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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 Auditorium, East-West Center
Hawaii Imin International Conference Center
1777 East-West Road

AFTERNOON SESSION

VOLUME II

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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

WESTERN REGIONAL OFFICE:

- Mr. Tom Pilla
- Ms. Grace Hernandez
- Ms. Stella Youngblood

Reported By:

Cassie Uyekubo, CSR 293

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1 AFTERNOON SESSION -- AUGUST 22, 1998

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3 CHAIRMAN MAXWELL: I would like to
4 call this meeting to order. And before I seat the
5 next panel, I would like to say that in the open
6 session you will be allowed to speak on any specific
7 subject pertaining to Hawaiian rights, sovereignty,
8 self-determination or whatever. So -- and like I
9 said, you can -- if we are limiting to maybe three
10 minutes, depending how many sign up, you will be asked
11 to submit your testimony, and you have 30 days to do
12 so, to the US Civil Rights Commission which address
13 our staff will give you.

14 I would like to now call upon the State
15 Reconciliation Efforts and Future Initiatives, and I
16 would like you to note that there were numerous
17 attempts in getting the state Senate and the state
18 House members, the Hawaiian Affairs Committee of each
19 body to be here as panelists, and they chose not to
20 attend.

21 I would like to call on -- introduce first of
22 all, Mr. Peter Apo, Special Assistant for Hawaiian
23 Affairs, Office of the Governor of Hawaii; A. Frenchy
24 Desoto, Chairperson, Department of Hawaiian Affairs;
25 and Kali K. Watson, Chairperson, Department of

1 Hawaiian Home Lands.

2 Peter Apo. Mr. Apo.

3 MR. APO: 'Mr. Chairman, I would like
4 to, as a matter I think of my own personal feelings of
5 cultural protocol, defer to the chair of the Office of
6 Hawaiian Affairs as the ranking member of our
7 delegation.

8 CHAIRMAN MAXWELL: Very good. Very
9 good. And so Frenchy, as our kupuna, you have the
10 floor.

11 MS. DESOTO: I would like to correct
12 the record. The Office of Hawaiian Affairs is not a
13 department. It is the Office of Hawaiian Affairs.
14 And I guess I am sitting here because somebody thought
15 that we were a department of the state.

16 CHAIRMAN MAXWELL: Thank you,
17 Chairman Desoto, it shall be noted.

18 STATEMENT OF A. FRENCHY DESOTO:

19 Aloha -- (Hawaiian preface) -- Chairperson
20 of the Office of Hawaiian Affairs. Mahalo for
21 providing me this opportunity to participate in this
22 fact-finding forum regarding the effect of the 1993
23 Apology Bill, what it has had or will have on the
24 civil rights of Hawaiians.

25 Before I begin, I want to ensure that each of

1 you understand that the Office of Hawaiian Affairs
2 trustees are the only duly elected representatives of
3 the Hawaiian people, and their first elected
4 representatives since the illegal overthrow of the
5 Hawaiian Kingdom in 1893.

6 OHA is committed to seeking justice for the
7 overthrow and the uncompensated taking of the lands of
8 the Hawaiian people without their consent, restoration
9 of Hawaiian sovereignty, establishment of the Hawaiian
10 land base, and preservation and restoration of
11 Hawaiian culture, language, and traditions.

12 It is very easy for me to summarize the effect
13 the Apology Bill, Public Law 103-150, has had on
14 Hawaiians. All have to do is paraphrase your project
15 proposal, and I quote:

16 "In the minds of many native Hawaiians, the
17 Apology Resolution has accomplished little, except to
18 serve as a painful reminder of the legislative
19 limitations that have been placed on our future."

20 The 1983 findings and conclusions of the
21 Native Hawaiian Study Commission to the Committee on
22 Energy and Natural Resources and Interior and Insular
23 Affairs regarding the culture, needs and concerns of
24 Native Hawaiians provides information from documents
25 and data, testimony at public hearings, and written

1 comments from numerous individuals, organizations, and
2 agencies.

3 The written material, Mr. Chairman, that I
4 will provide to you and your members of your
5 Commission, includes an advance copy of OHA's 1998
6 Native Hawaiian Data Book. That is the one I would
7 like to show -- what is his name -- Goeman's -- which
8 provides social and economic statistics on our
9 people. I urge you to compare this data with the
10 information compiled by the Study Commission.

11 Sadly, you will find virtually no improvement
12 in the statistics on Hawaiians, despite that I begin
13 with a small gain for Hawaiians. The effort for
14 change in the Office of Management & Budget Directive
15 15 was initiated several years ago by Hawaiians. Last
16 year, the federal government allowed our effort to
17 advance, but only in a compromised form.

18 Supported by the Office of Hawaiian Affairs
19 and many Hawaiian organizations and individuals, a
20 groundswell of grass roots activity culminated in
21 20,000 postcards mailed to the Washington Office of
22 Management & Budget.

23 Shortly thereafter, the Bureau of the Census
24 announced it would no longer classify Hawaiians with
25 Asian Americans.

1 The Bureau, however, did not classify us with
2 Alaskan Natives and Native Americans, as we had
3 asked. Instead, it created a new classification,
4 Native Hawaiians or other Pacific Islanders.

5 These changes represent a small step towards
6 reconciliation. They will provide the federal
7 government with a more accurate framework for its
8 social and economic statistical indicators for
9 Hawaiians, and for its monitoring of discrimination.

10 Under the old system, our situation was
11 skewed, because Hawaiians were lumped with Asian
12 Americans, who out-numbered us tremendously, and whose
13 socioeconomic statistics are the opposite of ours.

14 Monitoring is crucial to reconciliation
15 between the United States and Native Hawaiians, a goal
16 expressed in Public Law 103-150. As such, the federal
17 government must monitor how its laws are applied to
18 Hawaiians, and take steps to enforce them.

19 To date, monitoring and enforcement are
20 lacking. Most notable is the absence of monitoring of
21 our legally-based rights, benefits, and entitlements.
22 An unhappy result has been the expensive and costly
23 litigation that the Office of Hawaiian Affairs has
24 been forced to undertake.

25 Yesterday, August 21st, marked commemoration

1 of the Admission of our aina as the 50th state
2 thirty-nine years ago. Through the Admission Act of
3 1959, presumably with good intentions, the federal
4 government made us wards of the new state of Hawaii,
5 and beneficiaries of a ceded land trust consisting of
6 almost half the lands of Hawaii.

7 But the federal government has failed to
8 monitor the state's compliance with its fiduciary duty
9 to Hawaiians, or to demand an accounting.

10 Consequently, the system intended to
11 compensate Hawaiians for past injustices, and to
12 prevent more of them, has never worked.

13 In 1994, a year after the apology, OHA took
14 the state to court to resolve issues relating to the
15 pro rata share due Hawaiians from the ceded lands in
16 the public trust.

17 With the apology among the legal authorities
18 cited, justice came down on the side of Hawaiians.
19 The state appealed, and we are now entering into
20 negotiations to try to resolve this matter.

21 OHA has demonstrated its willingness for
22 reconciliation, but we have repeatedly been met with
23 the state's effort to diminish Hawaiian entitlements.
24 A recent example was a two-year, 15.1 million cap
25 imposed on our share of ceded land revenues. That is

1 one-half of what we believe the state's own laws say
2 we should get.

3 This was followed in 1998 by an insidious but
4 unsuccessful attempt to dispose of the state's debt to
5 Hawaiians by eliminating OHA and the Department of
6 Hawaiian Home Lands, and presuming for Hawaiians how
7 our business and programs should be run.

8 In connection with OHA's ceded land revenues,
9 the federal government itself has contradicted the
10 Admissions Act. A portion of the revenues generated
11 by Honolulu International Airport, which partially
12 sits on ceded land, is owed Hawaiians.

13 Every day, thousands of visitors use the
14 airport. But the US Department of Transportation
15 ruled airport revenues could not be used to pay the
16 debt owed Hawaiians, despite the fact rent is paid for
17 by other airports, and a grandfather clause in the
18 Airport and Airway Improvement Act of 1982 exempts
19 covenants or assurances in debt obligation issued
20 before September the 3rd 1982.

21 This restriction was lobbied for and supported
22 by the state, perhaps as a means of reducing its
23 commitment to Hawaiians. Such a blatant contradiction
24 in the use of one government to excuse another
25 government's obligation does not, in no way, favor

1 reconciliation.

2 State non-compliance with federal law, and the
3 absence of any monitoring, promotes a further pattern
4 of discrimination against Hawaiians in federal
5 programs. We have anecdotal evidence of an
6 interruption in the federal Meals on Meals Program for
7 the elderly in a predominantly Hawaiian neighborhood
8 because a non-Hawaiian contractor decided it was too
9 dangerous for staff to service the area.

10 We know millions of dollars of federal
11 educational funds are available for the benefit of
12 Hawaiians. Siphoned through the state Department of
13 Education, however, the bulk of these funds are used
14 to cover administration costs, and only a few thousand
15 dollars arrived at selected schools -- not enough to
16 fund anything helpful for Hawaiian children.

17 Recent court decisions demonstrate the
18 programs favoring minorities are subject to strict
19 scrutiny.

20 CHAIRMAN MAXWELL: Continue.

21 MS. DESOTO: Preferences for
22 Hawaiians, however, are not based on race. They are
23 based on the unique political relationship Hawaiians
24 have with the federal government.

25 In addition, OHA recently learned that in

1 1988, the State Attorney General deleted the
2 preference for students of Hawaiian or Oriental
3 ancestry in the Hemenway Trust which funds University
4 of Hawaii scholarships.

5 OHA believes Hawaiian students have a
6 demonstrated need for financial aid, and that
7 preferential financial programs for Hawaiians are
8 lawful, because they are based on the political status
9 of Hawaiians, rather than on racial discrimination.

10 Overwhelmingly, OHA's efforts to correct
11 discrimination against Hawaiians are directed at the
12 state of Hawaii, which gives with one hand, and takes
13 back with many.

14 In addition to the litigation over ceded land
15 entitlements for Hawaiians, OHA has addressed the
16 following issues involving the state administration's
17 failure to comply with state statutes and the State
18 Constitution:

19 Native Hawaiian exercise of traditional and
20 customary rights. We filed the brief as amicus curiae
21 in Public Access Shoreline Hawaii versus Nansay
22 Incorporated, in which the Hawaii Supreme Court
23 affirmed the constitutional protection of Native
24 Hawaiians' right to exercise on undeveloped private
25 property -- traditional gathering, cultural, religious

1 and subsistence rights.

2 We supported grass roots efforts, such as
3 Liliuokalani's massive solidarity rally in 1998, to
4 prevent any abrogation of these rights.

5 Recently, OHA filed an amicus curiae brief in
6 an appeal to the Hawaii Supreme Court of the State
7 versus Keliikoa et al. The defendants were Hawaiians
8 who had been arrested for trespass, when their
9 cultural possession used a private road, the sole
10 access to a sacred site. Unfortunately, their
11 convictions were affirmed.

12 CHAIRMAN MAXWELL: And Frenchy, can
13 you take about a minute to conclude?

14 MS. DESOTO: Yes.

15 CHAIRMAN MAXWELL: Thank you.

16 MS. DESOTO: OHA is suing to compel
17 the state of Hawaii to provide a comprehensive program
18 of Hawaiian immersion, in conformance with the state
19 Constitution.

20 Chapter 10 of the HRS mandates OHA serve our
21 Hawaiians. However, under federal and state law, only
22 Native Hawaiians, defined as those with a blood
23 quantum of 50 percent or more, may benefit.

24 Hawaiians must prove their blood quantum by
25 furnishing birth certificates and other vital records

1 for several generations back. I am a Hawaiian
2 Homesteader, and I thank God for that. But after I
3 hala, my children going suffer.

4 OHA and other groups did successfully derail
5 legislation which would have made proof of ancestry
6 the requisite for exercising traditional and customary
7 rights. Talk about spitting on somebody's face.

8 As I run out of time, I leave you, Mr.
9 Chairman and members, with OHA's strong recommendation
10 that the federal government immediately apply
11 resources in these areas:

12 Include Hawaiians in all native American
13 programs without prejudice, to reconfirm that native
14 Hawaiians have the same political relationship with
15 the United States that Native Americans and Alaskan
16 Natives have;

17 Establish a procedure whereby Hawaiians can
18 pursue claims for the injustices done, as identified
19 in Public Law 103-150, such as redress;

20 And in the area of sovereignty, provide
21 funding to assist the Hawaiians in organizing their
22 own constitutional convention to consider sovereignty;

23 In the area of housing, enact Senate Bill 109,
24 which is pending in Congress, modeled after the Native
25 American Housing Act. And I have, Mr. Chairman,

1 twelve recommendations for your committee.

2 CHAIRMAN MAXWELL: I would have to
3 ask you to submit it, which I think you did already,
4 and it will be in our record as part of your
5 testimony, if you don't mind, Aunty Frenchy.

6 Mahalo nui loa.

7 MS. DESOTO: Mahalo.

8 CHAIRMAN MAXWELL: We'll move on to
9 Mr. Apo. Mr. Apo, state your name and your position,
10 please.

11 MR. APO: Mr. Chairman, may I defer
12 to the chairman of DHHL, and then I'll kind of clean
13 things up afterwards.

14 CHAIRMAN MAXWELL: Okay, Peter, you
15 can always defer. Mr. Kali Watson, would you state
16 your name and your position?

17 STATEMENT BY KALI K. WATSON:

18 MR. WATSON: Yes. My name is Kali
19 Watson. I am the director of the Department of
20 Hawaiian Home Lands, as well as the chairman of the
21 Hawaiian Homes Commission.

22 I would like to thank the committee for this
23 opportunity to present evidence regarding the status
24 of the Native Hawaiians as it relates to civil rights.

25 As we all know, back in 1920, when this

1 Hawaiian Homes Commission Act was first introduced and
2 signed into law 77 years ago, much has happened.

3 But as we look to the past, we see the same,
4 as with respect to the conditions of Hawaiians even
5 today. This program, when it was initially set up, as
6 we all know, its intent was to rehabilitate a dying
7 race. However, the program was set up with no
8 funding, and was given very, very poor lands. To
9 date, very little direct assistance from the federal
10 government has materialized.

11 In fact, in 1959, they basically abandoned the
12 program, and kicked it over to the state, and gave
13 them the responsibility of administering the program.

14 Since the passage of the program, or the
15 passage of the act, we've continually had problems
16 with the various federal agencies in administering the
17 program, primarily because of their interpretation of
18 our various laws, in particular, the Fair Housing Act,
19 which basically, because of the preferential treatment
20 under this program, their position is, it's
21 discriminatory.

22 Presently, we have this battle within the
23 legal community, as to whether or not the Morton case
24 regarding rational basis scrutiny in defining the
25 Native Hawaiians as a political classification, versus

1 the Adarand case, which basically applies a strict
2 scrutiny analysis, as to whether preferential
3 treatment could be given to Native Hawaiians -- has
4 really left us in a vacuum, which we need to get the
5 federal government aid and support necessary, so that
6 our beneficiaries can receive the benefits that they
7 are entitled to.

8 With respect to the various programs that are
9 available to the public, in general, unfortunately,
10 the various programs are not available to us.

11 In particular, the HUD Multi-Unit Insurance
12 Program, which allows multi-unit facilities to be
13 occupied by Native Hawaiians; low income housing tax
14 credits are also not available in the Rural
15 Development Department, for farmers' homes, the
16 Housing For Elderly Program has been excluded from our
17 program.

18 While we have been provided access to the HUD
19 247 or the FHA program, it's basically a guarantee
20 program which the federal government provides, which
21 we then guarantee. So, when you talk about federal
22 assistance, it's sort of a nullity, from the
23 standpoint that the department has to actually
24 guarantee, should there be a default, and pay off the
25 lenders that made funds available.

1 With respect to the situation with Native
2 Hawaiians, what we've tried to do is address the
3 problem at the state level. And back in 1995,
4 Governor Cayetano tried to implement, and was
5 successful in implementing the Memorandum of
6 Understanding that was consummated in 1994 by a state
7 task force.

8 And as a result of that particular settlement,
9 over the last three years, we've received \$120 million
10 that we've used for our program.

11 In addition to that, the state has transferred
12 over sixteen -- or is in the process of transferring
13 over 16,518 acres. And this basically was as a result
14 of inventory in existing lands that we have, and under
15 the act, we were supposed to get 230,500 acres, the
16 shortage was made up by the transfer of these lands.

17 And through this transfer, we have been able
18 to get new lands in Keanai, Hana, Kaanapali on Maui;
19 Moiliili and Nimitz Highway and Kapolei on this
20 island; Kapaa and Waialua on Kauai; also, lands in
21 east Molokai; on the Big Island, some excellent
22 farming lands in Konomolu, Curtis Town, Halawa, as
23 well as at another island which we have never had
24 lands on, which is Lanai.

25 Our mission for the program is basically to

1 create over 3,000 homesteads. Now, when we were first
2 trying to figure out what we wanted to do, in trying
3 to use the settlement monies, what we did was we
4 formed a special group of experts or temporary
5 development and assistance group that has, with their
6 background, been able to successfully start and
7 implement new projects throughout the state.

8 And one of the things that we also did was to
9 try and address the infrastructure needs of the
10 accelerated awardees that were made in the mid-80's.
11 And the chairman is well aware that.

12 In fact, not long ago, we broke ground on the
13 Kula project, which is costing us \$22 million to put
14 in the infrastructure for 318 homesteaders that
15 received their awards in the mid-80's.

16 Now, one of the other areas that we've tried
17 to do, is to look at the use of planned communities
18 and be a part of a planned community, rather than just
19 rows of houses in areas.

20 And by using this process, we've identified
21 certain areas that we feel, to create a Hawaiian
22 homestead community within a general community that is
23 well-planned-out, would be the ideal situation.

24 And one of the locations which we recently
25 broke ground, and are actually building houses, is on

1 the island of Hawaii, in Kona, in the Kealahiki area.
2 That particular project, we anticipate doing 225
3 units, of which 60 of them will be self-help, in order
4 to bring the costs down.

5 We also look to do another planned unit
6 development in Kapolei, which is already up and
7 running. We are in the design phases. And once that
8 goes, we will also be similarly housing over 200
9 homestead families.

10 One of the other areas we've tried to
11 implement, which we feel is important in order to get
12 adequate funding for the approximately \$2 billion that
13 is needed for our program, is to leverage the dollars
14 that we have.

15 And in 1991, the department sold \$18 million
16 in bonds, which the proceeds were used to put in
17 infrastructure for over 500 new homesteaders. And
18 last year, we were able to get the legislature to
19 authorize us \$100 million in bond financing.

20 Now, with respect to the federal government,
21 why do we need federal assistance? I think the needs
22 are clear. We still have a very long waiting list of
23 over 13,000, and it's growing every day.

24 We estimate need for about \$2 billion. If we
25 look at the entire waiting list, which is 29,000 in

1 number -- we actually -- if we were to put in the
2 infrastructure, as well as build houses, as well as
3 put in infrastructure for the ag and pastoral uses,
4 the cost would jump to over \$6 billion. So there is
5 definitely additional need.

6 The more important thing, though, is when you
7 look at the makeup of the waiting list, a substantial
8 number of it are very low income. And so, that's why
9 it's also important that we look at alternative ways
10 of doing the -- providing the benefits.

11 And in this graph, it shows a comparative
12 analysis of the state housing needs, versus Native
13 Hawaiians. And the green columns reflect that there
14 is tremendous need within the Hawaiian community in
15 the lower end of the median income, which is the
16 bottom numbers.

17 In addition to that, when we look at and
18 analyze the different federal programs that are
19 available to our beneficiaries, there is very -- it's
20 actually worse, from the standpoint that those in
21 the -- with the greatest needs are denied access to
22 some of these loan programs.

23 Just recently, we started to access CDBG and
24 home grants, and we have a project in Hoolehua, where
25 we were going to put in a community center with about

1 \$500,000 in community grant monies, for the first time
2 in the history of the program.

3 With respect to the rural development, we have
4 about \$11 million in loans. FHA, we have \$104 million
5 in FHA loans. But if you look at those that qualify,
6 the 80 to 140 percent median family income, those are
7 the higher-end people on our waiting list.

8 So, with the three main loan programs -- the
9 rural development, FHA, and VA -- address those in the
10 higher end of our spectrum, from a financial status.

11 I think one of the greatest opportunities for
12 our program is the Bill S109, which Senator Inouye has
13 introduced, and which recently reported out of the
14 Indian Affairs Committee.

15 And this particular bill is an off-shoot of
16 the 1996 bill -- the Native American Housing
17 Assistance and Self-determination Act, NAHASDA, and
18 basically, it's a bill that does a set-aside for
19 Indians and Alaskan Natives, from the amounts of
20 monies set aside for affordable housing. And we are
21 talking about \$600 million that the Indians have
22 gotten this last year. And in 1998, they are looking
23 to get \$677 million.

24 If we are successful in accessing this
25 particular program, we estimate, using a 10 percent

1 relative analogy in population, that we should be able
2 to get an allocation between \$30 to \$67 million over
3 the next five years.

4 Obviously, such funds would be substantial in
5 moving ahead our efforts to address the housing needs
6 of our program.

7 In addition, S109 also allows the federal
8 government to do a guarantee program, HUD 184, in
9 which the federal government would put aside funds,
10 whereby if there is a default, the lender that made
11 monies available to the lessee would then be
12 reimbursed by the federal government, rather than
13 under the 247 program, which the Department of
14 Hawaiian Home Lands reimbursed the federal government,
15 that had reimbursed the lender.

16 So it's a way that, I think, more
17 appropriately puts the burden of support on the
18 federal government, versus on the state agency.

19 Now, one of the other things that -- some of
20 the other areas that we are looking at trying to
21 pursue affordable housing options, last year, we
22 passed we had the legislature pass a bill which allows
23 our program to do rentals.

24 We also want to try to do the rent-to-own, for
25 those that are talked about earlier, that are in the

1 low end regarding financial status. And so, with the
2 rent-to-own program, not only would we be able to
3 address their needs, but we would be able to use some
4 of our bond financing, as well as the housing tax
5 credits, which is basically free money that the
6 private sector invests in order to get write-offs.
7 The combination will substantially move ahead our
8 program.

9 In addition, we are looking and expanding the
10 self-help area. We are looking to create a
11 manufactured housing plant on this island. We have
12 retained a consultant, and we have met with various
13 national manufacturers regarding that. We are also
14 trying to develop low-cost mortgage program.

15 And lastly, we have had meetings with various
16 banking institutions regarding the formation of a
17 Community Development Financial Institution that I
18 think can better serve our beneficiaries, rather than
19 other entities that are more profit-driven.

20 And I think one of the other areas that has
21 really kind of positioned or placed us in a better
22 position is the Hawaiian Homes Recovery Act, which
23 Senator Akaka was successful in getting through.

24 We are in the process of negotiating -- I
25 would say we're 99 percent there -- in actually

1 identifying and agreeing with the federal government
2 to the transfer of excess federal lands, primarily on
3 this island and the Big Island, which will greatly
4 enhance our land inventory, and create tremendous
5 possibilities and potential for future residential
6 subdivision development.

