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HAWAI'I STATE ADVISORY COMMITTEE

to the

UNITED STATES COMMISSION ON CIVIL RIGHTS

BRIEFING

Commencing at 8:30 a.m.

Thursday, March 23, 2006

Waikiki Beach Marriott Hotel

Milo I

2552 Kalakaua Avenue

Honolulu, Hawai'i

Reported by Holly M. Hackett, RPR, CSR #130
Certified Shorthand Reporter

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Hawai'i State Advisory Committee

David M. Forman, Chairperson - Honolulu

M. Nalani Fujimori - Honolulu

David H. Helela - Kapa'a

Faye Kennedy - Honolulu

Kahu Charles Maxwell - Maui (via speakerphone)

Kaulana Park - Honolulu

Oswald Stender - Kailua

BRIEFING PANEL

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Gary Smith 46
Executive Director, Hawai'i Disability Rights Center

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Domestic Violence Clearinghouse and Legal Hotline

Alphonso Braggs 83
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ACLU of Hawai'i

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Coordinator, Community Alliance on Prisons

Jo-Ann M. Adams, Law Office of Jo-Ann M. Adams 139

Also Present: William Woods-Bateman 164

1 March 23, 2006

2 MR. FORMAN: Good morning. This briefing meeting of the
3 Hawai'i Advisory Committee will now come to order. I just
4 wanted to note that we are amending the agenda to accommodate
5 some of our invited speakers who have some conflicts. Any
6 objections from the SAC members?

7 MS. FUJIMORI: No.

8 MR. FORMAN: Okay. Thank you. Any objections from the
9 SAC members? Okay. Hearing none, I'm David Forman,
10 Chairperson of the Hawai'i Advisory Committee to the U.S.
11 Commission on Civil Rights.

12 The Commission on Civil Rights is an independent
13 agency of the United States Government established by Congress
14 in 1957 and directed to:

15 1) Investigate complaints alleging that citizens are
16 being deprived of their right to vote by reason of their race,
17 color, religion, sex, age, handicap or national origin or by
18 reason of fraudulent practices.

19 MR. MAXWELL: David, I'm getting a lot of static. I
20 cannot hear nothing.

21 MR. FORMAN: Okay. Let's see if we can make some
22 adjustments to the phone so that SAC Member Maxwell can hear
23 us.

24 MR. PILLA: (making sound adjustments.) How's that?

25 MR. MAXWELL: Yeah, okay. It stopped.

1 MR. PILLA: It may come on intermittently.

2 MR. MAXWELL: If you got water close by you can pour
3 water on it. That helps. (Laughter)

4 MR. FORMAN: I was about ready to kick it. All right.
5 I'll continue. I'm just doing kind of the introductory
6 remarks, Uncle Charley. You're familiar with these having been
7 our Chairperson in the past and read them many times.

8 MR. MAXWELL: Yep.

9 MR. FORMAN: The second purpose: Study and collect
10 information concerning legal developments constituting
11 discrimination or denial of equal protection of the laws under
12 the Constitution because of race, color, religion, sex, age,
13 handicap, or national origin, or in the administration of
14 justice.

15 3) Appraise federal laws and policies with respect to
16 discrimination or denial of equal protection of the laws.

17 4) Serve as a national clearinghouse for information
18 about discrimination. And

19 5) Submit reports, findings and recommendations to the
20 president and congress.

21 Advisory committees were established in each state and
22 the District of Columbia in accordance with enabling
23 legislation and the Federal Advisory Committee Act to advise
24 the commission on matters pertaining to discrimination or
25 denials of equal protection of the laws because of race,

1 color, religion, sex, national origin, age, handicap or in the
2 administration of justice, and to aid the commission in its
3 statutory obligation to serve as a national clearinghouse for
4 information on those subjects.

5 The purpose of the meeting today is to obtain
6 information on the status of civil rights in Hawai'i. Based
7 upon the information collected at this meeting a summary will
8 be prepared for the use of the advisory committee and
9 submission to the United States Commission on Civil Rights.

10 Other members of the Hawai'i Advisory Committee are:
11 Vice-Chairperson Faye Kennedy, Allen Ai, Robin Danner, M.
12 Nalani Fujimori, David Helela, Charles Maxwell, Alan Murakami,
13 Kaulana Park, Kealoha Pisciotta, Oswald Stender and Jackie
14 Young.

15 Also present with us today is Thomas V. Pilla of the
16 commission's western regional office in Los Angeles. Please
17 seek Mr. Pilla out if you require assistance.

18 This meeting is being held pursuant to federal rules
19 applicable to state advisory committees and regulations
20 promulgated by the U.S. Commission on Civil Rights. All
21 requests regarding these provisions should be directed to
22 commission staff.

23 I would like to emphasize that this is a briefing
24 meeting and not an adversarial proceeding. Individuals have
25 been invited to come and share with the committee information

1 relevant to the subject of today's inquiry. Each person who
2 will participate has voluntarily agreed to meet with the
3 committee.

4 The record of this meeting will remain open for a
5 period of thirty days following its conclusion. The committee
6 welcomes additional written statements and exhibits for
7 inclusion in the record.

8 These items should be submitted to the Western Regional
9 Office of the United States Commission on Civil Rights, 300
10 North Los Angeles Street, Suite 2010, Los Angeles, California,
11 90012. Commission staff should be able to assist you in the
12 process for submitting information.

13 Let's proceed with Attorney General Mark Bennett.
14 Please state your name and spell it for the record.

15 MR. BENNETT: Mark Bennett, M-a-r-k B-e-n-n-e-t-t.

16 MR. FORMAN: Thank you, Attorney General Bennett.

17 MR. BENNETT: We'll, I'd like to first thank you very
18 much for inviting me to speak to you today on a subject that I
19 consider to be of paramount importance to our state and that is
20 S147 in the United States Senate locally known as the Akaka
21 Bill.

22 And while I am certain that the audience here is very
23 familiar with the bill, what I'd like to do is state some
24 things that I think are very basic. And I apologize if I go
25 over some of these basic things, things that are those that

1 everyone is familiar with.

2 One has to start, as one often does, with the
3 constitution of the United States. The framers of the
4 constitution provided among the many powers of the Congress of
5 the United States the power to regulate commerce among the
6 Indian nations, with and among the Indian nations. This
7 provision of the United States Constitution has come to be
8 known as the Indian Commerce Clause.

9 Over the last 200 years but especially in the last
10 hundred years the Supreme Court of the United States has said
11 that what the framers intended is that the congress has nigh
12 on plenary power to determine what constitutes an Indian
13 tribe, to recognize an Indian tribe, to cease recognition of
14 an Indian tribe, to recognize again an Indian tribe that it
15 once recognized and ceased recognition of and to determine how
16 it is going to conduct its relationships with those Indian
17 tribes, whether it's going to treat them on a nation-to-nation
18 basis or on some other basis.

19 Part of what the Congress has done with regard to
20 Indian tribes is it has provided special benefits to Indian
21 tribes, although I'm sure that characterization at least in a
22 philosophical sense could be disputed, but in a legal sense
23 benefits that are not available in some circumstances to other
24 groups has directed legislation both remedial and otherwise
25 for the benefit of Indian tribes.

1 And has made provisions that, for example, some types
2 of jobs or some types of programs in the federal government
3 can only be given to Indian tribes, native Americans.

4 These programs have come under challenge in the courts.
5 And one of the primary challenges of these programs has been a
6 claim that Indians, that native Americans are a race. And
7 that programs that benefit native Americans are a racial
8 preference by the Congress and are illegal under the Fifth
9 Amendment to the United States Constitution unless they can be
10 justified by what the courts have called strict scrutiny.

11 The Supreme Court in the primary case in this area, is
12 a case called Morton v. Montary, rejected that claim. And it
13 went back to the framers. And it said looking at the Indian
14 Commerce Clause the framers intended that the way the congress
15 chooses to treat with the Indian nations is political. And it
16 is a political decision by congress as to how to deal with the
17 Indian nations under the Indian Commerce Clause. And benefits
18 that are provided are political not racial in nature.

19 And that in determining whether benefits can be
20 provided to Indians that you only apply what's called the
21 rational basis test. Is the distinction rationally related to
22 a permissible objective. You don't have to have intermediate
23 or higher scrutiny. You don't have to have strict scrutiny.

24 And in the, I believe it's the 1970s although it might
25 have been in the late '60s, the congress made a determination

1 that even though native Alaskans were not the same as American
2 Indians or native Americans, that it was going to choose, as
3 they were the indigenous people of Alaska, it was going to
4 treat them in much the same way that it had decided to treat
5 American Indians.

6 And there has never been a successful challenge to
7 congress's determination to treat native Alaskans like native
8 Americans who are Indians, even though it is clear that they
9 are not, that there are significant types of differences. And
10 that one can look at the differences of racial or cultural but
11 it's an accepted historical fact that they are not the same.

12 A similar type of challenge was made to the congress's
13 attempt early last century to treat the Pueblos of the
14 Southwest like American Indians. The Supreme Court said the
15 Pueblos are not like other native Americans. They don't
16 generally organize in tribes. There are many other types of
17 distinctions. But like native Americans they are a native
18 people of the United States.

19 And if the congress chooses to treat them like other
20 Indian tribes, we the Supreme Court are not going to say to
21 our coequal branch of government, "You don't have the
22 authority to do this. Reasonable people could differ. We
23 might decide something else, but we believe that you at
24 Congress have the plenary power to decide that you're going to
25 treat Pueblos like other American Indian tribes."

1 And the same rationale applied to the congress's
2 decision to treat native Alaskans like other native Americans.

3 So what we are faced with factually is Congress has
4 afforded explicit recognition to hundreds of Indian tribes in
5 the continental United States. Congress has afforded explicit
6 recognition under the Indian Commerce Clause to native
7 Alaskans.

8 The only native group in the United States as a people
9 that congress has not extended formal recognition to is native
10 Hawaiians. Although congress has passed more than a hundred
11 statutes in which it has either said explicitly or recognized
12 implicitly that native Hawaiians as the native people of the
13 Hawaiian archipelago that they are entitled to legally treat
14 native Hawaiians in the same way that they treat other native
15 peoples in the United States.

16 Whether we're dealing with education or other types of
17 issues, the congress has spoken in terms of benefits that it's
18 provided and in terms of findings in historical acts. But it
19 has not specifically afforded the type of specific and
20 explicit recognition to native Hawaiians that it has to other
21 groups.

22 As I think everyone in this room is aware there are
23 many programs that benefit native Hawaiians. Indeed, part of
24 the compact that admitted Hawai'i as a state to the United
25 States needs required Hawai'i to take over management of the

1 Hawaiian Homes Programs from the congress; for the state of
2 Hawai'i to replace the United States as the trustee.

3 And Section 5-F of the Admissions Act requires the
4 state specifically to use some of the proceeds from ceded
5 lands to benefit native Hawaiians. So this was a part of the
6 very compact that made Hawai'i a state.

7 Yet all of these programs, federal and state, whether
8 the Office of Hawaiian Affairs established by our
9 constitution, the native Hawaiian Homes program established by
10 the congress in 1920 and made a part of our constitution, all
11 of these programs are under attack by those who claim that
12 programs that benefit native Hawaiians are racial benefits and
13 are illegal under the Fourteenth Amendment to the
14 constitution.

15 And that the only way they can survive a legalistic
16 challenge is if the state can demonstrate a compelling state
17 interest for or the federal government to demonstrate a
18 compelling state interest.

19 As a practical matter, while it is conceivable that
20 there are some case out there providing a racial distinction
21 that has been upheld by a court where the test has been
22 compelling state interest, I'm not familiar with one.

23 And in a seminal case in front of the Supreme Court,
24 either a year or two years ago, involving California where
25 they segregated prisoners based on race upon admission to

1 prison because they presented with a belief there was
2 compelling empirical evidence that when they were mixing
3 certain racial groups in certain types of prisons in
4 California people were killing each other. And that it was
5 necessary to separate certain racial groups in prison.

6 The Supreme Court said, "No, we accept this empirical
7 statement but that's not a compelling enough state interest to
8 justify it. And what you're doing is illegal."

9 And what I take from that case as a practical matter is
10 that it would be very hard for anyone to make out a case for a
11 compelling state interest that would satisfy the Supreme Court
12 if they were to find that a distinction or a preference was
13 racial rather than political.

14 That gets us to what the primary purpose from my
15 perspective is of the Akaka Bill. What basically the Akaka
16 Bill does is it sets out explicitly that the congress of the
17 United States finds that it has the power under the Indian
18 Commerce Clause to afford recognition to native Hawaiians in
19 the same way it has afforded recognition to native Americans
20 and to native Alaskans. That is the vast majority of what the
21 bill does.

22 What the bill also does, however, is that it sets up a
23 process for native Hawaiians to organize, for a role of
24 eligible voters to be certified, and for the Department of the
25 Interior basically to allow an election to be conducted among

1 native Hawaiians to establish an organic governing document
2 and membership criteria in the native Hawaiian governing
3 entity.

4 And once that process concludes, at that point and is
5 recognized by the Department of the Interior, at that point
6 the bill contemplates specific negotiations between the native
7 Hawaiian governing entity, the state of Hawai'i and the United
8 States which will discuss what the limits of the powers will
9 be of the native Hawaiian governing entity; what assets the
10 native Hawaiian governing entity will receive such as land or
11 money, what type of criminal and civil jurisdiction the native
12 Hawaiian governing entity will have and matters like that.

13 But it affords immediate recognition. It makes a
14 statement that congress is exercising its power under the
15 Indian Commerce Clause. And it sets up a process for tribe/
16 governmental negotiations that will ultimately have to be
17 ratified by the State Legislature and the congress. That is
18 in essence what the Akaka Bill does.

19 My guess is, since becoming Attorney General three
20 years ago, I have been involved in numerous discussions on the
21 subject of whether the Akaka Bill would be constitutional or
22 not.

23 I have been in many debates on the subject of people
24 claiming that the Akaka Bill is not within the power of
25 congress because congress does not have power under the Indian

1 Commerce Clause to afford recognition to native Hawaiians in
2 the same way it's afforded recognition to other native groups
3 in the United States.

4 Although I accept the good faith of some of the people
5 with whom I have debated on this subject, I believe fully and
6 firmly that that position asserted by opponents of the Akaka
7 Bill is baseless and is wholly without legal merit.

8 I believe that if this bill were passed and it is
9 challenged, which it almost certainly will be, and it will get
10 to the Supreme Court of the United States, that the Supreme
11 Court of the United States would say that, "That while we
12 might not decide that it makes good policy sense to recognize
13 native Hawaiians like other native peoples, the congress has
14 the plenary power under the Indian Commerce Clause to do this;
15 we as a court have never denied congress this power. And
16 there are easily enough historical and other reasons why we
17 are going to say the congress of the United States has this
18 power."

19 Part of what we submitted or what was submitted to the
20 United States Civil Rights Commission on this and what we have
21 submitted to the congress is not only my briefing paper as to
22 my legal conclusion on this issue but a briefing paper of what
23 I would describe as one of the foremost conservative legal
24 scholars in the country Viet Dinh, who was the previous head
25 of the Office of Legal Counsel in the Department of Justice,

1 now a professor at Georgetown and also works in private
2 practice. And he has concluded as well that the clear answer
3 to the question of whether the Akaka Bill is constitutional
4 is: Yes. Congress has this plenary power. And the Supreme
5 Court is not going to for the first time in the history of our
6 nation essentially deny to congress the ability to decide what
7 constitutes a native people with whom they can deal under the
8 Indian Commerce Clause of the United States.

9 I also believe that the Akaka Bill is both fair and
10 just and wise. There is no justification for treating the
11 native peoples of Hawai'i basically as second class citizens
12 among the native peoples of our country.

13 Why should the congress afford recognition to hundreds
14 of native American Indian groups, to native Alaskans, but
15 decide not to afford that same recognition, that same legal
16 protection and the same umbrella of Morton v. Montary to
17 native Hawaiians?

18 If one wants to discuss history, one need only look at
19 the logbooks of members of the crew of Captain Cook when they
20 first came to the Hawaiian archipelago. They believed that
21 the people they were dealing with were Indians. They were
22 contemporaries of the framers of the constitution.

23 Anyone who believes that those who framed our
24 constitution would not have believed that native Hawaiians
25 occupied generally the same status constitutionally as

1 American Indian tribes just are not students of history, 18th
2 Century or otherwise.

3 So whether people want to look at it on an historical
4 basis or on an equal footing basis or on a fairness and
5 justice basis, there is simply no basis for denying native
6 Hawaiians the type of recognition that other native groups in
7 the country have had.

8 Two questions that have been passed on to me that
9 people have raised that I think, quite frankly, are complete
10 red herrings, not that it's being passed on to me. These are
11 questions that are being raised. But these are red herrings.

12 Some have claimed that by passing the Akaka Bill,
13 quote, "The flood gates will open for all other so-called
14 native groups." People have talked about Hispanic Americans.
15 Or in a *reductio ad absurdum* argument they've talked about
16 Italian Americans.

17 And the fact is none of these groups historically are
18 indigenous peoples of the regions where they now reside. And
19 that is what the congress has to look at in deciding whether a
20 group qualifies to be recognized under the Indian Commerce
21 Clause.

22 And if there are American Indian groups that have been
23 in a particular place for 500 or a thousand years, the
24 congress has the power to recognize them.

25 Quite frankly, if we're simply talking, as some people

1 are, about immigrants from other countries after the founding
2 of the United States, congress has no power to recognize them
3 as Indian tribes under the Indian Commerce Clause. And those
4 who suggest that the quote, unquote "flood gates will be
5 opened" are putting forth what in my view is a nonsensical
6 argument.

7 One question that was put to me is some have claimed
8 that the Akaka Bill would further complicate the already
9 complex native Indian Tribe Laws that are quote, "ripe for
10 reform."

11 The Akaka Bill has the support of all of the major
12 native American and native Alaskan organizations, the full
13 100 percent support because it is just and fair.

14 The fact that, in essence, there is one more group that
15 is being added to the hundreds of groups that congress
16 recognizes as native tribes, the suggestion that that will
17 somehow complicate the already complex native Indian tribe
18 laws again is just absolute nonsense.

19 There is no question that there are significant
20 problems. And that is clearly an understatement in the way
21 the Department of Interior has dealt with its trust
22 responsibilities. And one need only read some of the
23 decisions in the Kovell case, whatever one's perspective, to
24 know that there have been no serious problems. But the
25 suggestion that the Akaka Bill will somehow add to the

1 problems is just completely untrue.

2 I have spent hours in negotiations with individuals of
3 the Department of Justice, the Department of the Interior and
4 even the Department of Defense on proposed amendments to the
5 Akaka Bill to satisfy practical concerns of the federal
6 government regarding the operation of the bill.

7 And if the bill reaches the floor those amendments
8 which have been approved by Senators Akaka and Inouye and the
9 other co-sponsors of the bill will be incorporated in the bill
10 but they relate to practical concerns regarding the operations
11 of the bill.

12 The passage of the Akaka Bill will not in any way
13 complicate an already complicated regulatory system. So to me
14 the issues that are raised, can I guarantee that the Akaka
15 Bill will be held to be constitutional? No, I can't guarantee
16 that any court is going to do anything.

17 But what I can say is that the legal arguments that I
18 have seen demonstrate to me quite clearly that the Akaka Bill
19 will survive constitutional challenge. It doesn't violate the
20 Fifth Amendment; the state programs that benefit native
21 Hawaiians, don't now, but certainly wouldn't violate the
22 Fourteenth Amendment in the light of the Akaka Bill.

23 And to the extent that this group has any ability to
24 support the passage of the Akaka Bill I would respectfully ask
25 you to do it. And I'm available for maybe 10 or 15 minutes

1 for questions you may have. I do have a 10:00 hearing, an
2 argument that I have to make in federal court.

3 MR. FORMAN: Thank you very much, Attorney General
4 Bennett. Before opening it up for questions from the SAC
5 members, just because there seem to be -- well, let me start
6 this way.

7 I understand that you, and I appreciate that you had
8 made efforts to appear before the U.S. Commission on Civil
9 Rights. I've read the submissions that you made and found
10 them to be very compelling. I hope that the commissioners
11 will actually read them.

12 One of the things that I wanted to do really quickly
13 because there seems to be some confusion at the commission
14 level about the prior reports that our committee has issued on
15 this subject.

16 The Chairperson has referred to a 1991 report on
17 reconciliation and Rice v. Cayetano. Obviously that report
18 was in 2001 following the Rice v. Cayetano decision. But in
19 1991 this committee issued recommendations including immediate
20 recognition of the political status of native Hawaiians. SAC
21 members Charley Maxwell and Faye Kennedy were on that
22 committee.

23 I wanted to ask you one quick question. As a member of
24 a Republican administration there was some exchange at the
25 commission level where Noe Kalipi was testifying and referred

1 to the bipartisan support for this bill. And one of the
2 commissioners had said in response to that comment, "This
3 seems to me it doesn't pass the laugh test. Everybody knows
4 that any time a bill is before congress that seems politically
5 problematic to foes because he could be labeled as racially
6 insensitive, then the Republican for good historical reason, I
7 agree, runs for cover and the Democrat, of course likely raise
8 entitlement. So you've got something that's called
9 bipartisan. I think many Republicans on the Hill would welcome
10 a strong statement against this bill on the part of the
11 commission."

12 I was wondering if you would address -- you've talked
13 about and dismissed the arguments about race-based
14 entitlement. There's clearly bipartisan support here in
15 Hawai'i. I'm wondering if you could comment on that as well
16 as your efforts to discuss this issue with Republicans on the
17 Hill.

18 MR. BENNETT: Absolutely. I mean I do have to say that
19 I think that whoever made that comment, to me it's irrelevant.
20 But Noe Kalipi's statement is an absolutely true statement. In
21 Hawai'i the Legislature as recently as I believe last year
22 passed a resolution supporting the passage of the Akaka Bill.
23 There was one dissenting vote -- or one no vote in the entire
24 76-person Legislature.

25 There are numerous Republican senators who are

1 co-sponsoring the Akaka Bill including Senator Murkowski,
2 Senator Stevens and others. The bill has the full support of
3 one of the leading Republicans in the Senate, John McCain. If
4 it hadn't it wouldn't have been passed out of his committee.
5 In order to get to the floor it had to pass out of Senator
6 McCain's committee.

7 I myself have had discussions Senator McCain on this
8 bill. And I've had discussions with numerous Republican
9 senators on this bill who I believe will fully support it when
10 it comes to the floor of the congress.

11 But the point is as a practical matter if the bill
12 doesn't have Republican support, all one has to do is count to
13 50 in the current makeup of the United States Senate to know
14 if there are no Republicans that support this bill it can't
15 pass.

16 Not only do we believe that there are easily enough
17 Republicans who will support this bill so that it will pass,
18 there are easily enough Republicans to support a cloture
19 motion so that there will be 60 votes in support of cloture.

20 And the final point that I would like to mention is
21 that although I have only been involved in this for three
22 years, the person who I have seen make the most vigorous
23 efforts supporting this bill has been Republican Governor
24 Linda Lingle.

25 I have been in dozens of meetings with Governor Lingle

1 and elected office holders of both parties, but primarily
2 Republicans, that include not only many senators but the
3 Speaker of the House of Representatives and others. She has
4 spent more time supporting this bill than perhaps any other
5 project that she supports in her three years as governor.

6 So it has the full support of Republicans in the state
7 of Hawai'i. And it has easily enough Republican support in
8 Washington. So that the support for the bill can be called
9 clearly bipartisan.

10 The proof, of course, will be when the bill comes up
11 for a vote. So anything other than that people can say
12 anything. And my experiences in Washington is that people
13 often do say anything. But the proof of the pudding will be
14 when the bill comes up for a vote. And I am confident that
15 when it does the way people's votes can and will demonstrate
16 that in fact the bill has bipartisan support.

17 MR. FORMAN: I'd also like to acknowledge that when I
18 mentioned the 1991 report that SAC member Oswald Stender was
19 also on the committee at that time.

20 I'd like to start with Kahu Charles Maxwell since he's
21 on the phone and I wouldn't be able to see his hand, give him
22 an opportunity to ask a question of the attorney general
23 before he has to leave.

24 MR. MAXWELL: Okay, thank you, David. Hi, Mark.

25 MR. BENNETT: Hi.

1 MR. MAXWELL: I completely agree with your chronology.
2 But my question only is when do you think the bill will come up
3 for a vote? Which I think that is important. And, shouldn't
4 there be more essence of informing? You know, because the
5 people of Hawai'i, the Hawaiians don't seem to realize the
6 importance of recognition.

7 And to me no matter how the bill was changed and being
8 involved with the Alaskan Native Claims Bill, and it's been in
9 existence for 31 years and it's been changed 31 times,
10 amended, so, you know, that's not important to me. The
11 importance is recognition.

12 So about when do you think it might come up, the bill,
13 or vote?

14 MR. BENNETT: I have gotten to the point where I put no
15 credence in anything that anybody tells me on the schedule for
16 this bill. With the caveat that I put no credence in these
17 reports that I've heard and that I do not vouch for them in the
18 least, the latest that I've heard is that it's going to get a
19 vote before Memorial Day.

