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office of the Ombudsman
State of Hawaii
fiscal year 1992-93
report number 24

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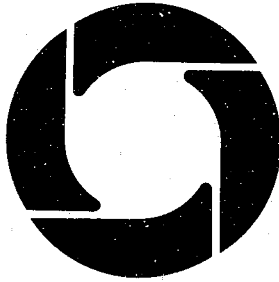

As a service to the public provided by the legislature, the Office of the Ombudsman receives and investigates complaints from the public about injustice or maladministration by executive agencies of the State and county governments.

The Ombudsman is a nonpartisan officer of the legislature. The Ombudsman is empowered to obtain necessary information for investigations, to recommend corrective action to agencies, and to criticize agency actions; but the Ombudsman may not compel or reverse administrative decisions.

The Ombudsman is charged with: (1) accepting and investigating complaints made by the public about any action or inaction by any officer or employee of an executive agency of the State and county governments; and (2) improving administrative processes and procedures by recommending appropriate solutions for valid individual complaints and by suggesting appropriate amendments to rules, regulations or statutes.

By law, the Ombudsman cannot investigate actions of the governor, lieutenant governor and their personal staffs; the legislature, its committees and its staff; the judiciary and its staff; the mayors and councils of the various counties; an entity of the federal government; a multistate governmental entity; and public employee grievances, if a collective bargaining agreement provides an exclusive method for resolving such grievances.

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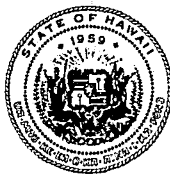

STATE OF HAWAII

REPORT of the OMBUDSMAN

FOR THE PERIOD JULY 1, 1992 – JUNE 30,1993
REPORT NO. 24

PRESENTED TO THE LEGISLATURE
PURSUANT TO SECTION 96-16 OF
THE HAWAII REVISED STATUTES

November 1993

Mr. President, Mr. Speaker, and Members of the
Hawaii State Legislature of 1994:

In accordance with section 96-16, Hawaii Revised Statutes, I hereby submit the report of the Office of the Ombudsman for fiscal year 1992-93. This is the twenty-fourth annual report since the establishment of the office in 1969.

This report covers the first year of my term of office as Ombudsman. I came to the position with a profound respect for the history and repute of the office. I have endeavored to provide the office with the leadership and direction necessary to effectively continue its dual mission of serving the public and improving government administration.

We live in an age of cynicism and disaffection. Government and its institutions are held in low public esteem. By promoting the fair and impartial administration of government, it is my hope that this office can help in the restoration of public confidence and support, two very vital qualities if our democratic system is to survive and flourish.

At the close of the current 1993-94 fiscal year, our office will have reached a major milestone, twenty-five years of service as the oldest state Ombudsman's office in the nation. In establishing the office, the Hawaii State Legislature demonstrated its progressive spirit and sensitivity to the problems confronted by the citizenry in the course of their everyday contact with government. We are grateful for the Legislature's ongoing support for the past quarter of a century.

All of us in the office would like to thank the Governor, the Mayors and Councils of the various counties, and the State and County department heads and employees for their continued cooperation and assistance in our efforts to resolve citizen complaints and concerns.

Respectfully submitted,

YEN L. LEW
Ombudsman

November 1993

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Chapter I

THE HAWAII OMBUDSMAN

During the 1992-93 fiscal year, the office underwent a number of changes. Some of these changes may be attributable to the turnover in personnel in the office, others to the office's continuing efforts at self-examination, improvement, and adaptation. The appointment of a new Ombudsman and new First Assistant inaugurated administrative and operational changes.

Some highlights of our experiences during the year follow.

Personnel Changes

There were a number of personnel changes during the fiscal year beginning with Yen Lew's assumption of office on July 1.

In January, Lynn Iwamasa resigned as one of our secretaries to take a supervisory position with the State Department of Education. While with our office, one of her primary duties was to serve as our receptionist. Her gracious demeanor had a calming effect on many of the irate callers and visitors that our office receives. Yvette Lum took her place in March, transferring from the State Department of Business, Economic Development, and Tourism. Ms. Lum has worked in various State agencies so she brings broad governmental knowledge and experience as well as a responsible and professional attitude to the job.

In February we welcomed Norrie Thompson to the office as First Assistant. Ms. Thompson received a B.A. in English from Stanford University as well as an M.A. in American Studies and a J.D. from the University of Hawaii. Prior to her appointment as First Assistant, she served for nine years as a deputy public defender where she honed her sense of justice, fair play, and empathy for the underdog.

Our Executive Secretary, Colleen Nakamura, left in May to take a similar position with the Hawaiian Electric Company. While we regretted seeing her leave, we realize this was a significant career advancement for her. During her time with our office, she initiated a number of operational reforms and modernization efforts, including new modular furniture for the secretarial workstations.

As a matter of fact, Ms. Nakamura's replacement, Linda Teruya, applied for the position after she had learned about the impending vacancy while working at the company that supplied the new furniture. Ms. Teruya comes to us with an impressive background, including 27 years of increasingly responsible secretarial and administrative experience with IBM. She joined our office in June.

Thus, at the end of the fiscal year our office stood at full strength with all authorized positions filled. The staff consists of Ombudsman Yen Lew and First Assistant Norrie Thompson, together with analysts Herbert Almeida,

Gillman Chu, Alfred Itamura, Glenn Mirikidani, Jamie Omori, Lynn Oshiro nee Okumura, David Tomatani, and Susan Trent, and secretaries Edna de la Cruz, Jean Fujimoto, Yvette Lum, Sue Oshima, Linda Teruya, and Debbie Toyama.

As ever, the staff is professional in attitude, collegial in spirit, and dedicated to the principles and mission of the office. We acknowledge their contributions, both individually and collectively, to our ongoing work.

Access

As an agency designed to provide direct service to the public, we are sensitive to the need to be as accessible as possible to the people we serve.

We were fortunate to be assigned office space in a State building at the corner of King and Punchbowl Streets, a conveniently situated intersection in downtown Honolulu. The building is accessible to wheelchairs. There is metered public parking in front of the building and handicapped parking is available nearby as well. A bus stop is located at the corner.

Even though we are conveniently located, complainants usually do not have to come in person to our office. Telephone inquiries are accepted, even encouraged, since this is the easiest way to contact us." In fact, the overwhelming majority of our cases are received by telephone. For residents of the neighbor islands, we can be reached through a toll-free 800 number.

Table A illustrates the point about the increasing use of the telephone as the means of public access to our office. It can readily be seen that this is indeed the long-term trend, accounting in recent years for over 95 percent of our inquiries. Generally, the number of written inquiries have remained remarkably stable over the years. It has been in the number of in-person visits that a long-term decline can be perceived.

TABLE A
MEANS BY WHICH INQUIRIES ARE RECEIVED

Fiscal Year	Telephone	Written	Visit
1983-84	3,652 (90.2%)	217 (5.4%)	178 (4.4%)
1984-85	3,650 (88.7%)	221 (5.4%)	244 (5.9%)
1985-86	3,893 (91.2%)	243 (5.7%)	134 (3.1%)
1986-87	4,257 (91.6%)	266 (5.7%)	126 (2.7%)
1987-88	4,868 (93.7%)	218 (4.2%)	110 (2.1%)
1988-89	6,387 (96.1%)	181 (2.7%)	81 (1.2%)
1989-90	6,027 (95.1%)	229 (3.6%)	81 (1.3%)
1990-91	6,939 (95.2%)	266 (3.6%)	83 (1.1%)
1991-92	6,804 (96.3%)	183 (2.6%)	75 (1.1%)
1992-93	5,979 (95.1%)	223 (3.5%)	81 (1.3%)

In recent years, the number of visitations per year have been less than a hundred, barely over 1 percent of the total.

Once a person has filed a complaint, however, sometimes that person may wish to stop by the office to drop off or to pick up documents, to discuss the case with the assigned analyst, or to follow up on some other matter. The location of the office facilitates this type of visit.

We have tried to keep our interviewing techniques as informal as possible, realizing that this approach is more apt to put people at ease. We try to avoid a formalistic approach which may be perceived as intimidating or bureaucratic. There is always room for improvement. Like people in any specialized field, we need to guard against the overuse of professional jargon. In our case, that means trying to avoid legalistic or bureaucratic terms in our conversations and correspondence.

The issue of people possibly being denied access to government or government-funded services because of their handicapped status, race, sex, national origin, religion, or other reasons is one that has received considerable public attention as of late. This issue has been raised nationally as well as locally. The Hawaii State Legislature in 1992 adopted two resolutions (Senate Concurrent Resolution 166 and Senate Resolution 132) to study whether such discrimination exists. Our office has cooperated in this study.

More pertinently, insofar as our office is concerned, we took the opportunity to review our own operations to make sure that we ourselves were accessible to the fullest extent possible to all segments of our community. We were unable to identify any instances where someone may have been denied access to our office. Of course we recognized the Catch-22 nature of the question--if someone was unable to file a complaint with us because of some access problem, we would not know about it.

One question which we attempted to address was what would we do if contacted by a non-English speaking complainant. Such a complainant may be deemed to have been denied effective access to our office if we were unable to establish meaningful communication with one another. A review of the history of our office indicated this problem may be more hypothetical than actual since no staff member could recall any non-English speaker calling, writing, or visiting our office only to be denied access to our services because of our inability to communicate. However, we did take the opportunity to ascertain the foreign language capabilities of our staff members as well as to establish an office procedure for obtaining translator service if the need should ever arise. As a final point on this issue, we should note that we have dealt frequently with people who contact us on behalf of a non-English speaking friend or relative and we have been able to handle their inquiries without undue difficulty.

We recognize the need for us to continually monitor our operations to make sure that we are serving all the people of Hawaii to the best of our ability.

Training and Professional Development

Training and professional development for our office poses certain special challenges. Because of the unique nature of our work, directly relevant training opportunities at the local level are limited. Also, for a number of years due to budgetary and other constraints, our office has been operating in relative isolation from Ombudsman offices in other jurisdictions.

During this fiscal year, we decided to address some of these concerns head-on. We had three objectives in mind.

To begin, we wanted to become more fully involved with the international Ombudsman community so that we can keep abreast of new trends in the field as well as to be able to offer whatever knowledge and expertise we may have to our professional colleagues.

Next, we wanted to review our operations and procedures and compare them with other Ombudsmen to determine areas of possible improvement on our part. We also wanted to be assured that our work is within the professional norms and standards of the international Ombudsman community.

Finally, we wanted to provide training and professional development opportunities for our staff as well as impress upon them the appreciation that they are a part of an institution that is greater than just our own office.

Towards this end, our office participated in three out-of-state meetings. To start, in August the Ombudsman attended a workshop in Edmonton, Canada, sponsored by the International Ombudsman Institute. Participating in the workshop were Ombudsmen, Ombudsmen staff, scholars and supporters of the Ombudsman concept from many parts of the world. It was a pleasure to have had this opportunity to meet key people involved in the International Ombudsman Institute, which is the overall parent organization for the Ombudsman movement worldwide. To be able to meet and discuss matters of mutual interest with Ombudsman colleagues from around the world was extremely rewarding.

In April, the two senior analysts from the office participated in a workshop for Ombudsman investigating officers held in Auckland, New Zealand. This workshop was held under the auspices of John Robertson, the New Zealand Ombudsman and current president of the International Ombudsman Institute. The workshop covered investigative strategies, techniques, and methodologies. In attendance were Ombudsman investigators from various Pacific island jurisdictions (Cook Islands, Fiji, Solomon Islands, Papua New Guinea, Western Samoa); Australia; New Zealand; and Hong Kong.

Our office presented one of the case studies for discussion at the workshop, which was well received by the other participants. We were able to compare our investigative procedures with those of other offices. From that experience, we were able to gain some insight into how the Ombudsman institution has adapted to different archipelagic environments, to different cultural and social conditions, and to different levels of technology.

In June, our First Assistant attended the annual meeting of the United States Association of Ombudsmen held in Anchorage, Alaska.

This afforded her the opportunity to meet her professional colleagues from all over the country and to learn of recent trends and developments in the American Ombudsman community.

Scheduled in conjunction with the USAO meeting was an intensive, one-week training program conducted by the Council on Licensure, Enforcement and Regulation (CLEAR), an affiliate of the Council of State Governments. The First Assistant enrolled in the program which covered such areas as interrogation techniques, case analysis, report writing, and legal analysis.

Attendance at these workshops proved to be very beneficial to our office. The information brought back was disseminated to all the staff. We are using the information gained to review our operations and to see where we may be able to achieve greater efficiency and effectiveness. We have also developed a greater sense of collegiality with other Ombudsman offices. This has proved helpful at times when we have been able to consult with our out-of-state counterparts on difficult issues. All in all, we believe the experience gained was worthwhile and will pay off in improvements to our operations.

Chapter II

THE YEAR'S ACTIVITIES

In terms of the work load of the office, the year saw a continuation of the trend begun the year before in which the overall number of inquiries declined but the number of citizen complaints (that is, non-inmate complaints) held steady. A variety of reasons may be offered for this trend, but the basic consequence for our office is that it is enabling us to focus more on our core mission, the investigation of complaints from the general public.

Caseload Trends

Our office received a total of 6,283 inquiries during fiscal 1992-93. Of this total, 4,075 were complaints, 1,742 were informational requests, and 466 were cases outside of our jurisdiction.

The 6,283 total represents a decline of 779 from the previous year's total of 7,062. The bulk of the decline can be attributed to a decrease in the number of inmate complaints, 2,332 or 636 less than the 2,968 received the year before. While we may not be able to pinpoint the exact cause of the decline in prison complaints because a number of different causes may be involved, we can offer some thoughts on this question. These are contained in our discussion of prison complaints which is in the following section of this report.

The statistics on the other components of our work load are relatively stable. Complaints from the general public totaled 1,743, which is 31 fewer than the year before. Informational inquiries dropped by 43, to 1,742 and non-jurisdictional inquiries were down by 69, to 466. These decreases are relatively small and probably just represent a temporary leveling off of these types of cases.