7 I guess the last thing that I would like to
8 talk about is, with respect to the Native Hawaiian
9 federal concerns, is the issue of the treatment of our
10 program, as well as Hawaiians, in general, which I
11 feel is a form of reverse discrimination, from the
12 standpoint that a lot of these different federal
13 programs have historically, and even presently, not
14 been made available to Native Hawaiians who are a part
15 of the public.

16 In addition to that, I think the federal
17 government needs to take a stance, and identify the
18 Hawaiian people as a political group, therefore,
19 justifying preferential treatment for them.

20 I think one of the things that we need to
21 recognize, that S109 is a vehicle in which the
22 language has been inserted that not only identifies
23 their civil rights, and acknowledges their rights as a
24 group, but also, that the Justice Department, in a
25 letter or opinion to the Indian Affairs Committee, on

1 July 16th of this year, has created a -- or made
2 statements which has actually, at least in my mind,
3 interpreted a favorable response to S109.

4 One of the last things I would like to say is
5 that the -- with the passage of the S109, it's going
6 to be contingent upon some of these other federal
7 agencies, such as the Department of Interior, the
8 Bureau of Indian Affairs, as well as HUD, to take a
9 positive substance regarding the status of Native
10 Hawaiians, and the rights for them to receive
11 preferential treatment.

12 And until that is done, I think we'll always
13 have a problem at the federal level regarding the
14 implementation of legislation that truly will help
15 Native Hawaiians. Thank you.

16 CHAIRMAN MAXWELL: Thank you Kali.

17 Any questions from the panel?

18 Oh, I'm sorry, Peter, I almost forgot you.
19 You deferred, deferred, and you know?

20 MR. APO: Can I defer again?

21 CHAIRMAN MAXWELL: No, Peter.

22 STATEMENT BY PETER APO:

23 MR. APO: Mr. Chairman, I really
24 thank you for holding this -- this event to offer us
25 an opportunity to provide some comment on the

1 reconciliation effort.

2 I would like to begin -- and I am not going to
3 be long, but I would like to begin by giving you a
4 perception of what we believe to be the political
5 landscape on the whole reconciliation situation
6 regarding Native Hawaiians.

7 First, we do not believe that the shakers and
8 movers of the federal government understand that there
9 are three dimensions to the Hawaiian reconciliation
10 effort.

11 One is the -- just trying to take the existing
12 trusts, and honor them, created by the Congress and
13 the state of Hawaii.

14 There is a second dimension that is separate,
15 but at the same time a part of addressing the existing
16 trust, and that is the Hawaiians' effort to redefine
17 their relationship with the state and the federal
18 government, which involves some new actions, some new
19 proposals, and making some amendments, not only to the
20 existing trusts, but completely changing some aspects
21 of the -- of the relationship between both state and
22 federal government.

23 And there is a third dimension that sort of
24 looms large in the media, particularly, and that is,
25 there is a dimension of where some Hawaiians totally

1 deny that the United States has any jurisdiction over
2 Hawaii at all, which negates any effort on the first
3 two parts.

4 So when you take these three dimensions, and
5 combine all the efforts, and particularly the media to
6 the general public, or the window to the general
7 public of these efforts are largely media, who tend to
8 want to gravitate toward the more titillating and
9 controversial aspects of all three dimensions, it
10 creates tremendous confusion.

11 And the chilling effect is that there is a
12 diffusion of focus, and there is a total
13 misunderstanding of what is going on in the Hawaiian
14 community.

15 We believe that this political landscape is
16 particularly detrimental to the efforts of Hawaiians,
17 who are trying to bring about some movement.

18 While we do acknowledge that we have a long
19 way to go towards reconciliation, there are some
20 indicators that have come down over the years that
21 gives us a sense of movement and hope.

22 One is the creation, by Constitution, of the
23 Office of Hawaiian Affairs, which as you know, is a
24 office that has unprecedented powers and autonomy, in
25 that its leaders are elected, it is able to carry an

1 investment portfolio, and in fact, operate much like a
2 private corporation.

3 And that, in fact, it is probably as close to
4 self-determination as we can get, short of national
5 sovereignty, at least within the current structure of
6 our constitution, both federal and state.

7 We believe that this was a major step forward
8 in providing a process, and a forum, and opportunity
9 by which Hawaiians, themselves, can begin to, through
10 an established, constitutionally-mandated body
11 politic, to provide proposals and proposed actions for
12 redress.

13 The fact that the state, separate from federal
14 action in the creation of OHA; expanded the
15 beneficiary group beyond the only definition that
16 seems to provide entitlements at this point -- the
17 Hawaiian Home Lands Act -- which requires 50 percent
18 blood quantum, the state did, under the OHA, expand
19 the beneficiary group to include less than 50 percent
20 Hawaiians.

21 However there are no entitlements to the less
22 than 50 percent Hawaiian, which is a very
23 problematical situation for all of us to deal with.

24 A major step indicator toward reconciliation
25 is the fact that the state waived its sovereign

1 immunity. And if I do anything today, it would be to
2 convince this panel to include in their recommendation
3 to the federal government and the Congress, that the
4 federal government follow suit.

5 We believe that allowing the judicial process,
6 allowing Hawaiians to access the judicial process to
7 address what they perceive to be a valid grievance,
8 is a very, very important step toward reconciliation.

9 And unless the federal government, out of
10 which emanates most of the entitlements, allows this
11 waiver of sovereign immunity, it is a major barrier
12 towards Hawaiians' ability to achieve redress.

13 One recently highly publicized situation that,
14 again, while we have a long way to go is an indicator,
15 is in 1978, through the Constitutional Convention,
16 there was a reaffirmation of traditional and customary
17 Hawaiian practices.

18 There was a court decision recently which I
19 think everyone is familiar with, called the Pash
20 decision, which to everyone's great surprise, not only
21 upheld and reaffirmed traditional and customary
22 Hawaiian practices, but it extended beyond ethnicity.

23 It in fact attached the right to the
24 practice -- the right to practice, not to a Native
25 Hawaiian or Hawaiian, but in fact, the practice of the

1 custom, in and of itself, is enforced, regardless of
2 whether you are Hawaiian or not.

3 One we believe a very, very positive and
4 sweeping effort that the state has supported is the
5 beginning of the establishment of the Hawaiian
6 Immersion Language Programs. These programs have
7 proven to be fundamental to begin a whole new
8 generation of learning and learning techniques, and
9 development of pride and dignity, and a return to some
10 very fundamental aspects of the culture and creating a
11 new class -- a much more enlightened class of Hawaiian
12 citizen.

13 I think Kali Watson has eloquently expressed
14 all the efforts that are being made on the part of the
15 Department of Hawaiian Home Lands to redress that
16 specific trust.

17 The last thing is that we feel very strongly
18 that there is general public support for Hawaiians
19 seeking reconciliation and redress, and that the
20 timing is critical, that there be more movement
21 towards this effort.

22 In terms of future initiatives, this
23 administration has learned its lesson, and understands
24 all too clearly that Hawaiians need time to address
25 the problems, absent of state intervention.

1 This administration, in fact, supports the
2 processes that need to occur in order for Hawaiians to
3 determine for themselves what kind of future they
4 think that they would prefer.

5 In the meantime, we do intend to fully move
6 forward in trying to address the existing trust, and
7 depending on how you want to characterize it, whether
8 it's good or bad, there is a very, very high priority
9 placed on working on the ceded land trust settlement
10 with the Office of Hawaiian Affairs, as well as the
11 native rights situation.

12 One other area that is receiving very little
13 attention -- and here again, this administration is --
14 is very hilahila about even suggesting that Hawaiians
15 ought to be begin taking look at the sixteen different
16 definitions that define us. And that it is an item
17 that must move, as a top priority of Hawaiians, but we
18 are not about to suggest it. That needs to come from
19 the Hawaiian people, in order to be able to bring
20 focus, and create one group.

21 One problem that we confront a lot in trying
22 to deal with some of the Hawaiian issues and engage
23 the Hawaiian community in asking for suggestions for
24 solutions, is that in developing a process that is
25 internal to the Hawaiian community, to propose

1 specific actions for reconciliation or models of
2 self-determination, that Hawaiians tend to reject
3 proposals or any processes offered by government or
4 government-created forums as being contaminated, and
5 designed to protect the status quo, or worse, to
6 reverse entitlements.

7 So we do, at this point in time, try to keep
8 our distance, and allow Hawaiians to process
9 internally.

10 There is general agreement, that the loss of
11 sovereignty demands much higher levels of redress and
12 reconciliation than provided by the existing trusts.
13 And we hope that the effort to redefine relationships
14 will allow that to occur.

15 Maybe a return to sovereign national status,
16 in addition to for punitive damages for pain,
17 suffering, and loss of dignity, may be where this
18 whole effort ends up.

19 With that, I would conclude my remarks.

20 CHAIRMAN MAXWELL: Thank you, Peter.

21 Before we call on the Commissioners, there
22 is -- I thought I heard music. It was very
23 disruptive. If the sound people or somebody -- I just
24 hope I am not -- if somebody could tell them to lower
25 it down, because we have this process in the making.

1 Okay. Questions from the panel? Alan.

2 MR. MURAKAMI: A question for Kali.

3 This proposed amendment that is now pending,
4 is it the Native American Housing Act?

5 MR. WATSON: Right, S109 creates a
6 Title 8, which is in addition to the NAHASDA. It's
7 sort of like set aside for native Hawaiians.

8 MR. MURAKAMI: Do you have the
9 language that is being proposed that would supposedly
10 serve as the basis for the preferential treatment that
11 will be afforded Hawaiians under this act for housing
12 benefits?

13 MR. WATSON: Yes, it's about an
14 80-something page legislation, but we would be happy
15 to make that available to the committee.

16 CHAIRMAN MAXWELL: David.

17 MR. FORMAN: I was just going to get
18 some of these panelists to comment on some of our
19 prior discussion about political status. Several of
20 you mentioned political status. Some of the previous
21 panelists raised the question of application of
22 preferences to -- or the lack of application of these
23 preferences to descendants of citizens of the Hawaiian
24 Kingdom who were affected by the illegal overthrow.

25 Just if you had anything to share about that,

1 that if what we are talking about in the Apology Bill
2 is only addressed to Native Hawaiians, as opposed to
3 non-Native Hawaiians who were members of the Kingdom
4 of Hawaii when it was overthrown.

5 CHAIRMAN MAXWELL: Frenchy.

6 MS. DESOTO: Manao. As one native
7 Hawaiian, I think that's a lame duck excuse.

8 I think that when people are afraid, or are
9 not able to control what goes on around them, these
10 kinds of allegations arise.

11 I think if you look at the mere fact that it
12 was the Native Hawaiian who lost their culture -- and
13 I am a clear example of that colonization that took
14 place. I am 68 years old, and I am still fighting for
15 what I believe to be right for generations to follow
16 me. Nahua, namo opuna, namoo -- great grandchildren.

17 But you know, this isn't a racial issue. It
18 is -- what have they taken from me? They have taken
19 my dignity. They have stripped me of my nationhood,
20 my language, everything -- and then we are responsible
21 for putting it back. Oh, "only if" I will recognize
22 you only if you throw your culture away, and admit
23 that you are a tribe.

24 I cannot buy that. And I hear clearly what
25 Mililani is saying, because komanao io. That is what

1 the naao is saying. This is not pono, you know?

2 And you look at your 91 report. How many of
3 your recommendations have been implemented?

4 I come, because you asked me to come. Inside,
5 my naao is that you are not going to be able to do
6 anything, because you are controlled by the bigger
7 power -- the thief, if you will.

8 But I love you just the same, for trying.

9 We sit here, you know, I feel like you,
10 Charlie, you know, the hell with everything, but we
11 can't do that. Because we get the opio coming, and
12 the opio will show the way, too.

13 So you know, it's just so frustrating to sit
14 here and listen to --

15 CHAIRMAN MAXWELL: In other words,
16 you are saying we have to try every avenue, whenever
17 it arises, right?

18 Any more questions? If not, I have some.
19 Anybody? Alan.

20 MR. MURAKAMI: Peter, it seems to me
21 that given what's been said before about the notion of
22 redress, the annexation, the overthrow, resulted in
23 the purported transfer of 1.8 million acres of land
24 from the Hawaiian entity to the US entity that took
25 over.

1 The state has been the beneficiary of that
2 trust -- those lands. And it seems to me, inevitably,
3 that issue will come to the forefront. The state is
4 now the current manager of those lands.

5 What attitude is the state administration
6 taking, in terms of how it will approach the
7 discussion that will be placed on the table at some
8 point?

9 What kind of preparations are being made, and
10 what is the attitude of the administration about that
11 issue?

12 MR. WATSON: Mr. Murakami, what we
13 hope will happen is that, through the Governor's
14 Office, and perhaps through certain elements of the
15 legislature, that a dialogue with the Office of
16 Hawaiian Affairs can take place, to address not only
17 that issue, but many others.

18 One of the problems that I think both the
19 state government and also, the Office of Hawaiian
20 Affairs faces is that we wonder whether, in fact, the
21 Hawaiians accept the concept of majority rule, and
22 that who speaks for Hawaiians.

23 So whenever we get into trying to negotiate
24 something out, both entities are sort of hit with a
25 lot of skepticism, some of it deserved, I think,

1 particularly on the part of the state.

2 So to make it short, we are interested in
3 creating processes that have validity, and have the
4 support of the Hawaiian people, and the trust of the
5 Hawaiian people to negotiate these kinds of items out.
6 Because that is one of many of the issues that need to
7 be resolved.

8 So to us, the process is important.

9 And again, because the administration is
10 reluctant to tell Hawaiians what to do, what we hope
11 is that Hawaiians will come forward, and offer some
12 suggestions, as to processes that they would have
13 confidence in.

14 MS. DESOTO: Mr. Chairman.

15 CHAIRMAN MAXWELL: Yes.

16 MS. DESOTO: I would like to
17 respond, if I may, to Mr. Murakami's question in this
18 manner.

19 CHAIRMAN MAXWELL: Go ahead.

20 MR. DE SOTO: The pending
21 negotiations between the Office of Hawaiian Affairs
22 and the state administration will deal specifically
23 with the Healy decision and the past-due amounts.

24 We are not -- the office at this point, and
25 its board of trustees, is not looking at a dialogue

1 that will be the panacea of all the ills, and
2 certainly, the Board of Trustees will determine to
3 what extent the negotiations may be or may not be
4 expanded.

5 Secondly, I am very happy to hear, my dear
6 friend who I love very much, Peter Apo, represent the
7 state administration in saying we are looking at
8 processes.

9 My experience over the last four years, which
10 doesn't mean that it's an ultimate experience, has
11 been that the Democratic Party, represented by the
12 majority in the Senate and the House of our
13 Legislature, has introduced tons, of which I have
14 submitted copies to you, of legislation to take away
15 entitlements of the native people.

16 We have been hearing different versions of
17 voodoo economics that profess to be laid at the feet
18 of the native peoples, relative to breaking the back
19 of the economic status of the state of Hawaii.

20 So I am very happy at this day, to hear this
21 important thing. As they tried to strip our native
22 rights, at no time were Hawaiians invited to the
23 table, that I know of -- elected or otherwise -- to
24 the table to discuss any of this.

25 Never before did the Attorney General of this

1 state sit with the Office of Hawaiian Affairs and
2 discuss her idea of what is illegal monies, or writing
3 to the Department of Transportation to undermine the
4 payment of funds to the office for rent, and for other
5 obligations.

6 So I am very happy to hear that.

7 I did want to set the record straight, though,
8 as far as I know -- which don't mean nothing, I
9 probably don't know nothing, but -- as far as I know,
10 we are only going to be talking about the Healy
11 decision, what amount is due us from that. And if we
12 continue to negotiate, that is the decision of the
13 Board of Trustees, and not the halele.

14 CHAIRMAN MAXWELL: Thank you, Aunty
15 Frenchy.

16 MS. KENNEDY: Frenchy, I just wanted
17 to thank you for coming, and I appreciate your honesty
18 in saying that you feel very frustrated. And it
19 amazes me, when I come to these hearings over the
20 years that I served the Committee, that people do
21 continue to come.

22 And I am sure a lot of people feel frustrated,
23 and I just want to ask one question.

24 Do you feel that this committee is part -- do
25 you feel that there is something we do that is wrong,

1 or do you feel that we are just part of the people who
2 are not heard, or is there something that you would
3 like to address to us. Because I notice one of the
4 comments you made is that, almost like we are part of
5 the problem.

6 It wasn't said that way, but is there
7 something you would like to just advise us that we
8 could do differently, to be, you know, a better
9 conductor of the problems as you see them?

10 MS. DESOTO: I apologize. My
11 rudeness is based on the fact that, probably, because
12 I am half white.

13 But I think that what I tried to communicate
14 here is that over my lifetime, we have had many, many
15 federal studies, federal commissions, federal boards.
16 I am asked to expose my buttocks to an instrument
17 called "prove your blood quantum" and still retain my
18 dignity, because I am a homesteader. And this is the
19 situation we are in all the time.

20 The frustration I feel is, nothing of your
21 1991 report and recommendations were bought. We still
22 don't have standing.

23 You know, we are still over here fooling
24 around. And I heard my brother Peter say that we need
25 to discuss the blood quantum. I am a homesteader. I

1 am also a grandmother, and a great grandmother.

2 And the government has put me in a position of
3 choosing being -- so divisive as to not include my
4 grandchildren and my great grandchildren.

5 CHAIRMAN MAXWELL: Aunty Frenchy, if
6 I can, we have another question, and we have to move
7 along. And in your eloquence, I really want to listen
8 but --

9 You know, based on what she said, I have what
10 I think is important, and Peter brought that up, that
11 we should try to find one classification of native
12 Hawaiians. But I want to pose the question to Kali,
13 because that is the agency that has the 50 percent.
14 We have many determinations prior, if they can prove
15 their Hawaiian prior to 1778. And to me that is very
16 divisive, even the 50 percent, like Frenchy had said,
17 when she hala, their children, unless they are
18 one-fourth, you know, cannot receive what she
19 inherited, or be a first lessee.

20 Could you respond how we could come up with
21 one recommendation for identification of a Hawaiian,
22 and let me continue that. It's very important,
23 because other legislation refer to the Hawaiian Homes
24 Act of 1921, and use that to identify a Native
25 Hawaiian.

1 So can you respond, Mr. Watson?

2 MR. WATSON: Well, I think, you know,
3 part of the frustration with the process is the
4 difficulty in establishing your blood quantum.

5 One of the things that the Department has done
6 is to we put together a booklet, a video, and we have
7 actually introduced legislation to try and streamline
8 the access to various health records.

9 There has also been changes to the act,
10 itself, whereby successors -- whether it be a spouse,
11 a child, or a grandchild -- can have a quarter
12 Hawaiian, versus a half.

13 That doesn't address the -- like Auntie
14 Frenchy, her eagerness to transfer the property to her
15 children while she lives, you know, with her children
16 not being half-Hawaiian, she's precluded from doing
17 that.

18 Now, with respect to your question regarding
19 how do we come up with a universal, so to speak,
20 definition of Hawaiians, you know, I don't know what
21 the answer is, other than, you know, it all traces
22 back to the blood quantum prior to 1778.

23 I think part of the answer is to make the
24 process a lot easier, as well as coordinate the effort
25 among the different Hawaiian organizations.

1 One of the legislation, or proposed
2 legislation we had submitted, was combining the Bishop
3 Estate Office of Hawaiian Affairs, as well as DHHL,
4 and actually computerize access to the various health
5 records, and thereby, also share some of the
6 information, especially where we've already done the
7 analysis, and it's really a matter of supplementing
8 with new individuals that are successors, that they --
9 their definite definition, as to the blood quantum
10 that they have, is easily determined.

11 With respect to changing that, as to what it
12 is today, that is something that I think the Hawaiian
13 community has to decide among itself. I don't have
14 the answer. I think it's a process that is going to
15 be very difficult. I do know that there is a lot of
16 frustration.

17 When I attended the Hawaiian Civic Club
18 Convention in San Diego, they passed a resolution
19 asking us to hold a forum on discussing that very
20 issue. That is something that it's going to take a
21 long, drawn-out effort, with various Hawaiian groups,
22 to decide what is a universal.

23 All I can say is, you can establish the blood
24 quantum by the records that are here today. In some
25 cases, you have to have a little bit of flexibility,

1 in both affidavits and other records.

2 The thing is, if you want to reduce it, that
3 is a decision for the Hawaiian people. And I think
4 we've reduced it Congressionally, as well as
5 legislatively, because of the reflection or the
6 decimation of the Hawaiian population, there are less
7 and less pure-blooded or half Hawaiians. And out of
8 need, the successors were reduced to quarter
9 Hawaiian.

10 I see that evolution continuing, and there
11 obviously is going to have to be a continuing revision
12 of the definition of Native Hawaiians.

13 But as to how far, and when, that is a process
14 that, I think, I would defer to the Hawaiian
15 community, as a whole.

16 CHAIRMAN MAXWELL: Okay. Thank you.
17 But I would like to have Peter respond, also, on this,
18 but I just have to comment that I was privileged
19 enough to read excerpts of Prince Kuhio's intention,
20 that he wanted, you know, one-thirty-second blood
21 quantum, and/or a lesser blood quantum.

22 And the Congress, at that time, implemented
23 the one-half, because it was a distinction of a native
24 person.

25 Peter.

1 MR. APO: I think this would be a
2 very bad time to bring up the blood quantum issue,
3 with respect to Hawaiian Home Lands, as being the
4 extremely divisive, highly emotional, and probably
5 provocative, and provoke a lot of confrontation,
6 largely because there is frustration of people who are
7 50 percent, who died on the list.

8 I think the larger problem is on the ceded
9 land trust, because the Office of Hawaiian Affairs has
10 extreme constraints on expending those trust monies,
11 because the definition of 50 percent applies to those
12 monies.

13 This is why they have to continually go to the
14 Legislature, practically on hands and knees, and beg
15 for matching funds.

16 The degree to which the funds are matched
17 limits and places a ceiling on how much they can
18 expend on Hawaiians, because they have to get half of
19 it to take care of the less than 50 percent Hawaiian.
20 And it keeps that -- it keeps the umbilical cord tied
21 to the state. That's the only string attached to the
22 Office of Hawaiian Affairs, that keeps them coming to
23 the state.

24 If the definition in the Ceded Land Trust were
25 expanded to include less than 50 percent Hawaiians,

1 they would finally be free of the yoke.

2 CHAIRMAN MAXWELL: Okay. Peter and
3 Kali, if I could ask, within 30 days, could you
4 submit, jointly, some recommendation to this
5 Commission that we might forward to the US Commission
6 on Civil Rights on the exact topic we were talking
7 about -- blood quantum.

8 And I stand corrected. Prince Kuhio did not
9 want any blood quantum set on -- his theory was that
10 ten generations down the line, the koka will still be
11 there, even if it's a small portion, and even if they
12 look a different nationality, they are still Hawaiian.

13 So if you could please submit recommendations
14 that you feel -- or something that we could work
15 with -- some recommendation, because this is all our
16 Committee can work on, is recommendations.

17 Would that be possible, Kali and Peter?

18 MS. DESOTO: Mr. Chairman. That
19 puts Kali in a very awkward position. Kali is a
20 director, and he must advocate for what the law says
21 now.