20 On your second issue I would like to very much commend
21 the efforts of the Office of Hawaiian Affairs for doing
22 everything possible to inform native Hawaiians, their
23 constituency, as to the provisions of the bill and why support
24 is so important.

25 And I think that both the Office of Hawaiian Affairs

1 and the Department of Hawaiian Homelands have recognized the
2 importance of this bill and the importance of letting their
3 constituents know what it provides and why it's important.

4 So I truly don't believe any efforts have been spared
5 to try to inform people in Hawai'i and native Hawaiians as to
6 what the provisions of the bill are.

7 MR. FORMAN: I believe the attorney general has about
8 five minutes or so left. Any other questions from the SAC
9 members in attendance today? Uncle Charley, do you have any
10 additional questions?

11 MR. MAXWELL: No, that's it.

12 MR. FORMAN: One follow-up question. One of the experts
13 that the commission had appear before the committee made this
14 statement: "The Office of Hawaiian Affairs administers a huge
15 public trust that in theory benefits all Hawaiians" -- I think
16 what she meant by that was citizens of the state of Hawai'i --
17 "but for reasons that are both historical and political in
18 practice provides benefits exclusively for ethnic Hawaiians."

19 You had mentioned the compact and the obligations the
20 state has to fulfill and the Section 5F of the Admissions Act.
21 Could you say a little bit to help educate the commissioners
22 about that.

23 MR. BENNETT: The fact the statement that you just read
24 is factually wrong. That while Section 5F of the Admissions
25 Act provides that ceded lands are as a whole to be used for the

1 benefit of all the people of Hawai'i including but not limited
2 to certain purposes which include benefiting native Hawaiians,
3 the Office of Hawaiian Affairs, and I certainly would welcome
4 Trustee Stender's comments, was set up by the Constitutional
5 Convention of 1978 to benefit native Hawaiians.

6 So our constitution and laws provide that that is the
7 mission of the Office of Hawaiian Affairs. And I would hasten
8 to add that there has been no court that has ever found that
9 that mission of the Office of Hawaiian Affairs somehow
10 violates either Hawai'i law, the Hawai'i constitution or the
11 Fourteenth Amendment. But as I said in my initial
12 presentation those challenges exist today and continue.

13 MR. FORMAN: One other thing that was mentioned at the
14 hearing before the commission, several commissioners made
15 statements to the effect that, "We can't right every wrong." I
16 think you addressed that in your statements earlier about the
17 fairness and justice of this bill.

18 But had you been at that briefing how would you have
19 responded to that question?

20 MR. BENNETT: What I would have said I suppose that's
21 that tautology. And I suppose in the abstract metaphysical
22 sense I agree with it. It is historically recognized although
23 the same people who make those statements deny that there was
24 any wrong committed to the native Hawaiian people, a claim
25 which I find outrageous both in a moral sense and in an

1 historical sense.

2 There was a grave wrong done to native Hawaiians. And
3 this is a wrong that can in part not be righted by the Akaka
4 Bill, but some of the harm that was caused by this wrong can
5 be ameliorated by the Akaka Bill.

6 So whether one can right every wrong or not, this is a
7 situation where we can do something that furthers right and
8 justice. There is a vehicle for doing it, and we ought to do
9 it. I would say to whoever made that statement it is
10 irrelevant to this issue.

11 I might say something else if I were in a private
12 meeting. (Laughter) But this is a fair and just step for the
13 congress to take. I think in Hawai'i we would say it is pono.
14 It is something that ought to be done.

15 MR. FORMAN: I take it it's fair to assume that your
16 response to the question, "Is it good for our country is also a
17 hard "Yes".

18 MR. BENNETT: It absolutely is. I mean, again, the
19 Indian Commerce Clause is not some new invention of the 21st
20 Century. It is part of the compact that governs our nation.
21 That the country, whatever one's political perspective is no
22 one can deny that this country has a shameful record in its
23 treatment of all of our native peoples. I mean that is just an
24 undeniable historical fact.

25 To say that we shouldn't take the step that the Akaka

1 Bill does as one step toward ameliorating or helping to
2 overcome some of the injustice caused by the shameful
3 treatment of native people, those who say we shouldn't do it
4 because you can't right every wrong is just nonsense.

5 And it is good for the country. Righting wrongs,
6 taking steps to promote justice where there's a history of
7 injustice is good for our country. And it is something that
8 makes our country does stand out as a beacon to the world. We
9 are not perfect. The history of our treatment of native
10 peoples demonstrates that as much as anything.

11 But we recognize in this country when we have acted in
12 a way we shouldn't. The Civil Rights Bills of the '60s were
13 long in coming but they came. This is long in coming but it
14 too ought to come.

15 MR. FORMAN: Thank you very much, Attorney General
16 Bennett. We certainly appreciate your taking time out of your
17 schedule. I recognize that you need to get to federal court.

18 MR. BENNETT: Well, I apologize for having to cut this
19 short. I would like to be able to stay and take more questions
20 of this hearing. The Hawai'i State Hospital came up relatively
21 recently. I didn't have the ability to tell Judge Ezra, "Wait
22 for me." (Laughter) Even if I had that ability it would not be
23 a smart move. (Laughter)

24 MR. FORMAN: Thank you very much.

25 MR. BENNETT: Thank you very much.

1 MR. FORMAN: At this point we're going to shift gears a
2 little bit and hear from William Hoshijo, Executive Director of
3 the Hawai'i Civil Rights Commission. Bill, if I could ask you
4 to come up and assume the seat here in front of the microphone.
5 And also, again, there's coffee and water here. If anybody in
6 attendance would like to step up I'm sure the speaker wouldn't
7 mind.

8 You can take your time when you're ready to begin.
9 Yes, if you could provide a copy to the court reporter. I'll
10 let Tom Pilla from the western regional office distribute them
11 to the commissioners. Uncle Charley, Tom has assured me he'll
12 mail out a copy to you.

13 MR. MAXWELL: Oh, thank you so much.

14 MR. HOSHIJO: Hi, Uncle Charley. How are you?

15 MR. MAXWELL: Oh, pretty good.

16 MR. FORMAN: You can go ahead, Mr. Hoshijo.

17 MR. HOSHIJO: Chair Forman, members of the committee,
18 good morning. My name is Bill Hoshijo. I currently serve as
19 the executive director of the Hawai'i Civil Rights Commission
20 and will talk this morning about some of the civil rights
21 issues that the HCRC is facing.

22 However, it is my understanding that I have also been
23 asked to address civil rights issues in Hawai'i more generally,
24 with an overview that might frame some of the more specific
25 presentations to follow.

1 To the extent that my remarks are broader than the
2 positions of the HCRC, they reflect my individual perspective,
3 informed by my work in the civil rights arena, but not any
4 official position of the HCRC.

5 That being said, I will address the civil rights issues
6 and challenges that we face in Hawai'i and put them in context
7 of the broader civil rights discourse and debate taking place
8 at the national level as best I can.

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

13 In the interest of time in my written testimony from
14 the bottom of Page 1 through Page 2 I recount some of that
15 history and I won't read it.

16 MR. FORMAN: We have a little bit of flexibility. So
17 whatever you feel is appropriate. We have your testimony. We
18 will certainly take a look at it. But don't feel so
19 constrained by that 10 minutes that we cut you short.

20 MR. HOSHIJO: Maybe I will go through some of it. I
21 know that for many of you, given your commitment to civil
22 rights that this is an old history.

23 But Hawai'i has a history of race and ancestry-based
24 segregation dating back to the Kingdom of Hawai'i, when
25 American plantation owners brought in foreign laborers as

1 contract laborers. Segregated plantation camps and ethnic
2 wage schedules were the rule.

3 Typically haole workers were paid the highest followed
4 by Hawaiians, Portuguese, Chinese, Japanese, and Filipinos.
5 Through World War II the private sector was segregated along
6 the lines similar to those imposed on the plantations.
7 Schools, neighborhoods, private clubs were also segregated
8 along racial and ethnic lines.

9 Much of our civil rights movement was directly tied to
10 the progress of organized labor and the ILWU, who in efforts
11 to organize plantation workers won important victories
12 securing: the right to vote, the right to assemble and
13 associate, the right to trial by jury of peers, the right to
14 free speech and due process.

15 These hard one rights which we now take for granted,
16 have benefited all of Hawai'i's people. As a result, we moved
17 from a segregated, oligarchic plantation society to a more
18 integrated and democratic society, but there's much yet to be
19 done before we achieve a just society.

20 This historical tradition continues. Our fair
21 employment law predated Title VII of the Civil Rights Act of
22 1964. We were the first state to ratify the Equal Rights
23 Amendment. And we have an ERA provision in our state
24 constitution.

25 Hawai'i was the first state to recognize women's right

1 to choose. And to our credit and consternation the first to
2 address the issue of same-sex marriage seriously.

3 Our history reflects our values. We value fairness and
4 equal opportunity. Discrimination prevents us from fully
5 developing our greatest resource: Our people. Discrimination
6 diminishes productivity and hurts workplace morale. And
7 discrimination takes a heavy toll on those who suffer its
8 impact. It affects their opportunity to perform and succeed.
9 And it can literally consume and destroy lives. So it's a
10 real human cost.

11 I'd like to touch on just a handful of issues that I
12 see as civil rights issues based here in Hawai'i. First,
13 Native Hawaiian rights, sovereignty, self-governance and
14 recognition, challenges to Hawaiian programs and institutions.

15 The Hawai'i Civil Rights Commission filed an amicus
16 brief in the *Doe v. Kamehameha Schools* case in support of the
17 Kamehameha Schools' petition for rehearing en banc. In this
18 petition we presented two basic arguments.

19 First, that programs meant to benefit Hawaiians are
20 based on a political classification, not a racial
21 classification so do not violate civil rights law prohibitions
22 against racial discrimination.

23 Second, that Hawaiian rights issues are not civil
24 rights issues within the framework applied by the courts,
25 particularly the courts in *Rice v. Kamehameha Schools* case.

1 They're not issues of individual rights and equality
2 under law, but rather the inherent right of indigenous peoples
3 to self-determination.

4 As such, a mechanical application of civil rights
5 standards to restorative programs meant to benefit Hawaiians
6 is inappropriate.

7 Reconciliation of civil rights law and theory with
8 Hawaiian rights is perhaps the most important challenge that
9 we face today in Hawai'i, one that we must address in order to
10 move forward and establish a just society.

11 Federal vs. state standards. Our state civil rights
12 laws provide greater protection than federal laws in many
13 respects, consistent with a constitutional mandate, state
14 constitutional mandate, that no person shall be denied the
15 enjoyment of their civil rights or be discriminated against in
16 the exercise thereof because of race, religion, sex, or
17 ancestry.

18 Stronger state protection of civil rights has been
19 recognized in both, in a couple of different areas, both in
20 Hawai'i constitutional rights where our courts have recognized
21 stronger protection of due process rights and the rights
22 against unlawful search and seizure.

23 And also in our statutory civil rights protections
24 where we have stronger protections than federal law against
25 sexual harassment, pregnancy discrimination and disability

1 discrimination as well as additional protected bases,
2 including sexual orientation which are not included or covered
3 under federal law.

4 In several of these areas the Legislature and the
5 courts have been urged to adopt the weaker federal standards,
6 in effect adopting those minimal standards as our state
7 standards. They're being urged to make, in essence, the floor
8 the ceiling.

9 One of the areas where we have greater protections is
10 in our state civil rights protections against discrimination
11 on the basis of sexual orientation. The Legislature has
12 expressed its public policy against discrimination on the
13 basis of sexual orientation in the purpose and intent
14 provision of Chapter 368 Hawaii Revised Statutes which is the
15 enabling legislation for the Hawai'i Civil Rights Commission.

16 Presently, sexual orientation is a protected basis in
17 our employment discrimination law and fair housing law. The
18 protection against sexual orientation discrimination should be
19 extended to our state public accommodations law. And there is
20 a bill, House Bill 1715, which is currently moving in the
21 Legislature this year.

22 Another issue that has been around for a while is
23 language discrimination as it relates to immigrant rights.
24 Under Title VI of the Civil Rights Act of 1964, and Executive
25 Order 13166 issued on August 11, 2000, all recipients of

1 federal funding are required to take reasonable steps to
2 ensure meaningful access to their programs for persons of
3 limited English proficiency. Denial of access to services
4 based on language is prohibited national origin
5 discrimination.

6 The issue of language access for persons of limited
7 English proficiency is not new in Hawai'i, but very little has
8 been done to effectively address the issue in the past 25+
9 years.

10 Again, there is a bill, House Bill 2778, which is
11 currently moving through the Legislature, which would make an
12 affirmative commitment of funds and resources to plan, develop
13 and implement meaningful access to services for limited
14 English proficiency persons in Hawai'i.

15 Just have a couple more issues that I wanted to touch
16 on. Incarceration has a disproportionate and devastating
17 impact on the Hawaiian community.

18 In 2004 Native Hawaiians, defined as part or full
19 Hawaiian, comprised over 41 percent of the state prison
20 population, while they comprise 28 percent of the state
21 population.

22 Broken down by gender, Native Hawaiian women have an
23 even higher, and growing, rate of incarceration.
24 Incarceration of parents profoundly affects families, and
25 children whose parents are incarcerated are six times more

1 likely to end up in prison themselves. So this is a really
2 important issue.

3 Public education, housing, and economic opportunity.
4 Education advocates argue that quality education is a civil
5 right. And the history of our civil rights movement was
6 grounded in the struggle for school desegregation and
7 co-educational opportunity. Success in employment and
8 economic opportunity are directly tied to education.

9 If we hope to do a better job on civil rights and equal
10 opportunity, we need to do better on education. As a divide
11 between rich and poor grows, exacerbated by the high cost of
12 housing, poor people are being pushed to the margins. And
13 schools need resources and support. They're our first line in
14 a broader struggle for equal opportunity.

15 And my conclusion sort of I wanted to try to tie this
16 together. Our civil rights laws were enacted to remedy
17 historical discrimination and exclusion. Discrimination and
18 exclusion from slavery to Jim Crow, from treatment of women as
19 chattel to denying the vote to women, from alien land laws and
20 exclusion to the English-only movement.

21 With the evolution of civil rights law enforcement some
22 view civil rights as neutral policy. But civil rights laws
23 and policy cannot be viewed in a vacuum but have to be seen in
24 an historical context. Our civil rights laws were born out of
25 struggle for justice and they were meant to right wrongs.

1 They have a remedial purpose.

2 Another larger trend that affects our struggle to
3 improve in the area of civil rights is the growing economic
4 divide and relationship between race and class as it affects
5 equal opportunity. The growing chasm between rich and poor
6 and the relationship between race and class forces us to
7 re-examine, reframe the struggle for civil rights and equal
8 opportunity as economic stratification resegregates our
9 society and denies people equal opportunity.

10 Finally, I think there is really grave concern over
11 what happens to our civil rights in times of crisis. In these
12 times of crisis our faith in and commitment to civil rights is
13 sorely tested. Too often we fail to live up to the ideals
14 that we hold dearest.

15 One need only look at our recent history for examples:
16 the incarceration of Japanese-Americans based on false
17 military necessity justification during World War II; the red-
18 baiting of McCarthyism justified by Cold War fears; and
19 attacks on civil rights and COINTELPRO domestic spying abuses
20 during the Vietnam War.

21 Once again, today we live in a time when dissent is all
22 too often characterized as unpatriotic, and we are asked to
23 sacrifice that which we hold dearest because we are in crisis.

24 The challenges we face are many, but change comes only
25 through struggle and hard work. And thank you for your hard

1 work and commitment, and I commend you to your work.

2 MR. FORMAN: Thank you very much for covering so much
3 ground in such a short time. I'd like to give SAC members a
4 chance to ask Mr. Hoshijo any questions, if there are any.
5 I'll start with Uncle Charley again just in case.

6 MR. MAXWELL: Bill, that was very informative. Thank
7 you.

8 MR. HOSHIJO: Thank you, Uncle Charley.

9 MR. FORMAN: I'd like to ask. You talked a little bit
10 about our state's proud history and how we have kind of in a
11 sense led the way. I'm wondering if you had any observations
12 about the history of Hawai'i and what kinds of lessons we can
13 serve as a laboratory of democracy for the rest of the United
14 States.

15 MR. HOSHIJO: Yeah. I think looking at the progress
16 that we have made here, and there are a couple of things that
17 we have to offer. One is there's a real spirit of
18 inclusiveness that I think comes from, really from Hawaiians.

19 Just as an historical example when, under the Hawaiian
20 kingdom the immigrants from Asia could become citizens of the
21 Hawaiian kingdom. But at the time and up to World War II they
22 could not become citizens of the United States. There are
23 actually a lot of examples of things like that.

24 I believe that under the Hawaiian kingdom women could
25 vote. And it was not very a long time after that in the U.S.

1 that women got the vote.

2 So there is that -- or there's something very basic in
3 terms of the values that we have and what we have to offer.

4 The other thing is I think in terms of being a
5 laboratory that in some ways with the demographic changes
6 across the rest of the country that we are what people fear.
7 The way that we deal with issues of diversity can be
8 instructive for, well, issues of diversity and justice can be
9 instructive for the rest of the country and some instances
10 beyond I think.

11 So if we do the right thing and build on a foundation I
12 think first with ensuring justice for Hawaiians then we can
13 build a just society and be an example for others.

14 MS. KENNEDY: Since you're speaking about general things
15 and also as executive director of the Hawai'i Civil Rights
16 Commission which I serve on, if you had a wish list of just one
17 or two things that would help the Civil Rights Commission being
18 more effective in solving the problems, are there a couple of
19 things that you would like to put on record?

20 MR. HOSHIJO: Thank you, Faye. In Hawai'i our basic
21 statutory protections are very strong. So in terms of
22 enforcement of civil rights, anti-discrimination laws, we have,
23 again, very strong protection, strong remedies, stronger laws
24 than federal laws than most other states.

25 We have been facing a number of procedural challenges

1 which I think have been affecting our ability to do our jobs.
2 And this is consistent with what other enforcement agencies
3 have faced nationwide. In terms of -- so those are some of
4 the challenges that we face.

5 In terms of anything that you wish for that would help
6 to advance civil rights of the Commission I think a higher
7 level of consciousness, which is really what your work is all
8 about, about civil rights and the importance of maintaining,
9 being vigilant about guaranteeing citizens, residents, all
10 persons their civil rights. That's really an important thing.

11 Because civil rights protections are not just about
12 enforcement. By the time we get to the back end we are
13 dealing with complaints, we are pretty far down the road. I
14 think the more we can have people in our community make the
15 commitment to civil rights and diversity that would be good.

16 MS. KENNEDY: More staff and more money I would assume.
17 You didn't mention that. (Laughter)

18 MR. HOSHIJO: Thank you, Faye. Actually there is also
19 an appropriation bill, and maybe appropriation budget for
20 increased staff and three additional positions which is
21 actually the first increase in the number of permanent
22 positions since the Commission was established. So it's about
23 time.

24 MS. KENNEDY: So we could testify for that bill? Is it
25 still crossed over?

1 MR. HOSHIJO: It was actually in the budget as a
2 cross-over from the House to the Senate. It's with the Ways
3 and Means Committee.

4 MR. FORMAN: Committee member Stender.

5 MR. STENDER: Bill, just off the top of your head, how
6 many issues predominates your HCC office?

7 MR. HOSHIJO: Let's see. That's a good question. Our
8 office accepts and investigates complaints of discrimination in
9 four areas: Employment, housing and public accommodations as
10 well as state and state-funded services.

11 Access to state and state-funded services, the only
12 protection is for disability access.

13 Of the complaints that we receive, that are filed each
14 year 90 percent of them are employment discrimination
15 complaints. Of those the largest number between 20 to
16 25 percent generally are sex discrimination complaints. Of
17 those the largest number of complaints are sexual harassment,
18 pregnancy discrimination.

19 MR. FORMAN: Any other questions from the committee
20 members? While they're thinking about that I'd like to follow
21 up. You talked a little bit about the spirit of inclusiveness
22 under the kingdom. Then I think what was left unsaid is that
23 there's a transition from the years of the kingdom to a sense
24 of separateness under the Territorial government of the United
25 States followed by, I think most people just focus on the

1 democratic revolution that led to Hawai'i becoming a state.

2 Then attention essentially turned back to Native
3 Hawaiians -- after advances were made to address the
4 deficiencies affecting the Asian communities in Hawai'i, that
5 there was a recognition that there were serious issues of
6 Native Hawaiians that also had to be addressed.

7 I'm wondering if you're interested in tying that
8 together a little further.

9 MR. HOSHIJO: Between the kingdom and the...

10 MR. FORMAN: Well, I was just thinking more about a lot
11 of folks look to the advances that were made in Hawai'i at
12 least for the Asian-American community and talking about how
13 that progress is sometimes just focused on the fact that of the
14 participation in the World War II that led to that involvement.

15 But then you have very prominent Asian-American
16 politicians like Daniel Inouye wholeheartedly supporting the
17 Native Hawaiian sovereignty. And that comes from a place that
18 I think is beyond pure democratic. Really ties to the issues
19 that you mentioned before about that inclusive spirit.

20 MR. HOSHIJO: I think one of the things if you look at
21 the period after the Overthrow that for Asian workers in
22 Hawai'i that it was a mixed bag. Because on the one hand the
23 contract labor system was struck down because that's
24 involuntary servitude.

25 On the other hand, you have this system composed off de

1 facto and du jour segregation which created a lot of the
2 conditions that you're just referring to: Restricted
3 covenants, segregated neighborhoods, all of those things that
4 I think gave rise to some of the reforms and actually pretty
5 much revolutionary changes that we have seen over the past 60
6 years.

7 In terms of how that experience shapes our perspective
8 on Hawaiian rights issues I think that really going through
9 that experience for many people it really does inform their
10 position or take on the Hawaiian issues that are now a
11 controversy I guess.

12 Because from personal experience, from my own family
13 history knowing about the discrimination against
14 Asian-Americans and going through the reparations movement,
15 learning about the denial of rights that my own family and
16 others went through, I think really raises a, really, the
17 basis for my involvement in rights work.

18 And I think that for many people in a broader sense too
19 that it's, that that experience is the basis for support for
20 Hawaiians in their struggle for justice. Again, I think that
21 there is a sense that we're all in this together and that
22 we're really not going to be able to move forward and build a
23 better society unless we address these justice uses.

24 MR. FORMAN: I think you were here for Attorney General
25 Bennett's presentation. When you're talking about that

1 inclusiveness there are some folks that in response to the
2 Akaka Bill have said you focus on this issue of race, have
3 said, "Well, why not tie the definition of the folks who are
4 addressed by the Akaka Bill to citizens of the kingdom of
5 Hawai'i who might not necessarily have been Native Hawaiian?"

6 MR. HOSHIJO: My understanding of that issue and how I
7 look at it is that it really has to do with a political issue
8 that we are dealing with the rights of indigenous people to
9 self-governance. I think that at some point it's up to
10 Hawaiians. And we need to get to that point.

11 MR. FORMAN: Thank you. Faye.

12 MS. KENNEDY: I have a question from a member of our
13 audience. I'm not quite sure if I understand but you probably
14 would. You currently can't investigate or handle cases related
15 to the *chilling* effect. Does that mean something to you? Are
16 audience members allowed to talk?

17 MR. FORMAN: Yeah. Bill Woods.

18 MR. WOODS-BATEMAN: I'm Bill Woods-Bateman. The
19 chilling effect, the feds do cover this under a number of EEO
20 provisions where -- different from Hawai'i, is that in Hawai'i
21 you must have a personal situation of being harmed by the
22 potential discrimination like employment, housing, whatever.
23 So you must have a claim based on your own harm or someone's
24 harm.

25 Chilling effect is about they have policies. They have

1 formal statements. They have taken positions and said, "We
2 won't do this." There are many institutions that have formal
3 policies regarding codes of conduct either for religious or
4 against sex, against sexual orientation, a number of other
5 issues too. And they put this out. It's published in a lot
6 of forms. And their local or national chapters or policy
7 makers have said, "This is our official policy."

8 But because they sometimes hire through word of mouth
9 and through friends and things like that there isn't a person
10 who has made an application and been rejected and therefore
11 cannot be a case.

12 So chilling effect is a process in which you can do it
13 based on the claims that they wouldn't hire people or wouldn't
14 do whatever on a discriminatory basis without actually having
15 a person involved.

16 Is that a limitation? Is that something that would
17 benefit Hawai'i civil rights?

18 MR. HOSHIJO: It's actually, the question you're asking
19 basically goes to standing, the issue of standing to file a
20 complaint and whether a person has actually suffered a harm.

21 And the short answer to your question is that there's
22 not that big a difference between federal and state law in
23 this area. Because in terms of suffering a harm or suffering
24 from an adverse act, if a person is, let's say, I'll try to
25 illustrate my answer by an example.

1 If a person goes in or pulls down an application form
2 off the internet or goes and just gets an application, and
3 there are unlawful inquiries in the application that are so
4 demeaning or hurtful and unlawful that the person decides that
5 they don't have a chance; they're not going to apply, they
6 could still file a complaint even if they didn't actually file
7 their application. In essence the harm that they suffered was
8 that they were discouraged from applying for the job.

