The Commission convened in Room 540 at 624 Ninth Street, N.W., Washington, D.C. at 9:30 a.m., Gerald A. Reynolds, Chairman, presiding.

PRESENT:

GERALD A. REYNOLDS, Chairman
ABIGAIL THERNSTROM, Vice Chairman
JENNIFER C. BRACERAS, Commissioner
PETER N. KIRSANOW, Commissioner (via telephone)
ARLAN D. MELENDEZ, Commissioner
MICHAEL YAKI, Commissioner
ASHLEY L. TAYLOR, JR., Commissioner
KENNETH L. MARCUS, Staff Director

STAFF PRESENT:

JOHN BLAKELEY
RACHELLE BRACEY
TERESA BROOKS
CHRISTOPHER BYRNES
DEBRA CARR, ESQ., Associate Deputy Staff Director
TERRI DICKERSON, Assistant Staff Director
PAMELA A. DUNSTON, Chief, Administrative Services and Clearinghouse Division
BARBARA FONTANA, Library
SETH JAFFE
SOCK FOON MACDOUGALL
TINALOUISE MARTIN, Director of Management
EMMA MONROIG, Solicitor/Parliamentarian
MIREILLE ZIESENISS
COMMISSIONER ASSISTANTS PRESENT:

LISA NEUDER
KIMBERLY SCHULD
AGENDA

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II. APPROVAL OF 12/16/2005 MEETING MINUTES

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VI. PROGRAM PLANNING
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IX. BRIEFING REPORTS
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9:40 a.m.

CHAIRMAN REYNOLDS: Okay. Welcome. This meeting will come to order.

This is a meeting of with most of the Commissioners participating in person with the exception of Commissioner Kirsanow who is participating by telephone.

I APPROVAL OF AGENDA

CHAIRMAN REYNOLDS: The first item on the agenda is the approval of the agenda. May I have a motion for the agenda?

COMMISSIONER YAKI: So moved.

CHAIRMAN REYNOLDS: A second.

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Discussion.

Jennifer, didn’t you want to change an item on the agenda?

COMMISSIONER BRACERAS: This is where you want me to raise what we just talked about?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Okay. I guess I would like to move that we table the discussion of the Arizona SAC Report in order to reconsider the procedure that we passed in November for how we deal
with SAC reports.

CHAIRMAN REYNOLDS: Okay. Second?

VICE CHAIRMAN THERNSTROM: I second it.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER BRACERAS: Just by way of explanation, as I've already explained to the Chair, I have been uncomfortable with the language we adopted for considering SAC reports. And I'd just like to go back to the Committee and reconsider how we handle the SAC reports. And I'd like to try to come up with a way that wouldn't be quite so convoluted.

CHAIRMAN REYNOLDS: Additional comments, questions?

COMMISSIONER YAKI: Is there a motion for something?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Yes. There's a motion to table the discussion of the Arizona SAC Report, take it off the agenda.

COMMISSIONER YAKI: I absolutely agree with that. Okay.

COMMISSIONER BRACERAS: And to reconsider our process for how we vote to accept or not accept the SAC reports.

COMMISSIONER YAKI: I'll second that.
COMMISSIONER BRACERAS: I basically already did, Michael.

COMMISSIONER YAKI: Yes, but you didn't get a democratic second.

COMMISSIONER BRACERAS: There you go. I'm happy to talk to you later about what my concerns are. We can just save it for the working group.

CHAIRMAN REYNOLDS: Additional comments, questions? Okay. Let's vote.

All in favor, please say aye.

ALL: Aye.

CHAIRMAN REYNOLDS: All in opposition? Any abstentions? The motion passes.

Okay. The next motion to amend the agenda is to add a discussion on the SAC membership selection final rule as the first sub item under item 8 of the agenda. May I have a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Okay. Discussion?

COMMISSIONER YAKI: We're changing the agenda?

CHAIRMAN REYNOLDS: Yes. We're basically going to vote on the final rule for SAC membership selection. Any comments, questions, concerns?
COMMISSIONER YAKI: Yes, Mr. Chair. As you know, I've continued to express my concerns about the final rule for selecting state advisory committee members. I am uncomfortable with the fact that the Commission is backtracking from its previous commitment to ensure that the diversity of the SACs should be reflective of the constituencies that we are charged to represent and protect, as well as the constituencies of the population that they represent in each state. I am concerned that the criteria used and the diminution of the role that effected constituencies should play in the membership of the SACs could eliminate, I think, a very good and historically reliable source of information and data on the ground for the Commission. So I am going to vote no on adoption of the final rule.

CHAIRMAN REYNOLDS: Additional comments?

Okay. I just have a brief one. The proposed rules, in my opinion, will not affect the effected constituencies. Anyone who has a demonstrated interest in civil rights is welcome.

Our sole reason for doing this is to -- well, our primary reason for doing this is to ensure that racial preferences are not used in the selection process and also to broaden the skill sets that
members of the SACs possess.

COMMISSIONER YAKI: Mr. Chair, just in response. I respect your point of view. I understand broadening the skill set is a worthy goal. I don't believe that the administrative instruction; I understand that there was a letter promulgated by the Staff Director in the past that may have been contrary. But I don't believe that the administrative instructions as they were constituted have any sort of racial preference involved in there and instead sought to have representation that was reflective or proportional to the demographics of the population of the state for which they represented, which I believe is constitutionally viable. But we disagree on this.

And I would also just say notwithstanding with no reference to any of the members of this Commission, but I would are say that there are people who are interested in the issue of civil rights whose interests in civil rights are certainly not the same as mine.

CHAIRMAN REYNOLDS: That's correct.

COMMISSIONER BRACERAS: Point of information.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: At this point
we're just voting to add this discussion to the agenda under Roman numeral VIII, correct?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: We'll have an opportunity --

CHAIRMAN REYNOLDS: No, this isn't to vote on the final rule.

COMMISSIONER YAKI: This is adding it.

CHAIRMAN REYNOLDS: Yes. Well, the actual vote will take place later on in the --

COMMISSIONER BRACERAS: Right. And we'll have an opportunity to raise these issues and discuss it further after the briefing, right?

CHAIRMAN REYNOLDS: Yes. Yes. Yes.

COMMISSIONER BRACERAS: Okay. So we're just voting right now to put it on.

CHAIRMAN REYNOLDS: To put it on the agenda.

COMMISSIONER BRACERAS: I just wanted to clarify that.

CHAIRMAN REYNOLDS: Okay. All right.

Commissioner Melendez?

COMMISSIONER MELENDEZ: Just a comment. I think that this is a very important issue, and I know that we had discussed it and I had a concern with
changes to the SAC at one time, and I had to really
fight to just get it an extension for two weeks to
basically get some input from our local SAC within the
state of Nevada. And I know it is still a concern.

When we get to issues that are of real
concern to the Commission, I would hope that we could
not be adding things on at the last minute. I hope
that if it's a real debatable issue that we could put
it on the agenda from the very beginning. Then we
have an opportunity to know what's coming. I just
think that on real important issues that we should
agendize it real early so that we know it's coming in
the following month to really have a good debate.

I think it's just when you add things on,
I don't have a problem if they're not really
important. But I think this is a real important issue
and it should be agendized from the very beginning.

CHAIRMAN REYNOLDS: I appreciate your
comments. And in this particular case, this issue has
been discussed on several occasions. And I felt
comfortable adding it to the agenda because everyone
is well versed in the issues. But I do appreciate
your comments and we'll strive to get these types of
issues on the agenda at an earlier date.

Okay. At this point if there are no more
questions or comments, let's vote. All in favor to adding to the agenda?

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: All in opposition?

COMMISSIONERS: No.

CHAIRMAN REYNOLDS: All right. Any abstentions?

Please let the record reflect that Commissioners Braceras, Taylor, Thernstrom and Kirsanow voted in favor. And that Commissioners Yaki and Melendez voted in opposition.

The motion carries.

COMMISSIONER BRACERAS: And the Chair voted in favor, right?

CHAIRMAN REYNOLDS: Oh, yes. Yes. Thank you.

II. APPROVAL OF 12/16/2005 MEETING MINUTES

CHAIRMAN REYNOLDS: Okay. Next up is the approval of the minutes of the December 16, 2005 meeting. May I have a motion?

VICE CHAIRMAN THERNSTROM: So moved.

CHAIRMAN REYNOLDS: A second?

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Any discussions or proposed changes?
Okay. Let's vote. All in favor, please say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: All in opposition?

CHAIRMAN REYNOLDS: Any abstentions?

The motion carries unanimously.

**III. ANNOUNCEMENTS**

CHAIRMAN REYNOLDS: Okay. Next up we're at the point where we'll do the announcements. In this case we just have one. On January 16, 2006 Dr. Martin Luther King, Jr. would have been 76 years old. We commemorate and honor the ideals for which Dr. King fought and celebrate how far we have come in realizing these ideals, while also taking time to ponder how best to reach the goals that we have not achieved.

Dr. King was a pivotal figure in the civil rights movements of the 1950s and 1960s. Dr. King was arrested over 30 times for participating in civil rights activities aimed at dismantling Jim Crow laws that kept the races separate and blacks subjugated by white rule.

Dr. King was instrumental in the successful Montgomery bus boycott in 1956 as well as spearheading the 1969 march on Washington, which
brought together more than 200,000 people seeking justice. It was at this event where Dr. King delivered his "I Have A Dream" speech where he so artfully articulated the goal for which we all strive, which is that our children will one day live in a nation where they will not be known by the color of their skin, but the content of their character. For these and other activities he was awarded the 1964 Nobel Peace Prize.

Thanks to Dr. King's leadership our nation has made tremendous progress in eliminating discrimination. And on behalf of the Commission I say that we will continue to honor his legacy by moving the nation closer to his and our highest ideals.

Okay.

COMMISSIONER KIRSANOW: Jim?

CHAIRMAN REYNOLDS: Yes, Commissioner Kirsanow?

COMMISSIONER KIRSANOW: I just had, it's not really an announcement, but I simply wanted to note that my assistant Chris Jennings did another bang up job preparing an extensive examination of the civil rights record of Samuel Alito in anticipation of the nomination hearing.

I am pleased to forward that to everybody
at some point in the future. But suffice it say that it was integral to the nomination hearing at least in terms of the civil rights component of the hearing. And it is a several hundred page document that he prepared at my direction. And it's just splendid work.

So I just wanted to commend him. I think he's not there because he's got a bout of food poisoning. But he did just a phenomenal job. And I can't commend him highly enough, as did some of the members of the Senate Judiciary Committee who very much appreciated his work.

CHAIRMAN REYNOLDS: Okay. Yes. Commissioner Kirsanow, I would appreciate a copy of the document when it's complete.

COMMISSIONER KIRSANOW: Will do.

COMMISSIONER BRACERAS: Well, Commissioner Kirsanow, I think all of us would. And, of course, all of us commend Chris Jennings on once again doing some very good work.

CHAIRMAN REYNOLDS: Okay.

**IV. BRIEFING**

CHAIRMAN REYNOLDS: At this point we're going to start our briefing. The briefing is on the Native Hawaiian Government Reorganization Act.
On behalf of the Commission on Civil Rights I welcome everyone to this briefing on the Native Hawaiian Government Reorganization Act. The Commissioner frequently arranges such public briefings with presentations from experts outside of the agency in order to inform itself and the nation of civil rights situations and issues.

At this briefing a panel of experts will advise the U.S. Commission on Civil Rights concerning a bill before Congress: Senate Bill 147, which would create a government-to-government relationship between the United States and Native Hawaiians. Some argue that this bill is a reaction to the United States Supreme Court discussion in Rice v. Cayetano that held in 2000 that a policy allowing only Native Hawaiians to vote for trustees of the state's Office of Hawaiian Affairs violated the 15th Amendment of the Constitution which prohibits race-base exclusion from voting.

The bill defines Native Hawaiians by racial characteristics and residual sovereignty, and in doing so extends to Native Hawaiians the policy of self governance historically granted to American Indians and Alaska Natives.

Proponents of the legislation believe that
it would represent a major advance in Native Hawaiians affairs while opponents believe that it would go beyond racial preferences and potentially create a race-based government.

In 1991 the Hawaii Advisory Committee to the U.S. Commission on Civil Rights issued a report on this topic entitled "Reconciliation at a Crossroads: The implication of the apology resolution and Rice v. Cayetano for federal and state programs benefiting Native Hawaiians."

This issue is one of national import. It's an issue that's important to all Americans. And for that reason we're delighted to conduct this briefing.

Okay. We will begin with our introductions. This morning we are pleased to welcome four experts on various aspects of the proposed Native Hawaiian Government Reorganization Act. I welcome all of you on behalf of the Commission, and I will introduce everyone and describe your background and then I will call on you according to the order in which you have been introduced.

First, we have Noelani Kalipi. I'm sorry, did I pronounce your name?

MS. KALIPI: Kalipi.

CHAIRMAN REYNOLDS: Kalipi. Thank you.
Ms. Kalipi was born and raised in Hilo, Hawaii. She graduated with a bachelor's degree in government and politics and economics from George Mason University, and a JD from the National Law Center at George Washington University.


She served as Senator Akaka's counsel from 1999 to 2005 and advised him on legislative issues pertaining to veterans affairs, judiciary, homeland security, armed services, U.S. territories and Pacific Islands and finally, Native Hawaiians.

Ms. Kalipi was appointed Democratic Staff Director on the Senate Committee on Veterans Affairs in February of 2005.

Ms. Kalipi will deliver a written statement authorized by Patricia Zell, former Democratic Staff Director of the United States Senate Committee on Indian Affairs and editor of the Indian Law Review.

Thank you for being with us, Ms. Kalipi.

Next we will hear from H. William Burgess, an attorney who lives in Hawaii who is an opponent of
the Hawaiian sovereignty movement and of government programs that give preferences to Native Hawaiians.

After attending the University of Virginia Law School and graduating in 1953, he enrolled in the U.S. Marine Corps from 1953 to 1958 as a fighter pilot and legal officer. Once out of the military, Mr. Burgess joined the law firm of Carlsmith & Carlsmith and then A. William Barlow.

In 1965 Burgess opened his own law office where he focused full time on business and real property litigation. From 1969 to 1972 he was the volunteer President of the Legal Aid Society. In 1979 Mr. Burgess was one of the founders and first President of the Neighborhood Justice Center of Honolulu now called the Mediation Center of the Pacific.

In 1994 he retired from his practice and became a trustee for a Maui shopping center and a Chapter 11 reorganization. Mr. Burgess was instrumental in bringing two controversial lawsuits seeking to declare programs as unconstitutional.

In July of 2000 Mr. Burgess filed Arakai the state of Hawaii challenging the requirements that the trustees of the Office of Hawaiian Affairs be of Hawaiian ancestry on the basis of the 14th Amendment,

In March of 2002 Mr. Burgess and attorney Patrick W. Hanifin filed a second lawsuit Arakaki v. Lingle challenging the constitutionality of the Office of Hawaiian Affairs and the Hawaiian Homes Commission Act. In 2005 in a two to one decision by the U.S. 9th Circuit Court of Appeals found that state taxpayers had standing to challenge the appropriation of tax moneys to, the office of Hawaiian Affairs, but dismissed the rest of the plaintiffs’ claims. Mr. Burgess is a member of the Grassroots Institute of Hawaii, a nonprofit organization that has gained prominence through its intense campaign to educate the public and Congress about the Native Hawaiian Government Reorganization Act.

Next we will hear from H. Christopher Bartolomucci, a partner at the law firm of Hogan and Hartson.

In law school he was an editor of the Harvard Law Review. Following law school he clerked for the Honorable William L. Garwood of the U.S. Court
of Appeals for the 5th Circuit.

Mr. Bartolomucci served in the Administration of President George W. Bush as Associate Counsel to the President from January 20, 2001 to August 15, 2003. While serving in the White House he assisted the President in matters ranging from the selection of federal judges to the consideration of pardon requests. He also served as counsel for the Inspector General of the District of Columbia, Associate Special Counsel to the Senate Whitewater Committee. And he's also a Bristow Fellow at the Office of the Solicitor General of the United States Department of Justice.

At Hogan and Hartson Mr. Bartolomucci focuses on appellant and Supreme Court litigation, and other litigation involving complex legal issues at both the trial and appellate levels. He has briefed numerous cases in the U.S. Supreme Court at the certiari and merit stages for both private clients and the United States Government.

Finally, we have Gail Heriot, who is a professor law at the University of San Diego School of Law. Ms. Heriot was formerly Associate Dean for Academic Affairs and professor of law at George Mason University School of Law, and counsel to the Senate
She also served as a litigation associate at Hogan and Hartson in Washington, D.C. and Mayer, Brown and Platt in Chicago.

After she graduated she worked as a law clerk for the Honorable Seymour F. Simon of the Supreme Court of Illinois.

She has numerous academic publications, such as faculty editor for "A Symposium On Direct Democracy: An Introduction" at the Journal of Contemporary Legal Issues; Standardized Tests Under the Magnifying Glass: A Defense of the LSAT Against Recent Charges of Bias" at the Texas Review of Law and Politics, and; also "Strict Scrutiny: Public Opinion and Racial Preferences on Campus. Should The Courts Finds a Narrowly Tailored Solution." And that was published at the Harvard Journal of Legislation.

Okay. Now that we've dispensed with the introductions, we can start.

Ms. Kalipi, please speak for 15 minutes.

MS. KALIPI: Good morning.

Thank you for providing me with the opportunity to present information related to S. 147, Native Hawaiian Government Reorganization Act of 2005.

I ask that my written statement along with
that of Dr. Patricia Zell be included for the record.

CHAIRMAN REYNOLDS: It was.

MS. KALIPI: I have served as Senator Akaka's primary staffer on Native Hawaiian issues since 1999. I have brought with me information for each of the Commissioners, which was delivered to you in the blue packet.

The blue packet includes the substitute amendment to S. 147, which was negotiated between Hawaii's Congressional Delegation, Hawaii's Attorney General and officials from the Department of Justice, Office of Management and Budget and the White House. So this is the most recent and accurate version of the legislation.

The substitute amendment addresses concerns raised in the letter sent to Senators John McCain and Senator Byron Dorgan on July 13, 2005.

The packet also contains an information sheet about the substitute amendment, the committee report filed by the Senate Committee on Indian Affairs on S. 147 and numerous news articles regarding the legislation.

The customs, traditions and culture and Hawaii's indigenous peoples, Native Hawaiians, serve as a basis of society in Hawaii. The essence of
Hawaii is captured not by the physical beauty of its islands, but by the beauty of its people and their willingness to welcome others into their society in order to share their culture, environment and lives. This attitude often referred to as the aloha spirit originates from the culture and traditions of Hawaii's indigenous peoples, Native Hawaiians.

