



January 2003

Upcoming Events

December 26 to January 14
HWL After Christmas Food
Drive (see article below)

January 11, 2003

Seminar— William S. Richardson School of Law Alumni Association presents "The Violence Against Women Act and Immigrant Clients: How it Affects your Practice of Law" 8:30 am— 12:30 pm, William S. Richardson Law School. Registration is free for 2003 dues paid Alumni Association Members. Non-alumni fee is \$25, and for Law Students and Non-Profit attorneys, \$10. Please pay by check and made payable to WSRSLAA and send to WSRSLAA Seminar Series c/o John Robert Egan, 1188 Bishop St., Ste. 1212 Honolulu, HI 96813.

January 20, 2003

Remember! Celebrate! Act! A Day On, Not A Day Off
Martin Luther King Parade, 8:30 am from Magic Island to Kapi'olani Park. "The Unity Rally," from 10 am at Kapi'olani Park featuring entertainment, food and crafts. Come join us for a fun-pack and inspirational day!

January 22, 2003

30th Anniversary of Roe v. Wade, the landmark ruling that protects a woman's right to control her own reproductive choices. Join in a gathering from 12:00 to 1:00 pm at the Hawaii State Capitol Queen Lili'uokalani Statute

Hawai'i Women Lawyers

Hawai'i Women Lawyers Annual Awards Ceremony

For those of you who have been waiting with bated breath to hear the announcement of Hawai'i Women Lawyers annual recipients and to learn of the scheduled date of the 2002 annual award ceremony and reception, here is an update: On December 11, 2002, the HWL board voted unanimously to henceforth move the date of the HWL annual award ceremony to the month of March so that Hawaii Women Lawyers annual recognition of outstanding women can coincide with Women's History Month.

In accordance, this year's HWL annual award ceremony and reception will be held as follows:

Friday, March 14, 2003

The Plaza Club

Main Dining Room

900 Fort Street Mall

5:30 p.m. to 8:00 p.m.

E-mail Erin Uyeda at eu@miyasaki.com or call her at 521-3255 and send your check, for \$35.00 per person payable to Hawaii Women Lawyers, to her at Pacific Tower, Suite 1030, 1001 Bishop Street, Honolulu, HI 96813

At this year's ceremony and reception, HWL will honor five outstanding women and their contributions to the mission of HWL and to our community:

Congresswoman

Patsy Takemoto Mink
Hawai'i Woman Lawyer
of the Year

Shelby Anne Floyd
Lifetime Achievement
Award

Lynn Maunakea
HWL President's Award

Assistant Professor
Denise E. Antolini
Distinguished Community
Service Award

Associate Justice
Paula Nakayama
Hawaii Woman
Jurist of the Year

One of the best things that Hawai'i Women Lawyers does every year is recognize the women (and sometimes, the men) in our community who are doing important work that helps to advance the values and goals found in Hawai'i Women Lawyers mission. So often, those who do the most are so busy working that they do not take the time to recognize what they have done, much less expect to be recognized

by others for what they are doing. It is a joy to stand in a roomful of Hawai'i Women Lawyers members every year and tell our award winners how much we appreciate what they are doing. Please set aside the evening of March 14, 2003 to join us in recognizing the achievements of the winners of Hawai'i Women Lawyers 2002 annual awards.

This event will also provide an opportunity for those of you who would like to do so to help to establish and contribute to an educational fund that will be established in Patsy Mink's name. More information about this fund will be forthcoming in the January and February HWL newsletters as well as in invitations and announcements that will be sent out later regarding the award ceremony.

For those of you who are interested in helping the HWL Board to fundraise for an educational legacy in Patsy Mink's name and honor, you can become involved by contacting April Wilson-South, Lane Hornfeck, or Lynn McGivern, and indicating how you would be interested in helping.

During the holidays, many of us receive a large assortment of chocolates, candies, popcorn, and even the occasional fruit cake that we are either loathe to eat ourselves or would like to share with others. The Foodbank has indicated that they would love to receive these items and any other food donations our membership would like to provide over the holidays.

To arrange for pick up of your donations, please contact Stacey Djou at 521-9203. If others in your company or organization are willing to donate, it would be much appreciated if one person could coordinate the collections for your entire company or organization. We would appreciate receiving any donations by January 14, 2003. If you have any questions, please contact Elizabeth Kent or Stacey Djou at 521-9203, and mahalo for your generosity!

**HWL's After
Christmas
Goodies Drive**



April Wilson-South
President, Hawaii Women Lawyers

President's Message

The past year has been a very busy one for Hawai'i Women Lawyers – and next year looks like it is going to be even busier.

HWL has a very exciting set of recipients for its annual awards this year and our annual award ceremony and reception will now be a part of the women's history month celebrations. We also hope that in addition to the usual recognition and honoring of the fine work of other women in our community, we are able at this special award ceremony to make good progress toward helping Patsy Mink's family in firmly establishing an educational legacy in Patsy Mink's name that will provide the kinds of educational opportunities to which Mink devoted so much of her life.

HWL's legislative agenda for 2003 is fo-

cusated but powerful: HWL will be pushing only three bills, two aimed at providing protections for victims of domestic violence who are fired or evicted because they are victims of violence, and one bill aimed at resurrecting a pay equity review of state and county employment – a bill that was previously successfully pushed by HWL (& others) through the legislature only to be vetoed by Governor Cayetano. The HWL Legislative Committee is also scheduled to hold a Reception Breakfast for legislators to introduce them to our legislative agenda and meet our members at the Capital on January 7th.

During the next year, HWL will begin to implement its new mentorship program, starting with brownbag discussion groups and continuing into other efforts to estab-

lish formal and informal methods of learning & helping one and another.

As always, HWL has a number of very active committees that could use the assistance of HWL members who are interested in helping. These committees include membership, legislative, amicus, mentorship, program, projects, judicial equity, and newsletter committees. If you are interested in working on any HWL committee, simply contact a HWL board member at the e-mail address on the back page of this newsletter, and tell them what you would like to do.

For today -- and from everyone at HWL -- I want to wish all of you a very wonderful holiday season and a prosperous and joyful New Year!

—April

"During the next year, HWL will begin to implement its new mentorship program . . ."