In any event, the decrease in the number of prison complaints will now enable us to concentrate more time and attention on carrying out the primary intent of our office, investigating complaints from the general public. We note that the 1,743 non-prison complaints received last year constitute the second-highest number in this category in the 24-year history of this office. This reinforces the continued relevance of our mission as well as the continued public demand for our services.

As previously noted, of the inquiries received, 5,977, or 95.1%, were by telephone and 223, or 3.5%, were by mail. Only 81, or 1.3 %, were received by in-person visits to the office. Of these 81, only 11 were received during our neighbor island visits. These statistics are generally consistent with our experience in recent years.

We have concluded, based on the low volume of in-person inquiries received during our scheduled neighbor island staff visits, that such visits are

not cost-effective. After announcing such visits through newspaper advertisements and radio public service announcements, many times our visiting analysts wound up with no appointments and no walk-in visitors. The funds expended and time away from the office could have been put to more productive use.

A review of the number of inquiries we have received during our neighbor island visits over the past decade is instructive. As Table B shows, the numbers reflect a progressive decline over the years. It may be noteworthy to point out that it was in 1989 that we were assigned a toll-free number for neighbor islanders to use in calling us. Then, in 1991, we began having the neighbor islanders call our office directly over the toll-free line to schedule their appointments. This was a departure from our prior practice of having the appointments scheduled by the host agency whose office we used during our visit. A serendipitous result of having the people call us directly was that the caller could be put in touch with an analyst immediately rather than have to wait until the scheduled appointment day. This resulted in faster service and we were able to obviate the need for many of the appointments.

As a consequence of the foregoing considerations, we have decided to suspend our neighbor island visits for the time being.

It must be noted that neighbor island residents have the same effective access to our office as residents of Oahu because of the availability of a toll-free number for their use. We recognize that some neighbor island residents may feel a sense of isolation in spite of the toll-free number and we are exploring ways to break down that barrier.

In terms of where our inquiries actually originate, Oahu, with 74.6% of the State's population, accounts for 81.8% of our work load. Hawaii

TABLE B
INQUIRIES RECEIVED DURING
NEIGHBOR ISLAND VISITS

Fiscal Year	Hawaii	Maui	Kauai
1983-84	20	2	18
1984-85	71	15	14
1985-86	16	12	13
1986-87	19	12	13
1987-88	20	4	17
1988-89	10	2	5
1989-90	9	1	7
1990-91	17	5	4
1991-92	7	5	1
1992-93	5	5	1

County, with 11.3% of the population, is next with 8.2% of the inquiries. Maui County has 9.4% of the population and is responsible for 6.9% of our inquiries. The smallest county, Kauai, has 4.8% of the population and generates 1.7% of the inquiries. Some 86 inquiries, constituting 1.4% of the total received, came from out-of-state.

The general supposition is that Oahu generates more than its proportionate share of inquiries because this is where the bulk of the population resides, this is where the angst and disaffection associated with urban life is apt to be found, and this is where most of the governmental agencies are located. As a consequence, more questions and problems are likely to be generated here.

With the leveling off of our total caseload and the resulting easing of the hectic pressure of incoming cases, we have decided that it would be opportune now to pursue certain operational objectives. We want to be able to research complex cases in a more thorough manner. We want to be able to resolve cases more quickly. We want to cut down on our backlog of older cases. Of course, these cannot all be pursued simultaneously but, hopefully, we will be able to achieve a balance among them that will result in a higher level of service to the public.

We also decided that this is an opportune time to make the services of our office better known to the public. Accordingly, we have begun placing advertisements in the Sunday newspaper, which has a broad, statewide readership. At this writing, other possibilities are also under consideration.

Prison Inmate Complaints

Since 1985-86, inmate complaints have been the largest single part of our total caseload. Such complaints peaked in 1990-91 at 3,553 and have since been declining in volume, numbering 2,968 in 1991-92 and 2,332 in 1992-93.

Although we are not certain as to the exact reasons for this downward trend, some possible reasons may be conjectured.

It has been our general practice when receiving nonurgent inmate complaints to refer the complainants to the grievance process. This is an internal, three-step process established by the Department of Public Safety to deal with prisoner concerns. Since the inmates have become increasingly aware of our referral practice, many may be going directly to the grievance process rather than contacting us.

However, we do have some concerns about the continued viability of the grievance process. Personnel problems at the prisons, such as staff vacancies and reassignments, frequently result in delays in the logging in and processing of grievances. Occasionally, grievances are misplaced. The process at times does get bogged down although, to be fair, part of this is due to a certain number of inmates who generate extremely large numbers of grievances. However, while that may be,it still does not detract from the fact that in order for the grievance process to continue to operate effectively, it must be reliable and timely. We call on the Department to take steps to assure the viability of

the process. Should the grievance process ever get to the point where we believe it is no longer working, then we would not be able in good conscience to continue to refer inmates to it.

Even under the best of conditions, there are bound to be dissatisfactions within a prison environment. These dissatisfactions have the potential of developing into explosive situations. It is important that there be outlets available, such as the grievance process, to address these problems.

We have noted that there is a cadre of chronic complainers in prison. They file many grievances at the prison as well as many complaints with our office. This means that a large number of the prison complaints are filed by a relatively small number of inmates. Some of them file complaints on a steady basis, others do so in periodic spurts. The single most prolific complainant filed 81 complaints with us during the year. The top four complainants accounted for over 10 percent of all the inmate complaints we received. When a frequent complainer is released, it could result in a reduction of several dozen complaints from our office work load. This is, however, but a momentary respite. Our experience has shown that as chronic complainers are released, there is no lack of others to take their places.

Although we generally refer inmates to the grievance process, we do investigate prison complaints which have some degree of urgency, such as complaints involving health or safety concerns. We also assist inmates in tracking their grievances through the grievance system and assist inmates who are still not satisfied after exhausting the process.

In many cases, our role is that of a catalyst. Occasionally there is some simple miscommunication between an inmate and a staff person and we act as an intermediary or facilitator to get the two parties together. Sometimes we just have to intervene enough to break an impasse and nudge things along.

Our goal at the prisons is to achieve some sort of reasonable balance between allowing the internal grievance process to operate and yet remain available as an external outlet for prisoner complaints. Being this external outlet can sometimes be a trying and time-consuming experience, but we feel it is an important role as well as a role mandated to us by our enabling legislation. Exterr 'watchdog organizations, such as our _ fice, exert a salutary effect on even the best of prison systems. A sense of accountability is necessary for all organizations and this is especially applicable for those exercising overarching power over people in their charge.

Chapter III

THE OMBUDSMAN AND CURRENT EVENTS

Our office does not operate in a vacuum. Events that impact upon the community at large are often the genesis of many of the inquiries and complaints directed to us. That is to be expected. Because of the pervasive role of government in modern society, many of these events are either created by governmental action or, if not created by government, there is an expectation for some sort of governmental response. It may be a truism, but whenever government acts, there is likely to be someone not happy with that action. That gives rise to complaints.

That is where we come in.

We pay attention to local news developments. We know that what is in the newspaper today may presage a complaint tomorrow.

During fiscal year 1992-93, our office was drawn into various headline news matters. Some of these really stand out and will become a part of the history of contemporary Hawaii. They contributed to making this year a memorable one for our office.

Hurricane Iniki

Hurricane Iniki, Hawaii's worst storm of the century, struck on September 11, 1992, causing over $1.6 billion in damage and the loss of three lives. Iniki passed directly over the island of Kauai, which was particularly hard hit.

The amount of devastation, disruption, and suffering engendered by Iniki is difficult to imagine and full recovery is perhaps years away.

Many of the problems encountered by the public as a result of Iniki were manifested as complaints to our office. The following are a few examples.

Because of damage to the Kauai Community Correctional Center, the facility had to be closed for repairs. The inmates, mostly Kauai residents, were transferred to other facilities off the island of Kauai. Because of their separation from their families and because their transfers exacerbated the overcrowded conditions in the other facilities, our office received a number of complaints that were caused or at least aggravated by the hurricane.

As part of the recovery effort, many State workers were temporarily assigned to Kauai to provide services in areas such as health care, social services, unemployment benefits, business redevelopment, and infrastructure repair. Their absence from their regular duties, often over a period of several weeks, meant a delay in their regular work, which in turn engendered complaints to our office. The bypassing of regular procedures in the rushed effort to provide them with accommodations and work facilities also resulted in some complaints.

By far the largest number of calls and letters we received as a consequence of Iniki can be attributed to the massive disruptions caused to

the insurance industry. The industry, which was already claiming billions of dollars in losses due to Hurricane Andrew, which had just hit Louisiana and south Florida, responded by canceling or not renewing many homeowners' policies. Many homeowners consequently found themselves without insurance coverage. Their desperate attempts to find insurance led many to contact our office. Many of their complaints centered around their shock at having their insurance canceled or their frustration in their inability to find an agent who would issue them a new policy. Many felt panicky over their plight. Many complaints were against various public officials, including the State Insurance Commissioner, for not being able to come up with a prompt solution to their problem.

It was an especially hectic time for us, having to deal with irate and emotionally upset people and not being able to provide the meaningful assistance they were seeking.

Sovereignty

January 17, 1993 marked the 100th anniversary of the overthrow of the Hawaiian monarchy. This event, supported by the American minister to Hawaii and with the armed intervention of marines from the USS Boston which was in Honolulu Harbor, set off a sequence of events leading to the annexation of Hawaii to the United States.

A consideration of the historic, cultural, social, political, and economic consequences of an action taken a hundred years ago is beyond the scope of this report. Yet, it must be acknowledged that to the native Hawaiians, the passing of their national identity constitutes a very powerful loss. The past hundred years have been a momentous period in the history of Hawaii. Thus, the observance of the centennial of the overthrow was a major occasion, not just for the native Hawaiians but for all the people of the State. It was considered a significant news event which attracted international media attention.

An event of this magnitude, one that was so emotionally charged, was bound to generate controversy. And where there is controversy, there are bound to be complaints. A number of those complaints were directed to our office.

Many of these complaints were outside of our jurisdiction. They did not deal with questions of public administration, but rather with symbolic and emotional issues.

At the beginning of the observance ceremonies, the Governor ordered that the American flag not be flown over State government buildings within the Capitol District for the duration of the event, leaving the Hawaiian flag to fly alone.

This order prompted many calls to our office from people offended by the Governor's action. Allegations were made that the action was illegal, treasonous, and disrespectful to the American flag. We advised the callers that we had no jurisdiction over the Governor and suggested that they call his office directly to voice their opinions. In researching the issue so that we could better answer these callers, we learned that the order not to fly the American flag did not violate any federal or State law. While there are some questions about compliance with flag protocol or etiquette, these do not constitute any legal infraction. It was, however, a heavily charged emotional issue pitting those who

thought an act of lese majeste to the American flag had been committed against those who felt the gesture was an appropriate recognition of the feelings and aspirations of the Hawaiian people.

Parenthetically, we might note that if the solo flying of the Hawaiian flag were to be considered as part of the overall tableau of the observance, then it is analogous to other similar historic representations such as the solo flying of the Lone Star flag at the Alamo in Texas.

Over the years our office has received complaints from time to time which touch on issues of Hawaiian sovereignty, native Hawaiian rights, and the status of the native Hawaiian people with respect to the population at large. We note that a number of Ombudsmen in other jurisdictions have been confronted with the question of what constitutes the appropriate role of the Ombudsman in dealing with aboriginal rights issues.

Does the Ombudsman have a special role to play? Are aboriginal rights issues a separate and definable area of attention? How would Ombudsman involvement in this area--with its political, social, and legal ramifications--comport with the classical role of the Ombudsman in focusing on issues of public administration? These are questions that a number of Ombudsmen from different parts of the world are confronting. Ongoing dialogue is taking place within the international Ombudsman community. We intend to keep in touch with future developments to help guide us in our own planning efforts.

Abuse of Female Inmates

During the early part of 1992, disturbing news accounts appeared about correctional officers sexually abusing inmates at the Women's Community Correctional Center. There were reports of sexual assault, the coercion of inmates into performing sexual acts, the practice of inmates trading sexual favors for gifts and privileges, and the transport of inmates out of the facility for purposes of prostitution. These accounts provoked widespread public outrage. Particularly disturbing to many people was a perception that the Department of Public Safety, the Prosecuting Attorney's Office, as well as other agencies involved had not taken the allegations seriously and were dilatory in their investigation. As a result, the statute of limitations had expired on a number of the earlier reported incidents. Many people expressed concern that if prompt action were not taken, the statute of limitations would run out on even more incidents thus further compounding the injustices.

The matter became a cause celebre, which attracted national media attention.

Our office became involved after a former inmate filed a complaint with us. Her concern was that if the authorities did not take vigorous action, the statute of limitations would run out on even more incidents and additional correctional officers would escape prosecution. However, by the time we initiated our investigation, we found that the agencies involved had become sensitized to the need to move swiftly, galvanized no doubt by all the public concern. Our investigation indicated that they were then proceeding at a diligent pace. Several correctional officers had been fired or transferred out of the facility. Eventually, a

number of them were indicted and, as of this writing, had gone to trial or were awaiting trial. Meanwhile, the investigation continues and additional indictments are anticipated. We reported this information back to our complainant who expressed satisfaction that justice was being done.

Our own involvement in this case consisted in large part of making inquiries and monitoring agency work already in progress. We do not claim credit for playing an instrumental role in the eventual outcome, although we hope that our inquiries did help to stimulate forward movement. However, we feel that this case illustrates the need for corrections officials to take care to protect those who are under their control from abuse. When one person has power over another, the potential for abuse always exists and must be guarded against. We note that the Department of Public Safety is initiating staffing and administrative changes to address this problem. These reforms need to be pursued aggressively and on a sustained basis if they are to succeed.

Chapter IV

THE OMBUDSMAN AND GOVERNMENT REFORM

With all the contemporary discussion about how to achieve government reform, perhaps we should consider reinventing the Ombudsman while we go about reinventing government.