Hawaii's motto "Ua mau ke ea o ka aina I ka pono: The life of the land is perpetrated in righteousness" captures the culture of Native Hawaiians. Prior to western contact, Native Hawaiians lived in an advanced society that was steeped in science. Native Hawaiians honored their land and environment and therefore developed methods of irrigation, agriculture, aquaculture, navigation, medicine, fishing and other forms of substance whereby the land and sea were efficiently used without waste or damage. Respect for the environment and for others formed the basis of their culture and tradition.

Unlike a number of other aboriginal peoples, the Native Hawaiians welcomed foreigners into their society. Over time this generosity resulted in the near decimation of the indigenous population and almost destroyed the precious traditions and culture of Hawaii. A monarchy was overthrown, a provisional
government was established which proclaimed Hawaii a republic and transferred vast amounts of land to the United States.

The perpetuation of Hawaii's important cultural traditions were discouraged by these leaders who were convinced of their primacy and committed exclusively to the propagation of western values and conventions.

Despite these events the remaining Native Hawaiians continued to share their culture and tradition with non-Native Hawaiians and continued to include them in their society. Indeed, the spirit of aloha has endured and flourished in spite of pestilence, political upheaval and poverty. It transcends political and geographic demarcations and remains the noblest legacy of the Native Hawaiian people to their American brethren and to the world. For this reason efforts to preserve Native Hawaiian tradition, culture and custom are widely supported in Hawaii and are nonpartisan.

S.147, the Native Hawaiian Government Reorganization Act of 2005 is supported by Hawaii's congressional delegation, the Hawaii State legislature, the Governor of Hawaii and numerous organizations and associations as well as individuals.
in Hawaii and across the nation. The bill is also supported by the National Congress of American Indians and Alaska Federation of Natives.

The formal extension of the federal policy of self governance and self determination to Native Hawaiians provides parity in federal policies towards American Indians, Alaska Natives and Native Hawaiians. While Congress has enacted more than 160 statutes addressing the conditions of Native Hawaiians, the formal extension of the federal policy of self governance and self determination through a federally recognized government-to-government relationship has not happened. This bill corrects this oversight and injustice, thereby putting Native Hawaiians on an equal footing with their indigenous brethren, American Indians and Alaska Natives as 147 recognizes the political and legal relationship between Native Hawaiians and the United States.

The United States Supreme Court has acknowledged that Indian tribes were originally independent nations and European nations historically dealt with Indian tribes as such nations prior to the establishment of the American republic. Indian tribes lands were incorporated within the United States through military force or through treaty.
Indians were dispossessed of their lands by the United States and Congress later had to take remedial legislation to help alleviate the destruction and devastation visited upon Indian tribes by federal policies and actions.

Similarly, the Kingdom of Hawaii was a distinct independent nation with treaties with European nations and the United States. The United States Minister to Hawaii used U.S. forces to assist in the overthrow of the Hawaiian nation in favor of American settlers. But President Grover Cleveland recognized the overthrow as an international wrong. In 1898, five years after the overthrow, the United States annexed Hawaii. Twenty-three years later the Native Hawaiian people were destitute and Congress enacted the Hawaiian Homes Commission Act in 1920 to establish protected lands for Native Hawaiians who had been devastated by the overthrow.

It is also clear that Native Hawaiians are native in the same sense as American Indians, meaning aboriginal. Thus, when Congress deals with Native Hawaiians as an aboriginal peoples it legislates on the same basis as it does with American Indians. This is clear in the legislative history of the Hawaii Homes Commission Act of 1920.
Only non-Indians consider American Indians a distinct race of people. American Indians consider themselves to be many peoples; Cherokee, Chippewa, Dakota, Pueblo and Navajo to name a few bound together by a common experience of dealing with the United States overthrow of tribal governments of seizure of tribal lands. The fact that some non-natives were included in the Kingdom of Hawaii does not make the kingdom non-native. And Indian tribes frequently incorporated non-natives whether French, American or otherwise, and this did not change the native character of the community. In fact, some Indian treaties and statutes provided for the allotment of Indian lands to non-Indians who had married into an Indian tribe.

The fact that the Kingdom of Hawaii was overthrown does not prevent Congress from dealing with Native Hawaiian people as a native government because Native Hawaiians remain a distinctly native community. No one who spends anytime in Indian Country and then visits Hawaii could fail to recognize the many similarities between the circumstances of the native communities in the continental United States and in Hawaii.

Congress has declared that it has the same
authority to deal with Native Hawaiians and American Indians under the Indian Commerce Clause. And those declarations are entitled to a presumption of constitutionality.

In short, a fair review of history cannot ignore the fact that there were aboriginal peoples in the United States of America prior to the formation of the American republic and the Constitution provides authority to Congress to deal with them as distinctly native communities, not based on race but upon political status as citizens of separate native polities that have been incorporated within the United States.

Finally, I would like to talk about the bill itself. We have worked hard to ensure that the bill strikes a careful balance between necessary structure and flexibility so that key issues such as the citizenship in the governing entity can be determined by Hawaii's indigenous peoples.

I hope all of you take the time to really examine the process in this bill. There are two processes. The first provides for the reorganization of the Native Hawaiian governing entity. It is not the creation of a new entity as much as it is restoring the right of Native Hawaiians to govern
themselves, as do other indigenous peoples within the framework of federal law.

The second process is a negotiations process which provides that upon federal recognition the Native Hawaiian governing entity will negotiate issues such as the transfer of any lands, natural resources and assets commiserate with jurisdiction, grievances for historical wrongs and any governmental authority with the state of Hawaii and the United States. This negotiations process is inclusive and intended to represent all of the people of Hawaii. Before any transfers can be completed, enabling legislation at the state and federal levels if necessary, must be enacted.

Opponents to the legislation have made wild accusations as to what could potentially result from the enactment of this bill. In reality, the bill is about the process. The bill is about finally allowing Native Hawaiians to make some decisions. Many, both opponents and proponents, have advocated to Senator Akaka that he should attempt to predetermine the outcome of both of these processes. He has refused to predetermine either the structure of the entity or the negotiations process for he has confidence that the bill provides the tools necessary
for the people of Hawaii, both native and non-native, to resolve the longstanding issues resulting from the overthrow of the Kingdom of Hawaii in order to provide a better future for all children of Hawaii.

It is an honor to present testimony before you this morning. I stand ready to answer your questions.

CHAIRMAN REYNOLDS: Thank you.

Next up, Mr. Burgess. You, too, will have 15 minutes.

MR. BURGESS: Hi, and good morning.

Thank you for allowing me to come and share my views about this important subject -- is that better?

CHAIRMAN REYNOLDS: Yes.

MR. BURGESS: I've lived in Hawaii for 50 years. The first two years as a Marine Corps legal officer and fighter pilot - in peacetime. And the rest of the years as an attorney in private practice. For the last 28 years I've been married to a lovely lady of Chinese, Filipino and Hawaiian ancestry. In the last eight years she and I have been litigating pro bono to bring back to Hawaii the idea that everybody should play by the same rules.

My wife puts it this way: She asks why
should I get more rights and privileges than my Chinese cousins, my Filipino cousins, or my Irish-English husband just because I have some Hawaiian ancestry and they don't?

She deplores the effect of entitlements and the victimhood mentality on young Hawaiians. Based on her own life and family experience she knows that waiting for a free homestead or handouts is not the way to better your condition or to build wealth. Hard work is.

From my perspective as a lawyer I'm amazed that the entitlement programs in Hawaii have lasted as long as they have. Hawaii is the only state in the nation that gives homesteads restricted exclusively to people that are defined explicitly by race. The definition of Native Hawaiians in the Hawaii Homes Commission Act, for example, is any descendent of not less than one-half part of the blood of the races inhabiting the Hawaiian Islands previous to 1778.

The state also gives to the Office of Hawaiian Affairs, it's referred to locally as "OHA", for that very small racial group annual cash distributions of public land trust revenues. That's revenues before expenses. The state gives no cash transfers to any of the rest of the beneficiaries of
the public land trust.

And as taxpayers we are appalled at the waste by the end of the Waihee administration in 1994 when the public schools in Hawaii were crumbling, the state department of education couldn't even afford to buy books for the students or to repair or even to clean the restrooms and yet money and public resources were gushing out of the fist for the benefit of that same small racial group. And the more that was paid, the more demands were made, not only for that limited racial group, the 50 percent or more Hawaiians, but also for people with even a drop of Hawaiian ancestry.

And now the Akaka bill would push Hawaii over the cliff. It would permanently segregate the state of Hawaii and its people on grounds that the Supreme Court calls odious to a free people. Even Senator Akaka has acknowledged that the bill could lead to secession.

I'm not going to read my entire prepared statement, but I'd like to touch on just three reasons that I think it would be just plain nuts for Congress to go into the most integrated state and reverse course.

First, Kamehameha united us. Akaka would divide us forever.
Second, the Indian tribe analogy does not work. There is no Native Hawaiian tribe to be recognized, and there never has been since the Kingdom of Hawaii was created.

This is the third point. The U.S. did not overthrow the queen. When you look at history wearing blinders you get a distorted picture.

I would like to discuss just those three points in order.

First of all on the concept of unity and equality. The Supreme Court has explained that the United States Constitution contemplates an indivisible nation composed of indestructible states. And the first of America's self-evident truths is that all men are created equal: Every citizen of the United States, whatever her or his ancestry is entitled to the equal protection of the laws.

Those two basic rules of American democracy, unity and equality were embraced early on by Kamehameha the Great. Long before he united the islands and created the Kingdom of Hawaii in 1810, Kamehameha brought non-natives onto his forces and into his family. And ever since then non-natives have continued to intermarry, to assimilate and to contribute to the social, economic and political life
of Hawaii both as leaders in high positions and as ordinary citizens.

The crux of the Akaka bill is that it would break up the state of Hawaii and it would discriminate between citizens of the United States solely based on their ancestry. Merely having a drop of the favored blood would make some people superior to all others forever. And we feel that that violates not only the United States Constitution, it dishonors and defies the fundamental laws of the Kingdom of Hawaii and the vision, particularly, of Kamehameha the Great which has made Hawaii today in many ways a model for the world.

As to the Indian tribe analogy, the Akaka bill supporters, as Noelani said, say all we want is parity; Alaska Natives and American Indians get all of these benefits. It's not fair that Native Hawaiians don't get some, too. But the Akaka bill would not just give Native Hawaiians parity, it would give them supremacy. No group of native Americans has the right to be recognized as a tribe simply because of ancestry. A preexisting, longstanding political entity is required without an existing tribe or polity of some kind there's nothing to be recognized. Congress cannot create tribes out of thin air. It can
only recognize those historic tribes which still exist and function. And there has never been in Hawaii, even during the years of the Kingdom, a tribe or a government of any kind for Native Hawaiians separate from the government of the rest of the citizens of Hawaii.

Census 2000 showed about 400,000 persons who identified themselves as being of some degree of Hawaiian ancestry. Those entire 400,000 would qualify under the definition of Hawaiian as in the Akaka bill. Those 400,000 people reside throughout all the 48 Census districts of the state of Hawaii and throughout all the 50 states. In California, for example, 60,000 people identify themselves as being of Hawaiian ancestry. There is no way under Indian law that such a group could qualify for recognition as a tribe, because they are not governed by a single government, and they do not live in a separate community.

And the third point I'd like to talk about is the rest of the story about the Akaka bill. Just last Sunday on the Honolulu Advertiser there was a headline that said "Morgan Report Is Public At Long Last." The Morgan Report of February 26, 1894 is the final report of the Senate Committee on Foreign Affairs that was investigating the overthrow of the
Hawaiian monarchy. The report consists of 800 pages of sworn testimony, exhibits and findings. That Committee was composed of six Democrats including the Chairman John Morgan and five Republicans. And the report concludes that despite the earlier statements by President Cleveland based on the report by his minister or his representative, former Congressman Blount, that the overthrow was instigated and aided by the United States. But the conclusion of the Committee, the bipartisan committee, was that in fact the U.S. troops had landed as peacekeepers to protect American lives and property and had remained completely neutral.

Now the advocates or the supporters of the Akaka bill frequently report President Cleveland's earlier statements, but they don't ever mention the fact that, after the Morgan Report, President Cleveland recognized, he accepted the verdict of Congress, he recognized the provisional government of Hawaii and subsequently the Republic of Hawaii as the lawful successor to the Kingdom of Hawaii.

Now, I would urge for your consideration the Morgan Report. It's available now digitized for the first time, easily accessible to the public. It can be found on the Internet at morganreport.org. No
spaces. It's indexed, it's searchable and it's good reading because you can hear from people who were on the scene with personal knowledge.

I'd be happy to answer any questions that the Commission has.

CHAIRMAN REYNOLDS: We're going to hold off the questions until the end.

Mr. Bartolomucci, you have 15 minutes.

MR. BARTOLOMUCCI: Chairman Reynolds and members of the Commission, thank you for this opportunity to participate in the briefing on S. 147, the Native Hawaiian Government Reorganization Act of 2005.

I'd hope to focus today on the issue of Congress' power to enact S. 147. The principal legal question presented by S. 147 is whether Congress has the constitutional authority to treat Native Hawaiians the way it treats other Native Americans, i.e., American Indians and Native Alaskans. Constitutional text, Supreme Court precedent and historical events provide the answer.

Congress' broad power in regard to Indian tribes allows Congress to recognize Native Hawaiians as having the same sovereign status as the other indigenous peoples of this country. S. 147 would
establish a process by which Native Hawaiians would reconstitute their tribal government.

Before Hawaii became a state, the Kingdom of Hawaii was a sovereign nation recognized as such by the United States. In 1893 American officials and the U.S. military aided the overthrow of the Hawaiian monarchy. A century later in 1993 Congress formally apologized to the Hawaiian people for the U.S. involvement in this regime change.

Congress has ample authority to assist Native Hawaiians in their effort to reorganize their governing entity. Congress' broadest constitutional power, the power to regulate commerce, specifically encompasses the power to regulate commerce with the Indian tribes. Based upon the Commerce Clause and constitutional provisions, the Supreme Court has time and again acknowledged Congress' plenary power to legislate regarding Indian affairs. As the Supreme Court said only two years ago in the case United States v. Lara, "The Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as plenary and exclusive."

Congress has used that broad power in the past to restore lost tribal sovereignty. In 1954
Congress terminated the sovereignty of the Menominee Indian Tribe in Wisconsin. In 1973 Congress reversed course and enacted the Menominee Restoration Act which restored sovereignty to the Menominee.

Pointing to the Menominee Restoration Act the Supreme Court in Lara affirmed that the Constitution authorized Congress to enact legislation "recognizing the existence of Indian tribes" and "restoring previously extinguished tribal status."

S. 147 is patterned after the Menominee Restoration Act and would do for Native Hawaiians what Congress did for the Menominee.

S. 147 does not run afoul of the Supreme Court's 2000 decision in Rice v. Cayetano. In Rice the Court ruled that the state of Hawaii could not limit the right to vote in a state election to Native Hawaiians. But Rice did not address whether Congress may treat Native Hawaiians as it does other native Americans. Indeed, the Court in Rice expressly declined to address whether Native Hawaiians have a status like that of Indians in organized tribes or whether Congress may treat the Native Hawaiians as it does the Indian tribes.

Some opponents of S. 147 have pointed to Rice in support of an argument that the bill violated
equal protection principles. But the Supreme Court has long held that congressional legislation dealing with indigenous groups is political, not racial, in character and therefore is neither discrimination nor unconstitutional. When Congress enacts laws for indigenous peoples it does so on a government-to-government basis. Scores of federal laws and regulations exist relating to American Indians, Native Alaskans and Native Hawaiians and none has ever been struck down as racially discriminatory.

At the end of the day a decision by Congress to treat Native Hawaiians like other native groups is a political decision and one that the courts are not likely to second-guess. In the 1913 case of United States v. Sandoval, which involved the New Mexico Pueblos, the Supreme Court ruled that Congress could treat the Pueblos as Indians even though their culture and customs differed from that of other Indian tribes. The Court decided that Congress' judgment was not arbitrary and that judicial review should end there. S. 147 easily passes that legal test.

That concludes my opening statement, and I'll be happy to answer the Commission's questions at the appropriate time.

CHAIRMAN REYNOLDS: Thank you.
Professor Heriot?

PROFESSOR HERIOT: Thanks for inviting me to participate in this briefing.

In order to stick to the time allotted, I'm going to deviate a little bit from my draft text.

Let me start by saying Indian law is a very complicated area of the law full of contradictions and ripe for major reform. The last thing that it needs is a major expansion that would come, even with the recognition of an additional Indian megatribe. But the proposed Native Hawaiian Government Reorganization Act goes far beyond merely recognizing a very, very, very large tribe. And I believe that it does so in an unconstitutional manner.

First of all, I'm going to call it the Akaka bill for brevity.

The Akaka bill does not simply recognize an existing tribe. It creates that tribe, or more precisely it creates the mechanism for creating the tribe. The Constitution contains no clear statement of congressional authority to create or organize new Indian tribes. In fact, it's worth pointing out the Constitution contains no clear statement of congressional authority to regulate even existing Indian tribes as opposed to regulating commerce.
between the United States and Indian tribes. The
authority to regulate existing tribes is sometimes
said to derive from the necessity of dealing with
reality. The existence of Indian tribes in this
country in 1787 as well as today is a fact, and truly
it was the intention of the framers to confer upon
Congress the power to deal with that reality, whether
that reality was considered a happy one, an unhappy
one or something in between. But the power to
authorize the creation of new tribes or even authorize
the reorganization of a previously existing tribe is
not merely the practical power to cope with the world
as it is.

New tribes and newly reconstituted tribes
alter the status quo in significant ways. If that
power exists, what limits should be placed on it?
Does Congress have the authority to create an Indian
tribe from Mexican Americans living in Southern
California, for the Amish in Pennsylvania or Orthodox
Jews in New York?

By the way, religious groups would be
among those most desiring tribal status since tribes,
if they can be conceptualized as sovereign or quasi-
sovereign entities are not governed by the Bill of
Rights except insofar as the Indian Civil Rights Act
imposed that legal responsibility upon them, which is only partial. Religious groups could therefore arguably surmount the establishment clause difficulties dealt with by the Supreme Court in the case of Board of Education of Kiryas Joel School District v. Grumit by becoming an Indian tribe. So this is not a fanciable issue.

It's been pointed out that in the past the Supreme Court has allowed Congress to reconstitute Indian tribes, in particular the Menominee Tribe. But I disagree that this has occurred in the past.

