



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 ·PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 28, 2013
11:00 a.m.
Room 309

To: The Honorable Henry Aquino, Chair
and Members of the House Committee on Public Safety

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.C.R. No. 134 / H.R. No. 104

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.C.R. No. 134 and H.R. No. 104 request all agencies in the criminal justice system to conduct mandatory and ongoing training for their employees on implicit, unconscious bias.

A 2010 OHA report documented the overrepresentation of Native Hawaiians at every stage of the criminal justice system and in prison. There is also anecdotal reporting of bias-based policing and prosecution of COFA migrants and other immigrant groups in Hawai‘i. Issued in 2012, the Native Hawaiian Justice Task Force Report recommended

mandatory training of all employees in the criminal justice system on unconscious bias, as one of 38 recommendations to the legislature.

Disproportionate representation of Native Hawaiians and other minorities in the criminal justice system raises serious civil rights concerns over disparate treatment and disproportionate impact of racial profiling and other implicit, unconscious bias that may be a contributing factor.

The HCRC supports the intent of H.C.R. No. 134 and H.R. No. 104 calling for mandatory and ongoing training of all criminal justice agency personnel on implicit, unconscious bias.



HCR134/HR104
REQUESTING ALL AGENCIES IN THE CRIMINAL JUSTICE SYSTEM TO
CONDUCT MANDATORY AND ONGOING IMPLICIT, UNCONSCIOUS BIAS
TRAINING FOR ALL EMPLOYEES
House Committee on Public Safety

March 28, 2013

11:00 a.m.

Room 309

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HCR134/HR104, which is a house concurrent resolution and a house resolution, encouraging implicit unconscious bias training for agencies in the criminal justice system.

In 2010, OHA produced a comprehensive report detailing the disparate treatment of Native Hawaiians in the criminal justice system. Since then, OHA has administered the Native Hawaiian Justice Task Force (NHJTF), which was tasked by the Legislature to address this multi-faceted issue. A copy of the NHJTF 2012 legislative report and related materials are available at: www.oha.org/nativehawaiianjusticetaskforce

This resolution would further recommendation B3 of the NHJTF report,

Training regarding implicit, unconscious bias is to be mandatory and ongoing for all employees who have contact with individuals in the criminal justice system. The Judiciary has recently held such a training for judges.

The Judiciary should be applauded for taking a proactive step in addressing this important issue and acting as a model for other agencies working in this field. This resolution would further the work that the Judiciary has started.

Therefore, OHA urges the committee to **PASS** HCR134/104. Mahalo for the opportunity to testify on this important measure.

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, March 28, 2013

11:00 a.m.

Room 309

STRONG SUPPORT FOR HCR 134/HR 104 - IMPLICIT, UNCONSCIOUS BIAS TRAINING

Aloha Chair Aquino, Vice Chair Ing and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HCR 134/HR 104 requests all agencies in the criminal justice system to conduct mandatory and ongoing implicit, unconscious bias training for all employees.

Community Alliance on Prisons strongly supports this measure. Every citizen regardless of race, ethnicity, gender, sexual orientation, religion, economic status, background, age, or culture deserves the highest level of service available and equal treatment under the law.

After attending the meetings of the Native Hawaiian Justice Task Force in 2011 and 2012, the need for mandatory and ongoing implicit, unconscious bias training for all agencies in the criminal justice system became painfully clear. The community members who attended the meetings were appalled to hear statements from the Attorney General and the Honolulu Prosecutor's office that most of us considered highly offensive. Both these agencies did their best to de-rail the task force from its work to ensure that nothing useful emerged from this collaboration of judges, agencies and scholars. It was only through the leadership of former family court Judge Michael Broderick that the group stayed on task.

Among the recommendations of the Native Hawaiian Justice Task Force published in December 2012¹:
B.3 Training regarding implicit, unconscious bias is to be mandatory and ongoing for all employees who have contact with individuals in the criminal justice system. The Judiciary has recently held such a training for judges. (*Vote taken. One vote against the Recommendation: Department of the Prosecuting Attorney for the City and County of Honolulu, "The specific bases for this recommendation are unclear."*)

¹ Native Hawaiian Justice Task Force Report, December 2012, page 27...

http://www.oha.org/sites/default/files/2012NHJTF_REPORT_FINAL_0.pdf

Bias-based profiling is the use of race, ethnicity, gender, sexual orientation, religion, economic status, background, age, or culture as the sole basis for police activity. The absence of facts, suspicious activity, or specific criminal information is what separates bias-based profiling from legitimate criminal profiling.²

Implicit Bias

The implicit bias phenomenon is being explored in many phases of the criminal justice system and is not limited to law enforcement. Specifically, implicit bias is being studied in judicial decision making (for example, jury selection, jury instruction, and sentencing decisions), as well as in hiring and promotion decisions within criminal justice agencies. Outside of the criminal justice field, the topic has been examined in the fields of education and medicine, as well as in CEO selection at Fortune 500 companies.

