 process, he believed, should be an evolving and  
17 continuing process whereby the federal government can  
18 make amends for some of its past wrongs.

19 The resolution itself was not intended to  
20 grant Native Hawaiians newly-created rights. The  
21 senator intended that the resolution was to be used as  
22 the basis for future federal legislation which would  
23 address the longer term issues of political status for  
24 Native Hawaiians and ceded lands issues.

25 The most important aspect of the resolution

1 for the senator is the fact that the Congress and  
2 President of the United States is now on record as  
3 acknowledging that the 1893 overthrow was illegal.

4 It was not intended, however, to be used as  
5 the basis for disobeying current local, state and  
6 federal laws. Setting the record straight was  
7 important, as I mentioned earlier, to counter the 1983  
8 Native Hawaiian Study Commission Majority Report's  
9 damaging conclusions about the overthrow, as well as  
10 the Interior Department's flip-flop and denial since  
11 1989 that there was a trust relationship between the  
12 Native Hawaiians and the federal government under the  
13 Hawaiian Homes Commission Act.

14 Another event which occurred in early  
15 1993 further raised concerns by Senator Akaka and the  
16 other Hawaii delegation members.

17 On January 19th, 1993, another damaging legal  
18 opinion from the Interior Department Solicitor's  
19 Office, which I will refer to as the Sansonetti  
20 opinion, gave further justification for why the  
21 Apology Resolution needed to get enacted.

22 The Sansonetti opinion, which was issued in  
23 the final days of the Bush Administration, and focused  
24 on the Hawaiian Homes Commission Act, concluded that  
25 the federal government had no trust responsibility to

1 the Native Hawaiians, either before statehood, or  
2 thereafter; and that the Hawaiian Homes Commission Act  
3 did not create a fiduciary responsibility in any  
4 party -- the United States, the Territory of Hawaii,  
5 or the state of Hawaii.

6 The legal opinion was notable for its timing,  
7 the end of an administration, as well as its reliance  
8 on the 1983 Native Hawaiian Study Commission Majority  
9 Report conclusions.

10 The Interior opinion went as far as to say,  
11 "Our analysis in this opinion is in basic agreement  
12 with the conclusions of the Study Commission  
13 Majority."

14 The Interior Department, under the Clinton  
15 Administration, on November 15th 1993 did rescind the  
16 Sansonetti opinion, through its new solicitor, John  
17 Leshy. However, due to pending litigation at the  
18 time, the department did not enunciate any new  
19 policy. Instead, it simply withdrew all of its legal  
20 opinions on whether or not the federal government had  
21 a trust relationship with Native Hawaiians, including  
22 an August 27th 1979 opinion drafted under the Carter  
23 Administration, which acknowledged that there was a  
24 trust relationship between the federal government and  
25 Native Hawaiians.

1           Thus, as can be seen by the way we are being  
2 treated by the executive branch, with the enactment of  
3 the Apology Resolution, Senator Akaka sought to level  
4 the playing field between Native Hawaiians and the  
5 federal government. He certainly believes that more  
6 than just an apology is necessary, but he views the  
7 apology as a first step in establishing a dialogue  
8 with the federal government.

9           As far as making clear what the term  
10 "reconciliation" means under the Apology Resolution,  
11 he did not think it should be defined by the federal  
12 government. He believes that reconciliation, or  
13 ho'oponopono, should be a process between the federal  
14 government and Native Hawaiians to be developed  
15 mutually, not unilaterally.

16           I am quite certain that the Senator would  
17 consider today's hearing as contributing to such a  
18 process. Thank you very much for providing me with  
19 the opportunity to explain some background information  
20 on the legislative history, and intent of the Apology  
21 Resolution.

22           I understand that I will have an opportunity  
23 to talk about what has happened since 1993, and what  
24 initiatives the senator plans to undertake for the  
25 future, on the federal panel this afternoon.

1                   CHAIRMAN MAXWELL:    Thank you,  
2 Esther. Do the committee members have any questions  
3 for Esther? Thank you, Esther.

4                   Okay, the next speaker, Reverend Kaleo  
5 Patterson.

6                   STATEMENT OF REVEREND KALEO PATTERSON:

7                   Aloha, good morning, and Mahalo for this  
8 opportunity to say a few words about the church's role  
9 in this apology.

10                  My name is Kaleo Patterson. I am one of three  
11 kahus over at Kaumakapili church. I have been there  
12 for about three years. Prior to that, I was on Kauai  
13 for about nine years, served a couple of churches  
14 there. I have been the Executive Director of the  
15 Hawaii Ecumenical Coalition since 1989. And for me,  
16 that's really where it all began. I think I will  
17 start there.

18                  In 1988, a group of people or persons that met  
19 at the Church of the Crossroads felt that it was  
20 important to look at the issue of tourism, and the  
21 negative impact on Native Hawaiians. And so we had a  
22 tourism conference in 1989, and with representatives  
23 from the National Council of Churches, many of our  
24 churches here in Hawaii, in particular the Hawaii  
25 Council of Churches was shepherding that project, that

1 major conference, which was an international  
2 conference, involved folks from the World Council of  
3 Churches and activists, human rights activists, from  
4 the international arena.

5           And the significant thing about that  
6 conference that was held at St. Stephens in August of  
7 1989 was the determination of the conference  
8 participants that there really needed to be an  
9 official apology, a formal apology, from all of the  
10 churches in Hawaii.

11           And this came out of the context when we  
12 looked at the issues -- the impact of tourism on  
13 Native Hawaiians, the land, the community, the  
14 economics. The sovereignty issue emerged out of that  
15 context, and while there was a strong affirmation that  
16 Hawaiian sovereignty needed to be supported even by  
17 the churches, at that time in 1989, there was the  
18 understanding that even before the churches could  
19 support sovereignty, the churches needed to recognize  
20 its complicity in the overthrow of the Hawaiian nation  
21 in 1893.

22           And so therefore, this strong call or appeal  
23 to all the churches of Hawaii went forward from that  
24 conference for formal apology. So many of us from the  
25 Hawaii Ecumenical Coalition went and systematically



1 visited with key officials in most of the major  
2 denominations in Hawaii, and did our best to advocate  
3 for some process of reconciliation between the church  
4 and Native Hawaiians.

5           The United Churches of Christ or the Hawaii  
6 Conference of the United Churches of Christ, of which  
7 I am an ordained minister, did pick up the ball, or  
8 did try to dribble a little bit when they received  
9 their formal request in September of 1989.

10           The following year, in 1990, at our aha paaina,  
11 or Annual Conference of Churches, a resolution was  
12 passed affirming the rights of Native Hawaiians to  
13 self-determination and self-governance. And that was  
14 a very important resolution which was drafted by  
15 Reverend Takualii up there in Hilo. It was passed at  
16 Central Union Church, and became quite a document  
17 within our church structures.

18           But that document became important, because in  
19 1990, that document, in a revised form, went to  
20 Virginia, and was submitted to the General Synod of  
21 all of the United Churches of Christ.

22           We've got about 6,000 churches throughout the  
23 United States, and it was at that time that this  
24 resolution on supporting the rights of Native  
25 Hawaiians in self-determination and self-governance

1 went into working committee, and while it was in the  
2 work committee, there was unanimous consensus that  
3 Hawaiians needed an opportunity to be self-governing,  
4 they needed to have a land base, and all of those  
5 things.

6 But again, the manao came back from several of  
7 the committee members in that working group that we've  
8 got to apologize. We have to apologize, before we can  
9 even begin to support the rights of Native Hawaiians  
10 to self-determination and self-governance. We have to  
11 issue an apology. And so the sovereignty resolution  
12 that went from Hawaii to the national level of our  
13 United Churches of Christ was amended in that working  
14 group, came to the floor and passed unanimously, which  
15 was somewhat of a shock to their churches back home,  
16 because we had simply sent up a resolution dealing  
17 with sovereignty, and it came back with a major  
18 national church apology.

19 And that kind of got the ball moving, and got  
20 our folks to think more about the implications of  
21 reconciliation in a different light, and gave us  
22 something in the Hawaii Ecumenical Coalition --  
23 something to use with other denominations.

24 And eventually, the following year with the  
25 National Council of Churches, that has a 61 or

1 62-member denomination in the United Churches in the  
2 United States, issued a very strong resolution as  
3 well, called "The Stolen Nation Resolution."

4 And Bishop Browning, who was the bishop of  
5 Hawaii, assisted on the national level with the  
6 National Council of Churches, in seeking the passage  
7 of this resolution within the church structures  
8 nationally, the National Council of Churches.

9 I guess I just want to share a little bit of  
10 that history with you, because there has been a  
11 process in which we have been seeking reconciliation  
12 from within the church structures, reconciliation  
13 between the church, which has some history, has some  
14 negative history, and Kanaka Maoli, the people of this  
15 land.

16 And so, that's a little bit of the process.  
17 It's kind of a quick overview of how we got to where  
18 we got.

19 But I want to go back to the United Churches  
20 of Christ, because in the United Churches of Christ,  
21 it was the only denomination that formally apologized.

22 Some of you may remember, in 1993, the president of  
23 the United Churches of Christ, Dr. Paul Sheery, did  
24 comment in shared words of apology at the Iolani  
25 Palace and at the Kaumakapili Church.

1           He gave a very moving, a very compassionate  
2 statement of apology. And the manuscript of his  
3 apology was used to consecrate the kuahu at the Iolani  
4 Palace the following evening. But the interesting  
5 thing that happened with that apology manuscript was  
6 that Dr. Paul Sheery, we asked him, can we look at  
7 what you are going to say, what will be the formal  
8 apology?

9           Kekuni Blaisdell, Damien MacGregor, Ron  
10 Fujiyoshi, and some of us met with Dr. Paul Sheery and  
11 other high church officials in the Queen Kapiolani  
12 Hotel, and there was strong pressure to add the word  
13 redress, okay?

14           I mean, there was a lot of beautiful language  
15 about apology and reconciliation, but the one word  
16 that was missing was "redress." And Dr. Paul Sheery,  
17 being the kind of person that he was, added the word  
18 "redress" into that apology, and issued a very, very  
19 good -- what we believed was a very good statement.

20           And we followed up with Dr. Paul Sheery, and  
21 tried to engage the church into a dialogue, and a  
22 process of recreation that involved redress. And  
23 there was -- there has been some struggle with that.  
24 It's not easy to get -- it's easy to apologize, but  
25 it's not easy to talk about redress, and making things

1 right.

2 In the church, theologically, we think that if  
3 you are going to apologize, if you want to seek  
4 reconciliation, reconciliation comes when you have  
5 justice, too, yeah? And so the two, the two come  
6 hand-in-hand.

7 The National Church of the United Churches of  
8 Christ were able to could have up \$1.25 million as an  
9 initial package of redress. And there was quite a bit  
10 of discussion about that, and how that was to be  
11 used.

12 On the local level, the churches -- and I must  
13 commend the Asian -- the Japanese churches in  
14 Hawaii -- for taking some leadership on the local  
15 level, and pushing our local churches to also issue a  
16 formal apology.

17 We have the national apology, but we, the  
18 churches here in Hawaii, needed to get on board, too.  
19 And the Asian churches, like Nuuanu Congressional  
20 Church, Church of the Crossroads -- a lot of the  
21 non-Hawaiian non-Kanaka Maoli churches really went to  
22 bat for our people. And there was an apology that was  
23 passed on local level in 1992.

24 And anyway, out of that redress process, a  
25 task force was created. And it would be nice if with

1 this Apology Bill that came out of Congress, if there  
2 would have been or if there can be a redress task  
3 force, just a group that can get together to look at  
4 possibilities of redress.

5 I am amazed that no one is sitting down and  
6 even looking at that issue. That is an important  
7 issue I think maybe the Civil Rights Commission can  
8 raise on the national level and in the work that you  
9 folks do. But to set up a redress task force, we did  
10 that in the church, it's a lot of fun, you know, there  
11 is a lot of discussions that will come out of that.  
12 And you will get to the heart of the matter.

13 And so, if there is anything I would leave to  
14 you, it would be that at the local level, they ended  
15 up putting together a package of \$3 million. And even  
16 some lands were identified. But we've got a long ways  
17 to go, and the church really needs to work a lot  
18 harder here, on the local level -- redress and  
19 reconciliation is not a reality, it has just begun.

20 And that's my one word.

21 CHAIRMAN MAXWELL: Thank you, Kaleo.  
22 Are there any questions from the panel?

23 Mr. Stender.

24 MR. STENDER: What is, currently,  
25 what is the church doing to keep moving that



1 initiative forward?

2 REVEREND PATTERSON: Well, you know,  
3 on the local level, the churches has carved up, you  
4 know. We have a pretty wealthy foundation, which is  
5 sort of like a separate arm of the Hawaii Conference  
6 of Churches, yeah? So in the earlier days, the  
7 church, because of its land holdings and it's  
8 accumulated wealth, wanted to protect itself, so it  
9 created this foundation that is in a covenant  
10 relationship with the Hawaii Conference of Churches.

11 But they were able to see fit to set aside \$3  
12 million which was divided three ways. A million  
13 dollars went to all the Hawaiian churches. It was  
14 divided up, so that I think about 40 or 50 churches  
15 received about \$28,000 each -- just a redress check --  
16 two churches that were in existence at the time of the  
17 overthrow.

18 Another million dollars went into the Puua  
19 Foundation. And I doubt anybody knows what is going  
20 on with the Puua Foundation. So that was a foundation  
21 that was set up with the national redress money of a  
22 million dollars, yeah?

23 \$1.25 million was set up, and we felt that we  
24 will put it into a foundation, and so there was a  
25 foundation that was created. I haven't heard what's

1 come out of that, but that foundation is supposed to  
2 be committed to supporting the sovereignty movement.  
3 They've just been -- you know, it's just kind of a  
4 long time developing the organization.

5 The third million went into a new association of  
6 Hawaiian Evangelical Churches, which was formed a  
7 couple of years ago. And that million dollars went  
8 into that association to strengthen the life of the  
9 Hawaiian churches.

10 So if you will look at that, Oswald, the  
11 redress money has gone back to the church in many  
12 respects, yeah? The Hawaiians and the church, yeah?  
13 And some of us were very unhappy about that. We felt  
14 that the Hawaiians who were pushing for the apology  
15 were the grass roots activists, and that this money  
16 needed to go into the movement to sustain the  
17 initiatives that are moving forward.

18 But you know, when you look at what's happened  
19 with the churches, I think the church is trying to  
20 deal with its own structural evils, yeah? When we  
21 talk about reconciliation and apology, we have to  
22 realize that institutional racism is at the heart of  
23 everything. That the real evil is in the structures  
24 and the systems.

25 So I think what the church is doing, without

1 even knowing about it, is it's -- you know, these  
2 things are having to change within the structure,  
3 within the system of the church. And it needs to be  
4 -- and so, with the government itself, you are talking  
5 about "apology" -- things have to change, the context  
6 in which you seek reconciliation.

7           You can't just have a dialogue, but things  
8 have to change -- policies, laws. Even here in  
9 Hawaii, we should be looking at reorganizing the way  
10 we do things as a result of this Apology Bill, yeah?  
11 Because otherwise, we're stuck in this same structure,  
12 and this same institution. And no matter what we come  
13 up with from the grass-roots level, it's going to hit  
14 this thing that has been created over the last two or  
15 three hundred years, yeah?

16           And that's the nature of the beast, and that's  
17 too long of an answer.

18                   CHAIRMAN MAXWELL:    No, that's all  
19 right. Ossie, do you have a response?

20                   MR. STENDER:    I thought, you know,  
21 when it happened, you know, I thought it was  
22 commendable that the church took a step to admit, and  
23 then to try to fix.

24                   REVEREND PATTERSON:   It was a big  
25 step.

1                   MR. STENDER:     And it's a difficult  
2 one, a big step to fix.

3                   REVEREND PATTERSON:    Because the  
4 church has to deal with itself, too, yeah, at the same  
5 time.

6                   CHAIRMAN MAXWELL:    Alan.

7                   MR. MURAKAMI:     What you've been  
8 saying has been really instructive.  And what I am  
9 seeking, I guess, is maybe greater theological  
10 instruction.  You know, there is a real moral question  
11 that is -- that surrounds this whole issue, and what I  
12 was going to ask you is, as a reverend, as a trained  
13 person, and oftentimes I think I guess in conflict  
14 resolution in your ministry, is there some kind of a  
15 theological church model for what happens, in terms of  
16 conflict and conflict resolution, which can apply in a  
17 more general sense to what the federal government can  
18 do in implementing this so-called policy of  
19 reconciliation that is still the subject of this  
20 particular discussion, but more generally, what are  
21 those kinds of processes or structural changes that  
22 you talked about that fit within that model of  
23 conflict resolution that you might -- that you are  
24 familiar with through your training as a reverend, as  
25 a minister, how would those principals apply in the

1 context of reconciliation between the United States  
2 and Hawaiians?

3           And if you don't have an answer right now, I  
4 guess I am kind of inviting you to think about that --  
5 what kind of models would apply, and how would that  
6 fit in the context of this situation.

7           REVEREND PATTERSON:    I think there  
8 are some things that we can look at within the church  
9 process, yeah, that maybe didn't -- didn't really get  
10 implemented that should have gotten implemented.

11           And one was, a really rich, strong dialogue in  
12 this redress process with the grass-roots mapaiana  
13 (phon.)? The church did a lot of its work behind  
14 closed doors, with selected groups of people. We  
15 tried to convene some later at some point, but there  
16 was a real hesitancy, a natural hesitancy -- part of  
17 an institution's desire to survive and protect itself.

18           And I think the same with the government,  
19 yeah? The government is going to want to do  
20 everything on the national level, in Washington D.C,  
21 where, you know, reconciliation really needs to take  
22 place in the communities here in Hawaii. The dialogue  
23 needs to be here -- not in Washington D.C, yeah? It  
24 needs to be with regular people, yeah, community  
25 leaders, yeah?

1           And I don't want to say too much more, but  
2           that is a good question.

3                   MR. MURAKAMI:     Again, I leave that  
4           invitation open. I think if you could think about how  
5           that model might apply, and you suggested a task  
6           force, you suggested a stronger dialogue with the  
7           Kanaka Maoli. Think about it, because I think that  
8           could really form the basis of better form of what  
9           could happen in this question that we face about -- so  
10          what now happens?

11                   CHAIRMAN MAXWELL:    Okay. Helen.

12                   DR. NAGTALON-MILLER:   I have a  
13          specific question.

14                   Has the church talked about their idea or  
15          concept of proselytizing and maybe perhaps including  
16          the Native Hawaiian religion as part of a route to  
17          recognize, you know, sort of a Council of Churches  
18          thing?

19                   REVEREND PATTERSON:   In fact, that is  
20          one of the key underlying things that we recognize in  
21          the Hawaiian Ecumenical Coalition.

22                   And the most recent issue we've been involved  
23          in has been the religious shrines over at Honeula.

24                   We came out and organized the Hawaiian churches  
25          to oppose the bulldozing of the coral shrines, the

1 fishing shrines over at Honeula in Ewa Beach.

2 And so we have made progress towards affirming  
3 and lifting up and encouraging our traditional belief  
4 systems and cultural practices that are very  
5 spiritual, you know. But you know, the church is a  
6 church. And it's got a history that is hard to shake,  
7 sometimes. But that's the work.

8 And I believe we do have people in our  
9 communities who are Christians, who are very open and  
10 are out there, and are working to support and lift up,  
11 you know, Kanaka Maoli spirituality.

12 Many of the issues -- the evictions, the  
13 military issues, the tourism issues -- a lot of the  
14 fights that are out there, at the very heart of those  
15 fights is this longing or this yearning of Kanaka  
16 Maoli to connect with the land again. That is  
17 spiritual. That's the Aloha aina, malama aina -- that  
18 is spiritual. It's a religious issue. So religious  
19 persecution and religious discrimination is at the  
20 heart of the matter. That's racism again, yeah, the  
21 heart of the matter.