House passes resolution renaming Title IX after Mink

The law that mandated gender equity in education now bears the name of the woman who spearheaded the effort, the late U.S. Rep. Patsy Mink. Title IX now will be known as the *Patsy T. Mink Equal Opportunity in Education Act*. "Every single woman in this nation who today has been given an equal opportunity in education, and by extension in vir-

tually every other field of endeavor, owes the impetus to that in modern times to Patsy Mink," Abercrombie said in a speech on the House floor. "She was one of the pioneers who transformed Hawaii and transformed this nation." Her daughter, Gwendolyn Mink, a professor and the acting chair of the Women's Studies Department at Smith Col-

lege, said Title IX will be part of a very broad legacy left behind by her mother. "She'll certainly have a legacy, in substantive terms, as one of the valiant defenders of equality both equality of access and opportunity but also equality in a concrete sense of everybody having a right to a decent existence and health care and food and shelter."



2002 Hawai'i Woman Lawyer of the Year - Congresswoman Patsy Takemoto Mink

Hawai'i and the world lost one of its greatest citizens on September 28, 2002, with the death of Hawai'i Congresswoman Patsy Takemoto Mink. Every woman today – including every member of Hawai'i Women Lawyers – who is enjoying the fruits of her education and job opportunities, and every girl who has a chance to play sports in school, owes a nod of thanks to Mink who unremittingly and dauntlessly challenged old stereotypes about "women's place" and helped to engineer the steady progress for women over the last four decades.

In the last decade of her political leadership, Patsy Mink was a vigorous advocate on behalf of poor families. Faced with the bipartisan tidal wave that pounded poor women, insisting that they "get to work," Mink worked tirelessly to promote policies that truly addressed the realities of poverty and last year garnered substantial support in the House of Representatives for her legislation to provide additional education and skills that would support true self-sufficiency. It was these recent efforts that led to her nomination – some time before her illness and death – for the 2002 HWL Lawyer of the Year award.

Patsy fought for women, minorities, immigrants, working people, and others who were unable to fight for themselves, 'she was a powerful voice for those who are poor and would otherwise be forgotten, disenfranchised, and powerless. She was a mighty champion for equal opportu-

nity, civil rights and education, perhaps a reflection of the gender discrimination she herself experienced early in life, when her application for admission to medical schools was rejected a dozen times, not because of academic ability and scholastic record, but because of gender.

Her family story is the classic story of immigrants seeking a better life in America for themselves and their families. Her four grandparents emigrated from Japan in the late 1800's to work as contract laborers in Maui's sugar plantations. Patsy was born in 1928 in Maui and from her earliest years, she was encouraged to excel in academics. When she ran for student body president during her junior year in high school, she began her unofficial political career. World War II had begun and she was facing the anti-Japanese sentiment that prevailed throughout the country and was also the first girl to run for this office. Nonetheless, Patsy won a very close election and learned the importance of coalition building. In 1944 she graduated as high school class valedictorian.

She began college at the University of Hawai'i, but when she later transferred to the University of Nebraska, she faced a policy of segregated student housing. Working with other students, their parents, and even university trustees, this policy of discrimination was ended. She returned to the University of Hawai'i to prepare for medical school and graduated with a degree in zoology and chemistry. However, in 1948, none of the twenty

medical schools to which she applied would accept women.

She decided to study law and was accepted by the University of Chicago because they considered her a "foreign student." Choosing not to inform the University that Hawai'i was an American territory, she obtained her Doctor of Jurisprudence in 1951.

Newly married, she became the second Asian-American woman to practice law in Hawai'i. In 1956, she was elected to the Territorial House of Representatives. It was the beginning of a long and effective political life for Patsy Mink. In 1959, Hawai'i became the 50th state and in 1965, Patsy Mink was elected to the U.S. House of Representatives and began the first of six consecutive terms in the House of Representatives. She was the first woman of color to be elected to Congress.

A brilliant and articulate woman, she helped to write scores of legislation affecting families and women, from early childhood education initiatives to family medical leave. She was an outspoken advocate for women, children, and the underrepresented; a trailblazer for laborers, minorities, the poor and powerless. In Congress she was known for uncompromising liberal idealism. Mink's ability to build coalitions for progressive legislation continued during her tenure in Congress. She introduced the first comprehensive Early Childhood Education Act and



Patsy Mink

"We have to build things that we want to see accomplished, in life and in our country, based on our own personal experiences ... to make sure that others ... do not have to suffer the same discrimination. That is really the story of Title IX."

**Patsy Mink, 2002
NOW Conference**

(Continued on page 14)



Shelby Anne Floyd

HWL 2002 Lifetime Achievement Award Shelby Anne Floyd

Shelby Anne Floyd has worked tirelessly for the rights of children and the disadvantaged and disenfranchised in Hawai'i. She is lead counsel in *Jennifer Felix, et al. v. Cayetano, et al.*, United States District Court for the District of Hawai'i, class action which resulted in a consent decree entered in 1994 and extended in 2000, resulting in a new system of care for children with mental health and special education needs. The *Felix* case has required the State to provide free and appropriate education for children with handicaps, and has reached the entire future generations of disabled persons in Hawai'i through this suit.

Shelby Floyd is also currently lead counsel in *Burns-Vidlak v. Chandler*, USDC, District of Hawaii (1996) a class action lawsuit for persons with disabilities that the State of Hawai'i excluded from any

insurance coverage under our welfare programs, and recently won a 9th Circuit decision recognizing the right of disabled persons to be included in the state's insurance programs for the needy. Shelby achieved summary judgment on liability and punitive damages for class of over 700 disabled adults and children denied Medicaid benefits by State of Hawai'i, and has obtained monetary settlements or judgments for over 300 disabled citizens.

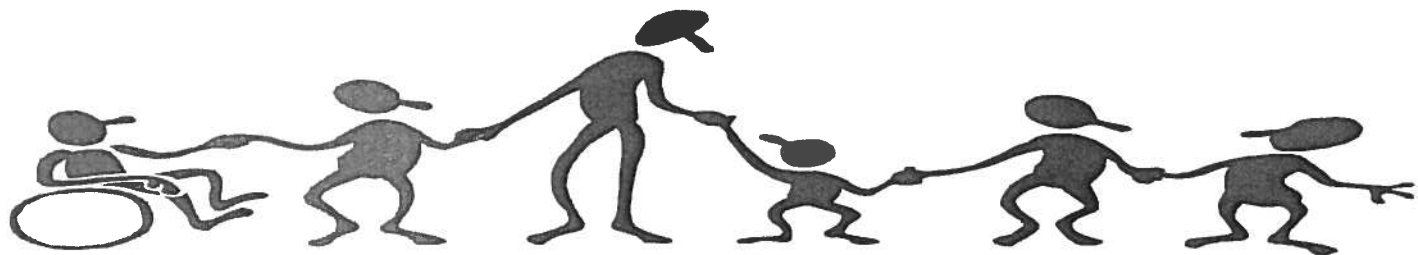
Shelby received J.D. from Columbia University School of Law in 1975 and has been in private practice since 1978. Since 1980, she has been an officer and director in Alston Hunt Floyd & Ing and its predecessor. In 1999, she opened the firm's Big Island office.