A discussion on implicit bias must start with a brief explanation of how the brain sorts, relates, and processes information. Much of the day-to-day processing is done at an unconscious level as the mind works through what Professor Kang calls schemas, which are “templates of knowledge that help us organize specific examples into broad categories. A stool, sofa, and office chair are all understood to be ‘chairs.’ Once our brain maps some item into that category, we know what to do with it—in this case . . . sit on it. **Schemas exist not only for objects, but also for people. Automatically, we categorize individuals by age, gender, race, and role. Once an individual is mapped into that category, specific meanings associated with that category are immediately activated and influence our interaction with that individual.**”³

Properly defining bias-based profiling is essential for the advancement of civil rights. First the term must acknowledge that there are forms of discrimination beyond race, which can degrade civil rights. The term “racial profiling” fails to address adequately other forms of discrimination. The term ‘bias-based profiling’ acknowledges the underlying motivations that promote unlawful police practices and broadens the understanding of this important issue.⁴

This is an important issue in Hawai‘i, as evidenced by the 2010 OHA report, “The Disparate Treatment of Native Hawaiians in the Criminal Justice System”⁵ and the Native Hawaiian Justice Task Force Report⁶.

The task force found that disproportionate representation of Native Hawaiians in prisons suggests **implicit, unconscious bias** against the Native population by law enforcement, courts and corrections employees – which led to the recommendation of additional training in ways to mitigate treatment.⁷

Robert J. Smith, Visiting Assistant Professor of Law at DePaul University and Justin D. Levinson, Associate Professor of Law and Director of the Culture and Jury Project at the William S. Richardson School of Law, University of Hawai‘i co-authored a paper in 2012 entitled, *The Impact of Implicit Racial*

² Winter Park Police Department, Bias-based policing <http://www.wppd.org/about/bbp.htm>

³ Americans for American Values, “What Is Implicit Bias?,” 2009, <http://americansforamericanvalues.org/unconsciousbias>

⁴ Bias-based Profiling in Vermont, Brian R. Jones, J.D.

⁵ www.oha.org/disparatetreatment/

⁶ Ibid

⁷ Addressing the Native Hawaiian Inmate Issue by Cliff Matias, January 23, 2013.

<http://indiancountrytodaymedianetwork.com/2013/01/23/addressing-native-hawaiian-inmate-issue-147136>

⁸ ADDRESSING THE EFFECTS OF IMPLICIT RACIAL BIAS ON PROSECUTORIAL DISCRETION, Robert J. Smith and Justin D. Levinson, April 24, 2012.. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045316

Bias on the Exercise of Prosecutorial Discretion. In Section IV. ADDRESSING THE EFFECTS OF IMPLICIT RACIAL BIAS ON PROSECUTORIAL DISCRETION⁸, they state:

“As we have demonstrated, there are compelling reasons to believe that prosecutors unwittingly display implicit racial bias at a variety of decision points. One could expect that in the aggregate, the harms of these biases are quite substantial. It is important to note, however, that empirical studies have yet to test prosecutors directly or prove that prosecutors act automatically in bias-influenced ways. We therefore encourage researchers to take on the charge of pursuing our hypotheses empirically. Although we expect to pursue some of these hypotheses ourselves, the best science is collaborative, transparent, and forward-looking. We thus specifically encourage researchers to test precisely where and how implicit bias operates in the context of prosecutorial decision-making and provide here several examples of potential starting points.

(...)

Each of the potential remedies we discuss above would benefit from empirical testing, yet we do not believe, considering the likely ongoing harms, that waiting for a perfect scientific answer to the debiasing question is the best response. It is true that there are no easy answers for remedying the influence of implicit racial bias on prosecutorial discretion. **Yet, justice should not wait, and the search for fairness in the criminal justice system must continue with both a moral compass and a thirst for emerging social-scientific knowledge.**” (emphasis added)

Mahalo to the committee for hearing this important resolution. We encourage its passage. As Professors Smith and Levinson have said, “**...Justice should not wait, and the search for fairness in the criminal justice system must continue with both a moral compass and a thirst for emerging social-scientific knowledge.**”

Mahalo for the opportunity to testify.

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 26, 2013 10:33 PM
To: pbstestimony
Cc: shaglund@hotmail.com
Subject: *Submitted testimony for HCR134 on Mar 28, 2013 11:00AM*

HCR134

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Sue Haglund	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 26, 2013 9:12 PM
To: pbstestimony
Cc: merway@hawaii.rr.com
Subject: Submitted testimony for HCR134 on Mar 28, 2013 11:00AM

HCR134

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Marjorie Erway	Individual	Support	No

Comments: to ensure fairness and justice, this is very important training for those who work in the Criminal Justice agencies. Please support.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 26, 2013 9:16 PM
To: pbstestimony
Cc: hokuokekai50@msn.com
Subject: *Submitted testimony for HCR134 on Mar 28, 2013 11:00AM*

HCR134

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Lacques	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, March 26, 2013 11:23 PM
To: pbstestimony
Cc: sherrianwitt@aol.com
Subject: Submitted testimony for HCR134 on Mar 28, 2013 11:00AM

HCR134

Submitted on: 3/26/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
sherrian witt	Witt Counseling Service	Support	No

Comments: As it is imperative that those working in the judicial system become aware of their bias's and the unconscious workings in order to have a just and fair observation of the facts. Our society depends on the justice system to be without an agenda or personal bias. As all people have bias's and many are unconscious, professional training for awareness is necessary. I support this training ...

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 27, 2013 4:13 AM
To: pbstestimony
Cc: jemray@hawaii.rr.com
Subject: *Submitted testimony for HCR134 on Mar 28, 2013 11:00AM*

HCR134

Submitted on: 3/27/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Janet Murray	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 27, 2013 9:13 AM
To: pbstestimony
Cc: miike@mikeswerdlow.com
Subject: *Submitted testimony for HCR134 on Mar 28, 2013 11:00AM*

HCR134

Submitted on: 3/27/2013

Testimony for PBS on Mar 28, 2013 11:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
michael swerdlow	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