9 So what you're characterizing is the chilling effect --

10 MR. WOODS-BATEMAN: Some places that they won't give you
11 an application to even go through that.

12 MR. HOSHIJO: Yeah. So it would really depend. Under
13 our jurisdiction what we do is we make -- when someone comes to
14 us to file a complaint we make a threshold jurisdiction. If
15 everything that they allege is taken as true would it
16 constitute a violation of law. That's basically our starting
17 point.

18 MR. FORMAN: Thank you, Bill. Any other questions from
19 the committee members? Thank you very much. We will hear now
20 from Gary Smith, the executive director of the Hawai'i
21 Disability Rights Center.

22 While he's getting situated, for the committee members,
23 Jill Nunokawa was scheduled to appear next but submitted
24 written testimony. With the commission's permission I'll
25 defer reading excerpts of her testimony to later in the

1 meeting. Okay? Thank you.

2 If you could identify yourself for the court reporter.

3 MR. SMITH: Good morning. My name is Gary Smith and I'm
4 president of the Hawai'i Disability Rights Center. I want to
5 thank you for the opportunity to provide our perspective on the
6 status of civil rights for people with disabilities in the
7 state of Hawai'i.

8 The March 13, 2006 issue of the Hawaii Business News
9 recorded that the population of Hawai'i grew 1 percent from
10 2004 to 2005 reaching 1.27 million people. It's generally
11 estimated that 15 to 20 percent of the population or in
12 Hawai'i about 190,000 people to 254,000 people have a
13 disability. That's a lot of people.

14 HDRC is Hawaii's designated protection in advocacy
15 system for these people with disabilities. P&A was first
16 authorized in the Developmental Disabilities Assistance and
17 Bill of Rights Act of 1975.

18 Subsequently, Congress has expanded the authority of
19 the P&A system under six additional federal laws, so that
20 today the nationwide P&A system has the authority to advocate
21 for and represent people with disabilities and classes of
22 people with disabilities on a broad range of individual and
23 systemic civil rights issues.

24 I would like to call your attention to just four
25 critical areas in which people with disabilities routinely

1 experience discrimination or denials of equal protection.
2 Those four areas are: employment, housing, services, and
3 education.

4 First of all: Employment. On Monday of this week,
5 March 20th, the Garden Island Newspaper from Kauai had an
6 article on employment in Hawai'i. It said this in part. "The
7 state's unemployment is so low that there are more jobs than
8 there are workers to fill them. At 2.4 percent Hawai'i's
9 unemployment rate is the lowest in the country, according to
10 the most recent figures. The national average rose to
11 4.8 percent in February. Workers are in such high demand that
12 businesses are offering better salaries, more benefits and
13 extra overtime pay."

14 Then the newspaper went on to get a quote from a state
15 official and it is: "There's so much demand for workers that
16 even ex-cons, people with disabilities, high school dropouts
17 and older residents have a good chance of finding jobs," said
18 Tom Smyth, senior adviser for the state Department of
19 Business, Economic Development and Tourism."

20 Mr. Smyth's unfortunate remark reflects the bias that
21 people with disabilities face when they go job hunting. Far
22 too many Americans with disabilities are underemployed or
23 unemployed and have no hope of changing that critical
24 circumstance of their lives.

25 The 2000 census reports that 56.6 percent of

1 working-age Americans with disabilities are employed compared
2 to 77.2 percent of non-disabled Americans. Many sources
3 report even lower employment rates for people with
4 disabilities.

5 It has been postulated that the Americans with
6 Disabilities Act, or the ADA, actually resulted in a drop in
7 employment with people with disabilities during the 1990s.
8 Because the ADA only provides sanctions for employment
9 discrimination it has become too risky for employers to take a
10 chance on people with disabilities.

11 Instead, the prudent course of action is to screen out
12 people with disabilities during the application process and
13 give the job to someone more qualified, a decision that is
14 virtually impossible to disprove.

15 Recently, there's been a flurry of federal activity
16 aimed at reducing the unemployment rate of people with
17 disabilities. In 1999 Congress passed the Ticket to Work and
18 Work Incentives Improvement Act. To date, 33,162 tickets have
19 been issued to people with disabilities in Hawai'i, but only
20 33 of them, that's 1/10th of 1 percent, have been assigned to
21 an employment network to enable that person to prepare to
22 return to work.

23 Authorized in the Ticket to Work Act is another program
24 called Benefits Planning Assistance and Outreach or BPAO that
25 has been so ineffective that the Social Security

1 Administration is rolling out a major overhaul reinventing it
2 as the Work Incentives Planning and Assistance program
3 beginning in fiscal year '07.

4 I recently attended a conference in Washington, DC
5 where a federal official said -- and this was not from the
6 Social Security Administration, she said, "We know that the
7 Ticket does not work. Does anybody want to disagree with me
8 on that?" And no one did.

9 So some of the issues that need to be addressed
10 concerning the employment of people with disabilities: New
11 programming needs to somehow focus on employer incentives to
12 hire people with disabilities and not just sanctions for not
13 hiring people with disabilities.

14 New programming needs to focus on job design and
15 employer development and not just on vocational rehabilitation
16 for the person with the disability who's most likely to never
17 get a job anyway.

18 As far as the Ticket to Work is concerned Hawai'i needs
19 to adopt Medicaid Buy-In if it is to have any chance of
20 success here.

21 And, finally, in Hawai'i, state and county governments,
22 large employers, the visitor industry need to step up to the
23 plate and hire more people with disabilities.

24 Moving on to housing. The real estate market is
25 booming in Hawai'i. And while that's a very good thing for

1 many people it has been devastating for people with
2 disabilities. It is simply a fact that if you're living on
3 SSI, SSDI, a minimum wage job or part-time work, as so many
4 people with disabilities do, it's very unlikely that you will
5 be able to find a place to rent that you can afford.

6 For people unable to afford the rents in the private
7 housing markets, public housing projects and programs have
8 traditionally kept them from becoming homeless.
9 Unfortunately, there are numerous serious problems with public
10 housing projects and programs in Hawai'i.

11 First of all, the designations of housing: Elderly
12 housing, disability housing, so forth. For many years now
13 federal housing policy has pitted senior citizens against
14 people with disabilities for public housing. And people with
15 disabilities have been the clear losers. Even the small
16 percentage of housing that should be allocated to people with
17 disabilities, based on federal regulation, is not always
18 available to them.

19 For example, federal regulations require that 5 percent
20 of public housing units be wheelchair accessible and 2 percent
21 of public housing units should be accessible to people with
22 visual and hearing impairments.

23 After nearly three months of inquiry the Housing and
24 Community Development Corporation of Hawai'i, HCDCH, has not
25 yet been able to tell us if the state of Hawai'i is in

1 compliance with that requirement. They've also not been able
2 to tell us how many accessible units are occupied by people
3 without disabilities while people with disabilities remain on
4 the waiting list.

5 Lack of maintenance. Legislative testimony has
6 indicated that that are currently some 825 federal and state
7 public housing units, that's 13 percent of the entire
8 inventory, vacant and uninhabitable due to deferred
9 maintenance.

10 Section 8 vouchers. There was a time when Section 8
11 vouchers were the housing lifeline of people with disabilities
12 who by definition are usually poor. Now, however, the wait
13 list for the Section 8 voucher housing program has been
14 closed.

15 For those individuals fortunate enough to actually have
16 a voucher it may be impossible to find a landlord that will
17 accept the voucher because the HUD established fair market
18 rent is too low.

19 Given Hawai'i's rental market an increase in the fair
20 market rent is critically important to the success of the
21 Section 8 voucher program.

22 New construction money. Hawai'i has never gotten Hope
23 Six funding which is the only new federal money available for
24 construction of public housing.

25 And community development block grants, which could be

1 another major source of funding for housing in Hawai'i, is
2 seldom used for that purpose. And what can we do to increase
3 the use of CDBG funds for public housing?

4 Disability services. Just a couple critical issues
5 related to services. Following employment and housing
6 disability services are the third major concern of people with
7 disabilities.

8 The deinstitutionalization movement before or without
9 developing an infrastructure for community residential care
10 has been difficult for people with disabilities. But
11 particularly so for people with mental illness. Many have
12 become homeless and live on our streets without adequate
13 health care or services. Intervention has come from our
14 police departments and corrections system.

15 Because of this, not just in Hawai'i but across the
16 nation, jails have effectively become America's new mental
17 institutions. They house a larger volume of mentally ill
18 people than all other programs combined. Some 283,800 inmates
19 or 16 percent of the inmate population are identified as
20 having a mental illness.

21 The rate of disability appears to be even higher for
22 juvenile detainees. A study funded by the Hawaii State Office
23 of Youth Services on the mental health of adolescents and
24 youth at the Hawaii Youth Correctional Facility indicated that
25 of the 260 case records reviewed for a one year period, June

1 1999 to July 2000, 215 of the adolescents, or 80 percent of
2 them had at least one psychiatric diagnosis.

3 In recent months Hawai'i's Department of Health, the
4 Adult Mental Health Division, has made tremendous strides in
5 the development of community-based care for people with mental
6 illness. And the National Association for Mental Illness
7 recently reported that Hawai'i's system has moved from 50th to
8 14th in the nation. While there's still a great deal of work
9 to be done, we do want to acknowledge and commend the Division
10 for their efforts that they've made.

11 Over the years the ACLU and the Department of Justice
12 have maintained surveillance of the state's provision of
13 mental health services to prisoners within the adult
14 corrections system, and more recently to juvenile detainees at
15 the Hawai'i Youth Correctional facility. We also want to
16 acknowledge them and thank them for this work on behalf of
17 people with disabilities.

18 One issue that's, one other -- well, two other issues
19 that are of interest to us related to services for people with
20 disability: Fitness to proceed evaluations.

21 About two years ago we studied a random sample of 67
22 pretrial detainees who were the subject of court-ordered
23 forensic examinations in 2001 and 2002. And found that the
24 mental examination process averaged 84 days from the date of
25 issuance of the court's order for the examination to the

1 judicial ruling on the fitness to proceed.

2 During the forensic evaluation process persons
3 suspected of mental illness may remain in prison for weeks or
4 months without appropriate mental health treatment. In
5 31.4 percent of the cases reviewed the initial period of
6 evaluation was extended by the court for additional periods of
7 30 to 180 days. So it's not uncommon for pretrial detainees
8 who have been detained for misdemeanors who undergo one-panel
9 forensic examination to actually be incarcerated longer than
10 the possible length of incarceration for conviction of the
11 crime for which they were charged.

12 We believe that the state statute should be amended to
13 provide timelines for completion of these evaluations. For
14 example, Vermont law provides for an examination not more than
15 30 days from the date of the court order with the one possible
16 15-day extension.

17 South Carolina law requires the examination within 15
18 days after court order. If it's being done in a facility they
19 may request an additional 15 days. And the examiner is
20 allowed five days to prepare the report.

21 Then on another front, people with disabilities both
22 physical and intellectual, are asserting themselves to move
23 out of institutions or to avoid institutional placement
24 altogether.

25 You may have heard the term "Olmstead". Olmstead was a

1 case which was brought on behalf of two Georgia women with
2 mental illness that was appealed to the Supreme Court, and is
3 the landmark decision of the Supreme Court in the world of
4 disability is Olmstead.

5 It has become the rallying cry across the nation for
6 people with disabilities who want to live in the community and
7 gain control of their own lives.

8 The basic principles of Olmstead: Unnecessary
9 institutionalization of persons with disabilities who are
10 qualified to participate in an existing state community based
11 program constitutes a form of discrimination by reason of
12 disability, which is prohibited by the ADA.

13 At the federal government's behest most states
14 including Hawai'i, have written and adopted an Olmstead
15 Implementation Plan. Unfortunately, Hawai'i's efforts to
16 develop community residential care alternatives, the
17 cornerstone of Olmstead, has been fully inadequate. And the
18 state still expends about three times more money to support
19 people in nursing homes than it expends to support in the
20 community.

21 Education. Finally, I would like to bring to your
22 attention the right of children with disabilities are entitled
23 to a "free and appropriate public education" or FAPE, which is
24 also referred to as SPED, or special education, as authorized
25 in the Individuals with Disabilities Education Act, IDEA.

1 Virtually everyone in Hawai'i is familiar with "Felix",
2 the class action suit that was brought on behalf of children
3 with mental illness or also referred to in the case of
4 children "serious emotional disturbances", who were entitled
5 to "special education and related mental health services."

6 After years of federal court supervision control was
7 finally returned to the Department of Education last year.
8 Unfortunately, many of the problems which resulted in the
9 filing of Felix persist.

10 Within the past two weeks the Special Education
11 Advisory Council released its report which attempts to analyze
12 all due process decisions for the school year 2004 to 2005 and
13 identified a fairly long list of problems:

14 Difficulty reporting and accounting for cases.

15 Failure to provide information on federal appeals to
16 the advisory council.

17 Lack of good faith by DOE.

18 Unnecessary hearings for cases which should have been
19 settled.

20 Late identification of students with special needs.

21 Refusal of services not in the best interest of
22 students.

23 Only 4 percent of hearings were held within 45 days as
24 required by law.

25 DOE under-reported the cost of due process petitions to

1 the Board of Education.

2 There are approximately 12 attorneys in private
3 practice in the state who devote their entire practice or a
4 significant portion of their practice to IDEA cases.

5 Our agency, the Hawai'i Disability Rights Center,
6 during the fiscal year ending September 30th, 2005, provided
7 representation on 531 IDEA cases or nearly 25 percent of our
8 individual case work.

9 We do have a high rate of success in resolving cases
10 through negotiation as our federal mandate requires of us.
11 However, 16 cases or just about 10 percent of our cases
12 required filing of an administrative hearing. And one of
13 those cases required filing of a complaint in family court.

14 Thank you very much for the opportunity to talk to you
15 about these major concerns of people with disabilities.

16 MR. FORMAN: Thank you very much. That was some very
17 disturbing information that needs to be addressed. And I also
18 appreciate acknowledgement of some signs of encouragement as
19 well as specific signs for improvement. Any questions from the
20 committee members?

21 MR. MAXWELL: Yeah, I have one question for Mr. Smith.
22 Charles Maxwell on Maui. Mr. Smith, have you in the past filed
23 any complaint with the U.S. Civil Rights Commission pertaining
24 to these violations that occurred?

25 MR. SMITH: Primarily in the case of complaints of

1 employment discrimination which we received because we, in
2 order for people to sue they need to get a Right to Sue letter
3 either from the Civil Rights Commission or from the EEOC.

4 So whenever those issues we always send to the Civil
5 Rights Commissioner first.

6 MR. MAXWELL: And have you had a response?

7 MR. SMITH: We always have a response.

8 MR. MAXWELL: From our office in LA?

9 MR. FORMAN: Yeah, I think Uncle Charley is asking about
10 the U.S. Commission on Civil Rights, not necessarily the
11 Hawai'i Commission on Civil Rights.

12 MR. SMITH: Oh, I'm sorry, yes. No, we don't -- no.

13 MR. MAXWELL: Because I think this is not only unique in
14 Hawai'i. I think it covers the rest of the 49 states. But,
15 yeah, maybe you should have some national recognition on these
16 violations. Maybe it would help you.

17 MR. SMITH: I'm sure you're absolutely right. This is
18 not a problem unique to Hawai'i. It's nationwide.

19 MR. MAXWELL: Right.

20 MR. FORMAN: Nalani Fujimori.

21 MS. FUJIMORI: I'm curious about, you talked a little
22 bit about the Section 8 vouchers and the public housing issue.

23 Is there a separate list that you know that's
24 maintained for those with disabilities in terms of access to
25 those units? I know they're asking the question right now of

1 HCDCH but I'm curious about that.

2 MR. SMITH: Apparently there is not. There probably
3 should be, yes. So since they have had our request for a
4 month, I think they're frantically putting together a list.

5 MR. FORMAN: You had mentioned one of the things, and
6 maybe this is related to the question that Charley Maxwell
7 asked, I'd never heard that Hawai'i had never received any Hope
8 Six funds. Has any justification been issued for that? Might
9 this be something that we could ask the U.S. Commission on
10 Civil Rights to look into?

11 MR. SMITH: I'd be grateful if you would. It's fairly
12 new information to me. We've been doing some, focusing some
13 new additional attention on housing issues recently. And that
14 was one of the pieces of the information that we discovered.
15 But, yes, we'd be grateful for any assistance getting more
16 money to Hawai'i.

17 MR. FORMAN: Any other kinds of things that perhaps
18 inquiry by either this committee or the U.S. Commission on
19 Civil Rights that might help advance the interests of the
20 disabled community in Hawai'i?

21 MR. SMITH: Well...

22 MR. FORMAN: And the record is going to stay open for 30
23 days. If you can give it some thought and get back to us we'd
24 appreciate it.

25 MR. SMITH: Actually the one issue that I would really

1 like to see addressed at the national level is the battle
2 that's been created between senior citizens and people with
3 disabilities for public housing.

4 I'd like to see a way for that to be resolved on a
5 national level and for people with disabilities to receive an
6 equitable share of public housing. The reality is those of us
7 who are growing older, being a senior citizen is nearly always
8 accompanied by a disability. So it's a division that doesn't
9 need to exist.

10 MR. FORMAN: Oswald Stender.

11 MR. STENDER: In the HCDCH, part of their charge is to
12 build housing. Do they have in their scheme of things an
13 allotment of housing for the disabled? I've never heard of it.

14 MR. SMITH: That's one of the pieces of information that
15 we have asked them for.

16 MR. STENDER: You would think, they seem to be providing
17 housing for the needy but I've never heard of a disabled
18 project by HCDCH.

19 MR. SMITH: It is my understanding that they should
20 maintain a list of housing set-asides for people with
21 disabilities. But I think they don't have that list as of
22 right now.

23 MR. FORMAN: That's certainly something that our
24 committee can ask them for as well.

25 MR. MAXWELL: Is that a federal law requirement that

1 this list is maintained?

2 MR. SMITH: Well, it's a federal regulation that 5
3 percent of public housing must be wheel chair accessible and
4 2 percent needs to be accessible for people with hearing and
5 vision impairments. So I would think you would have to have a
6 list to verify that.

7 MR. FORMAN: Faye Kennedy.

8 MS. KENNEDY: Yes. I was glad you mentioned that
9 there's some kind of a competition with senior citizens.
10 Because early on you mentioned -- it wasn't something you're
11 saying, you were quoting that ex-cons got some privileges
12 ahead. That seems to be a battle set up between quote
13 "ex-cons." And I assume that you realize that ex-cons are
14 people who are going to be spoken about later on by Kat Brady.

15 MR. SMITH: Yes.

16 MS. KENNEDY: And I think that is the type of things
17 that sets up competition and is unfortunate. So I'm sure your
18 clients share that view that the ex-cons were getting certain
19 benefits ahead of people who are disabled. Because all of the
20 ex-cons I think deserve that too.

21 MR. SMITH: Yes. I just, I quoted that because I think
22 the Kauai newspaper had not been out more than an hour before I
23 started receiving emails about it. So, yes. But that's not at
24 all to say that people released from prison should not have
25 employment and all of the ability to create a new life.

1 MR. FORMAN: Thank you very much for your time. We're
2 going to take a short break so the court reporter to reenergize
3 and the rest of us.

4 (Recess was held.)

5 MR. FORMAN: We will reconvene. If you happened to have
6 any written testimony, please provide it to our court reporter.
7 Otherwise we'll go on. She's got skills. She can take care of
8 it. (Laughter)

9 If you would state your full name and spell it for the
10 record, please.

11 MS. ROSE: Good morning, everybody. My name is Jennifer
12 Rose and I'm with the Domestic Violence Clearinghouse and Legal
13 Hotline.

14 I've given the reporter notice that I talk very fast so
15 I made sure I had no caffeine this morning. (Laughter) Just
16 decaffeinated tea. I also submitted written testimony. I've
17 also warned her that I skip around a lot and sometimes make
18 things up. But I promise it will be the truth. (Laughter)

19 Again, I work at Domestic Violence Clearinghouse. And
20 I'm an attorney as well. I've been at that agency for nine
21 years so I submit this testimony on behalf of the
22 clearinghouse but also I'm a member of the Interagency Council
23 which is a coalition of immigrants' rights advocates on Oahu.
24 And I believe that I speak on their behalf as well.

25 I am not an expert on language access, which is going

1 to be the focus of my testimony. So if there are any really
2 hard questions I'll just defer to Bill. (Addressing Mr.
3 Hoshijo) (Laughter) I will be buying him lunch and I've
4 asked time to stay for the duration of my testimony.

5 I'm talking from the perspective of a service provider,
6 someone who has worked with immigrants and limited English
7 proficient individuals for many years.

8 I speak as an attorney who has represented immigrants
9 in family law cases, survivors of domestic violence. And I
10 also draw my experience from my community work. I was
11 formerly the legal services director of the Domestic Violence
12 Clearinghouse for a number of years. And recently started
13 different department in the agency focused solely on improving
14 access to services for underserved populations, particularly
15 immigrants.

16 And we're doing this not just through our agency but
17 also providing technical assistance to other agencies locally,
18 nationally, and in some cases internationally to build
19 capacity to increase access of services on domestic violence
20 issues.

21 I also provide technical assistance to the Office of
22 Violence Against Women which is housed in the Department of
23 Justice. And I'm working currently with the United States
24 Territories, particularly with Guam, CMI and American Samoa to
25 help them build capacity to do more grass roots work in the

1 area of domestic violence and sexual assault.

2 I also run what I believe to be one of the only
3 programs in the country that focuses on culturally based
4 intervention practices particularly for Filipino survivors of
5 domestic violence. I don't think there is any other such
6 program in the country that provides that kind of bilingual
7 and bicultural advocacy for domestic violence intervention.

8 So now that I've qualified myself I will begin.

9 Immigration continues to change the face of Hawai'i.

10 According to the 2000 Census:

11 Hawaii ranked 5th in the nation, approximately 27
12 percent for persons over the age of five speaking a language
13 other than English at home. This is over 8 percent higher
14 than the national average.

15 Hawai'i also ranks 4th in the nation, 13 percent, for
16 persons over the age of five speaking English less than "very
17 well."

18 Hawai'i ranks 4th in the nation in terms of the
19 percentage of foreign-born residents, which I think is really
20 amazing that we're actually tied with New Jersey, having that
21 large a percentage under Florida, California and New York.
22 That is mind boggling.

23 In the last several years Filipinos continue to
24 represent the largest immigrant population, representing over
25 half of all annual incoming immigrants in Hawai'i.

1 The numbers of individuals migrating to Hawai'i from
2 the Federated States of Micronesia also continue to increase,
3 although I do not have any statistics for you at this time.

4 Bill referenced in his testimony under Title VI, the
5 denial of access to services based on languages prohibited
6 national origin discrimination.

7 As many of you are aware in 2000 former President
8 Clinton issued Executive Order 13166 affirming that Title VI
9 requires federally funded programs to provide language
10 accessible services. Underscoring the importance of language
11 access for limited English proficient individuals, President
12 Clinton further directed all federal departments to develop
13 and implement plans that would provide meaningful access for
14 all LEP persons. So anybody who is receiving federal funding,
15 non-profits including myself are held to this Executive Order.

16 Despite Hawai'i's demographics and a very clear federal
17 mandate, most state entities are in woeful non-compliance.
18 LEP persons continue to experience national origin
19 discrimination on the basis of language.

20 Over the years that I've worked with the Domestic
21 Violence Clearinghouse, and I've been working with the
22 community alliance, I've heard many, many horror stories from
23 my own clients and other staff members' clients as well as
24 from community members.

25 Many basic civil rights violations such as being denied

1 public benefits due solely to language. DHS workers on a
2 weekly basis have told our clients things such as, "Oh, no, I
3 think your English is good enough. You can get by. You don't
4 need an interpreter." Or, "I heard that they learn English in
5 the Philippines so I don't think an interpreter will be
6 necessary."

7 State workers have also told our clients that they
8 should know to bring their own interpreters. In one case one
9 worker said, "Well, the Chinese know to bring their own
10 interpreter. You should have brought your own interpreter."

11 While some clients have been outright denied state
12 benefits to which they are entitled, others have experienced
13 great delays in accessing these benefits.

14 One of the horror stories that we experienced at our
15 agency was a woman on Moloka'i who was a victim of domestic
16 violence, also an LEP person. She finally decided to get
17 protection after being abused for years by her husband and
18 nephew.

19 Neighbors had encouraged her to go and get that TRO
20 which she finally did. At her protection order hearing two
21 weeks later there was no Ilocano interpreter provided. She
22 had to come back for a continuance. She came back for the
23 continuance and there was no Ilocano interpreter. She came
24 back again for another hearing and there was no Ilocano
25 interpreter so she had to have had her sister interpret for

1 her.

2 A week later she did get her protection order but she
3 committed suicide. And I'm not suggesting that it's because
4 she didn't have the court interpreter. But we can only
5 imagine the public shame that there is in obtaining protection
6 orders. Many of the family members were very afraid of the
7 batterer as is true in most cases. It is completely
8 inappropriate for any family member to be interpreting in a
9 domestic violence case, particularly children.