She has 25 years of litigation experience under federal special education laws and

anti-discrimination laws, and while her area of practice also includes commercial litigation, she is also a frequent speaker on special education law in Hawai'i.

Shelby Floyd has received numerous awards for her legal and community work including a 1999 "Loio Ku Kahi Award" (Outstanding Attorney), from the American Civil Liberties Union of Hawai'i; a 1997 Making a Difference Award, from the Thirteenth Annual Pacific Rim Conference on Disabilities, a 1996 "Friend of Social Work" Award, from the National Association of Social Workers, a 1994 Legal Advocacy Award, Mental Health Association of Hawai'i, and last – but certainly not least – a 1984 HWL Lawyer of the Year Award.

"She is lead counsel in Jennifer Felix, et al. v. Cayetano, et al., . . . class action which resulted . . . in a new system of care for children with mental health and special education needs."



HWL 2002 – HWL President's Award Lynn Maunakea



Lynn Maunakea

Lynn Maunakea has been the Executive Director of Institute for Human Services since 1997. Ms. Maunakea has been instrumental in establishing a Women and Children's Shelter at the Institute for Human Services – where previously there had only been a men's shelter – one that was unsafe for women and children.

In her years as IHS's Executive Director, Maunakea has engaged in an un-ending public relations campaign designed to obtain greater public understanding of the root problems of homelessness, building coalitions to address the problems faced by those who are homeless, while putting a human face on the problem and bringing independence and dignity to those who are without a home.

Lynn Maunakea holds a masters degree in social work and, while at HIS, she has built upon her previous skills to move from one-on-one care of others to a multi-tasking balancing of management, care of others, and political action aimed at changing thousands of lives. Maunakea, a New York native who moved to Hawaii in 1977, was previously a manager of a community economic-development program with the state Department of Business, Economic Development & Tourism, and also has headed the Hilo unit of the Association for Retarded Citizens.

Since Lynn Maunakea became the Executive Director of IHS in 1997, for the first time, city, state and federal officials are coordinating their efforts to end home-

lessness in Hawai'i by using federal money and assistance and looking at other areas of the country as models. Hawai'i is now one of just eight states approved by the federal government to form a homeless "academy," or solutions working group, and bring together all agencies involved in paying for social programs to target the problem here.

In the last year, the city has also moved to clean up and reclaim parks and public spaces in Kalihi, downtown and Waimanalo, some of which have been dominated by the homeless for years – pushing the people living in these public spaces into other, more populated areas. In recent years, IHS has also been there to respond to the needs of women and children losing federal welfare benefits.

Nonetheless Maunakea says that the cure to homelessness is simple: Provide enough shelters for people living on the streets and affordable housing and services to accommodate those who want to get off of them.

While this solution will take years to fully implement, Maunakea says it won't cost much more than the state and city are now spending. But it will require a comprehensive approach, and that's where the Hawai'i Homeless Policy Academy comes in.

"The federal government called upon the states to bring together the real resource providers to look at existing ways services are provided and how to improve it," Maunakea says. The Homeless Academy is

based on a report by the National Alliance to End Homelessness titled "How to End Homelessness in Ten Years" and a five-year study of the homeless population in New York and Philadelphia by University of Pittsburgh researcher Dennis Culhane.

According to the report, widespread homelessness did not emerge until the 1980s following two decades of reductions in affordable home construction, wages that did not keep pace with the cost of living for low-income people and dwindling federal support for health services to balance the budget. Social trends including new kinds of illegal drugs, and more single parent and teen-headed households with low earning power added to the problem.

Maunakea says that the report shows that efforts to provide food and shelter are simply sustaining the homeless population, not helping to solve the problem: "The beauty of this study, because it was such a large group he looked at, is it can apply here. We have looked at the same thing here, and these percentages hold true. Hawai'i will need to increase spending – but nowhere near the levels of New York – to provide homes and services. They found out that it costs \$900 more a year to house them permanently in the community with the support needed to keep them in that housing than it does to service them in shelters and on the streets. It's a little bit more, but it is more appropriate. You've got people off of the streets, out of the parks."

"... the cure to homelessness is simple: Provide enough shelters for people living on the streets and affordable housing and services to accommodate those who want to get off of them."

IHS is a model program for serving the needs of the homeless, is doing a phenomenal job providing care dignity and services for a very challenging population, and Lynn provides the vision, love and skill that helps make it all happen. "I think serving the community by assisting people in need of shelter and food is a fantastic service, and I think people see that, and recognize the need, and [will] help."



Assistant Professor
Denise L. Antolini

"She has even been known to 'extort' money from lawyers (and their firms) to fund awards for the best environmental law paper."

HWL 2002 -- Distinguished Community Service Award Assistant Professor Denise E. Antolini

Denise Antolini attended Princeton University and graduated Magna Cum Laude in 1982. She earned a Master Degree in Public Policy from the University of California at Berkeley and received her J.D. from Boalt Hall School of Law, University of California at Berkeley. In law school, she served as editor-in-chief of *Ecology Law Quarterly*.

After a federal district court clerkship in Washington, D.C., she spent eight years practicing public interest law with the Sierra Club Legal Defense Fund (now EarthJustice Legal Defense Fund) in Seattle and Honolulu. She became managing attorney of the Hawaii office in 1993/94.

While at EarthJustice, Professor Antolini litigated several major citizen suit environmental cases involving coastal pollution, water rights, endangered species, environmental impact statements, and Native Hawaiian rights. Professor Antolini was instrumental in broadening EarthJustice's representation from traditional environmental advocacy groups (e.g., Sierra Club) to community groups that needed legal representation on environmental concerns but had limited access to public interest lawyers (e.g., organizations in Moloka'i, Ewa, Waiahole), and reaching out to build strong new legal coalitions with Native Hawaiian groups (e.g., Ka Lahui, Ahupua'a Action Alliance, Protect Kohanaiki Ohana, Pai Ohana). In 1993, under her leadership as managing attorney, the Waiahole taro farmers obtained representation from EarthJustice, and she spearheaded the formation of the three legal teams that represented the coalition of environmental and Native Hawaiian groups in the lengthy proceedings that resulted in the Hawaii Supreme Court's landmark decision on public trust and water resources, *In Re Water Use Applications*, 94 Haw. 97, 9 P.3d 409 (2000).