22 It also puts Peter in a very awkward position.
23 I think the Peter comments about the native people
24 should decide, I would support.

25 But you see, we are all into bureaucracy. Our

1 culture calls for it. Nainai kekumu. For what your
2 mokuku auhau? You know?

3 CHAIRMAN MAXWELL: Yeah, but Frenchy,
4 just in our parameters, as a federal advisory
5 committee, we cannot use this kind of dialogue, we
6 have to have something in writing.

7 David Forman has slipped me a note, and also,
8 Helen, if we could have something substantial --
9 something concrete that we could work on.

10 Could your office then --

11 MR. APO: Mr. Chairman.

12 CHAIRMAN MAXWELL: Yes.

13 MR. APO: What we could do is, we
14 could dredge up some of the old proposals that came
15 from various Hawaiian organizations to the
16 Legislature. These are legislative initiatives that
17 failed.

18 MR. WATSON: You also have the report
19 of the Study Commission.

20 CHAIRMAN MAXWELL: Alan has some
21 comments to give on the 1991 recommendations.

22 MR. MURAKAMI: You know, there was a
23 series of recommendations on the 1991 report just
24 before you, Peter.

25 I am wondering whether the state is in a

1 position to form a response as to what's been done
2 since that time, in recognition of some of these
3 recommendations as they affect the state. They
4 address both the state and the federal government.

5 And I think what we would like to see, at
6 least I would -- I don't know about the rest of the
7 Committee -- is some idea of what the state has been
8 able to accomplish with respect to those
9 recommendations.

10 Is that something that is possible to get?

11 MR. WATSON: We'll take a look at it.

12 CHAIRMAN MAXWELL: Because, yeah,
13 Alan, you were saying, and I agree, too, there was
14 recommendations that were taken from our twelve
15 suggestions, right?

16 Okay. And we are going to -- and thank you so
17 much, panelists, for appearing. I know it's a little
18 frustrating, we cannot talk as freely as we want to,
19 but we are under federal constraints to move on.

20 Thank you so much.

21 And now I would like to call upon the Federal
22 Oversight Reconciliation Efforts and Future
23 Initiatives.

24 Ferdinand Danny Aranza, Deputy Director,
25 Office of Insular Affairs, US Department of the

1 Interior.

2 Esther Kiaaina, Legislative Assistant to US
3 Senator Daniel K. Akaka.

4 Mark Van Norman Deputy Director of the US
5 Department of Justice.

6 And Grover Joseph Rees, Staff Director and
7 Chief Counsel, Subcommittee on International
8 Operations of Human Rights, Committee on International
9 Relations in the US House of Representatives.

10 The first one is Ferdinand Danny Aranza.

11 STATEMENT BY FERDINAND "DANNY" ARANZA:

12 MR. ARANZA: Thank you.

13 Good afternoon, and Aloha.

14 My name is Danny Aranza. I am the Deputy
15 Director of the Office of Insular Affairs at the US
16 Department of Interior.

17 And while I sit here on a panel of federal
18 officials, I want to let you know that I am not
19 originally from Washington DC. I am really a native,
20 I was born and raised in Guam.

21 As you may know, the people of Guam have been
22 trying for ten years to resolve their political
23 status, and define their relations with the United
24 States.

25 And so, with that kind of background, I know a

1 little bit about Timor's self-determination, and
2 getting territories off the non-self-governing list at
3 the United Nations.

4 But I come here today, before you,
5 representing the Secretary of the Interior, Bruce
6 Babbitt, who asked me to represent him and the
7 Department of the Interior.

8 I am familiar with Hawaiian issues through my
9 previous work as a private attorney in Honolulu, where
10 one of my most memorable cases was opposing a
11 commercial development project in East Molokai.

12 My most current work at Interior has focused
13 on Hawaiian Home Lands issues. Since 1993, I have
14 worked with a succession of very senior Interior
15 officials on home lands issues.

16 These include I. Michael Heyman who is the
17 counselor and Deputy Assistant Secretary, Leslie
18 Turner, who is the Assistant Secretary for Territory
19 and International Affairs, John Garrimandi, who was
20 the second-in-command at Interior, who was the Deputy
21 Secretary.

22 And today, I have been working with John
23 Berry, who is the Assistant Secretary for Policy
24 Management and Budget.

25 I mention all of these names to you because

1 they are all very high senior ranking federal
2 officials. All of them are non-Hawaiians, but all of
3 them, in my personal experience, have been profoundly
4 moved and touched by the plight of the Native Hawaiian
5 people.

6 Today, I have been asked to give a statement
7 regarding what efforts, if any, have been undertaken
8 by the Department of Interior to, and I quote,
9 "provide a foundation for and to support
10 reconciliation efforts between the United States and
11 the Native Hawaiian people."

12 Now, I think the discussion that we've heard
13 today, I think, indicates that this is a multi-faceted
14 and very complex issue. And there is a lot of tough
15 questions involved, including what does the apology
16 bill mean, what exactly does reconciliation involve,
17 what are the different aspects of political status,
18 and sovereignty, and various recognitions or
19 recognition of indigenous domestic people.

20 All these are good questions, and worthy of
21 receiving our serious attention and best efforts to
22 try and answer.

23 But underlying these issues, I think, are the
24 fundamental question of the political status of Native
25 Hawaiians -- whether those is couched in terms of

1 self-government, or self-determination, or
2 decolonization, or sovereignty.

3 And I know that there are as many formulations
4 of these concepts as there are fish in the sea. And
5 while people may see that as a weakness, I think that
6 whatever our conception is of Native Hawaiian
7 political status, I think one of the strengths of
8 these movement right now is, paradoxically, the
9 diversity of the opinion and perspective.

10 What I mean is this. That from so many
11 opinions and perspectives regarding political status,
12 all are united in the common objective, that something
13 must be done -- something must be done to address the
14 political, social, economic, and historical situation
15 of the Kanaka Maoli.

16 It is from this point of commonality of shared
17 objective that I come to you today as a federal
18 official, and a representative of the Secretary of the
19 Interior.

20 We, at the Department of Interior, under the
21 leadership of Secretary Bruce Babbitt, agree with you
22 that something ought to be done to address the
23 problems confronting the Native Hawaiians.

24 I would love to tell you today what the
25 Department of Interior is doing to address these

1 problems. Unfortunately, today is not the time, and I
2 am not the one to tell you what those efforts have
3 been.

4 On August 31 Secretary Bruce Babbitt and
5 Assistant Secretary John Berry will be coming,
6 personally, to Honolulu to make several important
7 announcements. One announcement will be about
8 significant progress regarding Hawaiian Home Lands.

9 Another announcement has to do with beginning
10 to lay the foundation for reconciliation between the
11 Native Hawaiian people and the United States.

12 So, while I cannot make any grand
13 announcements at this time, I do promise you that what
14 we have heard and shared so eloquent today will be
15 shared directly with Secretary Babbitt and Assistant
16 Secretary Berry, and other federal officials of
17 Washington D.C.

18 I have listened all day to your thoughts and
19 concerns, and your aspirations, and have also taken a
20 lot of good notes. And I want to just assure you that
21 these sentiments generated by the meeting today will
22 be shared with folks in Washington D.C.

23 This concludes my opening statement. I would
24 be glad to take any questions from you, although I
25 have to apologize ahead of time if I am unable to

1 fully answer your questions to the extent you might
2 wish, because of the announcements coming later on in
3 the month.

4 CHAIRMAN MAXWELL: Thank you, Mr.
5 Aranza. We will ask questions after all the panelists
6 have spoken.

7 And now, Esther Kiaaina, your name, and your
8 position, please, for the records.

9 STATEMENT OF ESTHER KIAAINA:

10 MS. KIAAINA: Thank you.

11 I am Esther Kiaaina, and I am a legislative
12 assistant for Senator Akaka in Washington.

13 Since 1993, Senator Akaka has worked on
14 several issues that he believes supplements the
15 efforts of the Apology Resolution.

16 Senator Akaka authored the Hawaiian Home Lands
17 Recovery Act, enacted in 1995, which provides federal
18 land compensation for lands taken out of the Hawaiian
19 Home Lands Trust during the Territory period.

20 It was one of the recommendations made in the
21 1991 Hawaii Advisory Committee Report relating to
22 Lualualei.

23 He deliberately sought to resolve this issue,
24 because he did not want to jeopardize or confuse
25 future federal efforts on ceded lands. He has also

1 worked on the re-classification of native Hawaiians
2 under OMB Directive Number 15, the federal guideline
3 governing racial and ethnic statistics.

4 Last October, OMB announced that there will be
5 a new category entitled, "Native Hawaiian and other
6 Pacific Islanders." Native Hawaiians had previously
7 been placed in the API category, for "Asian and
8 Pacific Islander" category.

9 The sad history of how no federal agency
10 supported the Senator's efforts during the process of
11 review by the federal government is reflective of why
12 more leadership is needed from the executive branch.

13 The impetus for OMB Directive Number 15,
14 established in 1997, was for statistical and
15 administrative reporting and civil rights compliance.

16 In 1993, then Former Chairman Arthur Fletcher,
17 chairperson of the US Civil Rights Commission, was one
18 of the only individuals who testified before Congress
19 in support of native Hawaiians, and we appreciate
20 that.

21 Lastly, Senator Akaka has been working on
22 ensuring that the federal government is active on the
23 draft declaration on the rights of indigenous people
24 that is being considered by the United Nations.

25 In 1993, Senator Akaka authored a concurrent

1 resolution urging US support for the international
2 standards on the rights of indigenous peoples, and the
3 UN Decade of the World's Indigenous Peoples.

4 He continues to advocate for United States
5 policy which is inclusive of all indigenous groups
6 under US jurisdiction.

7 Currently, policy is based on domestic law, or
8 federal Indian law, which he believes does not address
9 the unique needs of Native Hawaiians, and other
10 Pacific indigenous groups.

11 Although the Department's current
12 responsibility -- sorry -- now that the Hawaiian Home
13 Lands Recovery Act is coming to closure, Senator Akaka
14 would like to see more involvement by the Interior
15 Department on the political status of Native Hawaiians
16 in ceded lands issues.

17 Although the department's current
18 responsibility is limited to the Hawaiian Homes
19 Commission Act, Senator Akaka believes that a
20 department without future legislative authority, can
21 broaden its responsibilities for Native Hawaiians.

22 First, the Apology Resolution encourages that
23 the Congress, and the president, support
24 reconciliation efforts with Native Hawaiians. The
25 Interior Department would be the most logical

1 department to take such a lead for the executive
2 branch.

3 Second, under the Hawaiian Home Lands Recovery
4 Act, the provision relating to the responsibilities
5 for the DOI official responsible for the Hawaiian
6 Homes Commission Act states that, "He shall advance
7 the interests of beneficiaries" and

8 Two, "That he shall assist the beneficiaries
9 in the Department of Hawaiian Home Lands in obtaining
10 assistance from programs of the Department of Interior
11 and other federal agencies that would promote
12 homesteading opportunities, economic self-sufficiency,
13 and social well-being of the beneficiaries."

14 Third, Secretary Babbitt, on November 15th,
15 1993, on the same day that Interior Department
16 Solicitor John Leshy repealed the Sansonetti opinion,
17 in a letter to Senator Akaka and others, stated as
18 part of President Clinton's visit to Hawaii in 1993,
19 "The president pledged that he would work with the
20 Governor of Hawaii and the Hawaii congressional
21 delegation to address issues of concerns to Native
22 Hawaiians in a positive way."

23 Secretary Babbitt further stated, "I look
24 forward to helping to carry out that pledge." He also
25 acknowledged that legislation is the most appropriate

1 way to address the concerns of Native Hawaiians, such
2 as their status as aboriginal indigenous people. "We
3 stand ready to discuss this option, as well," he
4 stated.

5 Finally, while much attention is focused on
6 the Hawaiian Homes Commission Act, little attention
7 has been given to the fact that a ceded lands trust or
8 5F provisions of the State Admissions Act has explicit
9 language which refers to Native Hawaiians, as defined
10 in the Hawaiian Homes Commission Act.

11 This should provide the Interior Department,
12 at a minimum, with discretionary and oversight
13 authority over ensuring that Native Hawaiians benefit
14 from the ceded lands trust.

15 I would like to make clear that Senator Akaka
16 does not believe that redress efforts should be
17 constrained judicially or administratively. The best
18 remedy for justice should be based on sound policy
19 that balances moral obligations and deduction of
20 equity.

21 The Hawaiian Home Lands Recovery Act, enacted
22 in 1995, is an example of how policymakers can move
23 beyond statutory limitations and legal constraints,
24 and provide a legislative remedy.

25 Most recently, in a July 14th 1998 speech at

1 the US State Department on the rights of indigenous
2 peoples, Senator Akaka announced that he would be
3 introducing legislation which would seek and promote
4 three goals.

5 The legislation would establish the US
6 Advisory Committee on Indigenous Rights within the US
7 State Department, to be composed of tribal leaders and
8 distinguished indigenous peoples, and individuals with
9 expertise in the field of human rights law,
10 international law, foreign affairs, environmental and
11 natural resources law, federal Indian law, Native
12 Hawaiian rights, insular affairs, and constitutional
13 law.

14 The measure would also seek the appointment of
15 a special advisor on indigenous rights on the Domestic
16 Policy Council at the White House.

17 This individual would be responsible for
18 coordinating US policy among federal agencies, and
19 will would work with the US Advisory Committee in
20 making recommendations to the President and the
21 Departments of State, Justice and Interior, on the
22 rights of indigenous peoples.

23 One goal, as special advisor, is to coordinate
24 US policy on the UN Draft Declaration on the rights of
25 indigenous peoples.

1 The second would be to make recommendations on
2 improving relations between federal government and
3 indigenous peoples in the United States.

4 Third, the special advisor will implement
5 specific plans for increased US involvement on
6 commemorating the International Decade of the World's
7 Indigenous Peoples, including greater participation of
8 tribal leaders and specific indigenous peoples.

9 Lastly, he would like to see established
10 within the Department of the Interior a designated
11 official to address the political status of Native
12 Hawaiians, and to coordinate with the Congress on
13 potential remedies.

14 This person would also help to assist in
15 promoting the process for reconciliation efforts, as
16 enunciated in Public Law 103-150, between Native
17 Hawaiians and the federal government.

18 In my capacity as a staff member for Senator
19 Akaka, I look forward to working with the Hawaiian
20 community, and state and federal officials, on
21 achieving some of these goals.

22 CHAIRMAN MAXWELL: Thank you.

23 And now, Mark Van Norman.

24 MR. VAN NORMAN: Thank you.

25 CHAIRMAN MAXWELL: State your name

1 and your position, sir.

2 STATEMENT OF MARK VAN NORMAN:

3 MR. VAN NORMAN: I am Mark Van
4 Norman, Deputy Director from the Office of Tribal
5 Justice in the US Department of Justice.

6 And I would like to briefly talk about -- a
7 little bit about federal Indian law, our office, and
8 some of our work with American Indians, and then turn
9 to Native Hawaiian issues that we've worked on.

10 Before Europeans came to North America, Indian
11 nations and tribes were independent, self-governing
12 political communities with their own societies,
13 cultures, languages, and traditions.

14 These indigenous American Indian nations were
15 exercising their inherent actual rights of
16 self-government.

17 European nations entered into treaties with
18 Indian nations, recognizing their status as
19 sovereigns, and rightful possessors of the soil.

20 The United States, as successor to the
21 European nations, continued the practice of entering
22 in treaties with Indian nations.

23 In the seminal cases of Cherokee Nation v
24 Georgia and Worcester V. Georgia, the Supreme Court
25 recognized tribes as domestic dependent nations, and

1 acknowledged their national character, and that the
2 treaties guaranteed their natural rights to
3 self-government.

4 They referred to tribes as domestic dependent
5 nations -- "domestic" because they were within the
6 United States, "dependent" because they are under the
7 protection of the United States, and "nations" because
8 they retained their national character and rights to
9 self-government.

10 By ratifying Indian treaties that were entered
11 into before the Constitution, the Worcester court
12 explained further that the Constitution, itself,
13 recognizes the status of Indian tribes as sovereigns,
14 with authority to enter into treaties.

15 In modern times, well, at present in the
16 Clinton Administration, in April 1994, President
17 Clinton directed the heads of all executive
18 departments and agencies to work with tribes on issues
19 affecting tribal rights and trust resources on a
20 government-to-government basis, in a knowledgeable,
21 sensitive manner, respectful of tribal sovereignty.

22 In May 1998, he issued Executive Order Number
23 13084 concerning consultation and coordination with
24 Indian tribes, and he reaffirmed the principles of
25 Indian law.

1 The Executive Order states, "Since the
2 formation of the Union, the United States has
3 recognized Indian tribes as domestic dependent nations
4 under its protection. In treaties, our nation
5 guaranteed the right of Indian tribes to
6 self-government. As domestic dependent nations,
7 Indian tribes exercise inherent sovereign powers over
8 their members and territory."

9 The order also establishes respect for tribal
10 self-government and tribal sovereignty, as
11 policy-making criteria, and directs all agencies to
12 have a coordination process in place.

13 In a speech recently to tribal leaders, the
14 president said, "I have worked hard to honor tribal
15 sovereignty, and to strengthen our
16 government-to-government relations. Long ago, many of
17 your ancestors gave up land, water, and mineral rights
18 in exchange for peace, security, health care and
19 education from the federal government."

20 "It's a solemn pact. And while the United
21 States did not live up to its bargain in the past, we
22 must honor today, and into that new millenium."

23 "Four years ago, when the memorandum was
24 issued directing all federal agencies to consult with
25 Indian tribes before making decisions on matters

1 affecting your people, that established the
2 government-to-government relations policy."

3 "This spring, I strengthened that directive.
4 So decisions made by the federal government regarding
5 Indian country are always made in cooperation with
6 tribes."

7 The President acknowledged that American
8 Indians and Alaska Natives suffer from poverty, poor
9 economic and social conditions and poor health, and
10 pledged that the federal government would work to
11 improve those conditions.

12 Tribal self-government is important to
13 American Indians and Alaskan Native peoples because it
14 enables them, as peoples, to continue to live
15 according to their own traditions and ways of life on
16 their own lands.

17 The Attorney General has established the
18 policy on government-to-government relations, and our
19 office is charged with the implementing that policy.

20 We work to coordinate that policy within the
21 department, and with other agencies. We work on a lot
22 of different issues -- from Indian gaming, to Indian
23 child welfare acts cases, trust land issues, federal,
24 tribal, state court dialogues, violence against women.

25 We held a conference on banking in Indian

1 country last year to promote access to capital. And
2 this year, we organized a conference on building
3 economic self-determination for Indian communities.

4 In regard to Native Hawaiian issues, although
5 our office wasn't specifically set up to deal with
6 Native Hawaiian issues, other agencies of the federal
7 government have come to talk to us. So we've been out
8 to Hawaii to talk to Native Hawaiians about the UN
9 Draft Declaration.

10 More recently, we worked with the Attorney
11 General's Chief of Staff in preparation for his
12 address to the State Department in their consultation
13 with indigenous people.

14 Mr. Ogden made it clear that the Justice
15 Department supports a strong declaration to protect
16 the rights of Indian peoples.

17 We have consulted with the Office of Hawaiian
18 Affairs, with the Department of Hawaiian Home Lands,
19 and Native Hawaiian organizations, from time to time.

20 Part of our work is to look at legislation,
21 proposed legislation, when it comes through an OMB
22 clearance process with the federal government.

23 And in that, a question has come up: Are
24 Hawaiians a racial group, or are they dealt with as a
25 community, with a distinct political status, as

1 American Indians and Alaska Natives are dealt with?

2 In regard to American Indians and Alaska
3 Natives, the Justice Department addressed this issue
4 in the Office of Legal Counsel's review of Adarand.

5 And they said that, basically, Native
6 Americans -- American Indians and Alaska Natives --
7 have a political status, and they are not under the
8 Adarand strict scrutiny test.

9 Well, the question has come up regarding
10 Native Hawaiians, and the courts have not definitively
11 addressed the issue. At our office, we believe that
12 there is substantial reason to believe that Native
13 Hawaiians are a political community. That position
14 has not been signed off on by the whole department,
15 but what they have recognized from the Office of Legal
16 Counsel is, based on the text and constitutional
17 history of the Indian commerce and treaty clauses, the
18 history of the federal government's exercise of
19 authority granted by those clauses, with respect to
20 Indians and Alaska Natives, and the relevant case law,
21 the Constitution would not bar Congress from
22 legislating on behalf of other appropriately
23 constituted indigenous communities within the
24 jurisdiction of the United States.

25 So then the question is, are Native Hawaiians

1 such an appropriately-constituted community?

2 For its part, Congress has legislated on
3 behalf of Native Hawaiians, along with other native
4 Americans, and it's affirmed that the United States
5 has a special responsibility to Native Hawaiians in
6 the Apology and other Native Hawaiian legislation.

7 Nevertheless, it would be helpful -- and I
8 would take a little bit at issue with Professor Van
9 Dyke on this -- it would be helpful to clarify that
10 the Native Hawaiian community has a political status
11 that permits Congress to legislate on behalf of Native
12 Hawaiians, under the Morton rational-basis test.

13 S109, the Native American Housing and
14 Self-Determination Amendments of 1998 is helpful in
15 that regard, in extending HUD housing programs to
16 Native Hawaiians.

17 The bill sets forth the finding that the
18 political relationship between the United States and
19 the Native Hawaiian people has been recognized and
20 reaffirmed by the United States.

21 In regard to this bill, the Justice Department
22 communicated to Congress that the although the courts
23 have not finally resolved the proper standard of
24 review for Native Hawaiian legislation, we had some
25 suggestions, but we supported the bill as a measure

1 consistent with other federal legislation, making
2 Native American programs available to Native
3 Hawaiians -- such as the Native American Veterans
4 Housing Loan Pilot Project.

5 So for our part, we will continue to look at
6 these issues, and where we can, weigh in, and try and
7 assist. Thank you.

8 CHAIRMAN MAXWELL: Thank you, Mr.
9 Norman.

10 And now, I would like to call Grover Joseph
11 Rees. Would you state your name and your position.

12 STATEMENT OF GROVER JOSEPH REES:

13 MR. REES: My name is Grove Joseph
14 Rees. I am the staff director and chief counsel of
15 the Subcommittee on International Operations and Human
16 Rights of the US House Committee on International
17 Relations.

18 I should stress that I cannot claim to speak
19 on behalf of the House of Representatives, or the
20 Committee on International Relations, or anybody
21 else. It is in my official capacity that I deal with
22 some of these issues.

23 But -- but since we are -- I couldn't try to
24 be helpful, and also claim that everything that I said
25 represented the views of every member of our

1 committee.

2 I also grew up here in Hawaii, and spent some
3 time in Samoa. So some of the issues that I will
4 speak about -- planned tenure, and so forth, I have a
5 little bit of personal expertise.

6 I want to speak first, for a moment, about
7 what the debate has been over the federal relationship
8 to native Hawaiians, and then talk a little bit about
9 how the Apology Bill should affect that debate -- the
10 Apology Law should affect that debate, and finally,
11 talk for a few moments about developments in
12 international law and practice that might also affect
13 the debate.