From the beginnings of the expansion of the Ombudsman institution around the world in the 1960s, a major emphasis of the work of many Ombudsmen has been to see to it that administrative agencies operate in accordance with statutory law, formal rules and regulations, and explicit written policies and procedures. There are a number of historic and institutional reasons for this emphasis on compliance.

The Ombudsman in Sweden, where the institution began, was a quasi-judicial official who reviewed administrative actions in the light of legal compliance. This perception of the role of the Ombudsman carried over into the new jurisdictions where the office was established. Attorneys, bar associations, and legal scholars took a special interest in the institution and were prominently involved in its expansion. Reinforcing this legal-based attitude was the fact that many of the Ombudsmen who were being appointed to office at that time were attorneys, judges, or senior police officials--people whose professional inclination was to place a high value on written law and strict obedience to that written law.

Also, the classical Ombudsman's office is attached to the legislative body to make it independent of the administration of government. However, this legislative perspective on the administrative actions of government does tend to color an Ombudsman's perception. Legislators tend to be wary of bureaucrats, they are concerned that bureaucrats may be acting in a unilateral and arbitrary manner, contrary to the intent of the laws which the duly-elected lawmakers have passed.

Such concerns were a major part of the focus of public administration and public policy consideration during those days two to three decades ago when the Ombudsman institution began its expansion. Much thought was given to seeing how government administrators could be controlled in order to assure that they were indeed carrying out the intended policies of their elected superiors. These concerns contributed to the proliferation of explicitly written laws, rules and regulations, policies and procedures, guidelines and provisos.

Times have changed.

Insofar as public administration is concerned, the major concern in the United States in the 1990s is not necessarily over the threat of a runaway bureaucracy, but rather over excessive red tape, gridlock, inefficiency, and unresponsiveness. This is the thesis of the 1992 bestselling book, Reinventing Government, by David Osborne and Ted Gaebler. This is the impetus for the advocates of Total Quality Management as the remedy for the administrative shortcomings of government. In this same spirit of

reform, Vice President Al Gore's National Performance Review recently (as of this writing) released its report with recommendations on how to make over the federal government, to make it, in President Bill Clinton's words, "less expensive and more efficient, and to change the culture of our national bureaucracy away from complacency and entitlement toward initiative and empowerment."

Thus, the call now is for government to be more responsive, more customer oriented, more accountable, and more task oriented rather than control oriented. This call has struck a responsive chord among many people, both in and out of government. Many of the arguments for reform are well taken. We do not doubt that there has been excessive bureaucratic rigidity, too much micromanagement by rules, too much emphasis on compliance rather than performance.

A point that needs to be fully appreciated by all the advocates of reform is the need to deemphasize control of the bureaucracy. Being responsive, customer oriented, accountable, and task oriented are all excellent qualities, but public administrators need to know that is how they will be judged. At the present time, the rewards for exhibiting such qualities may be problematic, while the sanctions for noncompliance with even the most pettifogging rule may be quite severe. A change in mindset by the public and public policy-makers is necessary to allow bureaucrats greater discretion and autonomy.

It must be recognized, of course, that if the bureaucrats are to be granted more autonomy, they in turn must bear certain points in mind in the performance of their duties.

First, their role is to implement public policy, the making of which under our democratic form of government is properly the role of the elected officials. They cannot allow their own interests to subrogate democratically determined decisions; to do otherwise would be running a rogue operation. Elected officials are highly sensitive to perceived usurpations of their power, so much so that it is the cause for much of the detailed, tightly-written laws that are the subject of disparagement by the advocates of administrative flexibility.

Second, they must administer their programs in an open and accountable manner. Bureaucratic fiefdoms may have had an acceptable place in the past, but are not in accord with the spirit of the 1990s. The days of powerful and imperious bureaucrats--such as J. Edgar Hoover and Robert Moses--are history.

Third, they must guard against abuse and improprieties. It is important that they demonstrate that they are worthy of the public trust. Revelations of abuse are usually followed by the imposition of constraints to prevent repetition. Such reactions may be likened to "closing the barn door" a little too late, and they add to the accretion of governmental regulations.

These three points are noted because it is usually breaches of one or more of them that lead to demands for tighter controls and more procedural safeguards that account for much of the emphasis on compliance. To cut down on red tape, it is necessary to cut down on the need for red tape.

In the ongoing dialogue for government reform, the Ombudsman may be able to play a significant role. As the government complaint officer, the Ombudsman is in an excellent position to observe how government

impinges on the everyday lives of the people. Our perspective on government is not the bird's-eye view where we see the big picture of public policy-making and implementation. Instead, we have the worm's-eye view, seeing government from the bottom up. We get the opportunity to see government as the individual citizen sees it, either as a recipient of government services or as an object for government regulation. This perspective is often overlooked by those in the government reform movement and it is perhaps here that the Ombudsman can best be called upon to make a contribution.

Where will this finally lead us? Government reform is a worthy goal but not one which is easily reached. A nurturing environment for reform needs to be established. Inertia needs to be overcome. There are many people, both in and out of government, who are comfortable with the status quo. Change is always difficult and often unpredictable in its effects. There are many who are strongly oriented towards control and micromanagement. An appropriate balance needs to be found between the different positions.

It may be that the institution of the Ombudsman can take an active role in seeking this balance. Perhaps a dialogue on this question of what may be the appropriate role of the Ombudsman can be initiated among Ombudsmen and people interested in the Ombudsman institution. Comments from the reader are invited.

Chapter V

STATISTICAL TABLES

For all tables, the percentages may not add up to a total of 100% due to rounding.

TABLE 1

NUMBERS AND TYPES OF INQUIRIES

Fiscal Year 1992-93

Month	Total Inquiries	No Jurisdiction	Information	Complaint
July	573	47	163	363
August	542	45	127	370
September	569	38	174	357
October	526	40	150	336
November	479	28	137	314
December	463	28	128	307
January	463	44	121	298
February	480	44	157	279
March	593	31	141	421
April	521	39	146	336
May	516	36	142	338
June	558	46	156	356
TOTAL	6,283	466	1,742	4,075
% OF TOTAL INQUIRIES	100%	7.4%	27.7%	64.9%

TABLE 2

MEANS BY WHICH INQUIRIES ARE RECEIVED

Fiscal Year 1992-93

Month	Written	Phone	Visit
July	13	550	10
August	30	502	10
September	24	539	6
October	17	504	5
November	12	459	8
December	20	440	3
January	21	441	1
February	6	462	12
March	33	556	4
April	17	489	15
May	8	503	5
June	22	534	2
TOTAL	223	5,979	81
% OF TOTAL INQUIRIES (6,283)	3.5%	95.1%	1.3%

TABLE 3

DISTRIBUTION OF POPULATION AND INQUIRERS BY RESIDENCE

Fiscal Year 1992-93

County	Population*	Percent of Total Population	Total Inquiries	Percent of Total Inquiries
City and County of Honolulu	864,800	74.6%	5,142	81.8%
Hawaii County	130,500	11.3%	515	8.2%
Maui County	109,000	9.4%	435	6.9%
Kauai County	55,300	4.8%	105	1.7%
Out-of-State	--	--	86	1.4%
TOTAL	1,159,600	100%	6,283	100%

*Source: The State of Hawaii Data Book 1992, A Statistical Abstract. Hawaii State Department of Business, Economic Development, and Tourism, Table 6, "*Resident Population, by Counties: 1980 to 1992.*"

TABLE 4

DISTRIBUTION OF TYPES OF INQUIRIES BY RESIDENTS OF VARIOUS COUNTIES FOR FISCAL YEAR 1992-93

Types of Inquiries						
County	No Jurisdiction		Information		Complaint	
	Number	Percent of Total	Number	Percent of Total	Number	Percent of Total
C&C of Hono.	361	77.5%	1,351	77.6%	3,430	84.2%
Hawaii County	53	11.4%	169	9.7%	293	7.2%
Maui County	35	7.5%	140	8.0%	260	6.4%
Kauai County	14	3.0%	33	1.9%	58	1.4%
Out-of-State	3	.6%	49	2.8%	34	.8%
TOTAL	466	100%	1,742	100%	4,075	100%

TABLE 5

CITY AND COUNTY OF HONOLULU

Means of Receipt and Types of Inquiries by Month During Fiscal Year 1992-93

		Means of Receipt			Types of Inquiries		
Month	Total Inquiries	WR	PH	VT	NJ	Infor-mation	Com-plaint
July	479	9	460	10	35	133	311
August	423	23	398	2	30	91	302
Sept	462	17	439	6	33	126	303
Oct	420	11	405	4	27	116	277
Nov	401	11	383	7	21	112	268
Dec	396	17	376	3	26	101	269
Jan	386	14	371	1	35	99	252
Feb	398	4	382	12	35	122	241
March	482	19	460	3	25	115	342
April	411	13	383	15	28	108	275
May	421	3	413	5	30	103	288
June	463	13	448	2	36	125	302
TOTAL	5,142	154	4,918	70	361	1,351	3,430
% OF TOTAL	100%	3.0%	95.6%	1.4%	7.0%	26.3%	66.7%

WR = Written
PH = Phone
VT = Visit
NJ = No Jurisdiction

TABLE 6

NEIGHBOR ISLAND COUNTIES AND OUT-OF-STATE

Means of Receipt and Types of Inquiries During Fiscal Year 1992-93

County	Total Inquiries	Means of Receipt: Written	Means of Receipt: Phone LD	Means of Receipt: Phone Local	Means of Receipt: Visit	Types of Inquiries: No Juris-diction	Types of Inquiries: Infor-mation	Types of Inquiries: Com-plaint
Hawaii	515	17	488	5	5	53	169	293
% of County	100%	3.3%	94.8%	1.0%	1.0%	10.3%	32.8%	56.9%
Maui	435	30	390	10	5	35	140	260
% of County	100%	6.9%	89.7%	2.3%	1.1%	8.0%	32.2%	59.8%
Kauai	105	4	98	2	1	14	33	58
% of County	100%	3.8%	93.3%	1.9%	1.0%	13.3%	31.4%	55.2%
Out-of-State	86	18	64	4	0	3	49	34
% of County	100%	20.9%	74.4%	4.7%	0%	3.5%	57.0%	39.5%
TOTAL	1,141	69	1,040	21	11	105	391	645
% of County	100%	6.0%	91.1%	1.8%	1.0%	9.2%	34.3%	56.5%

LD = Long Distance
Local = Inquiries received by staff member during visit to a neighbor island

TABLE 7
COMPLAINT DISPOSITION
Fiscal Year 1992-93

			Complaints Investigated			
State Departments	Total Compl.	Percent of Total	Not Sustained	Sus-tained	Discon-tinued	Pend-ing
Accounting & General Services	53	1.3%	18	12	18	5
Agriculture	8	.2%	3	1	4	0
Attorney General	176	4.3%	56	48	57	15
Budget & Finance	145	3.6%	38	25	77	5
Business, Economic Dev. & Tourism	9	.2%	1	1	4	3
Commerce & Consumer Affairs	86	2.1%	35	7	30	14
Defense	3	.1%	1	0	0	2
Education	101	2.5%	29	23	43	6
Hawaiian Home Lands	6	.1%	1	1	2	2
Health	128	3.1%	48	23	41	16
Human Services	274	6.7%	122	40	89	23
Labor & Industrial Relations	156	3.8%	64	21	53	18
Land & Natural Resources	54	1.3%	14	10	18	12
Office of Hawaiian Affairs	3	.1%	0	0	1	2
Personnel Services	23	.6%	9	4	6	4
Public Safety	2,393	58.7%	620	472	1,203	98
Taxation	41	1.0%	16	11	12	2
Transportation	103	2.5%	34	28	28	13
University of Hawaii	42	1.0%	17	8	15	2
Other Executive Agencies	10	.2%	3	3	4	0
Counties						
City & County of Honolulu	175	4.3%	61	23	73	18
County of Hawaii	49	1.2%	21	6	13	9
County of Maui	30	.7%	9	2	10	9
County of Kauai	7	.2%	3	0	0	4
TOTAL	4,075	100%	1,223	769	1,801	282
% OF TOTAL COMPLAINTS (4,075)	100%	--	30.0%	18.9%	44.2%	6.9%
% OF TOTAL INQUIRIES (6,283)	64.9%	--	19.5%	18.9%	28.7%	4.5%

TABLE 8
SUSTAINED COMPLAINT DISPOSITION
Fiscal Year 1992-93

State Departments	Sustained	Rectified	No Action Necessary
Accounting & General Services	12	9	3
Agriculture	1	1	0
Attorney General	48	47	1
Budget & Finance	25	24	1
Business, Economic Dev. & Tourism	1	1	0
Commerce & Consumer Affairs	7	6	1
Defense	0	0	0
Education	23	22	1
Hawaiian Home Lands	1	1	0
Health	23	21	2
Human Services	40	36	4
Labor & Industrial Relations	21	16	5
Land & Natural Resources	10	9	1
Office of Hawaiian Affairs	0	0	0
Personnel Services	4	4	0
Public Safety	472	436	36
Taxation	11	11	0
Transportation	28	26	2
University of Hawaii	8	8	0
Other Executive Agencies	3	2	1
Counties			
City & County of Honolulu	23	20	3
County of Hawaii	6	5	1
County of Maui	2	1	1
County of Kauai	0	0	0
TOTAL	769	715	54
% OF TOTAL SUSTAINED COMPLAINTS (769)	100%	93.0%	7.0%
% OF TOTAL COMPLAINTS (4,075)	18.9%	17.5%	1.3%
% OF TOTAL INQUIRIES (6,283)	12.2%	11.4%	.9%