First, the Supreme Court has not put its mark upon this at all. It was never challenged in court. But more importantly, the Menominee Tribe was not extinguished by an act of Congress. What happened was federal supervision ceased in the 1950s as part of a general policy at the time to decrease federal supervision over Indian tribes with the thought that eventually perhaps these tribes would melt away. But the tribe continued to exist. It continued to be organized. It became a corporation with the members of the tribe as shareholders of that corporation.

And so by recognizing the Menominee Tribe again Congress was not in anyway creating a tribe. It wasn't recreating the mechanisms to put together a
tribe. Those people who were members of the Menominee Tribe knew that they were members of the Menominee Tribe. There was a political unit and it was simply rerecognized by Congress and federal supervision was undertaken again. So that is quite distinguishable from this case.

Nevertheless, in examining the constitutionality of the proposed Akaka bill we can put all this aside, at least temporarily, because another issue looms much larger in an age in which racial entitlement are an important future of the political landscape in nearly every part of the country Hawaii is in a league by itself. Its Office of Hawaiian Affairs administers a huge public trust that in theory benefits all Hawaiians, but for reasons that are both historical and political in practice provides benefits exclusively for ethnic Hawaiians. Among other things, ethnic Hawaiians are eligible for special home loans, business loans, housing and educational programs. On the OHA website the caption proudly proclaims its racial loyalty saying, and I'm quoting here, "The Office of Hawaiian Affairs for the betterment of Native Hawaiians."

The proposed Native Hawaiian Government Reorganization Act is, in large measure, an effort to
preserve that system. The constitutionality of the system has recently been called into question as a result of the Supreme Court's decision in Rice v. Cayetano and the 9th Circuit's decision in Doe v. Kamehameha Schools.

Rice held that Hawaii's election system under which only ethnic Hawaiians could vote for trustees of the Office of Hawaiian Affairs was a violation of the Constitution's 15th Amendment, which prohibits discrimination on the basis of race in voting rights.

Doe held that the prestigious King Kamehameha Schools which are privately wrong cannot give ethnic Hawaiians priority over students of other races and ethnicities for admission without violating 42 USC Section 1981.

Given the result in these cases it is considered by many to be only a matter of time before other aspects of OHA's special benefits programs will be challenged in court on equal protection and other civil rights grounds and ultimately found contrary to law.

The best hope for those who favor these programs is to transform them from programs that favor one race or ethnicity over others, to programs that
favor members of a tribe over non-members. As the Supreme Court has held in Morton v. Mancari, a case involving a hiring preference for tribal members at the U.S. Bureau of Indian Affairs, and I'm quoting here, "Such a benefit is granted to Indians not as a discreet racial group but rather as members of quasi-sovereign tribal entities." In other words, it's not race discrimination, it's discrimination on the basis of tribal membership.

The question I hear I think boils down to this: Can the United States Government and the state of Hawaii achieve by indirection what they very likely could not have achieved directly on account of the due process clause of the Fifth Amendment and the equal protection clause of the Fourteenth Amendment? I would respectfully submit that the answer is no.

Know however, that the Mancari decision, just as an aside, is a double-edged sword. If discrimination by the Bureau of Indian Affairs in favor of tribal members is not race discrimination, then presumably discrimination against tribal members by a state government is also not race discrimination. But that aside, it cannot apply to a tribal group that does not yet exist. The very act of transforming ethnic Hawaiians into a tribe is an act performed on a
racial group, not a tribal group. When as here it is
done for the purpose of conferring very large benefits
on that group, it is an act of racial discrimination
subject to strict scrutiny; scrutiny that likely
cannot survive.

I think the best way of illustrating this
is simply alter the facts slightly. If the state of
Hawaii were operating its special benefits program for
whites only or for Asians only, no one would dream
that the United States could assist them in this
scheme by providing a procedure under which whites or
Asians could be declared a tribe. There are standards
for determining what is a tribe and what is not a
tribe. And important among them is that there be some
sort of political unit that has continuously existed.

And that is very much not the case here. And just
looking at the Akaka bill will illustrate that this is
not the case since this sets up a procedure under
which, for one thing, membership in the group can be
defined. A tribe that exists doesn't need to be told
by the United States Government who is in the group
and who isn't. They don't need a mechanism of this
sort. And hence, I would respectfully submit that
there is no tribe here.

Rather than speak further, I think I will
stop so that we can get on to what I suspect the
members of the Commission are most interested in, and
that their questions.

CHAIRMAN REYNOLDS: Well, I'd like to	hank the panelists. This has been enlightening.
This is a very important issue.

When it's appropriate for the state to
distribute benefits and burdens on the basis of race
or ethnicity is extremely important in a
constitutional sense, but also in a public policy
sense.

For me there are two questions that need
to be asked. First is is it constitutional? And
second, even if it is, is that something that we want
to do or is it something that we want to expand? So
the comments today are most appreciated.

And at this point I'll open up the floor
for questions.

VICE CHAIRMAN THERNSTROM: If we may have
a minute to question each to respond.

CHAIRMAN REYNOLDS: Okay. Would any of
the panelists like to pose a question to another
panelist?

VICE CHAIRMAN THERNSTROM: Or respond to
another panelist.
MR. BARTOLOMUCCI: Thank you. I just wanted to respond to a strong point made by Professor Heriot, that being her point that Congress may have the authority to recognize Indian tribes but doesn't have the authority to create a tribe. And as lawyers are to do, I want to present two counter arguments which are arguments in the alternative.

COMMISSIONER YAKI: This is why one lawyer is a town is poor but two lawyers in a town are rich.

MR. BARTOLOMUCCI: The first being assuming that Native Hawaiians now are not a tribe, I would point to the Supreme Court's decision in Lara in which Justice Breyer's opinion expressly stated that Congress has the authority to "restore extinguished tribal status." So that language, which was written in the opinion that the entire Court joined, would support Congress' power to take a tribe that previously existed and bring it back into existence, as in the case of Menominee.

And then my second response is that it's actually not clear to me that Native Hawaiians are not a tribe now. I think if you ask Ms. Kalipi, she would tell you that there still is a Native Hawaiian tribe. That nothing that Congress or the American Government could do could take away their status or destroy their
sovereignty. And that what they're seeking is merely reorganization of the tribe and federal recognition of the tribe.

I can't speak for the Native Hawaiians, but I think they would say that their sovereignty is invalidable and was not taken away by the acts of 1893 and that what they're seeking is a reorganization and recognition.

CHAIRMAN REYNOLDS: Professor Heriot a rejoinder?

PROFESSOR HERIOT: Just on the Breyer opinion. Breyer says that Congress has the authority when we're talking about tribal status. But I think what he means there is not the existence of the tribe. He doesn't talk about extinguishing the tribe. But status in terms of the eyes of the United States Government. So I don't think he's talking about anything beyond recognition.

Again, the Menominee case is the one that's always pointed to. That group did not disappear as a political unit. In fact, even before the Restoration Act, there had already been a decision by the Court that made it very clear that the Menomines continued to be sovereign in the sense that they continued to be exempt from Wisconsin law on issues of
fishing and hunting rights which could only be if there's actually a tribe.

CHAIRMAN REYNOLDS: Okay. Ms. Kalipi?

MS. KALIPI: Yes. I just wanted to clarify or respond to a couple of points that Mr. Burgess made.

With respect to Senator Akaka, he has never advocated that this bill would lead to secession from the United States. He did an NPR interview where he was asked what the future of the governing entity would look like and he said my bill sets up a process. That's something that will be determined by the future generations of Hawaii by my grandchildren or whoever.

When the story was put on NPR they ran an independences piece and said some of the advocates even say this could lead to independence and they put that quote in there. But Senator Akaka has never ever said that this bill would lead to secession. His position is the bill would extend the federal policy of self governance and self determination, which is how indigenous peoples have self governance within the federal framework in the United States. So I just want to make that clear for the record.

Second, with respect to the Morgan Report, the Morgan Report has always been public as has been
the Blount report. And it shows evidence of how the
United States has flipped-flopped, for lack of a more
articulate term, on dealing with Hawaii and Hawaii's
history.

As you can see, the Morgan Report said
that the United States remain neutral --

COMMISSIONER YAKI: It's important to say
what the date of the Morgan Report was?

MS. KALIPI: It was in the 1800s. It was--

COMMISSIONER YAKI: This was not something
that just came out?

MS. KALIPI: Right. No. The Blount report
came out, that was President Cleveland's person. And
then Morgan's report came out with the Senate
Committee on Foreign Relations after that.

So one report said that the United States
participated in the overthrow. The next report, the
Morgan Report said they remained neutral. Similarly,
in 1983 a Native Hawaiian Study Commission had a
majority report and a minority report. A majority
report saying that there was no trust relationship
with Native Hawaiians. The minority report saying
that they said that there was.

COMMISSIONER BRACERAS: Can I ask just a
question about that specific point?
MS. KALIPI:  Sure.

COMMISSIONER BRACERAS:  Obviously, historians can differ about the role of the United States.

MS. KALIPI:  Right.

COMMISSIONER BRACERAS:  You know in the events leading to the dissolution of that government. But can you just tell us your view on what the relevance of that is to this? I mean, in other words the decision by the United States Congress now as to whether or not to recognize Native Hawaiians as a separate tribe seems to me to be separate and distinct from that historical question.

MS. KALIPI:  The reason I think it's an important clarification is because it goes to the points being made by opponents to the bill that this is a creation of a governing entity. Native Hawaiians believe that the Kingdom of Hawaii was our governing entity and when it was overthrown, and when we were prevented from having a government structure because we had a republic put upon us of which Native Hawaiians were not allowed to participate and it was their government, that goes directly to our argument that this is a restoration of a preexisting native government.
COMMISSIONER BRACERAS: I see.

MS. KALIPI: So that's why we believe that the clarification is very important. Not that we would like to rehash what happened. What happened, happened historically.

COMMISSIONER BRACERAS: Yes.

MS. KALIPI: But the reason the point is important is for that very reason because there are those who claim that because the Kingdom of Hawaii, include non-Native Hawaiians, it was not a native government, and that's why I talked about it in my opening statement, Native Hawaiians were open but it was clearly their government.

COMMISSIONER BRACERAS: Yes.

MS. KALIPI: You know, and so they should not be penalized for having the wisdom to have processes to allow others to be part of their government. And when that government gets overthrown and they're no longer allowed to have that government and we get to link it up with our bill, the reason we have that process is because Native Hawaiians have not been allowed to have that governing structure. So we have to provide an opportunity for the reorganization of it. And we see it as a restoration of that government. And that's why I was going through that
history.

So I just want to make clear that, you know, if we're going to go on the flip-flops rather then the current United States' position really is the 1993 Public Law 103-150 where Congress apologized to Native Hawaiians on behalf of the United States for United States participation in the overthrow and committed to a process of reconciliation with Native Hawaiians.

CHAIRMAN REYNOLDS: Mr. Burgess?

MR. BURGESS: I'd like to respond to some of those points.

The Kingdom of Hawaii was not a tribe. The Kingdom of Hawaii was never exclusively of, by or for Native Hawaiians. For example, the first Constitution of the Kingdom of Hawaii in 1840 by Kauikeaouli, Kamehameha III, began by saying, "God hath made of one blood all nations of men to dwell on the earth, in unity." The civil codes of the Kingdom of Hawaii provided that naturalized foreigners had the same rights and privileges and immunities as natives.

By the time of the overthrow, in fact by the Census of 1890, Hawaiians were in a minority of the inhabitants of Hawaii. The non-natives played important roles as judges, as elected officials in the
legislature, as cabinet members and as business leaders.

So if the logic of the whole sovereignty movement is to restore the Kingdom which was wrongfully overthrown, then that certainly by no stretch of logic could justify creating an exclusively Native Hawaiian government. I mean, it would have to be an inclusive government of all the people of Hawaii. And that's, in effect, no different from what we already have.

The Morgan Report is important. It's true, as Commissioner Yaki said, that it has always been a public document but it's not available and just a few libraries have it. It's very difficult to find. Now it's out there and easily accessible. And that's the benefit of it. And it's really pretty good reading if you're interested in the subject because you're getting information from people who were there and living through the days and seeing exactly what the orders were to the Marines and the sailors that landed that day, just as they had on previous occasions to help the Kingdom of Hawaii restore order.

For example, after the election of King Kalakaua that he was accused of corruption and the supporters of Queen Emma who was his opponent in the
election, they rioted and he asked for help. And the U.S. warship that was in harbor at the time sent some troops in and they helped restore order. But simply as peacekeepers. And that's the only role that the United States played in 1893 at the time of the overthrow.

And the Morgan Report is important because the Queen surrendered but on the request that the United States reinstate her to the throne. President Cleveland, after he got the Blunt report, he then tried to do exactly that. He sent a new Commissioner Willis to Hawaii to negotiate with the Queen to restore her to the throne. But he said that you should agree to amnesty for the people who did the overthrow. And the Queen said no. She insisted they are traitors and they have to be beheaded. And she finally backed down from that demand, which President Cleveland couldn't very well have actually complied with. She finally backed down with that demand a couple of months later, but by then President Cleveland had already referred it to the broader discretion and judgment of the Congress. And the report of the Morgan Committee is what resulted from that. And President Cleveland after that accepted it and moved on.
That was not the only official congressional report. Also 1983 the United States Congress requested a thorough study of the events of the overthrow. And again, the official study was to the same conclusion; that the United States was not responsible.

CHAIRMAN REYNOLDS: Okay. Well, I suspect that Commissioner Yaki has a question or two.

COMMISSIONER YAKI: Go ahead. I was just waiting for -- we'll go by whatever order you choose to go in, Mr. Chairman, is fine with me.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez?

COMMISSIONER MELENDEZ: Yes. For either Mr. Burgess or Ms. Heriot. Thank you for coming out.

You argued that Congress is considering establishing a race-based government. It appears, however, like this legislation would put Native Hawaiians on similar footing to the legal status of American Indians and Alaska Natives. Do your objections to sovereignty for Native Hawaiians extend also to sovereignty for the Indians tribes? And how can you distinguish between the groups of indigenous people who all exercise sovereignty over the homelands prior to the arrival of the Europeans?
PROFESSOR HERIOT: I'll go first. No, I have no objection to the status of Indians in the United States or I'm not familiar with the Alaska Native case. But I believe that Indian tribes preexisted the United States and that the federal government is fully authorized to recognize a tribe that exists and is functioning. And that's fine.

The difference between that is that it has been many, many years since there was anything approaching a tribal entity in Hawaii that there is no functioning tribe there now and that rather than recognizing Indian tribes in the United States, Congress is seeking to create a mechanism that would allow a tribe to be created. And that I don't think they have the authority to do.

COMMISSIONER MELENDEZ: On that same question, what would your definition of a tribe be? Basically because the word "tribe" basically didn't come out of a Native Americans for the tribes as they're called now. Actually, basically tribes in the United States have certainly a self governance that they demonstrated. So it may not have even been European style English governments as they are since the Reorganization Act of 1934. And who is to know exactly how they actually operated. Maybe they were
similar to the way Hawaii operated as far as the queen and that hierarchy. So how would you respond?

PROFESSOR HERIOT: Yes, I think that it's actually a very interesting and very difficult question about what constitutes sufficient separate cultural and political existence here. It's certainly true that many groups that we would call tribes had very different political structures from those that we're used to today, and that's fine. But there has to be some continuous political unit there. There has to be something which is recognizable as a political structure. It can be very different from what I might choose if I were in charge of the world or what we might be use to, but there has to be something there.

And I think the tribes recognized on the mainland, all of those that I'm aware of, have had some political structure to them. But at this point, and it has to be continuous, at this point if there was ever a political structure of that sort in Hawaii, it doesn't exist anymore. And what I'm saying is Congress does not have the authority to go back and recreate it, assuming that it existed in the first place.

And, of course, the Kingdom of Hawaii itself was very much a multiracial political unit. And
so, you know, how far do we have to go back before we find an ethnic group or unit there? I'm not certain. But I'm certain that it doesn't exist today.

CHAIRMAN REYNOLDS: Okay. Commissioner Taylor, any questions?

COMMISSIONER TAYLOR: Maybe just one or two preliminary questions, and I know I don't have to formally reserve the right to ask additional questions, but I suspect I will have some more.

CHAIRMAN REYNOLDS: We're not formal around here.

COMMISSIONER TAYLOR: I'm trying to get my mind around two basic concepts. One, supporters of this legislation -- and I want to make sure this assertion is correct. They don't take the position that this just creates a racial or ethnically based group, correct?

MS. KALIPI: Yes.

COMMISSIONER TAYLOR: It is, indeed, a tribe, right?

MS. KALIPI: It's a group of indigenous peoples.

COMMISSIONER TAYLOR: Okay. Which goes to the fact that -- well, if it's a group of indigenous peoples must they have a recognized political system
in place in order for this to be viable in your view?

MS. KALIPI: Our position is that we had a political entity in place, it was overthrown. And when the republic was asserted you had to swear allegiance that you would not reform. So Hawaiians did the best they could in terms of maintaining their communities throughout without a government as others would perceive a government. And what this bill would do would be to recorrect that by providing a process for reorganization.

And the fact that Congress has always treated Native Hawaiians as they have with American Indians and Alaska Natives.

COMMISSIONER TAYLOR: So the key question is whether or not you can identify a point in time where there was indeed a structure? That's in your mind the key question. And if you can identify a point in time where there was a structure, regardless of the amount of time that has passed --

MS. KALIPI: Yes.

COMMISSIONER TAYLOR: -- then Congress is authorized to go back and, your words, recognize or restore rather than create?

MS. KALIPI: Yes.

CHAIRMAN REYNOLDS: Let me follow up on
that. The issue of sovereignty when the Kingdom was
overthrown a monarchy was in place. In terms of logic
the monarchy is overthrown, didn't the sovereign
entity in place at that time, wasn't it extinguished?

MS. KALIPI: No.

CHAIRMAN REYNOLDS: There wasn't a
democracy in place at the time, so the sovereign did
not reside in the people since it wasn't a democracy.
The power of the sovereign resided in the queen?

MS. KALIPI: You could make that argument,
yes, but the Native Hawaiians believe firmly that the
monarchy was their government. It was similar to
others. Hawaiian history is a little bit different.

For example, in comparison to when you
compare the monarchies of European countries to the
monarchy of Hawaii, the commoners had more of a role.
In fact, the commoners worked for chiefs who then
reported up to the monarch. And the commoners could
move and if the commoners left that chief, the chief
lost power and it similarly went upscale.

So it was -- the Hawaiian culture and
tradition and form of government was different. And
everyone feels that it was the Hawaiian government.

Now I think if you were to apply the
western concept of a monarchy, then what you're saying
with respect to the sovereignty of that governing
structure residing with the sovereign, then your
statement would be correct. But that's not how Native
Hawaiians view it.