In 1996, Antolini joined the faculty of William S. Richardson School of Law, University of Hawaii at Manoa where she teaches torts, environmental law, environmental litigation seminar, and legal writing. In partnership with Professor Casey Jarman (a 1999 winner of the HWL President's award), Professor Antolini has been instrumental in organizing the Environmental Law Program's curriculum, programs, and faculty, and in Spring 2002, she was named Co-Director of Program.

Thanks to her contributions, UH's environmental law program is now ranked in the "top 20" such programs nationwide. She co-advises the Environmental Law Society and coaches the Environmental Law Moot Court Team, which won the national championship in 1999 and, in several other years, has reached the semi-finals of the national environmental moot competition at Pace Law School, New York.

She served as a member of the State Legislature's Tort Law Study Group (1997-1999) and the Legislature's PASH Study Group (on Native Hawaiian traditional and customary rights) in 1998. She is currently the principal investigator on a governance study of Hawaii's Marine Protected Areas for the State of Hawaii's Department of Land and Natural Resources and co-founded the Marine Protected Areas Working Group, which will be proposing new legislation on our state marine reserves system.

In 2002, Professor Antolini published a major article entitled "Modernizing Public Nuisance: Solving the Paradox of the Special Injury Rule." The article discusses the legal history and jurisprudence of the special injury rule and places Hawaii's liberal interpretation of this rule into a broad national context. The article also reviews the lively historical debates in the American Law Institute, analyzes the contributions to this issue by tort law giants William Prosser and John Wade, and proposes a new approach that solves the paradox of the rule. Professor Antolini presented the findings of her article at a recent conference in Albany, New York, and will be speaking again on the topic at a national conference in Maryland in March 2003.

In October 2001, Professor Antolini co-chaired a Symposium on Managing Hawaii's Public Trust Doctrine, held at the University of Hawaii. She then published the [Proceedings of the conference and a Foreword, in the Hawaii Law Review](#). The Symposium featured leading public trust doctrine experts and diverse panels of Hawaii's governmental, private, and public interest attorneys who work in the area of water rights and natural resources law and policy. Most recently, she has completed a study of 17 years of empirical data on punitive damage awards in Hawaii, which will be published in Spring 2003 in the University of Virginia

Journal of Law and Politics. In 2002, she also launched a new public web site, designed to make Hawaii's environmental law easily accessible to practitioners and the public. The site – called Our Hawaii Environmental Law On-Line or OHELO – provides "one stop shopping" for research, presenting published and unpublished court decisions, statutory material, and other useful resources and links.

Professor Antolini has served as the Treasurer, Program Chair, Vice-Chair, and Chair of the HSBA Natural Resources Section. When she was Chair two years ago, she formed a committee to raise funds from Hawaii environmental law practitioners to match an ABA grant to fund two diversity fellowships in Hawaii for students interested in careers in environmental law, a program now in its third year. She has successfully lobbied law firms, individuals, and charitable organizations for funding for students to participate in national law conferences. Last year, she twisted the arms of the Environmental and Cultural Resources Practice Group, at the Alston firm to fund a new cash award for the UH Law School student writing the best environmental law paper each year. She is known as a "wonderful mentor" and is one of the most beloved professors on campus. Professor Antolini lives on Oahu's rural North Shore with her husband and sons, and enjoys hiking, gardening, and family beach excursions. She recently was awarded a Fulbright Scholarship to teach and conduct research in Spring 2004 as the Distinguished Chair in Environmental Studies at the Polytechnic Institute of Turin, Italy, and she plans to take her lucky family with her to Italy for her sabbatical year (Summer 2003-Summer 2004).



Hawaii Woman Jurist of the Year Honorable Paula A. Nakayama

On April 22, 1993, the Honorable Paula A. Nakayama became the first woman on the state Supreme Court in 26 years. Associate Justice Nakayama received her undergraduate degree from the University of California at Davis and juris doctorate from Hastings College of Law. Upon admission to the Hawai'i Bar in 1979, she served as deputy prosecuting attorney for the City & County of Honolulu. She was a member of the Career Criminal Unit of the Prosecutors Office when she left to become a partner with the firm Shim, Tam and Kirimitsu, where she practiced personal injury and insurance litigation. She was appointed as a judge of the Circuit Court of the First Judicial Circuit in 1992.

Justice Nakayama has demonstrated her intelligence and commitment in a number of cases including the same-sex marriage decision that came before the court when she was new Associate Justice. In that case Justice Nakayama joined Justices Levinson and Moon to form a majority holding that sexual orientation

was not relevant to determining whether the state could justify its refusal to issue marriage licenses to same-sex couples, and finding, in answer to the State's request for reconsideration, that the State prove a "compelling interest" or lift the ban on same-sex marriages.

In another significant decision involving the allocation of the water flowing through the Ko'olau in the Waiahole Ditch, Justice Nakayama's order gave life to the public trust doctrine in a manner consistent with earlier landmark rulings like *McBryde Sugar Co. vs. Robinson*, *Robinson vs. Ariyoshi*, and *Reppun vs. Board of Water Supply* -- advancing a tradition that has distinguished our high court since it was led by William Richardson. These rulings have brought the state further away from territorial thinking about water, to the effect that streams existed simply as sources of supply for people who wanted to irrigate crops, for the benefit of business interests to use for profit. In those days, no attention was paid to what happened

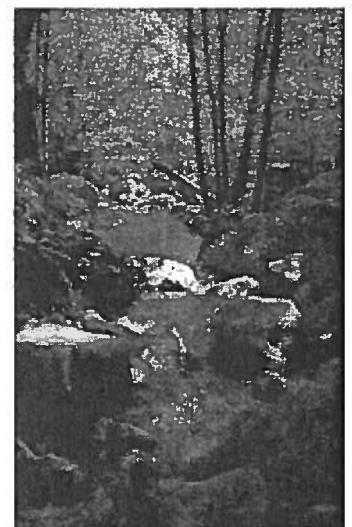
when water was removed from a stream - to the ecology, for instance, within its banks and in the near-shore waters into which the fresh water formerly flowed. Citing the Reppun case "as an acknowledgment of the public interest in 'a free-flowing stream for its own sake,' " Nakayama held in the Waiahole case "that the maintenance of waters in their natural state constitutes a distinct 'use' under the water resources trust. This disposes of any portrayal of retention of waters in their natural state as 'waste.' "

Justice Nakayama presently serves on and takes an active part in the Board of Certified Shorthand Reporters, the Judiciary Education Committee and the Caseflow Management Committee. She formed and currently chairs the Committee on the Hawai'i Rules of Appellate Procedure, which revised the appellate rules. Among other administrative duties, she was the justice assigned to decide procedural motions and handled about 2,000 to 3,000 motions per year.