22 CHAIRMAN MAXWELL: David.

23 MR. FORMAN: Real quickly, Reverend  
24 Patterson.

25 As part of the church's reconciliation with

1 the Native Hawaiians, was that -- was part of that  
2 process meant to address the reported historical  
3 events of Native Hawaiians leaving the church after  
4 the overthrow?

5 REVEREND PATTERSON: No, I don't  
6 think the church was really looking at that.  
7 Two-thirds of all of the Hawaiians in our churches --  
8 and we are the original, you know, many of our  
9 churches were the first churches that were ever built  
10 in Hawaii.

11 Two-thirds of the Hawaiians actually just left  
12 the church after the overthrow. So that would have  
13 been a good reason to do the apology. And you know, I  
14 tried to encourage the church to look at that, but I  
15 think they were just put into a corner. And you know,  
16 kicking and screaming, they came to the table and  
17 apologized, yeah?

18 So we were sort of -- it was sort of a  
19 prophetic movement within our churches. And then, in  
20 the years after the apology had been manifested, our  
21 churches really had to go through a process of  
22 decolonization, okay, of the soul, too, yeah?

23 That's a new theological word we came up  
24 with -- "decolonization of the soul."

25 And so, our churches are still struggling.



1 Even the Hawaiian churches, yeah, are going through  
2 the process of decolonization within our ranks.

3 But I think the motive that we wanted -- the  
4 agenda that we had -- those of us who were pushing the  
5 apology -- was the recognition of the rights of the  
6 Kanaka Maoli toward self-determination and  
7 self-governance.

8 Sovereignty, freedom, liberation, you know,  
9 that's -- that's -- you know, human rights, you know,

10 CHAIRMAN MAXWELL: You know, Kaleo,  
11 what I would like you to do -- and there is two  
12 things, actually. I would like you to restate your  
13 question for this committee.

14 In your testimony, you said, this committee  
15 should look into the feasibility or it was a  
16 recommendation to Congress or to the United States  
17 Civil Rights Commission and then to Congress, is  
18 having all the churches in the United States come up.

19 So if you could kind of restate that question  
20 for the record.

21 And also, I would like you to submit your  
22 manao within 30 days, you know, to supplement your  
23 statements that you gave today. Because I think it's  
24 sort of like the crux. It's very, very important,  
25 what you said.

1                   CHAIRMAN MAXWELL:    Can he respond  
2 first?  Go ahead.

3                   REVEREND PATTERSON:   Well, I am not  
4 sure I understand the question.  But in my -- the  
5 kuleana I felt called to -- we are trying to get to  
6 every church possible.  We are trying to get every  
7 church educated on the Hawaiian issues.

8                   Often, you have to educate them on just  
9 indigenous issues, yeah?  And we are talking about  
10 American churches.  They don't even understand what is  
11 going on in the Indian country, much less jump to  
12 Hawaii now, and deal with Don Ho and Magnum PI and all  
13 that, right?

14                  So there is a tremendous educational task.

15                  CHAIRMAN MAXWELL:    So, let me  
16 interrupt you in saying that one of the  
17 recommendations to the committee would be an education  
18 to the rest of the church, what your Council of  
19 Churches have taken.

20                  REVEREND PATTERSON:   If you can help  
21 out with that.  We've been out there, and you know,  
22 we've worked the National Council of Churches, African  
23 Americans.  We've done a lot of meetings with African  
24 Americans, you know.

25                  Ben Chavez, when he was with the NAACP, I

1 served on a committee together. We were planning a  
2 national conference on racism in Texas in April, on  
3 white supremacy, yeah, in America.

4 And so, you know, the churches are pretty much  
5 inundated with the Hawaiian stuff. But they can  
6 always use more education. And of course, the  
7 credibility that the Civil Rights Commission could add  
8 to our issue, yeah, would be very, very important,  
9 yeah?

10 CHAIRMAN MAXWELL: Great. Your  
11 comments will be noted. I will allow one more  
12 question. Faye?

13 MS. KENNEDY: I don't have a  
14 question, I have a comment. I am very glad that you  
15 mentioned the racism which seems to be inherent in  
16 this. And also, I think it's very important that you  
17 gave credit to other groups that are not part of the  
18 Native Hawaiians. Because I think in all movements,  
19 you have to include everything, and make it as  
20 ecumenical as possible.

21 And you specifically mentioned Church of the  
22 Crossroads, and the different Asian churches, I think  
23 it's very important. So I don't have a question, but  
24 I want to commend you, and I think that all people  
25 involved in this need to make it as inclusive as

1 possible, and I think that's very important.

2 CHAIRMAN MAXWELL: Thank you, Faye.

3 Since that was not a question, I will allow  
4 Alan to ask a question.

5 MR. MURAKAMI: Just one more request,  
6 Kaleo. I know you've had some dealings with the US  
7 agency in connection with religious practices,  
8 particularly in our national parks.

9 And if you could include that as part of your  
10 submission, in terms of what -- what that experience  
11 taught you, and in terms of what lessons it poses for  
12 making recommendations on what kind of steps we should  
13 be taking for reconciliation, that would be helpful.

14 REVEREND PATTERSON: Let me just say,  
15 in response to that, I have been serving on the Native  
16 American Legal Rights Fund -- I think that's what Alan  
17 was taking about -- for the last four years, and it's  
18 been a tremendous experience learning about Indian  
19 Country.

20 I just attended a Tribal Leaders meeting with  
21 Senator Inouye in Connecticut a couple weeks ago, and  
22 the report that came out of that meeting, in Inouye's  
23 words, were very disheartening because in Indian  
24 Country, they are taking a beating, okay, from  
25 Congress, the Supreme Court, the indifference of the

1 Supreme Court on Indian issues.

2 We're going backwards.

3 It's a very disheartening time, a very  
4 disappointing time. Inouye made a statement that he  
5 hasn't seen it this bad since he's been in Congress.

6 And so things are reversing. There is not a  
7 real -- a real good window for any of the indigenous  
8 appeals that are here. And so, we have to deal with  
9 this system structurally, yeah?

10 MR. MURAKAMI: I am talking about  
11 that, in general, as well as the particular instance  
12 of the Hono Kohala National Park.

13 REVEREND PATTERSON: Okay. Okay, I  
14 will have to talk to you about that.

15 CHAIRMAN MAXWELL: Okay, thank you.

16 And now, I would like to call on James Mee,  
17 attorney at law. Mr. Mee.

18 STATEMENT OF JAMES MEE, ESQ.

19 Thank you, Mr. Chairman.

20 I am Jim Mee. I am an attorney in Honolulu,  
21 and I guess I have the somewhat unenviable reputation  
22 or position of having raised concerns or questions  
23 about a number of issues in the Hawaiian sovereignty  
24 movement.

25 And I have to say that probably a lot of that

1 comes from my own personal background.

2 I am part Hawaiian, but I also, obviously,  
3 from my appearance, have a lot of haole in me. My dad  
4 was from California. My mom, although she's Hawaiian,  
5 has haole ancestors that go back in Hawaii.

6 Her first haole ancestor came here in 1810,  
7 and was a ship captain for Kamehameha the Great.

8 So I think because of that, I am in a sort of  
9 position where I kind of can feel the tensions and see  
10 the potential problems and concerns of both the  
11 Hawaiian community and the non-Hawaiian community.

12 And I would like to follow-up on something  
13 that Kaleo was talking about, because it kind of leads  
14 into my comments.

15 He was talking about the involvement of the  
16 United Church of Christ, or its predecessor, the  
17 Congregational Church, back during the time of the  
18 monarchy, and the fact that a number of its members  
19 were involved in the overthrow.

20 I would like to point out that the  
21 denomination that my family comes from, and which I  
22 was raised, supported the Monarchy. I was raised as  
23 an Episcopalian. At the time, the church was know as  
24 the -- I believe -- the Hawaiian Congregation of the  
25 Reformed English Church, and was very adamant in its

1 support for the Monarchy.

2 And in fact, after the overthrow, Liliuokalani  
3 left the Congressional Church, and became a member of  
4 the Anglican church or Episcopal church.

5 So the point I am trying to make is that even  
6 back during the period during the overthrow and after,  
7 there was a lot of division among people in Hawaii.

8 There were Hawaiians that obviously opposed  
9 the overthrow and the loss of the Monarchy. There  
10 were some Hawaiians, Native Hawaiians, that actually  
11 advocated for some sort of a republican form of  
12 government rather than a monarchy.

13 And on the other hand, there were many  
14 non-Native Hawaiians in Hawaii that did not support  
15 the overthrow, that did not support annexation, but  
16 instead, were supporters of the monarchy, including  
17 many members of the Episcopal church.

18 The Apology Resolution only deals with Native  
19 Hawaiians. And it talks about an apology for Native  
20 Hawaiians. It talks about reconciliation with Native  
21 Hawaiians.

22 But the fact is, at that time -- the time of  
23 the overthrow in 1893 -- and today, there are many  
24 other people in Hawaii that were affected, and even  
25 today, are potentially affected by what can happen in

1 the whole process of reconciliation.

2 And I think it's very important for this  
3 committee and the Civil Rights Commission to also  
4 consider the viewpoints and the concerns of people who  
5 are non-Native Hawaiians.

6 And I think that's the only way that we are  
7 going to be able to move forward with a productive  
8 resolution of the concerns and the hurt that many  
9 Native Hawaiians feel.

10 The second thing I wanted to address is what  
11 the Apology Resolution means. Because we do, as I  
12 believe Esther Kiaaina said, have a lot of confusion  
13 on that.

14 The Apology Resolution was intended to be just  
15 that -- an apology. It was not created or not  
16 intended to create any legal rights. It wasn't  
17 considered by Congress to be any admission that  
18 Hawaii's position as a state was in question.

19 And in fact, when the resolution was debated  
20 on the floor of the Senate, Senator Gordon, who has  
21 been referred to, asked a number of questions about  
22 what the effect of the resolution would be -- would it  
23 create new legal rights? Would it lead to claims that  
24 Hawaii was legally a part of the United States?

25 And Senator Inouye, in response, said that the



1 resolution is a simple resolution of apology. It is a  
2 simple apology.

3 So the Apology Resolution, in itself, does not  
4 do anything, other than express the regret of the  
5 United States for events that happened in 1893.

6 I guess it's the duty of this committee and  
7 the Commission, and others looking at this, to decide  
8 what should happen in the future. But the reason I  
9 bring this up is that the Apology Resolution is now  
10 being put forward for all sorts of things that were  
11 not intended by Congress.

12 I have written testimony I would like to submit  
13 later regarding some of the legal things that have  
14 been occurring in Hawaii and nationally -- various  
15 lawsuits that have been filed in Hawaii and in  
16 Washington D.C., arguing that Hawaii was illegally  
17 annexed, it's not part of the United States.

18 And these various arguments refer, in part,  
19 and are based on the Apology Resolution.

20 The other thing which everybody here of course  
21 is aware of, is the draft report, a report of the  
22 United Nations Commission a Working Group on  
23 Indigenous Peoples which was released last week or a  
24 couple of weeks ago, and had a lot of press coverage,  
25 which concludes, apparently, that Hawaii may have been

1 illegally annexed by the United States, and refers to  
2 the Apology Bill.

3           Again, I do not believe that that was the  
4 intent of the Apology Bill. I do not believe that was  
5 the purpose of the Apology Bill. And I think that if  
6 that is indeed what is happening, we need to reexamine  
7 what the Apology Bill was intended to do, and see  
8 where we go from here.

9           The third comment I would just like to make --  
10 and I know this has been discussed a lot, and argued a  
11 lot -- is how does this affect the lands of Hawaii.  
12 Because I think ultimately, that is what a lot of what  
13 we're talking about.

14           And specifically, I am referring to the ceded  
15 lands, and to the public lands that are presently held  
16 by the state of Hawaii under the Admissions Act.

17           The Apology Resolution makes specific  
18 reference to the lands that were ceded to the United  
19 States, and says that those lands were ceded to the  
20 United States without payment of any compensation to  
21 the Hawaiian people.

22           My own personal position, as a lawyer who  
23 deals with real estate, is that the statement is  
24 inaccurate. The public lands of the Kingdom of Hawaii  
25 continue to be the public lands, and to be used for

1 public purposes. At the time they were acquired by  
2 the United States under the New Lands Resolution, it  
3 was specifically made clear that those lands would be  
4 held for the benefit of the inhabitants of the  
5 Hawaiian islands. So it was not a question where the  
6 United States just walked in and walked off with lands  
7 for its own use. It was understood from the beginning  
8 that it would be used for all of the inhabitants.

9 That follows down to the present day. The  
10 Admissions Act, Section 5(f), enacted at the time  
11 Hawaii became a state, sets forth specific purposes  
12 that the ceded lands are to be used for.

13 One of those purposes is for the betterment of  
14 the conditions of Native Hawaiians. So again, I think  
15 there has been a recognition, to the present day, that  
16 Native Hawaiians are to benefit from the ceded and  
17 public lands. And this is both under the Hawaiian  
18 Home Lands Program, and of course, the share of ceded  
19 lands revenues that is to go to the Office of Hawaiian  
20 Affairs.

21 So again, I think it's an over-statement to  
22 say that these lands were totally lost to the Hawaiian  
23 people. I do not think that is correct, I guess in  
24 conclusion, obviously, because we're here today. This  
25 is what we're discussing about -- where we go from

1 here.

2 My recommendation would be that there should  
3 be some sort of group or panel convened in Washington  
4 by Congress, or perhaps this agency, to look into  
5 these matters in detail, and to see how we are to  
6 resolve the positions of the Kanaka Maoli people and  
7 of the position of the other citizens of Hawaii.

8 I think it is very important that we do  
9 address this. What I am concerned about right now is  
10 that we have a high amount of frustration among Kanaka  
11 Maoli, and I think a growing concern among people who  
12 are not Native Hawaiians. And I think we need to  
13 address this in a positive manner, because if we  
14 don't, the situation is going to continue to fester.

15 And I am concerned, seriously concerned, that  
16 it's going to lead to a worsening of relations between  
17 different groups in Hawaii. Those are my comments.

18 Thank you.

19 CHAIRMAN MAXWELL: Thank you, Mr.  
20 Mee.

21 Before I recognize the other panel members,  
22 you state that during the overthrow, it affected even  
23 non-Hawaiians, which is true.

24 For the record, I would like you to say, you  
25 know, now that we now about the 20,000 signatures that

1 consisted of about 98 percent of the population that  
2 was against the annexation, have you got any  
3 information as to how much percentage of native  
4 people, Kanaka Maoli, were for the annexation?

5 MR. MEE: I do not have specific  
6 statistics on that. I think I would refer the  
7 committee to several works, including chapter or  
8 Volume III of Kuykendall work, where he describes, for  
9 example, the political activities of what was known as  
10 the Liberal Party before the overthrow.

11 The Liberal Party was comprised primarily of  
12 Native Hawaiians. And at one point, because of  
13 various reasons they were unhappy with both the queen  
14 and with the government then in control, which was the  
15 Reform Party, and which people often refer to as the  
16 Missionary Party, they actually called for the  
17 establishment of a republic, rather than a monarchy.

18 They later changed their positions after the  
19 overthrow, at least some of the people involved in  
20 that party:

21 CHAIRMAN MAXWELL: In your expertise,  
22 after 105 years of being under the United States  
23 government, who has -- who makes up the social ills of  
24 the present government? I mean, when I say "social  
25 ills" -- welfare, death rate, suicide, health --

1 compared to the other people who are non-Hawaiian --  
2 how have they fared 105 years after the annexation --  
3 I mean, excuse me, after the overthrow, and  
4 inevitably, the annexation -- how have they fared?

5 MR. MEE: I think what you are  
6 perhaps alluding to is the relative position of Native  
7 Hawaiians in health statistics, for example --

8 CHAIRMAN MAXWELL: -- Well, excuse  
9 me. Let me reiterate what I said.

10 Not only health, but in every social ill --  
11 welfare, prison population -- are the non-Hawaiians  
12 also making up an equal percentage, who are deprived,  
13 after 105 years under the American government?

14 MR. MEE: Again, what I think you are  
15 referring to is the present statistics, whether it's  
16 health or other indicators of social welfare.

17 CHAIRMAN MAXWELL: Right.

18 MR. MEE: I think at the present  
19 time, the statistics indicate that Native Hawaiians  
20 are not in as good a position as other groups.

21 I think what you need to do to get a full  
22 picture of that, though, is to go back through the  
23 history of the Hawaiian people. And I would go back  
24 to the history of the early territory of the United  
25 States. Because my personal belief is that the

1 present condition of Native Hawaiians is not due so  
2 much to what occurred at the time of annexation or the  
3 early territory, but was the result of later  
4 developments, particularly in the 1940's and 1950's.

5 And I think what the statistics demonstrate is  
6 that what occurred, at that point during the  
7 territory, Hawaiians, statistically, were on a level  
8 above the Asian population here.

9 As the Asians became more educated, and as a  
10 result of political factors, they essentially moved up  
11 in the ladder, and unfortunately, Hawaiians were  
12 displaced to a certain extent.

13 CHAIRMAN MAXWELL: You know, I am  
14 confused. And I should not be.

15 Do you mean 1840? Or 1940?

16 Because my question was, 105 years, when the  
17 annexation occurred, how have the Native Hawaiians  
18 fared compared to the other ethnic races that the  
19 nation -- the annexation -- I mean, the overthrow also  
20 occurred.

21 My question was, how have these groups fared?  
22 I mean, are they making up the rolls of prison,  
23 health, education, and welfare like the Native  
24 Hawaiians are? I am not talking about 1940. I am  
25 talking about from the overthrow to the annexation.

1 Because you brought the figure out that -- that they  
2 also lost -- non-Hawaiians lost when they overthrew  
3 the queen, and finally annexed Hawaii.

4 That's what I was wondering -- how did they  
5 fare, in your personal observation?

6 MR. MEE: You mean, non-Hawaiians at  
7 the time of the annexation?

8 CHAIRMAN MAXWELL: Non-Hawaiians.  
9 Are they equally as representative in the social ills  
10 of Hawaii or not?

11 MR. MEE: Today, or at the time?

12 CHAIRMAN MAXWELL: Today.

13 MR. MEE: I don't think today, you  
14 can find that same sort of position. Again, I do not  
15 believe that where we are at today is the result of  
16 the overthrow or annexation, in terms of where those  
17 groups are. I can point to specific examples of  
18 people back during the overthrow, and the subsequent  
19 revolution against the Republic, of non-Hawaiians who  
20 paid a price by taking a political position.

21 People don't realize that a number of the  
22 people who supported the counter -- what they called  
23 the revolution, or the counter-revolution of 1895,  
24 were not Native Hawaiians.

25 A number of those people were convicted by the



1 military tribunal subsequently, and either sent to  
2 jail terms, or ordered to leave, and move to the  
3 mainland.

4 So I think you can point specifically to  
5 non-Hawaiians that were harmed, to the extent there  
6 was harm by what occurred in the late 1800's.

7 CHAIRMAN MAXWELL: So this -- I will  
8 conclude, and I will let the other panel.

9 So it's a residual action. How have they been  
10 affected now, that's what I am asking.

11 Have they been affected? Have their lives of  
12 losing a nation, losing their land, association to the  
13 land, like Native Hawaiians do -- are they still being  
14 affected now, even though they supported the  
15 overthrow, supported the -- the lawyerless, so to  
16 speak, are they still suffering now like the Native  
17 Hawaiians are?

18 MR. MEE: I would guess probably they  
19 are not. Again, my point is --

20 CHAIRMAN MAXWELL: -- Okay. You  
21 answered my question.

22 MR. MEE: -- I don't think the  
23 Native Hawaiians are suffering as a result of the  
24 overthrow. I think it's as a result of later factors.

25 CHAIRMAN MAXWELL: Okay. Next?

1 Anybody else?

2 MR. FORMAN: Mr. Mee, you commented  
3 on the Senate debates on the resolution, and how it  
4 appeared to be on what the effects of the resolution  
5 would be -- in other words, what are the next steps.

6 Do you think it's accurate to say that the  
7 comments -- well, the historical facts are, in other  
8 words, what Ms. Kiaaina referred to as the, you know,  
9 correcting of the 1983 Native Hawaiians Study  
10 Commission Report -- those facts were not challenged  
11 by the proponents of the resolution in the debates in  
12 Congress.