TABLE 9
INFORMATION INQUIRIES
Fiscal Year 1992-93

State Departments	Number of Inquiries	Percent of Total
Accounting & General Services	36	2.1%
Agriculture	10	.6%
Attorney General	38	2.2%
Budget & Finance	51	2.9%
Business, Economic Dev. & Tourism	17	1.0%
Commerce & Consumer Affairs	401	23.0%
Defense	4	.2%
Education	27	1.5%
Hawaiian Home Lands	3	.2%
Health	71	4.1%
Human Services	52	3.0%
Labor & Industrial Relations	94	5.4%
Land & Natural Resources	32	1.8%
Office of Hawaiian Affairs	4	.2%
Personnel Services	10	.6%
Public Safety	56	3.2%
Taxation	16	.9%
Transportation	28	1.6%
University of Hawaii	9	.5%
Other Executive Agencies	25	1.4%
Counties		
City & County of Honolulu	136	7.8%
County of Hawaii	8	.5%
County of Maui	8	.5%
County of Kauai	1	.1%
Miscellaneous	605	34.7%
TOTAL	1,742	100%

TABLE 10

NO JURISDICTION EXCLUSIONS

Fiscal Year 1992-93

Exclusions	Number of Inquiries	Percent of Total
Collective Bargaining	38	8.2%
County Councils	2	.4%
Courts	183	39.3%
Federal Government	36	7.7%
Governor	25	5.4%
Legislature	22	4.7%
Lieutenant Governor	0	0%
Mayors	0	0%
Multi-State	0	0%
Private Transaction	153	32.8%
Miscellaneous	7	1.5%
TOTAL	466	100%

TABLE 11

INQUIRIES CARRIED OVER TO FISCAL YEAR 1992-93 AND THEIR DISPOSITIONS, AND INQUIRIES CARRIED OVER TO FISCAL YEAR 1993-94

Types of Inquiries	Inquiries Carried Over to FY 92-93	Inquiries Carried Over to FY 92-93 and Closed During FY 92-93	Balance of Inquiries Carried Over to FY 92-93	Inquiries Received in FY 92-93 and Pending	Total Inquiries Carried Over to FY 93-94
No Jurisdiction	0	0	0	0	0
Information	9	7	2	12	14
Complaint	333	225	108	270	378
		Disposition of Complaints Justified 84 Unjustified 110 Discontinued 31 225			
TOTAL	342	232	110	282	392

Chapter VI

SELECTED CASE SUMMARIES

The following are summaries of selected cases investigated by the office. Each case summary is listed under the State government department or the county government which was involved in the complaint or inquiry, or against which the complaint was made. Although some cases involved more than one department or involved both the State and the county, each summary is placed under the most appropriate State department or county government. Case summaries are numerically arranged.

Abbreviations

Department of Accounting and General Services (DAGS)
Department of Agriculture (DOA)
Department of the Attorney General (AG)
Department of Budget and Finance (B&F)
Department of Business, Economic Development,
  and Tourism (DBEDT)
Department of Commerce and Consumer Affairs (DCCA)
Department of Defense (DOD)
Department of Education (DOE)
Department of Hawaiian Home Lands (DHHL)
Department of Health (DOH)
Department of Human Services (DHS)
Department of Labor and Industrial Relations (DLIR)
Department of Land and Natural Resources (DLNR)
Department of Personnel Services (DPS)
Department of Public Safety (PSD)
Department of Taxation (TAX)
Department of Transportation (DOT)
University of Hawaii (UH)
City and County of Honolulu (C&C)
Hawaii Revised Statutes (HRS)
Hawaii Administrative Rules (HAR)
Session Laws of Hawaii (SLH)

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DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

(92-6294) Hazards of errant baseballs. A woman who lived near a public park complained of delays in the installation of a fence and the extension of a backstop for the park's baseball field. The complainant indicated that balls often landed on the adjacent street or on neighboring residential properties, creating a hazard to motorists and residents alike. She reported that over five months had passed since she was informed that the project was put out to bid, but work still had not begun.

The complainant had been concerned about the problem of errant balls for many years and, in fact, had played a strong role in lobbying for the protective improvements. She was frustrated over the continued delays.

Upon our inquiry, the DAGS informed us that although a contractor had been selected, the project was delayed by further complaints that the material to be used for the backstop extension and the fence would visually detract from the natural beauty of the mountain behind the park. As a result, the project was redesigned and new material ordered. We continued to monitor developments to verify that continued progress was being made. Six months after we received the complaint, the project was completed.

(93-2099) Delay in annuity payment. A retired teacher complained that the DAGS failed to make a payment representing her contribution for one pay period toward her tax-sheltered annuity. Payments were automatically deducted from her paychecks and sent by the DAGS to the insurance company managing her annuity. In this case the payment warrant, which included payments for a number of employees, appeared to have been lost in the mail.

The DAGS informed us that before it could issue a duplicate warrant, the insurance company had to execute a Bond for Lost Warrant, but was reluctant to do so because of liability concerns. By signing the bond, the warrant payee (i.e., the insurance company) affirms and a surety or co-signer guarantees that the original warrant was not endorsed. If a duplicate warrant is issued and the original warrant is then cashed with the payee's valid endorsement, the bond requires the payee or, in the payee's default, the surety or co-signer to pay the amount of the warrant to the State of Hawaii. As the bond provided the State with protection against loss that could occur if an original warrant and a duplicate of that warrant were both cashed, the DAGS stood firm in its requirement that the Bond for Lost Warrant be properly executed before issuing a duplicate warrant.

As eight months had elapsed since the initial warrant was issued and negotiations between the DAGS and the insurance company were ongoing with no resolution in sight, we expressed our concern to the State Comptroller about the length of time it was taking to resolve this issue. We noted the complainant's desire that the payment be received by the insurance company before the end of the year because of tax considerations.

In early January the DAGS finally received the Bond for Lost Warrant and issued a duplicate warrant. Although payment to the insurance company was not made until the following calendar year, the complainant was credited with the tax deduction in the year the money was taken from her paycheck.

Unfortunately, because of the delay, she missed about nine months of interest earnings.

Because of this delay, the ultimate resolution of this case fell short of being altogether satisfactory. The DAGS's position to protect itself against incurring the costs of a double payment and the insurance company's liability concerns were both understandable. Regretfully, these divergent interests led to something of an impasse which worked against a quicker resolution.

(93-2854) Soaked in sprinkler system test. An elderly woman complained that she and others waiting at a bus stop near a State building were soaked from head to toe by a blast of water. Her eyeglasses were covered with water, so she could not tell from where the water came. She was particularly upset because no one came to apologize. We conveyed our sincere apology on behalf of the State and assured her that we would investigate the matter.

In response to our inquiry, a maintenance supervisor reported that a sprinkler system in the area was tested periodically for malfunctions. Only one staff member conducted the test on the day of the mishap. The valve to turn on the sprinklers was in a remote area, so the staff member did not realize people were near the sprinklers and getting soaked. The supervisor said that hereafter steps would be taken to make sure the area is clear before testing the sprinkler system.

When we reported our findings, the complainant apologized for bothering us. We told her that her call was worthwhile, noting that a new procedure was instituted to prevent any recurrences.

(93-4464) State employee takes afternoon naps. A woman called to complain about a man taking daily naps in a State truck. The caller reported seeing the man sleeping in the truck every afternoon. She identified the man as a State employee from the markings on the truck. As a citizen and a taxpayer, she was indignant about this behavior.

We were able to trace the employee through the truck's license plate. His supervisor was notified of the complaint. Later, the supervisor reported back that he had admonished the sleeper.

DEPARTMENT OF THE ATTORNEY GENERAL

(92-5198) Delay in terminating child support for adult daughter. A payor parent complained that child support payments were still being deducted from his paycheck even though his daughter was no longer attending school and had turned 18 several months prior to his call to our office. Furthermore, his daughter was employed and no longer lived with her mother. It was his understanding that no action on his case would be taken by the Child Support Enforcement Agency (CSEA) until the passage of a law that would allow the CSEA to automatically terminate child support payments when a child reaches the age of 18.

Child support, which usually ends when the child becomes an adult at age 18, may continue if the youth stays in school. Because of this provision, the CSEA must verify whether or not the youth is attending school before terminating support. In the meantime, the payor parent continues making payments. Because the verification

process can be lengthy, the payor parent may end up paying more support than he or she is obligated to pay.

We learned that a bill was before the legislature to facilitate terminating support in such cases. The CSEA, however, was not awaiting passage of this bill to initiate action on the complainant's case. Backlog and work load demands accounted for the delay. Subsequently, the CSEA verified the daughter's status and terminated the support.

The bill that was before the legislature eventually passed. It allowed child support to be automatically suspended by the CSEA, a hearings officer, or the court on the youth's 19th birthday if the custodial parent fails to provide proof that the youth will be enrolled as a full-time student. The age of 19, rather than 18, was chosen as the automatic cut-off age because approximately 50 percent of youths do not graduate from high school by their 18th birthday, and the legislature felt that it would be easier to determine whether or not a 19-year-old, after having received a high school diploma, was pursuing a full-time, post-high school education.

(92-5946) Arbitrary closing of Civil Identification Section (ID Office). A man complained that the ID Office closed its doors to the public at varying times of the day. Because of the erratic closing schedule, the man was afraid that members of the public may be inconvenienced by going to the office only to find its doors closed.

Section 80-1, HRS, established the business hours of State and county government offices but also provided for exceptions:

> Offices of the State and counties, and independent boards and commissions thereof, shall be open for the transaction of public business between the hours of 7:45 a.m. and 4:30 p.m., Monday to Friday, inclusive. By executive order or directive, the chief executive of the State or of any county may modify the hours and days for the transaction of public business in their respective jurisdiction to meet a demonstrated need for public services, provide for the efficient operation of business, encourage energy conservation, and reduce traffic congestion. . . .

A staff member explained that an executive order allowed the ID Office to be open for business from 7:45 a.m. to 3:30 p.m. She further explained that ID applicants were instructed to take a number upon arrival, as service was on a first-come, first-served basis. At 3:30 p.m., the numbers were removed and the office doors closed so that the staff could complete servicing by the end of the workday those who already had numbers.

The time involved in processing one applicant could be quite lengthy if the documentation to verify that person's name and identity was confusing, inconsistent, or incomplete. Thus, on busy days when it was felt that it would take until 4:30 p.m. to service the people already waiting, the ID Office would close its doors even earlier than 3:30 p.m.

We visited the office and noticed a sign outside indicating the office hours--7:45 a.m. to 3:30 p.m.--and recommending that applicants arrive by

3 p.m. A recorded telephone message, however, specified the office hours as being from 7:45 a.m. to 3 p.m. and recommended that applicants arrive by 2 p.m. to ensure service on that day.

We brought to the attention of the administrator the discrepancies among the office sign, the recorded telephone message, and the office's actual practice. Although we understood the reasons for closing earlier than 3:30 p.m., the existing executive order did not allow such earlier closing. Also, we felt that the practice would inconvenience applicants who would not know beforehand if the office would close before 3:30 p.m.

Subsequently, the administrator apprised us that the Governor signed a new executive order which established office hours from 8 a.m. to 2 p.m. The office sign and recorded telephone message were changed to reflect the new hours.

While this action resolved the problem of misleading or conflicting information being disseminated to the public, we were not entirely satisfied because the solution was achieved at the expense of the hours the office would be open. We recognized the operational problems faced by the office, however, and were not able to suggest a more viable alternative.

(93-2353) Erroneous notice of tax refund offset sent years after records were reportedly corrected. A former child support payor complained that the Child Support Enforcement Agency (CSEA) sent him a tax refund offset notice in October 1992 because he supposedly had a past due amount of $4,875. The notice informed him that his federal income tax refund could be withheld to satisfy his outstanding child support obligation.

The complainant reminded us that in January 1989 he filed a complaint with our office because he received a tax refund offset notice which stated he had a past due amount of $4,875. In that case the CSEA determined that the complainant was current in his payments and should not have been sent the offset notice. At that time, the CSEA assured the complainant that it would correct the error in its records. We presented a summary of this case (89-3175) in our Annual Report No. 20.

The complainant was upset that nearly four years after the CSEA assured him that it would correct its records, he received another offset notice reporting that he had the same amount past due.

We advised the complainant to contest the CSEA's most recent determination and to request an administrative review as provided in the notice. The complainant requested an administrative review and provided the CSEA with a copy of a letter he received from the CSEA in January 1989, informing him that he was current in his payments and that the erroneous past due amount would be corrected.

Upon inquiry with the CSEA, we learned that it could not locate the complainant's request for an administrative review. We provided the CSEA a copy of the request and upon review the CSEA determined that the complainant was current in his support payments and the erroneous past due amount had not been corrected in its records at the time the error was found in 1989.

The CSEA informed us that within a week or so, it would send the complainant written notification that he was current in his payments and his tax refund would not be offset. We

informed the complainant of the CSEA's error and the corrective action to be taken.

A month later, the complainant informed us that he had not received the CSEA's written notification of the correction. We again contacted the CSEA which acknowledged that the notice had not yet been sent and assured us that it would be sent forthwith. A few days later, the written notice arrived. Hopefully, this finally put an end to the complainant's problem.

(93-2412) Erroneous child support delinquency. In this case we had the privilege of working with the Alaska Ombudsman to resolve a complaint.

A resident of Alaska, who had been paying child support in Hawaii, called us long-distance about receiving notices of past-due child support for approximately $20,000 from the Hawaii Child Support Enforcement Agency (CSEA) even though his child support obligation was dismissed by the court after his son was adopted by his ex-wife's husband. The day after he contacted our office, we happened to be consulting with the Alaska Ombudsman's office when this case was brought up. Apparently, the complainant had also sought the Alaska Ombudsman's assistance. To assist us in our investigation, the Alaska Ombudsman faxed us documents verifying the adoption and cancellation of the child support obligation.

Upon inquiry, the CSEA informed us that it had not received copies of any court documents pertaining to the cancellation of the child support obligation. The complainant's account, therefore, remained open, resulting in an erroneous delinquent balance. The CSEA subsequently obtained copies of the appropriate court documents, cleared the erroneous balance, and closed the complainant's account. Thus, through the collaborative efforts of the Alaska and Hawaii Ombudsmen, we were able to straighten out the complainant's problem.

We then informed the complainant and the Alaska Ombudsman of the disposition of the case.

(93-2523) Documentation required to obtain duplicate civil identification (ID) card. A man whose daughter suffered mental health problems complained that each time his daughter applied for a duplicate ID card from the Civil Identification Section (ID Office), she was required to furnish documents to verify her identity.