And I would also pose that the type of
governing structure I would argue should not -- the
fact that we didn't have a tribal government in the
sense of what tribal governments looked like after
1934 with the Indian Reorganization Act should not be
held against Native Hawaiians in terms of what kind of
governing entity they had.

CHAIRMAN REYNOLDS: Okay. And it's not
going to be based raced. It would be raced on
ancestry. But it wouldn't work it exactly like a
racial preference in that non-Native Hawaiians would
be -- you would have the ability to treat non-Native
Hawaiians differently? You would be able to use
classifications, those who can demonstrate Native
Hawaiian ancestry versus those who don't? So the
practical effects we have here, wouldn't the effect
that you can maybe get a subsidized loan for a home or
a car or to get an allotment, that would continue
unabated? I have family who have lived in Hawaii for
22 years. They would still be ineligible for those
benefits?
MS. KALIPI: Yes.

CHAIRMAN REYNOLDS: Okay.

MS. KALIPI: But I'd like to also make the clarifications that our position is that that's based on the political and legal relationship that the United States has with Native Hawaiians as an indigenous group, again going back to the fact that they had a preexisting government which is the whole basis of what we're talking about.

Second, I just want to make clear in terms of the processes in this bill. I think it's easy to jump to conclusions or assumptions about what this government will look like and what supposed entitlement or benefits and services will look like when, in fact, the bill defines Native Hawaiian for the sole purpose of identifying who can participate in the reorganization of the government, which I think is an important clarification.

VICE CHAIRMAN THERNSTROM: One follow-up preliminary question.

CHAIRMAN REYNOLDS: Yes, Commissioner Thernstrom.

VICE CHAIRMAN THERNSTROM: Maybe in my own mind I want some help on two very basic issues. Native people, indigenous people, and the government
or political entity you are seeking to "restore," they sound different to me. The government that was in place did not sound like it was a government exclusively of Native Hawaiians.

MS. KALIPI: It wasn't.

VICE CHAIRMAN THERNSTROM: So how are you then restoring that --

COMMISSIONER YAKI: I would clarify. I would say at the time of dissolution it was not.

VICE CHAIRMAN THERNSTROM: It was not?

MS. KALIPI: This is how I would clarify it. With respect to Mr. Burgess' comments regarding the Census if you look solely at the Census in 18 -- I think it's between 1880 and 1893, right before the overthrown, Hawaiians I think you could extrapolate and say Hawaiians were only 40 percent of the Kingdom.

VICE CHAIRMAN THERNSTROM: Okay.

MS. KALIPI: The context of that is that we were in a period of influx with respect to sugar plantations and we had thousands and thousands of immigrant workers from China, Philippines, Japan and Portugal and they were included in that Census.

VICE CHAIRMAN THERNSTROM: In that Census.

MS. KALIPI: They were not participants in the government. Not all of them were participants in
the government. In fact for a long time Japanese and
Chinese immigrants were not allowed to participate and
were discriminated against.

So everything has to be looked at in terms
of context. If you were to make that assertion and
look closely at it, Native Hawaiians were still the
majority of people participating and it was still
their government.

Now with respect to your question that
goes back to what I said in my opening statement,
which was it was a native government; whether or not
it's a monarchy or albeit it a different form of what
people have conceptualized a tribal government ought
to be or may be, but this native governing entity made
its own decision as to how it would allow foreigners
to participate.

VICE CHAIRMAN THERNSTROM: Okay.

MS. KALIPI: And so my position and point
is that because --

COMMISSIONER YAKI: They kind of came on
visas.

MS. KALIPI: Because this government had
that mechanism that didn't make that government non-
native.

VICE CHAIRMAN THERNSTROM: Right. So as a
policy matter then are you expressing a judgment on
the appropriateness of establishing a new government
through this reorganization process that would have
the ability to say we are seeking to restore a
government that at the time admitted foreigners, we
may choose not to admit them? I mean is --

MS. KALIPI: The process allows the Native
Hawaiians --

VICE CHAIRMAN THERNSTROM: To do that?

MS. KALIPI: -- to decide if they want to
or they don't want to.

VICE CHAIRMAN THERNSTROM: I mean just as
a supporter of the bill, is that a good thing in your
view or a bad thing?

MS. KALIPI: I think that's a good thing.

VICE CHAIRMAN THERNSTROM: Okay.

MS. KALIPI: Because when you look at the
history in Indian law and you look at the reason we're
doing this with respect to the political and legal
relationship and the ideals of the federal policy of
self governance and self determination for indigenous
peoples it's a decision that indigenous peoples are to
make.

VICE CHAIRMAN THERNSTROM: Okay.

COMMISSIONER KIRSANOW: Mr. Chairman?
CHAIRMAN REYNOLDS: Commissioner Kirsanow?

COMMISSIONER KIRSANOW: Thank you.

I first want to, again, thank the staff for putting together a splendid panel.

I've got a number of questions, but I'll just ask one for now. And this is directed at anyone, but I think it's probably best directed at Professor Heriot and Mr. Bartolomucci. This is a subpart question.

Would a discrimination statute such as Title VII and its progeny and/or sovereign immunity apply to this sovereign governing entity if this Senate bill 147, I think it is, were to pass?

PROFESSOR HERIOT: If the bill were to pass in the condition that it's in right now, presumably there would be some level of sovereign immunity on the part of the tribe. There is an amendment that is being considered that would specifically subject the governing entity to the United States Constitution and to federal anti-discrimination laws. That same proposed amendment would clarify the sovereign immunity issue as well.

Just reading from the operative sentence here, this amendment would include a sentence "The Native Hawaiian governing entity and citizens of the
Native Hawaiian governing entity shall be subject to liability in any court of the state of Hawaii in an action in tort by a person who is not a citizen of the Native Hawaiian governing entity to the same extent that the state and the citizens of the state would be subject to liability in such an action."

So there's an amendment out there that might address itself to your question.

COMMISSIONER KIRSANOW: That's the Kyl Amendment?

PROFESSOR HERIOT: I believe this was done by Kyl's office.

COMMISSIONER KIRSANOW: With that such amendment do you believe that there would be Title VII application to the affairs of the governing entity.

PROFESSOR HERIOT: If this amendment is not included?

COMMISSIONER KIRSANOW: Right.

PROFESSOR HERIOT: If the amendment is not included, presumably the tribe is not subject to federal anti-discrimination laws.

COMMISSIONER KIRSANOW: And one practical question. The bill has a definition for Native Hawaiian that deals with lineal descendants and it has dates in there with respect to who is considered to be
Native Hawaiian as a result of lineal descendency. And just a practical question. Is there some type of registry as to who was considered a Native Hawaiian in 1893, I think is the one date and then the other date is 1921 for the Hawaii Homes Commission Act? Is there some kind of registry that had identified who was a Native Hawaiian at that time so that lineal descendants can be identified? That's the first question. And a subpart to that is if in fact there is some means by which to identify that person, is the one drop rule in effect? In other words, if the lineal descendent is one who by virtue of intermarriage would still be considered a Native Hawaiian even though they're one thirty-second Native Hawaiian? There used to be the old -- that for example identified someone who is black if they're great, great, great grandfather was black and everyone else was white.

And that's directed to anyone on the panel who wishes to answer.

MS. KALIPI: I'd just like to make one quick clarification on Professor Heriot. The amendments that are in your packet were drafted by Senator Kyl before the substitute amendment was negotiated with the Administration. So the substitute amendment has sovereign immunity provisions in it. And
I would direct -- and it's sovereign immunity for the federal government and for the state government.

In addition --

COMMISSIONER BRACERAS: I'm sorry. Where do we find the substitute amendment.

MS. KALIPI: The substitute is in your packet on the left side right behind that factsheet, ma'am.

COMMISSIONER BRACERAS: Okay.

MS. KALIPI: That's the substitute amendment.

COMMISSIONER BRACERAS: And this is supported by the current Administration?

MS. KALIPI: It was negotiated with the Department of Justice, White House and Office of Management and Budget. And it addresses the concerns that they raised in their letter to Senators McCain and Dorgan.

COMMISSIONER BRACERAS: Okay. And I'm sorry, when did that language come out?

MS. KALIPI: That was in September.

COMMISSIONER BRACERAS: This one came out in September?

MS. KALIPI: Yes.

COMMISSIONER BRACERAS: Okay.
CHAIRMAN REYNOLDS: The letter that Senator Kyl received also had a paragraph discussing some constitutional concerns.

MS. KALIPI: Yes. This amendment reflects negotiated language that could address anything short of ideology.

CHAIRMAN REYNOLDS: So the constitutional concerns that --

MS. KALIPI: Right. The constitutional concerns are still out there in terms of the ideological question of does Congress have the right to recognize Native Hawaiians as an indigenous people.

COMMISSIONER YAKI: The sovereign immunity section was actually negotiated --

MS. KALIPI: Right. Right.

COMMISSIONER YAKI: -- and put into the amendment, which was the second part of the Kyl.

MS. KALIPI: But the sovereign immunity provisions related to the federal and state governments were included in the substitute and are on pages 39 and 40 for your reference. I just want to make that clarification.

In addition, the bill provides on page 34 of the substitute for the protection of the civil rights of members of the entity and those affected by
the entity. And the bill had always provided that.

When the Secretary certifies the organic governing documents of this entity, one of the requirements is that the organic governing documents have to provide for the protection of the civil rights of the citizens of the governing entity and all persons affected by the exercise of governmental powers and authorities by the Native Hawaiian governing entity. So I would just like to make that clarification.

With respect to the registry --

VICE CHAIRMAN THERNSTMOR: Wait a minute.

I don't think that answers Commissioner Kirsanow's question about the application, for instance, the '64 Civil Rights Act, Title VII, whatever. I mean, I think the answer is no to that. It doesn't answer that problem.

COMMISSIONER TAYLOR: Or it's left open to the government to decide.

MS. KALIPI: It's left open to the governing entity as part of the process, ma'am, in developing its organic governing documents with the Secretary of the Interior having the check on it.

COMMISSIONER TAYLOR: So that governing entity could opt into the civil rights protections
that all other Americans enjoy or --

MS. KALIPI: Or not. That would be up to the entity and the Secretary of the Interior in making the certification would have to comply with this requirement. So if the Secretary of the Interior determined that the organic governing documents did not meet this -- what I'm quoting on page 34 on lines 1 through 6 of the substitute, then she could not certify the entity and not provide federal recognition.

COMMISSIONER TAYLOR: Okay. Before we get away, I want someone to answer the question about the one drop rule.

VICE CHAIRMAN THERNSTROM: Yes, I do, too. I was about to say that question was never answered.

COMMISSIONER TAYLOR: Yes.

MR. BURGESS: Could I take a try at that?

VICE CHAIRMAN THERNSTROM: And can I just add that, you know, it seems to me we got a semitic little dance here about racial groups and tribal groups. And, I mean, the definition here of the tribal group is a one drop of blood definition.

Now Mr. Burgess was about to speak.

MR. BURGESS: Okay. The definition in the Akaka bill, the shorthand for it is that anyone with
an indigenous ancestor, no matter how remote, is eligible. Whether it was 1921 or 1893 it says on -- who had directly a descendent of someone who resided in the Hawaiian Islands on or before 1893. So that could go back as far as you want to go. And it could include anybody with one five hundredths. They would be eligible to participate in the creation of the new government.

VICE CHAIRMAN THERNSTROM: Okay.

COMMISSIONER BRACERAS: But it's anybody who resided on the island at that time? So it could be somebody who is white?

PROFESSOR HERIOT: No.

COMMISSIONER BRACERAS: No?

MR. BURGESS: I could be --

COMMISSIONER BRACERAS: Wait. I want to hear--

MR. BURGESS: If somebody could establish who was white now, could establish that he or she has an ancestor --

COMMISSIONER BRACERAS: Right. I'm not interested in what they look like now.

MR. BURGESS: Right.

COMMISSIONER BRACERAS: I'm interested in what group of people from the 1800s it applies to. In
other words if 60 percent of the Islands was not native, do the direct lineal descendants of those people, they're not covered?

MR. BURGESS: No, no. No, they're not indigenous.

COMMISSIONER BRACERAS: Right.

MR. BURGESS: It's only people who are indigenous.

COMMISSIONER BRACERAS: Right.

COMMISSIONER KIRSANOW: And see, that goes to my question how would you establish that one is a lineal descendent of someone who is a Native Hawaiian? Was there some central registry or is this thing something that could possibly be subject to fraud? Can people buy into it, as has been the case in other tribal cases? How does one establish that Joe Smith in 2006 was a lineal descendent of a beautiful Hawaiian as of 1893 or whatever the other date mentioned, '21 I think it is, was?

CHAIRMAN REYNOLDS: Okay. Commission Yaki is going to answer your question.

COMMISSIONER YAKI: Commissioner Yaki is going to answer your question and start in on his questions.

First, I want to say a warm aloha to the
members of the Hawaiian community who have joined us in this room.

And actually your question, Peter, is one I wanted to address because it directly affects me. My grandfather was born on the Island of Hana. And he told us throughout his life, he was put in an orphanage when he was young. And he said the reason he was put in an orphanage was that his mother had died and his mother was Hawaiian. But the records of that orphanage were burnt to the ground in a fire, so I have no idea if I am one eighth or whatever, but all I do know is that as of now I cannot claim to be kanaka maoli or a Native Hawaiian, but I can tell you that as someone who goes to the Islands frequently, I think of it as home.

Part of I think the struggle that conceptually we're having here is because in addition to the normal role that we have in talking about traditional civil rights, Title VII, Title VI, Title IX Voting Rights Act, you name it, we are now dealing with the civil rights of indigenous peoples who form the backdrop for one of the less sanguine aspects of our nation's history. And in attempting to repair the damage done during those times, the federal government using its plenary authority under the Indian Commerce
Clause and the Treaty Clause has created a special status, sovereign status within this country for Native American tribes.

Now, let's all be realistic here. The nomenclature that we're talking about is uniquely derived from western culture. If Columbus hadn't taken a wrong turn and thought he was in the East Indies, we would probably be using a much different term nowadays to talk about Native American indigenous peoples here.

But when we talk about tribes, when we talk about Indians and when we look to the words of the founders, I think we have to look to take them in the context of what they were seeing at the time, and those were the people who were native and on the land at the time.

In the subsequent years through '34, through the other acts that this government has established to attempt to right some of the wrongs done to Native Americans over the past, they have created this unique and, albeit limited as exhibits in the Lara court that the Congress has the ability to limit or expand sovereignty as it sees fit, but it has created this limited sovereignty between Indian organizations, and they call them tribe, they call them nations, I would simply call them sovereigns and the United States Government.
So when Commissioner Kirsanow asked the question about Title VII, you know the question to ask is well what is the application of these laws right now as it relates to the sovereign status of Native American governments. And I think that the question right now, I think Professor Heriot has talked about how there's been some struggle and some tension over the application of these laws, but for right now a number of courts have said that a number of the laws that normally would apply to every citizen including, perhaps, some of our civil rights laws, may or may not extend to those tribal sovereigns that the United States has negotiated a treaty.

I think the questions that to me I want to ask go to that. Because I think we're getting bogged down in this semantic definition of what is a tribe or what is a Hawaiian. To me we wouldn't be having this debate if it were not for, quite frankly, the aloha spirit of the Hawaiian people over the years. If the Great King Kamehameha, if King Kalakaua, if Queen Liliuokalani had decided that we're going to get a bunch of guns and get these people out of here because we're just sick and tired of the fact that our lands are being transferred and we have no property rights, and the only people that get to vote are the people
that came here afterwards, and they lost and they
exiled to Niihau, we wouldn't be having this
discussion. It would be very clear what would have
happened. They would have been isolated, put into a
remote area. And we all know how little habitable an
area of land there is in Hawaii. We wouldn't be
having this discussion. It would be very neat and
clear. It would be of question of, who knows, maybe
we'd have a big casino on Niihau by now. But that's
not what happened. That's not what the Hawaiians
chose to do.

And by penalizing the Hawaiians, by making
them neither fish or fowl, by saying that they're not
a tribe nor or they really even native Hawaiians, I
think is uniquely unfair given the fact that they
simply chose a different path. They chose peaceful
resistance, peaceful abdication rather than --

CHAIRMAN REYNOLDS: It's just --

COMMISSIONER YAKI: Well, I'm just saying,
the question is -- there is question here. The
question --

COMMISSIONER BRACERAS: Yes, what is the
question, Senator Biden?

COMMISSIONER YAKI: If I were Senator
Biden, I would be reading -- oh, never mind.
But the question is there's a lot of talk about what this bill could lead to. But the fact is that this bill is really only just a process for something. And I would like for the elucidation for this Commission, I would direct this question to Ms. Kalipi. Does this bill create divisiveness? Does it create the prospect that Waikiki is going to become, you know, some other type of land? Does it transfer any new assets into this entity? And more importantly, what is the process that it really is setting up so we understand how far away we are from the parade of horribles that people are talking about here?

MS. KALIPI: The processes in the bill provide -- well, first of all to answer your question, with respect to divisiveness, we don't believe the bill would be divisive.

The vast majority of people, whether they're Native Hawaiians or non-Native Hawaiian in Hawaii appreciate Hawaiian culture, support Hawaiian culture and support the preservation of the culture and traditions. For that reason, almost every elected official in the state of Hawaii has come out in support of this bill. And for that reason the bill, even on the national level, is largely bipartisan.
I'm pleased to see Senator Murkowski's staff here, and Senator Murkowski is a strong supporter of our legislation.

The reason that it doesn't lead to divisiveness is because the bill provides a process and a structured process to finally allow the people of Hawaii, native and non-native, to begin to discuss the longstanding issues resulting from the overthrow of the Kingdom of Hawaii. What's happened since the overthrow is that there was a lot of pressure to be western. So, for example, Senator Akaka as a child was told you cannot speak Hawaiian, you need to speak English. You need to not make trouble, don't raise these issues. Just fit in with the way everything is.

And as we've gone through, we're now two or three generations past the people who actually experienced the overthrow, we have a younger generation of Native Hawaiians who look back at the history and say wait a minute, why didn't we resolve this. And non-Native Hawaiians as well. Some who support Native Hawaiians and some who don't who say why haven't we discussed this, why is this still hanging out there. And we have a lot of misunderstanding, a lot of mistrust and we have a situation where it's not harmonious. We have a lot of
people arguing and debating these issues.

So Senator Akaka's position is this bill provides the process for the people of Hawaii to begin to have a structured process to address these issues and not to -- his position would be if we don't pass the bill, we'll have more divisiveness.

Now with respect to the second part of the question, the second part of the question goes to will there be an immediate transfer of land if this bill is enacted? No, there won't. Nothing happens except that first the governing entity is reorganized and, I might add, the bill provides several checks for the federal government to be satisfied before federal recognition can even be conferred on the resulting reorganized governing entity, which in the Native Hawaiian's opinion, is not the best situation.