10 The truth is it happens all the time. The truth is
11 that children are interpreting not just in LEP cases but in
12 situations where medical services arrive and there's no
13 interpreter there. So children are trying to explain what is
14 a condition or symptoms of their parent or sibling.

15 They're trying to explain how their mother got choked
16 or strangled or raped. And children are missing school in
17 Hawai'i because they're interpreting for their families.
18 They're playing the role of the state.

19 The sad truth is that we are going to pay a huge price
20 for that. There is a long-term cost to that, the trauma that
21 these children are experiencing.

22 In another situation an LEP woman was not provided an
23 interpreter when the police were called to a domestic
24 situation. The police spoke to the English-speaking male who
25 was present at the scene of the crime. The woman, of course,

1 could not speak English well at all and she did not speak with
2 the police. He told the police that she was suicidal.

3 Without ever obtaining an interpreter the police then
4 called CPS since there was a child present on the scene. The
5 child was not the biological child of the man that was present
6 on the scene. So CPS was called. And she was asked to
7 voluntarily give up her children to CPS in an English-only
8 form that was never translated, nor was there any oral
9 interpretation of what that form was.

10 She, of course, signed the form and she was taken to a
11 medical, a psychiatric facility where she spent a number of
12 days before anybody ever knew what was going on.

13 Finally, one of the psychiatric staff workers figured
14 out she was a victim of domestic violence and not at all
15 suicidal and had no mental illness, and she was taken to a
16 shelter where an interpreter was finally provided. Yet it
17 still took weeks for her to get her children back from CPS.
18 This is just an egregious situation. It happened very
19 recently.

20 Through the testimony of individuals who are part of
21 the community of Kokua Kalihi Valley Comprehensive Family
22 Services, patients have reported being violated by paramedics
23 who touched the patient all over the body without first
24 communicating their intent.

25 Hospital staff have asked patients in the waiting room

1 to interpret for other patients.

2 Children are often asked to interpret for parents and
3 relatives in emergency rooms.

4 Whether it's a health care situation or a domestic
5 violence situation or sexual assault incident, there is
6 serious harm that is being inflicted when there are language
7 barriers such as these. Again, we pay a price.

8 The community has felt outrage for some time. And you
9 should know that language advocates have been working in this
10 area for almost 30 years. At a recent conference that we had
11 hosted on "Domestic Violence within the Filipino Community,"
12 in fact first ever I believe, has been focused solely on
13 domestic violence among Filipinos, some 100 community members
14 in attendance prioritized language access as a barrier for
15 Filipino domestic violence survivors.

16 The National Federation of Filipino American
17 Association is the leading voice advocating for Filipino
18 Americans on public policy issues.

19 Pacific Region IX of NaFFAA, recently passed a
20 resolution to address language accessibility for Hawai'i's LEP
21 population. Similarly, the Oahu Filipino Coalition for
22 Solidarity, a political action group that addresses issues
23 affecting the Filipino community in Hawai'i, also passed a
24 resolution at their annual meeting in August 2005 addressing
25 the disparities that persist for the Filipino community with

1 respect to language access.

2 I also speak from the perspective of an immigrant and
3 from the perspective of a Filipino that's lived in this
4 community.

5 The Department of the Attorney General recently
6 published the Hawai'i Strategic Plan for Victim Services, a
7 statewide report that recognized that LEP persons are a highly
8 vulnerable population of crime victims. The AG's office
9 brought a hundred stakeholders together to design the elements
10 of a strategic plan and made recommendations to increase
11 accessibility of services for all LEP crime victims.

12 One stated goal for the strategic plan was to enhance
13 the civil and legal rights of immigrant and LEP crime victims.
14 The report made recommendations such as having specific
15 training on immigrant legal rights and having the population
16 learn more about Title VI.

17 Language access advocates, again, have worked
18 tirelessly on this issue. In part due to the community outcry
19 and mobilization advocates and members of the Interagency
20 Council decided to try once again this legislative session.
21 Currently a legislative measure authored by the House is still
22 alive in the Senate as we speak.

23 The measure proposes an affirmative approach to
24 addressing language access on a statewide level. The bill
25 would require the state and all federally funded entities to

1 meet the minimum requirements of Title VI of Executive Order
2 13166 and to develop language access plans.

3 The bill creates a position of a language access
4 director to be housed with the Department of Labor. The
5 language access director would be responsible for reviewing
6 and monitoring each state department's language access plan,
7 they would provide technical assistance and oversight and
8 endeavor to eliminate barriers using informal methods such as
9 mediation and conciliation.

10 The bill also creates a language access advisory
11 council composed of representatives from the community,
12 non-profits and the state.

13 There was an enforcement measure that was before both
14 the House and the Senate that would create a private right of
15 action similar to disability rights that would be housed in
16 the Hawai'i Civil Rights Commission, but that bill died.

17 Amazing, the House bill has passed out of subject
18 matter committee within the Senate was due largely to the fact
19 that the state departments headed by the Department of Labor,
20 the Attorney General's office, the Hawai'i Civil Rights
21 Commission, and us language advocates who were able to agree
22 on the affirmative model to the specific language in that
23 model.

24 However, the role of the community can't be underscored
25 as a driving force behind this process. It has been a

1 collaborative grass roots community effort.

2 The benefits to limited English proficient individuals
3 if this bill is made law, can be significant. Improved access
4 to a variety of services as well entitled benefits not only
5 ensures safety and well-being but also allows LEP persons to
6 get the support they need to become economically viable in the
7 community.

8 It is our hope that this measure is made law. We have
9 tremendous community support for its passage. But whether or
10 not it does become the law of the land the Interagency Council
11 and agencies such as mine continue to work on community-based
12 efforts to increase accessibility of services for LEP persons.

13 We're aware that there are both quality and quantity
14 issues that impact accessibility of interpreters. We are
15 working towards community-based language banks, the
16 development of language advocates and training for existing
17 interpreters.

18 But the state must meet its legal obligation under
19 Title VI and Executive Order 13166. The measure before the
20 Hawai'i State Senate will help the state to show good faith
21 compliance under federal inquiry.

22 However, in order to truly provide meaningful access,
23 the state should recognize that effective development of a
24 free and democratic society depends on the right and ability
25 of its citizens and its residents to communicate with their

1 government. Given Hawai'i's demographics, the state should
2 work towards employing a sufficient number of bilingual staff
3 in public contact positions.

4 Even if this measure does pass, the state must also
5 provide leadership in ensuring that state agencies and other
6 covered entities comply with the Act. I also believe that if
7 passed, the policy goal of making state entities more
8 accessible also requires the state to proactively work to
9 eliminate barriers that prevent LEP persons from utilizing
10 their services.

11 Other suggestions for constructive change, regardless
12 of whether or not this bill passes -- suggestions that I make
13 are not just coming from me but suggestions that people have
14 made over the years:

15 1) Create economies of scale. Significant economies of
16 scale can be achieved by consolidating and coordinating
17 language access resources. In addition, some state agencies
18 currently have protocols for determining an LEP person's
19 primary language. Some of the effective policies in place can
20 be utilized statewide, regardless of the type of service.

21 And on that note another idea is to identify successful
22 models and best practices that state agencies or non-profits
23 are already utilizing.

24 A third we need to identify sources of funding to
25 implement state legislation to improve language access. The

1 state should research and identify all federal sources of
2 funding that could be used to help with translation and
3 interpretation services.

4 And, finally, provide resources for LEP persons to
5 learn English. Very simple. The state has both a legal and
6 ethical responsibility to ensure basic civil rights for
7 residents of Hawai'i. We must not ignore Hawai'i's
8 demographics or the public outcry of the community and
9 language access advocates over the years.

10 Vulnerable populations such as LEP victims of crime,
11 those living in poverty and the elderly will continue to be
12 both traumatized in their denial of civil and human rights and
13 be treated in inhumane ways. And there's a long-term cost to
14 that.

15 We as a community will continue to pay the price of
16 inaction. So I urge you to consider some of these
17 recommendations. And I thank you for the opportunity to
18 testify.

19 If there are any questions Bill will answer them.

20 (Laughter)

21 MR. FORMAN: Thank you very much. Are there any
22 questions from the committee members? Os Stender.

23 MR. STENDER: Actually, are you familiar with Pacific
24 Gateway?

25 MS. ROSE: Yes.

1 MR. STENDER: Because I used to serve on that board.
2 The whole idea, one of the activities was to have a pool of
3 interpreters of different languages that would be provided if
4 called upon. And I guess that's really where the problem is
5 getting the agencies to call upon where the service is
6 available.

7 MS. ROSE: Right. I think you're absolutely right. One
8 area for non-profits is that we are very ill equipped and often
9 not trained on how to access interpreters and what are the best
10 practices in using them.

11 On Oahu we're a lot more lucky than the woman on
12 Moloka'i. Because through a VOCA grant from the prosecutor's
13 office and with agencies such as Helping Hands and Gateway we
14 have bilingual access lines.

15 So, for example, on our hotline I can access pretty
16 much any of the main languages spoken in Hawai'i. At that
17 time the hotline call is being taken we can determine the
18 victim's language, their first language. So I can have that
19 person on the call at the same time. I can also have
20 bilingual access for intake and walk through the whole legal
21 process.

22 That's not true for the neighbor islands.

23 MR. FORMAN: Faye Kennedy.

24 MS. KENNEDY: I was wondering what type of arguments are
25 used by people who oppose this bill?

1 MS. ROSE: That's a great question. They say that it's
2 an undue burden. Of course you folks all know that it was
3 required by law already. Whether this measure -- people are in
4 non-compliance of the federal law. So it needs to happen
5 whether or not this measure or any other measure passes this
6 year.

7 As far as the affirmative model the cost is not very
8 great as far as putting the staff into the Department of
9 Labor. They realized that there are lots of cost to maintain
10 which is why I suggested looking at economies of scale.

11 The arguments we make in return are some of the things
12 that I've said today which is you're going to pay now or
13 you're going to pay later. And you're going to pay a lot
14 later. And I think that -- and I mean, Bill, you can nod your
15 head or shake your head -- I think that most of the
16 legislators get that. There has been very little disagreement
17 in opposition.

18 MS. KENNEDY: So there's a good chance it will pass.

19 MS. ROSE: Yes. Some version.

20 MR. FORMAN: Any other questions? I could just
21 reinforce the things that Jennifer said. Thirty years for
22 sure. My family lived on Moloka'i 30 years ago. And my
23 parents were -- my mother's an immigrant. My father also
24 speaks the language. But just the simple matter of these old
25 Filipino laborers trying to get their driver's license when

1 they wouldn't administer the test.

2 My parents had also testified before the Legislature
3 about they did a little test. They called. My father
4 would be on one line and my mother on the other line. My
5 mother would speak Filipino and then see how the state
6 agencies reacted.

7 My father would call back, say exactly the same things
8 in English and there were completely different responses to
9 the two people. On several occasions the state agencies who
10 were obligated to provide these services would refer my mother
11 to herself. So there are serious problems here that have been
12 ongoing for a quite a long time.

13 What are the barriers here? Is it unwillingness of the
14 state to comply with its mandate? Is it really the funding?
15 Are there other things that are going that are going on?

16 MS. ROSE: I think that there is a sense of overwhelm.
17 It is difficult to try -- it's not hard to come up with a plan.
18 Here's our plan for oral interpretation. And when they walk in
19 the door we'll have like the ten most common spoken languages.
20 And they'll check off which language they speak.

21 I mean there are obviously a lot -- each state agency
22 would have to make their plan work and their policies work for
23 the specific kind of services they provide. We would look at
24 a number of different factors.

25 As far as the written interpretation we're asking for

1 the vital documents to be translated, things like denial of
2 benefits or, you know, notice of a hearing. Those are the
3 kinds of things.

4 I think, David, that there is that sense of
5 overwhelming, how to get started. I think that people think
6 they don't want to put the money into it. But what feels like
7 what's behind that is a lack of prioritizing immigrants'
8 rights and a sense I believe -- this is my own personal
9 opinion, not the opinion of the Domestic Violence
10 Clearinghouse -- that there is a false consciousness in
11 Hawai'i because we're all brown that somehow we can all figure
12 it out.

13 Whereas language is such a huge barrier and language
14 and culture the way that you look at the world. In a perfect
15 world there would be bilingual, bicultural advocates,
16 interpreters everywhere.

17 Of course, there is the issue of quality among
18 interpreters. The Judiciary is looking of having court
19 interpreters being certified.

20 But as Mr. Stender pointed out there are resources that
21 are already available. The state could be looking at what
22 non-profits are doing because we have been successful at
23 pooling our resources.

24 MS. KENNEDY: Also most immigrants don't vote. That's
25 the other half.

1 MS: ROSE: Well, I didn't want to say it but, yes. But
2 thank you for saying that. It is an issue. It seems like
3 there's a lot of political power. This is a huge issue in the
4 Filipino community as they're celebrating our centennial this
5 year.

6 And Faye's absolutely right. A lot of the testimony
7 that was presented at the first hearing were from Sakadas and
8 Manongs who still, it's not that people don't want to learn
9 English. People say, "Well, why can't they just learn
10 English?" A lot of the Manongs will tell you, "I know English
11 very well. But when it comes to a document about fiduciary
12 duty...." when it comes to a document, legal document, those
13 kinds of things some things don't translate very well from
14 your primary language. So there's still a challenge.

15 A lot of the testimony came from our elderly community
16 that pay taxes in this state for many, many years for these
17 exact same programs and benefits to which they're entitled to
18 and yet can't access.

19 MR. FORMAN: Nalani, did you want...

20 MS. FUJIMORI: Do you have a sense of, I think I
21 understand that you need what's called a level 5 translator for
22 legal services. Do you have a sense of how many translators we
23 do have in the state that are certified at that level?

24 MS. ROSE: I think the Judiciary would know. I was just
25 speaking with one of their staff the other day at a hearing. I

1 don't think it's very many. That's why they're slowly, they've
2 got a lot of funding to slowly move toward this certification
3 plan. Again that would be for the court.

4 A lot of the horror stories we hear and other state
5 departments I personally believe that in some ways the
6 Judiciary has the hardest in trying to meet LEP needs and
7 comply with Title VI.

8 MS. FUJIMORI: To follow up with that. How much
9 training do you need in order to get that level 5
10 certification?

11 MS. ROSE: I have no idea. I know in the court
12 certification process it's many hours. They actually told me
13 that but I couldn't remember. Sorry. I can find out if I have
14 30 days. (Laughter)

15 MR. FORMAN: Sure. Absolutely. We appreciate that.
16 Since Bill Hoshijo's name was invoked in your presentation I'll
17 give him an opportunity to say a few words.

18 MR. HOSHIJO: In terms of the barriers that we faced
19 over the years towards, in the way of addressing this issue, I
20 think one is we really need a commitment on a statewide
21 systemic basis.

22 Because, you know, one of the things that came up
23 during the hearings on this bill is that there's, in
24 individual instances people are trying. So there's a lot of
25 kind of goodwill and good faith effort to try to help but not

1 a real high level of awareness of what the requirements are.

2 And as an administrator of a small state agency I know
3 that if you leave it to each individual program, division or
4 even department it's not going to happen. Because without
5 that commitment of resources it's an impossible task.

6 The other thing is that I don't know that we're that
7 much better off than we were 20 years ago. Part of the reason
8 for that is when the state was going through its worse fiscal
9 crisis and the downturn in the economy, one of the first
10 things that was cut were the programs that were added in the
11 late '70s and early '80s which included a lot of these
12 bilingual access type programs.

13 At one time through Pacific Gateway which was then
14 Kalihi-Palama Immigrant Service Center and Catholic
15 Immigration Center there were more resources available than
16 there are today. The focus was on bilingual case management
17 which even goes beyond interpretation. Those programs were
18 really cut to the bone or eliminated during the budget cuts.

19 So, again, in terms of priority it was, I think, seen
20 as sort of a luxury and those programs were actually cut. We
21 have less now than we had. Thanks.

22 MR. FORMAN: Thank you very much Jennifer and Bill. We
23 can now turn to Mr. Alphonso Braggs. If you could approach the
24 microphone. If you happen to have any copies of written
25 testimony the court reporter would appreciate it. Yes, Uncle

1 Charley?

2 MR. MAXWELL: I've been hearing the conversation of the
3 testimony intermittently. So I don't know if I'm -- I don't
4 know what's happening. But I wanted to ask Ms. Rose if in the
5 past she has filed anything with the U.S. Civil Rights
6 Commission.

7 MS. ROSE: No, I have not. I know that NALOYO has been
8 work on filing a complaint with Legion Nine for those DHS
9 violations. But I have never filed anything.

10 MR. MAXWELL: Uh-huh. Maybe you should. I mean at
11 least have some record. You said some federal laws, if I'm not
12 mistaken, were violated.

13 MS. ROSE: Actually what you just mentioned is what our
14 interagency council has been talking about, particularly if our
15 bill doesn't pass. Then we're going to look at more towards
16 the enforcement approach versus the care and nurturing model
17 that we're still trying to hold onto. Thank you.

18 MR. FORMAN: Thank you. Uncle Charley, I'm sorry about
19 the poor connections.

20 MR. MAXWELL: Yeah. If everybody can just talk up,
21 okay. It sounds good now.

22 MR. FORMAN: Okay. Thank you. If you could identify,
23 state your name and spell it for the record.

24 MR. BRAGGS: Good morning. My name is Alphonso Braggs,
25 A-l-p-h-o-n-s-o B-r-a-g-g-s, President for the Honolulu Hawai'i

1 branch of the NAACP. Thank you for this opportunity to testify
2 today.

3 The Honolulu, Hawai'i branch of the National
4 Association for the Advancement of Colored People is grateful
5 that we have an opportunity to share with you our perspective
6 of civil rights in Hawai'i from an African-American
7 perspective.

8 We are concerned about the number of alleged violations
9 of federal, state, and local civil rights law. And based on
10 the volume and nature of these complaints we are compelled to
11 conclude that, yes, racism and discrimination is still
12 prevalent in Hawai'i. The following highlights some of the
13 cases that we have received.

14 Racism and discrimination in education. We've had a
15 number of meetings with the Department of Education and the
16 Board of Education since September of '04. We've also met
17 with representatives from private schools and charter schools.
18 Although we've seen over this time some changes at
19 administrative levels all the way down and in the classroom,
20 we still receive a significant number of complaints.

21 We only need to look at the national reports that grade
22 us on how we are doing in comparison to other states. We can
23 only conclude that we are not achieving at the rate that we
24 need to be achieving.

25 Unfortunately, this means that African-American

1 students and other marginalized students are being further
2 disenfranchised. The bottom line is that children are being
3 left behind.

4 Some of the complaints have to specifically do with
5 African-American teachers and parents alleging discrimination
6 by teachers, staff and administrators. Concerns that are
7 raised that the system is not sensitive to the need for a
8 multicultural staff.

9 Allegations that staff, teachers and students are not
10 being provided adequate sensitivity and/or bullying training.
11 Let me say that this doesn't mean that there isn't a degree of
12 these taking place. The determination is that it is not
13 having the desired effect. That's the real message that we're
14 trying to convey today.

15 We have an allegation of teachers who feel that their
16 rights with respect to the unions and as teachers are being
17 denied based on their race by administrations.

18 Several parents allege students reporting to schools
19 during the midterm have not received the required sensitivity
20 or diversity training or bullying training. Consequently,
21 this leads to incidents or an increased rate of incidents
22 within our school systems. And this matter needs to be
23 addressed.

24 It is the parents' contention that had these kids had
25 this training subsequent or throughout the year, that this

1 rate of incidents would be much lower.

2 We also noticed that military parents and students
3 also feel that they are somewhat received in a less than equal
4 way as their counterparts who are permanent residents or live
5 permanently here in Hawai'i. We see this at all levels in
6 recent cases ongoing. We haven't seen a decline in that to be
7 quite frank with you.

8 We also need to indicate that we not only receive those
9 types of complaints pertaining to the military from minorities
10 but we also receive those from Caucasians as well.

11 Recommendations with respect to education. We think
12 that an independent type of investigation should be conducted
13 to help determine what are the root causes for these
14 complaints. I know that a lot of these are regarded or set
15 aside as just mere perceptions.

16 However, I think in all fairness to parents and to
17 teachers and to students these alleged perceptions, if that's
18 what they want to call them, really do warrant review or
19 consideration and not just simply be dismissed or given the
20 bureaucratic response. That's the feeling of a lot of the
21 students, a lot of the teachers, a lot of the parents who
22 register complaints with us.

23 We feel that there needs to be an aggressive effort on
24 the part of the Department of Education to hire and retain
25 more African-American teachers, staff, security and

1 administrators.

2 It is our contention that students who see more
3 diversity will feel more confident about being a part of the
4 process. This gives them that reassurance and also it helps
5 foster a philosophy where they see equality being practiced
6 and consequently we're setting a template that will work in
7 our communities as we desired.

8 After the discussions and meetings with several parents
9 and administrators and teachers, we find that if there had
10 been more clear communication on the part of the teachers, on
11 the part of administrations when certain messages or actions
12 are taken -- say there is a disruption in the class. If there
13 had been some clear communication initially between the
14 official reporting to the parents or the means where that
15 message got conveyed to the parents or someone else, a lot of
16 the problems that followed could have been alleviated.

17 So again it's really key that we articulate what
18 happened and what we think may have happened versus
19 automatically a presumption that this is it. Not all cases
20 and complaints have a racial basis. But if they're not
21 properly dealt with they're allowed to foster this concept of
22 racism because we already have two ethnic groups dealing with
23 the conflict.

24 Students are also asking to take a greater role in
25 being responsible for their own demise. In other words, we

1 are receiving feedback that if they were given more of an
2 opportunity to be part of a resolution and more of a study or
3 a feedback, then they feel that some of these conflicts could
4 be resolved.

5 And that gives them ownership of their school. It
6 instills pride. Again it fosters a philosophy that "I can be
7 a part of a society even at this age where I can make things
8 better for my community." And this carries over into the
9 workplace and on. So I think we really need to look at this.

10 Campus security personnel. We need to take a look at
11 whether or not those individuals are being properly trained
12 with respect to diverse cultures, the sensitivities that need
13 to be exercised.

14 An example would be if we have an African-American
15 student that's first year here, and we have a local security
16 guard where there may not be an understanding of what one's
17 body language or deportment of words may mean and intent.

18 So because of that misunderstanding, because of that
19 lack of sensitivity and training and preparedness, we have a
20 conflict ensue because we did not properly prepare both the
21 student and the individual in position of authority.

22 Basically it means that it's the entire community
23 working with the schools, working with the teachers. And also
24 we noticed that parents have a greater role to play in this.

25 And I think our best case we saw, we recently had a

1 meeting with some parents and school officials. And at that
2 meeting it was discovered that while the parents actually have
3 enrolled their kids in private tutoring and also into some
4 learning centers to reinforce what is supposed to be taking
5 place in the classroom. And it was only at that meeting that
6 the administration finally decided: Wow. You know, if we
7 communicated with this established learning center, you know,
8 if the teachers would give some feedback or some
9 correspondence, we could probably achieve higher rates of
10 successes with these students.

11 The other thing that came out of that was that parents
12 simply want to be heard. I mean when you say that, you know,
13 "This kid is failing," they want real responses. They don't
14 want the bureaucratic response. I think that a lot of the
15 emotion that clouds our ability to bring progress is because
16 we tend to have little canned responses or answers. Not all
17 situations fit every situation.

18 So I think that identifying a student as an individual
19 and honoring that and empowering that student as an individual
20 as well as respecting what are the concerns of the parents.
21 It does mean that we have to go back away to what is the
22 fundamental principles about teaching and how it is that we --
23 that's the foundation.

24 And I want to emphasize that because it leads to other
25 problems that we're having within our communities. I'll talk

1 about that in a quick moment here and I'll be through.

2 Also we've received a significant number of complaints
3 about racism and discrimination within the business community
4 and hotels and tourist industry. To be quite frank with you
5 we're quite shocked and just appalled at allegations against
6 the hotel tourist industry primarily in the Waikiki area.

7 One case here we have an individual who was denied the
8 opportunity to use a credit card at a hotel. This individual,
9 you know, stated, "I probably looked like, I probably
10 represented myself as the typical rapper style young man."
11 However, that should not be a determinant fact as to whether
12 or not you receive the standard of service that is supposed to
13 set your establishment apart from and also what it is that we
14 want to be reflective of the message for individuals arriving
15 to Hawai'i as guests.

16 The other irony here is that most people who come to
17 Hawai'i think that this is the last place on Earth that you
18 would experience racism and discrimination. So there's this
19 double effect when it happens. And I mean particularly here
20 in Waikiki where we have a lot of tourists they're just not
21 anticipating.

22 For many of them their concept of racism is a white/
23 black issue. So when they get here and they have, "they"
24 being black, and it comes from a brown it's like an
25 overwhelming experience.

1 So; you know, we continue to get several complaints a
2 months on those. And some of our recommendations on that is
3 that we need to respect all cultures, not just marginalized
4 based on one culture's economic ability and resource in
5 Waikiki. That's the perception.

6 If I may quote one, "Our dollar is the same dollar as
7 other individuals. However, we may not make as many dollars
8 as they do."

