

**TESTIMONY PRESENTED TO THE HAWAII STATE ADVISORY COMMITTEE
OF THE U.S. COMMISSION ON CIVIL RIGHTS
WEDNESDAY, SEPTEMBER 5, 2007
HILTON HAWAIIAN VILLAGE HOTEL, WAIKIKI, OAHU
OFFICE OF HAWAIIAN AFFAIRS
HAUNANI APOLIONA, CHAIRPERSON BOARD OF TRUSTEES
AND
BOYD P. MOSSMAN, TRUSTEE, ISLAND OF MAUI
ROBERT G. KLEIN, OHA BOARD COUNSEL**

1. APOLIONA

Ke aloha pumehana e nā `ōiwi `ōlino, e nā kūpuna, e nā makua a me nā `ōpio mai Hawai'i a Ni`ihau a puni ke ao mālamalama a me ko kākou makamaka i ho`akoakoa mai nei no kēia halāwai e pili ana ka ho`ōla `ana a me ka ho`āla `ana o ko kākou `ōiwi Hawai'i. Aloha e nā kama`āina a me nā malihini kekahi me ka na`au ha`aha`a a me ka mana`o pono. Aloha no kākou.

My name is Haunani Apoliona, Trustee and Chairperson of the Board of Trustees of the Office of Hawaiian Affairs. Joining me this afternoon in presenting our testimony are Office of Hawaiian Affairs Maui Trustee and retired State of Hawai'i Circuit Court Judge Boyd P. Mossman and Robert G. Klein, retired Associate Justice of the Hawai'i State Supreme Court and since 2003 Counsel to the OHA Board of Trustees.

OHA, established in 1978 by amendment to the Constitution of the State of Hawai'i, is a quasi-independent agency governed by nine Trustees elected by all the voters in Hawai'i. We, at OHA, work to better the conditions of Hawaiians. Our duties as Trustees are delineated in the Hawai'i Revised Statutes.

The OHA Board of Trustees supports and advocates passage of the Native Hawaiian Government Reorganization Act of 2007 (NHGRA), also referred to as the "Akaka Bill".

The Native Hawaiian Government Reorganization Act of 2007 (NHGRA) when enacted:

Will reaffirm that "Native Hawaiians are a unique and distinct, indigenous people with whom the United States has a special political and legal relationship".

Will reaffirm that "the United States has a special political and legal relationship with the Native Hawaiian people which includes promoting the welfare of Native Hawaiians".

Will reaffirm that "Native Hawaiians have an inherent right to autonomy in their internal affairs; an inherent right of self-determination and self-governance; and the right to reorganize a Native Hawaiian governing entity; and the right to become economically self-sufficient". (Section 4)

Enactment of the NHGRA of 2007 will establish a process for U.S. federal recognition of a reorganized Native Hawaiian representative governing entity, consistent with the laws governing the United States and the State of Hawai'i.

During the August 20, 2007 hearing on the Bill at the State Capitol, I heard Mr. Roger Clegg base his opposition on two premises: 1) the Bill as unconstitutional; and 2) the Bill as bad policy.

Mr. Clegg candidly admitted that this was his first visit to Hawai'i; and, that he knew nothing of our history yet he proceeded to speak as the final authority on our Native Hawaiian self-determination legislation.

His policy argument predicted that the Bill would disintegrate, "balkanize" Hawai'i into racial enclaves.

It is ironic that following Mr. Clegg's speech, the President of the Alaska Federation of Natives, Ms. Julie Kitka, spoke to advise the HSAC that similar predictions of doom plagued the federal recognition debate relating to Alaska Natives back in the 1970s. She noted, Congress did enact federal recognition for Alaska Natives; and now 30 plus years after passage none of those dire predictions, fanned by the scare tactics of opponents, ever manifested into reality.

Passage of the Native Hawaiian Government Reorganization Act (NHGRA) will finally give official and long overdue recognition to Native Hawaiians, many of whom still suffer from the adverse social, economic, environmental, spiritual, and cultural impacts of the United States' overthrow of our world-recognized sovereign Hawaiian government, more than a century ago.

