

GET Committee

From: Brandon Makaawaawa <bird.bran07@gmail.com>
Sent: Monday, August 12, 2019 10:04 AM
To: ryan.kp.kanakaole@hawaii.gov
Cc: DHHL.director@hawaii.gov; Jobi.k.masagatani@hawaii.gov; GET Committee; hulu@oha.org; Clare.E.Connors@hawaii.gov; William.F.Oku@hawaii.gov; kehau.filimoeatu@gmail.com; Kanahele Dennis
Subject: Kūpuna, Bank of America and the rule of law.
Attachments: Draft email for Ryan Kanaka'ole.docx; Lingle Admin & BofA's \$150M '03.pdf

Aloha Ryan,

My name is Brandon Makaawaawa. I am vice president of the board of Na Po'e Kokua and a member of the Hawaii Fair Lending Coalition. I also serve as deputy head of state for the Nation of Hawaii and I live on Hawaiian Homelands in Waimanalo.

On Tuesday, August 6, 2019, I traveled to Maui to testify before the Maui County Council's Governance, Ethics, and Transparency Committee on matters related to Bank of America's record of foreclosure fraud and relating to the Federal Reserve System's order requiring Bank of America to provide \$150 million in FHA-247 mortgages on Hawaiian Home Lands. The testimony that I gave to the Maui Council follows:

We've heard a lot about the rule of law recently when it comes to TMT's so called rights to build what it wants on our Mauna.

But when it comes to big banks what Hawaiians have learned over the past quarter century is that the rule of law does not always apply to us and it is selectively enforced. The three page timeline that Chairman Molina provided in County Communication 19-107 makes this very clear. Bank of America believes it is above the law and the government often supports that belief. Yesterday I sent a chart to the GET committee which adds more detail to Chair Molina's timeline from 2003. Does everyone have a copy?

Take a look at the third box down to the right of the bank of America logo. I'll read it: In March of 2003, Micah Kane [Who at that time was chair of the department of Hawaiian Home Lands] meets with Bank of America executives three weeks after Hawaiian homelands beneficiaries are forcibly evicted by 80 law enforcement officers — as a matter of "principle" — over \$250,000 in overdue mortgages.

This is what I mean by selective enforcement of the law. Despite the fact that Bank of America admits in writing that it completed only 2% of its commitment by the deadline, the Lingle administration was eager to work things out with Bank of America. Hawaiian Homelands beneficiaries including Kupuna and Mo'opuna didn't receive the same treatment and were forcibly evicted in an early morning raid for a manini amount of money.

When you look over the rest of the chart, you don't need to be a lawyer to understand that the Lingle administration continually put Bank of America's corporate agenda before the urgent needs of the Hawaiian people repeatedly and we're not even looking at what happened in later years, particularly in 2007. But I only get 3 minutes so what happened in 2007 will need to wait.

Today, the second resolution you are considering is entitled "Authorizing the Employment of Special Counsel to Pursue Sanctions and Other Remedies for Fraudulent Foreclosures." I'm not a lawyer but my fiancé is. She specializes in housing discrimination law and I've learned a few things from her.

First, lawyers like my fiancé who fight discrimination and injustice and work for the people are somewhat rare because the odds are stacked against them and banks and other corporations pay better.

Second, there was an article published on Law.com six weeks ago with the headline: Maui County Officials Consider Recruiting Miami Litigator Bruce Jacobs in Affordable Housing Fight. An early draft of the resolution you are considering today was included with the article and considered authorizing the employment of the Bruce Jacobs' firm as special counsel to pursue sanctions and other remedies for fraudulent foreclosures.

Third, I have spoken directly with Bruce Jacobs and I believe him to be the type of lawyer who is committed to ensuring that even a corporation as powerful as Bank of America with more than \$2 trillion in assets needs to be held accountable to the rule of law.

Bank of America should not be allowed to continue to default on its commitments and commit fraud on the courts.

Finally, this is the Governance, Ethics, and Transparency Committee. I would ask that you keep your deliberations on the special counsel transparent and not close them off to the public by denying Corporation Counsel's likely request that you go into executive session.

I submitted the chart which I referenced in my testimony (see attached) to the Maui Council the day before the hearing so the council members had it available for review. What the council members did not have available for their review before last Tuesday's hearing was your email to Maui County's Corporation Counsel regarding Bank of America which you sent on August 5 at 1:35pm. In fact, your email was distributed as the hearing was well underway and after public testimony was closed.