The complainant explained that due to his daughter's condition, she would occasionally lose her ID card. She then needed to present her passport to verify her identity when applying for a duplicate. Since he was concerned that she might also lose her passport, he would accompany her to the ID Office, which required him to take time off from work.

An ID Office supervisor informed us that as the records for all ID cards issued since October 1991 were computerized, the ID Office could readily verify whether a person who obtained an ID card after that time had furnished the necessary documents. Thus, if the complainant's daughter last obtained an ID card after October 1991, the ID Office would not require her to again present the documentation when she applied for a duplicate card.

As the complainant reported that his daughter last obtained an ID card in 1992, the supervisor suggested that he contact her and provide his daughter's

name so that she could review the records and, thereafter, determine whether documentation would be required for a duplicate card. We conveyed this information to the complainant who was pleased with this news. He indicated that he would be calling the supervisor.

(93-4771) Unable to return child support payment to the Child Support Enforcement Agency (CSEA). Cynics talk about the avaricious nature of people or of the irresistible lure of money. However, there are those who are scrupulous about accepting only that to which they are entitled.

A child support recipient complained that the CSEA sent her a check for $185. Because she did not believe she was entitled to the money, she returned the check to the CSEA, but the CSEA kept sending it back to her. The third time the CSEA sent her the check, she received a handwritten, unsigned statement on a small stick-on note stating that the money was hers to keep. This did not, however, convince the complainant that the money was rightfully hers. Moreover, she was concerned that if she kept the money, she could later be required to repay it.

We verified with the CSEA that the complainant was indeed entitled to the $185. It was the amount due her after a readjustment of her account. The CSEA acknowledged, however, that the informal note was an inadequate means of explaining the situation to her. Thereafter, the CSEA sent the complainant a formal letter confirming that she was entitled to the $185.

DEPARTMENT OF BUDGET AND FINANCE

(91-5237) Eligibility to apply for service-connected total disability retirement. A retiree complained that the Employees' Retirement System (ERS) would not allow her to apply for service-connected total disability retirement benefits. She was already receiving ordinary disability retirement because of a medical condition which rendered her permanently incapacitated. After a physician's report indicated that her disability was service-connected, she applied several times for service-connected total disability retirement, which would entitle her to greater benefits. However, the ERS informed her each time that since she was no longer a member of the ERS, she was ineligible to apply for service-connected total disability retirement.

In our investigation, we found that after a State or county employee retires and starts to receive retirement benefits, the person's status changes from that of a "member" to a "retirant." Section 88-61(b), HRS, stated:

> Any member who withdraws the member's contributions, becomes a retirant, or dies, ceases to be a member as of the date of withdrawal, retirement or death.

The ERS felt that section 88-77, HRS, only allowed a member to apply for service-connected total disability retirement benefits.

In one of its responses, the ERS recommended that the complainant file a petition for a declaratory order as to whether she was eligible to apply, noting that there was a case before the

court at that time on the same issue. It appeared, however, that the retirant did not file a petition.

In our review, we found that the circumstances of the court case were almost the same as the complainant's. In the court case a retirant, who had received ordinary disability retirement benefits for nine years, submitted an application for service-connected total disability retirement. The ERS rejected the application because he was not a member of the ERS at the time of application. The retirant filed a petition for a declaratory order. In the declaratory order, the ERS Board of Trustees confirmed the ERS staff's position, ruling that the ERS could not accept the retirant's application for service-connected total disability retirement because he was no longer an ERS member.

The retirant appealed the Board of Trustees' decision to the circuit court. The court vacated the declaratory order and remanded the matter to the Board of Trustees to allow the retirant "to file the necessary pleadings and documents with the ERS, State of Hawaii, requesting the reopening and/or amendment to his prior application." The Board of Trustees then ordered that the retirant's request to reopen and amend his application be granted.

In view of this court order, which was issued prior to the ERS's denial of the complainant's latest application, we asked the ERS whether she should also be given the opportunity to apply for service-connected total disability retirement. After consultation with the AG, the ERS informed the complainant that it would accept her application.

(92-6913) Payroll deductions not returned. Quite often, we receive complaints from people who are caught in a web of government red tape. They feel their problems are stalled in the system and do not see any progress being made. Through the years, we have been able to successfully resolve many of these complaints.

The grant for a UH research assistant's position expired so the person filling the position was without a job. He accepted another State position not covered by the Health Fund, through which State employees may purchase medical and dental insurance. However, deductions for payments to the fund continued to be made from his paycheck for about two months. He complained to his employing unit and was told he would be reimbursed soon, but after two months he did not receive the reimbursement.

We contacted the Health Fund and were able to clear up the complainant's problem. He received his reimbursement by the next pay period. He expressed appreciation for our help, saying he had called all over but could not get any results until contacting our office.

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

(93-3610) Delay in reactivation of contractor's license. A contractor complained that a delay by the Professional and Vocational Licensing Division (PVLD) in cashing his check for inactivation of his contractor's license caused a delay in its reactivation. He explained that because he was going to be out-of-State when his license expired, he followed PVLD's suggestion that he submit an application to inactivate his license, along with the required fee in the form of a personal check. However, the PVLD did not cash his check for nearly two months and when it attempted to do so, there

were insufficient funds in his account due to a withdrawal that had just been made.

On July 14, 1992 a notice was sent to the complainant apprising him that the check he wrote was returned unpaid by the bank and his license was therefore invalid. The notice informed him that he could rectify the situation by resubmitting payment by June 30, 1992, two weeks prior to this notice. Since he was away at the time, his secretary attempted to resubmit payment but was denied because the June 30 deadline had passed.

Upon his return to Hawaii, the complainant contacted the PVLD and was permitted to submit a money order to replace the returned check. However, two months after his return and seven months after submission of the original check, the inactivation of his license and its subsequent reactivation were not processed.

During our investigation, we learned that the agency's backlog contributed to the delay in cashing the check. The PVLD also acknowledged that the notice sent to the complainant was in error, as he could not meet a deadline that had passed two weeks prior to issuance of the notice. As a result, the PVLD reactivated his license. The complainant thanked us for our assistance.

While we recognize that the State may have backlog problems due to staff limitations and work load demands, we do not believe it is good practice to hold checks for extended periods before cashing them. Such a practice obviously results in record keeping being perpetually out-of-date. It leaves substantial funds unaccounted for or inaccessible for use. It creates hardships for the private citizens involved who are trying to keep their bank balances up-to-date. These are concerns that need to be considered and addressed.

DEPARTMENT OF EDUCATION

(93-616) No vehicle access to library book drop. A patron complained about the inconvenience of using the Hawaii State Library's book drop, located on the side of the building along a former dead-end street. When the library underwent major renovations, the side street was converted to a "library mall" so it appeared that motorists were no longer permitted to drive to the book drop to return their books. The complainant said that patrons had to find parking on the busy streets bordering the library and then walk to the book drop. She contended it would be just as easy to walk into the library to return books, defeating the purpose of having a book drop at all.

In our investigation, we learned that the book drop could not be relocated since it fed into a secured, fireproof room. A sign prohibiting parking was located at one end of the mall, visible to motorists driving past the front of the library. Midway up the mall were two stalls designated for the handicapped, and toward the other end of the mall were two stalls designated for light parcel loading. Thus, it appeared that motor vehicles were allowed on the mall under certain conditions. Furthermore, a library administrator informed us that she had seen motorists driving on the mall to deposit books in the book drop and was unaware of any law or rule which prohibited vehicular traffic on the mall.

We contacted the DAGS, the department which enforces the rules governing parking on State lands. The

DAGS indicated that there was no rule prohibiting driving on the mall and agreed that the no-parking sign could lead motorists to believe that no driving was allowed on the mall. Therefore, the DAGS installed an additional sign stating that "vehicular access to book drop is permitted."

The patron was pleased when we informed her of the results of our investigation.

(93-903) Fat franks fail school test. A food vendor complained that the brand of frankfurter selected for the public school lunch program exceeded the maximum fat content of 25 percent called for in the bid specifications. Because a product with more fat is better tasting, he claimed that his competitor had an unfair advantage in the taste test conducted by the DOE. A contract was awarded to the company with the best rating, which was based on two factors: the proposed price and the score from the taste test.

In our investigation, we found that the DOE had lowered the maximum fat content for frankfurters to 25 percent to improve the nutritional quality of the students' diet. The product fact sheet of the company which was awarded the contract showed that the average fat content of its frankfurters was 25 percent, plus or minus 4 percent. Because of the complaint, samples of frankfurters from all qualified bidders were sent to an independent laboratory to be tested. The test results showed that the contractor's frankfurters, as well as those of the complainant's, exceeded the maximum fat content.

As a result, the contractor's frankfurters were disqualified, and the DOE issued instructions to the schools to purchase frankfurters from the next lowest bidder whose product did meet the fat content specifications. The DOE also informed us that in the future vendors could be required to submit individual laboratory test results with their bids to verify that their products complied with bid specifications.

(93-2752) Immunization required for school attendance. A mother complained that the DOE required her daughter to receive immunizations for pertussis, measles, mumps, and rubella in order to continue attending school.

The complainant stated that her daughter was already immunized against diphtheria, tetanus, and polio. However, she was opposed to her daughter being given the pertussis vaccination because her older daughter had a severe reaction to that vaccination. In addition, based on her own research, the complainant felt the risks presented by the vaccinations for the other diseases--measles, mumps, and rubella--far outweighed their benefits.

The complainant submitted a statement from her daughter's physician in which he said that he did not administer the pertussis vaccine because of parental fear. The DOE, however, refused to exempt the complainant's daughter from the immunization requirement on the basis of the physician's statement.

In our investigation, we reviewed chapter 298, HRS, titled "Schools and Attendance, Generally." Section 298-42(a), HRS, stated:

> No child shall attend any school in the State unless such child presents to the appropriate school official certification from a licensed physician stating that the child has received immunizations against

> communicable diseases as required by the department of health. (Emphasis added).

The diseases for which the DOH required immunizations were specified in chapter 157 of the HAR, titled "Examination and Immunization." Section 11-157-6(c), HAR, stated:

> Immunization required for school attendance shall be those against polio, diphtheria, pertussis, tetanus, measles (two doses), rubella, mumps and haemophilus influenzae type b disease.

Based on the above-quoted statute and the DOH rule, the DOE requirement that the complainant's daughter be immunized was proper. This requirement was intended to protect the health of other students as well as the health of the individual child. It was made mandatory on the grounds that the public interest outweighed the individual's objection.

Although the law provided an exemption from the immunization requirement in cases where it would endanger the child's life or health or would conflict with the parents' religious beliefs, the exemptions were not applicable to the complainant's daughter.

The child's physician said that the pertussis immunization was not administered because of parental fear, not because the immunization would endanger the child's life or health, and the complainant said that she could not in good conscience claim an exemption based on religious beliefs.

Based on the foregoing, we were unable to assist the complainant and advised her that we found the DOE's actions to be lawful.

(93-3641) Delay in receiving paycheck. A DOE home instructor complained that she had not received a single paycheck after working for more than 1½ months.

In our investigation, we were informed that a DOE staff member erred by not processing the complainant's pay until receipt of her teaching certification. Since the complainant was not responsible for the error and as the delay was causing her financial difficulties, we requested that she be paid through a priority payroll procedure. This was done and the complainant received a priority payroll check for her back pay as well as a regular payroll check for the current payroll period.

(93-4426) Not allowed to pay library fines. A library patron complained that, upon returning ten overdue library books which he and his father borrowed, he was not allowed to pay the fines because he did not have either his or his father's library card with him.

We discussed the matter with a library administrator. Evidently, in this case the library employee was following procedures intended to protect the confidentiality of the reading preferences of library patrons. This confidentiality could be breached if someone unilaterally offered to pay the fines owed by another person. Clearly, however, this concern was misplaced in this instance since the complainant already had his father's books in hand and could have easily checked their titles.

The administrator acknowledged that a person returning overdue books should not be prohibited from paying the applicable fines because of the inability to show a library card. She indicated that her staff was instructed accordingly.

We informed our complainant about the library's new procedure.

DEPARTMENT OF HEALTH

(93-2220) Socializing during work hours. The tenant of a building with offices on the same floor as three DOH programs complained that State employees were constantly celebrating staff birthdays, special events, and holidays. On the day of the complaint, the employees were dressed in Halloween costumes. The complainant said that the employees were spending an inordinate amount of time eating and socializing together.

Additionally, two of the program offices closed daily during the lunch hour, contrary to State requirements, and the employees congregated in the third office. As a result, program services were not available to the public during these times.

We reported the complaint to a division administrator. The complaint was addressed at a division-level staff meeting and instructions were issued to curtail socializing. Division administrators also met with the staff of the three programs and instructed them to keep all offices open during established office hours. We were told that supervisors would make unannounced visits to monitor the staff.

(93-2672) Documentary proof of identity and employment eligibility required. Considerable national attention has been focused on the issue of the illegal employment of aliens. As a means of addressing this issue, federal legislation was enacted to screen out these individuals in the hiring process. In order to legally work in the United States, a person must provide proof that he/she is a citizen or national of the United States or an alien authorized to work here. The employer is required to verify the identity and employment eligibility of anyone the employer hires by completing an Employment Eligibility Verification Form (Form I-9). As may be expected, the implementation of legislation sometimes creates problems for the people affected.

A woman complained that, because the DOH refused to accept her U.S. passport and marriage certificate as proof of her identity and employment eligibility, she was unable to take a position at the Hawaii State Hospital (HSH). She explained that the DOH would accept her passport if it were in her married surname, but the passport was in her birth surname. The complainant felt that her marriage certificate verified her identity, as it showed the change from her birth surname to her married surname.

The HSH confirmed that because the complainant's passport was not in her present legal surname, the DOH Personnel Office believed it could not be used to establish her identity and employment eligibility.

Form I-9 instructions listed documents which are acceptable for establishing both identity and employment eligibility, documents which are acceptable for establishing only identity, and documents which are acceptable for establishing only employment eligibility. A U.S. passport, which may be issued to U.S.

citizens and nationals, is acceptable for establishing both identity and employment eligibility. A marriage certificate, however, was not listed as an acceptable document for any purpose.