And second, upon federal recognition the governing entity then has to negotiate any proposed transfer of lands and authority to the governing entity. Following that enabling legislation at the federal and state levels have to be passed before anything can be transferred to the governing entity.

So, again, when we hit on process the reason we have this process is to be as inclusive as possible to allow the people of Hawaii, both native
and non-native, to participate and to determine the outcome with the idea that we're bringing the state closer together and allowing the state as a whole to move forward.

COMMISSIONER KIRSANOW: If I could, I still have not gotten an answer to the second part of my question, that is how do we identify a Native Hawaiian? I made reference to whether or not there was a registry, and I know there are many vehicles that can be employed to try to establish that lineal descendent.

CHAIRMAN REYNOLDS: Commissioner Kirsanow, I think that we have a response coming from Mr. Bartolomucci.

MR. BARTOLOMUCCI: Yes. I wanted to point out that the definition in the bill is not the definition of who is a member of the Native Hawaiian entity. It is merely the definition that is used to establish an initial role of persons eligible then to vote for an interim governing council. It's a well established principle of Indian law that it's up to a tribe to decide for itself who are the members of the tribe. And that is what will happen here.

The bill calls for the Secretary of the Interior to create a commission of experts in the area
of determining Native Hawaiian ancestry and lineal
descendency. And that commission will be responsible
for establishing criteria for fitting the definition
and deciding whether people do fall within the
definition. Once that role is established, those
folks will have the initial election to determine an
interim council. But it will be later in the process
that the Native Hawaiians will themselves decide who
should be in the entity and what is the test?

VICE CHAIRMAN THERNSTROM: So in other
words you're going to have experts decide who has one
drop of blood? Isn't that what it amounts to?

MR. BARTOLOMUCCI: You'll have experts
decide who meets this definition of do I have an
ancestor who fits with the definition.

VICE CHAIRMAN THERNSTROM: People who have
the right blood? But Gail wanted to say something.

PROFESSOR HERIOT: I wanted to say several
things. One, I wanted to comment back here on the
notion of the parade of horribles, will that occur.

The parade of horribles is already in
place. The Office of Hawaiian Affairs already is
managing a huge program of special benefits based on
Hawaiian ethnicity. And this is simply an attempt to
recast those benefits that already exist in terms that
are not specifically racially. But I would --

COMMISSIONER YAKI: But you conceded in your testimony that if these were benefits given by a sovereign tribal government, there wouldn't be these kinds of questions asked.

PROFESSOR HERIOT: But that's the point. In order to create that sovereign tribal entity, the Act has to work on a racial group. If a group existed before, then it would not be a group that the United States is recognizing based on race. They'd be recognized based on sovereignty that exists. But you can't hand sovereignty someone and then say from now on I'm giving you these further benefits because you're a sovereign.

COMMISSIONER YAKI: But that is seen--

PROFESSOR HERIOT: The original gift of sovereignty --

COMMISSIONER YAKI: But if you took sovereignty from them, can't you give it back?

PROFESSOR HERIOT: It has to be continuous.

COMMISSIONER YAKI: Why?

PROFESSOR HERIOT: Because that's what the law says.

COMMISSIONER YAKI: But let me ask you
this question: You say that it has to be continuous.

PROFESSOR HERIOT: Congress doesn't have any authority otherwise.

COMMISSIONER YAKI: Congress, I think, has plenty authority to decide in what constitutes a tribe for the purposes of its ability to determination recognition. I think that here we can -- I mean, again, I hate the fact that we keep on using the word "tribe." We are talking about an indigenous peoples who came to these islands thousands of years ago who had a community there, who anthropologists have said--

CHAIRMAN REYNOLDS: Commissioner Yaki, doesn't the Constitution discuss tribes, not aboriginal people?

COMMISSIONER YAKI: Yes.

CHAIRMAN REYNOLDS: And by inflating the history of Native Hawaiians --

COMMISSIONER YAKI: But the Constitution was written in 1787 by people who decided to call them tribes and Indians. And it also made characterizations of other ethnic groups that we don't deal with anymore.

CHAIRMAN REYNOLDS: The Constitution --

COMMISSIONER YAKI: The Constitution has changed has we characterize people, how we treat them.
How we decide they're not three-fifths anymore has evolved over time. So all I'm saying is get away from the idea that we're tribes and into the fact of the mindset --

CHAIRMAN REYNOLDS: If we get away from the nomenclature --

COMMISSIONER YAKI: -- where here who lived here by themselves.

CHAIRMAN REYNOLDS: If you agree that Native Hawaiians have a different history and a different relationship with the U.S. Government, and I would like to suggest that because of this different history that that may justify different treatments. In one case you may recognize a tribe and another you may not recognize the Native Hawaiian people.

COMMISSIONER YAKI: Well, maybe the fortunate part was that they were on an island and they really couldn't force them off a thousand miles off of their normal, they're native grounds like we did to the Native Americans in this country. And maybe because of the way that the Hawaiian peoples are, that didn't become an option.

The fact, though, is that there was an organic government in there over time that if you read the history became slowly -- I'm not going to say the
words I want to say, but changed over time. And then
when it become completely inconvenient to have them
around, we went in and knocked it out to the point
where, you know, a hundred years later the United
States Government has officially apologized for that
unless, of course, we're denying that Congress ever
apologized for that act in the first place, which one
of our speakers seems to believe.

I mean, the idea that you cannot call
Native Hawaiians indigenous peoples for the purposes
of the Commerce Clause and the Treaty Clause I think
is just not reading history and not reading -- I mean,
it's just not reading history correctly.

CHAIRMAN REYNOLDS: Commissioner Braceras?

COMMISSIONER BRACERAS: I have a couple of
narrow questions. But just to respond to my colleague
here and his statement about the nomenclature that we
use to discuss these issues. The fact of the matter
is when you're dealing with a constitutional or legal
question you have to deal with the text as written.
And we all understand that the Constitution was
written by dead white men and that some of the terms
that they used or the things they put into place may
not be palatable to us today. But that is what the
amendment process is for. We have amended the
Constitution numerous times. And the bottom line is unless you're willing to say that you don't want to be ruled by the Constitution because you don't like the nomenclature or use it, then you have to deal with the text as written. If the text says tribes, the text says tribes. So I'll get off the soapbox now about that.

But a question for Mr. Bartolomucci. Your remarks were very carefully limited to the congressional authority to pass this legislation. And I'm curious if you can give us a brief synopses of your views of the propriety of the legislation, putting aside Congress' ability to do this? Is this a good thing for our country?

MR. BARTOLOMUCCI: Well, as I've indicated, what I did was study the legal issue of Congress' authority. And I haven't opined upon whether it's something Congress should adopt.

COMMISSIONER BRACERAS: I know. But I'm asking you to opine.

MR. BARTOLOMUCCI: Yes. Well, I want to make this point. And I was struck by this when Professor Heriot was making her point that well it's okay to treat as a tribe a group that's had a continuous existence, but not one that ended as a
tribe. And her point basically is you can't bring them back. But, I find this somewhat ironic that it's okay to treat as Indian tribes, those tribes that we pushed off their lands and put into reservations. But if we went even further and we took away their sovereignty, if we overthrew a monarchy, if we did even more then we can't treat them as a tribe, we can't give fairness to that kind of group?

COMMISSIONER BRACERAS: And that's exactly why I want to get away from the semantic question of what is a tribe and go to the heart of the matter, which is simply is this piece of legislation something that's, in your view, good or bad for America?

MR. BARTOLOMUCCI: Well, I think there's a strong case to be made on equality grounds that Native Hawaiians ought to be treated the same as Native Alaskans or American Indians. No one doubts that Congress can and should treat Native Alaskans like it should, Indians in the lower 48 states. Yet Native Alaskans are very dissimilar culturally, ethnically --

COMMISSIONER BRACERAS: I guess what I'm getting at is do we want to increase and further perpetuate a system whereby certain groups are treated differently than others and there's a reason why they are, I understand that, but is that a system that we
want to extend and expand as a policy matter?

MR. BARTOLOMUCCI: Well, you know, if you're making a slippery slope argument --

COMMISSIONER BRACERAS: I'm not making any argument. I'm just asking you whether in your view that's a system that should be expanded and if so, why.

MR. BARTOLOMUCCI: Well, I think it could be expanded to Native Hawaiians with some justice. But anticipating a possible slippery slope argument, I don't think it could go beyond Native Hawaiians. I think they are the last indigenous group in America.

COMMISSIONER BRACERAS: What about Native Puerto Ricans? I mean, the situation in Puerto Rico is quite different, but there were indigenous peoples on the island. They were killed off quite rapidly, unfortunately. But presumably there are Puerto Ricans to this day who can trace their lineage to the native peoples on that island. Puerto Rico is very much a mixed culture today of Spanish and African and some indigenous cultural aspects. So how does that differ or doesn't it?

CHAIRMAN REYNOLDS: Does inherent sovereignty remain in Puerto Rico?

MS. KALIPI: If I may, ma'am, it's because
Puerto Rico is still a territory which is why, as a Congress, we're still dealing with what they want their political status to be, which is why they keep having their referendums of whether they're going to be a state of a commonwealth. I would make the same case for Guam and American Samoa.

COMMISSIONER BRACERAS: No, I understand. And I believe this Commission is going to be looking into that very question later on. But as a theoretical matter, I understand that Puerto Rico's political status is still undecided. But let's just for the sake of argument hypothesize that Puerto Rico became a state. Is there an argument to be made that the people who can trace their heritage, Puerto Ricans who can trace their heritage back to the indigenous peoples of the island should be given a tribe by Congress? Would you view that as difference or not?

MS. KALIPI: In the context of what we are advocating with respect to indigenous peoples, I'm not unfortunately familiar with Puerto Rico's history so I don't know, you know, if there was a Puerto Rican government or if they were a part of the Spain. I apologize for --

COMMISSIONER BRACERAS: And I guess that's what I'm getting to. Does the argument for
recognition of tribal status depend on the particular
history, the political history of the territory and
how it was incorporated or does it depend strictly on
racial affiliation, custom, culture, culture
identification? Because clearly in Puerto Rico, I
mean the Puerto Ricans could vote tomorrow to become a
state, but that wouldn't take away a cultural sense of
community or cultural ties to indigenous traditions
and rights. And so I'm trying to figure out what the
determination hinges on. Does it hinge on cultural
identity or does it hinge on political history?

MS. KALIPI: In my view it hinges on both.

Because the United States policy of self governance
and self determination with indigenous peoples is
based on the political and legal relationship the
United States has with the preexisting sovereign
entity that was there before the United States took
that land and took over that area. So it would depend
on what the political entity was at the time and how
the history played into it. So my answer is it would
depend on both of those issues.

And in your scenario in your hypothetical
if Puerto Rico's history is similar to ours with
respect to the fact that they are indigenous peoples
whose government was overthrown and who had a native
government and the United States has dealt with those indigenous peoples through a political and legal relationship, then yes. But it's in your hypothetical.

COMMISSIONER BRACERAS: I think it's very different in that sense. But it seemed that at least my colleague Commissioner Yaki was suggesting that the critical question was really not whether we call them a tribe or whether they had a political governing structure, but whether they were indigenous and whether they are culturally connected. And if that's the case, I see no reason why Puerto Ricans don't fall into that category.

COMMISSIONER YAKI: With due respect --

MR. BURGESS: Could I jump in, Commissioner Braceras.

COMMISSIONER YAKI: I need to respond.

COMMISSIONER BRACERAS: Yes.

COMMISSIONER YAKI: With due respect to Commissioner Braceras, that wasn't my point at all. My point was that we have a situation where you had an indigenous sovereign government that was dissolved by the United States for its own purposes. I never have said -- I mean, to me it's silly to almost talk about the issue of race here because certainly no one who
practices Native American Indian law, whatever it's called nowadays, can say that the recognition of these tribes is not based in part of on the fact that they are ethnically a part and the fact that they are culturally and as a cohesive group apart from what government later came to take their land. The same situation as here with Hawaii.

I think I would like to hear one of the things that sort of creates the trail, I think, of how the government has over the years tried to understand its obligations to the Native Hawaiians has been for example, the Hawaiian -- is the Hawaiian Homestead --


COMMISSIONER YAKI: Hawaii Homes Commission Act, which was required to be part of the--its continuance was a condition for admission into the Union. Various acts with Congress over time I think you reference in your testimony have continued to talk about the indigenous peoples of Hawaii and the responsibility of the government.

Can anyone elaborate on those facts, because I think that would also help create the trail of responsibility?

CHAIRMAN REYNOLDS: Commissioner Yaki, Mr. Burgess wanted to respond. So before we go on to your
question --

COMMISSIONER YAKI: Okay.

CHAIRMAN REYNOLDS: -- I'd like to give him an opportunity to respond.

MR. BURGESS: Yes. Thank you, Mr. Chairman.

A lot has been said that I think is just really incorrect. Indigenousness has no status and no effect at all under the Constitution. The Constitution doesn't mention indigenous. The very same arguments that I've heard advanced here today were made in the Rice case before the Supreme Court. And the argument was made that all indigenous people, whether they're a tribe or not, are entitled to have a special relationship, and the Supreme Court just did not accept that.

PROFESSOR HERIOT: Right.

MR. BURGESS: They simply decided without out.

The same argument was made in Arakaki v. State, which was our first lawsuit. And, again, the Court just rejected it because being indigenous has no effect under the laws of the United States.

There is an international movement to declare the rights of indigenous people. That has not
been adopted by the United States. And the problem and the real danger of the Akaka bill is that it would immediately, as soon as it passes if it does and becomes law, it would recognize a new privileged elite in America consisting of anyone with an indigenous ancestor. Not just Native Hawaiians. That's one of the findings that would become effective immediately when the bill is passed. And that would have drastic consequences. It would bring about a radical change in Indian law.

Anyway indigenous to the lands that are now part of the United States would then have a right of self government and presumably, they would have the right to have the federal government assist them in creating their own new separate government. That would apply to Puerto Rico. It would certainly apply to any indigenous people living anywhere in the United States. And that would certainly include the Aztlan Movement, Mexicans who are seeking to liberate the southwestern part of the United States. It would apply to Indians who are now a part of the mainstream that don't participate as members of tribes. But they would then arguably simply because of being indigenous, they would have the right for self determination. I think that's the potential of this,
of this bill. It's indeed a radical change. It would
ultimately lead to the breaking up of every state and
I think ultimately to, you know, what would happen.
You know, where does it end? What would become of the
indivisible Union composed of indestructible states?

I'd like to, if I may, also address a
question that you mentioned, Mr. Chairman. A
distinction between race and ancestry. In the Rice
decision one of the points was that the definitions of
Hawaiian are based on ancestry. But the United States
said you're using ancestry as a proxy for race. And
that's exactly the same use of ancestry here.

So although it's called ancestry instead
of race in the Akaka bill, it's basically racial
discrimination that's contemplated by the Akaka bill.

CHAIRMAN REYNOLDS: Okay. Commissioner
Yaki, you were about to pose a question?

COMMISSIONER YAKI: No. I already posed a
question.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER TAYLOR: I wondered,
Commissioner Yaki, do you have any thoughts on what he
just said? I'm wondering relative to the movement in
the west and would we recognize a unique status for
indigenous people if this were to pass?
MS. KALIPI: I'd like to make a distinction.

COMMISSIONER TAYLOR: Okay.

MS. KALIPI: And the distinction is that Congress has passed 160 laws and statutes to address the conditions of Native Hawaiians. Congress has established political and legal relationship with Native Hawaiians since the time that we were a territory. And this bill just, again, formalizes that political and legal relationship. That's a big distinction then from making a jump to the idea that any indigenous peoples with which Congress hasn't had this kind of historical political and legal relationship with would have the ability to create a government which goes to, I think, what Chris was saying in response to Commissioner Braceras' question in terms of Hawaiians probably being the last indigenous group that would be able to comply with this.

COMMISSIONER TAYLOR: You raise an interesting point in my mind. Because what you have just said indicates to me that for your purpose at least the fact that we're talking about indigenous people is important, but what's more important is that the federal government decided to deal with this.
group. So that it's decision not to deal with other indigenous people in my view would be somewhat arbitrary if I were thinking about this issue. Why are they dealing with this indigenous group and not others? And does that make sense? Why aren't they dealing with those indigenous people if that is an important characteristic?

So what do we say to the next indigenous group of folks that have not been dealt with by the federal government? Why?

VICE CHAIRMAN THERNSTROM: Or the next group that calls themself --

COMMISSIONER TAYLOR: That's my fundamental question. If this is really important relative to the status of a group being indigenous, if that's important, then shouldn't we apply that same principle to every indigenous group whether or not the federal government has decided to engage them or not?

COMMISSIONER YAKI: Well, actually, the federal government does apply that principle to many groups. You'll find that there are many organizations, individuals who say that they are members of this tribe or that tribe who have not been recognized yet, do not enjoy sovereignty, have to go through a very lengthy process through the Bureau of Indians Affairs,
correct, in order to get that established. But, I mean, we could make the argument all day about whether or not we're omitting group one, group two, group three. The fact is that as the representative from Senator Akaka's office pointed out, the U.S. Government in a kind of half way there kind of attitude attempted to provide some sort of semi-recognition to the fact that would it did in the Hawaiian Islands was something that it was not entirely comfortable with and to the Hawaiian peoples. The Akaka bill, and let's just focus on the Akaka bill because that is the focus of this discussion, is simply to complete the process of creating the recognition between the two. It does not predetermine what the outcomes are, it does not predetermine who will be part of that outcome and does not predetermine what are the results of that outcome. It is simply to say we have basically ignored or neglected this decision since 1893 and beyond. We decided to punt it during statehood admission as well. And now, you know, finally as the government has become more progressive in its attitudes toward its native indigenous peoples to the tribes who exist, that perhaps we should accord the same respect and recognition to a peoples who were in 1778 a wholly indigenous, wholly insular society.
and who in 1893 whose government we decided was no longer useful to us.

CHAIRMAN REYNOLDS: Okay. Vice Chair Thernstrom?

VICE CHAIRMAN THERNSTROM: I believe in 1959 Hawaii joined the United States with an overwhelming vote that Hawaiians wanted to become Americans. I don't think a problem in this country is that there's --

COMMISSIONER KIRSANOW: Commissioner Thernstrom, I could barely hear you. Are you near the microphone?

VICE CHAIRMAN THERNSTROM: Oh, I'm terribly sorry. What have I done with my microphone. Can you hear me now? I'm terribly sorry. I dropped my microphone.

COMMISSIONER KIRSANOW: Yes.

