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HAWAII STATE ADVISORY COMMITTEE TO THE
U.S. COMMISSION ON CIVIL RIGHTS
The Impact of the Decision in
Rice v. Cayetano on Entitlements

TRANSCRIPT OF PROCEEDINGS

Taken at the Hilton Hawaiian Village Hotel
Honolulu, Hawaii
Commencing at 8:15 a.m.
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ORIGINAL

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P R O C E E D I N G S

1
2 DR. KAMELELEHIWA: If you stand and take the
3 hand of the person next to you, please. I'd like to
4 do a traditional chant to call the ancestors to come
5 and be with us to inspire us, to lead us in our quest
6 for land, for the return of our government, for the
7 return of our life breath, for the return of the mana
8 of our ancestors, and to be guided in the correct
9 manner.

10 I'll also ask for long life and protection from
11 all evil, because that is something that is so
12 important to all of us native peoples and non-native
13 alike. (Speaking Hawaiian)

14 CHAIRMAN FORMAN: Good morning. This meeting
15 of the Hawaii Advisory Committee to the United States
16 Commission on Civil Rights will come to order. I am
17 David Forman, Subcommittee Co-chair of the Hawaii
18 Advisory Committee to the U.S. Commission on Civil
19 Rights.

20 Kahu Charles Kauluwehi Maxwell, Sr.,
21 Chairperson of the Hawaii Advisory Committee to the
22 U.S. Commission on Civil Rights, has been hospitalized
23 and will not be presiding. We hope that our
24 Vice-chair, Judy Puzon, will be able to join us a
25 little later today.

1 Uncle Charlie Maxwell sends his greetings and
2 expectations that this session will prove helpful to
3 the dialogue on the impact of the Rice decision.

4 Joining the Advisory Committee today is Cruz
5 Reynoso, Vice Chairperson of the U.S. Commission on
6 Civil Rights, and Commissioners Yvonne Lee and Elsie
7 Meeks. We are pleased with their interest in this
8 important topic. Thank you and welcome.

9 - The U.S. Commission on Civil Rights is an
10 independent, bipartisan, fact-finding agency first
11 established under the Civil Rights Act of 1957. By
12 congressional mandate, the Commission is directed to
13 investigate complaints alleging that citizens are
14 being deprived of their right to vote by reason of
15 their race, color, religion, sex, age, disability, or
16 national origin, or by reason of fraudulent practices.

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

23 Three, appraise federal laws and policies with
24 respect to discrimination or denial of equal
25 protection of the laws;

1 Four, serve as a national clearinghouse for
2 information about discrimination;

3 And five, submit reports, findings, and
4 recommendations to the President and Congress.

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

16 Commission regulations and the Federal Advisory
17 Committee Act call for each Advisory Committee to,
18 one, advise the Commission in writing of any
19 information it may have respecting any alleged
20 deprivation of citizens' right to vote and to have the
21 vote counted by reason of color, race, religion, sex,
22 national origin, age, or disability, or that citizens
23 are being accorded or denied the right to vote in
24 federal elections as a result of patterns or practices
25 of fraud or discrimination;

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

9 Three, advise the Commission upon matters of
10 mutual concern in the preparation of reports to the
11 Commission, to the President, and the Congress;

12 Four, receive reports, suggestions, and
13 recommendations from individuals, public and private
14 organizations, and public officials about matters
15 pertinent to inquiries conducted by the State Advisory
16 Committee;

17 Five, initiate and forward advice and
18 recommendations to the Commission about matters that
19 the Advisory Committee has studied, and;

20 Six, assist the Commission in the exercise of
21 its clearinghouse function.

22 The purpose of this meeting today is to obtain
23 information and public comment regarding the impact on
24 entitlement programs for Native Hawaiians of the U.S.
25 Supreme Court decision in Rice versus Cayetano. Some

1 view the decision as an initial attack on programs
2 established to acknowledge the need to improve the
3 economic and social well-being of Hawaii's first
4 inhabitants. Others believe the decision will
5 ultimately free Native Hawaiians from dependence on
6 government programs. Whether the decision is narrowly
7 viewed or interpreted broadly is a question that
8 concerns all of Hawaii's residents.

9 Based upon information collected at this
10 meeting, a summary report will be prepared for the
11 U.S. Commission on Civil Rights.

12 Other members of the Hawaii Advisory Committee
13 in attendance during this meeting are Faye Kennedy,
14 Helen Nagtalon -- Dr. Helen Nagtalon-Miller, Alan
15 Murakami, and Os Stender.

16 Also present with us today are Thomas Pilla,
17 Arthur Palacios, Grace Hernandez, and Angelica
18 Trevino, of the Commission's Western Regional Office
19 in Los Angeles; and David Aronson, Pamela Dunston,
20 Deborah Reed, and Mireille Ziesness, of the
21 Commission's Washington, D.C. office. Please seek
22 these individuals out if you require assistance.

23 This meeting is being held pursuant to federal
24 rules applicable to State Advisory Committees and
25 regulations promulgated by the U.S. Commission on

1 Civil Rights. All requests regarding these provisions
2 should be directed to the Commission staff.

3 I would like to emphasize that this is a
4 fact-finding meeting and not an adversarial
5 proceeding. Individuals have been invited to come and
6 share information with the Committee relevant to the
7 subject of today's inquiry. Each person who will
8 participate has voluntarily agreed to be here today.

9 Since this is a public meeting, the press and
10 radio and television stations as well as individuals
11 are welcome. Persons meeting with the Committee,
12 however, may specifically request that they not be
13 televised. In that case, we will comply with their
14 wishes.

15 We are concerned that no defamatory material is
16 presented at this meeting. In the unlikely event that
17 this situation should develop, it will be necessary
18 for me to call this to the attention of the persons
19 making those statements and request that they desist
20 in their action. Such information will be stricken
21 from the record, if necessary.

22 Finally, many of you may have questions
23 regarding why certain persons were invited to
24 participate while others were not. The Committee
25 would like to acknowledge that this has been a very

1 important issue in this state and many individuals
2 possessing particular knowledge, expertise, and
3 experiences, have been involved in moving the
4 discussion forward. This issue has many voices.
5 Because of the time and budget constraints under which
6 we operate, the Committee simply could not accommodate
7 everyone who wished to participate on scheduled panels
8 today.

9 The Committee's goal in assembling the
10 individuals who all of us will hear from today was to
11 ensure that information is obtained from the broadest
12 and most diverse cross-section of voices on this issue
13 as possible.

14 Each of the persons you will hear from today
15 has depth of knowledge on the implications of Rice,
16 which we felt were important to include in the record.
17 This is not to say that others do not have opinions
18 and viewpoints that are just as important. This is
19 simply to say that, as a group, we have attempted to
20 do the best that we could under the circumstances.

21 In an effort to hear from others having
22 differing points of view, we have allocated time
23 between 4:00 p.m. and 6:00 p.m. to hear from anyone
24 who wishes to share specific information with the
25 Committee about the specific issues under

1 consideration. At that time, each person or
2 organization will be afforded a brief opportunity to
3 address the Committee. Those wishing to participate
4 in the open session must contact Commission staff
5 before 1:30 p.m. this afternoon.

6 In the event that we are not able to hear from
7 you in the open session, the record of this meeting
8 will remain open for a period of 30 days following its
9 conclusion. The Committee welcomes additional written
10 statements and exhibits for inclusion in the record.
11 These items should be submitted to the Western
12 Regional Office of the U.S. Commission on Civil
13 Rights, 3660 Wilshire Boulevard, Suite 810, Los
14 Angeles, California, 90010.

15 Any member of the Commission staff should be
16 able to assist you in the process for submitting the
17 information. In addition to myself, Alan Murakami is
18 the co-chairperson of the subcommittee on this topic,
19 and in Mr. Maxwell's absence, we will chair these
20 proceedings. Mahalo and thank you for joining us
21 today.

22 At this point, I'd like to ask Vice-Chair
23 Reynoso to try to provide a little bit of
24 clarification on the defame and degrade regulations
25 that are governing today's meeting.

1 COMMISSIONER REYNOSO: Thank you very much.
2 Thank you very much. I'm getting instructions on how
3 to use the instrument before me. Thank you very much,
4 Mr. Co-Chair. I would like to take the liberty of
5 expressing my own thanks to the Committee for inviting
6 us. This is the third hearing that I've been involved
7 with where the Advisory Committee of that given state
8 took the lead in hearings, but where we, as
— 9 Commissioners, participated in large numbers. We have
10 found that is an effective way of having hearings and
11 being able to issue a report in a timely fashion, so I
12 was very interested in the Committee's proposal that
13 this hearing take place, and very appreciative that we
14 were invited.

15 Secondly, I would like to say that in addition
16 to the individuals who are here mentioned by the
17 Co-Chair, we do have several assistants to the chair,
18 the Vice-Chair, and Commissioners, and I wonder if
19 those folks would raise their right hand. They're all
20 over here on my left-hand side, and so feel free to
21 talk to them, particularly if you would like to get
22 word to any of the Commissioners or the Chair.

23 Finally, I'd like to say in these opening
24 footnotes that we already met informally last night
25 with some of the elders, and I'm just struck as I

1 heard from the elders last night, as I have been in
2 some other areas of our country, how much work needs
3 to be done so that the whole community understands the
4 suffering and the feelings of the folk involved in
5 those particular hearings, on this occasion, the
6 Native Hawaiians.

7 There seems to be, I gather from what I've read
8 or what I know, but particularly from what I heard
9 last night, that there continues to be, sadly mind
10 you, a divide in understanding about what makes a
11 community or what makes people tick, so I hope very
12 much that these hearings will be hearings that will
13 bring the various peoples of this state together so
14 that we do what I'm sure all of us want to do, and
15 that is what's best for the Native Hawaiians who,
16 after all, were the inhabitants of this land for so
17 many centuries before it became a territory and a
18 state of the United States of America.

19 Finally, with respect to defame and degrade, I
20 need to explain to you that the Commission has a
21 procedure whereby if any individual or even
22 corporation is criticized with respect to their doing
23 anything unlawful or illegal or improper, the
24 Commission will -- before a report is published, will
25 send to those individuals those comments and get their

1 responses to it, and the general counsel will then
2 take that into account in deciding what's proper and
3 what's improper to have in the reports.

4 But in a further effort to be fair, we ask
5 those who come before us at a hearing like this,
6 because we're not yet at the report-writing stage, to
7 be conscious of that procedure that we follow and to
8 keep that in mind in testifying so that if an
9 individual by name, for example, is going to be
10 criticized, a witness before us needs to be careful
11 not to do that in a degrading fashion; if the person
12 is a public official, to speak about what that agency
13 does, for example.

14 So I just want to explain to you that this is
15 not at all an effort to not hear wholly and entirely
16 what the witnesses have to tell us, but simply an
17 effort to be fair with everybody who is here or is not
18 here in terms of their being involved by name at this
19 Commission hearing. Thank you very much.

20 CHAIRMAN FORMAN: I'd like to invite
21 Commissioner Yvonne Lee to make a statement.

22 COMMISSIONER LEE: Thank you, Mr. Co-Chair. I
23 want to thank Uncle Charlie and members of the
24 Hawaiian Advisory Committee for bringing together this
25 very important and timely forum. We had a very good

1 meeting last night with the kupunas. I hear their
2 frustration, their anger, and their pain for having to
3 retell their stories over and over again. And they're
4 right, that not all Americans are aware of the real
5 Hawaii and the Hawaiian history and experience and,
6 therefore, the facts and the truth must be told over
7 and over again, and I hope that's why we're here for
8 today's fact-finding forum and that is the purpose of
9 us coming.

10 Last night, the kupuna shared their
11 perspectives on Hawaiian rights and I look forward to
12 today's discussions particularly in exploring how,
13 under international human rights principles, the
14 potential to expand the U.S. notion of civil rights to
15 encompass indigenous people's rights, including the
16 right of self-determination, and I look forward to
17 today's session. And I understand my colleague,
18 Commissioner Meeks, also has a statement.

19 CHAIRMAN FORMAN: Commissioner Meeks?

20 COMMISSIONER MEEKS: Yes. Thank you. Well, I
21 am particularly happy and overwhelmed at the Native
22 Hawaiians' hospitality here. This is my first visit
23 to Hawaii.

24 I'm an enrolled member of the Oglala Lakota
25 Tribe, Pineridge Indians based in South Dakota, so

1 this forum is of particularly great interest to me.
2 And I'm sure that most of you are aware of the effect
3 that the federal government's policies have had upon
4 the Native Americans and the unique relationship that
5 we have with the federal government. And I'm sure
6 that most of you know the tension-filled relationships
7 we have with the states and one that no one seems to
8 be able to solve.

9 So my hope here is that the Rice versus
10 Cayetano case will really be the spark for you to come
11 together and to craft a process or a system that can
12 learn from the mistakes that have been made in the
13 past and can develop into something that works for all
14 Native Hawaiians, and that Native Hawaiians do not get
15 pushed off into some corner of Hawaii as the Native
16 Americans have in the United States.

17 I was just struck by how Hawaii really is about
18 Native Hawaiians and the culture here, and in South
19 Dakota, and I was mentioning this, about 10 percent of
20 the people in South Dakota are Native Americans, yet
21 there's many, many, many, most non-Indians in South
22 Dakota really have no idea about the culture or about
23 Indian people, and so I'm struck that that's not the
24 case here, but I do hope that Native Hawaiians can
25 come together out of this case and build a

1 relationship that will work for all of them. Thank
2 you.

3 CHAIRMAN FORMAN: Thank you,
4 Commissioner Meeks, Commissioner Lee, and Vice-Chair
5 Reynoso.

6 IMPACT ON PROGRAMS IN HEALTH, EDUCATION, HOUSING

7 CHAIRMAN FORMAN: If we may have the first
8 panel. Dr. Richard Kekuni Akana Blaisdell, Dr. Peter
9 Hanohano, Dr. Lilikala Kamelelehiwa, Tara Lulani
10 McKenzie, and Dr. Kenneth Conklin.

11 We will hear your opening statement and then
12 wait to proceed to questions when the entire panel has
13 spoken. I will give you an indication of when there
14 are approximately two minutes remaining out of the 10
15 minutes that have been allocated to you, and then I
16 will stop you when your 10 minutes has expired.

17 Please identify yourself for the record and --
18 do you folks have a little button in front of your
19 microphone? Okay, good. Your fingers won't get sore
20 like those of us up here. Mahalo and thank you.
21 Let's proceed. Dr. Blaisdell?

22 DR. BLAISDELL: (Speaking Hawaiian) and the
23 counsel recognition there. I am Kekuni Blaisdell. In
24 the Kanaka Maoli world, I am a member of the Board of
25 Directors of Ke Ola Mamo, which is the one of the five

1 Native Hawaiian health care systems funded by federal
2 monies.

3 Also in the Kanaka Maoli world, I am convenor
4 of the Kanaka Maoli Tribunal Komike, which has made
5 recommendations since the Tribunal in 1993 for the
6 United States to recognize our inherent sovereignty
7 and right to self-determination and to return all of
8 our lands without delay.

9 In the haole white man's world, I'm a physician
10 and a professor of medicine at the University of
11 Hawaii, John A. Burns School of Medicine. You have
12 heard me use the term Kanaka Maoli. We are Kanaka
13 Maoli. In a very important sense, we are not
14 Hawaiian. We are not Native Hawaiian with a lower
15 case N or an upper case capital N. We are not
16 Americans. We are not Native Americans. We are
17 Kanaka Maoli. That is a name by which our ancestors
18 identified themselves. That is the way and the manner
19 in which we identify ourselves. So every time one of
20 us, one of you, uses any of these other terms, these
21 colonial and colonized terms for us, then you are, in
22 a sense, demeaning us. Those are colonial demeaning
23 terms.

24 The Rice vs. Cayetano decision, most of us are
25 familiar with the main features. From our

1 perspective, the United States Supreme Court is a
2 court in a foreign country, the United States, five to
3 six thousand miles away from our home land. That
4 court considered a case of a haole, a white man, a
5 missionary descendant, settler in our home land, who
6 initiated the suit with his attorney, also a haole,
7 white man because he was denied, Mr. Harold "Freddy"
8 Rice was denied to vote for OHA trustees.

9 OHA is a state, State of Hawaii agency. It's
10 an agency that is supposed to be meeting the needs of
11 Kanaka Maoli. The Supreme Court, a foreign court,
12 decided in favor of Rice, and in essence, decided that
13 the State of Hawaii, Office of Hawaiian Affairs, and
14 those of us who participated in OHA elections are
15 racists; that is, we have denied Mr. Rice to vote for
16 an organization established for us to meet our needs
17 in our home land.

18 So that is our view of the Rice versus Cayetano
19 decision. The Akaka Trust Recognition Bill is
20 presumably an attempt to protect OHA and other
21 programs, state and federal, in attempting to meet the
22 dire needs of our Kanaka Maoli people. And most of
23 the features of that bill are becoming familiar,
24 although most of our people are not familiar with that
25 legislation. It is top-down legislation. It came

1 from the top, the United States Congress, which is
2 part of a government that is foreign to our people and
3 our nation. It was not initiated by our Kanaka Maoli
4 people. We had virtually no input in it. Those
5 Kanaka Maoli who did participate in that legislation
6 are officials of the colonial establishment, who you
7 will be hearing from.

8 So the Akaka Trust Recognition Bill, its
9 process and its product, is a gross violation of our
10 Kanaka Maoli inherent sovereignty and right to
11 self-determination. And we feel that there is
12 sufficient evidence in the American law already
13 existing to protect current federal and other
14 government programs providing funds for our people,
15 such as in health.

16 We Kanaka Maoli have the worst
17 health/economic/social indicators of all ethnic
18 peoples in our homeland. The figures are coming in
19 from the 1990s and they are generally worse or at
20 least not better compared to previous decades. The
21 United States Congress in 1985 predicted that in the
22 year 2044, there will be no remaining piha, Kanaka
23 Maoli, so-called pure-blooded Kanaka Maoli. We will
24 be officially extinct as a distinct people in our own
25 homeland. That is genocide. Genocide is an

1 international crime.

2 Our situation at the bottom is chiefly due to
3 the theft of our government and our lands, and our
4 health will not return until all of our lands are
5 returned to us and when we, ourselves, initiate our
6 own government in our homeland.

7 So that is our position, and on the last page
8 of the handout, I have listed some recommendations.
9 We might begin at the bottom of the page, on 6,
10 because it refers to the Hawaii Advisory Committee to
11 the U.S. Commission on Civil Rights.

12 In essence, we ask that you support our
13 recommendations. In order to do that, you will need
14 to broaden and lift yourselves above domestic law. So
15 I was encouraged to hear Yvonne Lee referring to
16 international law. It is only with international law
17 and Kanaka Maoli law, beyond United States domestic
18 law, that there can be proper redress and justice for
19 the wrongs committed by the United States and its
20 subsidiaries against our Kanaka Maoli people and
21 nation.

22 My time is up. I want to thank you for
23 permitting me to make this presentation. Mahalo ia
24 'oukou. All pau.

25 CHAIRMAN FORMAN: Unless there's a collective

1 decision by the Committee, I think we should proceed
2 to hear all the panelists and then ask questions of
3 all the panelists.

4 Next, Dr. Peter Hanohano, please identify
5 yourself for the record.

6 DR. HANOHANO: Aloha ia 'oukou. My name is
7 Peter Hanohano. I'd like to, in acknowledgement of
8 our native friends from America, welcome the panel. I
9 am recently returned to Hawaii having spent three
10 years in Alberta, Canada, among the *Cree and
11 Blackfoot peoples, nations, and it was a joy to be
12 with them. They accepted my family and I as we lived
13 and studied among them and I have a deep appreciation
14 for our native cousins.

15 I would like to just correct the agenda in that
16 I do have a JD. I am in the tail end of my Ph.D.
17 program, which my dissertation is actually due today
18 and I'm a chapter short, so I'm still working on it,
19 so I'm not there yet. But I appreciate the
20 recognition and acknowledgement and I will complete
21 because my wife will kick my butt all the way till I'm
22 done.

23 CHAIRMAN FORMAN: We're confident that you'll
24 finish it.

25 DR. HANOHANO: I hope so.

1 COMMISSIONER REYNOSO: We'll correct the record
2 to say quasi Ph.D.

3 DR. HANOHANO: As I was sharing with you, my
4 family has been on quite a journey. It's been a great
5 experience. I have two documents here that I'd like
6 to submit and will document the thoughts that I'd like
7 to share. One is Section 17 of the Canadian Charter
8 of Right and Freedoms, which is entitled Equality
9 Rights. I'd like to read the language of that section
10 into the record.

11 Paragraph 1 says, "Every individual is equal
12 before and under the law and has the right to the
13 equal protection and equal benefit of the law without
14 discrimination and, in particular, without
15 discrimination based on race, national or ethnic
16 origin, color, religion, sex, age, or mental or
17 physical disability."

18 Subsection 2 says, "Subsection 1 does not
19 preclude any law, program or activity that has, as its
20 object, the amelioration of conditions of
21 disadvantaged individuals or groups, including those
22 that are disadvantaged because of race, national or
23 ethnic origin, color, religion, sex, age, or mental or
24 physical disability."

25 I think the Canadians have kind of figured out

1 the dilemma that we are suffering here, in the U.S.,
2 in that there's a backlash against protecting those
3 who are disadvantaged. So I will submit copies of
4 this.

5 I have another statement entitled The
6 Coolangatta Statement, which was adopted and ratified
7 at the World Indigenous People's Conference on
8 Education in Hilo in August of 1999, last year. It
9 sets forth indigenous people's rights in education.

10 I guess, I believe, the reason I was asked to
11 be on this panel is possibly because of my role as the
12 director of the Native Hawaiian Education Council,
13 which is a federally-funded program under the Native
14 Hawaiian Education Act. It's a 25-member council that
15 has, as its mandate, the coordination, assessment, and
16 recommendations for improvement for educational
17 services and programs for Native Hawaiians.

18 In my estimation, The Coolangatta Statement
19 represents the thoughts and feelings of native and
20 indigenous people around the world. The statement was
21 in draft form in 1993. It was again reviewed in 1996,
22 and in 1999, the statement was adopted and forwarded
23 on to the United Nations, which I believe now means
24 that it's fallen off the edge of the world. And I
25 bring it to your attention just to keep it alive, just

1 to keep the principles of this document in mind.

2 In preparing for my presentation today, I guess
3 I was more concerned about what I should wear rather
4 than what I should say, and it turns out -- because I
5 think what I'm wearing is symbolic of what it is I
6 want to say. The symbolism is that the shirt that I'm
7 wearing is -- represents -- is the conference shirt
8 from the World Indigenous People's Conference on
9 Education. And in reflecting upon what it is, what
10 your charge is, my sense and in meeting native and
11 indigenous people around the world, we have all
12 suffered from colonization and the impact and the
13 clash of cultures. I'm here on behalf of the children
14 who are languishing in our schools.

15 The other item I'm wearing is a necklace made
16 out of the kukui shell. This is taken from -- this
17 was gathered on the shore from where I'm from, which
18 is Punaluu on this island. My family is from Punaluu,
19 and in particular, the ahupuaa of Papaakoko, and these
20 shells fall into a stream, Punaluu Stream. During the
21 rainy seasons, the stream brings it down to the shore.
22 It gets trapped on the shoreline just where the water
23 and sand meets. And these particular shells were
24 cleaned and polished in the ocean there at the
25 shoreline, and so my family and I went and gathered

1 these shells and made leis for each of us and we took
2 these leis with us to Canada, so we always had a
3 connection with our aina, our ahupuaa.

4 And when we went to Canada, it was a great
5 learning experience for our children. When we left,
6 our children had been in the Hawaiian language
7 immersion program on Kekaha on the Big Island, and
8 they had been -- we lived in Hilo for eight years,
9 then we went up to --

10 CHAIRMAN FORMAN: I'm sorry to interrupt. You
11 have two minutes remaining.

12 DR. HANOHANO: Sure. We went up to Canada and
13 that was their first experience in English immersion.
14 At the same time being in Canada, they also had the
15 opportunity of learning French, and so our -- so we
16 were gone -- actually, we were gone for five years.

17 Now that we're back, our children are having to
18 make adjustments in returning to the Hawaiian language
19 and it's a struggle for them. They've just been back
20 in school for about a month, month and a half. And I
21 guess what I'm trying to say is that the education
22 that our people need is what I would call education
23 for self-determination. That education is a vehicle
24 to help our people reach the personal and cultural
25 self-determination that we each seek. Thank you.

1 CHAIRMAN FORMAN: Thank you. Dr. Hanohano, did
2 you wish to identify any position or organization or
3 just state -- or were you giving testimony in your
4 individual capacity?

5 DR. HANOHANO: I think I was -- it could be as
6 director of the Native Hawaiian Education Council.

7 CHAIRMAN FORMAN: Thank you. Dr. Lilikala
8 Kamelelehiwa.

9 DR. KAMELELEHIWA: (Speaking Hawaiian) I'm very
10 glad to see all of you here today and I'm pleased that
11 I'm allowed to give testimony. My name is
12 Dr. Lilikala Kamelelehiwa. I'm the director of the
13 Center for Hawaiian Studies at the University of
14 Hawaii in Manoa. I would like to invite all of you to
15 come to the University to see our center and to meet
16 our staff and our students.

17 My Ph.D. is in the field of Hawaiian Pacific
18 history. My job is one of education. I try to enroll
19 as many Native Hawaiian students as possible into the
20 University and to educate them about their history and
21 their rights as natives. At the Center for Hawaiian
22 Studies, we excel in the education of Hawaiian
23 culture, history, politics, and now resource
24 management. We are currently planning a Master's
25 program and a research institute. It would create new

1 curriculum, especially in English for the 48,000
2 Hawaiian children in the DOE that are not serviced by
3 Hawaiian immersion or by Kamehameha Schools.

4 The curriculum currently in English that our
5 children are faced with every day and, of course, all
6 the non-native children read as well, is really
7 racist. It's very anti-Hawaiian. We need to change
8 it. We need to do better than we have done in the
9 past. This terrible curriculum has contributed
10 greatly to the poor self-image of our children. It
11 feeds into higher rates of drop-out from high school,
12 also the high rates of suicide and crime and eventual
13 prison that our people face. So it's very important
14 that we have a Master's program and a research
15 institute at the Center for Hawaiian Studies.

16 However, we are seriously under-funded by the
17 University of Hawaii. For example, a 1986 report,
18 University report, on the situation of Hawaiian
19 studies recommended that there be 15 professors at the
20 Center for Hawaiian Studies. Fourteen years later, we
21 still have only five professors, only five professors;
22 and they teach 1500 students a year with those five
23 professors. So just to put that out there, I'm about
24 education and these are the problems we have.

25 I understand that you are enlisting comments,

1 however, regarding impact on Native Hawaiian
2 entitlement programs of the United States Supreme
3 Court of injustice decision in Rice v. Cayetano, and
4 given the anger of the Hawaiian community in response
5 to the Supremist Court opinion, I must commend your
6 bravery and invite the public comment especially since
7 our true feelings are mostly on principle.

8 Please know that the anger you will hear
9 expressed today is not directed at you personally, but
10 rather, at certain agents of the United States
11 Government who have behaved in a most racist manner
12 against Hawaiians.

13 The Rice v. Cayetano decision which, as we all
14 know, threatens to take away every right currently
15 enjoyed by the Hawaiian people under American laws,
16 Board of Educations, Board of Health, for housing, our
17 land rights. All of these cannot be considered in
18 isolation and must be put into a certain historical
19 context. In deference to the short time allotted for
20 this testimony, I will tailor my remarks and issues of
21 Native Hawaiian rights to land and to education as
22 those are my areas of expertise.

23 From time immemorial, Native Hawaiians have had
24 a special genealogical relationship to the Hawaiian
25 islands. Born from the mating of Earth Mother

1 Ukahana-moku and Sky Father Wakea, (phonetic
2 spellings) we're the Hawaiian islands and the Hawaiian
3 people. That's the definition of native. We are born
4 from the land 100 generations ago.

5 As such, we have an ancient duty to love,
6 cherish, and cultivate our beloved grandmother, the
7 land. The study of stewardship is called malama aina
8 where land is not for buying and selling, but for the
9 privilege of living upon. And in the reciprocal
10 relationship, when we Native Hawaiians care for and
11 cultivate the land, she feeds and protects us.

12 I would like to submit my book called Native
13 Land and Foreign Desires into these proceedings and
14 you may see more about traditional relationships to
15 land and how those were changed by very bad American
16 missionarian acts. Even though the Native Hawaiians
17 were converted to Christianity and countless notions
18 of capitalism, which required pride of ownership of
19 land, the King insisted...

20 CHAIRMAN FORMAN: Excuse me. Could you read
21 the name of your book into the record for the
22 reporter?

23 DR. KAMELELEHIWA: It's Native Land and Foreign
24 Desires. (inaudible)

25 CHAIRMAN FORMAN: Also, could you please slow

1 down? I understand you have a very short period of
2 time, but in order for the reporter to get your
3 remarks, she has requested that you slow down, please.

4 DR. KAMELELEHIWA: I have a lot to say.

5 Even after Native Hawaiians were converted to
6 Christianity and countless notions of capitalism,
7 which required private ownership of land, the King
8 insisted upon the right of native tenants. The rights
9 of native tenants include the right to enter into and
10 live upon any unoccupied land. Since land was an
11 important source of food, denial to land was
12 tantamount to starvation and death.

13 And, as you know, crown lands and government
14 lands, which are ceded lands, once taken over by
15 America, became lands that America controlled and
16 denied Native Hawaiians the right to live upon.

17 You folks know, and this is the end of my
18 testimony, which you will receive copies of later,
19 about how many Hawaiians have tried to move onto those
20 lands to provide housing for their people, for their
21 children, how those people have been arrested,
22 evicted, their houses and possessions bulldozed.
23 You're going to hear from people today who will say
24 those things who have been there and through that.

25 A majority of the homeless in Hawaii are

1 Hawaiians, Native Hawaiians. We have thousands of
2 children every day who are Native Hawaiian going to
3 school from situations of homelessness, from tents,
4 from cars, from caves. This is a terrible thing that
5 has been done to our people. It is a great wrong done
6 by America.

7 Moreover, the historical situation of Native
8 Hawaiians is different from any previous example of
9 indigenous native people of the United States. Native
10 Hawaiians are the only native indigenous people now
11 residing within America who had an independent
12 kingdom, treaties with many nations around the world,
13 and who were never conquered in war by the United
14 States.

15 Indigenous rights of Native Hawaiians, it is
16 best to first address indigenous rights of Native
17 Hawaiians in the international arena, and one should
18 note that international law and international
19 conventions take precedence over laws made by
20 countries such as United States, for example.

21 I would like to quote the following excerpted
22 paragraphs from the United States declaration on the
23 rights of indigenous people, only a few of them, not
24 all 30, but I think very illustrative for this
25 discussion today.

1 Number one, indigenous peoples have the right
2 of self-determination in accordance with international
3 law by virtue of which they may freely determine their
4 political status and institutions and freely pursue
5 their economic, social, and cultural development. An
6 integral part of this is the right to autonomy and
7 self-government.

8 Number 6, covenant number 6, indigenous peoples
9 have a collective and individual right to maintain and
10 develop distinct ethnic and cultural characteristics
11 and identities, including the right to
12 self-identification, which, of course, you know has
13 been abrogated by the American government by insisting
14 that Native Hawaiians must be 50 percent blood. We
15 claim that Native Hawaiians are any, quote, blood
16 quantum.

17 Number 7, indigenous peoples have the
18 collective and individual rights to be protected from
19 cultural genocide, including the prevention of
20 (inaudible) and redress, 4; A, any act, which has the
21 aim or effect of depriving them of their integrity as
22 distinct societies or their cultural or ethnic
23 characteristics or identities; B, any form of forced
24 assimilation or integration by the position of other
25 cultures or ways of life; C, disposition of their

1 lands, territories, or resources.

2 Number 11, indigenous peoples have the right to
3 all levels of education, including access to education
4 in their own languages and the right to establish and
5 control their own educational systems and
6 institutions. Resources shall be provided by the
7 state for these purposes.

8 Number 12, indigenous peoples have the right to
9 have the dignity and diversity of their cultures,
10 histories, traditions, and aspirations, reflected in
11 all forms of education and public information. The
12 state shall take effective measures to eliminate
13 prejudices and to foster tolerance, understanding, and
14 good relations.

15 Number 14, indigenous peoples have the right to
16 adequate financial and technical assistance from the
17 States and through international cooperation to pursue
18 freely their own political, economic, social,
19 cultural, and spiritual development, and for the
20 enjoyment of rights contained in this declaration.

21 Number 15, indigenous peoples have the right to
22 recognition of a distinctive and profound relationship
23 with the total environment of the lands, territories,
24 and resources, which they have traditionally occupied
25 or otherwise used.

1 Number 16, indigenous peoples have the
2 collective and individual rights to own, control, and
3 use the lands and territories they have traditionally
4 occupied or otherwise used. This includes the right
5 to full recognition of their own laws and customs,
6 land tenure systems and institutions for the
7 management and resources, and the right to effective
8 measures by states to prevent any interference with or
9 encroachment upon these rights.

10 Nothing in the foregoing should be interpreted
11 as restricting the development of self-government and
12 self-management arrangements not tied to indigenous
13 territories and resources.

14 CHAIRMAN FORMAN: Dr. Kamelelehiwa, you have
15 two minutes remaining.

16 DR. KAMELELEHIWA: Yes. Indigenous peoples
17 also have the right to restitution. Where this is not
18 possible, to just and fair compensation for lands and
19 territories which have been confiscated and occupied.
20 We have the right to protection and, where
21 appropriate, rehabilitation of the total environment.

22 We have the right to maintain and develop our
23 areas of lands and territories with our traditional
24 economic structures. Because America has taken our
25 land and our country, we have been denied these

1 rights. They have been -- our rights have been
2 violated. Once the American military invaded in 1893,
3 all of these rights were abrogated.

4 When, in 1900, the American government decided
5 to take us, without vote, as a territory, without
6 vote, we did not get to vote on this, and despite the
7 thousands of signatures, 92 percent of the adult
8 public, 92 percent wrote on these petitions and said,
9 "Please do not annex our country," and said to us,
10 "Forever, we will resist the annexation of our
11 country." Abrogation of our civil rights. Hu'e, the
12 Kui Aloha Aina Anti-Annexation Petitions 1897 to 1898,
13 I submit to you also for your perusal.

14 In that light, Rice v. Cayetano is one more
15 racist attack upon us. I could tell you about how my
16 mother's brothers died of starvation. I could tell
17 you how my grandmother died on the waiting list for
18 Hawaiian Homelands. I don't have enough time today to
19 do that.

20 So in my 10 minutes, I direct you to
21 international rights of natives, and I also direct you
22 to understand that, as a kingdom with treaties, our
23 rights as a sovereign nation have been abrogated,
24 which you know about because that is enunciated in
25 Public Law 103-150, apology law, I submit to you for

1 your perusal.

2 In addition, we have a 1998 UN report that
3 says, "The invasion of Hawaii by the American military
4 was illegal. The taking of Hawaii as a territory in
5 1900 was illegal. And recommends that we be
6 re-enscribed on the list of decolonized nations. And,
7 as you know, this is the United Nations process for
8 allowing us to become an independent nation again.
9 Rice v. Cayetano breaks all the laws.

10 The Supreme Court of injustice breaks all
11 international laws concerning indigenous peoples, and
12 those people who have pressed for the breaking of
13 these laws are guilty of international crimes. Thank
14 you.

15 (Applause)

16 CHAIRMAN FORMAN: Thank you very much. And
17 please, if you have additional remarks, if you could
18 submit them in writing. Mr. Tom Pilla is at the end
19 of the table and the record will also be left open for
20 30 days so you have additional time to put your
21 thoughts down on paper.

22 DR. KAMELELEHIWA: I have them all ready and
23 I'll give the 15 copies to you later today.

24 CHAIRMAN FORMAN: Thank you very much. I'd
25 also thank you for pointing out indirectly an

1 oversight on my part in introducing this panel, which
2 is discussing the impact on programs in health,
3 education, and housing.

4 Tara Lulani McKenzie, please identify yourself
5 and any organizational position that you wish.

6 MS. MCKENZIE: Tara Lulani McKenzie. Aloha mai
7 kakou Commission members, Committee members. Mahalo
8 for allowing me to present to you today. I have been
9 a little sick, so my ears are plugged, so you are
10 going to have to raise your hand if I'm either not
11 talking loud enough or talking too loud because I'm
12 having trouble hearing.

13 I assume that I was asked to present because of
14 my role as a president and CEO of Alu Like, Inc. And
15 before I begin, I would just like to say that I honor
16 my ancestors from the north, to the south, to the
17 east, and the west, from the deepest depths of the
18 ocean to the highest mountaintops, from the farthest
19 horizon to the rain forests, I honor them and I
20 respect them. And I also want to thank Ke Akua and
21 all that is above us, all that is within us, for the
22 divine mana that flows through each and every one of
23 us every day.

24 In the 1970s, there were a number of concerned
25 Native Hawaiians who recognized the grave conditions

1 in the Hawaiian communities across the State. Native
2 Hawaiians are suffering from serious socioeconomic
3 problems. They have overwhelming needs and few
4 remedies. Alu Like was born from this group of
5 concerned Native Hawaiians. Two beloved Native
6 Hawaiian kupuna leaders, Edith Kanakaole and Mary
7 Kawena Pukui, blessed Alu Like, Inc., with its name
8 and its motto, "E alu like mai kakou e na oiwi o
9 Hawaii," translated as, "Let us work together, native
10 people of Hawaii."

11 In the last 25 years, Alu Like has grown into
12 the largest private nonprofit 501(c)(3) that provides
13 services and programs to Native Hawaiians statewide.
14 Over 100,000 Native Hawaiians have benefitted from Alu
15 Like's programs, some of which are early childhood and
16 prenatal care to kupuna elderly health and nutrition,
17 at-risk youth to ex-offender programs, vocational
18 education to employment and training, and literacy to
19 business training programs.

20 In addition, the Hawaii Technology Institute, a
21 computer training school, received accreditation in
22 May of this year, I'm happy to report, and the Hawaii
23 Technology Institute is a project which was born and
24 developed within Alu Like and has now formed its own
25 separate nonprofit.

1 Finally, Alu Like has a subsidiary for-profit
2 whose goal is to develop business opportunities and
3 create greater support for the nonprofit corporation.
4 The formation of this for-profit was anticipated to
5 help Alu Like achieve greater self-sufficiency in case
6 funding was jeopardized or reduced.

7 In the past century, the Congress of the United
8 States has passed over 150 statutes addressing the
9 conditions of Native Hawaiians. These include, but
10 are not limited to the Hawaiian Homes Commission Act,
11 the Native Hawaiian Education Act, the Native Hawaiian
12 Health Act, the Job Training Partnership Act, which is
13 now called the Workforce Investment Act, and many
14 others.

15 Alu Like and many other organizations that
16 serve Native Hawaiians could not have provided their
17 programs and services without these federal -- this
18 federal support. While there has been support from
19 the State and the Office of Hawaiian Affairs, Alu Like
20 receives the majority of its funding from the federal
21 government.

22 The recent Supreme Court decision in
23 Rice vs. Cayetano set a precedent for future
24 challenges. There are individuals in groups preparing
25 to challenge Native Hawaiian programs and even the

1 Alii Trust. In fact, just recently, in the Honolulu
2 Advertiser, during the week of September 18th,
3 Mr. Goemans, Freddie Rice's attorney in the
4 Rice vs. Cayetano case, stated that he is currently
5 working on a legal challenge to Native Hawaiian
6 programs. The Rice vs. Cayetano decision set in
7 motion a tragic situation which could have very
8 serious implications for Native Hawaiians.

9 Fortunately, Senator Akaka, Senator Inouye, and
10 Representative Abercrombie, along with the Native
11 Hawaiian community, were able to act quickly and
12 introduce legislation which has the potential to
13 protect programs and entitlements and resolve
14 long-standing issues facing Native Hawaiians, such as
15 political status and self-determination.

16 This is only a very baby beginning step, but it
17 is a step, and I don't believe in any way that it
18 jeopardizes the rights to pursue independence in a
19 different venue, which is the international arena. It
20 appears that this legislation is going to pass this
21 session and become law. This is a significant step
22 for Native Hawaiians, but there is a lot of work still
23 to be done. In the meantime, the Goemans of the world
24 will continue to mount their challenges and attempt to
25 strip away everything Native Hawaiians have gained

1 over the past decade.

2 Another important point to make, a poll was
3 taken in April of this year. Eighty-seven percent of
4 Native Hawaiians polled in the April survey said that
5 they support some kind of federal recognition or
6 political relationship between the United States and
7 Native Hawaiians.

8 Now, what are some of the improvements that
9 have occurred over the last 20 or 30 years as a result
10 of Alu Like and other organizations' efforts? There
11 are a higher percentage of Native Hawaiians who are
12 employed. More Native Hawaiians are attending
13 college. There is a greater appreciation of practice
14 of Native Hawaiian culture and traditions. Native
15 Hawaiian language opportunities have increased
16 producing a greater number of native speakers. And
17 there are more Native Hawaiian doctors and lawyers.

18 What are the effectiveness of some of these
19 programs weighed against dollar expenditure? I will
20 provide you 15 copies of my testimony. I'm not going
21 through, but I have provided you some of what we call
22 return on investment analysis, which shows the effect
23 of your programs as you compare it against the dollars
24 that are spent on those programs.

25 So the above-mentioned programs, which I have

1 referred to, are only two examples of effective
2 efficient use of federal dollars. There are many more
3 programs and organizations too numerous to mention in
4 this paper that have effectively helped thousands of
5 Native Hawaiians.

6 Every time a Hawaiian family is able to move
7 into a home on Hawaiian Homelands, health prevention
8 services help a high-risk Hawaiian, prenatal and early
9 childhood education assists a teenage mother to better
10 care for her child, a Hawaiian student graduates from
11 college, an adult masters new skills in a job, or one
12 of our own overcomes substance abuse, we know that one
13 more Native Hawaiian individual or family has been
14 helped and healed. That's one less needing
15 assistance. Every accomplishment helps in this arena.

16 And while the above-mentioned improvements and
17 examples of effective programs are encouraging
18 achievements, unfortunately, Native Hawaiians still
19 have some of the worst statistics, the highest rates
20 and poor indicators in many areas. Alcoholism,
21 substance abuse, domestic violence, poor health
22 habits, lack of motivation, sedentary lifestyle, are
23 still very critical problems in the Native Hawaiian
24 communities.

25 My great, great grandmother died at 54 years

1 old from a disease that they didn't know what it was.
2 My great grandmother died at 50 from heart failure.
3 My grandmother died at 44 from diabetes. Over 38
4 percent of Native Hawaiians' deaths in 1996 were due
5 to heart disease. Native Hawaiians rated the top in
6 diabetes and cancer also.

7 While Native Hawaiians comprise only 18 percent
8 of the Hawaii state population, over 40 percent of
9 convicted felons and a staggering 51 percent of the
10 youth offenders are Native Hawaiians.

11 In 1997, Native Hawaiians were the largest
12 single racial group in the state receiving AFDC and
13 food stamps. This is due to a large number of Native
14 Hawaiian single-parent families and generally low
15 income levels. So while Native Hawaiians, again,
16 comprise 18 percent of the Hawaii State population,
17 almost 40 percent of the total admissions to state
18 substance abuse treatment centers are Native
19 Hawaiians.

20 More major efforts to address Native Hawaiians
21 began late in the 1970s, where there was already a
22 proliferation of problems and suffering within
23 communities. It has been a matter of catch-up ever
24 since, constantly working to make greater progress,
25 but inundated with the numbers who need help and the

1 many roadblocks encountered. As long as we continue
2 to have a positive impact on Native Hawaiians, those
3 of us involved with Native Hawaiian programs and
4 services will stand up against those who seek to take
5 away what we have attained for the betterment of our
6 people.

7 In conclusion, yes, the Rice vs. Cayetano
8 decision has potential for major impact on programs
9 and entitlements. However, realization of our
10 self-determination through The Akaka Bill, through the
11 international arena, raise potential for greater
12 control of our resources and lands, education systems,
13 health and government issues, economic destiny, and
14 preservation of our culture and language, all of which
15 has alluded us for over a century.

16 When people have greater control over their
17 destiny and are more self-sufficient, they feel a
18 sense of self-worth and pride, a sense of value in
19 their lives. Nothing is more powerful than this than
20 to help mend broken hearts and change lives.