If your email regarding your views on Bank of America had been made publicly available prior to the hearing, here are the questions I would have raised during my testimony:

1. Why did you apologize to Maui County's Corporation Counsel for your "late response" claiming that "matters on the Big Island" — as you refer to the enormity of what is happening on the Mauna — "have been taking much of my offices resources lately"?
 2. Why are you not instead apologizing to the Kupuna — not just the Kupuna that your office had arrested on the Mauna — but also the Kupuna who stood up to Bank of America 25 years ago and those who are now Kupuna a quarter of a century later and who continue the work of holding Bank of America accountable to the rule of law?
 3. My understanding is that your division within the office of the Attorney General is responsible for Hawaiian Home Lands, Housing and Public Safety. Why are you focused on arresting or ignoring Kupuna rather than working with them to hold Bank of America accountable for its long overdue commitment to housing on Hawaiian Homelands?
 4. During your office's "review" of Bank of America's failure to fulfill its commitment to federal banking regulators that it would make \$150 million in FHA-247 loans between 1994 and 1998, why didn't you contact Na Po'e Kokua and the Hawai'i Fair Lending Coalition? Both Governor Ige's April 18, 2018 letter to Bank of America and the stated policy of the Hawaiian Homes Commission (which the Governor included in his letter and Jobie Masagatani reiterated during her testimony) along with resolutions passed by three county councils and the state senate make it clear that NPK/HFLC have a central role in holding Bank of America accountable for fulfilling its Hawaiian commitment. NPK/HFLC have hundreds of documents relevant to Bank of America's Hawaiian commitment and we have repeatedly requested a meeting with the attorney general.
 5. Why did the Attorney General delete key elements of the FOIA appeal which the Governor's office submitted for review before it was submitted to the Federal Reserve Board?
- We have many additional questions for the Attorney General, but I would ask you to answer theses first five by the end of the day tomorrow. I am also requesting an in person meeting with the Attorney General.

Aloha,
Brandon Makaawaawa
VP Na Po'e Kokua

[OBJ]

[OBJ]

Aloha Ryan,

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Bank of America.



Between 1994 and 2002 Bank of America originated 82 FHA-247 mortgages for a total of \$9,107,403. This was 6% of the \$150 million in FHA-247 mortgages on Hawaiian Home Lands that in 1994 federal banking regulators had ordered Bank of America to originate within four years. By the 1998 deadline, BofA had only originated \$3,109,502 in qualifying loans.

December 2, 2002
Linda Lingle is sworn in as Hawaii's first GOP governor in 40 years.



December 9, 2002
Gov. Lingle nominates two key GOP officials to her cabinet: Micah Kane as Chair of the Department of Hawaiian Home Lands (DHHL) and Mark Bennett as Attorney General.



On January 10, 2003, Bank of America's President of Community Development Banking, Doug Woodruff, writes to Bumpy Kanehele confirming that "only \$3 million in qualifying loans had been originated" by the 1998 deadline.

Bank of America.



Spring 2003
Merger talks begin



In March of 2003, Micah Kane meets with Bank of America executives three weeks after Hawaiian homelands beneficiaries are forcibly evicted by 80 law enforcement officers — as a matter of "principle" — over \$250,000 in overdue mortgages.



On May 12, 2003, Bumpy Kanehele initiates a series of briefings for the Waimanalo Neighborhood Board (WNB) on the status of Bank of America's \$150 million commitment. Micah Kane attends these meetings as the Governor's representative. Minutes of these meetings are publicly available.



At the June 9, 2003 WNB meeting Micah Kane states that DHHL will work with Bumpy Kanehele to have Bank of America fund their \$150 million commitment to the Hawaiian community.

On July 9, 2003, Micah Kane writes to Bumpy Kanehele stating that "Since my arrival at the Department, we have been in negotiation with Bank of America pertaining to the \$150 million commitment."



Bank of America.



Late summer —> fall 2003
Merger talks accelerate



On September 12, 2003, Bumpy Kanehele files a complaint with the US Attorney's office stating that there is "reason to believe that, without the consent of the majority of its commissioners, the state Department of Hawaiian Home Lands may be acting in collusion with Bank of America..."

Bank of America.



On October 27, 2003 Bank of America announces that it will acquire FleetBoston in a deal valued at \$47 Billion.



During a November 6, 2003 meeting between DHHL and Bank of America it is agreed — without the knowledge or consent of the Commission — that \$69,391,673 would be counted towards the \$150 million commitment when, in fact, BofA had originated only \$9,107,403 in FHA-247 mortgages by 2002 with zero originated in 2003.



Starbulletin

On November 23, 2003 — the 10th anniversary of the "Apology Bill" — Bumpy Kanehele writes an op/ed asking, "Why is Lingle trying to help BofA off the hook?"



On December 15, 2003, Doug Woodruff writes to Micah Kane regarding their meeting in Honolulu on the \$150 million commitment.



On December 15, 2003, Micah Kane writes the Federal Reserve stating that the "Commission requests your consideration" of comments in "connection with the proposed merger" with FleetBoston. Among other assertions in the Commission's name, Micah Kane states that "BoA and DHHL agreed to a modification" of the commitment.



At the December 15, 2003 community meeting of the Hawaiian Homes Commission, Commissioners state that they did not have knowledge of or approve any agenda related to Bank of America's \$150 million commitment.



On December 19, 2003 the Hawaii Fair Lending Coalition writes the Federal Reserve stating that "at public meetings of the Hawaiian Homes Commission, commissioners repeatedly stated that they had not authorized the executive branch of the state of Hawaii to enter into any discussions or negotiations with Bank of America. Therefore, for this and other reasons, any agreement that Bank of America claims to have reached with the state of Hawaii is not valid."

HFLC

The Federal Reserve forwards HFLC's letter to Bank of America

Bank of America.