14 The debate over the relationship between the
15 federal government and Native Hawaiians has tended to
16 focus on whether the federal government is a "trustee"
17 with respect to Native Hawaiians.

18 And in a sense, the two sides have been
19 talking past each other on this question.

20 This Advisory Committee, the state of Hawaii,
21 the State Supreme Court have said, yes, the federal
22 government is a trustee. And the Secretary of the
23 Interior in 1920, Secretary Lane said, in a sense, we
24 are the trustee, and they are our wards.

25 The federal government itself, the Department

1 of the Interior, has tended to respond by saying,
2 well, maybe in a sense, but we are not a common law
3 trustee. We don't have all of the indicia. The 1921
4 Act cannot be read to create a common law
5 trusteeship.

6 Well, the question that the federal government
7 hasn't answered is, even if we are not a common law
8 trustee -- or the executive branch, at least, has not
9 answered -- is even if we are not a common law
10 trustee, even if we don't have legal obligations
11 flowing from a fiduciary relationship that you can
12 point to the time that it was established,
13 nevertheless, is the moral and philosophical statement
14 that was made by Secretary Lane in 1920 correct, that
15 we have that kind of relationship to people?

16 And if it is correct as a moral and
17 philosophical statement, do we have a legal discretion
18 to act as trustee, and to act as though we have
19 certain obligations toward Hawaiian people?

20 And I think the Apology Bill can have an
21 important effect on -- should have an important effect
22 on the way the executive branch chooses to exercise
23 its discretion, within the law.

24 Now, with respect to the debate about
25 trusteeship, it seems to me that there are some

1 important questions that undergirth that debate, even
2 if they are not always stated.

3 And one of them is, did the native Hawaiian
4 people have a right to self-determination?

5 And second, did they -- have they ever
6 exercised that right of self-determination, by
7 incorporating into the United States?

8 The related question is, what are the
9 respective relationships to the land -- to what is
10 called crown, public, and government lands in Hawaii,
11 of, on the one hand the Hawaiian people, and on the
12 other hand, the federal government.

13 And these two underlying debates are, in turn,
14 related to each other. Because to the extent that the
15 Hawaiian people were deprived of something that they
16 had a right to -- to a right of sovereignty or
17 self-determination in 1898 and in 1893 -- then you can
18 see the Hawaiian Home Lands Act as an attempt to -- a
19 partial recogition of that -- pardon me, the Hawaii
20 Homes Commission Act creating the Hawaiian Home Lands
21 entities -- as a partial recogition of the fact that
22 Hawaiians have been deprived, by our government, of
23 something that they had a right to, not as just a
24 favor or just another social program on behalf of
25 another special group.

1 It seems to me that the reason -- one of the
2 reasons that federal entities have been reluctant to
3 address those two questions, is that they don't really
4 understand -- even some of the speakers who I thought
5 made a lot of valid points earlier today, some of the
6 dissenting speakers -- really didn't seem to have a
7 detailed understanding of the relationship, the
8 traditional relationship, between the Hawaiian people
9 and their land.

10 And that that understanding is crucial to
11 understanding the whole debate, and then, to doing
12 something constructive about it.

13 The very word "aina" in Hawaiian, the word
14 that Hawaiians use to mean land, in almost all other
15 Polynesian languages, it means family. And most
16 linguists think that that's what it meant in ancient
17 Polynesia, in what they call Proto-Polynesia.

18 And the very fact that you could have an
19 evolution, where the word for "family" became the word
20 for "land" begins to tell you something both about how
21 important land was in the Hawaiian tradition, and the
22 fact that they viewed it differently.

23 So the simply analysis that says, this land
24 belonged to the queen. The queen abdicated. The
25 Hawaiian provisional government was her successor in

1 interest. The government of the United States is the
2 successor in interest to the professional government.
3 The queen owned the land absolutely. Therefore, the
4 United States government owns the land absolutely.

5 Therefore, they can cede it absolutely to the
6 state of Hawaii. They can do with it what they want.
7 If they want to give some of it to the Hawaiian people
8 for homesteads, that's fine, but they don't really
9 have to -- that analysis ignores what kinds of rights
10 the queen had in those lands in the first place.

11 And I want to read just one very brief
12 excerpt, if I may, from Queen Liliuokalani's book,
13 which is published under the title, "Hawaii's Story by
14 Hawaii's Queen" where she describes, very simply, the
15 relationship of land.

16 She says, "Originally, all territory belonged
17 to the king" -- all territory, is her view -- "by
18 whom it was apportioned for use only, not for sale to
19 the chiefs, who in turn assigned tracts, small or
20 large, to their people; an excellent system for us, by
21 which the poorest native held all the land he needed,
22 and yet it could not be taken from him by any
23 designing foreigner."

24 Now, whether you agree that it was proper to
25 say that the king owned all the land, the relationship

1 of every Hawaiian to land was not one that could be
2 easily reduced to western concepts of fee simple.

3 For every piece of land, there were dozens and
4 probably hundreds of people who had some rights and
5 obligations with respect to that land.

6 I am not telling the members of the Commission
7 something they don't know -- the committee something
8 they don't know, but I would like to put it on the
9 record.

10 Every Hawaiian had a piece of land, probably
11 pieces of land, with respect to which he or she
12 enjoyed certain customary rights. But they also had
13 obligations to their chiefs. The chiefs, in turn, had
14 obligations to the king.

15 But the obligations flowed both ways, and the
16 king, even though you could say all the land in Hawaii
17 belonged to the king, there were strong moral
18 obligations and traditional obligations. The king
19 would never have just said, since this is my land,
20 you, who have an ancient right to use this land, could
21 no longer use it. At least, the king would never have
22 done that without consultation and without
23 compensation.

24 Well, by just saying the king owns all the
25 land, and the king owned the land in fee simple,

1 therefore, the government owns the land, you have
2 erased a lot of history.

3 But you have not only erased a lot of history,
4 you have essentially erased a system.

5 I would say that if you had asked a hundred
6 years ago, or if you had asked with respect to other
7 Polynesian peoples today, could they live, as
8 Polynesians, without having an independent government
9 of their own? I think you would have to say, the
10 answer is, yes, some of them do.

11 But if you say, could they live as
12 Polynesians, in the Polynesian way, without access to
13 their traditional lands? The answer would be, not for
14 long.

15 So now, here is what the Apology Resolution
16 does. The Apology Resolution, which is now the
17 Apology Law, does two things.

18 First, it recognizes that -- it puts Congress
19 and the President on record as recognizing that the
20 Hawaiian people did enjoy a right of sovereignty, and
21 a right of self-determination, and that that was taken
22 away, rather than exercised, in the events of 1893.

23 The second thing it does is, it recognizes
24 that one of the important things they lost in that
25 process was the land, of which, in the "whereas"

1 clauses, it makes clear were central to their
2 culture.

3 Now, what should that do to the debate?

4 Well, it should mean that the federal agencies
5 involved should go look at their own policies, and
6 their own exercise of discretion, in light of those
7 two central facts, which some of their earlier
8 positions seemed to be premised on the opposite view.

9 Now, let me talk just for a moment -- and how
10 am I on time? Am I out?

11 MR. FORMAN: You are close.

12 MR. REES: Let me say something about
13 the international law.

14 The right to self-determination, while it was
15 recognized by 19th Century and earlier commentators on
16 international law, was honored far more often in the
17 breach than in the observance.

18 In the 20th Century, the right to
19 self-determination of all peoples -- not just
20 indigenous peoples -- has been far more firmly
21 established and regarded as something that is worth
22 doing something about if it's taken away.

23 And there has been an attempt -- although not
24 a settled one -- in the form of the UN Draft
25 Declaration on the rights of indigenous peoples to

1 deal with this right of self-determination,
2 specifically with respect to the respect to indigenous
3 peoples.

4 The United States, for instance, takes the
5 position that while East Timor is part of Indonesia,
6 nevertheless, the East Timorese people have never
7 exercised their right of self-determination. And that
8 Indonesia still owes them the right to exercise their
9 right to self-determination.

10 And so, while you can't say what the answer
11 is, exactly what ought to happen with respect to
12 Native Hawaiians, certainly the fact that a hundred
13 years later we recognize far more clearly that all
14 peoples, including indigenous people have a right to
15 self-determination -- ought effect the spirit with
16 which federal agencies implement their obligations and
17 their powers, and whether they behave more as trustees
18 toward the Native Hawaiians.

19 So, in conclusion, I would just like to
20 suggest --

21 CHAIRMAN MAXWELL: Excuse me. Um,
22 you know, we have just been told we have some more
23 minutes, so go ahead, you can expound on it.

24 MR. REES: Let me just make one more
25 connection, then.

1 I would like to suggest that the international
2 law debate about self-determination does suggest an
3 answer to some of the Constitutional problems that
4 were being posed by Professor Benjamin earlier.

5 And I have not read Professor Benjamin's
6 article. I think he makes some important points, that
7 when you've got the language of the Constitution
8 staring at you saying that the Congress can make --
9 can conduct relations with foreign nations and with
10 the Indian tribes, it's possible to say, well, gee,
11 however much we'd like to help, the Hawaiian people
12 are not a foreign nation, and by their own insistence,
13 they are not an Indian tribe, and therefore, Congress
14 is out of luck.

15 But when you look historically at what
16 happened, I would like to suggest the following
17 analysis.

18 Would it have been permissible at the time the
19 Constitution was written, or at any time up until
20 1893, for Congress to have a treaty with the Native
21 Hawaiians in the form of the Kingdom of Hawaii?

22 The answer is clearly, yes, under the
23 Constitution. They were a foreign nation.

24 Now suppose that -- and I hope I won't offend
25 anybody by doing this -- but by shorthand, suppose we

1 had done the annexation right. Suppose that the
2 Kingdom of Hawaii had, for whatever reasons, the
3 Hawaiian people had chosen to join the United States,
4 and suppose that they had done so in exchange for a
5 system of land ownership that was different from the
6 rights that other Americans had.

7 Would we have been able to make a treaty with
8 them, by which their rights were analogous to an
9 Indian tribe?

10 And the answer would seem clearly, yes, they
11 were still a foreign nation at that time. You could
12 make a treaty.

13 Would that treaty then become illegal and
14 unconstitutional, the moment Hawaii actually did
15 become a state? I would think not.

16 Therefore, the fact that we did it wrong,
17 rather than right in 1893 and 1898, should not
18 diminish the constitutional rights of the Hawaiian
19 people, as a people.

20 That's just thinking out loud, but it seems to
21 me that it might help us get around some of the
22 difficulties posed by Professor Benjamin.

23 The other interesting thing that I have just
24 been focusing on this afternoon, as I listened to all
25 the other speakers, is that what some of what the

1 Hawaiian people seem to be fighting for in their
2 relationship with the federal government is, they want
3 to be treated as well in some respects as Indian
4 tribes are treated. And they want to be treated that
5 way, without the necessity of having to say, we are an
6 Indian tribe, which they are clearly not.

7 What they are is, more of a family.

8 Let me read another little excerpt from Queen
9 Liliuokalani's book, where she is pleading at the very
10 end with the American people to -- as what she calls,
11 a Christian nation, to take heed of the situation in
12 which they put the Native Hawaiians.

13 She is describing the conspiracy by which the
14 provisional government took hold of the government
15 with the assistance of the United States power.

16 "So it happens that overawed by the power of
17 the United States, to the extent that they can neither
18 themselves throw off the usurpers, nor obtain
19 assistance from other friendly states, the people of
20 the islands have no voice in determining their future,
21 but are virtually relegated to the condition of the
22 aborigines of the American continent."

23 So in the early part of the 20th Century, it
24 was regarded as unthinkable that the Hawaiian people
25 could sink so low, in terms of recognition of their

1 rights as the Indian tribes.

2 And yet, a hundred years later, the Indian
3 tribes -- the situation -- the relationship between
4 the federal government and the Indian tribes is being
5 used as a potential model for improving the status of
6 Native Hawaiians.

7 And it suggests, again, that we, in the
8 federal government, ought to reexamine our
9 relationship and our administration of the laws, with
10 respect to these principals. Thank you.

11 CHAIRMAN MAXWELL: Okay, thank you.

12 Before we continue and open the floor, I want
13 to clarify some of the points you made about the word
14 "aina." "Ai" means "to eat." "Na" means "the."

15 So the land, for the Hawaiian people, means
16 "the food, sustenance." It's the mythical association
17 to the land, even to the rock, the pohaku.

18 It says "ai pohaku" which means "to eat the
19 rock." But the land is that sacred. It is the
20 sustenance of the core of the Hawaiian people.

21 And when you say about the Kings and Queens
22 when they reigned -- when they were reigning, they
23 were trustees of the land. And the land followed each
24 succession. Okay? Question?

25 Question from the panel? Yes.

1 DR. NAGTALON-MILLER: When we wrote
2 our earlier reports, we were surprised when the
3 federal government felt that they had no
4 responsibility or trustee-type of responsibility to
5 the Kanaka Maoli.

6 And now, Mr. Aranza, this is the first speaker
7 that said that they are interested, and they have
8 recognized their trusteeship to the Kanaka Maoli.

9 Did I understand you correctly?

10 MR. ARANZA: I guess I should be a
11 little bit more clear. I didn't touch on the issue of
12 whether we have a trust relationship.

13 What I said was that Secretary Babbitt will
14 have an announcement at the end of the month regarding
15 a process of reconciliation. And I think the fact
16 that the Apology Bill is written the way it is gives
17 us some leeway, perhaps to have a constructive
18 dialogue, without getting into some of the legal
19 questions or constitutional questions surrounding a
20 trust relationship.

21 DR. NAGTALON-MILLER: Also, we did
22 have recommendations in that 1991 report. And I just
23 wondered if you could suggest that -- if you look at
24 those questions, too, and probably make comments on
25 them.

1 MR. ARANZA: In the 1991 report?

2 CHAIRMAN MAXWELL: The Broken Trust,
3 1991.

4 DR. NAGTALON-MILLER: I think it's
5 The Broken Trust, 1991.

6 MR. ARANZA: I have to apologize,
7 because I have not read the report. And in fact, one
8 of the things that I have noticed, being at the
9 department for the last eight years is,
10 institutionally, I am not aware of any particular
11 office or place where Hawaiian issues per se are
12 handled.

13 Now there may be bits and pieces separated in
14 different places, like with the Office of the
15 Secretary of the Interior, the Hawaiian Home Lands Act
16 and the Hawaiian Home Lands Recovery Act clearly
17 reside.

18 So one of the things I guess I would point out
19 is that these broader issues of political status and
20 sovereignty -- and these big issues -- there isn't a
21 specific place within the federal government where
22 they reside.

23 So things like this report aren't readily
24 brought to the attention of people who need to know.

25 DR. NAGTALON-MILLER: Well, I think

1 the reason I made that point is that we would like to
2 have a response of some kind, because then, that
3 should have been in our report. And it would give us
4 a better idea on how to proceed in our next report, to
5 see whether or not there have been progress made in
6 certain areas.

7 MR. ARANZA: So, as I understand
8 your question, you would like the Department of
9 Interior to respond to the recommendation?

10 DR. NAGTALON-MILLER: Yes.

11 MR. ARANZA: Okay.

12 CHAIRMAN MAXWELL: Alan.

13 MR. MURAKAMI: In light of your last
14 answer, Mr. Aranza, is it the position that -- or can
15 you say if it's the position of the Interior to
16 support what Ms. Kiaaina has suggested should be a
17 special office within the Domestic Policy Council of
18 the White House to have a special adviser, so you will
19 have a centralized person to discuss these issues, and
20 have a focal point for future reconciliation efforts
21 with Hawaiians?

22 MR. ARANZA: I think all I can say
23 today is what I said earlier, that the Secretary, at
24 the end of the month, will make an announcement.

25 MR. MURAKAMI: What about the

1 Department of Justice's position?

2 CHAIRMAN MAXWELL: Esther.

3 MS. KIAAINA: Just to clarify, there
4 were three thoughts. The special advisor position at
5 the White House would not only include Native
6 Hawaiians, but it would include all indigenous groups.

7 There is someone within the inter-governmental
8 Affairs Office at the White House that currently deals
9 with the government-to-government relationship with
10 the tribes.

11 However, the Senator believes that in light of
12 the fact that there is no formal process for the UN
13 Draft Declaration on indigenous rights, that there
14 should be, out of fairness, a person at the White
15 House to deal not only with American Indians and
16 Alaskan Natives, but also with other indigenous
17 groups, including Native Hawaiians.

18 The Senator, however, does propose that there
19 be more input from the Department of Interior --
20 either through the creation of a one specific person
21 to do only Native Hawaiian issues, or an office.

22 Currently, there is a whole Bureau of Indian
23 Affairs to deal with Alaska Natives and American
24 Indians. There is also an Office of Insular Affairs,
25 which deals with the territories, some of whose

1 numbers are smaller than Native Hawaiians.

2 So at a minimum, there just seems to be no
3 excuse for the federal government not to establish at
4 least one position, if not one office, for Native
5 Hawaiians.

6 MR. MURAKAMI: Isn't it true that
7 they were supposed to be -- I mean, there had been
8 before a special representative for Hawaiian Homes?

9 MS. KIAAINA: The Hawaiian Homes
10 Commission Act. And as you know, that role is still
11 very minimal. And most of the time, that person has
12 other duties.

13 So if you look at the history, since the 1983
14 Federal State Task Force Report on the Hawaiian Homes
15 Commission Act, there have been several individuals,
16 some adverse to Native Hawaiians.

17 Under the Clinton Administration, we have
18 wonderful people. We had Mr. Heyman, who is currently
19 secretary at the Smithsonian. We had Leslie Turner,
20 Mr. Garrimandi, and John Berry.

21 The problem, however, no matter how
22 meritorious they are in dealing with us is the fact
23 remains that they have other obligations, and the
24 Senator believes that it is unfair for Native
25 Hawaiians to get short-shrift of the Department of

1 Interior.

2 CHAIRMAN MAXWELL: Thank you.

3 MR. MURAKAMI: I think I would also
4 be interested in -- since this report we put out in
5 1991 really addressed the federal government as a
6 whole, whether Justice had any position on it, the
7 recommendations. I don't know if you read the report
8 or not, but I invite the same question about whether
9 Justice would be willing to respond to these
10 recommendations, which I think need coordination
11 amongst the agencies involved.

12 MR. VAN NORMAN: Well, I'm sorry, I
13 have seen the report for the first time today.

14 I thought the recommendation formalizing, just
15 from my personal point of view, I should say, and not
16 as a department viewpoint, I thought the thing about
17 some kind of government recognition is important. I
18 don't think people should get tripped up on the words
19 "Indian tribe."

20 Clearly, you have your own history and culture
21 here. I think when you say "Indian tribe" in the
22 Constitution, what the Office of Legal Counsel is
23 telling us -- and they interpret the Constitution for
24 the executive branch -- they are telling us that could
25 be read as indigenous community, indigenous

1 government.

2 So if Native Hawaiians had a recognized
3 indigenous government, it would help with sort of the
4 constitutional question. That's not a position that
5 is cleared by the Department of Justice. That's just
6 a purview.

7 I can tell you from experience that it's
8 extremely helpful to have people in the White House
9 Inter-Governmental Affairs Office that we work with on
10 American Indian and Alaska Native issues. If you want
11 to get something done, it's very helpful to have
12 someone to go to when you are in an agency position.

13 And I would just point out in addition to the
14 BIA that the Department of Interior has a special
15 statute that established an Office of American Indian
16 Trust. And what they do -- I guess, you know, there
17 is two senses of the word "trust."

18 One is sort of a common law trustee, and I
19 think there may be some tripping over that language,
20 where the trustee holds legal title to property for a
21 beneficiary.

22 There is also a broader sense that is used, in
23 terms of sort of a protectorate relationship. And
24 that is the broad sense that is used with the American
25 Indian tribes, in terms of forging tribal

1 self-government and self-determination.

2 So that might be something that would be worth
3 looking at that Office of American Indian Trust, in
4 terms of, you know, thinking about this issue Esther
5 is raising.

6 Those are personal viewpoints.

7 MR. MURAKAMI: Whatever the issue, I
8 mean, the issues or the answers are, with respect to
9 responding to the recommendations, do I take it that
10 there would be interagency cooperation, in terms of
11 the responses?

12 MR. VAN NORMAN: Yes, I think we
13 would be talking to each other.

14 MR. ARANZA: There would have to be.
15 Otherwise, it would just be a response from the
16 Department of the Interior.

17 CHAIRMAN MAXWELL: Okay. Any other
18 questions?

19 MR. FORMAN: There was a question for
20 Mr. Rees.

21 CHAIRMAN MAXWELL: Yes.

22 MR. FORMAN: It's a question by Mr.
23 Rees. I was intrigued by your example regarding East
24 Timor, and what I thought I heard in regard to the US
25 position covering East Timor and its relation to

1 Indonesia. It's been a long time since I studied
2 international law, but my impression was that in a lot
3 of cases, the United States had pointed to the
4 Convention on Friendly Relations Among States as -- in
5 response to any time anybody in the international
6 community raised the issue of Hawaii.

7 And if you talk about any kind of
8 reconciliation efforts that would involve any form of
9 independence or cession, meaning that it was something
10 that was not justified under international law.

11 And it sounded to me like the position
12 regarding East Timor was -- it's ironic that the US
13 would take that position with regard to East Timor,
14 and not with regard to Native Hawaiians.

15 MR. REES: Well, even the sections
16 regarding non-self-governing territories makes it
17 clear -- the United Nations declaration makes it clear
18 that their policy with respect to the territories to
19 which this chapter applies do account -- pardon me --
20 must be based on the general principal of good
21 neighborliness. So you are right.

22 But East Timor is on the list. And so, it's
23 easier for us to address that.

24 And frankly, the part where we're being
25 good-neighborly to Indonesia, is by recognizing that

1 East Timor is a part of Indonesia at all, because that
2 invasion was not only starkly illegal, it was also
3 recent. So we are kind of bending over backwards to
4 be nice to the government of Indonesia by saying that
5 we recognize East Timor as a part of Indonesia.

6 And yet nevertheless, the interesting part is
7 that we can say that, and still say, that the East
8 Timorese people never exercised their right of
9 self-determination. That implies that there is room
10 for recognizing that right in other contexts, without
11 the dramatic consequence that, therefore, you have to
12 say, well, they are not really part of the country.

13 And that was all I was suggesting by analogy.

14 CHAIRMAN MAXWELL: Mr. Rees, you
15 know, just for your information -- and I would like
16 you to comment on it after you hear -- the Hawaiian
17 Kingdom from the late 1830's had numerous treaties
18 throughout the world with different countries.

19 And in fact, had a favorite status treaty with
20 the United States government even up to the overthrow,
21 which actually was violated -- the treaty was violated
22 because it didn't help protect Queen Liliuokalani.

23 So knowing that, what --

24 MR. REES: -- Well, I did know
25 that, and probably should have commented on it. That

1 if you look at the book that the State Department
2 publishes of treaties in force, it lists all of those
3 treaties, and say -- in fact, it's reproduced in the
4 report to the Apology Bill -- after each one, it says,
5 this was abrogated by the resolution, or this was
6 presumably abrogated.

