

**CONSTITUTION OF THE  
UNITED STATES OF AMERICA**

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This copy of the Constitution and its amendments contains the orthography and punctuation of the originals.

Generally, the annotations to the Constitution cover cases decided after statehood only. On application of Constitution and laws of the United States to Hawaii between annexation and the establishment of the Territorial government, see Joint Resolution of Annexation and notes thereto, RLH 1955, page 13; on application of the Constitution and laws to Hawaii thereafter until statehood, see Organic Act and notes thereto, post.

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WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

**ARTICLE I**

**Section 1.** All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

**Case Notes**

U.S. Sentencing Commission Guidelines Manual was not rendered unconstitutional by Title IV of the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21. 302 F. Supp. 2d 1170.

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**Section 2.** The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within the Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.\* The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

### **Attorney General Opinions**

State legislature may not impose additional qualifications to federal offices. Att. Gen. Op. 75-22.

### **Law Journals and Reviews**

Trailblaze or Retreat? Political Gerrymandering After Vieth v. Jubelirer. 27 UH L. Rev. 269.

### **Case Notes**

State must depend on total federal census figures to apportion congressional districts. 552 F. Supp. 554.

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\*See the XIVth amendment, §2, and the XVIth amendment.

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**Section 3.** [The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.]\*

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year;[and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.]\*

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

### **Attorney General Opinions**

State legislature may not impose additional qualifications to federal offices. Att. Gen. Op. 75-22.

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\*Superseded by the XVIIth amendment.

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**Section 4.** The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

[The Congress shall assemble at least once in every Year, and such Meetings shall be on the first Monday in December, unless they shall by Law appoint a different Day.]\*\*

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\*\*Superseded by the XXth amendment.

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**Section 5.** Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behavior, and with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

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**Section 6.** The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a member of either House during his Continuance in Office.

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**Section 7.** All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

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**Section 8.** The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws, on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions:

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;--And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

### **Attorney General Opinions**

A bill that requires the labeling of poultry products specifying their geographic origin on their container does not violate the U.S. Constitution's commerce clause. Att. Gen. Op. 67-11.

Proposed amendment to article 8, titled "Nuclear Energy", of chapter 14 of Hawaii County Code, that would prohibit the transportation into or storage of any radioactive material that could be used, e.g., in an irradiation facility, impermissibly regulated the flow of interstate commerce and thus violated the

commerce clause. Att. Gen. Op. 99-1.

## Law Journals and Reviews

### Commerce.

The New Resident: Hawaii's Second-Class Citizen. 5 HBJ 77.

The Power of the Courts to Protect Journalists' Confidential Sources of Information: An Examination of Proposed Shield Legislation. 11 HBJ 35.

Hawaii's Quarantine Laws: Can Spot Come Home? 13 UH L. Rev. 175.

A Skeleton in the Legal Closet: The Discovery of "Kennewick Man" Crystallizes the Debate over Federal Law Governing Disposal of Ancient Human Remains. 21 UH L. Rev. 41.

The Jurisdictional Limits of Federal Criminal Child Pornography Law. 21 UH L. Rev. 73.

Federalism and Federal Spending: Why the Religious Land Use and Institutionalized Persons Act of 2000 is Unconstitutional. 23 UH L. Rev. 479.

The Akaka Bill: The Native Hawaiians' Race For Federal Recognition. 23 UH L. Rev. 857.

Loko i'a: A Legal Guide to the Restoration of Native Hawaiian Fishponds Within the Western Paradigm. 24 UH L. Rev. 657.

The Aboriginal Land Title of the Native People of Guam. 26 UH L. Rev. 1.

Price Controls in Paradise: Foreshadowing the Legal and Economic Consequences of Hawai'i's Gasoline Price Cap Law. 27 UH L. Rev. 549.

Gonzales v. Raich: How the Medical Marijuana Debate Invoked Commerce Clause Confusion. 28 UH L. Rev. 261.