21 Thank you.

22 CHAIRMAN FORMAN: It seems that the list of
23 things that I omitted in my opening statement has
24 increased. If you have a cell phone or pager, please
25 put it on vibrator for everyone in attendance for the

1 courtesy of not being interrupted or distracted.

2 Also neglected to introduce Ruby Moi, who is
3 the staff -- speaking of pagers -- Staff Director Ruby
4 Moi, who has come all the way from Washington, D.C.
5 Welcome. Sorry for the interruption.

6 Dr. Kenneth Conklin, please identify yourself
7 and if you have any organizational...

8 DR. CONKLIN: Aloha kakou. Mahalo i ko 'oukou
9 ho'okipa mai i keia kakahiaka. Thanks for your
10 hospitality in morning.

11 You propose to discuss only one topic, the
12 impact on Native Hawaiian entitlement programs of the
13 Supreme Court decision in Rice-Cayetano. Do you
14 assume the Rice decision is bad? Is preservation of
15 racial entitlement programs your goal? Some have a
16 topsy-turvy concept of civil rights saying that it
17 violates the civil rights of Hawaiians when they
18 cannot get preferential treatment, land, money, and
19 political power based solely on race. I reject that
20 upside-down logic. To grant such logic would grossly
21 violate the civil rights of all the people of Hawaii.

22 The Supreme Court heard about the overthrow
23 apology bill that claimed that ethnic Hawaiians are
24 indigenous and have a trust relationship like the
25 Indian tribe, the same things you will be hearing

1 again today. Nevertheless, the Court ruled that
2 Hawaiian and Native Hawaiian are racial categories,
3 not political ones. By a 7-to-2 vote, they said the
4 use of racial classifications is corruptive of the
5 whole legal order and distinctions between citizens
6 solely because of ancestry are, by their very nature,
7 odious to a free people whose institutions are founded
8 upon the doctrine of equality.

9 So it is clear what the long-term effects of
10 the Rice decision will be upon racial entitlement
11 programs. They are unconstitutional and will be
12 abolished. This is not a bad thing. This is a good
13 thing. It is good to reaffirm that all citizens of a
14 democracy are equal under the law. It is good to
15 reaffirm that government cannot discriminate either
16 for or against people on account of race. It is
17 called protecting civil rights.

18 Some people are so desperately addicted to
19 racial entitlement programs, they want to rip apart
20 the State of Hawaii by seeking federal recognition for
21 a phony Indian tribe. Addiction is like that.
22 Desperate druggies would do anything for a fix. The
23 Akaka Bill would be the first time in history for
24 Congress to recognize a political entity that never
25 existed, get people to sign up, allow it to invent its

1 own membership rules as it goes along, and then
2 negotiate with it over money, land, and power.
3 Hopefully, The Akaka Bill will be ruled
4 unconstitutional.

5 I believe we should focus on what brings us
6 together rather than what tears us apart. How awful
7 if a group calling itself a Civil Rights Commission is
8 an accomplice in fomenting ethnic strife as in Bosnia,
9 Rwanda, Zimbabwe, and Fiji. Instead of aiding and
10 abetting the ripping apart of Hawaii to create racial
11 supremacy for a hereditary elite, the Civil Rights
12 Commission should be focusing on real violations of
13 civil rights.

14 The Hawaii Attorney General and OHA used their
15 power to try to preserve racial segregation of the
16 candidates for statewide office and to argue that a
17 candidate must pass a test of political correctness
18 from OHA before being allowed to run for the OHA
19 board. The Civil Rights Commission should also be
20 looking at how The Akaka Bill, supported by the
21 State's power elite, will petition the State of Hawaii
22 along racial lines without asking the vast majority
23 whether they approve. Now, that's a real civil rights
24 violation for you.

25 Let me reply to some distortions about history

1 and current events, which you are sure to hear today,
2 and I hope you will challenge people on these points
3 as the day goes by. Yes, the Kingdom of Hawaii had
4 treaty relations with the U.S. and other nations, but
5 let me point out that there was never any treaty with
6 the race of Native Hawaiians. All treaties were with
7 a multi-racial Kingdom of Hawaii where thousands of
8 people with no Hawaiian blood had full and equal
9 voting and property rights.

10 Most of the wealth and most of the high
11 political offices were held by people with no native
12 blood. At the time of the overthrow, only 40 percent
13 of the population had any native blood. All of this
14 happened because the sovereign monarchs exercising
15 self-determination chose assimilation and full
16 partnership rather than separatism.

17 Some say Hawaiians are indigenous. Well, I am
18 descended from people who once were indigenous. Does
19 that make me indigenous? Hawaiians integrated to
20 Hawaii less than 2,000 years ago, long after Celts and
21 Saxons were already well established in Ireland and
22 England. Would you call today's British people
23 descended from them indigenous?

24 For true indigenous people, look at the
25 aborigines of Australia or African bush tribes. They

1 are truly separate and distinct from nonindigenous
2 populations.

3 Some say the people of Hawaii opposed
4 annexation to the U.S. A commonly heard falsehood is
5 that 38,000 signatures were on a petition against
6 annexation in 1897, representing almost 100 percent of
7 Kanaka Maoli. The truth is very different. The
8 petition against annexation had only 21,000
9 signatures, representing about half the Kanaka Maoli
10 and only 19 percent of the entire population. There
11 was allegedly a second petition not opposing
12 annexation, but seeking to restore the queen allegedly
13 signed by 17,000 people, but it was never presented to
14 Congress, it has never been found. Any anyone wanting
15 to restore the queen would surely have opposed
16 annexation and signed both petitions.

17 Some say Hawaiians today are at the bottom
18 among all ethnic groups in terms of poverty, disease,
19 education, and incarceration, but those figures are
20 doubtful partly because anyone with a single drop of
21 native blood is counted as Hawaiian. Three-quarters
22 of Hawaiians today have mostly non-Hawaiian blood.

23 In Spring 1999, OHA Commissioned the
24 well-respected SMS Research Organization to do a
25 study. The results are on the OHA website. Fifty

1 percent of Hawaiian families had incomes over \$50,000
2 per year, including 11 percent with incomes over
3 \$100,000. Poverty? Of course, there are some
4 Hawaiians living in poverty. There are also
5 Filipinos, Chinese, Japanese, and haoles living in
6 poverty. The solution is that government should help
7 people in need based on need and not race.

8 Now, here's something so obvious, I hate to
9 mention it. If it is true that Hawaiians are more
10 needy than others, then they will get more help than
11 others in any programs based on need alone. Why
12 should we provide a separate agency to help just one
13 race, and then another agency for another race if
14 we're lucky? Are we trying to balkanize Hawaii?

15 OHA Chairman Clayton Hee likes to say that many
16 Hawaiians are married to non-Hawaiians or have
17 non-Hawaiians in their families. Therefore, Hee says,
18 whenever a program benefits Hawaiians, it also
19 benefits many others, but that logic works the other
20 way too. Every time the legislature enacts programs
21 to benefit the people of Hawaii regardless of race,
22 those programs automatically benefit ethnic Hawaiians.
23 Schools, roads, airports, harbors, Welfare programs,
24 benefit Hawaiians at least in proportion to their
25 population and probably more than proportionately.

1 It's ludicrous to say that Hawaiians would get no
2 benefits from government or ceded lands unless such
3 benefits were racially earmarked for them. Hawaiians
4 get 20 percent of all the revenues and all government
5 expenditures simply by being 20 percent of the
6 population, and they get more if they are more needy
7 than average.

8 One of the racial entitlement programs proposed
9 in Congress this session was Senate Bill 1929, to
10 provide free health care to all ethnic Hawaiians
11 regardless of need. Thus, the 50 percent of Hawaiians
12 with family income over \$50,000 a year would get free
13 health care even while truly destitute people of other
14 races get no help at all. That's outrageous. I think
15 it's a violation of civil rights.

16 All the programs that these panelists are here
17 to defend are wonderful. The 160 federal programs to
18 help Hawaiians are wonderful. They should be open to
19 all people regardless of race. To do otherwise is
20 racist, unconstitutional, and a violation of civil
21 rights. Help people based on need instead of race.

22 Take note of the institutional affiliations of
23 today's speakers. Notice that those speaking in favor
24 are beneficiaries or large service providers who make
25 money off of these programs. I and others are just

1 individuals trying to speak truth to power as civil
2 rights activists have always done.

3 Mahalo i ko 'oukou ho'olohe ana mai i ko'u
4 mana'o. Thanks for listening. Aloha kakou.

5 CHAIRMAN FORMAN: Thank you. I'll open up for
6 questions to any of the Commission or guests. Do the
7 Commission have questions for any of the panelists?

8 COMMISSIONER REYNOSO: I was just saying to the
9 Co-Chair that we always have questions.

10 Dr. Conklin, from what I heard, as much as,
11 perhaps more so last night from the elders that are
12 not here today, one of the great concerns that the
13 folks have here is that the culture needs to be
14 protected. They have concerns about health and
15 education and so on, and land, but it relates a great
16 deal to the culture. And some of the folk here this
17 morning referred to cultural genocide. Do you
18 consider it a value to the Hawaiian society as a whole
19 and to the U.S. and to the world to try to have an
20 ambience where that culture is nurtured and protected?
21 And if you do, what can we do to help that?

22 DR. CONKLIN: Yes. Thank you for the question.
23 It's an excellent one. I am a very brave and strong
24 supporter of Hawaiian culture and spirituality.
25 That's why I came here, took the time to learn

1 Hawaiian language and learn about the history and
2 culture.

3 I would note that perhaps 40 or 50 years ago,
4 we didn't hear much about Hawaiian culture and the
5 Hawaiian people themselves didn't make very much of
6 it, but over the last 20 years or so, there has been a
7 powerful resurgence of Hawaiian culture and that has
8 taken place under the auspices of the existing
9 governmental system where all people have equal rights
10 under the law.

11 There are many, many different cultures in
12 Hawaii. All of us are in the minority here. The
13 various cultures of immigrants have done quite well in
14 maintaining and preserving their culture and the
15 Hawaiian renaissance of the last 20 years has been
16 extraordinarily powerful and I believe it is strongly
17 supported by all of us in Hawaii.

18 So the issue is not the survival of the
19 culture. The issue is the survival of equal rights
20 for us all.

21 COMMISSIONER REYNOSO: One more question. I
22 don't mean to monopolize. Dr. Kekuni Blaisdell, last
23 night and again this morning, we heard a lot about the
24 importance of land. Some of the elders mentioned that
25 it's difficult to protect culture and protect land,

1 and so on, without having a land base. If the world
2 were ideal from your point of view, what would that
3 mean to Hawaii? What does regaining land mean in a
4 practical sense?

5 DR. BLAISDELL: As Professor Lilikala has
6 pointed out, we come from the land. We are part of
7 the land. By "land," we mean our sacred environment.
8 Without it, we are not a people, we have no culture.
9 Our existence is oneness with our sacred environment.
10 So without the land, we don't exist, and that's why
11 we -- that's why we have the worst mortality rate.
12 That's why we have the worst other indicators. That's
13 why we are destined to disappear as a distinct people
14 in the year 2044.

15 So you say practical, it's the land that feeds
16 us. That's what the term "aina" means, land which
17 feeds us. We don't eat unless we have land. What we
18 eat has to be junk food, processed food, and that's
19 why we have the highest rates for obesity and
20 hypertension and diabetes and heart disease.

21 So the only answer to our survival is to return
22 all of our lands. Perhaps Lilikala would like to
23 comment on this. May I ask her to?

24 CHAIRMAN FORMAN: One other question?
25 Questions for Dr. Kekuni?

1 COMMISSIONER REYNOSO: I would just say thank
2 you, Mr. Chairman.

3 CHAIRMAN FORMAN: Commissioner Lee?

4 COMMISSIONER LEE: I have a question for
5 Dr. Lilikala, and I apologize, because we are short of
6 time, I won't try to pronounce your last name.

7 Last night, we heard from some elders talking
8 about the plight of Native Hawaiian youth not able to
9 go to -- not able to seek higher education, and
10 someone mentioned only 3 percent of University of
11 Hawaii students are Native Hawaiians. Why is that and
12 what steps would you recommend that need to be taken
13 to increase that population?

14 DR. KAMELELEHIWA: University is a very
15 unfriendly place to Hawaiians. There's a lot of
16 anti-Hawaiian bias there. Seventy-five percent of the
17 professors of the University of Hawaii at Manoa are
18 white. They don't necessarily like Hawaiians and they
19 resent that we are a native people. So Hawaiians are
20 not encouraged to come into University, but it really
21 begins with public school systems, which are very bad
22 with degradation of everything Hawaiian in those
23 public school systems, and so we don't -- a lot of us
24 don't finish high school. In fact, I'm the first
25 person in my family since the overthrow to finish high

1 school. So going to University is something that is
2 outside of general experience.

3 I don't think the figures are quite so bad as
4 3 percent, or perhaps it is overall, there are only 2
5 percent of the tenured faculty are Hawaiian at the
6 University, but for undergraduates now, we have been
7 able to bring the numbers up to 10 percent of the
8 undergrad freshmen this year will be Native Hawaiians
9 and that is because, solely because, of two things
10 actually: The money that we're getting for tuition
11 waivers and for financial aid from the federal
12 government, without which a majority of my students
13 could not be in school. I have 130 majors and a
14 majority of them could not be in school without that
15 federal funding.

16 So federal funding is very important, but the
17 other part that is important is providing courses
18 about Hawaiian culture that attract Hawaiians into
19 University. So what we do at the Center for Hawaiian
20 Studies is make an improvement in self-identity, and
21 after their finished with our B.A., they go into every
22 other field, because we're under-represented in every
23 field, to do graduate work. About 95 percent of our
24 students will go on to graduate school.

25 COMMISSIONER LEE: Another question: Will the

1 Rice decision impact federal financial aid in this
2 case?

3 DR. KAMELELEHIWA: Yes. We will see -- the
4 Rice decision actually makes a problem for all the
5 federal funding coming to Hawaiians. And contrary to
6 what Mr. Conklin has said, it's not just poor people
7 who get that money. Most of the tuition waivers at
8 the University of Hawaii actually go to foreign
9 students to attract foreign students to Hawaii, so it
10 doesn't go to people of need. And even then, if it
11 were to go to people of need, Hawaiians are
12 embarrassed to come forward to say, "Oh, we need to
13 have this. Gee, could we please have this?"

14 They apply for financial aid, they have to do
15 that, but they are not necessarily given financial
16 aid. They are not necessarily given any encouragement
17 to come to the University. We have seen it across the
18 University system. We've seen it at the College of
19 Education. We see it in many departments on campus.
20 With the graduate programs, they do not want Hawaiians
21 there.

22 And what Mr. Conklin does not address is the
23 dichotomy between native and citizens. We are the
24 native people of this land, 2,000 years, 100
25 generations, as opposed to perhaps one on our shores

1 and people who come after, as I'm sure the Native
2 American experience has long illustrated. People who
3 come after resent the fact that we have special
4 relationship to our land and that we want our land.
5 And under international law, we have the rights to our
6 land. That resentment causes the kind of racism and
7 anti-Hawaiian behavior that we have seen and heard
8 about today.

9 CHAIRMAN FORMAN: Why don't we go with a
10 question from Commissioner Meeks first and then we'll
11 come back to Commissioner Lee.

12 COMMISSIONER MEEKS: This is for Tara Lulani.
13 It sounds like you support Senate Bill 2899 and I just
14 wondered, we heard last night, and today too, some
15 opposition to that. Can you tell me what you think
16 the downside of that being passed might be, if you
17 thought in those terms?

18 MS. MCKENZIE: First of all, I'd like to say
19 that, contrary to what one of our panelists said
20 earlier, that it didn't have the input of the Native
21 Hawaiian community, that that is not true. I do agree
22 that the bill was a top-down bill. It did come from
23 Senator Akaka and the congressional delegation.
24 There's no question about that, but there was the
25 Native Hawaiian community working group, of which I

1 was a member, went to meetings island-wide to Native
2 Hawaiian communities to discuss the bill and solicit
3 input on that bill. So I just wanted make that
4 clarification.

5 As to whether the -- what the potential
6 disadvantages of the bill might be, I think there's --

7 COMMISSIONER REYNOSO: You're being asked to be
8 a good debater here. You're debating the other side.

9 MS. MCKENZIE: There's probably three
10 possibilities that seem to appear. One that's
11 critical is unification of the Native Hawaiian
12 community around this bill and there is a potential
13 that that may not happen, that those that are in
14 opposition to it that are seeking other remedies will
15 try to thwart the efforts of the bill and those that
16 are supporting it, so there's that.

17 Another disadvantage potential is that to be
18 categorized as Native Americans or Indian tribes. We
19 don't look at it that way. We're looking at this as a
20 distinct, unique bill relative to Native Hawaiians.
21 Yes, it's patterned after many of the Native American
22 efforts, but we are distinct people and this
23 legislation will reflect that, I believe, but a
24 potential disadvantage is that that may not, that
25 there may be difficulties in that area also.

1 And third, I guess, disadvantage is that the, I
2 think, the difficulty of making it happen not only --
3 I guess both sides, the Hawaiian community on the side
4 of all the efforts to require to develop a role to
5 have developed an interim -- elected an interim body
6 to decide what the documents, the government
7 documents, would look like, all of those issues are
8 going to take a lot of work.

9 On the federal side, it's the bureaucracy, the
10 tremendous bureaucracy from Washington and the time it
11 takes to get anything done.

12 CHAIRMAN FORMAN: Commissioner Meeks, do you
13 have any other questions?

14 COMMISSIONER MEEKS: I think this issue may
15 come up as we go on today. I'm also interested in
16 what's the up side to that. So I don't know if we
17 have to stop that question at this panel or if we
18 can --

19 CHAIRMAN FORMAN: We can do it later. Although
20 we've reached the time for a break, I'm going to take
21 my prerogative as the Chair to work through the break,
22 but invite anyone who needs to or wants to use the
23 bathroom or stretch their legs, to do so at this time.
24 I believe Commissioner Lee had another question.

25 COMMISSIONER LEE: If I may. Mr. Conklin

1 presented some pretty interesting statistics and I
2 wonder if anyone on the panel can shed some light on
3 helping me understand, because I've heard testimonies
4 last night and earlier today very different from
5 Mr. Conklin's perspectives, specifically on the
6 poverty rate and the health status. So if anyone on
7 the panel can shed some light on it, that would be
8 really helpful.

9 DR. BLAISDELL: I'll be glad to speak about the
10 health data. Kanaka Maoli have the highest mortality;
11 that is, death rates, overall, and for the major
12 causes of death, (inaudible) heart disease, cancer,
13 stroke, injuries, infections, and diabetes. And we
14 continue to have the highest rate in the 1990s
15 compared to previous decades.

16 We also have the highest rates for the major
17 chronic diseases, that is, the incidence of morbidity.
18 We have the highest rates of mortality for cancer, and
19 especially among women, with breast cancer, and men,
20 with lung cancer, so that we have a special program
21 now devoted to cancer prevention and early screening
22 in order to detect cancer.

23 We also have difficulty with access to
24 available health programs. Many of our people are
25 very reluctant to enter into the health system because

1 it's a western system, and so one of the efforts of
2 the Native Hawaiian health care programs is to have
3 culturally relevant, culturally competent health care
4 workers, and to have in our system traditional healers
5 as well.

6 So it comes back to revitalizing our culture
7 and incorporating our culture into the modern western
8 health system.

9 CHAIRMAN FORMAN: Dr. Kamelelehiwa, did you
10 have something to add?

11 DR. KAMELELEHIWA: Yeah. I wanted to address,
12 because I'm an historian, my expertise is on history,
13 I wanted to address the statistics and also to comment
14 on the idea that there's been rich Hawaiians around.
15 I don't know where these Hawaiians are. I haven't
16 seen these OHA statistics, and I certainly will look
17 for them, but of all the Hawaiians I know, I'm the
18 richest one that I know. And all of those Hawaiians,
19 as a professor that -- who's 80-year-old mother is
20 still working to help me pay the mortgage and I live
21 in a townhouse, I don't think that there are very many
22 rich Hawaiians around.

23 Most people I know are having extreme
24 difficulty paying rent. And the students that I have
25 are working at least part-time, some full-time, to

1 help their parents pay rent. They live at home and
2 help their parents pay rent. So I doubt that
3 Mr. Conklin's statistics are correct.

4 But I would like to point out that at the time
5 of the overthrow in 1893, 85 percent of the citizens
6 of Hawaii were Hawaiians, and Americans made up only 2
7 percent of that citizen base. Now, we had a lot of
8 contract workers here. They were not citizens. Mr.
9 Conklin is prevaricating when he says that those were
10 the correct statistics and only 40 percent of the
11 people were Hawaiians. That's not true. Citizens who
12 make the decision about sovereignty and government and
13 treaties were 85 percent native.

14 Also, with regards to the signatures in the
15 Ku'e petitions that were against annexation of Hawaii,
16 the 21,000 signatures that he quotes actually
17 represents almost all of the adult population of
18 Hawaiians. There were 40,000 Hawaiians in 1893.
19 21,000 signatures must mean there's more than
20 Hawaiians who signed these petitions against
21 annexation.

22 So I wanted to clarify those things because I
23 think there's a lot of misinformation that's going
24 around out there.

25 CHAIRMAN FORMAN: Mr. Hanohano, did you have

1 anything to add?

2 DR. HANOHANO: Yes. I believe the question
3 before your panel is whether -- well, you have the
4 charge of determining whether Hawaiians would
5 disappear as distinct people and culture, and to
6 follow the logic of Rice v. Cayetano would lead to
7 that result, I believe. And that the right for
8 Hawaiians to exist as a distinct people requires
9 protection and further preservation, and it falls, I
10 believe, in your hands. But whether you act on it or
11 not, Hawaiians will preserve -- we will preserve
12 ourselves regardless of whatever it is you do.

13 CHAIRMAN FORMAN: Unless Mr. Conklin has
14 something...

15 DR. CONKLIN: Well, there were a number of
16 things in Lilikala's comments. Just one of them, she
17 was saying that there were only perhaps 20,000 adult
18 Native Hawaiians at the time the petitions were
19 signed, but as we all know, Lilikala, the ages of the
20 signors of those petitions were written down next to
21 their names and there are many babies who signed the
22 petitions through their mothers and fathers.

23 So the statistics can be played any which way
24 you'd like. The fact is that there were thousands of
25 people in Hawaii prior to the overthrow who had no

1 native blood. Many, many of them become naturalized
2 as full subjects of the Hawaiian Kingdom. Many of
3 them were native-born subjects of the Kingdom of
4 Hawaii even though they had no native blood, and they
5 and their descendants today are still here with us in
6 Hawaii, Chinese, Japanese, and people from the U.S.
7 and from Europe, and they should be fully as entitled
8 as Native Hawaiians to any reparations from the United
9 States government for the overthrow of the Kingdom,
10 but we hear not one word mentioned about them in The
11 Akaka Bill or in any of the other activities going on.

12 CHAIRMAN FORMAN: I'm sure we could talk about
13 this for quite a long time. I would ask, if others
14 have anything they would like to add in this vein or
15 with respect to any of the other questions that have
16 been asked by the Commissioners, to submit their
17 comments to us in writing over the next 30 days.
18 Committee Member Murakami has a question.

19 COMMITTEE MEMBER MURAKAMI: Frankly, I guess
20 we're going to run out of time to get that thing
21 resolved, but I would be real interested in getting
22 written responses from any of you that want to address
23 that particular point, because we have contrasting
24 views about how many Hawaiians there were, how many
25 were adults, how many were citizens, and what

1 proportionately were relative to the citizenry of the
2 time.

3 And in that clarification, I would ask that if
4 any of you are able to address whether or not that's
5 the definition of a citizenry, does that include the
6 citizenry as defined under the Hawaiian Constitution
7 or some other constitution that you might have been
8 referring to at the time? Because as I understand it,
9 certain rights of suffrage were denied as a result of
10 the imposition of the 1887 Constitution, so that would
11 affect the percentages as well.

12 I would just like to get a clarification of the
13 facts so that we, as a Committee and Commission, can
14 act appropriately and not cite statistics that are not
15 reliable. I think that's a very critical point.

16 DR. CONKLIN: Mr. Murakami --

17 CHAIRMAN FORMAN: Hold on. If one of the
18 Committee Members has a question for one of the
19 panelists in particular, then I will recognize you.

20 COMMITTEE MEMBER MURAKAMI: The other point is
21 that I don't necessarily have to get an answer now
22 because I don't think everybody is prepared, but
23 Dr. Conklin cites the OHA survey at a website for OHA,
24 OHA.org, for the source of his 48 percent of Hawaiian
25 families having income of \$50,000 and above, so I

1 would like to get a clarification of that, if
2 anybody's willing to address that issue, whether that
3 is an accurate figure or not, because that obviously
4 changes the picture quite a bit in terms of what the
5 economic status of Hawaiians are. I think
6 Dr. Kamelelehiwa or maybe even Peter might be able to
7 address that. I was a little bit confused about that
8 as well because that was not my impression of the
9 economic status of Hawaiian families.

10 CHAIRMAN FORMAN: I understand that you're
11 requesting the panelists to submit maybe written
12 submissions.

13 COMMITTEE MEMBER MURAKAMI: Yes.

14 CHAIRMAN FORMAN: Your written submissions, as
15 I indicated earlier, will be made a part of the record
16 and they will be reviewed by the Commissioners and
17 Committee Members. With apologies to the Co-Chair and
18 the rest of the other Committee Members, I want to
19 start with my guests first, but Committee Member
20 Stender?

21 COMMITTEE MEMBER STENDER: Dr. Conklin,
22 inasmuch as you submitted this information, if you
23 could supplement that with a reference of where you
24 got your information from, I think that might be
25 helpful.

1 DR. CONKLIN: OHA website. I gave that in the
2 written statement.

3 COMMITTEE MEMBER STENDER: Well, I think the
4 website is information input. You must have some
5 other source because I wouldn't rely wholly on the
6 information received in the website.

7 DR. CONKLIN: I just thought it was rather
8 interesting that OHA itself commissioned the study to
9 be done, they paid for it, and they published the
10 information on their website. And they, if anyone,
11 that would be what the attorneys call a statement
12 against interest. They are the ones who would not
13 want that information to be known, but they put that
14 information there, and so I think it is clearly
15 reliable.

16 By the way, the demographic studies are also on
17 the OHA website through Robert Schmidt, who is
18 formerly the -- I forgot now what his exact position
19 was with the State of Hawaii, but --

20 COMMITTEE MEMBER MURAKAMI: He used to be a
21 state statistician.

22 DR. CONKLIN: State statistician, right. He's
23 the one who developed the marital figures on
24 population.

25 COMMITTEE MEMBER STENDER: If you can submit

1 that information to us off the website.

2 DR. CONKLIN: Sure.

3 CHAIRMAN FORMAN: I would also like to ask
4 staff to provide copies of the statements of each
5 panelist to the other panelists. I think that might
6 facilitate the responses that the Committee Members
7 are requesting. Dr. Nagtalon-Miller?

8 COMMITTEE MEMBER NAGTALON-MILLER: This is
9 directed to anybody, but particularly Dr. Conklin.
10 Since the U.S. Constitution does not deal or mention
11 the rights of people who were put under U.S.
12 jurisdiction illegally, how could the Rice
13 vs. Cayetano decision be valid if it's based on the
14 14th and 15th Amendments? They're talking about the
15 rights of everybody except the Kanaka Maoli?

16 CHAIRMAN FORMAN: Dr. Conklin?

17 DR. CONKLIN: I think that this is the
18 Commission of the United States. This is the United
19 States Civil Rights Commission. We operate under
20 United States law. Although Kekuni Blaisdell thinks
21 we should not be operating under United States law, I
22 do believe this is a part of the United States, and
23 therefore, the Supreme Court's decision applies to all
24 of us, including Native Hawaiians.

25 I might add that many, many Kanaka Maoli have

1 fought for the United States in wars, they have died
2 for their country, and they're buried in Puowaina, in
3 Punchbowl Cemetery, and elsewhere throughout the
4 world. I don't think that it does a service to those
5 folks who have died for their country to say this is
6 not their country. They thought it was their country.
7 Most Kanaka Maoli today believe that the United States
8 is their country. They are proud to be Americans, as
9 I am.

10 CHAIRMAN FORMAN: I understood Dr. Blaisdell's
11 testimony earlier to indicate that he felt the United
12 States Constitution requires that hearings to
13 international law by virtue of the Constitution's
14 requirement that treaties --

15 DR. BLAISDELL: Treaties are the supreme law of
16 the land according to the United States Constitution.
17 Treaties are the basis for international law.

18 CHAIRMAN FORMAN: Dr. Nagtalon-Miller's
19 question was also addressed to other panelists. Is
20 there anyone that would like to respond? Doctor?

21 DR. KAMELELEHIWA: Yes. I'd like to talk just
22 very briefly about international law versus American
23 law. Under international law, indigenous peoples, and
24 we are clearly indigenous as Native Hawaiians, have
25 certain rights, and those are the rights that I was

1 quoting to you and, in fact, they're much more
2 extensive than the ones I had time to squeeze in.

3 America is a country in the world that has to
4 live in the international arena. I think the reason
5 we're seeing the federal recognition bill at all is
6 because every year, for many years, we have gone to
7 the United Nations to tell people about how wrong
8 America has been in invading our country. I doubt
9 that Native Hawaiians would identify with being
10 American were it not for the American military
11 occupation of our country.

12 My 80-year-old mother doesn't want to be an
13 American, but we are scared of the American military
14 and she has been afraid of the American military all
15 her life. I know this. I've heard it. If I bring
16 her to you, you will hear it and she will use every
17 profanity she can think of to tell you how she feels.
18 So we're not free to make decisions about where we
19 find our livelihood here or how we settle our lands.
20 We are an occupied country.

21 And I submit to you, and for those people who
22 are guests of recognition who feel it would be a
23 terrible thing to give Hawaiians certain rights as a
24 particular race, there is a political relationship.
25 It's recognized by the international courts, it's

1 recognized by the United Nations, and it's a political
2 relationship that occurs between every native people
3 and their colonizer everywhere, not just Hawaii.

4 I was in the UN this summer and there were over
5 a hundred representatives of native peoples everywhere
6 with the same thoughts and being heard at the United
7 Nations because of that political relationship.

8 If the federal recognition bill does not go
9 through and Hawaiians are denied any kind of justice
10 within America, as we have seen with the Rice
11 v. Cayetano decision, then Hawaiians will more and
12 more go for the United Nations and opt for that
13 option. We want our country back. We want our lands.
14 We want to live upon our lands, because if we do not
15 live upon our land, we cannot perpetuate our culture.

16 We will struggle to maintain ourselves as
17 indigenous people forever, my children and
18 grandchildren and great grandchildren forever. And at
19 this point in time, because of so much anti-Hawaiian
20 sentiment that has been expressed, all I can say is I
21 encourage every Hawaiian to make as many babies as
22 possible so we can outnumber everybody else and then
23 we will not be a minority -- (inaudible)

24 (Applause)

25 CHAIRMAN FORMAN: Committee Member Kennedy?

1 COMMITTEE MEMBER KENNEDY: This is a comment
2 that's directed towards Dr. Conklin. We all realize
3 that the Rice decision was not a unanimous decision
4 from the Supreme Court, and I think that in your
5 comments, when you say that it's unconstitutional,
6 it's true that we have to have the constitutional
7 decision, but at the same time, I think it's important
8 to realize that it's not a unanimous decision. So
9 this, I think, is something indicative that even
10 within the confines of the Supreme Court, some people
11 feel that that decision was not correct. And I just
12 wondered if you'd like to comment on that.'

13 DR. CONKLIN: Yes. Regrettably, it was only a
14 7-to-2 decision, so there were two members of the
15 Court who felt differently. But as you know,
16 throughout history, we've had some very significant
17 decisions that were 5 to 4, and nevertheless, they are
18 the law of the land.

19 I think it's kind of surprising to find members
20 of the Civil Rights Commission and members of the
21 American Civil Liberties Union and others who are so
22 strongly for civil rights, but they say, well, this
23 may be the law of the land, but we don't agree with it
24 and we're not going to enforce it and we're not going
25 to help anybody who thinks that it should be enforced.

1 I had great difficulty being able to run for
2 public office on account of my race. I sought help
3 from the American Civil Liberties Union. They said,
4 "We're not interested in that." I mentioned that to a
5 preliminary meeting of this group right here chaired
6 by Yvonne Lee several months ago. "Not interested."
7 These are real civil rights issues and I wish that you
8 folks would take more of an interest in actual ongoing
9 civil rights cases where we have to live under the law
10 of the land as it has been given in a 7-to-2 verdict
11 by the U.S. Supreme Court, and still, we have all
12 kinds of resistance against that.

13 CHAIRMAN FORMAN: I want to take one further
14 question from Co-Chair Murakami.

15 COMMITTEE MEMBER MURAKAMI: Just as a preface,
16 as I understand the decision, Dr. Conklin, that
17 decision did not say that all programs we've been
18 talking about are unconstitutional based on race. All
19 it says is that you can't restrict voting to Hawaiians
20 only in the OHA elections, and that's all it says. In
21 any case, I understand what the implications can be
22 and that's what we're here to talk about.

23 But I have a question for some of the other
24 panelists that may want to react to a statement that
25 Dr. Conklin made about the multiracial composition of

1 the nations and timely overthrow. How -- and I guess,
2 you know, Dr. Kamelelehiwa, you're probably the best,
3 and I'd invite others, including Dr. Blaisdell, how do
4 you deal with that issue about the fact that whether
5 it's 40 percent or 85 percent Hawaiians, there was a
6 percentage that was non-Hawaiian in citizenry. So how
7 would the Hawaiian community deal with that issue at
8 this stage or is it too preliminary an issue to talk
9 about right now in terms of what rights or other, I
10 guess, issues might arise from that particular fact in
11 our industry?

12 DR. KAMELELEHIWA: Thank you so much for the
13 question. I love to speak about that issue as a
14 matter of fact.

15 When we look at all of the people who were
16 citizens in the Kingdom of Hawaii, who was most
17 deprived of rights and who was most targeted with
18 racism after the overthrow and with the taking of
19 Hawaii as an American territory? And I submit to you
20 that was Native Hawaiians.

21 First of all, Native Hawaiians refused to --
22 almost a hundred percent refused to swear an oath of
23 allegiance to the Republic of Hawaii, refused to speak
24 English even though Hawaiian language was banned, and
25 in the territorial legislatures, spoke Hawaiian. They

1 refused. They were breaking the law. They refused to
2 agree that America had a right to be in the country.
3 These are important facts to look at because what
4 happens then, of course, is that they don't get jobs,
5 they don't get opportunities for economic advancement.

6 My grandmother's grandfather was a lawyer in
7 Hana, Maui, at the time of the overthrow, and the
8 way -- he was loyal to the Kingdom. He refused to
9 take an oath of allegiance, and subsequent to that
10 refusal, he was denied employment. He was also the
11 sheriff of Hana, Maui, at the time. He was denied
12 employment.

13 So what we see then from him not having
14 employment and the subsequent generations from there
15 is a descent into poverty, great poverty. Who
16 suffered from that? Hawaiians suffered from that more
17 than anybody. It was our rights to live upon the land
18 which were cut off by the American government. Our
19 native rights. That's one of the rights of native
20 tenants. That's why Hawaiians do that today. They go
21 to live upon the land.

22 From time immemorial, that's been our right.
23 That's been cut off by the American government.
24 That's caused great poverty. That doesn't affect the
25 other races. That's not their custom. That wasn't

1 their right anyway under the Kingdom of Hawaii, their
2 native right, so that doesn't affect them. And who
3 benefitted, who benefitted most, were the members of
4 the white community, Americans and Europeans who lived
5 in Hawaii. They benefitted the most.

6 So now, we hear people like Dunston Treat-Smith
7 (phonetic spelling) say, well, maybe everyone should
8 get some kind of benefit because they were part of the
9 Kingdom? Who were those that stood against the
10 Kingdom? Who were they? Who organized and who
11 benefitted from the overthrow of our country? And
12 those who opposed to annexation are listed here, in
13 these petitions. There may be some non-Hawaiians here
14 and I welcome them. I think that's wonderful that
15 they have signed this petition against annexation, but
16 there's not a mass majority, I'll tell you. Most of
17 these are Hawaiian. And I haven't seen a single baby
18 listed here. Not a single one on these petitions.

19 So maybe I haven't looked through the 516 pages
20 carefully enough, but certainly, there are a great
21 majority of Hawaiians that were protesting, and they
22 were the ones who suffered the most because of their
23 protest.

24 I also want to submit to you, at the time of
25 the overthrow, the majority of teachers in the public

1 school system were Hawaiians, and now we are a very,
2 very small minority because systematically, Hawaiians
3 were legislated against. The law that said Hawaiian
4 language was illegal meant that in the schools, our
5 children were beaten for speaking Hawaiian. It wasn't
6 Japanese kids or Chinese kids or haole kids who were
7 beaten for speaking Hawaiian. It was Hawaiian kids.
8 It was Hawaiians who were afraid to say their Hawaiian
9 names for fear that they would get a beating. My
10 mother will tell you these things and she has raised
11 us with all of that knowledge.

12 So who suffered? Whose identify suffered? Who
13 had to give up their own Hawaiian names, the names of
14 their ancestors who shaped our own character? It was
15 Hawaiians. That kind of anti-Hawaiian behavior that
16 we saw with America saying everybody should be
17 American and no one in Hawaii, in the territory, no
18 one was supposed to have a Hawaiian name, that
19 impacted us the most.

20 So I'm glad to hear that question being brought
21 up because I'd like to clarify the historical record.

22 CHAIRMAN FORMAN: If you'd like to supplement
23 with written submissions, we would appreciate that.

24 Dr. Blaisdell, did you wish to respond to the
25 question at all?

1 DR. BLAISDELL: No, but I'll be submitting some
2 papers and some precise figures also.

3 CHAIRMAN FORMAN: Mahalo ia 'oukou. We started
4 about 45 minutes late and we're now about 25 minutes
5 late, so hopefully, we'll make up a little bit more
6 time in the next panel. Staff, make sure you can get
7 the submissions from these panelists. And thank you
8 very much for taking the time to be with us today.

9 COMMISSIONER REYNOSO: Thank you very much.

10 LEGAL IMPLICATIONS

11 CHAIRMAN FORMAN: As the panelists are leaving
12 the table, I'd like to invite the second panel on
13 legal implications to occupy the seats up front.
14 Mahealani Kamau'u from the Native Hawaiian Legal
15 Corporation, Bill Hoshijo from the Hawaii Civil Rights
16 Commission, Robert Klein, H. William Burgess, and
17 Edward King.

18 I'd like to ask again, if any of the audience
19 have pagers or cellular modes, to turn them on
20 vibrator mode so that they don't disturb the panelists
21 and other audience members.

22 Also, under our meeting guidelines, no audience
23 participation is permitted at any time during the
24 proceedings. Those who wish to address the meeting
25 will be afforded an opportunity between 4:00 and 6:00

1 p.m. this evening. I believe there's a sign-up sheet
2 outside that will be available until approximately
3 1:30 p.m. for sign-up. And your statements must
4 relate directly to the issues under consideration and
5 must not contain defamatory information.

6 During this panel, we have asked each of the
7 panelists to give a statement and limit their remarks
8 to 10 minutes. I will indicate -- I'm sorry. I will
9 interrupt you about two minutes, with two minutes
10 remaining in your statement, and then I will ask you
11 to summarize as your time is expiring.

12 We will hear from each of the panel members
13 before opening the floor up to questions, first from
14 our guests from the U.S. Commission on Civil Rights,
15 and then from other members of the Hawaii Advisory
16 Committee, and if time permits, if there are any
17 questions from staff for clarification or otherwise,
18 then we'll entertain those.

19 If everyone is ready to proceed, we will start
20 this panel on legal implications with Mahealani
21 Kamau'u from the Native Hawaiian Legal Corporation.
22 Would you please identify yourself and your
23 organization or position for the record.

24 MS. KAMAU'U: Yes. Aloha. I'm Mahealani
25 Kamau'u, executive director of the Native Hawaiian

1 Legal Corporation. Is that loud enough?

2 CHAIRMAN FORMAN: Yes. Thank you.

3 MS. KAMAU'U: Thank you for this opportunity to
4 appear before you to discuss my perspective on the
5 potential legal impacts of the Rice decision on the
6 legal status of Native Hawaiians and the programs
7 benefiting them.

8 The United States Supreme Court held in
9 Rice vs. Cayetano that the State of Hawaii's denial of
10 Rice's right to vote in OHA trustee elections violated
11 the 15th Amendment, which prohibits the National
12 Government and the States from denying or abridging
13 the right to vote on account of race.

14 In rendering its opinion, the high court chose
15 to apply the law as though entirely separate from the
16 cultural, political, and economic context within which
17 OHA's voting process was created. That context
18 largely is the result of America's misdeeds and the
19 Hawaii's electorate's desire to make amends.

20 The Court appears to have been influenced by
21 the increasingly dominant discourse of
22 neo-conservatism which has emphasized the need for
23 strictly color-blind policies, calling for the repeal
24 of special treatment such as Affirmative Action and
25 other race-remedial policies.

1 Under this doctrine, implicit assumptions
2 regarding race include beliefs that any race
3 consciousness is discrimination, that race is
4 biological and thus, a concept devoid of historical,
5 cultural, or social content, and that a group is
6 either racial or it is not. And if it is racial, it
7 cannot be characterized as political. This approach
8 allows America to ignore its historical oppression of
9 Native Hawaiians when meting out justice in its courts
10 of law.

11 The U.S. Supreme Court's opinion is not yet a
12 year old, but it has already worked great mischief in
13 the Native Hawaiian community. In a historical
14 context that includes America's theft of their nation,
15 theft of their public lands for which, to this day, no
16 compensation has ever been paid, and imposition of
17 policies tantamount to cultural genocide for over a
18 century, America's highest arbiter of justice has
19 begun a process of eliminating what has been available
20 to Native Hawaiians only in recent times and the
21 exclusive means for expressing their collective and
22 political will, the Office of Hawaiian Affairs.

23 The Supreme Court in Rice held that the State
24 of Hawaii could not constitutionally limit, by race,
25 the class of voters who choose the officials of the

1 Office of Hawaiian Affairs. It declared that the vote
2 must be open to all, not only OHA's beneficiaries, but
3 all Hawaiian citizens must have a say regarding the
4 selection of trustees who will oversee Native Hawaiian
5 trust assets for which OHA serves as repository.

6 Now, another federal District Court decision
7 following closely on the heels of Rice rendered only a
8 little over a week ago in Arakaki vs. Cayetano
9 declares, the Supreme Court's holding in Rice that the
10 U.S. Constitution prohibits discrimination on the
11 basis of race in voting for public office guides this
12 Court's determination that the Constitution also
13 prohibits racial discrimination as to who serves in
14 public office. Such discrimination violates the Equal
15 Protection Clause of the 14th Amendment, the 15th
16 Amendment, and the Voting Rights Act. Thus, trustees
17 cannot be limited to members of the beneficiary class.

18 More ominously, by declaring the voting scheme
19 a discriminatory violation of the 14th Amendment's
20 Equal Protection Clause, the Federal District Court
21 has explicitly expanded its constitutional reach to
22 lay bare and cement the legal foundation upon which
23 all Native Hawaiian-preference programs may now be
24 challenged and scrutinized under a stricter standard
25 of legal review. The government must now show that a

1 law which allows the native preference is narrowly
2 tailored to achieving a compelling state interest.
3 Native Hawaiian programs would have difficulty meeting
4 this strict scrutiny test in the best of times, but
5 the high court's recent inclination to turn a blind
6 eye to the larger context, the historic, cultural,
7 social, and political oppression suffered by Native
8 Hawaiians for over a century at the hands of America
9 portends disaster.

10 Native Hawaiians have made some small progress
11 over the past 25 years in combatting the socioeconomic
12 problems wrought by American colonization, progress
13 largely due to reforms implemented at the Department
14 of Hawaiian Homelands, the creation of the Office of
15 Hawaiian Affairs, and federal programs which have
16 addressed the housing, employment, health, and
17 cultural needs of Native Hawaiians. It has been only
18 in the recent -- in the past 25 years or so since
19 Native Hawaiians have had a modicum of political
20 empowerment and been able to exercise direct
21 responsibility for their own affairs, that progress
22 has been made in so many areas.