7 So that one of the -- certainly, if something
8 like what happened in 1893 happened today, there would
9 be a very good argument that it was a violation, not
10 only of moral obligations, but also of our treaty
11 obligations.

12 CHAIRMAN MAXWELL: You know, can you
13 answer this question, also?

14 In your interpretation, how come the Hawaiian
15 nation and the Hawaiian people were internationally
16 recognized, and some of the Indian nations throughout
17 the upper 49 had only recognition by the United States
18 government -- how come, now, this distinction is lost
19 for us, that we are, you know, as a native people, we
20 are not even recognized by our own government --
21 excuse me -- as an indigenous -- or having come from
22 an indigenous government?

23 MR. REES: Well, part of the answer
24 was suggested by some of the earlier speakers --
25 Attorney Poka, and also by Professor Benjamin.

1 That is, that the Hawaiian Kingdom, itself,
2 had admitted citizens who were non-ethnic Hawaiians.
3 And so, the distinction that was made that, look, land
4 rights are one thing, those are the rights of
5 indigenous peoples, and the deprivation of sovereignty
6 is another thing.

7 Also, Attorney Mee made this point, and that's
8 another thing. And that that hurt everybody, not just
9 Hawaiians. So you can certainly construct an argument
10 that what was done to the Hawaiian Kingdom had nothing
11 to do with ethnic native Hawaiians, per se, because
12 that bridge had already been crossed.

13 Indeed, the Hawaiian Kingdom probably responds
14 to pressures from some of the Americans and others who
15 had become citizens, had also changed the land rights,
16 in many respects.

17 So -- but I think it's also possible to
18 recognize that a lot of those actions taken were an
19 attempt to accommodate the foreign settlers, and
20 shouldn't be held against the Hawaiian people.

21 If a few years before 1893, the Hawaiian
22 government made changes, recognizing certain rights of
23 people who had been foreigners to live in Hawaii, and
24 even let them participate in the government, to say
25 that the overthrow of the Hawaiian kingdom had nothing

1 to do with the deprivation of the right of the
2 Hawaiian people, ethnically is -- it seems to me --
3 ignores 99 percent of the reality.

4 MR. VAN NORMAN: I'm sorry, that was
5 me. Could I give you a different perspective?

6 CHAIRMAN MAXWELL: Sure.

7 MR. VAN NORMAN: You know, I don't
8 think it makes so much difference that the Kingdom of
9 Hawaii may have admitted some people who were not
10 racially native Hawaiian. Some Indian tribes have
11 done that.

12 I think one of the reasons why there isn't
13 recognition today of a native Hawaiian government is
14 that while, you know, some Indian tribes, as you
15 mentioned, say that -- the Iroquois six nations, they
16 had international recognition, also. But the United
17 States changed its policy over time, where it
18 exercised sovereign authority.

19 And what they did with Indian tribes was they
20 demarcated reserves, where they said, okay, this is
21 going to be an Indian area, Indian country. And
22 that's where the tribe has jurisdiction.

23 Well, in terms of what happened here, there
24 was the overthrow, which is recognized as wrongful in
25 the Apology, but that's not an official US government

1 action there. They didn't, so there wasn't sort of
2 consideration of the same type given to Native
3 Hawaiian people at that time. And with the
4 annexation, there wasn't consideration.

5 It's not until the 20's, with the Hawaiian
6 Home Lands, that you have sort of a remedial problem,
7 but at that time, they are sort of -- the recognition
8 of tribal governments is at a low point in American
9 policy, and it doesn't get better until the 1930's.

10 So it's sort of maybe a historical
11 circumstance of when the programs were put in place
12 for Native Hawaiians, more than anything.

13 CHAIRMAN MAXWELL: You know what is
14 puzzling, I ask you to address this question.

15 Even though the action occurred in 1893, the
16 overthrow, but Hawaiians associate to the land unlike
17 any other ethnic group that came here, you know, from
18 1820 on, from the missionaries, or 1778.

19 They associate to the land spiritually and
20 culturally, and can trace back those associations
21 thousands of years, to the creation chant. And these
22 lands are the same lands we're on today -- the
23 valleys, and the mountains, and the oceans are the
24 same lands that we, as native people, associate.

25 So wouldn't you think that accounts for some

1 difference in association to the land, even now to us,
2 as native people, and we would have more precedence
3 than anyone else?

4 MR. VAN NORMAN: You mean, in terms
5 of -- in terms of having Congress treat Native
6 Hawaiians as a community?

7 CHAIRMAN MAXWELL: Yes.

8 MR. VAN NORMAN: You know, I told
9 you, from our office, we haven't got agreement
10 throughout the whole Department of Justice. But we
11 believe there is authority for Congress to do that.

12 And the Office of Legal Counsel has told us
13 that you can view that Indian Commerce Clause as
14 really indigenous commerce, and there is room to move
15 forward. But what hasn't happened is the thing that
16 Stuart Benjamin, Professor Benjamin, is pointing out
17 is that there isn't an organized, formal indigenous
18 governmental structure that is speaking on behalf of
19 all Hawaiians.

20 Instead, you have kind of a different history,
21 because you came in the 20's with more of an
22 individualized home land situation, and it's only
23 later on where you are having some more remediation in
24 getting the Office of Hawaiian Affairs, it's more of a
25 electoral system, and it's moving towards an

1 indigenous government.

2 So it seems to make sense, you know, in view
3 of the other policies that have happened with other
4 native American peoples, to move forward with that.

5 MR. REES: Can I make one other
6 historical note that I think adds to the analysis?

7 CHAIRMAN MAXWELL: Sure.

8 MR. REES: The other reason is, until
9 the United States was willing to look back in the way
10 they did, the way Congress did in the apology
11 resolution, the reason they couldn't, that it was
12 psychically difficult, spiritually difficult, and in
13 some ways legally difficult to treat the Native
14 Hawaiians the way that -- at least as well as you
15 treat an Indian tribe -- is because that would have
16 been an admission that something was wrong with the
17 way in which they became part of the United States in
18 1898.

19 And insofar as it was viewed, the reason that
20 we wouldn't have treated -- our government wouldn't
21 have dealt with the Native Hawaiians as a sovereign,
22 or quasi-sovereign entity was that their official view
23 was there was a different quasi-sovereign entity,
24 which was the provisional government, and we already
25 made our deal with them.

1 Whereas in the Indian tribes, it was the same
2 entity that you were making a treaty with. To make a
3 formal agreement with the Native Hawaiians, as Native
4 Hawaiians, back in the days when the New Lands
5 Resolution itself wasn't that old, would have been an
6 implicit repudiation of that.

7 And the United States government probably just
8 wasn't ready for that. And that's what created the
9 history.

10 MR. MURAKAMI: I've got two
11 questions, one short one, and one is a little longer,
12 but the quick one is for Mr. Norman.

13 Whether and when this internal debate in
14 Justice is going to get resolved on this issue, can
15 you give us an answer to that?

16 MR. NORMAN: You know, I think that
17 institutionally, maybe the appropriate thing has
18 already happened at Justice, where they have said that
19 there is authority for Congress to act in this area
20 with an appropriately constituted community, and that
21 normally, the two areas where there would be
22 recognition from, would either be from Interior or
23 from Congress.

24 And normally, it wouldn't be institutionally a
25 decision that is committed to the Department of

1 Justice.

2 So it may be that the Native Hawaiian
3 community is better off addressing Interior or
4 Congress on the ultimate issue, than the Department of
5 Justice.

6 CHAIRMAN MAXWELL: Go ahead.

7 MR. MURAKAMI: A somewhat different
8 note for all the speakers, and I am not sure Mr.
9 Aranza can answer this, because he has to defer, but
10 regardless of what the path is toward reconciliation,
11 I guess my question to you would be, do any of you see
12 a role for UN oversight in this process of
13 reconciliation, and the process discussed earlier
14 concerning decolonization?

15 Anybody, first?

16 MS. KIAAINA: I guess the Senator
17 would believe that --

18 CHAIRMAN MAXWELL: Excuse me,
19 Esther, could you put the mike closer?

20 MS. KIAAINA: I'm sorry -- that while
21 that seems ideal, the fact remains that the
22 decolonization process provides for all citizens of
23 that defined territory to be able to vote.

24 And so, international remedies for
25 self-determination, addressing the unique needs of

1 Native Hawaiians appear inadequate, as well as
2 domestic remedies. And that is why they are currently
3 considering the UN Draft Declaration on Indigenous
4 Rights, because nation states have come to understand
5 that when the UN Charter was established, they were
6 fixated or concerned about territorial boundaries, not
7 realizing the impact on indigenous populations.

8 And what I think that with the UN working
9 group, and all of the work that has been done in the
10 community by a lot of the speakers today, we are at a
11 point where we can do that.

12 So I guess I am just trying to say that the
13 current process seems inadequate. However, it's nice
14 to know that there are certain individuals at the UN
15 who care about Hawaii. That is positive.

16 But as far as actually being able to tailor to
17 our needs, it is still wanting.

18 MR. MURAKAMI: You are saying,
19 because the vote --

20 MS. KIAAINA: -- Because the vote
21 for decolonization would have to be for all ethnic
22 groups within that defined territory. And that's
23 debatable.

24 Some people believe that you can limit it,
25 like in New Caledonia to the Caymans, but as I said,

1 this is an evolving process, and since the UN Draft
2 Declaration is trying to address this problem within
3 indigenous populations world-wide, that's why we need
4 more US support.

5 CHAIRMAN MAXWELL: Mr. Norman.

6 MR. NORMAN: It seems to me like you
7 have a lot of progress that you appear to be making,
8 with not only the federal government, but with the
9 state government. And I was impressed to read the
10 Department of Home Lands report.

11 You know, you get -- when you deal with
12 different governments, you get a lot of different
13 players involved. And the federal government is, you
14 know, in terms of Justice and Interior, we don't
15 naturally work with the UN.

16 So it's really kind of a distinct process.

17 We do work together to try and have a position
18 on this UN Draft Declaration, but that is really at a
19 formative stage.

20 And I think one of your native Hawaiian
21 speakers suggested that maybe there are two fronts --
22 or maybe more -- and maybe they are distinct arenas.
23 And it might be worthwhile to focus on what you can do
24 with the federal government, somewhat, you know, in
25 terms of these -- I don't want to say -- these

1 important steps that you can make now.

2 And the UN thing may be more of a long-term
3 issue.

4 CHAIRMAN MAXWELL: Okay. Any other
5 questions?

6 MR. REES: I agree with both of those
7 speakers. I think the United States has done a lot of
8 wrong things. But its still got a better track record
9 than the United Nations in doing the right thing. And
10 I don't know what we gain by bringing France and China
11 into the process.

12 CHAIRMAN MAXWELL: Okay. Any other
13 comments? If not, I am going to take a break.

14 Esther you wanted to say something?

15 Okay, before I do, I wanted to thank at this
16 time the Nalani Maddocks and her staff from Olelo,
17 because the televised version of the entire session
18 will be shown here on Oahu on -- Episode 1 will be
19 Monday, September 7th, at 10:00 p.m.

20 Episode 2 will be on Tuesday, September 8th at
21 10:00 p.m.

22 Episode 3 will be Wednesday, September 9th at
23 10:00 p.m.

24 And Episode 4 will be Thursday, September
25 10th, at 10:00 p.m.

1 And it will be shown, sent to each island, and
2 they will have in their paper the viewing times. So I
3 would like to take this time to thank Olelo. Mahalo.

4 We will have a ten-minute break, and we come
5 into the open session. Thank you all the panelists
6 for appearing today.

7 (Recess from 3:45 to 4:00 p.m.)

8 OPEN SESSION SPEAKERS:

9 ----oOo----

10 CHAIRMAN MAXWELL: I would like to
11 call the meeting back to order.

12 And we are concerned that no defamatory
13 material is presented at this meeting. In the
14 unlikely event that this situation should develop, it
15 will be necessary for me to call this to the attention
16 of the person making the statements, and request that
17 they desist in their action. Such information will be
18 stricken from the record.

19 Also, now, we would like to start testimony,
20 and I will be calling by order. So after I call the
21 first person, I will also call the second person.

22 The first person to testify -- and we have a
23 three-minute limit, and I will give you another minute
24 summarize -- the first one is Kina'u Boyd Kamalii.

25 And the next one is Mililani Trask.

1 OPEN SESSION SPEAKERS

2 SPEAKER KINA'U BOYD KAMALI

3 DR. KAMALII: Aloha, Chairman
4 Maxwell, and members of the committee.

5 Thank you for this opportunity to appear
6 before you. And I am Kina'u Boyd Kamalii.

7 And in 1981, while I was the Minority Leader
8 of the State House of Representatives, I was appointed
9 by President Ronald Reagan to chair the nine-member
10 Native Hawaiian Study Commission. This Commission was
11 charged to study the culture, needs, and concerns of
12 the Native Hawaiian people, and to submit a report of
13 our findings conclusions and recommendations to the
14 United States Congress.

15 In 1983, a two-volume report was submitted.

16 In Volume 1, the Commission was unanimously,
17 in its conclusions, regarding the economic,
18 educational, and health needs of the Hawaiian people.

19 Our findings and recommendations in these
20 areas led to the development and passage of the Native
21 Hawaiian Education Act and the Native Hawaiian Health
22 Act.

23 Volume 2 of the Study Commission Report
24 entitled, Claims of Conscience, was submitted by the
25 three Hawaii members of the Commission -- cultural

1 authority, Winona Beamer, Attorney Roger Bent, and
2 myself.

3 This volume descended from the majority
4 findings and conclusions, in several significant
5 areas, most conspicuous among these disagreements were
6 the findings regarding the American role in the
7 overthrow of the Kingdom of Hawaii in 1893, and the
8 amplification of harms related to the United States
9 annexation of the Hawaiian Islands in 1898.

10 The first recommendation set forth in Volume 2
11 was that the United States admit and apologize to the
12 Hawaiian people for its role in the overthrow and
13 subsequent annexation.

14 Public Law 103-150, the so-called Apology
15 Bill, follows and echoes virtually word-for-word the
16 findings and conclusions of Volume 2 in this area.
17 Our report may have waited ten years, but it was not
18 forgotten or ignored.

19 Most important to the work of this Committee,
20 and to your responsibility to engage the attention of
21 the Civil Rights Commission on these issues, Mr.
22 Chairman, is to make clear, explicit, and meaningful
23 for the process of reconciliation promised by this
24 apology. There are several points I would urge you to
25 stress.

1 First, that the indigenous peoples of Hawaii,
2 the Kanaka Maoli, have a special and unique political
3 relationship to the United States and other nations of
4 the world.

5 Public trust and other programs established
6 for our benefit are not based on a racial category,
7 but on appropriate responses to our political status
8 as a first people whose sovereignty and kinship to the
9 land, known as Hawaii, predates the American
10 Constitution and have its origin in time immemorial.

11 Second, the continuing dual standard of
12 Native Hawaiian definition is a civil rights
13 violation, depriving and denying equal protection to
14 Hawaiians of less than 50 percent native blood.

15 Self-definition is an innate right of people.
16 It is inseparable from the right to exist. Our
17 identity is expressed through the life of our culture,
18 our customs, and our traditions, and must be
19 recognized as vibrant, alive, and cherished.

20 These practices are now only recognized and
21 vulnerable to the political whims of this state.

22 The federal legislation, perhaps similar to
23 the American Indian Religious Freedom Act may be
24 necessary to elevate this acknowledgement and
25 protection of identity to a national level.

1 Third, the existing American political
2 practices do not and cannot address the outstanding
3 claims of the Hawaiian people for the creation of a
4 self-determined government, and the return of our
5 aina.

6 More discussion is needed, but perhaps the
7 Civil Rights Commission -- The Civil Rights
8 Commission -- could be the vehicle for forging this
9 now unknown process. Reconciliation will be
10 difficult, but time only deepens the experience and
11 the extent of the wrongs.

12 Within the Hawaiian tradition, an apology is
13 meaningless unless it is accompanied by concrete
14 actions to repair the harms. Simply saying, I'm
15 sorry, is hollow, and in a fundamental way only adds
16 to the pain when it does not also included emotional
17 and substantive repair.

18 As far as part of my submittal today, I am
19 also including a special publication called,
20 "Sovereignty and Self-Determination, Fulfilling the
21 Prophecy" prepared by the Unity Organization, Hoomalu
22 Makualoa.

23 Included in this issue is a full text of the
24 paupalai aike (phon.) nearly one thousand, over a year
25 and-a-half, of Native Hawaiians meeting over the last

1 eighteen months, have joined their hearts and their
2 minds to write this document of agreements.

3 This document speaks in one voice. I hope
4 that you will, too.

5 The Committee has played an important role in
6 focusing national attention on Native Hawaiian civil
7 rights violations in the past. And I pray, Mr.
8 Chairman and committee members, that you will do so
9 again.

10 Mahalo nui loa for allowing me to speak.

11 CHAIRMAN MAXWELL: Mahalo. Are there
12 any questions? Any questions by the committee
13 members?

14 MS. KAMALI: Mr. Chairman, I might
15 add that when I spoke to -- that the federal
16 government should be looking at the religious --
17 Native Hawaiian Religious Freedom Act -- that when I
18 speak of the Native Rights Act, that a bill should be
19 prepared which would recognize the tradition and
20 customary practices of native Hawaiians, so that they
21 there will be no ifs and buts about where the federal
22 government stands as to the rights of Native
23 Hawaiians, particularly when the state government
24 refuses this to even acknowledge our rights, and move
25 forward with it in our own state constitution.

1 CHAIRMAN MAXWELL: Thank you. And
2 now, the next speaker is Mililani Trask.

3 And the other, next in line, is Stephanie
4 Lindsey. Would you get in line, please?

5 SPEAKER MILILANI TRASK:

6 MS. TRASK: Thank you, Mr. Chair, for
7 allowing me to finish up my testimony.

8 I wanted now to make comments on some of the
9 issues that were raised that I could not address
10 earlier:

11 Number 1, Mr. Benjamin's suggestion to this
12 committee that you pursue some avenue that would have
13 Hawaiians categorized as Indian tribes.

14 Apparently, he is not aware that this avenue
15 was already tried by the Hou Hawaiians in the federal
16 court case during Ariyoshi's time.

17 The court ruled that Hawaiians are not, in
18 fact, Indian tribes. The truth is, is that we are not
19 Indian tribes. When the court looked at that case,
20 the court used the federal test for Indian tribes.
21 Example: one of the criteria, Indian tribes recognize
22 you as an Indian tribe.

23 Now, Ka Lahui Hawaii has 70 treaties with
24 Indian tribes. In every treaty we have, Indian tribes
25 recognize that we are Hawaiians. We recognize that

1 they are Indians. We are never going to write a
2 treaty where they recognize us as Indians, because we
3 aren't. And this is why the whole Hawaiian case was
4 struck down. It's pointless to try to pursue this,
5 and apparently, Benjamin did not know that this case
6 had already been raised in the federal court.

7 With regards to Senate Bill 109, Alan had made
8 a comment about where are these specific sections that
9 are important. They are quoted in my testimony, pages
10 two and three during the preambular section of Senate
11 Bill 109.

12 You don't have to read the full bill, 80
13 pages, but let me recommend to you that you do read
14 it, because Kali Watson came here and presented to you
15 Senate Bill 109 as an example of state efforts with
16 the Feds to get some process for reconciliation for
17 Hawaiian homesteaders. You need to read the bill.

18 I have worked on this for six years, trying to
19 get this bill down. And right now, myself and several
20 other non-profits have sent testimony to the Congress
21 opposing this.

22 We worked for six years to get needed federal
23 funds to impoverished Hawaiians for housing. We have
24 an Urban Institute Report that says that Hawaiians
25 have the poorest housing, and that also says that DHHL

1 lessees are at the bottom of the list.

2 Read Senate Bill 109. And read Kali's
3 statement to the Congress. He is saying that only
4 Hawaiian homestead lessees of 50 percent blood or more
5 should benefit from the bill.

6 His own lessees -- his own lessees, as a state
7 trustee, who are less than 50 percent blood, but who
8 are Hawaiian homestead, and who are impoverished, his
9 testimony is that they should not qualify for help.

10 His testimony is that it should only be
11 limited to 50 percent blood lessees. Hawaiians of
12 less than 50 percent blood on the homestead don't
13 benefit. Neither do all the Hawaiians who are in
14 places like Kalapana and Milolii.

15 So Senate Bill 109, you need to look at from
16 both sides of the perspective.

17 With regard to the Akaka legislation that is
18 being proposed now, I think we need to support it.

19 Two months ago, all the Indian tribal leaders,
20 all the NGOs at the UN were in Washington when this
21 was presented. I was also there. Even the National
22 Council of American Indians is supporting this.

23 This would be a good first step to get
24 somebody up there in the White House domestic policy
25 set up some cultural advice to the State Department.

1 And with this, and something like an interagency
2 working group, we could make some progress.

3 CHAIRMAN MAXWELL: Millie, could you
4 conclude in a minute?

5 MS. TRASK: Yeah, I wanted to wrap it
6 up by looking at your question, Mr. Forman, about the
7 Convention on Friendly Relations Between States.

8 You know, I could tell that you you probably
9 got your advice from somebody like Haydens. It's best
10 to work on international issues with those of us who
11 are practicing international law. The Convention on
12 Friendly Relations Between States does not bar the
13 activities of the Special Committee for
14 Decolonization.

15 The Convention on Friendly Relations Among
16 States is not applicable to those who are listed, or
17 to those who have been relisted, because the
18 territorial lands of peoples on non-self-governing
19 territories are not considered to be within the
20 boundary of states. States are only administrating
21 agencies for our lands.

22 And this was the US argument, now. They
23 raised this convention to try to prevent Puerto Rico
24 from being relisted, and they lost it. Puerto Rico
25 was put back on the list.

1 And let me also just comment on one thing that
2 Esther had said. If we go to the international arena
3 for UN-supervised plebiscite, everybody has to vote.
4 That may or may not be the case. It certainly wasn't
5 the case in New Caledonia, where there were many
6 indigenous peoples, and so the vote was limited to the
7 indigenous peoples.

8 In the case of Puerto Rico, everyone did vote,
9 because there wasn't any indigenous peoples left.

10 So whether or not a UN-supervised vote results
11 in everyone in the territory voting, or if it's just
12 Hawaiians is a question, I think, that's up for grabs.

13 But I don't think that we should use the US
14 argument on the Convention on Friendly Nations Between
15 States, because it just do not impact the
16 international laws related to relisting for the
17 Special Committee of 24. They exist in a parallel
18 way, but one does not bar the other, although the US
19 has tried to assert that they lost it, in the case of
20 Puerto Rico, and Puerto Rico was relisted over their
21 objection. Thank you.

22 CHAIRMAN MAXWELL: Thank you,
23 Millie.

24 The next speaker is Stephanie Lindsey, and after
25 that is Richard Schrantz.

1 And please state your name, and who you
2 represent -- if you represent you, or yourself.

3 SPEAKER STEPHANIE LINDSEY:

4 MS. LINDSEY: Aloha. Thank you so
5 much.

6 It's always very interesting to come to these
7 public meetings. And I thank you for the invitation
8 to be here, and the ability to speak.