To mute and buffer early attempts to eliminate Hawaiians, similar to efforts to erase native peoples from the continental U.S., Native Hawaiians quietly reconciled living in two worlds: the first world, "the Hawaiian" world, rooted deeply in our culture and traditions in balance with all of nature, all of human kind and our higher power; the second world: "the western", self-imposed for economic survival.

Do not confuse functioning or even functioning well in the western world as "absorption or extermination" of the Hawaiian.

Failing to support the Bill because you harbor the belief that Hawaiians are make (dead) is subscribing to cultural genocide and is morally repugnant.

As Native Hawaiians, we have lived with institutional barriers and negative repercussions for Hawaiian expression and practice, blatant in the past and more subtle in the present.

Yet our dual existence does not sit well with Mr. Clegg and those he represents, who deceive themselves, and would deceive you into the belief that Hawaiians have been completely assimilated, marginalized, or rendered legally extinct. The Akaka Bill on the other hand is worthwhile in its undeniable recognition that Hawaiians continue to exist as the aboriginal native indigenous people of this land.

Any HSAC panel members and others who share Mr. Clegg's misconceptions about Hawaiians will be enlightened by reviewing the paper "Income Distribution and Poverty Alleviation for the Native Hawaiian Community, May 2007" by Dr. Seiji Naya, Distinguished Visiting Senior Fellow, East West Center, and Emeritus Professor, University of Hawai'i and former Director of the State of Hawai'i Department of Business, Economic Development and Tourism and the Native Hawaiian Data Book (2006 Edition), copies of which we have provided for you.

If you simply look around you will notice a distinct Hawaiian community with its own values, priorities, institutions, leadership and desire to fully express self-determination.

The Hawaiian community is not defined by particular, small land boundaries; all of Hawai'i is our homeland.

Hawaiians at home and on the continent talk about it all the time, Hawai'i, the source of our culture, our values, our language, our spirit, our mo'okū`auhau, ancestral connections, genealogy, all unify our distinct Hawaiian community, past, present and future.

The Native Hawaiian Government Reorganization Act (Akaka Bill) is unyielding in its undeniable recognition that in reality Hawaiians remain as a distinct community in this land, firmly rooted as the aboriginal native indigenous people of Hawai'i.

The Native Hawaiian Government Reorganization Act (Akaka Bill) represents reconciliation for wrongs done that Congress and the President acknowledged in the 1993 Apology Bill, Public Law 103-150.

Why would Congress and the President apologize if no wrongs were committed?

If wrongs were committed against the Hawaiian people, it stands to reason that Hawaiians exist today as a people, otherwise to whom was Congress apologizing?

What were the wrongs done for which Congress apologized?

The wrong of the grossly undemocratic (some say unconstitutional) overthrow of our sovereign government by the show of military force;

The wrong of appropriating, ceding (some say stealing) our native lands; and,

The wrong of depriving Hawaiians, an indigenous sovereign people, of their rights to self-determination.

Senator Ted Stevens of Alaska, Republican and co-sponsor of the NHGRA along with Senator Lisa Murkowski of Alaska, made the following June 2006 remarks in Senate debate.

Senator Stevens notes, "The U.S. Government has a responsibility to Native Hawaiians, as it does to all indigenous people under our Constitution. The Constitution vests Congress with the authority to promote the welfare of all Native American people and to help foster their success. Our Federal policy of self-determination and self-governance has not been formally extended to Native Hawaiians. This omission unfairly singles them out for disparate treatment from our Federal Government. It deprives them of the processes by which other native groups may negotiate and resolve issues with the Federal and State governments. In my judgment, it is time to right this wrong. The time has come to fulfill our commitment to these indigenous people and to address the needs of Native Hawaiians. We can no longer deny our Nation's responsibility to promote their welfare (in) as much as we have promoted the welfare of Indian people and Alaska native people. The Native Hawaiian Government Reorganization Act is a step towards meeting our Federal Government commitment to Native Hawaiians".

It will be healing for our community and our nation to unburden itself of their past destructive inequities towards the Hawaiian people by granting Hawaiians a small measure of redress and political reconciliation under the Akaka Bill, a good first step from which a longer journey of reconciliation must start.

If one wants to concoct doom and gloom scenarios, visualize the social disruption that undoubtedly will follow if Mr. Burgess, and his comrades in litigation, should one day succeed in having the federal courts overturn the Hawaiian homelands and ceded lands trusts and eliminate federal resources and programs now alleviating social needs in the Native Hawaiian community

It means a loss of approximately \$70 million in federal dollars dedicated to assisting Native Hawaiians to eliminate disparities in health, housing, education, business and economic development.