**Honorable
Paula A. Nakayama**

"the maintenance of waters in their natural state constitutes a distinct 'use' under the water resources trust."



things you need to know . . .



Major changes debated for Title IX

A commission appointed by the Bush administration is poised to propose profound changes in Title IX, the federal law that forbids sex discrimination at schools and universities receiving federal funds. The Commission on Athletic Opportunity has received relatively little attention, though it does its work in public and its proposals could reverberate at virtually every educational institution in the country.

The 15-member commission held a meeting in Philadelphia two weeks ago at which members offered broad outlines of the kinds of changes they would like to see, especially in how the underlying regulations of Title IX apply to college sports. What emerged was a clear consensus to recommend new rules for enforcement of Title IX at its next meeting Jan. 8.

The notion of any change in the law that revolutionized women's sports has fueled anger among women's groups. A coalition of groups will gather in Washington on December 19th at the Leadership Council on Civil Rights to plan protests when the commission meets to vote on its proposals in preparation for its final report, due Jan. 31. The National Coalition for Women and Girls in Education will hold a teleconference to brief reporters on what it calls bias and flaws in commission work.

These next few weeks will be crucial ones behind the scenes at the Department of Education, where staff members are putting flesh and bone to the broad-stroke proposals commission members floated two weeks ago. Time remains for coalitions to form behind particular proposals, though commissioners are limited in how much they can do by e-mail and phone as all commission meetings, by law, must be public.

Several proposals center on changing the principle of proportionality, which says the percentage of a school's athletes who are female should mirror the percentage of women in the student body. If a college is 56% female — the national average — then about 56% of its athletes should be women.

Sports for women and girls have become a part of the national cul-

ture since Title IX's passage in 1972. About 2.7 million girls play high school sports — nine times more than in 1971. The number of women in Division I college sports has grown from 26,461, when the NCAA took over women's sports in 1981, to 62,677 in its most recent count. More males still play at both levels: 3.9 million in high school and 84,284 in Division I colleges.

Title IX has led to an increase not only in numbers but in talent and interest — to the rise of stars such as Mia Hamm and the formation of professional sports leagues such as the Women's National Basketball Association and Hamm's Women's United Soccer Association.

'Sky is the limit'

"There is almost a sky-is-the-limit sense to the proposals" being discussed by the commission, says Marcia Greenberger, co-president of the National Women's Law Center. "It is shocking to see this commission throw out 30 years of progress in such a casual way."

Title IX forbids sex discrimination in all programs at schools that get federal aid. Medical schools and law schools have long since complied. The continuing controversy is almost exclusively about how Title IX applies to sports, although the 35-word statute makes no mention of sports.

Critics of Title IX say proportionality is a quota. Proponents call it central to the meaning of the law. Critics say proportionality has been the blunt instrument used to kill about 170 wrestling teams. Proponents say if colleges with big-time, albeit revenue-producing, football programs reduced their football scholarship limit from 85 to 60 and stopped paying coaches \$1 million a year and more, they could easily afford wrestling and gymnastics teams.

Several proposals tackled the lightning rod of proportionality, which is the first part of a three-part test that the Education Department's Office of Civil Rights uses to measure whether a school meets Title IX's participation requirements. A school must pass one part of the test to comply.

Defenders of Title IX say proportionality can't be a quota because there are two other ways to comply

with the law. A 1996 clarification letter from the Department of Education referred to the first test as a "safe harbor."

The commission held four town meetings across the country and heard testimony from dozens of witnesses, including men who felt they had been denied opportunities by the unintended consequences of Title IX.

Courts have almost universally accepted the three-part test since its introduction in 1979. What happens to these precedents if the principle of proportionality is substantially changed by the Bush administration?

Brian Jones, the Department of Education's general counsel, says courts would have to decide cases based on the new rules — and there could be different outcomes as a result. "The department could issue new regulations or a new letter of clarification," Jones says.

Jeffrey Orleans, executive director of the Ivy League, was among those who helped write the original regulations in 1979. He says when the government drafts a reasonable interpretation of a statute, it leaves an opening for the government to change its mind. The key, he says, is whether new policies are reasonable interpretations.

Jocelyn Samuels, the National Women's Law Center's educational director, says courts would throw out new rules like those proposed. "That could take years," she says. "It would be deeply unfortunate if we have to go down that road."

Samuels is highly critical of the role played by ex-officio commission member Gerald Reynolds, assistant U.S. secretary of education for civil rights, whose job it is to enforce Title IX. Reynolds offered a proposal that rules be considered for private financing of college teams, citing a case in which Marquette University dropped its wrestling program, though alumni were willing to pick up the cost.

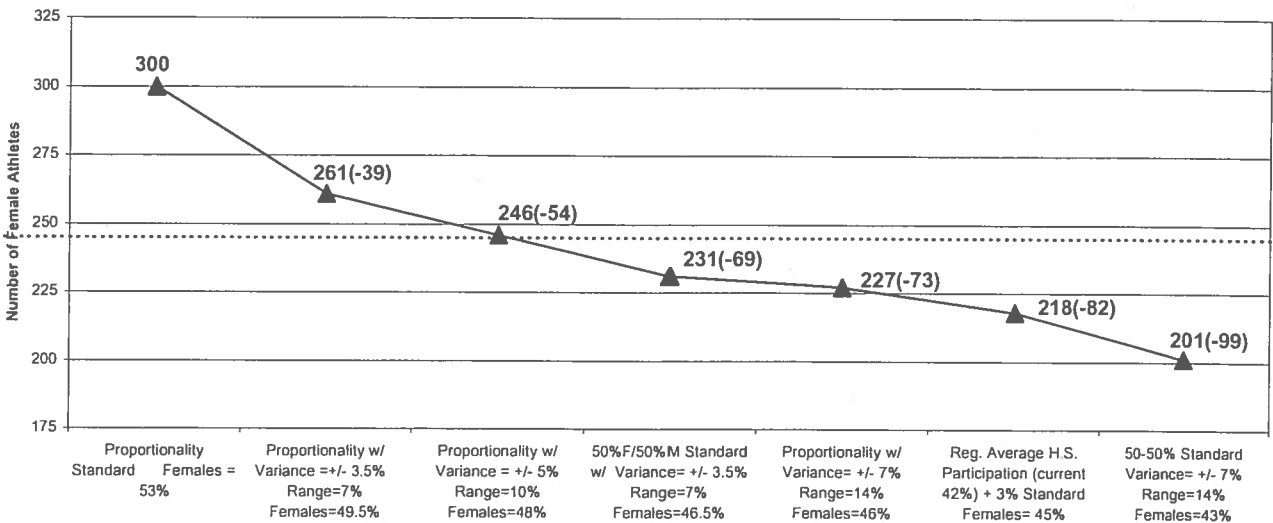
"The Department of Education staff is not merely influencing the commission," Samuels says, "but is actively pushing it in the direction of drafting new policies."