13 MR. MEE: Yes, that's true. And in  
14 fact, the opponents, for example, Senator Gordon and  
15 Senator Brown, apparently admitted that they did not  
16 dispute or were not aware of anything to contradict  
17 the facts.

18 I think it's interesting, though, that as far  
19 as I am aware, information was not presented to  
20 members of the Senate or of Congress, that there were  
21 other viewpoints that could be expressed, other than  
22 the findings that were in the resolution.

23 Specifically -- that apparently, there is a  
24 determination that somehow the 1983 Hawaiian Study  
25 Commission Report had to be disavowed.

1           Why? I mean, shouldn't that information have  
2 been made available to the Senate and to the Congress,  
3 and allow them to compare what that commission, which  
4 spent 21 months looking at this issue came up with,  
5 versus the findings expressed in the resolution, which  
6 were not subject, as far as I am aware, to any public  
7 debate or input.

8           CHAIRMAN MAXWELL: Okay, next? Thank  
9 you.

10           MR. MURAKAMI: On the last statement,  
11 Ms. Kiaaina, is that true, there was no public debate  
12 on this resolution?

13           MS. KIAAINA: Well, I guess you can  
14 choose information in whatever fashion you like to  
15 choose them.

16           The fact is, the 1983 Native Hawaiian Study  
17 Commission Report was thoroughly debated by  
18 Congress -- both in Washington, as well as Hawaii.  
19 There were island-wide hearings. And I would have to  
20 say that that's part of the record.

21           In any legislative process, people are always  
22 going to have to ascertain facts presented to them, as  
23 well as what is in the history. For a lot of things  
24 that we have tried to pursue, both in Congress, as  
25 well as at the grass-roots level, we have never been

1 given information either.

2 All I am saying is that it was on the record.  
3 They -- it's part of legislative history, and if they  
4 were very interested in the history, and wanted to  
5 challenge the findings in this report, they should  
6 have held the bill, and requested that it not be voted  
7 upon.

8 As far as we are concerned, the Senate debate,  
9 which was -- which was a roll-call vote is telling.  
10 If the senators believe that Senator Gordon, Danforth,  
11 and Senator Brown's concerns were meritorious, or  
12 needed to be further considered, I believe that the  
13 Apology Resolution would have failed.

14 Saying that, I would just say that it passed  
15 by a vote of 65-34. Senator Dole was the first  
16 Republican member to vote for that resolution, which a  
17 lot of people are unaware of. And I would just like  
18 to, you know, think that if they had further  
19 questions, or if people believed that it should have  
20 been postponed, then the resolution should have been  
21 defeated.

22 CHAIRMAN MAXWELL: You know, I am  
23 going to have to cut further dialogue because of the  
24 time constraints, because I wanted to give Kekuni  
25 Blaisdell -- Dr. Blaisdell, would you do your

1 testimony now?

2 STATEMENT OF DR. KEKUNI BLAISDELL

3 DR. BLAISDELL: Aloha.

4 I am Kekuni Blaisdell. I am Kekuni Blaisdell,  
5 convener of the Kanaka Maoli Tribunal Komike, and  
6 Professor of Medicine in the John A. Burns School of  
7 Medicine at the University of Hawaii.

8 I appreciate this opportunity to be on this  
9 panel, and to make some remarks, overview remarks,  
10 regarding the purpose and meaning of the Apology Law  
11 Public Law 103-150.

12 The proper historical appreciation of the 1993  
13 apology law begins in both statehood -- 1960's and  
14 1970's -- when key puka, enclaves of Kanaka Maoli,  
15 preserving our traditional self-reliant and  
16 subsistence lifestyle began to kooai, resist, the  
17 trans-national corporation tourist resort development  
18 and the United States military and federal and state  
19 of Hawaii, destructive and displacement expansion, and  
20 the state department of Hawaiian Homelands abuses.

21 The resulting struggles involved private  
22 kuleana, ceded, and Hawaiian Home Lands. These led to  
23 evictions, but in spite of that, a revitalization of  
24 our traditional culture by those involved in these  
25 land crises, and helpful collaboration between

1 self-taught Kanaka Maoli land claim researchers and  
2 taro roots activists against the colonial  
3 establishment.

4 January 16th to the 17th 1993, marked the  
5 centennial of the US armed invasion of our home land.  
6 More than 15,000 Kanaka Maoli gathered at Iolani  
7 Palace to call for restoration of our Kanaka Maoli  
8 nation.

9 The colonial establishment was shaken.

10 August 12th to the 21st of 1993, Kaholo  
11 Kolokolo Nui Kanaka Maoli, the People's International  
12 Tribunal convened on five of our main islands, to hear  
13 taro roots Kanaka Maoli, and to document the  
14 historical, moral, and legal basis for redress of US  
15 wrongs against our Kanaka Maoli people, the nation.

16 The panel of nine distinguished judges and  
17 three prosecuting advocates invoked indigenous law,  
18 including Kanaka Maoli law, as well as Western  
19 International law, and US law.

20 The invitation for the United States to  
21 participate, a letter to the White House went  
22 unanswered.

23 The tribunal found the United States and its  
24 subsidiaries, including the state of Hawaii, guilty of  
25 all nine charges. These charges included: one,

1 beginning in 1790, interference in the internal  
2 affairs of the sovereign people and nation;

3 Two, in 1893, aiding and abetting a foreign  
4 coup against a government of a sovereign people and  
5 nation;

6 Three, in 1898, forced annexation of a  
7 sovereign people and nation, without their consent;

8 Four, in 1921, imposition of a land trust, but  
9 only for those of specified blood quantum;

10 In 1959, imposition of statehood on a  
11 sovereign people, nation and territory, again, without  
12 their free and informed consent;

13 Six, from 1848 to 1993, appropriation of  
14 lands, waters, and natural resources and economic  
15 colonization of a sovereign people and nation;

16 Number seven, acts of genocide and ethnocide  
17 against a people and a nation.

18 The tribunal's recommendations included:

19 One, the United States and world recognize the  
20 inherent sovereignty and right to self-determination  
21 of all Kanaka Maoli people and nation;

22 Two, the United States and the world  
23 acknowledge our Kanaka Maoli right to decolonization;

24 Three, the United States return all Kanaka  
25 Maoli lands without delay;

1           Four, the United States negotiate with our  
2 Kanaka Maoli nation, and observe the provisions of the  
3 United Nations Draft Declaration and the rights of  
4 indigenous peoples as a minimum standard;

5           Five, the United States immediately ratify and  
6 adhere to the 1948 convention on genocide.

7           In spite of these eight sweeping findings and  
8 recommendations, the colonial establishment remained  
9 silent, except for a comment from one of the senators,  
10 and that is that this Tribunal had been conducted just  
11 for its shock effect.

12           The Apology Law, Public Law 103-150, signed by  
13 President William Clinton on November 23rd, was the  
14 colonial establishment's reaction to the Kanaka Maoli  
15 people's movement, which I have described above,  
16 including the tribunal's findings.

17           We were told that the main reason for the  
18 Apology Law was to provide a basis in law for special  
19 programs to Native Hawaiians. The key feature of that  
20 law have not been fully cited here, and I don't have  
21 time to go into that. But I would like to infer to  
22 two.

23           One, there was suppression of the inherent  
24 sovereignty of the Kanaka Maoli people.

25           Two, there was deprivation of the rights of



1 Kanaka Maoli self-determination, yet no mechanisms had  
2 been set in place to resolve, to redress those serious  
3 violations against our Kanaka Maoli people.

4 When it came to actions, we repeatedly, while  
5 the bill was in the making, called for the term  
6 "redress" to appear in that bill. That term did not  
7 appear. The terms that did come, or did result, were  
8 proper foundation for reconciliation between the  
9 United States and the Kanaka Maoli people.

10 Certainly, Public Law 103-150, is necessary  
11 as a beginning for the resolution of the Kanaka Maoli  
12 1993 call for restoration of our nation.

13 However, the law is obviously inadequate for  
14 full resolution, because it's directed only to a  
15 single event in January of 1893, whereas as indicated  
16 in the tribunal's findings and charges, crimes of the  
17 United States committed against our nation preceded  
18 that date, and continued since then.

19 In summary, Kanaka Maoli activists and land  
20 struggles for true self-determination are responsible  
21 for pressing the colonial establishment to respond,  
22 and the result was in 1993 Apology Law.

23 In spite of our repeated requests that the  
24 congressional delegation follow through implementation  
25 of the Apology Law by holding regular hearings and

1 meetings with the concerned Kanaka Maoli people, these  
2 requests have been repeatedly ignored.

3 So one of our recommendations to your  
4 committee and the Commission is a responsible  
5 congressional person seriously proceed with regular  
6 dialogue with the Kanaka Maoli people, in order to  
7 resolve, through proper redress, correction of these  
8 violations against Kanaka Maoli people.

9 And that these government officials support  
10 current efforts of the Kanaka Maoli people for  
11 decolonization -- peaceful decolonization -- under the  
12 oversight of the United Nations.

13 We are moving to gain support of official  
14 decolonization among our Pacific island brothers and  
15 sisters. And currently, we have a representative  
16 meeting with South Pacific heads of government to  
17 support re-inscription of the Kanaka Maoli people and  
18 our nation on the United Nations list of  
19 non-self-governing territories.

20 We ask that your committee and your Commission  
21 support our efforts, that are ongoing, toward peaceful  
22 decolonization, beginning with re-inscription Kanaka  
23 Maoli people and nation on the United Nation's list of  
24 non-self-governing territories.

25 Amama hulele. Mahalo.

1                   CHAIRMAN MAXWELL:    Let me just say  
2   that your comments and further discussion with the  
3   Hawaiian people will be necessary in order to complete  
4   the final study of this hearing, and any further  
5   recommendations that our people will have.

6                   Comments from the panel?

7                   MR. FORMAN:     Doctor Blaisdell, there  
8   is a comment made -- there was a previous comment  
9   about the fact that the Apology Law addresses only  
10  Native Hawaiians, and that there were non-Native  
11  Hawaiians that were also impacted by the illegal  
12  overthrow, as termed in the Apology Law.

13                  Do you think there is a basis for distinguishing  
14  between Kanaka Maoli and non-Kanaka Maoli who were  
15  also affected by the illegal overthrow?

16                  DR. BLAISDELL:    Yes, we feel this  
17  distinction is essential.  It is we, Kanaka Maoli, the  
18  indigenous people of this, our homeland, who are  
19  colonized.  It is the foreign settlers who have  
20  colonized us.

21                  Because of that, we have the worst social,  
22  health, and economic conditions of all ethnic peoples  
23  in our homelands.  The statistics are in, based on the  
24  1990 census, and the figures are worse, not better,  
25  for our people, whereas for all other ethnic peoples

1 in our homeland, the figures are better.

2 CHAIRMAN MAXWELL: Kekuni.

3 DR. BLAISDELL: Ei ou.

4 CHAIRMAN MAXWELL: In your  
5 interpretation, how can these -- how can we eliminate  
6 -- how can we make our people healthy again? What's  
7 your feeling? How can this be? How can we be  
8 citizens as we were, in health-wise, and you know,  
9 robust, and be not the bottom of the social ills -- I  
10 might add, not only of Hawaii, but of America?

11 DR. BLAISDELL: As we heard, the  
12 opening ceremony in this room by Kealii Gora,  
13 Kame'elehiwa, and Kanalu Young, it is our land.

14 We come from the land. Our land has been  
15 taken from us. Without our land, we are not a  
16 people. Return our land, and we will be a whole  
17 people again.

18 CHAIRMAN MAXWELL: Thank you.  
19 Faye?

20 MS. KENNEDY: My question, Dr.  
21 Blaisdell, do you think that there is a need to reach  
22 out to other people?

23 I just want to make the comment, and also the  
24 question, when Reverend Patterson made his comments  
25 about including and giving credit to other groups, to

1 me, this is the type of thing that is helpful.

2           And some of the statements that were made by  
3 Mr. Mee, I think some people who are not of the Kanaka  
4 Maoli can relate to a certain extent.

5           I think it's important, whenever you have this  
6 dialogue, to not take the position that it's only for  
7 the Kanaka Maoli, but to try to include other people,  
8 because many times there are common grounds. And if  
9 you speak of decolonization, and make no effort to  
10 make statements that realize that other people live in  
11 Hawaii, too, I don't think that it always brings  
12 people together.

13           And I think it's very important, whenever you  
14 have an opportunity, to reach out and think of ways  
15 that can make it more inclusive.

16           DR. BLAISDELL: Yes. I appreciate  
17 your comments, and I would like to respond, if I may.

18           As was said right from the beginning by our  
19 chanters, we are Kanaka Maoli because of the land,  
20 because of our spiritual attachment to the land, and  
21 our basic belief, and all of our practices, stem from  
22 our reverence for the sacredness of our land.

23           And this is why our basic beliefs stemming  
24 from that is to share -- to share.

25           The basic belief of the dominant settler

1 culture is to take, to exploit, to dominate, to  
2 subjugate. Those are terms in the official definition  
3 of colonialism by the United Nations -- to dominate,  
4 exploit, subjugate.

5 Our basic living belief is to share. So we  
6 invite all peoples to share, and to stop domination,  
7 exploitation.

8 CHAIRMAN MAXWELL: Thank you,  
9 Kekuni. We are going to have to move on to the next  
10 panel. But before we do, I think your comments are  
11 very important, and I encourage you to submit it in  
12 writing. Like I said, you have 30 days to do it.

13 The address can be gotten from our staff  
14 outside. Mahalo nui loa. Thank you very much.

15 CHAIRMAN MAXWELL: The panel is Civil  
16 Rights Implications of Public Law 103-150, Carl  
17 Christensen, staff attorney for Native Hawaiian Legal  
18 Corporation; John Goemans, attorney at law, will be  
19 via audio-conferencing by phone; Poka Laenui, Director  
20 for the Institute of the Advancement of Hawaiian  
21 Affairs, and Executive Director of Hale Naau Pono,  
22 Waianae Coast Community Mental Health Center; and  
23 Kanalu Young, Professor, Center for Hawaiian Studies,  
24 University of Hawaii.

25 Welcome.

1           Mr. Christensen, you have the floor.

2                   MR. CHRISTENSEN:    Thank you, Mr.  
3 Maxwell.  I think I agree that the --

4                   CHAIRMAN MAXWELL:   Excuse me, could  
5 you hold the mike closer?  And your name, for the  
6 record, please?

7                   STATEMENT BY MR. CHRISTENSEN:

8                   MR. CHRISTENSEN:    My name is Carl  
9 Christensen, I am a staff attorney with the Native  
10 Hawaiian Legal Corporation.

11                   We've heard Public Law 103-150 referred to by  
12 a number of terms today -- the Apology Bill, the  
13 Apology Resolution, or the Apology Law.

14                   I think we might want to think about just  
15 exactly what term we should use to describe it,  
16 because it is a public law.

17                   It was passed by both houses of Congress,  
18 signed into law by the President.  It has a formal  
19 designation of Public Law 103-150.

20                   To call it a "bill" -- well, a bill is  
21 normally an unenacted piece of proposed legislation.  
22 A resolution makes it sound like something honoring  
23 National Walnut Week or something.  I think it -- we  
24 should give very serious thought to coming up with a  
25 term that recognizes the dignity of this congressional

1 action, remembering that Hawaii was, after all,  
2 annexed by joint resolution. And this document has at  
3 least as high a dignity.

4           Hawaiians have been -- the United States has  
5 never figured out quite how to treat Native Hawaiians  
6 under the law. They are not treated as Indian tribes  
7 are. Instead, in 1921, Congress set up a program of  
8 homesteading for those Hawaiians who are 50 percent or  
9 more Hawaiian.

10           With the admission of Hawaii to the United  
11 States, Congress established two land trusts which  
12 were dealt -- the management of which was delegated to  
13 the state of Hawaii.

14           The lands which had been set aside under the  
15 Hawaiian Homes Commission Act were transferred to the  
16 state. And also, the public lands which were ceded to  
17 the United States at annexation by the Republic of  
18 Hawaii -- those portions of the public lands which the  
19 United States did not choose to keep to itself, for  
20 mostly military purposes, were conveyed to the new  
21 state, in trust, for five purposes.

22           One of those purposes was the benefit of  
23 Native Hawaiians, as defined in the Hawaiian Homes  
24 Commission Act.

25           Ever since then, and actually, before Hawaii's



1 admission, the use of those lands has been  
2 controversial. The Territory, and after that the  
3 state, had the unfortunate habit of ignoring the trust  
4 obligations, particularly with regard to the Hawaiian  
5 Home Lands, and using them for whatever public or  
6 sometimes not-so-public purpose appeared advantageous  
7 at the time.

8           Since statehood, the state has managed the  
9 public lands in a way that suggests that the state is  
10 more willing to subsidize whatever special interest  
11 seems desirable at the time, by charging very low  
12 rents for the use of public lands for private  
13 purposes.

14           The state of Hawaii, by an enactment of the  
15 interstate constitution by amendment of the Hawaiian  
16 Homes Commission Act, and by statute, has provided  
17 that the Office of Hawaiian Affairs is to get 20  
18 percent of the revenues from the ceded lands, and that  
19 the Department of Hawaiian Home Lands is to get 30  
20 percent of the revenues from ceded lands that are used  
21 for sugar cultivation, and also for water licenses.

22           20 percent -- or in some cases 50 percent of  
23 those revenues can be -- doesn't come to very much, if  
24 your intention is to insure that the lands don't  
25 generate much revenue, and you use them for purposes

1 that are not within the trust -- the five trust  
2 purposes -- but that you still don't charge very much  
3 rent for.

4           Obviously, this has been a source of  
5 controversy. It has been a source of litigation.

6           The federal courts have held that the  
7 beneficiaries of those land trusts can bring an action  
8 in federal court under 42 USC 1983, one of the federal  
9 Civil Rights Laws, and in more recent years, the state  
10 courts have also recognized a right of action under 42  
11 USC 1983. And there are more recent state enactments  
12 that allow Hawaiians to get into state court to  
13 challenge, arguably, unlawful management of either the  
14 Hawaiian Homes Commission Lands or the ceded lands.

15           Unfortunately, the state had, in its  
16 interpretation of its duties under these acts, has  
17 tended to take a very minimal view. And Hawaiians  
18 have found that promises have been made to them that  
19 do not appear to have been kept.

20           Currently, the Office of Hawaiian Affairs is  
21 in litigation with the state over the interpretation  
22 of what revenues are due them under the various  
23 federal and state statutes that are applicable.

24           Also, individuals who have been injured by  
25 breaches of trust on the part of the state and its

1 agents over the years are in litigation now, as to  
2 just how to interpret the various statutes that the  
3 state has passed in the last ten years, in a very  
4 admirable effort to make whole those injuries -- both  
5 with regard to the trusts, and the individuals.

6           Unfortunately, however, as these claimants  
7 have proceeded through the various mechanisms that  
8 have been made available to them, the state  
9 administration and the legislature discovered that  
10 from their point of view the courts and the agencies  
11 are being far too generous to Native Hawaiians.

12           This has caused both the executive branch and  
13 the legislature in the last several years to try and  
14 reinterpret those laws, retroactively, in a way that  
15 diminishes the benefits available to Native Hawaiians,  
16 without publicly giving the appearance that the  
17 legislature is taking away something that has been  
18 promised.

19           I believe that as was recently determined in  
20 Circuit Court, that those efforts are simply  
21 unconstitutional, and will ultimately fail.

22           The relevance of the Apology Bill, or whatever  
23 you want to call it to all of this, is that although  
24 it's very true that Public Law 103-150 does not create  
25 any new federal rights, it serves a very important

1 evidentiary purpose.

2           It contains an admission by the United  
3 States -- by Congress and by the executive branch --  
4 that an agent of the United States conspired in a  
5 unlawful act -- the illegal overthrow of the Hawaiian  
6 Monarchy.

7           And it specifically states, and I quote,  
8 "illegal overthrow." That is an incredibly important,  
9 and I think, probably almost unique admission on the  
10 part of the United States, that some major action by  
11 the government a hundred years ago was simply  
12 unlawful.