VICE CHAIRMAN THERNSTROM: I said I'd thought in 1959 when Hawaii joined the United States there was an overwhelming vote on the part of Hawaiians that they wanted to become Americans. And it does seem to me that one of our problems in this country is not insufficient recognition of the distinctive culture and rights of racial, ethnic, other subgroups but the fact that we no longer assume
in this country that Americans are Americans. And, you know, more recognition for a subgroup, I don't understand why that's a good thing. And it goes back to the questions that Commissioner Braceras and several other people raised: Why is this a good thing? We are -- the bill here with authorize, I don't see how you can get away from this -- authorize the creation of a race-based government for Native Hawaiians living throughout 50 states with a nightmare in terms of legal enforcement and a nightmare in terms of further dividing this country with respect to who is entitled to what because of ancestry. I mean, I didn't think that's what this country was all about.

    I mean, the history here, obviously this would not have arisen before the rise of the whole regime of race-base entitlement and high levels of ethnic and racial consciousness in this society. And you say well the supporters say, you know, there's no commitment to a particular form of government. Well, we're talking about restoration of recognition, of separateness. Well, if we're talking about restoration why couldn't the government install a monarchy?

    I don't know what we're going down the road here on.

And this question of bipartisan support. I
mean, this seems to me, it doesn't pass the laugh
test. Everybody knows that anytime a bill is before
Congress that seems politically problematic to oppose
because you could be labeled as racially insensitive,
then the Republicans for good historical reason, I
agree, run for cover and the Democrats, of course,
like race-based entitlement. And so you got something
that's called bipartisan.

I think that there are many Republicans on
the Hill who would welcome a strong statement against
this bill on the part of the Commission.

On the question of cultural identity. I
was curious here. What is the intermarriage rate of
Native Hawaiians? I mean, intermarriage rates are one
of the good indications always for a group of cultural
distinctiveness and whether groups have separate
cultural identities. What is the cultural
intermarriage rate? What is the intermarriage rate,
I'm sorry.

MR. BURGESS: It's the highest by far of
any state, more racial intermarriage in the state of
Hawaii. And I think Hawaiians in particular, that has
been studied and it's always been -- I think it's been
mutual love affair between immigrants and Hawaiians
from the beginning. But that I think has been
documented in studies.

COMMISSIONER KIRSANOW: Commissioner Thernstrom, can I jump in real quick.

VICE CHAIRMAN THERNSTROM: Sure.

COMMISSIONER KIRSANOW: To comment on to a point you made. I've gone through the materials here and one of the things I was trying to discern is something related to Commissioner Thernstrom's statement about the vote for statehood. It's been nearly 50 years and I'm wondering what was the precipitating event? And I realize most of these things evolve over time, but what was the precipitating event that prompted the introduction of this bill at this particular point in time? And also along the lines of what Commissioner Thernstrom said is I remember it was Winston Churchill who said that, you know, democracy is the worst form of government except for all the others.

VICE CHAIRMAN THERNSTROM: It was Churchill.

COMMISSIONER KIRSANOW: In terms of, again, this goes to Commissioner Thernstrom's point, if there was a watershed event that prompted the introduction of this bill now 50 years later, what's the end gain here? In other words, it seems to me,
yes, the United States Government has got all kinds of problems while going to Churchill's statement again, you know, except for all the others isn't that too bad? What is it about the form of government -- and I understand the whole idea is to have self rule and self governance and everybody wants to have their own form of government and the idea that cultural means sometimes a direct form of governance, but what does one hope to obtain that is separate and distinct or maybe better the current state of governance?

VICE CHAIRMAN THERNSTROM: Gail Heriot?

PROFESSOR HERIOT: I think this is all connected to the Rice v. Cayetano litigation which was pending at the time. And that this was very much focused on providing an alternate justification under the Constitution for the racial preference system that is operated by the Office of Hawaiian Affairs.

CHAIRMAN REYNOLDS: Okay. Just a quick comment.

COMMISSIONER BRACERAS: Wait. I'm sorry. I'd like to have some of the other panelists answer Commissioner Kirsanow's question. What is that you hope to achieve from this legislation? How would this legislation make things better for the native people of Hawaii. What is the end game?
VICE CHAIRMAN THERNSTROM: Yes. I was going to ask the simple question. You start the sentence this is a good idea because.

COMMISSIONER BRACERAS: Right.

VICE CHAIRMAN THERNSTROM: What is the end of the sentence?

MS. KALIPI: The end of the sentence is because it allows the people of Hawaii to move forward as a state because it provides a structured process to allow us to deal with the longstanding issues of the overthrow. Because currently there's a lot of mistrust, misunderstanding and a lot of unresolved issues.

CHAIRMAN REYNOLDS: So you want to resolve those --

COMMISSIONER BRACERAS: But if you could wave a magic wand --

CHAIRMAN REYNOLDS: -- historical wrongs?

COMMISSIONER BRACERAS: If you could wave a magic wand and resolve the mistrust, then there would be no need for this? In other words, the substantive benefits for --

MS. KALIPI: No. The substantive issues--

COMMISSIONER BRACERAS: -- that flow from this have nothing to do with it is what you're telling
MS. KALIPI: No. The resolution of those substantive issues need to happen for us to be able to move forward.

COMMISSIONER BRACERAS: Okay. I think that's the heart of Commissioner Kirsanow's question is that what is it substantively that you feel you need to achieve in order to move forward. Not just process.

VICE CHAIRMAN THERNSTROM: I mean, what are you saying? I want to right historical wrongs? There are a lot of historical wrongs to right in this country.

MS. KALIPI: It's more than historical wrongs, ma'am. It's the fact that there are outstanding issues that need to be resolved that people in Hawaii, both native and non-native, would like to resolve.

CHAIRMAN REYNOLDS: Is this the only vehicle.

COMMISSIONER BRACERAS: Let her finish.

MS. KALIPI: In addition with respect to respect to the Statehood Act, you know under the federal policy of self governance and self determination allows for dual citizenship. The federal
policy just allows indigenous peoples to have greater autonomy over their natural resources and assets. It doesn't denounce being an American. We have many proud Native Hawaiians, Alaska Natives and American Indians who are proud to be American.

COMMISSIONER BRACERAS: So?

MS. KALIPI: So going back to that, I'd like to say that for us to finish that sentence, it finally provides the parity that Native Hawaiians have sought because we have always been treated like American Indians and Alaska Natives but our relationship has never been formalized. So we're like stepchildren and we're asking to be put at the same level.

COMMISSIONER BRACERAS: What's wrong with just being treated like Americans, African-Americans, Anglo-Americans, Irish Americans? I mean your response is well we want to be treated the same as other indigenous groups. And I guess the follow-up to that is but why?

VICE CHAIRMAN THERNSTROM: Yes, I mean I'm a part of the Israeli tribe, I suppose, as a Jew. I mean, I'm an American.

MS. KALIPI: The answer would be because Hawaii is our homeland. For all the ethnic groups that
you just mentioned, many can go back to their homeland
if they want to learn about their culture, their
tradition or they want to experience what it's like
to, with all due respect, ma'am, go back to Israel or
whatever. With respect to indigenous peoples, this is
our homeland and everyone has come in and taken it
over and this is the least part with respect to the
federal policy. This is a federal policy established
by President Nixon that says that the federal
government would deal with indigenous peoples in a
government-to-government relationship. Native
Hawaiians are seeking that.

COMMISSIONER BRACERAS: But there was a
democratic vote on the issue of statehood, that was a
democratic process.

MS. KALIPI: Right. That has nothing to do
with the fact that -- this doesn't revolve, take away
statehood. The federal policy allows you to be a
state.

COMMISSIONER BRACERAS: Right.

MS. KALIPI: And allows you to have a
government-to-government relationship with indigenous
peoples. I think we're talking at cross purposes.
We're not saying we don't want to be a state. We want
to participate the way American Indians and Alaska
Natives do as Americans in the federal policy of self governance and self determination.

COMMISSIONER BRACERAS: I think what several of us keep coming back to is you keep saying you want to be treated in the same manner as other Native American Indian tribes are treated under federal law.

MS. KALIPI: Right.

COMMISSIONER BRACERAS: And I'm trying to understand why is that necessary? In other words, why is the current state of affairs inequitable?, the current state of affairs being that you're treated like every other American citizen but you don't the special status of the Native American tribes? Why is that current state of affairs bad?

MS. KALIPI: Because like the American Indians and Alaska Natives we have longstanding issues with respect to lands, with respect to how our culture and our traditions are preserved. And for that reason we would like the current legal and political relationship that we currently have with the United States to merely be formalized.

COMMISSIONER BRACERAS: But, see, now I think you're getting to some of the substantive reasons. So land, partial autonomy, right?
MS. KALIPI: Yes.

COMMISSIONER BRACERAS: And so I think that was the question that was originally asked by Commissioner Kirsanow is what are the substantive goals that you have, the substantive political goals.

MS. KALIPI: The substantive political goals would be to give Native Hawaiians greater autonomy over --

COMMISSIONER BRACERAS: Over what?

MS. KALIPI: -- any natural resources and lands that would be afforded to them through the negotiations process that is afforded in this --

CHAIRMAN REYNOLDS: These are tangible benefits in part, is what you're seeking. The cultural issues and resolving these longstanding distrust, that could be worked out outside of the context of this legislation. But the land piece, the tangible benefits that has to be -- the process that's on the table, that has to be enacted or signed into law in order to resolve the land issue?

MS. KALIPI: No, sir. With all due respect, we could pass legislation solely just dealing with the land issue if we wanted to.

VICE CHAIRMAN THERNSTROM: Well, wait a minute. Land in 50 states?
CHAIRMAN REYNOLDS: No. Not and restricted to --

MS. KALIPI: In the United States. I mean, in the state of Hawaii. We're not advocating that we have land all over the United States outside the state of Hawaii.

CHAIRMAN REYNOLDS: No, no, no, no. You misunderstand me. You misunderstand me. For example, the trust that's in place now and the 200,000 acres of land to preserve that to ensure that Fourteenth Amendment attacks aren't successful. This process ultimately I assume is your hope that this process will ultimately lead to a set of laws that will protect the corpus of this process among other things?

MS. KALIPI: Yes. Yes. Yes.

COMMISSIONER YAKI: Right.

CHAIRMAN REYNOLDS: And that can't be done any other way? But the other issues, maintaining and preserving your culture, that can be done outside of-- I mean, you don't need to have the government to preserve your culture, is that right?

MS. KALIPI: No, but it would allow Native Hawaiians to interact with everyone else in a way that is culturally sensitive. So --

COMMISSIONER BRACERAS: Can you give me an
example of that? I'm not sure what that means.

VICE CHAIRMAN THERNSTROM: I mean, other groups in this country have a sense of culture and community and they interact with other people without giving up that sense of --

COMMISSIONER YAKI: Well, they didn't get their land stolen from them either.

COMMISSIONER BRACERAS: Or they got themselves stolen from their land in the case of African-Americans.

MR. BURGESS: No land was stolen from the Hawaiian people.

COMMISSIONER YAKI: No land was stolen until about 50 years ago in this state. I think part of the appreciation of the difficulty of this situation, and there is a lot of difficulty I think in understanding it from -- even I have difficulty understanding it, even though I have family who live in Oahu right now and I've followed this pretty carefully. But the fact is that, you know, whatever you want to call it there is I believe -- and I think this is what Ms. Kalipi was trying to say and maybe you should just say it better than I can, but the structure that the government has provided to attempt to provide some sort of recompense for the actions
taken by the government over time, such as the Hawaii Homes Commission and others which really gave land that really wasn't all that friendly to homes, etcetera, was given only really half way in terms of the ability of the Native Hawaiians to have a feeling of control and autonomy over the decisions that were made. These are decisions that have been accorded and handed over to other American Indians tribes or sovereign nations. That process is not yet completed here.

It doesn't mean that they're non-Americans. I mean, if you want to look at the enrollment rates for the United States Army, they're probably some of the highest are from the Islands of Hawaii. So anyone who wants to go down that road had first better take a look at what the recruiting rates are. Because --

COMMISSIONER BRACERAS: I don't think anyone's gone down that road.

COMMISSIONER YAKI: Well, you know, when someone says you know we should be Americans first, yes, we are Americans. But we are Americans of heritage. We're proud of our heritage. And here we have a particular error in our history for a particular people that Congress is looking to try and
right that wrong and put it in a position where there
is a greater deal of autonomy, actual --

CHAIRMAN REYNOLDS: I think we're getting
to the heart of the matter here. It's reparations.

COMMISSIONER YAKI: No, I don't think it
is reparations.

CHAIRMAN REYNOLDS: Well, you used the
term recompense.

COMMISSIONER YAKI: Well, I'm talking
about the fact that over the years the government --

CHAIRMAN REYNOLDS: You're talking about
land.

COMMISSIONER YAKI: But the government has
put out these programs, but they do it like about half
way, which is different.

VICE CHAIRMAN THERNSTROM: Well, you know,
there are a lot of wrongs to be righted. Are we going
to right them all?

COMMISSIONER YAKI: We can't. Well,
sometimes if we can, we should. It's silly to say we
can't right every wrong.

CHAIRMAN REYNOLDS: There are times when
attempts to undue these cosmic wrongs just add on to
the wrongs. There's some things that God will just
have to straighten out.
I think that when we try to, looking for slavery for example, there's not a check big enough that you can write that can just undoe the harm that was just done to the Reynolds family.

COMMISSIONER YAKI: I can appreciate that.

CHAIRMAN REYNOLDS: But the attempt to do it through reparations, I think that it's divisive. And I understand, Ms. Kalipi, that you disagree with me that you think that it's not divisive.

MS. KALIPI: Oh, no, no, sir. I'm saying the bill is not reparations. If we're going to do reparations, we just pass a reparations bill. This is not about that.

CHAIRMAN REYNOLDS: But you couldn't pass a reparations bill and restrict it to Native Hawaiians.

MS. KALIPI: Oh, I think we could. We did. We did the Japanese American internment. In fact, one of the opponents to the bill has advocated instead of doing this bill where we have structure in process, we just slap $20,000 to every Native Hawaiian. And that's not what this bill is about.

CHAIRMAN REYNOLDS: Well, we disagree as to the constitutional infirmities with that type of proposal. But in any event, I mean we have two
patient Commissioners here.

COMMISSIONER TAYLOR: I just want to rise in defense of the principle that I hear at the heart of the argument for the supporters. And that is one of self determination, which I keenly appreciate. I guess we're trying to unring the bell is what we're trying to do in terms of addressing and recognizing what the federal government has done by way of going half way down the road and not going the whole way. And the importance of self determination of a people as they relate to the governing body, which quite frankly, I completely understand.

My concern, I guess, is the only way we can really do that is to truly advocate unringing the bell.

CHAIRMAN REYNOLDS: Which is impossible.

COMMISSIONER TAYLOR: I mean, how do you really unring the bell? I mean, it seems like we're trying to unscramble eggs. And I appreciate the attempt, but I mean how do you do it without saying we're going to separate from the United States and we're going to start this process of negotiation from the beginning? I mean, I'm trying to recognize the principle of self determination without the --

MS. KALIPI: Because it's a federal policy
of self governance and self determination, which I'm sure Commissioner Melendez as a tribal leader has a lot more experience with. And it's within the federal framework. We're not trying to go back to --

COMMISSIONER YAKI: I mean, the federal government sets the terms and conditions.

CHAIRMAN REYNOLDS: Okay. Commissioner Melendez has been quite patient. Please?

COMMISSIONER MELENDEZ: Just a comment. I think that, and I've heard people say that this could lead to secession or that -- you know, and I think that what we have to understand here is similar to Native American tribes is that Congress is still in control. They're not going to let the Hawaiian people separate from the Union, the same way they're going to not let Indian tribes separate from the Union. They're still in control. If there are issues such as whether or not the Bill of Rights apply, I think that they would do the same thing in the process that Native Americans have put in place, is passing the Indian Civil Rights legislation which mirrors the Bill of Rights. May not be exactly the same, but I'm sure in this process that's what the Hawaiian organization or the recognition would do.

I think, you know, when we're talking
about the question that was asked: What does it actually mean? Well, it probably means the same thing to the Hawaiians as it does to Native Americans as to what really happened in history. And you're right, you can't right every wrong. But you sure -- I think that the integrity of the United States in trying to, either whether you call it righting wrongs or to try to do something to recognize the injustices that have happened. I mean, even today there are things that Indian tribes in the United States are still trying to remedy, whether or not it the Allotment Act of the 1880 and '89 where basically encroachment of non basically white people onto Indian reservations subdivided their reservations; even today they're still trying to buy lands back, they're trying to work with Congress under the law to actually do that.

So the issue is that there's a lot of things that have happened that the United States could actually make right. And can you right every wrong? Probably not. But can you make an attempt to right some of the things that have happened in the past?

I read the Queen's statement here, I guess it's her statement, in this public law. What she says, "Now to avoid any collision of armed forces and perhaps the loss of life I do under protest and
impelled by said force yield my authority until such
time as the Government of the United States shall upon
the facts being presented to it undue the action of
its representatives and reinstate me in the authority
which I claim as the constitutional sovereign of the
Hawaii Islands." I don't see very much difference
then what happened to Native Americans in this land.
And the question would be are we special interests
because we have certain privileges that maybe
Caucasian Americans and other ethnic groups within the
United States don't? I would say that the reason we
have that standing is because we're indigenous peoples
to this North American continent, the same reason that
the Hawaiian people are indigenous to those islands
there. And it seems to me that, you know, they were
basically -- whether you call them a tribe or not, I
understand that they actually had certain several
groups on each one of the islands until they came
together in 1810 under the king who basically
centralized the government there.

So, you know, I think that they're not
asking for anything different than what Native
American tribes in the United States have been
granted. And I don't see a lot of differences in the
way that they've been treated.
CHAIRMAN REYNOLDS: Okay. I'm going to take one more question from the Staff Director.

STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman.

I'd like to recognize that some of the panelists came a great distance to be here with us today and others joined us on short notice. So thank you all for the credit that you've brought to the Commission by your participation today.

And also recognize that several staff did excellent work in putting this together, including Office of General Counsel John Blakeley and Bernard Quarterman and Chris Byrnes of the Office of the Staff Director.

Mr. Burgess and Professor Heriot, I'd like to ask you a question about whether some of the qualms, any of the qualms that you've raised today might be addressed by a potential amendment to this bill, not the one that Professor Heriot addressed earlier, but rather one that might go to the selection criteria for the ultimate governing entity?

