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HAWAII STATE ADVISORY COMMITTEE
TO THE
UNITED STATES COMMISSION ON CIVIL RIGHTS

ORIGINAL

PUBLIC HEARING

Held at the State Capitol, Beretania Street,
Honolulu, Hawaii 96813, commencing at 1:00 p.m., on
Monday, August 20th, 2007.

BEFORE: PATRICIA ANN CAMPBELL, CSR 108
Certified Shorthand Reporter
Notary Public, State of Hawaii

1 APPEARANCES:

2 HAWAII STATE ADVISORY COMMITTEE BOARD MEMBERS:

3 Michael A. Lily, Chair

4 Daphne Barbee-Wooten

5 Jennifer A. Benck

6 William H. Burgess

7 Vernon F. L. Char

8 Linda M. Colburn

9 Rubellite K. Johnson

10 James I. Kuroiwa

11 Thomas J. MacDonald

12 Gerald Reynolds

13 Paul M. Sullivan

14 Wayne M. Tanna

15 Jackie Young

16

17 US COMMISSION ON CIVIL RIGHTS BOARD MEMBER:

18 Gerald Reynolds, Chairman

19

20 STAFF MEMBERS:

21 Angelica Trevino

22 Barbara de la Viez

23 Derek Horne

24

25

1 APPEARANCES (Continued):

2 PANELISTS:

3 MARK BENNETT, ESQ.

4 Attorney General

5 Department of the Attorney General,

6 State of Hawaii

7 425 Queen Street

8 Honolulu, Hawaii 96813

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10 ROGER CLEGG, ESQ.

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16 Participants (In order of participation):

17 David Forman

18 Patricia M. Zell

19 Marilyn Leimomi Khan

20 Antoinette L. Lee

21 Charles Kapua

22 Haunani Apoliana

23 Robert G. Klein

24 Oswald Stender

25 Marshall Ka'anoi

1 APPEARANCES (Continued):
2 Julie Kitka
3 H. K. Bruss Keppler
4 Lawrence G. Ebel
5 Bill Hoshijo
6 Dr. David Sing
7 Dr. VerlieAnn Malina-Wright
8 Ke'alohi Medeiros
9 Kapua Medeiros
10 Lanny Sinkin
11 Toby Kravet
12 Poka Laenui
13 Ken O'Keefe
14 Henry Noa
15 David M. K. Inciong, II
16 Hinaleimoana Wong
17 Jack Gillmar
18 Sol Naluai
19 Lela M. Hubbard
20 Moana Sanders
21 Mahealani Wendt
22 David Peters
23 Roy Benham
24 Colonel Lawrence Woody
25 Pono Kealoha McNeil

1 APPEARANCES (Continued):

2 James Manaku, Sr.

3 Kanohowaiukee Koko

4 Annelle Amaral

5 Erma O'Toole

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P R O C E E D I N G S

HEARINGS OFFICER LILY: Good afternoon.

This meeting of the Hawaii Advisory Committee to the US Commission on Civil Rights will come to order. I am Michael A. Lily, chair of the committee.

The Commission on Civil Rights is an independent agency of the US Government established by Congress and has a number of important tasks: To investigate complaints alleging that citizens are being deprived of their right to vote by reason of race, color, religion, sex, age, handicap or national origin or by reason of fraudulent practices; to study and collect information concerning legal developments constituting discrimination or denial of equal protection of the laws under the Constitution.

Everybody can hear?

Okay. Appraise federal laws and policies with respect to discrimination or denial of equal protection; serve as a national clearinghouse for information about discrimination; submit reports, findings, and recommendations to the President and Congress.

Advisory committees were established in each state such as ours and the District of Columbia

1 by law and under the Federal Advisory Committee Act
2 to advise the commission on matters pertaining to
3 discrimination or denial of equal protection of the
4 laws because of race, color, religion, sex, national
5 origin, age, handicap, or in the administration of
6 justice or to aid the commission in its statutory
7 obligation to serve as a national clearinghouse of
8 information on those subjects. We also serve a very
9 important function of providing a forum for
10 information and for public education, which we are
11 getting a fair amount of of late.

12 We have two respective speakers that we
13 will hear first today, and then we are going to open
14 the meeting up to members of the public. A large
15 number of people have signed up, and because of that
16 number, we are going to have to limit the speakers
17 to about three minutes each. Now, the committee has
18 voted to have another open session on Oahu that will
19 be published in the Federal Register for September
20 12th, September 12th. We want to have as much
21 public input on the issue of the Akaka Bill as
22 possible, and so we want to have another full day on
23 Oahu for citizens on this island.

24 Now, pursuant to majority vote of the
25 committee in prior session last week, the purpose of

1 today's meeting is to obtain information and public
2 comment on what is just generally known as the Akaka
3 Bill.

4 Prior to last week's meeting, there were
5 some concerns expressed about process which I
6 shared, I agreed, as a result. We have opened it up
7 for more meetings. We are going to have meetings on
8 September 5th. There's going to be presentations by
9 various speakers of different points of view that
10 were invited to appear before the panel here on
11 Oahu. We also are going to have a public forum this
12 Wednesday on Maui and also on September 7th on the
13 Island of Kauai and on September 10th in Hilo, and
14 then, of course, after that on September 12th, the
15 purpose being that we want to have as much
16 information from the members of the public on this
17 important topic.

18 Also, the reason for today's date,
19 there's a lot of reasons for today's date, but we
20 wanted to hear from the Attorney General. There
21 were some open dates, there were a number of dates
22 available, but this was one of them, and so we have
23 asked that he please kindly consent to appear here,
24 plus Roger Clegg who has come in from the mainland.
25 We also in addition to the other meetings that we

1 set that I have already explained to you, and please
2 put them down, let your friends know that they can
3 come back here on September 12th at our open forum.

4 My goal is one that I think I have tried
5 to express and I think it is one that is shared by
6 our committee is that we want to have as broad a
7 representation as possible from Hawaii citizens on
8 all issues that come before this committee, and the
9 Akaka Bill is not going to be the only one, and the
10 committee voted for these sessions. This committee
11 is now in charge of its agenda. It has taken its
12 vote. It is moving forward on an agenda established
13 by its own majority vote. It is charting its course
14 as the committee sees fit.

15 Whether the committee ultimately decides
16 to issue an opinion or a vote or anything on the
17 Akaka Bill is something that is not going to be
18 determined by the committee for some time, some time
19 in the future, as a matter of just practicalities,
20 timing, not earlier than October, if at all. That
21 is for the committee to decide at some future date
22 by majority vote.

23 We may also choose to consider other
24 issues we are going to be hearing on September 5
25 from the chair of the Hawaii Civil Rights Commission

1 and of issues that are of pressing concern in
2 Hawaii, and we want to hear from that chair to see
3 what other issues that we may want to take up as a
4 committee.

5 Now, members of the advisory committee
6 that are present here today, starting from my left
7 is Paul Sullivan, then is Jimmy Kuroiwa. Can I say
8 Jimmy?

9 BOARD MEMBER KUROIWA: Yes.

10 HEARINGS OFFICER LILY: Linda Colburn,
11 Bill Burgess, Daphne Barbee-Wooten. Did I say that
12 right?

13 BOARD MEMBER BARBEE-WOOTEN: Yes.

14 HEARINGS OFFICER LILY: Jennifer Benck,
15 Vernon Char. I think you all know Rubellite is one
16 of our -- is a living treasure of Hawaii, we have
17 heard, and then Tom McDonald and Wayne Tanna.

18 I would like to emphasize that this is a
19 briefing. This is not an adversarial proceeding.
20 Individuals have been advised to come and share with
21 the committee information relevant to the Akaka
22 Bill. Each person who participates has voluntarily
23 agreed to meet with the committee. All issues that
24 come before the committee are important, and we
25 value the members of the public for their input.

1 People have strong views on this issue,
2 pro and con. It is vital that we maintain a
3 professional decorum when our views are being
4 expressed, and regardless of their views, every
5 member of the public that has comments to make are
6 entitled to be heard. I ask that no defamatory,
7 scurrilous, or personally derogatory material be
8 presented. In the unlikely event that that might
9 happen, don't take offense if I call it to your
10 attention and may have to ask you to leave.

11 I would also ask everyone to give due
12 respect to each speaker, recognize the dignity of
13 this proceeding as if you were before Congress or a
14 court of law or any government agency. Please don't
15 express audible physical reactions to testimony and
16 no outbursts of emotion, and if there is any, I will
17 have to ask you to leave.

18 In the event that we are not able to
19 hear from you in today's session, the record of this
20 meeting will remain open for thirty days, actually,
21 longer than that because we are going to have
22 subsequent sessions, so you have ample opportunity
23 to submit written materials and also to appear
24 personally here on September 12th.

25 Okay, if you want to have information

1 included, it should be submitted to the Western
2 Regional Office of the United States Commission on
3 Civil Rights, 300 North Los Angeles Street, Suite
4 2010, Los Angeles, California 90012, and any member
5 of the commission staff should be able to assist you
6 in the process for submitting information.

7 Before we hear from speakers, we are
8 honored here today to have the chairman of the US
9 Commission on Civil Rights, Gerry Reynolds who is
10 here somewhere. There he is.

11 Mr. Reynolds, do you have anything that
12 you want to say?

13 MR. REYNOLDS: Yes. I just want to make
14 a few brief comments. First of all, I would like to
15 thank you for inviting me and welcoming me. I also
16 think that I need to acknowledge on the front end
17 and express my appreciation for the individuals at
18 this table. They are going to wrestle with many
19 difficult issues. The Akaka Bill is one of them,
20 but there are many issues that concern us all, and I
21 believe that we have selected some very smart
22 people, some people with good judgment, and some
23 people who have a range of views on the topic.

24 As the chair indicated earlier, it's
25 extremely important as we have conversations about

1 the Akaka Bill, about any issue, that we have the
2 full spectrum of views represented. Everyone needs
3 to be heard from, and that is why I was also pleased
4 to hear that this organization has decided to add
5 some additional days, at least one day has been
6 added for public input.

7 So that's all I have to say, and I look
8 forward to hearing what the panelists have to say
9 along with the public. Thank you.

10 HEARINGS OFFICER LILY: Well, I am proud
11 to introduce to you Hawaii's Attorney General, Mark
12 Bennett. I have a great deal of respect for him. I
13 would like to call him a friend, a colleague, and I
14 know you are all looking forward to hearing from
15 Mr. Bennett. Thank you.

16 ATTORNEY GENERAL BENNETT: Thank you
17 very much. Good afternoon, Chair Lily and members
18 of the Hawaii Advisory Committee to the United
19 States Commission on Civil Rights.

20 I am here to testify today and to
21 express my strong support and the strong support of
22 Governor Linda Lingle and her administration for the
23 Native Hawaiian Government Reorganization Act of
24 2007. This bill is known as the Akaka Bill in honor
25 of its chief author and our only Native Hawaiian

1 senator, Daniel Akaka.

2 Mr. Chairman, this bill is fair,
3 equitable, just, constitutional, and long overdue.
4 It affords formal Federal recognition to Native
5 Hawaiians, a recognition that has been extended for
6 decades to other Native Americans and to Alaskan
7 natives. It sets up recognition, it allows for the
8 establishment of a Native Hawaiian governing entity.
9 It has the effect of preserving existing programs,
10 and it provides for negotiations between the United
11 States, the State of Hawaii, and the Native Hawaiian
12 governing entity.

13 The negotiations that this bill provides
14 for do not enact any changes in positive law unless
15 approved by the Congress and either the Hawaii State
16 Legislature or Hawaii's citizens if they are called
17 upon as would be likely to amend Hawaii's
18 Constitution. Although there have been many canards
19 put in the public as to what this bill would do,
20 this bill does not allow gambling. It does not
21 provide for the succession from the United States of
22 Hawaii or any part of it. It does not give immunity
23 from civil suits or criminal prosecution to anyone.
24 It does not create any land claims of any kind. It
25 does not provide any tax benefits or detriments. It

1 does not ban contracting with any businesses or
2 provide specific benefits to any businesses.

3 It, as I have said, allows for the
4 establishment of a Native Hawaiian governing entity,
5 and it provides for negotiations between that
6 entity, the United States, and the State of Hawaii,
7 and the products of those negotiations in order to
8 take effect must be enacted into positive law
9 following the negotiations by the Congress and,
10 where applicable, by the appropriate and acting
11 authority in the State of Hawaii, either the
12 Legislature or the people.

13 This bill has enormous by partisan
14 support in the State of Hawaii. It is supported by
15 Governor Linda Lingle. It is supported by virtually
16 every State Legislator in the State of Hawaii. It
17 is supported by our Mayor and our County Councils.

18 As the Attorney General of the State of
19 Hawaii who has sworn an oath to uphold the
20 Constitutions of the State of Hawaii and the United
21 States, I start where I start most of my analyses,
22 and that is with the law, and the most appropriate
23 place to start with regard to the law that governs
24 the State of Hawaii is the Admissions Act, the
25 organic document which admitted Hawaii on equal

1 footing into the Union with our 49 sister states.

2 It is worth quoting from the Admissions
3 Act. Section three of the Admissions Act starts
4 out, and I quote, and I think this is a very
5 important provision, the Constitution of the State
6 of Hawaii shall always be Republican in form and
7 shall not be repugnant to the Constitution of the
8 United States and the principles of the Declaration
9 of Independence. This was part of the organic law,
10 a condition, if you will, that the Congress imposed
11 on the admission of Hawaii into the United States.
12 That is section three.

13 Section four of the Admissions Act says,
14 as a compact with the United States relating to the
15 management and disposition of the Hawaiian
16 homelands, the Hawaiian Homes Commission Act 1920 as
17 amended shall be adopted as a provision of the
18 Constitution of the State of Hawaii. So at the same
19 time that Congress was barring the State of Hawaii
20 from enacting any provision of law in its
21 Constitution that was repugnant to the Constitution
22 of the United States, it was requiring the State of
23 Hawaii to enact in its Constitution the Hawaiian
24 Homes Act which provides specific benefits to Native
25 Hawaiians.

1 In addition, in section five F of the
2 Admissions Act, the Congress stated that the lands
3 granted to the State of Hawaii shall be held by the
4 State as a public trust for specific purposes,
5 including for the betterment of the conditions of
6 Native Hawaiians as defined in the Hawaiian Homes
7 Commissions Act of 1920, and their use for any other
8 purpose other than those enumerated including the
9 betterment of Native Hawaiians shall constitute a
10 breach of trust for which suit may be brought by the
11 United States.

12 So let us start with a basic principle
13 here which is that the Congress could not, would
14 not, and did not condition Hawaii's entry into the
15 Union on Hawaii's violating the 14th Amendment of
16 the Constitution of the United States, and all of
17 those who say that the Akaka Bill is
18 unconstitutional because it violates the 14th
19 Amendment, all of those, including some of your
20 commissioners who bring lawsuits challenging these
21 acts, all have as their base the principle that the
22 Admissions Act itself, that the Hawaiian Homes Act
23 itself somehow violates the Constitution of the
24 United States.

25 What I say is that that is just plain

1 nonsense, common sense nonsense, and legal nonsense,
2 and the Congress did not violate the Constitution of
3 the United States in admitting Hawaii into the Union
4 and neither did it act unconstitutionally for almost
5 a century in passing more than one hundred acts for
6 the specific benefit of and betterment of Native
7 Hawaiians.

8 For those who argue that the Akaka Bill
9 is unconstitutional, what I also say is that never
10 in the more than two centuries of the republic has
11 the Supreme Court of the United States struck down
12 the recognition of an aboriginal people by the
13 Congress pursuant to the authority granted to
14 Congress under what is colloquially known as the
15 Indian Commerce Clause to the Constitution of the
16 United States.

17 Article one, section eight, clause three
18 of the Constitution, which is known as the Indian
19 Commerce Clause, says that Congress shall have the
20 power to regulate commerce with foreign nations and
21 among the several states and with the Indian tribes.
22 The only limitation placed by the Supreme Court on
23 the decision by the Congress as to which aboriginal
24 indigenous people to recognize under the Indian
25 Commerce Clause is that Congress not act

1 arbitrarily, that the Congress not act irrationally.

2 Indeed, because Native Hawaiians, like
3 Native Americans and Native Alaskans, are the
4 indigenous aboriginal people of the land subsumed
5 within the expanding United States frontier, it can
6 not as a legal matter possibly be arbitrary for the
7 Congress to provide recognition to Native Hawaiians
8 similar to the recognition as provided America's
9 other indigenous aboriginal people. Indeed, in a
10 common sense way, because Native Hawaiians are not
11 only indigenous but also share with other indigenous
12 people of America a similar history of
13 dispossession, cultural disruption, and loss of full
14 self-determination, it would be logically arbitrary
15 not to afford Native Hawaiians the same recognition
16 America has afforded every other one of our
17 indigenous people.

18 For those who say this is some
19 historical distortion, the framers of the
20 Constitution would have described Native Hawaiians
21 with the generic term Indians for those who say the
22 Indian Commerce Clause is inapplicable, and, indeed,
23 in the Declaration of Independence itself the term
24 Indian means nothing more and refers to nothing more
25 than the aboriginal inhabitants of our frontiers,

1 section 29 of the Declaration of Independence.

2 At the time of the founding, the term
3 tribe meant nothing more than a distinct body of
4 people as divided by family or fortune or any other
5 characteristic. It is a generic type of term, and
6 while it has taken on more meaning in the 21st
7 Century, for those who say we must look at history,
8 whether one looks at the journals of the officers
9 with Captain Cook who described inhabitants of the
10 Hawaiian archipelago as Indians, the framers would
11 have recognized that Congress's power to treat with
12 and recognize Native Hawaiians was the same as
13 Congress's power to treat with or recognize the
14 Iroquois or the Sioux or the Cheyenne or any other
15 group of Indians, any other group of aboriginal
16 peoples that inhabited our frontiers at the time of
17 western contact.

18 The bill, the Akaka Bill, describes a
19 special political and legal relationship, and it
20 says, and I quote, the term special political and
21 legal relationship shall refer to the type of and
22 nature of relationship the United States has with
23 the several federally recognized Indian tribes.

24 This language was suggested for the bill
25 by representatives of the United States Department

1 of Justice to make it clear that the relationship
2 and the recognition afforded was no more and no
3 less, no more special, no less special, no more
4 unfair, no less fair than that recognition afforded
5 the other native peoples that Congress has
6 recognized for decades, if not centuries.

7 And for those who say this is nothing
8 more than discrimination based on race, the Supreme
9 Court of the United States has said that while one
10 of the reasons why native peoples are native peoples
11 is because they share racial characteristics. The
12 Supreme Court of the United States in the unanimous
13 Morton v. Mancari position in 1974 has said
14 extending benefits to native peoples is not racial
15 discrimination because it is Congress acting in a
16 political way, it is Congress affording a political
17 recognition to an indigenous group, not affording a
18 racial preference.

19 I have had in the last four-and-a-half
20 years many discussions with those on the other side
21 of the legal issue than I am, and there is not one
22 of those individuals whom I have had this legal
23 discussion with who feels anything other than that
24 this case, Morton v. Mancari written by Justice
25 Blackman 33 years ago, was simply wrong. They think

1 the Supreme Court got it wrong. There shouldn't be
2 any recognition or benefits afforded to any Native
3 Americans, Indians, Alaskans, or Native Hawaiians.

4 In a free country they are entitled to
5 their view that Morton v. Mancari as a policy matter
6 was wrongly decided, but when they conflate their
7 view of the alleged wrong-headedness of the policy
8 of Morton v. Mancari and jump to the legal argument
9 that recognition afforded by the Akaka Bill to
10 Native Hawaiians is racial, not political, they are
11 engaging in intellectual and legal dishonesty.

12 The recognition that would be afforded
13 to Native Hawaiians is political and not racial, and
14 that is the law in the United States as it relates
15 to the recognition of native peoples. Those who
16 bring up the decision in Rice v. Cayetano and say,
17 Rice v. Cayetano, the Supreme Court already said you
18 couldn't do this, absolute nonsense.

19 The Supreme Court without distinguishing
20 between Native Hawaiians and Native Americans said
21 the 15th Amendment to the Constitution of the United
22 States says you can't have an election in which
23 there are limits as to who can vote on the basis of
24 any racial characteristic, and, again, people are
25 Native Hawaiian or Sioux or Cheyenne or Native

1 Alaskan in part because they share racial
2 characteristics, and the Supreme Court said we have
3 a specific constitutional amendment that says you
4 can't restrict voting along those lines.

5 The Supreme Court in no way in Rice said
6 that the Akaka Bill would be unconstitutional. Is
7 there a constitutional question? Yes. It would be
8 just as disingenious and intellectually dishonest of
9 me to say that this is a 100 percent clear cut issue
10 as it would and is for those on the other side to
11 say, oh, it's just unconstitutional.

12 But the debate in the area of
13 constitutionality has to be informed by anyone who
14 is engaging in an intellectually honest legal
15 discussion by the 2004 United States Supreme Court
16 decision in the United States v. Lara in which the
17 Supreme Court was dealing with the question of how
18 plenary exactly is the power of the Congress to
19 recognize, derecognize, and deal with tribal status
20 under the Constitution of the United States?

21 An act in issue in that case was the
22 Menominee Restoration Act in which the Menominee had
23 been recognized as a tribe, and then Congress had
24 derecognized the Menominee as a tribe, said as a
25 matter of legal recognition they no longer exist,

1 and then passed another statute later saying we have
2 changed our mind, we now recognize the Menominee,
3 and the critics said you can't do that. Your power
4 doesn't allow you to recognize, then derecognize,
5 and then recognize again.

6 What the Supreme Court said in Lara is
7 Congress's power is, and I quote, plenary and
8 exclusive, close quote. Quote, the Constitution
9 does not suggest that the court should second guess
10 the political branches's own determinations. The
11 political branches of government are the Congress
12 and the President. The court is the non-political
13 branch of government, and the court was saying as
14 clear as could be in Lara that we are not going to
15 step in and second guess, that Congress's plenary
16 and exclusive power to determine which native groups
17 that Congress in affording political recognition is
18 going to decide.

19 There are so many specious objections
20 that are thrown up to the Akaka Bill, it is hard in
21 twenty minutes, much less twenty hours, to try to
22 rebut all of them, but the fact that opponents of
23 the Akaka Bill continually throw up specious
24 arguments is a strong logical indication that their
25 real arguments do not hold water, but I am going to

1 deal with a few of the arguments that are thrown up
2 and not just by fringe groups.

3 I recently testified in Washington where
4 one of these arguments was advanced by the United
5 States Department of Justice, an organization which
6 I had the privilege of working for myself for eight
7 or nine years, and I was ashamed as a former
8 employee of the Department to hear arguments like
9 this. It is what about other groups? If you are
10 recognizing Native Hawaiians, why aren't you
11 recognizing Acadians? Or why aren't you recognizing
12 groups that I had never even heard of before, the
13 Californios? Why aren't you recognizing Italian
14 Americans?

15 And the basic answer to all of these is
16 that none of these other groups were native to the
17 territory of the United States at the time of the
18 first western contact. It is that which provided
19 American Indians and Alaskan natives with their
20 status as aboriginal indigenous people, and that is
21 the same reason why Native Hawaiians should be
22 afforded that recognition and the same reason why
23 those like the Acadians who by definition came to
24 Louisiana after western contact do not qualify as
25 indigenous aboriginal people.

1 There is an argument made that, well,
2 there is no existing government to government
3 relationship now between the United States and
4 Native Hawaiians. First of all, the Lara case
5 demonstrates that this argument is irrelevant
6 because, as I said, the Congress recognized,
7 derecognized, and recognized again the Menominee
8 people. But second and more importantly, Native
9 Hawaiians do not today have a self-governing
10 structure only because the United States
11 participated in the elimination of that governing
12 entity, and it would be the height of hypocrisy to
13 say to Native Hawaiians, we, the United States,
14 can't legally recognize you because we so thoroughly
15 destroyed your government. It is ludicrous.

16 Another argument made is that the
17 Kingdom of Hawaii was not racially exclusive, and,
18 thus, it is unreasonable to recognize just Native
19 Hawaiians. Indeed, this was something that was put
20 in the US Civil Rights Commission report itself.
21 This objection too is absurd. The fact that Native
22 Hawaiians more than one hundred years ago, whether
23 by choice or coercion, maintained a government that
24 was open to participation by non-Hawaiians should
25 not deprive Native Hawaiians today of the

1 recognition that they deserve, and indeed, it is
2 ironic that those who oppose the Akaka Bill because
3 they believe it contradicts our nation's commitment
4 to equal rights and racial harmony would use the
5 historical inclusiveness of the Kingdom of Hawaii as
6 a reason for denying recognition to Native
7 Hawaiians.

8 There are those who say the Akaka Bill
9 could lead to succession. We fought in this country
10 more than a century and a half ago a war that
11 settled legally and factually there is no allowable
12 succession in the United States, and there is
13 nothing in the Akaka Bill which can give rise to any
14 argument by anyone arguing with reason and common
15 sense that it could lead to the same.