9 My name is Stephanie Bengene Lindsey, Quiet
10 Title 095007-457. The reason I recognized myself with
11 that identity is that just like when Akebono did not
12 want to be a US citizen, what did he do? He
13 expatriated. And now he's a Japanese citizen, a
14 Japanese national.

15 And thus, in my studies, I realize that there
16 is no hope, there is no justice. There is no remedy
17 and recourse for our people of Hawaii. There is none
18 under the federal government.

19 If I was to give a grade to the federal
20 government, as to how they run the country, if it was
21 a company, they would fire everybody.

22 I hear the representatives from the federal
23 government here, and they -- number one, they never
24 read some of the reports. And yet, they would come
25 and give their manao. And they don't talk to each

1 other. And I cannot see how the Hawaiian people feel
2 there is any remedy and recourse in regards to the
3 federal government.

4 So I am here on behalf of the OHA Interim
5 Provisional Government to make these statements.

6 That I believe and we believe that the only
7 alternative we have is to have our own courts, our own
8 tribunals, to try these different issues that we would
9 like to try in the federal courts, but cannot try it
10 there, try it first in our own courts.

11 So process upon the federal -- the people in
12 these different departments, in the personal capacity,
13 to come into our courts. When they do not show up,
14 just like in the federal and state courts, then you
15 issue a default. Once you get a default, then you go
16 into the federal courts.

17 I am always honored when I can follow
18 Mililani, and I told her many times -- many times --
19 if she would just expatriate and not be a US Hawaiian,
20 I would follow her direction.

21 I believe that the only direction for our
22 people -- any justice -- will be as a separate entity
23 in comity with the United States, in comity with the
24 state -- not taking anything away from them -- but
25 coming on your knees all the time, and begging, and

1 frustration -- it is not working.

2 When are our people going to realize it's not
3 working?

4 Another issue I would like to bring up is that
5 of blood. This Hawaiian issue is not of blood. It
6 never was -- in the kingdom, before the overthrow --
7 and it is not today. It is status and jurisdiction.

8 When they talk about Hawaiians, why is it
9 every state in the United States, when you are born in
10 California, they ask, who are you?

11 They say, well, I am an American first. Why?
12 Because they were born on a continent named America.
13 And then, they say, I am a Californian.

14 CHAIRMAN MAXWELL: Okay, can you
15 summarize in 30 seconds?

16 MS. LINDSEY: Yes. Why is it that
17 every state can claim a citizen that is born in that
18 state, but for Hawaii? You are born in Hawaii.
19 Doesn't it make common sense that you are Hawaiian,
20 where you have the koko or not?

21 This is the injustice that I see within the
22 state and the federal government. And I would like to
23 implore our people to stop begging to the federal and
24 the state, and just force the Office of Hawaiian
25 Affairs to do what they were supposed to be doing all

1 this time. That was the vehicle -- the beginning
2 vehicle -- a sovereign bus. But who are the drivers?
3 US federal Hawaiians.

4 So thank you very much for the time. I wish I
5 had more time. And I would he like to know the
6 criteria when they have panels, who selects the
7 panels, who selects the speakers?

8 If you would give it to me, then I would
9 really try to fit within the criteria to be a panel
10 member, so I have more time.

11 CHAIRMAN MAXWELL: Thank you. We'll
12 consider it. And we've been in the process of picking
13 the panelists for the last several months. So -- and
14 if you were here this morning, if you read my opening
15 testimony, I had said that although everyone we could
16 not accommodate because of constraints in the federal
17 budgets, we couldn't accommodate everybody.

18 Is there any questions from the panel?

19 Okay, if not, thank you, ma'am.

20 THE WITNESS: Thank you very much.

21 CHAIRMAN MAXWELL: The next speaker
22 is Richard Schrantz, and if I am mispronouncing your
23 name, please state it when you get to the mike, and
24 who you represent.

25 The next speaker is Richard Thompson.

1 SPEAKER RICHARD SCHRANTZ:

2 MR. SCHRANTZ: Good afternoon,
3 honorable members of the Hawaii Advisory Committee,
4 and ladies and gentlemen of the audience.

5 I am Richard Schrantz. I am speaking on my
6 own, on behalf of the Hawaiian people.

7 Thank you for this opportunity to express my
8 thoughts on the issue of reconciliation between the
9 Hawaiian people and the United States government, as
10 called for in US Public Law 103-150.

11 I am speaking to you today as a Hawaiian at
12 heart, who calls these islands home, and as an
13 American citizen of mixed ethnic background, which
14 includes native American heritage.

15 Having extensively reviewed and studied the
16 facts surrounding the illegal overthrow of the lawful
17 de jure government of the Hawaiian islands in 1893,
18 and the subsequent suppression of the Hawaiian
19 people's inherent right to sovereignty and
20 self-determination under the Law of Nations, facts of
21 which are duly affirmed and acknowledged by the United
22 States government in the Apology Bill, I feel
23 compelled to express to you three of my thoughts in
24 this regard.

25 First, as a Hawaiian at heart, I long for the

1 full reinstatement of the lawful government of our
2 sovereign Hawaiian nation, through which we can best
3 achieve true self-determination, preservation of our
4 unique culture, and provide our own path for
5 socio-economic development.

6 Second, as an American citizen, I am morally
7 outraged that my home government continues to violate
8 its own constitution, by suppressing the Hawaiians
9 people's inherent right to sovereignty and
10 self-determination under the Law of Nations.

11 And third, as a native American, my spirit
12 calls out for restitution on behalf of my Hawaiian
13 brothers and sisters.

14 In my mind, reconciliation between the
15 Hawaiian people and the US government must include
16 three essential components.

17 One, full reinstatement of the lawful de jure
18 government of the sovereign Hawaiian nation, under the
19 Law of Nations, a government that has been impaired
20 and absentee since the illegal overthrow of the
21 Hawaiian Monarchy in 1893.

22 Second, return of all lands belonging to that
23 lawful government, but which were unlawfully ceded to
24 the United States by the self-declared Republic of
25 Hawaii.

1 And third, reparations from the United States
2 government to the Hawaiian people, for its support of
3 the illegal overthrow of their lawful government, and
4 its subsequent suppression of the Hawaiian people's
5 perfect and inherent right to sovereignty and
6 self-determination under the Law of Nations -- a
7 suppression that has been existed since 1893, and
8 continues to the present day.

9 Any reconciliation program that does not
10 include these three essential elements --

11 CHAIRMAN MAXWELL: -- Could you
12 conclude in 30 seconds?

13 MR. THOMPSON: Yes.

14 Any reconciliation program that does not
15 include these three essential elements would be
16 tantamount to continued suppression of a people's
17 perfect inherent right to sovereignty and
18 self-determination. Any such reconciliation program
19 would not only disgrace the legacy and true intent of
20 the founding fathers of the American Republic, but
21 also would violate the US Constitution, which is
22 subject to and bound by the Law of Nations.

23 I would like to conclude by saying that while
24 I do not believe that the matter of a sovereign
25 people's inherent perfect rights under the Law of

1 Nations falls under the purview of the United States
2 Commission on Civil Rights, I do welcome, applaud, and
3 commend the Commission's interest in the matter of
4 reconciliation.

5 I look forward to the Hawaii Advisory
6 Committee's recommendation of a reconciliation program
7 that, at a minimum, fully reinstates the lawful de
8 jure government of the sovereign Hawaiian nation,
9 returns to that lawful government all ceded lands
10 currently held in public trust --

11 CHAIRMAN MAXWELL: -- Mr. Schrantz,
12 your time is up.

13 MR. SCHRANTZ: -- and provides for
14 reparations --

15 CHAIRMAN MAXWELL: Mr. Schrantz,
16 your time is up. Thank you.

17 Next speaker, Richard Thompson. And the
18 speaker after that, is Charles Rose.

19 SPEAKER RICHARD THOMPSON:

20 MR. THOMPSON: Good afternoon.

21 I would caution Hawaiians to compare
22 themselves with American Indians in the Declaration of
23 Independence.

24 They are known as barbarians who violate all
25 the known laws of warfare, and kill people of all ages

1 and genders, and also later laws -- and Supreme Court
2 decisions like Randell versus Confederated Tribes, of
3 1989, make it very clear that they have a dependent
4 status, and are not free.

5 I tended the Apology Resolution as it made its
6 way through the state legislature. It was repeatedly
7 emphasized that no change of law was involved, and
8 most of all, no money.

9 The Hawaiian Homes Act also had no money. It
10 was a limited lease program. No commitment was made
11 to a significant proportion of Native Hawaiians, or to
12 any Native Hawaiian to a homestead lease. It was a
13 lease program, which created no title in the Native
14 Hawaiians to the lands.

15 It said, quite specifically, that not more
16 than 5 percent of the land was to be leased to Native
17 Hawaiians in any three-year period. It is being
18 misrepresented.

19 I read the 1950 Constitutional Convention
20 Proceedings. While the delegates recognized the
21 asymmetry of bringing the Hawaiian Homes Act into the
22 State Constitution, the figure discussed as being a
23 reasonable figure for funding -- what has become Kali
24 Watson's bailiwick -- was \$100,000.

25 And when one of the delegates mentioned what

1 he thought was an unreasonable figure, a fabulous sum,
2 it was \$200,000. And they discussed that, in terms of
3 an abrogation of the compact between the state and the
4 federal government in the Admissions Act.

5 The 1968 Con-Con Five Purposes are too vague.
6 In any event, the other four purposes have received no
7 funding at all.

8 Ground rent on an elementary school in
9 Nanakuli has been paid in advance to the Hawaiian
10 Homes Commission by the DOE to the year 2002, at five
11 hundred thousand dollars a year. In no way should one
12 race receive advancement at the cost of public
13 education.

14 OHA has between \$300 and \$400 million in New
15 York Stock Exchange accounts at a time of
16 unprecedented economic malaise.

17 The so-called reparations that are being
18 discussed, have amounted to scores of hundreds of
19 millions of dollars. Kali Watson spoke of \$2 billion
20 in infrastructure and housing expenditures today.

21 The Bishop Estate Trustees' salaries are
22 written into the laws. They are selected by the State
23 Supreme Court. Their assets exceed \$10 million. I
24 believe that they own every shopping mall in Hawaii,
25 with the exception with the one that is for sale.

1 CHAIRMAN MAXWELL: Could you conclude
2 in 30 seconds?

3 MR. THOMPSON: They voted unanimously
4 to endorse Governor John Waihee's symbolic action of
5 lowering Old Glory.

6 THE AUDIENCE: They should burn it.

7 MR. THOMPSON: The International
8 Convention on the Elimination of Racial Discrimination
9 including reverse discrimination states that once a
10 program has succeeded, it must be ended.

11 Sandra Day O'Connor said racial
12 classifications of all kinds pose a threat to our
13 society. It reinforces the belief held by too many
14 people, for too much of our history, that people
15 should be judged by the color of their skin.

16 CHAIRMAN MAXWELL: Thank you. Are
17 there any questions?

18 Having none, the next speaker is Charles Rose.

19 And following Charles Rose is Lili Kala
20 Kame'eleihiwa.

21 SPEAKER CHARLES ROSE:

22 MR. ROSE: Aloha. My name is Charles
23 Rose. I am the president of HA Hawaii. I have been
24 involved, along with many others, in the uplift of the
25 Hawaiian people for many years. In fact, this year, I

1 will be completing my 27th year.

2 During that 27 years, no Hawaiian individual
3 or any Hawaiian group can claim, nor do they claim,
4 that they speak for all of the Hawaiian people.

5 Today, none of the people appearing before
6 you, no matter how persuasive, no matter how eloquent,
7 no matter how sincere, can claim that they speak for
8 all of the Hawaiian people.

9 To do so would be dishonest.

10 Today, as you examine the ramifications of the
11 Apology Bill, and as you hear the various proposed
12 solutions, one thing will become clear to you early
13 on. There is a need for the Hawaiian people to speak
14 with one voice. There is a need to design an entity
15 that will speak for the majority of the Hawaiian
16 people.

17 As you hear the testimony, you will come to
18 realize that a Native Hawaiian convention attended by
19 Native Hawaiian delegates elected by the communities
20 they represent is a compelling one. A convention,
21 where all aspects of self-determination and
22 sovereignty can be examined, a convention that would
23 propose a self-determination document for all of the
24 Hawaiian people to examine and to ratify.

25 HA Hawaii proposes such a convention.

1 In fact, our mission is to see that a Native
2 Hawaiian convention becomes a reality. We believe in
3 the people, and that the people should choose. We
4 want to provide the opportunity for all people of
5 Hawaiian ancestry, throughout the world, to
6 participate in this process -- a process that is fair
7 to everyone.

8 We are not a state agency. We are not a
9 sovereignty group. We are sort of like a elections
10 office.

11 Mr. Chairman, I have prepared a packet of our
12 activities, and request that it be made part of the
13 record of this hearing.

14 And before closing, I think it is not
15 necessary for me to remind all of you that when you
16 examine the history of Hawaii, no matter who was in
17 charge, Hawaiians have not fared well.

18 So I would ask that your committee, in its
19 recommendations to the Civil Rights Commission, be
20 very careful in your language, and provide some
21 provisions that say that the Hawaiian people should be
22 making the decisions -- not the United States
23 government, or the state of Hawaii.

24 Mahalo.

25 CHAIRMAN MAXWELL: Thank you, Mr.

1 Rose. Are there any questions of Mr. Rose?

2 Alan.

3 MR. MURAKAMI: Charlie, you know,
4 there has been some suggestion about the need for UN
5 supervision. Is there any view that the HA Hawaii
6 takes about whether the UN should be involved in this
7 process that you are talking about?

8 MR. ROSE: Yes. Our process that we
9 are designing is an inclusive process. We want to
10 welcome everybody -- Hawaiian people -- to
11 participate.

12 I have -- the board of directors of HA Hawaii
13 have not discussed this, but I do not think anyone in
14 the board of directors would oppose any kind of
15 oversight.

16 However, the United Nations, or the
17 international community -- I just pose one question.
18 Where were they for the past hundred years? And now,
19 they suddenly want to, you know, oversight what we
20 want to do?

21 I think this is a Hawaiian effort. I think
22 the Hawaiians should decide. And I think the
23 Hawaiians are capable to decide. And to hint that
24 would he need some United Nations oversight, I think,
25 is offensive to the Hawaiian people.

1 I think it's the Hawaiians' decision. Mahalo.

2 CHAIRMAN MAXWELL: Any other
3 questions for Mr. Rose? Thank you, Charlie.

4 And now, Dr. Lili Kala Kame'eleihiwa.

5 To follow her, will be Richard Morse.

6 SPEAKER LILI KALA KAME'ELEIHIWA:

7 DR. KAME'ELEIHIWA: Aloha ka kou.

8 I am Lili Kala Kame'eleihiwa, and I thank you
9 folks for listening to all of the testimony today.

10 Considering that we have learned today that
11 the various government agencies don't pay any
12 attention to the reports that you put out, it must be
13 very disheartening to sit and listen to all of this.

14 In any event, I am a historian, and I would
15 like to address the historical issues that were
16 brought up today, which were incorrect, in my view,
17 and also, I have recommendations for the
18 reconciliation process.

19 As you know, we are the native people of
20 Hawaii. We are the descendants of papan and maukea,
21 earth, mother, and sky.

22 We have great antiquity of residence in these
23 islands -- at least 2,000 years, a hundred
24 generations. And we are not very impressed with
25 people who have been here for only three or four

1 generations, or even seven, to say that they should
2 tell us what to do.

3 And I know that that is not a very popular
4 idea, and I understand that this may offend someone,
5 but I will explain why we feel that way, why many
6 Hawaiians feel that way, especially since when we are
7 looking at this whole situation, we would like to have
8 our country back.

9 So everything that we do, in trying to reach
10 out to others and perform reconciliation, and to look
11 at how we can work this out, is a great effort on our
12 part. Because we won't get our country back tomorrow.
13 Probably not in my lifetime.

14 In any event, in our great antiquity of
15 residence here, we developed a concept of malama aina,
16 to live in harmony with the land.

17 Hawaiians did not own land. It's been
18 suggested here that the king owned land, under a
19 feudal system. The person who said that ought to read
20 my book -- The Native Land and Foreign Desires.

21 It's been out since 1991. It's a long time
22 already. So he should know that there is great proof
23 that there was no feudalism in Hawaii, that all
24 Hawaiians had communal rights to land, and that those
25 communal rights to land were only abrogated in 1898

1 when America took us over.

2 We have a great concept of sovereignty, an
3 ancient concept of sovereignty. We cherish that
4 sovereignty. We developed our own forms of
5 government. We changed those forms of government over
6 time, as we saw fit.

7 To suggest that members of the Liberal Party
8 in the 1880's wanted to overthrow the queen when they
9 talked about Republicanism is really ridiculous.

10 They did not want to become part of America.
11 They wanted to adjust the political system in Hawaii,
12 as they had been adjusting for two thousand years.

13 So we never asked for annexation to America.
14 Please look at all of the signatures on the
15 petition -- anti-annexation petitions.

16 As we say, hoopui aina, halaka mai aina.

17 The three events that had a devastating effect
18 upon Hawaiians happened in 1893, American military
19 invasion of our country, and abrogation of our
20 political rights, and the sovereignty that we hold
21 most dear.

22 The 1896 banning the Hawaiian language, the
23 beating of our parents and grandparents who were
24 speaking Hawaiian, bringing our language to the brink
25 of extinction. And as language is foundation of

1 people's identity, it had a terrible effect on
2 Hawaiian identity, from which we now, one hundred
3 years later, are just starting to recover from.

4 In 1898, the illegal annexation of Hawaii to
5 America where Hawaiians were not allowed vote on the
6 subject has also had a devastating effect upon us.

7 It was said earlier that lands -- the crown
8 lands, and the public lands that were ceded to America
9 at this time, really did not amount to a taking, or a
10 theft of land from the Hawaiian people.

11 And this is incorrect.

12 Because the 1898 illegal annexation abrogated
13 customary rights of native tenants to live freely upon
14 the land. It was customary for Hawaiians to live upon
15 the crown lands. It was customary for Hawaiians to
16 live rent-free -- rent-free.

17 This ended, when America took over our
18 country. And even after America took over our
19 country, Queen Liliuokalani allowed Hawaiians to live
20 upon her own personal land, rent-free, because that
21 was the customary right of our people. That is a
22 native, customary right -- a native right, a native
23 tenant right that did not apply to the other people
24 who lived in our country.

25 Is that stop sign right now?

1 CHAIRMAN MAXWELL: Take a minute to
2 conclude.

3 DR. KAME'ELEIHIWA: Okay. So, I am
4 not clear that those non-natives who lived in our
5 country suffered the way that we suffered.

6 Their Hawaiian children died of starvation in
7 the 1920's and the 1930's. I did not see the
8 non-native children dying of starvation. They were
9 sentenced to child labor during those times.
10 I did not see non-natives going to child labor. We
11 suffer greatly from this. We still suffer greatly
12 from it. We have Hawaiians dying today who are dying
13 of starvation, who are working themselves to death.

14 And what can we do about this problem, by a
15 process of reconciliation?

16 First of all, eliminate wardship, and let us
17 proceed to court. Please put that in your report.
18 Mililani said, and I would like to echo it. I am sure
19 others will, as well.

20 Give Hawaiians control over 2 million acres of
21 our trust lands, as defined by American law. The last
22 40 years non-natives controlled these lands. Let us
23 administer them for the next 40 years, and see who
24 does a better job.

25 Support the UN process for decolonization,

1 which would include the withdrawal of the American
2 military some time during that process.

3 Support reinscription of the official list of
4 decolonization nations.

5 Support the removal of nuclear weapons,
6 nuclear submarines, and nuclear waste from Hawaii.

7 Five, support our call for decommissioning of
8 all American bases in Hawaii used for rest and
9 recreation. I am not talking about security, but rest
10 and recreation. After all, should the military have a
11 hotel?

12 That includes over 13 hundred acres of land
13 at Bellows Air Force Base. That also includes for the
14 sacred lands, such as the 500 acres at the Mokapi
15 Marine Corps Air Station.

16 And finally, since education is crucial for
17 our people, and since most of the University of Hawaii
18 campus is set on ceded lands, please recommend that
19 there should be free tuition for all Hawaiians.

20 CHAIRMAN MAXWELL: Let me tell you
21 that you have 30 days. Please submit, if you have any
22 further information. And you know, all of you that I
23 cut out when I have to because of time constraints,
24 you have 30 days to submit it, and at the end, I will
25 give you the address, and our staff will also furnish

1 that to you.

2 Any questions for Lili Kala?

3 MR. MURAKAMI: Yes. You know, I can
4 understand the desire to have the military out, but
5 realistically, if it's going to take like say, ten,
6 twenty years, thirty years, whatever, to get them out,
7 are you willing to wait for that to happen before all
8 of the processes of reconciliation go forward?

9 DR. KAME'ELEIHIWA: Well, one of the
10 wonderful things about the United Nations process of
11 decolonization, is they come, and they will do their
12 workshops about what kinds of forms of government we
13 ought to have.

14 And when the vote gets taken, when they run
15 the plebiscite, the occupying army from the government
16 that has colonized us has to withdraw. That's their
17 law. So America would have to comply. And I don't
18 think that is going to take twenty years.

19 If we can get the UN in here today, we could
20 get it done in five years.

21 MR. MURAKAMI: How soon are you
22 envisioning this UN process to actually take place?

23 DR. KAME'ELEIHIWA: I'm sorry?

24 MR. MURAKAMI: How soon are soon
25 are you envisioning this UN process to take place?

1 DR. KAME'ELEIHIWA: Well, considering
2 how long the UN takes to do things, I am looking at
3 what the situation has been in New Caledonia. I think
4 five years is a quick amount of time.

5 CHAIRMAN MAXWELL: Any more
6 questions? Yes, go ahead. Speak close to the mike.

7 MR. FORMAN: I was wondering if you
8 could comment a little bit more on some of the
9 previous speakers. You mentioned New Caledonia had
10 talked about limiting the votes under that UN process.
11 I wonder if you could share a little bit more about
12 that, if you know.

13 DR. KAME'ELEIHIWA: You mean,
14 limiting the votes to native people?

15 MR. FORMAN: Right.

16 DR. KAME'ELEIHIWA: Other speakers
17 have talked about this as well.

18 When we look at the process of decolonization,
19 we need to address the needs of the people who have
20 been damaged by colonization.

21 Obviously, in this situation, it's the native
22 people. For the non-natives -- it's very interesting
23 to me that non-natives now are claiming they have
24 rights under the Kingdom of Hawaii.

25 I wonder if they would also take the sanctions

1 that the queen suggested for those who were traitors
2 against our country. She wanted them deported.

3 Do the descendants want to be deported? You
4 know, if they want to call back to the rights they had
5 under the nation.

6 We made a mistake in Hawaii in 1850 by
7 allowing non-natives to become citizens. The Tongans
8 learned from us. They don't allow non-Tongans to
9 become citizens of Tonga. They don't allow
10 non-Tongans to own land. They have their country.

11 So in Kanaka Maoli, we rectified this mistake.
12 What we said was, all right, non-natives can be
13 honorary citizens. They can live in our land, they
14 have right to our land, they live under our laws, they
15 don't have the right to rule us politically.