9 But I think if we are to succeed in the business world
10 we have got to make sure that everybody's dollar is given
11 equal value and the worth of their spending power is fully
12 recognized. And that requires intervention at the government
13 level and by other civil rights minded individuals.

14 We are also concerned with the number of complaints
15 that we get, again, from military personnel, who in this
16 particular community there are many of the younger ones who
17 feel that there is a perception of transiitness. Consequently
18 that because they aren't anchoring down here they're not being
19 given full credit for their ability to make a worthwhile
20 contribution other than the use for those in favor of their
21 national defense ability, it's almost like they have no
22 purpose and they're unwelcome. Yet still we'll take that
23 dollar when we want it.

24 But they complained that they are not being equally
25 serviced in establishments throughout town. Also they receive

1 a different degree of service at establishments. And in
2 particularly for a lot of them I think their biggest
3 complaints arise around clubs and others where it's known it's
4 easy to identify a military person so they receive a lesser
5 service.

6 Of course we have the ongoing issues of the eating
7 establishment of the wait longer, disquality service.

8 The basic recommendation on that is that, again,
9 culture awareness, businesses really need to make sure that
10 they don't lose out across the board on the success of their
11 businesses because they fail to recognize diversity and they
12 fail to adequately train their staffs.

13 This is staff including management. We had one
14 complaint of allegations of discrimination from management on
15 down. So if management is practicing this then we can clearly
16 understand while staff, and most of whom are already facing
17 culture challenges and language barrier challenges,
18 automatically feel that if the boss is doing it it's okay.

19 So this is the same type of ignorance that has been
20 fought for many years in the South. You know, we managed to
21 make some headway. So the sense of complacency that we have
22 here in Hawai'i has got to be dealt with so that we all come
23 to the table and say how can we irradiate this. We need to
24 stay vigilant about that.

25 The bottom line is that a bad image ultimately leads to

1 a bad economy. And that's not what we need.

2 While we haven't received as many complaints we still
3 continue to get allegations of sexual harassment, racism and
4 discrimination in the workplace.

5 And many feel that while they were equally as qualified
6 as other applicants, that they were overlooked for promotions
7 and hirings based solely on their race.

8 And others' complaints include a minority and a
9 non-minority or an African-American and another minority being
10 in an equal incident and security choosing to single out with
11 the presumption of guilt towards the African-American and the
12 local individual being treated in a different way.

13 So again it's happening at all levels across the board.
14 It just needs to be addressed. I think that standards and
15 enforcement of standards and training can help and go a long
16 way in improving that.

17 We're also, and this is to wrap this up here, we're
18 also concerned about the proposed legislation for three
19 strikes bill. We would be remiss in our responsibility if we
20 did not advise this body that we're adamantly opposed to any
21 type of a three strikes legislation.

22 As it is African-Americans across the nation, while
23 they don't rank in the top here in Hawai'i, but, however, the
24 same statistics that affect African-Americans -- right now
25 African-American women are the fastest growing prison

1 population.

2 We have more African-American men in the prison system
3 than we have enrolled in institutions of higher learning. The
4 fallout from that should be quite obvious to all of us. And
5 really should awaken our moral consciousness to say this isn't
6 a criminal justice concern. This is really a social concern.

7 We again need to get to those systemic issues that
8 allow that end result. When that individual is standing
9 before the judge for sentencing now it's too late. We've got
10 to look at the issues that I addressed early on. What is it
11 that we're allowing to take place within our community?

12 What is it that we're failing to ensure is being met
13 within our school system?

14 How is it that we're failing to really build our
15 community to eradicate some of these enablers that end up with
16 that individual standing before the judge?

17 So, consequently, we urge you to not only consider this
18 a criminal justice matter but the social. And also we need to
19 take a strong look at the economic impact for Hawai'i in
20 particular here. This particular piece of legislation would
21 be a major, major, major tax burden on already overtaxed
22 citizens.

23 There are some reports that put estimates at, if this
24 goes through, that each individual prisoner would be costing
25 us somewhere in the vicinity of \$1.2 million for the 30 years.

1 Obviously if it goes -- that doesn't include health
2 concerns for this individual getting older. This doesn't
3 include building one prison or any additional security guards.
4 This is the basic cost for that one guy just to have him
5 behind those bars.

6 We really need to figure out are we exercising our best
7 practices to make our neighborhoods a safe place. And all of
8 this ties into the issues that we raised. How can we make our
9 community safe so that our children will grow up in a safe
10 environment where they will be productive members of society?
11 And that our elders as the baby boom grows, more and more
12 people are coming to Hawai'i.

13 The other issue has to do with homeless. We are
14 finding more and more homeless people are coming to Hawai'i.
15 Why? Because they can survive here outside in the winter.
16 And in the mainland they cannot. So there are a lot of social
17 and economic implications involved in this that I urge you all
18 to please consider.

19 With respect to the three strikes it's important not to
20 think that it doesn't matter here because our concerns for
21 Hawaiians, for Filipinos, for other minority groups, you know,
22 they are equally affected.

23 In other words, it's about economics. If you can
24 afford a good system and a good defense then you probably will
25 not fall prey to a poor system, to the fallout as we have a

1 lot of in the mainland where we have a poor public defenders
2 system. Consequently that contribute to the high volume of
3 individuals in our penal system.

4 Finally, let me say thanks to, I think it's important
5 for you to know that a measure of our success as an
6 organization has been the partnership that we've managed to
7 succeed at with the Hawai'i Civil Rights Commission, with the
8 Equal Employment Opportunity Commission and the
9 Japanese-American Citizens League.

10 Our collaborative efforts have helped us to move
11 forward an agenda where we really can say that we're trying to
12 achieve. We have not yet achieved. But we are remaining
13 vigilant in our struggle for justice and equality for all.

14 And I thank you for this opportunity today. I will be
15 happy to take any questions.

16 MR. FORMAN: Thank you very much, Alphonso. Committee
17 members, any questions?

18 MR. MAXWELL: Yes. Charley Maxwell on Maui. I truly
19 agree with Mr. Braggs, your interpretation of what's happening.
20 But I'd like to speak from the perspective as a Native
21 Hawaiian.

22 When Captain Cook came here and the missionaries who
23 came later, you know, there was racism and prejudice from then
24 on. And it continues up until the present time. For Native
25 Hawaiians we make up all the social ills of Hawai'i in prison,

1 in welfare and suicide.

2 So I can sympathize with what you're saying. But for
3 Hawaiians they're trying to find their identity in their own
4 land here in Hawai'i. But there is so much barriers that is
5 economical and educational and everything else that is set up.

6 Look at the economy, for instance. Here on Maui a
7 common house, a house, a median priced house is 700,000.
8 Rental is up to \$2,100. So the poor, the poor, like you said,
9 the poor people, they're the ones living down the beach.
10 They're the ones that's economically deprived in the education
11 system, in everything.

12 And I can see where military would be prejudiced
13 against. But not only blacks but also military, the haole,
14 the white people that comes in the military. They would be
15 prejudiced against by the local people because they have,
16 Hawaiians are going through, like I said, this battle amongst
17 themselves of us stop being a military footprint in Hawai'i.

18 Already we probably are the first, second or the third
19 target for any nuclear attack here on Maui with the space
20 station up in Haleakala and with Pearl Harbor.

21 So these are all the kind of things that we also have
22 to combat as Native Hawaiian people. And I sympathize with
23 you and I agree there's a lot of work across the board with
24 all ethnic groups. Like I said Hawaiians, we're still in that
25 social ill. We still make up all the social ills of Hawai'i.

1 Yet this is our own land. This is where we came from, where
2 we originated.

3 MR. FORMAN: Thank you, Uncle Charley. I want to pick
4 up on what Uncle Charley's been asking. Are there specific
5 areas of inquiry that you think that our committee can
6 undertake that might address some of the issues that you raised
7 today?

8 MR. BRAGGS: I think that we may want to start if there
9 is an opportunity to work within the educational system. And I
10 don't mean just the Department of Education, but I think the
11 private and charter schools as well.

12 That's because it gives us a greater opportunity to
13 work at the foundation, at the lowest common denominator.
14 And I think it's worthwhile for this group, if you haven't
15 already, several years ago, a few years ago there was a study
16 done by the U.S. Civil Rights Commission which talked about
17 the social ills and the effect that it was having on various
18 ethnic populations.

19 And African-Americans and in specific here the Pacific
20 Islanders were at the low end of that. In other words, they
21 were the ones most affected. And the number one ill that it
22 had as the greatest effect in happened to have been the
23 criminal justice system. So I agree. I wholeheartedly concur
24 with...

25 MR. FORMAN: Mr. Maxwell.

1 MR. BRAGGS: Mr. Maxwell from Maui.

2 MR. FORMAN: Faye Kennedy.

3 MS. KENNEDY: As a committee member I don't want to be
4 in the position of trying to testify because I'm also the vice
5 president of the NAACP. I want to really commend you, first of
6 all, for the things you covered and the way you covered them.
7 I'm really very proud of you, Alphonso. You did a good job.

8 As far as your question that you just asked about what
9 could be done. When I got involved with the NAACP I didn't
10 realize there was such a lack of African-Americans in schools.
11 And I think if nothing else comes from this hearing, if we
12 could do something about that.

13 When I was on the Civil Rights Commission we had a
14 committee that was looking into the lack of employment of
15 minorities in schools. It's just ongoing.

16 Right now I serve on the State Schools Advisory
17 Committee. The problem is that there's so much defensiveness
18 and circling of the wagons. And I think anything that this
19 body can do to make them confront the problems -- they're not
20 just against the African-American students. They're against
21 the gay students. They're against the students who are poor.

22 That one against the African-Americans, as an
23 African-American that's the one that I think I want to address
24 because that is something that we met with the students in
25 public schools. We now have a safe school advisory committee

1 Nothing changes.

2 And my feeling is that not only does it not change but
3 the people who are like the whistle blowers they get treated
4 worse and worse.

5 The first case that we had started in September '04
6 that got us really involved in the schools. This teacher,
7 he's just about ready to take some kind of a breakdown, have a
8 nervous breakdown. I just think that what they do they're so
9 afraid that they're going to be criticized, the more you talk
10 about the problems really the worse they get.

11 Even the Civil Rights Compliance Office, they, if you
12 talk about problems, their very defensive. So that's the main
13 thing.

14 One other thing I wanted say in response to Uncle
15 Charley. You'd be surprised how many complaints we get from
16 Hawaiians and part Hawaiians. I myself when I get the
17 complaints on our hotline I take them very seriously because
18 it gives me chills and thrills of happiness when Hawaiians and
19 part Hawaiians call to complain.

20 I've been involved in a case where there's a coach in
21 the school. He said his daughter is Hawaiian. She has one of
22 the best records in soccer of the school. The PAC 5 head does
23 not help him. He doesn't know who to turn to. He calls me.
24 We talked hours trying to think how to resolve it.

25 We had another case of a part Hawaiian man, part

1 Hawaiian, park black, he went out to one of the resorts. They
2 turned him away said that he shouldn't be there. They didn't
3 like his car. They accused him of stealing. They called the
4 police.

5 And he said they kept calling him a, "black buddy."
6 And he said he's Hawaiian and he is part black. But he said
7 it's a denial of access to some of these resorts. So it's not
8 only in Waikiki do they have these problems, but they also
9 have them in some of the more expensive resorts out on the
10 north shore area.

11 So I just want to say that what the NAACP does is
12 concern themselves with all different problems. Sometimes we
13 have the haole children who call us. I just think you'd be
14 quite amazed at how multi-cultured the NAACP is and the depth
15 of our concerns not just for African-Americans.

16 MR. FORMAN: Thank you, Faye. Unless there are any more
17 questions the record is going to be left open for 30 more days.

18 So we appreciate it if you have anything additional to add.

19 We're going to divert a little bit from the schedule.
20 Kat Brady has graciously allowed Lois Perrin to speak ahead of
21 her. So we ask you to approach the microphone.

22 MS. PERRIN: Good morning. My name is Lois Perrin. I'm
23 the legal director for the American Civil Liberties Union of
24 Hawai'i.

25 I have been in Hawai'i for the last two years. And I

1 think that most of you know that the mission of the ACLU is to
2 protect and defend civil liberties and civil rights which are
3 found in the federal, and state constitutions as well as the
4 federal and state laws.

5 What's resonated with me over the past two years in my
6 position is really the sheer breadth of issues that our
7 organization deals with on an annual basis. It really runs
8 the gamut from everything from the First Amendment to people
9 talking about Jesus Christ in city hall to the rights of kids
10 who are in secured confinement to the rights of the homeless.
11 And it really is every issue in between.

12 We get approximately 2,000 requests each year that we
13 respond to. Most of this is done very informally. We try
14 refer when we can. Litigation, of course, is always the last
15 resort.

16 In order to put into context some of the national
17 issues we're working on, I did want to touch briefly upon some
18 of the local issues we are working on.

19 Specifically the Hawai'i constitution is really a
20 beautiful document in a number of ways. It creates a lot of
21 protections that are greater than what is afforded by the
22 federal constitution. Most notably in this regard is the
23 right to privacy. We have a specific right to privacy which
24 the framers determined was appropriate to give to the citizens
25 of this state, to give us power against our government.

1 What's been really disheartening is that in the last
2 five years there has been a trend to erode this additional
3 protection and other protections. This has been directly the
4 result of a campaign from the law enforcement coalition to
5 federalize the Hawai'i constitution.

6 What's really disappointing about this also is that
7 Hawai'i does not have an attorneys fees statute. Most states
8 have a specific statute that allows for the recovery of
9 attorneys fees for civil rights action. Hawai'i does not have
10 that statute.

11 So it makes it very unlikely that individuals are going
12 to challenge the sort of Hawai'i-specific issues because
13 there's no chance to get compensated at the end of the case.

14 We challenge them anyway because that is our mandate.
15 Although realistically it does become a budget decision as to
16 whether we can afford to keep taking cases for which we cannot
17 be compensated at the end. So that's just a little bit of
18 context.

19 Of course the recommendation on that is for them to
20 pass an attorneys fee statute. And every year I ask and every
21 year the Legislature says no. So we can continue to try but I
22 don't think it's going to happen any time soon.

23 I want to talk about two cases that we worked on that
24 really raise issues of national implication. The first is I
25 have spent probably 50 to 60 percent of my time in the last

1 two years working on issues from the Hawai'i Youth
2 Correctional Facility. The Hawai'i Youth Correctional
3 Facility is the only secured juvenile custodial facility in
4 the state.

5 It was originally designed as a very small facility.
6 This was done intentionally. It only has 40 beds. It was
7 supposed to be for 30 boys and for 10 girls. And the point of
8 this facility was to ensure that we had enough alternative
9 placement programs in the community to divert our kids away
10 from secured custody.

11 Unfortunately, over the last 15 to 20 years the
12 original model has completely broken down. Two and a half
13 years ago the former legal director did a scathing report on
14 the conditions at HYCF. And found, for example, at the time
15 there were almost 90 kids that are living at HYCF. They were
16 being triple bunked in cells, cells that were designed for one
17 person.

18 So what was happening is in an 8 x 10 cell there was
19 one bed affixed to the wall and two beds that were literally
20 on the floor with the kids sleeping head to toe, head to toe
21 with one child's nose being inches only from the toilet.

22 They were so short staffed that the kids would be
23 locked down for days on end. When I say locked down it's not
24 as if they're in their module and they're free to walk around.
25 They were locked down in their cells, taking every meal in

1 their cells with absolutely nothing to do but to stare at the
2 walls.

3 What ended up happening is there was a lot of violence
4 when the kids came out of their cells, mostly because they
5 were stir-crazy because they weren't allowed to have a single
6 personal affects in their cell.

7 In addition the staff at HYCF had not been trained at
8 all with respect to anything since 1987. The majority of the
9 people who are at HYCF have a background in adult corrections
10 which is fundamentally different than juvenile corrections.

11 The primary goal of juvenile corrections really should
12 be rehabilitation. But, unfortunately, the lack of services,
13 the lack of training, the lack of other things, these kids
14 were being treated as if they were adults as if they were in a
15 very, very restricted adult facility.

16 We're recently in the middle of a case right now which
17 is about the mistreatment of lesbian/gay/bisexual and
18 transgender wards at HYCF. So on top of the fact that none of
19 the individuals have ever had training generally, there has
20 never been any training with respect to sensitivity issues in
21 the care and treatment of LGBT kids.

22 It's an interesting case for a number of reasons. One
23 is that it's really the first case of its kind in the United
24 States. There are problems like this all across the United
25 States. And very recently and actually about to be published,

1 we now have Best Practices for the care of LGBT youth in
2 out-of-home custody. That refers not to just secured
3 facilities but also to foster homes and alternative placement
4 programs.

5 We had a terrific result. We had a preliminary
6 injunction from Judge Seabright. And the facility is being
7 ordered to develop and implement policies, procedures and
8 practices to ensure the safety and well-being of LGBT kids.

9 Judge Seabright has also ordered the state retain
10 specific consultant for this purpose recognizing that the
11 defendants when left to their own devices simply do not have
12 the expertise in how to handle this particular vulnerable
13 population.

14 The one thing that's been really shocking to me in
15 working with HYCF, though, is the lack of alternative
16 placement programs and the fact that the majority of kids that
17 are at HYCF should not be there.

18 For example, one of my clients was placed at HYCF,
19 she's a transgender girl, and she was placed at HYCF for
20 solicitation. This is not a violent crime. This is, frankly,
21 a victimless crime to anybody but the person who is
22 soliciting.

23 Because there was no placements for her, there was
24 nowhere for her to go, she went to HYCF for almost 18 months.

25 I have another kid who was there, a gay girl, who also

1 because there were no alternative placements for her she's
2 there for truancy.

3 Now, originally what happens with these kids, there's
4 an initial event of some sort that subjects them to family
5 court jurisdiction. Thereafter a status offence which could
6 be running away from home, not holding down your job, quitting
7 school, being truant, allows the family court to revoke your
8 probation and sentence you to HYCF.

9 Now, there are some kids at HYCF that do deserve to be
10 there. And I'm not saying that there aren't. There was one
11 kid who held up an AV break and that was not good. But the
12 majority of the kids don't truthfully, they don't come from
13 really stable families. They're from marginalized
14 populations. There's a disproportionately number of Native
15 Hawaiians and other minorities. Very few white kids out at
16 HYCF. And they come from a place where they have not been
17 given the support that they need in the community.

18 So going back to what Mr. Braggs just stated, it really
19 is to get into the schools, start teaching cultural
20 sensitivity, being able to offer services and programs so that
21 the children have a network outside of their families of
22 people that they can rely upon and identify with, we might do
23 a very good job of diverting them from HYCF in the first
24 instance.

25 The second case that I wanted to talk about is a case

1 that we brought last year which is, it was to strike a law
2 called Act 50. Act 50 was brought, enacted by the Legislature
3 in 2004. It was originally conceived by Senate President
4 Bobby Bunda to combat the problem of homelessness out at
5 Mokuleia on the north shore.

6 Unfortunately for the Legislature they simply took the
7 words public property and threw it into an existing statute
8 dealing with criminal trespass for private property. And in
9 doing so they didn't recognize the constitutional
10 implications.

11 What ended up happening was a law that was incredibly
12 sweeping in scope. And it allowed any public officer or his
13 or her agent to ban any individual from any public property
14 for up to one year. And he didn't need to tell the person
15 why. All you needed to do was give them a piece of paper that
16 said, "Your presence is no longer desired on the property."

17 Once you were banned from the property for a one year
18 period you had no right to appeal. The person really had no
19 recourse whatsoever.

20 The statute was used in a wide variety of
21 circumstances. It was used with my client to expel him, ban
22 him for a year from the Hawai'i State Public Library on King
23 Street because he accessed gayhawaii.com which is a gay
24 website that talks about restaurants and movies and that sort
25 of thing because the security guard found it to be

1 distasteful.

2 Whether or not he finds it to be distasteful it is
3 absolutely constitutionally protected. The individual was
4 banned for a year and had not recourse until he came to us.

5 There other thing is that it was being used not just in
6 Mokuleia but to literally sweep the homeless all throughout
7 Hawai'i. But what was interesting about it, though, was they
8 didn't use the law to sweep Waianae. They used the law to
9 sweep Waikiki.

10 So what was coming out of this was so long as you moved
11 the homeless to a place where the tourists won't see them or
12 the wealthier people won't see them, if they're out of sight
13 they're out of mind.

14 What was interesting about Act 50 was that ultimately
15 we got it repealed. It was an interesting coalition of people
16 that came together at the Legislature to do this. We had
17 homeless advocates, we had church groups, the Interfaith
18 Hawai'i, the gay community, civil rights groups, everybody
19 coming together to talk about this.

20 But instead, one of the things that I left with was the
21 lack of services for the homeless population. We only have a
22 single shelter on Oahu which is simply not equipped to house
23 the thousands of people that are homeless. The majority of
24 people who are homeless are suffering from mental illness.
25 They also are suffering from, they're basically just

1 completely disenfranchised both from society generally and
2 from their families.

3 So if there are services that are available to the
4 homeless they don't know how to get those services.
5 Unfortunately IHS the shelter is not equipped to be able to
6 put the people in need with the people who have services to
7 provide.

8 In this regard to the extent that a study has been done
9 with respect to service providers that already exist and
10 putting them in contact with those who need it the most we
11 could do a lot and we could get the homeless the help they
12 need.

13 That's all I have, and I'll take questions.

14 MR. FORMAN: Thank you very much, Lois. And questions
15 from members of the committee for Lois Perrin?

16 Lois, is it possible to provide the committee with a
17 copy of Judge Seabright's order?

18 MS. PERRIN: Oh, it's so well written. I sure will.

19 (Laughter)

20 MR. FORMAN: Okay. We'd appreciate that. When you were
21 talking about the lack of attorneys fees statute for civil
22 rights, I guess this is focused on issues that are outside the
23 jurisdiction of the Hawai'i Civil Rights Commission?

24 MS. PERRIN: The only attorneys -- right, that's true.
25 It's outside of the Hawai'i Civil Rights Commission. There is

1 1983 of course which allows for the recovery of attorneys fees
2 for any right that is secured by the federal constitution or
3 federal laws.

4 But to the extent they're something outside the
5 jurisdiction of the HCRC, something that's specifically
6 outside of the Hawai'i constitution, we challenge it and we
7 did challenge a case last year and we overturned a
8 constitutional amendment that would give attorneys fees
9 pending on a very clever argument, if I do say so myself.

10 (Laughter) However, it's by no means guaranteed that that
11 won't happen.

12 In talking with people in advance trying to get people
13 to help with these kinds of cases, one of the things that
14 would come up is, "Can we be compensated at the end of the
15 day?" When the answer is, "No," people aren't as willing to
16 give the pro bono work, to dedicate their time if there really
17 is no chance to even recover the cost of bringing the lawsuit.

18 MR. FORMAN: Did I understand you correctly to say there
19 has been no training?

20 MS. PERRIN: "No," none.

21 MR. FORMAN: Since 1987.

22 MS. PERRIN: Since 1987.

23 MR. FORMAN: Was that reflected by Judge Seabright?

24 MS. PERRIN: I'm not sure if that particular case but it
25 is actually in the transcript from the proceeding. I'd be

1 happy to provide the commission with it.

2 MR. FORMAN: The Best Practices also?

3 MS. PERRIN: Best Practices were attached to Exhibit L
4 to my declaration in support of the preliminary injunction
5 motion. I'm happy to provide that as well.

6 MR. FORMAN: Thank you. Anything that you think might
7 be helpful to the committee as it looks at these issues would
8 be appreciated.

9 MS. PERRIN: Okay. So I have 30 days.

10 MR. FORMAN: Thirty days.

11 MS. PERRIN: To where should I deliver it?

12 MR. FORMAN: To Mr. Pilla of the Western Regional
13 Office. He can provide you with -- the letter that he sent has
14 the address there.

15 MS. PERRIN: Oh, I have it, yeah.

16 MR. FORMAN: Any other questions from the committee
17 members? Thank you very much. Any other questions from
18 committee members? Thank you very much. Next Kat Brady from
19 Community Alliance on Prisons.

20 MS. BRADY: Aloha, Commissioners. Mahalo for this
21 opportunity to share some information on Hawai'i's correctional
22 crisis. Let me introduce myself. My name is Kat Brady. I'm a
23 community justice activist. I'm also the coordinator of
24 Community Alliance on Prisons which is a community initiative
25 working on issues of criminal justice and prison reform. I

1 came to this work because I'm also the Assistant Executive
2 Director of Life of the Land, a 36-year old environmental and
3 community action group.

4 And in the mid-'90s I was wondering where's all the
5 money going. As environmental programs and social service
6 programs were being slashed I was trying to figure out where
7 is Hawai'i spending its money?

8 I really believe that the state budget is a moral
9 document. The state can say many things but the budget shows
10 what they actually do. So I consider it a moral document.

11 I was actually shocked when I read the state budget
12 because while everything else was tanking, you know, higher
13 education, social programs, everything else was being slashed,
14 the one budget in this state that has constantly risen is
15 Department of Public Safety, the department that's responsible
16 for prisons and jails all across the state.