13           The courts are extremely reluctant to make a  
14 determination of whether an event like that was lawful  
15 or not. So, by having this admission, that basically  
16 establishes the background, in front of which all of  
17 this litigation is taking place.

18           Once Congress has admitted the unlawfulness of  
19 the overthrow, it is, I think, effectively impossible  
20 for anybody to continue to argue to the contrary.

21           So I think that this public law has served an  
22 extremely important purpose, because of that  
23 evidentiary value. I think I will close with that.

24           MR. FORMAN: I will ask the committee  
25 members to hold their questions until all the

1 panelists have had an opportunity to speak.

2 I believe now we are going to have John  
3 Goemans, via audio-conferencing.

4 (Discussion off the record.)

5 Well, we'll move forward, and Mr. Goemans  
6 will hopefully get in contact with us shortly.

7 Poka Laenui, would you please state your name  
8 for the record.

9 STATEMENT OF POKA LAENUI:

10 MR. LAENUI: First of all, let me  
11 apologize to those who sit in back of me, for having  
12 my back turned to them.

13 Members of the committee, I am especially  
14 pleased to follow Mr. Christensen, especially his  
15 statement with regards to the evidentiary value of the  
16 confession -- what others would call the Public  
17 Apology.

18 I remember in 1977, before Judge Lanham, in a  
19 criminal trial, when we presented President  
20 Cleveland's address to the US Congress, Lanham  
21 interrupted me, and he said, this is the most  
22 fantastic story I have ever heard -- never heard this  
23 story before.

24 1998, we go before a tax court judge in the  
25 case of John Marsh, where the IRS refused to even

1 challenge, in fact, stipulate to the historic events  
2 that occurred in Hawaii. And that is because of this  
3 confession that the Congress finally came up with.

4 But aside from that, what I would like to do is  
5 take, first of all, a general observation of this  
6 whole idea of civil rights, and the development of  
7 civil rights, as it applies to us here in Hawaii, and  
8 begin by making a comparison with generally accepted  
9 human rights developments.

10 And if we understand the generational approach  
11 to human rights in the international arena -- first,  
12 the Universal Declaration on Human Rights;

13 Second generation being the international  
14 covenants on civil and political rights, and economic,  
15 social, and cultural rights;

16 Third generation, the rights of children, the  
17 rights of families;

18 And there is the fourth generation, indigenous  
19 rights, and the rest.

20 If you look at civil rights within the United  
21 States, you find also this generational approach,  
22 beginning with the constitutional rights, and what  
23 comes out of the Bill of Rights.

24 And then, as we watch the society mature, or  
25 at least get older, we see new generations of civil

1 rights coming out, such as the rights or the  
2 developments led especially by Dr. Martin Luther King  
3 in one case, and then, after that, by the admission by  
4 the United States government that they were, in fact,  
5 racist in the treatment of Japanese American citizens.

6 So you see new generations of rights there.

7 The question then becomes, you know, in what  
8 arena, or how do we take a look at the Hawaiian  
9 situation, as we view the development of generational  
10 rights -- both in the human rights context, as well as  
11 the civil rights context.

12 So let's move the case more to the case of the  
13 United States and its movement about a hundred years  
14 ago, when it decided to become an imperial nation.

15 So it ventures out into the Pacific Ocean. It  
16 ventures out in foreign countries. It declares war  
17 against Spain. And after the declaration of war  
18 against Spain in 1898, it ends up with Guam, the  
19 Philippines, Wake Island, Puerto Rico, portions of  
20 Cuban territory, and control over the Cuban  
21 government, as well as Hawaii.

22 Most of these were taken in, of course, the  
23 Treaty of Paris with Spain.

24 But in Hawaii, the case was slightly  
25 different. In Hawaii, of course, we all know that

1 five years before 1898, the Americans' excursion into  
2 foreign waters, into invading an independent nation  
3 militarily -- giving not even the courtesy of advance  
4 warning or a declaration of war -- something they  
5 accused Japan doing a half a century later.

6 The Americans then, wresting the  
7 constitutional democratic form of government from the  
8 power, or from power, and placing in its stead an  
9 oligarchy of primarily white American descendants --  
10 something they accuse Iraq of doing a century later,  
11 and in 1898, five years after invasion, annexing that  
12 national territory and citizens into its own.

13 Mr. Chairman, members of the committee, this  
14 was not merely a discriminatory practice of the  
15 government among its citizenry. It was not the mere  
16 extension of governmental authority upon the private  
17 rights of its citizens, such as the civil rights  
18 movements of the 60's or the concentration camps for  
19 the Japanese Americans in the 40's.

20 It was, instead, a multi-layered incursion of  
21 rights upon the sovereign integrity of an independent  
22 nation, as well as suppression of individual rights  
23 recognized to exist in both Hawaii and the United  
24 States.

25 To begin addressing the appropriate remedy for



1 this historic, and this ongoing violation of rights,  
2 let us examine some of those injuries which resulted,  
3 by which the United States Congress, and two of its  
4 presidents, has confessed to.

5 First, we take a look at the unfolding of  
6 governmental forms in Hawaii since the overthrow. We  
7 begin with the Hawaiian nation.

8 Following that, we have the government -- the  
9 provisional government, the republic of Hawaii, the  
10 establishment of the territorial government, and  
11 following that, the state of Hawaii -- all under  
12 American control, essentially.

13 The explicit political injury imposed on the  
14 Hawaiian nationals, from then to now, covering a  
15 period of 105 years, include the denial of our  
16 nationality, our government, our control over our  
17 national lands, our control over immigration, our  
18 control over taxation, our control over banking and  
19 finance, the right to print our own money, the right  
20 to control foreign trade and foreign relations, the  
21 right to protect our aina from environmental  
22 pollution, the right to control our own education  
23 system, the right to exercise jurisdiction over all of  
24 Hawaii's territories.

25 The right to control our air space, and to

1 exercise jurisdiction over print, radio, television,  
2 and satellite communication. The control over oceans  
3 to the full extent now provided for under the Law of  
4 the Sea Treaty; the right to have membership in  
5 international organizations such as the United  
6 Nations.

7 And attached to this political injury came the  
8 associated injuries to our health and welfare,  
9 cultural identity, education and economy, cultural  
10 practices, language, self-esteem, and so forth.

11 Thus a wrong was done to the United States and  
12 the nation of Hawaii and her individual nationals and  
13 residents.

14 So what are the appropriate remedies to  
15 address the initial wrong and the resulting injuries?  
16 Is the remedy of according appropriate civil rights  
17 protection adequate? Are the American civil rights  
18 remedies limited to the internal domestic arena of the  
19 United States, while the actual controversy is really  
20 one of an international nature, thus requiring an  
21 international remedy?

22 Is the right of divorce on the table? Is it  
23 part of the discussion, in view of the fact that the  
24 Hawaiian side never willingly engaged in the marital  
25 relationship in the first place?

1           If it's not part of the discussion, then is  
2 the US government truly acting in good faith, really  
3 wanting to achieve a remedy appropriate to the  
4 injustice? Is the United States and its special study  
5 commissions the appropriate bodies to determine the  
6 remedy? Should a thief sit in judgment of itself?

7           Should the US define the process by which we  
8 reach an amicable resolution, or should the process  
9 toward justice be one agreed upon by both the American  
10 and the Hawaiian side, and if not, by a third  
11 international voice?

12           And until properly remedies are put into  
13 place, what immediate action should be taken to  
14 prevent the continuing injury from continuing?

15           If we were to divide the injuries to those of  
16 the past and to those of the present, should the US  
17 begin to define those practices which they are engaged  
18 in today, which are practices are the fruits of the  
19 illegal historic activities, and end such practices  
20 immediately?

21           One of the major failings of the United States  
22 is its twisting the issue of Hawaiian sovereignty,  
23 from a national to a racial question. The Congress  
24 has taken the act of overthrowing the government of an  
25 independent nation state, and suggests reconciliation

1 only to the Native Hawaiian people.

2 In those few words of the US Congress, it has  
3 acted against the principal of non-discrimination by  
4 race, by doing exactly that among Hawaiian nationals.

5 Prior to the American invasion, we all know  
6 that we were a multi-racial nation, just as the United  
7 States today is a multi-racial nation. If a foreign  
8 country should injure US nationals, would it be  
9 permissible for that foreign country to choose among  
10 what race of these American nationals they should give  
11 a remedy?

12 Should a foreign country which mistakenly  
13 shoots down an American passenger plane, killing  
14 Americans of various races, religions, or social  
15 status -- should that foreign country have the right  
16 to say they will pay only for the injuries to the  
17 American Indian victim?

18 One of the reasons for this problem in  
19 American distinction is a strong indigenous rights  
20 movement occurring here, and in America, and in the  
21 rest of the world. This movement calls for the  
22 recognition of special rights of indigenous people  
23 within their traditional homelands, such as the right  
24 to retain their culture, their traditional language  
25 and religion, to educate their own children, based

1 upon their own traditional beliefs, and within their  
2 own social systems, to maintain their economic  
3 practices, and so forth.

4 In the Hawaii case, the struggle for  
5 indigenous rights, starting about the 1970's -- and  
6 Charlie, of course, you were very much involved in  
7 that movement -- it was also intertwined with the  
8 Hawaiian sovereignty movement which dealt with not  
9 only the practice of indigenous rights, but raised the  
10 whole question of the illegal overthrow of the  
11 Hawaiian government.

12 Many people, including Native Hawaiians, have  
13 not understood the distinction, and speak of  
14 indigenous rights and Hawaiian sovereignty as if they  
15 are one and the same. They are not the same.

16 But they are not a matter of either/or as  
17 well. It is not a question of choosing in favor of  
18 Native Hawaiian rights or Hawaiian sovereignty. Both  
19 rights should be available. But both must be clearly  
20 understood and distinguished.

21 Native Hawaiian rights are the rights of  
22 indigenous people in their own homelands to language,  
23 culture, traditional lands, rights of access,  
24 reclamation of burial and other sacred sites, and so  
25 forth.

1           Hawaiian sovereignty are rights accorded  
2 beyond the race line, addressing questions of  
3 developing an independent government, reclaiming their  
4 international stature as before the US invasion, and  
5 the debt owed by the US for its years of governance  
6 and occupation over Hawaii.

7           Mr. Chairman, I recognize I probably have gone  
8 over my time, and unfortunately, I won't be able to  
9 finish this. Except, if you will permit me just to  
10 read a conclusion.

11                   CHAIRMAN MAXWELL:     Go ahead.

12           MR. LAENUI:     There are many ways that  
13 Hawaiians resist and continue to invade the national  
14 memory, in the face of the United States' first  
15 apology, but unwillingness to really come forth with  
16 the appropriate remedies. And all of you on this  
17 panel understand these ways. It's not only in the  
18 language, in the hula, in the remembrance of the  
19 genealogies -- many, many other ways.

20           What we are witnessing in Hawaii is not only  
21 very interesting, but it is a very important  
22 phenomenon in human development. We are watching the  
23 unfolding of a decolonization drama, in which a people  
24 under the colonization, since the original armed  
25 invasion over a hundred years ago, have continued to

1 rely upon peace, reason, a faith in justice, a strong  
2 trust in God, and Aloha, to bring about their  
3 salvation.

4 And all of this within a colonial government  
5 context, which wants to contain the issue as merely  
6 domestic civil rights issues, and not face the fact  
7 that it also has other major implications.

8 So we, in Hawaii, are blessed and burdened, as  
9 actors and as witnesses to this great human  
10 experience. So while we go through this controversy,  
11 we should also savor the moment, because we will want  
12 to tell our grandchildren about this fantastic human  
13 experience. Thank you.

14 CHAIRMAN MAXWELL: Thank you, Poka.

15 And now, we are going to move on, because we  
16 have Mr. John Goemans, attorney at law, on the  
17 audio-conferencing phone. Mr. Goemans.

18 Mr. Goemans, can you hear me?

19 MR. GOEMANS: I can hear you. Can  
20 you hear me?

21 CHAIRMAN MAXWELL: My name is  
22 Charles Kauluwehi Maxwell, and I am the chairman of  
23 the Hawaii Advisory Committee to the US Civil Rights  
24 Commission. You now have the floor.

25 MR. GOEMANS: Is it better if I speak

1 like this, or through the speaker phone?

2 CHAIRMAN MAXWELL: That's better,  
3 what you are doing right now.

4 MR. GOEMANS: All right. My  
5 statement, then?

6 CHAIRMAN MAXWELL: Yes, go ahead.

7 STATEMENT BY JOHN GOEMANS, ESQ.

8 MR. GOEMANS: I have been requested to  
9 address the civil rights implications of PL 103-150,  
10 the so-called Apology Resolution.

11 I can state categorically that those  
12 implications were, at the time of the resolution's  
13 adoption and today, disastrous.

14 What we can see now, increasingly clearly,  
15 many in Congress anticipated five years ago. Senator  
16 Gordon of Washington, speak are for those prescient  
17 legislators stated, "It divides the citizens of the  
18 state of Hawaii, who are of course citizens of the  
19 United States, into two distinct groups -- Native  
20 Hawaiians, and all other citizens."

21 He observed that Hawaii is the single  
22 multi-ethnic community in the entire world in which a  
23 multitude of people from many ethnic backgrounds live  
24 together in peace and friendship.

25 He saw Hawaii as an example to the world. He



1 lamented, however, that this resolution was a  
2 beginning of division among the peoples of Hawaii.

3 He quoted Abraham Lincoln who guided, "The  
4 true American heritage that all men are created equal  
5 and deserve equal treatment." That heritage he saw as  
6 being undercut by this divisive resolution.

7 Likewise, Senator Danforth of Missouri,  
8 calling attention to the motto carved in marble in  
9 Senate Chambers, E Pluribus Unum -- From Many, One --  
10 decried the race discrimination, bigotry and  
11 divisiveness inherent in this resolution.

12 I moved to Hawaii fresh out of law school in  
13 the year 87 percent of the people of Hawaii voted to  
14 become the 50th state -- 1959. I was attracted, of  
15 course, by the physical beauty of the islands, but  
16 also, and more importantly, by its multi-racial  
17 society, and by its potential to lead the way for  
18 America and the world toward that elusive goal of  
19 racial harmony.

20 There was not then, nor is there now, a  
21 majority race of Hawaii. That, for me, was its charm  
22 and potential. That potential is now destroyed.

23 Over time, beginning with the state  
24 constitutional convention of 1978, a stream of  
25 governmental actions -- state and federal -- PL

1 103-150 is only a point on an unfortunate continuum --  
2 has systematically created a special class of citizens  
3 in Hawaii with rights and privileges denied of  
4 citizens not of that class.

5 Enough time has passed since the resolution's  
6 adoption to assess its effects. It has been used to  
7 legitimize past governmental action, singling out the  
8 members of the Hawaiian race, and also to serve as  
9 authority for yet more such action. It is part and  
10 parcel of a whole universe of racial preferences  
11 existing in Hawaii, and it is inseparable there from.

12 It may be difficult for other Americans to  
13 accept, but what's been created in Hawaii during the  
14 last two decades is a place where, if you are a member  
15 of a particular race, you can get discounts from  
16 certain stores and service providers. You can attend  
17 the university without paying tuition. You can get  
18 loans not available to other races.

19 You alone can attend certain public-funded  
20 classes. You can be preferred for public employment.  
21 You can get free health care not available to your  
22 non-Hawaiian neighbors.

23 You have one of the eight Hawaiian islands,  
24 part of the public lands of Hawaii, by statute,  
25 committed to the ownership and control of yourself and

1 others of your race.

2           You can get special rights on private land,  
3 not owned by you, and to public waters, and other  
4 natural resources of the state. You have the right to  
5 vote in certain elections, which right is specifically  
6 denied your fellow citizens of other races.

7           And interestingly, if you are 50 percent  
8 native Hawaiian or more, you have access to some one  
9 billion dollars of public funds, and over 200,000  
10 acres of public lands dedicated solely to your  
11 benefit, and for the 20,000 or so the other 50  
12 percenters.

13           All of these are in certain violation of not  
14 only the federal and state constitutions, but the  
15 whole gamut civil rights legislation acts since the  
16 Civil War.

17           And it isn't just governmental action which is  
18 objectionable. For instance, there exists in Hawaii a  
19 public trust of some \$10 billion in assets.

20           As a public trust, its beneficiaries are the  
21 citizens of Hawaii. That trust operates educational  
22 institutions admissions to which are strictly  
23 restricted by race -- this, in direct disregard of US  
24 Supreme Court decisions concerning race discrimination  
25 in education.

1           Each year, that trust illegally claims  
2 exemption from state and federal taxation, in  
3 violation of IRS regulation and civil rights law.

4           The Apology Resolution, itself, has been cited  
5 and used in various contexts to further the Alice in  
6 Wonderland environment which is modern Hawaii:

7           For instance, to challenge traffic citations  
8 and criminal prosecution. To avoid mortgage  
9 obligations. To justify court decisions granting  
10 extraordinary rights of public property of others, as  
11 a basis for this proposition that the state of Hawaii  
12 is illegal, and its laws inoperable.

13           How did it all happen?

14           Underpinning this universal or pernicious  
15 nonsense are certain basic myths which have been  
16 widely disseminated and fortunately accepted as true  
17 by many citizens.

18           First, that Native Hawaiians were deprived of  
19 sovereignty upon the overthrow of the Monarchy in  
20 1893. In fact, full and complete sovereignty reposed  
21 in the various monarchs of the kingdom, including  
22 Queen Liliuokalani -- not in the citizens of that  
23 kingdom.

24           As attested to by the Supreme Court of the  
25 kingdom in 1863, no Hawaiian citizen had any claim to

1 sovereignty until the establishment of the Territory  
2 of Hawaii in 1900, when citizens of the Hawaii became  
3 subject to the United States Constitution, which  
4 reposes all sovereignty in the people.

5 Second, that Native Hawaiians had land stolen  
6 from them in 1893.

7 In fact, if any Hawaiian owned land in 1893  
8 in Hawaii, he or she had a deed thereto, which was  
9 most probably recorded in the Bureau of Conveyances,  
10 and that deed was in no way affected by the  
11 overthrow.

12 Lands transferred to the Republic of Hawaii,  
13 and in 1898 the US government, in trust for the  
14 inhabitants of Hawaii, where the public lands of the  
15 Monarchy, not in the property of any individual,  
16 group, or race.

17 Third, that Native Hawaiians are native  
18 Americans. What was annexed to the United States in  
19 1898 was the Republic of Hawaii, a multi-racial  
20 foreign nation. None of the citizens were, or could  
21 become, native Americans by that annexation of that  
22 foreign nation of the United States.

23 Fourth, a myth created out of the whole cloth  
24 by someone somehow, to serve as legal justification  
25 for the existing panoply of preferences, is the

1 proposition that collectively, Native Hawaiians have  
2 been and are victims -- victims of race  
3 discrimination, citizens of the Territory and state of  
4 Hawaii.

5 This myth flies in the face of fact.

6 Native Hawaiians were by far the largest  
7 voting block for the first fifty years of territorial  
8 government, and effectively controlled the legislature  
9 during that period, and have served in  
10 disproportionate numbers as public officials,  
11 representatives to Congress, and members of the  
12 judiciary, and the state legislature.

13 No reasonable case can be made that Native  
14 Hawaiians, as a group, are or have been victims of  
15 racial discrimination.

16 PL 103-150 reflects this mythology, in its  
17 mention of the inherit sovereignty of the Native  
18 Hawaiian people, and the right of Native Hawaiians to  
19 self-determination.

20 The illogicality of the entire exercise  
21 reflected by the resolution is clear, when one asks,  
22 why should the United States apologize to Native  
23 Hawaiians, a minority of the population of the Kingdom  
24 of Hawaii in 1893, for acts done in furtherance of the  
25 kingdom's overthrow, and likewise, not apologize to

1 all other citizens of that kingdom?

2 Where do we go from here?

3 Because of the existence of PL 103-150, Native  
4 Hawaiian activists believe that their federally  
5 recognized rights to self-determination and  
6 self-governance will now be realized by Congressional  
7 action establishing a Native Hawaiian government.