16 There are arguments made that, well,
17 Rice v. Cayetano says the blood quantum afforded
18 Native Hawaiian recognition in this bill is too
19 small. Untrue. Several of the concurring justices
20 expressed concern about blood quantum in a
21 definition that was imposed upon Native Hawaiians by
22 government. What the Akaka Bill does is it says who
23 can participate in the original plebiscite, but it
24 leaves to Native Hawaiians themselves, as it should,
25 who it is that will be able to participate in the

1 reorganized Native Hawaiian government.

2 The current language of the Akaka Bill
3 was in large part the result of negotiations between
4 the government of the United States, the
5 congressional delegation, and the Lingle
6 administration. In the language we resolved every
7 objection of the Department of Justice to the bill,
8 except for their concern about whether or not the
9 bill was at its base constitutional. There is
10 nothing in the bill, as I said, that will affect
11 gambling or allow it or will affect defense
12 readiness or will lead to the succession of Hawaii.

13 Mr. Chairman, Native Hawaiians do not
14 seek special or privileged treatment. As I said in
15 Washington, like our other patriotic native peoples,
16 Native Hawaiians have fought in wars and died for
17 our nation including in Iraq and Afghanistan for
18 almost one hundred years. Native Hawaiians do not
19 seek special treatment. They seek treatment equal
20 to that of America's other great native peoples, and
21 that is why I, Governor Lingle, and so many other
22 people support the Akaka Bill. Thank you.

23 HEARINGS OFFICER LILY: Thank you very
24 much.

25 Are we going to do question answers

1 afterwards? Is that the way we are doing it?

2 Okay. Number one, I want to remind
3 people if you have cell phones or pagers, would you
4 please turn them off? Mine is off.

5 I also want to remind those, some people
6 that have come in since we have started, to respect
7 the dignity of this -- I just heard something going
8 on, so let's turn our cell phones off -- let's
9 respect the dignity of this occasion. Every speaker
10 has a right to speak. There are people who feel
11 strongly about this issue, but everyone is entitled
12 to comment on it, so we want to hear from everybody.

13 So now I am honored to recognize
14 Mr. Roger Clegg who has come from the mainland to
15 speak on the issue. Thank you, Mr. Clegg.

16 MR. CLEGG: Thank you. Aloha kakou.

17 HEARINGS OFFICER LILY: Aloha kakou.

18 MR. CLEGG: I am delighted to be here.

19 I very much appreciate the invitation that was
20 extended to me to come here, and I am having a
21 wonderful time in Hawaii. It is my first trip.

22 Because it is my first trip, I think
23 that shows that I am not an expert on all things
24 Hawaiian, but I think that in some ways that may be
25 an advantage. It gives me some perspective, some

1 distance, and I hope that the remarks that I have
2 will be helpful to the committee in its
3 deliberations on this issue.

4 My name is Roger Clegg, and I am
5 president and general counsel of the Center for
6 Equal Opportunity, a nonprofit research and
7 educational organization that is based in Virginia.
8 Our focus is on public policy issues that involve
9 race and ethnicity such as civil rights, bilingual
10 education, and immigration and assimilation. Our
11 chairman is Linda Chavez, whom you may recall was
12 once the staff director of the US Commission on
13 Civil Rights and is now the chair of the Virginia
14 State Advisory Committee who is your counterpart.

15 I should also note that I too served in
16 the Justice Department. I was the number two person
17 in the Justice Department's civil rights division
18 for four years from 1987 to 1991, and I actually
19 started serving in the Justice Department for
20 several years before that and continued serving for
21 several years after that.

22 The Native Hawaiian Government
23 Reorganization Act of 2007, also known as the Akaka
24 Bill, has been introduced to both the House of
25 Representatives and the US Senate. It is not the

1 easiest 22 pages of prose that you will ever read,
2 but I think I can boil it down to this. The bill
3 will use a one drop rule to define membership in an
4 ethnic group, namely Native Hawaiians, whom it will
5 then allow to organize themselves into a
6 governmental entity that can claim a, quote, special
7 legal and political relationship, end quote, with
8 the US Government of the, quote, type and nature
9 that the US Government has with the several
10 federally recognized Indian tribes, end quote.

11 Members in this group will be made
12 separate and distinct from the rest of the people in
13 Hawaii, will be able to claim preferences more
14 easily than other racial and ethnic groups, and will
15 be able to claim special economic and political
16 power and authority in Hawaii.

17 I don't like this bill, and the
18 objections to it fall into two basic categories:
19 First, that it is unconstitutional, and second, that
20 even if it were constitutional, it would still be a
21 bad idea. Although the bill itself can be sometimes
22 hard to follow, I think the problems with it are
23 straightforward, and I will try to outline them
24 briefly here this afternoon.

25 Let me talk about the constitutional

1 problems first. The equal protection clause of the
2 14th Amendment makes it illegal for any state to,
3 quote, deny to any person within its jurisdiction
4 the equal protection of the laws, end quote. The
5 Supreme Court has ruled that the due process clause
6 of the Fifth Amendment makes it illegal for the
7 Federal government to deny equal protection as well.

8 The definition of equal protection can
9 be complicated, but one thing that it definitely
10 applies to is treating people differently because of
11 their race or ethnicity. The Supreme Court in its
12 2000 ruling in Rice versus Cayetano ruled explicitly
13 that Native Hawaiians are an ethnic group and that
14 it is illegal to give anyone preferential treatment
15 on account of their membership in that group.
16 Putting all of this together means that Congress can
17 not pass a law that gives Native Hawaiians the
18 special right to organize into a separate group that
19 can claim in turn still more special rights. It's
20 as simple as that.

21 Now, how can anyone think they can get
22 around this? Well, you really can't, but here is
23 the argument that's being made. There is another
24 part of the Constitution, article one, section
25 eight, clause three, which is called the Commerce

1 Clause, and the Commerce Clause says, quote, that
2 Congress shall have power to regulate commerce with
3 foreign nations and among the several states and
4 with the Indian tribes.

5 So the argument is that since Congress
6 has authority to regulate commerce with Indian
7 tribes, therefore, it has the power to create what
8 are essentially new Indian tribes based on
9 membership in an ethnic group.

10 Now, if that sounds like a weak argument
11 to you, you are right. For starters, of course, no
12 one can claim with a straight face that this bill is
13 about regulating commerce, let alone regulating
14 commerce with Indian tribes. More fundamentally,
15 the Commerce Clause gives Congress the power to deal
16 with Indian tribes, not to create new ones. The
17 fact that the Commerce Clause gives Congress the
18 authority to deal with foreign nations has never
19 been claimed to give Congress the power to create
20 new foreign nations, and the fact that Congress is
21 given authority by the Commerce Clause to deal with
22 the states doesn't give it authority to create new
23 states.

24 The latter power, that is the power to
25 create new states, is explicitly set out in article

1 four, section three, clause one, and, indeed, the
2 fact that the framers felt that they had to spell it
3 out there proves that they can not have thought that
4 it had already created that power in the Commerce
5 Clause, and if the Commerce Clause doesn't give
6 Congress the power to create new states, then how
7 can the same words in it give Congress the power to
8 create new Indian tribes?

9 Let me add that the Commerce Clause
10 argument is the best argument that the proponents of
11 this bill have for its constitutionality. That's
12 the argument, that's the clause that was relied on
13 this afternoon by your Attorney General. Even if
14 you think that there is something to this Indian
15 Commerce Clause argument, I don't know why whatever
16 Congress power or whatever power Congress has to
17 recognize Indian tribes should trump the equal
18 protection clause limitations on what Congress can
19 do.

20 Let me give you my opinion of what is
21 going on here. There are people who would like to
22 give special preferences to Native Hawaiians and to
23 maintain the special programs that they already
24 have, but they know that such preferences will
25 likely be struck down by the Supreme Court as

1 unconstitutional since, as I have discussed, Native
2 Hawaiians are an ethnic group, and it is
3 unconstitutional to give one ethnic group a special
4 preference over other ethnic groups.

5 So the supporters of this kind of
6 preference had the ingenious idea of getting
7 Congress to declare the Native Hawaiians are no
8 longer an ethnic group, instead they are now an
9 Indian tribe, and the Supreme Court has said, as the
10 Attorney General outlined in Morton versus Mancari,
11 that giving preferences on the basis of membership
12 in an Indian tribe is not ethnic discrimination.

13 So this is a very clever scheme, but it
14 calls to mind President Lincoln's famous joke about
15 how many legs does a dog have if you call a tail a
16 leg, and the answer is still four because calling a
17 tail a leg doesn't make it one. Calling Native
18 Hawaiians an Indian tribe will not make them one, at
19 least if there are limits on whom Congress can
20 declare to be an Indian tribe.

21 As the US Department of Justice noted in
22 its recent testimony, although the Supreme Court has
23 consistently acknowledged Congress's broad power to
24 determine when and how to recognize and deal with
25 Indian tribes, it has also observed that a predicate

1 for the exercise of this power is the existence of a
2 distinctly Indian community. Moreover, the court
3 has cautioned that Congress may not bring a
4 community or a body of people within the range of
5 this power by arbitrarily calling them an Indian
6 tribe, and the courts may strike down any heedless
7 extension of that label as a manifestly unauthorized
8 exercise of that power.

9 The US Department of Interior has a
10 well-developed set of regulations for determining
11 whether an Indian group is an Indian tribe. The
12 focus of those regulations is on whether the group
13 is already a distinct political community, not
14 whether it might become one once recognized. Native
15 Americans do not come close to passing muster under
16 the Department of Interior regulations nor under the
17 criteria that the Supreme Court itself has laid out.

18 One of your fellow Hawaiians has noted
19 that according to the 2000 census, there are more
20 than 400,000 Native Hawaiians, including 240,000 in
21 Hawaii, 60,000 in California, and 100,000 scattered
22 throughout each of the other 48 states. This would
23 be larger than any other Indian tribe, and at 20
24 percent of Hawaii's population, a much larger
25 percentage of the State than any other tribe makes

1 up in any other state. The vast majority of
2 Hawaiians with Native Hawaiian blood are of mixed
3 ethnicity versus the vast majority of those living
4 on Indians reservations consider themselves to be.
5 For all kinds of reasons that we can discuss in
6 greater detail, this is simply not an Indian tribe
7 as has been commonly understood and has been legally
8 recognized in the law.

9 I am in good company in seeing these
10 constitutional problems. You have heard the
11 Attorney General refer to the fact that the US
12 Department of Justice has noted these constitutional
13 problems this year, the testimony before Congress
14 that I have already cited. A very good senate
15 report has likewise pointed out these problems. I
16 have included links to those documents in my
17 testimony, and I urge the committee to read them
18 carefully. And, of course, the US Commission on
19 Civil Rights has opposed passage of this bill
20 because it would, quote, discriminate on the basis
21 of race or national origin and further subdivide the
22 American people into discrete subgroups accorded
23 varying degrees of privilege.

24 Well, that leads me to the next major
25 heading in my remarks, which is that even if you

1 don't think that the Akaka Bill is unconstitutional,
2 I think it should still be opposed because it is
3 very bad policy. The United States is a
4 multi-racial, multi-ethnic society. It always has
5 been, and indeed, it's multi-ethnicity increases
6 every year. Hawaii also has this multi-racial and
7 multi-ethnic description, if not more so.

8 In such a society, it is simply
9 untenable to have a legal regime where some of us
10 are singled out for special treatment, whether that
11 special treatment is better or worse, whether it
12 results in people being treated in ways that are
13 favorable, more favorable than other people are
14 treated or less favorable, simply because of our
15 skin color or what country our ancestors came from
16 or when our ancestors came here. It would be
17 especially dangerous, I think, to pick out a large
18 group of that population and not only allow them
19 special treatment, but to give them a separate
20 government and separate rights. It is hard to
21 imagine anything that would be more divisive than
22 that.

23 Let's face it. The reason that
24 preferences for some groups have a visceral appeal
25 is because of the fact that some groups were better

1 treated and others worse treated in our history, and
2 so superficially, it seems fair to make up for this
3 past discrimination by discriminating in the other
4 direction, especially if the group continues to lag
5 in some way. As I said, I am not an expert on your
6 State's history, and I know that people have
7 different opinions on who did what to whom 114 or
8 229 or more years ago, but let's just assume for the
9 sake of argument this afternoon that Native
10 Hawaiians have suffered historical wrongs, and that
11 we want to do something about them.

12 You have been making this assumption,
13 which again many people don't share, you have to
14 admit that similar or worse things have been
15 suffered by African Americans and the Irish and the
16 Jews and the Japanese and the Chinese and so forth.
17 All of them can claim historical wrongs, and all of
18 them can claim to have a cultural heritage worthy of
19 continuation, by the way. But if you started
20 fudging laws to give groups that have suffered
21 historical wrongs a mechanism to claim special
22 treatment, call it tribal status, call it
23 reparations, call it whatever you would like, then
24 where do you stop?

25 You have simply made it inevitable that

1 there will be more division, more resentment, more
2 stigmatization, and, of course, these wrongs are
3 always far enough in the past that it is impossible
4 to say with certainty that this person over here
5 today is entitled to be given something from that
6 person over there today since they may have little
7 in common with the original victim and the original
8 wrongdoer, except their respective skin colors.
9 Indeed, most Native Americans, most Native Hawaiians
10 today are descendents of both the supposed victims
11 and supposed oppressors.

12 Well, it is claimed that these aren't
13 just historical wrongs, though. There are social
14 disparities to this very day, and someone will show
15 that Native Americans have more poverty and less
16 health care and more substance abuse and less
17 education and so forth. Here again, I am going to
18 assume for the sake of argument this afternoon that
19 these disparities exist, even though I know there is
20 vigorous disagreement over particular points.

21 Even if we make this assumption, though,
22 about these disparities, you have to acknowledge
23 that often these social disparities are suffered by
24 other groups too, by, for instance, African
25 Americans and Latinos or at least by some subgroups

1 of African Americans and some subgroups of Latinos
2 and some Asian groups, but not most of them, and
3 even some white subgroups and so forth. So are we
4 supposed to slice and dice every racial group into
5 subgroups, and if some of the subgroups suffer some
6 social disparity, then we are supposed to call them
7 Indian tribes? Of course not, and that would be
8 silly.

9 The logical thing to do is to try to
10 help poor people or people who lack access to
11 medical care or people with substance abuse or
12 people who are failing in public schools, but we
13 should help all of those people regardless of their
14 skin color or ethnicity. There are plenty of poor
15 white people, plenty of Asians who go to lousy
16 public schools, plenty of Jews who abuse drugs,
17 plenty of Irish who don't get good medical care, and
18 I should add there are plenty of Native Hawaiians
19 who are healthy and wealthy and hardly in need of
20 special preference. Separating people into a new
21 Indian tribe on the basis of ethnicity is, to say
22 the least, a very odd and inefficient way to go
23 about helping them.

24 Let me end my discussion with one last
25 point which I think is too often forgotten. Even if

1 you think that there is some good to be accomplished
2 by this legislation, you can't end your inquiry
3 there. You have to go on and then say what about
4 the costs? What about the bad things that may
5 result from this legislation too? Does the possible
6 good outweigh the undeniable costs? And here the
7 undeniable costs I think are huge. The
8 divisiveness, the unfairness, the unforeseen
9 consequences of creating a huge powerful ethnically
10 defined government within a government, we have no
11 idea of what that is going to lead to. The bill
12 deliberately and dramatically encourages separatists
13 mind set. It institutionalizes an us versus them
14 approach to public policy. It requires a division,
15 a literal disintegration of your islands' peoples.
16 Is that what you want?

17 In conclusion, the Akaka Bill is
18 unconstitutional, and even if it weren't, it would
19 be a bad idea because it is divisive, unfair, and
20 discriminatory. Whatever legitimate purposes it
21 claims can be accomplished can be accomplished in
22 other and more direct and less unfair and especially
23 less divisive ways.

24 Thank you very much again, Mr. Chairman,
25 for the opportunity to testify today, and I look

1 forward to answering any questions that the
2 committee may have. Thank you all.

3 HEARINGS OFFICER LILY: Thank you. We
4 are going to have a ten-minute rebuttal, is that how
5 we are doing this, from Mr. Bennett and then back to
6 Mr. Clegg?

7 ATTORNEY GENERAL BENNETT: You know, I
8 think that I made the points that I wanted to make,
9 and there are a lot of people out there who want to
10 have their viewpoints made, so I would be happy to
11 just answer questions.

12 HEARINGS OFFICER LILY: All right, so I
13 am going to remind you that on Wednesday, this
14 Wednesday from three to seven at Maui Community
15 College we are having an open session for comment,
16 this Wednesday, and also we are going to have an all
17 day session on September 12th here on Oahu, and it
18 will be publicized, so there will be plenty of
19 opportunity for those of you who were pressed for
20 time today, and there's a lot of people who have
21 signed up.

22 I have a couple of questions to start
23 out with, Mr. Bennett. One of the concerns that I
24 heard raised before, notably by a good friend of
25 mine who is an OHA trustee, a concern that if the

1 Akaka Bill were not passed that it would jeopardize
2 some of the special programs that are now in
3 existence for Native Hawaiians, which there are
4 quite a few statutes locally and federally, and I
5 would like to ask you that question. The concern
6 that we have, and based on your testimony, it sounds
7 like you feel that based on the history that they
8 would not be in jeopardy, that the Akaka Bill is not
9 necessary to insure that those benefits are
10 retained, or is there a threat that they could go
11 away without the Akaka Bill?

12 ATTORNEY GENERAL BENNETT: Oh, I think
13 that there is a very real threat, and I have said
14 publicly that one of the reasons why we so strongly
15 support the Akaka Bill in addition to it simply
16 being a just and fair and equality among native
17 peoples is to help preserve current programs. I
18 think that you don't have to be Nostradamus in this
19 area. You just read the varying opinions, for
20 example, in the Kamehameha Schools and ban decision
21 where virtually every judge concurring opined on
22 issues relating to the Akaka Bill recognition and
23 the effect on programs.

24 One of the arguments made by legal
25 opponents of every current program that benefit

1 Native Hawaiians, whether it's OHA or the Native
2 Hawaiian Homes program, etcetera, is that it
3 violates the 14th Amendment, and that it can't be
4 saved by arguments that the recognition is political
5 rather than racial because Congress has not yet
6 afforded the formal recognition that they have to
7 other groups like Native Americans or Native
8 Alaskans.

9 So this is an argument that is made by
10 the legal opponents of all of these programs, and
11 while we have said in court that the recognition
12 afforded by Congress up to now is indeed enough to
13 convert the tests for validity into a test like
14 Martin v. Mancari, we have also said that that
15 argument would be far, far stronger were Congress to
16 afford the formal recognition that the Akaka Bill
17 affords.

18 So the most recent attack on programs
19 was defended on the basis of standing without the
20 court reaching the legal merits of whether or not
21 this is or isn't violative of the 14th Amendment,
22 whether it is a political rather than a racial
23 recognition, and what tests rational basis or
24 scrutiny is applicable, but there is absolutely no
25 question that the concern raised by your friend who

1 is a present or former OHA trustee is a very valid
2 one, and one of the major reasons we support the
3 Akaka Bill is to afford further protection for the
4 status quo.

5 HEARINGS OFFICER LILY: Just kind of a
6 flip side to Mr. Clegg, if I may, I guess based on
7 your testimony, then, regardless of whether the
8 Akaka Bill is passed, it and the existing programs
9 for Native Hawaiians are in jeopardy regardless of
10 the Akaka Bill, or does the Akaka Bill legitimize
11 existing programs earmarked for Hawaiians?

12 MR. CLEGG: Well, I think it's an
13 attempt to do that. I don't think that it's likely
14 to be a successful attempt because I think that, as
15 I explained, what the Akaka Bill does is
16 unconstitutional, and Congress can't -- assuming
17 there are constitutional problems, Congress does not
18 have the authority to make something that is
19 unconstitutional constitutional by passing an
20 unconstitutional statute, so I don't think that --

21 I think you are right and I certainly
22 don't disagree with the Attorney General that part
23 of the impetus behind the Akaka Bill is an attempt
24 to bolster these programs unconstitutional
25 challenge, but I think that you are also right that

1 those challenges are going to come anyway, and I
2 don't think that the passage of the Akaka Bill is
3 going to -- that there are constitutional problems,
4 and the Akaka Bill is not going to help them.

5 ATTORNEY GENERAL BENNETT: I have to say
6 I think that's a little blithe. I mean, it sounds
7 good that you can't remedy unconstitutional acts by
8 the passages of unconstitutional laws, but that kind
9 of skips over the analysis part that if, in fact,
10 preferences for Native Hawaiians are currently
11 racial and not political and if Congress has the
12 power, as we believe it does, to recognize
13 indigenous groups, then under *Morton v. Mancari* that
14 solves the problem, if there is one.

15 Now, it doesn't get around by itself the
16 issue of whether Congress has the power. That is
17 something that clearly if this bill passes is going
18 to be litigated because we know there are plenty of
19 people who would challenge it, but even assuming
20 current programs wouldn't meet ultimate
21 constitutional muster, Congress can remedy that with
22 a law in the same way that Congress now could, say,
23 provide benefits for individuals who are Native
24 Hawaiians but in an unrecognized tribe or who
25 Congress doesn't recognize as Native Americans, and

1 that currently might be challengeable as
2 unconstitutional as a racial rather than a political
3 recognition or benefit.

4 But if Congress has the power to
5 recognize them, under Morton v. Mancari, the passage
6 of that law does turn what might be unconstitutional
7 into something that isn't, so to say simply, well,
8 even if it is unconstitutional now, then you are
9 without hope without amending the Constitution just
10 isn't correct.

11 MR. CLEGG: Well --

12 HEARINGS OFFICER LILY: Go ahead.

13 MR. CLEGG: It is correct if in fact
14 Congress does not have the ability to pass this
15 bill, that's our position.

16 HEARINGS OFFICER LILY: Mr. Attorney
17 General, Mr. Bennett, I had one other question. You
18 mentioned part of your analysis of why the Akaka
19 Bill is valid and constitutional, and it had to do
20 with the US complicity in the overthrow of the
21 monarchy, and I wanted to hear your views on whether
22 you viewed the monarchy as a multi-ethnic nation or
23 one that was racially divided? In other words, was
24 it an ethnically and multi-racial nation, or was it
25 one that was broken up into discrete races?

1 ATTORNEY GENERAL BENNETT: Well, first
2 of all, I didn't say that the Akaka Bill was
3 constitutional because of the complicity of the
4 United States in the overthrow of the monarchy.
5 What I said was that the argument that the Congress
6 lacks the power to recognize Native Hawaiians
7 because they currently don't have a government is a
8 specious kind of argument because the very reason in
9 part that Native Hawaiians don't have a governing
10 entity is because of the actions of the United
11 States.

12 I also indicated in my testimony that,
13 in fact, the government of Hawaii did not restrict
14 citizenship to those who were only Native Hawaiians,
15 and as I said, whether that was by choice or
16 coercion is not a reason to now deny Native
17 Hawaiians the same recognition that is afforded
18 America's other native people, whether the Cherokee
19 or the Sioux or the Iroquois decided to let
20 non-Indians have a voice in their affairs, that
21 wouldn't be a reason not to recognize them today,
22 and the inclusiveness of Native Hawaiians is not a
23 reason today not to afford them recognition.

24 HEARINGS OFFICER LILY: Any comments? I
25 am going to turn it over to another member now.

1 MR. CLEGG: Well, I think you asked a
2 very good question, and I think it points up one of
3 the reasons that there is a problem with trying to
4 characterize Native Hawaiians today as an Indian
5 tribe rather than simply an ethnic group. In order
6 to be an Indian tribe, you have to point to some
7 kind of continuous political organization of that
8 tribe, and one of the points I think to your
9 question is that the political organization that
10 existed under the monarchy is not one that was
11 limited to people of this particular ethnic group,
12 so you can't really point to this kind of ethnically
13 distinct political organization which is something
14 that you need in order to point to an Indian tribe.

15 You know, I think that the Attorney
16 General is right on all credits to the monarchy for
17 being so inclusive, but I think that that shows that
18 there is a real problem with the characterizing of
19 Native Hawaiians as an Indian tribe, and, indeed, it
20 shows the inconsistency and sort of the irony, the
21 hypocrisy, if you will, of now invoking a kind of
22 ethnic exclusivity in the name of this group which
23 had been so open.

24 ATTORNEY GENERAL BENNETT: Well, I think
25 there is some irony here, and the irony is that,

1 well, you know, maybe you would have a better
2 argument if the Native Hawaiian government
3 restricted citizenship to Native Hawaiians and was
4 less open. I mean, it just doesn't follow or flow
5 logically that the inclusiveness of the Native
6 Hawaiian governing entity is not a reason why
7 Congress lacks the power to afford the same
8 recognition to Native Hawaiians that it does other
9 native groups. Those two things don't follow, and
10 there is no constitutional dimension to what
11 constitutes a tribe or the degree of continuity that
12 is required for a government entity other than the
13 constitutional dimension that Congress act
14 rationally.

15 MR. CLEGG: It also has to act
16 consistently with other provisions in the
17 Constitution like the Equal Protections Act.

18 HEARINGS OFFICER LILY: Okay, Jennifer
19 Benck, do you have some questions?

20 BOARD MEMBER BENCK: One quick question.
21 This is a question for the Attorney General. At the
22 start of your testimony, you said that the passing
23 of the Akaka Bill won't allow for different tax
24 treatment, different land claims, won't allow for
25 gambling. Could you talk a little bit about that

1 and whether or not it would at least provide an
2 avenue for those changes to come along in the
3 future?