17 Then I got really curious. And I wondered, well, who's
18 in prison and how come? That was a harder question. But I
19 actually dug and dug and dug and found out that it's basically
20 people who are somehow involved in drugs.

21 So it's people who possess drugs and people who commit
22 crimes that are drug related. You know, steal to get money to
23 buy drugs.

24 I've been working on these issues about a decade. And
25 I'm the only, I'm considered the only prisoner advocate in the

1 state. And I sit on the UH Institutional Review Board that
2 reviews social science research to make sure it's ethical and
3 not coercive.

4 I'm also on the Legislative Task Force, from last
5 year's session there was a resolution passed, looking at
6 issues of children of incarcerated parents. Because children
7 whose parents are in prison are six times more likely to end
8 up in prison than other children.

9 So that really resonated with me because I just think
10 that we're locking people up willy-nilly, spending lots of
11 money and not really getting any return on that.

12 I also authored the report of the Task Force of the
13 Children of Incarcerated Parents that was distributed to the
14 Legislature this year. We have a bill in that will extend the
15 work of the Task Force for another year.

16 We only have two meetings but it's really important
17 because Hawai'i has such a huge number of people who are
18 incarcerated on the U.S. continent. And how do we keep those
19 families together.

20 So I tried to break my testimony into different
21 sections so that you sort of get the whole picture. My first
22 section is: The Crisis of Leadership. The Department of
23 Public Safety is imploding. We are currently looking for our
24 sixth director since 2003. That's sixth. The first person
25 withdrew his name, nominated by the governor, withdrew his

1 name when some issues arose that he didn't really want to go
2 public on. His name was Stephen Watarai, a retired police
3 officer.

4 The second person, John Peyton, who was a former U.S.
5 Attorney, took the job and was at the job for 18 months. Then
6 he left. And people aren't really sure if he left of his own
7 will or he was asked to leave.

8 The third person then was Jim Propotnick who is the
9 deputy director for law enforcement at the Department of
10 Public Safety, former U.S. Marshal. He was in the position
11 for a few months as the Acting Director.

12 The fourth person appointed as an Acting Director was
13 Richard Bissen who then got appointed to the bench on Maui.
14 And he left after, oh, about six to nine months.

15 The fifth director who's currently there as an interim
16 director, and his name is Frank Lopez, and he's been in the
17 Department for about 34 years at the intake service center.

18 So the Department's in total disarray. There's a lack
19 of leadership, no consistency and staff with years of
20 institutional knowledge are just bailing out and retiring. So
21 we have a lack of consistency, a vacuum of leadership and
22 varying commitments to rehabilitation which has really left
23 the system in crisis.

24 Then we also have a staffing crisis. This is about all
25 of Hawai'i's prisons. There's a shortage of Adult

1 Correctional Officers, ACOs, and social workers. This is
2 important because without a security staff there are basically
3 no programs and no visitation.

4 So when facilities are short staffed it impacts not
5 only the management of the facility because inmates are
6 basically spending the day on their bunks with nothing to do,
7 so tension rises and fights happen, and also many inmates are
8 actually mandated to complete programs in order to be eligible
9 for parole.

10 So people are spending more time in prison because they
11 haven't done the programs through no fault of their own. They
12 just -- at the women's prison about two years ago there were
13 only programs two days a week. Three days it was all dead.
14 The women were serving dead time. It was because of a
15 shortage of security.

16 We currently have a legislator who is from Maui who is
17 a former ACO. So it's kind of nice to have somebody in there
18 who can say in the caucus the things I'm saying in the public
19 domain. He has said a security shortage is dangerous for the
20 inmates and dangerous for management. It doesn't serve
21 anybody.

22 The next crisis we have is the banishment crisis.
23 Hawai'i leads the nation in exporting prisoners. Currently 47
24 percent of our inmates are shipped to four private prisons on
25 the U.S. continent.

1 All these prisons are operated by Corrections
2 Corporation of America which has a very checkered history.
3 Lots of inmate deaths, lots of abuse, many riots in their
4 prisons.

5 They basically hire guards at minimum wage, no
6 training. And they just don't know how to deal in a situation
7 that can be very tense at times.

8 So the fallout from the banishment crisis, that crisis
9 is definitely economic costs. Currently we're spending
10 \$33,179,292.95 to send 1,858 people to prisons on the U.S.
11 Continent.

12 The Department has just asked for an increase to send
13 another 701 inmates to those four prisons on the continent
14 which are in Arizona, Oklahoma, Mississippi and Kentucky at a
15 tab of \$12,133,586. So we'll have almost \$45 million a year
16 being bled from Hawai'i's economy and basically buying jobs
17 somewhere else. This is only the economic cost.

18 The social cost of shipping our inmates abroad is
19 enormous. Phone calls:.. The cost of phone calls from these
20 prisons to Hawai'i is really burdening the families that can
21 least afford. Phone calls cost anywhere, some of the prisons
22 you can only call, the inmate can only call collect. Each
23 phone call costs between \$15 and \$20. I know this because I
24 take several a week.

25 My work is unpaid for Community Alliance on Prisons so

1 this is my donation. But I feel like the inmates need someone
2 who's neutral that they can talk to. I log all the
3 complaints. Then I read the contracts with the prison. And I
4 verify that, you know, it is a contractual violation. Then I
5 can sometimes talk to the Department about it.

6 Other times I wish there was a pro bono attorney that
7 wanted to take these cases. But it's very onerous to sue the
8 Department of Public Safety.

9 So we're working on the Task Force for Incarcerated
10 Children. That task force, some of the subcommittees have
11 come up with some really creative ideas on how to deal with
12 keeping families connected. It doesn't have to be by the
13 phone. You know the Internet now, they have free phone
14 programs on the Internet. Almost every school has Internet
15 access. So we think that there's ways that we can actually
16 keep families connected and at a cost that's affordable to
17 them.

18 The next issue is family visits. When people are on
19 the continent there are very few family visits, almost none.
20 Actually in ten years I've only heard of two families that
21 have actually been able to afford to visit their loved ones in
22 prisons on the U.S. Continent.

23 One family actually moved to Oklahoma to be near their
24 loved ones so that their kids could actually know their
25 incarcerated parent. So the very fabric of Hawaii's families

1 is being torn asunder. When our people are so far from home
2 the likelihood of visits is just not there.

3 All the research on family visitation is -- I've never
4 researched an issue that had all the research on one side --
5 and it basically says visitation reduces recidivism; that
6 keeping families connected is vital.

7 And I cite there are several studies, empirical study
8 done in 1972 by Holt and Miller. They found that prisoners
9 with no visitors were six times more likely to re-enter prison
10 during the first year of parole than those who had no
11 visitors. So it's out there and it's very real.

12 There is actually a bill going through the Legislature
13 this year and it's still alive on family visits despite the
14 fact that the Department of Public Safety has testified
15 against it. That bill basically says pre-approved family
16 visits, they need to happen.

17 Because what happens is we have one woman's prison in
18 Hawai'i. There are women from all the islands in that prison.
19 Many of our neighbor people are in Halawa. So families save
20 the money. They fly over with their kids. They get to the
21 gate, they find out, oh, lock-down. No can. So they spent
22 all that money and they can't get to see their kids.

23 So we have worked out on arrangement that I think
24 Public Safety is going to sign off on with the Senate
25 Judiciary Committee that those visits -- currently you don't

1 have -- the visits are, there's no glass. You don't have to
2 speak on a phone. You're basically across the table from your
3 loved one.

4 We said: Well, what if we could construct those; get
5 Hawai'i Correctional Industries to construct those little
6 booths with phones. And then families would not have to be
7 turned away. We could somehow work out something because it
8 would be less monitoring when people don't have physical
9 contact.

10 So the Department has agreed to that. They're
11 researching how much that will cost. I can't see it costing a
12 lot. But we'll see what they come up with. And I'm hoping
13 that that bill passes because that's really important,
14 especially for children to know their parents.

15 Gangs. Well, in the last decade since we've been
16 sending more people far away gang activity has really
17 increased. What I think the genesis of that is we send our
18 people to prisons in, you know, small towns and far away
19 places that have no idea who Hawaiians are.

20 Many Hawaiian inmates have cultural tattoos. They're
21 immediately marked as gang members. Even if they're not gang
22 members they're just practicing their culture, that's a
23 problem.

24 So what happened was people started banding together.
25 The Hawaiian inmates were starting to band together to protect

1 themselves from all -- the prisons on the continent are full
2 of gangs, many gangs. So to protect themselves they sort of
3 banded together.

4 Then, the gangs grew really big. In Arizona we had a
5 huge problem because there was a gang called the United Samoan
6 Organization. And they basically ended up running the prison.
7 They were bigger, badder than the guys who were in existing
8 gangs there.

9 Then they started making this prison alcohol called
10 swipe made out of all sort of icky kind of things and also
11 were dealing drugs in the prison.

12 So a lot of our inmates were removed actually from
13 Arizona and sent to other places. But when those inmates
14 started coming back, the members of USO, United Samoan
15 Organization, the inmates in Hawai'i then formed gangs to
16 protect themselves from their own inmates who had formed a
17 gang and had really been hardened by the U.S. prison
18 experience.

19 So then there was another gang, La Familia, The Family.
20 Then the guards were nervous in Halawa and they formed a gang.
21 So I think there's gangs all over the place now and it's all
22 home grown. I mean we created this problem by sending people
23 far away with absolutely no training of the prison workers in
24 the prisons we're sending them to about who Hawaiians are,
25 what Hawaiian culture is, what are some very important

1 practices that Native Hawaiians practice in prison and why
2 it's important to keep those practices going. So we really
3 grew this problem and now we're dealing with the problem
4 that's huge.

5 So in Florence Correctional, this is as of November
6 15th, 2005 in Florence, Arizona, that prison we had 59 men.

7 In Oklahoma a facility called Diamondback, we had 822
8 men.

9 We just moved a bunch of men to Tallahatchie
10 Correctional Facility in Tutwiler, Mississippi. And I can
11 guarantee you they know nothing of Hawaiians in Mississippi.
12 857 men are there.

13 And we just moved the women from Brush, Colorado. We
14 had 64 women in Brush, Colorado. And two of our women were
15 allegedly sexually assaulted. There is a lawsuit going on
16 right now about that.

17 So after a big huhu they moved the women to another
18 Corrections Corporation of America prison called Otter Creek
19 in a tiny, tiny little former mining town in Wheelwright,
20 Kentucky. So it's in the southeastern part of Kentucky. I
21 tried to go there. You cannot-- you have to make many
22 connections. I think they have to fly to Louisville, take a
23 small plane to Virginia, then take, then drive across the
24 state. It's really in the middle of nowhere.

25 We had 120 women there, the 64 from Brush; but we also

1 shipped women from W because W's capacity, W, the women's
2 prison, has a capacity of 265 inmates. And we had at one time
3 well over 300, like 320 inmates there. So really unsafe
4 conditions.

5 So they shipped the women to Otter Creek to my
6 dissatisfaction because it was so far away when there was
7 actually a prison to Texas that would have been, at least been
8 a little bit closer. But they shipped them there.

9 I was also concerned because all four of our contract
10 prisons are run by one company. So that puts Hawai'i at great
11 jeopardy because they could basically say, "Okay, we're upping
12 the prices." What are we going to do, you know?

13 If they ship another 700 people we will have 2500
14 people and where are we going to place them? So I think
15 Corrections Corporation of America was very smart to make the
16 Otter Creek prison a little bit lower than the other
17 Corrections Corporation of America prisons that our inmates
18 are in to make it very attractive for Hawai'i. But I still
19 contend that the social costs are just so enormous that we
20 continue to pay and pay and pay.

21 On December 31st, 2005 one of our women in Otter Creek
22 died, Sarah Ah Mau, 43 years old, under very suspicious
23 circumstances.

24 I've been battling with the Department who promised me
25 a report on the team that went out there after. I tried to

1 get on that team but I'm not very welcome there.

2 But I think it's really important that an independent
3 voice go, and especially a woman. The women know me. That I
4 could go and let them know that the people at home have not
5 forgotten about them.

6 The health care complaints that I've received from the
7 contract prisons, the bulk of them are from the women. Many
8 of the women are on various medications for diabetes, heart
9 conditions, high blood pressure especially.

10 And when they were shipped from Brush, Colorado to
11 Otter Creek they denied them their medication even though it
12 was doctor-approved medication and it was Department-approved
13 medication. They just cut off their medication.

14 So when they arrived at Otter Creek at 2:00 in the
15 morning one of the women passed out. And her blood pressure
16 was like 190. It was just sky rocketing. So they immediately
17 took her to the hospital. Bad press. Not good for them.

18 So they gave her a few days' medication and then she
19 didn't have it after that. And, you know medications you have
20 to really keep that level of medication up in many cases and
21 that has not been happening. I posit that's why we have so
22 many problems there.

23 In the month of December we had a woman that had, was
24 rushed to emergency room: Pneumonia. She went to surgery.
25 She then called me a new days later after she arrived back at

1 the prison and said, "I'm really worried because I'm supposed
2 to have a follow-up appointment with the doctor and they're
3 telling me that the prison nurse will take care of it."

4 And she went up to the medical unit. She was called to
5 the medical unit at, like, 3:00 in the morning. And she went
6 up to the medical unit and the nurse was treating another
7 inmate who had an open wound. And she turned right to her
8 with her gloves and said, "Okay, now I'll work on you."

9 She said, "No. I just got of the hospital. I don't
10 want to this to happen." So she got written up for refusing.

11 I called the doctor. And she called me and said, "I'm
12 really concerned. They're not going to let me have a doctor's
13 appointment."

14 Of course I couldn't get the name of the doctor or the
15 medical facility that she went to. But I am good at digging.
16 And I found out where she went. And I called the doctor's
17 office and asked, "Does this person have an appointment?" And
18 the nurse said, "Of course because that's protocol. After
19 surgery there's always a follow up appointment."

20 I said, "Well, the prison is telling her that there's
21 no notation in her file and that the prison doctor or the
22 prison nurses were actually going to give her her chest x-ray
23 and bloodwork. And she's very scared because she's not sure
24 that they're actually following best practices at the medical
25 unit in the prison."

1 She said, "No, there is an appointment." So then I
2 called the prison. And to my surprise the assistant warden
3 didn't even know the name of the doctor at the prison, said he
4 would look into it.

5 I called him back a couple of hours later. He said,
6 "No, there's no notation here. It just doesn't say anything.
7 So I called the Hawai'i medical unit that's responsible for
8 all our inmates at the Department of Public Safety. They
9 said, "Oh, no. No, the prison is going to take care of it."

10 I said, "No. After surgery isn't it protocol that a
11 doctor, the doctor that did the surgery for nothing else but
12 malpractice reasons they want to do a follow up?"

13 "Oh, no, no. That's not the way it is."

14 Well, she then sent me the letter she got from the
15 doctor saying, "You missed your appointment."

16 So there's just something really screwy going on and
17 it's very concerning to me. So that was one person who was
18 rushed to the hospital with pneumonia.

19 Another one of our inmates was rushed to the hospital
20 after multiple complaints with the medical unit and needed a
21 triple bypass. They told her, "Oh, you have leg problems."
22 She started with a pain in her leg and it went all the way up
23 her left side. And oh, no, they were giving here Ben-gay or
24 something like that. I mean ridiculous.

25 The third person was Sarah Ah Mau. And I talked with

1 many people in the system, people who work in the system,
2 people who run programs and other inmates and they all said
3 she was a model inmate, very quiet woman, 43 years old.

4 She started complaining of, she had, her stomach was
5 distended. And she couldn't figure out what was going on.
6 She was having trouble eating. She was having trouble
7 sleeping. She asked for medical care numerous times, was
8 denied.

9 One night she went up to one of the inmates who is kind
10 of outspoken and said, "You need to help me. Something is
11 very wrong. And I don't know what it is. I'm requesting to
12 see an outside doctor and they're not letting me."

13 And this woman took a look at her. She was completely
14 swollen. She said you wouldn't even recognize her feet, they
15 were just so hugely swollen. So she, the woman, the other
16 inmate called the guard, who came in and was shocked at what
17 she saw.

18 And Sarah was rushed immediately to the hospital and
19 placed in ICU. She died the next day. And my phone started
20 ringing at 6:30 New Year's Eve, 6:30 in the morning, families
21 of other inmates who were really concerned not only that Sarah
22 had died but their loved one is on medication, had been denied
23 and they started worrying that their loved one was going to
24 die.

25 So the healthcare at Otter Creek is absolutely abysmal.

1 Some of the nurses, I've hear, have quit because they were
2 asked to do things outside of their scope of practice and they
3 didn't want to lose their license.

4 So something is suspicious there. And whenever I talk
5 to the Department of Public Safety they assure me that
6 everything is fine. So there's something really wrong.

7 Environmental problems at that prison. All their water
8 is surface water and it's a former mining town. Actually some
9 families of Kentucky inmates saw my name in the paper and
10 started calling me and saying, "You're right. That water is
11 coming from an abandoned mine shaft." Because our women got
12 there in October. And from October to early December I would
13 say the majority of them have complained of diarrhea and
14 vomiting.

15 Finally, one of the nurses told the women, "Don't drink
16 the water here." Of course how can you avoid that? Ice, it's
17 used for cooking, showering. I mean it's just really hard to
18 avoid that. Plus buying the bottled water from the commissary
19 which is generally open between 2:00 and 4:00 in the morning,
20 which is strange to me, is prohibitive to say the least.

21 I mean these women can't even afford winter clothing
22 that they were promised. That's another thing about the
23 health care. When their medication was restored it was either
24 changed or reduced with no doctor's input at all.

25 So the woman who had pneumonia, in order to get her

1 medication when she got out of the hospital she had to stand
2 outside. It's in another building in the medical unit. It's
3 dispersed from like a half-door thing in the building. So the
4 women have to stand outside on a line to get their medication.

5 And it's been really cold there. They were promised
6 warm clothing. But for the most part the women have gotten
7 what they consider thin jackets. And standing on line has not
8 been a very productive thing because most of the women ended
9 up with the flu.

10 Hawai'i has monitors that are permanent at some of our
11 prisons, contract prisons. In Arizona and Oklahoma I think
12 there are contract monitors there that are hired by Hawai'i
13 that are there to oversee the contract daily.

14 But in the other two prisons there are monitors -- we
15 have a monitoring team that runs out of the Department of
16 Public Safety that makes quarterly visits to the prisons.

17 And I've read their monitors' reports. I log in all
18 the complaints and all the things I get from the people who
19 are in prison. Then I look at the contract to make sure they
20 really are contract violations. Then I check the monitors'
21 reports. They never, ever look the same.

22 The monitors' reports are completely white washed. It
23 seems like everything's fine. It's all good. It has nothing
24 to do with what I'm hearing from the inmates or the families
25 are hearing from the inmates.

1 We also have several people who are not in those four
2 private prisons but are in prisons under an Interstate Compact
3 that Hawai'i has. We have one inmate in Colorado who is a
4 gang defector. He was member of USO. He wanted out. And
5 he's basically being punished. He's had life threats, death
6 threats on him. He's had a lot of trouble.

7 So he asked to be sent to another facility. So they
8 sent him on this Interstate Compact to a prison in Colorado
9 where he was in solitary confinement for 23 hours a day
10 because he was trying to do the right thing. He's had no
11 writeups, no nothing. It seems like he's being punished
12 because he's trying to make his life better, trying to extract
13 himself from the gang culture.

14 There are no monitors that go to those prisons that
15 check to see if our people's civil rights or needs are being
16 met at all. So they are really left to their own devices.

17 There are major inconsistencies. One of the problems
18 with having our people in prisons far away is it sort of gives
19 the private prison administration a chance to play with the
20 rules. Sometimes they tell them, "Oh, you have to file that,
21 a Hawai'i form for that."

22 Then they'll file a Hawai'i State grievance form. Then
23 they'll be told, "Oh, no, you really have to file a grievance
24 form for this prison." So they give these people the
25 runaround. And they really have no recourse.

1 And when they complain to the monitors, the monitors
2 say, "I'm not here to hear your complaints."

3 It's like, "Yes, you are. That's your job to make sure
4 that the contract is complied with." These people make \$60-
5 \$70,000 a year of publicly funded money. And they have
6 absolutely no accountability.

7 I have to pay if I want the monitors' reports, pay a
8 quarter a page to get them copied. So to me it's worth it
9 because I really want to make the case. I'm trying to involve
10 the Legislature telling them this is public money that's being
11 used to incarcerate these people. We have contracts that are
12 constantly being violated and our people are at risk.

13 Then we also have language access issues. We have an
14 inmate who, her mom only speaks Portuguese. She is no longer
15 allowed to speak to her mom on the phone because she's not
16 allowed to speak in another language. Although, inmates of
17 other ethnicities have been allowed to do this. So that's a
18 problem. I've asked the ACLU to look into that.

19 But I told her, "You need to complete the grievance
20 process." That's where I found out all the huhu about the
21 grievance because Hawai'i has no grievance forms there.

22 So the women are smart and they've been taking
23 Kentucky forms and changing it to Hawai'i and making do.

24 In the women's prison here we had a deaf inmate. She
25 had no -- was provided no interpreter. So some of the other

1 inmates who could sort of figure out what she was saying ended
2 up being her interpreter.

3 She was provided no help so it was very hard for her to
4 get into any kind of program because she couldn't hear what
5 was going on and nobody really took the time to help her.

6 Then we have a huge cultural crisis. It's interesting
7 to note that the Department says 85 percent of the people in
8 prison need substance abuse treatment. When you look across
9 the socio-economic spectrum drug abuse is pretty even among
10 all ethnicities. But who's in prison? Native Hawaiians are
11 in prison.

12 So between -- the 2004 and 2005 stats from the
13 Department of Public Safety revealed that 38 percent of
14 inmates incarcerated in Hawai'i are Native Hawaiian and
15 41 percent of inmates who are sent to the continent are Native
16 Hawaiian. This has a huge impact since ohana is so important
17 to us. It's really difficult to keep families connected.

18 Many of the inmates, I really see cultural programs as
19 a rehabilitation strategy. Many of the men when they were in
20 Minnesota at one time they started a group. And they really
21 wanted to learn olelo Hawai'i, practice hula, practice
22 chanting and celebrate, like, makahiki.

23 The Department was dead set against this. I saw men
24 who were really hardened change when they realized who they
25 were. Because they realized: I have a responsibility not

1 just to myself and my immediate family but to my ancestors, my
2 genealogy.

3 That has been around an amazing thing. I've seen
4 amazing transformations of men who were in for violent crimes
5 who once they realized who they were, something came together
6 in their heads and one of them is out now and he's doing
7 really great.

8 And he's actually starting a group on the outside
9 that's communicating with some of the guys on the inside.
10 They actually waged a lawsuit against the state of Hawai'i
11 because the director of the Department at one point said that
12 Hawaiian is not a religion.

13 He got a letter saying that, from the Hawai'i
14 Historical Society. We were like, "No, everything about
15 Hawaiian culture is spiritual." And other people are allowed
16 to practice their beliefs. Native Americans have sweat lodges
17 at the prisons on the continent. Yet our people were denied
18 their cultural rights.

19 So a lawsuit was waged, and then it was settled with
20 the state of Hawai'i. So now the men in Diamondback, Oklahoma
21 are allowed to celebrate makahiki. That's been a really
22 wonderful thing because OHA has helped them, sent Native
23 Hawaiian food up there so they have a pa'ina. And they chant
24 from outside the gate. They do a whole protocol except the
25 hihiwai. But they really, it's been a really transformative

1 thing for these inmates.

2 So it's very difficult for me to believe why the
3 Department would want to stop something that's peaceful and so
4 healing to people. It's a great rehabilitation strategy.

5 The next section is the recidivism crisis. Our
6 recidivism numbers are between 51 and 80 percent. That should
7 outrage everybody because the same people are basically going
8 in and out. At one point the director of Public Safety said,
9 "On any given day 50 percent of the people at intake
10 services," which is the first stop on your way to prison, "are
11 parole or probation violators." Most of them for dirty drug
12 screens.

13 Yet they know that 85 percent of the people need
14 treatment. Less than 15 percent of any of the inmates in
15 Hawai'i get any substance abuse treatment at all. So we
16 wonder why people are recidivating. We give them no chance to
17 develop marketable job skills. We don't directly treat the
18 reason we know they're in prison. Drugs are basically the
19 underlying cause of most of the crime in Hawai'i. And yet we
20 just don't meet those needs. And we wonder: Gee, what's
21 happening? What's wrong with these people?

22 It's like if you don't get treatment when you have
23 cancer you're either going to die or you might go into
24 remission and relapse. And relapse is part of the substance
25 abuse problem.

1 MR. FORMAN: Kat, can I ask you to bring it to
2 a conclusion?

3 MS. BRADY: Yep, I'm on my last paragraph. Okay. So
4 The reason that the Hawai'i prison population is growing so
5 rapidly is because of the institution of mandatory minimums in
6 1996. In four years that law, mandatory minimums for crystal
7 meth has doubled the women's population and the men's
8 population.

9 Alphonso talked about the proposed three strikes laws.
10 Since this administration has been in office they have every
11 year proposed amazingly punitive laws that offer no
12 rehabilitation.