Factor in the impact of no Hawaiian Home Lands, no Office of Hawaiian Affairs, and zero out the Native Hawaiian trust assets they oversee and grow.

Hawai'i, as a whole, will experience clear, irreparable damage to a fragile, existing social and economic safety net, a net that state tax payers will have to patch and fix.

Are you willing to lay the groundwork for the advent of that day?

Our community in Hawai'i, represented by virtually every elected official at every level of government clearly favors passage of the Bill.

Republican Governor Linda Lingle and Attorney General Mark Bennett completely understand the ramifications for Hawai'i and Native Hawaiians if the Bill fails. They have tirelessly worked for its passage as have the OHA Board of Trustees and our Hawai'i Congressional delegation, Senators Akaka and Inouye and Representatives Abercrombie and Hirono.

The Hawai'i State Legislature, Senate and House members, our County Mayors and County Councils support passage of the Native Hawaiian Government Reorganization Act.

Aren't these elected leaders the ones who know and understand what policies are best for our people in Hawai'i? Or will that distinction be given to Mr. Clegg a non-Hawai'i resident, not elected to represent the citizens of Hawai'i?

Exhaustive, analytical reports over time have addressed the very same issues that this HSAC feels compelled to only superficially review.

Recent authoritative poll numbers continue to show that local residents by and large strongly support the Bill. Will the "rumored" HSAC report reflect this majority or reject their voice?

Ward Research, in a poll commissioned by OHA, contacted Hawai'i residents between August 15 and August 27, 2007 by phone. Ward Research is a highly reputable professional polling company that has also polled for media outlets such as The Honolulu Advertiser.

The sample size of 380 obtained through the scientific methodology used by Ward Research, is a cross-section, representative of the Hawai'i population with a +/- 5% error rate.

A preliminary analysis indicates the following:

The scientific poll finds that seven out of ten Hawai'i residents support federal recognition.

The scientific poll indicates an overwhelming majority of residents in Hawaii do not agree with conservative critics who say Native Hawaiians are a race, not an indigenous people.

A clear majority also believe Hawaiians have a right to make decisions about their land, education, and health, cultural and traditional practices.

The scientific poll found overwhelming support for federally funded programs for Hawaiians.

A clear majority agree that organizations like Kamehameha Schools, the Department of Hawaiian Home Lands and OHA should be protected from the litigation through federal recognition of Hawaiians as an indigenous group.

This recent Hawai'i poll, along with other scientific polls in the past, proves that the majority of Hawaii residents have long supported the Akaka bill.

The bottom line is that support for federal recognition and programs that serve Hawaiians has remained consistent in Hawaii, even in the wake of the blizzard of misinformation and unreliable "push polls" designed to manipulate public opinion rather than measure it.

Mr. Burgess acknowledged in his August 27 HOT SEAT appearance that these "push polls" are conducted by the "Grassroot Institute"; the group in which certain members of this HSAC hold membership.

These HSAC members actively assisting anti-Hawaiian groups continue to repeat false and divisive phrases such as "race based discrimination" to oppose federal recognition and its enactment.

But as you can see from this scientific poll the clear majority of Hawaii residents aren't buying their propaganda.

For entry into the record, we present 2,000 letters of support for the Hawaiian recognition bill gathered in the past few years to Chair Lily.

For entry into the record, we present also the document representing 2,000 brave people, Hawaiians and non-Hawaiians, who added their names to a public list in support of Hawaiian recognition published in the Honolulu Advertiser in 2005.

We have seen only a handful of letters from detractors. Such an insignificant minority should not appear to have an equal voice on this issue.

NHGRA is NOT based on race. It is based on the fact that Native Hawaiians, like the American Indians and Alaska Natives are the aboriginal, indigenous, native people whose ancestors settled and exercised sovereignty in these lands predating the founding of the colonies and the United States.

Authors of the U.S. Constitution acknowledged the existence of sovereign, indigenous nations of these lands and provided Congress authority to legislate for these native nations and indigenous people in Constitutional language.