4 ATTORNEY GENERAL BENNETT: Well, for
5 gambling, section nine of the Akaka Bill has
6 language in it that was essentially drafted by the
7 Department of Justice. The bill had been written
8 originally to basically say no gambling, and by the
9 way, we really mean no gambling, and the Department
10 of Justice came up with language that was the
11 equivalent of no gambling, we really mean no
12 gambling, and by the way, we really, really mean no
13 gambling. And there was a question at a recent
14 Senate hearing that was basically the equivalent of,
15 and would you be amenable to language that said and
16 we really, really, really, really mean no gambling?
17 And we said, yes, you want to stick another really
18 in there, go ahead, but it's section nine of the
19 bill.

20 With regard to land claims, because of
21 the way property has been held in Hawaii, there
22 really is no possibility for the same kind of land
23 claims as there are with Indian tribes on the
24 mainland, but notwithstanding that, the Department
25 of Justice suggested the language that is in section

1 -- that the gambling was nine A, and they suggested
2 the language that is in nine C, and they said that
3 this written language would make absolutely certain
4 of it, and to show you just how much they wanted to
5 make sure that all of the T's were crossed and all
6 of the I's were dotted, the first line says the
7 Indian Trade and Intercourse Act does not, has
8 never, and will not apply after enactment to lands
9 or land transfers present, past, or future in the
10 State of Hawaii, which is what they thought was the
11 key language.

12 But then they wanted to add the second
13 line which was, if despite the expression of this
14 intent herein a court were to nonetheless construe
15 the act as applying despite the language that says
16 does not, has never, and will not apply, it still
17 does not apply, so the Department of Justice was
18 fully confident that this language completely took
19 care of that issue, but if somebody wanted to throw
20 in a really, really, really sentence, no one would,
21 I think, object.

22 As to the question about taxes, the
23 Congress always maintains the power to pass new laws
24 dealing with taxes, and if there were a provision
25 that the Congress passed today which said we take

1 away from ourselves the power to ever pass a new law
2 on taxes, that would be, of course, only applicable
3 until Congress decided to act in contravention of
4 that, so this bill does say, however, that the
5 status quo is completely maintained notwithstanding
6 the negotiations, unless there is future laws that
7 are passed.

8 So while there can't be a guarantee that
9 a future Congress won't pass some law, there is a
10 guarantee in this bill which says nothing changes
11 about the status quo unless and until Congress does
12 so, and no Congress can take away from its
13 successors the power to do that anyway, and if you
14 are looking for those particular provisions on the
15 status quo, one is in section eight, paren three,
16 and the other is nine E.

17 HEARINGS OFFICER LILY: Okay, thank you.
18 Daphne Barbee-Wooten?

19 BOARD MEMBER BARBEE-WOOTEN: Okay,
20 hello, I am going to shout loud. Daphne
21 Barbee-Wooten.

22 Mr. Clegg, Congress has historically
23 recognized historical facts such as the Japanese
24 interment during World War II, and I also understand
25 from Mr. Bennett's testimony today that in US versus

1 Lara they recognized the Menominee Tribe. Given
2 that Congress has in the past recognized historical
3 facts, do you agree that the Hawaiians were here and
4 had their own culture and language and social
5 political economic status before Captain Cook
6 arrived, and then if we do agree, then what's wrong
7 with Congress recognizing that?

8 MR. CLEGG: Well, I think that Congress
9 can recognize that, but the question is whether it
10 can recognize Native Americans as essentially an
11 Indian tribe and use that as a way around the
12 prohibition on giving preference on the basis of
13 ethnicity, and that's a different question, I think.

14 One of the historical facts that has to
15 be there for Congress to do that is a long time
16 political organization that makes it appropriate for
17 Congress to say, well, in order for us to deal with
18 these people, we have to recognize them as a
19 separate sovereign entity, and is there anything in
20 history that justifies Congress in making that kind
21 of finding today? And the answer to that question
22 is pretty clearly no. There is no reason why
23 Congress has to -- no practical reason why in order
24 to regulate commerce Congress has to recognize
25 Native Hawaiians as an Indian tribe. That's the --

1 you know, the short answer.

2 Now, you know, the longer answer is that
3 as far as non-political things are concerned, you
4 know, culture and language and so forth, those are
5 all things that the Congress can recognize, but
6 nobody is suggesting that the recognition of those
7 things allows Congress to give preferences to people
8 on the basis of ethnicity. That is, Congress can
9 recognize that, you know, a particular group speaks
10 a particular language or has a particular cultural
11 tradition, but it would not be allowed to say that,
12 you know, therefore, we are going to give them
13 special treatment.

14 Does that answer your question?

15 BOARD MEMBER BARBEE-WOOTEN: Yes.

16 Mr. Bennett, could you respond?

17 ATTORNEY GENERAL BENNETT: Sure. I
18 think that you start from the premise, as you did,
19 and I think you have identified the key point that
20 the Native Hawaiians were the aboriginal inhabitants
21 of the Hawaiian archipelago, and they completely
22 controlled it at the time of the first western
23 contact. Exactly in the situation of American
24 Indians in the continental United States, that there
25 was interaction with the west, that the governing

1 structure was interfered with, and there was, like
2 with the original tribes, an original recognition of
3 a Native Hawaiian governing entity, and that doesn't
4 exist today.

5 There is no constitutional requirement
6 of continuity of government. What there is, I
7 think, a constitutional requirement of is the
8 recognition being afforded to aboriginal indigenous
9 people. If you apply the test --

10 HEARINGS OFFICER LILY: Just a minute,
11 just a minute. I understand, as I said earlier,
12 there are very strong views on both sides, and I
13 know that there are emotions involved, but we want
14 to hear testimony on all sides of the issues, and so
15 let's give the respect to each of the speakers. I
16 really don't want any public applauding or any other
17 kind of reaction. Let's maintain the dignity of
18 this proceeding.

19 ATTORNEY GENERAL BENNETT: If you apply
20 the test that Mr. Clegg is suggesting, the Supreme
21 Court's decision that Congress can afford
22 recognition to the Pueblos wouldn't hold true. If
23 you apply the test that Mr. Clegg is suggesting,
24 Congress's recognition of Native Alaskans wouldn't
25 be appropriate, and certainly if you take Mr.

1 Clegg's argument, if you take this argument at face
2 value, Mr. Clegg's view is that the Admissions Act
3 itself is unconstitutional, and perhaps you would
4 like to express an opinion on that, and the
5 Admissions Act is pretty clear the State must
6 provide specific benefits to Native Hawaiians, but
7 under his suggestion, that's unconstitutional as
8 well.

9 So in terms of the constitutional basis
10 for recognition of Native Hawaiians, all of the
11 facts that are required for that are in my view
12 clearly there in the historical record.

13 MR. CLEGG: Just to make one additional
14 elaboration, and maybe this will help some, if
15 Congress were to decide it was going to give a
16 preference to all Native Americans whether or not
17 they belong to a particular tribe or not, that would
18 clearly be unconstitutional because what Congress
19 has to do in order to use this separate tribal
20 distinction in order to give preferences is to show
21 that it is focusing on a particular entity. The
22 Morton versus Mancari decision that Attorney General
23 Bennett has cited says that it is not a racial
24 classification because it is a political
25 classification.

1 I am not an expert on Hawaiian history,
2 but my understanding is that at the time of the
3 James Cook incident, there was not one Native
4 Hawaiian tribe or one Native Hawaiian indigenous
5 entity. It wasn't until after that that the
6 sovereignty of the Hawaiian Islands was unified
7 under King Kamehameha, and that shows that now going
8 back and saying that we are going to recognize a new
9 tribe is really recognizing a new tribe, something
10 that didn't or -- or something could not exist or
11 did not exist in history.

12 By the time that the monarchy came
13 along, we had people who were included in the
14 sovereignty who were European, so you never had the
15 kind of ethnically defined political organization
16 that is essential in order to have an Indian tribe
17 that could be given preference and recognition on
18 that kind of political basis as opposed to just
19 simply on an ethnic basis.

20 HEARINGS OFFICER LILY: Okay, Vernon
21 Char, any comments, any questions?

22 BOARD MEMBER CHAR: No questions.

23 HEARINGS OFFICER LILY: Okay,
24 Mr. Burgess, Bill Burgess?

25 And I want to say these are excellent

1 questions and excellent answers from our panelists.
2 We also have a lot of people in the audience that
3 want to give comments, and I do remind you that they
4 will have an open session as well on September 12th
5 to make sure that everyone has an opportunity to
6 participate. Go ahead.

7 BOARD MEMBER BURGESS: I want to ask
8 Mark Bennett, Attorney General Bennett, you
9 indicated that one of the things the Akaka Bill
10 would do would be to simply give Native Hawaiians
11 the same recognition that has already been given to
12 Native Americans and Native Alaskans, but as I
13 understand it, in order to be recognized as a tribe,
14 a group of Native Americans would have to establish
15 that they do currently exist as members of the tribe
16 in order to be recognized, but if there is no
17 existing tribe, then there is nothing to recognize.
18 Congress, as I understand it, has no power to create
19 a tribe out of thin air.

20 Now, Mr. Bennett, my question is this.
21 I know or I think I am correct in saying that you
22 were born and raised in New York, and my question to
23 you is would you support the creation of a new
24 Native American tribe in New York comprising of
25 anyone who can trace ancestry to precontact in New

1 York?

2 ATTORNEY GENERAL BENNETT: Well, if I
3 can sort through the predicate --

4 HEARINGS OFFICER LILY: I am just
5 bringing the proceedings to order. Mr. Bennett?

6 ATTORNEY GENERAL BENNETT: If I could
7 sort through the predicate to your question, the
8 fact that Congress has established some procedures
9 for orderly recognition of some of the many hundreds
10 of Indian tribes statutorily is no reason that
11 Congress can't establish a different method for
12 taking or establishing recognition of one Native
13 Hawaiian group. It is the type of recognition that
14 is afforded that is the same.

15 If, in fact, Congress made a decision
16 that it wished to recognize a Native American group
17 in upstate New York where I came from which was, as
18 I said, the home of the Iroquois and in particular
19 the Mohawk in a lot of the area where I lived, and
20 if Congress decided that it was going to allow the
21 recognition of, say, for example, a different Native
22 American group in New York, as the Lara case said,
23 Congress has the power to decide which Native
24 American groups it is going to recognize.

25 I myself am Jewish, and my antecedents

1 are mostly from Russia and Poland. Do I think that
2 Congress has the power to recognize the descendents
3 of Russian and Polish Jews like myself who
4 immigrated to New York in the 20th Century? No.
5 But none of us are the aboriginal indigenous people
6 of New York or any other place in America. If they
7 were the American Indians who were the aboriginal
8 inhabitants of a place in upstate New York, then
9 Congress would have the power to recognize them.

10 BOARD MEMBER BURGESS: But can you give
11 us any example of an American Indian who has or an
12 American Indian tribe that has been recognized
13 simply by virtue of blood simply by having a group
14 of people who happen to share common ancestral blood
15 recognized as a tribe?

16 ATTORNEY GENERAL BENNETT: Well, I am
17 not an expert on the recognition of the hundreds of
18 tribes that are recognized by the Congress, but if
19 part of your question is suggesting that the only
20 thing that draws Native Hawaiians together is racial
21 characteristics, then, of course, that's just
22 historically not true.

23 Native Hawaiians share culture, Native
24 Hawaiians share history, and Native Hawaiians did,
25 in fact, inhabit the Hawaiian archipelago at the

1 time of western contact, and the fact that until
2 after western contact Kamehameha, The Great, did not
3 unite the Hawaiian Islands is certainly of no legal
4 significance in terms of recognition of Native
5 Hawaiians as an aboriginal indigenous people, and
6 the fact that there were different alii on different
7 islands that had some sovereignty and that they were
8 united under Kamehameha, The Great, is of no legal
9 significance in terms of the ability to recognize
10 Native Hawaiians.

11 MR. CLEGG: I think it's of enormous
12 legal significance. Let me give an analyses towards
13 that that may be helpful not only to you but to the
14 rest of the committee. Suppose the Congress were to
15 decide that when we annexed Texas that the
16 indigenous aboriginal people who were there at the
17 time that we annexed Texas needed to be recognized
18 as an Indian tribe. Now, those folks in Texas
19 belong to all kinds of different Indian tribes, all
20 kinds of different political organizations and
21 cultural and everything else.

22 Congress, I think, would not have
23 authority to say that because they are -- those are
24 the aboriginal indigenous people and because we have
25 plenary authority under all of these cases that

1 Attorney General Bennett has cited, that therefore,
2 we can make up a new Indian tribe and allow them
3 special preferences in Texas, allow them to do all
4 the kinds of things that the Akaka Bill does,
5 specifically, start off with a new rule of a one
6 drop rule and all the rest of it, that is precisely
7 what is going on here.

8 What you have is a group of individuals
9 in Hawaii who certainly have much in common
10 culturally, but it is absolutely critical in order
11 for Congress to be able to claim authority to
12 recognize them as a separate political entity that
13 they be a separate political entity or at least have
14 been a separate political entity at one time and to
15 -- and to remain identifiable in those -- in those
16 terms, and that is just not the historical reality.

17 ATTORNEY GENERAL BENNETT: Well, I mean,
18 someone who says that it just isn't historical
19 reality just ignores the history of Hawaii, and to
20 say that there was no distinct Hawaiian government,
21 that there was no distinct Hawaiian entity, and that
22 there was no distinct Hawaiian people both prior to
23 and after western contact is just ahistorical, and
24 the rest may very well be Mr. Clegg's view of what
25 the Constitution ought to require, but it isn't what

1 is in any case what the Constitution does require.

2 MR. CLEGG: Was there ever a time when a
3 political entity like the one that is defined the
4 way that the Akaka Bill would define it existed in
5 Hawaii, and that is one which included all Native
6 Hawaiian people regardless of timing and which
7 excluded people of European and non-Native Hawaiian
8 ancestry.

9 ATTORNEY GENERAL BENNETT: I mean, the
10 question is a non sequitur because it assumes -- I
11 mean, you can chuckle, but that doesn't make your
12 question any more logical. That assumes that there
13 is some constitutional requirement that the only
14 group that Congress can extend recognition to is a
15 group of the exact same kind or nature that existed
16 at one static point in time, and that's just not a
17 part of constitutional law, and, again, that is
18 exactly what the Supreme Court said in the Lara
19 case. Congress's power is plenary. The
20 Constitution does not suggest that the court should
21 second guess the political branches's own
22 determinations.

23 So while your view may be that it would
24 be illogical for Congress to afford recognition to
25 Native Hawaiians because it is affording it in a way

1 that is not precisely the same as it afforded it
2 before, I don't think that constitutionally it is in
3 any way illogical that it is -- it is without
4 reason, and I guess at one of these points I will
5 get the last word, but it apparently isn't going to
6 come now.

7 MR. CLEGG: You're right.

8 HEARINGS OFFICER LILY: Make it brief.

9 MR. CLEGG: Another problem if you
10 succeed in transforming Native Hawaiians from being
11 an ethnic group into an Indian tribe is that just as
12 it is easier to justify constitutionally preferences
13 for it, it also becomes much easier to justify
14 constitutionally discrimination against them. Now,
15 you are no longer required to pass strict scrutiny
16 if the State of Hawaii, for instance, decides that
17 it is going to have a policy of refusing to hire
18 anybody who belongs to this new tribe.

19 This is the road that you are headed
20 down, and I think, again, what you have to ask
21 yourself is not just whether there are some possible
22 goods that might come from this statute, but is it
23 worth the divisiveness, the disintegration, and all
24 the unforeseen consequences that can result from it?

25 ATTORNEY GENERAL BENNETT: Well, like

1 with some of these other arguments, whenever we get
2 to the slippery slope, then we know that we have
3 kind of run out of good arguments, so it is like in
4 logical discussions --

5 HEARINGS OFFICER LILY: Okay, let's have
6 some order here, please.

7 ATTORNEY GENERAL BENNETT: When most of
8 the logical arguments are rebutted, you get, well,
9 then there's succession. When the logical legal
10 arguments are rebutted, you get an argument that one
11 of your commissioners made in front of the Congress,
12 well, this is unconstitutional because it is
13 conveying titles of nobility on Native Hawaiians,
14 and that's forbidden by the Constitution, and now we
15 get, which is just legally ludicrous, well, you
16 know, if you do this, then the State of Hawaii can
17 pass a law which says it is not going to hire any
18 Native Hawaiians.

19 So when you hit the slippery slope
20 argument, then you kind of know that the logical
21 arguments have been exhausted.

22 HEARINGS OFFICER LILY: Okay, we are
23 exhausting our time.

24 Mr. Burgess, do you have any further
25 questions?

1 BOARD MEMBER BURGESS: I will pass.

2 HEARINGS OFFICER LILY: Okay, pass.

3 Rubellite Johnson? You have to get up real close
4 there, Ruby.

5 BOARD MEMBER JOHNSON: This is Ruby.
6 Can you hear me? Okay. Do I have to talk louder?

7 THE AUDIENCE: Yes.

8 BOARD MEMBER JOHNSON: Excuse me. I
9 would like to direct my question to the Attorney
10 General. You mentioned, okay, when Hawaii became a
11 state, it became a state with the Admissions Act of
12 1959, and in the Act there is section five F. Now,
13 I notice when you mentioned that, you did not quote
14 home ownership. You remember home ownership for
15 Native Hawaiians was 50 to 100 percent blood. All
16 right, let me explain this. I am 50 percent
17 Hawaiian, so I may qualify for benefits under the
18 Hawaiian Homelands provision. It came as the result
19 of Jonah Kuhio. I applied in 1983 for the homestead
20 in Kula, and I want to go back, Mr. Bennett, and
21 when I looked at the clause home ownership, it
22 doesn't apply to my home. I may not have the deed
23 title at all because under the State of Hawaii and
24 under Hawaiian Homelands, those lands are leased to
25 perpetuity.

1 Now, there was another act called the
2 Hawaiian Land Act of 1895 when Governor Sanford
3 Ballard Dole made it possible for lease holders of
4 any race, any ethnicity in Hawaii to use residency
5 for a period of time plus lease rent payments plus
6 paying the real property taxes for no more than
7 thirty or forty years after application and after
8 qualification and after residency was completed,
9 according to that land act, it was done during the
10 Republic of Hawaii and prior to annexation to the
11 United States. It wasn't the first provision.
12 There was one other of David Kalakaua opening up
13 Hawaiian homesteads to any ethnicity and citizens in
14 the Hawaiian monarchy, so it was in 1884, and then
15 in 1959 the government said home ownership is not
16 leased in perpetuity.

17 My question to you and to the proponents
18 of the Akaka Bill is this, let's say we get the
19 million acres back, and we make this our land base,
20 am I guaranteed home ownership under the new
21 Hawaiian sovereignty? My reaction to that is this:
22 No, because I don't think that's the intent of the
23 Akaka Bill. It's just the opposite, is that we
24 become by definition under US Public Law 103150
25 communal tenure. This is the definition of all

1 aboriginal Hawaiian land tenure before 1778.

2 So I am just curious, Mr. Bennett, how
3 much the Akaka Bill will actually do for my
4 descendants?

5 ATTORNEY GENERAL BENNETT: Well, one of
6 the things that the Akaka Bill would do would be to
7 set up a Native Hawaiian governing entity which
8 could take title to whatever assets the free
9 government, the governing entity, the State of
10 Hawaii, and the United States decided they would
11 take title to which could include Hawaiian
12 homelands, it could include ceded lands, it could
13 include government lands, and it could include other
14 lands and assets, and it wouldn't be for me or any
15 one individual to say how the Native Hawaiian
16 governing entity would utilize those assets. It
17 would be to the citizens of the Native Hawaiian
18 governing entity to decide how it was going to hold
19 those lands or in what way it was going to
20 distribute them to citizens.

21 So can I guarantee any particular way in
22 which those lands are going to be held? No, but
23 right now the Congress guarantees that the Native
24 Hawaiian homestead lands be utilized in a particular
25 way for the benefit of a particular group of people,

1 and that any changes to that have to be approved by
2 the Congress.

3 HEARINGS OFFICER LILY: Thank you.

4 Ruby, that's your question? Any further questions?

5 BOARD MEMBER JOHNSON: I have no further
6 questions.

7 HEARINGS OFFICER LILY: Okay, thank you.
8 Then Linda Colburn?

9 BOARD MEMBER COLBURN: I would like to
10 thank you both for your comments. They have been
11 both informative and enlightening and complex.

12 Mr. Clegg, I have a question to you
13 relating to some remarks that you made earlier about
14 the recognition might be bad policy, for example,
15 because tribal numbers in general represent a small
16 percentage of the state's population where those
17 tribes reside, and Hawaiians might constitute, with
18 200,000 in numbers, close to 20 percent of the
19 population, and I inferred from that that there must
20 be some magic number when it would be okay policy if
21 the numbers were not too threatening as the
22 percentage of the total population.

23 Can you tell me if you have a magic
24 number in mind where the size of the group provided
25 recognition would not be injurious to the state in

1 which that decision is reached?

2 MR. CLEGG: No, I don't. The reason
3 that I was talking about the -- well, there are a
4 large number of people who would be considered
5 potential members, and this was to show how out of
6 kilter this tribe was with other tribes that, you
7 know, do exist both in terms of absolute numbers and
8 also in terms of their -- the extent to which they
9 are disbursed geographically and also ethnically,
10 and I think that all of these things are factors
11 that show that we are really not dealing here with
12 the kind of politically cohesive unit that you need
13 to have in order for Congress to be able to invoke
14 its power under the Indian Commerce Clause.

15 BOARD MEMBER COLBURN: So if at one time
16 the Hawaiian population constituted one hundred
17 percent of the occupants of this place, and through
18 migration, not necessarily by choice of that
19 population, they are diluted to 20 percent of that
20 population, are you suggesting that that's just too
21 big a number of people to be considered as an entity
22 with some unifying quality?

23 MR. CLEGG: No. What I am saying is
24 that the politically unifying qualities are not
25 there, and the evidence of that is in the fact that

1 you have a group that is geographically very far
2 flung, and which is even simply in -- in ethnic
3 terms is not very -- is not very homogeneous.

4 For instance, you know, I was doing some
5 research, and a very high number of members of the
6 Navajo tribe identify their ethnicity as being tribe
7 only, and that's the phrase that is used. That is,
8 they -- they claim no ancestors who are not members
9 of that tribe. That is not the case obviously for
10 Native Hawaiians. Now, I don't have the numbers
11 here at my fingertips, but I was impressed at the
12 high degree of intermarriage that there is among
13 Native Hawaiians and non-Native Hawaiians.

14 The point is that it becomes very hard
15 when you have an ethnic group that is so far flung
16 geographically and that -- to have such high
17 intermarriage rates to say that, well, we are
18 magically going to try to, you know, recreate an
19 Indian tribe, which I think you are not even
20 recreating it because it never did exist, but it
21 becomes even harder to argue that you have the kind
22 of, you know, political cohesion that the law
23 requires you to have that Congress is going to
24 invoke the authority under the Indian Commerce laws.

25 BOARD MEMBER COLBURN: Thank you.

1 MR. CLEGG: Sure.

2 HEARINGS OFFICER LILY: Linda, is that
3 it?

4 BOARD MEMBER COLBURN: That's it.

5 HEARINGS OFFICER LILY: Okay. Tom
6 MacDonald?

7 BOARD MEMBER MACDONALD: Yes, I have a
8 question for Attorney General Bennett. One of the
9 concerns that many folks have about the Akaka Bill
10 is that it is so uncertain what the results will
11 ultimately be until after the bill becomes the law
12 of the land and these negotiations occur. In other
13 words, Congress is going to approve something with
14 the details to be flushed out later.

15 In particular, the US Department of
16 Justice had objections to the provision in section
17 eight of the bill which allowed for the negotiations
18 to determine whether or not citizens of the new
19 Hawaiian entity would be subject to the same civil
20 and criminal laws as other citizens in the State of
21 Hawaii would be, and it would have been very simple
22 to solve that concern by simply taking that one line
23 out of section eight, but instead, you simply added
24 a provision that changes in criminal or civil
25 jurisdiction do not occur unless the Legislature or

1 the Congress passed new laws to do that, which
2 suggested there are changes in civil and criminal
3 jurisdictions that are being considered or planned.

4 What are those changes?

5 ATTORNEY GENERAL BENNETT: Your premise
6 is wrong, but I will say more than that. First of
7 all, it would be hypocritical to put a provision in
8 the Akaka Bill which says there can't be any changes
9 in civil or criminal jurisdiction because, as I said
10 before, the Congress has no power to bind its
11 successors in a way like that, so you could put
12 something in there, but it would be trying to pull
13 the wool over people's eyes because it wouldn't be
14 true. I mean, you could say it, but it's just like
15 with our Legislature here, the Legislature can
16 purport to bind future legislatures, but they are
17 only bound for as long as they choose to be bound.