23 From the narrow vantage point of my agency for
24 which OHA, from its inception, has been the principal
25 means of financial support, a reversal from the

1 systematic taking of native land by large corporations
2 through adverse possession has been made possible, and
3 substantial numbers of Native Hawaiians have been
4 secured in their title and ownership of ancestral
5 lands. Many landmark cases which have signaled gains
6 for Native Hawaiians' ability to exercise customary
7 and traditional rights and to enforce their public
8 trusts in the courts would not have been possible but
9 for the existence of OHA.

10 Nevertheless, Hawaiians still suffer the
11 highest rate of housing problems in the nation,
12 exceeding Native Americans and Alaskan Natives. They
13 still have a shorter life expectancy and die in
14 catastrophic numbers from heart disease, cancer, and
15 diabetes. They are still the most alcohol and
16 drug-addicted and tragically over-represented in our
17 prison population.

18 Our incarcerated men and women are still being
19 exported to prisons in Minnesota, Texas, and Oklahoma,
20 cutting them off from their families and social
21 support systems and greatly diminishing the chances of
22 their successful re-entry into Hawaii society.

23 Our children are 34 percent of all victims of
24 child abuse or neglect, and 49 percent of the children
25 in the state's foster care system. The hope and

1 future of our people, our children, are growing up
2 without the nurture and spiritual sustenance of
3 family.

4 The impact of the Rice decision has been to
5 pull the rug out from under critical economic,
6 political, and social and cultural resources only
7 recently available and required for our continued
8 survival as a people. The Federal Recognition Bill
9 now before Congress, which confirms the existence of a
10 political relationship between the United States and
11 Native Hawaiians, possibly recasting our status from a
12 racial classification in such a manner as to escape
13 the pernicious application of constitutional law
14 devoid of contextual conscience, offers some promise.

15 I implore this Commission to support this
16 federal legislation, and to support our efforts to
17 govern ourselves in order that we may be a people, be
18 who we are culturally, politically, socially, and
19 spiritually. I have been taught by America and
20 believe to the very core of me that we are indeed
21 enriched by our diversity.

22 It is my hope -- excuse me. It is my hope that
23 the great country America, in its wide array of policy
24 fora, from the courts to its legislatures and anywhere
25 citizens of conscience gather, will not farther stray

1 from the fair and honorable principles that, in spite
2 of historic injustices committed against its native
3 peoples and minorities, continues to be a wellspring
4 and source of vibrant optimism from which its citizens
5 draw, and which can ultimately lead to a better future
6 and true reconciliation.

7 Thank you for this opportunity to share some
8 perspectives on the impact of Rice vs. Cayetano.

9 CHAIRMAN FORMAN: Thank you. We'll now hear
10 from Bill Hoshijo.

11 MR. HOSHIJO: Vice-Chair Reynoso, Commissioners
12 Lee and Meeks, members of the Hawaii Advisory
13 Committee, my name is Bill Hoshijo. I currently serve
14 as the executive director of the Hawaii Civil Rights
15 Commission and as a Board member of the Japanese
16 American Citizens League, Honolulu Chapter, but I'm
17 here today to speak as an individual, not in any
18 official capacity.

19 I understand that we're here today to discuss
20 the impact of Rice versus Cayetano on entitlements,
21 but I think we need to look at the impact of Rice, the
22 Rice decision in a broader sense, the impact on
23 Hawaiians, Hawaiian programs, and Hawaii.

24 I'm not Kanaka Maoli, but a third-generation
25 descendant of Japanese and Okinawan immigrants to

1 Hawaii and America. I do not consider myself an
2 expert on Hawaiian entitlements. All that being said,
3 I will comment on the conflict between civil rights
4 law and Hawaiian claims rights and the right to
5 self-determination as evident in the Rice decision and
6 its aftermath.

7 At the outset, I'd like to make two points.
8 First, we must recognize and acknowledge that Hawaiian
9 rights issues are not civil rights issues within the
10 framework that was applied by the United States
11 Supreme Court in Rice. The issues involved are not
12 issues of individual rights and equality under law,
13 but those of the inherent right of indigenous peoples
14 to self-determination.

15 For those of us who are committed to civil
16 rights and who support Hawaiian rights to
17 self-determination and self-government, the challenge
18 lies in reconciling the two and in expanding the
19 United States civil rights framework to include
20 indigenous people's right to self-determination.

21 Second, while a critical discussion of
22 Rice vs. Cayetano may bring into focus all the reasons
23 why Hawaiian rights and self-determination issues do
24 not fit neatly into a traditional American civil
25 rights framework, Rice is part of the disturbing trend

1 in which hard-won civil rights protections are being
2 subjected to constitutional attacks. We just need to
3 consider recent cases including the Boy Scouts of
4 America vs. Dale in which a 1st Amendment right of
5 expressive association was used to challenge,
6 successfully challenge, a New York -- New Jersey
7 public accommodations law.

8 We've also seen challenges to -- constitutional
9 challenges to the Americans with Disabilities Act, and
10 similar challenges to the Violence Against Women Act
11 and the Age Discrimination Act.

12 We're seeing an increase in -- increasing
13 number of cases litigated on 1st Amendment, free
14 exercise of religion challenges to civil rights
15 protections. These challenges are not new or
16 unprecedented. At the outset of Title 7, prohibitions
17 against race discrimination were also subjected to
18 states' rights constitutional challenges. However,
19 now we see or have a federal judiciary that seems more
20 receptive to these challenges.

21 When I read the United States Supreme Court
22 opinions in Rice vs. Cayetano, I was filled with shame
23 and sadness for what the Court had done. In striking
24 down the State law provision that limited voting in
25 elections of the Office of Hawaiian Affairs to

1 Hawaiian voters, the Court rendered a great injustice
2 and one that will have -- will affect every one of us
3 who live here in Hawaii.

4 Seven of the nine justices agreed that
5 Hawaiians eligible to vote in OHA elections
6 constituted a racial class rejecting the argument that
7 Hawaiians have similar standing to Native Americans
8 who have a political relationship with the United
9 States. That distinction between racial and political
10 classifications is crucial.

11 The Court then held that the Hawaiian-only OHA
12 vote violated the 15th Amendment principle that the
13 right to vote may not be denied on account of race.
14 In its analysis, the Court analogized the OHA vote
15 provisions to Jim Crow laws, which disenfranchised,
16 emancipated, after the Civil War, African Americans up
17 until the passage of the Voting Rights Act of 1965.
18 The Court did not address the issue of whether the OHA
19 vote violates the 14th Amendment guarantee, 14th
20 Amendment guarantee of equal protection.

21 In a powerful dissent, Justice Stevens
22 disagreed with the majority, citing the compelling
23 Hawaiian history which supports the remedial OHA law,
24 particularly the United States complicity in the
25 overthrow of the sovereign Hawaiian government.

1 Justice Stevens noted that the majority recited
2 Hawaii's history, but failed to understand its import.
3 It is a history of supression, eradication,
4 extinguishment, and termination from Hawaiian
5 political, land and water rights, culture, religion,
6 and language.

7 And as an aside, it's interesting that when the
8 majority discussed the waves of immigrants that came
9 to Hawaii, that they listed the Chinese, Japanese,
10 Filipinos, and other immigrants who came to Hawaii,
11 but did not include Americans and Europeans as
12 immigrants or settlers who came to Hawaii as --
13 anyway.

14 In his dissent, justice Stevens discussed the
15 federal government's unique obligation to native
16 peoples rejecting the majority's distinction between
17 tribal Indians and Native Hawaiians. He noted, and I
18 quote, "It is a painful irony indeed to conclude that
19 Native Hawaiians are not entitled to special benefits
20 designed to restore a measure of native
21 self-government because they currently lack any
22 vestigial native government, a possibility of which
23 history and the actions of this nation have deprived
24 them."

25 Since the decision, we've heard many

1 commentators repeat the mantra that the Supreme Court
2 has spoken, so it's the law of the land and we need to
3 move forward. Yes, it's the law, but we can't
4 abdicate our responsibility to critique the Court's
5 analysis, to hold it up to the camera of public
6 discourse and to condemn the unjust result.

7 We of the Japanese community are particularly
8 sensitive to the fact that the Court is not always
9 right, that it does render unjust decisions. In our
10 own history, the Court overwhelmingly upheld the
11 race-based curfew exclusion, evacuation, and
12 internment of Japanese during World War II in the
13 Yasui, Hirabayashi, and Korematsu cases.

14 The Japanese internment cases are widely
15 acknowledged as civil liberties disasters. It is
16 insulting that the Rice court cited Hirabayashi for
17 the principle that, quote, "Distinctions between
18 citizens solely because of their ancestry are, by
19 their very nature, odious to a free people whose
20 institutions are founded upon the doctrine of
21 equality."

22 I have no doubt that Rice vs. Cayetano will
23 similarly be condemned in historical hindsight.
24 Indeed, of many of us condemn it now and feel an
25 obligation to stand up and say so. It is true that

1 the Rice court ruled only on the 15th Amendment
2 right-to-vote issue, so Hawaiian programs and benefits
3 are not directly affected by the Rice decision.
4 However, Royce's attorney argues that the Court's
5 holding that Hawaiians constitute a racial class
6 subjects Hawaiian programs to constitutionally equal
7 protection challenges.

8 Mainland anti-Affirmative Action groups
9 characterize Hawaiian programs as racial preferences
10 and seek out Hawaii residents to challenge these
11 programs. Rice's attorney has made clear his intent
12 to file lawsuits to dismantle all state and federal
13 Hawaiian programs.

14 Contrary to what some commentators would have
15 us believe, less for Hawaiians does not mean more for
16 non-Hawaiians. We all benefit from living in a just
17 society. Here in Hawaii, we cannot build a just
18 society without justice for Hawaiians.

19 For the United States, justice demands
20 recognition of the inherent right of indigenous people
21 to self-determination, reconciliation with Hawaiians
22 through establishment of government-to-government
23 relationship, and acknowledgement of a trust
24 obligation over federal lands taken without
25 compensation to the Hawaiian people, all without

1 foreclosing future relief under international law.

2 Thank you.

3 CHAIRMAN FORMAN: Thank you.

4 (Applause)

5 CHAIRMAN FORMAN: We'll now hear from Justice
6 Klein. Please identify yourself and an organization
7 or position, if you wish.

8 MR. KLEIN: Good morning. My name is
9 Robert Klein. I am a former member of the Hawaii
10 Supreme Court, retired in February. I have
11 represented OHA since the time that the Hawaii Supreme
12 Court or the U.S. Supreme Court ruled in Rice
13 v. Cayetano, and have recently represented OHA in the
14 Arakaki case.

15 I'm not here as OHA's attorney today. I'm here
16 because I was asked and because I'm also a Kanaka
17 Maoli and because of my, I think, extensive dealings
18 on Hawaiian matters for many years. And I appreciate
19 the opportunity to appear today before the panel, and
20 I thank you for taking the time to delve into these
21 very thorny and important issues of the moment.

22 From the moment that Rice v. Cayetano was
23 rendered by the United States Supreme Court, almost
24 instantly, there was a local reaction. In the first
25 reaction, somewhat surprisingly, was the governor of

1 the state declared that he had the right immediately
2 to remove all of the OHA trustees who had been
3 illegally elected, according to Rice, and replace them
4 utilizing his appointment power under state law, and
5 he moved alarmingly quickly and without recourse to
6 any court follow-up.

7 Subsequently, OHA and the governor reached an
8 arrangement whereby the Hawaii Supreme Court would be
9 consulted on a stipulated facts trial basis, expedited
10 basis, to determine whether, in fact, Rice
11 v. Cayetano, under its own terms, created a vacancy in
12 the Office of Hawaiian Affairs or whether there needed
13 to be a recourse to other legal proceedings to
14 determine whether, in fact, trustees had been
15 illegally elected, whether in fact, therefore, they
16 served under a diminished capacity de facto in nature
17 rather than du jure, and whether, in fact, the
18 governor had the power to appoint replacements.

19 Hawaii Supreme Court ruled on that issue
20 recently determining that Rice v. Cayetano did not
21 create vacancies in the office, it did effect a change
22 in the status of the trustees, and welcomed a contest
23 in the nature of a Koa Ronco (phonetic) action to
24 determine the legality or the means by which the
25 trustees held office.

1 All of this was going on at about the time the
2 Arakaki case, which was a very narrow case focusing on
3 whether state law after Rice v. Cayetano could prevent
4 non-Hawaiians from taking papers to run for the office
5 of trustee of the Office of Hawaiian Affairs. That
6 matter filed by Attorney Bill Burgess, who is on this
7 panel, narrowly focused the issue on the basis that
8 Rice v. Cayetano determined that the state law
9 preventing non-Hawaiians from voting in Hawaiian
10 Affairs should be extended to the concept of
11 non-Hawaiians being OHA trustees. And successfully
12 and very well argued by Mr. Burgess, he gained a
13 victory for non-Hawaiians to run for the trustee
14 positions of OHA on September 19th, I believe, and
15 Judge Gillmor rendered a decision on the motion for
16 summary judgment denying ours.

17 The fallout from Rice v. Cayetano not only has
18 directly gone to the heart of the administration of
19 OHA, that is, who gets to vote for OHA elections, who
20 gets to run in OHA elections, as well as the
21 politicizing of the office by gubernatorial
22 appointments in an area where, certainly, the people
23 of this state had envisioned elections would be the
24 means by which OHA trustees would be appointed.

25 The fallout is even greater because when

1 Rice v. Cayetano worked its way back down from the
2 Supreme Court on remand to the U.S. District Court,
3 this U.S. District Judge David Ezra, who was the judge
4 in the initial stages of the Rice v. Cayetano matter,
5 Judge Ezra, on remand, there was a question as to
6 whether or not Judge Ezra would summarily remove the
7 trustees of OHA or whether he would exercise any
8 residual power to make comments about the legality
9 under which they held office. Judge Ezra clearly
10 stated at that hearing that Rice v. Cayetano was
11 limited to its facts and the law and that was, of
12 course, that non-Hawaiians could not be excluded from
13 OHA elections. It was a very limited decision.

14 He also characterized the splintered opinion.
15 I've heard it referred to as a 7-2 opinion, but
16 certainly, it was closer to 5 to 2 in its theory, and
17 certainly cannot be uniformly viewed as a 7-2
18 overwhelming opinion.

19 Judge Ezra characterized it in this fashion.
20 He said, Plessy vs. Ferguson, (phonetic) a separate
21 but equal case from the early 20th century, which was
22 later overruled by Brown v. Board of Education, was
23 also a splintered case, and that, based on Judge
24 Ezra's reading of Rice v. Cayetano, it should be
25 limited, very limited, to its facts and very limited

1 to the issue in front of the court, voting rights
2 under the 15th Amendment.

3 And I think Judge Ezra referred to those cases,
4 Plessy v. Ferguson, certainly a shameful case in the
5 history of the U.S. Supreme Court allowing separate
6 but equal accommodations rightfully, although
7 overthrown or overturned later by Brown v. Board many,
8 many, many years later, in the fifties, I believe.
9 His reference to Plessy v. Ferguson in connection with
10 Rice v. Cayetano, I think, sheds a great deal of light
11 as to at least what one federal judge thinks of
12 Rice v. Cayetano and his going out of the way to limit
13 it to its facts, and now a legal principle, also
14 speaks volumes.

15 Of course, the sequel to that, as far as the
16 District Court for the District of Hawaii, has been
17 the next foot falling, that is, the Arakaki case. And
18 Arakaki, I think, was described by Mr. Burgess, if
19 not, one of the plaintiffs, as being a slam-dunk case.
20 It's a slam-dunk case from the standpoint of if you
21 allow the courts to utilize the traditional
22 constitutional paradigm in determining whether
23 statutes, which discriminate on their face, can only
24 be upheld if there is a clear compelling state
25 interest and another means of exonerating the statute

1 in a narrowly tailored way cannot be found. If you
2 utilize that paradigm, as was done in
3 Rice v. Cayetano, to measure practically any case or
4 any law favoring Hawaiians or others, I might add --

5 CHAIRMAN FORMAN: You have two minutes, Justice
6 Klein.

7 MR. KLEIN: Okay, thank you. I know lawyers do
8 talk forever. I'm sorry.

9 If you use that paradigm to measure any of
10 these programs under typical constitutional analysis,
11 they're all in jeopardy, because two of the major
12 determinations made in Rice v. Cayetano that are
13 harmful in legal analysis are, number one, the
14 discrimination was based on race; number two, that OHA
15 was a state office. Those two principal foundations
16 to the Rice v. Cayetano decision color any future
17 legal cases challenging any state/federal programs, be
18 they statutory, be they constitutional rights in
19 nature, or even Hawaii Supreme Court decisions
20 favoring the rights of Hawaiians all can be challenged
21 using the traditional paradigm.

22 So if Rice did anything, it was to galvanize, I
23 think, the Hawaiian community and those working
24 legally for the Hawaiian community to seek other
25 means, besides court redress, to solve these problems.

1 Hawaiian people have turned to court time after time
2 and have been rebuffed. The only place to go is to
3 Congress, which is the reason that I frankly support
4 what is known as The Akaka Bill. I think it might
5 have even passed today were it not for Rosh Hashanah.
6 It certainly will be passing before Congress is
7 adjourned and that is the future, because when
8 Hawaiians becomes a quasi-sovereign nation, certainly
9 the government can deal with Hawaiians on the same
10 basis as American Indians and Eskimos, and favorable
11 programs can continue without having the persistent
12 invasive legal actions being taken against them to
13 disassemble them.

14 And I would also like to make one comment. I
15 overheard the last panel. There was some discussion
16 about civil rights and the issue being Mr. Conklin
17 talking about his civil rights when he took out papers
18 and the ACLU not helping him do that. I think
19 Hawaiians have a case on equal protection; that is, if
20 Hawaiians are native indigenous peoples and cannot be
21 treated the same as American Indians or Native
22 Eskimos, would they not be hurt to say that their
23 civil rights have been violated as peoples of the
24 United States who are not accorded the same type of
25 protections that are accorded American Indians and

1 Eskimos? I think it's the Hawaiians who have the
2 civil rights claims. And with that, I'll rest for
3 now. Thank you very much.

4 CHAIRMAN FORMAN: Thank you.

5 (Applause)

6 CHAIRMAN FORMAN: H. William Burgess?

7 MR. BURGESS: Good morning. My name is William
8 Burgess. I'm a retired attorney. I practiced law in
9 Hawaii before I retired about five years ago. I
10 practiced for about 35 years here, in Hawaii.

11 I noticed in the newspaper accounts of the
12 hearings today before this Commission that one of the
13 missions of these hearings today is to see how the
14 United States Civil Rights or civil -- United States
15 Commission on Civil Rights can help protect the civil
16 rights of Native Hawaiians in the wake of the Supreme
17 Court decision in Rice vs. Cayetano. I would suggest
18 that a better mission would be to see how a Commission
19 can help protect the civil rights of all the citizens
20 of Hawaii.

21 Under the U.S. Constitution, every individual
22 citizen, every one of us, is entitled to equal
23 protection of the laws without regard to race or
24 ancestry. When the government allocates benefits
25 based on race or ancestry, that discriminates against

1 the rest of the citizens who are denied the right to
2 share in those benefits.

3 A great civil rights principle of American
4 democracy is that government shall not engage in
5 racial discrimination. That principle has been
6 combined in Hawaii with the aloha spirit and it's been
7 embraced by Hawaii to create a real live working model
8 for the whole world of how a diverse people can live
9 together in relative harmony. The Rice decision
10 doesn't diminish that principle. It enhances it.

11 We should not be trying to circumvent the Rice
12 decision. We should be trying to figure out ways that
13 we can use it to eliminate, from the aloha state, the
14 shameful idea that it's okay for the government to
15 discriminate against the citizens of Hawaii and to
16 allocate benefits to one group, which is a small
17 percentage of the population of the citizens of
18 Hawaii, based not on need, not because people or
19 individuals in that group need it, but solely because
20 that group happens to have one drop of a particular
21 kind of ancestral blood.

22 For 20 years, 22 years, since 1978, when the
23 ConCon created the Office of Hawaiian Affairs, I was a
24 delegate to that Constitutional Convention. For the
25 next 22 years, up until now, at least up until the

1 Rice decision, Hawaii has had the dubious distinction
2 of being the only state in the nation that uses a
3 racial definition, a racial classification, to
4 determine who can vote in state elections, who can run
5 for office and serve as officers of a state agency and
6 who can receive benefits from a state agency, a state
7 agency that has control over a significant number of
8 state resources, public monies right now in the amount
9 of, I think, some \$370 million, held solely for the
10 benefit of a small group that is defined solely on the
11 basis of ancestry or race.

12 And according to the testimony and to press
13 reports, there's some 150 or 160 federal programs that
14 allocate significant federal monies in addition to the
15 state monies that are for the benefit only of a group
16 that's defined on the basis of ancestry or race, and
17 that group includes people that are just like all of
18 the rest of us. That includes people that are very
19 wealthy, far wealthier than I am, that have no need
20 for health insurance or for help with their health
21 needs or education needs or housing needs solely on
22 the basis of race, not on the basis of need.

23 The poll that I heard referred to before on the
24 previous panel was one that was conducted last August,
25 in August of '99, not last August, and it was

1 commissioned by OHA by the SMS Research, which is a
2 reputable polling company. And one of the questions
3 that they asked of the people polled was what is the
4 family income. And for the Hawaiian families,
5 39 percent reported their family income as between
6 fifty and a hundred thousand dollars per year. The
7 rest of the families polled, only 37 percent were in
8 that same category.

9 If you consider families with income of over
10 \$50,000, in other words, between fifty and other
11 amounts, the Hawaiian families had roughly 50 percent
12 and the rest of the families had roughly 50 percent.

13 We're not dealing -- Hawaiians are not a
14 separate people. I mean, those of you who live in
15 Hawaii know that. But Hawaiians are not a separate
16 distinct people like American Indians, who stay in
17 tribes and remain apart in a separate community.
18 Hawaiians, long before the United States annexed
19 Hawaii in 1898, long before that, Hawaiians themselves
20 had chosen to abandon their old ways because they felt
21 it was in their own interests to do that.

22 For example, and this is something that I found
23 in the book by Lilikala Kamelelehiwa, in 1819, shortly
24 after the death of Kamehameha the Great, Kaahumanu,
25 who became the most powerful of the Alii Nui after the

1 death of Kamehameha, she convinced Liholiho, the young
2 son of Kamehameha, to come over at a banquet in Kona,
3 to come over and sit down and eat with the Alii
4 wahine, and there was a great gasp in the crowd and
5 everyone said, you know, what is happening? There
6 were many onlookers. And Kaahumanu stood up and she
7 said, "We're going to eat pork and bananas and
8 coconuts and live like the white people."

9 She was the most powerful -- she was, in fact,
10 the de facto mo'i, the real king, the real ruler of
11 Hawaii for years after that until she died. That was
12 a decision that she made. She rejected the old ways
13 because, obviously, they were unfair.

14 I mean, ladies here, can you imagine, if you
15 wanted today to have a coconut pie or to eat a banana
16 and to know that you would be facing the risk of being
17 put to death, I mean, that's not very desirable.
18 Kaahumanu recognized that the old ways were terrible
19 and she rejected it. And the people of Hawaii, the
20 followers of Hawaii rejected it.

21 The next year, when the missionaries came to
22 Hawaii in 1820, soon after that, Kaahumanu adopted
23 Christianity. She wasn't forced to do that. The
24 Marines, U.S. wasn't even a presence in Hawaii at that
25 time. She did it because it was in the interest of

1 her and her people to do it. She adopted Christianity
2 and she, in fact, made it the official religion of the
3 Kingdom of Hawaii. These are decisions that Hawaiians
4 themselves made because they felt that it was the
5 proper and best thing to do in their own interests.

6 And I would suggest that by the time of
7 annexation in 1898 -- and this again is according to
8 the statistics that were published in the OHA website
9 that was mentioned by Ken Conklin, and they're based
10 on Robert Schmidt's books on the population of Hawaii.
11 I would be happy to confirm that and send that
12 documentation to you. But at the time, there was talk
13 about, and I've heard it eloquently stated and I know
14 that these positions, as Mahealani said so eloquently,
15 I know that they're honestly held --

16 CHAIRMAN FORMAN: Sorry, Mr. Burgess, you have
17 one minute remaining.

18 MR. BURGESS: Okay, thank you. Sorry.

19 But the fact is, historically, there is simply
20 no justification for the argument that the lands of
21 Hawaii were stolen by the United States. The lands of
22 Hawaii under the Kingdom were held for the benefit of
23 all the subjects of the Kingdom, not just for those of
24 Hawaiian ancestry.

25 In 1898, Hawaiian subjects, Native Hawaiians,

1 ethic Hawaiians, made up less than 30 percent of the
2 population, and the lands that were ceded to the
3 United States were ceded for the benefit of the
4 inhabitants of Hawaii, not just for those of Hawaiian
5 ancestry. No lands were stolen. Those lands are
6 still held by the government. They're still held for
7 all of us. Thank you.

8 CHAIRMAN FORMAN: Thank you. Judge King,
9 please state your name and position or organization
10 for the record.

11 MR. KING: Thank you, Mr. Chairman. I'm Edward
12 King. I served as independent representative for
13 Hawaiians in addressing breaches of the Hawaiian Home
14 Claims Trust, Homelands Trust when I first came here.
15 Prior to that, I served as chief justice of the
16 Federated States of Micronesia and sat as justice on
17 supreme courts, part-time justice on other courts in
18 Micronesia, the Marianas and Palau. I've most
19 recently been a federal magistrate for a few years.
20 And earliest, I was an attorney and represented a
21 number of minority groups, African-Americans,
22 Palestinians and Micronesians in federal class actions
23 in litigation concerning issues somewhat similar
24 before us here.

25 I'm very proud to be with the group of

1 advocates for Hawaiians that are here, on this panel.
2 It's an honor. Each of them is a remarkable person
3 and has very important insight. I'd like to bring my
4 approach of being somewhat less immersed in Hawaiian
5 issues, although I feel keenly about them and take a
6 somewhat broader look at this to point out that in the
7 course of this nation, there's been, for much of the
8 last past century, a debate as to race-protective
9 constitutional provisions such as the Equal Protection
10 Clause of the 14th Amendment and protections of the
11 right to vote under the 15th Amendment. The Voting
12 Rights Act may be invoked by a relatively few members
13 of the political majority to prevent the great
14 majority of the citizens of a particular state from
15 employing governmental means to act in benign and
16 helpful ways to strengthen and support the members of
17 a discreet and insular minority.

18 That issue has now apparently been finally
19 resolved by two decisions of the federal courts
20 addressing efforts by the people of the State of
21 Hawaii to respond to the circumstances and needs of
22 Native Hawaiians. Of course, first we had
23 Rice vs. Cayetano, and most recently, we've had the
24 Arakaki decision.

25 The Federal District Court in Hawaii quotes

1 Justice Scalia as laying out the rationale for this
2 willingness to use these race-protective provisions to
3 prevent any kind of assistance from a larger political
4 group to the smaller. And what Justice Scalia said
5 and the Court quoted is, "To pursue the concept of
6 racial entitlement, even for the most admirable and
7 benign of purposes, is to enforce and preserve for
8 future mischief the way of thinking that produced race
9 slavery, race privilege, and race hatred."

10 So the issue is decided probably once and for
11 all. Members of the political majority indeed, unable
12 to dissuade their fellow citizens from acting in
13 generous fashion to support a minority group, may
14 invoke constitutional provisions and statutes to
15 prevent their fellow citizens from using government to
16 help selected racial or ethnic groups. And this is so
17 despite the fact that the laws which such persons are
18 invoking were established for the very purpose of
19 protecting minority groups within our nation from the
20 mean, spirited acts of which is the majority.

21 It may be that this apparently anomalous use of
22 these provisions to thwart the wish of the majority
23 voters to respond to the history and needs of the
24 minority community may actually be correct in at least
25 one or two senses. One, in the sense that such a

1 racially blind approach might hold out the greatest
2 promise of long-term support for the protective
3 provisions themselves and their inherent and intended
4 promise to support minorities.

5 Secondly, it's possible that the sense of
6 community can be -- by refusing to recognize that
7 community, certain communities have different
8 histories than the rest, and pretending that we're all
9 simply one community, perhaps this will enhance the
10 sense of community, although one has to recognize that
11 there's reason for doubt. This can be destructive of
12 the overall community by refusing to come to terms
13 with realities.

14 But even recognizing or conceding that the Rice
15 and Arakaki decisions may somehow be a proper
16 resolution in this long-standing judicial and societal
17 debate, it is clear that a powerful tool for
18 addressing the wrongs of the past and the consequent
19 needs of the present have been stripped from us.
20 Justice Blackman put it this way some time ago in the
21 Baki (phonetic) case, "I suspect that it will be
22 impossible to arrange an Affirmative Action program in
23 a racially neutral way and have it successful. To ask
24 that this be so is to demand the impossible. In order
25 to get beyond racism, we must first take account of

1 race. There is no other way. And in order to treat
2 some persons equally, we must treat them differently.
3 We cannot, we dare not, let the Equal Protection
4 Clause perpetuate racial supremacy."

5 So a tool has been taken away. Second, one
6 only has to read the words of Justice Kennedy in
7 Rice vs. Cayetano drawn almost exclusively from cases
8 prohibiting discrimination by Caucasians against
9 racial minorities to recognize that this is not right.
10 It seems strange to read his attempts to explain the
11 Court's decision in Rice vs. Cayetano. He speaks of a
12 variety and persistence and the manipulative vices and
13 practices employed to deny the vote to blacks. He
14 argues that it demeans the dignity and worth of a
15 person to be judged by ancestry instead of by his or
16 her own merit and essential qualities.

17 To read these words in the context of Hawaiian
18 issues is to understand that the underlying concepts
19 of the 15th Amendment do not readily fit the
20 circumstances in which we find ourselves in Hawaii.

21 Third, American Society and our history are
22 complex. Inevitably, this nation, like many others,
23 confronts grave and pressing problems. There are
24 problems. Some of these problems have distinctly
25 ethnic and racial origins.

1 Even Justice Kennedy recognized this in
2 Rice vs. Cayetano. He spoke saying, "When the culture
3 and way of life of a people have all been engulfed by
4 a history beyond their control, their sense of loss
5 may extend down through generations."

6 In reaching to make sense of this, although the
7 Court didn't follow its own lead, I submit that
8 this -- that despite the Equal Protection Clause and
9 other provisions, which have been employed to prevent
10 government from addressing specifically the needs of
11 certain racial minorities, all racial groups have not
12 arrived here to the 21st century completely equal,
13 untouched by the history of this nation.

14 Justice Kennedy had something when he spoke of
15 the sense of loss of a people. It's this sense of
16 loss which should serve as a touchstone in determining
17 the propriety for remedial action. There are three
18 particular groups in our nation, I think, that stand
19 out as having this sense of loss. These are the
20 African-Americans who were taken away from their
21 homelands and having their family torn apart, I mean
22 most incredibly egregious grievous loss; the Native
23 Americans on the Mainland and in Alaska who were on
24 their homeland and had it overwhelmed by outsiders and
25 actually were killed in many instances, taken as they

1 were stripped of their rights and their lands; and
2 then we have the Native Hawaiians who are a somewhat
3 more complicated situation, but nonetheless, we're a
4 people who were alone, isolated, living their own
5 lives, and then ultimately were overwhelmed by outside
6 forces.

7 This sense of loss leads to the kinds of
8 statistics that have been cited today, in my judgment.
9 For groups who were here or who were brought here
10 against their will, they've developed a sense of their
11 own history that makes it difficult. The story is
12 handed down and it makes it extremely difficult for
13 that group to participate in a larger society and it
14 leads to the kinds of statistics that we've talked
15 about.

16 With all due respect to Mr. Burgess, one has to
17 be extremely selective in finding statistics that show
18 that somehow, Native Hawaiians are doing as well as
19 the rest of the people in this community. So these
20 statistics of these particular groups --

21 CHAIRMAN FORMAN: You have one minute.

22 MR. KLEIN: Thank you.

23 These statistics, I think, reflect this sense
24 of loss and it's extremely important here, in this
25 community, for us to do something. The courts have

1 been taken away as a tool, I'm afraid. The courts, in
2 fact, are being used now as a weapon and extension of
3 these manipulative devices that were talked about by
4 Justice Kennedy in Rice vs. Cayetano, so we have to
5 look in other directions.

6 And the federal recognition legislation is the
7 business of the day, I guess. It may or may not be
8 the end-all answer, but it looks like an absolutely
9 essential requirement in order to establish the notion
10 of the trust, to bring in congressional action, and to
11 allow the State to move in a way the majority of these
12 people intend.

13 I was struck when I moved here approximately
14 nine years ago about how this community is gentle and
15 accepting and courteous, that we've got a lot of
16 different racial groups living together, people are
17 very kind to each other and very thoughtful, and we've
18 moved more and more to this stage of confrontation,
19 which is very unfortunate.

20 I'm afraid that our generation is called upon
21 to respond to that, that people have to become engaged
22 and people have renew the battle to keep our
23 constitutional provisions from being used as weapons
24 against the weakest people in our community.

25 There has to be a way to redress the wrongs of

1 the past, to recognize those, and I urge -- I
2 appreciate this panel being here and the effort that
3 you're taking and thought, and I urge you to move
4 forward and I hope that others in this state will do
5 the same.

6 (Applause)

7 COMMISSIONER REYNOSO: Thank you very much. I
8 have a couple of comments to the question, comments to
9 Judge King. You know, folk get along very often and
10 it was said that blacks and whites got along very well
11 in the south during the Jim Crow days. Some said
12 that, but it's because some folk, many
13 African-Americans, didn't have the power to respond at
14 that time because of the lynchings and so on.

15 Sometimes folk get along because some get
16 trampled over and they don't have the power to
17 respond. When they start organizing themselves to
18 have that power, then it's said to be a conflict, and
19 many people then, at that point, are concerned that
20 there's a conflict. But sad to say that conflict is
21 sometimes necessary before, then there's a resolution
22 to the issue. I know that you know that, but I'm just
23 reminded of that as you were talking about your own
24 observations here.

25 Secondly, second observation is simply that

1 there are yet other peoples who have suffered in the
2 same manner as you described, the three groups that
3 you mentioned, and of course, that includes lands that
4 were conquered by the U.S., particularly the southwest
5 where you had folk who lived there for 300 years or so
6 and, as folk often say, "We didn't come to the U.S.,
7 the U.S. came to us." And many of the institutions
8 that those in the Southwest had, including language
9 and culture, of course, came under attack. Those are
10 some comments.

11 I have a question for Mr. Burgess because, as a
12 lawyer, he has focused on some of the legal concepts,
13 but we heard last night and we heard today the concern
14 that many of the Native Hawaiians have for the land
15 trust and the desire that there be a land base with
16 protections, we heard particularly from the elders,
17 for the culture and language, and the elders that we
18 heard from, most of them were in there sixties,
19 seventies, and eighties. These are not folks who have
20 become concerned, apparently, just the last 25 years.
21 They were concerned about these matters all their
22 lives.

23 And we did have -- we do have the 1921 Hawaiian
24 Homestead Commission that did define Native Hawaiians,
25 whether one agrees or disagrees with that, and did

1 establish a land trust. And we have a report dated
2 1991 indicating that neither the U.S. government nor
3 the State have lived up to their responsibilities in
4 terms of that land trust, and that Native Americans,
5 as described by that statute, have not benefitted from
6 it. I just wonder what your observations might be in
7 that regard.

8 MR. BURGESS: Thank you. I would agree that
9 the Hawaiian Homes Commission has been a failure for
10 80 years. It's shameful and it's inflicted cruel and
11 unusual punishment on all the people that were led to
12 believe that they were going to get something and they
13 didn't. I think that it should be terminated.

14 If I had my way, Mr. Reynoso, I would have that
15 commission completely eliminated and terminated and
16 the people who have homesteads would receive their
17 property and get it in fee simple and they could then
18 go about their lives. They could mortgage it or sell
19 it or pass it on to their children or do anything they
20 wanted to with it, just like property owners anywhere
21 else in the country. I think that's the solution to
22 that.

23 Let me, just for a moment, address the question
24 of the land trust. The land trust, the public land
25 trust, started in Hawaii in 1898, when the Republic

1 ceded all of the public lands to the United States.
2 The leaders of the Republic didn't simply cede it like
3 all previous states had done. They ceded it on the
4 condition that all of the incoming proceeds, except
5 for with certain exceptions, that is, the parts that
6 were held by the U.S. for military and Naval purposes
7 or civil purposes, but for all the rest of the 1.8
8 million acres of ceded lands, they were held in trust
9 for the benefit solely, these are the words of the
10 Admission Act, solely for the benefit of the inhabits
11 of the Hawaiian islands for educational and other
12 public purposes..

13 There was no racial component to that, just as
14 there had not been on the Kingdom of Hawaii. The
15 public lands were held by the kings for the benefit of
16 all the subjects, not just for those of Hawaiian
17 ancestry.

18 That trust continued and it still continues to
19 this day, but in 1920, Congress, and out of some
20 well-intentioned sense that there was a need to do it,
21 they segregated roughly 200,000 acres of the public
22 lands of Hawaii and said they were to be held solely
23 for the benefit of those of at least one-half of the
24 blood of the inhabitants from 1778.

25 Now, my observation on that is that that has

1 not helped Hawaiians. Today, we have a situation
2 where people of Hawaiian ancestry, of more than
3 50 percent ancestry, spend their whole lives waiting
4 for something which they, in most cases, never get.
5 That doesn't help them. It has hurt them. It has
6 acted as a wet blanket on their need to go out, just
7 like all the rest of us, Hawaiians, I mean the Chinese
8 and people of ancestry that are Japanese or Chinese or
9 Caucasian or Irish, or any race whatever, we all know
10 we've got to go out and try to save our money to get a
11 down payment and do the best we can to buy a home.
12 The fact that that thing was luring them to the
13 possibility of free land has not been helpful to them.

14 My own observation is that the 1920's reading
15 through the congressional hearings, it was insulting
16 what they said about the need to give these programs
17 for Hawaiians. Basically, they said they're just too
18 dumb to take care of themselves. That's an insulting
19 thing and it should not be part of our lives, it
20 should not be part of our government, and it should be
21 terminated.

22 CHAIRMAN FORMAN: Before, Vice-Chair Reynoso
23 asked a follow-up question.

24 COMMISSIONER REYNOSO: No.

25 CHAIRMAN FORMAN: Mr. Burgess, last night, one

1 of the elders suggested that the trust
2 responsibilities were actually established by
3 Liliuokalani, which she yielded to the superior forces
4 of the United States in 1893. I was wondering if you
5 had any comments on that testimony by one of the
6 elders.

7 MR. BURGESS: I don't see anything in her
8 statement yielding to the United States that said that
9 these properties should be held solely for the benefit
10 of people of Hawaiian ancestry. A few years later,
11 when Liliuokalani sued in a court of claims to recover
12 the crown lands, she didn't do it for the benefit of
13 anybody except herself personally. The Court decision
14 was that they were held for the government. And that
15 was actually a decision of the government of Hawaii in
16 1864, I believe it was. It said that the crown lands
17 are not held for the personal benefit of the queen, or
18 the king at that time, but they were held for the
19 support of the monarchy or of the government itself.

20 I don't believe the crown lands, under any
21 justification, could be argued as being held solely
22 for the benefit of those of Hawaiian ancestry.

23 CHAIRMAN FORMAN: Any of our guests have any
24 other questions? Commissioner Lee?

25 COMMISSIONER LEE: Mr. Co-Chair, I'd like to

1 ask for your indulgence if I can ask a question to
2 Judge King, even though today's session is on legal
3 implications of Hawaiians, but because --

4 CHAIRMAN FORMAN: Could I interrupt you just
5 for just a second? I'm sorry. I think Member
6 Murakami wanted to ask a follow-up question. We'll
7 come right back to you. Committee Member Murakami?

8 COMMITTEE MEMBER MURAKAMI: Yes. Mr. Burgess,
9 on your last statement, I think you indicated that the
10 Court of Claims held that the crown lands had been
11 held strictly for the benefit of the government, and
12 that was a 1897 decision, I believe, right?

13 MR. BURGESS: That Liliuokalani decision was
14 1910, or something. I'm not sure.

15 COMMITTEE MEMBER MURAKAMI: I'm not going to go
16 against your --

17 MR. BURGESS: It denied the claim that
18 Liliuokalani made that she personally was the owner of
19 the crown lands and, therefore, they should be given
20 to her. It was a previous -- legislature of the king
21 of Hawaii, I think 1864, they put -- because of the
22 fact that, I think it was Kamehameha V that had
23 mortgaged some of the crown lands to Claus Spreckles
24 (phonetic)? I'm not sure about these details, but he
25 had encumbered the crown lands for millions of --

1 well, for big dollars at that time, and therefore, put
2 them in danger of being lost to the government of
3 Hawaii.

4 And the legislature of the Kingdom in 1864
5 passed a law saying that the crown lands were held not
6 for the personal use of the king, but for the king as
7 the head of government, and they prohibited their
8 elimination.

9 COMMITTEE MEMBER MURAKAMI: In actuality, what
10 they said was that they weren't -- that the lands were
11 not to be held in fee by the person of the king, but
12 in fact, by the crown, which would be, actually, the
13 concept of the crown, not any particular person. So
14 in that sense, the king of Hawaii spoke that those
15 lands were to be held -- title of those lands were to
16 be held for the benefit of the crown.

17 Now, it wasn't until the Court of Claims, after
18 the annexation, that the United States, speaking
19 through the Court of Claims, said that that was being
20 held for the government, which is a slightly different
21 concept.

22 So I raise that point because you had stated
23 earlier that none of the lands had been stolen, but in
24 fact, if the Kingdom of Hawaii had specified that this
25 land was to be held forever in the hands of the crown,

1 not foreseeing that there would be an illegal
2 overthrow as Public Law 103-150 says, isn't it a fact
3 that some kind of theft of land has not been
4 compensated?

5 MR. BURGESS: I don't see where there's any
6 lack of compensation. The crown was the government,
7 the head of government until the monarchy was
8 overthrown, and then the government consisted of a
9 different form. There was a provisional government,
10 then a republic, then it became a territory of the
11 United States. That same government, in a different
12 form, held the crown lands for the benefit of
13 everybody. What's been lost? What's been stolen?

14 COMMITTEE MEMBER MURAKAMI: That begs a
15 question about who defines -- who the government
16 really is, because the Kingdom said that that was
17 forever to be held by the crown, but the United States
18 is saying that this became lands in the hands of the
19 government, so do you see the point that Hawaiians are
20 making; that theft occurred because the lands were
21 taken, in essence, from the crown that was defined by
22 the Kingdom, and later, pronouncements by the U.S.
23 government through the Court of Claims, we're really
24 talking about that land belonging to the government
25 ignoring the fact that the overthrow eliminated the

1 crown.

2 MR. BURGESS: So you seem to be saying that --

3 COMMITTEE MEMBER MURAKAMI: My only question is
4 that --

5 MR. BURGESS: -- Queen Liliuokalani should have
6 won the case?

7 COMMITTEE MEMBER MURAKAMI: I'm only saying
8 that this whole notion about the theft of lands,
9 you're saying that it's always been in the hands of
10 the government, but in fact, isn't it true that the
11 Hawaiians, in fact, see this as a theft because, at
12 least for the crown lands, at least for the government
13 lands as well, but for the crown lands, the intent of
14 the Kingdom was to have that perpetually in the hands
15 of the crown and not necessarily simply in the hands
16 of the government and, therefore, the lands being
17 passed on through the annexation to the trust that
18 were established.

19 So I'm trying to figure out, from your
20 statement, what do you mean by whether, in fact, you
21 can say that there has been no theft of land from
22 Hawaiian people who, in essence, had defined that
23 those lands would be in the hands of the crown.

24 MR. BURGESS: Well, the reason for my argument
25 is that the crown was the head of the government up

1 until 1893, and the crown held the public lands for
2 the benefit of all subjects, not just Hawaiians, those
3 of Hawaiian ancestry. And the present government
4 still holds the public lands of Hawaii for the benefit
5 of everybody, not just for those of Hawaiian ancestry.

6 CHAIRMAN FORMAN: This is a very interesting
7 discussion. I have a question for staff before the
8 Commissioner leaves. Is it consistent with our
9 procedures if we have any supplemental questions that
10 we want to ask the panelists, that we provide it
11 later?

12 MR. PILLA: That's fine.

13 CHAIRMAN FORMAN: Commissioner Lee?

14 COMMISSIONER LEE: Thank you. Even though this
15 panel is on the eve of Rice's (inaudible) of
16 Hawaiians, but since we have Judge King, who is a
17 professor in the Center for Hawaiian Legal Studies, I
18 want like to ask Judge King to give us his opinion of
19 whether the Rice decision may impact other Pacific
20 Islanders, specifically Chamorros in Guam,
21 Mr. Co-Chair, if I may ask the question.