NHGRA is about fairness. Enactment of this federal policy codifies United States recognition of the special legal and political relationship with Native Hawaiians as it has done previously with American Indians and Alaska Natives. It is time for the U.S. policy toward the indigenous, native, aboriginal people of Hawai'i to reflect parity.

We ask HSAC to reflect the will of Hawai'i and continue its support of the Native Hawaiian Government Reorganization Act of 2007.

I leave you with the packet of informational materials about Hawaiian history and NHGRA and additional references cited today.

2. KLEIN

Momentum for the passage of the Akaka Bill has been mounting since the November 1993 enactment of P. L. 103-150, the federal Apology Bill followed by the October 2000 completion of the "Mauka to Makai Report, Let the River of Justice Flow Freely" of the Department of Justice and the Department of Interior, favoring U. S. reconciliation with Native Hawaiians in part by the passage of a federal recognition Act for Hawaiians.

This body held community forums in August 1998 and September 2000 in which speakers addressed the federal Apology Bill and the U. S. Supreme Court's *Rice v. Cayetano* decision, respectively. Information presented at these forums was summarized in this Committee's 2001 report (Reconciliation at a Crossroads).

Why should the findings that led to HSAC's 2001 position relating to the present Akaka Bill be second-guessed today? Given the current litigious environment, there is even more reason to reaffirm those findings and recommendations, including support for the Akaka Bill. Hawaiian programs require protection from political and legal attack, even from a member of this Commission, who actively litigates against such programs and whose clients would benefit if the Akaka Bill fails.

The "driving force" behind passage of S. 310, the "Akaka Bill", is not "discrimination based on ancestry" as some have described it. That attack point ignores the fact that Congress has recognized and established a special relationship with the Hawaiian people through numerous pieces of legislation, including the Admissions Act, and because of that special relationship, it can exercise the power vested in Congress to grant Hawaiians political recognition.

United States Supreme Court Chief Justice John Roberts in his legal briefs to the United States Supreme Court in *Rice v. Cayetano* argued that Congress has recognized a "special relationship" with Hawaiians and, "[i]n recognition of th[at] special relationship"--has extended to Native Hawaiians the same rights and privileges accorded to American Indian, Alaska Native, Eskimo, and Aleut communities." Citing 20 U.S.C. § 7902(13). As such, Congress has established with Hawaiians the same type of "unique legal relationship" that exists with respect to the Indian tribes who enjoy the "same rights and privileges" accorded Hawaiians under these laws. Citing 42 U.S.C. § 1170(19). **That unique legal or political status--not recognition of "tribal" status, under the latest executive transmutation of what that means-is the touchstone for application of Mancari when, as here, Congress is constitutionally empowered to treat an indigenous group as such.**

In *Mancari*, the Supreme Court laid down the following rule with respect to Congress' special treatment of Indians: "As long as the special treatment can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians, such legislative judgments will not be disturbed." Clearly, the NHGRA can be "rationally tied" to Congress discharge of its duty with respect to the native people of Hawaii.

Will the Akaka Bill pass constitutional muster? This is a legal determination that only a court can make and should be irrelevant to this discussion--it is not your call. However, there is a strong argument subscribed to by legal scholars such as Professor Viet Dinh, formerly a member of the Bush Justice Department, and State Attorney General Mark Bennett, among many others, that Congress is constitutionally empowered to deal with Hawaiians.

The Constitution gives plenary power to Congress to regulate commerce among the Indian tribes. Neither the word "Indian" nor the word "tribe" can be cramped to exclude Hawaiians.

The term "Indian," at the time of the framing of the Constitution, simply referred to the aboriginal "inhabitants of our Frontiers." And the term "tribe" at that time simply meant "a distinct body of people as divided by family or fortune, or any other characteristic." Native Hawaiians easily fit within both definitions. "Commerce" has been defined broadly by Congress and numerous Supreme Court opinions accept it breadth. Certainly congressional power over Indian

Commerce includes the power to grant federal recognition to the native people of Hawaii.