We brought the matter to the attention of the DPS and inquired as to whether the complainant's passport, in conjunction with the marriage certificate to verify the change from her birth surname to her married surname, would suffice to establish her identity and employment eligibility.

After consulting with the Immigration and Naturalization Service (INS), the DPS informed us that the INS believed that it was reasonable to accept the complainant's passport with her marriage certificate as verification of her identity and employment eligibility.

The DPS then informed the HSH of the acceptability of both documents, and the HSH in turn informed the complainant that she could begin work as originally scheduled.

(93-3249) Nurse's aide threw out patient's property. Mental health patients sometimes attach great value to items which others would view as worthless.

A resident of the Hawaii State Hospital complained that an aide threw out some bags containing her "jewelry." She filed a grievance and consulted with her social worker, who assured her that the incident would be investigated.

When we contacted the complainant's social worker, we learned that the complainant collected items such as empty cigarette cartons and rocks, which she believed to be precious gems. The social worker reported that the aide was actually trying to be helpful by taking it upon himself to assist the complainant by discarding items of no value. However, he should not have unilaterally gone through the complainant's personal property nor discarded any property.

We were told that a staff member went through the hospital's garbage bin and retrieved the complainant's bags. The facility counseled the aide not to go through a patient's personal property nor discard such property without the patient's authorization.

We verified with the complainant that her personal property was returned.

(93-3311) Odor and flies from neighbor's property. A man complained that the DOH failed to remedy an odor and fly problem stemming from his neighbor's many dogs.

The complainant stated that for a year he periodically sought the assistance of the Vector Control Branch (VCB). He reported that, after the VCB's contacts with his neighbor, she would become conscientious about cleaning up after her dogs. However, after a while she would become lax again and the problem would reoccur. He complained that, in his most recent contact with the VCB, he was told to contact the Sanitation Branch (SB) for assistance.

We reviewed the DOH rules and found that relevant provisions were contained in two chapters.

The DOH rules on sanitation required that a person in control of a place in which dog droppings accumulate or originate remove them promptly and as often as necessary.

Furthermore, the sanitation rules provided that while awaiting removal, the droppings should not be held longer than 24 hours unless they are kept in a dung pit, refuse bin, or storage container that is fly-proof and rodent-proof and constructed to prevent the escape of objectionable odors.

The DOH rules on vector control required a property owner or tenant to prevent the accumulation of and to remove dog droppings as often as necessary to prevent the harboring or excessive breeding of flies.

Upon inquiry, we learned that the VCB and the SB shared responsibility for the enforcement of the DOH rules in this case. The SB had primary responsibility with regard to foul odors and the VCB had primary responsibility with regard to prevention of fly breeding. At the time of our inquiry, however, the VCB was in the process of assuming full responsibility for all complaints stemming from domestic animal droppings and wastes.

Within a month after we reported the complaint to the VCB, the VCB conducted three inspections of the premises. The VCB did not find evidence of fly breeding, but confirmed a foul odor problem. When notified of the VCB's finding, the dog owner took action to correct the immediate problem. The VCB warned her that a reoccurrence could result in the initiation of legal enforcement action against her. The VCB also demonstrated methods to control the foul odor, and the dog owner agreed to give those methods a try.

We informed the complainant of the corrective action taken by the VCB and advised him to contact the VCB if the problem reoccurred.

(93-5667) Delay in approval of individual wastewater system. After constructing a new residence which had an aerobic unit to process wastewater, a contractor complained about the difficulty in obtaining DOH approval to operate the unit. The DOH's inaction was delaying the owner's move into his new home.

In rural areas not serviced by a public sewage system, individual wastewater systems such as septic tanks, cesspools, and household aerobic units may be used to dispose of domestic wastewater. Initially, the DOH authorizes the construction of an individual wastewater system if the building plans are satisfactory. When the construction is completed, the DOH conducts a final inspection and, if all conditions are met, gives approval for the operation of the system.

In this case the DOH had already conducted the final inspection of the home's aerobic unit. However, it needed to review the manufacturers' detail pages on the plumbing fixtures installed in the house before granting final approval. The contractor had provided a list of the plumbing fixtures and their costs, but the information was insufficient. After our inquiry helped to clarify the problem, the contractor faxed the detail pages to the DOH, which thereafter granted final approval.

In this case we served as a conduit for information between the agency and the complainant, breaking an apparent impasse. Once that was accomplished, the problem was resolved.

DEPARTMENT OF HUMAN SERVICES

(91-6217) Contraceptives given to minor in foster care. The mother of a 12-year-old girl complained that the DHS allowed her daughter to receive oral contraceptives without parental knowledge or consent. Her daughter was under the voluntary foster care of Child Protective Services (CPS) and a CPS worker assisted her in obtaining the contraceptives through a physician.

We reviewed chapter 577A, HRS, entitled "Legal Capacity of Minor Regarding Medical Care." Section 577A-1, HRS, defined a "minor" as "any person from the age of fourteen to seventeen inclusive," and "family planning services" as "counseling and medical care designed to facilitate family planning." Section 577A-2, HRS, provided that the consent of a minor for family planning services was valid.

Since the statute defined a minor as a person from ages 14 to 17 and the complainant's daughter was 12, her consent was not legally valid.

The CPS workers involved in the case were unaware of the provisions of chapter 577A, HRS. Thus, we inquired with a CPS supervisor, who informed us that the CPS did not counsel minors on birth control, referred interested minors to a physician, and considered family planning services to be a matter strictly between the physician and the minor patient.

The CPS noted that the complainant entered into a voluntary agreement with the DHS, allowing the DHS to place her daughter in foster care. The CPS indicated that the agreement did not authorize it to provide family planning services to the child.

The CPS also reported that the DHS did not have a written policy to inform staff members of the provisions of chapter 577A, HRS. Furthermore, the DHS did not have procedures for dealing with minors' requests for birth control services.

We requested that the DHS review the situation. We asked if the CPS staff would be notified of the provisions of chapter 577A, HRS, and if the DHS would instruct the CPS staff on the proper course of action when a minor under the age of 14 requests family planning services.

The DHS subsequently informed us that it advised its workers to adhere to chapter 577A, HRS, and that it revised its procedures to include instructions to involve the parents of minors below the age of 14 years in the decision to get family planning services and to secure parental consent or the approval of the court before proceeding with such services.

The issue of the accessibility of family planning services to minors is a very sensitive one. Strongly felt arguments exist on both sides of the issue and no consensus appears likely in the near future. In the meanwhile, government agencies need to be aware of the existing laws, rules, and procedures governing their actions in this area.

(93-2575) Prison wages considered earned income. A former inmate complained that when he applied for welfare assistance, the welfare worker included, as earned income, money that he had earned several months before while in prison. As a result, his welfare check was smaller than it should have been.

We contacted the welfare unit supervisor and found that the worker was incorrect, as wages paid to an inmate are not earned income. Thus, a supplemental check of $88 was mailed to the complainant.

Sometimes a simple call from our office is sufficient to correct a misinterpretation.

(93-3193) No coverage of travel expenses for emergency medical treatment. A Maui resident complained that reimbursement of travel expenses from Maui to a children's hospital in Honolulu was denied by the State medical assistance program (Medicaid). The complainant related that, after attending to her seven-month-old daughter for seizures of an unknown origin, a Maui pediatrician instructed her to take the baby immediately to Honolulu for diagnosis and treatment. As soon as she could, the complainant took her daughter to Honolulu on a commercial airline.

The complainant informed us that Medicaid covered her daughter's medical expenses and the cost of their return travel from Honolulu to Maui. However, a hospital social worker informed her that Medicaid would not cover the cost of their travel from Maui to Honolulu because approval was not obtained prior to the travel. The complainant believed that obtaining prior approval was not feasible because her daughter required emergency treatment on a Saturday when the Medicaid offices were closed.

Although the Medicaid rules required prior authorization for inter-island transportation services, the rules also provided that emergency services for immediate medical attention do not require prior authorization if it would cause a delay in services that could jeopardize the patient.

Upon our inquiry, a Medicaid staff member confirmed that the complainant's travel expenses from Maui to Honolulu did not require prior authorization because of the emergency situation. Reimbursement had not been approved because the Maui pediatrician did not submit the required request for authorization. Upon receipt of a request from the Maui pediatrician, payment would be made to the service provider (the airline company) and the complainant could then obtain reimbursement from the provider.

We informed the complainant of the Medicaid procedure, and she indicated she would have the Maui pediatrician submit the necessary request. We invited her to contact us again should she require further assistance.

(93-4981) Delay in Medicaid payments. A pharmacist complained that the DHS was taking seven to eight weeks to pay for prescription drugs dispensed to Medicaid patients. In the past payments had been made within two weeks.

In our investigation, we contacted the DHS and reviewed its rules. Section 17-1322-15(b), HAR, relating to timely claim payments stated:

> The department shall pay ninety per cent of all clean claims from practitioners, who are in individual or group practice or who practice in shared health facilities, within thirty days, and ninety-nine per cent of the clean claims within ninety days of the date of receipt.

We were informed by the DHS that most of the complainant's claims, except a number of those filed within the past month, had been paid. Only 17 of nearly 400 of his claims were not paid. In those cases there were questions or discrepancies for which clarifying information was being sought.

We advised the complainant of the department's rule regarding timely payments. While expressing some dissatisfaction with the overall administration of the Medicaid program, he acknowledged that most of his claims, except those filed within the past month, had indeed been paid.

(93-5000) Delay in vacation pay. A woman complained that she had not received her accumulated vacation pay two months after she terminated employment with the DHS. Her former supervisor, on information received from the DHS Administrative Services Office (ASO), told her that her accumulated vacation pay would be deposited in her credit union account by April 30. The employee had moved to Seattle, Washington, but maintained her account to receive direct deposits. On April 30 the complainant checked the balance of her account and found that her vacation pay had not been deposited. She called us that morning, thus triggering a busy day's activities.

In following up, we learned that vacation pay is processed manually. The ASO told us that it usually takes four to six weeks to process vacation pay and acknowledged that there was a delay in this case.

The ASO learned from DAGS that direct deposits are automatically canceled if no payments are made for two pay periods. Because the complainant had not been paid for over two pay periods, her direct deposit arrangement was canceled. Instead, a check for $1,200.08 for her vacation pay was issued.

We then spoke to the complainant's former supervisor, who informed us that she learned only the day before that the complainant's direct deposit arrangement had been canceled. However, the supervisor said that as she was holding the check, she would be willing to deposit it into the complainant's account if she were given the account number.

We contacted the complainant, obtained her account number, and passed it on to the supervisor. The supervisor subsequently informed us, somewhat breathlessly, that she had just deposited the check, getting to the credit union right before the afternoon rush. She would be mailing the complainant the deposit slip. It took a few trans-Pacific telephone calls and a spirit of helpfulness on the part of the supervisor but, by the end of the day, the complainant's vacation pay was finally in her account.

DEPARTMENT OF PUBLIC SAFETY

(92-166) No presentence credit for time spent in mainland jail. An inmate escaped from a local community correctional center and managed to flee to the mainland. There he was arrested and held in jail prior to his return to Hawaii for trial. The inmate pled guilty and was sentenced to five years in prison. He was given a 2½-year minimum sentence and credited 317 days for time served prior to his sentence.

The inmate complained that he was not credited the time spent in the mainland jail while awaiting return to Hawaii. We obtained the inmate's

record of presentence credits and verified that the inmate should have been credited with more days.

Upon reporting our findings to prison authorities, the inmate's record of presentence credits was amended from 317 days to 343 days and his tentative parole date adjusted accordingly.

We present this case not to make the point that a convicted felon is now going to be released a few days earlier. The point is that the criminal justice system needs to operate fairly and accurately if it is to be credible and effective. If prisoners are expected to abide by the rules and dictates of the system, they need to have a level of confidence in the workings of the system.

(92-1785) State employee's son allowed to purchase forfeited truck. A person complained that the son of a PSD employee had been allowed to buy a truck from the PSD's Narcotics Enforcement Division (NED). The State had seized the truck under its forfeiture law, chapter 712A, HRS.

The AG offered the forfeited truck for sale at a public auction. Although bids were received, the top bidders subsequently withdrew. The State employee then indicated that her son wanted to buy the truck. Her supervisor advised her to clear the sale with the AG. After the employee reported that a deputy AG had indicated the sale was legally permissible, the truck was sold privately to her son.

By law, the AG is assigned to dispose of forfeited property. Section 712A-16, HRS, authorizes the AG to sell forfeited property and requires that any such sale be a public sale. We therefore questioned the propriety of selling forfeited property on a private basis, even following an unsuccessful offering at public auction. We also pointed out a DAGS rule that prohibits the sale of State property to State employees and members of their families.

Upon review, the AG informed us that it would conduct no further private sales of forfeited property. The AG also developed a new requirement for future purchasers of forfeited property to certify that the purchaser was not a State employee or a family member. Violation of the certification would result in the purchase being voided and possible criminal prosecution.

While it could be said in this case that the employee's son did not enjoy any special advantage because the truck had been put up for public sale before he offered to buy it, the issue is the appearance of impropriety. Such appearance is a real concern, as evidenced by the fact of the complaint we received. Here, the interest in maintaining public confidence in government and avoiding the appearance of impropriety have been deemed to outweigh any limitations on the ability of State workers or their families to buy State property.

(93-476) A crime victim's restitution delayed. A woman informed us that she was injured during a burglary of her home five years ago. Although she was awarded approximately $3,800 as a crime victim, she somehow missed the opportunity to pick up the check. She wanted to collect the money, but could not remember which agency had contacted her.

We contacted the Criminal Injuries Compensation Commission (CICC) and found that the complainant had filed a claim which was denied

because it was not filed within 18 months of the date of injury, as required by law.