22 CHAIRMAN FORMAN: Please.

23 COMMISSIONER LEE: Okay.

24 MR. KING: The areas outside of the United
25 States proper have the determination as to whether the

1 Constitution applies in those places is a somewhat
2 different one than it is, of course, within the United
3 States; that all provisions of the Constitution don't
4 automatically apply to all those places that are under
5 the jurisdiction of the United States. Specifically,
6 for example, the voting rights of the legislature
7 would not apply in Guam, presumably. I've never
8 looked at the voting rights legislation of the
9 Pacific, but I'm almost certain that it does not, and
10 of course, Guamanians don't have an opportunity to
11 vote for the president there.

12 When determining whether or not there's a
13 violation of equal protection, instead of applying the
14 basic fundamental right analysis that's applied under
15 United States, normal United States constitutional
16 jurisprudence, the notion of fundamental right is
17 couched differently in looking at territories and
18 possessions of the United States, and the kinds of
19 rights that can't be taken away there are rights that
20 are fundamental to free people.

21 Now, whether a distinction can be made between
22 Chamorros and non-Chamorros in that context is not
23 entirely -- it's not a clear question or clear --
24 there's not a clear answer to it. There have been
25 situations. In American Samoa, for example, there are

1 restrictions of alienation of land where the right to
2 own land has been restricted, in the case of Northern
3 Marianas, to the people of Northern Marianas descent,
4 and in the case of American Samoa, to the people of
5 Samoan decent, and the theory has been that this is
6 necessary in order to protect the culture. And the
7 Congress, because Congress has signed off on these in
8 particular ways, it is all right to make these
9 distinctions on racial basis in those areas.

10 So that the fact that these areas are slightly
11 removed may take them out from under
12 Rice vs. Cayetano, but it's going to -- it might have
13 to be tested. And certainly, in the area of voting,
14 there is not any clear precedent that distinctions can
15 be made on the basis of racial lines in those areas,
16 and so it may turn out that there are problems.

17 For example, in Guam, there is kind of a
18 homeland trust that has been developed, and what
19 implications are for that trust and the ability to
20 govern that trust, I'm not entirely sure of at this
21 point. It is possible that this could lead to
22 problems on the point.

23 About the Southwest, I would distinguish
24 between immigrants who come here. We've got basically
25 two groups of people, if you want to divide it that

1 way, that live in the United States as citizens today.
2 There are those people who came voluntarily, many of
3 whom have been subjected to discrimination and hard
4 times and they have come, and their family's story,
5 their people's story is, we can make it in this place.
6 This is a good place and we can make it.

7 And then the other group are people who either
8 were forced in here in the first place and not allowed
9 at all to develop their own destiny, or people who
10 were overwhelmed by the outsiders coming in, and the
11 story of those peoples, in my judgment, is this is a
12 terrible bunch of people and you can't trust the
13 principles they say they believe in, and when they can
14 get you, they'll get you and you should not be part of
15 them. You shouldn't get good grades. You shouldn't
16 try to get wealthy. You shouldn't -- at least you
17 shouldn't do it if it involves being part of those
18 people, and that's -- and kind of -- that's the sense
19 of loss, I think, that is important here, and somehow,
20 we have to confront that because it takes away the
21 wish to participate.

22 The things that Mr. Burgess is talking about,
23 save your money, go out and get something, those
24 things are stripped away when you feel the whole --
25 that events have surrounded you.

1 The people of the Southwest, certainly, I'm not
2 that familiar with the people you're referring to, but
3 I can see that's exactly the same thing.

4 COMMISSIONER REYNOSO: I was just struck by a
5 statement last night by one of the elders that some of
6 the Native Hawaiians felt like strangers in their own
7 land, and that happens to be the title of a book of
8 the experience of Ernie Kanifonios (phonetic) and
9 Southwesterners in their experience as the
10 Anglo-Americans came in and dominated the Southwest
11 numerically and politically, so I couldn't help but
12 think of that relationship. That's why I mentioned it
13 to you.

14 (Applause.)

15 CHAIRMAN FORMAN: Committee Member Murakami?

16 COMMITTEE MEMBER MURAKAMI: Judge King, I'm not
17 sure if this is in line with what you're saying, but I
18 want to hear Bill Hoshijo speak about the need to, in
19 essence, change our analytical framework of civil
20 rights in the context of looking at the civil rights
21 of native peoples. He suggests that the right, the
22 inherent right of self-determination should be viewed
23 as a civil right.

24 In your discussion about the sense of loss
25 experienced by natives along these lines of, in fact,

1 a loss of right to self-determination, would you agree
2 that this is a type of analysis that needs to be
3 recast in the context of native peoples in terms of
4 civil rights?

5 MR. KING: Well, of course, my thinking about
6 it goes beyond just native peoples. I think
7 African-Americans fall into the same situation. In
8 fact, if I put my own little scale on it, I'd say
9 African-Americans have had the toughest of everybody,
10 but -- and I think we see the impact.

11 You could predict that the problems we have in
12 groups that get overwhelmed by these events are going
13 to be as they are, and yet we, even to this day, say
14 it's their fault, so there is a need to respond. It
15 may be the right of self-determination, that may be
16 the tool, but my point is that we need to understand
17 there are fundamentally two groups of citizens that we
18 have today, those that have been either dragged in
19 here kicking and screaming, or were overwhelmed, and
20 they were here in the first place and then they were
21 overwhelmed by outsiders who now say they're running
22 the place, that's one group, and then the others who
23 came in and said, we can do it, we can do it, we're
24 going to make this work. And that's such a
25 fundamental distinction, but it gets talked about so

1 little, I think.

2 And then the question would be, what kind of
3 tools? Is it self-determination, is it what is
4 needed, that Native Hawaiians set up their own
5 governing institutions and operate in a separate way?
6 That may be. I don't know. I love the idea of us all
7 being one big happy community, actually, but I can see
8 that we can't easily get there, and we can't be
9 unrealistic about the impact our own history and this
10 nation has had on people today and how important a
11 role it plays.

12 But it's a question of tools. I think right of
13 self-determination may be a response to it. Certainly
14 would be one. I wouldn't cast it aside.

15 CHAIRMAN FORMAN: Was your question addressed
16 also to Justice Klein?

17 COMMITTEE MEMBER MURAKAMI: Actually, I had
18 another one along this line.

19 CHAIRMAN FORMAN: Please.

20 COMMITTEE MEMBER MURAKAMI: Justice Klein, you
21 suggested, during your presentation, you suggested
22 that one way we can analyze the question about
23 deprivation of civil rights is this notion that there
24 may have been discrimination against Hawaiians for not
25 being allowed to exercise the same rights that other

1 native peoples in America have been allowed to
2 exercise. I don't know if you were cut off at the
3 end, but I was kind of intrigued by that in terms of
4 how you saw that and, frankly, I wanted to know
5 whether or not Mr. Burgess agreed with that or not,
6 whether that constitutes discrimination.

7 MR. KLEIN: That's not a novel concept. It's
8 been discussed before in civil rights panels. If
9 Hawaiians indeed -- I think Mr. Burgess doesn't
10 believe that Hawaiians are any more a distinct
11 indigenous native peoples, but if indeed they are,
12 they should be treated the same under the U.S.
13 Constitution because after all, it is the Constitution
14 that we are relying on in court cases to take away
15 rights. Therefore, we should look to the Constitution
16 when it helps as well.

17 I feel like I need to respond just briefly, if
18 I can, to some of the statements that Mr. Burgess, my
19 worthy adversary, has made, and I don't want to turn
20 this into a debate and I don't want to be glib about
21 it, but with respect to stolen lands, one has to
22 wonder that if lands were not stolen, why did the
23 president of the United States apologize to the queen
24 and seek her immediate restoration to the throne of
25 Hawaii in 1893? Why did Congress apologize to

1 Hawaiians in 1993, a hundred years later?

2 And if I can use an example, if it's not
3 stealing when money is taken out of the bank because,
4 later on, you buy the bank or you take the bank over,
5 then that's certainly -- it's a matter of definition,
6 isn't it? I just can't help but believing you're
7 still a thief if you take money out of the bank and
8 then say there's no thief.

9 (Applause)

10 MR. KLEIN: One other thing, talking about
11 Kaahumanu, I think that's a wonderful example. I
12 agree with Mr. Burgess a hundred percent, about
13 Kaahumanu and the breaking of the taboos. One thing
14 we need to learn from that lesson of Kaahumanu is that
15 it was a Hawaiian making the choice, and that's what's
16 been lacking and that's why Hawaiian people feel a
17 great sense of injustice. Hawaiians have not been
18 able to make that choice.

19 (Applause.)

20 MR. KLEIN: And we also need to refer to one
21 thing. When Hawaii was admitted into the Union in
22 1959 by the Admission Act, whether and under what
23 circumstances the ceded lands were part of the
24 territory or the Republic of Hawaii or what happened
25 on annexation, we know one thing, that under the

1 Admission Act, those ceded lands came in subject to
2 five trusts, one of which was for the betterment of
3 conditions of Native Hawaiians, and the decision of
4 how to use the trust was left to the State of Hawaii
5 through the constitution of the State and the laws of
6 the State of Hawaii. So Hawaii came in under federal
7 law, became a state under the Admission Act. Those
8 lands were then subjected to five trusts. And it's up
9 to the State of Hawaii, according to the Admission
10 Act, the law of the land, how to use the benefits of
11 that trust.

12 If they choose to benefit conditions of Native
13 Hawaiians, they're fully within their rights to do so.
14 And, of course, that was the whole concept behind OHA
15 that was missed in Rice v. Cayetano.

16 When we're talking about the history of Hawaii,
17 I think we need to do exactly what our brethren in the
18 dissent did and that is not just take it and skim
19 through it and not utilize it in determining the
20 issues of Rice v. Cayetano, but actually keep it in
21 mind when we're talking about the awesome power, the
22 plenary power of Congress to deal with issues
23 involving Native Americans.

24 If indeed Hawaiians are Native Americans, which
25 the Senate bill addresses, the distinct nature of

1 native indigenous Hawaiians, if indeed that is true,
2 then certainly, Hawaiian history would allow Congress
3 to exercise it's plenary power to help Hawaiians just
4 as it does American Eskimos and American Indians,
5 getting back to the question you asked me. Thank you.

6 (Applause)

7 CHAIRMAN FORMAN: I recognize that there are
8 quite a lot of issues that you might like to address
9 and you're more than welcome to submit written
10 testimony subsequently, but I'll recognize Mr. Burgess
11 for the purpose of answering Committee Member
12 Murakami's question about whether it's unequal
13 treatment of Native Hawaiians with respect to Native
14 Americans.

15 MR. BURGESS: My answer to Mr. Murakami would
16 be that, first, there is no constitutional right on
17 behalf of indigenous peoples generally. There's
18 nothing in the Constitution that says that indigenous
19 peoples are not given the full rights of American
20 citizens and they don't have the same
21 responsibilities, and there's nothing that says that
22 they're exempt from the equal protection clause so
23 that Congress can't -- simply because someone is a
24 descendant of someone who was once an indigenous
25 person, can't deprive that person of equal protection

1 of the laws and cannot single him out for preferential
2 treatment simply because of that.

3 The only constitutional provision under which
4 Indian tribes are entitled to be treated deferentially
5 is the provision that gives Congress the power to
6 regulate commerce with states, between the states and
7 with foreign governments and with the Indian tribes.
8 So the Constitution of the U.S. only permits members
9 of federally recognized Indian tribes to be treated
10 deferentially from other citizens of the United
11 States.

12 There's millions of indigenous people or
13 descendants of indigenous people in the United States
14 who are not members of Indian tribes. They have the
15 full rights of U.S. citizens, no more and no less. So
16 United States, the federal government, cannot treat
17 people, just because they're descendants of indigenous
18 people, differently from other citizens of the U.S.

19 We don't have any tribes in Hawaii. We don't
20 have anything comparable to an Indian tribe in Hawaii.
21 I've lived here 44 years. I've never seen or heard of
22 a Japanese tribe or an Irish tribe or a Filipino tribe
23 or a Hawaiian tribe or anything resembling a
24 quasi-sovereign entity which governs Native Hawaiians.

25 We're a multi-ethnic people in Hawaii, all

1 blended together by the aloha spirit, and we're all
2 governed by the same government, so there is no basis
3 for giving deferential treatment either by the state
4 government or federal government to people solely
5 because they are descendants of a group of people who
6 once lived here before Europeans came. That's why I
7 believe the Rice decision means that all of the
8 programs which treat Native Hawaiians differently will
9 fall. That's why I believe that The Akaka Bill, if
10 it's enacted, will eventually fall.

11 CHAIRMAN FORMAN: We have a little less than
12 five minutes left. I'll recognize Committee Member
13 Murakami first for a concise follow-up question.

14 COMMITTEE MEMBER MURAKAMI: So if I understand
15 your answer, Mr. Burgess, you're saying that if the
16 Court agrees with you about the failure of any
17 particular person or group to attain Indian tribal
18 status in the strictest sense, then those same groups
19 will be affected by the Rice vs. Cayetano decision the
20 same way the Hawaiians have been affected?

21 MR. BURGESS: Yeah. Yeah. The only
22 deferential treatment permitted under the Constitution
23 is for members of federally recognized Indian tribes.
24 That's the law now.

25 CHAIRMAN FORMAN: Commissioner Meeks?

1 COMMISSIONER MEEKS: I've refrained from asking
2 any questions till I sorted out my feelings because I
3 wanted this to be a rational comment question, but
4 Mr. Burgess, doesn't it concern you that the Native
5 Hawaiians were indigenous people to this country and,
6 as in every other country, when the Europeans came in
7 and colonized those countries, then it was the
8 indigenous people that suffered?

9 Now, of course, if you take away the argument
10 that the indigenous people here haven't suffered and
11 that they're all just doing fine and are well, I don't
12 know how that accounts for the testimony that we've
13 heard, that the statistics that the educational
14 systems for the Native Hawaiians is poor, their health
15 is poor. I guess I just want some kind of clarity or
16 comment. And I think, again, that speaks to our need
17 for clear statistics and to make rational decisions
18 here.

19 And I have just one other comment. I heard
20 Mr. Conklin and yourself making comments about all the
21 native -- or all the people in Hawaii and their civil
22 rights being upheld and you cited the Japanese,
23 Chinese, et cetera, and yet we heard -- all the
24 Japanese and Chinese people we've heard from to date
25 have upheld this view that the Native Hawaiians do

1 have a distinct -- should have a distinct recognition,
2 and I'm just not sure why this is.

3 CHAIRMAN FORMAN: Mr. Burgess?

4 MR. BURGESS: Those are very good questions,
5 and I can tell you from my own experience that the
6 Arakaki case, for example, the plaintiffs were 13, a
7 group of 13 people, multi-ethnic. We had people of
8 Japanese ancestry, Chinese, Filipino, Portuguese,
9 Spanish, had a multi-ethnic group representing a
10 cross-section of the population. It wasn't just one
11 group. In Hawaii, no ethnic group is in the majority.

12 You say everybody that's here, that those
13 ancestries supported it. I don't think that that's
14 true in the community. We had a poll by the Star
15 Bulletin and News 8 just recently and they asked about
16 people who supported the Rice decision and 56 percent
17 of the people polled said they supported the Rice
18 decision and they agreed with it.

19 I can tell you the conversations I've had, but
20 every day, somebody comes up to me and says they agree
21 with what I'm doing and they tell me to go for it and
22 they think it's long overdue. I think it would be a
23 real mistake to say that the larger population of the
24 State of Hawaii supports giving preferential or
25 special treatment to people just because they have a

1 drop of the blood of Hawaiians.

2 Now, your question about being indigenous
3 people of Hawaii who have suffered since the United
4 States annexed the territory and later became the
5 state, I would question that the people of Hawaiian
6 ancestry have suffered. It's true that the population
7 of Hawaiians declined drastically during years of the
8 Kingdom. It went from some estimates of maybe 300,000
9 at the time of Cooke down to as little as, I think,
10 thirty-nine or forty thousand at the time of
11 annexation in 1898. But the population bottomed out
12 at that point and the population of Hawaiians, that
13 is, people of any Hawaiian ancestry, has been
14 increasing rapidly, I mean steadily, I won't say
15 rapidly, since 1900. And today, according to the OHA
16 news website, the Hawaiian population is increasing
17 faster than any other single ethnic population in the
18 State of Hawaii.

19 Suffered? I would seriously question that.
20 The Hawaiians I know are not suffering. We've --
21 (inaudible) We've had the chief justice, speaker of
22 the house, prominent people in business. My own
23 neighborhood illustrates that. I've got neighbors on
24 one side that are part Hawaiian; natives on the other
25 side that are Portuguese; on another side, Japanese; a

1 neighbor of mine that's three or four houses away is
2 part Hawaiian. He's the president of a large company
3 here. I would question -- I think the statistics
4 you've been hearing are not accurate. I would think
5 if you define, let's say, Chinese as being anyone with
6 one drop of Chinese blood, you would find Chinese
7 over-represented in the statistics for diabetes or
8 among all of the other things. I think it's in the
9 way you do the definitions.

10 CHAIRMAN FORMAN: Can you summarize,
11 Mr. Burgess?

12 MR. BURGESS: Let me just finish. I don't mean
13 to sound hard-hearted because I don't want to sound
14 that way, but people who are in need should be helped
15 by the government, but it shouldn't be done on the
16 basis of race.

17 CHAIRMAN FORMAN: Thank you, Mr. Burgess.
18 Before recognizing Commissioner Lee, I'd just like any
19 of the panelists to address this in the supplemental
20 written testimony. There are many discussions about
21 statistics and particular references to population and
22 references to a book by Mr. Schmidt. I'm also aware
23 that there's a book by David Stander (phonetic) called
24 Before the Horror that contains a reply by Mr. Schmidt
25 and then a response again by Mr. Stander (phonetic).

1 If any of you can address that in the context of the
2 statistics that we've been addressing today, I would
3 appreciate that.

4 Commissioner Lee?

5 COMMISSIONER LEE: This is just a comment in
6 reference to Mr. Burgess. You mentioned all the
7 success stories about immigrants, Chinese-American
8 immigrants, what have you. My parents came over, my
9 family came over from Hong Kong as immigrants. We
10 struggle. To this day, we struggle. My family and I
11 continue to receive disparate treatment from others,
12 yet we're very grateful to be in this country.

13 But for every one successful immigration story,
14 immigrant story that you know and you can share, let
15 me remind you, I just came back from New York for the
16 second town hall meeting sponsored by the President's
17 Advisory Commission of Asian-American Pacific
18 Islanders. For everyone's success stories, they can
19 tell you thousands of struggles, so it's unfair to
20 paint immigrants as success stories. It divides us.
21 It does not unite us.

22 The second thing is I wanted to tell you why we
23 left Hong Kong. Hong Kong was colonized by Britain.
24 My family was pretty well to do compared to others,
25 yet I left Hong Kong when I was really young. But one

1 image that I have was I never knew why -- all of us
2 were -- most of us were Chinese. We spoke the
3 language, but there were English people there. And
4 one day, when I was about three or four, I was struck
5 by a bike, bicyclist, who was British. Instead of
6 apologizing to me and my parents, he wanted us to
7 apologize to him because that was his street.

8 I cannot compare that to what's the experience
9 of the Native Hawaiian people, but with my limited
10 experience, I do know there is a difference between
11 growing up in your land that you do not have control
12 over. My parents chose to leave that kind of
13 environment to have a better life and to be respected,
14 and I certainly do not hope that the Hawaiians have to
15 leave their own land to get respect.

16 (Applause)

17 CHAIRMAN FORMAN: We've already exceeded our
18 time. I have just one brief request for Justice Klein
19 or Judge King, if you could respond to this in writing
20 later. Justice Klein, you had mentioned the response
21 of the governor to the decision of Rice vs. Cayetano,
22 and I was wondering about other cases where public
23 officials were elected pursuant to illegal or
24 unconstitutional procedures and what kind of actions
25 were taken subsequently.

1 MR. KLEIN: I'll be happy to respond. Thank
2 you.

3 CHAIRMAN FORMAN: If there are no other similar
4 requests for additional information from this panel.
5 Hearing none, we will adjourn for lunch. Thank you
6 very much, panelists and members of the audience. We
7 will begin again at 1:00 p.m.

8 (Luncheon recess from 12:10 to 1:22 p.m.)

9 CHAIRMAN FORMAN: If everybody could take their
10 seats, please, we will reconvene the afternoon.
11 Before beginning, I would just like to repeat
12 something that I read this morning regarding the
13 procedures that govern Federal Advisory Committee
14 meetings.

15 We are concerned that no defamatory material is
16 presented at this meeting. In the unlikely event that
17 a situation should develop, it will be necessary for
18 me to call this attention to the persons making those
19 statements and request that they desist in their
20 action. Such information will be stricken from the
21 record if necessary. If you need any clarification on
22 the defame and degrade, the staff will be happen to do
23 that for you.

24 GOVERNMENT PROGRAMS

25 CHAIRMAN FORMAN: We will now hear from the

1 Government Programs panel, Clayton Hee from the Office
2 of Hawaiian Affairs, Ray Soon from the Department of
3 Hawaiian Homelands, and Sherry Broder will be making a
4 presentation for the Office of Hawaiian Affairs. If
5 you could please state your name and position and/or
6 organization for the record.

7 MS. BRODER: You want me to state my name, or
8 all three of us?

9 CHAIRMAN FORMAN: Who will be starting?
10 Mr. Hee?

11 MR. HEE: I will.

12 CHAIRMAN FORMAN: Okay, Mr. Hee.

13 MR. HEE: Good afternoon, Commissioners. Thank
14 you for the privilege of appearing before you to
15 discuss Rice, the Rice case. I'm Clayton Hee. I'm
16 the Chairman the Office of Hawaiian Affairs. To my
17 left is Ray Soon, the Chairman of the Department of
18 Hawaiian Homelands, formerly of the governor's
19 cabinet. To my right, your left, is Sherry Broder,
20 who has been Board counsel for the Office of Hawaiian
21 Affairs since the earliest of times.

22 Briefly, with your permission, I'll offer a few
23 brief remarks about Rice from the Board perspective,
24 and then immediately yield to Sherry Broder, who will
25 present a power-point discussion on the ramifications

1 of the decision.

2 Let me just say very briefly that the office
3 has been consumed with the Rice case since January.
4 However, the Rice case began several years ago, as you
5 probably know. Sherry will go into the Federal
6 District -- the decision before Judge Ezra as well as
7 the Ninth Circuit Court of Appeals.

8 It is -- the ramifications of Rice have been
9 such that it has caused the resignation of the entire
10 Board of Trustees as a result of the decision by the
11 Hawaii Supreme Court finding that the trustees were de
12 facto, sitting in a de facto status as opposed to
13 du jure, and that the constituted Board that sits
14 today are appointments of the governor in order to
15 comport with the Rice decision. So without further
16 ado and with those brief comments, I would yield to
17 Board Counsel Sherry Broder with your permission.

18 CHAIRMAN FORMAN: Ms. Broder?

19 MS. BRODER: Good afternoon. My name is Sherry
20 Broder and I am the attorney for the Office of
21 Hawaiian Affairs. I was also the attorney at the 1978
22 Constitutional Convention and I was involved in the
23 drafting of the constitutional amendments that were
24 voted upon by all the people of the State of Hawaii,
25 which created the Office of Hawaiian Affairs, and also

1 created the Native-Hawaiian-only vote, which was
2 recently struck down by the U.S. Supreme Court.

3 This story really starts a long time ago and
4 this is the statement by Queen Liliuokalani in 1893
5 when she agreed to abdicate the throne. And she
6 specifically stated that she did yield her authority
7 until such time as the government of the United States
8 shall, upon the facts being presented to it, undo the
9 action of its representatives and reinstate me in the
10 authority which I claim as the constitutional
11 sovereign of the Hawaiian Islands.

12 So that was in 1893, and it wasn't until 1980
13 that the Hawaiian people again had any duly-elected
14 representatives of their own.

15 The U.S. Constitution does give Congress the
16 power to legislate for native people and this is to
17 allow for a government-to-government relationship with
18 native people. This is the provision of the U.S.
19 Constitution which does give them power.

20 One of the reasons that Native Hawaiian people
21 have been basically overlooked by the federal
22 government as a sovereign people is that in 1871, the
23 United States ended its treaty-making authority with
24 native people, so Congress passed statute in 1871 that
25 prohibited the further making of treaties with native

1 people.

2 As a result of this, in 1893, when the queen
3 was overthrown, there was no mechanism for entering
4 into a treaty with Native Hawaiian people. So in
5 1978, when the Constitutional Convention created the
6 Office of Hawaiian Affairs, it was created as a public
7 trust, not a private trust, but a public trust, but
8 most importantly, it was to provide a democratic
9 process for self-determination and self-government
10 like other native people have.

11 In addition, the ConCon was looking toward the
12 idea of reparations because, as you may recall in
13 1971, Congress passed the Alaskan Native Settlement
14 Claims Act, and at that time in ConCon, people were
15 imagining that Native Hawaiians would have a
16 resolution or partial resolution of their land claims
17 and their loss of sovereignty claims from Congress.
18 Of course, now we're 25 years later and that does not
19 happen.

20 In the Rice case, one of the major achievements
21 in litigation was the solicitor general's brief,
22 because although Congress had passed 150 statutes for
23 the benefit of Native Hawaiians, it wasn't until the
24 solicitor general filed his brief on behalf of the
25 United States of America that the Executive Department

1 of the United States also supported the special trust
2 relationship between Native Hawaiians and the United
3 States.

4 This is really critical because, in the past,
5 until this brief was filed, the Department of Interior
6 actually had taken the position that Native Hawaiians
7 were not like other native peoples, but the United
8 States Supreme Court nevertheless rejected the
9 Native-Hawaiian-only vote for the Office of Hawaiian
10 Affairs and characterized it as racial discrimination.

11 But the Court was clear to point out that while
12 it was rejecting the Native-Hawaiian-only vote, at the
13 same time, the Court recognized the plenary power of
14 Congress, as we showed you in the first slide, to
15 legislate the Native Hawaiian people. So the Court
16 pointed out that the OHA election was an election of
17 the state, not of the federal government.

18 The Court, of course, I'm sure as you're all
19 aware, assumed the underlying validity of the trust
20 and didn't make any statement on that point. So with
21 regard to a 14th Amendment challenge, that issue was
22 clearly not addressed in any way by the Court, and in
23 fact, one could say to the contrary since the Court
24 did assume the underlying administrative structure in
25 the trust.

1 However, after the case came out, of course,
2 there were threats of further cases. Rice's attorney
3 says he's going to sue OHA Homesteading, which is the
4 Department of Hawaiian Homelands, following grants,
5 Native Hawaiian gathering rights, health and education
6 programs. He also alleges that he's going to take on
7 a public trust for some \$10 billion in assets, which
8 could only be the Bishop Estate, which provides a
9 preference to Native Hawaiian children in education.
10 So what needs to happen next? Congress needs to
11 establish a procedure for formal recognition of a
12 political entity representing the Native Hawaiian
13 people.

14 I'd like to point out to this Commission that
15 in your own report, A Broken Trust, your
16 Recommendation Number 2 is that, "Congress should
17 promptly enact legislation enabling Native Hawaiians
18 to develop a political relationship with the federal
19 government comparable to that enjoyed by other native
20 peoples in the nation. Such legislation would
21 encourage the realization of sovereignty and
22 self-determination for Native Hawaiians, a goal that
23 this Advisory Committee strongly endorses."

24 So this was your report for 1991. These are
25 examples that the U.S. Supreme Court gave in the Rice

1 decision of other native people who have had
2 elections, and so the Menominee Restoration Act really
3 shows the great power of Congress. In 1954, Congress
4 terminated the Menominee Nation. In 1973, Congress
5 restored the Menominee Nation. These are actions that
6 are cited approvingly by the U.S. Supreme Court.

7 As you know, the Alaskan Native Claims
8 Settlement Act of 1971 recognized Alaskan Natives.
9 Alaskan Natives are anthropologically not the same as
10 Indians in the lower 48 states, although there are
11 more Native Hawaiians than there are Alaskan Natives.
12 Alaskan Natives have 44 million acres of land, and
13 back in 1971, they received a settlement of almost a
14 billion dollars.

15 The U.S. Supreme Court also cited the Indian
16 Reorganization Act. Native Hawaiians have never been
17 able to petition under the Indian Reorganization Act
18 because it applies only to 48 states and to some
19 natives in Alaska. It does allow natives to petition
20 the Department of Interior for recognition and
21 political status, but again, Native Hawaiians have
22 never been able to do that because that statute
23 specifically does not cover Hawaii.

24 There are 557 federally recognized tribes in
25 the United States, so recognition of Native Hawaiians

1 affording them a government-to-government relationship
2 would be well within the power of Congress and well
3 within the tradition and history of the United States.

4 In 1993, the Congress passed the Apology
5 Resolution. In the Apology Resolution, Congress
6 admitted that the taking of the 1.8 million acres of
7 crown government and public lands of the Kingdom of
8 Hawaii was without the consent of or compensation to
9 the Native Hawaiian people of Hawaii or their
10 sovereign government. That is a direct quote from the
11 Apology Resolution.

12 In the Apology Resolution, Congress also
13 admitted that the overthrow of the Kingdom of Hawaii
14 resulted in, quote, "The suppression of the inherent
15 sovereignty of Native Hawaiian people and the
16 deprivation of Native Hawaiians' right to
17 self-determination." And furthermore, Congress
18 admitted that the overthrow of the Kingdom was, quote,
19 illegal.

20 I can't get the final one. Oh, okay. So
21 here's a map of Indian lands and communities
22 throughout the United States. So the bill that is
23 pending in Congress right now, which has passed the
24 House, so it's now in the form of House Resolution
25 4909, this is a bill to establish a

1 government-to-government relationship between Native
2 Hawaiians and the federal government. The bill will
3 appoint a Commission, will have a Commission
4 appointed, actually, the current version of the bill
5 has the appointments made by the executive to develop
6 a role of Native Hawaiians. Native Hawaiians in the
7 role will elect an interim governing council.

8 The Native Hawaiian Interim Governing Council
9 will conduct a referendum to determine the elements of
10 the organic governing documents of a Native Hawaiian
11 government. After the election of duly-elected
12 officials of the Native Hawaiian government and after
13 they take office, then the Interim Governing Council
14 will cease to exist. Upon certification by the
15 Secretary of the Department of Interior, federal
16 recognition will be extended to the Native Hawaiian
17 government.

18 An Office of Native Hawaiian Affairs will be
19 established in the office of the Department of
20 Interior Secretary. This is actually very important
21 because Native Hawaiians need people within the
22 federal bureaucracy to advocate for them, to make the
23 facts about their situation known. I'm sure that
24 those of you who go to Washington, D.C., know that the
25 bureaucracy there is very big and very slow to move,

1 so it's really critical to have people there who will
2 be knowledgeable about Native Hawaiians. .

3 The Attorney General shall designate a person
4 within the Department of Justice to implement and
5 protect the rights of Native Hawaiians and their,
6 quote, political, legal, and trust relationship with
7 the United States. This is also going to be very
8 important. The Department of Hawaiian Homelands has
9 tried many years to get legislation passed relating to
10 housing for Native Hawaiians, and there's been -- it's
11 taken many years because of resistance within the
12 Department of Justice and within HUD to the idea of
13 including Native Hawaiians. That has turned around in
14 the last few years, but nevertheless, to have somebody
15 in the Department of Justice hopefully will overcome
16 that kind of thing in the future. Then there would be
17 a Native Hawaiian Interagency Task Force.

18 So I'm going to turn the program back over to
19 Chairman Hee.

20 MR. HEE: While we were in Washington, we found
21 some similarities between the indigenes of the lower
22 48 and the Hawaiian people. And also while there, I
23 used a citation from one of our kings to end our part,
24 our portion. I'd like to do so with your permission
25 and yield the rest of the time to you and as well as

1 the Chair of the Department of Hawaiian Homelands.

2 Basically, in 1778, when Cooke arrived, our
3 population, the accepted population of the Hawaiian
4 people were about 400,000. That's about the same
5 time, frankly, that the Declaration of Independence
6 was being carved out in America.

7 By 1848, the population, the Hawaiian
8 population, had decreased from 400,000 to about
9 50,000. Land was privatized and the greatest move
10 towards capitalism was firmly underway. About the
11 same time, with the native indigenes of the lower 48,
12 it was the end of the Indian war era where, like the
13 population decrease in Hawaii, the estimates between
14 10 and 50 million Indians was decreased to about
15 250,000 by 1848.

16 By 1893, when the Kingdom was overthrown, the
17 population was less than 40,000. The loss to the
18 Hawaiian people at minimum was the land, the right to
19 govern themselves, and the imprisonment of their
20 queen. Well, about the same time, in 1893, was known
21 as The Allotment Era where the Indians were -- Indians
22 were allotted land per Indian with the expressed
23 intent by the American government to Americanize the
24 indigenes. Clearly, we share some very similar past
25 with respect to at least some of the more important

1 dates in our history.

2 113 years ago, the last king of Hawaii, King
3 David Laamea Kalakaua, wrote a brief passage which
4 today, 113 years later, is as relevant as it was in
5 1887. What he said was, briefly:

6 "In the midst of these evidences of prosperity
7 and advancement, it is but too apparent that the
8 natives are steadily decreasing in numbers and
9 gradually losing their hold upon the fair land of
10 their fathers. Within a century, they have dwindled
11 from 400,000 healthy and happy children of nature to a
12 little more than a tenth of that number of landless,
13 hopeless victims to the greed and vices of
14 civilization.

15 "They are slowly sinking under the restraints
16 and burdens of their surroundings and will in time
17 succumb to the social and political conditions foreign
18 to their nature and poisonous to their blood. Year by
19 year, their footprints will grow more dim along the
20 sands of their reef-sheltered shores and fainter and
21 fainter will come their songs until finally, their
22 voices will be heard no more forever.

23 "And then, if not before, and no human effort
24 can shape it otherwise, the Hawaiian Islands, with the
25 echoes of their songs, will pass into the political as

1 they are now firmly within the commercial system of
2 the great American Republic."

3 With those few remarks and with the
4 anticipation of some questions from your Commission,
5 I'll yield the floor back to you.

6 CHAIRMAN FORMAN: Thank you, Chairman Hee.
7 After we hear from Mr. Soon, we will have some
8 questions from the Commissioners and Committee
9 members. Also, at this point, I'd like to reiterate
10 that if any members of the audience have pagers or
11 cell phones, we request that you put those on vibrator
12 mode so that they do not disturb the panelists.

13 Thank you, Mr. Soon.

14 MR. SOON: Thank you. Members of the U.S.
15 Commission on Civil Rights, aloha kakou, welcome to
16 Hawaii.

17 Chairman Hee and Sherry Broder were excellent
18 at covering a lot of what would have been my
19 introduction, so I'm going to skim through that as
20 much as possible and get on to the other portion, but
21 I do want to make some statements about your visit.

22 Many of us are very happy to have you here. I
23 would hope that, in your findings, that you'll bear
24 witness to what I consider to be the endangered rights
25 of really the only indigenous people of these islands,

1 that's the rights of the Native Hawaiians. As Sherry
2 talked about eloquently, we are not Indians and we are
3 not Alaskans, but like those two groups, we are
4 indigenous people of lands in the United States. We
5 have occupied these lands for thousands of years, long
6 before the United States was ever envisioned, and like
7 them, we share a rather tragic history post-contact
8 with European and Americans. What we don't have that
9 they have is we don't have the same rights to
10 self-determination and I hope you find that to be a
11 shortcoming.

12 You have a unique opportunity to comment on our
13 situation. Your voice resonates far beyond your
14 number throughout the country and I hope that what you
15 find is that Hawaiians have every right to be
16 recognized as indigenous people and that we should, in
17 fact, share the same rights afforded to both Native
18 Alaskans and American Indians. Okay, now let's talk
19 about housing a little bit.

20 In the last eight years, there have been three
21 rather critical studies, and Mr. Stender reminded me
22 of the broken trust which I had conveniently forgotten
23 about. In fact, that might be a fourth. But the
24 three having to do with housing, I'd like to note a
25 little bit. The first, in 1982, the National

1 Commission of American Indians, Alaskan Natives, and
2 Native Hawaiian Housing, was issued to Congress, and
3 probably the most important finding is that Native
4 Hawaiians here, in Hawaii, amongst all the groups
5 here, suffer the worst housing conditions, and that
6 we, in fact, have the highest percentage of
7 homelessness, approximately 30 percent of all homeless
8 being the Hawaiian.

9 What the Commission asked then, in fact,
10 strongly recommended to Congress, is that Congress
11 extend to Native Hawaiians the same federal housing
12 assistance programs that are provided to Indians and
13 Native Alaskans. Sherry mentioned earlier the efforts
14 we've been going through to do specifically that and
15 we feel we're right on the cusp. We have before both
16 houses of Congress and we have gotten through all the
17 important committees the Native Hawaiian Housing
18 Self-Determination Act. It's a parallel bill to
19 NHHSA, which does some of the same things for -- in
20 fact, exactly the same things with Native Alaskans and
21 American Indians.

22 The second document was done in 1995 by us
23 commissioned through an outside research company.
24 What we're doing is we're interviewing our
25 beneficiaries, both those on the land and those off

1 it. And the pertinent finding here is that one-half
2 of all of our applicants in those families off the
3 land suffer overcrowding conditions, and one-third pay
4 more than 30 percent of their income per shelter.

5 The third study I bring you to also published
6 in '95 was by HUD, and it was helpful because it
7 compared Hawaii statistics with those of other native
8 groups as well as with the population as a whole, and
9 there, the critical finding is that we have the
10 highest percentage of housing problems of any group in
11 the nation.

12 49 percent of Native Hawaiian households
13 experience housing problems compared to 27 percent of
14 the U.S. population. And 36 percent of our households
15 are overcrowded compared to 3 percent of the overall
16 population.

17 Now, for those of us who work in the Hawaiian
18 communities, these are not statistics we're proud of,
19 and it's important to note that these statistics, in
20 varying magnitude, have been with us for many decades.
21 But what we are proud of is that, I believe, and many
22 of us who are out there every day, believe that the
23 tide is changing. I can only speak to the Hawaiian
24 Homes programs, but I can feel the shift in other
25 programs throughout the community. I note that you

1 had Alu Like here, OHA'is here, I think you will find
2 some of the same optimism for the impact of our
3 programs in the community.

4 In the last 10 years, Hawaiian Homes has
5 produced more homesteads than in the first 70 years of
6 the program. Today, we have just short of a thousand
7 homesteads in production and about another thousand
8 that are in design. We're putting Hawaiian families
9 on the land in a variety of types of shelter. We do
10 vacant lots upon which people build their own homes.
11 We also do vacant lots for self-help and habitat
12 construction. Those are particularly successful. It
13 takes long and they're difficult to do, but when
14 someone's finished building their own house, they're
15 awfully, awfully proud of it. They know how to fix it
16 and they love it.

17 We also do turnkey homes where the Department
18 builds the homes and sells them to the homesteaders.
19 We have farms. We have ranches. Today, we are
20 experimenting with a variety of settlement patterns, a
21 variety of building types, a variety of building
22 systems.

23 Right now, we're doing our first multi-family
24 project. It's only duplexes, but it's the first one
25 we've ever tried. Common walls have not worked in the

1 past and we'll see how it goes, and thus far, it's
2 going quite well.

3 We're also about to break ground on our first
4 kupuna project, which is an elderly project, and our
5 first rent-to-own project, again, trying to reach to
6 people who couldn't afford to buy a market house.

7 We have secured a state-of-the-art
8 telecommunication system that will link up all of our
9 communities, and we are about to announce a series of
10 economic development opportunities that will provide
11 the resources we, at the Department, need in the
12 future and jobs for our beneficiaries.

13 None of this is magic. It hasn't been done by
14 the good grace of one or two people. It's been done
15 through the work of a lot of people over a long period
16 of time. Laws that were major impediments have been
17 changed. We've gotten better land, we're partnered
18 with other Hawaiian agencies, we have adopted private
19 industry techniques into a public agency, but the most
20 important is we've garnered financial resources.

21 The future looks bright. At least the future
22 looked bright until Rice vs. Cayetano came along.
23 That case has cast a shadow of doubt over all Hawaiian
24 programs, certainly over Hawaiian Homes. It would be
25 painfully ironic if, just now, when Hawaiian Homes was

1 beginning and certainly just the beginning of
2 delivering on the promise of Congress back in 1920,
3 just as we're beginning to deliver, if we were now
4 declared unconstitutional because of the work of
5 others before the Supreme Court.

6 People will argue that Hawaiian Homes has added
7 protection because it's a creature of the federal
8 government. We do believe that we have better
9 standing, but our closest counsel advised us that we
10 are not safe, that the Supreme Court all but invited
11 14th Amendment challenges and we prepare for those
12 challenges.

13 We fear for the people who are about to get on
14 the land because they're not going to get that promise
15 delivered. And we fear for the 30,000 Hawaiians who
16 are on the land right now because their future is in
17 doubt. But most of all, and I believe this is
18 genuine, we fear mostly for the loss of the indigenous
19 culture in the islands. This is our homeland.
20 There's no place else to go. If you go -- if you
21 visit any homestead area from Anahole to Keaukaha,
22 although every community will differ a little bit,
23 what you're going to find is you're going to find the
24 language being spoken and the culture thriving and the
25 Hawaiians gathering.

1 A 14th Amendment threat, if it were to prevail,
2 I think the programs could work and the culture would
3 be lost, so to you, members, I ask that you take a
4 strong position and you take a strong voice back to
5 Washington to encourage the finding that we are
6 indigenous people and that the federal government
7 honor its right, its civil rights, to us.

8 I think I'll end there and leave myself
9 available for questions.

10 CHAIRMAN FORMAN: Thank you. Are there any
11 questions from our guests, from the Commissioners?
12 Commissioner Meeks?

13 COMMISSIONER MEEKS: Thank you for your
14 testimony, all of you. I'm from Pineridge Indian
15 Reservation, so I understand the issues that you're
16 talking about. It seems like there's dissension to
17 Senate Bill 2899 and I guess I'd like your response to
18 that. I'd like your response, any one of you or all
19 of you.

20 MR. HEE: Well, we live in a democracy, number
21 one, and like other people, perhaps even your people,
22 not everyone agrees on everything at the same time.
23 So it should not be neither surprising or difficult to
24 understand that on legislation which will reshape the
25 history of people, that unanimity is not achieved.

1 Secondly, it's my own view that if one were to
2 base conclusions on the federal hearings on the
3 Committee of Indiana Affairs, which was conducted
4 recently, it's my own conclusion that, number one,
5 that the support far outweighed the dissent, and
6 number two, those who dissented, which the right to
7 dissent is supported by me, but those who dissented
8 were the same ones, by and large, who were there from
9 Monday to Friday.

10 On the other hand, those who supported and came
11 forth with supportive testimony were different every
12 day. It's my conclusion that it's true that there is
13 some dissent on the bill, but on the other hand, it is
14 far outnumbered by those who support the bill.

15 MR. SOON: Let me answer that. I think if you
16 step back from the disagreement, you will see that the
17 disagreement is over process. It is not over final
18 state. We agree that what we want to get to one day
19 is self-governance, self-determination. The
20 independents believe that path should, in fact, be
21 outside of the United States system, and many of us
22 who might become more pragmatic say that's not going
23 to happen. We've got problems every day. We've got
24 people living on the beaches and we've got to deal
25 with those issues and we take the path of working with

1 the United States.

2 I think we differ on process, therefore, one
3 would differ on the bill. However, we don't differ on
4 the end state.

5 CHAIRMAN FORMAN: Commission or -- sorry. Did
6 you have a follow-up question?

7 COMMISSIONER MEEKS: No, I don't think so.

8 CHAIRMAN FORMAN: Commissioner Lee?

9 COMMISSIONER LEE: The question is to Mr. Soon.
10 Since the Hawaiian Homes Commission Act --

11 CHAIRMAN FORMAN: Commissioner, could you bring
12 the microphone a little closer for the reporter?
13 Thank you.

14 COMMISSIONER LEE: The act has been in place
15 for 80 years and you mentioned in your testimony that
16 in the last 10 years, you produced more homes in 10
17 years than in the first 70 years. What happened to
18 the last 10 years that was different from the previous
19 70?