Reynolds, who has a history of opposing gender and racial preferences, has been a controversial figure since Bush selected him.

things you need to know . . .

IMPACT OF PROPOSED REVISIONS ON FEMALE ATHLETIC PARTICIPATION

Example assumes: (1) institution with 53% female enrollment, (2) no loss in opportunities for men and (3) illustrates lowest permissible number of female participants under Prong One



Women Athletes Talk About Opportunities Lost

The Commission on Opportunity in Athletics was named by Education Secretary Rod Paige last June. Critics say the makeup of the commission is unfair because 10 of its 15 members come from NCAA Division I-A football schools (those with the biggest programs), which they say have a vested interest in changing Title IX. Critics also suggest that the commission was named in June and given a deadline in January so proposals for change would come fast but not before the November election.

Title IX proponents say the kinds of changes being discussed would amount to repeal of the law.

Critics mostly held their fire during the summer and fall. "We wanted to give them the benefit of the doubt," Samuels says. The first real fireworks came last month. Women's Sports Foundation executive director Donna Lopiano had publicly called the commission a sham and urged its members to resign.

The National Association of Collegiate Women Athletics Administrators fact sheet regarding the effect of the proposed changes to the proportionality test include the following:

Under these proposals, women at a school that is 53% female would lose between 3.5% and 10% of their opportunities to play sports. This translates to 578,000 to 1.4 million fewer high school, and 31,000 to 78,000 fewer college, opportunities overall. In a typical college with 566 athletes, females would lose 39 to 99 opportunities under the various proposals.

- These proposals would worsen the imbalance that already exists on the playing field.
- Females currently receive 1.1 million less (41% fewer) opportunities at the high school level, and 58,000 less (38% fewer) opportunities at the college level, than do their male counterparts.
- These proposals would also deny women their fair share of athletic scholarship dollars.
- Because scholarships are awarded in direct relation to participation opportunities, if participation opportunities were decreased by 3.5% to 10%, women would lose from \$75 to \$189 million annually.

This only worsens current disparities since, at the present time, men receive \$133 million or 36% more than women in athletic scholarships.

- These proposals further contradict the spirit and approach of the three-part test. The first prong of the three-part test recognizes the fundamental principle that a school that provides equal opportunities to its students will be found to be in compliance with the law without further inquiry. If a school does not provide these equal opportunities, it can show that it is nonetheless in compliance with Title IX's participation requirements through the second and third prongs of the test.
- These proposals would modify that understanding by finding that a school provides equal opportunity – and declining to undertake the further inquiry currently required under the second and third prongs – even where the school falls far short of equally accommodating its male and female students.

Includes information from USA Today article, December 19, 2002, and information and table from "Proposals Being Considered by the Commission on Opportunity in Athletics Would Further Disadvantage Female Athletes and Dismantle Title IX Protections", Christine Grant, National Association of Collegiate Women Athletics Administrators

things you need to know . . .



From Barry Raff of
Planned Parenthood of Hawaii . . .

Fifth UN Asia and Pacific Population Conference Resounding Victory For Reproductive Health And Rights

On December 17, 2002 the Fifth Asia and Pacific Population Conference closed today with a resounding victory for reproductive health and rights. Despite the heavy handed tactics of the U.S. delegation, Asian nations emphatically rejected the Bush Administration's attempts to impose its ideological reproductive health agenda on the rest of the world.

Global agreements on unsafe abortion and adolescent reproductive health were upheld. Unable to make progress via harassment and intimidation alone, the U.S. delegation to the Bangkok meeting called for votes on whether to accept two paragraphs in the negotiating document - the first dealing with the prevention and treatment of unsafe abortion and the second with expanding adolescent reproductive health services and rights. (Calling for votes at UN regional and global meetings is largely unheard of, as agreements are reached by consensus, and the U.S. delegation's move was widely seen as a threat.) During each vote, every Asian delegation spoke one-by-one to uphold the language, emphatically rejecting the Bush Administration's attempts to hijack the conference and overturn global consensus on reproductive health and rights.

In the first vote on language related to the prevention and treatment of complications resulting from unsafe abortion, 30 countries voted "yes" to affirm the language, while the U.S. stood alone in voting "no." On adolescent reproductive health services, 31 nations voted "yes" to affirm the language, 2 abstained, and the U.S. was once again the sole "no" vote. In the end, the consensus document affirms the 1994 ICPD agreement (a.k.a. the Cairo Consensus) and goes even farther in calling on nations to address the sexual and reproductive health and rights of their citizens, particularly adolescents and women.

The Philippine delegation came under some of the most intense pressure from the U.S. delegation that was reportedly counting on the heavily Catholic country to fall in step with the Bush Administration's anti-choice proposals. Speaking on behalf of Philippine NGOs, Gladys F.R. Malayang, executive director of the Women's Health Care Foundation, said, "Our Philippine delegation received extreme pressure from back home, as well as inside the negotiation room, to come to the side of the U.S. delegation. At several points, we received word that the United States had complained about alleged non-

cooperation and blocks made by our delegation here. In fact, the reverse is true: it was the U.S. that all along sought to undermine and block the solidarity and unity of the Asian countries with which the Philippines stood."

Asian nations remain united in support of the Cairo Consensus. Throughout the week, senior officials from countries as diverse as India, Pakistan, China, Turkey, Fiji, New Zealand, Iran, Indonesia and the Philippines spoke forcefully against the Bush Administration's anti-health proposals. The Bush Administration made numerous proposals to water down the language in the consensus document but was met with near unanimous opposition at every turn. In presenting the draft document to the main committee, the chair of the drafting committee,

Shahab Khawaja from Pakistan said that all member countries had agreed to the draft except for the U.S.