### Patents and copyrights.

Questions and Answers About the Performance of Music Under the New Copyright Law. 15 HBJ 21.

Discretionary Use of the Doctrine of Equivalents in Patent Law: Going Beyond the Triple Identity Test of Graver Tank. 17 UH L. Rev. 513.

The Misappropriation Doctrine in Cyberspace: Protecting the Commercial Value of "Hot News" Information. 20 UH L. Rev. 421.

Music on the Internet: An International Copyright Dilemma. 23 UH L. Rev. 183.

No Free Music: Effect of A & M Records, Inc. v. Napster, Inc. on the Music Industry and Internet Copyright Law. 23 UH L. Rev. 767.

New York Times Co. v. Tasini: Can Electronic Publications Ever Be Considered Revisions of Printed Media? 24 UH L. Rev. 843.

### Taxing and spending.

Federalism and Federal Spending: Why the Religious Land Use and Institutionalized Persons Act of 2000 is Unconstitutional. 23 UH L. Rev. 479.

Patricia N. v. LeMahieu: Abrogation of State Sovereign Immunity Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act After Board of Trustees v. Garrett. 24 UH L. Rev. 347.

## Case Notes

### Commerce.

Fifth Amendment's takings clause precludes federal government from exercising commerce clause authority to promote navigation. 444 U.S. 164.

Liquor tax exemption for okolehao and pineapple wine violated commerce clause because it had both purpose and effect of discriminating in favor of local products. 468 U.S. 263.

Lagoon formed from littoral Hawaiian fishpond was incapable of use as continuous highway for purpose of navigation in interstate commerce, not subject to federal navigational servitude. 944 F.2d 1489.

No commerce clause violation by state anchoring and mooring regulations where state's interest in having regulations for public safety is substantial and there is little burden on interstate commerce. 42 F.3d 1185.

Where defendant argued that Congress exceeded its authority under commerce clause when it enacted 21 U.S.C. §841(a)(1), i.e., defendant contended, inter alia, that possession of a controlled substance is not necessarily a commercial activity that may be regulated under commerce clause, defendant's commerce clause argument lacked merit. 94 F.3d 1247.

Where defendant who entered conditional guilty pleas to two counts of illegal possession of a firearm, contended that 18 U.S.C. §922(g), as applied to defendant, represented an unconstitutional extension of Congress' power to regulate interstate commerce, and that §922(g) could not be justified as having a substantial effect on interstate commerce, district court's denial of defendant's motion to dismiss on commerce clause grounds affirmed. 479 F.3d 1153.

Airline engaged in interstate and foreign commerce subject to suit in Hawaii. 253 F. Supp. 588.

Defendant's motion to dismiss indictment alleging that defendant violated 18 U.S.C. §922(g) by possessing a rifle and ammunition while being an unlawful user of a controlled substance denied, where defendant argued that the statute, as applied to the facts of the case, was an unconstitutional exercise of Congress' commerce clause authority. 351 F. Supp. 2d 1045.

Plaintiff had not presented sufficient evidence to raise a question of fact as to whether the seasonal ban on parasailing imposed clearly excessive burdens on interstate commerce. 380 F. Supp. 2d 1160.

Control share acquisition law is unconstitutional because it directly burdens interstate commerce and its indirect burden on commerce outweighs its benefits. 643 F. Supp. 161.

Congress is provided with the exclusive authority to regulate the nation's waterways. 725 F. Supp. 1509.

Not all burdens imposed by a state upon commerce, but only undue or discriminatory ones, are forbidden. 46 H. 269, 379 P.2d 336; 48 H. 486, 405 P.2d 382.

General excise tax on commissions received by travel agencies does not offend the commerce clause if (1) it does not discriminate against interstate commerce, (2) it is fairly apportioned so as to cover only income attributable to activity within state, (3) it does not subject interstate commerce to cumulative taxation. 53 H. 419, 495 P.2d 1172.