20 MR. SOON: When the Hawaiian Homes Commission
21 Act was passed, remember the context, the context of
22 how Congress was dealing with native people and the
23 compromise that was forced between the sugar and
24 commercial interests and the interests that were being
25 represented by Prince Kuhio, and those compromises led

1 to encumbrances on the bill and on the program that
2 took many, many years to first understand and then to
3 rise out of.

4 Let give you some examples. The lands were
5 called available lands. Why were they called
6 available lands? Because they took ahupuaa that
7 Prince Kuhio had first identified, and then the sugar
8 interest carved out the sugar lands. When you carve
9 out the sugar lands, you take the best lands, the most
10 fertile, the ones that are in production.

11 Then they carved out forest lands, so you take
12 highly productive forest areas. Then you took out
13 lands that had already been previously disposed of to
14 private interests and you were left with what was
15 available. So the Hawaiian Homes program had river
16 beds, mountain cliffs, a variety of other things.

17 The second thing is they had lands that were in
18 distant areas. Eighty percent of our population, in
19 fact, almost 80 percent of our applicants, live on
20 this island. Only 3 percent of Hawaiian Homelands is
21 on this island. Ninety-seven percent is on neighbor
22 islands where the job opportunities are fewer, income
23 opportunities are fewer, the ability to rehabilitate
24 fewer. It's very difficult to get people to transfer
25 out to the neighbor islands.

1 A third is one that Indian nations have faced
2 for many years and that these are trust lands and,
3 therefore, inalienable. The ability to get private
4 interests to invest or to lend money on Hawaiian
5 Homelands sharply curtailed and it wasn't until --
6 well, let me come to that.

7 And then probably the most important thing is
8 that the federal government established the program,
9 but in 80 years, till today, the federal government
10 has put \$7,500,000 into this program. That is 80
11 years, 7-and-a-half million dollars, that's it. You
12 don't build houses, you don't dig roads, you don't put
13 up power lines, you don't run cable without money.

14 So what happened in the last 10 years? In the
15 last 10 years, we negotiated an agreement with FHA so
16 that FHA gives insurance on our property, private
17 lenders are lending, what we stand behind is that FHA
18 insurance. That was a major difference. You will
19 find almost no private money before 1988, and today,
20 of our total portfolio of about \$200 million, about a
21 hundred and thirty, hundred and forty million are FHA
22 finance.

23 Second is we came to the table with the state
24 about the misuse of Hawaiian Homelands and we created
25 a cash flow of \$30 million over 20 years. That's led

1 to real money, real production. We got better land
2 from the state in 1993. Those lands have been the
3 backbone of a lot of our development since then.

4 So a number of things changed in the
5 institutional environment within which we were
6 working. It wasn't because we were any more dedicated
7 or we worked any harder or we cared any more than the
8 staff of Hawaiian Homes pre-1985. It was just, I
9 think, that we were able to address a lot of those
10 impediments that hung that program up for so many
11 years.

12 CHAIRMAN FORMAN: Vice-Chair Reynoso?

13 COMMISSIONER REYNOSO: Somewhat of a follow-up
14 question. This hearing, these meetings have dealt a
15 great deal with the relationship with the federal
16 government because of the Rice case, but I was
17 impressed last night, in talking with some of the
18 elders, where one of the elders had laid down a series
19 of concerns that she had about education and housing
20 and so on, and at the end of her discussion, I asked
21 her what specific recommendations she had, and I
22 recall that she said, you know, all we really need is
23 to have the laws enforced the way they were meant to
24 be enforced.

25 And the impact of what she was saying to me

1 really meant the State of Hawaii hasn't done its job
2 in terms of enforcing the spirit of the federal laws
3 or many of the state laws. So I guess that in some
4 ways, I wonder whether this history that you just
5 recounted is a history of a failure maybe of this
6 community rather than the federal government to do
7 what's right in terms of the Native Hawaiians.

8 (Applause)

9 MR. SOON: In that discussion, I did not mean
10 to discount any failure on the part of the state
11 government. As you may recall, one bit of that, I
12 talked about settling with the state over the misuse
13 of Hawaiian Homelands for essentially \$600 million.

14 No, I think there's plenty of blame to go
15 around, plenty of places, and the state should stand
16 right up there with everyone else, including myself.
17 What I'm more concerned with, as opposed to worrying
18 about what didn't go right in the past, is making sure
19 that what's going right right now can continue into
20 the future. That's the threat. The threat here is
21 that when we finally turn the corner, the good work is
22 being done, bang, cut it off. And so I plead with you
23 to find in our favor there.

24 CHAIRMAN FORMAN: Mr. Hee?

25 MR. HEE: Just a couple remarks. In the

1 eighties, I served in both the House and Senate of the
2 legislature, so some familiarity with the governing
3 houses, elected houses. But regardless of whether one
4 wishes or chooses to place the blame on the state or
5 federal government, from the Hawaiian's eyes, it
6 doesn't matter.

7 I mean, clearly, if it took over 30 years to
8 revisit the Section 5(f) of the Admissions Act to see
9 that one of the purposes of the Ceded Land Trust was
10 for the betterment of indigenous Hawaiian people, if
11 one wishes to pin that on the state government, that's
12 fine, but you know, the whole -- we could go back to
13 the territorial legislature that outlawed Hawaiian
14 language to be spoken publicly. You take your
15 language, you take your culture, you take your land
16 and your language, you take everything, you take life.

17 And, you know, it wasn't really until 1986
18 that, actually, Commissioner Alan Murakami and myself,
19 when I sat as the Senate Committee Chair on the
20 Committee of Judiciary, had a fairly significant role
21 in drafting the Right to Sue Bill. So these things of
22 redress take extraordinarily long, but at the end of
23 the day, it really doesn't matter from the eyes of the
24 Hawaiians.

25 CHAIRMAN FORMAN: Ms. Broder, did you wish to

1 respond to the Commissioner's question as well?

2 MS. BRODER: Well, I guess I'd like to point
3 out, without saying who's more at fault, the state or
4 the federal government, that the Office of Hawaiian
5 Affairs has received 20 percent of the revenues from
6 the ceded lands, which are the former lands of the
7 Hawaiian Kingdom. However, the federal government has
8 military bases, including military golf courses, and
9 has about 500,000 acres of ceded lands here, in
10 Hawaii, and Native Hawaiian people get no revenues, no
11 income, no rent payment from those lands.

12 So I don't think it would be fair to lay all
13 the blame at the feet of the State of Hawaii.

14 (Applause)

15 CHAIRMAN FORMAN: The Chair recognizes
16 Commissioner Meeks.

17 COMMISSIONER MEEKS: On Mr. Soon's remarks
18 here, you stated some statistics here that 30 percent
19 of the homeless population in Hawaii are Native
20 Hawaiians, and you went on that HUD did a study, and I
21 just wonder how that weighs up against Mr. Conklin
22 also stated some statistics that came from OHA that
23 said 39 percent of the Hawaiian families have annual
24 incomes of between fifty and a hundred thousand and
25 on. So, I mean, there was a lot of discussion about

1 whose statistics were right and how you justify it.

2 MR. HEE: Maybe I could respond by saying
3 there's lies, damn lies, and then statistics. I can
4 respond with respect to Mr. Conklin and Mr. Burgess,
5 what elders tell us, "nana ke kumu," consider the
6 source.

7 Let me say, that hit me by surprise when I came
8 through the door and Judge Kippen (phonetic), who
9 works for us, happened to have -- I don't know where
10 he pulled this out of, whose hat he pulled it out of,
11 but he said, "You probably will be asked that
12 question."

13 So I looked at it, and very briefly, to
14 demonstrate lies, damn lies, and statistics, I guess
15 SMS, on behalf of OHA, did this study and 1,700
16 Hawaiians were polled and 4,000 non-Hawaiians polled,
17 so when I looked at the household income, indeed it
18 looked, on the bar graph, 39 percent indicated they
19 have a household income of fifty-one to a hundred
20 thousand while only 37 percent of non-Hawaiian
21 households indicated that they have an income of -- so
22 on the face of it, it looks like Hawaiians are
23 outearning non-Hawaiians.

24 Well, I took the, actually, the 40 percent
25 instead of 39 because of my math. So 40 percent of

1 1,700 is 680 people responded that way, and 37 of
2 4,000 polled non-Hawaiians or 1,480. So one could
3 then conclude that less than half of the Hawaiians
4 polled make as much as who are non-Hawaiians, make two
5 times as much. That's one conclusion.

6 The other conclusion is if I were the Hawaiian
7 being called on this question, I would answer as a
8 Hawaiian who is married to a non-Hawaiian, and the two
9 of us earn between fifty-one and a hundred thousand,
10 but let me assure you, of the two of us, my salary is
11 \$32,000 a year, so you know, I think that, you know,
12 this survey is not -- I actually asked Judge Kippen if
13 there was an executive summary and there isn't one.

14 But clearly, one could take statistics and
15 fashion them the way they wish, but in taking the
16 statistics as they are shown here and taking the
17 numbers polled and looking at some reason, I think
18 that one could conclude, without too much heartache,
19 that Hawaiians do not outearn non-Hawaiians, period.
20 That would suggest to me that Indians outearn
21 non-Indians.

22 CHAIRMAN FORMAN: Commissioner Lee?

23 COMMISSIONER LEE: If I can add a comment. I
24 think this is a similar problem that the
25 Asian-American community faces all the time when you

1 look at the aggregate, Asian-American households makes
2 more money than the white population, but when you
3 look at it, many households are multi-households. So
4 when you also talk about a housing shortage here, I
5 wonder if that plays a role when you're talking about
6 multiple households in your interview, so when you add
7 up two, three, four members...

8 I don't know. I'm just speculating. Because
9 that's surely what happened in the Asian-American
10 community when you just don't compare apples and
11 apples like that.

12 MR. SOON: That's very possible. When you have
13 overcrowding, you have multiple earners. I would even
14 venture to wonder why the statistics differ. I would,
15 though, say that most researchers find that income is
16 directly correlated to other indices of achievement of
17 any group. In the health statistics, the prison rate
18 statistics, the educational achievements statistics,
19 unfortunately, we rank often very, very low, and I
20 think those are good comparables to ask yourself, if
21 we're earning so much money, why are we doing so
22 poorly in other areas? I don't think you'll find what
23 this has shown. I think you'll find that there's
24 something wrong with perhaps other numbers that are
25 aggregated or are two-earning.

1 MR. HEE: Let me say a little bit more. In the
2 survey that was cited by Conklin, it also went
3 directly to what Commissioner Lee said and that is
4 that 30 percent of the Hawaiians polled responded that
5 their household consists of five or more while 17
6 percent of non-Hawaiians said similar, said that they
7 had five or more.

8 And then finally, the correlation to education,
9 5 percent of 85 Hawaiians polled have completed
10 graduate school while 9 percent of non-Hawaiians
11 polled of 400 completed graduate school. So it begs
12 the question that, geez, if almost five times the
13 amount of non-Hawaiians completed graduate school than
14 Hawaiians, how is it that Hawaiians are outearning
15 non-Hawaiians?

16 Then finally, the Native Hawaiian Data Book
17 shows that Native Hawaiians make the lowest income in
18 the state. I'm sorry. I don't have the Data Book. I
19 should have thought, what would Conklin say if he were
20 here.

21 CHAIRMAN FORMAN: We would appreciate if you
22 could submit that Native Hawaiian Data Book, I'd like
23 to look at it, and also if you could provide a printed
24 version of the power-point presentation for the
25 record, we would also appreciate that.

1 MR. HEE: We'll do that.

2 CHAIRMAN FORMAN: Are there any further
3 questions? Hearing none, thank you very much for
4 coming.

5 COMMISSIONER REYNOSO: Thank you very, very
6 much.

7 LEGISLATIVE RESPONSE

8 CHAIRMAN FORMAN: We will now proceed with the
9 next panel on Legislative Response. We have a
10 representative from the Office of U.S. Senator Daniel
11 Akaka, and Representative Sol Kuho'Ohalahalà, and Jon
12 Van Dyke, Professor of Law, University of Hawaii.

13 During the panel presentations, in accordance
14 with the procedures under which the Federal Advisory
15 Committee operates, audience participation is not
16 allowed, so we would appreciate refraining from
17 comments at this point, but we would encourage you to
18 share your views and your perspectives with us during
19 the open sessions.

20 And also, for any of you who may have come in
21 after I made the announcement about cellular phones
22 and pagers, if you could please turn those to the
23 vibrator mode so as to minimize disruption of today's
24 hearing, we would appreciate it. Thank you.

25 We will begin with the representative from the

1 panel for Legislative Response, representative from
2 the office of U.S. Senator Daniel Akaka's office.
3 Please state your name and position and organization
4 for the record.

5 MR. KIMURA: Thank you, Mr. Chair. My name is
6 Mike Kimura and I'm representing Senator Akaka, Daniel
7 Akaka. I am on staff in the senator's Honolulu
8 office.

9 CHAIRMAN FORMAN: Question for staff. How much
10 time have we indicated to the panelists that they
11 would have for testimony? Ten minutes?

12 I apologize in advance if, at about the
13 two-minute mark, I will interrupt you to let you know
14 that you have two minutes remaining.

15 MR. KIMURA: I understand, sir.

16 I know that the Commission wanted Senator
17 Akaka's testimony, actually his presence or a staff
18 member for the Washington office's presence, who is
19 working day to day on the legislation that Senator
20 Akaka has introduced known as The Akaka Bill.

21 Unfortunately, as you know, that bill is
22 pending consideration as we speak and, therefore, both
23 Senator Akaka as well as his staff member, Noe Kalipi
24 (phonetic spelling) could not attend this hearing, but
25 then the senator wanted to make sure that there was

1 some sort of nexus that the Commission could identify
2 with the person from his office who could speak on his
3 behalf, not necessarily answer the kind of questions,
4 substantive questions on the bill itself, but be able
5 to take back those questions to Washington, to Senator
6 Akaka, for written reply so that you can continue in
7 your fact-finding mission.

8 So what I'd like to do today to open this is to
9 deliver the senator's written testimony that he wishes
10 to deliver to you. You, I believe, have a copy of
11 that. And to those sitting behind me, I also have
12 about 30 copies of the senator's statement and I
13 welcome your taking those copies after I'm done
14 delivering his statement. So if you will allow me,
15 Mr. Chairman?

16 CHAIRMAN FORMAN: Please.

17 MR. KIMURA: Thank you. Aloha and mahalo for
18 inviting my participation in this very important
19 discussion. I would like to thank the members of the
20 Hawaii Advisory Committee to the United States
21 Commission on Civil Rights for hosting this forum to
22 discuss the impact of the United States Supreme Court
23 decision in Rice v. Cayetano on Native Hawaiian
24 programs. I would also like to thank the
25 Commissioners who have traveled to Hawaii to examine

1 this issue.

2 In my view, the Supreme Court's decision in the
3 case of Rice v. Cayetano has no direct impact on
4 federal programs addressing the conditions of Native
5 Hawaiians. The Supreme Court's ruling addressed the
6 15th Amendment; namely, whether the Office of Hawaiian
7 Affairs is a state agency, and if so, whether or not
8 the election of the Board of Trustees for the Office
9 of Hawaiian Affairs could be limited to Native
10 Hawaiians.

11 The Supreme Court ruled that OHA is a state
12 agency and, as such, could not limit the election of
13 its Board of Trustees to Native Hawaiians. The Court
14 clearly stated in its opinion that the only question
15 before the Court was the validity of the voting
16 restriction. The ruling in Rice v. Cayetano,
17 therefore, does not directly impact federal programs
18 which have been established by Congress to address
19 conditions of Native Hawaiians.

20 The Rice decision has, however, had an impact
21 on the Native Hawaiian community. In 1978, the entire
22 State of Hawaii voted to adopt the amendments to the
23 Hawaii State Constitution, which created the Office of
24 Hawaiian Affairs. This vote is significant because it
25 clearly demonstrates that the citizens of Hawaii

1 recognized Native Hawaiians as the aboriginal,
2 indigenous native people of Hawaii.

3 The Office of Hawaiian Affairs was created by
4 the people of Hawaii to address the rights of Native
5 Hawaiians to self-determination and self-governance.
6 The Court's decision in Rice clearly impacts the
7 process.

8 As you know, I have introduced legislation to
9 clarify the political relationship between Native
10 Hawaiians and the United States. S. 2899 was
11 introduced on July 20, 2000, and is pending
12 consideration by the Senate. H.R. 4904, its House
13 counterpart, was introduced by Representative Neil
14 Abercrombie and was passed by the House of
15 Representatives on September 26, 2000.

16 I have been asked by a number of individuals
17 whether or not this legislation is a response to the
18 Supreme Court's decision in Rice v. Cayetano. The
19 answer is yes and no. While the Rice case has
20 impacted the timing of the legislation to clarify the
21 political relationship between Native Hawaiians and
22 the United States, this issue has been a discussion
23 for many, many years within the Native Hawaiian
24 community, the State of Hawaii, and the federal
25 government. I believe this issue would have been

1 addressed by legislation as part of the reconciliation
2 process.

3 In 1993, the president -- excuse me. In 1993,
4 President Clinton signed Public Law 103-150, the
5 Apology Resolution, which acknowledged the illegal
6 overthrow of the Kingdom of Hawaii and the deprivation
7 of the rights of Native Hawaiians to
8 self-determination.

9 The Apology Resolution committed the United
10 States to acknowledge the ramifications of the
11 overthrow in order to provide a proper foundation of
12 reconciliation between the United States and the
13 Native Hawaiian people.

14 In 1999, Attorney General Janet Reno and
15 Secretary of Interior Bruce Babbitt designated
16 officials to begin the public consultations with
17 Native Hawaiians as the beginning of a process of
18 reconciliation. The process of reconciliation is a
19 process of healing, which should not be viewed as one
20 particular issue or a narrowly defined process. It
21 should be viewed as a multitude of positive steps
22 between Native Hawaiians and the federal government to
23 improve the understanding between each party, to
24 improve the social and economic conditions of Native
25 Hawaiians, and to resolve longstanding matters of

1 political status and land claims.

2 In December 1999, Mr. John Berry, Assistant
3 Secretary of Policy, Management and Budget for the
4 Department of the Interior, and Mr. Mark Van Norman,
5 Director of Office of Tribal Justice for the
6 Department of Justice, traveled to Hawaii and began
7 public consultations with Native Hawaiians. The
8 discussions were not limited to specific topics and
9 covered a wide number of issues, including the
10 political relationship between Native Hawaiians and
11 the United States.

12 On February 23, 2000, the United States Supreme
13 Court rendered its decision in the case of
14 Rice v. Cayetano. The Supreme Court's ruling was
15 limited to the 15th Amendment. The ruling did not
16 address the political relationship between Native
17 Hawaiians and the United States. The ruling did not
18 invalidate the federal programs which have been
19 established to address the conditions of Hawaii's
20 indigenous native peoples, Native Hawaiians. The
21 ruling did not declare the Office of Hawaiian Affairs
22 to be unconstitutional. What the Rice case did,
23 however, was make clear that the political
24 relationship between Native Hawaiians and the United
25 States is an important matter.

1 Hawaii's congressional delegation formed a task
2 force on Native Hawaiian issues and we made it our
3 priority to clarify the political relationship between
4 Native Hawaiians and the United States. As the chair
5 of the task force on Native Hawaiian issues, I wanted
6 to ensure that the community was aware of our efforts.

7 To involve a number of individuals with
8 expertise in a variety of issues, we formed five
9 working groups: The Native Hawaiian Community Working
10 Group, the State Working Group, the Federal Officials
11 Working Group, the Native American and Constitutional
12 Scholars Working Group, and finally, the Congressional
13 Members and Caucuses Working Group.

14 The Native Hawaiian Community Working Group
15 consisted of 25 individuals who reflected a
16 cross-section of the Native Hawaiian community. We
17 tried to ensure that we had people from each of the
18 islands with different occupations, different
19 backgrounds and who were of different ages. The
20 Native Hawaiian Community Working Group not only
21 worked together to provide valuable input on the
22 legislation, but also held educational workshops on
23 every island to share their thoughts about the
24 legislation with the Native Hawaiian community.

25 CHAIRMAN FORMAN: You have two minutes

1 remaining.

2 MR. KIMURA: Thank you. I'll submit the
3 remaining remarks, written remarks, into the record.

4 CHAIRMAN FORMAN: If you could briefly
5 summarize. You still have two minutes. I'm sorry for
6 interrupting.

7 MR. KIMURA: Okay. In conclusion, this
8 legislation provides a tremendous opportunity for the
9 Native Hawaiian community to come together to begin to
10 resolve longstanding issues. It provides the
11 opportunity for Native Hawaiians to have a seat at the
12 table with respect to federal policies impacting them.
13 It provides the opportunity for Native Hawaiians to
14 begin to exercise their rights as native people to
15 self-governance.

16 This legislation is also important to
17 non-Native Hawaiians because it provides a process to
18 resolve longstanding issues that have concerned
19 Hawaiians for many, many years. We must begin to
20 address these issues. We cannot continue to ignore
21 the fact that these issues exist. .

22 This legislation continues the reconciliation
23 process and the healing between Native Hawaiians and
24 the United States as well as within the State of
25 Hawaii.

1 Once again, I would like to thank the Hawaii
2 Advisory Committee to the United States Civil Rights
3 Commission for holding this forum. We have had a
4 number of hearings to discuss these issues over the
5 past two years. I believe the Rice case played an
6 important role in uniting the Native Hawaiian
7 community. It has been a catalyst.

8 The Rice case does not directly impact the
9 federal programs. Instead, the case has caused Native
10 Hawaiians to come together to begin to resolve
11 longstanding issues. Through addressing and resolving
12 these matters, we will come together as a community
13 and move forward together to provide a better future
14 for the children of Hawaii.

15 Thank you very much.

16 CHAIRMAN FORMAN: Thank you, Mr. Kimura.
17 Representative Kuho'Ohalahala, I will give you the
18 choice of speaking now or waiting till after Professor
19 Van Dyke.

20 MR. KUHO'OHALAHALA: I'll go ahead.

21 CHAIRMAN FORMAN: Please state your name or
22 position or organization for the record.

23 MR. KAHO'OHALAHALA: Aloha, Commissioners. My
24 name is Sol Kuho'Ohalahala. I am a resident of the
25 island of Lanai. I also serve as the 7th District

1 State Representative for the islands of Lanai,
2 Molokai, Kahoolawe, West Maui, and Kālaupapa. I'm
3 very happy that I have this opportunity to come before
4 you, so I'd like to begin by --

5 CHAIRMAN FORMAN: I'm sorry to interrupt you,
6 Representative. Do you have any written testimony
7 that we can provide to the reporter?

8 MR. KAHO'OHALAHALA: Yes, I do.

9 CHAIRMAN FORMAN: If you could do that at this
10 time, we won't interrupt at the time of your
11 presentation, that would be helpful. Thank you.

12 MR. KAHO'OHALAHALA: Would you like me to wait?

13 CHAIRMAN FORMAN: Please proceed.

14 MR. KAHO'OHALAHALA: Okay, thank you.

15 I'd like to begin with a statement that I had
16 put out earlier during the session of the legislature.
17 I begin by saying, of the ethnic groups of Hawaii, the
18 Hawaiian people are the most legislated and regulated.
19 Conditions that impact our land ownership, our health
20 and welfare, and most recently, our ability to seek
21 justice for breaches of our trust, are all dependent
22 upon the wisdom and knowledge of the Hawaii State
23 legislature.

24 In this 1999-2000 legislative session alone,
25 there are 89 different bills with the words "Native

1 Hawaiian," and 488 bills with the word "Hawaiian" in
2 them. Compare that with the fact that there are only
3 32 bills with the word "Chinese," 16 with the word
4 "Japanese," and one bill containing the word
5 "Portuguese." Review the contents of these bills and
6 you will find that Hawaiian people must deal with
7 legislation that affects almost every aspect of our
8 being: Our homes, our assets, even our basic rights
9 to sue. Still, the state denies Hawaiians the right
10 to manage our own assets, including homelands and
11 trust revenues, to care for cultural sites and
12 resources like Mauna Kea and many fish ponds, and even
13 to appoint the trustees of our own privately funded
14 educational estate, Kamehameha Schools.

15 Laws are passed setting policy for all these
16 issues that impact Hawaiians' very existence while
17 other ethnic groups are affected by bills recognizing
18 their accomplishments or pertaining to how their
19 culture will be impacted by a fireworks ban.

20 As a member of the legislature, I know
21 firsthand that many of our colleagues sponsor bills
22 with the best intentions, seeking to make life better
23 for all Hawaiian citizens -- all of Hawaii's citizens.
24 As a Hawaiian, I understand the frustration and the
25 pain that some of the state's actions have created for

1 us all. The state process, and in particular, the
2 legislative process, is a challenging one to
3 understand and advocate in. The idea that an issue
4 can be thoroughly discussed, decided, and yet not
5 firmly committed, can be frustrating for anyone.

6 The frequency with which Hawaiians have to
7 advocate in the legislative process to protect rights
8 and assets and seek redress only compounds the
9 frustration and feelings of neglect. The situation is
10 worsened when, through law, the State offers Hawaiians
11 a process for resolving claims as it did with the
12 Hawaiian Homes Claims Panel, and then decides it will
13 not honor the outcomes of the process that it
14 established in the first place.

15 It is a frustration that is difficult for
16 Hawaiians to bear and one that legislators can often
17 feel powerless to control. It is a by-product of the
18 state/Hawaii trust relationship and a situation that
19 is largely unique to Hawaii because few other states
20 manage the trust assets of the native peoples within
21 their boundaries.

22 In other states, federally-recognized native
23 governments manage their own people's collective
24 assets. They make the decisions, good or bad, and
25 impact their lives -- that impact their lives most.

1 As a people, they exercise self-determination and are
2 responsible for the consequences of their own
3 decisions and actions.

4 Overall, the states have found that the
5 presence of native governments within their borders is
6 good for the state socially and economically. Natives
7 have found that having a native government affords
8 them better or greater control over their own future,
9 creating their own solutions and possibilities.

10 I have great faith that the State of Hawaii
11 will one day realize that what is good for Hawaiians
12 is good for the whole state, to realize that greater
13 self-determination for Hawaiians means less
14 responsibility for the state, greater Hawaiian control
15 in Hawaiian Affairs means less mistakes in solutions
16 for Hawaiians and less liability for the state, and
17 when justice is served for Hawaiians, it is a victory
18 for all.

19 Every day that I see my fellow Hawaiians
20 accessing the legislative process, fighting for what
21 is fair and right, I know we have the ability to be
22 self-governing. We only need the opportunity to put
23 our energies into solving our own problems instead of
24 making sure that the state doesn't create more. Until
25 then, I hope Hawaiians will continue to access the

1 state's process, lobby it and even get inside it to
2 make sure that justice is served. I also hope my
3 fellow legislators will continue to strive to work for
4 Hawaiians to enable us to find our own solutions and
5 manage our own affairs.

6 In this last session, I would like to also
7 state that both houses, the State House of
8 Representatives and the Senate, submitted a
9 House-concurrent resolution that addresses really the
10 Rice vs. Cayetano decision. I would like to also
11 state for the record that this legislation was drafted
12 well before the decision was rendered on
13 February 23rd, and if I may, I'd like to enter that
14 into your record.

15 This is House-concurrent Resolution 41, Senate
16 Draft 1, House-prepared resolution supporting federal
17 recognition of a Native Hawaiian nation.

18 Whereas, on the 100th anniversary of the
19 illegal overthrow of the Kingdom of Hawaii, Congress
20 enacted Public Law 103-150 to acknowledge a historical
21 significance and ramifications of the overthrow in
22 order to provide a proper foundation for
23 reconciliation between United States and the Native
24 Hawaiian people; and

25 Whereas, in Public Law 105-150 -- 103-150,

1 Congress acknowledged the participation of the United
2 States in the suppression of the inherent sovereignty
3 of the Native Hawaiian people, thereby solidifying the
4 varied positions of previous administrations disputing
5 responsibility; and

6 Whereas, Congress expressed its commitment and
7 urged presidential support for reconciliation between
8 United States and the Native Hawaiian people; and

9 Whereas, there exists a trust relationship
10 between the United States and the Native Hawaiians,
11 wherein many of these duties of the United States
12 through federal acts, including the Hawaiian Homes
13 Commission Act of 1920 as amended, have been delegated
14 to the State of Hawaii for administration; and

15 Whereas, current federal policies and laws
16 allow greater autonomy and self-determination for
17 native peoples, including direct contracting with
18 recognized native governments to administer funds and
19 programs designed to meet the trust obligation of the
20 United States to those peoples; and

21 Whereas, there is a need for Congress to effect
22 a clear statement about the political status of Native
23 Hawaiians and to recognize a Native Hawaiian nation;
24 and

25 Whereas, it is in the best interest of Native

1 Hawaiians for the United States government to
2 recognize the Native Hawaiian nation so as to enjoy a
3 full government-to-government relationship with the
4 United States.

5 Whereas, Congress has acknowledged that the
6 Native Hawaiian people are determined to preserve,
7 develop, and transmit to future generations their
8 ancestral territory and their cultural identity in
9 accordance with their own spiritual and traditional
10 beliefs, customs, practices, language, and social
11 institutions; now, therefore,

12 Be it resolved by the House of Representatives
13 of the 20th Legislature of the State of Hawaii,
14 Regular Session of 2000, and Senate concurring, that
15 the federal government is requested to recognize an
16 official political relationship between the United
17 States Government and the Native Hawaiian people; and

18 Be it further resolved that the 20th
19 Legislature supports the sovereign rights of Native
20 Hawaiians, and recognizes the need to develop a
21 government-to-government relationship between the
22 Native Hawaiian nation and the United States; and

23 Be it further resolved that the 20th
24 Legislature of the State of Hawaii respectfully
25 requests that the United States Congress and President

1 articulate and implement a federal policy of Native
2 Hawaiian self-government with a distinct, unique, and
3 special trust relationship and to implement
4 reconciliation pursuant to Public Law 103-150; and

5 Be it further resolved that certified copies of
6 this concurrent resolution be transmitted to the
7 President of the United States, the Majority Leader of
8 the United States Senate, the Speaker of the United
9 States House of Representatives, each member of
10 Hawaii's Congressional Delegation, the Secretaries of
11 the United States Departments of Justice, Interior,
12 and State, the National Congress of American Indians,
13 the Alaska Federation of Natives, the Governor of the
14 State of Hawaii, the Trustees of the Office of
15 Hawaiian Affairs, and the members of the Hawaiian
16 Homes Commission.

17 (Applause)

18 MR. KAHO'OHALAHALA: Commissioners, I think
19 what I am here this afternoon to share with you is
20 some of the work that we have tried to put forth in
21 the state legislature to support these issues that
22 have come before us since Rice vs. Cayetano. I want
23 to say that we --

24 CHAIRMAN FORMAN: Could you summarize?

25 MR. KAHO'OHALAHALA: Okay -- that we had no

1 idea that the decision would come the way it did, but
2 having drafted this legislation prior to the decision,
3 it became very clear after the decision was rendered
4 that something needed to be done to make sure that all
5 the entitlements for Hawaiians were going to be
6 protected. And if it means that federal recognition
7 is one of those ways, then I'd like to at least say
8 that we have done and have supported it and we've
9 demonstrated through this kind of legislation. Thank
10 you for this opportunity.

11 CHAIRMAN FORMAN: Thank you, Representative
12 Kaho'ohalahala. Professor Van Dyke?

13 MR. VAN DYKE: Thank you, thank you very much.
14 It's an honor to be before the distinguished
15 Commission and advisory panel. I want to spend the
16 few minutes that I have to build on the ideas that
17 have already been shared with you and to just make a
18 few additional comments and then, of course, be
19 available for questioning.

20 We've all been speaking about the
21 Rice vs. Cayetano decision from last February, and
22 it's a reflection of what, I'm sure, you're all
23 familiar with, a very activist court which has been
24 taking bold initiatives in the area of federal/state
25 relationships and the relationship between the Court

1 and the Congress, and particularly in Affirmative
2 Action issues, and this picture of them here is
3 instructive because it lists the five on top that are
4 forming, at the moment, a fragile but powerful
5 majority that is attempting to change a lot of the
6 rules. And this group of five also was in the
7 majority opinion that was written by Justice Kennedy,
8 which strikes down the natives-only vote for the
9 Office of Hawaiian Affairs.

10 And as you've been told by others, the decision
11 is narrow in the sense that it's limited only to the
12 15th Amendment and does not address the many other
13 programs that the Hawaiians -- that have been set up
14 for the Hawaiians, but there are dangers in the
15 opinion in that it does focus on the question of what
16 is and what is not racial discrimination, and does
17 characterize preferences for Native Hawaiians as
18 racial discrimination and, in the course of the
19 opinion, distinguishes between the Office of Hawaiian
20 Affairs and other native entities.

21 And so the mystery always is, well, why can or
22 cannot the Native Hawaiians, or certainly, as
23 native -- as any other native, have the same rights to
24 elect their own leaders that other native people have?
25 And Justice Kennedy's answer was that it's because the

1 Office of Hawaiian Affairs was not a quasi-sovereign
2 entity, and that that was the defining difference
3 between the Office of Hawaiian Affairs on the one hand
4 and the Navajo Nation or the Cherokee Nation or any
5 other Indian nation.

6 So the good news in Rice vs. Cayetano is that
7 it is a limited decision and it does not undercut the
8 Morton vs. Mancari decision, which allows native
9 programs to be considered in a whole different
10 category that's not subject to the strict scrutiny
11 test, and that it is limited to the 15th Amendment.

12 And I want to just comment briefly also on the
13 concurrent opinion by Justice Breyer, who is not part
14 of this five-member faction, but did also join in the
15 judgment.. His opinion is short and a little difficult
16 to characterize. His concern was that the definition
17 of who could and could not participate in the OHA
18 election was not at all explicit. Anybody with any
19 Hawaiian ancestry could vote in the OHA election and
20 he felt that that was too broad. It was much broader
21 than any definition for any other native nation.

22 The reason for that broad definition was that
23 the people setting up OHA wanted the Native Hawaiians
24 themselves to define their own membership, and Justice
25 Breyer does acknowledge that each native group has

1 broad authority to define its membership, but
2 nonetheless, it felt that this vehicle -- Justice
3 Breyer joined by Justice Souter, felt that this
4 vehicle, which had sort of an open-ended definition of
5 Native Hawaiians, was not proper. But there's lots of
6 hints in his opinion that a more careful definition of
7 Native Hawaiians would pass his scrutiny, and there's
8 also that same indication in Justice Kennedy's
9 majority opinion because he talks about the
10 quasi-sovereign entity. And we've been told by many
11 others that there will be further challenges and,
12 ultimately, those challenges may have to be evaluated
13 under the compelling state interest test.

14 Can programs for Native Hawaiians meet that
15 test? There certainly are compelling interests. The
16 compelling interest to acknowledge the Native
17 Hawaiians' status as native people, to facilitate and
18 support their quest for self-determination and
19 self-governance, and to provide compensation for their
20 loss of land and resources or to return those lands
21 and resources. So we have compelling interests that
22 are certainly compelling under any definition.

23 Would the government's program be narrowly
24 tailored? Would the Hawaiian Homes Commission or
25 Kamehameha Schools be viewed as narrowly tailored?

1 Has the government used the least drastic
2 alternatives? These are the magic words that the
3 Court requires the programs to meet. Well, in my
4 judgment, certainly they would, because the goal of
5 providing self-determination and self-governance can
6 only be met through a Hawaiian-only program. How else
7 can you have self-determination unless you have the
8 limited polity or political community that the Native
9 Hawaiians would make up? And how else can you return
10 lands except to this exclusive group defined by their
11 ancestry, which has strong unresolved claims to those
12 lands.

13 So the bill that has been proposed goes a long
14 way in making sure that any such challenge would fail.
15 You had the bill described to you. It's a splendid
16 bill. It was put together through a long and careful
17 process with lots of input from the Native Hawaiian
18 community.

19 It listed a statement of policy, the very
20 important statements that you're familiar with, that
21 the Native Hawaiians are a unique, distinct,
22 aboriginal, indigenous Native Hawaiian people with
23 whom the United States has a political and legal and
24 special trust relationship.

25 So the bill uses all of these magic terms and

1 also triggers an automatic recognition of the Native
2 Hawaiian nation as soon as it completes the task, and
3 then, and this is also very important, triggers a
4 negotiation process. As soon as the Native Hawaiian
5 nation is established, there will be negotiations that
6 will lead to the transfer of land, resources, and
7 assets back to the Native Hawaiian nation. So this is
8 a splendid bill and one that should go a long way in
9 finally resolving these long, lingering disputes.

10 As others have told you, the Native Hawaiians
11 are the only native people that have never had a
12 settlement package or a claims commission established
13 for them, so they're unique in sort of being left out
14 of the effort to provide justice that the United
15 States' has been pursuing for its native people over
16 the last few decades.

17 Finally, I want to just mention that
18 international law also requires the United States and
19 the State of Hawaii to address these claims and
20 facilitate the process of returning the lands to the
21 Native Hawaiian people and promoting their
22 self-determination. International law is found, of
23 course, in the corpus of customary international law
24 and we look to various treaties to find examples of
25 that. And with regard to indigenous rights, we have

1 the treaty number 169, which the International Labor
2 Organization sponsored, which makes it clear that
3 governments have an obligation to assist their native
4 people to attain self-governance and self-sufficiency
5 and to protect and return their lands to them, and
6 we're seeing lots and lots of examples today of that
7 happening.

8 One of the examples that here, in Hawaii, we
9 pay a lot of attention to is the situation in New
10 Zealand, Aotearoa, where the Maori people, who are the
11 Polynesian cousins of the Native Hawaiians, have made
12 enormous progress in getting their lands returned to
13 them. The situation is roughly comparable in that you
14 have a relatively small minority of a larger
15 population. The Maoris make up 12 to 15 percent. Our
16 Native Hawaiians make up about 20 percent. In both
17 cases, the culture was suppressed, the lands were
18 taken, and the resources were distributed, and so on.

19 The Maoris have a treaty, the Treaty of
20 Waitangi, that was put together in 1840, but that
21 treaty is not a binding treaty in the strict sense,
22 but nonetheless, the people of New Zealand felt that
23 they had an obligation to treat the Maori people
24 correctly. They've set up a Waitangi Tribunal.
25 They've adjudicated all the claims of all the

1 different Maori groups, and then the government has
2 negotiated significant settlements in which
3 significant amount of land and resources and fishing
4 rights and factories and all kind of things are now in
5 the hands of the Maoris, and the Maoris are economic
6 players in that situation.

7 So this is what needs to happen here in Hawaii
8 and is long overdue. Thank you very much.

9 CHAIRMAN FORMAN: Thank you, Professor Van
10 Dyke. Could you provide a printed copy of your
11 overhead presentation for the record?

12 MR. VAN DYKE: I'd be happy to. I've also
13 distributed a paper to the Commission and the Advisory
14 Board that is 48 pages in length and goes in much more
15 detail in most of these topics for you.

16 CHAIRMAN FORMAN: Also, an article that you
17 wrote is described in the Rice vs. Cayetano decision.
18 I was wondering if you could provide a copy of that
19 for the record, and if you would be -- if you are able
20 to provide a copy of Professor Benjamin's article
21 also. Otherwise, I will ask one of our previous
22 panelists.

23 MR. VAN DYKE: Certainly. I would be happy to.

24 CHAIRMAN FORMAN: Thank you.

25 (Applause)

1 CHAIRMAN FORMAN: At this point, I'd like to
2 open up the floor for questions from our guests, our
3 Commissioners of the U.S. Commission on Civil Rights.
4 Vice-Chair Reynoso?

5 COMMISSIONER REYNOSO: Thank you.

6 Professor Van Dyke, while you're walking back,
7 tell us the problems that the New Zealanders ran into
8 in particularly returning lands to the Maori or were
9 those lands all still publicly held? What happened
10 there? Because I've been asking some of the same
11 questions here in terms of Hawaii.

12 MR. VAN DYKE: Yes. I have a long footnote in
13 my paper, Footnote 102, that tries to summarize the
14 essence of the Maoris' situation. There were what
15 they call crown lands, which were public lands. In
16 Hawaii, we have the 1.8 million acres that is the
17 ceded lands. So they have a large amount of public
18 land.

19 The New Zealand Government was going through a
20 process of privatization. They were trying to move
21 that land into private hands. The Maoris, this was in
22 the sixties and seventies and into the eighties,
23 started filing lawsuits to block the transfer of lands
24 saying that it violated the trust obligation. And the
25 courts, in about 10 very significant decisions, agreed

1 with the Maoris and prevented the government from
2 moving any of the land outside of the public domain
3 until the complete Maori claim was resolved.

4 And so that provides a very good precedent for
5 what should happen here. And the Office of Hawaiian
6 Affairs and other Hawaiian groups do have a similar
7 lawsuit now to block the transfer of any public lands
8 from the State of Hawaii.

9 COMMISSIONER REYNOSO: Thank you.

10 CHAIRMAN FORMAN: Commissioner Lee?

11 COMMISSIONER LEE: Professor Van Dyke, some of
12 the folks have mentioned that the reason why they are
13 not supporting The Akaka Bill was because they felt
14 that The Akaka Bill would prevent them from seeking
15 international justice. What's your opinion on that?

16 MR. VAN DYKE: The current version of The Akaka
17 Bill addresses that in its disclaimer clause, which is
18 Section 10, which now reads as follows:

19 "Nothing in this act is intended to serve as a
20 settlement of any claims against the United States or
21 to affect the rights of the Native Hawaiian people
22 under international law."

23 So it's very clear that the rights of the
24 Native Hawaiian people, and they certainly have such
25 rights under international law, are fully protected

1 and preserved by this bill. The bill, in my judgment,
2 would facilitate the process of addressing those
3 issues because it would allow the native people to
4 have a voice through the Native Hawaiian government.

5 Now, we have many voices, many disparate Native
6 Hawaiian groups, and they're not being taken seriously
7 at either the national or international level because
8 they are so scattered and divided. But with a unified
9 Native Hawaiian nation addressing these issues and
10 then reaching out to the national and international
11 levels, their views will be taken seriously. And if
12 that's the route they wish to pursue, that avenue will
13 have to be addressed at that time.

14 CHAIRMAN FORMAN: Any questions from Committee
15 Members?

16 COMMITTEE MEMBER STENDER: You seem to have
17 some knowledge on the New Zealand settlement with the
18 Maoris. What was the -- how much of the land that the
19 New Zealanders received in this repatriation as
20 against an entire land mass in New Zealand; do you
21 have some idea?

22 MR. VAN DYKE: I can't give you a figure right
23 off the top of my head. There are -- as you know, the
24 Maoris are tribal. There are a number of different
25 Maori groups, so they all brought their claims

1 separately and some of them are still in the process
2 of negotiations.

3 The tribunal adjudicated each claim and made a
4 recommendation, but that then led to negotiations.
5 The government wasn't bound by the tribunal's
6 recommendations, although they were always taken
7 seriously. And so even negotiations, the government
8 would offer a package, not just land, but also
9 factories, ships, fishing rights.

10 In New Zealand, all the fishing rights are
11 private and New Zealand has a rich fishery and the
12 Maoris now control over 50 percent of all the fishing
13 rights in the waters surrounding the New Zealand
14 islands, so that's an enormous valuable resource. And
15 they also have ships, canneries, processing plants.
16 So the Maoris are at the table. They are major
17 players economically.

18 With regard to land, they've gotten substantial
19 amounts of land back. Each group put together a
20 package. They wanted some of the sacred sites that
21 were historically important to them, they also wanted
22 some commercial sites, and so this was the process of
23 negotiations, and I can -- in the slides that I didn't
24 have time to reach, I do go into some detail with
25 regard to some of the settlements, so I can provide

1 that to you.

2 CHAIRMAN FORMAN: Commissioner Reynoso?

3 COMMISSIONER REYNOSO: I'd like to ask a
4 question now of Representative Kaho'ohalahala. Does
5 something like that sound possible in Hawaii in terms
6 of the politics as you've seen them in the footnote?
7 How many Native Hawaiians are in the legislature?

8 MR. KAHO'OHALAHALA: I can tell you right now
9 that we have a Hawaiian caucus in this last session.
10 We have seven Hawaiian representatives in our caucus
11 out of 51. In the Senate, there's only one Hawaiian
12 member out of 25.