The CICC referred us to the Hawaii Paroling Authority (HPA), which informed us that the perpetrator was on parole. The HPA had no indication that the perpetrator was ordered to make restitution, but referred us to the Adult Probation Division (APD). The APD informed us that restitution, in the amount of $3,884.95, had been ordered by the court. The APD apprised the HPA of the restitution order and forwarded the order to the HPA. We confirmed that the HPA would set up a payment schedule with the parolee.

Although the complainant was apparently mistaken in her belief that a check had been prepared for her, she was extremely appreciative of our efforts. At long last, she would finally get restitution.

(93-975) Improper left turn. Public servants need to be reminded from time to time that their behavior while on duty is subject to public scrutiny. They must comport themselves in a manner which will not reflect adversely upon themselves or their employing agencies. Nowhere is this more true than in the use of government vehicles. These vehicles, clearly marked as official vehicles, inevitably draw public attention when inappropriately used. We have received a number of complaints along these lines.

A citizen complained that drivers of State law enforcement vehicles were making left turns despite "No Turns" signs posted at a busy downtown Honolulu intersection. It appeared that the officers were making the left turns as a convenient shortcut to Kauikeaouli Hale, the district court building. The complainant said that he could understand if the officers made left turns when in hot pursuit of suspected law breakers, but not in normal driving situations.

We informed the department of the complaint. To follow up, a memorandum was issued to remind personnel to adhere to the no-turn prohibition at the intersection. The memorandum warned that anyone failing to follow the order would be disciplined.

We informed the complainant of this corrective action.

(93-1236) Lack of dental treatment. Eleven days after two wisdom teeth had been extracted, an inmate complained that he did not receive the follow-up treatment that he requested. He stated that one extraction healed nicely, but the area around the other extraction was painful, swollen, and possibly infected. Although he reported the problem to a nurse at sick call, he had not been seen by a dentist.

After we reported the inmate's complaint to the dental unit, the dental staff scheduled an appointment for the inmate later that day. A dentist found and removed a suture that had been inadvertently left in the inmate's gum.

Several days later, we checked with the inmate, who reported that he was feeling much better.

(93-2450) Delay in scheduling surgery. An inmate claimed to have been waiting for six months for surgery to remove a cyst on his hand, and he complained that the cyst was getting larger and more painful.

We learned that the inmate had actually been awaiting surgery for only one month. Although he had brought the matter to the facility's attention about a year earlier, it evidently was not really troubling him at that time as he did not complain about it again until ten months later. When he did so, the facility arranged for him to be examined by a surgeon. The surgeon recommended removal of the cyst but failed to timely complete the paperwork necessary to finalize the arrangements for the surgery. We subsequently confirmed that the inmate had a follow-up appointment with the surgeon so that surgery could be scheduled.

(93-4095) Breakfast delayed during Ramadan. Prison officials are expected to make reasonable accommodations for the religious beliefs and practices of their charges.

Followers of the Muslim faith observe Ramadan in the ninth month of the Islamic year. During Ramadan, fasting is practiced from sunup to sundown.

An inmate observing Ramadan complained that breakfasts, which were supposed to be brought to him by 5 a.m., were not served on time. Thus, he was unable to finish his breakfast by sunrise and had to go hungry until the evening meal at 7 p.m.

We contacted the food services manager who said that breakfast service was delayed because the guards were conducting inmate counts at 5 a.m. To address the concerns of the Muslim inmates, as of that morning, those observing Ramadan would be served their breakfasts at 4:30 a.m.

The inmate later confirmed to us that he was being served breakfast on time.

(93-6004) Not allowed to attend funeral of fiancee. On the day of his fiancee's funeral, an inmate at Oahu Community Correctional Center complained that his request to attend the funeral had been denied. He said he had a letter from a judge approving their marriage during his incarceration as well as a letter from his fiancee's mother verifying her daughter's relationship with him.

Corrections policy provided that facility administrators may permit inmates to attend funerals of immediate family members. The policy also provided that a common-law spouse would be considered an immediate family member if there was a bona fide, long-term spousal relationship.

When we contacted the captain who disapproved the inmate's request, we found that she was unaware of the letters the inmate had mentioned to us. The captain suggested that the inmate resubmit his request with the letters.

We called the inmate's module and informed a sergeant of the situation. The sergeant reported that the inmate was at work but would be called back to the module. Because of the urgency of the situation, the sergeant assured us that he would personally deliver the inmate's request to the captain.

We subsequently confirmed with the inmate that he was permitted to attend the funeral.

DEPARTMENT OF TAXATION

(93-225) Delay in State tax refund. A taxpayer complained that his 1991 State income tax refund was withheld because of an outstanding tax debit. When he did not receive his refund, he inquired with the TAX and learned that he owed $1.61 in interest on his 1988 taxes. The complainant reported that he was not notified of this debt until he inquired about his 1991 refund.

A TAX administrator confirmed that the $1.61 owed by the complainant was the result of accrued interest on his 1988 income taxes and was the reason his 1991 refund was not processed. As he had paid his 1988 taxes in installments rather than in a lump sum, interest charges accrued on the outstanding balance. Since he was not billed for the interest, when he made his final payment he was actually short $1.61 of what he owed. The administrator explained that the TAX's regular practice was to process a tax refund only after a debt was cleared.

The administrator acknowledged that the TAX failed to notify the complainant of the interest due. As the amount was very small, the administrator waived payment of the $1.61 and processed the complainant's tax refund check. The administrator reported that rather than a wait of up to eight weeks, the complainant could expect to receive his check in two to three weeks.

We informed the complainant of the action taken by the administrator. In a subsequent conversation with him, he reported that he had received his check and appreciated our efforts on his behalf.

(93-3538) Identical fees create confusion. A woman informed us that she erroneously wrote a $54.90 check to the Department of Finance, C&C (Finance), which she intended to write to the TAX for her general excise tax payment. She said she mailed the check to the TAX. She complained that the TAX forwarded the check to Finance instead of returning it to her for correction. As a result, she still owed the TAX $54.90 plus the assessed penalty and interest for not making the payment.

In our investigation, the TAX could provide no record that it had indeed received and then sent her check to Finance. However, Finance did receive her check and processed it for her automobile registration renewal. Finance stated it would not have done so without an accompanying document which in this case was the renewal form. By coincidence, the complainant also owed $54.90 for her automobile registration renewal. Thus, it appeared that the complainant correctly mailed the check to Finance, not to the TAX.

We surmised that because her automobile registration renewal fee was identical to the amount of her general excise tax, the complainant confused the two fees thinking one was the other, or that both were one and the same. Such coincidences, while rare, do occur from time to time and are apt to cause confusion.

We informed the complainant of the above information and that, since there was no apparent administrative error, we had no basis to recommend that the TAX waive the penalties and interest for the $54.90 outstanding, which was the remedy she sought.

(93-6026) Untimely notification of penalty and interest on delinquent tax payments. A man complained that a collection notice he received from the TAX on his monthly general excise tax payments was untimely. The notice informed him that he owed penalties and interest for nine late payments that he made during the two years preceding the notice.

Upon inquiry with the TAX, the complainant learned that on nine occasions his monthly tax returns and payments were postmarked one to three days after the due date, which was the last day of the month following the month in which the taxes accrued. The complainant surmised that he may have dropped these tax returns into a mailbox on the last day of the month after the postal pickup, resulting in the tax returns not being postmarked until a day or two later.

We found that section 231-39, HRS, provided for the addition of penalty and interest when a tax return is not filed by the due date, unless it is shown that the failure was due to reasonable cause and not due to neglect.

We discussed the complainant's case with the Collections Division (CD) chief. We noted that since the complainant was not notified for two years of the untimely filing of nine of his tax returns, he was unaware of the problem and did not have an opportunity to correct it.

Upon review of the complainant's record, the CD chief found that for each month in the past two years the complainant filed a tax return and made full payment of the taxes due. When his returns and payments were late, they were late by only one to three days. Thus, it appeared that the complainant had made good faith efforts to pay his taxes on a timely basis.

The CD chief, therefore, waived the penalties and interest, and the TAX informed the complainant to disregard the collection notice. The complainant thanked us for our assistance and noted that in the future he will mail his returns prior to the end of the month to ensure no repetition of this problem.

DEPARTMENT OF TRANSPORTATION

(93-2059) Inadequate marking of parking stall reserved for disabled persons. We received a complaint from a man who was cited for parking in a stall reserved for disabled persons at the Honolulu International Airport. In the early morning darkness, the complainant parked his car in a stall that he thought was adjacent to two stalls reserved for the disabled. Upon his return to his car, he found that he had been cited for illegal parking.

The complainant told us he did not want to contest the citation. Instead, he wanted to correct the problem of poorly marked signs. In support of his position, he sent us photographs of the scene which showed that the circled wheelchair symbol painted on the stall pavement was small and faded. Furthermore, the sign identifying the stall was on a post located not directly behind the stall, but to the side. The positioning of the sign was such that it could be mistakenly thought to be referring to the adjacent stall.

We sent the DOT the photographs. The DOT reported that the area in which the complainant parked was no longer used for parking.

The DOT acknowledged, however, that the stall in which he parked should have been more clearly marked.

As a result, the DOT reviewed the signs and markings identifying other disabled parking stalls at the airport and found that, in a number of cases, they were inadequate. This prompted the DOT to repaint the markings and to ensure that signs were properly posted.

We notified our complainant that the remedial action he wanted had been accomplished.

(93-2103) Fire hydrants on sidewalk blocking passage of wheelchair. A wheelchair-bound woman complained that, in the widening of Kalanianaole Highway in East Honolulu, fire hydrants were positioned in the middle of the sidewalk, making it impassable to her.

We contacted the Highways Division (HD) and were informed that the sidewalks were designed with the fire hydrants set back from, rather than along, the curb. The designers, however, provided for a minimum 32-inch clearance between the fire hydrants and the edge of the sidewalk.

Upon our inquiry, the HD and its private consultant separately took measurements of the sidewalk clearance between the edge of the sidewalk and the two fire hydrants about which the woman complained. The HD and the private consultant informed us that 32-inch clearances had been provided according to design. Thus, wheelchairs should be able to pass by the fire hydrants.

The HD informed us, however, that wheelchair passage on the sidewalk was obstructed by holes around temporary utility poles and by an overhanging hedge. The HD arranged for the holes to be filled and the hedge to be trimmed.

When we contacted the complainant, she confirmed that the corrective work was done and that she was able to negotiate her wheelchair past the fire hydrants. She was grateful that she was once again able to use the sidewalk.

(93-2338) Employee cited for parking in unmarked area. A man complained that he received a parking citation for parking his car in an unmarked area in an employee parking lot at the Honolulu International Airport. He explained that, one day when he arrived late for work, the lot was full so he parked along the curb in the parking lot. When he returned to his car after work, he found that he had been ticketed for parking in an unmarked stall. Although he paid the $20 fine, he complained that there were no signs prohibiting parking in the unmarked area, that parking along the curb did not obstruct the flow of traffic in and out of the lot, and that parking along the curb in that lot was a common practice.

When we contacted the airport manager's office, we were informed that there were problems with people parking along the curb. Curbside parking narrowed the driving lanes in the lot.

At our suggestion, the airport manager's office agreed to post signs in the parking lot to notify drivers that cars are authorized to park in marked stalls only. We later confirmed that the signs were posted and that similar signs were also posted in the new interisland parking lot.

(93-3725) Broken tree branch overhanging Kaneohe Bay Drive. A man complained that, as a result of Hurricane Iniki, a monkeypod tree was damaged and one of its branches was hanging over elevated utility wires. The complainant notified the DOT, which sent a subcontractor to trim the branch. The subcontractor, however, trimmed only the portion of the branch touching the wires and left the broken branch hanging over the road.

The complainant called the DOT several times over a period of five months and each time was told that the branch would be cut. Since the branch remained uncut, the complainant contacted our office.

We contacted the DOT and were assured that the tree branch would be cut shortly. When we subsequently checked with the complainant, he verified that the branch was cut about a week after he contacted our office.

(93-3729) Additional traffic sign needed to prevent left turns. An East Honolulu resident called us because he believed that traffic signs that had been installed to prohibit a left turn onto Kalanianaole Highway from a side street were inadequate.

Previously, there had been no signs at the intersection. Then the community association, of which the caller was a member, met with DOT officials who agreed that making a left turn onto the highway was hazardous. Two signs were installed. However, our caller said that the signs were not readily noticeable and so motorists were still making left turns. The resident wanted an additional sign to be posted across the highway in the line of sight of a driver contemplating a left turn.

We consulted with DOT personnel who agreed to reassess the safety of the intersection. The DOT later informed us that a "No Left Turn" sign would be installed within the next few weeks, not at the recommended location but at another spot which they felt would be more visible to motorists.

We informed the resident of the DOT's decision.

(93-4023) Overgrowth on medial strip. A woman complained that the medial strip along the main street running through her neighborhood in Kailua, on the Windward side of Oahu, was overgrown with weeds. She was concerned that weeds would be blown into her yard.

We notified the district office of the Highways Division about the overgrowth and were informed that a contract to maintain the medial strip was forthcoming within the month. However, based on the woman's concern, the agency offered to expedite sending a maintenance crew to the area. It was anticipated that the work would be done within a week of the date of our inquiry.

UNIVERSITY OF HAWAII

(93-4490) Noisy construction activity. A homeowner, living near the UH campus, complained about construction activity on university property. A pile driver was used to dig holes and insert "tapes" into the holes. The complainant stated that his house shook whenever the pile driver hit a rock and he could not watch television because it was too noisy.

The UH informed us that it was constructing new faculty housing. The contractor was drilling holes 25 feet deep and inserting wicks to absorb underground water. The drilling activity was scheduled to last another couple of months.

The noise control rules for Oahu, which are administered by the DOH, limited noise levels allowable in residential areas between 7 a.m. and 6 p.m. to 55 decibels. However, with a permit, noise levels exceeding the 55 decibel limit were allowed between the 7 a.m. to 6 p.m. time period. Construction causing noise in excess of 95 decibels was only allowed between 9 a.m. and 5:30 p.m.