18 But there was a concern raised by the
19 Department of Justice about would there be any
20 change in the status quo from the passage of the
21 Akaka Bill, and it was clearly no one's intent that
22 there would be, so what was enacted or what was put
23 in here as positive law in the Akaka Bill was to
24 make it very clear that there would be no civil or
25 criminal jurisdiction changes in the status quo

1 unless and until a future law were enacted by the
2 Congress and, if appropriate, by the State
3 Legislature.

4 So negotiations like elections have
5 within them uncertainty. You don't know what the
6 result is going to be, but you do know that nothing
7 will happen until there are both negotiations and a
8 new act of Congress and to the effect that it
9 materially affects Hawaii, either a new State law or
10 an amendment to the Constitution. So in terms of
11 making sure that the status quo is maintained absent
12 future legislative action, this bill's language does
13 as much as the Congress can legally do.

14 BOARD MEMBER MACDONALD: And so it is
15 distinctly possible, then, that there will be
16 changes in criminal and civil jurisdiction that
17 result from these negotiations; that's a long way of
18 saying that, correct?

19 ATTORNEY GENERAL BENNETT: Well, I don't
20 know what distinctly possible is, but there are
21 Indian tribes, for example, I mean, people are
22 familiar with the Major Crimes Act which provides
23 for which crimes that occur on Indian reservations
24 are prosecutable by the US Attorney in Federal
25 Court and for which there aren't major crimes are

1 prosecuteable in local courts, who are the subjects
2 of those, for example, misdemeanor prosecutions.

3 So I would think, yes, it is certainly
4 possible that there could be a decision made in the
5 future that crimes, for example, by Native Hawaiians
6 against Native Hawaiians that occurred on Native
7 Hawaiian land could be prosecuted through a Native
8 Hawaiian judicial process. I mean, I personally
9 don't find anything scary or abhorrent about that,
10 but, yes, that is certainly possible that the
11 negotiations could lead to that in the same way that
12 there is a division among major crime prosecutions
13 and non-major crime prosecutions that occur on
14 Indians reservations.

15 BOARD MEMBER MACDONALD: I think that
16 answers my question. I do have one other
17 question --

18 HEARINGS OFFICER LILY: Okay, one other
19 question.

20 BOARD MEMBER MACDONALD: The
21 negotiations that would occur after this bill is
22 enacted would have three parties negotiating: The
23 Federal government, presumably the Department of
24 Interior would represent the Federal government's
25 interest, presumably representatives from OHA and

1 Hawaiian Homelands and others would represent the
2 interests of the Native Hawaiian community, and the
3 things that are negotiated, among others, are what
4 lands and what money from the State's treasury and
5 the State's land ownership bank would be transferred
6 to the new entity.

7 Now, who would be the third party to
8 represent the citizens of Hawaii, all the citizens
9 of Hawaii, not just the Native Hawaiian citizens of
10 Hawaii? We know that the Legislature, with one
11 exception, has voted continually in favor of Native
12 Hawaiian benefits, and we know that the Lingle
13 administration has continually voted in favor of
14 Native Hawaiian benefits. Aren't they in a conflict
15 of interest position if they try to represent both
16 Native Hawaiians and non-Native Hawaiians in what
17 lands and what cash goes to this new government
18 entity?

19 ATTORNEY GENERAL BENNETT: Okay, well,
20 first, there again are some inaccurate factual
21 premises that Native Hawaiians would be represented
22 by OHA or by representatives dealing with the
23 Hawaiian Homestead Act. Native Hawaiians would be
24 represented by representatives of their choice as
25 chosen by the Native Hawaiian governing entity.

1 With regard to the State, the State
2 governing structure would determine who represented
3 the State in negotiations. Either the governor
4 would determine it or if the Legislature passed
5 legislation, the Legislature would determine it, and
6 just like the State is the trustee of ceded lands
7 and has to manage ceded lands for a number of
8 different purposes, including for the benefit of
9 Native Hawaiians, the representatives, the
10 negotiating representatives who are appointed by the
11 political branches would have to represent the
12 State.

13 Because it is almost certain that if the
14 negotiations made material changes, they would have
15 to involve changes to the Constitution. OHA is in
16 the Constitution. The Native Hawaiian, the
17 Homestead Act is in the Constitution. So if there
18 were going to be material changes that come about
19 through negotiations that would have to by necessity
20 amend the Constitution, then that would go to the
21 people for a vote, and although I am not a big fan
22 of it, in Hawaii when you are voting on changes to
23 the Constitution, yes means yes, no means no, and
24 blank votes mean no, so you need a super majority to
25 change the Constitution, and, again if there were

1 any effect on OHA or the Hawaiian Homes Act, which
2 there almost certainly would need to be if there
3 were any material changes, then it would be voted on
4 by the people.

5 BOARD MEMBER MACDONALD: Now, just one
6 follow-up. Recently we have seen Waimea Valley
7 transferred to OHA without any act to the
8 Legislature or any constitutional action. We have
9 seen forty square miles of land on the Big Island
10 transferred to OHA without any vote of the
11 Legislature or constitutional action.

12 What would be there to prevent that kind
13 of thing happening on a grand scale?

14 ATTORNEY GENERAL BENNETT: Well, you
15 mean --

16 BOARD MEMBER MACDONALD: Without --

17 ATTORNEY GENERAL BENNETT: You mean OHA
18 buying land, that's what you are referring to, from
19 a private entity?

20 BOARD MEMBER MACDONALD: No, no, no. I
21 don't believe they bought the Waimea Valley or the
22 land on the Big Island.

23 ATTORNEY GENERAL BENNETT: Well, I'm not
24 familiar with exactly what you are discussing, but,
25 again, if the idea is that people are suggesting

1 that the Native Hawaiian governing entity is going
2 to be the successor, for example, to OHA, and OHA's
3 assets are going to be transferred, and OHA is going
4 to cease to exist, then that would have to be --
5 that can only be accomplished through an amendment
6 to the Hawaii Constitution, and that would be voted
7 on by the people.

8 HEARINGS OFFICER LILY: Okay.

9 BOARD MEMBER MACDONALD: No further
10 questions.

11 HEARINGS OFFICER LILY: Okay, Wayne
12 Tanna? Oh, no, I'm sorry. Jimmy Kuroiwa?

13 BOARD MEMBER KUROIWA: Attorney General
14 Bennett, you made comment in your testimony
15 regarding the Admissions Act, and that one of the
16 five items are for the benefit of Native Hawaiians.
17 Can you provide the committee the other four
18 benefits?

19 ATTORNEY GENERAL BENNETT: Well, I
20 should read what five S says, that these lands are
21 held by the State as a public trust for the support
22 of public schools and for other public institutions,
23 for the benefit of the conditions of Native
24 Hawaiians as defined in the Homes Commission Act as
25 amended, for the development of farm and home

1 ownership on as widespread a basis as possible, for
2 the making of public improvements, and for the
3 provision of lands for public use.

4 BOARD MEMBER KUROIWA: That's it.

5 HEARINGS OFFICER LILY: Okay.

6 BOARD MEMBER KUROIWA: I have no
7 questions.

8 HEARINGS OFFICER LILY: Wayne Tanna?

9 BOARD MEMBER TANNA: I have no
10 questions.

11 HEARINGS OFFICER LILY: Okay, Paul
12 Sullivan?

13 BOARD MEMBER SULLIVAN: Just one
14 question for Attorney General Bennett. The bill
15 provides for only one Native Hawaiian governing
16 entity, and it specifies that when this entity is
17 recognized, it will be the representative of the
18 Native Hawaiian people. What plans are there for
19 protection of people of Native Hawaiian ancestry who
20 elect not to become members of the new government?

21 ATTORNEY GENERAL BENNETT: Well, what
22 the bill provides, and let me read it to you, is the
23 secretary can not certify the organic documents of
24 the Native Hawaiian governing entity unless they
25 provide for the protection of the civil rights of

1 the citizens of the Native Hawaiian governing entity
2 and all persons affected by the exercise of
3 governmental powers and authorities by the Native
4 Hawaiian governing entity, that this was a concern
5 that had been raised that this wasn't explicitly
6 stated in the bill, and so the secretary can't
7 certify the organic governing documents unless they
8 provide for the protection of the civil rights of
9 all.

10 BOARD MEMBER SULLIVAN: And if I might
11 ask one follow-up question?

12 HEARINGS OFFICER LILY: Yes.

13 BOARD MEMBER SULLIVAN: You mentioned
14 the hundreds of Indian tribes that exist, and some
15 of them I believe were formed by the joinder of two
16 separate prior tribes, and some of them resulted
17 from divisions in earlier existing tribes. Is it
18 fair for the Akaka Bill to limit Native Hawaiians to
19 one entity, or would it not be preferable to allow
20 them to form as many as they think they can support
21 or manage?

22 ATTORNEY GENERAL BENNETT: Well, I think
23 that it's a judgment for the Congress, and I think
24 that when we have a situation --

25 You are not a supporter, are you, of the

1 bill?

2 BOARD MEMBER SULLIVAN: Correct.

3 ATTORNEY GENERAL BENNETT: That's what I
4 had thought, and I think that it's disingenious to
5 suggest that, oh, let's just have five, ten, fifteen
6 tribes in there knowing that that will just make
7 this process more cumbersome and take a longer
8 period of time. I think it is perfectly reasonable
9 in a circumstance that we have today for the
10 Congress to make the judgment that the interests of
11 all concerned are best served by negotiations that
12 involve three parties rather than 33 parties and one
13 Native Hawaiian governing entity rather than 32. I
14 think that's a judgment that the Congress has the
15 right to make. My own view is given everything that
16 that's the correct judgment, that that's a policy
17 call.

18 HEARINGS OFFICER LILY: Okay, anything
19 further? Okay, I thank you so much. I can't tell
20 you how enlightening it is for me personally, and I
21 know on behalf of the committee we have all learned
22 a great deal and the audience as well. I can't say
23 enough that part of our charter is public inclusion,
24 and as a fifth generation keiki o ka aina, I thought
25 I knew a great deal of some of this history, and I

1 have learned a lot today, and I just want to both of
2 you, Roger, for coming down here, and, Attorney
3 General Bennett, thank you very much. You have been
4 very helpful to all of us. Thank you.

5 Okay, now, I want to remind everybody
6 that we have September 12th, so there's plenty of
7 opportunity for everybody to comment. What I am
8 going to do is call up five people at a time, if you
9 could line up, and I am going to limit you to three
10 minutes because of the great number of people who
11 want to comment.

12 Also, for members of the committee, if
13 you need to take a break, and I am going to take a
14 break myself shortly, just, you know, onesies and
15 twosies, go on out, take your break, and come back
16 so we can keep going. I want to keep this moving.
17 I want to get the public's input.

18 So I am going to call the first five up,
19 and I am going to start with David Forman, Mila
20 Medallon -- don't fault me for mispronouncing your
21 name -- if you will stand up here? Patricia Zell,
22 Marilyn Leimomi Khan, and Antoinette Lee, if you
23 could stand up, the five of you, and then I will be
24 calling five up at a time so we can move right along
25 and start out. Give your name so that the court

1 reporter can take it down, and we look forward to
2 your comment.

3 So we will start with Mr. Forman.

4 MR. FORMAN: Mr. Chairman and members of
5 the Hawaii State Advisory Committee, my name is
6 David Forman. I had the pleasure of serving as a
7 member of this committee from 1995 to 2006,
8 including the last two terms as chair.

9 First, I would like to congratulate all
10 of you on your appointments. As uncompensated
11 volunteers, you are providing an important service
12 as the eyes and ears of our community. Although
13 some may try to suggest that you must operate at the
14 direction of the commission, you are meant to be an
15 independent body. It is your role to make
16 recommendations to the Washington, D.C., based
17 Commission on Civil Rights by drawing upon a
18 connection to the community that most folks inside
19 the beltway simply do not have.

20 I noted that Chair Reynolds was here. I
21 wanted to welcome him despite our frequent
22 philosophical disagreements over the telephone and
23 discussions with other state advisory committees
24 around the country.

25 I wanted to also note that the sudden

1 expenditure of funds relating to this briefing
2 without a request for the same emanating from this
3 committee itself is highly unusual. Indeed, a
4 significant question arises as to whether today's
5 briefing is legitimate under applicable law.
6 Mr. Chair, as an attorney, and other members of the
7 committee, I draw your attention to 41 Code of
8 Federal regulations, section 102-3.150, sub B, which
9 requires that the reasons for providing less than
10 fifteen days notice must be included in the Federal
11 register. It was not provided for this meeting, and
12 I think that's one of the reasons you have
13 experienced some difficulties in process, which the
14 chair has acknowledged. I'm glad to see that you
15 have agreed to have further open meetings on the
16 12th. Unfortunately, I will not be here. I will be
17 on family medical level.

18 I also see that three of my colleagues,
19 Jackie Young, Michelle Fujimura, and Kealoha
20 Kishota, who are hold over members of the committee,
21 are not here. You know, as a result of funding
22 limitations, I was asked to provide the orientation
23 for those committee members when they joined, and I
24 would be happy to share my institutional knowledge
25 with any of you upon request.

1 One of the things the process issues
2 that you have raised highlights the fact that myself
3 and 36 other state advisory committee chairs around
4 the country issued a no confidence resolution in the
5 commission back in 2005. There are a number of
6 reasons for this, but this is an issue that has
7 plagued the commission. Folks in the public will
8 note and will recognize that the commission did not
9 express any interest in hearing from the State
10 Advisory Committee when it decided to hold its
11 briefing in January of 2006.

12 As far as the substance of the Akaka
13 Bill, I will echo what Attorney General Bennett
14 stated. I could not state it any better than he
15 has. I would also like to state that I have a great
16 deal of respect for those in the audience who are
17 opposed to the Akaka Bill. I see many folks here in
18 the audience that I respect a great deal. I wanted
19 to note a point of caution about the danger of your
20 opposition being manipulated by folks who have an
21 agenda that is fundamentally different from your
22 own. I thought it was very appropriate that we had
23 some young folks who came in --

24 HEARINGS OFFICER LILY: Mr. Forman, you
25 need to wrap it up.

1 MR. FORMAN: I will conclude briefly.

2 I thought it was very appropriate that we had some
3 young folks who came in during Attorney General
4 Bennett's presentation but who had to leave. They
5 reflect the symbolism of this very issue. Native
6 Hawaiians have served as a political football
7 starting with the Blunt report, followed by the
8 Morgan report. We have the Native Hawaiian study
9 commission minority report and the majority report,
10 people based in DC. You have got the 2001 State
11 Advisory Committee report, which I commend to all of
12 you, and then you have got the May, 2006, report by
13 the US Commission on Civil Rights.

14 I stand by this report. Commissioner
15 Lee called it one of the most comprehensively
16 researched reports issued by a state advisory
17 committee during her service to the commission and
18 simultaneously referred to the US Commission on
19 Civil Rights report as superficial. I would be
20 happy to go into this in greater detail with you at
21 any time.

22 HEARINGS OFFICER LILY: I would be happy
23 to receive any written materials as well,
24 Mr. Forman. Thank you.

25 May I have the next, please?

1 MS. ZELL: I am not the second person
2 that you called.

3 HEARINGS OFFICER LILY: That's all
4 right. You are?

5 MS. ZELL: Mr. Chairman, members of the
6 Hawaii State Advisory Committee, and Commissioner
7 Reynolds, my name is Patricia Zell, and I have
8 requested an opportunity to present testimony today
9 in my individual capacity. My testimony does not
10 reflect the views of any other person or entity. By
11 way of background, in March of 2005, I retired after
12 nearly 25 years of service on the US Senate
13 Committee on Indian Affairs. For 19 of those years,
14 I served as the chief counsel and staff director of
15 the committee. Many years ago, I also served on the
16 staff of the US Commission on Civil Rights.

17 There has been very thorough discussion
18 this morning of Senator Akaka's bill, and so my
19 testimony today is directed to the overarching issue
20 of civil rights for the citizens of the State of
21 Hawaii and whether the legal challenges that have
22 been mounted against any Federal or State law that
23 makes provisions for Native Hawaiians and the Native
24 Hawaiian people will lead us down a path that poses
25 any threat to the national security of the United

1 States.

2 The legal theory that is being advanced
3 to call into question the constitutionality of
4 existing federal laws that provides for Native
5 Hawaiians as well as calling into question the
6 constitutionality of the Native Hawaiian Government
7 Reorganization Act is a legal theory that is easily
8 articulated. The legal argument is that the United
9 States Congress does not have the authority under
10 the United States Constitution to enact legislation
11 to address the conditions of the Native Hawaiian
12 people. This is the question that any Federal court
13 faced with these challenges to federal laws
14 providing for Native Hawaiians will be called upon
15 to decide.

16 While I do not believe that this legal
17 theory has support in US Constitution or in Federal
18 law or in the rulings of the US Supreme Court, as
19 anyone who has read the Hawaii Admissions Act knows,
20 the Hawaii Statehood Act is replete with provisions
21 addressing the responsibilities not only of the
22 State of Hawaii but the United States as they relate
23 to the Native Hawaiian people.

24 Thus, if this legal theory should
25 prevail, not only could the Hawaiian Homes

1 Commission Act of 1921 be struck down, but the
2 Hawaii Admissions Act could also be rendered
3 unconstitutional. If the Statehood Act is found to
4 be unconstitutional, then the legal status of the
5 State of Hawaii is at best uncertain, and if Hawaii
6 is not legally one of the fifty states, then the
7 people who reside in these islands are not citizens
8 of one of the fifty states nor by definition are
9 they citizens of the United States.

10 HEARINGS OFFICER LILY: I need you to
11 wrap up.

12 MS. ZELL: Certainly. If they are not
13 citizens of the United States, then the provisions
14 of the US Constitution, including those provisions
15 which guarantee the protection of civil rights, do
16 not apply to those who reside in the islands, and so
17 in conclusion, I think we must ask why are the
18 efforts to have the Federal court strike down any
19 law that references the Native Hawaiian people,
20 including as it must the Hawaii Admissions Act, a
21 good outcome for the citizens of the State of Hawaii
22 and the economic health and well-being of the State
23 of Hawaii, and given the strategic importance of the
24 State of Hawaii to the national security of the
25 United States, why is this a desirable outcome for

1 all Americans? Thank you, Mr. Chairman.

2 HEARINGS OFFICER LILY: Thank you. I am
3 going to ask Barbara here to give a thirty second
4 warning so people will know.

5 Okay, I think you are Antoinette Lee?

6 MS. LEE: Yes, but she is before me.

7 HEARINGS OFFICER LILY: Okay, is that
8 Marilyn Leimomi Khan?

9 MS. KHAN: Yes.

10 HEARINGS OFFICER LILY: Okay, I am going
11 to mention the next five, just so you know. The
12 next five in order is Charles Kapua, Haunani
13 Apoliana, Justice Robert Klein, Os Stender, and I am
14 not sure on this name, Marshall Ka'anoi? It might
15 be Ka'anoi. Okay, go ahead, thank you.

16 MS. KHAN: Aloha mai kakou. I am
17 Marilyn Leimomi Khan. I am the President of the
18 Association of Hawaiian Civic Clubs. In presenting
19 my testimony, I feel a little anger, and so I need
20 to release this anger by making three comments. One
21 is to even suggest that we do not -- that we need to
22 be a tribe to exist or else we have no standing, I
23 think is an affront to all of the Native Hawaiian
24 people of these lands.

25 Secondly, to suggest that we are not

1 politically unified, that we are not together
2 because we have intermarried or because we are
3 located throughout the United States, again, I think
4 is an affront to Native Hawaiians. It does not
5 matter where we live. We practice and honor our
6 culture. We have an allegiance to our people, we
7 have an allegiance to our traditional beliefs, and
8 every day, whether we live in Hawaii or whether we
9 live in Utah or Nevada, we practice our culture.
10 And interestingly enough, those that we marry, I
11 happen to have a Pakistani husband, practice it too.

12 Having said that, oh, and one more
13 point. You know, if we were such a divisive people,
14 by passing this law, would we only be 20 percent of
15 the State. A'ole. We would be one hundred percent
16 of the State, but it is because of our aloha that
17 embraced everybody that we only represent that small
18 number. We are not divisive. We have always been
19 unifying with others. Thank you for allowing me to
20 get that off my chest. Now I can go on.

21 Aloha on behalf of the Association of
22 Hawaiian Civic Clubs, thank you for the opportunity
23 to provide written and oral testimony and to request
24 this committee's support for S 310 HR 505, the
25 Native Hawaiian Government Reorganization Act. Our

1 organization is composed of several thousand native
2 Hawaiians and non-Hawaiian members, of 52 Hawaiian
3 civic clubs spanning the United States.

4 Prince Jonah Kuhio Kalaniana'ole,
5 Hawaii's delegate to the US Congress, was a strong
6 advocate of equality and insuring that the civil
7 rights of all of his constituents were protected.
8 Additionally, he founded the Hawaiian Civic Club in
9 1918 to encourage a politically aware and active
10 Native Hawaiian community to support these
11 priorities. We are now the oldest open community
12 based grass roots organization in the State, and we
13 continue to support initiatives that promote the
14 health and social welfare of our Native Hawaiian
15 community and preserve our culture.

16 For nearly 90 years our organization has
17 staunchly supported efforts to achieve
18 self-determination, self-governance, and
19 self-preservation. In the last ten years alone, we
20 have adopted more than ten resolutions in support of
21 Federal recognition. We also affirmed that all of
22 the programs that we have do not infringe upon the
23 civil rights others.

24 In 1993, the President of the US signed
25 Public Law 103.150, the apology resolution, as a

1 statement of apology to the Native Hawaiians for the
2 overthrow of the Kingdom setting into place a
3 commitment --

4 HEARINGS OFFICER LILY: I need you to
5 wrap up because --

6 MS. KHAN: Yes, to provide a proper
7 foundation of reconciliation. In closing, the
8 Native Hawaiian Reorganization Act is the most
9 significant piece of legislation. It is about the
10 United States honoring and respecting an indigenous
11 people. It is about correcting a wrong. It is
12 acknowledging and honoring our ancestors who affixed
13 their signatures to a document known as the Ku'e
14 petition in which they fought to retain their nation
15 as a people. Mahalo nui loa.

16 HEARINGS OFFICER LILY: We have your
17 testimony as well which we are receiving, and the
18 reason we have the three-minute rule is so that
19 everybody here has an opportunity. There are many,
20 many people who want to speak, and so we are trying
21 to give everybody equal time.

22 So next?

23 MS. LEE: Aloha, members. My name is
24 Antoinette Lee, and I strongly support Federal
25 recognition of the Akaka Bill. Thank you for

1 allowing me to explain why Federal recognition makes
2 sense and why this body should also revise its
3 recommendation from last year that Congress oppose
4 this bill.

5 First, I am sure you will hear several
6 times today this same recognition has been extended
7 to hundreds of indigenous groups across the United
8 States. To be absolutely fair, the same recognition
9 must be extended to Native Hawaiians.

10 Second, I am a lifelong active member
11 and supporter of the Prince Kuhio Kalaniana'ole
12 Hawaiian Civic Club Movement, and as a group,
13 Hawaiian Civic Club members continue to advance its
14 principles of culture, preservation, civic activism,
15 and equal opportunity. Passage of one bill would
16 advance each of these.

17 Finally, in reaction to the adverse
18 ruling of the Rice case, both the Hawaii Advisory
19 Committee and the United States Department of
20 Justice and Interior made recommendations for
21 reconciliation between the United States and the
22 Native Hawaiians. These recommendations were based
23 on the number of open sessions like this one today
24 and called for the Federal government to increase
25 efforts to recognize the political relationship

1 between Native Hawaiians and the United States and
2 for self-determination within the framework of
3 Federal law. The Akaka Bill does exactly that.

4 I imagine that many of the people who
5 shared their thoughts seven years ago will attend
6 these sessions and will say the same thing. I
7 earnestly hope this body will recall the mana'o from
8 the last round of open sessions and offer the same
9 recommendations. Mahalo.

10 HEARINGS OFFICER LILY: Thank you very
11 much. Next, please?

12 MR. KAPUA: Aloha. I am Charles Kapua,
13 and I am one hundred percent Hawaiian, and I support
14 Federal recognition. I am also a retired police
15 officer of the Honolulu Police Department for 27
16 years, and I want to add that I am a retired Army
17 sergeant major for 22 years. I have protected and
18 upheld the same civil rights of Honolulu citizens.
19 Federal recognition will do the same for Native
20 Hawaiians. Every day during my career as a police
21 officer and now in all my current community
22 activities, I work cooperatively with a diverse
23 group of people from a wide range of cultural,
24 social, economic, and professional backgrounds.

25 Federal recognition will not change this

1 and will not lead to racial organization as
2 opponents lead you to believe. Federal recognition
3 means that Native Hawaiians will finally achieve
4 self-determination which in my opinion is the
5 ultimate civil right. Mahalo.

6 HEARINGS OFFICER LILY: Next, please?
7 Is this Haunani?

8 MS. APOLIANA: My name is Haunani
9 Apoliana, trustee and chair person of the board of
10 trustees of the Office of Hawaiian Affairs. We are
11 nine in number, and we are elected by all voters in
12 Hawaii. The OHA board of trustees advocates passage
13 of the Native Hawaiian Government Reorganization
14 Act, and being passed out to you now are supportive
15 materials relative to OHA's position.