"We regret that the draft does not have the consensus of every member of the committee...We have received a proposal from the United States; we have considered it but an agreement could not take place, meaning difference between the countries and the United States cannot be bridged..."



ABA Woman Advocate Committee

The Woman Advocate Committee (a committee of the ABA Litigation Section) invites you to consider becoming a member. The mission of the Woman Advocate Committee is exactly what the name conveys: it is devoted to advocacy on behalf of the unique issues women litigators face. The Committee sponsors numerous programs on issues of particular interest to women litigators, including advancement in the profession, rainmaking, mentoring, alternative work arrangements, and the perception of women lawyers within the bar, by the judiciary, by juries and even by the public at large. The Committee also endeavors to create a variety of oppor-

tunities for networking with other women, with prospective clients, with mentors, and with leaders in our profession. A special newsletter published by the Woman Advocate Committee will enable you to keep abreast of pertinent issues.

We invite you to join the Litigation Section and the Woman Advocate Committee today. The ABA has made it easier than ever to join the Section of Litigation. Simply visit the Section webpage at <http://www.abanet.org/litigation/home.html>. Click on "Join the Section" and fill out the Online Application. Be sure to include the Woman Advocate Com-

mittee in your choice of up to three committees. If you are already a member of the Section, you can still join the Woman Advocate Committee online. If you would like more information regarding the Woman Advocate Committee, you can e-mail the national committee via Kathleen Havener at kbhavener@hahnlaw.com or Patricia Medina at pmedina@hrice.com, or you can contact the Hawai'i Woman Advocate Committee Hawai'i Coordinators, April Wilson-South at April@hcr.org, or Carrie Okinaga at CKO@m4law.com.

things you need to know . . .

Afghanistan: Women Still Not "Liberated"

Police Abuse, Forced Chastity Tests, and Continuing Taliban-Era Restrictions

Afghan women and girls have suffered mounting abuses, harassment and restrictions of their fundamental human rights during 2002, Human Rights Watch said in a new report released today.

The 52-page report, "We Want to Live As Humans": Repression of Women and Girls in Western Afghanistan, focuses on the increasingly harsh restrictions on women and girls imposed by Ismail Khan, a local governor in the west of Afghanistan who receives military and financial assistance from the United States. Human Rights Watch said that the situation in Herat was symptomatic of developments across the country, and that women and girls were facing new restrictions in several other regions as well.

"Many people outside the country believe that Afghan women and girls have had their rights restored. It's just not true," said Zama Coursen-Neff, the co-author of the report and researcher in the Children's Rights Division of Human Rights Watch. "Women and girls are still being abused, harassed, and threatened all over Afghanistan, often by government troops and officials."

Human Rights Watch found that women's and girls' rights in Herat had improved since the fall of the Taliban, noting that many women and girls have been allowed to return to school and university, and to some jobs. But the report found that these advances were tempered by growing government repression of social and political life. Ismail Khan has censored women's groups, intimidated outspoken women leaders, and sidelined women from his administration in Herat. Restrictions on the right to work mean that many women will never be able to use their education.

The Human Rights Watch report said that the Herat government has even recruited schoolboys to spy on girls and women and report on so-called un-Islamic behavior.

In some instances, police under Ismail Khan's command have questioned women and girls seen alone

with men, even taxi drivers, and arrested those who are not related. Human Rights Watch said that men caught in such circumstances are usually taken to jail; women are brought to a hospital, where police force doctors to conduct medical exams on the women to determine whether they have had recent sexual intercourse, or if unmarried, whether they are virgins.

"Ismail Khan has created an atmosphere in which government officials and private individuals believe they have the right to police every aspect of women's and girls' lives: how they dress, how they get around town, what they say," said Coursen-Neff. "Women and girls in Herat expected and deserved more when the Taliban were overthrown."

Human Rights Watch said that problems for women and girls were growing worse in many parts of the country outside of the capital, Kabul. Throughout 2002, girls' schools in at least five different provinces have been set on fire or destroyed by rocket attacks.

Human Rights Watch said that reports from around the country indicate that government troops and officials regularly target women and girls for abuse, often invoking vague edicts on dress and social behavior. In many areas, local police and troops are enforcing Taliban-era restrictions, including banning music and forcing women and adolescent girls to continue wearing burqas.

Human Rights Watch said that many of these local forces have received weapons and assistance from the United States and other countries during 2002. Human Rights Watch called on all countries involved in Afghanistan to cease military assistance to local commanders and to coordinate all future aid through Kabul's central government.

Human Rights Watch urged the Afghan Transitional Administration in Kabul to prohibit harassment and abuse targeted at women, and to appoint new civilian governors in provinces in which serious abuses against women and girls are occurring. Human Rights Watch also

called on the international community to support the Afghan government in these efforts. It urged international donors to support the work of Afghan women, inside and outside of the government, for example, by supporting women's groups throughout the country.

Human Rights Watch called on the U.N. Assistance Mission in Afghanistan (UNAMA) to expand human rights monitoring efforts and to continue efforts to strengthen the Afghan Human Rights Commission, in order to help protect all Afghans seeking to speak openly and challenge abusers.

Noting that efforts to improve security and human rights protection would require an increased presence of international peacekeepers, Human Rights Watch urged the United States, Germany, and the Netherlands to lead efforts to expand international peacekeeping forces in Afghanistan, which are currently stationed only in the Kabul area. Germany and the Netherlands will take joint command of the peacekeeping forces in early 2003. Human Rights Watch urged the United States, European Union nations, and NATO, as well as Pakistan, Iran, and other countries bordering Afghanistan to contribute logistical and intelligence support necessary for international peacekeeping to expand.

"The U.S.-led coalition justified the war against the Taliban in part by promising that it would liberate Afghanistan's women and girls," said Coursen-Neff. "In fact, by supporting repressive warlords, the international community has broken that promise and forsaken women's rights."

The Human Rights Watch report is the second of two reports on Herat. In November, Human Rights Watch released a 51-page report, "All Our Hopes Are Crushed: Violence and Repression in Western Afghanistan," documenting abuses by Ismail Khan's forces against political opponents, detainees and ethnic minorities.

The report is available at: <http://www.hrw.org/reports/2002/afghnwmn1202/>



"Many people outside the country believe that Afghan women and girls have had their rights restored. It's just not true."

Congresswoman Patsy Takemoto Mink (continued)

(Continued from page 3)

authored the Women's Educational Equity Act.