If I understood Mr. Bartolomucci earlier, he indicated that the legislation would not determine the membership of the ultimate governing entity and that as it stands if it were passed, the membership
would be based on tribal law where the tribe could
determine based on their own criteria who would be the
members of the tribe. But what if there were an
amendment to the bill that ensured that membership in
the government entity would not be determined based on
racial characteristics, that it might be determined by
other grounds, for instance a lineal descent from
persons who lived in Hawaii at a particular time
regardless of racial characteristics? Would that
address you have?

MR. BURGESS: Well, that wouldn't satisfy
the laws as far as I understand it. Living at a
particular place at a particular time in history has
been held to be just a proxy for race. And that,
indeed, is what the definition of ancestry does here
in this case just as it did in the laws that were
dealt with in the Rice case. But as far as an
amendment, I heard Noe Kalipi say five or six times
that this bill would afford a process where the people
of Hawaii, native and non-native, would have an
opportunity to discuss the matter and move forward.
That's just the problem: The people of Hawaii if they
don't have a drop of the magic blood, don't
participate at all. And even people who have lived
here for generations, I mean lived in Hawaii for
generations, would not have any right to participate in the creation of the new government whereas some one of the blood, even if they came, they'd never been to Hawaii and never knew anything about Hawaii, they would have the right to participate. That's the problem.

And the way to allay that fear would be to require that before anything in the bill becomes effective, it first must be ratified by a vote of all of the people of Hawaii. That would certainly solve that problem. And if that were done and a vote was taken, so be it. I mean, we'll just have to live with it. But there is no process for that. In fact, the bill as written does not give Congress the final say. It gives the Executive Branch doing the negotiation the final say. They have the ability and they may under the bill go back to Congress and go to the legislature of the state of Hawaii to ratify what they've done, but they don't have to do that. And my guess would be knowing the dynamics of the negotiation, that if a deal is cut, it's very unlikely that it's going to go back to Congress or to the state legislature. They're going to simply carry it out.

CHAIRMAN REYNOLDS: Professor Heriot?

PROFESSOR HERIOT: I agree with Mr.
Burgess that ancestry is often simply a proxy for race. So if the bill were amended such that it were defined in terms of ancestry as of, say, 1775 and obviously that would be solely a particular racial group. On the other hand if the group were defined in ways that were based on ancestry as of, say, the 1890s, that would include a lot of people who are not ethnically Hawaiian. And although that would not by any means get rid of all my problems with this bill, I nevertheless think it would make it a better bill than if it did not define the group in terms of simply ancestry without regard to race.

So I think it would make it a better bill.

You'd have to have that go from step-to-step rather than just the initial group. But you'd have to have a requirement that there be no discrimination based on race or ethnicity at each stage as this group is formed. But although it would not, I don't think, make the bill constitutional because there are some problems with the bill, it nevertheless would be a better bill.

CHAIRMAN REYNOLDS: Okay. I'd like to thank the panelists for participating. This has been an outstanding presentation. So, thank you.

We will take a ten minute break.
(Whereupon, at 12:21 p.m. a recess until 12:44 p.m.)

CHAIRMAN REYNOLDS: All right. Folks, let's get started so we can finish up. All right. This is going to be a long day but I hope that if we work efficiently that we can get through the rest of the agenda.

Okay. I mean, we're too dedicated to leave.

Okay. Here we go. First up is a motion to keep the record of the Native Hawaiian hearing open for public comment. I'll make the motion. I move that the Commission keep the record open for this briefing, open in order to provide the public enough time to submit comments to the Commission and for the Commission to perform the requisite defame and degrade review. I recommend that the record be kept open for 60 days after the completion of this briefing until March 21, 2006. Is there a second?

COMMISSIONER YAKI: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIRMAN THERNSTROM: Yes. I just want to raise an issue here.

I was hoping we would bring this to a close by the April 7th meeting.
CHAIRMAN REYNOLDS: Bring what to a close?

VICE CHAIRMAN THERNSTROM: Sorry about that. I don't have anything to clip it to, that's my whole problem.

I was hoping we could bring this a vote at the April 7th meeting. We are going to have congressional action on this sometime this spring. And so I wonder if we could work back from the April 7th meeting to reopen the question of whether working back from the April 7th meeting we need to reopen the question of how long the record is open.

CHAIRMAN REYNOLDS: Okay. How would you feel if we kept the record open until March 3rd?

STAFF DIRECTOR MARCUS: Actually, I think that the original date would be sufficient in order to get the document available for a vote on April 7th.

CHAIRMAN REYNOLDS: So that's not much to do once we get the comments in?

STAFF DIRECTOR MARCUS: I think it can be done quickly enough.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIRMAN THERNSTROM: Well, but the document to be voted on has to be available to the Commissioners to be voted on April 7th --

CHAIRMAN REYNOLDS: Well, the comments
coming in won't effect that process. Whatever records are sent in, we will keep them for the record.

STAFF DIRECTOR MARCUS: I think we can review them quickly enough to be able to turn this around in time.

VICE CHAIRMAN THERNSTROM: Okay. I would very much like for the record of this to come to a vote on April 7th. And I hope, Mr. Staff Director, that might be possible.

STAFF DIRECTOR MARCUS: Yes, I do think that that is possible.

VICE CHAIRMAN THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Okay. Any other questions or comments? All right. let's vote. All favor please say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: All in opposition?

COMMISSIONER: Aye.

CHAIRMAN REYNOLDS: Let the record reflect that the motion passed unanimously.

Also let the record reflect that Commissioner Kirsanow is no longer on the line.

V. STAFF DIRECTOR'S REPORT

CHAIRMAN REYNOLDS:

Next up is the Staff Director's Report.
STAFF DIRECTOR MARCUS: Thank you, Mr. Chairman, Madam Vice Chair, Commissioners. In light of the hour, I will try to keep the remarks brief but will be open for questions and answers.

I do have a few things that I would like to add beyond the contents of the monthly written Staff Director's Report.

To start with I'd like to say that we do have some good news regarding the state advisory committees. As you know, the Commission's financial condition prevented the SACs from conducting face-to-face meeting during fiscal year 2004. And the Commission's fiscal year '05 budget does not provide funding for SAC face-to-face meeting. However, as we concluded the first fiscal quarter of 2005 we achieved sufficient savings to allow for a limited number of additional meetings for the state advisory committees. This will enable me to provide travel for face-to-face meetings by each of the currently chartered state advisory committees.

Now as you know, there are only too small number of SACs that are currently chartered, but we will be able to approve travel for one face-to-face meeting, that I hope will take place within the next few months for each of our current SACs.
CHAIRMAN REYNOLDS: And do we have a proposed budget for that meeting?

STAFF DIRECTOR MARCUS: I am getting proposed budgets for each of the meetings separately.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR MARCUS: The amounts will differ depending on the travel issues, the size of the state, etcetera, etcetera. It's typically a couple or a few thousand dollars per meeting. We should have no problem approving the ones that have been recommended so far. And I'm sure that there will be a way for each of the states to have a face-to-face meeting as long as they don't go overboard with the nature of the meeting they want to have.

I've communicated this to our regional offices and they are now working on the state committees to arrange meetings over the next few months and to develop budgets accordingly. My hope is that this will help to reinvigorate our state advisory committees.

Speaking of state advisory committees, on November 4, 2005 the Commission published for public comment its proposed rule change for selecting state advisory committee members. Comments were received from 13 sources, including past and present state
advisory committee members; a nonprofit public policy organization, a lawyer's organization, an agency of the federal government and a private citizen. The comment closed on December 5, 2005.

Based on the comments received, the Office of General Counsel prepared the final draft of the rule which was distributed to you on January 13, 2006 for a vote at this meeting.

I could discuss that later on further if there are questions.

I'm also glad to report that over the last week we have issued a series of four administrative instructions which are intended to implement a number of GAO recommendations as well as the work of the working group on reform. For instance, last week I issued AI-16 concerning national project developments and revised AI-91 concerning the public affairs unit. I also issued AI-92, a new AI concerning internal communications.

Each of you should have received a copy. If you not, please do let me know. They have also been distributed to the staff.

I would also like to say a work to bring you up to date on strategic planning. As you are aware, the Commission originally agreed on April 8,
2005 to implement all GAO and OPM recommendations contained in reports issued from 1997 through April 6, 2005 by mid-January 2006 consistent, however, with any strictures or confines imposed by the Anti-Deficiency Act and to the extent that the recommendations are nonrepetitive and funds are available for implementation.

On December 16, 2005 the Commission subsequently voted to extend implementation of these recommendations to mid-February, 2006 and directed me to apprise the Commission of any additional extensions required by further cooperation with the House Subcommittee on the Constitution in revising the agency's draft strategic plan. The reason for the December extension of time was that we have been talks with the House Authorizing Committee which has asked us to discuss with them and GAO future potential changes to the strategic plan, and we're trying to work with them rather than to prematurely finish the project.

Staff continued to work with the House Subcommittee on the Constitution and the GAO on the draft strategic plan. On Monday we plan to have a meeting with congressional staff, GAO staff and I believe also with OMB representation. As a result of
this meeting, there may be subsequent time to incorporate new comments from Congress and GAO. I would have to apprise the Commission that a further extension may be required since depending on the nature of the input it may be unfeasible to complete all implementation by the February meeting.

I would also like to indicate that we have provided a performance and accountability report with the audit of Williams Adley for our fiscal year 2005 to OMB. The Commissioners should have received copies of that. We are not yet able to publicly discuss that since it has not reached full clearance. But I would say that the completion of this audit is a milestone for the agency. It is, of course, required by law and it really is a first in quite some time that we have had a full scope audit of the Commission for the year. And I'm very pleased by that.

I would say that the development of the PAR, the Performance Accountability Report, really involved a very significant amount of strategic analysis and work. And I would like to thank the staff for it and particularly to commend Debra Carr for her extraordinary dedication to it including work all through the holiday weekend in order to get the document in time for the Sunday midnight deadline. And
we did get it in just a little bit before the deadline of Sunday, the night of the holiday weekend.

Those are the issues that I have for now, but I'd be happy to take questions and comments.

CHAIRMAN REYNOLDS: Questions? There being none.

VI. PROGRAM PLANNING

CHAIRMAN REYNOLDS: Next is program planning. Next we'll deal with the national report on the Voting Rights Act. On August 6, 2007 several core provisions of this Act that are temporary are due to expire. This report to the Commission's statutory report on the enforcement of civil rights by the federal government has to be done annually. This year it has been done on the Voting Rights Act.

At our December 18, 2005 meeting the Commission amended the scope of this report and eliminated work formally assigned to the Office of Civil Rights Evaluation. This was done so that the Commission can submit timely findings and recommendations to Congress since Congress has expedited the reauthorization of the Voting Rights Act.

We also directed staff to provide us with a draft of this report in time for us to vote on the...
report during this meeting. The Staff Director has provided us with a draft report as directed. This draft includes some significant independent staff analysis including data analysis, case analysis, substantial editorial review and the inclusion of several significant new graphics as well as the work of the consultant Mark Posner.

On the other hand, the Staff Director has apprised us that in his estimation the current draft could be significantly improved if additional time is allowed for further staff analysis, another round of editorial review and another round of Commissioner comments.

So based on those reasons, I move to extend the vote on the national report on the Voting Rights Act until March 10, 2006.

VICE CHAIRMAN THERNSTROM: I second it.

COMMISSIONER BRACERAS: Point of information. This is not the briefing?

CHAIRMAN REYNOLDS: That's correct.

VICE CHAIRMAN THERNSTROM: It's on the statutory report.

CHAIRMAN REYNOLDS: Okay. Have a second discussion? Yes?

VICE CHAIRMAN THERNSTROM: I want to
commend the staff on the work they've done on this statutory report and in the charts here and shifting the date that it became available and so forth. It's really, I think, a wonderful job. And I am voting, obviously, to allow more time to do additional work, but that does not come out of any discontent with the work that has been done, which I'm full of admiration for. So I thank the members of the staff who have come up with what I think is a very strong document.

I mean, as everybody knows here, I am want to put a million with track changes in my computer, a million comments and so forth in margins. I didn't find anything to comment on on this report. I thought it was really well done. So, again, my thanks to the staff.

COMMISSIONER YAKI: Well, that's scary.

VICE CHAIRMAN THERNSTROM: I have stopped making comments. But most of -- you know, the -- that work was done in great part by Mark Posner and it is, as far as I'm concerned, just terrific. So that's a man on your side of the table.

CHAIRMAN REYNOLDS: Okay. Let's vote. All in favor say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Any objections? Any
abstentions. The motion carries.

Let's see, where am I? Okay. I'll read the next motion into the record.

I move that the Staff Director develop a proposals to communicate with college students about their rights and remedies when faced with anti-semitic harassment.

Do I have a second?

COMMISSIONER BRACERAS: Yes. A second.

CHAIRMAN REYNOLDS: Discussion?

COMMISSIONER BRACERAS: Yes, I have a question.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Maybe I'm completely out of it, but at some point finding the recommendations were circulated, right?

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Draft. Very preliminary draft?

CHAIRMAN REYNOLDS: They were tabled. And so we're going to have revisit that issue in the future.

COMMISSIONER YAKI: Is that the next motion?

VICE CHAIRMAN THERNSTROM: When did they
tell us --

COMMISSIONER BRACERAS: In December.

CHAIRMAN REYNOLDS: Was it last meeting?

STAFF DIRECTOR MARCUS: They were one of the December --

COMMISSIONER BRACERAS: In December.

STAFF DIRECTOR MARCUS: -- issues that were tabled until this meeting.

VICE CHAIRMAN THERNSTROM: That's what I was going to say, they were tabled until meeting.

COMMISSIONER BRACERAS: Right. So that's what I'm asking about. What's happening with those and how does that relate to the current motion?

CHAIRMAN REYNOLDS: There's your answer.

COMMISSIONER BRACERAS: So how does it relate to the current motion?

CHAIRMAN REYNOLDS: Well, that's a very good point. The document, the booklet has to have content. And the content, presumably, would consist at least in part, the recommendations. So it seems to me that we need to put the --

COMMISSIONER BRACERAS: So the draft that was circulated earlier, is it still something we should be reviewing or is that wait until we get a new version?
CHAIRMAN REYNOLDS: No. Wait until you get the second one.

Okay. How about this? I move that we table this issue with the understanding that we would circulate the recommendations. And once we've dealt with that issue, then we would move forward developing educational materials.

COMMISSIONER BRACERAS: Was the Staff Director about to say something? It looks like you were?

STAFF DIRECTOR MARCUS: No. We could take them in either way. They've been circulated. We have the materials or we could wait.

As I understand it, the public education campaign is intended to address the rights that students would have under the federal civil rights laws, whereas the findings and recommendations related to a number of issues. Perhaps one or two were related intentionally, but they're essentially two different --

COMMISSIONER BRACERAS: Two separate documents?

STAFF DIRECTOR MARCUS: Two separate documents.

COMMISSIONER BRACERAS: Okay. That's
fine. So are we still going to proceed with both of those documents, the findings and recommendations as well as the civil rights guidance?

CHAIRMAN REYNOLDS: Well, we just tabled the recommendations. There was no --

COMMISSIONER BRACERAS: Well, we tabled them until now.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: Or did we table them indefinitely?

CHAIRMAN REYNOLDS: Until this meeting.

COMMISSIONER BRACERAS: Okay. So I was just wondering did somebody have a problem with them or--

CHAIRMAN REYNOLDS: Yes, I had a problem.

COMMISSIONER BRACERAS: Okay. I just wasn't aware of what was going on.

CHAIRMAN REYNOLDS: Yes. I had some issues with it and that's why it was tabled. And we weren't able to get back to the document in time for this meeting. So it's my fault.

COMMISSIONER BRACERAS: Okay. Is that something we need to discuss as a Commission what substantive concerns you have?

CHAIRMAN REYNOLDS: I don't think so, but
I just -- I wanted it to be clear of the jurisdictional issue. The jurisdictional issue for OCR, it's national origin -- I wanted it to be clear that it was based on national origin and not religion. And --

COMMISSIONER BRACERAS: I see.

CHAIRMAN REYNOLDS: -- I thought that as the document was drafted, I thought there were some ambiguities.

COMMISSIONER BRACERAS: Okay.

CHAIRMAN REYNOLDS: I also thought that it would be easy to fix.

COMMISSIONER BRACERAS: Okay.

CHAIRMAN REYNOLDS: So that was my issue.

COMMISSIONER BRACERAS: That's fine. That answered it, that's exactly what I was wondering. But that is still something we're going to try to produce as a Commission?

CHAIRMAN REYNOLDS: Yes. Yes. Unless there's a movement, unless there's a majority of folks who decide that they don't want to move forward with the recommendations and/or the educational materials.

COMMISSIONER BRACERAS: No. I mean, I think it's a good idea to have two documents; one that outlines student's rights and responsibilities, I
guess, and one that makes findings and recommendations based on the hearing. I would love to see us put out documents on both of those.

CHAIRMAN REYNOLDS: Okay.

STAFF DIRECTOR MARCUS: If it's the consensus of the Commission, we would certainly be pleased to revise the proposed findings and recommendations to make more clear that jurisdiction under the Civil Rights Act of 1964 is based on national origin as opposed to religion. That would be fairly easy and we could recirculate it in time for the next Commission meeting.

CHAIRMAN REYNOLDS: Yes, it's an easy fix. And I presume that there would be no controversy. I think that we'll have complete consensus on this one.

STAFF DIRECTOR MARCUS: As for the public education campaign, we have given a little bit of thought to it and it might be useful just to mention the direction that we were thinking we might go in to see if that's consistent with the interests of the Commission. At least at present it appears we have very limited funding of it. And so the question is how can we take limited funding and get the word out as best we can.

An approach that has been developed by
staff is the notion of providing an electronic
document, which is available on the website, and which
provides the rights in depth. That way we could
provide it in a little bit more detail than we would
be able to if we were actually publishing a pamphlet
where we would have to distribute large numbers. And
then we could compliment that with a poster that would
be distributed informing people generally of the issue
and telling them where on our website they could find
the information based on the --

COMMISSIONER BRACERAS: Well, certainly,
couldn't we have some of the folks that we had
testify? I mean, if they are aware of the document,
they might take it upon themselves to distribute to
campuses?

STAFF DIRECTOR MARCUS: We certainly
could. Our hope would be that whichever way we but
particularly if we have the poster, that we would want
to try to work with a nongovernmental association,
perhaps one that we had testify, perhaps there are
others out there that would be able to get the word
out.

COMMISSIONER BRACERAS: Right.

STAFF DIRECTOR MARCUS: And so we've been
looking into different forms of partnership.
COMMISSIONER BRACERAS: Sounds good.

STAFF DIRECTOR MARCUS: But is the hope is that they can get the word out.

We've looked at the prospect of publishing approximately a thousand posters and providing an electronic pamphlet on the website.

COMMISSIONER BRACERAS: Great.