16 What I want to say is I have witnessed
17 the 2000 work of the USCCR and the last two months
18 of the work of the USCCR relating to the HSAC, and
19 myself having served on the US Presidential Advisory
20 Commission with a nationwide focus, I must say I am
21 appalled. I want to register my complaint that the
22 Washington, DC, based US Commission on Civil Rights
23 and its staff director appear to be misusing
24 commission powers, duties, and responsibilities by
25 conspiring to prevent enactment of the Native

1 Hawaiian Government Reorganization Act through
2 manipulation of the Hawaii Advisory Committee and
3 its leader and positioning advisory committee
4 members to further promote a biased agenda against
5 the aboriginal indigenous native people of Hawaii by
6 aiding and abetting litigants who seek to end Native
7 Hawaiian programs.

8 You have heard about activities in 2006
9 from former HSAC chair, Mr. Forman, but I want to
10 share with you in 2007 US Congressional House
11 Judiciary Committee and subcommittee chairs are
12 questioning the nonconformance by USCCR to
13 applicable rules and procedures governing advisory
14 committee appointments. There is a 36 year
15 experienced senior civil rights analyst with USCCR
16 who retired rather than participate in stacking the
17 process for appointing membership to this HSAC.

18 Our Internet searches along with
19 statements made by Senior Staff Director Marcus of
20 the USCCR concerning this chair person during the
21 July 13th, 2000, public meeting of the USCCR inform
22 us that at least nine of the seventeen seated
23 members, nine constituting a majority, oppose the
24 Akaka Bill. The Grass Root Institute of Hawaii, the
25 vocal opponent of the Hawaiian Recognition Bill, has

1 one from its board of scholars in the majority. Two
2 other advisory committee members are litigants
3 litigating in Federal court to end Native Hawaiian
4 programs, and one of the two is a member of the
5 Grass Root Institute of Hawaii.

6 Today's briefing got published in the
7 Federal register preceding any approval of the HSAC
8 further advancing the notion of the spector of
9 questionable bias by its Washington, D.C., based
10 control over our Hawaii Advisory Committee.

11 The Hawaiian Recognition Bill deserves
12 fair consideration and support. The bill is not
13 race based. It's based on the fact that Native
14 Hawaiians like American Indians and Alaskan natives
15 are the aboriginal indigenous native people whose
16 ancestors settled and exercised sovereignty in these
17 lands predating the founding of the colonies and the
18 United States. Authors of the US Constitution
19 acknowledge the existence of sovereign indigenous
20 nations of these lands and provided Congress
21 authority to legislate for these native nations and
22 indigenous people in constitutional language.

23 The bill is also about fairness.
24 Enactment of this Federal policy codifies United
25 States recognition of the special legal and

1 political relationship with Native Hawaiians as it's
2 done previously with American Indians and Alaskan
3 natives.

4 HEARINGS OFFICER LILY: I have to ask
5 you to wrap up.

6 MS. APOLIANA: It is time for the US
7 policy towards indigenous native aboriginal peoples
8 of Hawaii to reflect parity. Oe ko'o mau mana'o.
9 Mahalo.

10 HEARINGS OFFICER LILY: We have a lot of
11 testimony yet. We want to keep it going. We have a
12 lot of people waiting to speak.

13 Justice Robert Klein, honored to have
14 you present. Thank you.

15 JUSTICE KLEIN: Aloha, Mr. Chairman,
16 panel members. My name is Robert Klein, I am an
17 attorney, former member of the Hawaii Supreme Court.
18 I served the Office of Hawaiian Affairs as board
19 counsel, and I have represented the State Council of
20 Hawaiian Homestead Association in both the Carroll
21 and Barrett cases and in Arakaki versus Lingle.

22 I am very familiar with the Akaka Bill
23 having represented the Office of Hawaiian Affairs at
24 meetings with the US Department Justice Department
25 with regard to the amendments that are now reflected

1 in the bill. In addition, I have been on many
2 public panels both here and in Washington, D.C.,
3 where the Akaka Bill has been debated.

4 I urge this panel to support the measure
5 because it realizes the promise of reconciliation in
6 the Federal apology resolution and provides a small
7 measure of justice to the Hawaiian people. The
8 driving force behind the passage of S 310, the Akaka
9 Bill, is not discrimination based on ancestry. It
10 is the desire of the Hawaiian people and virtually
11 every political representative in the State of
12 Hawaii from its US senators and congressional
13 representatives to the governor, its State house
14 representatives, City Council members, elected
15 trustees of the Office of Hawaiian affairs, to
16 achieve legal parity and Federal recognition as with
17 the other two native indigenous peoples of America,
18 namely the American Indian nations and the Native
19 Alaskans.

20 The indigenous people of Hawaii are the
21 only native people in the country who are not
22 afforded the opportunity to be federally recognized.
23 The Akaka Bill corrects this disparate treatment.
24 If fairness and justice are the hallmarks of this
25 committee, then the Akaka Bill which provides a

1 process for Federal recognition should receive your
2 continued support. Momentum for the passage of the
3 Akaka Bill was generated when this body issued
4 reports in 1991, broken trust, and in 2001,
5 reconciliation at a crossroads, and Congress passed
6 the apology bill in 1993.

7 Why should the findings that led to the
8 present Akaka Bill be second guessed today by this
9 panel? Given the current litigious environment,
10 there is even more reason to reaffirm those findings
11 and recommendations, including support for the Akaka
12 Bill. Hawaiian programs require protection from
13 political and legal attack, even from a member of
14 this commission who actively litigates against such
15 programs and whose clients would benefit if the
16 Akaka Bill fails.

17 Will the Akaka Bill pass constitutional
18 muster? This is a legal determination that only a
19 court can make and should be irrelevant to this
20 discussion. It's not your call. However, there is
21 a strong argument referred to today, and I subscribe
22 to what Mr. Bennett stated earlier. I would just
23 like to add support to that.

24 United States Supreme Court Chief
25 Justice John Roberts in his legal briefs to the

1 United States Supreme Court in Rice versus Cayetano
2 wrote that Congress has recognized a special
3 relationship with Hawaiians, and in recognition of
4 that special relationship has extended to Native
5 Hawaiians the same rights and privileges accorded to
6 American Indians, Alaskan natives, Eskimo and Aleut
7 communities.

8 He cited 20 USC 7902 sub 13. As such,
9 Congress has established with Hawaiians the same
10 type of unique legal relationship that exists with
11 respect to the Indian tribes who enjoy the same
12 rights and privileges accorded Hawaiians under these
13 laws. Quote, that unique legal or political status,
14 not recognition of, quote, tribal status, under the
15 latest executive transmutation of what that means is
16 the touch stone of the application of Mancari,
17 meaning Morton versus Mancari, when as your Con --
18 Congress is constitutionally empowered to treat
19 indigenous people as such.

20 I wanted to give you one more quote. I
21 know you are trying to rush --

22 HEARINGS OFFICER LILY: I have a hard
23 time cutting off a justice of the Supreme Court, a
24 former justice --

25 JUSTICE KLEIN: Thank you, I will just

1 keep talking.

2 HEARINGS OFFICER LILY: No, no, don't
3 keep talking. Just wrap up.

4 JUSTICE KLEIN: I think one more quote
5 from Mr. Roberts' brief sort of sums it all up with
6 respect to the issue of race. Mr. Roberts argued,
7 now Chief Justice of the United States John Roberts,
8 not someone to be cavilled with lightly, the
9 Constitution in short gives Congress room to deal
10 with the particular problems posed by the indigenous
11 people of Hawaii, and at least when legislation is
12 in furtherance of the obligation of Congress, has
13 assumed to those people that legislation is no more
14 racial in nature than legislation attempting to
15 honor the Federal trust's responsibility to any
16 other indigenous people. It is in sum not racial at
17 all.

18 The Akaka Bill does not discriminate
19 based on ancestry but only furthers the political
20 relationship of Congress that is already fostered
21 with Hawaiians through numerous pieces of Federal
22 legislation. The bill is also partial fulfillment
23 of the promises made to the Hawaiian people in the
24 Federal apology bill for reconciliation with the
25 United States. It would allow Hawaiians to achieve

1 equity with other indigenous people in the country.

2 This body should recommend support for
3 the measure to the United States Civil Rights
4 Commission. I would urge you to do so. Thank you.

5 HEARINGS OFFICER LILY: Thank you,
6 Justice Klein.

7 Okay, to let you know, the next five are
8 the following. Some of these spellings may not be
9 very well, so my pronunciation is not going to be
10 good. Okay, it is Jule Kitka, Bruce Keppler if you
11 are here, Lawrence Ebel, Wendell Marumoto, and Bill
12 Hoshijo, and OHA trustee and friend Os Stender.

13 MR. STENDER: Good afternoon, chairman
14 and committee chair members. My name is Oswald
15 Stender, and I am a Native Hawaiian. I currently
16 serve as a trustee of the Office of Hawaiian
17 Affairs. In a couple of months, I will be 76 years
18 old. Other than my service in the Marine Corps, I
19 have spent my lifetime in Hawaii. I tell you this
20 because you need to know that living here for this
21 many years as a Native Hawaiian, I have seen and
22 experienced the troubles of our people. I have
23 observed and experienced the struggles of Hawaiians
24 trying to fit into this non-Hawaiian society and a
25 social order that has treated Hawaiians as second

1 rate citizens who are to be tolerated and used when
2 the occasion suits the need.

3 I continue to be saddened by all the
4 years that we as Hawaiians have suffered
5 discrimination as a race of people, who are the most
6 under educated, who have the highest prison
7 population, and who top the number receiving
8 welfare. This list goes on, and I am sad to say we
9 are homeless in our own land.

10 Many might ask why? I have lived it, so
11 I will tell you why. We look different, we are of
12 color, we are not well educated, we just don't fit
13 in. Ms. Edmunds (phonetic) said that the most we
14 Hawaiians can achieve is to be a good police
15 officer, a fireman, trash collector, janitor or
16 maid. All those things are well respected jobs.
17 Many have believed that the majority of Hawaiians
18 can not be lawyers, doctors, presidents and CEOs.
19 Many have also believed that Hawaiians can not hold
20 positions associated with prestige. Throughout my
21 lifetime, I have heard that we as Hawaiians are
22 under achievers and will never succeed in the
23 professions. For many years, we have been trying
24 desperately to change this stigma.

25 Many of us believe that the Akaka Bill

1 would prepare the way as well as help us stay the
2 challenges that some of you at this table continue
3 to send our way. You are trying to deny us the
4 right and opportunity to make a difference in the
5 lives of our Hawaiian people, the indigenous people
6 of Hawaii. Your challenges perpetuate the
7 discrimination that I speak about today.

8 Prior to this committee's recent
9 reorganization that allowed many of you to sit at
10 this table, I served on this advisory committee for
11 more than fifteen years. Not once in those many
12 years have I ever been so concerned about the makeup
13 of this committee as I am today. This committee
14 appears to be stacked with those who are against the
15 Akaka Bill because of the rights it will give to
16 Hawaiians.

17 My judgments about this committee are
18 based solely on the fact that the action taken in
19 2006 by the US Commission in opposing the Akaka Bill
20 was taken without consulting with our Hawaii
21 Advisory Committee, and many of these -- this
22 hearing today, as mentioned by Mr. Forman, is
23 another example of the violation of its own rules.
24 I need to mention, however, that the commission
25 called for nominations, and OHA sent in more than

1 sixteen names to be considered. Not one, let me say
2 again, not one was selected.

3 All of this makes me suspect that this
4 entire process is just window dressing by the
5 commission. I am very concerned about the way you
6 will deal with this matter. In closing, I can only
7 ask that you will let your conscience be your guide,
8 and that you give this issue serious and fair
9 consideration.

10 The harmful consequences in terms of
11 decimation and suffering brought on the Native
12 Hawaiian people and their culture are the result of
13 colonization. This fact is well documented and has
14 never been challenged. The apology bill of 1993
15 clearly expresses the part the United States played
16 in the illegal overthrow and the demise of the
17 Hawaiian monarchy. The Akaka Bill is the first step
18 in making right the treatment of our indigenous
19 people of this land, and I ask that you to give
20 credence to the apology bill.

21 We Hawaiians, the indigenous people of
22 this land, want to believe that the United States of
23 America is truly a country that believes in making
24 right the wrongs that Hawaiians have endured at the
25 hands of those more than 200 years ago. We were

1 once a great nation, but our nation was stolen by
2 foreigners who claimed to be our friends.

3 I strongly support the Native Hawaiian
4 Reorganization Act also known as the Akaka Bill.
5 Mahalo for giving me your time.

6 HEARINGS OFFICER LILY: Thank you,
7 Mr. Stender. There have been a number of comments
8 by Mr. Forman and a couple of trustees, Os, about
9 the process, and that's why we are being very
10 careful about having more meetings. We slowed the
11 process down, and this committee has taken control
12 of its agenda, and it is making sure that we are get
13 full public input on this very important subject.

14 So next, please, and I really am sorry
15 if I -- I don't want you to feel offended if I tell
16 you you have got thirty seconds or three minutes,
17 but there are a lot of people that want to testify.

18 So yes, sir.

19 MR. KA'ANOI: Aloha.

20 HEARINGS OFFICER LILY: Aloha.

21 MR. KA'ANOI: The liberty and freedom to
22 sustain your breath of life in the natural habitat
23 of your ancestors is a divine gift from the creator
24 and our ancestors who potentiated every moment of
25 their life in righteousness, and that word for a

1 heaven like mana'o, this is pono, perpetuating a way
2 of life, which encompasses from e ala e to e ala e,
3 all 86,400 moments in a 24 hour day, our ancestors
4 perpetuated their life in righteousness and their
5 mana'o, their kino, and their ano with pono.

6 What we need to learn from our ancestors
7 so that we can restore mother earth back to wellness
8 without the turbulent weather is to replant the malo
9 koa on our mountain and the ha. Understand the ha
10 in Hawaii is the stem of every single leaf on earth
11 as well, yeah, that keeps the temperature from outer
12 space. When you guys go back to wherever you came
13 from, yeah, when you are riding the altitude, the
14 weather up there, yeah, is 60 below zero, and it is
15 compressed down on the earth which is 92 degrees
16 below freezing, yeah?

17 The warm air of plants rising up into
18 the sky, yeah, keeps that turbulent air from causing
19 this hurricane and turbulent weather, yeah, and
20 unless an understanding, yeah, for every single leaf
21 there is a root down below, and the malo koa on the
22 mountain penetrated twice the depth into the
23 mountain as the height of the tree, and there was no
24 rocks, no landslides, yeah, and no hurricanes in
25 what was called the Pacific Ocean in 1776, yeah?

1 Calm was the Pacific. 33 years later, the first
2 hurricane, yeah? And we have been --

3 HEARINGS OFFICER LILY: I need to ask
4 you to wrap up, please. Thank you.

5 MR. KA'ANOI: Wrapping up right now.
6 The 13th Amendment of the Constitution is
7 involuntary servitude. Our queen was enslave on
8 January 17th, 1893, and that meant all of her people
9 lost their human rights, the liberty and freedom to
10 sustain their life in the natural habilitat of their
11 ancestors. Mahalo.

12 HEARINGS OFFICER LILY: Mahalo for your
13 comments.

14 Okay, is the next one Jule Kitka?

15 MS. KITKA: Good afternoon.

16 HEARINGS OFFICER LILY: Good afternoon.

17 MS. KITKA: Members of the advisory
18 committee, my name is Julie Kitka, and I am honored
19 to be allowed to address the advisory committee. I
20 am not from your state. I am from the beautiful
21 State of Alaska, but I have a very strong interest
22 in the issue before you and want to give a message
23 on behalf of the native people in the State of
24 Alaska.

25 I am currently serve as the President of

1 the Alaskan Federation of Natives. AFN is the
2 largest statewide organization in Alaska. We
3 represent over 123,000 Alaskan natives. In December
4 of 1971, the Alaskan Native Claims Settlement Act
5 was signed into law by President Nixon to settle our
6 long-standing claims as Alaskan natives. Where
7 extinguishing aboriginal claims, Alaska Natives were
8 compensated with fee simple title to 44 million
9 acres of land, 962, 25 million for lands lost to the
10 State, Federal, and private interests. Our land
11 claims created thirteen regional for profit
12 corporations and more than 200 village corporations
13 to receive and oversee the land and monetary
14 entitlements.

15 Today our organization is governed by a
16 37 member board of directors representing our
17 villages, both federally recognized tribes and ANCSA
18 village corporations, our regional nonprofit tribal
19 consortiums, and thirteen regional ANCSA
20 corporations.

21 Today, I basically would like to make
22 two points to you. The first, Federal legislation
23 extending the Federal policy of self-governance and
24 self-determination to Native Hawaiians will benefit
25 not only Native Hawaiians but all the citizens of

1 Hawaii. It will set in motion the means by which
2 Native Hawaiians can make positive contributions to
3 the national and State economy. It will help the
4 indigenous people of the State become more
5 self-sustaining and less self-reliant on the
6 government spending by helping them attain economic
7 independence.

8 One only needs to look at Alaska to see
9 these benefits. Over the years since our land
10 claims were passed, the regional and village
11 corporations and tribes have achieved success by
12 generating long term revenue stream, creating jobs
13 for our members in our communities in which they
14 work in providing cultural and social benefits to
15 our shareholders in the larger native community in
16 Alaska.

17 Alaskan entities have become more
18 self-sufficient and overcome significant economic
19 barriers creating and expanding competitive
20 businesses in the private sector, creating new
21 business opportunities in remote rural areas of our
22 State, and returning profits to their communities.
23 In 2004, Alaskan native corporations paid over 27
24 million dollars in dividends to native shareholders
25 and donated 4.9 million for cultural and social

1 programs. Between 1999 and 2004, our corporations
2 awarded over 14 million in scholarships to Alaskan
3 natives. Other community benefits, you can go on.

4 I wanted to basically tell you during
5 the period of time in which our land claims were the
6 subject of intense political debate in our State,
7 there was a lot of fear and anger and concern in our
8 State that didn't come to pass. If you look at the
9 history of our land claims and all the public
10 venues, incredible amounts of fear of how divisive
11 this was going to be, and it just hasn't turned out,
12 and it's been over 35 years since our land claims
13 settlement.

14 We are major contributing partners in
15 our economy. We are not only creating opportunity
16 for our own people, but we are expanding
17 opportunities for the entire State, and it isn't a
18 problem the fact that we are a large population. We
19 make up 23 percent of our State. You talk about
20 Native Hawaiians being 20 percent of the State.
21 Alaskan Natives are 23 percent of the population in
22 Alaska, and we are major contributors.

23 HEARINGS OFFICER LILY: I need to ask
24 you to wrap it up.

25 MS. KITKA: To wrap it up, we would like

1 to submit written testimony.

2 HEARINGS OFFICER LILY: Please, we would
3 like to see it.

4 MS. KITKA: Like I said, we see a lot of
5 parallels between what's going on here in Hawaii.
6 We think that this bill that is pending in the
7 Congress makes a lot of sense, and if there was
8 anybody that was going to oppose this bill, it
9 should be the Alaskan Natives or Native Americans,
10 the Navajos or the other tribes, but all of the
11 other tribes in Alaska fully are in support of this.
12 We are not threatened by the recognition of Native
13 Hawaiians. We feel that they are brothers and
14 sisters to our people on that, and we think it will
15 only make the United States stronger by having them
16 recognized.

17 So in conclusion, I will submit our
18 written testimony, but I urge you to strongly
19 consider supporting the Akaka Bill and the
20 recognition, and I would also on a side note
21 strongly urge you to continue work on other civil
22 rights issues such as sexual assault and domestic
23 violence and the high incarceration rate of native
24 people because that's a continuing issue that needs
25 attention, and bodies like this are absolutely

1 essential to not ever leave your focus on that. So
2 in conclusion, thank you for the privilege of
3 addressing you, and good luck in your deliberations.

4 HEARINGS OFFICER LILY: Thank you very
5 much. Thank you.

6 Bruce Keppler, nice to see you, a friend
7 and an attorney.

8 MR. KEPPLER: Aloha, Michael.

9 HEARINGS OFFICER LILY: Aloha.

10 MR. KEPPLER: Aloha, Jackie. Aloha,
11 Bill. Aloha, Jimmy. Aloha, Paul. Aloha, Kawena.
12 Aloha to all of you. I am H. K. Bruce Keppler, and
13 I am here as the chair of the Government Relations
14 Committee of the Native Hawaiian Chamber of Commerce
15 to stand in favor of the S 310 HR 505. We do intend
16 to form a native government under the principles
17 enunciated in the so-called Indian Commerce Clause
18 of the US Constitution and before that, the Articles
19 of Confederation of the colonies, hence why S 310
20 and HR 505, that's what it will enable. It will
21 enact provisions which will allow for the process to
22 begin and lay the frame work for the eventual
23 recognition of the Native Hawaiian Nation by the
24 Federal Government of the United States under the
25 United States law.

1 Let's go forward with the historic and
2 legal basis for the recognition of the Native
3 Hawaiian Nation. The founding fathers of the United
4 States of America had only a very shallow
5 understanding of the natives they found in the
6 eastern seaboard which they had colonized. To their
7 credit, they understood that they had established
8 certain political relationships with those natives
9 in the form of treaties and other pacts, and they
10 had to honor those political relationships.

11 What they could not have understood or
12 envisioned was the number and variety of the natives
13 that their future generations would encounter as
14 settlement advanced westward. How could they have
15 known that their descendents would come upon natives
16 as diverse as Navajo, Pueblo, Inuit, or Hawaiian?
17 Indeed, although they have been recognized as a
18 native people of Alaska, Eskimos are no more Indian
19 than Hawaiians are.

20 In their compact late 18th century
21 fledgling nation made up of thirteen former
22 colonies, there were a handful of groups that they
23 called tribes. The founding fathers assumed that
24 all tribes and natives were organized in that
25 manner. Even then, however, there were other forms

1 of native governance: Bands, villages, clans and so
2 forth. They lumped them all in with the word tribe.
3 Time and time again, constitutional language has
4 been interpreted to include other forms of
5 governance. Over the years a procedure called
6 Federal recognition, for lack of a better term, has
7 been used to acknowledge the domestic sovereignty of
8 these varied native peoples.

9 There is only one state in the nation
10 where the native peoples have not been recognized.
11 Its name is the State of Hawaii. Why was that the
12 case? Well, ironically, it was partly due to the
13 fact that even Native Hawaiians have problems with
14 calling themselves natives. I can remember when
15 what is now known as the Native Hawaiian Chamber of
16 Commerce, a number of our members would not allow
17 the insertion of that name into the name of our
18 organization. Our membership, however, has come to
19 grips with the fact that we are natives of this land
20 and not just another racial or ethnic group.
21 Racially, we are proudly Polynesian. What makes us
22 Native Hawaiian is the fact that for a century this
23 place has been our one hanau, our native lands.

24 Despite that fact and in complete
25 departure from logic, there are some people who

1 would try to convince you that Native Hawaiians are
2 not natives. They will try to convince you that
3 Native Hawaiian is merely a racial classification or
4 ethnic definition. Asian Americans, African
5 Americans, European Americans, and other racial
6 groups have ancestral homelands to go back to. The
7 homelands of Native Americans and Native Alaskans
8 like Julie and Native Hawaiians like us have been --
9 their lands were subsumed into the United States and
10 within the territory of the United States of
11 America.

12 HEARINGS OFFICER LILY: You have to wrap
13 it up.

14 MR. KEPPLER: Where do we go back to?
15 This is it. What you see is what you get.

16 I will begin to wrap. I would like to
17 indicate that the Chamber of Commerce is strongly in
18 support of S 310. I would like to add one other
19 thing. That I am not only part Native Hawaiian, but
20 I also hail from the White Earth band of the
21 Chippewa in Minnesota, and so I, I believe, can
22 speak in some detail with respect to this issue.

23 Mahalo for the opportunity to speak.

24 HEARINGS OFFICER LILY: Mahalo.

25 What I am going to do is do a little

1 chairman's prerogative, and we will take five more
2 speakers, and then we are going to take a ten-minute
3 break, and I mean ten minutes, and then we will move
4 right on to the next speaker.

5 So I think Lawrence Ebel, and after that
6 the next five will be Dr. David Sing, Dr. VerlieAnn
7 Malina-Wright, Kapua Medeiros, Faye Kennedy, and
8 then David Rober, and then we will take a break.

9 Yes, sir.

10 MR. EBEL: Thank you for the
11 opportunity. I am coming from a different
12 perspective. My name is Bud Ebel, I ran for the
13 State House of Representatives, and I live in
14 Waianae.

15 Civil rights, whose are you concerned
16 with? I ran for the 45th District State House of
17 Representatives at odd stakes, and there was no
18 concern for mine. I ran on a platform of no race
19 based benefits, period, and equality for all. When
20 did the citizen lose the right to run for public
21 office in his own neighborhood? I was hit, kicked,
22 spat upon, and verbally assaulted upon a daily
23 basis. The Honolulu Police Department was of no use
24 whatsoever. In fact, their efforts were actually
25 belligerent at best and consistently contemptuous of

1 my rights.