In the early 1970's, she played a key role in the enactment of Title IX of the Higher Education Act Amendments. Written in 1972 to be enacted by 1977, Title IX, which prohibited gender discrimination by federally funded institutions, has become the major tool for women's fuller participation not only in all aspects of education, including athletics.

In 1972, she briefly ran for

president to promote women's rights platform. Her early opposition to U.S. war in Vietnam was not popular in Hawaii at first, but she never gave up her pacifism. In the early days of the civil rights movement of the 1960s, Mink joined NAACP, a national organization of activists supporting the civil rights of African Americans. Patsy's brash and fiery style, especially on social causes and issues on which she took strong and unwavering stances, often put her at odds with her colleagues.

Nonetheless, in 1992, McCall's magazine named her one of the 10 best politicians in Congress.

Among her many accomplishments, Patsy Mink was most proud of her co-authorship of the Title IX legislation prohibiting sex discrimination in education, which has changed the face of education and athletics across the nation by making them an option for girls and women. In celebrating her achievements and her life, HWL must rededicate itself

to protecting her legacy by preventing the current efforts to dismantle this landmark legislation (see separate article).

Patsy Mink was a long-standing member of Hawai'i Women Lawyers who will always be remembered with love and respect and gratitude. She was a 1996 recipient of the HWL Lifetime Achievement Award and she will always be our champion – a tireless advocate and a hero to women and girls everywhere.

Patsy Mink: June 2001:

When we talk about the status of women and economic well being, do we include the 20% of our children who go to bed every night hungry?

By enacting Welfare Reform in 1996 it was hoped that forcing people off of welfare would eliminate poverty. Welfare roles were reduced, but poverty remains. The barons of political power and rhetoric overpowered logic by legislating welfare reform premised on the belief that women remained on welfare because they were lazy.

With time limits under the reform law, women have been forced out of welfare into low-paying jobs that earn them little more than what they received under welfare. In real terms they are poorer because their children are raised by others and their out-of-pocket costs such as bus fare, clothes, and lunch money reduce their available cash.

Politicians reveled in the fact that welfare, as we knew it is gone.

I doubt that any of us could feed our families, clothe them, house them, and care for their medical and dental needs on a minimum wage, yet many families do.

The mistrust of women and denigration of poor mothers under TANF should have incensed all persons of conscience.

The truth is, the bottom fifth of the population is worse off today. This "poverty gap" hits single-mother families hardest. Today, the annual income of this group is \$8,800, down from \$10,000 in 1997. While they work, a society that values work still leaves them without vacation time, sick leave, medical benefits, or family and medical leave.

Low wage jobs usually do not include health benefits, so mothers who "move from welfare to work" become medically indigent, as do their children. To make matters worse, the chances of finding childcare are slim. In 1998, in New York City, 61% of the welfare mothers with small children who were required to work or they would lose welfare had no child care available. They had to rely on neighbors or family. Millions of children are at risk because of forced work policies imposed in a free society only on the poor.

Even at the best childcare centers the wages of childcare workers are below poverty. All of which says something about how little we value the work that goes into caring for children.

There are numerous reports and studies that document the struggles of former welfare recipients. One report states "33% skip meals, 57% worry about food for their children, 50% ran out of money for food before the end of the month."

The reality is that a sizeable proportion of our single mothers will not be able to find work that pays enough to support their families.

The real issue is if we must make work the moral equivalent of personal responsibility, then we must find appropriate work that can sustain life, health and family. And we must recognize the hard work that goes into caring for families.

True economic "well-being" for women must include legislative remedies for poor women.

We must enact policies that support poor women who go on to higher education to obtain certificates in teaching, nursing, social work, accounting, high-tech, or whatever they choose as a vocation--so that they can enjoy real opportunity and earn a living wage.

If TANF forces women out of the home and into the labor market, it must require government supported child care of the highest quality. Childcare must be fully subsidized and the childcare workers must be paid professional salaries equivalent to school teachers. Anything less says that poor children aren't worth as much as other children.

If a mother is forced to quit her job because she has no childcare, she must be eligible for unemployment compensation.

If work is the preferred ethic, then government must support that ethic with living wages, quality childcare, and educational opportunities to get a decent job. Congress is about to reauthorize the Elementary-Secondary Education Act. The basic principle of this law since 1965 is to target billions of dollars to the lowest income children. The policy is to help these children through education to build a better future. Title I endures today as the best hope for the elimination of poverty. If, as a nation, we are committed to helping our poor children with Title I, ESEA funding, why do we insist on punishing their mothers.

We need to bring our policies into harmony with concern for everyone in poverty. Mothers are children's principal caregivers. They are the sole providers of both care and income in millions of homes. We need to find ways to enhance their lives, to support them as they build upon their strengths and capacities and to help them reach for the stars. Poverty must not be allowed to suffocate hope and aspiration and opportunity.

Mardi Gras Mischief: Mayors, Players, & Masqueraders



On October 5, 2002, Hawai'i Women's Legal Foundation held their annual fundraiser at the Waikiki Sheraton Grand Ballroom. This year's theme was Mardi Gras Mischief: Mayors Players, & Masqueraders. As you can see, there are quite a few recognizable attendees who enjoyed an entertaining night, while raising money for the foundation's many worthwhile projects. Can you identify them all?



Hawai'i Women Lawyers

HWL Newsletter is published ten times a year.
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Hawaii Women Lawyers is a non-profit organization of

men and women, founded in 1976, committed to:

Improving the lives and careers of women in all aspects of the

legal profession, influencing the future of the legal profession,

and enhancing the status of women and promoting

equal opportunities for all people.

HWL annually elects members to serve on its 15-member

board of directors. Members volunteer to serve on committees

such as the Legislative, Newsletter, Programs, Projects,

Publicity, Judicial Equity and Membership committees.

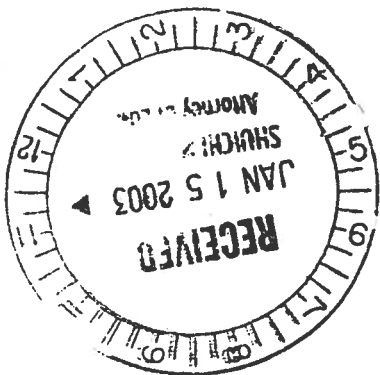
HWL is supported by the dues paid by its members and grant

funding from the Hawaii Women's Legal Foundation

and other organizations.

WE'RE ON THE WEB:

<http://www.hsba.org/sections/HWL/hwl.html>



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