13 And I guess one of the most egregious things was in the
14 proposal for three strikes the original proposal actually
15 wanted to include 21 class C felonies as a violent crime.

16 I couldn't figure out why would Hawai'i try to increase
17 its felon class. Why would we want to do that? Because most
18 of the contract prisons won't even take people classified as
19 violent. So what are we going to do with them?

20 So what can we do? We can actually have a diverse
21 array of community-based programs that directly affect the
22 needs of people. There are many people sitting in prison who
23 are community custody, could get out and should be in
24 community programs where they could be better helped.

25 We can have more work furlough beds. The Department

1 testified that they need 2,725 work furlough beds. That has
2 been a strategy that really prevents recidivism. Because when
3 people have support when they get out of prison they're more
4 likely to have a successful reentry.

5 Of course the third thing is enforcement. That's the
6 thing that Hawai'i does the least well. We have many great
7 laws and just don't enforce them. We have contracts. We
8 don't enforce the provisions. So there are many people who
9 really want to lift themselves out of poverty. They want to
10 help their families. They want to be back in the community.
11 They need help. That's why I'm here.

12 MR. FORMAN: Thank you very much for that very
13 comprehensive presentation. Are there questions from the
14 committee members? We'll start with --

15 MR. MAXWELL: I'll make it real brief because I know
16 we're running into --

17 MS. BRADY: Hi, Uncle Charley.

18 MR. MAXWELL: Hi, there. You know, I was involved in
19 the Diamondback with Melody McKenzie --

20 MS. BRADY: Yes.

21 MR. MAXWELL: -- as one of the kupuna that speak about
22 the makahiki. I was involved in the lawsuit. It was amazing
23 that you said exactly what you said. And it substantiates what
24 I said. The majority of the people in prisons and in all the
25 social ills of Hawai'i is Native Hawaiians.

1 MS. BRADY: Yes.

2 MR. MAXWELL: What is so disturbing is that nobody seems
3 to care, the governor, that all these rules are being broken as
4 we speak, you know. That is a very frustrating part.

5 I'm speaking from a personal level because I have a
6 former son-in-law in a California prison. He was just moved
7 up there. And my granddaughter is 10 years old. But with her
8 her father's been involved with drugs for like five, six,
9 seven years since she was about four years old.

10 So what she's done was turn on to education and she
11 makes honor roll every quarter.

12 MS. BRADY: Right on.

13 MR. MAXWELL: But her father calls her. And it's a sad
14 part, makes her sad when she hears him because he hasn't
15 changed. He's a three-time loser. But, I mean there's a lot
16 of other stuff happening in the prison, like you said, that
17 sometimes as the advisory committee to the U.S. Civil Rights
18 Commission this is a perfect example of what we should be
19 involved in from a state advisory.

20 But, you know, all we can do is try. We've tried with
21 other Native Hawaiian things in the past and some success
22 happened. But we still gotta keep trying. We gotta have the
23 government, the governor's office and every federal agency and
24 everybody involved to correct this problem. It's really bad.

25 MS. BRADY: Yes.

1 MR. FORMAN: Os Stender.

2 MR. STENDER: Yes. I guess with the recidivism issue,
3 it's so pronounced I think because of the isolation the
4 prisoners from family and friends so they don't build
5 networking for the day they get out.

6 How serious is the current governor? There was an
7 announcement in the paper not too long ago about building a
8 prison, one or two I think. And how much of that will improve
9 programs for building relationships with prisoners and
10 families that really need this?

11 MR. BRAGGS: Yes. Sadly, this administration came into
12 office saying that they were going handle the drug problem and
13 the prison problem. The prisons are, they haven't done
14 anything to help the prisoners. In fact on that three strikes
15 law AG Bennett got up and said: These people are absolutely
16 hopeless and we will just send them up there and forget about
17 them.

18 Yet the Maui Best program that's modeled on DeLancey
19 Street? Their first grant was a federal government for
20 serious and violent offender reentry. So DeLancey Street and
21 Best take serious violent offenders who are actually
22 rebuilding their lives. So I don't give up on people. I'm
23 sad that the governor and this administration has given up on
24 people. But I will never give up on people.

25 So every time they talk about a prison I ask, "Okay..

1 Let's take about visiting space, program space, what kinds of
2 programs, how you're going to do this." So I am quite vocal.
3 And they just can't get rid of me as much as they want to.

4 MR. FORMAN: Thank you. Any other questions? Kaulana
5 Park.

6 MR. PARK: Who is responsible for the sending of Hawai'i
7 prisoners to mainland prisons?

8 MS. BRADY: It started 10 years ago. It happened
9 because of the consent decree that Hawai'i prisons were under
10 for 15 years. At that point they started a commission, a
11 governor's commission called the Corrections Population
12 Management Commission. Their goal was actually to manage the
13 population. Unfortunately they haven't met for a year. It's
14 been kind of sporadic.

15 They realized in order to get out from under the
16 consent decree they were going to have to ship people out and
17 make the prisons less crowded.

18 MR. PARK: So it's kind of an, to some degree an
19 inherited problem?

20 MS. BRADY: Oh, yes. It's not just this governor, no.
21 But I'm sad that this governor has not anything about the
22 prisons. That's been something the Department has felt because
23 they haven't really gotten any direction.

24 MR. PARK: It's no question it's a huge issue.

25 MS. BRADY: It is. But it's not insurmountable.

1 MR. PARK: You're right. I think in the leadership
2 you're correct. But it's not to say that it's not on the
3 radar.

4 MS. BRADY: I hope so. Because we could have the model
5 system. When you look at our jurisdictions --

6 MR. PARK: Sure, sure.

7 MS. BRADY: -- ours is very small.

8 MR. PARK: That's what we're looking at. But to get
9 that person to commit to that it's a huge order.

10 MS. BRADY: Thank you.

11 MR. FORMAN: Thank you very much. I appreciate Jo-Ann
12 Adams being so patient with us. We are running beyond time. I
13 hope the community members are able to stay. We don't have
14 very much business to take care of after Jo-Ann is finished
15 with her presentation. And we're hoping that we don't get
16 kicked out of the room. (Laughter)

17 MR. MAXWELL: Lock the doors. (Laughter)

18 MS. ADAMS: Thank you very much. My name is Jo-Ann
19 Adams and I will try to speak slowly since I don't have written
20 testimony. And I will speak my first name very slowly. J-o
21 hyphen capital A-n-n. Then if you get that part the Adams is
22 easy because it's standard A-d-a-m-s.

23 I've been asked by the chairman to give the status of
24 the sexual orientation issues here in Hawai'i. And I kind of
25 want to begin with saying I'm really pleased to be here.

1 Sometimes it's been frustrating to me. When you hear, "Lucky
2 you live Hawai'i" and that there are no problems here.

3 I'm not saying that we need to spend all our time
4 complaining about what's going on in Hawai'i but I was very
5 please to hear people talking about that there are some really
6 significant issues to be addressed here in Hawai'i.

7 And I also wanted to share anecdotally I came here in
8 1959 which was a wonderful thing to come when I was 10 years
9 old and to see Hawai'i become a state.

10 And I remember at that time being surprised when I saw
11 black and white couples walking down in Waikiki with no
12 comment. That was shocking to me growing up in Southern
13 California.

14 But at the same time I do think in a lot of ways
15 Hawai'i now lags other parts of the country in areas of
16 discrimination. So I'm thrilled that this commission will be
17 doing its part to try and help us catch up to resume our
18 leadership position.

19 So that's what I'm here to talk about is the status of
20 civil rights in Hawai'i regarding sexual orientation. And I
21 am active in the GLBT caucus, the Gay, Lesbian, Bisexual and
22 Transgender caucus of the Democratic Party. And also the Gay
23 Collaboration Group which gets together and talks primarily
24 about legislation, trying to get legislation for the
25 gay/lesbian community.

1 Bill Woods is also here. Just as the other speaker
2 said if you have any questions ask Bill Hoshijo. I would say
3 the same thing. If you have any questions ask Bill Woods.
4 He's been the shaker and mover for years in the gay community
5 and probably has more historical knowledge than any other
6 person on this.

7 I do want to mention, as you can see our title has
8 grown over the years. It started out as the Gay Rights
9 Movement, then the Gay and Lesbian Rights Movement, then the
10 Gay, Lesbian and Bisexual Movement, then the Gay, Lesbian,
11 Bisexual and Transgender Movement. Sometimes people have
12 collapsed the names and have gone down to things like the
13 Rainbow Coalition, or Rainbow Committee.

14 We're ending up really picking up almost any sort of
15 sexual minority. I think that's one reason that we receive
16 the most disparate treatment of any group. By that I don't
17 mean that we are the most discriminated against. I'm not
18 saying that.

19 I think others have had more horrific experiences than
20 we have in part because we can pass so easily. But in terms
21 of what are your rights and protections as we move from one
22 state to another, I think we receive the most disparate
23 treatment of any minority group.

24 And why? I think it's in part because we as a society
25 are completely obsessed with marital status. From the time

1 when you're growing up as girls or boys and you kind of get to
2 the age where I remember girls in 8th grade talking about what
3 bridal gown they were going to wear, what church they were
4 going to be married in. They had everything but the groom in
5 place. You know, it's just an obsession with our culture.

6 So when I looked at the U.S. statistics in preparing
7 this presentation I wasn't terribly surprised to find out that
8 the U.S. Census Bureau in describing households, almost
9 everything is in relationship to your marital status.

10 You're married and your spouse is present.

11 You're married and your spouse is absent.

12 You're widowed which means you're married but your
13 spouse is now dead.

14 You're divorced which means you were married but now
15 your spouse is no longer around.

16 Or you're separated which means you're married and in
17 some sort of transition.

18 And then there's is category of 'never married.'

19 And the part that I find that's interesting is we don't
20 seem to care who really makes up the 'never married' category.
21 What are their relationships among each other? I think that's
22 partly why we suffer in the unique ways that we do.

23 You would think since we're in this small, also-ran
24 category that that would mean that there are very few of us.
25 And I think that would be the public perception is that there

1 are really very few in the never.....married.... category.
2 But in fact we make up 30 percent of the population of the
3 United States.

4 We make up more than the people who are separated,
5 divorced and widowed combined. If you would put those
6 categories in with 'never married' so that you would have
7 'never married, separated divorced and widowed, i.e. the
8 'unmarried' population, that's 47 percent of the population.
9 Whereas the married population is 57 percent. So it's almost
10 half.

11 These statistics we see are also true here in Hawai'i.
12 The 'never married' category makes up 30 percent of the
13 Hawai'i population. Again, far more than separated, divorced,
14 and widowed combined.

15 When you look at it in terms of comparing it with other
16 racial groups at 30 percent, and I just focused on Hawai'i
17 statistics but it's also true in the U.S. that never married
18 group then becomes a larger subgroup than any racial minority
19 on the mainland.

20 Here in Hawai'i it is not the larger than any racial
21 group because Asians make up 41.6 percent. However, if you
22 look at the next chart where we break down Asian, which is
23 what we tend to do here in Hawai'i. Because there are so many
24 people of Asian background we don't think of Asians as
25 'Asians'. We break them down by their ethnic group. We think

1 of them as Chinese or Filipino or Japanese or
2 Chinese-Hawaiian.

3 When you look at it from that perspective 30 percent,
4 the never married group, is more than any other sub-racial or
5 ethnic subgroup in Hawai'i. There are more never marrieds
6 than whites. There are more never marrieds than Chinese,
7 Filipinos, Japanese, each of those groups, not the total
8 combined.

9 So here we have, really, a very large minority but
10 really is not identified by the federal government, the state
11 government or in fact even with each other. We don't as a
12 group see ourselves as the 'never marrieds'. Because part of
13 that doesn't really accurately describe our group.

14 Many of our group has been married. Some of our people
15 are still married. Some of them are transgendered, so on. So
16 when you look at the legal status in Hawai'i the terms that
17 are used are sexual orientation. And that tends to cover gay,
18 lesbian and bisexual, or gender identity and expression. And
19 that tends to cover the transgender and trans-sexual
20 community.

21 So how have we faired in terms of legislation with
22 those two components? We started off in sexual orientation
23 with employment being passed in 1981. So we have protection,
24 again, legal protection as opposed to enforcement as other
25 people have mentioned. But we have legal protection for

1 sexual orientation beginning in 1981.

2 We brought it up to add gender identity and expression
3 here in 2005. That legislation was vetoed. If you looked at
4 hate crimes -- I'm going to skip grants and subsidies because
5 that's basically saying you're giving out money. It doesn't
6 really protect people per se.

7 Hate crimes was a 20-year gap between the passing of
8 employment legislation and the passing of hate crimes
9 legislation here in Hawai'i. By that time gender identity and
10 expression was included. A part of that was because the
11 transgender community itself had evolved and identified itself
12 in 1981.

13 In housing, which was just last year, we were able to
14 get sexual identity and sexual orientation and gender identity
15 and expression added into the housing bill. And that one was
16 signed into law.

17 We are currently, we have public accommodations
18 legislation. It has passed both the House judiciary committee
19 and the Senate judiciary and Hawaiian affairs committee. So
20 we may be able to add public accommodations to the list at the
21 end of this year, assuming that it passes and assuming that
22 the governor doesn't veto that.

23 As Bill Hoshijo mentioned, one of the main issues that
24 put Hawai'i on the map in terms of sexual orientation was this
25 was the first state that took a giant leap forward. This was

1 not the beginning of the same sex marriage movement. But it
2 took a huge leap forward when three couples who were actually
3 under the guidance of Bill Woods -- that's why he's so great
4 for an historical perspective -- applied for marriage licenses
5 and were denied.

6 They then retained counsel, who is now Judge Dan Foley,
7 who crafted I think a brilliant legal argument that said that
8 marriage licenses were not denied based on sexual orientation
9 because they really didn't ask about sexual orientation.

10 They were denied based on gender. Therefore because
11 they were denied based on gender they were covered by the
12 Equal Rights Amendment and should not have their suits denied,
13 their marriage licenses denied.

14 In 1993, much to everyone's surprise, the Hawai'i
15 Supreme Court agreed with that argument and remanded the case
16 saying the state must show a compelling state interest.

17 I mentioned parenthetically in 1994 and also because
18 another group mentioned, Japanese-American Citizens League.
19 The YACL was the first non-gay organization to sign on in
20 support of the quest for same-sex marriage.

21 In 1996 the circuit court, because the case was
22 remanded, reheard the case and ordered the state to permit
23 same-sex marriage. And this, I think, begins what I see in my
24 concern about the state of civil rights for people in Hawai'i
25 based on sexual orientation is that there is beginning to be

1 an alignment of government forces to prevent those persons in
2 the sexual minority categories from full exercise of their
3 rights.

4 In 1997 the Hawai'i Legislature knew that they had to,
5 in order to overcome the 1996 ruling, they had to amend the
6 constitution.

7 So in 1997 they proposed a constitutional amendment to
8 allow the Legislature to define marriage. And in 1997-'98
9 there was a huge campaign to support that amendment to allow
10 the Legislature to define marriage. And \$800,000 was reported
11 as coming from the Church of the Latter Day Saints to fund
12 that, coming into Hawai'i to fund that campaign.

13 In 1998 the constitutional amendment passed by about
14 80 percent. And that really knocked the wind out of a lot of
15 people who were civil rights activists here in Hawai'i.

16 I was on the mainland at the time, not that that's why
17 it lost, but anyway, I was surprised to find out when I came
18 back and talked to my friends later about it, these were
19 straight friends that I worked with, apparently the message in
20 this whole campaign got so distorted that they believed that
21 we now had rights to same-sex marriage here in Hawai'i.

22 They completely did not realize that there was a
23 constitutional amendment that was passed. That's how muddled
24 the whole message got during that very bloody campaign.

25 We do have gay bashings. And I noticed there were two

1 that were reported in the paper in 2004 just one week apart.
2 One was on September 18th, 2004 a doctor from Missouri was
3 bashed near Hula's.

4 Then on September Pam Disel, who was from Oklahoma, was
5 bashed on her way to Hula's.

6 The first fellow did not feel that it was a hate crime,
7 although I find that astounding. And the second one did.
8 What I thought was interesting as I was pulling this together
9 was these two were people from the mainland.

10 What happens to local gay bashings? My guess is they
11 don't go reported. I think they're here but they just don't
12 go reported. And the reason I think that is because I then
13 went to the state schools website.

14 And they said they have lots of testimony about gay,
15 lesbian, bisexual, transgender youth being harassed in the
16 schools and receiving little or no protection from school
17 counselors and teachers.

18 We are becoming the one group that it is still
19 politically correct to bash physically and verbally. They
20 said that one girl said she went to her counsel and said, "I
21 had been harassed. I had been called a butchy." And the
22 counselor said to her, "Well, look at you."

23 Now, can you imagine if anyone else was hurled a racial
24 epithet, went to the counselor and said, "I was called"
25 whatever the racial epithet was, and the counselor said,

1 "Well, look at you." This is the type of harassment that we
2 need to correct.

3 And as Alphonso said it needs to be started in the
4 schools. If there's one thing that someone needs to do, and
5 I'm hoping it's this commission, someone needs to look very
6 seriously at the Department of Education.

7 And I say that, and I'm going to digress from my notes
8 for a minute. Because when I working for a law firm downtown
9 we were taking random calls -- we were a prepaid legal thing
10 so we were taking calls of a random nature, anything from, "I
11 didn't get the services I ordered," to, "I'm having problems
12 getting my insurance to pay for my medical."

13 The one that I received the most complaints on were
14 people who were teachers in the DOE who felt that they were
15 either fired or not retained for other reasons or that there
16 was hiring discrimination in the Department of Education.

17 That was the most common theme. As someone mentioned
18 earlier, those who are whistle blowers -- I received a call
19 from a whistle blower who felt that she was being
20 discriminated against because she was doing whistle blowing on
21 the Department of Education.

22 I won't belabor the Hawai'i Youth Correctional Facility
23 because I think that the other speaker from the ACLU did a
24 brilliant job in outlining the abuse there.

25 I think it's absolutely important that we look at the

1 DOE -- I'll talk about that later.

2 Another huge issue for us is faith-based social
3 services. This strikes terror in our hearts, as those in the
4 sexual minority community, because the faith-based initiatives
5 are the vehicle by which members of our society are being
6 allowed to continue to discriminate against people.

7 They are particularly, those of you who have been
8 privileged to see the website in Kansas, there's a God Hates
9 Fags website by Reverend Phelps out of Kansas. They are
10 particularly targeting people who are members of the sexual
11 minorities. But it doesn't stop there. They also go after
12 racial minorities as well.

13 We have to realize if you look at it for an historical
14 perspective that's when it made sense to me. We have the
15 civil rights movement coming up out of the South. What
16 happens out of that you had a lot of the evangelical churches
17 forming to counteract the civil rights movement.

18 They have then used the religious protections to be --
19 and asked for lots of religious exemptions. You'll see that
20 even in our Hawai'i statutes exempting religious institutions
21 from civil rights laws.

22 Then they used these religious exemptions to perpetrate
23 further discrimination. So now we have presidential executive
24 order providing funding to faith-based organizations to
25 provide social services.

1 Now, it's not just a matter of "We're going to deliver
2 a religious message." It's a matter of "We're now delivering
3 social services." These social services are now being tied to
4 religious messages or services are being denied based on a
5 person's beliefs, a person's desire to have, perhaps, an
6 abortion, a person's racial background, a person's sexual
7 orientation and so on.

8 The governor, I believe it was last fall, provided a
9 seminar for the faith-based, for those who wanted to take
10 advantage of federal funding for faith-based community
11 services. One of the workshops in that government-sponsored
12 seminar was how you can legally circumvent discrimination
13 rules using faith-based initiatives.

14 So who's responsible for enforcing the civil rights
15 here? Obviously the Hawai'i Civil Rights Commission if in
16 fact it falls within their legislative mandate. One of the
17 things that they have done which is, I think, very insightful
18 and brilliant is they realized that gender identity and
19 expression, discrimination based on gender identity and
20 expression really is fundamentally based in sex
21 discrimination.

22 We discriminate against people we perceive who are
23 acting other in their gender identity because of the
24 discrimination that we feel about persons based on their
25 gender not just their gender identity. And I would frankly

1 say the same thing about sexual orientation.

2 The men who decide that they are gay and act as if they
3 are women by being drag queens or whatever, receive far
4 greater discrimination and brutality than women who decide who
5 decide that they want to act more like men and maybe go into
6 the unions or the trades or dress more like men.

7 So there is an underlying sex discrimination when
8 you're looking at discrimination based on sexual orientation,
9 gender identity or expression.

10 I remember giving a talk years ago, gosh, it must have
11 been in the '70s, given to gay men about why should gay men be
12 interested in women's rights. And I said basically it's like
13 this. There's a binary theory of sexism where men are ones
14 and women are zeros. Our society has been based on that there
15 can only be one union: A one and a zero.

16 And if you allow ones and ones or zeros and zeros it's
17 going to wreak havoc through the whole community. That's
18 basically what we've been seeing played out over the last 30
19 years.

20 Those who want to push for any relationship other than
21 ones and zeros were going to have problems. And we see this
22 played out in Texas. Texas, the transgender community says
23 you're going to learn a lot from us if you can come in with
24 us. Here's what they did in Texas. They went in and they had
25 a gay or lesbian couple go in and apply for a marriage

1 license. It goes up through their courts. The court says,
2 nope, you've got to have an XX chromosome and an XY chromosome
3 or you can't have marriage.

4 So what did the transgenders do? They found themselves
5 an XX male who is now female -- excuse me. An XX female who
6 is a female and an XY male who is now transgendered into being
7 female. And they trotted that lesbian couple in there. And
8 they said, "You have to give us a marriage license because the
9 Supreme Court has said sex is based on chromosomes and
10 chromosomes we pass."

11 And I think that's what we really have to look at is
12 what is the deal about marriage and where would we really be?
13 Look in our hearts. Where would we really be with ethnic and
14 racial discrimination if we have laws here that prohibited
15 people from different ethnic groups or racial to marry? Where
16 would we be?

17 We have to look at that seriously. It really is a
18 matter of to know us is to love us. As we get to know people
19 that aren't quite like us we get the joy of finding out who
20 they are. But as long as we can keep them separate from us we
21 will never get to know who they really are.

22 So hate crimes -- I want to talk about that too -- hate
23 crimes is applicable only at sentencing so therefore you can't
24 charge someone with a hate crime. It comes on at sentencing.

25 The other thing that we have going on right now which

1 could potentially be a very serious problem is the Hawai'i
2 National Guard. When a person joins the Hawai'i National
3 Guard they are guaranteed under our constitution that they
4 will not be discriminated against based on sexual orientation.

5 If they are called up and sent to Iraq or Afghanistan
6 or anywhere by the federal government, those protections are
7 stripped from them. They are at risk that they will be
8 discharged from their service at a less than honorable
9 discharge.

10 And that's not just the disgrace of having left the
11 service. That affects your ability to get student loans,
12 your ability to get housing, your ability to get employment.
13 It can follow you and haunt you for the rest of your life
14 unless you go through extraordinary efforts to get your
15 discharge status upgraded.

16 So just to run through some examples. There are two
17 subgroups that really get fairly even treatment from one
18 jurisdiction to the other. That is two persons, one male and
19 one female who are legally married and both are U.S. citizens.
20 Or one person who is celibate and perceived to be celibate and
21 living alone.

22 If you're in any other groups your legal rights will
23 vary. If you are two persons; one male, one female married in
24 Massachusetts but living in Hawai'i, your marriage will be
25 recognized.

1 If you're two persons of the same gender who are
2 legally married in Massachusetts, the only state that allows
3 legal marriage right now for same sex couples, your marriage
4 will be recognized in Massachusetts but it will not be
5 acknowledged or recognized in Hawai'i.

6 If you're two persons, one male and one female married
7 in Canada and you are now living in Hawai'i, your marriage
8 will be recognized.

9 But if you're two persons of the same gender -- Bill
10 Woods-Bateman cannot have his marriage recognized here in the
11 state of Hawai'i.

12 If you are two persons, one male, one female legally
13 married in the United States, you have all sorts of rights.
14 But if you're two persons under a common law marriage, that
15 common law marriage is only acknowledged in six states.

16 If you are two persons, one male, one female who are
17 legally married you have a full panoply of rights. But if
18 you're two persons, one male, one female who are not legally
19 married, I don't care how long you've lived together, you will
20 have very few rights.

21 Since I practice law in the area of estate planning
22 that's where I've seen horror stories of people who have lived
23 together for 20 years, one male, one female. And when one of
24 the persons died that person has nothing.

25 If that person dies without any estate planning they

1 have not only lost their lover but they lose their home. They
2 will lose all possessions unless they have them in their own
3 name or unless they took the steps to own them jointly.

4 If they own them separately they have no access to that
5 person's property. They can't even visit each other in a
6 hospital. That whole horror came up for us in the AIDS
7 crisis. If you are not legally married, you're not even
8 allowed in the hospital room. We had all sorts of stories of
9 people dying. They finally contacted their parents because
10 they were dying. And the family comes in, boots everybody
11 else out and says, "We'll take it from here."