13 COMMISSIONER REYNOSO: And importantly then in
14 terms of the political atmosphere in Hawaii now or for
15 the next 10 years, assuming the legislation passes in
16 Washington, and then the political ball was passed
17 back to Hawaii in, I assume, an evolutionary process,
18 but does this sound like something that could happen
19 here?

20 MR. KAHO'OHALAHALA: I think you need to
21 clarify what you mean by political ball being passed
22 back to Hawaii.

23 COMMISSIONER REYNOSO: If the legislation
24 passes in Congress, all it really does is provide the
25 opportunity for Hawaii to, if it wants to, to again

1 have the same sort of electoral process that was found
2 before the Rice decision. But more importantly, it
3 would open the door for negotiations between the U.S.
4 and Native Hawaiians, which necessarily would include
5 the State of Hawaii, it seems to me, in trying to
6 negotiate some of the return of some of the lands,
7 some of the return or structuring of those assets that
8 could give the Native Hawaiians some economic power,
9 which all of us know it's so often the essence of
10 protecting individual and linguistic and cultural
11 rights, or what the elders last night were saying, the
12 protection of their culture for their children and
13 grandchildren, so I just sort of wanted to get an
14 assessment from you of how you sense the atmosphere is
15 in the state legislature.

16 MR. KAHO'OHALAHALA: Well, I can tell you that
17 right now, just based on my comments earlier, you can
18 see that most of what we have to deal with at the
19 state legislature affects Native Hawaiians in almost
20 every way. We have only, up until this opportunity
21 for federal recognition, have been steering our focus
22 to state government and in the State of Hawaii given
23 the fact that our Admissions Act does place a trust
24 responsibility with the Native Hawaiians by federal
25 act in definition, and also the trust lands, crown

1 lands as well as Hawaiian Homelands, but we've never
2 had an opportunity to really get the kind of result
3 out of legislative processes.

4 I mean, just as an example, as I raised
5 earlier, Hawaiian Homes Claims Panel had been in the
6 process for over eight years to resolve some of these
7 issues with the Department of Hawaiian Homelands. And
8 even after the results are nearly finalized, this
9 process would end and we would say, let's start all
10 over again. I don't like the outcome.

11 Again, if you can understand it, if we're only
12 expecting that these kinds of resolutions can come
13 only with state political processes, then obviously,
14 it's not been working the way that it should. This
15 provides us another avenue, another opportunity where
16 we would be dealing from government to government, so
17 the Native Hawaiian people will have now a voice.

18 Now you're talking about what happens beyond
19 that. I think, as I understand the recognition bill,
20 two things or two phases. One is to be given the
21 quasi-sovereign political status that we need, first
22 of all. The second is to allow Native Hawaiians now
23 to work and really create what they envision to be the
24 parameters of their own sovereign government. And in
25 that, I would think that part of the kinds of things

1 that we would think very carefully about are going to
2 be land, are going to be those rights that they
3 described, as Professor Van Dyke said, that lead well
4 beyond the shores into the seas for those kinds of
5 economic opportunity.

6 I think we're capable of doing that, but the
7 opportunity perhaps has never been given to Native
8 Hawaiians, so I think this recognition bill is the one
9 that's perhaps going to afford us now that chance to
10 create a Hawaiian nation.

11 CHAIRMAN FORMAN: I'm sure there are many more
12 questions that the Commissioners and Committee Members
13 would like to ask, however, we've exhausted the time
14 scheduled for the panel. I'd like you, Mr. Kimura,
15 and Representative Kaho'ohalahala and Professor Van
16 Dyke, to be available if we have some subsequent
17 written requests, that you would respond to those in
18 writing. The record will be left open for 30 days.
19 Thank you.

20 COMMISSIONER REYNOSO: Thank you very much.

21 CHAIRMAN FORMAN: We were scheduled for a
22 10-minute break. I will say a five-minute break, so
23 that we can try to get started quickly and have
24 sufficient time for the -- to hear from the panel on
25 Perspectives and from the public. We will take a

1 break.

2 (Recess from 3:00 to 3:10 p.m.)

3 PERSPECTIVES

4 CHAIRMAN FORMAN: In this final panel entitled
5 Perspectives, we will hear from Sondra Field-Grace,
6 David Helela, Kanoelani Medeiros, and Patrick Hanifin.

7 Earlier today, I made some statements that I
8 will repeat again relating to the procedures that this
9 Advisory Committee operates under. We are concerned
10 that no defamatory material is presented at this
11 meeting. In the unlikely event that this situation
12 will develop, it will be necessary for me to call this
13 to the attention of persons making those statements
14 and request that they desist from their action. Such
15 information will be stricken from the record, if
16 necessary. If you'd like clarification of the defame
17 and degrade regulations, a member of the staff would
18 be happy to do that for you.

19 At this point, also, if there are members of
20 the audience who have pagers or cellular phones, I ask
21 that you please turn those to the vibrator modes to
22 minimize disruptions. There's also no audience
23 participation during this last panel. However, there
24 will be an opportunity for public testimony beginning
25 at the conclusion of this panel.

1 We will now hear from Sondra Field-Grace.
2 Please state your name and, if you wish, a position or
3 organization for the record.

4 MS. FIELD-GRACE: Aloha. May the breath of
5 life be with you in the bosom of all creation. I like
6 to believe when I say "aloha" that those are my
7 sentiments, and they were taught to me by Nana Berry.

8 Before I start my testimony, my written
9 testimony, I'd like to, with my husband, thank the
10 U.S. Commission on Civil Rights for inviting us here.
11 We were here through the testimonies last night with
12 the kupuna and have sat through all of them today, and
13 for us, it's been truly a journey down memory lane.
14 Every name, practically, of the people who have
15 testified, we've had something to do with over the
16 last 15 years of being in the sovereignty movement and
17 being on the front lines.

18 I wasn't going to share with you because we're
19 kind of focused on what's happening now because it's
20 so critical, but I will share with you that my husband
21 and I have been arrested dozens of times. The longest
22 time spent in jail was 105 days for contempt of court
23 for refusing to leave the trust lands.

24 We had -- we were arrested, evicted, and had
25 two of our Hawaiian cultural centers bulldozed. And

1 we've been through -- we've learned a lot though, and
2 thank you today for the review.

3 All right, I'll start on my testimony.

4 CHAIRMAN FORMAN: Just before you begin, I want
5 to apologize in advance, I'm going to be interrupting,
6 with about two minutes remaining to let you know that
7 you have two minutes remaining.

8 MS. FIELD-GRACE: That's fine. I actually got
9 ready for five minutes, but I see you've been granting
10 longer. Thank you. I'll take that.

11 My name is Sondra Field-Grace. I live with my
12 husband Michael Kamakau Grace on Hawaiian Homes on the
13 island of Kauai. I'd like to mention that it's known
14 as the Garden Island.

15 As with the other islands, we were
16 self-sufficient in food. Now today, we import
17 somewheres between in the nineties, ninety percent of
18 our food, our clothing, our building materials, and on
19 and on.

20 My husband is a subject of the Hawaiian
21 Kingdom. This knowledge has come fairly recently in
22 our education. He was never naturalized as an
23 American citizen. On the other hand, I am a resident
24 alien and, therefore, subject to Kingdom law as
25 required by the Kingdom Constitution and pursuant to

1 the articles of the 1907 Haig Convention on the laws
2 of occupation, but I am still a U.S. citizen and
3 believe it is my sacred responsibility to inform you
4 that the United States and the State of Hawaii are
5 actively committing fraud, blackmail, and genocide.

6 Because I have only five minutes to testify, I
7 have included several written documents and articles
8 for you to take home to aid you in your own research
9 into the true history of Hawaii.

10 I was raised to believe in the American ideals,
11 so I do not take these charges lightly. The decision
12 in Rice vs. Cayetano is just a continuation of the
13 conspiracy to wipe out the status of a proud people
14 and a peaceful, neutral nation. I was shocked to read
15 the decisions from the U.S. Supreme Court. I found
16 them so lacking in hysterical -- in historical
17 research and intelligent arguments.

18 But I shouldn't have been surprised as it was
19 just another step in making the Kanaka Maoli people
20 more American, just another ethnic group in their own
21 homeland? Actually, I see it as blackmail.

22 "If you don't go along with our rules, we're
23 going to take away your entitlements."

24 Let's look at the trend of events. The Rice
25 decision came six years after The Apology Bill, which

1 followed the 1993 100th-year commemoration with over
2 15,000 Kanaka Maoli at the Iolani Palace. We saw it
3 as an admission of crimes, but now -- oh, I left out a
4 part. My computer must have left out the part about
5 the Apology Bill. Let me add that on my own.

6 So following 1993, in September, after the
7 palace, we had The Apology Bill. You've heard about
8 it, Public Law 103-150? 150? Yeah. Anyway, with The
9 Apology Bill, we saw it as an admission of crimes, but
10 now looking back, we feel it was a set-up to entrap
11 indigenous Hawaiians as Native Americans. But the
12 people were doing their homework and began to see that
13 the only way to save the values, culture, language,
14 history, and the land, was to seek independence.

15 Then came the reconciliation hearings. The
16 Departments of the Interior and Justice were sent here
17 to test the waters. What did they get? Large
18 numbers --

19 CHAIRMAN FORMAN: You have two minutes
20 remaining.

21 MS. FIELD-GRACE: Oh, really? Large numbers of
22 opposition, 80 percent on Kauai, to the federal
23 government's attempt to limit the self-determination
24 to a nation-within-a-nation. And the federal
25 representatives found out that the sovereignty

1 movement had grown and had discovered that the
2 Hawaiian Kingdom was never overthrown, but rather
3 occupied by the United States as a belligerent power.

4 We now have a case before the International
5 Court of Arbitration which include the questions of:
6 The Hawaiian Kingdom as a nation state, Hawaiian
7 nationality, Hawaiian domestic law, the validity of
8 American annexation, international treaty violations,
9 and international laws of occupation. I have included
10 the synopsis of this case and the Internet address
11 with all the pleadings and background documents. No
12 can say now they didn't know.

13 And finally, the last, but certainly not the
14 least of this trend of events, The Akaka Bill, and for
15 us on Kauai, an outrage that goes beyond any violation
16 of our civil rights. Many of us believe that the
17 neighbor island hearings were canceled on Friday
18 before our Monday Kauai hearings because the Committee
19 on Indiana Affairs had received our written
20 testimonies and it was evident that the vast majority
21 were going to testify against the bill. So we set up
22 our own hearings and invited everyone to come and
23 testify and we made a video that is a little less than
24 four hours. We were blessed to have Mr. Phillip
25 Montez, the regional director of your L.A. office, as

1 an observer. He hadn't even been notified that the
2 official hearings had been cancelled and had heard
3 about our hearings on the radio and in the newspaper
4 over the weekend. We then sent the video to Senator
5 Akaka and Inouye on September 2nd and have not
6 received one word from them or the Committee.

7 CHAIRMAN FORMAN: Could you briefly summarize?

8 MS. FIELD-GRACE: Yes. This bill has been
9 rushed through the Congress with testimonies of only
10 people who are in favor of the bill.

11 (Applause.)

12 MS. FIELD-GRACE: Those in opposition have been
13 refused as in the case of Anna Marie Kahunahana, who
14 traveled to Washington, D.C. at her own expense. I'll
15 skip the next line.

16 We believe --

17 CHAIRMAN FORMAN: Your entire written statement
18 will be made part of the record.

19 MS. FIELD-GRACE: I just have to do this. It's
20 just one paragraph.

21 CHAIRMAN FORMAN: If you could quickly --

22 MS. FIELD-GRACE: I'll skip the facts. The
23 manipulation and outright lies of the Hawaii
24 congressional representatives and the manufactured
25 consent of the media on The Akaka Bill must be taken

1 up by this Commission. Your stated role as an
2 independent bipartisan fact-finding agency of the
3 Federal Executive Branch may be the opportunity to get
4 to President Clinton to veto this bill and call for an
5 independent investigation of the Hawaii congressional
6 representatives and the Justice and Interior
7 Departments. You can play the role that the Blount
8 Report did for President Cleveland, but you must move
9 quickly. The civil rights of an entire nation of
10 people are on the chopping block. You cannot plead
11 ignorance. The facts are there for all the world to
12 see. My husband and I pray that you will do the right
13 thing in the administration of justice and truth.

14 CHAIRMAN FORMAN: Thank you. Mr. Helela?

15 (Applause.)

16 CHAIRMAN FORMAN: Please state your name and,
17 if you wish, a position or an organization.

18 MR. HELELA: Aloha. My name is David Helela.
19 I'm Native Hawaiian, born on Molokai'i. Living today
20 on Kauai, the island of my ancestors. I'm speaking as
21 an individual. I do belong to a Hawaiian club, group.
22 Really, I'm not speaking for them. I've been asked to
23 comment regarding the impact of the U.S. Supreme Court
24 decision in the Rice vs. Cayetano case on the Native
25 Hawaiian entitlement programs. I have no doubt the

1 decision could prove harmful to those programs and may
2 even cause their elimination should the opponents have
3 their way.

4 Since the Rice decision in February, there's
5 been a marked increase in public expressions against
6 programs and services that benefit Native Hawaiians
7 only. We're seeing, on an almost daily basis in our
8 newspapers, letters to the editor that argue for
9 ending the so-called race-based programs that there
10 was no reason Native Hawaiians should be given
11 preferential treatment over other Americans.

12 Constitutional challenges have begun in our
13 Hawaii courts and the recent ruling that would allow
14 any citizen to run for a trustee position in OHA is
15 just the beginning of the attacks we can expect to be
16 taken against other Native Hawaiian institutions.

17 I fully expect that each success will encourage
18 other challenges to Hawaiian claims and opponents will
19 not rest until the Native Hawaiians are stripped of
20 every traditional right including what remains of our
21 lands and of our identity. There is no question of
22 the need to clarify the relationship between the
23 federal government and the Hawaiian people as The
24 Akaka Bill is attempting to do in the U.S. Congress as
25 we speak.

1 We need to secure federal recognition that we
2 are indeed the indigenous people of Hawaii with a
3 right to self-determination. We must do this quickly
4 if current programs that benefit the needy among our
5 people are to be protected, if our options for
6 self-determination are to be preserved, and if
7 reparations and restitution for acknowledged wrongs
8 are to be worked out. Federal recognition is an
9 essential first step in the process of making right
10 the egregious wrong of the overthrow of the Hawaiian
11 Government in 1893.

12 I'm encouraged by the passage of the Native
13 Hawaiian bill in the U.S. House of Representatives
14 just a couple days ago. I pray that federal
15 recognition becomes reality before our lawmakers in
16 Washington quit work for the year. The distinct and
17 dangerous possibility that the Republican George
18 B. Bush may win the White House in November worries me
19 greatly.

20 While I am confident that our American system,
21 in particular, constitutional sense of justice that
22 shapes national conscience, may ultimately guide us to
23 a fair and moral policy response to our current
24 situation, I'm concerned that the prejudices of the
25 average American are still obstacles to be overcome.

1 As much as we'd like to pretend we do, America has yet
2 to accept cultural diversity despite having the most
3 heterogeneous society in history.

4 We beckon to the world, "Give me your tired,
5 your poor, your huddled masses, yearning to breathe
6 free," as the inscription at the base of the Statue of
7 Liberty begins. Then we expect every American will
8 shed both old cultures in exchange for the promise of
9 this country. In other words, Americans are expected
10 to become cookie-cutter models of Barbie and Ken.

11 I would argue about the concept of homogenized
12 people of different cultures as a process of
13 Americanization is racist; that our country thrives
14 under God precisely because freedom in America means
15 we can live comfortably with people of other cultures
16 even if we don't look and talk alike. After all,
17 isn't that what the spirit of America is all about;
18 what the diverse people who have come to this country
19 were invited to embrace?

20 Here in Hawaii, the problem gets complicated
21 because a distinctly different dimension applies in
22 the case of its native people. Like the aboriginal
23 people of North America, the Native Hawaiian people
24 are not Americans today because our ancestors happened
25 to respond to Lady Liberty's invitation. As we all

1 know, the aboriginal people of this country were
2 living on their homelands thousands of years before
3 the concept of America was ever conceived.

4 So the challenge we face today is this: How do
5 we quell the racist emotions of our fellow Americans
6 while we try to win their understanding and acceptance
7 of the unique status of the Native Hawaiian people?
8 Anything that this committee can do to help in this
9 matter will go a long way, I think, in helping to keep
10 the spirit of America flying high. Mahalo nui loa for
11 your good work.

12 CHAIRMAN FORMAN: Thank you, Helela.

13 I apologize for mispronouncing your name
14 earlier, Ms. Kanoelani Medeiros.

15 MS. MEDEIROS: Aloha. My name is Kanoelani
16 Medeiros. I am not from any group or any
17 organization, but I have repatriated back to my
18 Hawaiian National government. I am a Hawaiian
19 nationalist and I am here exercising my inalienable
20 rights and my inherent sovereign right as a Kanaka
21 Maoli.

22 First of all, I would like to acknowledge
23 Ke Akua first, to give him thanks and guidance and to
24 seek his guidance to be upon us, to seek justice and
25 truth of civil rights to be committed, not only civil

1 rights, but human rights and natural law.

2 I would like to remind all of us here the chain
3 of command of laws that governs the world. First is
4 Ke Akua, the natural law of the Bible. Second is man,
5 that is us, that nature applies the law of nations.
6 Third is the sovereignty nations. Fourth is
7 government, which created sessions laws. As Queen
8 Liliuokalani, in good faith, I pray to Ke Akua, in
9 good faith and acts of justice and equity, by Queen --
10 and to be in accord with the principles and laws of
11 the almighty ruler of the universe, to him who will
12 judge righteously.

13 I respect all people's mana'o and opinions and
14 thoughts and their interpretations which Ke Akua gave
15 to each one of us, but legal facts of the law when
16 establishing authority which governs the world and has
17 binding legal force.

18 The United States admitted in all the
19 wrongdoings, in the invasion, the overthrow, the new
20 joint resolution of annexation, but most of all, which
21 was so devastating, on August 12th, 1898, all Hawaiian
22 subjects, both kanaka maoli persons of aboriginal
23 Hawaiian ancestry, and Kanaka'e, those of foreign
24 ethnicity, were collectively naturalized as U.S.
25 nationals. This is the basic norm of a violation of

1 international law of alienating a whole nation of
2 their inherent sovereign rights to their lawful birth
3 place as a Hawaiian nationalist.

4 In violations under Ke Akua and also under
5 international law and under the United States, the
6 United States adopted Public Law 100-606, 100th
7 Congress as a Genocide Convention Implementation Act
8 of 1987, the Proxmire Act. Charter 50-A, Genocide.
9 Be aware of the consequences of this notification.

10 Germany genocide a Jewish ethnic race. The
11 Republic of Hawaii, the State of Hawaii, and the
12 United States of America genocide a whole entire
13 nation, the Hawaii Kingdom, the lawful Hawaiian
14 government.

15 The United States of America and State of
16 Hawaii is here by military occupation by Article 1,
17 Section 8, which is a subsidiary military law
18 jurisdiction. The municipal law, domestic of the
19 Supreme Court, opinion decision, Rice vs. State of
20 Hawaii, is a legal act enforced by martial law. Both
21 parties are bind to United States Constitution, but it
22 is not a lawful act. The facts, the United States had
23 no power extraterritorially over the Hawaii Kingdom or
24 Hawaiian subjects. In reference, Mankishi vs. Hawaii,
25 see Inter Alia, Peacock and Company versus Republic of

1 Hawaii. See 22 Attorney General opinions at 151, the
2 Tonnage Tax. It concluded that the joint resolution
3 had no power to annex the people of Hawaii.

4 The Hawaiian Islands were foreign soil in 1898 .
5 some 2100-miles beyond U.S. territory. Whereas, the
6 Native Hawaiians are not lawfully part of the United
7 States. The Native Hawaiians protested from being an
8 American in any shape or form --

9 CHAIRMAN FORMAN: You have two minutes.

10 MS. MEDEIROS: -- and preserve our inherent
11 rights in the words of Queen Liliuokalani's protest
12 letter on June 17, 1897 and by our Ancestors' Petition
13 in the year of 1897-1898. The wording of Native
14 Hawaiian are Hawaiian Nationals. It is reserved to
15 the Kingdom of Hawaii, the lawful Hawaiian government.
16 Any ethnic group who is a federal citizen of the
17 United States of America is an American National and
18 not a Hawaiian Nationalist.

19 This is the remedy, not 2899 or to create
20 another de facto government.

21 The remedy is to comply with the laws. The
22 laws are in place. To recognize the international
23 laws, the sovereign is under obligation to protect the
24 persons and the property of his subjects and to defend
25 them against the enemy when there's a subject or some

1 part of the subject's property has fallen into the
2 hands of the enemy. If by some happy turn of events,
3 and there are two happy events that I would like to
4 mention. The first is Public Law 103-105. That is
5 the admission of guilt.

6 The second happy event was a reinstatement of
7 the lawful Hawaiian government on March 13th, 1999.
8 They came into power of the sovereign. There is no
9 doubt but that should have restored them to their
10 former condition by renewing to the subjects all his
11 rights and obligations and be returning the property
12 to his owners in breach by putting things as they were
13 before the enemy became master of them.

14 What is the trust obligation? Reinstatement. Give
15 back what is not yours.. Thou shall not steal.

16 CHAIRMAN FORMAN: I'm sorry. Your time is
17 expiring. If you would like to make a brief
18 conclusion.

19 MS. MEDEIROS: I would like to make a brief --
20 just one paragraph. Thou shall not steal is the Ten
21 Commandments represents God's government over man.
22 God commands, for our own good, to give up wrong and
23 not right. His system allows results in liberty and
24 freedom. The United States Constitution and the Bill
25 of Rights are built on this foundation, which is the

1 principles of their fathers.

2 Directly above the Chief Justice chair is a
3 tablet signifying the Ten Commandments. When a
4 Speaker of the House in the U.S. Congress looks out,
5 his eyes look into the face of Moses. The Bible is a
6 book upon which the Republic rests.

7 And in reference back to our queen, we pray
8 that the injustice can come back into place and be
9 justice and to be in accord with the principles and
10 laws according to God, Ke Akua, and to international
11 law. Thank you.

12 (Applause)

13 CHAIRMAN FORMAN: Mr. Hanifin?

14 MR. HANIFIN: Thank you.

15 CHAIRMAN FORMAN: Please state your name and a
16 position or organization, if you wish.

17 MR. HANIFIN: My name is Patrick Hanifin. I
18 represent the Plaintiffs in Arakaki vs. State, which
19 is the case recently decided by the U.S. District
20 Court extending the Rice decision to hold that it is
21 unconstitutional to deny people the right to choose,
22 without regard to race, candidates to the Office of
23 Hawaiian Affairs, and furthermore, it is
24 unconstitutional to deny people the right to run for
25 that office based on their racial ancestry.

1 I would like to focus on that decision today
2 and perhaps I can contribute a little bit of insight
3 on the implications of Arakaki as well as Rice. I
4 have submitted written remarks and attached to those
5 is the -- one of the briefs filed by the Plaintiffs in
6 the Rice case -- pardon me, in the Arakaki case, which
7 lays out our argument in its essence. Also attached
8 to that are a short editorial and a Law Review article
9 from some years back when the slogan was Hawaiian
10 reparations, but I think that the analysis can be
11 extended today; and finally, a short legal analysis of
12 the history of citizenship and voting in the kingdom,
13 republic, territory, and state. I hope these are
14 helpful to you, but I won't try to address them now.

15 I think probably the simplest and clearest way
16 to express the principle at stake in Rice and Arakaki
17 is not to use my own words, but to very briefly quote
18 from that great civil libertarian, William O. Douglas,
19 Justice of the Supreme Court, in a case from almost 40
20 years ago, but I think is still relevant today,
21 Wright vs. Rockefeller. That was a racial
22 jerrymandering case and he said there:

23 "The intervenors are persons who apparently
24 have a vested interest in control of the segregated
25 district."

1 This was a district in New York represented by
2 the famous Adam Clayton Powell. They in the state
3 seem to support this segregation not on the, quote,
4 separate but equal theory of Plessy versus Ferguson,
5 but on the theory of separate but better off, a theory
6 that has been used before. A like argument was made
7 in Buchanan vs. Worley in support of municipal
8 segregation of residential areas.

9 Justice Douglas went on to analogize the
10 segregative voting rule that he thought he detected in
11 that case with the racial electoral registers used by
12 the British and Colonial India and by Lebanon in
13 Cyprus to make sure that each little ethnic group got
14 a little piece of the government. Significantly all
15 three countries have experienced significant war since
16 Justice Douglas wrote this opinion. But Douglas said,
17 racial electoral registers, like religious ones, have
18 no place in a society that honors the Lincoln
19 tradition, of the people, by the people, for the
20 people. Here, the individual is important, not his
21 race, his creed, or his color.

22 The electoral system weights voters along one
23 racial line more heavily than it does other voters.
24 The system, by whatever name it is called, is a
25 divisive force in a community emphasizing differences

1 between candidates and voters that are irrelevant in
2 the constitutional sense.

3 Government has no business designing electoral
4 districts on racial or religious lines. When racial
5 or religious lines are drawn by the state, the
6 multi-racial, multi-religious communities that our
7 Constitution seeks to weld together as one becomes
8 separatist. Antagonisms that relate to race or to
9 religion rather than to political issues are
10 generated. Communities seek not the best
11 representative, but the best racial or religious
12 partisan. Since that system is at war with the
13 democratic ideal, it should have no footing here.

14 I must say that in the Arakaki case, we ran
15 into exactly that problem of encouraging racial
16 partisanship. I represent Kenneth Conklin, who is a
17 candidate for the Office of Hawaiian Affairs. One of
18 the reasons that OHA's counsel argued that he should
19 not be allowed to run is not merely his race and his
20 ancestry, but that his expressed opinions protected by
21 the 1st Amendment showed that he would not be a true
22 racial partisan advocating for a racial ancestry group
23 regardless of other interest in the community.
24 Fortunately, Judge Gilmore rejected that argument.

25 But what do we know after Rice and Arakaki?

1 First, we know that "Hawaiian" and "Native Hawaiian"
2 as defined in the statutes are racial classifications.

3 CHAIRMAN FORMAN: You have two minutes.

4 MR. HANIFIN: Second, that using these
5 classifications to deny the right to vote violates the
6 15th and 14th Amendment. Then under the 14th
7 Amendment, there is a strict scrutiny test. Judge
8 Gilmore and the Supreme Court rejected the
9 Morton vs. Mancari analogy to Indian tribes. A
10 case-by-case analysis is required.

11 To survive strict scrutiny, a law using racial
12 classifications must invoke a compelling state
13 interest and must be narrowly tailored to achieve that
14 interest. One interest that we know, if it is not
15 compelling because it is not legitimate, is the
16 so-called interest in Hawaiian self-governance. That
17 is essentially a claim for a government of the race,
18 by the race, and for the race. It is anathema to
19 American democracy.

20 And I think at that point, I will simply stop
21 and answer any questions that you may have.

22 CHAIRMAN FORMAN: Thank you, Mr. Hanifin. I
23 will allow routine questions from our guests.
24 Commissioners? Vice-Chair Reynoso?

25 COMMISSIONER REYNOSO: Mr. Hanifin, our

1 country, as it becomes more diverse by race and
2 ethnicity, is struggling with the notion of how to
3 make a democracy work. As you know, in a majority and
4 electoral process, those who don't have a majority
5 very often, as happened in the Jim Crow days in the
6 South, are simply excluded from the political process,
7 and I think we've learned something from that. So the
8 country's now struggling, I think, with how to have a
9 country where we all feel deep inside that we're all
10 Americans, and then yet at the same time, that we are
11 Americans plus, American-Hawaiians,
12 American-African-Americans, American-Europeans,
13 whatever, and yet have us all still feel as Americans,
14 so expecting that our ethnicity and language and
15 culture will be recognized and appreciated by other
16 Americans.

17 How do you suggest we get there? I guess
18 that's my question.

19 MR. HANIFIN: Well, and that is a difficult
20 question and I understand. I think I agree with what
21 you've just said. Being an American is by no means
22 inconsistent with recognizing other cultures. What
23 I'm concerned with is I think one way not to go there
24 is to set up a political system in which special
25 political rights are afforded to people based on their

1 ancestry, whether that ancestry is a broad ancestry
2 like a race or somewhat narrower like an ethnic group
3 or even a royal family, to take the oldest example,
4 they are all fundamentally undemocratic. They go the
5 wrong way.

6 Now, the 1st Amendment, I think, is relevant
7 here, that insofar as we're talking about cultural
8 values, they are fully protected by the American
9 Constitution. They are fully consistent with
10 expressing one's views, associating with people of
11 similar views, whether those views are derived from an
12 ancestral group or whether it's a political group, or
13 whatever.

14 I think, also, it should be noted in response
15 to your first point about minorities, the Jim Crow
16 situation was not a matter of black people being a
17 minority of voters, but rather, not being voters at
18 all, being denied the right to vote, as were
19 non-Hawaiians in OHA until recently.

20 Everyone in Hawaii is a minority. The way to
21 deal with that is to build political coalitions across
22 ethnic lines, not separate people into ethnic
23 political subdivisions. We have seen, for instance,
24 Senator Akaka get elected repeatedly on a statewide
25 basis. Every other state official in this state is a

1 member of a minority group.

2 COMMISSIONER REYNOSO: Just a follow-up
3 question. I'm still concerned. Since I've been on
4 the Commission, and this will shift the question a
5 little bit, but I'm still concerned about how we can
6 work within our democracy. I found that at hearings
7 in Los Angeles, Miami, twice in New York, Santa Rosa,
8 California, now in Honolulu, and so often, we have
9 public officials come before us on any issue that's
10 being discussed is very often is community relations
11 and they seem to think that everything is okay.
12 Obviously, those public officials get elected by
13 majority of the vote. And then we have just a great
14 number of religious and community leaders come to
15 speak about the problems they're having with
16 government. And it seems to me that, somehow, we need
17 to have to come up with a structure where we give some
18 more power to those folk who may not have a majority
19 of political power, but have an interest in our
20 society and our government. And I see, in those
21 hearings that we've heard, that there's certain groups
22 that politically just seem to be excluded.

23 Now, the Native Hawaiians here, I understood,
24 have seven representatives in the legislature, for
25 example, but most of the folk who have come before us

1 also feel sort of a sense of exclusion from political
2 power in this state, and so I see the analogy of their
3 sense of lack of political power with the sense that
4 I've had at those other hearings among some peoples.
5 Do we worry about that in a democracy?

6 MR. HANIFIN: I think we do, but I must say
7 that there are a number of ways to be in the minority.
8 I've been known to vote Republican, which certainly
9 puts me in a minority in this state. I think, again,
10 there's a matter that you have a right to vote, you
11 have a right to speak, you have a right to associate,
12 you don't have a right to win.

13 There are some people, who I think have spoken
14 before you, who have taken a position, as my
15 colleagues on this panel, some of them have, that deny
16 that Hawaii is part of the United States. That is
17 distinctly a minority position. They have the right
18 to advocate it. I, for one, hope that they remain in
19 a small minority because I disagree with them, but
20 they have the right to advocate that. And as long as
21 they do, they are, at least as of today, in the
22 minority.

23 I think there's a distinction fundamentally
24 between saying that you have a right to participate
25 and that you have a right to prevail.

1 CHAIRMAN FORMAN: Before we proceed, I have a
2 point of clarification. We have a document here
3 entitled Reinstated Hawaiian Government.

4 MS. MEDEIROS: I submitted that with my
5 document.

6 CHAIRMAN FORMAN: Thank you very much. Do any
7 of the other Commissioners have a question at this
8 point? Members of the Committee? Mr. Stender?

9 COMMITTEE MEMBER STENDER: I'm not sure whether
10 it's a question or a comment or more an observation
11 after hearing people speak in the last few days, and
12 with particular reference to you and Mr. Burgess and
13 Mr. Conklin. You seem to pick up the ethnicity issue
14 and minority issue and those sorts of issues, but you
15 skip, I think, or tend to forget the basis for the
16 Hawaiians' claim for sovereignty is the fact that this
17 island nation was colonized by westerners. They were
18 not given a choice. And annexation, it's as though,
19 for instance, when the United States conquered Japan,
20 and at the end of the day, Japan got their land back,
21 they got their culture back, they got their country
22 back. And where, with the Hawaiians, during the
23 annexation, that was all taken away and never given
24 back, and I think that's the argument we have here
25 that the Hawaiians are trying to make.

1 (Applause.)

2 CHAIRMAN FORMAN: Mr. Hanifin?

3 MR. HANIFIN: If I could briefly address that,
4 I'm not going to say that annexation was done
5 democratically. It was not. That is perfectly clear
6 from the history. Let me address it a different way
7 though, that everyone involved in that event is now
8 dead. The claim, therefore, has to be of inheritance
9 of something.

10 Now, if it's inheritance of political power,
11 you face the difficulty of justifying hereditary
12 political power. I think that's fundamentally
13 undemocratic. Furthermore, I think you face another
14 problem, which is if you look at the politics of the
15 Kingdom and who actually had voting rights and
16 citizenship, you will see that it was not limited to
17 ethnic Hawaiians. And by that, I mean people who can
18 trace their ancestry, at least in part, to the
19 inhabitants of Hawaii in 1778.

20 Everyone born in Hawaii in the days of the
21 Kingdom was a subject of the Kingdom. Everyone who
22 came here was eligible for naturalization.
23 Naturalization was freely granted. Many of the
24 officials of the Kingdom, the legislators, the judges,
25 the cabinet officials, were not ethnically Hawaiian.

1 Most, actually, ethnic Hawaiians could not vote at the
2 end of the Kingdom because of^o discrimination on the
3 basis of gender and poverty qualifications. What was
4 eliminated, what was overthrown in 1893 was not a
5 nation defined by ethnicity tracing its ancestry to
6 1778. It was a country organized much like Great
7 Britain and the United States, a multi-ethnic country,
8 and I would say that what we have in Hawaii today is
9 the same thing. Everyone has equal rights without
10 regard to race. No one can demand more than equality
11 by a claim of inheritance.

12 CHAIRMAN FORMAN: Mr. Hanifin, I asked your
13 counterpart in that Arakaki litigation earlier to
14 supplement in writing a discussion of the -- what
15 happened in other cases where public officials were
16 elected pursuant to unconstitutional or otherwise
17 illegal processes and what were the reactions to those
18 events, so if you could submit -- if you would be
19 willing to submit something.

20 MR. HANIFIN: Bill Burgess and I could try to
21 put something together. I don't think I have
22 researched it enough to offer an opinion now. It was
23 not a factor in the Arakaki case itself. I assume
24 you're referring to the recent resignations of the OHA
25 board as a result of the state litigation?

1 CHAIRMAN FORMAN: That's the related issue, but
2 just in other cases of, in the South, where the
3 elections were deemed unconstitutional, what was the
4 impact of those decisions? Were the elected officials
5 removed from office? Were their prior actions deemed
6 invalid?

7 MS. FIELD-GRACE: David, I need to object on
8 his presentation on the statistics on the voting end
9 of the Kingdom, and I will submit later a document.
10 And the ones I got, I believe, are before the
11 pleadings in the International Court of Arbitration,
12 which is, today, it's estimated that there would be
13 154,000 people who could vote as eligible subjects of
14 the Kingdom. And this came from analysis of the 1890
15 census and updating it to 1990. But in the 1890s, it
16 was 49 -- it was about 49 percent of the population
17 was of indigenous origins, and the other was of the
18 resident aliens. And under the Kingdom law as I have
19 read, you had to be a subject to vote and there were
20 some naturalization cases, but in fact, it was
21 85 percent of indigenous subjects who were voting for
22 the Kingdom at that time.

23 CHAIRMAN FORMAN: Thank you. I would
24 appreciate if you would provide written testimony.
25 The record will be left open for 30 days.

1 MS. FIELD-GRACE: I will. And the other thing
2 I want to note is that here, you have the taro roots
3 people, the grassroots people, and who are you asking
4 questions to? More lawyers. You've listened to the
5 state all day, to lawyers and more lawyers.

6 CHAIRMAN FORMAN: This is an excellent segue
7 into the next portion of our hearing today. Thank you
8 very much. I was going to ask one further question of
9 Mr. Hanifin, but I'll submit that in writing later.

10 MS. FIELD-GRACE: Thanks.

11 CHAIRMAN FORMAN: Are there any further
12 questions for members of the committee?

13 Panelists, thank you very much for taking the
14 time to be with us today.

15 MR. HANIFIN: Thank you.

16 COMMISSIONER REYNOSO: Thank you very much.

17 CHAIRMAN FORMAN: Can I have a list of the
18 individuals who signed up to give testimony during the
19 open session? We'll take a brief break, just a couple
20 of minutes. I hope you can stay, remain in your
21 seats, if that's possible.

22 (Recess from 3:56 to 4:01 p.m.)

23 OPEN SESSION

24 CHAIRMAN FORMAN: Today we understand that
25 there are very intense personal issues that are

1 involved in this case and that is why we have asked
2 you to be here. Unfortunately, we only have time for
3 each individual testifier to give statements of three
4 minutes. I apologize in advance. I will interrupt
5 you when you have one minute remaining, and then I
6 will ask you to stop when your three minutes have
7 terminated.

8 Now, that is for the purpose of allowing
9 testimony from everyone else who has signed up, as
10 well as to facilitate questions from the
11 Commissioners, who are our guests, and from Committee
12 Members. So at this time, I'd like to call up the
13 first five individuals who have signed up to
14 testify -- to give their statements, excuse me. Joyce
15 O'Brian, Richard Bertini, Kekuni Blaisdell. I'm
16 sorry, I might not be able to read this correctly, but
17 it looks like William Kalawaiianui, and Emmett Lee Lay.
18 Are those five individuals here? Joyce O'Brian,
19 Richard Bertini, Kekuni Blaisdell, William
20 Kalawaiianui, and Emmett Lee Lay. You're invited to
21 come join the podium and, if you could, sit in order,
22 that would make things a little bit easier for me, but
23 we will accommodate you in either event.

24 DR. BLAISDELL: I spoke this morning, so I
25 don't need to.

1 CHAIRMAN FORMAN: Dr. Blaisdell has agreed to
2 yield the time he signed up for so that others may
3 give their statements. Thank you, Dr. Blaisdell.

4 Steve Tataii, I'm sorry if I mispronounced your
5 name, if you could also join the others at the podium,
6 we would appreciate it. Okay. We'll begin with the
7 gentleman seated at the far left. Could you please
8 state your name and, if you wish, a position or
9 organization.

10 MR. LEE LAY: My name is Emmett Lee Lay,
11 Attorney at Law. I'm a Native Hawaiian as defined in
12 the Hawaiian Homes Commission Act of 1920,
13 50-percent-plus blood quantum that has been federally
14 recognized since the Act was passed back in 1920. -
15 That definition has been defended by those parties who
16 have an interest at stake under that federal law and
17 we were not represented by the Office of Hawaiian
18 Affairs and we are still not represented by the
19 trustees of the Office of Hawaiian Affairs who are not
20 elected solely by the Native Hawaiians as defined in
21 the Hawaiian Homes Commissions Act of 1920. Even
22 though the Office of Hawaiian Affairs controls the
23 Section 5(f) trust and monies, they have quoted an
24 excess of \$340 million which is limited to
25 betterment -- better the conditions of Native

1 Hawaiians as defined in the Hawaiian Homes Commission
2 Act of 1920. .

3 The Rice vs. Cayetano decision is not fatal to
4 the Hawaiian Homes Commission Act of 1920, and the
5 Chicken Little "sky is falling" argument that the
6 Office of Hawaiian Affairs has launched in the
7 advertising campaign blitz to say that, you know, all
8 Native Hawaiian programs are threatened by the Rice
9 decision is completely false. The Rice decision is
10 only limited to the right to vote for the trustees of
11 the Office of Hawaiian Affairs. And since we, the
12 Native Hawaiians under the Hawaiian Homes Commission
13 Act of 1920, are not electing the trustees of the
14 Office of Hawaiian Affairs, the result in the Rice
15 decision really is not -- it doesn't hurt us because
16 we have not been helped by the Office of Hawaiian
17 Affairs.

18 The Office of Hawaiian Affairs is elected by
19 persons who have one drop of Hawaiian blood, and in
20 the face of the Rice decision, the Office of Hawaiian
21 Affairs has been seeking to lower the blood quantum in
22 trying to pass this federal legislation with Akaka and
23 Inouye. They want to include anybody with one drop of
24 Hawaiian blood and call them Native Hawaiians. Those
25 are not Native Hawaiians. They have -- they've

1 basically subsumed the identity of the qualified
2 beneficiaries under the Hawaiian Homes Commission Act
3 of 1920.

4 Right now, we have 31,000 Native Hawaiians
5 qualified under the Hawaiian Homes Commission Act of
6 1920 continuing to wait for their Hawaiian Homestead
7 leases. You guys came out with a report back in 1991
8 and what has happened since 1991? We still had to
9 deal with the Office of Hawaiian Affairs.

10 They pretend to be Native Hawaiians. They've
11 got persons who are 1/256 part or less or who do not
12 meet the criteria of the Native Hawaiians under the
13 Hawaiian Homes Commission Act of 1920. Basically,
14 what they're trying to do is wipe us out by changing
15 the blood quantum. What better way to allow the
16 Democrats, who control the State of Hawaii -- and
17 that's the real problem. The one-party system that we
18 have in Hawaii do not want to implement the Hawaiian
19 Homes Commission Act of 1920. They're keeping us on
20 the waiting list and they're not implementing the Act,
21 and so what they're trying to do is they're trying to
22 broaden the class so much, that the State of Hawaii is
23 allowed to shirk its obligation to the 50-percent-plus
24 blood quantum, 50 percent to 100 percent Native
25 Hawaiians --

1 CHAIRMAN FORMAN: Sorry. Your time has
2 expired.

3 MR. LEE LAY: I should thank you guys for
4 letting me speak.

5 CHAIRMAN FORMAN: Thank you very much.

6 Sir, could you state your name and position or
7 organization for the record? Could you also pull the
8 microphone close to you so that the reporter can
9 accurately reflect your testimony?

10 Mr. Lee Lay, there may be some questions from
11 the Commission.

12 MR. KALAWAIANUI: I'm on the panel that started
13 this case from some time back. I heard and I followed
14 the newspaper, and all of a sudden, I saw this in the
15 newspaper and got all excited, and I'd like to speak
16 to the panel. My name is William Kalawaiianui. I am
17 the heir of King Kam, seventh-generation grandson.

18 Number one, I had finding there of my own,
19 myself, and my people, that America, in 1841 through
20 1891, had leased the land from Kamehameha, crown land,
21 and never returned. When 1991 came, there was a man,
22 we put it for 5 cents a day, Americans said no.
23 Americans sent down the Interior and raid my
24 ancestors' land.

25 I'm here to protest with the panel that some of

1 the boys in Mainland got (inaudible) to come down and
2 I cut it short because Kanaka Maoli and Hawaii says no
3 sense you go down because the panel not going to
4 believe you. And if the panel don't believe Kanaka
5 Maoli, I have no chance. So I said, well, I'll take a
6 chance. When Yaweh (phonetic) , my counsel, tell me
7 just where to go, how to go, and how to put 'em and
8 put me in court. Seventeen years, I've been fighting
9 this for my people and what they did to me? Take my
10 lands and take \$200, right there, \$300, right there,
11 \$34,000, look at them. Take my land, kick me out.
12 Now, it's my turn. Come right here with all the panel
13 and you got all the chart. You and I work together
14 and you can see all --

15 CHAIRMAN FORMAN: I'm sorry. Do you have some
16 submissions? If you have something that you can
17 submit for the record, we would appreciate it.

18 MR. KALAWAIANUI: I gave you one.

19 CHAIRMAN FORMAN: Do we have it? Okay. They
20 have it. I just haven't gotten it up here. Excuse me
21 for the interruption.

22 MR. KALAWAIANUI: If you don't have, I like to
23 talk to you, because I gave it to him.

24 CHAIRMAN FORMAN: He doesn't have enough copies
25 for the Committee. However, I assure you that the

1 Commissioners and the Committee Members will review
2 the materials that you submitted, and also, if you or
3 any of the other individuals who testify have any
4 written -- additional written submissions, the record
5 will be open for 30 days, and please submit other
6 thoughts that you are unable to express in the short
7 time that we have set aside for you today, and please
8 do take the time that I have used up.