8 Nonsense this may be, but to a few thousand  
9 Native Hawaiians, it is all too plausible.

10 As a Native Hawaiian leader, US Federal Court  
11 Judge Sam King, son of a former governor of Hawaii,  
12 recently stated, "This" -- meaning the Apology  
13 Resolution -- "was essentially a cynical action by an  
14 uninterested Congress, equivalent to apologizing to  
15 George the Third for the American Revolution.

16 "The mischief," Judge King said, "caused by  
17 this ill-considered resolution will plague us for many  
18 years." And so it has. It is now time for Congress to  
19 re-visit this illogical, nonsensical, divisive  
20 legislation.

21 Thank you.

22 CHAIRMAN MAXWELL: Okay, Mr. Goemans,  
23 if you would stay on the line, because we are going  
24 right into Professor Kanalu Young. Then we will come  
25 back to question you, if you mind staying on the line,

1 will you be?

2 MR. GOEMANS: I sure will.

3 CHAIRMAN MAXWELL: And now, I would  
4 like to introduce Professor Kanalu Young, The Center  
5 for Hawaiian Studies, University of Hawaii.

6 Please state your name and your position,  
7 please.

8 PROFESSOR YOUNG: My name is Kanalu  
9 G. Terry Young, Assistant Professor of Hawaiian  
10 Studies, University of Hawaii at Manoa.

11 STATEMENT BY PROFESSOR KANALU YOUNG:

12 PROFESSOR YOUNG: I appreciate this  
13 opportunity to address the Hawaii Advisory Committee  
14 to the United States Commission on Civil Rights.

15 And I would like to make four points here in  
16 the time that I have been allowed, that address the  
17 long-term civil rights implications of Public Law  
18 103-150.

19 The first point has to do with understanding,  
20 in recent light of research done by political science  
21 doctoral candidate Noenoe Silva and others in  
22 Washington D.C, in the National Archives, an  
23 establishment of the record from 1897, that clearly  
24 shows that one hundred years ago, Native Hawaiians,  
25 who were also Hawaiian nationals, subjects of the



1 Kingdom of Hawaii, were resisting or demonstrating the  
2 Hawaiian spirit of "koo-ay" or "resistance" the  
3 annexation of their homeland and of their country to  
4 the United States of America.

5 This is the precedent on which I base all of  
6 my further statements. It is the foundation for any  
7 redress, restitution, or reconciliation.

8 This history lives in the spirit and in the  
9 ancestry of everyone of the koekoe -- everyone of  
10 ancestry today -- the living embodiments of those  
11 patriots of 1898.

12 It is not something that is doomed to the dust  
13 bin of history. It is something that scripts,  
14 reinforces, and underscores every action of the  
15 Hawaiian people today -- both as indigenous people of  
16 these islands, and as subjugated colonized nationals  
17 from a country that was illegally taken.

18 Now, the liberation and the freedom that comes  
19 from knowing that this was done a hundred years ago is  
20 that we no longer have to defend ourselves.

21 We no longer, as Native Hawaiians, or  
22 subjugated Hawaiian nationals, have to back-pedal.  
23 Instead, we can begin to think about our future in a  
24 proactive way. We can seize this moment in history,  
25 and move forward.

1           I, like Poka Laenui, question the scope of  
2 oversight of the US Commission on Civil Rights, simply  
3 because of this historical precedent.

4           Also, it has been proven by the members of the  
5 Hawaiian Patriotic League, 1998 version, that we truly  
6 are who we were, that the annexation, itself, by joint  
7 resolution of Congress, is based on faulty,  
8 questionable, perhaps even illegal precedents.

9           That being the possible case, the meaning of  
10 reconciliation, and that word in Public Law 103-150,  
11 needs to be considered in the international arena, as  
12 was previously stated by another panelist, Poka  
13 Laenui, in the arena of the United States in  
14 connection to the Hawaiian people, as well as the  
15 third arena, which is in these islands, and where the  
16 state of Hawaii, some would say the de facto  
17 government of these islands, currently resides.

18           Our Hawaiian community must do its share of  
19 the kuleana. Our province of responsibility, as I see  
20 it, is to meet in summit, and to define the context of  
21 reconciliation from our point of view -- not at the  
22 exclusion of other people living in these islands, but  
23 certainly, to take the lead role in every effort, in  
24 acknowledgement of the political, economic, and social  
25 realities that do exist today.

1           That ball of twine, called the last hundred  
2 years, that has been wrapped so tightly around our  
3 people's throats, will only start to unravel if  
4 non-Hawaiians understand where we are coming from.

5           It is not our kuleana to pat people on the  
6 back, and to appease them, and to make them feel good,  
7 and to cajole them. That is not our kuleana.

8           We are the native people of this land. We  
9 have indigenous rights. And we are Hawaiian nationals  
10 reasserting our nationality. And it is true that that  
11 nation, in 1893, included people of other ancestral  
12 groups and ethnicities. And that is still a point  
13 that still needs to be reconsidered and worked into  
14 the mix. But it is something that will be done in the  
15 future;

16           Finally -- and this is a completely separate  
17 issue, in my mind, from self-determination -- the  
18 federal entitlement programs, to the tune of \$30  
19 million that address Native Hawaiian health,  
20 education, and welfare, will be another pillar or  
21 aspect of the reconciliation. For in the time our  
22 nation rises again and rebuilds, and reclaims our  
23 place in the international family of nations, we will  
24 not have the United States shrink away from its  
25 responsibility to maintain the \$30 million of

1 entitlements.

2 That will be just one aspect. For as it has  
3 been said so eloquently by previous speakers, we are  
4 people of the aina. And until the archipelago is  
5 returned and/or negotiated for in joint use, no  
6 justice will come to our people.

7 I will stop now, and thank the committee again  
8 for the opportunity to speak. Mahalo.

9 CHAIRMAN MAXWELL: And now, I would  
10 like to open up to the members of the panel any  
11 presenters that you may want to direct questions to.

12 Alan.

13 MR. MURAKAMI: Yeah, Poka, you talked  
14 a lot about some of the international implications,  
15 and mentioned a need for decolonization.

16 In your mind, then, is some process  
17 necessary -- some specific decolonization process  
18 necessary -- that involves UN oversight?

19 MR. LAENUI: I think UN oversight  
20 would be most helpful, on one condition, though.

21 And that is we, too, must be very careful with  
22 the US control within the United Nations, especially  
23 with regards to the US's attempt over the last two or  
24 three years to kill the committee on -- the Special  
25 Committee on decolonization.

1           What I am saying is that it's not necessarily  
2 the UN institution. They can also be regional  
3 arrangements that can assist in the decolonization  
4 process.

5           If you look at the process taken in South  
6 Africa more recently, the UN officially did not have  
7 an observer there. But you had representatives, or  
8 you had individuals from many UN agencies, who  
9 themselves went to dignify the process.

10           I think the most important, though, is not  
11 necessarily getting foreigners to come in, but getting  
12 our own people to fully appreciate what are our  
13 rights. So it's really the education process within  
14 Hawaii, where the first arena of decolonization must  
15 be taken.

16           And we need to educate and reeducate our own  
17 Hawaii people. We need to educate the American  
18 people. Because at the present time, they suffer from  
19 that education. They continue to see the justice of  
20 any people only within American legal structure.

21           They continue to believe that the United  
22 States somehow is above international law. And that  
23 sham has to be shattered.

24                           CHAIRMAN MAXWELL:     Alan.

25                           MR. MURAKAMI:     In that light, then, I

1 guess what I am curious about is -- and maybe any of  
2 the speakers, including Mr. Goemans, if necessary, can  
3 answer. But what would you contribute, in terms of  
4 what steps would be necessary to achieve the kind of  
5 reconciliation that would achieve the kind of  
6 understanding between the Hawaiians, non-Hawaiians,  
7 and the US government?

8 How would that process work? Can you sketch  
9 it out? Do you want to think about it and present  
10 that to us in writing later? I mean -- that's what I  
11 am kind of concerned about.

12 MR. LAENUI: I have thought about it,  
13 for a number of years. And I would suggest that we  
14 need greater honesty. We need to start with that --  
15 greater honesty, first of all, on the part the of the  
16 United States government.

17 We recently heard two very important -- or we  
18 have experienced two very important events going on.  
19 One is this particular hearing, the United States  
20 Commission on Civil Rights, this particular advisory  
21 committee, and how the United States is trying to  
22 grapple with its now confession of what has happened,  
23 and how it's going to resolve the issue.

24 And yet, another speaker had also referred to  
25 Miguel Alfonso Martinez's report, a United Nations

1 expert, who says Hawaii should be reinscribed on the  
2 list of places to be decolonized.

3 What is the US's approach to both of these?

4 Of course the United States supports this  
5 process. But what did they say, with regards to the  
6 other process?

7 They say it is merely a footnote in history, a  
8 small footnote by a small man, rather than identifying  
9 or addressing the substance of that report, they  
10 denigrate that individual. That is what needs to be  
11 changed. The United States must be brought  
12 face-to-face with the fact that they, too, should be  
13 judged by standards of international law -- the right  
14 of all people to govern themselves.

15 You know, a hundred years ago, our own  
16 ancestors said very clearly, and what they did was  
17 they cited the United States constitution itself, that  
18 governments derived their right to govern by the  
19 consent of the governed.

20 And all they said was, let us vote. Give us  
21 the same rights that, internationally, you have  
22 established as a standard.

23 That right has never been accorded to us. The  
24 United States continually suggests that they are above  
25 international law.

1           The first step, the United States has to come  
2 clean. The second step, even within th Hawaiian  
3 people, we have to process the understanding that yes,  
4 indeed, Native Hawaiians have been injured. They have  
5 been injured terribly.

6           And yet, we need to also recognize that the  
7 field of injury goes beyond race. And so, it's that  
8 dualism that we need to continue to be honest with it.

9           And never forget the concept of Aloha in this  
10 long process.

11                   CHAIRMAN MAXWELL: Thank you. Are  
12 there any other members that want to address a  
13 specific question? Kanalu.

14                   PROFESSOR YOUNG: I would like to  
15 add that in our effort to understand where we go from  
16 here, that to reiterate this issue about  
17 non-Hawaiians, and what our place is in educating  
18 them, we cannot move forward from this place without  
19 non-Hawaiians understanding what our agenda is, and  
20 what we base our agenda on, including the non-violent  
21 act of a queen, of a sovereign nation recognized by  
22 treaty with the United States, to stand down and put  
23 arms aside, and not, through bloodshed, fight for a  
24 nation that she so dearly loved.

25           That peaceful resolution, and the justice she



1 sought, and the trust she placed in the United States  
2 of America shall be one cornerstone for future action,  
3 if the United States now lives up to that trust, once  
4 and for all.

5           And that is the Aloha that Mr. Laenui speaks  
6 of. We are not about to shrink away from the most  
7 founding principal of our temperament, character, and  
8 type. Aloha, of course, will script our conduct. It  
9 always has. But it's a two-way street.

10           It's a two-way street.

11           CHAIRMAN MAXWELL:    Okay.  Someone  
12 else had a question here?

13           MS. KENNEDY:    I did want to comment  
14 that it's good that you recognize it's a two-way  
15 street, because I think it's very important for there  
16 to be understanding.  But I think there has been to be  
17 mutual respect.  And I think if everything is just one  
18 way, of everyone understanding the native Hawaiians  
19 and not understanding the other groups, I think it's  
20 unfortunate.

21           Because there are many people who feel very  
22 strongly on the rights of the Kanaka Maoli, and I  
23 think if that's taken into consideration, there will  
24 be more of a dialogue, and less of a confrontational  
25 spirit.

1           So I think it's important.

2                   CHAIRMAN MAXWELL:    Thank you, Faye.  
3 Alan?

4                   MR. MURAKAMI:    Yeah.  Again, you  
5 know, this is an opportunity for this advisory  
6 committee, and that's all it is, to make comments to a  
7 US federal body.  Now, of course, you realize the  
8 context, right?

9                   But it's an opportunity of this local advisory  
10 committee to make recommendations, to analyze issues,  
11 to present facts that may otherwise not have been  
12 considered.  And that's why, the reason for my  
13 question.

14                   And I am not trying to, like, nail you to the  
15 spot here and say, you have no know everything about  
16 what the steps should be.  But I am very serious about  
17 offering the opportunity -- whether or not now, or  
18 later submitted -- to think about these steps, and  
19 about what this committee can contribute in the  
20 context we find ourselves.

21                   We are limited, obviously, by how we are  
22 formed, and what our commission is.  But certainly, I  
23 would invite you to think long, and think hard, about  
24 how we approach this process of reconciliation.

25                   The word "reconciliation" means many things to

1 many people, as we have learned from the eight  
2 people -- or the seven speakers that have come up so  
3 far. And what I think this group would appreciate is  
4 your input, as to how much we should say. I mean, I  
5 am even leaving that open. How much should we say in  
6 this report we hope to formalize?

7 MR. LAENUI: Well, it would be  
8 even -- Mr. Murakami, it would be a refreshing point  
9 of view to have such a body as the Hawaii Advisory  
10 Committee to the US Commission on Civil Rights throw  
11 into question its role. Even that question is  
12 refreshing, and a step in the right direction.

13 And then, at a future time, perhaps if there  
14 is a place for such a committee to convene on the  
15 subject specifically of reconciliation, as a way to  
16 reach Washington D.C., and future congressional  
17 action, that might very well be a step toward more  
18 redress in the future.

19 But at the same time, the international arena  
20 that we are speaking of has to go forward, as well.  
21 It's not like we can just focus on one scenario.

22 These are as if they are battlefronts within  
23 the same movement. And as battlefronts within the  
24 same movement, or fronts within the same movement,  
25 they will all be happening simultaneously.

1                   CHAIRMAN MAXWELL:    You know, Kanalu,  
2   let me bring you up-to-date.  When I accepted this  
3   chairmanship, I did not want us to be just a  
4   statistic.  I said I wanted to be proactive.

5                   And the biggest thing that is happening now is  
6   sovereignty, and self-determination, and native  
7   rights.  So it's not -- it's very uncomfortable to be  
8   here because, you know, I am the culture, I am a  
9   spiritualist, I am a practitioner.  And it's hard,  
10  it's very difficult.

11                  But if you don't have any questions, I would  
12  like to address Mr. Goemans.

13                  Any other questions, before I address him,  
14  or --

15                  MR. MURAKAMI:    -- I just wanted to  
16  ask Mr. Goemans the same question that I posed to all  
17  the speakers.

18                  CHAIRMAN MAXWELL:    Okay, Mr.  
19  Goemans, this is Mr. Maxwell.

20                  Can you address Mr. Murakami?

21                  MR. GOEMANS:        Ask the question,  
22  please.

23                  MR. MURAKAMI:    Basically, my question  
24  was, Mr. Goemans, what you felt this Commission should  
25  be saying, with respect to the question of how to

1 implement the policy of reconciliation called for by  
2 the Apology Bill, if you think that should happen, at  
3 all.

4 MR. GOEMANS: Well, I can't get to  
5 that point, because as I said, it seems so clear to me  
6 that if you are talking about an Apology Resolution,  
7 and the issue of reconciliation is the end product of  
8 that resolution, you are talking about an Apology  
9 Resolution that is extended to only a certain small  
10 segment -- a relatively small segment of the  
11 population of the Kingdom of Hawaii.

12 It seems completely illogical to me.

13 And that therefore, I think the Congress acted  
14 illogically, and it should re-visit the area.

15 CHAIRMAN MAXWELL: Okay. Mr.  
16 Goemans, we have Commissioner Forman to ask a  
17 question.

18 MR. FORMAN: Mr. Goemans, I  
19 understand your concerns about your perception of  
20 divisiveness. Nevertheless, the majority of the  
21 members of Congress decided to address the first step  
22 towards reconciliation.

23 And a previous panelists have made the comment  
24 that -- this isn't their words, but I kind of  
25 interpret it as a way to address the present effects

1 of past discrimination. In other words, that the  
2 statistics regarding the status of Native Hawaiians --  
3 do you dispute those statistics? Or I am wondering  
4 what kind of alternative you are suggesting to address  
5 those conditions.

6 MR. GOEMANS: Well, let me say, in  
7 regard to your first question, yes, indeed, I do  
8 dispute those statistics.

9 As far as -- I mentioned -- I spoke to the  
10 issue of past discrimination. It's clear to me that  
11 Hawaiians, as a race, have not been subject to  
12 discrimination in Hawaii, and have in fact have  
13 enjoyed powers since the beginning of the Territory.

14 The figures in regard to -- the Hawaiian  
15 population in regard to health, to prison  
16 incarceration, and et cetera, are skewed.

17 What you have is the State Health Department  
18 which keeps figures based on whether a given person  
19 has any modicum of Hawaiian blood or not.

20 The US Census has a methodology whereby you  
21 identify your racial characterization. Based on that,  
22 138,000 people are Hawaiians by US Census figures, and  
23 by State Department figures, accepted by Native  
24 Hawaiians, 208,000 are. That means there are 70,000  
25 people that Hawaiians consider to be Hawaiians, that

1 do not themselves consider themselves to be Hawaiian.

2 And that means that the diseases, et cetera,  
3 et cetera, that those non-Hawaiians, by their own  
4 definition have, are carried into the figures for  
5 Native Hawaiians as they make these representations.

6 And for instance, when you are talking about  
7 diseases that are disproportionately visited upon  
8 Hawaiians, are we to assume that the Hawaiians have  
9 some sort of depreciated genetic structure that cause  
10 them to have more cancer, or more tuberculosis, or  
11 whatever it is, than others races? No, obviously.

12 But those are the things that are presented as  
13 gospel, when in fact, they don't bear scrutiny.

14 MR. FORMAN: Thank you, Mr. Goemans.  
15 I would just like the chairman to please remind the  
16 audience about our meeting guidelines.

17 CHAIRMAN MAXWELL: Yeah, our meeting  
18 guidelines is that there is really no audience  
19 participation. Sorry, but we have these federal  
20 guidelines to follow.

21 Mr. Goemans, I would like to ask you a  
22 question. And my question is, our historians -- and I  
23 am not talking about Kuykendall -- I am talking about  
24 Pua Kanahale, I am talking about Sam Kamakau, and I  
25 have to qualify my question by saying this, that all

1 of this land that was created was created by the Gods,  
2 and nobody else, and was given to us from the Gods.  
3 And we, till today, associate this land as such.

4 So, I know you know what prior rights are, and  
5 what aboriginal rights are. And so we, Hawaiians,  
6 know that these rights existed before Captain Cook  
7 even arrived here in 1778. And we maintained these  
8 rights continuously up till now, because of the blood  
9 that flows through our veins.

10 So how can you say -- and my question is, if  
11 you can tell the committee, how can you say that the  
12 Hawaiians don't have any right to the land, or to an  
13 indigenous government, which we had prior to the  
14 arrival of the first missionaries?

15 Can you answer that question, please?

16 MR. GOEMANS: Well, in the Apology  
17 Resolution, itself, and during the debate, it was  
18 positive that Hawaii had a communal land tenure system  
19 prior to the overthrow. That just isn't true  
20 historically.

21 What existed in Hawaii was a land system of a  
22 -- feudal land system, whereby all land was held by  
23 the Monarchy, and the Kona Hiki.

24 It is not historically accurate to say that  
25 land was owned by the Hawaiians, as a group. It just



1 isn't. You can talk in religious terms and spiritual  
2 terms, that is one thing, and not subject to any  
3 proof.

4 But when you are talking about sociologically,  
5 and in a political science sense, and in the context  
6 of land rights, you've got to accept the proposition  
7 and accept the fact that when we are talking about  
8 what existed in Hawaii, was a feudal land system,  
9 whereby the monarch had complete control of the lands  
10 of the kingdom.

11 Now, as I stated, that in 1893, by that time  
12 after the Mahele, you had a Bureau of Conveyances, you  
13 had a system of recordation of land. Any Hawaiians  
14 that owned any land, had that land recorded in the  
15 Bureau of Conveyances.