CHAIRMAN REYNOLDS: Vice Chairman Thernstrom?

VICE CHAIRMAN THERNSTROM: So we've been held up by a rather narrow legal question, that is national origin versus religion under Title VI. Is there a larger issue here?

CHAIRMAN REYNOLDS: No.

VICE CHAIRMAN THERNSTROM: No. So this is easy to resolve?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIRMAN THERNSTROM: Okay.

CHAIRMAN REYNOLDS: Any other questions or comments?

COMMISSIONER BRACERAS: No. That answered my questions.

CHAIRMAN REYNOLDS: Okay. His timing is impeccable. We're about to vote. All in favor of tabling the motion to develop campus anti-semitism
educational materials please say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Any in opposition.

COMMISSIONER BRACERAS: I'm sorry.

CHAIRMAN REYNOLDS: Yes.

COMMISSIONER BRACERAS: We're tabling? I thought that we were authorizing the Staff Director to develop those materials. Now we're tabling that.

CHAIRMAN REYNOLDS: Oh, well, I thought that.

COMMISSIONER BRACERAS: I'm sorry.

CHAIRMAN REYNOLDS: Okay. Where I left off, I started looking at my little gizmo here, is that we would look at the recommendations to see what would be incorporated and to be --

COMMISSIONER BRACERAS: Well, they're two separate documents.

CHAIRMAN REYNOLDS: Yes, but the information in one could be used in the other. But if people are comfortable, I don't have strong feelings one way or the other. I was just responding to what I felt was a concern about one going before the other.

COMMISSIONER BRACERAS: No. I thought that the current motion was to authorize the Staff Director to begin the process of developing the --
CHAIRMAN REYNOLDS: How about this? How about this then? This vote is to -- this motion is to develop campus anti-Semitism education materials, that's what we're going to vote on.

COMMISSIONER BRACERAS: All of them? Whatever they are?

CHAIRMAN REYNOLDS: Okay. All in favor?

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Okay. Any in opposition? Any abstentions? The motion carries. That's one less thing that we have to carry over until next month.

Okay. I'm going to move that the Commission keep the record open on the briefing on campus anti-semitism until February 10, 2006. This will enable the staff to complete the defame and degrade process and to admit the additional statements received from outside organizations. Is there a second?

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Discussion?

VICE CHAIRMAN THERNSTROM: Wait a minute. So is this we tabled --

COMMISSIONER BRACERAS: We didn't table anything.
VICE CHAIRMAN THERNSTROM: Last month.

CHAIRMAN REYNOLDS: The recommendations.

COMMISSIONER BRACERAS: We didn't table anything. We just authorized the Staff Director --

VICE CHAIRMAN THERNSTROM: I understand. But what's now happening with the recommendations?

CHAIRMAN REYNOLDS: The recommendations will be presented next month.

STAFF DIRECTOR MARCUS: At the next month with --

VICE CHAIRMAN THERNSTROM: That's unrelated to the motion you just made?

CHAIRMAN REYNOLDS:

DEAN: Well, no. The record will remain open so outside organizations will still have an opportunity to submit statements.

VICE CHAIRMAN THERNSTROM: Okay. But it needed a new motion?

COMMISSIONER BRACERAS: No.

VICE CHAIRMAN THERNSTROM: No. Okay.

COMMISSIONER BRACERAS: The staff can begin work on it or they already have and when new information comes in, they can incorporate it as they see fit until the --

VICE CHAIRMAN THERNSTROM: Okay. So
having tabled it until this meeting, we don't need to
incorporate in this motion some indication that --

COMMISSIONER BRACERAS: We didn't table
anything. We just authorized the staff to --

VICE CHAIRMAN THERNSTROM: We did at the
last meeting.

CHAIRMAN REYNOLDS: You're saying that we
need to have something in the record extending it an
additional month officially?

VICE CHAIRMAN THERNSTROM: Yes, that's
exactly what I'm saying.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIRMAN THERNSTROM: That's right.

CHAIRMAN REYNOLDS: What's she saying is
that we tabled the recommendations until this meeting
and she just wants to put something on the record so
that the record reflects that we further extended it
until next month.

COMMISSIONER BRACERAS: Okay.

CHAIRMAN REYNOLDS: So, on that note, I
move that the recommendations concern of the campus
anti-semitism briefing be postponed until the February
meeting. Is there a second?

VICE CHAIRMAN THERNSTROM: Well, and that
the record be kept open. Isn't it one part --
CHAIRMAN REYNOLDS: Yes. Yes. Thank you.

COMMISSIONER TAYLOR: Second.

CHAIRMAN REYNOLDS: Any discussion? All in favor?

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: All in opposition? Any abstentions.

Let the record reflect that the motion carried unanimously.

VII. MANAGEMENT AND OPERATIONS

CHAIRMAN REYNOLDS: Okay. The next motion up, I move to extend the deadline for the Commission implementation of the recommendations from the Government Accountability Office and the Office of Personnel Management contained in reports issued from 1997 through April 6, 2005. The Commission originally agreed on April 8, 2005 to implement these recommendations by mid-January 2006. On December 16, 2005 we subsequently voted to extend the implementation of these recommendations to mid-February, 2006 and directed the Staff Director to apprise us of any additional extensions required by further cooperation with the House Subcommittee on the Constitution in revising the agency's strategic plan.

The Staff Director has informed us that
the staff is continuing to work with the House
Subcommittee on the Constitution and GAO on the draft
strategic plan and has a meeting scheduled for next
Monday to discuss additional input. After approval of
the new strategic plan, it would take at least one
month to implement the GAO and OPM recommendations. I
now move that the Commission instead implement these
recommendations as expeditiously as possible
consistent with the need to continue cooperating the
House Subcommittee on the Constitution and revising
the Commission's draft strategic plan. This motion
would replace all previous deadlines for
implementation of these recommendations.

Is there a second?

VICE CHAIRMAN THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion? All in
favor please say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Any objections? Any
abstentions? The motion carries unanimously.

Next up, I move that the Commission
meeting previously approved for Friday, July 7, 2006
instead be held on Friday, July 28, 2006. And this
was in response to a request from one of the
Commissioners.
Is there a second?

VICE CHAIRMAN THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion? All in favor?

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Any objections? Any abstentions?

COMMISSIONER TAYLOR: Let me suggest this is now the July 4th meeting.

CHAIRMAN REYNOLDS: The motion carries.

VIII. STATE ADVISORY COMMITTEES

CHAIRMAN REYNOLDS: Okay.

Commissioner Taylor, as Chairman on the task force on state advisory committees, do you have a motion to approve a final rule on select state advisory committee members?

COMMISSIONER TAYLOR: I do. Thank you.

I move that the Commission approve the draft final rule on selecting state advisory committee members. The Commission approved a proposed rule on selecting SAC members at the October 31, 2005 business meeting and it was published in the Federal Register for notice and comment on November 4, 2005. The period for notice and comment closed on December 5th of that same year and staff prepared the draft final
rule based on the comments received during that period.

The draft amends 45 CFR Section 703(a) and (b) as follows:

(a) Subject to exceptions made from time-to-time by the Commission to fit special circumstances, each advisory committee shall consist of at least 11 members appointed by the Commission. Members of the advisory committees shall serve for a fixed term to be set by the Commission upon the appointment of a member subject to the duration of advisory committees as prescribed by the charter provided that members of the advisory committee may at anytime be removed by the Commission.

(b) No person is to be denied an opportunity to serve on a state advisory committee because of race, age, sex, religion, national origin or disability. The Commission shall encourage membership on the state advisory committee to be broadly diverse.

Once the Commission approves this draft final rule the Office of the Staff Director will submit it for publication in the Federal Register and the rule will become effective 30 days after publication in the Federal Register at which point the
Commission can proceed with soliciting recharter packages from the state advisory committees.

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIRMAN THERNSTROM: I second.

CHAIRMAN REYNOLDS: Discussion? All in favor please say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: All in opposition? Any abstentions?

Please let the record reflect that the Chairman, Commissioner Braceras, Commissioner Thernstrom and Commissioner Taylor support the motion. And Commissioner Yaki and Commissioner Melendez oppose with no abstentions.

Okay. Commissioner Taylor, we're not finished with you yet. I understand that you have a second motion regarding the state advisory committees.

COMMISSIONER TAYLOR: I do. And I'd move that the Commission recommend that Congress extend the term of the state advisory committees and their members to four years when it considers reauthorization legislation for the Commission. And that the Commission authorize the Chairman to advise the pertinent congressional committee of this recommendation.
Although two years is the maximum term generally allowable under the Federal Advisory Committee Act, the situation at the Commission in my view at least, warrants an exception. The Commission's SACs are different from the usual advisory committees addressed in the FACA statute because they are well established as part of the Commission and they play an important role in the overall mission of our agency.

The Commission's regulations currently applied to the FACA to "management, membership and operations of the state advisory committees and their subcommittees. FACA limits the term of such committees to two years with various exceptions. One exception is that Congress may specifically exempt an advisory committee from the usual limit by statute. This could be accomplished, of course, during the Commission's reauthorization."

Two years is an insufficient period of time for SAC membership given the time and resources necessary for rechartering. We have seen that the effort necessary for rechartering 51 SACs consumes a substantial amount of regional resources and reduces the resources available for SAC activities. We have also seen over time that the constant exploration of
SACs had led to a situation in which we frequently have a large number of unchartered SACs. Expanding the terms of the SACs and the members would enable the regional staffs to focus their activities on important state and local civil rights activities rather than diverting their resources to the rechartering process.

This motion would have the Commission recommend that Congress specifically exempt us from FACA's two year cap in our reauthorizing statute. This recommendation would be invited in a letter from the Chairman to the relevant congressional committees.

CHAIRMAN REYNOLDS: Okay. And is there a second?

VICE CHAIRMAN THERNSTROM: Yes, I second it.

CHAIRMAN REYNOLDS: Discussion? All in favor say aye.

COMMISSIONER TAYLOR: One moment. I think we should add that since our last meeting when this issue was raised and we all knew that we would vote on it at this meeting, I think the Staff Director could elaborate on this point, that we have received a number of documents from the SAC chairs in support of this motion, if I'm stating those comments correctly.

STAFF DIRECTOR MARCUS: That's right. Yes,
Commissioner Taylor. We did earlier this week get the word out to chairman of currently chartered state advisory committees and tried through them to get the word out to additional committee members.

We've heard back and I wish we had been able to get it out a little bit sooner, but we heard back from five or six of them. And they all took essentially the same position, which is that all of the ones who responded to us indicated that they would favor the recommendation that we ask Congress to extend the SAC period to four years.

At the same time we also asked their view about a related issue as to whether we should keep the term of SAC chairs at two years, even if the charter period of the SAC extended to four. And they unanimously so far have indicated that they would disagree with that proposal because they think that chairman need a greater amount of time to come up to speed and oversee the projects of the SACs.

CHAIRMAN REYNOLDS: Okay. All in favor say aye.

COMMISSIONERS: Aye.

CHAIRMAN REYNOLDS: Any objections? Any abstentions. Please let the record reflect that Commissioner Yaki and Commissioner Melendez abstain
and the remaining Commissioners voted in favor of the motion.

COMMISSIONER TAYLOR: One moment, I'd like to move that this next motion be tabled until the next meeting.

CHAIRMAN REYNOLDS: Is there a second?

VICE CHAIRMAN THERNSTROM: Second.

CHAIRMAN REYNOLDS: Discussion? All in favor say aye.

COMMISSIONERS: Aye.


Okay.

VICE CHAIRMAN THERNSTROM: And I'm moving that the next motion to accept for publication for the Arizona state advisory --

COMMISSIONER BRACERAS: That's already been tabled.

VICE CHAIRMAN THERNSTROM: Oh, it's already been tabled. That's right. Forgot that. I was about to move that it be tabled.

IX. BRIEFING REPORTS

CHAIRMAN REYNOLDS: Okay. Now we're going to deal with the Voting Rights Act Briefing Report as opposed to the statutory report. Okay. I move to
approve the report produced by the Office of Civil
Rights Evaluation on the briefing of the Commission
held on October 7, 2005 on the reauthorization of the

COMMISSIONER BRACERAS: Second.

CHAIRMAN REYNOLDS: Thank you.

COMMISSIONER BRACERAS: This is the final
version we're receiving incorporate Commissioner
comments, yes?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIRMAN THERNSTROM: Discussion?

CHAIRMAN REYNOLDS: Yes.

VICE CHAIRMAN THERNSTROM: No. This is
not possible. We have not had a chance to -- I mean, I
just got this last night on my computer. I don't have
a printed out version. I have had no time to read it.

CHAIRMAN REYNOLDS: Would you like to
table this issue?

VICE CHAIRMAN THERNSTROM: I would like to
table this issue. And there were --

COMMISSIONER BRACERAS: Well, it's just
assuming it incorporated all your redlines.

VICE CHAIRMAN THERNSTROM: No, no. Well,
wait a minute. Some of my redlines were I need to go
back to the transcript because I need to check on
things that actually went into the meeting. I haven't got the transcript yet.

    COMMISSIONER TAYLOR: I second the motion to table it.

    CHAIRMAN REYNOLDS: All in favor? Any objections?

    COMMISSIONER YAKI: Similarly we haven't been getting transcript for the past few months. What's happened.

    COMMISSIONER BRACERAS: Yes.

    STAFF DIRECTOR MARCUS: Commissioners have not gotten in the last few months?

    COMMISSIONER YAKI: No.

    STAFF DIRECTOR MARCUS: Make sure that we look at it and start getting them out.

    CHAIRMAN REYNOLDS: And some of the old ones also, the ones that we didn't receive. It's an easy fix.

    Okay. We can adjourn.

    VICE CHAIRMAN THERNSTROM: Oh, fantastic.

    COMMISSIONER BRACERAS: Oh, wait. I'm sorry. May I ask a question?

    CHAIRMAN REYNOLDS: Yes.

    COMMISSIONER BRACERAS: Could we get a rundown on the scheduled briefings for the next couple
of months?

CHAIRMAN REYNOLDS: Okay. Ken, are you prepared to review this information?

STAFF DIRECTOR MARCUS: I'll try.

COMMISSIONER BRACERAS: March is no longer Sanders, right?

STAFF DIRECTOR MARCUS: That's right. February is the Patriot Act. Now for the Patriot Act three of our original speakers have agreed that they would be able to participate in February. Those are Professor Viet Dinh, former Congresswoman Mary Rose Oakar and Mr. Parvez Ahmed. However, Andrew McCarthy and Michael Ledeen are no longer available. We are now looking at substitutes for them, and we're certainly amenable for ideas of people to include the appropriate substitutes to Mr. Ledeen or for Mr. McCarthy.

COMMISSIONER YAKI: We should also make that meeting a 9:00 meeting, don't you think?

CHAIRMAN REYNOLDS: What time did we start today?

COMMISSIONERS: 9:30.

VICE CHAIRMAN THERNSTROM: No. I much prefer 9:30.

COMMISSIONER YAKI: Okay. Well, I thought
we were doing a -- wasn't it your bright idea last time that --

CHAIRMAN REYNOLDS: Well, it is helpful in that we have been able to start. But Vice Chair doesn't get up too early.

VICE CHAIRMAN THERNSTROM: But, no, but that was that --

CHAIRMAN REYNOLDS: That's a joke. That's a joke.

VICE CHAIRMAN THERNSTROM: That was serious.

COMMISSIONER BRACERAS: The thought was that if people had to leave the meeting early, either to catch a flight or because they were participating from their home location and needed to get off the phone, that by starting at 9:00 we can have half an hour for the business portion of the meeting to take the necessary votes before people have to catch a plane. So I still favor that. But we can take it on a month-by-month basis.

COMMISSIONER YAKI: I definitely favor it in February because that's my personal --

COMMISSIONER TAYLOR: We should have some SAC issues to vote on at the February meeting as well.

VICE CHAIRMAN THERNSTROM: Well, if you're
making a personal request for February, I'm certainly happy to go --

COMMISSIONER BRACERAS: Yes, let's just take it month-by-month.

CHAIRMAN REYNOLDS: Okay.

VICE CHAIRMAN THERNSTROM: But I would like not to change it as a general rule.

CHAIRMAN REYNOLDS: Okay. So we don't need a vote on that. Just as an administrative matter.

COMMISSIONER BRACERAS: February, right.

CHAIRMAN REYNOLDS: Okay.

COMMISSIONER BRACERAS: Okay. So March?

STAFF DIRECTOR MARCUS: March, I believe, and we would have to check, but I believe that March is the month for minority representation at the Census.

COMMISSIONER BRACERAS: That's right. Okay.

STAFF DIRECTOR MARCUS: We do not yet have a panel to announce for March.

COMMISSIONER BRACERAS: And April?

STAFF DIRECTOR MARCUS: We can apprise you after the meeting.

CHAIRMAN REYNOLDS: Yes. Would it be best
if we circulate a list.

COMMISSIONER BRACERAS: So we're looking forward to the Patriot Act and to the minority representation of the Census; those are the two issues?

STAFF DIRECTOR MARCUS: Those are the two coming up on the next --

CHAIRMAN REYNOLDS: Ken, please distribute an email that lists the remaining briefings for the year.

STAFF DIRECTOR MARCUS: That would be fine.

VICE CHAIRMAN THERNSTROM: And we are scheduled through what in terms of briefings, to what month?

STAFF DIRECTOR MARCUS: We have briefings that are scheduled through late in 2007, but we haven't accepted briefings for every month in that period. So we really have a two year schedule, but we have open months throughout.

VICE CHAIRMAN THERNSTROM: And do we want suggestions for topics?

STAFF DIRECTOR MARCUS: Sure. I think that that would be appropriate perhaps in the planning meeting and under February or perhaps March.
VICE CHAIRMAN THERNSTROM: Let's all think about the open slots.

CHAIRMAN REYNOLDS: Commissioner Yaki, you had a question or comment?

COMMISSIONER YAKI: Nope. I withdraw it.

COMMISSIONER TAYLOR: I want to make one announcement before the benediction is given. Hopefully, we'll have a SAC chair meeting sometime, a working group meeting rather within the next two weeks to discuss how we go about accepting SAC reports. We'll address that issue as well as the term of the chair for SACs, as well as the overall relationship between the SACs and the Commission, which is a discussion I hope we can continue to have. And we will make sure that we coordinate with all Commissioners' calendars prior to setting the meeting.

CHAIRMAN REYNOLDS: Good luck.

STAFF DIRECTOR MARCUS: And I'd also recommend a meeting of the working group on the budget. Coming up fairly soon are a number of budget issues including special assistant issues.

CHAIRMAN REYNOLDS: Okay. We're done.

(Whereupon, at 1:25 p.m. the meeting was adjourned.)