9 MR. KALAWAIANUI: When I talked to his attorney
10 for the Asian Hawaiian Waimea, and I told him, he told
11 me to give it to him. I had one party with me, one
12 discussion about Mauna Kea telescope. I told them, I
13 got a paper. Said, you got a paper? Said yeah. How?
14 From my ancestor. (inaudible) After Parker Ranch,
15 Hawaiian Home, went put down there and give it to the
16 Hawaiian people there. It's not here. It's not here.
17 Where you see this Hamakua, Parker Ranch, Parker Ranch
18 is over here, 185,000 acres and no title. And no
19 sense me telling to you when the copy's over there
20 about --

21 CHAIRMAN FORMAN: I'm sorry. We don't have a
22 copy machine, sir.

23 MR. KALAWAIANUI: Hawaiian Bishop get the
24 title. He's supposed to give to you folks so we can
25 get together and talk these two together, not to give

1 it to you. If I know first, I would have given it to
2 him. He asked me for it. I tell him I'm not ready.
3 When we ate lunch, he want to know about Mauna Kea. I
4 said, I got the title. I got 'everything.

5 CHAIRMAN FORMAN: I'm sorry. Your time has
6 expired. We may have some questions from the
7 Commission.

8 MR. KALAWAIANUI: I have the proof here. Yeah,
9 ownership. Take this to Building Conveyance and tell
10 them, if these people own land. Bishop
11 Estate...(inaudible) Yes.

12 CHAIRMAN FORMAN: Thank you very much,
13 Mr. Kalawaiianui. Are there any questions for either
14 of the two panelists?

15 (No response.)

16 CHAIRMAN FORMAN: Is it Mr. Tataii? You have
17 three minutes and I will interrupt you when you have
18 one minute remaining. Please state your name and
19 position or organization, if you wish, for the record.

20 MR. TATAII: Steve Tataii. I'm a citizen of
21 the United States and I'm a permanent resident in
22 Hawaii. I wanted to go right into the subject that I
23 wanted to talk about today, which is the educating of
24 the American people, that is, the other 49 states,
25 which has not been done yet, and the justices of the

1 Supreme Court have made a decision without the consent
2 and the knowledge of the 250,000 -- I mean,
3 250 million people in America, and I want to recommend
4 that this education process, which has not taken place
5 and has been claimed by the attorneys of Mr. Rice that
6 they have been educating the justices and they would
7 like to have over a million dollars for the bonus for
8 their teaching.

9 So this teaching process should take place
10 first and the American people should know the facts
11 about the overthrow of the Hawaiian Monarchy and the
12 illegal activities that got started and led to the
13 overthrow, and then revisit the case,
14 Rice v. Cayetano, and make a decision after that,
15 afterwards, not before.

16 So I believe that attorneys of Mr. Rice and
17 Mr. Rice are responsible for educating 250 million
18 people in America about the overthrow of Hawaii, and I
19 believe that this is not being done because,
20 apparently, it is not good for the tourism industry,
21 that they probably fear that the tourist industry will
22 not flourish with the impact and the intensity as they
23 want it to flourish.

24 My other issue is about the fact that if they
25 had educated the justices, the justices would have

1 known that the only reason that America had to -- or
2 occupied the islands of Hawaii was just for the mere
3 four-month occupation in the Spanish-American wars,
4 and then they should have evacuated and left, but
5 instead, they stayed on for the next 107 years after
6 the overthrow especially.

7 So this is the main facts which has not been
8 known by the American people and I think this is a
9 travesty of justice. It is the most treasonous thing
10 that Mr. Rice and Mr. Conklin now claiming to run for
11 Native Hawaiian positions can commit against the
12 people of Hawaii.

13 And in the old days, they would have collected
14 the traitors and put them against the wall and shot
15 them or maybe hang them, but today, we are just too
16 kind with the traitors. We just let them keep on
17 going on and on. That's the American system of
18 justice and I resent that because I'm an American
19 citizen.

20 CHAIRMAN FORMAN: Than you. Your time is up.

21 MR. TATAII: Do you have any questions?

22 CHAIRMAN FORMAN: Yes, please. We have about
23 five minutes for questions from the Commissioners
24 and/or Committee Members. Excuse me. Were you one of
25 gentlemen --

1 MR. BERTINI: I understood you've already
2 called the Waianae Comprehensive Health Center.

3 CHAIRMAN FORMAN: We have called Mr. Emmett Lee
4 Lay, William Kalawaiianui, Steve Tataii, Joyce O'Brian,
5 Richard Bertini.

6 MR. BERTINI: I'm Richard Bertini.

7 CHAIRMAN FORMAN: Mr. Bertini, you have three
8 minutes. I will interrupt you when you have one
9 minute remaining.

10 MR. BERTINI: Thank you very much. I believe
11 you have some written testimony that was submitted
12 yesterday. I'm the executive director of the Waianae
13 Coast Comp --

14 CHAIRMAN FORMAN: Excuse me. If you could
15 submit that testimony again, I'm not sure staff
16 received it.

17 MR. BERTINI: Who do I submit it to?

18 CHAIRMAN FORMAN: Mr. Pilla can take that.

19 MR. BERTINI: I'm the executive director of the
20 Waianae Coast Comprehensive Health Center. As far as
21 I know, we're the largest provider of primary health
22 care to a predominantly Native Hawaiian population.
23 We, last year, provided 125,000 medical visits, over
24 half of those to Native Hawaiians. Our Board of
25 Directors and the majority of our Board are Native

1 Hawaiians, the majority of our employees are Native
2 Hawaiians.

3 Basically, we are extremely concerned and feel
4 that it is now necessary to formally raise a complaint
5 about Medicaid managed care and the impact it's had on
6 the Waianae community and potentially other Native
7 Hawaiians in the State.

8 And to make a long story short, managed care is
9 not necessarily the only part of the problem. It's
10 how managed care is structured. And when you have a
11 community that has very, very high rates of teen
12 pregnancy, early onset of chronic disease, and all the
13 problems you've heard about, and managed care is
14 structured so that very simple age/sex/risk adjustors
15 are used to determine where money flows, it creates a
16 very, very real problem.

17 Fortunately, the federal government put a
18 requirement on the State of Hawaii that if it was to
19 go ahead and move Medicaid, the program that serves
20 low-income people into managed care, that the state
21 would be required to make risk adjustments in their
22 payment system, so it counted for the high risk that
23 community health centers serving Native Hawaiians
24 experienced.

25 There was a couple of alternatives offered to

1 the state. It is our very strong opinion that that
2 has not been followed up on in a formal way. We have
3 no formal agreement. And when you see my testimony,
4 the very last 12 pages are a list of over a hundred
5 letters that have been written over the last six years
6 to try to fix this situation. Every attempt to
7 compromise is met with the same apathy --

8 CHAIRMAN FORMAN: You have one minute.

9 MR. BERTINI: Thank you.

10 -- and I think a certain level of neglect on
11 this issue.

12 Yesterday, in our newspaper here, in Hawaii,
13 there was something that came out that said, "Hawaiian
14 health care bill is moving through Congress," and it
15 articulates some very real problems with Native
16 Hawaiians: Higher mortality rates from cancer,
17 diabetes, heart disease, hypertension, high teen
18 pregnancy, lowest life expectancy, and so forth. We
19 have to have -- if we're going to use managed care to
20 serve poor people, we must make the right risk
21 adjustments so that those providers that see it as
22 their mission to outreach and attract these patients
23 basically receive a reasonable risk adjustment in
24 their payments. Thank you.

25 CHAIRMAN FORMAN: Thank you. Are there any

1 questions for any of the four individuals from our
2 guests, the Commissioners? Commissioner Meeks?

3 COMMISSIONER MEEKS: You made a remark about
4 the Rice decision and people's reaction, that people
5 were overreacting to the consequences of that. Would
6 you expand on that just a little bit?

7 MR. LEE LAY: That's right. The Rice decision
8 actually cut to the bone of what OHA was fraudulently
9 doing for the last 22 years or since it came into
10 being. OHA, the Office of Hawaiian Affairs, is
11 basically a scam run by the State of Hawaii to steal
12 the Section 5(f) Trust from the beneficiaries of the
13 Hawaiian Homes Commission Act of 1920, the 50 to 100
14 percent Native Hawaiians recognized under the Act of
15 1920.

16 The State of Hawaii, wanting to shirk its
17 obligations to carry out the provisions of the
18 Hawaiian Homes Commission Act of 1920 and to abandon
19 their responsibilities under the Section 5(f) Trust to
20 Native Hawaiians under the Act of 1920 came up with
21 this ploy called the Office of Hawaiian Affairs.

22 How they did this was that they created their
23 own definition of a Hawaiian, a
24 no-minimal-blood-quantum Hawaiian, that is anybody
25 with one drop of Hawaiian blood and they don't even

1 have to prove that they're Hawaiian. All they have to
2 do is fill out an affidavit saying that they are
3 Hawaiian, and they basically outnumber, outvoted,
4 outinfluenced us at the Office of Hawaiian Affairs.
5 And they are basically the ones, the minimal-quantum
6 Hawaiians are basically the ones that elect the Office
7 of Hawaiian Affairs trustees.

8 The Office of Hawaiian Affairs, once the
9 decision in the Rice case was rendered, immediately
10 reacted and set about arguing and putting an
11 advertising campaign out saying that the Rice decision
12 was fatal to all of the Hawaiian programs when, in
13 fact, it's not true. The Rice decision is limited
14 solely to who can vote for the trustees of the Office
15 of Hawaiian Affairs, but the Office of Hawaiian
16 Affairs itself, following the Rice decision, has
17 basically stirred up this, I call it the Chicken
18 Little "sky is falling," and that is that all of the
19 Hawaiian programs, including the Hawaiian Homes
20 program, which is constitutional, solid, black-letter
21 law, because the remedy under the Hawaiian Homes
22 Commission Act is narrowly tailored to vindicate the
23 compelling governmental interest of treating the heirs
24 of native tenants --

25 CHAIRMAN FORMAN: I'm sorry. Could you briefly

1 summarize? There's one more question from
2 Mr. Commissioner Reynoso.

3 MR. LEE LAY: Well, in brief, ma'am, yes. The
4 Office of Hawaiian Affairs has basically engaged in
5 this type of fraud. The trustees of the Office of
6 Hawaiian Affairs, who suffered under the decision in
7 the Rice case, are basically trying to con everybody
8 into believing that the Rice decision was wrong and
9 was fatal. But the Rice decision was absolutely right
10 because we, the 50-percent-plus-blood-quantum Native
11 Hawaiians are not the ones selecting the trustees.
12 There is no alignment of interest as the Supreme Court
13 pointed out.

14 Take a look at the Rice decision. I have a
15 copy of it here. They say that there is no alignment
16 of interest between the 50-percent-plus-blood-quantum
17 Native Hawaiians and the trustees of the Office of
18 Hawaiian Affairs, because we alone do not elect the
19 Office of Hawaiian Affairs trustees. That's why they
20 could care less about what our interests are. That's
21 why they're not helping us out under the Hawaiian
22 Homes Commission Act of 1920, because they're not
23 being elected by us. They're being elected by
24 basically members of the general public who call
25 themselves Hawaiians.

1 CHAIRMAN FORMAN: Thank you very much.
2 Unfortunately, if we're to accommodate all the people
3 who have signed up, we need to stop at this point. We
4 know that all of you have very valuable information to
5 share with the Commission. I just want to remind you
6 that the record will be left open for 30 days and we
7 invite you to submit additional written testimony to
8 the Regional Office, Western Regional Office of the
9 U.S. Commission on Civil Rights. It's 3660 Wilshire
10 Boulevard. Is that correct?

11 MR. LEE LAY: One last thing, Mr. Forman. I
12 have a copy of the brief filed by the whole Hawaiians
13 which filed an amicus brief in the Rice decision, and
14 I think I would like to submit it as part of the
15 record because I think it sets out in detail about the
16 difference between the 50 percent and 100 percent
17 Native Hawaiians and those who, you know, are 1/32
18 part and less and 1/256 part and less who are electing
19 the office of Hawaiian -- or who were the Office of
20 Hawaiian Affairs trustees.

21 CHAIRMAN FORMAN: Thank you. We'll be
22 accepting that and placed into the record. Is
23 Mr. Pilla here? Thank you very much. Thank you for
24 your time.

25 Please come up to the podium, Kealoha Kuhea,

1 Reynolds Kamakawiwoole, I think it looks -- excuse me
2 if I mispronounce it, it looks like James Manaku,
3 Rodney Shim, Max Medeiros. Is Joyce O'Brian here?

4 MR. BERTINI: Joyce O'Brian is my associate.

5 CHAIRMAN FORMAN: Thank you. Is Kealoha Kuhea
6 here? How about Reynolds Kamakawiwoole? James
7 Manaku? Mr. Manaku, could you state your name for the
8 record and, if you wish, a position or organization.
9 You will have three minutes and I will interrupt you
10 when you have one minute remaining.

11 MR. MANAKU: (Inaudible) If you raise your
12 hand, I'll look at you.

13 CHAIRMAN FORMAN: Sure.

14 MR. MANAKU: My name is James K. Manaku, Sr.
15 I'm a concerned parent and grandparent.

16 First of all, I'd like to share with you, I've
17 come to many committee meetings and they've had us
18 come up and have our hearts bleed, but my question is,
19 will this make a difference? I mean, will you folks
20 really make a difference? Because it would be hard
21 for me to try and share all of this hurt that we have
22 and then, as the rest of the committees have done,
23 nothing. Thank you.

24 Anyway, let's give you a point of information.
25 When the first white man came here, they compared

1 Hawaii to the Garden of Eden. Isn't that interesting?
2 We were a healthy people. We had no -- we hardly had
3 any -- no flies, no mosquitos, not even the common
4 cold.

5 Also, another point of information, if I may.
6 When our queen ceded the land to the United States of
7 America, she ceded it to a great country that was
8 formed under God and, you know, believe it or not, we
9 may have not called him Jesus, but we had our god and
10 we had our religion and we strongly believed in that.
11 But when she did that, what she was hoping for,
12 because this country was so great, that before she
13 died, we would have had our Kingdom back. . And isn't
14 it interesting, it hasn't happened yet. Apparently,
15 we're still viewed as, I guess, not being able to take
16 care of ourselves.

17 But, you know, I want to point out, we went to
18 school, we learned. You know, it was hard for you
19 folks to learn our language and our ways, but we
20 learned yours, and we can'cope with this world today.
21 We just need you folks to stop all of this abuse
22 that's going on. Number one abuser? Well, there's
23 two abusers: The federal government, who was
24 coconspirator, and the State of Hawaii.

25 You know, the federal government now has a bill

1 called The Akaka Bill. There's one aspect of the bill
2 I'd like to share with you and that aspect is that,
3 you know, they're changing the quantum again. It was
4 in 1776 when we had to show that we were Hawaiian.
5 Today, they have in that bill that says, if you were
6 here on January the 1st, 1893 -- by the way, we were
7 overthrown in July -- that you were a citizen. You
8 know what that does? That makes it seem that it was
9 just one Hawaiian group fighting another Hawaiian
10 group, and that's not fair. It's not fair for anybody
11 to change who we were and who we are.

12 And, you know, it's sad to see people -- I
13 mean, in a way, I feel good, but in a way, it's also
14 sad to see people ashamed of their own nationality.
15 And I'm glad though that nationality that they chose
16 is Hawaiian, but what is a Hawaiian now? It's not a
17 dirty person. It's not even homeless. We have our
18 home here. But the problem we're having with these
19 people that administer are supposed to be our
20 livelihood and we need to have you folks help us.
21 There's too many violations.

22 I mean, look, Office of Hawaiian Affairs, they
23 even separate us. They only allow people 20 percent,
24 they only allow people that live in Hawaiian Homestead
25 to borrow money.

1 CHAIRMAN FORMAN: I'm sorry, Mr. Manaku --

2 MR. MANAKU: They separate us already. If you
3 guys have any more questions, I'd be glad to share.

4 CHAIRMAN FORMAN: There will be questions if we
5 have time for questions.

6 MR. MANAKU: Thank you.

7 CHAIRMAN FORMAN: Thank you very much. Is
8 Rodney Shim here? Mr. Shim, could you please state
9 your name and position or organization, if you wish,
10 for the record.

11 MR. SHIM: My name is Rodney Shim and I'm kind
12 of Hawaiian-Chinese, I'm chop suey, but I sure
13 appreciate being here, and also the panel for what you
14 are doing.

15 The reason why I'm here, I moved from Maui, I
16 came from Maui and I was one of the kahu from
17 Kaahumanu. The problem, as I have learned, as a
18 Hawaiian, I didn't know who I was as a Hawaiian. And
19 in order to know a Hawaiian, you have to put the shoe
20 on. And a lot of you folks are from a different race
21 or ethnic group.

22 What I have learned in the Hawaiian churches is
23 that there's been a lot of problem. Kaahumanu
24 churches have 3,000 members and only 11 -- when the
25 flag went down with the overthrow, 11 members stayed.

1 In the Hawaiian association, we had 40,000 Hawaiians
2 supposed to be Christians, and 36,000 walked away when
3 the flag went down. So as a minister or as a kahu, I
4 have to ask myself what happened.

5 And when the queen was in Kawaiahao, she was
6 kicked out when Kahu Parker was a kahu there. So to
7 me, it's been a lot of painful -- for me, it's been a
8 big search, who am I as a Hawaiian? You know, where
9 do I stand as a Hawaiian? I went to school in the
10 Mainland, ministry school, and you hear all about
11 United States, the history of United States, and you
12 come back to Hawaii and hear that you were overthrown.
13 It blew my mind.

14 And in Waiola Church, where Queen Liliuokalani
15 was buried, who was married to King Kamehameha the
16 Great, that's when I realized that I needed to know
17 more about my people. But to me, there has been so
18 much hurt, so much damage, that I think, as the panel
19 here, we live in a time and era, to me, that God is
20 trying to fulfill this, the queen's prayer, to
21 forgive. But at the same time, we need to reconcile.
22 How are we going to reconcile this? Sol, you had a
23 lot of questions to Sol Kuho'Ohalahala, how would you
24 do it? I think in the State of Hawai'i --

25 CHAIRMAN FORMAN: You have one minute.

1 MR. SHIM: -- we need a panel of Hawaiians,
2 people who are very educated, who are concerned for
3 the people. You can't have, on the outside,
4 politicians or political people who are compromising
5 for the right of our people. I feel, as people of
6 Hawaii, that we need to work into deeper than this.
7 We need to have a panel of Hawaiians that are
8 concerned, who care for the people in order to work
9 this -- you can't do it in a bureaucracy. You can't
10 do it with a party on the top. You need to have a
11 mediator to negotiate how the Hawaiians really feel,
12 how can we work together to accomplish the prayer of
13 the queen. Mahalo.

14 (Applause)

15 CHAIRMAN FORMAN: Thank you very much.

16 Max Medeiros, if you could please state your
17 name for the record.

18 MR. MEDEIROS: My name is Max Medeiros from the
19 island of Kauai. I'm a Hawaiian subject. And I just
20 wanted to sit on the panel today and share some mana'o
21 with you. My participation in this fact-finding is
22 the legal implication regarding the Native Hawaiians
23 and legal action and protection of the Native Hawaiian
24 rights, which is only our national origin to the
25 Hawaiian Kingdom. We had that Apology Bill that came

1 out, Public Law 103-150. It is a long document, a
2 signed confession of the wrongdoing to the Native
3 Hawaiians. The indigenous people never relinquished
4 their rights and their claims of inherent sovereignty
5 as a people over their national lands. That means
6 everything around us is ours. Through the Monarchy or
7 promises, it wasn't done. So we have island laws.
8 Laws of Nations said that proof can be had from works
9 on the national law, that liberty and independence
10 belongs to men by its very nature, that they can't be
11 taken away from you without its consent. But the
12 whole Hawaii nation, the state, so long as it does not
13 voluntarily submit to other men and other nations,
14 remain absolutely free and independent. That means we
15 are still free and independent because our queen
16 stated that in the protest letter preserving our
17 rights. And talking about our civil rights and
18 liberty and inalienable rights, it's still preserved
19 to us as Kanaka Maolis.

20 The United States cannot interfere with other
21 nations, not any state entities, agents (inaudible) or
22 any other organizations who are federal citizens of
23 the United States of America. By doing so would be an
24 obstruction of justice and truth.

25 CHAIRMAN FORMAN: You have one minute

1 remaining.

2 MR. MEDEIROS: There are Americans in domestic
3 law and self-determination and free will of the people
4 to form their own government. Our rights are only
5 preserved or reserved to the lawful Hawaiian
6 government and the Hawaiian Kingdom. No nations --
7 and another quote from Laws of Nations. No nation is
8 willing to give up his liberty as in all cases in
9 which it belongs to a nation to (inaudible) extent of
10 its duties. No other nations may force him to act in
11 one way or another. An attempt to do so would be an
12 encroachment upon our liberty as our nations, as
13 Kanaka Maolis, Hawaiian subjects.

14 In good faith and act of justice and equity,
15 the President of the United States, by the lawful
16 authority, has the power to sign an executive order to
17 reinstate the lawful Hawaiian government and their
18 nation put back. On March 13, 1999, the aboriginal
19 descendants reinstated the lawful Hawaiian government.

20 CHAIRMAN FORMAN: You have no time remaining.
21 If you can briefly summarize very quickly, please.

22 MR. MEDEIROS: Well, aboriginal people from 24
23 districts came out as aboriginals fulfilling the
24 queen's letter, reinstate her government. We did that
25 on March 13, 1993, the aboriginal people. So we have

1 a process there called the lawful Hawaiian government
2 and every group and every -- my brothers and sisters
3 out there tried to build our nation. Hey, we have it.
4 We just have to follow the queen's letter.

5 CHAIRMAN FORMAN: Thank you.

6 MR. MEDEIROS: Mahalo.

7 CHAIRMAN FORMAN: Do you have a written
8 submission?

9 MR. MEDEIROS: That's just my sharing. My wife
10 sent you guys the reinstatement process. It's all in
11 front of there.

12 CHAIRMAN FORMAN: Again, if there's anything
13 further that anyone would like to submit in writing,
14 the address is Western Regional Office of the
15 U.S. Commission on Civil Rights, 3668 Wilshire
16 Boulevard, W-I-L-S-H-I-R-E, Suite 810, Los Angeles,
17 California, 90010. We have a few minutes available
18 for questions. Commissioner Meeks?

19 COMMISSIONER MEEKS: I think mine is more a
20 comment than a question, although perhaps somebody can
21 respond to it briefly. You know, as I sat and
22 listened to all of the panelists so far, I'm really
23 struck by -- I'm from an Indian reservation and the
24 sort of process that we've all gone through trying to
25 figure out who we were and how we should govern

1 ourselves. And I want to say in relation to the U.S.
2 Commission on Civil Rights, we're not going to be a
3 magic bullet for anybody, and in the end, it's really
4 going to have to be you that unifies and figures this
5 out. And hopefully, the Rice case can be a catalyst
6 that will make you all communicate and work through
7 the different issues and it's not going to be an easy
8 process. There's going to be tension in the process,
9 but in the end, it has to come from within. We're not
10 going to be able to tell you what's right because
11 you're the ones that know that.

12 MR. MEDEIROS: The free will of the people,
13 just like I said, that we have our government already.
14 Our people just need to come together is what I just
15 shared, that the aboriginal people need to come back.
16 The thing is we are being forced to be as Americans
17 and that's the problem, to me, I think. Our ancestors
18 had reserved that. Thirty-nine thousand of the
19 nationhood signed that petition. And our queen sent
20 an application, an application of international law,
21 to protect our sovereignty and our liberty and our
22 justice. So if anything, e komo mai, you guys stole
23 it, give it back. That's all. It's only by natural
24 law. What you take, you give back. You stole
25 something, give it back. That's all I can say. E

1 komo mai, 'right? I'm sorry if I offend anyone.

2 CHAIRMAN FORMAN: Thank you very much. We
3 appreciate you taking your time. You can take about
4 one minute.

5 MR. MANAKU: I just wanted to share, that right
6 there, you know, this kind of treatment, we expected
7 it from what they call a communist country. That's
8 the kind of treatment that we're getting, and yet it's
9 not coming from a communist country, because in the
10 fifties, we were really scared. McCarthy, remember
11 him? If you didn't say you was in love with it, wow,
12 you'd be in prison, and that's what's been happening
13 to us.

14 This is not happening to us from a communist
15 country. This is happening to us from a country that
16 goes around in our time, in my time, I've seen them
17 prevent these things from happening, and we really
18 need some help here. We don't know how or who is he?
19 We've had commissions after commissions, we've had
20 meetings, and hopefully somehow, someday it will come
21 out, because it needs to. We're Hawaiians. We're not
22 ashamed to be Hawaiians. There's nothing wrong with
23 being Americans either. We're not downing anybody's
24 race. We're just trying to perpetuate ours. Thank
25 you.

1 (Applause.)

2 CHAIRMAN FORMAN: I want to acknowledge all of
3 you for taking the time to be with us today and we
4 understand that many of the individuals that have
5 testified to us before have talked about how often
6 Hawaiians have had to come and defend rights that
7 should already be protected, and we appreciate all of
8 you for taking the time to be here. We apologize for
9 the rather limited nature of the publicity, so those
10 of you that came and were able to make it, thank you
11 very much for taking that time.

12 We will now move to the next group of
13 panelists. Michael Grace, it looks like Mohala
14 Haunani, William Lawson, Mililani Trask, and
15 Christopher Haig. Is Christopher Haig here? Is
16 Kealoha Kuhea here, or Reynolds Kamakawiwoole? Thank
17 you. You have three minutes. I will ask you to state
18 your name and, if you wish, a position or
19 organization. I will apologize in advance for
20 interrupting you when you have one minute remaining,
21 and then I will ask you to finish your remarks when
22 your time is expired so that we may entertain
23 questions from the Commissioners and/or members of the
24 Committee.

25 MR. GRACE: Before we start, I know you. You

1 dakine, you know that old man over there, the kupuna,
2 you interfere with him. He's an old man and, you
3 know, he's tearing his heart out and you confuse him
4 after that. He starts getting all around.
5 (inaudible) He could drop dead over here because, hey,
6 that wen happened in Kauai at my house. (inaudible)
7 One old man wen talk and he drop dead. That is Henry
8 Smith.

9 CHAIRMAN FORMAN: I understand and I apologize.

10 MR. GRACE: Show some concern or something, not
11 you know, show up, just making any kind.

12 CHAIRMAN FORMAN: I understand and --

13 MR. GRACE: You look like one Hawaiian
14 (inaudible) kupunas.

15 CHAIRMAN FORMAN: Actually, I'm not Hawaiian.

16 MR. GRACE: Whatever.

17 CHAIRMAN FORMAN: That was the reason why, and
18 again, I mentioned this --

19 MR. GRACE: You said we got five minutes. Now
20 you guys cut it off to three minutes, but all the
21 lawyers and all the agencies, they get 10 minutes, and
22 this is the guy they're talking about over here. It's
23 us guys they're talking about, the real people who own
24 the land.

25 CHAIRMAN FORMAN: Thank you for coming

1 yesterday evening. That was the purpose of yesterday
2 evening's session. I understand that probably
3 Mr. Kalawaiianui wasn't able to come last night, but we
4 had hoped to accommodate the kupuna yesterday, and
5 that was --

6 MR. GRACE: I'll go right now.

7 CHAIRMAN FORMAN: Thank you, Mr. Grace. Please
8 state your name and, if you wish, a position or
9 organization for the record.

10 MR. GRACE: Mike Grace and I hate taking about
11 myself. Saw pictures up there about the plan, what
12 they're going to do, the enrollment. That's a nice
13 picture there. Hawaiian's going to make a nation.
14 But before that picture, I have to go give up my
15 birthright to make that picture. You know what I
16 mean? I've got to give up my birthright, and when I
17 give up my birthright, I give up everything, every
18 rights, for make that nation. And that, I'm not going
19 to do, you see, I'm never going to do, because I know
20 my rights.

21 And the second thing is, Hawaiian Homes coming
22 over here telling 30,000 Hawaiians that they support.
23 Hey, I went down the road and on my Hawaiian lease,
24 that I'm going to get one petition. Most of the
25 Hawaiians don't know where the homes these Hawaiian

1 representative's talking about because they never see
2 'em. So it's another conspiracy against Hawaiians,
3 that one Hawaiian going to talk for all the Hawaiians.
4 And then the next thing is the Hawaiian get burned in
5 Kauai, he burn himself in the house, because 18 years
6 of fighting with the laws, 18 years of fighting with
7 the laws, that he never had one chance, and he said
8 I'm going to burn the house and I'm going to burn
9 myself before they move me out, and that's Henry
10 Smith. Drunk and he burned himself in the house. I
11 was there. And that's sad that Hawaiians got to go
12 through that crap.

13 Maybe one of these days, Hawaiians going to
14 Washington and make like the monks, you know, and burn
15 themselves so some kind of attention going to come
16 from the world, you know. But this is the real
17 attention. You guys over here talking about something
18 that don't even belong over here. What belong over
19 here is international laws, laws that, hey, we're
20 going to be right, not these laws that, hey, I'm going
21 to chase my tail around my back side all till the day
22 I die. This is like a carnival, monkey and donkey
23 show or something.

24 CHAIRMAN FORMAN: One minute.

25 MR. GRACE: We go through this every year and

1 still come out the same, you know. People crying,
2 Hawaiians are crying. Crying, crying, crying, you
3 know. I'm tired of that, you know. I'm tired of
4 crying already. It's time for see something right.
5 You guys, this is a cancer and you guys never stop the
6 when the thing wen start. You guys started in between
7 or at the end. Start when the thing start and clean
8 'em out. That's all I got to say.

9 CHAIRMAN FORMAN: Thank you very much.

10 (Applause)

11 CHAIRMAN FORMAN: Mohala Haunani?

12 MS. HAUNANI: I am Mohala Haunani and I am from
13 Kimokeo Keawe Ohana and I am from the District of Kuu
14 Moku o Keawe (phonetic spelling), and I am here to
15 speak for my ohana and for the children of my family
16 of who are yet to understand the decisions that are
17 being made and the perilous futures that they will
18 have because of these decisions if they are made on
19 the wrong behalf of our people and to their unborn.

20 I thank all of you for being here and I am here
21 to petition the ears of your heart, the courage of
22 your conviction, the right and light of your actions
23 to champion for the Kanaka Maoli, our people and our
24 rights.

25 Now, this case, Rice vs. Cayetano, Rice indeed

1 had a time to speak, yes, but that was premature. His
2 15th Amendment had been so-called abridged as far as
3 he was concerned, but what happened to the 1st and to
4 the 5th Amendment right of our beloved queen,
5 Liliuokalani, and our ancestors of the 1890s, all the
6 way up to present, which is the year 2000, the year of
7 the millennium. The United States continues to act in
8 an illegal manner. They are the counterfeit
9 government. We are the genuine legal owners of this
10 aina.

11 America has shown that they are not capable of
12 handling our affairs. They have taken 80 percent of
13 our revenue, 20 percent is given to us, but they are
14 not able to pay their 20 percent revenues to our
15 people. Our people are at the bottom of the heap as
16 far as education, as far as health, and as far as
17 housing, all under their administration. They are a
18 failure to our people.

19 Now, why should we consider to continue on that
20 light, to be continually in that dilemma, and that
21 dilemma is you have still not answered the question as
22 to whether or not the illegal overthrow was legal.

23 CHAIRMAN FORMAN: You have one minute.

24 MS. HAUNANI: I will now read my one minute.

25 CHAIRMAN FORMAN: Also, if you have a written

1 submission, if you could provide that.

2 MS. HAUNANI: I do. I will. And I will end
3 with a word from Queen Liliuokalani.

4 "Oh, honest Americans, as Christians, hear me
5 for my down-trodden people. Their form of government
6 is as dear to them as yours is precious to you. Quite
7 as warmly as you love your country, so they love
8 theirs. With all your goodly possessions covering a
9 territory so immense that there yet remains parts
10 unexplored, possessing islands that, although new at
11 hand, had to be neutral ground in time of war, do not
12 covet the little vineyard of neighbors so far from
13 your shores least the punishment of Ahab fall upon
14 you. If not in your day, in that of your children,
15 for be not deceived, God is not mocked.

16 The people to whom your fathers told of the
17 living God and taught to call Father, and whom the
18 sons now seek to spoil and destroy, are crying aloud
19 to Him in their time of trouble and He will keep his
20 promise and will listen to the voices of His Hawaiian
21 children lamenting for their homes."

22 Queen Liliuokalani died on the 11th of November
23 1917, and her poignant plea for justice is still
24 unanswered and I hope that you will be a participant
25 of making them answer to all their wrongdoings and

1 making them accountable for all the genocide and
2 ethnocide they continue to put on our people.

3 CHAIRMAN FORMAN: Thank you.

4 MS. HAUNANI: Mahalo.

5 CHAIRMAN FORMAN: Sir, state your name and
6 position or organization for the record.

7 MR. LAWSON: I'm William Lawson. I'm just
8 speaking on my own behalf. Repression through the
9 legal system gives the traditional reference for the
10 law in American society. The most effective vice to
11 quiet repression in dissident individuals and
12 organizations is to define their activities as
13 criminal and to transfer their conflict with the
14 dominant powers from the street and the ballot box
15 into the courtroom.

16 Such a transformation is a powerful tool to
17 issue oppression for to define certain activities as
18 criminal rather than political accomplishes several
19 things favorable to the status quo.

20 First, criminalizing dissent make it possible
21 to ignore the issues raised by that dissent, to
22 redefine the problem as one that involves the
23 determination of guilt or innocence. In such a
24 setting, the issues are not likely to receive a
25 hearing.

1 Second, criminalizing dissent makes it more
2 difficult for dissenters to gain allies for their
3 cause in the larger community. Once persons or groups
4 are officially stigmatized as criminal, they tend to
5 lose sympathizers.

6 Finally, unless one is armed with a strong
7 character and a powerful supporting ideology,
8 criminalization discourages and demoralizes dissident
9 individuals themselves once they find that they are
10 treated as criminals by the police, the courts and
11 prison personnel. The criminal process isolates
12 people and treats them as individual wrongdoers,
13 cutting them off from the support of their
14 compatriots.

15 The Rice-Cayetano decision and the
16 federal-mandated blood quantum within and made a part
17 of the Hawaiian Homes Commission Act of 1920 to '21 is
18 a blatant discriminatory mandate whereby those of
19 Hawaiian ancestry with 50 percent or higher blood
20 quantum have been pitted against those of less than
21 49 percent quantum or less of the required qualifying
22 mandate. What blood quantum makes a Caucasian a
23 Caucasian or what quantum makes a Filipino a Filipino
24 or an Afro-American an Afro-American, and so on and so
25 forth?

1 When looked at more closely, the original
2 febrile blood of that quantum mandate of 1920-'21,
3 along with the State of Hawaii's 1978 legislative
4 voting criteria, put in place the Office of Hawaiian
5 Affairs elections where only Hawaiians of blood,
6 regardless of their blood quantum, were allowed to
7 vote for trustees in the Office of Hawaiian Affairs
8 even though, once in office, the trustees, whom had
9 been elected through the aforementioned state
10 legislative voting criteria, were unable to -- were
11 unable to help and/or assist those of less than
12 49 percent blood quantum as the primary prerequisite
13 of qualifying, as per the original federal mandate and
14 the State of Hawaii Office of Hawaiian Affairs
15 legislative voting stipulation.

16 These two actions by both the federal
17 government of 1921 and the State of Hawaii 1978 are
18 the primary underlying discriminatory factors that
19 eventually caused the Rice-Cayetano decision.

20 CHAIRMAN FORMAN: I'm sorry. I didn't see the
21 indication of one minute and I'm informed that your
22 time has expired. If you could briefly summarize.

23 MR. LAWSON: Well, to briefly summarize, the
24 federal government and State of Hawaii actually
25 pitted, by the federal mandates and the legislative

1 criteria voting, those two entities, which are not the
2 people, mandated and stipulated the discriminatory
3 practice that caused the Rice-Cayetano decision to
4 eventuate.

5 Once the Rice-Cayetano decision came down, what
6 people are led to believe is that the Supreme Court
7 decision now is to supersede the legislative Congress
8 and Senate of the United States as a legislative body
9 of authority that enacts law.

10 All of the attorneys and all the people now
11 that look at this decision as, oh, it's going to take
12 away all the different programs and different things
13 from the Native Hawaiian people are, through their own
14 ignorance and/or fear, led to believe that a Supreme
15 Court decision, which is simply a decision of a
16 Supreme Court, and it's fallible, it's been overturned
17 on numerous occasions, so the Rice-Cayetano decision
18 was constructed.

19 And what's happening now through The Akaka Bill
20 attaches Hawaiian Homes Commission Act, through the
21 blood quantum mandate, to The Akaka Bill, to the
22 recognized criteria that says, who's recognized as a
23 Hawaiian? And what happens with the Hawaiians now is
24 they are what, trading away their independent
25 government and state and lands of 4 million acres over

1 to the federal government through the Department of
2 Interior and Domestic Laws in order for them now to
3 evade their legal fiduciary responsibilities.

4 CHAIRMAN FORMAN: Thank you, Mr. Lawson.
5 Perhaps one of the Commissioners or Committee Members
6 will ask you to expound. If you also have something
7 written that you could submit, we'd appreciate that.
8 We do have copies of the testimony that Mililani Trask
9 submitted.

10 If you could please state your name and
11 position or organization, if you wish, for the record.

12 MS. TRASK: I'm Mililani Trask. I'm a Native
13 Hawaiian attorney. 1985, I sent my first request for
14 assistance to this Commission, and for 15 years, I've
15 not had the benefit of a response from this
16 Commission.

17 I was previously an elected Office of Hawaiian
18 Affairs Trustee. I was elected by 29,000 Hawaiians.
19 I was sworn into office by the State Supreme Court. I
20 was given a certificate by the State Legislature
21 certifying that our election was valid under state
22 law.

23 I, along with eight other trustees, resigned my
24 position in order to prevent the State Democratic
25 Voice Party from seizing control of the Office of

1 Hawaiian Affairs, which I can honestly tell you, from
2 its inception, has really functioned more has a puppet
3 of the State Democratic Party than a representative of
4 the Hawaiian people, but it could never have been
5 truly a representative of the Hawaiian people because
6 it is a state agency, and as such, it is subject to
7 state law, and as such, it is subject not to the
8 decision of the U.S. Supreme Court in
9 Rice v. Cayetano.

10 I want to -- I'm submitting likely testimony,
11 which is the testimony I gave to the U.S. Congress
12 last week when I was in D.C. I wanted to begin by
13 first addressing some of the misconceptions that
14 others have testified here and that is the myth and
15 the lie that America guarantees equality for all.
16 That is not the case. It's never been the case.

17 Here, in Hawaii, if you're a born Hawaiian in
18 the State of Hawaii, you are born a ward of the state.
19 Japanese born in Hawaii aren't born wards of the
20 state; white people born in Hawaii, haoles, aren't
21 born wards of the state; Filipinos aren't born wards
22 of the state, but Hawaiians are born wards of the
23 state. Do we need anymore proof that America is not a
24 nation where there's equality for all?

25 Disabled Americans are residents and citizens,

1 but they have benefits other Americans don't have.
2 Veterans have the same type of benefits. Families
3 receiving AFDC, elders who get Medicaid and Medicare,
4 these are all American citizens, but they have certain
5 entitlements that other classes of Americans are not
6 entitled to. That is also the case for Native
7 Americans.

8 CHAIRMAN FORMAN: One minute.

9 MS. TRASK: That is also the case for Native
10 Americans. That is because the Equal Protection Rule
11 of the U.S. Constitution does not guarantee equal
12 protection for all, but it does require that if you're
13 similarly situated, you should be equally treated.
14 That is why the exclusion of Native Hawaiians, who are
15 in 150 pieces of congressional legislation, are
16 considered to be Native Americans rather only once in
17 a class of Native Americans excluded from the federal
18 policy for self-determination.

19 In summarizing, when you look at my testimony,
20 at page number 5, I have gone through the critical six
21 areas where our peoples received disparate treatment.
22 These areas are, number one, legal status. Number
23 two, judicial protection. Number three, health.
24 Number four, housing. Number five, child protection.
25 Number six, economic development.

1 In all of these six critical areas, other
2 classes of Native Americans receive certain benefits
3 and Hawaiians do not, and this is clearly a violation
4 of the Equal Protection Clause and it is a deprivation
5 of constitutional magnitude which you, yourself, your
6 predecessors acknowledged in your Broken Trust Report,
7 and when you read it, you'll see in detail the
8 footnotes of my testimony that I submitted in earlier
9 years.

10 CHAIRMAN FORMAN: Trustee Trask --

11 MS. TRASK: Rice v. Cayetano -- I'm not a
12 trustee anymore. I had to resign and you know that,
13 David. I'd like to be able to close my testimony
14 appropriately.

15 CHAIRMAN FORMAN: If you would, please. I'm
16 sure there will be many questions for you.

17 MS. TRASK: Rice v. Cayetano set aside the
18 election process. It did not threaten or rule
19 unconstitutional the Native Hawaiian trusts. It did
20 not remove me from office. What it did was it set
21 aside a state election process, which is an appendage
22 and a vehicle of wardship, because under American law,
23 if you're a state, you have to let in Asians, haoles,
24 and everyone else, but if you're a native nation under
25 the American policy, you have certain entitlements

1 that other classes of Native Americans don't have, and
2 that's what we're dealing with with Rice.

3 Rice is creating a fire storm because it is the
4 fuel that racists in this state are trying to use to
5 take away our people's trust entitlements. I agree
6 that the U.S. Congress is the only one that can confer
7 this political recognition and political status, but
8 it is your obligation as Commissioners to address the
9 equal protection violation. And for 15 years, I
10 myself have sent testimony to this body for 15 years.
11 Are you going to be a vehicle to address this
12 deprivation or are you going to be a vehicle to
13 perpetuate it?

14 CHAIRMAN FORMAN: Thank you. Let me be clear,
15 I did not mean any disrespect by identifying you as a
16 trustee. I also referred to Supreme Court Justice
17 Robert Klein as Justice Klein and Edward King as Judge
18 King.

19 MS. TRASK: Don't give me any apologies. Just
20 me some relief for my people. Our people live and die
21 in poverty. You know that, David.

22 CHAIRMAN FORMAN: Thank you. Are there any
23 questions from our guests, the Commissioners?
24 Vice-Chair Reynoso?

25 COMMISSIONER REYNOSO: I have a question for

1 the panel in terms of the Rice case. Is it the sense
2 that some of you have that the, presumably in the
3 future, newly-elected trustees will be able to do the
4 same sort of job in representing the interest of the
5 Native Hawaiians that the past trustees have done?

6 MR. LAWSON: It's hard to right now because of
7 Rice-Cayetano. If you look at what happened with
8 Hilary Clinton, she left Washington, she went to
9 Connecticut. Six months later as a resident, now
10 she's running for Senate. So now, anyone can jump on
11 an airplane. Six months later, live here in Hawaii,
12 now they're a Hawaiian citizen and they can vote in
13 the Office of Hawaiian Affairs. They don't know the
14 wants, needs, necessities, or the cultural traditions
15 of the people.

16 In order to stop that, it's real easy. They
17 could have just said, okay, in order to be a trustee,
18 you have to have lived here for 20 years and you have
19 to know the wants, needs, necessities, and traditional
20 values and culture of the people. And knowing that,
21 then I believe you actually could do away with the
22 discrimination and you've helped the people, because
23 now the people know that the person that's been, or
24 the people that have been here for that period of time
25 understand their needs and necessities.

1 I don't believe somebody or anybody that can
2 come over here, live for six months or even 10 years
3 without being involved with Hawaiian people or their
4 communities or their culture, know anything about
5 them. They're over here making money, doing what they
6 want to do, and yes, I want to be Rice and I want to
7 be Cayetano.

8 MS. TRASK: Sir, I'd like to respond to that by
9 giving you some real concrete examples of why it
10 doesn't happen. You know, I'm concerned as a trustee
11 when I see the possibility that haoles or Japanese are
12 going to make these determinations with regards to our
13 trusts and our programs, and let me give you some real
14 life examples.

15 For years, the State Department of Health
16 refused to bring on line culturally appropriate
17 programs to address HIV and AIDS in our community and
18 to address breast cancer. We have the highest rate of
19 mortality in the world for breast cancer among
20 Hawaiian women, my mother included. What was the
21 problem? The problem was that the people devising the
22 programs and the services for the Hawaiian community
23 were not Hawaiian, and that is why the Department of
24 Health programs did not do a single thing for our
25 people, to get Hawaiians in for HIV testing, to work

1 with Hawaiian families and the Hawaiian ohana in an
2 ohana way for breast cancer and for AIDS.