16 CHAIRMAN MAXWELL: Okay, Mr.  
17 Goemans, thank you. I am going to move on to some  
18 other panelists that want to respond.

19 MR. GOEMANS: I can't hear you.

20 CHAIRMAN MAXWELL: Can you hear me?  
21 I am going to move on to other panelists that might  
22 want to respond.

23 Yes, Poka.

24 MR. LAENUI: Yes, Mr. Chairman.

25 Given a few minutes to reconsider some of the

1 questions asked earlier, to Alan Murakami, I would  
2 like to say I have two very specific suggestions.

3           One is that we begin a process of creating an  
4 international oversight process, using both standards  
5 of developing indigenous rights, and rights of  
6 decolonization. And having them look specifically at  
7 the Hawaii case.

8           I had a discussion many years ago with Simon  
9 Wiezenthal in Vienna, Austria, where the suggestion  
10 was that if we could gather together people whose  
11 reputation are beyond repute -- Nobel Peace Prize  
12 winners, and others in the international society as  
13 being truly fair, honest, and not tied to any  
14 governmental institution, and let's place the Hawaii  
15 case, using these two standards.

16           And let's begin that as a process of  
17 reconciliation, taking it, as I said earlier, outside  
18 of the hands of one or the other party -- either the  
19 victimizer or the victim -- and placing it into an  
20 international arena.

21           A second remedy that we can begin immediately  
22 is to allow a choice of citizenship by eligible  
23 Hawaiian nationals -- of either being American or  
24 Hawaiian -- and carrying the requirements of  
25 citizenship accordingly, and let it fall there.

1           Let the people, themselves, again, have a  
2 choice of how they want to be governed, where they  
3 want to stand, and begin the reconstruction of the  
4 nation in that way.

5           A hundred years ago in 1897-1898, that  
6 memorial statement was adopted by Hawaiian nationals.  
7 They have basically said, ask us, get our consent  
8 before you skew us. That asking of the Hawaiian  
9 nationals that very basic question, of whether or not  
10 we want to be annexed to the United States has never  
11 been placed before us.

12           That would be another step that we could begin  
13 immediately.

14                         CHAIRMAN MAXWELL:    Thank you. Any  
15 other comments? Okay.

16           I would like to, first of all, thank the  
17 panel. All the panel so far has been very  
18 interesting, very active dialogue between us. And I  
19 would like to thank you so much.

20           And Mr. Goeman's on the phone, I would like to  
21 thank you for your participation all the way from the  
22 mainland.

23           And we are going to take a ten-minute break  
24 right now, our morning break. And we'll reconvene in  
25 ten minutes with the other panel.

1 Thank you. Mahalo nui loa.

2 (Recess at 11:30 a.m.)

3 CHAIRMAN MAXWELL: This meeting will  
4 come back to order. We will now call the Equal  
5 Protection for Native Hawaiians panel, consisting of  
6 Mililani Trask, John Van Dyke, and Stuart Benjamin.  
7 Mililani.

8 STATEMENT BY MILILANI TRASK, ESQ.

9 MS. TRASK: Good morning, Mr. Chair,  
10 and members of this committee.

11 It is my great pleasure to present this  
12 testimony on behalf of Ka Lahui Hawaii.

13 Let me say also that I was initially asked to  
14 speak on the civil rights Implications on the Apology  
15 Bill, and later then asked to address the equal  
16 protection issues. So I am going to be doing both in  
17 my testimony this morning. And there are several  
18 exhibits that you have.

19 Beginning first with the general feeling for  
20 what equal protection really is, the equal protection  
21 rule in the American juridical system, does not --  
22 does not guarantee -- that all peoples are treated  
23 equally.

24 It does provide that people who are similarly  
25 situated be given equal protection of the law.

1 Consequently, equal protection does not require that  
2 white Americans receive the same benefits as native  
3 Americans, but it does require that all native  
4 Americans be similarly treated under the law.

5 As a result of recent affirmative action  
6 challenges, and the US Supreme Court decision in  
7 Adarand, certain programs that are found to be based  
8 on race are now being subject to strict scrutiny  
9 standard.

10 The one exception to the rule, however, are  
11 programs and entitlements of Native Hawaiians which  
12 are not subject to strict scrutiny, because these  
13 programs are found not to be based on race, but upon  
14 the unique legal status and relationship of Native  
15 Americans to the federal and state governments. And  
16 this principal was set forth in Morton versus Mancari  
17 by the United States Supreme Court in 1974.

18 I would also like to point out that just  
19 recently, the United States Court of Appeals Federal  
20 Court threw out Mr. John Goemans, Freddie Rice, and  
21 also the Law Review Article from Harvard was thrown  
22 out by the 9th Circuit.

23 And in its decision, the 9th Circuit went  
24 right back to the old rule in Morton versus Mancari.  
25 The court said, Hawaiians are not Indians, but we're

1 looking for the rationale for providing program  
2 services to Hawaiians.

3 On pages 2 and 3 of my testimony, I set forth  
4 certain congressional actions and laws that verify  
5 that we have a political relationship with the US to a  
6 certain extent as Native Americans.

7 And this political relationship has been  
8 established through treaties, federal statutes, and  
9 rulings of the federal courts.

10 These treaties, statutes and rulings of the  
11 court come -- lead us to two conclusions.

12 One is that the political status of Native  
13 Hawaiians is similar to other classes of native  
14 Americans, significant the Indians and Alaska Natives.  
15 And also, that the aboriginal and indigenous peoples  
16 of Hawaii have a continuing right to autonomy and  
17 self-determination, which has never been extinguished.

18 I would like to point out to you that the  
19 language in my testimony, at page Number 2 and 3 is in  
20 quotes, because I have lifted this verbatim from  
21 Senate Bill 109, which is currently pending in the US  
22 Congress.

23 There have been many laws saying we are Native  
24 Americans. There has been great activity in the area  
25 of housing. And right now, I think you need to take

1 notice that even as we are talking, there is  
2 legislation in the US Senate summarizing all of this.

3 And that's why I pulled it out of the bill, so  
4 that you could take a look at where is the US Senate  
5 now. And I have quoted it right here, in the bill  
6 that has been introduced within the Senate within the  
7 last 30 days.

8 Now, let's take a look at the issue of equal  
9 protection under state law. In Hawaii, there is a  
10 very long legal tradition of recognizing Native  
11 Hawaiian rights -- customary, traditional rights,  
12 gathering rights, access rights, rights to fish,  
13 rights to hunt.

14 These rights of our people were well  
15 established prior to the coming of the white man. And  
16 what I have tried to summarize for you the areas in  
17 the law that give support to Native Hawaiian culture  
18 and traditional rights.

19 Under HRS Statute 1-1, there is a clear  
20 judicial ruling here -- legislative ruling here --  
21 that the law of Hawaiian usage is what shall be  
22 applied in Hawaii -- not Western common law, per se.

23 Western common law, only to the extent that  
24 there is no other custom established by Hawaiian  
25 usage. There is also statutory language protecting

1 our rights in Section 7-1.

2 When you take a look at the state  
3 constitution, these rights are directly referred to in  
4 Article 12, Section 7 of the State Constitution.

5 In addition to that, we've had judicial  
6 decisions. In 1995, the PASH decision, very much  
7 clarifying the nature of Hawaiian entitlements that  
8 should be protected by the state.

9 And in the PASH ruling, the court found  
10 unequivocally that the state and its agencies had a  
11 responsibility to take action to protect native  
12 traditional and customary rights.

13 In addition, the court clarified that those  
14 who had the rights -- asserted valid customary and  
15 traditional rights under Section 1-1 are entitled to  
16 protection regardless of their blood quantum. So this  
17 is not a 50 percent blood quantum issue.

18 The court also found that state agencies could  
19 not and should not place undue emphasis on  
20 non-Hawaiian principals of land ownership. The court  
21 ruled that such an approach would reflect an  
22 unjustifiable lack of respect for gathering  
23 activities, and an unacceptable cultural uses of  
24 pre-modern Hawaiian.

25 The court concluded that the state did not



1 have unfettered discretion to regulate our people's  
2 rights out of existence.

3 So we have custom and usage common law. We  
4 have at least two statutes in HRS. We have  
5 constitutional provisions, and three rulings of the  
6 Hawaii Supreme Court on this point.

7 Despite this, we have no system enforced by  
8 the county or the state to protect Hawaiian gathering  
9 and traditional access rights.

10 The state, and its subdivisions, have an  
11 extensive system of rules and regulations to protect  
12 public access, licensed public fishing, provide for  
13 public use of public property, but they do not have  
14 any system of law to guarantee Hawaiian rights to  
15 fish, Hawaiian rights to access, Hawaiian rights to  
16 gather.

17 And so, Hawaiians are regularly arrested,  
18 prosecuted, or charged with trespass, and criminal  
19 penalties imposed because they are trying to exert  
20 their traditional customary rights guaranteed in the  
21 constitution -- clearly, an equal protection  
22 violation -- clearly.

23 I would also like to point out that Mr. Mee  
24 wanted to raise this issue of the ceded lands.

25 Ceded land trust is set aside for the public

1 and the native. He's right. But why skirt the issue?  
2 The issue is, why does the public have all the  
3 regulations guaranteeing their access to ceded lands,  
4 and when it comes to Hawaiians, we have nothing?

5 In fact, what we have is a ten-year fight with  
6 the state refusing to give OHA their 20 cents on the  
7 dollar. So we have clear state violations under equal  
8 protection.

9 With regards to violations of equal  
10 protection, as a result of the federal domestic  
11 policies, I think this is really the watershed issue  
12 we need to look at.

13 We need to go back and re-visit this  
14 committee's 1991 report. And if you will take a look  
15 at the second finding and recommendation in this  
16 report, what you are going to find out is that almost  
17 eight years ago, our Civil Rights Commission pointed  
18 out that Native Hawaiians were not being treated  
19 equitably as other classes of Native Americans were.

20 And the finding here was that the lack of  
21 formal recognition of Native Hawaiians had resulted in  
22 our inability to secure control over lands, natural  
23 resources, develop self-governance, enjoy eligibility  
24 for program assistance, and that we, in fact, had been  
25 denied the valuable legal right to sue for

1 discrimination.

2           The recommendation that this committee made  
3 eight years ago was that the Congress had to address  
4 this through legislation clarifying this political  
5 relationship.

6           And the conclusion, the second recommendation,  
7 Native Hawaiians should receive full protection of  
8 civil rights statutes and regulations applicable to  
9 Native Americans and other protected groups.

10           That recommendation has not been implemented  
11 by the federal government. And I think that many of  
12 the recommendations in the 1990 report from this  
13 committee also have not been really fully  
14 implemented.

15           Where is of all the confusion is coming from?  
16 It's easy to track if you look at the history of the  
17 Interior Department opinions on this. We start out in  
18 1979 with the Ferguson opinion.

19           Why does Ferguson issue his opinion? Because  
20 this committee wrote to Interior, you pose the  
21 question, federal interior, what is your relation to  
22 Hawaiians? Ferguson issues an opinion saying that the  
23 federal government has a trust obligation to our  
24 people.

25           A few years later, this committee's report,

1 Broken Trust, comes out, and it details 73 years of  
2 civil rights violations.

3 Then, within two years, the Bush  
4 Administration comes on line, and they decided that  
5 they are going to change the policy. They issue the  
6 Sansonetti opinion in January of 1993, and the  
7 Sansonetti opinion says, we disagree with the Ferguson  
8 opinion. There is no trust obligation.

9 Within one year, we have Bill Clinton coming  
10 into office. Nine days before, Clinton signs the  
11 Apology Bill. He authorizes a third solicitor opinion  
12 to be released. And this is now known as the Leshy  
13 Opinion.

14 What does Leshy say? Leshy says that the US  
15 will not -- will not -- bring any legal action to  
16 enforce the provisions of federal statutes providing  
17 entitlements for our peoples, and that the federal  
18 government will continue to assert in court that we  
19 are -- that we do not have these protections.

20 So this committee, in its reports, are vitally  
21 tied to these solicitor opinions. You requested  
22 them. You requested them. You issued recommendations  
23 that now we have a Leshy opinion saying, we are going  
24 to ignore it.

25 Outcome? Take a look at the comparison I

1 present on pages 8 and 9. What I have done is I have  
2 looked at four or five critical areas to compare what  
3 native nations of other Native Americans have,  
4 compared to Hawaiians.

5 And these are legal status, juridical  
6 protection, health, housing, child protection and  
7 economic opportunity.

8 Under the US domestic policy, Native American  
9 Indians and Alaskans can have their own government,  
10 they have jurisdiction over land and natural  
11 resources. We, by comparison, are wards of the state.  
12 We have no control of our lands or natural resources.

13 Native American Indians and Alaskans are  
14 allowed to go into federal court to sue to protect  
15 their interest. We are barred. We do not have  
16 standing with the federal court to sue to protect our  
17 property rights.

18 Indians and Alaskan Natives have health  
19 services through the Indian Health Service. We do  
20 not. Our people enroll for the QUEST program, under  
21 federally assisted and state-paid-for welfare.

22 When it comes to housing, Indians have housing  
23 authorities and significant federal funding. We,  
24 instead, have an Urban Institute Report from 1996  
25 documenting that we have the poorest housing

1 conditions in the US, while the federal government  
2 continues to transfer lands to the DHHL, the very  
3 agency in breach of trust.

4           When it comes to child protection, Alaska  
5 Native children, Indian children, taken from their  
6 homes, have a right to be placed in cultural  
7 environments. Hawaiian children don't have that  
8 protection. Every day, they take away our children,  
9 and put them in Japanese and haole I homes. They  
10 don't think about cultural continuity for our  
11 children. But Indian children have that right. Why  
12 don't our children have a similar right?

13           When it comes to economic opportunity, Indians  
14 and Alaskan native governments have a whole section of  
15 the IRS Code. They can joint venture. They don't  
16 have to pay taxes. They can build their housing and  
17 generate income for their own sustainability.

18           Where are Hawaiians? Hawaiians are wards of  
19 the state. All of our money, all of our decisions  
20 made by Pinky Thompson, the Boys Club Service  
21 Agencies, state agencies, but not by the Hawaiian  
22 people.

23           I think when you look at the comparison chart  
24 on page 8 and 9, you can see how this domestic policy  
25 is impacting us in areas of political concern --

1 housing, health, our children -- critical areas of  
2 concern. And this is the basis of the denial of our  
3 right of equal protection.

4 CHAIRMAN MAXWELL: Millie, could you  
5 conclude?

6 MS. TRASK: When we look at  
7 addressing federal violations through reconciliation,  
8 it is our position that there is a good basis for  
9 addressing this.

10 The Apology Bill, contrary to what Mr. Mee is  
11 saying, is not an apology. It calls for a process of  
12 reconciliation, which we cannot implement because it's  
13 not defined, which we should celebrate, because  
14 self-determination means that we have to define it,  
15 not allow the Feds to define it.

16 So reconciliation is a format that we can use,  
17 and if you look at the exhibit that we have attached  
18 as Exhibit F, I am proud to say that Ka Lahui Hawaii  
19 is the only sovereign entity in this state that has a  
20 comprehensive proposal for implementing  
21 reconciliation.

22 We define reconciliation. We set forth the  
23 goals. We set forth the elements of it. We set forth  
24 the process that is culturally acceptable. We talk  
25 about economic development. We talk about

1 international issues. We would like our proposal to  
2 be included in your majority report.

3 Lastly, I wanted to summarize by talking about  
4 the international implications. I find it very  
5 interesting that many people now comment upon the  
6 treaties study, but in the eighteen years that I  
7 worked at the United Nations to bring this report  
8 down, only two groups assisted -- Ka Lahui and Kapa  
9 Kaukau.

10 Remember that the Apology Bill has a clear  
11 statement that international law was violated. That  
12 means that any domestic remedy that we pursue must  
13 address these international claims. We are not  
14 entitled to a domestic solution under domestic law,  
15 because the Apology Bill says international law is  
16 violated.

17 Consequently, we must look at the treaty  
18 study, the declaration, and other international  
19 instruments.

20 We are concluding with three recommendations  
21 to this committee, very clearly stated at the end, and  
22 underlying.

23 Number 1, we need Janet Reno to come here for  
24 a listening conference. She went to every Indian  
25 tribe, every Alaska nation. She never came to Hawaii,



1 because she doesn't recognize us, and we've got a  
2 history of civil rights violations. It's time that  
3 the US Attorney General come down here, and give us  
4 the same listening conference she gave to all the  
5 Indians.

6 Number 2, we are asking to recommend an  
7 interagency working group -- State Department, Justice  
8 and Interior -- coming here to work with Ka Lahui  
9 Hawaii and other groups, so that we may strategize and  
10 discuss reconciliation.

11 We are ready to go. We've got a proposal in  
12 writing, it's been out there for two years. We can't  
13 talk to ourselves. We've got to get these three  
14 federal agencies down here, to begin this process with  
15 us.

16 And lastly, we are calling upon you to  
17 recognize that when the Apology Bill says that we are  
18 deprived of our right of self-determination, that  
19 means that one of your recommendations must be that we  
20 have the right of self-determination, and that is our  
21 right to choose from the many options.

22 Hawaiian people have the right to vote for the  
23 formation of a government of their own choosing.  
24 Hawaiian people have a right to say if they want a  
25 monarchy, if they want a CC, if they want a free

1 association, or if they want autonomy.

2 That is a right that our people are entitled  
3 to under domestic and international law, and we are  
4 requesting that you include this in your report.

5 CHAIRMAN MAXWELL: Okay. Mililani,  
6 you had asked to respond to another panelist. If you  
7 can do it in three minutes, because we have to move on  
8 to another speaker.

9 MS. TRASK: Charlie, what I am going  
10 to do is, I am going to wait to hear my other  
11 panelists from this panel. And thereafter, if I have  
12 comment, it would be to their comment.

13 CHAIRMAN MAXWELL: Okay, sure. Thank  
14 you, Mililani.

15 Now, I would like to introduce Professor John  
16 Van Dyke. Could you state your name, and your  
17 position, sir?

18 PROFESSOR VAN DYKE: Thank you.

19 STATEMENT BY PROFESSOR JOHN VAN DYKE:

20 PROFESSOR VAN DYKE: I am John Van  
21 Dyke, Professor of Law at the Richardson School of  
22 Law, the University of Hawaii.

23 Thank you very much, Mr. Chairperson, and  
24 members of the committee, for including me in this  
25 important and distinguished panel.

1 I want to also acknowledge, in particular,  
2 Frenchy Desoto, who will be speaking this afternoon,  
3 and offering very specific recommendations, about how  
4 to proceed from our present situation.

5 I am going to be using overhead transparencies  
6 to present my perspectives. And I am hoping the  
7 Commission can see these. I don't know whether you  
8 want to relocate for a few minutes, but I am going to  
9 be covering some complicated legal material, and I  
10 find that sometimes having visual guides is helpful.

11 Now, this panel is focusing on equal  
12 protection rights. And as Mililani Trask explained,  
13 this is an area where there's been quite a bit of law,  
14 historically, and she mentioned the case of Morton  
15 versus Mancari a 1974 US Supreme Court case, which  
16 characterizes relationships between the United States  
17 and native people as political in nature, rather than  
18 as racial in nature.

19 And that's the crucial distinction that  
20 differentiates preferential or separate programs for  
21 native people from those that apply to other racial  
22 groups, other ethnic groups.

23 And there are some good reasons for that which  
24 have been stated by previous speakers. But just to  
25 kind of summarize, I've put together this view graph

1 in an attempt to kind of summarize exactly why native  
2 people do have the separate status, this different  
3 status, and why it's appropriate.

4 First of all, and most basically, the native  
5 people did not make the decision that most other  
6 immigrant groups made -- namely, that they understood  
7 that they were coming to a multi-ethnic community, and  
8 at some level of consciousness, agreed to participate  
9 in a multi-cultural society.

10 Of course, this rationale does not apply to  
11 the African Americans either, but most ethnic groups  
12 did come to America thinking that they would be part  
13 of a multi-ethnic community.

14 But the native people did not make that  
15 decision. They were here, and the rest of us came.

16 So they need to be heard from. And as many  
17 speakers have already said, we need to listen to them,  
18 and let them decide their own future under their right  
19 of self-determination.