12 And the whole support group for the person with AIDS is
13 stripped from them in their last moments.

14 Two persons who are reciprocal beneficiaries here in
15 Hawai'i versus two persons, one male and one female, cannot
16 apply for reciprocal beneficiary status here in Hawai'i, they
17 will have very different rights under Hawai'i law.

18 Two persons, one male and one female, both married but
19 one of them is a U.S. citizen versus one is not a U.S.
20 citizen. If you're both U.S. citizens and you're legally
21 married and you're of opposite genders you can have an
22 unlimited marital deduction for estate tax purposes.

23 But if one of them is not a citizen you can't. You're
24 limited to the current exclusion amount.

25 Now, you can put that, you have the option if you're

1 legally married of putting in a QDOT and therefore preserving
2 the estate. But, of course, if you can't legally marry and
3 that's not recognized by the United States, which applies to
4 this whole 'never married' group, you can't transfer wealth in
5 an unlimited deduction.

6 So the whole passage of wealth is a special right
7 that's been granted to married couples that was not granted to
8 any other group.

9 So what can this commission do? Certainly, and I
10 emphasize again, one of the most important things that needs
11 to be done is to look at the Department of Education. As
12 Alphonso indicated in his remarks, education is our one common
13 experience. It is the first experience that kids have.

14 If they go into a school and they don't see faces like
15 theirs why should they even bother continuing to school,
16 particularly at the higher end?

17 How can they feel that there is a just society if they
18 don't see faces like there's looking back at them?

19 How can they feel that they'll have a right to succeed
20 if they don't see faces like theirs coming back at them?

21 What happens when they begin to realize that all the
22 adults that they know or so many of the disproportionate faces
23 like theirs have been shipped off, as Kat indicated to
24 someplace on the mainland to a prison?

25 There are kids in minority groups in the mainland that

1 have said, "Why should I even bother going to school? Why
2 don't I go ahead and sign up at the local prison because
3 that's where I'm going to spend my life anyway."

4 What kind of message is that sending to a whole
5 generation of kids? We've got to address early that our
6 schools must look, must reflect the population at large.

7 Ice is also, I didn't put that in my notes, but Ice is
8 also a huge epidemic in our gay male population. And with
9 that often comes AIDS which is often disproportionately
10 historically affected our population.

11 Right now the federal funding for housing for AIDS
12 patients is in jeopardy. We also need to deal with the ice
13 problem.

14 I've mentioned tax-exempt status because when we had
15 the constitutional amendment and we ended up with \$800,000
16 coming in strictly from one church to make sure that our
17 rights were circumscribed, no one seems to raise a red flag
18 about churches and non-profit organizations acting in
19 political ways which should strip them of their tax exempt
20 status.

21 We have heard that there are churches that tell you
22 which candidates to vote for and how to vote on issues. And
23 we need people to follow up on those, and to strip them of
24 their tax-exempt status accordingly.

25 Faith-based initiative. We need to have guidelines for

1 the state. We need to monitor the awarding of grants to make
2 sure the grants aren't being awarded to institutions that
3 discriminate on the basis of sexual orientation or any other
4 non-merit category.

5 Same with the provision of social services. They've
6 already had problems where the provision of social services
7 was tied to the proselytizing of religion. And we have to
8 make sure that services are provided in a manner that did not
9 discriminate based on sexual orientation or any other
10 non-merit related criteria.

11 The other thing where we could use support is in the
12 passage of the Military Readiness Enhancement Act. Under Bill
13 Clinton he by executive order did the Don't Ask/Don't Tell
14 policy. We need to change that and acknowledge that gays and
15 lesbians, bisexuals and transgenders have and are serving in
16 the military and have done so with distinction.

17 Our major allies including the United Kingdom,
18 Australia and Israel allow gays and lesbians to serve openly
19 in their services.

20 Our defense-related civil agencies such as the
21 Department of Homeland Security, the Central Intelligence
22 Agency, the National Security Administration, so on allow gays
23 and lesbians to serve openly.

24 The policy is not working. What is happening is
25 hundreds and thousands of people are being ostracized from the

1 military services, many of them in critical positions such as
2 translators.

3 We also need to have help at the federal level to
4 recognize marriages for those who have been married in other
5 countries as is currently acknowledged for opposite couples.

6 We need help so that when marriage is a state's rights
7 issues and states acknowledge and provide same-sex marriage
8 for their citizens that those are given full faith and credit.

9 We need to work for the repeal of the Defense of
10 Marriage Act. And we need to work against the attempts to ban
11 for the U.S. Constitution to ban same-sexed marriage.

12 As I mentioned briefly I think we have to really look
13 at -- Hawai'i is in a unique position to do this. We have
14 more interracial marriage and more integrated neighborhoods
15 than any state in the union.

16 And I think we have to acknowledge in our heart of
17 hearts that a lot of that was because there was not ever
18 legislation that forbade people from other different ethnic
19 groups or different races from marrying.

20 Having access to marriage is absolutely crucial to
21 achieving parity. And with all the attempts to disallow same
22 sex people what is happening is the message is being laid down
23 in law that people who fall in the 'never married' category or
24 any other category where they are not married and sexually
25 living -- where they are not married, they are being legally

1 now placed in a second class status box and will continue to
2 be so.

3 Now, I shouldn't say 'continue' forever. Because,
4 frankly, the message of hope that I always have is frankly
5 those persons who are under the age of roughly 35 to 40 have a
6 huge difference in the way they perceive sexual orientation
7 than those who are older, people my age, I'm 56, or older.

8 I have borne the shame of being called, you know, the
9 lesbo or whatever. I've spent most of my life hiding my
10 orientation. I spent most of my time either not talking about
11 it or passing because most people presume that I'm straight so
12 I don't correct their impression.

13 Those people in the younger generation they don't
14 understand what the big deal is. And they're kind of
15 surprised: You don't have marriage? So eventually this will
16 get corrected.

17 I would love it if it would be in my lifetime. But if
18 not all of us old foggies will eventually die off and
19 eventually we will have same sex marriage. Because the
20 younger people as they grow up having more gay/straight
21 alliances, having more friends, being more open, they're like:
22 What's the big deal? People love each other. They care for
23 each other. They form stable relationships, all the reasons
24 why we want marriage in a society.

25 Or what's happening in the gay relationships. What

1 they found in Massachusetts and Canada -- and I'll use
 2 Massachusetts because it is a state of the Union. They found
 3 that in the one year from the time marriage was legalized to
 4 just one year later, the huge, huge swing in popular opinion
 5 on their support for gay marriage. It went from being not too
 6 sure to tepid to being against it to hugely in favor 85, 95
 7 percent in Massachusetts are not in favor of gay marriage.

8 And why? Because what happened in Massachusetts is
 9 what's going to happen everywhere. Once your relationships
 10 are sanctified, those people that you worked with that you
 11 never really kind of understood what was going on, there's
 12 just this sort of huge void of about how they wouldn't talk
 13 about what's going on in their homes.

14 All of a sudden it comes to light. These people,
 15 these people have been in long term relationships. They have
 16 been loved and supported for years by their own families of
 17 choice. And what was so frightening because we didn't know
 18 what was that huge black hole that wasn't being talked about
 19 comes to light.

20 The thing that it is is that they have been loved by
 21 someone that you said was unacceptable. And I certainly think
 22 that people here in Hawai'i can understand what it's like for
 23 someone to come in and say to you who you are and what you do
 24 is wrong. And you've got to change that or pretend to be
 25 something other than who you are.

1 We all have the right to fully participate, I believe,
2 in the pursuit of happiness. I firmly believe that unless we
3 continuously press for same-sexed relationships to be
4 acknowledge as are opposite-sexed relationships we will never
5 get there.

6 There will always be this fear that those that we don't
7 know are the ones who will prey upon our children. I was
8 pleased in the sense on one hand at the last hearing when that
9 sexual predator was coming out that they finally moved off
10 gays and lesbians and now they're going to try to hang that
11 handle on the transgenders. I was pleased with that part. I
12 was not pleased that it doesn't belong to the transgenders
13 either.

14 You need to know who we are. You need to embrace who
15 we are. When we do that we will all be able to move to a
16 place where we can create families because we know that
17 families stabilize communities. They provide loving homes to
18 children. And loving homes for children means you won't end
19 up in prison. Or if you do you'll have a family to return to.

20 Thank you very much for the time. (Applause)

21 MR. FORMAN: Thank you very much. That was very
22 powerful and informative testimony. Are there any questions
23 from the -- I realize that the hour is late but are there any
24 questions from the committee members? Or as I did before when
25 Bill Hoshijo was referenced in testimony I gave him a chance to

1 say a few words. I'll do the same for Bill Woods-Bateman.

2 MR. WOODS-BATEMAN: I think this, and I'm really
3 surprised that more of the public is not present and witnessing
4 this. And I don't know what mechanisms that we as a community
5 or you as a body can do to promulgate the information that was
6 shared here with the real world which has to deal with the life
7 and the attitudes where fairness is not the objective.

8 I would say every single person here I'm glad that I've
9 worked and known these people and have seen them helping to
10 change the world. I'm tremendously impressed that my live has
11 touched people who are making a big difference.

12 I have to obviously acknowledge Jo-Ann who I've only
13 met in the last four or five years who has tremendously made a
14 difference in people to understand the legal issues as well as
15 the human issues which are really relevant to the issue of
16 equal opportunity.

17 I just think this is a great process. I just don't
18 how, and I would like to encourage new mechanisms like this
19 group and the commission itself can promulgate the information
20 that comes here and not just to the reports but to the public
21 as a whole that that's an educational process that you know
22 what people are saying about the reality of discrimination and
23 the impact on our world is not better.

24 We waste money. We waste lives. And we waste
25 creativity involving every person in the system that can

1 possibly make the contribution that will make all the
2 differences for us all.

3 Every time we cut somebody out of the process, those
4 ideas and solutions that they may have will never be heard.
5 Thank you.

6 MR. FORMAN: Thank you very much. That was much
7 appreciated. Rather than, I'm going to share later with you
8 and I'll just go share with you rather briefly. Jill Nunokawa
9 has submitted a very short testimony. I'll read some quick
10 excerpts.

11 She talked about the application of Title IX within the
12 state of Hawai'i's Department of Education secondary
13 education's extracurricular athletic activities and the
14 University of Hawai'i at Manoa's athletic department.

15 She made her comments in the context of 34 years after
16 the passage of Title IX which has been renamed the Patsy T.
17 Mink Equal Opportunity in Education Act. And observing that
18 there are some disturbing things that are happening in
19 Hawai'i.

20 Ms. Nunokawa had started advocating in this issue about
21 13 years ago when she was in the Public Defender's office and
22 now works as a civil rights counselor at the University of
23 Hawai'i.

24 She did acknowledge that after much resistance and
25 reluctance the Department of Education and University of

1 Hawai'i have engaged in efforts to improve the spirit and
2 intent of Title IX within their respective areas noting that
3 in 2000 Governor Cayetano signed the Gender Equity in Sports
4 Law.

5 There was a three-year commission that was set forth
6 that sunset that was not renewed. But now Ms. Nunokawa serves
7 as the vice-chair of the Superintendent's Advisory Committee
8 on Gender Equity in Sports although it just meets once a year
9 to monitor and assess compliance and enforcement issues.

10 She also acknowledged that the DOE has made substantial
11 improvements in the implementation of Title IX in athletics.
12 But she also provided some articles about some specific areas
13 where DOE continues to ignore, neglect or deny obligations.

14 She noted specifically that we continue to be the only
15 state in the nation --

16 MR. MAXWELL: David, could you talk louder?

17 MR. FORMAN: Okay. Can I have the microphone, please.
18 We are the only state in the nation that plays girls basketball
19 from March to May. The articles, if you receive them later you
20 can take a look at what that means in terms of opportunities
21 for female athletes in Hawai'i. They don't have the
22 opportunity to participate in the national tournaments because
23 their season is held at a different time.

24 Whereas the boys have very prominent national
25 tournaments that are held locally that have helped to elevate

1 the level of boys basketball in Hawai'i.

2 Also Ms. Nunokawa mentioned that in July 2002 the state
3 Legislature appropriated \$10 million for gender equity capital
4 improvements which was intended to build softball fields in
5 order to meet Title IX requirements.

6 But to date few softball fields have been completed and
7 of those completed or in construction there are errors at each
8 field that should be fixed, but the DOE suggests it does not
9 have monies to fix the problems or that the problems are not
10 sufficient enough to warrant any subsequent efforts in
11 correcting.

12 For example a DOE official misappropriated some of the
13 funding to make necessary improvements to the boys baseball
14 facility in order to comply with the Americans with
15 Disabilities Act. That ended up taking money away from money
16 expressly appropriated to address Title IX concerns.

17 Also mentioned that the current status at the
18 University of Hawai'i at Manoa is also problematic. Although
19 the Chancellor of Manoa approved a second gender equity plan,
20 the Athletics Director refuses to implement this plan because
21 he did not approve it.

22 He agreed to develop his own plan with a deadline of
23 November 2005 but missed that deadline and all subsequent
24 deadlines that he requested. He has not submitted his own
25 gender equity plan and continues to ignore the requirements of

1 the previously approved gender equity plan at Manoa.

2 One of the specific areas, egregious areas of concern
3 is the AD's lack of compliance with budget cutting. The plan
4 is specific that during times of budgetary constraints, the AD
5 shall not cut existing women's programs. However, the AD at
6 UH-Manoa cut the women's funding across the board.

7 So she encourages the committee to seriously consider a
8 further study on Title IX in athletics in Hawai'i. As
9 mentioned again the fact that Title IX's new name is the Patsy
10 T. Mink Equal Opportunity in Education ACT. Coming from the
11 state whose congresswoman originated Title IX is somewhat
12 embarrassing that these conditions are still in existence.

13 That brings to a close the testimony that we have been
14 provided. There are a couple of housekeeping matters. I'd
15 like to give the committee members who are present a brief
16 opportunity to review the materials that Tom Pilla presented
17 you with earlier.

18 There's a copy of the minutes from our teleconference
19 meeting on February 23rd. I've gone over this and made some
20 minor corrections that are reflected here in the revised
21 minutes I believe.

22 MS. KENNEDY: As people review, I agree with what Bill
23 suggested. I feel very strongly about the fact we need
24 publicity. I'm surprised we had no public announcement. So
25 that is past but if we could do something about getting the

1 word out.

2 MR. PILLA: I can address some of that. I did prepare a
3 press advisory about this meeting. The new procedure is that
4 in the past we would be able to release that ourselves at our
5 regional office. We now have to submit that to the public
6 affairs officer in headquarters, which I did do. Whether or
7 not it was sent out from there I have no way of knowing. But
8 we are precluded from doing that directly now by the new staff
9 director.

10 MR. FORMAN: Perhaps reflective of that is the fact that
11 the U.S. Commission on Civil Rights held a briefing on January
12 20, 2006 on the Native Hawaiian Reorganization Act. Despite
13 the fact that our committee has issued reports in 1980, 1991
14 and 2001 on this issue we received no communication from the
15 staff at headquarters about that briefing.

16 The western original office has kept us advised and we
17 had conversations with Attorney General Bennett who tried to
18 provide testimony to the commission. But apparently they were
19 unable to resolve the conflicts.

20 The staff director is the one who chose the individuals
21 who appear, the four individuals to appear before the
22 commission without seeking any input from us, and apparently
23 without reviewing our reports based on the observations from
24 the majority of the commission members.

25 So committee members are aware of some of the

1 difficulties that I've had as a chairperson in dealing with
2 the commission. And I hope that in future years that we will
3 continue to try to hold the feet to the fire and have the
4 commission respect the role that the advisory committees were
5 intended to play when the legislation was initially enacted.

6 MR. STENDER: Are we going to write them a letter, and I
7 guess, complain about it? We do these things. We have not had
8 a meeting in a long time. We have had telecon meetings. This
9 is the one way to have a meeting. Yet we have kind of, it just
10 impresses me we are just window dressing here. They don't
11 allow us to do anything.

12 We haven't really done anything other than in the days
13 of, in the '90s that we were really more involved in issues
14 that affect Hawai'i that we have been able to get those
15 reports, those hearings down, reports out.

16 So, it seems in the last five years we've not been
17 allowed to do anything. And it's shameful.

18 MR. PILLA: It's been very frustrating from a staff
19 point of view. I realize the frustration that state advisory
20 committee members have. We're down to three people in the
21 western regional office, me and two secretaries to handle nine
22 states. But we have not had the budget in the last five years
23 to do much other than teleconference meetings which we have
24 attempted to do.

25 If you read the minutes of commission meetings it's a

1 wonder it's done at all at that level. Presently it seems
2 like they are more obstructionist than interested in civil
3 rights issues. The advisory committees have always played a
4 strong role in --

5 MR. MAXWELL: Could you talk louder, please.

6 MR. PILLA: -- doing the work of the commission. Sorry,
7 Charley.

8 MR. MAXWELL: I cannot hear.

9 MR. PILLA: Okay. So it's been the regional staff
10 perspective that we try to give them as much support as
11 possible. But in an agency that has limited budgetary
12 resources that's been a very major problem. It's been very
13 frustrating. I'm sure you'll all agree with that.

14 You oftentimes put in requests for meetings and they
15 tell you no, you can't do it. You can't hold it. We don't
16 have the money for it. But we actually set up meetings, and
17 then have to tell the state advisory budget committees we
18 aren't having that meeting because they won't let us have it.

19 But the new sort of guidelines they have put in place
20 regarding how we do normal routine business how they spent a
21 whole year, the commission, they put together a working group
22 on state advisory committees. They spent the whole year
23 deliberating.

24 They did not take any action on state advisory
25 committee rechartering packages that were sitting back there

1 for that year. By the end of 2004 when the old commission
2 left they had considered 13 rechartering packages.

3 So this past year 2005 those are the only committees
4 that had charters. This was one of four in our region that we
5 are able to get rechartered by that December 2004 date.

6 There are actually 13 advisory committees have been
7 recharted. We have four of them. The only reason we were
8 able to meet now is that the staff director realized that
9 nobody had met other than teleconference. He said he wanted
10 all 13 to meet in the month of March.

11 I had to point out to him that these committees hadn't
12 met in over two and a half years. They're not just going to
13 want to meet to meet. They want to meet with people and talk
14 to them about issues and that was going to take some time.

15 I said in a good year if I met with four advisory
16 committees in their briefing session that would be a great
17 year for me. You want to do that all in March? I'll give it
18 a try. Three of them met in March. The other one is meeting
19 in May.

20 But it's a serious problem with the fact that they
21 don't understand the advisory committee structure. They want
22 to control the advisory committee structure. They have issued
23 new guidelines about selection procedures. They were
24 published and commented upon. And now you have a set of what
25 was finally released in the Federal Register as part of the

1 package for today's meetings.

2 It's always been an issue of control. But this
3 commission has found a way to do it. They're planning to
4 impose a 10-year tenure for advisory committee members.
5 They've not grandfathered anybody. So that means anybody who
6 has been on the committee for 10 years well, goodbye
7 regardless whether you're an active member, a committed member
8 and somebody who knows their community. They have just picked
9 a number out of the air and you're going to be asked to leave
10 and not be renominated for reappointment.

11 That's extremely frustrating to me. We have about 125
12 members in our region, nine committees. 78 people are going
13 through no fault of their own just because they have had 10
14 years on the committee. But we have always had natural
15 attrition on these committees. People leave the state, people
16 die, people get too busy in their in of businesses so that
17 they need to leave. It's always been there's some natural
18 attrition.

19 But there's a sense of consistency if there are four or
20 five members who stay every two-year rechartering period.
21 That's not going to happen. It's unfortunate.

22 I've got into a number of battles with this new staff
23 director about different issues because what's he going to do
24 with me. I've got 35 plus years. And I told him that I was
25 opposed to the 10-year term for the reasons I listed.

1 I also told him that, getting back to your concern
2 about the Akaka Bill, the briefing they had, I first got
3 there, he didn't phone me either, by the way. And we handle
4 the state of Hawai'i.

5 So I found it in the minutes of the meeting the
6 commission meeting. I called him the day I read it. I said,
7 "You know, the Hawai'i advisory committee has done extensive
8 work on Native Hawaiian issues. You need to know this. And
9 these are the reports that they've released. And I will send
10 you a memo of their cites. They're back there at the
11 clearinghouse library. I think all commissioners should get a
12 copies."

13 "Thank you very much" is all I heard from him.

14 Whether or not he did that I have no way of knowing. I
15 said, "We also have members who can give you suggestions for
16 people who should brief the commissioner on this issue."

17 "Thank you very much."

18 But he didn't contact any of you nor David. He didn't
19 contact me to say, "Do you have the name of somebody?"

20 So they're doing their own thing. They've got an
21 agenda.

22 MR. MAXWELL: Could I make a comment?

23 MR. FORMAN: Yes, go ahead, Charley.

24 MR. MAXWELL: I've been on this commission, I don't know
25 why, but since 1974. And I want the records to show that Tom

1 has been the equator. He's done things that are so frustrating
2 as a member of the advisory committee over the years because of
3 the inadequacy of us having meetings, yet Tom Pilla has been
4 the strong force in the western regional in trying to put
5 things together even though it was totally impossible. We have
6 gone, we have done that.

7 So to the testifiers, you know, Jo-Ann Adams and all
8 the people that heart felt testimony they gave, you know,
9 we've been in this for a long time but don't expect nothing to
10 happen because of the budget constraints and the fact that we
11 are away from Washington. We are very far away from
12 Washington. They have even forget that we exist sometimes.
13 But I'd like to take that moment to thank Tom for all your
14 work you've done.

15 MR. PILLA: Thank you.

16 MR. FORMAN: Thank you, Tom. (Applause). Tom says that
17 he thanks you and appreciates it, Uncle Charley. I'm going to
18 consider Faye's motion for action. With there any amendments
19 to the minutes from our last meeting? Can I entertain a motion
20 to approve the minutes?

21 MS. KENNEDY: I move to approve.

22 MR. HELELA: I second.

23 MR. FORMAN: Moved by Faye and seconded by David Helela.
24 All in favor.

25 MEMBERS VOTING: Aye.

1 MR. FORMAN: Opposed? Any abstentions? None. Passes
2 unanimously. I believe, Faye, you were suggesting that we....

3 MS. KENNEDY: Some kind of press release so people can
4 come out and testify. We've had testimony that everybody needs
5 to hear.

6 MR. FORMAN: So something along the lines of a report
7 along with a substantial kind of PR educational component to
8 it.

9 MS. KENNEDY: Anything you can get to say this happened,
10 who testified, some synopsis of what was said.

11 MR. PILLA: We're planning on doing that. There will be
12 a briefing memorandum that will be done by the advisory
13 committee that will go to the commission but then it's
14 available to be released publicly.

15 MR. FORMAN: Do I hear a second?

16 MR. MAXWELL: Yeah, I second.

17 MR. FORMAN: Second by Charley Maxwell. Any discussion?
18 All in favor?

19 MEMBERS VOTING: Aye.

20 MR. FORMAN: Any opposed? None. Any abstentions?
21 None. Motion passes. Any other business that the state
22 advisory committee members would like to address? I really
23 appreciate--

24 MR. MAXWELL: Can I ask a question?

25 MR. FORMAN: Uncle Charley, go ahead.

1 MR.. MAXWELL: You know, we had tremendous testimony.
 2 There's so many things that is happening here in Hawai'i. Is
 3 this just going to be a report? I know I should have asked
 4 that when the motion was made. Is it just going to be in the
 5 report or subject that we discussed and it's going to be thrown
 6 away or filed? What's going to happen?

7 MR. FORMAN: I think the breadth of the motion would
 8 encompass something much broader. So we can meet to flesh out
 9 and discuss over email how that takes place, what kind of
 10 publicity we can generate, what kind of educational approach.

11 We can discuss that with Tom and think about creative
 12 ways of doing exactly what you're asking us. Thank you, Uncle
 13 Charley.

14 MR. MAXWELL: Yes.

15 MR. FORMAN: I'd also like to take this opportunity to
 16 extend our appreciation to Holly, our court reporter who stayed
 17 much longer than she was asked to and has done a tremendous job
 18 for us. So thank you very much, Holly.

19 MR. MAXWELL: There will be a little something in your
 20 check, Holly. (Laughter)

21 MR. FORMAN: Okay. If there's no further business...

22 MR. MAXWELL: Move for adjournment.

23 MR. STENDER: Second.

24 MR. FORMAN: It's been moved and seconded to adjourn.

25 All in favor?

1 MEMBERS VOTING: Aye.

2 MR. FORMAN: Any opposed? Okay, thank you very much.

3 The meeting is adjourned.

4 (The meeting was adjourned at 1:20 p.m.)

5 --oo00oo--

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I, HOLLY HACKETT, R.P.R., C.S.R. in and for the State of Hawai'i, do hereby certify;

That I was acting as shorthand reporter in the foregoing HSAC to the United States Commission on Civil Rights briefing on the 23rd day of March, 2006;

That the proceedings were taken down in computerized machine shorthand by me and were thereafter reduced to print by me;

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.

DATED: This 9th day of April 2006

Holly M. Hackett

HOLLY M. HACKETT, R.P.R., C.S.R. #130
Certified Shorthand Reporter