Some have argued that Congress has never created a tribe and then extended political recognition to it. However, that issue is inapt to the situation in Hawaii. Hawaiians are the only native, indigenous people of this archipelago and they easily fit within the definition of "Indian tribe". There can be little doubt that had the Founding Fathers encountered Hawaiians as their next door neighbors they would have quickly established a political relationship with them and called them the Hawaiian tribe or tribes. The Supreme Court in Lara observed that "Congress has restored previously extinguished tribal status -- by re-recognizing a Tribe whose tribal existence it previously had terminated." (citing Congress' restoration of the Menominee tribe in 25 U.S.C. §§ 903-903f). And the Court cited the 1898 annexation of Hawaii as an example of Congress' power "to modify the degree of autonomy enjoyed by a dependent sovereign that is not a State." Thus, when it comes to the sovereignty of Indian tribes or other "domestic dependent nations," Cherokee Nation v. Georgia, 30 U.S. 1, 17 (1831), the Constitution does not "prohibit Congress from changing the relevant legal circumstances, i.e., from taking actions that modify or adjust the tribes' status," and it is not for the federal judiciary to "second-guess the political branches' own determinations" in that regard. Lara, 124 S. Ct. at 205.

United States v. John, 437 U.S. 634 (1978), further supports Congressional authority to recognize reconstituted tribal governments and to re establish sovereign relations with them. There, Congress' power to legislate with respect to the Choctaw Indians of Mississippi was challenged on grounds that "since 1830 the Choctaw residing in Mississippi have become fully assimilated into the political and social life of the State" and that "the Federal Government long ago abandoned its supervisory authority over these Indians." Id. at 652. It was thus urged that "recognize the Choctaws in Mississippi as Indians over whom special federal power may be exercised would be anomalous and arbitrary." Id. The Court unanimously rejected the argument. "[W]e do not agree that Congress and the Executive Branch have less power to deal with the affairs of the Mississippi Choctaw than with the affairs of other Indian groups." Id. at 652-653. The "fact that federal supervision over them has not been continuous," according to the Court, does not "destroy[] the federal power to deal with them." Id. at 653.

Congress exercised this established authority to restore the government-to-government relationship with the Menominee Indian tribe of Wisconsin, and it can do the same here. Indeed, the NHGRA government reorganization process closely resembles that prescribed by the Menominee Restoration Act, 25 U.S.C. §§ 903-903f.

Thus, there is no constitutional impediment to congressional federal recognition of the Hawaiian people given Hawaii's history, including the historical relationship with the United States. Mr. Robert's pointedly argued:

"the Constitution, in short, gives Congress room to deal with the particular problems posed by the indigenous people of Hawaii and, at least when legislation is in furtherance of the obligation Congress has assumed to those people, that legislation is no more racial in nature than legislation attempting to honor the federal trust responsibility to any other indigenous people. It is, in sum, "not racial at all." (citation omitted).

Because the Akaka Bill does not discriminate based on ancestry but only furthers the political relationship Congress has already fostered with Hawaiians through numerous pieces of federal legislation, this body should recommend support for the measure to the United States Civil Rights Commission. I urge you to do so.

3.MOSSMAN

Aloha kakou.

Mahalo for your patience and allowing me to present my thoughts regarding the Akaka Bill. Although I may be an elected trustee of the Office of Hawaiian Affairs, I speak as a Hawaiian who is concerned about the future of the Hawaiian people. Our continued existence is at risk. Most of the voters of Hawaii recognize this and have supported federal recognition vicariously through their votes for OHA trustees, through their votes for all other elected officials in Hawaii who support nearly unanimously federal recognition, and by the continued existence of OHA and state and federal laws which support the recognition of Hawaiians as a people.

As a Hawaiian whose ancestors also came from England, Germany, Scotland, and Portugal while Hawaii was a nation ruled by Hawaiians, I pay allegiance to the United States but I also acknowledge my Hawaiian. Hawaiians share the same history, culture, spirit, traditions, language and heritage of self governance within their homeland for almost two thousand years. Hawaiians for recognition are not seeking independence. Neither do they want to be dependent. They seek self determination and interdependence wherein they can partner with all others in Hawaii to work together for solutions to problems that affect all yet are found predominantly in the Hawaiian population; ie, crime and prisons, welfare and homelessness, unemployment and poverty, chronic disease and illicit drugs, illiteracy and ignorance.