2 With regard to the repeated theft of my
3 banners and signs, even when I posted a sign asking
4 who stole Bud's banners, no effort was forthcoming.
5 In fact, it became a local curiosity, and even now I
6 get questions as to whether or not I got my signs
7 back? No other candidate was subjected to this
8 treatment as far as I know, nor were their signs
9 stolen.

10 Yet we meet here today to take testimony
11 on the subject of separating an entire racial group
12 from the United States. This must not be allowed to
13 happen. I realize the force and power of politics
14 of dependency brings to the commission merchants and
15 the beneficiaries of such a movement. Anyone would
16 like to become a -- why would anyone like to become
17 a ward of the Bureau of Indians Affairs or any other
18 position of dependency of the Federal government is
19 beyond me, but the commission merchants that are
20 driving this movement have millions of reasons.
21 Perhaps the Hawaiians are being used as a basis of
22 an ongoing political opportunitism without realizing
23 it.

24 It's simply unconstitutional and
25 unconscionable. It is my fervent hope and wish that

1 you recommend rejection of the Akaka Bill S 310 and
2 HR 505. Respectfully submitted, Lawrence G. Bud
3 Ebel.

4 HEARINGS OFFICER LILY: Thank you,
5 Mr. Ebel.

6 MR. EBEL: I handed these out to you,
7 but I skipped --

8 HEARINGS OFFICER LILY: We have your
9 testimony.

10 MR. EBEL: I skipped Jackie Young, and I
11 didn't realize you were there when I handed these
12 out.

13 HEARINGS OFFICER LILY: She might not
14 have been here.

15 MR. EBEL: So there's your copy.

16 HEARINGS OFFICER LILY: All right,
17 Mr. Hoshijo?

18 MR. HOSHIJO: Chair Lily and members of
19 the State Advisory Committee, my name is Bill
20 Hoshijo. I currently serve as the executive
21 director of the Hawaii Civil Rights Commission, the
22 agency that enforces Hawaii's state
23 antidiscrimination laws.

24 Today I appear here to present to you a
25 statement on behalf of the Hawaii Civil Rights

1 Commission and to briefly address and clarify two
2 points. First, I want to definitively end any
3 confusion over which Civil Rights Commission has
4 taken the highly controversial and political
5 position opposing congressional recognition of
6 Hawaiian's self-governance. It was the USCCR, not
7 the HCRC. The HCRC has consistently recognized
8 Hawaiian rights to sovereignty and self-governance
9 based on our understanding of the unique history of
10 the State and our expertise and experience and
11 enforcement of expansive states' civil rights laws .

12 Second, I will restate the HCRC's
13 position on the relationship between Native Hawaiian
14 rights and civil rights. In our amicus brief filed
15 in support of the Kamehameha Schools' petition for
16 rehearing in Doe versus Kamehameha Schools, the HCRC
17 stated that the classification of Hawaiian as used
18 in that case and with regard to congressional
19 recognition of a self-governing entity is a
20 political, non-racial classification. Hawaiian
21 rights issues are not civil rights issues within the
22 framework ordinarily applied by the courts
23 interpreting reconstruction amendments and civil
24 rights statutes. These are not issues of individual
25 rights and equality under law, but the inherent

1 right of indigenous people to self-determination.

2 Most of the American usurpers operating
3 with the support of US Armed Forces caused Native
4 Hawaiians loss of nationhood and suppression of
5 their internationally recognized sovereignty. This
6 is the basis for Hawaiian's political status and
7 right to self-determination. As such, restorative
8 programs and legislation recognizing Hawaiians as
9 indigenous people do not conflict with the
10 reconstruction amendments and civil rights laws
11 which were put in place to address the historical
12 legacy of slavery in America.

13 The HCRC urges the Hawaii State Advisory
14 Committee to consider this history and not to
15 compound the injury caused by the loss of nationhood
16 and sovereignty by opposing congressional
17 recognition of Hawaiian sovereignty and
18 self-determination. Thank you, Mr. Chair.

19 HEARINGS OFFICER LILY: We are going to
20 be seeing you on September 5th?

21 MR. HOSHIJO: Yes, I will be there.

22 HEARINGS OFFICER LILY: We look forward
23 to your discussion then.

24 MR. HOSHIJO: Thank you.

25 HEARINGS OFFICER LILY: Thank you very

1 much, Chairman Hoshijo.

2 Dr. David Sing?

3 DR. SING: Aloha, I am David Sing. I am
4 a faculty member at the University of Hawaii at
5 Hilo. On behalf of the 2,000 students, their
6 families and one hundred staff and teachers
7 currently part of the Na Pua No'eau Center, a
8 Hawaiian culture based education enrichment program
9 based at the University of Hawaii, I would like to
10 express our support of the Akaka Bill.

11 Na Pua No'eau is a culture based
12 education resource center within the University of
13 Hawaii that provides educational enrichment
14 activities to Hawaiian children and their families
15 in grades K through 12 throughout the State of
16 Hawaii. In 2006, with a new grant from the US
17 Department of Education, the service is now extended
18 to students in their first year of college at the
19 University of Hawaii campuses. The mission of Na
20 Pua No'eau is to design and provide educational
21 enrichment programs and activities that build strong
22 connections for Hawaiian students and their families
23 in learning their language and culture and in
24 endeavoring to higher educational aspirations and
25 achievement.

1 Through this effort and other similar
2 efforts, the Native Hawaiian population of Hawaii
3 will become increasingly represented in occupations
4 and roles that contribute significantly to the
5 growth and development of the community, the State
6 of Hawaii, and the nation. The Na Pua No'eau
7 curriculum model is designed to optimize learning
8 for Hawaiian students. It builds upon the assets of
9 students, provides activities in an authentic
10 learning environment, promotes hands on experiences,
11 and all within a Hawaiian context.

12 Today program models like Na Pua No'eau
13 are referred to as Hawaiian culture based programs.
14 Na Pua No'eau has hired hundreds of teachers over
15 the years ranging from medical doctors, astronomers,
16 scientists, geologists, marine scientists, cultural
17 specialists, practitioners and so forth. The
18 students have stated that having exposure to the
19 wide variety of teachers opens the possibilities of
20 educational and career goals far beyond what they
21 may have thought about otherwise.

22 Students have also stated that
23 participating in Na Pua No'eau gives them a stronger
24 sense of their identity as Hawaiians. Na Pua No'eau
25 connects the learning experiences to the students as

1 a means to provide a deeper understanding and
2 commitment to the ideas being taught. The Na Pua
3 No'eau teachers design their curriculum based on the
4 Na Pua No'eau model and best instructional
5 strategies for engaging Hawaiian students. It is
6 essential that programs for Hawaiians continue.
7 Currently, this model and successful practices
8 designed for Hawaiians do not exist in regular
9 public education for Hawaiians.

10 HEARINGS OFFICER LILY: I am going to
11 have to ask you to wrap up.

12 DR. SING: The Akaka Bill recognizes the
13 inherent right that all people have with respect to
14 being educated in the context of their own culture,
15 history, and language, and be taught using those
16 practices that optimize learning and potential. The
17 Akaka Bill protects these rights of the indigenous
18 people of Hawaii. Mahalo.

19 HEARINGS OFFICER LILY: Mahalo.
20 Dr. Sing, we will be in Hilo on September 10th. On
21 September 10th we are going to have a public open
22 session.

23 DR. SING: I didn't know that. I flew
24 here thinking that this is the only opportunity --

25 HEARINGS OFFICER LILY: Okay, perhaps we

1 will see you on September 10th. We just passed that
2 last week.

3 DR. SING: Okay, thank you.

4 HEARINGS OFFICER LILY: Thank you,
5 Aloha.

6 Is it Dr. Verlie Malina-Wright,
7 VerlieAnn?

8 DR. MALINA-WRIGHT: Aloha.

9 HEARINGS OFFICER LILY: Aloha.

10 DR. MALINA-WRIGHT: I want to apologize
11 for my students who had to leave. Those are Na Koa
12 Warriors of Ke Kula Kaiapuni 'O Anuenue. It gives
13 us an opportunity to teach our students civic
14 lessons and how difficult sometimes it is to get
15 self-determination and sovereignty.

16 I have with me today also Kapua Medeiros
17 who will testify after me and her daughter Ke'alohi
18 Medeiros, but we are going to do it ohana style as a
19 group, and so I will defer first to the ohana.

20 HEARINGS OFFICER LILY: And state your
21 name for the record as well.

22 MS. KAPUA MEDEIROS: My name is Kapua
23 Medeiros. I am a parent at Anuenue School or Ke
24 Kula Kaiapuni 'O Anuenue Hawaiian Language Immersion
25 School. My daughter Ke'alohi Nani has been there

1 for thirteen years. Actually, fourteen years in the
2 program, but at Anuenue for eight years, I think.
3 No, that's six years. But anyway she has been in
4 the program for fourteen years from preschool.

5 That education that was afforded her is
6 something that has helped her to be in touch with
7 who she is, to gain self-esteem and self-respect, to
8 allow her to step out into the world and take on
9 many challenges that she may not have been able to
10 take on. Meaning if she had been just a child,
11 another child at another public school, and she can
12 talk about that, but for me as a parent, the
13 importance of people like Dr. VerlieAnn who
14 consistently fight for our Native Hawaiian rights to
15 allow our children, children who may not otherwise
16 be afforded opportunities and opportunities well
17 deserved and actual rights, their inherent
18 birthrights that they deserve to experience, to
19 achieve, things that need to be there in place for
20 our children, our keiki kanaka malo Hawaii.

21 I am in support of Native Hawaiian
22 education, Native Hawaiian housing, Native Hawaiian
23 rights. Mahalo.

24 HEARINGS OFFICER LILY: Mahalo.

25 MS. KE'ALOHI MEDEIROS: Aloha. My name

1 is Ke'alo'hi Medeiros, and I am a senior at Ke Kula
2 Kaiapuni 'O Anuenue. As my mother has said, I have
3 been in the program for fourteen years since
4 preschool, and I think that it is very important for
5 me to be here today to let you know that I think
6 that it is very important that I have had the
7 education, the Native Hawaiian education and the
8 language because it is important to me that our
9 culture has its own -- sorry, excuse me.

10 It's important to me that we have a
11 Native Hawaiian Nation, and as my mother has already
12 said, self-determination is a key (inaudible).
13 Mahalo.

14 DR. MALINA-WRIGHT: Thank you. You
15 know, they are nervous, but this is how you build
16 capacity among your youth and ohana. Aloha, my name
17 is Dr. VerlieAnn Leimomi Kapule Malina-Wright.

18 I say aloha to my ohana Kawena. You
19 know, we believe in relationships which is so
20 interesting because Kawena, of course, benefited
21 from the knowledge of my tutu Helena Kapaka on
22 Kauai. Also, Mr. Char, while he was at Harvard also
23 was on the shortwave radio with my father-in-law,
24 Dr. George Wright. So you never know where your
25 relationships exist, and as I give my presentation,

1 of course, Linda Colburn, I knew her when she was
2 very young, and I was just starting my career. Of
3 course, Jimmy played with my ohana Kapule in Kauai,
4 and I bet you in our past history, civil rights was
5 not an issue.

6 However, I am the daughter of David
7 Kapule Malina and Belle Waiiau Kanoho Malina of
8 Huleia, Kauai. This is my fortieth year in
9 education, and I have had the opportunity to service
10 the needs of our children and adults throughout the
11 private and public school systems in Hawaii. I am
12 Native Hawaiian, and I currently serve as President
13 of the National Indian Education Association.

14 I think this committee could benefit
15 from Indian 101. On behalf of the National Indian
16 Education Association, the oldest and largest native
17 education organization representing American
18 Indians, Alaskan Natives, and Native Hawaiian
19 educators and students, thank you for the
20 opportunity to submit testimony to the Hawaii
21 Advisory Committee of the US Commission on Civil
22 Rights.

23 Founded in 1969, NIEA is the largest
24 organization in the nation dedicated to native
25 education, advocacy, and professional development

1 issues and embraces a membership of over 3,000
2 American Indians, Alaskan Natives, and Native
3 Hawaiian educators, tribal leaders, school
4 administrators, teachers, parents, and students.
5 NIEA collaborates with all tribes to advocate for
6 the unique educational and cultural related academic
7 needs of native students and to insure that the
8 Federal government upholds its responsibility for
9 the education of American Indians, Alaskan Natives,
10 and Native Hawaiian peoples.

11 NIEA also supports Federal recognition
12 for the Native Hawaiian people through S 310 Native
13 Hawaiian Government Reorganization Act of 2007. The
14 purpose of this act is to provide a process for the
15 reorganization of the special political and legal
16 relationship between the United States and the
17 Native Hawaiian governing entity for the purposes of
18 continuing a government to government relationship.

19 Having heard some of the information
20 that Mr. Clegg has shared, I can only say that we
21 don't want him speaking for Hawaiians. We want to
22 speak for ourselves.

23 NIEA continues to support the United
24 States and the political and legal relationship that
25 Congress possesses the authority under the

1 Constitution to address the conditions of Native
2 Hawaiians, which includes promoting the welfare of
3 Native Hawaiians. Today I am before you to share my
4 mana'o or thoughts regarding not only the support of
5 NIEA for the Native Hawaiian people in their
6 inherent right of self-determination and
7 self-governance but simply as kanaka oiwi, Native
8 Hawaiian.

9 HEARINGS OFFICER LILY: I have to ask
10 you to wrap up your mana'o.

11 DR. MALINA-WRIGHT: Okay, I think it is
12 really important since this type of testimony hasn't
13 been given is that I want to share with you the
14 importance of Hawaiian traditions at kaiapuni or
15 language immersion schools. We teach our children
16 three milestones to learn about their malus and
17 their piko and their honua. Malus is yourself, your
18 energy, your well-being. Piko are your ancestral
19 knowledge and your genealogy and for future
20 generations not born. Honua is your sacred land,
21 and not any piece of land but your place of land, so
22 for me it is Huleia.

23 We also teach our students seven
24 pathways, and I am going to wrap it up with the
25 seven pathways because it is important for this

1 commission to understand who we are as a native
2 people: 'Ike honua, the value of place; 'ike
3 ho'oko, the value of applied achievement; 'ike
4 kuana'ike, the value of cultural perspective; 'ike
5 malus lahui, the value of cultural identity; 'ike
6 na'auao, the value of intellect; 'ike piko'u, the
7 value of personal identity; and 'ike pilina, the
8 value of relationships.

9 It is the generosity of our ancestors,
10 the graciousness of my mother in trying to teach me
11 what local maika'i is. It is our generosity that
12 subjugates us sometimes to people who think they
13 know better than we do. We are the ones who will
14 determine our own self-determination and
15 sovereignty, and we ask you to authorize and support
16 Senate Bill 310.

17 HEARINGS OFFICER LILY: Mahalo, mahalo.

18 We are going to stop here for ten
19 minutes, I want to take a ten-minute break, and when
20 we come back in a prompt ten minutes, Faye Kennedy,
21 David Rober, Lanny Sinkin, Donald Moody, and Toby
22 Kraver will be the next up, so ten minutes.

23 (Recess was taken.)

24 HEARINGS OFFICER LILY: We are running
25 out of time, and it's not only time for the people

1 in the audience, but the court reporter too. We
2 have a deadline of six o'clock, but we can take
3 testimony on September 12th on Oahu, so there is
4 plenty of time for those who can't appear here this
5 evening, and also we will take any written testimony
6 as well, so we really need to move on, and I am
7 being encouraged by members of the public and also
8 members of the committee that I have to be more of
9 an ogre, so I am going to have to limit people to
10 the three minutes, and I am going to give a thirty
11 second warning, and then I am going to have to cut
12 you off because members of the audience want to
13 testify. They don't want to have to -- they want to
14 be able to testify, so let's move it along.

15 Faye Kennedy? Faye Kennedy is not here.
16 David Rober? David Rober? David Rober? Lanny
17 Sinkin?

18 Thank you, Mr. Sinkin.

19 MR. SINKIN: Aloha, members of the
20 Advisory Committee. My name is Lanny Sinkin.
21 Within the United States, I am an attorney licensed
22 by the State of Texas and admitted to the Federal
23 bar in Hawaii. I made arrangements to come over
24 from Hilo today before learning of your other
25 hearing. Within the Kingdom, I serve as Ali'i

1 Mana'o Nui to Ali'i Nui Mo'i Edmund Keli'i Silva,
2 Jr.

3 The debate you had today or presentation
4 was between two attorneys who do not support
5 restoring the independent nation of Hawaii. The
6 debate was whether the denial of a restored nation
7 should be pursued through creation of a reservation
8 or continued assimilation. Where was the voice for
9 the national independence perspective?
10 Decolonization is not succession. Why does your
11 debate revolve around a meaningless term like race
12 or ethnicity? Because focusing on race permits
13 ignoring the real issue of nation.

14 The issue is and always has been that a
15 handful of people determined to improve their
16 personal economic situation by annexing Hawaii to
17 the United States overthrew the legitimate
18 government of the Kingdom with the assistance of
19 United States Government officials. The Ku'e
20 petition signed by tens of thousands of Hawaiians
21 rejected annexation. The United States ignored the
22 illegal nature of the overthrow and the wishes of
23 the Hawaiian people by making Hawaii a state.

24 The subjects of the Kingdom included
25 people from a wide variety of backgrounds. There

1 are serious due process and equal protection issues
2 raised by the Akaka Bill's exclusion of those
3 descendants of Kingdom subjects who are not of
4 indigenous Hawaiian ancestry and who will not,
5 therefore, qualify to partake of the Akaka Bill
6 benefits, nor does the Akaka Bill provide the
7 restoration of an independent nation as called for
8 under international law.

9 While I respect those supporting the
10 bill as the best they can get under difficult
11 circumstances, the Akaka Bill will lead to
12 interminable litigation and endless negotiation.
13 The bill is a Judas goat leading into a corral where
14 butchers await, some sitting on this very committee.

15 I urge you to oppose the Akaka Bill
16 solely because this bill does not truly address the
17 wrongs that need be made right. I urge you to
18 instead recommend that a dialogue be initiated to
19 pursue a peaceful transition process that ends with
20 the Kingdom restored to its rightful place in the
21 community of nations.

22 I also speak today for the Temple of
23 Lono. As a practitioner and under the direction of
24 the Kahuna Nui of the temple, I urge you to look
25 beyond the nationhood question to the roots of the

1 civilization that existed prior to European
2 settlement --

3 HEARINGS OFFICER LILY: Third seconds.

4 MR. SINKIN: -- and the accompanying
5 proselytizing by the missionaries. At the roots,
6 you will find a highly developed spiritual system
7 that suffered suppression and loss of its land base
8 when the missionaries convinced the leadership of
9 the Kingdom to convert and persecute the traditional
10 practitioners. Today, sacred sites are under the
11 control of park rangers and private hotel owners.

12 If you are looking for civil rights
13 issues that exists in Hawaii, then acknowledging the
14 need to restore access by traditional practitioners
15 to their temples, their control of their sacred
16 sites and their right to practice as they see fit is
17 an issue you should be looking at. Thank you very
18 much.

19 HEARINGS OFFICER LILY: Thank you. You
20 know we will be in Hilo on the 10th of September?

21 MR. SINKIN: Yes.

22 HEARINGS OFFICER LILY: Okay, thank you.
23 The next in order will be Donald Moody, Toby Kravet,
24 Hauloia, and then Poka Laenui, and Jim Growney. So
25 the next one in order is Donald Moody. Are you

1 here? Donald Moody? Toby Kravet? Kravet?

2 MR. KRAVET: Kravet.

3 HEARINGS OFFICER LILY: Kravet? I
4 apologize for my pronunciation.

5 MR. KRAVET: Kravet.

6 HEARINGS OFFICER LILY: Kravet.

7 MR. KRAVET: Aloha, my name is Toby
8 Kravet, and unlike Attorney General Bennett who said
9 that he was part Polish Jew and part Russian Jew, I
10 am one hundred percent Russian Jew. I am 66 years
11 old, a retiree from the City and County of Honolulu,
12 and have been a taxpayer and a voting citizen of the
13 State of Hawaii since age 29 in 1970. I have lived
14 here for over half of my life, and my closest living
15 relatives are spread all over the map. My friends
16 and support systems are here. I no longer have a
17 home or an extended family in Massachusetts where I
18 was born and raised, and nowhere else to reasonably
19 go.

20 Therefore, I have a large stake in
21 assuring that Hawaii continues to resemble the
22 relatively peaceful melting pot of ethnicities in
23 which I feel most comfortable, and the question of
24 affordable now does not become suddenly more
25 expensive because of a financial drain on the State

1 and County which could very likely result in the
2 establishment of a new ethnically exclusive Hawaiian
3 government.

4 I don't want to experience the ethnic
5 divisiveness that I feel would result from the
6 creation of a new government whose citizens have
7 privileges such as tax savings or exclusive laws and
8 legal protections that are based on ethnicity and
9 not enjoyed by the rest of the Hawaii community. I
10 don't want to have to travel to the Native Hawaiian
11 enclaves to do my shopping because my neighborhood
12 stores have been forced out of business or relocated
13 to the enclaves due to the reduced tax benefits
14 offered by the native government. I don't want to
15 have to pay more income in usage taxes to the State
16 and the City because of their need to replace lost
17 revenue.

18 We don't really know all of this would
19 happen. We don't know what would happen. The Akaka
20 Bill only starts the process to created the
21 government and states that an as yet unspecified
22 amount of land and other unnamed assets will be
23 transferred from the State and the Federal
24 government upon creation. It's a pick and a poke.
25 Everything is negotiable, and we don't know what

1 will ultimately be put on the table. If based on
2 history this was the right thing to do, I would say
3 let the chips fall, but it's not.

4 Hawaii had already become integrated,
5 though barely so, when Kamehameha The Great
6 completed his unification of the islands in 1810,
7 and Kamehameha the Third thirty years later declared
8 that anyone could become a citizen of the nation
9 based on fulfilling a residency requirement and
10 signing a loyalty oath. The Native Hawaiians
11 themselves decided on nationality versus ethnicity
12 as the basis of citizenship, and we should not
13 dishonor that choice by now authorizing a creation
14 of the type of government which never existed.

15 Rather, we should look at what provided
16 the initial impetus for the Akaka Bill. It was a
17 loss of socioeconomic improvements and other
18 programs targeted to benefit Hawaiians in the face
19 of legal challenges to the constitutionality of
20 those progress. If Hawaiians were to establish a
21 government resembling that of an Indian tribe which
22 would then enjoy a government to government
23 relationship with the United States, those programs
24 could overcome the constitutional challenges.

25 In my opinion and my work experience

1 with government funding of social educational and
2 health related programs targeted to people in need
3 regardless of ethnicity, we might see that at the
4 very least some of those programs operated
5 exclusively for Hawaiians actually duplicate what is
6 or could be made available without ethnic
7 restrictions on recipients.

8 HEARINGS OFFICER LILY: Thank you,
9 Mr. Kravet, thank you.

10 MR. KRAVET: Thank you. There is no
11 need to create a new government. Thank you.

12 HEARINGS OFFICER LILY: Thank you. The
13 next is Hauloia? Hauloia? Poka Laenui?

14 MR. LAENUI: Laenui, Laenui.

15 HEARINGS OFFICER LILY: Laenui, okay.

16 MR. LAENUI: (Speaks in Hawaiian.) I am
17 Poka Laenui, also known as Aiden Burgess to others
18 of you. I have sat here listening with great
19 interest, and I want to make four points, provided I
20 have enough time.

21 First point, the question, who are the
22 indigenous people? How do you define them? The
23 international community has tried to address that
24 very basic question: How do we include these
25 people, those people, other people who came in

1 afterwards and the rest? The international
2 community has said let the indigenous people define
3 themselves. Okay, but it still doesn't answer the
4 question who are the indigenous people to define
5 themselves?

6 The United States Congress in the bill
7 is attempting to say, and hopefully it passes, that
8 we shall use a date in time, 1778, at the coming of
9 James Cook. Other people are saying, no, no, no,
10 bad idea. Let's use about the 1800s when Kamehameha
11 united the islands. Other people are choosing
12 instead 1840, the beginning of the constitutional
13 monarchy. Others are saying, well, why not go up to
14 1893? Others are saying why stop there? Let's go
15 up to 1900 or maybe even 1959, as somebody is trying
16 to make Ken Conklin an indigenous Hawaiian simply
17 because he lives in Hawaii.

18 The question is not what you would
19 rather have as an appropriate date but whether or
20 not the United States Congress has a constitutional
21 right to set that date, and under section eight of
22 article one, obviously they have the right to
23 establish laws appropriate to carry out their
24 mission in terms of the Commerce Clause especially.

25 Now, some people are saying how could

1 they be indigenous people if they don't have an
2 organization, they are not a government function,
3 they have not continuously acted as a government?
4 The estoppel theory applies. The government itself
5 which caused the destruction of the continuity of
6 those people can not now raise the argument that
7 because we have been so successful in destroying
8 you, you can not now claim to be an indigenous
9 people, as Mr. Bennett was absolutely appropriate in
10 saying. It is simply not a --

11 HEARINGS OFFICER LILY: Listen, I asked
12 that we have no outbursts. Everybody's testimony is
13 important. I want to hear it all, and let's reserve
14 the public reaction.