16 Because it was the non-natives who took away
17 our sovereignty -- those who are citizens of our
18 country. And they benefitted from it in the
19 long-term, okay? Even if a couple were deported, the
20 vast majority, 3,000 that were here, they benefitted
21 from that.

22 So when we look at the process, the UN
23 process, going back to your question about
24 decolonization, then the UN has to say, okay, who has
25 suffered, and who has benefitted in the process?

1 In Kanakee, or New Caledonia, it's the Kanak
2 people who have suffered. The French people have
3 gained. All those who came from the other colonies,
4 from Vietnam and Algeria, and wherever, the French
5 colones (phon.) -- they have gained, those settlers
6 gained.

7 So the argument is made, they should not be
8 the ones to decide. It should be the native people of
9 that land who suffered most. Similar arguments could
10 be made for the Hawaiian people. And that's why I
11 always point out, the hundred generations. We have
12 been here for a hundred generations. Surely we should
13 be the ones to say what we do with our land.

14 And in all of our processes in Ka Lahui
15 Hawaii, we have said, we don't want to take people's
16 private lands. We are only looking at the trust
17 lands, as defined by American law. How more
18 reasonable can we be? How more reasonable can we be?

19 And who should decide what to do with those
20 trust lands, if not the Hawaiian people?

21 CHAIRMAN MAXWELL: Alan, do you have a
22 question?

23 MR. MURAKAMI: No, I have none. I am
24 just trying to figure out the process.

25 CHAIRMAN MAXWELL: Speak closer to

1 the mike.

2 MR. MURAKAMI: If in fact, the UN
3 process is invoked, what do you envision will happen,
4 step by step, until that decision is made? There is
5 going to be some kind of vote, right?

6 DR. KAME'ELEIHIWA: Well, the UN
7 process of decolonization does involve a vote. The
8 process from today until that vote is a long one, I'm
9 willing to admit, because America is very powerful in
10 the United Nations.

11 The report has come out. It has to go through
12 many committees. We will be there lobbying for this
13 report to be heard, and for us to be put back on the
14 list of decolonized nations.

15 Some people said that America would never
16 allow for Hawaii to be put back on the list. That was
17 also said about France. It would not allow New
18 Caledonia to be put back on the list.

19 And I think when you are involved in these
20 kind of politics, you have to believe in miracles.
21 It's a miracle that we get a UN report in our favor,
22 considering the injustices of the world.

23 So, I am not one to say that it won't happen.
24 I am not one to say that the US is too powerful in the
25 United Nations. I want to say, let's go forward and

1 be positive here, and ask for justice, because we are
2 morally correct. We have not hurt anyone in this
3 process.

4 So given the whole thing was good, it goes to
5 the committees, and they say, hmm, it should be put
6 back on the list. Then it goes to the committee that
7 looks on decolonizing, this committee that oversees
8 the decolonization. And negotiations begin between
9 that committee and the United States. And that's
10 where it's going to get sticky, and we know that.

11 And that's where you folks come in. If we can
12 convince you that this is a good process, that this is
13 a peaceful process, that this is a fair process, and
14 you make a report that argues that this is something
15 you would like to support in the future, that's one
16 more piece of evidence that helps us in this sort of a
17 chess game.

18 And I hope that they read your report this
19 time, not like they said earlier that they haven't
20 read the report. I was shocked. At least they could
21 lie to us.

22 CHAIRMAN MAXWELL: Any more questions?
23 Faye.

24 MS. KENNEDY: Some people have
25 expressed the opinion that the blood quantum

1 differences have caused a divisiveness in the
2 community, whether it should be 50 percent or less.

3 Your comment about the one hundred generations
4 of people should, you know, basically make the
5 decision. Do you think that that is divisive, or do
6 you care if it is, or if it is not?

7 DR. KAME'ELEIHIWA: Divisive of whom?

8 MS. KENNEDY: Divisive of the other
9 Native Hawaiians who may not have had the hundred
10 generations, and maybe, you know, not have the long
11 roots of the people that you feel have the longer
12 generational ties.

13 DR. KAME'ELEIHIWA: Okay. The way we
14 define Hawaiians, or Hawaiians define Hawaiians, the
15 Native Hawaiians, we don't use the 50 percent blood
16 quantum which the federal government uses.

17 We say, Hawaiians of any blood. So Hawaiians
18 of any blood have a hundred generations here.

19 For those who are not, we would like to ask
20 them to please understand where we are coming from.
21 We are not trying to deport them. We are not trying
22 to hurt them. We are not burning anybody's house
23 down. We are not killing anybody in the middle of the
24 night. We want some land to live upon, and where we
25 can raise our children. That's what we want.

1 And if that is divisive, I'm sorry, but my
2 mother watched three of her brothers die of
3 starvation. Why wasn't that divisive? Why wasn't
4 that? When all the hurt happens to us, why is that
5 not divisive?

6 MS. KENNEDY: I asked the question
7 whether you thought it was. I don't know if it is or
8 not.

9 DR. KAME'ELEIHIWA: For Hawaiians,
10 this is not a divisive issue. For us, what we see is
11 we would like to see the 50's, as we call them, get
12 the 200,000 acres, and the less than 50's get the 1.8
13 million acres of ceded lands.

14 CHAIRMAN MAXWELL: I will allow one
15 more question, Alan, and that's the last.

16 MR. MURAKAMI: I am not sure if we
17 got to the right question or not, but at some point, I
18 assume from what you are saying about
19 self-determination, the Hawaiian people will decide
20 whether to go forward with the process of
21 decolonization and UN reinscription, et cetera.

22 So how do you envision how do we get from
23 there point today to the point where there has been a
24 decision made by the Hawaiian people to proceed with
25 that process? What do you envision will happen to get

1 to that point?

2 DR. KAME'ELEIHIWA: I think we are at
3 that point already. I think the Hawaiians have gone
4 to the United Nations and called for this. I think
5 the United Nations has said, yes, we will look at
6 this.

7 In every decolonization situation, what
8 happens is you have -- the native people have
9 different experiences, and different levels of
10 understanding because of the process of colonization,
11 and what happens in colonization.

12 And that's why the United Nations comes in to
13 do workshops, to educate the entire population, not
14 only the natives, but everyone, about what the
15 different kinds of avenues would be for governments.

16 What's the relationship of the colonizing
17 country? Do you want to remain a state? People may
18 all agree that they like being a state, you know,
19 just because I happen to disagree.

20 Or they may want to look at some kind of form
21 of independence, like Timor. Or they may say, nation
22 within a nation, which has been Ka Lahui Hawaii's
23 proposal.

24 Or they may decide on commonwealth, or they
25 decide on lots of different things. That takes

1 time -- that process of education. I would like to
2 see the UN do that tomorrow. I would like to see them
3 come in right away. So that when people say, yeah,
4 we've looked at all of these different kinds of
5 things, and think we know what we want to do.

6 Now let's call for a plebiscite. Let's talk
7 about a question -- calling for the question about
8 what form of government we should have.

9 CHAIRMAN MAXWELL: Thank you, Lili
10 Kala, and now, the next speaker will be Richard
11 Morse.

12 On deck will be Lela Hubbard.

13 Mr. Morse.

14 SPEAKER RICHARD MORSE:

15 MR. MORSE: Thank you, Mr. Chairman.
16 And mahalo for giving me this opportunity.

17 I apologize for not having been able to be
18 here this morning. I had a prior commitment through
19 lunch, and I only learned of the meeting yesterday in
20 the paper. So my remarks will be brief and not
21 formal.

22 My designation is Senior Fellow Emeritus at
23 the East West Center. I have been here for 24 years.
24 And I draw on the word "senior" to give one reason why
25 I feel qualified to speak.

1 My involvement and study of the processes of
2 self-determination, decolonization, and the
3 achievement of sovereignty, started in the year 1944,
4 when I was with the US military army in India, Burma,
5 and in China, and continued in 1946 to 1950 as a
6 scholar in India, understanding in part, the
7 remarkable process with which India gained
8 independence, but the unfortunate process which led to
9 partition, because of the diversity that could not be
10 overcome.

11 And my wife is from India. I have lived in
12 Burma, and subsequently in many capacities in India,
13 before coming to the East-West Center.

14 I speak to the question of sovereignty, then,
15 with some feelings, and really, from the standpoint
16 primarily here of a United States citizen, which was
17 referred to by one of our previous speakers.

18 And although this document has probably
19 already been called to the committee's attention, the
20 Apology Law and Kanaka Maoli Self-Determination by
21 Ramon Lopez Reyes -- I would urge that it be part of
22 your consideration. And I read two parts of it to
23 your attention.

24 He refers to immoral, illegal US role, and the
25 contradictions that that has created, and says

1 clearly, "Citizens who love the United States of
2 America may desire to address and correct the
3 contradictions that exist in Hawaii."

4 I think there are many of us citizens who are
5 not native Hawaiians, by any stretch of the
6 imagination, who share that feeling that it is our
7 responsibility to help make that correction.

8 Ramon also continues, "Under international
9 law, an apology implies admission of guilt, and
10 requires some form of restitution."

11 And he names two principles related to
12 restitution -- restitution of the formal legal
13 situation. And essentially, his first recommendation
14 is that the United States proceed, under the context
15 of reconciliation, to announce the willingness to
16 reestablish the previous legal status.

17 CHAIRMAN MAXWELL: Could you conclude
18 in 30 seconds?

19 MR. MORSE: And I would like to lend
20 our support to that, as United States citizens, not
21 Native Hawaiians, we need the guidance of the Kanaka
22 Maoli, of what we can do to further the process.

23 And I would like to draw your attention to
24 role of Mahala Nehru, the leader of the Indian
25 independence movement, in educating and advising the

1 British Labor Party on how to facilitate that process.

2 We look to you to facilitate that process.

3 CHAIRMAN MAXWELL: Thank you, Mr.
4 Morse. Are there any questions for Mr. Morse?

5 Okay, Lela Hubbard.

6 And on deck would be Louis Hangca, Junior.

7 SPEAKER LELA MALINA HUBBARD:

8 MS. HUBBARD: Lela Hubbard.

9 Mahalo for this opportunity to share my
10 ideas. First of all, I suggest that the committee set
11 up an emergency fund. You can't talk about civil
12 rights, when in reality, they are being undermined
13 daily here in Hawaii.

14 For example, this year, we had Hawaiian bones
15 blown up in Keahole, Hawaii, as the Natural Energy Lab
16 Hawaii was expanding. A cease and desist order was
17 issued by the Department of Land and Natural Resources
18 and it was never given out.

19 Because we made enough noise, supposedly they
20 have stopped. But also, our land titles here are so
21 clouded that the state had a lease with NELHA, and
22 they didn't even own the land. Apparently, it
23 belonged to the Hawaiians that they were ready to kick
24 out. And how is that Hawaiian, who has no money,
25 going to maintain his land?

1 This is a reality.

2 Also, last year -- well, this year, in the
3 last legislative session, a maritime bill passed.

4 OHA is a member of that. But so are a whole
5 bunch of other people. And there will be economic
6 development of the ceded lands and the submerged
7 lands.

8 Now, how are we going to fight that, where it
9 was proposed that this land, which would generate a
10 lot of money, would be given out at a dollar a year,
11 for 30 years?

12 You know, these are the reality of the
13 undermining of Native Hawaiian rights in Hawaii.

14 So we need money. We need money for legal
15 battles, that we don't have to pay back. And we need
16 money for battles in education, and getting the truth
17 out to the people.

18 Earlier, in 1996, we had the marvelous Native
19 Hawaiian vote. In OHA's paper this month, they said
20 the Hawaiian electorate is 118,000.

21 If you take the 33,000 votes that were cast in
22 that marvelous election, you will realize that 23.2
23 percent of the eligible Hawaiian voters, voted.

24 That includes 24,000 non-resident voters, most
25 of whom voted yes, because they thought they were

1 doing something good.

2 CHAIRMAN MAXWELL: Lela, could you
3 conclude in 30 seconds?

4 MS. HUBBARD: Because the rest of us
5 didn't have the money to go out and speak the truth.

6 Now, we Hawaiians do need to get together, but
7 we do not need to be manipulated by others. We need
8 to get together, on our own terms, with truth.

9 And so, therefore, I recommend this fund.

10 I have other recommendations, including an
11 education fund.

12 CHAIRMAN MAXWELL: Could you submit
13 it to us?

14 THE WITNESS: Yes, I will. Free
15 education for all Hawaiians. Mahalo. The time was
16 much too short.

17 CHAIRMAN MAXWELL: Any questions for
18 Lela? Okay.

19 Now, the next speaker is Luis Hangca, Junior.
20 And on deck is Louis Agard.

21 SPEAKER LUIS HANGCA, JUNIOR:

22 MR. HANGCA: Okay. I am Luis Hangca,
23 and I am not speaking for any organization today. I
24 am speaking for my ohana.

25 My ohana is Kealoha, Keola, and Kualaula --

1 regular Hawaiians.

2 I do not envy your position here, because your
3 decision submitted to the Commission will be
4 criticized, one way or the other. And I feel for
5 you.

6 However, look at reality. This issue that we
7 are speaking of is not happening just today. It
8 happened quite some time ago, over a hundred years.

9 And at each delay, the Hawaiians are finding
10 the facts -- the hidden facts that were set aside to
11 gain our aina back.

12 Okay? This delay today, and your organization
13 reporting your findings, to me, is just another delay
14 to prolong this transfer of our Hawaiian rights.

15 Be aware that during this period of delay, the
16 possibility of more findings of these facts that were
17 hidden -- I would like to ask the federal group that
18 was here, where were they in 1993 when the
19 international tribunals were held here in Hawaii?

20 They were invited. A seat was placed for
21 them. And it was emptied all throughout.

22 And here it is, five years later, they come
23 and present their view, with not a clear understanding
24 of Hawaiian history, very shameful.

25 We are not playing games. We are talking

1 about a nation, the Hawaiian nation. There is no
2 nation in this world where the native can claim, I am
3 Hawaiian, this is my country, Hawaii. But there is
4 all other nations, where Japan can claim Japan as
5 their nation. Philippines -- wherever. But there is
6 no Hawaii for Hawaiians.

7 Please, analyze the result of this gathering
8 today, and come up with the right decision.

9 Submit it with pono, not from the na'au, but
10 from the puuwae -- not from the guts, but from the
11 heart. Mahalo.

12 CHAIRMAN MAXWELL: Thank you, Mr.
13 Hangca, let me tell you, we are trying.

14 Any questions for Mr. Hangca?

15 If not, I called Lou Agard, but actually I
16 misread it. It's William Ko'omealani Amona.

17 Would you please come first; then Mr. Agard?

18 MR. AMONA: I have no objections to
19 Louis going first.

20 CHAIRMAN MAXWELL: Okay. Very good.
21 How about it, Louis?

22 SPEAKER LOUIS AGARD:

23 MR. AGARD: Mr. Chairman, members of
24 the committee, thank you very much. Aloha to the
25 audience.

1 I just want to make some comments and some
2 recommendations about the circular I got about this
3 meeting. I wanted to speak a little bit to the issue
4 of discrimination.

5 CHAIRMAN MAXWELL: Could you speak
6 closer to the mike, or could we have the mike higher,
7 please?

8 MR. AGARD: We can find that the
9 natives were granted a vested interest in all the
10 lands of Hawaii by the principles of 1847 by
11 Kamehameha the Third.

12 And the principles that were enunciated at
13 that time were followed Kamehameha the First's
14 declaration, wherein he said all of the lands, from
15 one end to the other, belonged to the chiefs and
16 people in common.

17 I believe that declaration.

18 And then, in 1847, the principals reaffirmed
19 that, by saying they have three persons who have a
20 vested interest in all of the lands of Hawaii. And
21 then, that sets the basis for where these benefits
22 should be going, because this is written down. It's
23 recorded.

24 I don't believe that interest has ever been
25 addressed. And it is the interest of the ceded lands

1 that were ceded to the United States.

2 Now, what we find is that most of the income
3 from that land, the ceded lands, will go to
4 non-natives today. And yet, in the ceding ceremony,
5 the income was to go all -- one hundred percent -- to
6 the inhabitants.

7 I will define the inhabitants as those that
8 were here from time immemorial. And that is a
9 definition in the dictionary -- not transients -- that
10 the inhabitants are those people. And you will find
11 out later, in 1959, they named the two
12 beneficiaries -- they named Native Hawaiians,
13 specifically, so you know who that first party was,
14 and then, the general public were included.

15 Now, we have five treaties between us and the
16 United States. And they were not mutually dissolved
17 by both parties, as you will find, if you read the
18 documents, the terms of which we find were violated,
19 as referred to in the Apology Bill -- they were all
20 violated, because they were peace and friendship.

21 The Apology Bill can also examine the
22 Statehood Act of 1959, which failed to determine the
23 right of Hawaiians to the new ceded lands, versus the
24 new state of Hawaii which received all of them.

25 The vested interest in these lands, of course,

1 were not dealt with, not recognized -- that interest
2 granted by Kamehameha the Third.

3 In 1898, we find all the ceded lands and trust
4 income was to go to the inhabitants for their public
5 purposes. And the inhabitants, I just said, appeared
6 to be the permanent residents -- not the transients.

7 So in January 16, 1893, US Minister Stevens
8 had requested a landing of US Marines, a non-approved
9 landing followed, and was described by US Cleveland in
10 his report to the Congress in 1893 as an act of war.

11 Cleveland called for an apology and proper
12 reparations. The apology has come one hundred years
13 later, but the -- my time is up?

14 CHAIRMAN MAXWELL: Conclude it in 30
15 seconds.

16 MR. AGARD: The apology came a
17 hundred years later, but there were no reparations, as
18 requested by Cleveland. Because one hundred years
19 have passed since the US Marines landed, an act of war
20 as described by the president, and I think the
21 question would be today, does that situation exist
22 till today.

23 There seems to be a need to address our
24 treaties, and a new treaty, if that be possible, to
25 end the conditions of intervention and the act of war

1 described by Cleveland.

2 These conditions are subject to be examined
3 under the terms of the 1993 Apology Bill towards
4 beginning the reconciliation, or even the ho'o pono
5 pono process spoken of in the Apology Bill.

6 Thank you.

7 CHAIRMAN MAXWELL: Thank you, Mr.
8 Agard. Mr. Amona.

9 And the next is Kauai Lew, on deck.

10 WILLIAM KO'OMEALANI AMONA:

11 MR. AMONA: Aloha Keakua (Hawaiian
12 greeting.)

13 I am an attorney by license. I am a machinist
14 by trade. And I am a beneficiary under the will of
15 Bernice Pauahi Bishop. I am what you might call, as
16 described by an attorney that represents Lokelani
17 Lindsey, that I am a product of the factory of
18 failures.

19 In any event, I wish to begin my three minutes
20 by saying that I am surprised that nowhere does this
21 Committee define the meaning of Native Hawaiian Civil
22 Rights.

23 So I assume that the use of the term "Native
24 Hawaiian civil rights" can be anything I choose it to
25 be, and I choose that to mean my rights as a Kanaka

1 Maoli, under the Declaration of Rights of 1839.

2 And under those rights, as a native tenant,
3 every Kanaka Maoli had a right in all this aina. We
4 have a right, as native tenants, in all of the land.

5 So, if you read the documents that came out
6 from the Land Commission, at the bottom, all of it
7 should say, "subject to the rights of native tenants."

8 In the clause of the Great Mahele, the rights
9 of the alii, and the konahiki, the chiefs, were
10 resolved. But the definition, and the extent and
11 scope of the rights of the Kanaka Maoli were never
12 determined. It remains to be determined.

13 And I wish that you would make the
14 recommendation to this US Commission on Civil Rights
15 that we request the United States honor the rights of
16 native tenants in all of the land.

17 In closing, I would like to say that Mr. Don
18 Louis has been indicted by the state of Hawaii for
19 attempted theft of the land in Hawaii.

20 If you are a lawyer, you know that land cannot
21 be the subject of theft. You can only commit a
22 trespass on land. You can steal tangible, physical
23 property, but you cannot steal land. But he has been
24 indicted on that basis.

25 So where are his civil rights under state

1 criminal laws? I am not his attorney. I am just a
2 Kanaka Maoli.

3 I would like to also add to my closing
4 statement that in the last course I took before I
5 finished law school, I finished in 1952, I remember
6 one axiom. I wasn't interested in international law,
7 because I figured that the United States is so
8 powerful, the other nations wouldn't have a say,
9 anyway. And I was told that there is an axiom, that
10 when a major powerful nation apologizes to a minor
11 nation, immediately it triggers the obligation of
12 reparations and restitution -- restitution in kind, if
13 possible; otherwise, reparation in other kinds of
14 damages. Mahalo.

15 CHAIRMAN MAXWELL: Thank you, Mr.
16 Amona. Any questions?

17 Next speaker is Kauai Lew.

18 And on deck is Larry Kimura. Is Larry Kimura
19 here? All right. Kauai Lew is not here? Larry Kimura
20 is not here? Jimmy Wang. Is that correct -- Wong?

21 Please correct me when you come up. Sorry, if
22 I mispronounced it.

23 SPEAKER JIMMY WONG:

24 MR. WONG: Leave it the last name
25 Wong, and I am probably the last speaker, right?

1 I should have changed my name, so I could come
2 earlier. Mr. Chairman --

3 CHAIRMAN MAXWELL: Excuse me. On
4 deck is Mr. Kinney. Okay, sorry, go ahead.

5 MR. WONG: Mr. Chairman, members of
6 the committee, my name is Jimmy Wong. I am a
7 non-native Hawaiian, by your definition. That is less
8 than 50 percent Hawaiian.

9 As you all know, non-native Hawaiians make up
10 the majority of Hawaiians today, and at some time in
11 the future, non-native Hawaiians will be 99 percent,
12 or perhaps one hundred percent of the Hawaiian race.

13 The responsibility and obligation to effect
14 and improve the underlying civil rights contained in
15 the Apology Bill, sits squarely on the shoulders of all
16 Hawaiians, regardless of blood quantum, which
17 incidentally, has been discussed as a requirement
18 invented by the United States Congress, designed to
19 divide the Hawaiian race, and that relegated the
20 sovereign status of the nation of Hawaii to that of a
21 tribe.

22 The fact that there has been little progress
23 at reconciliation efforts is not the fault of the
24 United States. It is due to the absence of the
25 political entity, a formal government, if you will,

1 that must represent all Hawaiians.

2 The foundation of reconciliation lies in the
3 concept of government-to-government negotiations as a
4 basis for settlement.

5 Without a political entity that represents the
6 best interest of all Hawaiians, it is futile to
7 discuss, debate, or argue if Native Hawaiians or
8 non-Native Hawaiians are receiving equal protection
9 under United States law.

10 The language in the Apology Bill acknowledges
11 that the Hawaiian people are determined to preserve,
12 develop, and transmit to future generations their
13 ancestral territory, and their cultural identity in
14 accordance with their old spiritual and traditional
15 beliefs, customs, practices, language, and social
16 institutions.

17 I guess this kind of -- the next part
18 addresses Mr. Murakami's concern about the process.

19 Hawaiians, to their credit in 1996, began the
20 process to elect delegates to propose a form of
21 government that would be approved by Hawaiians.