Hawaiians have lived and died here for centuries. Their bones are in the soil, their blood and sweat nourish the land. Their spirit pervades despite the immigration of so many foreign groups who overwhelmed the Hawaiian people with disease, with despair, and with defeat. It is to secure for our people their heritage and culture as well as to return a degree of sovereignty that we seek federal recognition, not racial segregation. We are not separatists. We are not asking for more government funding. We are not asking for a return of all ceded

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lands. We are not seeking to violate the laws of the United States or State of Hawaii. We do, however, seek reconciliation, in accordance with federal guidance via the Apology Bill and Department of Interior, and we also seek justice and fairness from the United States.

In 1893 the United States through its agent, John Stevens, collaborated and conspired with a tiny group of missionary descendants and businessmen to overthrow the lawful government of Hawaii. Hawaiians had no vote in the overthrow or annexation and in fact nearly unanimously opposed both. There is no other indigenous group from Hawaii. Hawaiians came from Hawaii. Japanese came from Japan. Chinese from China. English from England. Hawaiians are of this land. This is the home of our ancestors regardless of the amount of Hawaiian in our blood. We can all trace our roots to noble chiefs, hard working maka'ainana, and even lowly kauwa. We are proud of our heritage but also proud of our other non indigenous ethnicities. It is our indigenous standing, however, that distinguishes us politically from every other ethnic group and we are now having to fight for that distinction in order to defeat the attempt at terminal assimilation being forced upon Hawaiians by use of the 14th Amendment's Equal Protection Clause which would be tantamount to an ethnic cleansing and would remove from the law books any reference to "Native Hawaiian" and Native Hawaiian rights.

What the Grassroots organization, to which I presume many of you belong, seeks is a complete assimilation of Hawaiians into the rest of society. They talk of the threat of balkanization presented by the Akaka bill in a community where immigrants have been warmly received by the Hawaiian people since Captain Cook and where Hawaiians have always been the essential fabric that has held Hawaii together. Their color blind Hawaii would have Hawaiians become invisible and disintegrate the essence of Hawaii's indigenous people. We Hawaiians are asking only for justice, not racial separation or discrimination. Racism has not happened in Hawaii except for the overthrow itself by the haole revolutionaries and the oligarchy they forced upon the Hawaiian people. Our antagonists including Mr. Conklin and Mr. Clegg ridicule us by accusing us of having "magic blood" and the "one drop rule" and more. We believe in equal rights for all. We don't need to distinguish ourselves by blood quantum because we are an indigenous people and Congress has the plenary authority to recognize us.

Rubellite Johnson is a Hawaiian who believes the Akaka bill is race based and I respect her stand. What she doesn't recognize is her unique political standing as a descendant of the aboriginal, indigenous, native people of this land. The Constitution allows Congress to decide on Indian matters which we submit means indigenous matters. Capt. Cook called us "Indians," the same word used by white explorers to describe natives around the world. There were no others here. We are not Native Americans or Alaskan Natives. We are Hawaiians. But the three of us make up the indigenous people of America and there are no

others. Congress has the constitutional authority to pass this bill and has the power and it is plenary.

The issue of race is raised by those who believe that somehow extending the recognition given Indians and Alaskans to Hawaiians is discriminatory. Are not Indians and Alaskan groups given benefits not available to others? Do their roots not mirror ours? Is their political existence not dependent upon Congress? Did they not suffer historically from the wrong doing of the United States? Did they not lose their homelands to the American government? They never argued race and indeed the 560 recognized tribes have different membership requirements from no tribal blood to 100%. Neither do we argue race. It is a red herring that confuses and alienates and this commission should find so and make no ruling in this matter or simply dismiss consideration of the Akaka Bill from your docket. If you find S 310 to be race based, then will you find the law supporting 560 Indian tribes and all the Alaskan groups likewise to be race based? Under the laws of our nation and court rulings to date, the issue is not one of Equal Rights and racial discrimination as is the rallying cry of many of you but simply whether or not Hawaiians are indigenous and if so should they be recognized as the Indians and Alaskans thereby achieving not only justice but parity.