15 MR. LAENUI: That was forty seconds,
16 yeah?

17 HEARINGS OFFICER LILY: I didn't take
18 that away from you. I got my boss over here keeping
19 time.

20 MR. LAENUI: Okay, just to let you know.

21 Now, the idea is what are we looking at?
22 Oftentimes, I am hearing that we are looking at this
23 Hawaiian race as opposed to the haole race, the
24 Japanese race, the Chinese race, race, race, race,
25 race. As long as you leave it in a categorization

1 of race, of course, the Hawaiian race is just like
2 any other race, but you are looking at the wrong
3 category. The US Congress is mandated to take a
4 look at --

5 HEARINGS OFFICER LILY: Thirty seconds.

6 MR. LAENUI: Take a look at tribes, take
7 a look at indigenous people as opposed to migrant
8 population. It's not an issue of race. The
9 dichotomy is indigenous or first peoples as opposed
10 to other peoples. You need to change that framework
11 in order to deal appropriately with the issue now
12 before you. If you hang on to race, you are in the
13 wrong ball field.

14 The third point, and I will make that my
15 last point, this idea of anticipatory acts which may
16 not be favorable to the Hawaiian State or to the
17 United States about the civil and criminal laws, who
18 is going to represent these people? All of these
19 other problems that may arise as a result of the
20 passage is not your kuleana. It's not your
21 competence to look into those questions.

22 The only kuleana you have is whether or
23 not it discriminates according to those particular
24 areas that you are well aware of, and to argue any
25 other question is beyond your competence, and you

1 should not be fooling around with it. Thank you
2 very much. Aloha.

3 HEARINGS OFFICER LILY: Thank you.

4 Okay, you can certainly clap after
5 somebody has testified, but let's hold the reaction
6 while someone is testifying.

7 Okay, the next one is Jim Growney,
8 Michael Kioni Dudley, Ken O'Keefe, Georgette Hugho?

9 UNIDENTIFIED SPEAKER: It should be
10 Henry Noa.

11 HEARINGS OFFICER LILY: Okay, Henry Noa,
12 got it. Those are the next in order, so Jim
13 Growney, are you here? Michael Kioni Dudley? Okay.
14 Ken O'Keefe?

15 MR. O'KEEFE: Yes.

16 HEARINGS OFFICER LILY: Okay, Ken
17 O'Keefe, and Henry Noa will be next followed by Rick
18 Gregg. Okay, thank you.

19 MR. O'KEEFE: I would like to speak to
20 the importance of this issue that you are
21 considering with regard to what is a citizen?
22 Because the last gentleman sort of hit on it a
23 little bit, you are off -- you are in the wrong
24 ballpark with the whole race question. That is not
25 the issue.

1 The question is a matter of citizenship?
2 Now, fortunately, many kanaka maoli might not like
3 to hear this, but unfortunately, with the injustice
4 of the overthrow, every kanaka maoli who has become
5 a Hawaiian part -- a Hawaiian national and was
6 converted into a US national. That is what happened
7 here. You were naturalized as a US citizen upon
8 that event --

9 UNIDENTIFIED SPEAKER: That's
10 naturalizing.

11 MR. O'KEEFE: It was not voluntary. It
12 happened to you. Until you distinguish yourself,
13 redistinguish yourself, you are still a US citizen,
14 and it may be of kanaka maoli ancestry, but
15 nonetheless, you are a US citizen, and under the
16 terms of citizenship, you are in a contract, and
17 under that contract you are compelled to pay taxes
18 to the United States. You are also compelled to
19 subject yourself to their laws. If the United
20 States wishes to continue to carry out wars in this
21 world, perhaps they may reinstitute the draft, and
22 you may be called to fight for the United States and
23 its imperial endeavors. These are part of the terms
24 of the contract as a citizen.

25 I myself have renounced my US

1 citizenship, and I have done so after having served
2 as a US Marine and having been a participate in the
3 Gulf War, the first one. In that war, my nation,
4 who called me a hero while I was involved in that,
5 also gave me experimental drugs. They didn't tell
6 me that they were experimental. They ordered me to
7 take those drugs, and that is how they treat their
8 own citizens.

9 Kanaka maoli who do not acknowledge or
10 recognize the history of the United States are
11 playing a fool's game. I feel sorry for you. I
12 know it is a tragic fact, a realty that oftentimes
13 the oppressed adopt the culture of the oppressor,
14 and it seems as if many kanaka maoli have adopted
15 the culture of the oppressor, and this is tragic
16 because your culture is so much more, so much more
17 than that. Do you really want to be involved in the
18 game of American imperialism? Do you really want
19 the bone that they are throwing to you? Is that
20 really what you want?

21 Your queen was a Hawaiian national.
22 Others of her time were Hawaiian nationals. You, if
23 you want what your queen wanted, if you want what's
24 best for Hawaii, you should be a Hawaiian national.
25 Believe it or not, I am a Hawaiian national. It's

1 not about race, is it? Because I have no allegiance
2 to the United States. I want no part in its
3 imperial endeavors. I wish no part in any more of
4 its mass murders. Iraqi freedom, what a joke. I
5 want no part of any of that.

6 And Hawaii should be a free Hawaii once
7 again, and all of the weapons that America has here,
8 nuclear weapons, all of these weapons, take them
9 back home. Take them back to your mainland, and let
10 the people of those lands fight for those lands back
11 as well. This is not America. And when this world
12 is just again, if ever it will be, this place will
13 be a free Hawaii, and America, goodbye to you.

14 HEARINGS OFFICER LILY: Thank you,
15 Mr. O'Keefe. Henry Noa? Henry Noa?

16 MR. NOA: Aloha. My name is Henry Noa.
17 I object to the Akaka Bill because the bill implies
18 that the Native Hawaiian people are indigenous to
19 the United States of America when, in fact, the
20 Hawaiian people are not or do not come from either
21 the north or south continent of the Americas. We
22 are aboriginal people, not indigenous to the United
23 States. Yet the Akaka Bill continues to infer that
24 we are. We are located north of the equator in the
25 Hawaiian archipelago, and we have been here since

1 time immemorial. Our genealogy dates back far
2 beyond your existence.

3 Therefore, the so-called legal language
4 used in the Akaka Bill claims that the Native
5 Hawaiian people are indigenous to the United States
6 and that the special status of the Native American
7 Indian tribes extends to the Native Hawaiian. This
8 claim is purely false and deceptively infers and
9 assimilates the Native Hawaiian people possess the
10 same special status as Native American Indian
11 tribes.

12 According to the US Constitution,
13 article two, section eight, clause three, that
14 states towit, the Congress shall have power to
15 regulate commerce with foreign nations and among the
16 several states and with Indian tribes. This
17 language, this law is clear and unambiguous. First
18 of all, when this was written, the Hawaiian Kingdom
19 existed while this language was being written, so if
20 they had any intent to include Hawaiians, we would
21 have been listed into the Constitution. The above
22 constitutional law confirmed that the Indian tribes
23 possessed a status distinct from foreign nations and
24 several states of the Union --

25 HEARINGS OFFICER LILY: You have thirty

1 seconds.

2 MR. NOA: -- and this infers that the
3 Native Hawaiian people possess a similar status, it
4 is a travesty and mockery of the United States
5 supreme law of America, the Constitution.

6 In the United States history and US
7 Public Law 103.150, it confirms that the Native
8 Hawaiian people belong to the Kingdom of Hawaii, a
9 separate sovereign nation, clearly identifies that
10 the Hawaiian people were never indigenous to the
11 United States. This type of action has actually
12 influenced an agency to openly challenge --

13 HEARINGS OFFICER LILY: Thank you.

14 MR. NOA: -- the powers of the United
15 States by declaring a change in their identity from
16 State Council of Hawaiian Homestead Associations;
17 two, Sovereign Council of Hawaiian Homestead
18 Association. It was always my understanding that
19 the United States Government is the sovereign over
20 all its government agencies, and there are no
21 equals.

22 Apparently, the new officers of the
23 Sovereign Council of Hawaiian Homestead Association
24 believe otherwise and have actually executed the
25 change. I hope that this committee will look into

1 the matter and report on their conduct to the US
2 Attorney General.

3 In closing, I would like to state that I
4 object to the Akaka Bill as an individual and also
5 as a part of the reinstated Hawaiian Kingdom
6 government. Thank you.

7 HEARINGS OFFICER LILY: Mahalo, thank
8 you very much.

9 All right, Rick Gregg, Rick Gregg
10 followed by David Inciong. Is Rick Gregg here?
11 David Inciong? Hinaleimoana Wong? Susan Yates?

12 Sir, were you one of the people I
13 called?

14 MR. INCIONG: Yes.

15 HEARINGS OFFICER LILY: Step forward.
16 You are up.

17 MR. INCIONG: All right, mahalo. Aloha
18 kakou. I am Kane, also known as David Michael
19 (inaudible) Inciong, II.

20 It appeared from the beginning that when
21 they made the replacements on the committee that
22 this was pretty much a biased stacked deck from the
23 Federalist society mind set, so I know at least 80
24 percent of you are positioning yourself as this
25 being a racist thing.

1 There is still a faction of Hawaii
2 nationals that have not been heard, and their voices
3 have been shunned by the US corporate media, US
4 Americans, and Congress. While the US Americans
5 bicker on the pros and cons of the Akaka Bill within
6 the context of the US domestic internal box, they
7 need to hear from the Hawaii nationals who are
8 defending their nation. So here we are, the Hawaii
9 nationals, spoken in the context of the third
10 person. You assuming that we are complying with the
11 US agenda, its definitions, and fitting into its
12 nefarious box.

13 So to understand our position, the issue
14 of succession is ludicrous when there was no legal
15 or lawful session. The White House press secretary
16 Snow already clarified that resolutions are
17 non-binding, merely a wish list, thus the Newlands
18 resolution is non-binding according to him. The
19 fact that they are international violations and
20 irregularities with the statehood voting process
21 make Hawaii statehood null and void.

22 Now, going back further, we know of the
23 covert and overt activities manipulated by the US
24 Government and its agents, the suppression of the
25 people's mandate through the Ku'e petition as a form

1 of plebiscite or referendum. The invasion conducted
2 by the US as a fake revolution and the belligerent
3 occupation ongoing until today, we know it is more
4 than the aberrant few overzealous American
5 businessmen, but a US government sponsored takeover
6 breaking all of its treaties. Their ploy was not to
7 set a precedent, but it did anyway.

8 The fact that the US Kingdom -- the
9 Hawaiian Kingdom still exists with its external
10 sovereignty already recognized, albeit under the US
11 belligerent occupation which still disregards
12 Hawaii's neutrality status --

13 HEARINGS OFFICER LILY: Thirty seconds.

14 MR. INCIONG: -- the US continues to
15 violate the laws of occupation, the laws of
16 neutrality, and ignores the voice of the people.

17 The Akaka Bill is a domestic instrument,
18 and OHA is a US internal agency which does not have
19 the right to usurp the Hawaiian Kingdom's
20 jurisdiction nor its government which is in a long
21 extended recess. The sovereignty groups are merely
22 national political parties all juggling for a
23 position under the Hawaiian Kingdom's umbrella, and
24 what's wrong with the bill to the Hawaiian national
25 looking from the outside in?

1 HEARINGS OFFICER LILY: Time's is up.

2 MR. INCIONG: To name a few is the
3 wording and intent of the bill. We're cognizant of
4 the US historical scurrilous behavior against Native
5 Americans and to recognize or reverse recognition of
6 them, the disparity of definition of a nation, the
7 Congress plenary authority over indigenous
8 aboriginal people, so why give up the whole pie just
9 to receive the crumbs and to be subjugated under a
10 foreign entity?

11 The content of the Akaka Bill is
12 obfuscating, repugnant, and seditious, and I as a
13 Hawaii national will never accept it as the way it
14 is written.

15 HEARINGS OFFICER LILY: Okay, mahalo.

16 MR. INCIONG: Mahalo.

17 HEARINGS OFFICER LILY: Okay, thank you.

18 Next?

19 HINALEIMOANA WONG: (Speaks in
20 Hawaiian.)

21 HEARINGS OFFICER LILY: Thirty seconds.

22 HINALEIMOANA WONG: (Speaks in
23 Hawaiian.)

24 HEARINGS OFFICER LILY: Time is up.

25 HINALEIMOANA WONG: (Speaks in

1 Hawaiian.)

2 HEARINGS OFFICER LILY: Susan Yates,
3 Jack Miller, Jack Gillmar, is Jack Gillmar here?

4 MR. GILLMAR: Yes.

5 HEARINGS OFFICER LILY: Okay, Jack
6 Gillmar followed by Laura Thompson. Is there a Ken
7 O'Keith as opposed to a -- wait a minute. There is
8 a Ken O'Keith, and there is a Ken O'Keefe. That may
9 have been a misprint. Is there a Ken O'Keith?
10 Okay, so Laura Thompson will follow Jack Gillmar.
11 Thank you.

12 MR. GILLMAR: Commissioner, thank you
13 for having an open hearing. I appreciate having the
14 opportunity to speak, and I also appreciate hearing
15 my neighbors, and I loved that Hawaiian. It is so
16 lovely to hear it.

17 HEARINGS OFFICER LILY: Get a little
18 closer to your microphone.

19 MR. GILLMAR: Thank you. I am going to
20 present my take on this, and it may not be what
21 everybody would appreciate, but it is coming from my
22 heart. My name is Jack Gillmar. I am a retired
23 high school history teacher. I was born in Hawaii
24 under marshall law during World War II. Those of us
25 who have lived under marshall law appreciate the

1 full civil rights protection of the United States
2 Constitution. I was a high school student when
3 Hawaii achieved statehood in 1959 with virtually
4 unanimous support by Hawaii citizens. I was there,
5 I saw the festivities, and it was virtually
6 unanimous.

7 Hawaii once viewed itself as a racial
8 ethnic melting pot that, while not perfect, was a
9 model for the rest of the world and particularly our
10 country at that time with its segregation and so on.
11 We were a model for what could be, and I fear that
12 we are trying to split ourselves apart, and that
13 worries me.

14 I think we have entered now a well
15 intentioned but misguided effort to create a new
16 multi-ethnic exclusive one drop of blood Native
17 Hawaiian category that will be separating neighbors
18 from one another. This new exclusive group is
19 mostly made up of people with fractional shares of
20 native blood requesting special government
21 treatments. By fractional shares, we are talking
22 about one-eighth, one-sixteenth, one-thirty-second,
23 one-sixty-fourth native blood and so on, and I
24 believe this is a clear case of discrimination. I
25 don't think it could be clearer than that.

1 As a history teacher, I have taught the
2 US Constitution, and I have to agree with Mr. Clegg
3 who spoke earlier that I see the Akaka Bill as
4 unconstitutional. I see it creating false hopes for
5 my Hawaiian neighbors, and I fear that even if it is
6 enacted, it will be struck down, and that will
7 create greater resentment and hostility and further
8 divide our community.

9 I am in sympathy with those who are of
10 full or half native blood, our true Native
11 Hawaiians, who deserve our support in their cultural
12 modifications and transformations. It has obviously
13 not been easy for them, and they have still been
14 neglected. I regret that our territorial and State
15 governments have not fully implemented the hopes of
16 Prince Kuhio in the creation and the congressional
17 passage of the Hawaiian Homes Act.

18 HEARINGS OFFICER LILY: Thirty seconds.

19 MR. GILLMAR: While I do not support the
20 divisive Akaka Bill, I am willing to support the
21 full implementation of the Hawaiian Homes Act as a
22 still needed form of affirmative action for our few
23 remaining true Native Hawaiians as defined by Prince
24 Kuhio, Congress, and the State of Admission Act.

25 I think the issue that we are all

1 skirting here is broad quantum. Do we advance needs
2 and provide additional financial support to 200,000
3 partial Hawaiians, or do we address the serious
4 issues facing our true Hawaiians who really need the
5 help? When you are one-sixteenth Hawaiian blood,
6 how different are you from the local Japanese
7 Filipino girl in the hula halau? How divisive do we
8 wish to be?

9 HEARINGS OFFICER LILY: Thank you very
10 much. Laura Thompson followed by --

11 UNIDENTIFIED SPEAKER: She's gone.

12 HEARINGS OFFICER LILY: She's gone,
13 okay. Sol Naluai followed by Lela Hubbard and Moana
14 Sanders.

15 DR. NALUAI: Aloha. I am Dr. Sol
16 Naluai. I and my ohana are firmly against the Akaka
17 Bill. The Akaka Bill continues to employ US
18 domestic laws in its effort to cover up important
19 international issues, the issue of illegal overthrow
20 of our independent nation.

21 Historically, Hawaii is an
22 internationally recognized independent nation state
23 and was extended full and complete diplomatic
24 relations of equal status, having 25 foreign
25 consulates here in Hawaii, five from the US, 87 of

1 our consulates throughout the world, 10 in the
2 continental US, and 65 international treaties
3 worldwide, eight with the US, each extending peace
4 and friendship, all of which the US unilaterally
5 violated.

6 So the issue here then is the US
7 violation of international law when the US agents
8 conspired to deploy military forces with their
9 weapons of mass destruction to illegally invade,
10 overthrow, and occupy our national territories and
11 government dejour.

12 The Queen's protest to the US State
13 Department supported by the petition against
14 annexation lodged forever our vested interest in our
15 national lands and in our inherent first right to
16 our sovereign independence, neither of which was
17 ever relinquished to the United States.

18 These actions resulted in the Blunt
19 report and President Cleveland's statement to the
20 Congress as an illegal act of war, an illegal act of
21 war, by agents of the US without justification and
22 without authority of the US Congress upon a peaceful
23 and friendly nation.

24 The Akaka Bill wants us to subjugate
25 ourselves to become dependent welfare wards under

1 the US, under the control of the Secretary of the
2 Interior as our new ali'i nui having no choice in
3 its selection.

4 In summary, the Akaka Bill wants us to
5 trade our multi billion dollar sovereign nation in
6 exchange for token welfare handouts called Federal
7 entitlement. This is economic genocide. The
8 apology apologizes for the illegal overthrow, but
9 yet the US still continues to keep the stolen
10 property without full and complete restitution, and
11 this is political genocide. Where the apology law
12 apologizes for the illegal overthrow, the Akaka Bill
13 will legitimize that illegal overthrow, and this is
14 ethnic genocide.

15 In conclusion, my ohana and I will
16 accept nothing less than full and complete
17 restitution of our sovereign independent nation,
18 nothing more, but nothing less. Only then when
19 fully restored back to whole again, only then will
20 it become truly pono. Hui ke kakou. (Inaudible.)

21 HEARINGS OFFICER LILY: Mahalo.

22 MS. HUBBARD: Aloha. I am Lela Hubbard
23 of Na Kuai Ikaika, a family ohana which includes
24 some my hula sisters who are non-Hawaiians but are
25 supporters, and we oppose the Akaka Bill.

1 A number of Hawaiians, those who can
2 trace their roots prior to location of the Sandwich
3 Isles by Captain Cook, and those descendents of the
4 citizens of the Hawaiian Kingdom but not of Hawaiian
5 ethnicity oppose the Akaka Bill for reasons totally
6 different from your selected opponent who truly
7 represents racism under the guise of equality for
8 all.

9 We Hawaiian opponents wish the United
10 States to more than admit its wrongs against us. We
11 ask for the restoration of our nation which under
12 the law of nations and the UN charter was an illegal
13 taking. We do not want to be demoted to an
14 indigenous native nation, which is simply a way for
15 the United States to maintain its control of our
16 nation, and the United States all along opposed the
17 declaration of an indigenous rights in the UN. The
18 sovereignty of native nations in the United States
19 is limited. It's a farce.

20 Congress has the ultimate power, plenary
21 power. Congress should pass a simple resolution
22 recognizing the sovereignty of the Hawaiian Kingdom
23 and the right of its citizens to restore their
24 nation, to establish a government of their own
25 choosing. Moreover, the Office of Hawaiian Affairs

1 should be directed to truly educate the people of
2 Hawaii, and I mean all people, in these choices,
3 options for the form of our government nation to
4 nation under the US Constitution, independence, or a
5 compact of free association which our government
6 supports where we would still maintain a
7 relationship with the United States with whom we
8 would negotiate powers and responsibilities. It
9 would be shared powers, not dictated some powers.

10 Specifically, we oppose in the bill the
11 interim secretary deciding who should be in our
12 nation. That is our kuleana, our right. We have
13 the right, moreover, to decide whether we will have
14 gambling in our nation or not.

15 HEARINGS OFFICER LILY: Thirty seconds.

16 MS. HUBBARD: We are horrified that
17 military lands will not be touched. Since when is
18 the Department of Defense in the business of
19 providing travel and rec for military retirees,
20 which are the bulk at Hale Koa? Five acres there
21 are ceded lands, government, and crown lands taken
22 by the United States at the time of the annexation
23 under the Newlands Resolution.

24 The military occupies unnecessarily
25 lands that are needed by the rest of the residents

1 in the State of Hawaii. We particularly resent the
2 building at Bellows Beach, residential as well as
3 the impending play village for war games, a ploy to
4 show that there is a need for the military to keep
5 that beach area -- which has wonderful cabins by the
6 way fully furnished for the generals, et cetera --
7 which one of their real estate people call the
8 second Waikiki.

9 HEARINGS OFFICER LILY: Time is up.

10 MS. HUBBARD: If we are going to give
11 our lands with impunity, then let's give them out to
12 our other protectors, our Honolulu Police Department
13 and the Fire Department.

14 The military lands should be closely
15 scrutinized. We do not make or put down the
16 military which do help us and protect us, but their
17 arm here is too long in a land where land is
18 limited, and the majority of the residents are
19 suffering by these unnecessary military takings.

20 Furthermore, the United States needs to
21 rebuild its public image. Our solitary incursion in
22 Iraq was a diplomatic faux --

23 HEARINGS OFFICER LILY: I really need
24 you to wrap up, please. We have lots of people
25 here, and we are going to run out of time.

1 MS. HUBBARD: Okay, the United States is
2 as guilty of swallowing up nations as the Soviet
3 Union was in squelching the sovereignty of the
4 nations behind its iron curtain. In bringing
5 justice to Hawaiians by recognizing our rights to
6 true nationhood, the United States may once again
7 retrieve its positive image. Mahalo.

8 HEARINGS OFFICER LILY: Thank you,
9 mahalo. Next please, followed by -- and I really
10 apologize for some of these names -- Charlene
11 Cuaresma? Jake Manegdeg, Diane Espinas, and Cynthia
12 Thomas. This is handwritten by a doctor, so -- no.

13 Yes, ma'am.

14 MS. SANDERS: Aloha.

15 HEARINGS OFFICER LILY: Aloha.

16 MS. SANDERS: My name is Moana Sanders,
17 and I am President of the Pearl Harbor Hawaiian
18 Civic Club. Thank you for this opportunity during
19 your open session to express our organization's
20 support for Federal recognition as a tool to insure
21 the protection of Native Hawaiian civil rights.

22 The Pearl Harbor Hawaiian Civic Club is
23 a member of the Association of Hawaiian Civic Clubs,
24 and we also strongly support the Federal recognition
25 bill now before Congress. Our members include

1 Hawaiians and non-Hawaiians, student and retirees,
2 entrepreneurs and traditional cultural
3 practitioners, and Federal recognition will have a
4 profound impact on each one. This legislation is
5 our opportunity to uphold our civil and political
6 rights.

7 In the past ten years, we have actively
8 supported Federal recognition and
9 self-determination. Since our club's establishment,
10 protection of Native Hawaiian culture as well as
11 existing Native Hawaiian programs that preserve our
12 culture is critical for future generations. We also
13 affirm that these programs do not infringe upon the
14 civil rights of others.

15 The Native Hawaiian Government
16 Recognition Act of 2007 is the most significant
17 piece of legislation with potentially the most
18 profound impact on the civil rights of the Native
19 Hawaiian community. Ultimately, Federal recognition
20 is about Native Hawaiians having an opportunity to
21 achieve self-determination and Native Hawaiians
22 making decisions about our resources, programs, and
23 our future.

24 Mahalo nui for your consideration of
25 this important issue.

1 HEARINGS OFFICER LILY: Mahalo.
2 Charlene Cuaresma, she is not here. Jake Manegdeg.
3 Pardon the pronunciation. Diane Espinas. Cynthia
4 Thomas, are you here? Lawrence Good? Wood?
5 Lawrence Wood? Momi Cazimero, are you still here?
6 Momi? No? Malcolm Kirkpatrick? Mahealani Wendt?
7 Mahealani followed by David Peters.

8 MS. WENDT: Aloha, and thank you for
9 this opportunity to offer comments regarding Federal
10 recognition for Native Hawaiians. Before I go any
11 further, I would like to say my testimony is
12 absolutely in support. My name is Mahealani Wendt,
13 and I am the executive director of Native Hawaiian
14 Legal Corporation, and HLC is a public interest law
15 firm whose mission is to assert, protect, and defend
16 Native Hawaiian rights. I have been with the
17 organization for 33 years.

18 I have offered testimony on this subject
19 in the past before the US Commission on Civil
20 Rights, before the US Senate Committee on Indian
21 Affairs, before the US Consortium of Civil Rights
22 Organization, to many other groups on many other
23 occasions. I am appending some of those testimonies
24 for your further reference.