A DOH noise inspector, who took decibel readings at the site, informed us that the contractor had a noise permit. He further explained that the construction activity had two phases. The first phase entailed drilling holes in the ground and the reading for this phase was 71-76 decibels. The second phase entailed inserting wicks into the holes and the reading for this phase was 73-82 decibels, with occasional peaks of 89-90 decibels.

We informed the complainant that the construction noise levels were within allowable limits. He indicated that the noise level was no longer bothersome, as the contractor had moved operations further from his home. We recommended that he call the Noise and Radiation Branch of the DOH in the future if the problem reoccurred.

CITY AND COUNTY OF HONOLULU

(93-130) Recovery of confiscated firearm denied. A person complained about the difficulty in retrieving his firearm from the Honolulu Police Department (HPD). He explained that during an altercation with his neighbor, he had brandished a gun which provoked the neighbor to also get his own gun. The HPD was called to the scene and confiscated the firearms. In the end, no charges were filed against the complainant and, as he had a valid firearm permit, he could not understand why the HPD was reluctant to return his firearm.

The HPD referred us to section 134-7, HRS, as a legal basis for its keeping the firearm. Section 134-7 stated in part:

> **Ownership or possession prohibited, when; penalty.** (a) No person who is a fugitive from justice shall own, possess, or control any firearm or ammunition therefor.
>
> (b) No person who is under indictment for, or has waived indictment for, or has been convicted in this State or elsewhere of having committed a felony, or any crime of violence, or an illegal sale of any drug shall own, possess, or control any firearm or ammunition therefor.

(c) No person who:

(1) Is or has been under treatment for addiction to any dangerous, harmful, or detrimental drug, intoxicating compound as defined in section 712-1240, or intoxicating liquor;

(2) Has been committed pursuant to section 333F-9 or 333F-10;

(3) Has been acquitted of a crime on the grounds of mental disease, disorder, or defect pursuant to section 704-411; or

(4) Is or has been under treatment for significant behavioral, emotional, or mental disorders as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes;

shall own, possess, or control any firearm or ammunition therefor, unless the person has been medically documented to have been cured of the addiction, mental disease, disorder, or defect.

After reviewing the section, we asked the HPD for the specific disqualification which prohibited our complainant from recovering his firearm. After researching the case and our complainant's background, the HPD acknowledged there appeared to be no legal basis for retaining the firearm, and suggested that we advise the complainant to file release forms for his firearm.

We so informed the complainant.

This case, as well as case 93-3722 on page 58, is presented to provoke some renewed thinking about Hawaii's gun control law. To be sure, this is a sensitive if not to say controversial subject. Being able to own firearms is considered a prized right by many people. They resist efforts to impose statutory limits on that right. On the opposing side of the issue are those who favor stricter gun laws as a means of reducing the level of gun-related crime and violence in our community.

Because of this clash of opposing interests, the gun control legislation which has passed has tended to be very narrowly drawn. The presumption is that a person should be able to own firearms and that only under narrow and specific circumstances can that right be denied. The two cases presented here illustrate this point. Under the law, simply because a person has demonstrated a willingness to brandish a gun in the course of an argument is not legal grounds for confiscating that weapon. Also, a person with a gun-related arrest record,

as well as a perceived tendency towards violent behavior, cannot be denied a firearm permit.

The broader issue of gun control, with its Second Amendment considerations, is beyond the scope of this report. It is a matter of public policy to be duly dealt with by those elected to decide such policy. We only wish to note how chapter 134 was applied in these two cases. The legislature may wish to consider the question of whether the disposition of these cases is in accord with its intent and understanding of the law. We bring this matter up as a point for consideration during the current public debate on the gun control issue.

(93-2467) Failure to prosecute prison staff for sexual abuse. A former female inmate expressed concern that the State would not be prosecuting adult corrections officers accused of sexually abusing inmates at the Women's Community Correctional Center (WCCC).

The problem of the sex abuse of inmates at the WCCC had developed into a major scandal, having received media coverage both locally and nationally.

In our inquiry with the Department of the Prosecuting Attorney, we were informed that 30 cases were investigated. Twenty-one of the cases were dropped due to insufficient evidence, expiration of the three-year statute of limitations, or lack of cooperation from the alleged victims. Prosecution was being pursued in nine cases. The Prosecuting Attorney also informed us that a press release with the same information was being issued to the local newspapers.

After the newspapers published the press release, we contacted our complainant and she expressed satisfaction that prosecutorial action was being taken. We share her hope that the vigorous prosecution of these cases will send a strong message that sexual abuse of inmates will not be tolerated.

(93-2853) Construction equipment parked in front of house. A man complained that C&C construction equipment was parked in front of his home for about a week, making it difficult for him to get in and out of his driveway.

Upon our inquiry, the road maintenance superintendent reported that the C&C had been repairing roads in the area. The equipment was left there because they had planned to return later to do additional work. However, as they had decided not to do additional repairs at that time, they would remove the equipment that very day.

We informed our complainant of the C&C's plans.

(93-3152) Inmate's release for Christmas delayed. The day before Christmas Eve, an inmate complained that he was not being released as expected because of paperwork that was not processed by the Department of the Prosecuting Attorney (PA). He said his wife and son were expecting him home on Christmas Eve.

We contacted the correctional facility and learned that the inmate's record included two charges for which the dispositions were unclear. The charges were not reflected in the sentencing report and there was also

no documentation to indicate the charges were dismissed. The facility attempted to contact the PA without success.

To dismiss the charges, the PA had to file a written motion to dismiss stating the reasons therefor. Upon approval by the court, the charges would be dismissed.

We contacted the PA and asked for its immediate attention to this matter. Subsequently, we were informed that after the PA expedited the processing of the necessary paperwork and obtained the signature of a judge, the inmate was released the morning of Christmas Eve. It was gratifying to know that we had a role in bringing a family together for Christmas.

(93-4766) Fence obstructing path to the beach. A dive company employee complained that a newly constructed fence was blocking a path to a small sandy cove. The cove, which was situated within a rocky cliff area, was used as a departure point for dives by several dive companies. To reach the cove, the dive companies' employees and their customers were required to maneuver around the fence near the edge of a cliff while carrying diving equipment.

In our investigation, we learned that a utility company had constructed a 6-foot-high, 85-foot-long fence on its property as a security measure for its adjacent facility.

We contacted the Department of Land Utilization (DLU), the agency responsible for enforcing the shoreline setback and shoreline management ordinances. The DLU informed us that the shoreline setback ordinance prohibited structures within the setback area (defined as 40 feet inland of the shoreline) without a shoreline setback variance. The DLU also informed us that the shoreline management ordinance prohibited developments or structures within the special management area (the area about 300 feet inland of the shoreline) without a permit.

Since the DLU was not staffed with field inspectors and because the Building Code might also require a building permit for the fence, the DLU referred the matter to the Building Department (BD). An inspector of the BD was dispatched to the site and verified the location of the fence. Because the utility company had not obtained a building permit, a Notice of Violation was issued.

Subsequently, the utility company removed the portion of the fence that was within the shoreline setback area. The complainant verified the removal and that access to the cove was restored.

COUNTY OF MAUI

(92-4106) Delay in receiving last paycheck. Six months after terminating employment, a former employee of a children's summer program complained that she had not been fully paid by the Department of Parks and Recreation (P&R), even though she submitted documentation on the hours worked per instructions from the P&R Director.

After our efforts to reach the P&R Director by telephone proved unsuccessful, we wrote and asked when the complainant would be paid. A P&R staff member then contacted us on behalf of the director and assured us that compensation would be made after a review had been conducted of the hours the complainant claimed were

unpaid. We later learned that a reconciliation of the hours was necessary because the complainant had claimed hours in a pay period for which payment had already been made and had also claimed unauthorized hours in another pay period. In addition, new payroll forms had to be processed because the fiscal year had elapsed.

Because of these administrative complications, it took an extraordinarily long time for the final paycheck to be processed. Eventually, the complainant received the paycheck one year after her termination of employment.

(92-6676) Registration fees and taxes paid on wrong truck. A couple complained that in order to register their truck, the Motor Vehicles & Licensing Division (MVLD) required that they pay the registration fees and taxes due on the truck for the preceding five years.

The complainants explained that five years ago they purchased a truck which was described in its registration documents as a 1975 model. They regularly paid the annual registration fees and taxes on this truck. Then, while in the process of repairing the truck, they found that the vehicle identification number (VIN) affixed to their truck did not match the VIN on the registration documents.

Upon inquiry with the MVLD, they learned that the truck in their possession was actually a 1974 model for which the registration fees and taxes were last paid by a religious group five years ago. The whereabouts of the 1975 model truck, for which they had been paying the registration fees and taxes, were unknown.

Since the registration fees and taxes on the truck in their possession were not paid for five years, the MVLD required the couple to pay the fees and taxes due in order to register the truck. The fees and taxes for the five-year period amounted to about $600.

We wrote to the Director of Finance noting that the couple, in good faith, had paid the registration fees and taxes on the vehicle in their possession. Under these circumstances, we asked if it would be appropriate to waive the registration fees and taxes for the preceding five years for that truck.

The Director of Finance granted a waiver of the back registration fees and taxes and requested that the couple meet with MVLD staff to correct the title documents.

We informed the complainants of the decision of the Director of Finance and they were able to straighten out the matter with the MVLD.

(93-3722) Denial of firearm permit. A man complained that the Maui Police Department (MPD) denied his application for a permit to acquire a firearm. The complainant claimed that although he was once arrested for a crime involving a firearm, the charges were dropped and he had no record of any criminal conviction.

In our investigation, the MPD indicated that the permit was denied because the complainant had a felony conviction and other charges which the MPD felt indicated a tendency toward violent behavior.

The MPD informed us that section 134-2, HRS, states that the chief of police may issue permits to acquire firearms. Thus, since the statutory language was permissive rather than mandatory, the MPD concluded that the chief had discretionary authority to deny firearm permits for any reasons determined to be appropriate by the chief.

We noted, however, that section 134-7, HRS, (quoted earlier on page 54) is explicit as to which persons are not allowed to own or possess firearms. We questioned whether the circumstances listed in section 134-7 applied in this case.

The MPD requested legal advice from the Department of the Corporation Counsel (DCC) regarding the chief's authority to deny firearm permits. We also asked the MPD to check whether the complainant had any felony convictions on record.

Subsequently, the MPD informed us the DCC advised that the chief may deny firearm permits only in those circumstances listed in section 134-7, HRS. The MPD also found that the complainant did not have any felony convictions on record.

Since none of the prohibitions of section 134-7, HRS, were true of the complainant, the MPD informed him that it would approve his permit for a firearm.

LEGISLATURE

(93-2580) Unavailability of homeowner's insurance. The island of Hawaii, known as the Big Island, claims the distinction of being the site of frequent volcanic activity. Homes in certain areas may be subject to damage or destruction by lava flows. This causes special insurance problems for the homeowners.

A Big Island resident, who could not purchase homeowner's insurance because he lived in a high-risk area, complained about a bill recently passed by the legislature which he thought prevented homeowners in certain areas of the Big Island from obtaining homeowners' insurance coverage.

We contacted the Insurance Division and reviewed the pertinent law and its legislative history. We found that insurance companies were refusing to renew or issue homeowners' insurance policies in lava-threatened areas on the Big Island. As a result, homeowners could be forced to endure personal suffering and financial hardship from property losses caused by volcanic activity. Also, people wanting to build homes in one of the few remaining affordable areas in the State would not be able to obtain mortgage loans.

The legislature, through Act 284, SLH 1991, established the Hawaii Property Insurance Association (HPIA) to assure appropriately priced, basic property insurance for owners and occupants of property in high-risk areas exposed to major natural disasters. All property or casualty insurers authorized to do business in the State are required to become members of the HPIA. One of the duties of the HPIA is to "[f]ormulate and administer a plan of operation to insure persons having an insurable interest in real or tangible personal property in the area designated by the commissioner[.]"

After consultation with representatives of the United States Geological Survey, the State DOD, and the county in which the area is located,

the Insurance Commissioner designates the geographic areas eligible for coverage through the HPIA. Any person having an insurable interest in real or tangible personal property and who has been unable to obtain basic property insurance from a licensed insurer may then apply to the HPIA for coverage.

Therefore, contrary to our caller's understanding, the new law provided basic property insurance to persons who live in areas with high exposure to natural disasters and who are unable to obtain such insurance from a licensed insurer.

We informed the caller, who lived in one of the designated areas, of our findings. He mentioned that he just found out about the coverage from his insurance agent. Although he thought the premium was high, he decided to contact the HPIA for more information.

Appendix

CUMULATIVE INDEX OF SELECTED CASE SUMMARIES

The following cumulative index lists all selected case summaries which appeared in our Annual Report Nos. 1 through 24. The case summaries are numerically arranged under the appropriate State department, county government, or by categories in informational and non-jurisdictional cases. The index lists the report number and page of each case summary.

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91-5683	Licensing of bail bondsmen	22	10
Private Transaction			
79-1017	Maintenance of water supply pipe	10	74
79-1917	Denial of service by a public utility	10	75
92-7092	Electrical power surge damaged television set	23	56

STATE OF HAWAII

4

NIIHAU

KAUAI

Lihue

KAUAI COUNTY

1

Honolulu

CITY & COUNTY OF HONOLULU

3

MOLOKAI

LANAI

Wailuku

MAUI

KAHOOLAWE

MAUI COUNTY

2

HAWAII

Hilo

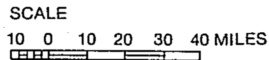
HAWAII COUNTY

STATE OF HAWAII
Capital: Honolulu
Population: 1,108,229*

1. CITY AND COUNTY OF HONOLULU
   County Seat: Honolulu
   Population: 836,207*
2. HAWAII COUNTY
   County Seat: Hilo
   Population: 120,317*
3. MAUI COUNTY
   County Seat: Wailuku
   Population: 100,504*
4. KAUAI COUNTY
   County Seat: Lihue
   Population: 50,947*

LEGEND

SCALE



**Source:*
The State of Hawaii Data Book 1991. A Statistical Abstract, Department of Business, Economic Development & Tourism, Table 4 (1990 population figures).