The need for Congress to protect and secure the well being of the Hawaiian people has been recognized over and over; from the Hawaiian Homes Act to the Akaka Bill which received 56 votes in a cloture hearing in 2006. A minority of the senate, whose sympathies and political philosophies reflect those of the US Civil Rights Commission, have been able to bottle up the bill for seven years and not give it the benefit of an up or down vote on the senate floor. I have heard and seen enough of the race based legislation hysteria including from those on this panel and the main panel on the mainland. That is not the issue. We are a people whose roots are of the aina. There are no others. We are a people whose ancestors lived, fought, died, and sailed here for centuries and we have always had their mana and genealogy to comfort, guide, and help us in our survival as a people. We don't resent the non Hawaiians who came to Hawaii for they are some of our ancestors as well. We don't believe in racial discrimination. Look at us. Look at the kids at Kamehameha Schools. We are a picture of the rainbow, yet continue our existence as an indigenous people through our unbroken connection to our aina through our ancestors, and through our memory of our Hawaiian nation which was literally stolen from us. Look at those who attack us. They argue assimilation but don't practice what they preach. They argue equal treatment but deny Hawaiians parity with the Indians and Eskimos. Where is their political justification? What homeland and culture do they have to lose? What language do they have to give up? They say "Aloha For All" but only take and have none to give. They claim that to be American, you cannot be Hawaiian.

The bottom line is that race is not relevant to this bill. You should not be hearing this bill. You should be moving on and taking up issues which are actually based on race discrimination here in Hawaii. The decision of the US Civil Rights

Commission has already been made and I understand they have stated that they won't be changing that. So rather than waste everyone's time with a newly appointed local committee which includes some of the harshest critics of the Akaka Bill in the nation and present to the public another reason to complain about government ineptitude, corruption and unfairness, this matter should be put to rest, the main body so advised, and Congressional action taken as provided by law.

The question is a political one which Congress has the authority to decide under Article 1 Section 8 of the United States Constitution. Should Congress pass this bill and the President sign it, the United States Supreme Court will likely not only uphold the bill but will put to rest any further racial attacks against our people. The report of the Department of Interior in 2000, Mauka to Makai, expressly recommended that the United States reconcile with the Hawaiian people the wrongs done to them and their government in 1893. SB 310 fulfills that recommendation and does so in a deliberate, planned, reasoned manner to allow Congress to insure compliance with its directives. This bill would not create anything different from today as regards Hawaiians and their relationship to the rest of the community but would improve our community by allowing Hawaiians to focus on their own problems as a nation within a nation, would keep in place all that is presently provided, would allow Hawaiians to keep their identity, and would not require any significant funding from Congress. Indeed, benefits wise, Hawaiians actually have much more to lose by failure of the Akaka Bill than they have to gain by its success. But then it is not benefits alone that we seek to preserve, it is our identity, our heritage, our culture, our legal existence.

Hawaii's future is unequivocally tied to its past. The misdeeds of the past must be corrected in order for our state, the people of our state, and the aboriginal, indigenous people of Hawaii to continue to live in peace, harmony and prosperity. Twisting political recognition of a formerly independent nation into race discrimination does nothing to help Hawaii or the United States. We are not seeking any affirmative action. We are not asking for race based preferences. We are not holding ourselves up to be a superior race like the US senators of 1898. We are merely seeking justice. In 1893 it was the white minority who deprived the brown majority of their vote and participation in the Provisional Government and the Republic. For 2% of the population to dictate their will upon the rest with the assistance of the United States was clearly a travesty of justice. That cannot be allowed to happen again.

You have heard arguments on two different levels of constitutional law: Congressional powers on the one hand and equal rights on the other; Indians on the one hand, other ethnic groups on the other; indigenous on the one hand, immigrants on the other. These are separate and distinct tracks and should not be intermixed. Everyone in Hawaii is of some race, including Hawaiians. No one in Hawaii is indigenous, excepting Hawaiians.

My remarks have focused both directly and indirectly upon two words: jurisdiction and justice. As regards these hearings, neither has been established and thus these hearings should be concluded and ended. The composition of this committee is inordinately weighted to one side, not representative of our community and precludes your ability to be fair, open minded, or just. I question whether this committee can distinguish between the race card and the truth card. The issue here is not civil rights but human rights. Like the kalo in the lo'i and the ohia lehua in the wao kele, Hawaiians belong here and will always belong here. The Akaka bill helps secure this. May the life of this land, its sovereign people, be perpetuated in righteousness. Ua mau ke ea o ka aina i ka pono.

Hon. Boyd P. Mossman (Ret.)