25 Today, I especially direct my testimony

1 to those of you who oppose Federal recognition of
2 Native Hawaiians. I simply want to say that it is
3 very hard to be a Hawaiian in Hawaii today, and it
4 would help a great deal if governments would
5 formally acknowledge that we are a people. It is
6 very hard to be a Hawaiian in Hawaii today. This is
7 our ancestral homeland. We are of this place and no
8 one else and nowhere else. In our ancestral
9 homeland, we are overwhelmed with unrelenting
10 challenges to our very existence as a people, to our
11 ability to be a people.

12 I don't understand how any human being
13 on the face of this earth can say that Hawaiians
14 don't exist as a people. I don't understand why
15 America's policy makers would want to orchestrate a
16 campaign to obliterate Hawaiians as a people. I
17 don't understand how any government can assert that
18 Hawaiians don't exist.

19 So I want to address you who say you are
20 friends but who sincerely believe that it is bad for
21 America for Hawaiians to be a people. I want you to
22 know that you are no friend to Hawaiians. If you
23 believe they do not exist as a people, your every
24 assertion that we do not exist as a people is an act
25 of genocide. We can not continue to exist as

1 Hawaiians under your program of assimilation.

2 What land, what nearly 300,000 acres is
3 militarized, used for war preparedness and bombing
4 practice? It is the land of our ancestral
5 homelands. And what land is being cleared and gated
6 to make way for luxury estates for millionaires from
7 the world over? It is the lands of our ancestral
8 homelands. What ocean waters are being polluted by
9 nuclear uranium waste?

10 HEARINGS OFFICER LILY: Thirty seconds.

11 MS. WENDT: It is the waters of our
12 ancestral homelands. What shoreline fisheries, what
13 reefs are being dynamited to create artificial
14 lagoons, resort developments for visitors? It is
15 the shoreline of our ancestral homelands. What
16 streams and rivers are being rerouted away from the
17 farmlands, the lo'i, of native communities for
18 commercial development by large corporations? The
19 streams and rivers of our ancestral homelands.
20 Whose traditional practices are being patented,
21 copyrighted, branded for commercial purposes for
22 sale to visitors here and abroad? The traditional
23 practices of the indigenous people of Hawaii --

24 HEARINGS OFFICER LILY: Time.

25 MS. WENDT: -- in their ancestral

1 homeland, and I will conclude, I won't go farther,
2 but you get the picture.

3 We in Hawaii, we the indigenous people
4 are the ones who have been lost, and I want to add
5 this. Whose bone fragments have been crushed by
6 earth moving equipment? Whose bones have been dug
7 up, dusted off, studied, exhibited, and probed?
8 Whose thousands of skeletal remains have been
9 disturbed and denied the right to a final resting
10 place as no other people? The bones of the
11 indigenous people of Native Hawaiians.

12 You have a copy of my testimony. It is
13 not a very long testimony beyond what I have shared,
14 but I want to get across the point that as
15 indigenous people we have lost the most, and we will
16 continue to lose the most unless you understand that
17 we are not asking for special treatment. We deserve
18 to exist as a people. Mahalo.

19 HEARINGS OFFICER LILY: Mahalo.

20 Okay, next is David Peters followed by
21 Roy Benham, Pono McNeil --

22 MR. WOODY: Excuse me, Chairman, did you
23 call my name, Lawrence Woody?

24 HEARINGS OFFICER LILY: Yes. Okay, I
25 will have you right after Mr. Peters.

1 MR. WOODY: Yes, thank you.

2 MR. BENHAM: I am older than he is. He
3 can follow me.

4 MR. PETERS: Aloha, Mr. Chairman and the
5 committee, I bid you aloha.

6 HEARINGS OFFICER LILY: Aloha.

7 MR. PETERS: Aloha no. My name is David
8 Peters, and I am here today as a concerned member of
9 the Hawaiian community to express a strong support
10 for the Native Hawaiian Government Reorganization
11 Act commonly known as the Akaka Bill. On August the
12 6th of this year, I retired after 29 years of
13 serving Queen Lienomalacia Trust, so I think I know
14 what Hawaiians feel, and prior to that I served
15 thirty years in the United States Army retiring as a
16 colonel with the First Brigade in Schweinfurt in the
17 Third Infantry Division.

18 I am not going to summarize my events,
19 but I want you to know I do support the Akaka Bill
20 for many reasons. I am not going to go into them
21 now because I have a copy of my testimony which I
22 will leave with you, but I will leave some time here
23 for my successor here, Colonel Woody. Thank you.

24 HEARINGS OFFICER LILY: Thank you. So,
25 Mr. Woody, are you up, Colonel Woody, or --

1 COLONEL WOODY: Yes, I think I am.

2 HEARINGS OFFICER LILY: -- did he
3 preempt you?

4 COLONEL WOODY: Do I have your
5 permission to go?

6 MR. BENHAM: No.

7 COLONEL WOODY: Respect for our kapunas.

8 HEARINGS OFFICER LILY: Mr. Benham?

9 MR. BENHAM: I followed David into high
10 school. I can follow him in here. My name is Roy
11 Benham. I am a Hawaiian activist, and this is a
12 civil rights commission thing, so forget about the
13 establishment of our sovereign race and whatever.
14 If you have ever gone to a meeting of Hawaiian
15 coalition where we try to talk about a process for
16 coming up with a governmental entity, you will hear
17 all of these same voices saying the same things
18 again.

19 Today we are talking about the Congress
20 recognizing the Hawaiian people, the Native Hawaiian
21 people as indigenous people, okay? That's what we
22 want to do, and that's what we hope you folks will
23 do. We don't feel it is racist. The problem is,
24 you see, the name of our state is Hawaii. The name
25 of California is California. They are Californians,

1 and we are Hawaiians. Everybody here is Hawaiian,
2 but you're not. We have Native Hawaiians. There is
3 a difference between Hawaiians from the State and
4 Native Hawaiians. The blood runs through us. Some
5 of it shows more than others, but I want to say
6 this.

7 There will be a time when you will check
8 with that Native Hawaiian entity that we come up
9 with. It will take a while for us to do it. I
10 don't think I will be here when they finally come up
11 with it, an entity, but at that time the State of
12 Hawaii, the rest of the people in the State of
13 Hawaii will be able to comment on whether they like
14 it or don't like it. That's the time that they
15 comment on it, whether we can do this or whether we
16 can't do this, because it has to be negotiated with
17 the State, and it has to be negotiated with the
18 Federal Government. I still say it has to be
19 negotiated with the counties too because they have
20 the police departments which you were interested in
21 earlier.

22 So all I am saying is give it your
23 deepest consideration. We think the bill should be
24 passed. We should be -- we meet all the criteria
25 for being an indigenous people. The only thing I

1 don't like about it is the name they give it, Native
2 Americans. You know, we are Native Hawaiians, so we
3 don't care what you call us because we know who we
4 are. Thank you very much. Mahalo.

5 HEARINGS OFFICER LILY: Thank you very
6 much. Mahalo. Colonel Woody?

7 COLONEL WOODY: Chairman Lily, members
8 of the committee, my name is Lawrence Woody, and I
9 am here to voice my support for the Akaka Bill.
10 What's important to me, and this goes back to a
11 question, Mr. Lily, that you asked earlier, what's
12 important to me is that passage of this act is
13 necessary to help protect against misguided lawsuits
14 threatening federally mandated programs which
15 support Native Hawaiians. These programs presently
16 provide much needed assistance in the way of
17 education, housing, and health care for a segment of
18 our State which has long ranked at the bottom of the
19 socioeconomic straddle.

20 Many Native Hawaiians, including myself,
21 have benefited from these programs which are now at
22 risk. I grew up on a Hawaiian homestead in
23 Nanakuli, and my family, like the majority of other
24 families living there, struggled economically, but
25 we managed to make do because of the economic

1 benefit afforded by living on homestead land. The
2 loss of such a program today would endanger many
3 families, would multiply the homeless population,
4 and would do irreparable harm to Hawaii's
5 socioeconomic base. The loss of such a program due
6 to political orientation, political motivation, or
7 political influence would breach the fiduciary
8 responsibility of our country.

9 Our nation is about integrity and
10 fairness, and our past leaders recognized the
11 existence of a trust relationship between the United
12 States and the Native Hawaiian people, and this
13 relationship entailed a fiduciary duty to support
14 self-sufficiency and self-determination for Native
15 Hawaiians. We would be seriously remiss if we
16 allowed the abrogation of the very programs enacted
17 during the past 87 years which were enacted to carry
18 out this particular fiduciary duty.

19 I served twenty years in the United
20 States Army. I am a retired lieutenant colonel. I
21 served a year in Viet Nam where I was awarded three
22 Bronze Stars and the Purple Heart. I was an
23 American yesterday, I was an American when I woke up
24 this morning, and I will be an American on the day I
25 die.

1 This act, the passage of this act is
2 vital to our entire state, and it is an issue about
3 fairness, and I strongly request that this committee
4 support this legislation. Thank you.

5 HEARINGS OFFICER LILY: Thank you,
6 Colonel.

7 Bud Ebel followed by Joseph Shorba, John
8 Cotton White or Wright, Representative Marcus
9 Oshiro. Sir, go ahead.

10 MR. MCNEIL: Aloha.

11 HEARINGS OFFICER LILY: Aloha.

12 MR. MCNEIL: My name is Pono Kealoha
13 McNeil. I do not recognize the United States of
14 America having any part in Hawaii. The only part it
15 had is as far as our destruction. Besides that,
16 it's basically built on a fallacy, a false history,
17 and it's been known to go and destroy other nations
18 under the name of freedom, which is all false.

19 This war in Iraq, that's all made up.
20 That was the second Pearl Harbor. As you know in
21 history, you will find out, and it's on the history
22 channel, Pearl Harbor, they knew about it. They
23 already knew about the bombing coming. They forced
24 Japan into bombing. Okay, same thing with this
25 9/11. Hey, man, that was demolition all the way

1 down, okay? Watching all of these kids getting
2 wasted over there in another country for genociding
3 another nation, this is how I feel what they are
4 doing to our nation.

5 HEARINGS OFFICER LILY: I understand you
6 feel that way.

7 MR. MCNEIL: And that's wrong.

8 HEARINGS OFFICER LILY: But do you have
9 a comment on the Akaka Bill?

10 MR. MCNEIL: Yes, I do --

11 HEARINGS OFFICER LILY: Okay, please
12 continue.

13 MR. MCNEIL: -- because this has to do
14 with my nation. The Akaka Bill shouldn't be
15 addressed over here. What should be addressed is
16 giving back our nation to the rightful owners,
17 that's where it belongs. It doesn't belong on any
18 other table, understand?

19 The USA, that's built basically on the
20 genocide program, colonial program. Ask the
21 Indians, they will tell you all about it, okay? You
22 go and celebrate your Columbus Day, that's a
23 genocide day, man. Come on, wake up. These history
24 classes that you have that they teach in school,
25 they teach what? What kind of history? The white

1 man's history, not the true Native Hawaiian history,
2 okay?

3 I say it's time for you guys to pack up
4 your military, get the hell out of our islands now.
5 Aloha.

6 HEARINGS OFFICER LILY: Mahalo. Okay,
7 Joseph Shorba followed by John Cotton Wright,
8 Representative Marcus Oshiro. Are any of you
9 present? Somebody raise your hand? Sir?

10 UNIDENTIFIED SPEAKER: I yield my time
11 to any other speaker.

12 HEARINGS OFFICER LILY: Okay. Kanoho --
13 I can't read this thing. Koko? All right, Sue
14 Yates? James Manaku? James Manaku? Are you Jim?

15 MR. MANAKU: Yes, I am.

16 HEARINGS OFFICER LILY: All right, good.
17 Followed after you will be Annelle Amaral.

18 MR. MANAKU: Thank you. My name is
19 James Manaku, Senior, concerned parent and
20 grandparent, and I am totally against the Akaka Bill
21 for these reasons.

22 Many of us, you know, aren't familiar
23 with history, but for those that are, I would like
24 to share that, first of all, from 1893 until today,
25 everything that has happened was illegal. And you

1 guys talk about US Constitution? You know, your
2 Constitution says that you are not supposed to come
3 to one country and do this, what you guys are doing
4 to us today. Till to today, you guys are still
5 doing it. They call that gestapo action. Amazing.

6 But America is supposed to be the most
7 friendliest and the best country in the world. I
8 mean, that's how I was raised, yeah? And I was
9 proud. 1959, I actually threw confetti in the air
10 when we became a state because I thought it was the
11 best thing in the world.

12 I never understood my history. I never
13 understood my culture, and it is so tragic that when
14 you really look at it, what's happening, and by
15 which country, it's mind boggling. I mean, really.
16 America today goes to every country, help people
17 out, kill people for other people, and make things
18 right. But you know what the most important thing
19 is? When they go in there, they actually give the
20 land back to the people.

21 What happened here, yeah? We are not
22 asking for special favors. Excuse me, we never
23 asked for special favors. All we asking is for what
24 is right, yeah? And what is right is not the Akaka
25 Bill. In the Akaka Bill, if you read the Akaka

1 Bill, it says if you were here in 1893, January 1st,
2 you one Hawaiian. It doesn't say you got to go
3 prove anything. All it says in Akaka Bill, you were
4 here January 1st, 1893, you one Hawaiian. Wow.
5 Isn't that amazing? Doesn't that -- isn't that
6 conflicting? Doesn't the Akaka Bill make those
7 people that took over our country Hawaiians, and
8 that will leave just one Hawaiian group fighting
9 another Hawaiian group? That's ludicrous.

10 You know, many of us that are old enough
11 that have watched many cowboy movies will tell you,
12 the Indians got a raw deal, and, you know, you would
13 think that it was back then, but it still continues
14 today. Under Federal recognition, they have the
15 right to come in and make determinations that they
16 feel is beneficial for everybody, yeah? And they
17 will take away some. They still going to take away
18 some.

19 You know, this deal kind of reminds me
20 of Henny Penny. You guys remember Henny Penny?
21 When we were in elementary school, the sky's
22 falling. Wow.

23 HEARINGS OFFICER LILY: Thirty seconds.

24 MR. MANAKU: And if we don't get out
25 from under the sky, we are going to get hurt. We

1 not going to lose nothing. You know, we don't have
2 anything. As Hawaiians, we don't have anything.

3 Sure, you may have land if you qualify,
4 and somehow even if you qualify, it doesn't mean
5 anything. My dad was one hundred percent Hawaiian.
6 Do you know how long it took him to get a Hawaiian
7 home, just to get a Hawaiian home? My father died.
8 He didn't even enjoy the pleasures of owning
9 something like that.

10 So as a concerned parent and
11 grandparent, and hopefully all of you, let's get rid
12 of this bill. If you want to do something good for
13 the Hawaiians, let us have back our own nation.

14 HEARINGS OFFICER LILY: Time.

15 MR. MANAKU: I know. In summary, you
16 know, when you open up a history book, there is not
17 only America. There is many, many cultures, many,
18 many different people, many, many ways of life. We
19 are just another one that is being suppressed.
20 Thank you.

21 HEARINGS OFFICER LILY: Thank you, sir.

22 Next is -- sir, what is your name?

23 MR. KOKO: Kanohowailukee Koko.

24 HEARINGS OFFICER LILY: You are

25 Mr. Koko?

1 MR. KOKO: Yes.

2 HEARINGS OFFICER LILY: Okay, thank you.

3 MR. KOKO: Aloha. Thank you for this
4 opportunity to be here. Not really knowing I was
5 going to be here, I just had somebody ask me to come
6 with them, and I sat here listening, so I started to
7 scribble.

8 HEARINGS OFFICER LILY: Could you give
9 your name, please?

10 MR. KOKO: Okay. I am a living human
11 being living in a human being function, kanaka maoli
12 human being function with the true name Kanoa
13 Wailuku Koko, spelled with capital letters and lower
14 cases.

15 When I signed up to speak on the
16 document outside, they were talking about civil
17 rights and everything else. Well, apparently we
18 were so unjustified when they took our civil rights
19 away, they overthrew our government, they took our
20 choice away. They made us who we are not. They
21 made us an American of which we are kanaka maoli.

22 Today, the Constitution of the United
23 States has been repeatedly mentioned, is a document
24 that was never ever written for us na kanaka maolis.
25 The US not only breached their Constitution but also

1 went against the law of nations and fraudulently
2 overthrew our country, the Kingdom of Hawaii, and
3 raped our Queen Liliuokalani of her dignity by
4 throwing her in prison.

5 By the way, did you know that your
6 founders of your Constitution were hypocrites? They
7 were nothing but hypocrites, thinking that their
8 standards of living were well worth the price of
9 owning and using the Negro populous as slaves.
10 Today, by your standards, you label them as African
11 American and na kanaka maoli as Native Americans, of
12 which we are not Indians. As defined, the
13 definition of Indians are all of those inhabitants
14 of the Americas. Does that mean that the Mexicans
15 are Americans too? The dictionary says that, that
16 all inhabitants who are classified as Indians come
17 from the Americas.

18 And you classify us as Native Hawaiians.
19 How dare you do that? It only will cause us a lot
20 more problems because the word native goes as to all
21 of those who are born on the land. Japanese come to
22 America, but they are not Hawaiian, they are not
23 American, but their children are born here. They
24 become Native Hawaiians.

25 HEARINGS OFFICER LILY: Thirty seconds.

1 MR. KOKO: Okay. So although I have a
2 lot to say on the Akaka Bill -- where did I put
3 that? Because everything is all based on fraud. As
4 fraud goes, so does the Akaka Bill. To reorganize
5 the Hawaiian Kingdom, the Hawaii government, which
6 tells us it already exists, tells me why should we
7 go ahead and do it? And yet it is called
8 reconciliation. What do we understand about
9 reconciliation? An example. Let me ask you, if
10 someone stole your Mercedes Benz, wouldn't you want
11 it back? And that's what America has done to us.
12 They stole our land, and we want it back.

13 Everything that stands here is all
14 fraudulent. The State of Hawaii and all of its
15 cooperation, the Office of Hawaiian Affairs,
16 Hawaiian Home Lands.

17 HEARINGS OFFICER LILY: That's it.

18 MR. KOKO: So thank you for this
19 opportunity. I will try to write one and submit it.

20 HEARINGS OFFICER LILY: Please do.
21 After Ms. Amaral will be Erma O'Toole and Ikaika
22 Hussey.

23 Ms. Amaral, it has been a long time.

24 MS. AMARAL: It has been, Mr. Chairman.
25 It is good to see you. Aloha.

1 HEARINGS OFFICER LILY: Aloha.

2 MS. AMARAL: Aloha, Mr. Chairman and
3 members of the Hawaii Advisory Committee to the US
4 Civil Rights Commission. Thank you for allowing me
5 to testify today in support of the Native Hawaiian
6 Government Reorganization Act. I am the President
7 of the 'Ahahui Siwila Hawaii 'O Kapolei, the
8 Hawaiian Civic Club of Kapolei.

9 We recognize that there has been
10 increasing scrutiny at the Federal level of the
11 legal justification for the authorization of Federal
12 programs designed to benefit the Native Hawaiians
13 and for the expenditure of the Federal funds to
14 implement those programs. We believe that there
15 exists a great deal of documentation already of the
16 government to government relationship between the
17 government of Hawaii and the United States prior to
18 1893 and the overthrow of Queen Liliuokalani.

19 Since the overthrow, we believe also
20 that Federal statutes and rulings by the Federal
21 courts have recognized and reaffirmed the political
22 status of the native people, comparable to that of
23 the American Indians and Alaskan Natives, and that
24 the indigenous people of the United States have
25 continued the right of self-determination and

1 self-governance, and that right has never been
2 extinguished.

3 The political relationship between the
4 United States and the Native Hawaiian peoples has
5 been recognized and reaffirmed by the United States
6 in the inclusion of Native Hawaiians in the Native
7 American Programs Act of 1974, the American Indian
8 Religious Freedom Act, the National Museum of the
9 American Indian Act, the Native American Graves
10 Protection and Reparations Act, the National
11 Historic Preservation Act, and so many more, just to
12 name a few.

13 You have a process of providing
14 recognition for native peoples. We meet the
15 standards and criteria of your process. Now, we
16 acknowledge that there are some of you on this
17 commission who wish to create case law to do away
18 with affirmative action programs and to do away with
19 minority programs and that you are using Native
20 Hawaiians as a means to that end. We say to you go
21 and look for another minority group and leave us
22 alone. We will not be the pawn of white America and
23 its attempt to extinguish the rights of peoples and,
24 in particular, the rights of the native people. We
25 will not allow you to ignore the native culture and

1 the unbroken history of na kanaka maoli to this
2 place. We support this legislation.

3 HEARINGS OFFICER LILY: Thirty seconds.

4 MS. AMARAL: Thank you, because it
5 addresses the recognition of our people in the
6 manner to which you are accustomed. It provides us
7 with the ability to control our sacred places, our
8 language, our culture, and to prevent the further
9 genocide of our people. We urge you to support this
10 legislation as well as an act of simple justice.
11 Mahalo for your support.

12 HEARINGS OFFICER LILY: Mahalo. Thank
13 you. Erma O'Toole followed by Charles Rose, and the
14 last one on my list is James Stowe.

15 Yes, ma'am?

16 MS. O'TOOLE: I thank you for the
17 privilege of addressing this commission.

18 HEARINGS OFFICER LILY: You are Erma
19 O'Toole?

20 MS. O'TOOLE: Yes, I am Erma O'Toole.
21 My ethnicity is white. My heritage, five
22 generations here in Hawaii from 1879. My ancestors
23 came from the Medeira Islands, however, I support
24 the Akaka Bill. I have grown up in Hawaii, and no
25 kanaka maoli person has ever violated my civil

1 rights. I support the Hawaiian people because they
2 are the one ethnicity that when they say they are
3 Hawaiian, they have to go back four generations or
4 to the hundred percent to prove that they are
5 Hawaiian. I tell you I am Portugese, you accept it.
6 The Hawaiian people have to prove it.

7 I apologize to the people here in this
8 room that have to prove that they were here before
9 me, and I thank them for the privilege of being
10 allowed to live in Hawaii. Thank you.

11 HEARINGS OFFICER LILY: Thank you. Is
12 there a Charles Rose or James Stowe?

13 Okay, I want to thank the audience. I
14 know how much the feelings are on all sides of this
15 issue, and your restraint today I thank you very
16 much. I thank the committee for staying here and
17 enduring this.

18 On Wednesday we will be on Maui at Maui
19 Community College from three to seven. On the 5th
20 we will have panels that will be making
21 presentations to the committee. Then on the 7th we
22 will be in Lihue, and on the 10th of September will
23 be Hilo, and then on the 12th we will be back on
24 Oahu for an open session for more testimony.

25 BOARD MEMBER YOUNG: I just wanted to

1 say that I apologize for being late, but I could not
2 clear my calendar, and I do not know if you
3 mentioned this earlier, but there were several of us
4 that sent a letter protesting that this was rushed,
5 that this agenda was put on us, and the hearing was
6 rushed, and I just wanted to note that I did send a
7 letter to you as did Amy Agbayani and as did Robert
8 Alm, but I just wanted to put that on the record.

9 HEARINGS OFFICER LILY: Yes, we have
10 discussed the issue, and, of course, the committee
11 has voted for the agenda at last week's meeting, and
12 we voted for the agenda again today.

13 So is there anything further?

14 MR. FORMAN: Point of order, Mr. Chair?

15 HEARINGS OFFICER LILY: Point of order.

16 MR. FORMAN: I just wanted to make the
17 record reflect that there were members of the
18 community who called the DC office in an attempt to
19 get their names on the list and were informed by the
20 DC office that the list was closed, that they could
21 come here and sign up, and if somebody cancelled,
22 they then would be given an opportunity to present
23 testimony. That information was wrong, but it did,
24 nevertheless, adversely affect the opportunity of
25 community members to come and speak, and I think the

1 record should reflect that.

2 HEARINGS OFFICER LILY: Well, I don't
3 know what happened there, but certainly we were
4 totally open to any public comment, and we will be
5 open to public comment on this island on the 12th of
6 September, and anybody that has any written
7 testimony, they can certainly present that and then
8 oral testimony on the 12th.

9 So if there is nothing further, we have
10 a motion to adjourn.

11 UNIDENTIFIED BOARD MEMBER: Move.

12 HEARINGS OFFICER LILY: Anybody second?

13 BOARD MEMBER SULLIVAN: I do.

14 HEARINGS OFFICER LILY: Okay, all in
15 favor? Okay. Thank you very much. We thank
16 everybody.

17 (Hearing adjourned at 5:39 p.m.)

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C E R T I F I C A T E

STATE OF HAWAII)

) SS.

CITY AND COUNTY OF HONOLULU)

I, PATRICIA ANN CAMPBELL, CSR 108, Notary Public, State of Hawaii, do hereby certify:

That on August 20th, 2007, the hearing was taken down by me in machine shorthand and was thereafter reduced to typewriting under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 4th day of September, 2007, in Honolulu, Hawaii.

Patricia Ann Campbell

PATRICIA ANN CAMPBELL, CSR 108

Notary Public, State of Hawaii

My Commission Exp: March 8th, 2010