20 Under international laws, as Mililani  
21 explained, and Poka, and others, native peoples are  
22 peoples. They have rights to self-determination,  
23 autonomy, and self-government.

24 The third reason I think is important, unlike  
25 other ethnic groups, the native people have no culture

1 elsewhere -- what we might call a mother culture or  
2 something. Filipinos Americans, of course, have the  
3 Philippines, where their culture is still thriving.  
4 The European Americans have Europe, and so on.

5 But the native people only have their location  
6 here in Hawaii, or in other parts of America, if they  
7 are other Native Americans, and if they are not  
8 permitted to have a separate and distinct status in  
9 this location, then their culture and their traditions  
10 will be lost. And they have a right to have their  
11 culture survive, and thrive, and develop, and we all  
12 benefit from having this kind of diversity that  
13 results.

14 And then, finally, we have a series of  
15 historical wrongs that occurred toward most Native  
16 Americans, and certainly Native Hawaiians, that remain  
17 to be redressed. And there is a distinct political  
18 relationship that exists, which has to be sorted out.

19 And that's, of course, why we are here today,  
20 to address what that means, and what reconciliation is  
21 all about. And it's this political status that native  
22 people have that differentiates them from other ethnic  
23 groups.

24 Now, I want to talk for a moment about the  
25 thesis that has been put forward by our next speaker,

1 who is listening to us on the speaker phones, Stuart  
2 Benjamin, who has written an article in the Yale Law  
3 Journal, December 1996, in which he argues vigorously  
4 that the Native Hawaiians do not have this political  
5 status, and are not entitled to be treated the way  
6 other Native Americans are.

7 This article, as I say, was published in a  
8 distinguished journal, the Yale Law Journal. It looks  
9 very erudite. It's 76 pages long, it has 294  
10 footnotes. Many of the footnotes are very long. So  
11 it gives the air of sophistication and learning.

12 But in fact, it's wrong, and it's misleading  
13 in a number of important respects, and it has become  
14 very mischievous in our community here.

15 Professor Benjamin's thesis basically is that  
16 the kind of differential judicial review that applies  
17 to other Native Americans cannot apply to Native  
18 Hawaiians because this special status only applies to  
19 "Indian tribes."

20 And he relies on two sources for that point of  
21 view. One is the language in the US Constitution,  
22 Article 1, Section 8, Clause 3, which does refer to  
23 Indian tribes when saying that the Congress has the  
24 power to regulate commerce with Indian Tribes.

25 And then, there is a footnote in the 1974

1 Morton versus Mancari decision, Footnote 24, which  
2 also refers to Indian tribes in the context of this  
3 statute which -- where it is important.

4 But that is the -- the extent of the source,  
5 really, for this point of view, that Professor  
6 Benjamin then turns into this 76-page article.

7 It came out recently, so there hasn't been too  
8 much commentary on it, but Philip Frickey, who is a  
9 person that has written quite a bit on Indian law from  
10 the University of Minnesota commented briefly on  
11 Professor Benjamin's perspective, and said that the  
12 conclusions are misleading because it's devoid of  
13 broader historical and theoretical perspectives.

14 And he likened Professor Benjamin to -- you  
15 remember the last scene in the Wizard of Oz, where the  
16 Wizard is asked to come out from behind the curtain,  
17 and the Wizard, of course, doesn't want to. And he  
18 says Professor Benjamin is like the Wizard in that he  
19 has relied upon the weak substructure of the Adarand  
20 and Mancari cases, and that they simply cannot support  
21 the dense superstructure of analysis that Benjamin  
22 creates.

23 So, we need to just quickly go through the  
24 concepts in Professor Benjamin's analysis.

25 And first of all, looking at the language in

1 the Constitution "Indian tribe" -- is there something  
2 magical about that?

3 Of course, Native Hawaiians were not tribal in  
4 nature. But the concept of "tribe" itself, is very  
5 elusive and malleable. And Native Americans generally  
6 have a wide range of kinds of relationships.

7 And until the 1930's, there was nothing at all  
8 magical about the concept of tribes, and very  
9 different kinds of groupings were viewed as tribal.  
10 And the Alaskan Natives, who include the Eskimos and  
11 the Aleuts, are not tribal either. But nobody has  
12 ever doubted that the Alaskan Natives were entitled to  
13 be viewed as native Americans.

14 So the whole idea that somehow because Native  
15 Hawaiians are not tribal, they can't be native -- it's  
16 just -- to me, it just does not follow.

17 And there are lots of other judicial  
18 decisions. In other words, this point of view that  
19 Professor Benjamin has espoused has been considered by  
20 many courts over the years.

21 And two Supreme Court decisions in the 70's  
22 shortly after Mancari clearly rejected the idea that  
23 the special abilities of Congress to legislate for  
24 native people were limited only to tribes.

25 The Delaware Tribal Business Committee versus



1 Weeks, and the United States versus John, both allowed  
2 Congress to govern, and regulate, and create a special  
3 regime for native people who are not in tribes.

4 And then, we have a 9th Circuit decision  
5 involving Alaska Natives from 1982, saying that the  
6 rational basis -- the differential judicial review --  
7 applies to Alaska Natives, even though they are not  
8 historically organized into reservations, or into  
9 tribal units.

10 Just to give a few other examples, in the area  
11 of housing, during the Reagan and Bush periods, this  
12 idea that you had to be tribal had some supporters in  
13 the Justice Department. But whenever it was put  
14 forward, it was rejected. And we have the St. Paul  
15 Inter-Tribal Housing Board decision in 1983, the  
16 Little Earth of United Tribes decision in 1987 clearly  
17 rejecting Professor Benjamin's point of view, and more  
18 recently, in 1997, Loudner versus United States, an  
19 8th Circuit decision, permits funds to go to Indians  
20 who were not members of a tribe.

21 So there is simply nothing in the law that  
22 would support this perspective.

23 Now, the Hawaiians are not tribal, but they  
24 are certainly native. And Congress has recognized the  
25 unique and special political relationship between the

1 United States and the Native Americans in numerous  
2 statutes over the years.

3 The Hawaiian Homes Commission Act, of course,  
4 is essential to that admission. The Admission Act,  
5 previous speakers have talked about.

6 Since the 1970's the Native Hawaiians have  
7 been included in many, many federal acts -- I couldn't  
8 list them all in a slide that you could all see -- but  
9 many, many federal acts have included Native Hawaiians  
10 as eligible for benefit programs.

11 And the Native Hawaiian Education Act of 1994,  
12 as well as the 1993 Apology Resolution, which previous  
13 speakers have talked about.

14 The 1994 Native Hawaiian Education Act is  
15 particularly interesting because it has findings that  
16 go over some of the same ground as the Apology  
17 Resolution, but has these magical terms here, also, in  
18 the finding, that Congress had affirmed -- this is a  
19 quote from the bill -- "the special relationship  
20 between the United States and the Native Hawaiians."

21 So Congress, itself, which is the body that  
22 decides whether there is a special relationship, says  
23 that there is such a relationship, and that it has  
24 existed throughout this century.

25 Now, we've finally had a case which Mililani

1 and other speakers have referred to, which should put  
2 the nail in the coffin of the point of view that  
3 Professor Benjamin and John Goemans have been  
4 espousing. This is the case of Rice versus Cayetano.

5 And Mr. Goemans, as many of you know,  
6 represented Freddie Rice, the Big Island rancher, who  
7 challenged the statute which says that only people of  
8 Hawaiian ancestry can vote in the election for  
9 trustees of the Office of Hawaiian Affairs.

10 And Judge Ezra, in our District Court, ruled  
11 against Mr. Rice and Mr. Goemans on this issue. And  
12 then, we went up to the 9th Circuit, and the panel was  
13 a relatively conservative panel, and the opinion was  
14 written by Panel O'Reimer who was first appointed to  
15 the District Court by President Reagan, and then  
16 elevated to the Court of Appeals by President Bush.

17 So her Republican credentials are in good  
18 order, but she, nonetheless, she's a good and  
19 conscientious judge, and wrote a careful opinion  
20 recognizing that the Native Hawaiians are entitled to  
21 the same differential treatment that other Native  
22 Americans are entitled to.

23 And the opinion really goes through all the  
24 arguments that Professor Benjamin and John Goemans  
25 have assembled. And she has language very

1 specifically saying that the special treatment of  
2 Native Hawaiians by Congress and by the state of  
3 Hawaii is similar to the treatment of Indians, that  
4 the Supreme Court approved in Morton versus Mancari.

5 So it's hard to find any language that would  
6 be any clearer than that. And then, she goes on to  
7 say that "The decision to restrict the vote to persons  
8 of Hawaiian ancestry meets this rational basis level  
9 of review."

10 "It is rational" -- and this language is also  
11 important -- "It's rationale for the state to make  
12 this decision, limiting OHA trustees, the vote, to  
13 people of Hawaiian ancestry, in light of its trust  
14 responsibilities."

15 So the 9th Circuit has recognized the trust  
16 responsibilities. We've heard about the Sansonetti  
17 opinion, and so forth, and so forth -- the various  
18 attempts by the federal government to avoid this trust  
19 responsibility. But the 9th Circuit has recognized  
20 that there are these trust responsibilities that  
21 continue.

22 And then -- and this is the part of the  
23 opinion that, in a way is the most dramatic and most  
24 exciting, the court then goes on to say that even if  
25 you have a higher than rational basis level of

1 judicial scrutiny -- for non-lawyers, this is tricky.  
2 We spend weeks in Constitutional law trying to sort  
3 out these levels of judicial review.

4 But there is a higher level they called strict  
5 scrutiny, where the government must show a compelling  
6 governmental interest. And the court said, well, even  
7 if Professor Benjamin were right, even if this higher  
8 level of judicial review were required, it's met,  
9 because there is a compelling responsibility to honor  
10 the trust.

11 And the voting restriction thus survives what  
12 they call "strict scrutiny" because of this special  
13 trust responsibility -- the special duties of the  
14 state to protect and promote the rights of  
15 self-determination and self-government do survive.

16 Well, let me try to proceed more quickly.

17 The final point -- well, I have sort of  
18 covered this -- but Professor Benjamin relies very  
19 heavily on a 1995 case called Adarand, which says that  
20 you have to use strict scrutiny review on all  
21 race-based statutes.

22 And he argues that that applies to -- that  
23 affects the way native people are governed.

24 But the Supreme Court has made it clear after  
25 Adarand that there is no change in the reduced

1 rational basis review that applies to programs for  
2 native people. And I just cite one of these many  
3 cases -- Oklahoma Tax Commission versus Chickasaw  
4 Nation, which was decided within days after Adarand,  
5 and where the court upheld unanimously a preferential  
6 program for native people.

7 So Adarand does not change the landscape  
8 governing native people, but it does affect -- Adarand  
9 does not change the landscape for native people, but  
10 even if it did, programs for Native Hawaiians would  
11 meet this higher standard.

12 Now, our focus today is on reconciliation. I  
13 am getting low on time. But I just want to spend a  
14 moment about this word "reconciliation" -- what does  
15 it mean, how can it be interpreted.

16 We have heard previous speakers saying they  
17 would have preferred a stronger word -- "redress."  
18 But "reconciliation" is not a meaningless word. It  
19 has some teeth to it. It doesn't mean just being  
20 nice, or showing respect, or something like that. It  
21 means writing the wrong. It means taking positive  
22 steps to correct the injustice, and reach a settlement  
23 or resolution of the dispute.

24 And we've seen many examples around the world  
25 of such reconciliation. Let me start from just two

1 examples from Canada that have just happened this  
2 year.

3 In January, Canada issued a statement of  
4 reconciliation. They are use that magical word to  
5 address the problem that they had in their community,  
6 whereby native children were taken from native  
7 villages and forced to reside in residential schools  
8 run by other races, and they were deprived of their  
9 families and cultures, and sometimes abused.

10 And the government of Canada provided a  
11 compensation fund, issued a formal apology. Millions  
12 of dollars were put into this.

13 So reconciliation means righting the wrong.

14 And then, even more recently, just a couple of  
15 days ago, they set aside a 750 square mile area, a  
16 beautiful area just south of Alaska for a tribe -- a  
17 5,000 member tribe called the Nisga'a.

18 This is an area larger than Oahu for this  
19 5,000-member tribe. And I put in, blown-up here, the  
20 article from the New York Times, because it was  
21 specifically stated that the purpose of doing this was  
22 reconciliation -- providing land back for these native  
23 people who have been deprived of their land and  
24 resources. And they were given this beautiful area of  
25 pine forests and crystal clear streams, and towering

1 peaks for their culture and their ability to survive  
2 in the future.

3 CHAIRMAN MAXWELL: You have one  
4 minute, professor.

5 PROFESSOR VAN DYKE: Okay. Well,  
6 very quickly, I wanted to just mention the situation  
7 in New Zealand, as well. The picture kind of appeals  
8 to me because this is a reconciliation, in a way,  
9 between the Maoris and the Europeans in Alterar  
10 (phon.) or New Zealand.

11 And in New Zealand, where the situation is  
12 somewhat comparable we have a Polynesian population,  
13 12,000 to 15,000 of the 3,600,000 people in New  
14 Zealand are Maori. They have had a claims process  
15 whereby they are now getting land and resources given  
16 back to them in substantial amounts.

17 I don't have time to go into these in any  
18 detail, but what's interesting is that the Maoris have  
19 been getting big chunks of land, but they also get  
20 factories, boats, fishing rights -- a whole package of  
21 things that give them the economic wherewithal to  
22 really make a go of it.

23 And they are now players, and when anything  
24 happens in New Zealand the Maoris are at the table,  
25 and they are helping to make the decisions.



1                   CHAIRMAN MAXWELL:    Thank you,  
2 Professor Van Dyke.

3                   PROFESSOR VAN DYKE:    Thank you.

4                   CHAIRMAN MAXWELL:    Okay.  Now, I  
5 would like to go to the telephone audio-conferencing,  
6 to Professor Stuart Benjamin of the University of San  
7 Diego.  Professor Benjamin, would you state your name  
8 and your affiliation, for the record?

9                   STATEMENT OF PROFESSOR STUART BENJAMIN:

10                  PROFESSOR BENJAMIN:   My name is  
11 Stuart Benjamin, and I am an Assistant Professor of  
12 Law at the University of San Diego.

13                  And I want to begin by thanking you all for  
14 inviting me.  I am glad to have this opportunity.

15                  It has already been mentioned, I guess, that  
16 you all are aware of me because of the Yale Law  
17 Journal article.

18                  You may be interested to know, just by way of  
19 background, that I came to this issue as a  
20 disinterested observer.  And both then and now, I  
21 don't have any vested interest in any of the various  
22 programs that are at issue.

23                  I actually first focused on this when I was in  
24 the United States Department of Justice, and I found  
25 that the equal protection issues involving Native

1 Hawaiians were fascinating, but there had been little  
2 attention paid to the question of the  
3 constitutionality programs singling out Native  
4 Hawaiians.

5           So I decided to dive into it on my own, and my  
6 immediate agenda was to figure out the right answer.

7           My starting hypothesis, in fact, was that  
8 Native Hawaiians probably did have the same status as  
9 Indian tribes. And I reached the opposite conclusion  
10 only in accord with my study of the issue.

11           In any event, that is background.

12           Let me begin by emphasizing that there are two  
13 questions that I do want to disentangle.

14           One is what should, if possible, be done for  
15 the Native Hawaiians -- that is, what are the ideal  
16 acts we believe that public and private entities  
17 should take.

18           The second is what are the legal constraints  
19 on actions vis-a-vis Native Hawaiians. That is, what  
20 can be done consistent with, in particular, the United  
21 States Constitution as it has been interpreted.

22           I raise the first question primarily to the  
23 people of Hawaii, especially when the programs at  
24 issue are state programs, it seems to me that the  
25 people in the state should take the lead in

1 determining what they want.

2 My focus is on the second question, namely,  
3 the Constitutional constraints on government actions  
4 that treat Native Hawaiians differently from other  
5 citizens of Hawaii -- whether those actions are  
6 intended to help or harm Native Hawaiians.

7 Now, there has already been some discussion  
8 about the cases. I just want to highlight a couple of  
9 things.

10 As you probably know, for many years, there's  
11 been a long line of Supreme Court cases that treat  
12 laws that harm members of racial ethnic minorities as  
13 presumptively invalid, subject to the strict scrutiny  
14 that Professor Van Dyke mentioned. More recently, the  
15 court has said any statute with a racial  
16 classification -- whether benefitting or harming -- is  
17 subject to strict scrutiny.

18 And they have applied that -- they made it  
19 quite clear that it applied broadly. And in fact, the  
20 very programs at issue in those cases -- the Adarand  
21 cases that have been mentioned, and another case that  
22 applied to state and local government, called Richmond  
23 versus Dayen Crudman (phon.) actually contained  
24 benefits for a number of different groups defined  
25 racially, one of which was native Americans. And the

1 court struck down the classification.

2 Now, there is the exception provided by Morton  
3 versus Mancari, but I do disagree with probably the  
4 other -- with Professor Van Dyke's interpretation of  
5 it. I think it's pretty clear from reading it that  
6 the court relied very heavily on the fact that this  
7 set of benefits did not extend to everyone who was  
8 defined racially to be a Native American, but in fact,  
9 was limited to members of Indian tribes.

10 And nothing in the Weeks and John cases -- I  
11 have to apologize, they are discussed at length in my  
12 article, I don't want to bore you with all the details  
13 -- changes that -- that is, nothing in those cases  
14 suggests that they intended to apply a different  
15 standard.

16 And in fact, they both purported to be  
17 applying the same standard. They may have gotten it  
18 wrong, but they thought they were talking --  
19 especially if you look at the language in the Weeks  
20 case -- they thought they were applying the tribal  
21 distinction.

22 And so, I do think it's important to be very  
23 careful about the language here. Because I heard both  
24 Mililani Trask and John Van Dyke refer to a special  
25 relationship with native people. Those words have

1 never appeared in any Supreme Court opinion.

2 The court is talking about a special  
3 relationship with Indian tribes, which does come from  
4 the Indian common clause of the Constitution. And I  
5 think it's important to highlight as to that.

6 Remember, the 14th Amendment is constitutional  
7 language prohibiting racial classifications.

8 Presumably it would require someplace else in the  
9 constitution that would give us other guidance -- that  
10 other place that gives us other guidance is treated as  
11 the Indian Commerce Clause, or perhaps the Treaty  
12 Clause.

13 The Treaty Clause doesn't mention Indians at  
14 all. And presumably, treaties are only made with  
15 other governments. But in any event, a good example  
16 of this point about the language is in the Chickasaw  
17 Case, as Professor Van Dyke mentioned, the Chickasaw  
18 Nation case.

19 It, like many cases after Adarand, does indeed  
20 leave untouched the special relationship. But that,  
21 like all the other cases, deals with a statute  
22 singling out Indian tribes -- not native people, not  
23 aboriginal people, not native, more generally.

24 Now, having said that, there is the tricky  
25 question of exactly how we define a tribe, exactly

1 what we mean by a tribe. And my article goes through  
2 great detail in discussing exactly what a tribe can  
3 be. And there is, in fact, a case called United  
4 States -- Montoya versus United States, that came out  
5 about a hundred years ago that gave one definition --  
6 a definition, I might add, that I think probably would  
7 include Alaskan Native villages, it probably would not  
8 include Native Hawaiians.

9 I am quoting here, "By a "tribe" we understand  
10 a body of Indians of the same or similar race united  
11 in a community under one leadership or government, and  
12 inhabiting a particular, though sometimes ill-defined,  
13 territory."

14 But the final point that I wanted to make was  
15 with respect to the 9th Circuit case that just came  
16 down. Because I do think there is a misreading of  
17 that case. The court was very careful to say what was  
18 not at issue. I am reading here from the court's  
19 opinion.

20 "The constitutionality of the racial  
21 classification that underlies the trust and OHA is not  
22 challenged in this case."