22 The election of delegates will take place on
23 January 17th 1999, and once selected, these delegates
24 will designate a time and a place to convene to
25 discuss and debate issues that will include -- and

1 certainly not be limited to -- blood quantum,
2 citizenship, civil rights, and equal protection under
3 Hawaiian law.

4 The American people have expressed its
5 commitment to acknowledge the ramifications of
6 Hawaii's illegal overthrow, in order to provide proper
7 foundation for and to support reconciliation and
8 settlement.

9 A cornerstone of this foundation is to assess
10 the impacts, and to assign a dollar value to the
11 economic and social changes that took place in Hawaii
12 during the 19th and early 20th centuries that have
13 been devastating to the Hawaiian population, and the
14 health and well-being of the Native Hawaiian people.

15 I think Mr. Apo went into this a little bit in
16 his presentation today. That's one of the
17 recommendations that I would make to the Commission.

18 CHAIRMAN MAXWELL: Excuse me. Could
19 you conclude within 30 seconds, and submit what you
20 cannot in writing?

21 MR. WONG: The American people are
22 presently waiting for the Hawaiians to ratify a form
23 of government to begin the process of negotiations
24 toward settlement.

25 One positive result of the signing of the

1 Apology Bill into law by the United States five years
2 ago has been the heightening of the Hawaiian political
3 awareness and restoration of Hawaiian national pride.

4 Hawaiians, including the trustees of the
5 Office of Hawaiian Affairs, are re-visiting and
6 reexamining the United States blood quantum
7 requirements. Removing this deterrent is the
8 beginning of Hawaiian solidarity.

9 Hawaiians have come to realize that we hold
10 the key to the survival of our race, and Hawaii's
11 economic future. We trust that the US Commission on
12 Civil Rights, and its Hawaii Advisory Committee, will
13 honor our commitment to re-establish our political
14 identity, a process which is under way and long
15 overdue.

16 We also ask for your assistance to encourage
17 the US Congress to remove any barriers to Hawaiian
18 unity, and to initiate a process to recognize this
19 political entity, upon ratification by the Hawaiian
20 people.

21 CHAIRMAN MAXWELL: Thank you, Mr.
22 Wong. And we have your testimony.

23 Any questions for Mr. Wong?

24 Okay. If not, I call Pomai Kai Kinney.

25 And Lehua Kimilau on deck.

1 SPEAKER POMAI KAI KINNEY:

2 MR. KINNEY: Mr. Chairman, committee
3 members, and naku puna, aloha.

4 For the record, my birth certificate name is
5 Henry Richard Kinney Junior. My Hawaiian given name
6 is Pomai Kai Lokalani Kinney. I was born at Queen's
7 Hospital on January 17th 1993 by state notarized
8 document. I have renounced my citizenship to the
9 United States.

10 In the past, in protest of the illegal and
11 unlawful occupation of these islands by the military
12 diplomatic forces of the United States, I have burned
13 the flag of the United States in protest six times.

14 I am hoping that in the future, I need not to
15 do that again.

16 The issue, to me, that is important, is that
17 the United States, in the past, with the overthrow of
18 the Hawaiian Kingdom, the lawful government of the
19 Native Hawaiian people, and continuously today, commit
20 high treason against the Native Hawaiian people.

21 High treason was committed against the Native
22 Hawaiian people, and their government, the Hawaiian
23 Kingdom -- high treason that is punishable by death by
24 all countries around the world.

25 There were two Americans the -- Rosenbergs in

1 the 50's were found of treason, and they were
2 committed -- they were put to death.

3 I am angered that today, with all the evidence
4 coming about, hand-appointed people come to committees
5 and speak with forked tongue, twist the truth.

6 What is at stake here is Native Hawaiian
7 national rights -- not only civil rights, or cultural
8 rights, or gathering rights -- but national rights --
9 our nation.

10 Public Law 103-150 recognizes that our people
11 never relinquished our inherit sovereignty as a
12 people, and also to our national lands.

13 The Organic Act, which was passed 99 years
14 ago, distinctly and clearly names the seventeen
15 islands that were ceded to the federal government
16 through the Joint Resolution of Annexation. Any
17 Hawaiian to comes here and talks about ceded lands,
18 referring to only the crown lands or the Five F Lands,
19 and not think about the whole national lands, the
20 Hawaiian archipelago, as far as I am concerned, are
21 traitors.

22 I can understand the ignorance of the common
23 Hawaiian who has not been in the movement to not
24 understand the whole picture, that when we are talking
25 about "our lands" we are talking about the whole

1 Hawaiian archipelago, as a nation, not only the Five F
2 Lands, or whatever.

3 CHAIRMAN MAXWELL: Richard, can you
4 include in 30 seconds?

5 MR. KINNEY: Yes.

6 My grandparents, who were Hawaiians by legal
7 document, my grandparents, and my ancestors who signed
8 this here never relinquished our inherent sovereignty
9 to the United States, or any other foreign country.

10 In international law, after the passing of the
11 Apology Bill by the United States, international law
12 says that the United States should lower their flag,
13 and allow the Native Hawaiian people all the time they
14 need to discuss the future of these islands.

15 There should be no action coming from Congress
16 until Congress complies with international law, lower
17 their flag, and withdrawal all of its military forces
18 off the land, onto the military lands, and stand by
19 until we tell them what is up next.

20 Mahalo. I will submit written testimony.

21 CHAIRMAN MAXWELL: Thank you. There
22 is a question for you. Richard, there is a question.

23 MR. FORMAN: Just a quick question,
24 for purpose of clarifying for the record.

25 I believe I recognize the document, but you

1 referred to a document that you had. Please indicate,
2 for the record, what the document is, for the record.

3 MR. KINNEY: The Hu Ai (phon.), the
4 Hui Aloha Anti-Annexation Petitions 1897-1898. And if
5 I may, I have ten copies for sale, \$35.

6 CHAIRMAN MAXWELL: Thank you,
7 Richard. Next. Thanks, Richard.

8 Next speaker is Lehua Kimilau, and on deck is
9 Bernard Freitas.

10 SPEAKER LEHUA KIMILAU:

11 THE WITNESS: Aloha, Chairman --

12 CHAIRMAN MAXWELL: -- Aloha.

13 MS. KIMILAU: -- Maxwell, and
14 members of the Committee. Mahalo for this opportunity
15 to speak before you today.

16 My name is Lehua Kimilau, and I am the vice
17 pookola (phon.) of Hawaii Oahu. Our ke aina has
18 eloquently spoke Kalani's (phon.) position, without
19 restating points already made, I was really concerned
20 by comments expressed by Professor Benjamin.

21 As he claims, only tribes have a special
22 political status. But if you look at Morton v.
23 Mancari, the US Supreme Court recognized that tribes
24 had a political status as quasi-sovereign entities.

25 So the question of the similar political

1 status for Native Hawaiians is tied to the claim of
2 sovereignty.

3 Therefore, this Commission must recognize just
4 how the federal and state government has undermined
5 Hawaiian sovereignty. Examples include the federal
6 government's role in the overthrow in 1893, and the
7 passage of the New Lands Resolution in 1898, to the
8 present documented federal breaches of trust.

9 The state legislature, earlier this year,
10 moving more presently, attempted to pass House Bill
11 3340, known as the Native Hawaiian Autonomy Act.

12 This bill specifically stated that a
13 corporation would be created, and not a sovereign
14 entity. The most recent example of what Ka Lahui
15 Hawaii views as state competition(phon.) is the A-Sec
16 (phon.) HA Hawaii process, which was created by the
17 state legislature.

18 The legislation specifically states that HA
19 Hawaii's proposed constitutional convention will
20 change nothing in the state. Native Hawaiians will
21 continue to remain wards of the state.

22 And I know, you know, you need to go through a
23 lot of other testimony, but in conclusion, this
24 Commission should recommend that any process for
25 reconciliation must have the integrity of

1 self-determination. That is a process created by and
2 for Native Hawaiians.

3 CHAIRMAN MAXWELL: Any comments?

4 MR. MURAKAMI: So do you support the
5 UN process, then?

6 MS. KIMILAU: The UN treaty study
7 that has recently come out, that I know the ke aina
8 has commented on, would be the position of Ka Lahui
9 Hawaii. I think that is the route we would like to
10 go, only because -- and again, with the whole HA
11 Hawaii issue, the concern we have is nothing will
12 change. So why are we going to go through a process
13 that nothing will change in the state?

14 And also, we have concerns about the
15 legislation, because at first it was called the
16 plebiscite, and then it was changed to Native Hawaiian
17 Vote. And then, you know, the term of a plebiscite in
18 the international arena, and what Ka Lahui is talking
19 about the UN treaties -- all of those issues need to
20 be, I guess, kind of education, you know, discussed
21 throughout the Hawaiian community.

22 And I think the most -- I guess our main
23 concern is, prior to the vote in 1996, the legislature
24 required a majority of qualified voters. That means
25 it would have required a majority of all the people

1 that was allowed to vote in that Native Hawaiian vote.
2 And two months before the election, they changed it to
3 majority of ballots cast, because there was a great
4 boycott.

5 So, you know, all of these issues need to be
6 dealt with, and a UN-supervised plebiscite may be the
7 process to be used.

8 MR. MURAKAMI: But do Hawaiians get
9 to choose whether they get to go through the UN
10 process?

11 MS. KIMILAU: Well, right now, in the
12 Hawaiian community, as you know, a lot of speakers
13 here, there is from independents to Ka Lahui's
14 position, to you know, the numerous kingdoms wanting
15 reinstatement. And I think this process would in some
16 sense allow all of those groups to have their options.

17 There is going to be the option of
18 independence. There is going to be the option of free
19 association, and other forms of government, whether
20 that is Ka Lahui or not.

21 So we get the options afforded, to what is
22 being put out there by the many organizations that now
23 exist.

24 MR. MURAKAMI: But is there going to
25 be a process where people will have the chance to

1 choose, or are we going to go through this process of
2 decolonization and reinscription? Is there a
3 process --

4 MS. KIMILAU: -- Well, if it's a
5 right afforded under the United Nations, it should be
6 a right exercised.

7 The whole question is whether in 1959, when we
8 held the plebiscite, it was a statehood vote --
9 whether that was a proper plebiscite. Because the
10 only options that given were whether we wanted to be a
11 state or a territory.

12 So in other words, do we want to be a part of
13 the part of the US, or do we want to be a part
14 of the US? Is that a choice that Hawaiians rallied
15 toward? We should be given all the options.

16 MR. MURAKAMI: Maybe I am mistaken,
17 but I understood that the constitutional convention
18 that they were proposing would allow any options to be
19 propose during the convention.

20 MS. KIMILAU: That's not the process,
21 and again, it's tied into the state legislation.

22 HA Hawaii is saying they are separate, because
23 they are a non-profit entity. But whatever
24 constitutional convention comes out of that, there is
25 that Section 14 language in the bill, which says that

1 nothing arising out of that constitutional convention
2 will change anything in the state.

3 So that's Ka Lahui's concern with the HA
4 Hawaii con-con.

5 CHAIRMAN MAXWELL: Okay. I am going
6 to cut any more. Any other comments here?

7 Okay. That was our last speaker, and the
8 committee welcomes additional written testimony --
9 statements, rather, and exhibits for inclusion on the
10 record. These items should be submitted to the
11 Western Regional Office of the US Commission on Civil
12 Rights, 360 Wilshire Boulevard, Suite 810, Los
13 Angeles, California, 90010.

14 Any member of Commission staff should be able
15 to assist you in the process for submitting
16 information.

17 Okay, thank you. Yeah, it's 3660, Wilshire
18 Boulevard. And if you didn't get that down, you can
19 get it from our staff afterwards. And I would like to
20 tell you that this, you know, this was a very
21 frustrating time for us, as native people, for me, as
22 the chairman. This is our 27th year along with --

23 -- Oh did Bernard Freitas come?

24 Oh, okay. Could you talk to the lady there?
25 The testimony has been closed. The signup, the end --

1 Mr. Freitas, come.

2 Go, Mr. Freitas. I am not recognizing you,
3 Maui Loa. Mr. Freitas.

4 SPEAKER BERNARD FREITAS:

5 MR. FREITAS: Thank you, Mr.
6 Chairman. I appreciate the opportunity to speak to
7 the panel and to the people that are here today.

8 I stand before you to address a problem that I
9 believe is affecting Native Hawaiian civil rights, and
10 that is a contaminated water problem.

11 Declaring that among our inalienable rights
12 guaranteed by the US Declaration of Independence of
13 life, liberty, and the pursuit of happiness, that we
14 also have the inalienable right to an environmentally
15 safe and ecologically sound environment.

16 Underground storage tanks and petroleum oil
17 and lubricant lines installed to meet the needs of
18 previous war efforts are now being decommissioned.

19 Environmental assessments have shown petroleum
20 and solvents to be present in the Pearl Harbor sole
21 source aquifer. Pesticides used by the various sugar
22 and pineapple growers are also present in the water.
23 The combination of these two situations has been
24 recognized and is being remedied, but in a fashion
25 that is not fair and equitable to Hawaiian needs.

1 There are many people in this situation, and
2 since tax dollars are ultimately utilized for these
3 efforts, all contributors should receive satisfaction
4 from remedial efforts, and those efforts should, in
5 our contention, come from the commercial polluters as
6 well as the military.

7 Granted, the efforts must begin somewhere, but
8 since the contaminants do not understand boundaries,
9 and are affecting the surrounding communities, just as
10 much as those inside the military reservation's fence,
11 the remedial efforts must be extended to the
12 contaminant's boundaries, not the military's.

13 The people whose lives and health are
14 compromised are all Hawaiians and Hawaiian residents
15 who do not reside on the military base, and even those
16 on a municipal water system.

17 Our islands are all, in some way, land-locked,
18 and many contaminated areas, Department of Defense
19 superfund sites, United States Air Force underground
20 storage tanks, and former sugar and pineapple
21 agricultural land. I am addressing you, as a
22 Hawaiian, and one with the privilege and advantage of
23 belonging to the Central Oahu Restoration Advisory
24 Board.

25 I pray for the grant to ownership of an equal

1 compensation of land and clean water, to allow the
2 Hawaiian people to begin the restoration of our
3 natural species, in exchange for those instances where
4 the land and water have become too contaminated for
5 our safe, healthful, and continuous use.

6 Thank you.

7 CHAIRMAN MAXWELL: Thank you. Any
8 questions of the speaker?

9 Stella, I am going to allow Mr -- the
10 Committee feels that if he is the only one, he should
11 speak. Maui Loa, come.

12 SPEAKER MAUI LOA:

13 MR. MAUI LOA: Thank you, Charles
14 Maxwell Senior, chairing this committee.

15 I am Maui Loa, hereditary chief of the Hou
16 Hawaiians. I would like to personally give my record
17 to each of you.

18 CHAIRMAN MAXWELL: Give me the whole
19 stack, I'll distribute them, and go back to the mike.

20 MR. MAUI LOA: I would like to get
21 to point on the second page, under the Admissions
22 Act. The betterment of the conditions of native
23 Hawaiians, as defined in the Hawaiian Homes Commission
24 Act of 1920, as amended, for the development of farm
25 and home ownership on as widespread a basis as

1 possible.

2 Then I would like to go to what created the
3 justification of the Home Lands Act.

4 The third page, "That the said Hawaiian
5 islands, and their dependencies be, and they are
6 hereby annexed as part of the territory of the United
7 States, and subject to the sovereign dominion thereof,
8 and that all and singular the property and rights
9 hereinbefore mentioned are vested in the United States
10 of America."

11 "Enactment of the Hawaiian Homes Commission
12 Act."

13 "Through the urging of Price Jonah Kuhio
14 Kalaniana'ole, delegate to Congress, and the efforts of
15 Secretary of the Interior Franklin Lane, the Hawaiian
16 Homes Commission Act of July 9th 1921, 42 Stat 108 C42
17 was enacted a part of the Congress of the United
18 States to become part of the basic law of the
19 territory, the Organic Act."

20 "The Hawaiian Homes Commission was established
21 by the Act to administer its provisions. The Act also
22 included provisions that the Act can only be amended
23 or replaced by Congress."

24 "Constitutionality."

25 "Special discriminatory legislation was deemed

1 justifiable and imperative to encourage adaptation,
2 development and survival of Native Hawaiians."

3 "Written Opinion -- The Solicitor of the
4 Department of Interior"

5 "Would an act of Congress setting apart a
6 limited area of the public lands of the Territory of
7 Hawaii for lease to the occupation of Native Hawaiians
8 be unconstitutional? It would not."

9 "There are numerous congressional
10 precedents -- "

11 CHAIRMAN MAXWELL: -- You have one
12 minute to conclude. One minute.

13 MR. MAUI LOA: -- The Act of
14 Congress approved February 8, 1887, as amended by the
15 Act of February 28, 1891, (26 Stat 794) authorizes
16 public lands which have been set apart --

17 CHAIRMAN MAXWELL: Could you slow
18 down, because the court reporter can't get your
19 words.

20 MR. MAUI LOA: Do you need a copy?

21 THE COURT REPORTER: Yes.

22 CHAIRMAN MAXWELL: And I told you to
23 conclude. She will get a copy. You will get a copy
24 of the testimony. You conclude in fifteen seconds,
25 Maui Loa.

1 MR. MAUI LOA: It's not very simple
2 to conclude anything in regards to the natives,
3 because we have waited for 30 years.

4 CHAIRMAN MAXWELL: Look, don't argue
5 with me. You got ten seconds.

6 THE WITNESS: Okay. I am invoking,
7 as a historian, my right as a hereditary chief. And
8 as a hereditary chief of the Hou Hawaiians --

9 CHAIRMAN MAXWELL: Cut the mike,
10 please? Thank you. You're done.

11 Next speaker, Kuchi Koons (phon.), you have
12 one minute. I'm sorry, you are done. Would you
13 please step away?

14 UNIDENTIFIED SPEAKER: There are not
15 many natives here. Why do you even have us come here,
16 if you are not going to let us talk?

17 UNIDENTIFIED SPEAKER: Follow the
18 rules.

19 CHAIRMAN MAXWELL: Kuchi, you have
20 to follow the rules. That's correct. Thank you,
21 ma'am. Kuchi Koons.

22 UNIDENTIFIED SPEAKER: Why doesn't
23 America follow the rules?

24 CHAIRMAN MAXWELL: Kuchi, you got the
25 floor.

1 SPEAKER KUCHI KOONS:

2 MS. KOONS: Mahalo for this time,
3 Uncle Charlie.

4 CHAIRMAN MAXWELL: Thank you.

5 MS KOONS: I was sitting through the
6 whole proceeding, and I couldn't keep quiet of this
7 particular thing, that the civil rights are very
8 kupuna bones needs to be recognized, and expanded from
9 the 1991 Report, Finding 12, which states that -- it
10 concludes that native Hawaiian rights to gather, hunt,
11 and fish, et cetera, and to have access to sacred
12 places of worship, have been insufficiently protected
13 by the state of Hawaii.

14 And I will send in full documentation on that
15 lack of equal protection as to our kupuna bones by the
16 state of Hawaii, despite recent legislation by the
17 federal and the Right to Religious Act.

18 So I could not be quiet because the civil
19 rights of our kupuna bones need to be addressed, also.
20 Mahalo.

21 CHAIRMAN MAXWELL: Thank you so much.

22 THE WITNESS: May I have one minute,
23 please, Uncle Charles?

24 CHAIRMAN MAXWELL: I will give you
25 one minute, and you are the last person, for sure.

1 THE WITNESS: Thank you very much.

2 CHAIRMAN MAXWELL: And you know, next
3 time we come like this, please, let's follow rules.
4 From 9:00 o'clock to 1:00 o'clock, we are supposed to
5 have signed up. Because I am a good person, I will
6 let you be the last to speak. I am not recognizing
7 you, go ahead, Owana (phon.)

8 SPEAKER OWANA SALAZAR:

9 MS. SALAZAR: Well, for those of you
10 don't know my name, my name is Owana Salazar, I am the
11 great grandniece, six times removed, of King
12 Kamehameha the Great.

13 Thank you very much for allowing me this time.
14 And I basically will summarize. I have an at-length
15 submission for you, that historically, we were a
16 constitutional monarchy, with a crown head of state, a
17 council of chiefs, and a legislature.

18 Today, that legislature is the state and
19 county governments of Hawaii. We can assume that the
20 civil rights violations have always and probably will
21 always plague mankind in different parts of the world.

22 And the one outstanding factor particular to
23 Hawaii was -- is its geographic location.

24 Since I have such short time, all I really
25 want to get to is this. That her Majesty, Queen

1 Liliuokalani, the crown head of state, lost her
2 sovereign power of dominion over all Hawaii's peoples,
3 over all island lands and titles, fresh water
4 resources, harbors, marine and air space, commerce and
5 navigation, food and energy self-sufficiency,
6 jurisprudence and court systems, all military
7 reserves, airports, buildings and usage, national
8 security police, and expanding our protectorate
9 status.

10 These and many more civil rights violations
11 happened to the royals of Hawaii, and it filtered
12 through the generations. And now, comes you, with
13 your mandate.

14 In suggestions for remedy, I would like to say
15 that the non-annexation research must be explored
16 further. It now forms a new and current backdrop to
17 all congressional and state legislation since the
18 illegal overthrow.

19 With this evidence a new series of civil
20 rights violations have opened up. This special status
21 of unincorporated, versus creeping incorporation,
22 gives Hawaii, although in theory a state of the union,
23 a unique and special nation-to-nation status.

24 America's Apology Bill signed by President
25 Clinton reaffirms our complaint of civil rights

1 violations, and makes reconciliation --

2 CHAIRMAN MAXWELL: -- 30 seconds.

3 MS. SALAZAR: -- between nation to
4 nation an alternate and positive process.

5 When the United States of America paid our
6 national debt of \$4 million, they assumed all title to
7 Hawaii and the crown head of state's sovereign power
8 of dominion. All people of Hawaii and the world must
9 see that our most cherished asset is the dominion over
10 our lands and people. Mahalo.

11 CHAIRMAN MAXWELL: Thank you so
12 much. Any questions for Owana? Okay, if not, thank
13 you, Owana. I would encourage you to submit your
14 testimony. Thank you.

15 And I would like to take this time to
16 compliment the court reporter for all of her -- it's
17 what -- how many hours, from 9:00 o'clock this
18 morning.

19 And mahalo nui loa, Aloha.

20 (The proceedings were concluded at 5:40 p.m.)

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C E R T I F I C A T E

I, Cassie Uyekubo, CSR in and for the State of Hawaii, do hereby certify:

That I was acting as shorthand reporter in the foregoing matter on the 22nd day of August 1998;

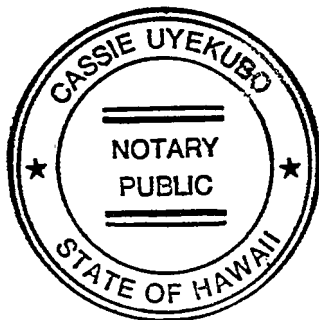
That the proceedings were taken down in machine shorthand by me, and were thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a correct transcript of the proceedings had in the foregoing matter;

I further certify that I am not counsel for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

Dated: SEP 2 1998

Cassie Uyekubo

Cassie Uyekubo, CSR 293
Certified Shorthand Reporter



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