3 It wasn't until OHA began to work with other
4 Hawaiian health care professionals that we could
5 devise programs. You cannot go to the Hawaiian
6 community and post a notice and say, if you have AIDS
7 or you want to talk about breast cancer, come down.
8 It's not going to work that way in our community. We
9 have to do it in an ohana family-based way.

10 We've seen the very same thing occurring in
11 other areas as well. When it comes to burial issues,
12 when it comes to issues pertaining to Hawaiian
13 language, education, it's critical that the trustees
14 have some understanding and some background in the
15 culture. How are we going to meet the cultural needs
16 of our people if we have trustees that have no
17 cultural background and that do not understand the
18 practices of our people? It really makes a difference
19 here. It's a life and death difference when it comes
20 to things like breast cancer and AIDS.

21 When you hear the haole talking over here, why
22 can't a haole, why can't a Filipino make a decision
23 for Hawaiian health? The reason is they don't have
24 the background, they're not Hawaiian, and they're not
25 going to devise that program and create a vehicle for

1 services that Hawaiians will access, and we have the
2 data on that.

3 CHAIRMAN FORMAN: Vice-Chair Reynoso indicated
4 to me that his question was to the entire panel.
5 Would any of the other panelists like to respond?

6 MS. HAUNANI: Yes, I would. First of all, in
7 the Office of Hawaiian Affairs, your administrator
8 there is a Mr. Ogata. Now, I understand that he is a
9 non-Kanaka Maoli, and as the administrator of that
10 office, he is able to say yes or to veto what are the
11 priorities of our people.

12 So even though we may have our Hawaiian
13 trustees in there, but they have a non-Kanaka Maoli
14 who cannot identify with our concerns, nor our pains,
15 nor our suffering, because it is already proven in
16 your documentation by the state that the Department of
17 Human Services has 80 percent of our people on that
18 dependent wardship.

19 And according to their auditor, Ms. Higa, the
20 Department of Human Services operates on illegal
21 authority to adopt our children out, to literally sell
22 our children out, and I am one of the families that
23 have been fighting Attorney General Earl Anzai with
24 regard to that.

25 So if we have people who are in the Office of

1 Hawaiian Affairs, as has been shown by Mr. Ogata's
2 conduct, and through all of his work that he has done,
3 he has done literally nothing for us. And when we
4 have Hawaiians in there who rally and lobby for the
5 concerns and the issues of our people, but they are
6 vetoed as to what they can undertake and what they
7 cannot, I would say that it nullifies all of their
8 hard labored work for our people.

9 (Applause.)

10 CHAIRMAN FORMAN: Mr. Grace?

11 MR. GRACE: For me, it's like three
12 administrations. You get the three attorney generals,
13 you know. Every time the Hawaiian issue come up, they
14 always say, if we're going to pay the Hawaiians back,
15 all this money from OHA, the state going broke. So
16 what they're telling me is the Hawaiian (inaudible)
17 are holding up the state? That's what it is; that all
18 of that that we get, they give back to us, that
19 they'll go broke. That's what they're telling
20 themselves.

21 MR. LAWSON: I would like to add one thing.
22 Prior to Rice-Cayetano, prior to that decision, the
23 main concern for the Hawaiian community were their
24 ceded land revenue issues and the concern was how much
25 they were owed.

1 The state admitted we don't have a mechanism in
2 place to tell you what the total figure is, so if that
3 is the case, how can anyone make a legitimate and
4 conscientious decision on behalf of any of the
5 Hawaiian people or the future beneficiaries when they
6 don't even know how much money they owe you?

7 So if they don't know what they owe you, how
8 can they now, through The Akaka Bill, trade everything
9 that you don't know what you have away? And once they
10 trade it all away, you become what? You become a
11 dependent ward of, now, the federal government under
12 the Department of Interior and Indian Affairs.

13 So if the trustees, as Ben Cayetano recently
14 said prior to the trustees resigning and Mr. Hee being
15 appointed once again to the chair, right? Because
16 prior to that, they asked for the Hawaiians to decide
17 on final global settlement and to agree not to sue
18 them in the future, and the Hawaiian people said, no
19 way. Rice-Cayetano came down. Now all of a sudden,
20 The Akaka Bill is thrown in. Akaka Bill does what?
21 Final global settlement and they agree under the
22 Department of Interior not to sue them in the future.

23 And so guess who's in the leadership?
24 Mr. Clayton Hee all over again. And that is the
25 problem. That is the total problem.

1 CHAIRMAN FORMAN: Excuse me. Ms. Trask, you
2 have a great deal of experience in the international
3 community. There was previous testimony regarding The
4 Akaka Bill and there was some disagreement of opinion
5 as opposed to whether that bill would have any impact
6 on the ability or effectiveness of Hawaiians, of
7 Kanaka Maoli, to argue for independence for
8 self-determination in the international arena. Do you
9 have any thoughts on that?

10 MS. TRASK: Yes. I addressed this question in
11 the U.S. Senate last week. For 13 consecutive years,
12 I've been at the United Nations representing Hawaiian
13 organizations and my peoples and myself. I worked
14 there with many of the chiefs of the federally
15 recognized American Indian Nations and Alaskan Nations.
16 as well, including people -- more conservative groups
17 such as NCAI, which is backing us up in the
18 legislation.

19 The Apology Bill states very clearly that
20 America recognized violations of international law.
21 That is an admission. That is in black and white in
22 The Apology Bill. I take that to mean that we have to
23 seek international remedies for those international
24 violations.

25 When I look at the last disclaimer clause in

1 The Apology Bill, it's very clear that claims are not
2 being addressed and claims are not being waived. That
3 means that domestic claims under American law are not
4 addressed and are not waived. That means that
5 international claims under international law, such as
6 treaty violation, are not addressed and they are not
7 waived.

8 It took me nine years working with others at
9 the United Nations to raise the issue of the violation
10 of the 21 international treaties of our peoples, six
11 of which are with the U.S. The rest are with Japan
12 and all of the crowns of Europe. We are the only
13 native peoples of America that have such a history.

14 The treaty report was issued by the special
15 rappator (phonetic) from Cuba. Four years ago, it
16 calls for Hawaii to be relisted to the United Nations'
17 list of nonself-governing territories for the
18 implementation of a process for decolonization and
19 eventually for a vote for independence.

20 And as we can see in the case of Puerto Rico,
21 the removal of a territory from the United Nations'
22 list does not mean it doesn't go back. Puerto Rico
23 has been relisted as well as New Caledonia.

24 In addition, as we can see under the American
25 experience, Guam was supposed to have their

1 commonwealth government recognized two years ago.
2 Interior played games, didn't want to do it, and so
3 now, the United Nations will proceed on their own with
4 the Commonwealth of Guam, and this year, they will
5 have their vote.

6 So I am not -- I do not put all my eggs in the
7 basket of United States jurisprudence. I'm an
8 attorney. I practice in the federal and state courts,
9 so I know more than to believe in justice from
10 American courts, but I also know that we will make
11 progress in the international arena, and I will go
12 there again in November. I will be there again.

13 CHAIRMAN FORMAN: Would you mind providing me
14 their citation or a copy of the special rappator's
15 report to staff for the record?

16 MS. TRASK: Yeah. I can send it to you.

17 CHAIRMAN FORMAN: Thank you. Are there any
18 further questions from the Commissioners?

19 MR. LAWSON: May I add one thing, just one
20 thing?

21 CHAIRMAN FORMAN: Yes, Mr. Lawson. In response
22 to this issue?

23 MR. LAWSON: Yes. In this document that I'll
24 give to you, part of it is in 1897, when Queen
25 Liliuokalani officially protested the annexation of

1 the Hawaiian Islands to the United States Government,
2 she filed that with the Secretary of State. Once she
3 did that, and she relinquished -- she had already
4 relinquished everything over to the federal
5 government, under trust and use, she implied a trust
6 and use relationship at that point in time, people
7 failed to even recognize that.

8 And under trust and use, it says, if X makes a
9 grant -- if A makes a grant to X without a
10 consideration, and in her official protest under her
11 civic and hereditary rights of her personal property
12 and that of her peoples and chiefs, she says that she
13 has not received any consideration for that, nor they
14 and anyone in the future or in succession of that that
15 didn't receive any consideration. She, at that point
16 in time, placed the Hawaiian Kingdom and her peoples
17 under a trust relationship with the federal
18 government. If not, we wouldn't be here anyway.

19 So now, what I'm saying is people are failing
20 to go back to trust and use law because trust and use
21 says, if A grants to X, nothing passes to X if there
22 is no consideration. And that means all she said is,
23 listen, hold this for me and my people. Once you do
24 your investigation, it all comes back to us, and law
25 says yes. The United States says, well, we don't

1 know. We don't see that. It's hidden. Where? It's
2 hidden. It's hidden in that official protest that was
3 filed with the Secretary of State in 1897. And that's
4 where it is and it's always been there.

5 For now, for anyone to assume that there isn't
6 a trust relationship in order to be recognized,
7 they're assuming wrong.

8 CHAIRMAN FORMAN: In order to accommodate the
9 rest of the individuals who have signed up, we need to
10 conclude. Thank you very much.

11 I have a question for staff. Mr. Lawson and
12 some others have included extensive thoughts on their
13 sign-up sheets. Will these be made part of the
14 record?

15 MR. PILLA: Yes.

16 CHAIRMAN FORMAN: Thank you. If staff would
17 give me a list of those who were called previously.
18 Is Kealoha Kuhea here? Reynolds Kamakawiwoole here?
19 How about Christopher Haig? Mr. Haig, please come
20 forward. Lucy Akau, Jill Nunokawa, Alice Green --
21 excuse me, Alice Greenwood, I apologize. How many is
22 that? Mr. Haig, Ms. Nunokawa, Ms. Greenwood. Nancy
23 Stone, is Nancy Stone here? Please come forward.
24 After this panel, there will be two more. Excuse me.
25 Two more individuals, not panels.

1 Mr. Haig, would you please state your name and,
2 if you would, your position or organization for the
3 record.

4 MR. HAIG: Yes. My name is Christopher Haig.
5 I'm the president of Heritage Research Productions and
6 we have been doing research on many related issues and
7 concerns relevant to some of the concerns of the U.S.
8 Committee of Civic rights, and we really appreciate
9 the opportunity that you have provided to so many
10 citizens here protected by 1st Amendment and
11 constitutional rights to really hear and express the
12 redress, the grievances and many, many of the concerns
13 which are on the minds and hearts of so many of the
14 different Hawaiian citizens. So it's a very good
15 opportunity and forum and certainly to be commended
16 consistent with the United States constitutional 1st
17 Amendment rights.

18 And you certainly have been listening to so
19 many different varieties of concerns too. It will be
20 a great responsibility to carefully review those
21 questions and be able to begin to respond to the many
22 types of educational concerns, concerns for land
23 rights and variety.

24 My particular concern, I'm not specifically
25 taking issue with other people who have made

1 presentations, but simply from an evidential
2 informational basis, we have heard from the
3 hard-working Democratic senators who are claiming to
4 represent the United States in their apology, and the
5 many hours of effort that they've put in. Recently,
6 we've heard from Democratic Senator Akaka and the many
7 hours of hard-working groups they have put together
8 and the types of working groups that they've helped
9 to, quote, make people aware of the issues, and yet it
10 is very important to look back at some of the factors
11 relating to the actual Democratic Party platform of
12 1892, and a historic evidential basis that I would
13 like to present to the Committee for further review at
14 a later time.

15 And the Democratic Party platform of 1892 is
16 evidence which has never really appeared in all of the
17 Democratic Party-authored books published in 1992, and
18 the many different positions taken by the Democratic
19 Party's senators in the debate on the apology.

20 CHAIRMAN FORMAN: One minute.

21 MR. HAIG: Along those lines, I think it is
22 responsible just to raise several questions. Have we
23 not ever heard of relevant information that clearly
24 indicates that there were severe derogation and
25 obstruction of the United States constitutional voting

1 rights by the Democratic Party platform in 1892 with
2 the election of President Cleveland and with the
3 re-election of Commissioner Blount, three-term
4 southern Democratic congressman, and those were two
5 supposed judges of the 1893 events, and yet there were
6 tremendous complexity of their own Democratic Party
7 platform that they were actually instigating the very
8 events which produced the supposed overthrow of the --
9 illegal overthrow.

10 I think it's time to understand and raise many
11 questions, why are the very same party apologizing to
12 the U.S. government when, in fact, the Democratic
13 Party appears --

14 CHAIRMAN FORMAN: I'm sorry. Your time is up.

15 MR. HAIG: I'll just provide this.

16 CHAIRMAN FORMAN: Please do, for the written
17 record.

18 MR. HAIG: Thank you very much for your
19 consideration of those type of questions,
20 informational evidentiary questions.

21 CHAIRMAN FORMAN: Lucy Akau is not here; am I
22 correct?

23 UNIDENTIFIED SPEAKER: I went out to get her.

24 CHAIRMAN FORMAN: Ms. Akau?

25 MS. AKAU: Yes.

1 CHAIRMAN FORMAN: If you could state your name
2 and, if you wish, a position or organization for the
3 record.

4 MS. AKAU: My name is Lucy Akau. I'm from
5 Waimanalo. And I cannot say I'm Hawaiian or not
6 because God put me on this earth as a human being, so
7 I think I'm just a human being. So when something is
8 Constitution, when the United States made the
9 Constitution way back, and it was made way before
10 Hawaii became a state. So the Constitution had over
11 26 amendments, so the Constitution, at that time, was
12 written by people that believe in God and they put God
13 first and they had all these rules that we live by.
14 So in the meantime, after so many years, United States
15 accepted Hawaii State Government Constitution. This
16 was in 1969. And this is 40 years later and now we're
17 having people questioning the Constitution.

18 And when the Constitution came up, when these
19 people question the Constitution, they have a right to
20 vote, the way I understand, you have a voting right to
21 vote for the President and in America, but I don't
22 think you have a voting right to vote for the trustees
23 of a Hawaiian organization.

24 So I question the fact that why are we
25 accepting and why are we not having amendment to the

1 Hawaii Constitution before Cayetano jump on the band
2 wagon and tried to get everybody running crazy,
3 because he's coming our way. The OHA is illegally in,
4 but OHA was born, OHA is a baby of the Hawaii
5 legislation. Clearly now, it's illegal in the
6 legislature of Hawaii, it's illegal too.

7 CHAIRMAN FORMAN: You have one more minute.

8 MS. AKAU: My minute is up?

9 CHAIRMAN FORMAN: You have one more minute.

10 MS. AKAU: So what I'm talking about, this
11 Rice-Cayetano case, I question the fact that he said
12 he comes from the Nation of Hawaii way back where his
13 parents were born during that time, so he claim to be
14 native. He didn't say he was American citizen, I
15 didn't hear him say it, and yet Congress, the judge,
16 the Supreme Court accepted him and took his case. Why
17 did they take his case? He's not an American. He is
18 a Hawaiian subject as he claims. So why don't they
19 look into that? We're talking about civil rights,
20 okay? The attorney or the judges should understand
21 what is civil rights. A right for the Hawaiians to
22 govern themselves and not to listen to anybody,
23 because right now, America is telling us how to
24 breathe, how to live, and if you tell us jump, we jump
25 how high. I was very disappointed with OHA, working

1 OHA --

2 CHAIRMAN FORMAN: Could you summarize, please?
3 Your time has expired. If you could briefly
4 summarize.

5 MS. AKAU: My time expired.

6 CHAIRMAN FORMAN: Yes. Are there any
7 questions --

8 MS. AKAU: No. The whole life of Hawaii
9 expired. Thank you.

10 CHAIRMAN FORMAN: Apparently, the numbers in my
11 list here are different than what I had before. I
12 believe Ms. Nunokawa was -- Ms. Nunokawa, please state
13 your name for the record and, if you wish, a position
14 or organization for the record.

15 MS. NUNOKAWA: Fast treadmill. My name is Jill
16 Nunokawa. I'm currently the civil rights counsel at
17 the University of Hawaii, Manoa, and I am formerly a
18 public defender and I practiced on five different
19 islands in the State of Hawaii.

20 I'm going to paraphrase my written testimony,
21 which you all don't have a copy of, but you will, and
22 I want to end by giving a few thoughts to what
23 Vice-Chair Reynoso had asked with regards to how are
24 we going to get there, merging indigenous, immigrant,
25 and American cultures.

1 First of all, I as well as others have worked
2 for years to draft and design a Native Hawaiian policy
3 at the University of Hawaii. Many felt the ongoing
4 injustices to Hawaiians were directly affecting their
5 ability to enter and remain at the University of
6 Hawaii.

7 The burdens and obstacles for Hawaiians in
8 higher education were particularly situated to their
9 historical plight within their own homelands. This
10 can be seen also relative to Native Americans and
11 Alaskan Villagers. However, unlike these two groups,
12 Hawaiians are relegated to ward-like status and it has
13 a lasting and devastating effect on their
14 socioeconomic situation.

15 We are currently unable to finish our task
16 recording the Native Hawaiian policy in light of the
17 Rice decision. We are also at risk of losing
18 supporting funding for Native Hawaiian tuition
19 waivers. Currently, the University has less than
20 2 percent Hawaiians, faculty and administration, and
21 less than 10 percent student enrollment at Manoa
22 specifically despite representing 25.5 percent of the
23 students in public schools in Hawaii.

24 In addition, as a former public defender, I
25 know firsthand the depressing facts and figures

1 regarding Hawaiians in their over-representation in
2 the prison system. Hawaiians make up over 40 percent
3 of the prison population despite being only 20 percent
4 of the state population. Most of the crimes are
5 drug-related and reflect the ongoing consequences of
6 the historical problems and issues that brought
7 Hawaiians their sovereignty, land, and dignity.

8 This very body opined in 1991 a lengthy broken
9 trust that you all are aware of, and they talked about
10 the disparate treatment. However, justice delayed has
11 been justice denied to the Hawaiians. Disparate
12 treatment found in 1991 will expand and multiply
13 without intervention because that, at that time,
14 almost a decade ago, there were federal, state, and
15 nonprofit entities supporting --

16 CHAIRMAN FORMAN: You have one minute.

17 MS. NUNOKAWA: -- Hawaiian initiatives,
18 including but not limited to education, health,
19 housing, okay? Rice vs. Cayetano decision could
20 adversely impact even that. So if you find in 1991
21 there's disparate treatment, you can guarantee that in
22 a decade or two decades with this impact, you're going
23 to see it multiplied in the systemic and edemic
24 problems that currently you see, that had a finding
25 then, are only going to exasperate.

1 To end, I'm going to end with this, I find this
2 hearing today ironic in timing. We have global
3 attention, 3 billion people watching what we call the
4 Olympics. We, as Americans, watch it and cheer for
5 Americans for the United States of America. Why?
6 Because we see it as a country. We don't go, "Oh,
7 Marion Jones and Michael Johnson, go black America."
8 We go, "Go United States. Go United States." But
9 funny, there was a woman named Kathy Freeman who ran
10 just a couple days ago and all, I believe all of the
11 world watched her. And when I asked people of every
12 ethnic group that I have come in contact with, "Why
13 did we watch Kathy Freeman with such hope?" And the
14 response I get from so many people is because there
15 was finally recognition, recognition of the aboriginal
16 people of the country of Australia. That's what
17 people saw, recognition. And yet, in our own state,
18 in our own country, we can't get recognition for the
19 aboriginal people of Hawaii because we're too busy
20 arguing over ethnicity. We're too busy arguing over
21 race.

22 And so to answer Vice-Chair Reynoso's inquiry,
23 how are we going to do this, how are we going to adopt
24 a 21st century identity which merges indigenous,
25 immigrant, and American cultures, and we're going to

1 do that by respecting and recognizing and
2 acknowledging and enforcing, okay, those groups.

3 We have not -- and I'm almost finished, David,
4 I promise -- we have not recognized indigenous, and if
5 you want to call them aborigine because global
6 Attention is looking, aboriginal status in this state.
7 That's the problem. So maybe we should have a
8 Hawaiian running that all of the globe is watching to
9 say, "Aboriginal, go for Hawaii." And that's how
10 we're going to get there. Mahalo.

11 CHAIRMAN FORMAN: Thank you. Excuse me for the
12 oversight, but we have an open seat. I'd like to
13 invite Williamson Chang up to the podium. But before,
14 the next person we'll hear from is Alice Greenwood.
15 Please state your name and, if you wish, a position or
16 organization for the record.

17 MS. GREENWOOD: I'm Alice Greenwood,
18 representing myself. You know, when the Rice-Cayetano
19 came into action, it was heard around the world. I
20 mean, it was heard in every single community because
21 every day, you opened up that TV and you opened up
22 that newspaper, they advertised all about the
23 Rice vs. Cayetano. Whenever they had the federal
24 reformation, when they had The Akaka Bill, now they
25 have the civil rights things, you hear it only one

1 day. So tell me how many people out there knows about
2 what's happening.

3 Like I said, every single day, you heard about
4 this Rice vs. Cayetano and how shocking the Hawaiians
5 had felt and everything else, and the rights of all
6 these people and everything, but nothing dealing to us
7 when it's time for justifying upon these things.

8 My mana'o goes out to those people that cannot
9 come here because they don't know. My issue is 1848.
10 I love doing history. I love researching. 1848,
11 there were three people that received lands and it
12 stated upon their deeds, I lilolilo, I give and
13 retreat to you and your heirs born in Hawaii portions
14 of this land. I will not mention the people's name
15 near the lands. These lands can never be given or
16 sold to any foreigners or haoles. These lands is for
17 your heirs born in Hawaii.

18 These men had Hawaiian wives, so he did not
19 discriminate. He just said, these heirs born in
20 Hawaii, and we all know they have Hawaiian in them and
21 they have hapa.

22 1893, of course, we all know about
23 Liliuokalani. By the grace of God and under the
24 Constitution of the Hawaiian Kingdom, duly advised
25 that we protest.

1 CHAIRMAN FORMAN: You have one minute
2 remaining.

3 MS. GREENWOOD: 1959, we became statehood, the
4 50th state. We were supposed to become the 49th
5 state. Why? Because they accused us of being
6 commoners. We had a racial amount of people and we
7 were accused of being commoners. For one whole year,
8 we had to prove that we're not commoners.

9 1960, one year later, the Advertiser and the
10 Star Bulletin advertises how much percentage were
11 Hawaiian that was voted -- had voted for the state.
12 1 percent. 1 percent were Hawaiians. Now we have
13 this Rice-Cayetano civil rights issue. Is this just?
14 I mean, you look all the way back. All of you folks
15 know.

16 CHAIRMAN FORMAN: I'm sorry, your time is up.
17 Could you briefly summarize?

18 MS. GREENWOOD: You all know. We have all
19 heard all of these things and everything. Please,
20 think of us. Thank you.

21 (Applause.)

22 CHAIRMAN FORMAN: Thank you. Nancy Stone.
23 Could you please state your name for the record and an
24 organization or position, if you wish.

25 MS. STONE: My name is Nancy Stone. I'm a

1 non-Hawaiian running for the Office of OHA. I am
2 running not to win. The reason I am running for this
3 position is because I've seen, as a teacher in this
4 state, firsthand what happens to the children here and
5 it breaks my heart and I can't teach here anymore.
6 They fail to recognize who these people are and what
7 they love, their traditional Hawaiian values that they
8 learn at home, and yet they go into school and they're
9 taught a whole new system and they're taught not to
10 feel good about themselves and not to cherish those
11 things and there's a conflict.

12 And if you want to talk about communism, isn't
13 that what communism does? Doesn't that -- where the
14 government makes confusion among the people? There
15 are children who look at each other and ask how much
16 bloodline do they have. I had a girl, just three
17 nights ago, come to me crying because her father never
18 signed her birth certificate and she doesn't know what
19 she's entitled to. She doesn't know her grandparents
20 wanted to sign, and she has no answers. She knows
21 she's part Hawaiian. She feels Hawaiian, but she
22 doesn't feel entitled.

23 Now, this Rice-Cayetano decision, I think, is
24 in many ways beneficial for this state because
25 children have been watching fighting going on back and

1 forth with racism and it's got to stop. Everybody's
2 looking at OHA and how they've acted in such an
3 angered manner. They're only reacting. They didn't
4 create this. They're a reaction to what's been
5 happening here.

6 I sit here as a white woman and I tell you that
7 I should be ashamed of many of the things that my
8 ancestors have done, and I apologize for that, and I
9 will do whatever I have to and stick my neck out as a
10 non-Hawaiian to help these children so that they don't
11 have to live like this anymore.

12 CHAIRMAN FORMAN: You have one minute
13 remaining.

14 MS. STONE: Okay. The gridlock here is
15 unbelievable with state government. I came from
16 Chicago. I thought they were bad. Hands down, this
17 place has it beat, trust me. I know how a machine can
18 work and how it can hurt and this machine hurts.

19 And you talk about equities and everything
20 else. We have a governor who can stand there and yell
21 on the screen and have children watch him about him
22 accusing a woman who's only 40 percent Hawaiian blood.
23 That would be Haunani Trask, Mililani's sister.
24 What's that make her? Which 40 percent? Her arm?
25 Leg? What? I don't know, to me.

1 But the whole thing evaluates around values and
2 that is what Hawaiians are about is their values and
3 family. These people who campaign for OHA, they list
4 their family and relatives, that's their source, and
5 these Hawaiian people have made me an ohana here and
6 given me so much, and I bring their children in my
7 home and they bring my children in their home, and
8 they've separated each other and they've caused all
9 this confusion because you're only part this and part
10 that. And everybody has to walk around and get a
11 blood test or something in this state just so that you
12 can find out whether or not you can walk through a
13 door. The racism has to be seen from where it started
14 and how it keeps on perpetuating, and it's got to stop
15 now because it's hurting these kids.

16 CHAIRMAN FORMAN: I'm sorry. You have no time
17 remaining. If you would like to briefly summarize.
18 Otherwise, we will receive --

19 MS. STONE: Yes. I'd like to get the support
20 of everybody here to write to the governor and write
21 to the superintendent of schools and put traditional
22 Hawaiian values in the schools. That's my only
23 purpose for being in this OHA race in the first place
24 was to help these people.

25 CHAIRMAN FORMAN: Thank you.

1 I believe next, we'll here from Williamson
2 Chang. Please state your name for the record and, if
3 you wish, position or organization.

4 MR. CHANG: My name is Williamson Chang. I'm a
5 professor of law at the University of Hawaii School of
6 Law. And as far as I know, I'm the only Native
7 Hawaiian who's a professor of law teaching Native
8 Hawaiians rights. I teach two courses. And I never
9 realized how intimidating three minutes can be. It's
10 an effective way of crushing any movement.

11 So I'm going to tell you what we do in class
12 because I'm a professional, this is part of my job.
13 I'm the only one in the United States who gets paid to
14 think about this stuff.

15 Rice vs. Cayetano, it doesn't matter to us.
16 It's a frame-up. Wrong question, wrong answer. We've
17 got a question of equal protection, but you got people
18 in the United States who forget that the United States
19 is made up of two kinds of people, those who came here
20 voluntarily and those who were here first. And those
21 who came voluntarily came from other places where they
22 left, or things weren't so good, or they wanted a
23 better life, they made choices. They can go back to
24 China, go back to Japan. They still got Chinese food.
25 They're still speaking Chinese, they don't have to

1 worry about that. But they came over here, my house,
2 and they made me an American and I got to worry about
3 the fact that we're not speaking Hawaiian right now
4 and I haven't seen poi in a long time. I'm part
5 Chinese. I don't worry about there's not going to be
6 Cantonese anymore.

7 So you tell me that America, that forgets the
8 fact that a great political experiment was conducted
9 in what we thought was a vacant lot actually had
10 people there and they had to kick them out and make
11 them walk from Georgia to Oklahoma and Honolulu? No.
12 There's two kinds of people, those who are Americans
13 by conquest and those who are Americans by consent.

14 I'll tell you, it makes a very big difference
15 because if you're an American by conquest, you've got
16 to spend at least one thing every day reminding
17 yourself that you're not an American. You know what I
18 do? I don't put a quarter in the parking meter. I'm
19 not stupid. I'm not going to go up to the Waianae
20 Police Station with an AK47 and shoot people. That's
21 not my form of consent. I've got to remind myself
22 that I'm Hawaiian, so every day, I have to do
23 something different, and that's why I can't like want
24 to go to Stanford and play the violin, and all of
25 that, and just be American and assimilate because

1 otherwise, it's the end of the Hawaiian people, and
2 we're real close to that, I want you to know that;
3 that when this generation of kupuna goes, it goes.

4 And I can understand Rice vs. Cayetano. I
5 taught at the University of Wisconsin and I taught in
6 Perth and Australia as a Fulbright scholar, and I
7 didn't give a hoot when I was out there about those
8 people. When I was in Hawaii and I was getting rich
9 and getting land and making money, I feel guilty deep
10 down inside because people are hurting out here.
11 People are really hurting. And when you get rich
12 because other people are going to hurt and you're not
13 from there, how good does that feel? How does that
14 make that success really seem so glowing? You need
15 something, you need somebody to tell you, it's okay.
16 It's the law.

17 CHAIRMAN FORMAN: Professor Chang, could you
18 briefly summarize? I'm sorry. I missed the
19 one-minute mark.

20 MR. CHANG: I'll just reiterate how
21 intimidating three minutes is, how it can crush any
22 indigenous movement and that this is the wrong
23 question. We have a problem, that is, the conquest of
24 Hawaii. That is a 1970 legal issue where the answers
25 are obvious, the restoration of sovereignty, the pass

1 through a second phase, a cold war, which the world
2 was divided into two camps where you belong to one or
3 the other, and all information, all power was
4 centralized, either the Soviet Union or the United
5 States, and you had to have secrets, you had to have
6 secrets. Hawaii was a huge secret. Hawaii was a
7 military base. You could never tell anybody the truth
8 about Hawaii. But now it's the 21st Century. It's
9 the age of globalization. It's the Net. Hawaiians
10 have the power. All they need is a broken down
11 pentium to go inside the garage and they can get their
12 word out to everybody in the world when, 25 years ago,
13 you'd have Naval Intelligence visiting you and the FBI
14 closing down your little telephone.

15 You have the difficult job of figuring out what
16 is the answer to a question where Hawaiians, they
17 don't really want to go and be like start all over,
18 because all you have to do is look at Africa and see
19 the civil wars there.

20 CHAIRMAN FORMAN: Mr. Chang, could I ask you to
21 conclude so we can save some time for questions.

22 MR. CHANG: All right. I'll close with this.
23 What's really important to the world right now is the
24 reaffirmation that we're not alone, but there's two
25 kinds of countries, uncommunists and communists,

1 they're capitalist countries, but there are
2 kleptocracies and democracies. Kleptocracies are
3 countries where everybody is corrupt.

4 CHAIRMAN FORMAN: Professor Chang, I know that
5 you can...(inaudible)

6 MR. CHANG: This is my house. This is my
7 house.

8 CHAIRMAN FORMAN: Professor Chang, the record
9 will remain open for 30 days. I know you've done
10 quite a bit of writing that would edify the Committee
11 and if you could submit on any topic --

12 MR. CHANG: Ten seconds?

13 CHAIRMAN FORMAN: I will entertain -- perhaps
14 one of the Commission members will, I'm sure one of
15 the Commission members or Committee Members will.

16 MR. CHANG: Finish the thought.

17 CHAIRMAN FORMAN: Just a second. Mr. Reynoso
18 is going to ask a question and he has indicated that
19 he will direct this question to you.

20 COMMISSIONER REYNOSO: I volunteered. What did
21 you have to tell us in 10 seconds?

22 MR. CHANG: It's very importantly to start to
23 reaffirm the validity and integrity of the law,
24 because the United States has got a central position
25 in the world and that's the truth. We can't force our

1 will on them. And when we have the power to
2 disseminate information through the Internet the way
3 we do and the United States loses the respect of the
4 other nations of the world, and the United States has
5 seen some variant of Russia, which is a capitalist
6 mafia, the world's going to fall apart.

7 What I'm trying to say is it's in the interest
8 of the United States. What are they worried about?
9 Do they think Hawaiians are going to go to the House
10 of Representatives and shoot them like Puerto Ricans
11 did in '54? No. We're the only people conquered and
12 occupied, Native Hawaiians, who never shot, even took
13 an aim at the enemy. It's like Bambi versus Godzilla.
14 What are we worried about?

15 The truth is, yeah, you took a country. What's
16 wrong with admitting it? Because what the future is
17 is we're going to become like, you know that part of
18 the New York with the UN where you can go there and
19 they have policemen from New York arrest you, which is
20 wonderful, you don't get past. But you go across the
21 street, you can buy a hotdog, go to a Broadway play,
22 you get the benefits of both. That's Hawaii. We
23 don't have to be a nation. Sovereignty,
24 territoriality, boundaries are irrelevant. This is go
25 home and boot up the computer. You're in the global

1 electronic herd. And I tell you, if you don't catch
2 on real quick, you're like road kill.

3 CHAIRMAN FORMAN: Thank you, Professor Chang.

4 (Applause)

5 CHAIRMAN FORMAN: The Hawaii Advisory Committee
6 had asked, we had proposed that this meeting stretch
7 over three days, and we're sorry that we weren't able
8 to accomplish what we had requested. And also, I
9 mentioned earlier today that the force behind this
10 meeting, our Chair, Kahu Charles Maxwell, he's the one
11 that really pushed hard for this meeting and pushed
12 very hard to bring our guest Commissioners from the
13 U.S. Commission on Civil Rights here, to Hawaii, for
14 the first time. This is the first time the
15 Commissioners have been here in an official capacity
16 as volunteers for the Commission on Civil Rights.

17 Unfortunately, Kahu Maxwell is recovering in
18 the hospital. I hear that he's doing better and our
19 wishes go out to him and we wish that he could have
20 been here with you.

21 Unfortunately, we don't have any additional
22 time, unless there's a question from one of the
23 Commission members or Committee Members. Committee
24 Member Murakami?

25 COMMITTEE MEMBER MURAKAMI: Jill, I'm not sure

1 if you're here in your official capacity.

2 MS. NUNOKAWA: Sure.

3 COMMITTEE MEMBER MURAKAMI: In response to
4 Chairperson Reynoso's questions about how to get
5 there, you said respect, recognize, and enforce the
6 rights of Hawaiians.

7 MS. NUNOKAWA: That was part of it, yes.

8 COMMITTEE MEMBER MURAKAMI: I guess to bring it
9 home to what's happening now with respect to the Akaka
10 Bill, which is an attempt to recognize political
11 relationship with Hawaiians, what is your position
12 about whether this bill should be enacted?

13 CHAIRMAN FORMAN: Could you put the microphone
14 a little closer?

15 MS. NUNOKAWA: I heard it. I don't know if
16 everybody else heard it, but I'll repeat it. My
17 position on The Akaka Bill, I believe that at this
18 stage of history, it's imperative, because without it,
19 we know that the color-blind America and a lot of
20 money out there that I'm sure the Civil Rights
21 Commission acknowledges, knows it's out there, is
22 going to begin to attack every single -- whether it's
23 Affirmative Action or anything else, they're going to
24 attack things and reverse racism. And again, we're
25 going back to the ethnic/racial lines as I was trying

1 to respond to Mr. Reynoso's questions.

2 And the problem is that not just Hawaii, but
3 the nation and the world does not acknowledge and
4 recognize and enforce indigenous/aboriginal rights,
5 and we're going to get into this tossing back and
6 forth money, money-motivated incentives, to basically
7 eliminate, not just erode, which we're seeing on
8 Affirmative Action issues, not just erode on race per
9 se, but eliminate. And once these things begin to get
10 eliminated, federal fundings, okay, not Hawaii Noe Au,
11 Punanaleo, okay, just across the board, how many
12 hundred-something programs.

13 When that happens, and still the fight for
14 whether it's self-determination, sovereignty and the
15 rest of it, it makes it that much more difficult
16 because if I don't have Hawaiians, we don't have
17 Hawaiians in higher education, we have more and more
18 Hawaiians, you think it's 47 percent now
19 over-representation in prisons. Just wait. When you
20 end all of the programs for higher education and all
21 of the educational programs and housing and health,
22 where do they all go? They're going to end up in the
23 industrial prison industry. We're seeing it on the
24 continent with African-Americans. We'll see it here.
25 It's not too far away from reservations.

1 Thank God they got certain protections
2 recognized as indigenous peoples. We don't have that.
3 So unless you begin to have some mechanism that the
4 United States recognizes, it's not how Native
5 Hawaiians see themselves. That's not what The Akaka
6 Bill is about. It's about how the United States is
7 going to treat this entity, not how they treat
8 themselves. Let them have self-determination.

9 So I put The Akaka Bill to that extent where it
10 can at least insulate what we currently have and allow
11 the Hawaiians self-determination.

12 CHAIRMAN FORMAN: Thank you, Professor Chang, I
13 had the privilege of studying Native Hawaiian rights
14 with you at the University of Hawaii. I know that you
15 have written a great deal and have much to offer the
16 Commissioners and Committee Members. I'm hoping that
17 you will take the opportunity to provide additional
18 written submissions. The record will be left open for
19 30 days.

20 The same goes for the rest of the panelists and
21 members of the audience. The record will be left open
22 for 30 days and you are invited to submit your
23 additional testimony to the Western Regional Office of
24 the United States Commission on Civil Rights, 3660
25 Wilshire Boulevard, Suite 810, Los Angeles,

1 California, 90010. Thank you very much.

2 MS. AKAU: Is there a limit? Is there a
3 limitation in doing our report?

4 CHAIRMAN FORMAN: There is no limitation.
5 Thank you.

6 We had two other persons who had signed up to
7 give testimony, Luckie Rodenhurst and A'o Pohakupu
8 Rodenhurst. Mrs. Rodenhurst, staff has suggested to
9 me that your sons are going to do a chant. Would it
10 be more appropriate for that to close the session and
11 start with you or should they --

12 MRS. RODENHURST: That's my testimony. All
13 right?

14 CHAIRMAN FORMAN: Sure, sure. It's just that
15 Luckie had signed up --

16 MRS. RODENHURST: Yeah. I'm taking his three
17 minutes and my boys are going to chant, because I had
18 signed up for my boys, but they said we were like one
19 person.

20 CHAIRMAN FORMAN: Okay. Please, if you
21 would -- that's fine. Staff has indicated that that's
22 perfectly fine. If you could, state your name and, if
23 you wish, a position or organization for the record.

24 MRS. RODENHURST: I will. But before I begin,
25 I wanted to, because our people were traditional

1 people --

2 CHAIRMAN FORMAN: Excuse me, members of the
3 audience, could you please refrain from making
4 comments so that we can hear the testimony and so that
5 the reporter can accurately reflect what is said here
6 today. Thank you.

7 MRS. RODENHURST: Aloha. A'o Pohakupu
8 Rodenhurst. I am the (speaking Hawaiian) kupuna. I
9 am the founder and the head of the spiritual nation of
10 Ku and the Council of Sovereigns. I am a kaula of the
11 Council of Sovereigns. We are a spiritual people. I
12 am pure Hawaiian. I am here with the last of my two
13 sons of 11 children. We are not Americans. We are
14 Hawaiians. We can trace our bloodline 3,000 years
15 here. And because our people was a traditional people
16 and I know you, David, and Alan, I wanted to have part
17 of my testimony done in a very traditional manner.

18 You know my sons as we have been fighting for
19 Native Hawaiian rights or even any rights at all to
20 exist as free people in this land called Hawaii ne'i,
21 not called America. We do not recognize this land,
22 this aina, as America. It was never conquered. And
23 our people share this aina with many people of the
24 world. And the reason the mana and power of this land
25 has been so sacred and kapu to every person who comes

1 here find it paradise, it is not about racism.
2 Hawaiians were never racists. It is about who we were
3 as a people. So my testimony is going to be very,
4 very short because nobody has ever done this.
5 Everybody has claimed their own positions. I say the
6 gods have asked me to come here because I did not see
7 in the paper, I just saw it yesterday, when this thing
8 was going to happen, because I don't like to read the
9 trash in the paper, I don't like to watch all the
10 disgusting propaganda in the news. I don't bother
11 myself with things like that. I believe in raising my
12 children in the old way, in the new way, spiritual
13 righteousness, and to live as free people in peace
14 with every person as our family has many colors.

15 But we are proud to be Hawaiians. We have
16 always been proud to be Hawaiians. There is no place
17 we can go to be Hawaiians but here. We take pride in
18 the sacredness of this land that was built by our
19 forefathers and the gods of our land that have taught
20 people healing called hooponopono. We have taught the
21 world how to see ho'ailonas, how to heal. We have
22 taught them the word that everybody has molested and
23 fornicated, that word called aloha.

24 So I come today with my boys because I want the
25 gods to say who they are, the kaulas to speak, the

1 kahunas, the learned people, to speak that the living
2 God Jehovah, who I am a servant of, have given me the
3 right to help all people of this land. All people, we
4 have helped and we live in peace. But nobody of the
5 American government has made peace for us kind of
6 people, but want to force us to be Americans, force us
7 to share everything, even our ethnicity. They tried
8 to steal our identity by claiming they are Hawaiians.
9 They are not Hawaiians. We will never give this up.

10 People who do not have culture cannot
11 understand this. People who are raised just colonized
12 cannot begin to understand the pain and the suffering
13 of what our ancestors went through, losing their
14 lands, their identity, and being kicked to the curb by
15 colonization and foreign laws and rules.

16 And nobody, all the entities that exist, have
17 never been able to fight for people like us to live as
18 free, to go in the rivers to catch fish, rivers behind
19 my house that people, foreign people, want to now come
20 for everything, "This is mine, they say. You cannot
21 go here. You have to act this way. You have to talk
22 this way." Pono'ole, nobody fights for people like
23 us.

24 People are fornicators of the law. They
25 fornicate the righteousness of the supreme laws of the

1 land which was given truly by God. They fornicate the
 2 teachings of history and they perpetuate the lies in
 3 our schools. But the gods, we are the voice of the
 4 old, the ancient council, and I would like them to
 5 voice their mana'o here today so that you, civil
 6 rights people who come, welcome to Hawaii. I don't
 7 say welcome to America. I say welcome to Hawaii,
 8 because I want them to leave you with a lasting
 9 impression that as my son Pookela chants, the gods
 10 will give him the ole right now, not man taught, but
 11 they will teach and they have been teaching him and
 12 telling what they want. So I will blow one pu. That
 13 is to say we have come here this day and they will
 14 leave their mana'o with you traditionally.

15 Step up. Step up. Kana'i. Begin.

16 They sound the pu so that they can be
 17 recognized. Today they bring their testimonies. The
 18 kaulas of the (inaudible)

19 (Chanting)

20 MRS. RODENHURST: Come here today. Warriors
 21 come forth who fight for this land which they say is
 22 theirs. What has happened. Have I been forgotten?
 23 We come to purge the land. I am Ukemi Mo'u (phonetic
 24 spelling). I have made all the lands come together.
 25 And the wrong that has been done in this land, the

1 great wrongs that have been done to my people, have a
2 discussion with us, the gods. Nobody recognizes us.
3 We have always been. In closing, the gods have said,
4 we have always been here and we will always be.

5 You are called civil rights people. They want
6 to know where are our rights, people like us, things
7 that have always been in place. None of you should be
8 dispossessed from that which you love. None of you
9 and your children should be dispossessed from who you
10 are, and never shall we as a people not live aloha and
11 share our aloha and then be fornicated by laws that do
12 not apply to people like us.

13 We ask you to do what is right, what is
14 spiritually correct, not under the law, but what is
15 spiritually correct. That is all (inaudible) the gods
16 ask today. You come here, pay attention. It is not
17 what is illegal that is made legal, that is made
18 perfect. This is not an American story. This is our
19 mo'olelo, our story. Mahalo.

20 CHAIRMAN FORMAN: Thank you very much. This
21 concludes today's fact-finding meeting. Again, if
22 there are individuals who would like to submit
23 additional testimony, please do so. Thank you very
24 much. This meeting is adjourned.
25 (Concluded at 6:03 p.m.)

C E R T I F I C A T E

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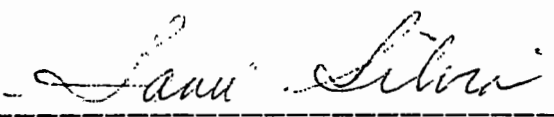
I, SAMI SILVIA, RPR, CRR, CSR, in and for the State of Hawaii, do hereby certify:

That I was acting as shorthand reporter in the foregoing matter on the 29th day of September, 2000.

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: October 13, 2000.



SAMI SILVIA, RPR, CRR, CSR #206