23 Footnote 10. Footnote 10 cited in my article,  
24 and the and the work of Professor John Van Dyke says,  
25 that's not relevant here. They weren't saying that I

1 was wrong, or that he was wrong. They were simply  
2 saying that that's not relevant, because the question  
3 that we are answering in this opinion is whether,  
4 assuming the validity of the underlying  
5 classification, it's permissible to limit those voters  
6 to those who benefit from the underlying  
7 classification.

8 But the key thing was the assumption. They  
9 emphasized repeatedly that the underlying  
10 classification was not challenged.

11 And in fact, they made that point in the very  
12 sentence that Professor Van Dyke pointed to, when they  
13 talked about strict scrutiny.

14 Let me read it to you, in its entirety.

15 "However, even if the voting restriction must  
16 be subjected to strict scrutiny, because the  
17 classification is based specifically on race, it  
18 survives because the restriction is rooted in the  
19 special trust relationship between Hawaii and  
20 descendants of aboriginal peoples who subsisted  
21 (phon.) on that land in the islands in 1778, and still  
22 live there, which is not challenged in this appeal."

23 That is, the court quite clearly was saying we  
24 are assuming that unchallenged, that these underlying  
25 classifications are permissible; that we are assuming,

1 unchallenged, that this trust relationship exists, and  
2 we are saying, given all of that, it's permissible to  
3 have the limitations to voting.

4 In any event, it seems to me that the  
5 important and interesting question in all of this is,  
6 can we expand -- is it a reasonable reading of Morton  
7 versus Mancari to say that it applies to non-tribal  
8 groupings of Native Americans, or is that not a fair  
9 reading of Morton and the cases following it.

10 I think that it's not a persuasive reading,  
11 and I think that the court -- the Supreme Court will  
12 find the same. I think the 9th Circuit, presented  
13 with it, will probably find the same, as well,  
14 although it certainly depends on what panel of the 9th  
15 Circuit one gets.

16 But I do want to stress that in no way should  
17 this be understood by anyone as suggesting a  
18 diminution in rights. That is, if Native Hawaiians  
19 are not subject to Morton versus Mancari, they have  
20 the exact same constitutional status as African  
21 Americans do.

22 And to respond in part to Professor Van Dyke's  
23 first set of points -- and I apologize for not being  
24 able to see the overhead -- there have been a couple  
25 of articles trying to talk about which group was more



1 harmed -- African Americans, or aboriginal people --  
2 that is not a debate in which I wish to engage.

3 I don't know how one figures out the matrix,  
4 in order to be able to answer that question. But we  
5 are talking about -- the question is whether,  
6 effectively, Native Hawaiians have the same  
7 constitutional status as African Americans and other  
8 racial ethnic minorities, or the same as members of  
9 Indian tribes.

10 Now, where does that leave the Apology  
11 Resolution, and what is the relevance of the Apology  
12 Resolution on the equal protection issue?

13 The answer is, I think, pretty clear. The  
14 Apology Resolution might change perceptions about what  
15 should be done absent legal constraints, but if actual  
16 legal effect is minimal, remember that none of the  
17 "whereas" clauses which have all of the language that  
18 people are citing -- none of the "whereas" clauses are  
19 operative portions of the bill. They don't have any  
20 legal force.

21 The actual operative provisions are quite  
22 modest. They merely acknowledge and apologize for the  
23 overthrow and its ramifications. Nothing in the  
24 resolution purports to affect any persons or any  
25 group's legal rights. In fact, the authoritative

1 Senate report on the resolution (inaudible) --

2 CHAIRMAN MAXWELL: -- Professor  
3 Benjamin, if I might interrupt you.

4 PROFESSOR BENJAMIN: -- enactment of  
5 the House Resolution will not result in any changes in  
6 existing law.

7 CHAIRMAN MAXWELL: Professor  
8 Benjamin, if you could summarize.

9 PROFESSOR BENJAMIN: Oh, sure.

10 CHAIRMAN MAXWELL: Thank you.

11 PROFESSOR BENJAMIN: So the final  
12 point that I would make is, even if the apology  
13 resolution did have some legal effect, despite the  
14 statements otherwise by the court, it would still be  
15 irrelevant to programs that single out Native  
16 Hawaiians because the entity that was overthrown in  
17 1893 was not a Hawaiian monarchy whose citizens were  
18 all Native Hawaiians.

19 It was a multi-ethnic oligarchy that was  
20 controlled mainly by westerners, through a long  
21 process that had taken place throughout the 19th  
22 century.

23 In any event, the final point that I will make  
24 is -- I want to emphasize, I don't take any position  
25 on the first question about what should be done.

1 I do think, though, these legal constraints  
2 exist. Thank you.

3 CHAIRMAN MAXWELL: Okay. Thank you,  
4 Professor Benjamin. We have a question from  
5 Commissioner Forman.

6 MR. FORMAN: Professor Benjamin,  
7 thank you for joining us by telephone.

8 Under your interpretation of the United States  
9 Constitution, how are Native Hawaiians and other  
10 citizens of the Kingdom of Hawaii to obtain justice  
11 for the wrongs done to them as acknowledged by the  
12 Apology Law?

13 PROFESSOR BENJAMIN: I'm sorry, I  
14 couldn't hear the second half of that. I missed the  
15 second half of that.

16 MR. FORMAN: Right. Under you  
17 interpretation, as you shared with us today, how are  
18 Native Hawaiians, or other members of the Kingdom of  
19 Hawaii who are -- how are they to obtain justice for  
20 the wrongs that were done to them, as acknowledged in  
21 the Apology Law?

22 PROFESSOR BENJAMIN: Well, as I  
23 suggested in the article, I think that there are ways  
24 of getting over the burden imposed by strict scrutiny.

25 I mean, I guess one way is to take this up

1 with the Supreme Court, would be one way. But in all  
2 seriousness, it seems to me that Native Hawaiians  
3 could create -- this is a matter of some dispute, I  
4 think, but I think they can create entities that would  
5 constitute Native Hawaiians tribes, that would be  
6 subject to the special relationship, and therefore,  
7 could enter into the government-to-government  
8 relationship, and have already been moved in that  
9 direction.

10 As you well know, the problem is that there  
11 is -- no group seems to have, you know, clear support  
12 of the vast majority of Native Hawaiians. And there  
13 is a lot of different fighting among the various  
14 groups. But it seems to me that that would be the  
15 appropriate route to go.

16 CHAIRMAN MAXWELL: Do you want to  
17 respond? Alan Murakami.

18 MR. MURAKAMI: Professor Benjamin, if  
19 Hawaiians chose not to become tribes, do you offer any  
20 alternatives to the same question that was posed by  
21 David Forman?

22 PROFESSOR BENJAMIN: I think it's  
23 difficult at that point. And I think it's difficult  
24 because of this language in the Constitution, that the  
25 safe harbor, as it were, the exception to the broad

1 prohibition on racial classifications does talk about  
2 Indian tribes. And I think without some sort of  
3 government with which the United States can have a  
4 relationship, something that the United States can  
5 meaningfully call a tribe, it would be -- it's hard  
6 for me to imagine how it would be done.

7 MR. MURAKAMI: In other words, are  
8 you saying that there is no remedy available under US  
9 law, given the factual foundation of the Apology  
10 Resolution, other than to go through the tribal  
11 route?

12 PROFESSOR BENJAMIN: I -- let me give  
13 you a shorter and the longer answer.

14 The shorter answer, I think, is yes.

15 The long answer is I don't think that the  
16 Apology Resolution changes the legal terrain in any  
17 significant way. As I said before, it recites a lot  
18 of "whereas" clauses, but in legal effect -- it says  
19 in the report, the legal effect was non-existent, and  
20 I think that's clear from the language.

21 So I don't think this means the Apology  
22 Resolution has been rendered nugatory, or not rendered  
23 nugatory. I don't think it had any real effect to  
24 begin with.

25 CHAIRMAN MAXWELL: David Forman?

1                   MR. FORMAN:     This is a question for  
2 any of the panelists.

3                   Earlier today, we had testimony by Esther  
4 Kiaaaina about the apparent vacillation in the US's  
5 position toward whether there was a trust obligation  
6 to Native Hawaiians. And we all know that the US has  
7 been reluctant to press for claims in the courts.

8                   Is this what we are struggling with? I mean,  
9 is this a recommendation that we need to make to the  
10 Civil Rights Commission, to urge that we ask to take a  
11 role in litigating this? Would that help at all?

12                   If you have any comment on that.

13                   CHAIRMAN MAXWELL: Can I? Mililani,  
14 would you like to respond, and Professor Van Dyke?

15                   MS. TRASK: Yes, let me respond to  
16 this question. And I also had wanted to respond to  
17 some of the statements that had been made by Mr.  
18 Benjamin. I think that one of the problems is that we  
19 don't have a judicial remedy. We are not able to sue  
20 on our own for breach of trust. We have a federal  
21 court decision on that.

22                   In fact, in your last report, you had called  
23 upon -- one of the recommendations was calling upon  
24 the Department of Justice to take the necessary  
25 steps.

1           Now, why didn't Justice do it? The answer is  
2 pretty simply, justice is in a clear conflict of  
3 interest here. So the recommendation that Justice  
4 should pursue, will not be one that they will  
5 implement, because in addition to litigating in your  
6 behalf, they are supposed to also be litigating in  
7 behalf of the US. So when the US government withdrew  
8 illegally -- withdrew Hawaiian Home Lands by agreement  
9 with the state, it was the US Department of Justice  
10 that approved those illegal withdrawals.

11           In a way, you are asking the Department of  
12 Justice to sue the state in our behalf, because the  
13 state breached its trust obligation by cutting a deal  
14 with the federal government that was approved by  
15 Justice.

16           I just wanted to point out that I don't think  
17 that it's a mistake that we haven't seen litigation on  
18 the part of Justice. They are not going to bring  
19 litigation against their primary client, the US, to  
20 benefit a secondary beneficiary, Native Hawaiians.

21           That's why we don't see it.

22                   CHAIRMAN MAXWELL: David.

23                   MR. FORMAN: This may be a question  
24 for one of the law professors, or Mililani.

25           Is there any basis for recommending appointment

1 of an independent counsel, per se, or some kind of  
2 other -- if we were to pay attention to the criticism  
3 of conflict of interest?

4 CHAIRMAN MAXWELL: Professor Van  
5 Dyke?

6 PROFESSOR VAN DYKE: I think the  
7 Justice Department has behaved badly, certainly over  
8 the last ten or fifteen years. Certainly during the  
9 Reagan and Bush period, we saw the Justice Department  
10 taking a very negative viewpoint towards Native  
11 Hawaiians, and refusing to step in when needed.

12 I think the question of how you get beyond it  
13 is a tricky one. I have been expecting more from the  
14 Clinton Administration Justice Department than we've  
15 seen. And I am surprised that they haven't taken a  
16 more aggressive stance.

17 So certainly, I would agree with those that  
18 recommend to this Advisory Committee that you folks  
19 recommend that the United States government, through  
20 its Justice Department, play a much more active role.

21 Now, if that requires an independent counsel  
22 or some trust counsel -- we've had various ideas  
23 floated over the past decade or so about how to  
24 address these conflict questions. And the idea of a  
25 special trust counsel has been one that has been



1       voiced over the years, whereby you would have somebody  
2       specifically with the responsibility to bring these  
3       trust-based claims before the courts.

4               The Native Hawaiian people are the only native  
5       people that have never been given the right to bring  
6       their claims against the United States government to  
7       any independent body. The Native Hawaiians were  
8       excluded from the Indians Claims Commission  
9       established in the 40's. Native Hawaiians, of course,  
10      were excluded from the Alaskan remedies.

11              And so, we have basically the largest group of  
12      native people in the United States, but one that has  
13      also been excluded from any effective remedy.

14              I think probably giving the Native Hawaiians  
15      their own ability to bring these matters to a  
16      newly-established claims commission might be more  
17      successful than having a trust counsel.

18              But both are ideas that need to be explored.

19                      CHAIRMAN MAXWELL: Alan, before I  
20      recognize you, I would like to ask Professor  
21      Benjamin -- have you got any comments or response to  
22      what has been said here?

23                      PROFESSOR VAN DYKE: Well, I am  
24      picking up on that last question.

25              I am not aware of any statute by which you

1 could currently set up for an independent counsel.  
2 The Government Act only applies to felonies that may  
3 have been committed by a covered official, or in a  
4 conflict of interest which is defined as a situation  
5 where the Attorney General may have, in her private  
6 life, before becoming Attorney General, been involved  
7 in a some situation, and then it came up.

8 But certainly, I don't know of anything that  
9 is wrong with -- I don't think there is anything  
10 wrong, as a matter of policy, with trying to create  
11 some sort of special counsel, or some sort of  
12 arrangement outside of it.

13 But frankly, whether that is done or not, I  
14 think it will not merely be the Department of Justice  
15 that may be a stumbling block. I think it will also,  
16 if it ever gets there, I think it would be the Supreme  
17 Court.

18 CHAIRMAN MAXWELL: Yeah, before I  
19 recognize you, Alan, thank you, Professor.

20 David, maybe you can also pose that question  
21 to the oversight, the next committee, to the federal  
22 committee.

23 MS. TRASK: I would like to respond  
24 to that question, as well.

25 CHAIRMAN MAXWELL: Oh, yes, go ahead.

1 MS. TRASK: As a member of the panel,  
2 you know, there have been previously circulated in  
3 Hawaii legislation -- federal legislation came out of  
4 Inouye's office with this idea of the independent  
5 counsel. And my response at that time is the same  
6 that I want to pose to you.

7 Why do we have to have independent trust  
8 counsel sue for us, when native Americans, Indians,  
9 and Alaska natives have their own right to go into the  
10 Federal District Court?

11 The proposal that we should not be allowed  
12 direct access to the federal court for redress is one  
13 that I cannot accept, because all it does is support  
14 the idea of wardship.

15 If Indians can go to court, and Alaska Natives  
16 and others, let us go. We don't need trust counsel.  
17 You are an attorney, Mr. Forman, so am I.

18 We are capable of representing our people --  
19 direct action, federal court. What possible  
20 recommendation -- what possible basis could there be  
21 to have a provision in the Federal District Court  
22 Jurisdictional Statutes -- federal statutes -- saying  
23 that Indians can come in to sue, but we cannot?

24 The Department of Justice is in a conflict.  
25 Any other division of the US is also in a conflict.

1 Appointing trust counsel is going to be a federal  
2 appointment, and the bottom line is that we wish to  
3 terminate our status as wards, and we should have the  
4 right to go directly into court.

5 I think that the underlying premise that we  
6 need, somehow, trustees to take care of our  
7 business -- trust counsel -- is not acceptable.

8 CHAIRMAN MAXWELL: Thank you,  
9 Mililani. Alan?

10 MR. MURAKAMI: Yes, I have a question  
11 for the three speakers.

12 We've talked about the right to go to court,  
13 and we've also talked in the sense about the right to  
14 -- I'm sorry -- to establish this relationship. And  
15 we've got a debate going about whether it is or it  
16 doesn't exist.

17 And I think I heard Professor Van Dyke's  
18 support of legislation to maybe clear this up.

19 One of the recommendations this panel made  
20 seven years ago was to enact -- just do that, enact  
21 legislation, as pointed out in Mililani's testimony.

22 So I wanted to ask the three speakers if they  
23 support that recommendation that Congress enact the  
24 appropriate legislation to clear this up, so there is  
25 no debate. Starting with Mililani.

1                   CHAIRMAN MAXWELL:    Okay.  Before the  
2 response, I would like to caution the presenters to  
3 try to make your comments very briefly, as we are  
4 slowly -- fast running out of time.

5                   MS. TRASK:     You know, let me respond  
6 to that by saying that if you will read the Ka Lahui  
7 proposal in my full testimony, you will see what I am  
8 getting at.

9                   There are some people that want to have the  
10 Congress enact legislation to clarify our political  
11 status.  They don't want us to be part of the  
12 dialogue.

13                   Self-determination is defined, under  
14 international law, as the right of all peoples to  
15 determine their political status, not to have it  
16 imposed upon them by the federal government.  This is  
17 why we are suggesting an interagency working group to  
18 explore this.

19                   Why would we support federal legislation  
20 moving now, when the Hawaiian peoples, themselves,  
21 have not had the chance to vote for the type of  
22 government they want to form?  This is not something  
23 that we are going to defer to Senator Inouye or the  
24 Congress.

25                   The first choice comes from the Hawaiian

1 people. They choose their political status.  
2 Thereafter, they, and their nation, go to the Feds to  
3 look at appropriate federal legislation.

4 Let's start working with the Feds. And  
5 remember what happened in the Dakotas. In the  
6 Dakotas, they were in the same position as us. They  
7 were trying to resolve a horrible historic situation,  
8 so they had a one-year period of reconciliation, where  
9 all the federal agencies came down, worked with the  
10 state and the native people, to fashion something  
11 acceptable.

12 The suggestion of trying to, you know, your  
13 suggestion of trying to get us to rubber stamp the Dan  
14 Inouye/Pinkie Thompson legislation or this proposal  
15 from HA Hawaii -- no way, Alan.

16 Give the right of self-determination to the  
17 people. The people make their choice.

18 Thereafter, we will permit the federal  
19 government, through the Congress, to write legislation  
20 for us -- but not before.

21 CHAIRMAN MAXWELL: Thank you for  
22 being brief, Mililani.

23 Professor Van Dyke.

24 PROFESSOR VAN DYKE: Obviously,  
25 anything to clear up any ambiguities is a good thing.

1 But I can't be as enthusiastic as others about doing  
2 this, because it seems to me that Congress has already  
3 been crystal clear, that there is a special political  
4 relationship between the United States and the Native  
5 Hawaiian people.

6 And so, what could a new bill say that hasn't  
7 already been said in the Apology Resolution, in the  
8 1994 Native Hawaiian Education Act Amendments, and so  
9 on. So obviously, a new statute can't be bad, but you  
10 know, is it necessary? I am not sure.

11 CHAIRMAN MAXWELL: Thank you,  
12 professor. Professor Benjamin, would you respond?

13 PROFESSOR BENJAMIN: What?

14 CHAIRMAN MAXWELL: Hold on.

15 Could you rephrase it? There is something  
16 wrong with the pickup. Okay, go ahead, professor.

17 PROFESSOR BENJAMIN: Hello? I'm  
18 sorry, did you hear what I said?

19 CHAIRMAN MAXWELL: Yes, go ahead.

20 PROFESSOR BENJAMIN: Did you hear  
21 what I said?

22 CHAIRMAN MAXWELL: Yeah, right now.  
23 Repeat what you said.

24 PROFESSOR BENJAMIN: I'm sorry. I  
25 was just picking up on what Professor Van Dyke just

1 said.

2           The difference with a piece of legislation  
3 that actually stated that there was a special  
4 relationship is that you would presumably put as part  
5 of the operative provision of the legislation, not the  
6 "whereas" clause which is prefatory. You could make  
7 it part of an active piece of legislation, setting out  
8 a relationship.

9           But the problem is, even if you do that,  
10 Congress does all sorts of things that the courts  
11 nonetheless say Congress can't do. That's how we got  
12 the Adarand case, was that Congress passed legislation  
13 that the court said they weren't able to do.

14           So I guess I differ with Professor Van Dyke  
15 both as to what has been done in the past, and as to  
16 the significance of anything that would be done by  
17 Congress, anyway.

18           CHAIRMAN MAXWELL:    Okay. Thank you  
19 very much, Professor Benjamin, and for taking the  
20 time, and to all the panelists who appeared this  
21 morning.

22           I am going to call our lunch recess. We will  
23 reconvene again at 1:30. Thank you.

24                           (Noon recess taken at 12:45 p.m.)

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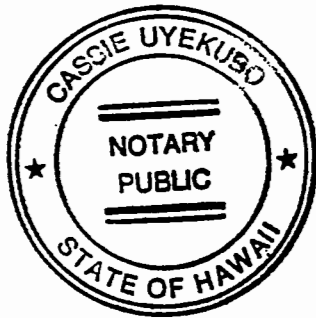
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Dated: SEP 2 1998



Cassie Uyekubo

Cassie Uyekubo, CSR 293  
Certified Shorthand Reporter