A tax upon out-of-state company's income based upon leased telecast rights exercisable only in Hawaii held not unconstitutional burden on interstate commerce. 57 H. 175, 554 P.2d 242.

Where comparison between out-of-state taxpayer and its in-state counterpart shows tax advantage to the former, such taxpayer has no ground to complain that use tax violates the commerce clause. 58 H. 163, 566 P.2d 1091.

Imposition of public service company tax on interisland air carrier was not undue burden on commerce. 65 H. 1, 647 P.2d 263.

No violation in exempting certain locally produced products from liquor tax. 65 H. 566, 656 P.2d 724.

No violation of commerce clause by Hawaii's imposition of general excise tax on Delaware corporation which sold books to the state library where corporation's presence in Hawaii was a continuous process of sales and service creating a substantial legal nexus with Hawaii, and tax was "internally" and

"externally" consistent for fair apportionment of taxable income. 103 H. 359, 82 P.3d 804.

**Necessary and proper.**

Migratory Bird Treaty Act was upheld by Supreme Court under necessary and proper clause and Article II treaty-making power. 103 F.3d 1475.

**Taxing and spending.**

Allegation that State improperly administers unemployment compensation program is not sufficient to confer standing to challenge federal contributions to state program. 691 F.2d 905.

**Hawaii Legal Reporter Citations**

Ban on plastic beverage containers. 78-2 HLR 78-1478.

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**Section 9.** The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by an Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

### Case Notes

#### **Ex post facto law.**

Ex post facto clause did not bar aggregation of amounts of contraband distributed before and after effective date of federal statute during course of single ongoing conspiracy. 938 F.2d 972.

No ex post facto clause violation despite crew members' claims that possession of drugs on ship became illegal only when ship's flag nation consented to authority of U.S. law. 35 F.3d 426.

Not violated by rule that, for purposes of criminal history calculation, state conviction for conduct which occurred after defendant's federal offense, but for which defendant was sentenced before defendant's sentencing on the federal offense, is counted as a prior sentence. 44 F.3d 749.

Applicability of provisions of Title IV of the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21, and amendments to U.S. Sentencing Commission Guidelines Manual in defendant's sentencing, where defendant's criminal conduct clearly preceded the enactment of the relevant law, discussed. 302 F. Supp. 2d 1170.

#### **Habeas corpus.**

Where applicants, passengers on vessel intercepted by U.S. Coast Guard and brought to Midway Island, argued that Immigration and Nationality Act effectively eliminated habeas jurisdiction and that such a repeal violated the suspension clause, Congress had not provided the benefit of a habeas corpus proceeding for aliens who were not in the United States; thus, applicants had no constitutional claim. 71 F. Supp. 2d 1052.

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**Section 10.** No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

### **Attorney General Opinions**

#### **Obligation of contracts.**

Milk control legislation enacted within the proper exercise of a State's police powers will not be declared unconstitutional even though it may impair the obligation of a pre-existing contract. Att. Gen. Op. 67-10.

#### **Title of nobility.**

Section prohibits the states from granting titles of royalty upon their citizens. Att. Gen. Op. 68-20.

#### **Ex post facto law.**

Law requiring reporting of campaign contributions made before effective date of act was not an ex post facto law. Att. Gen. Op. 73-17.

#### **Import-export.**

Hawaii's general excise and use taxes do not constitute an improper "Impost or Duty" under the import-export clause. Att. Gen. Op. 94-2.

### **Law Journals and Reviews**

For discussion of contracts clause, see Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.

The Contract Clause: The "Regulated Industry" Exception. 8 UH L. Rev. 135.

Kapiolani Park Preservation Society v. City and County of Honolulu: The Lease of Public Park Land as a Breach of a Charitable Trust. 11 UH L. Rev. 199.

### **Case Notes**

#### **Bill of attainder.**

Plaintiffs, owners of leasehold interests in a condominium complex, did not meet the burden of establishing that the savings clause of the ordinance which repealed chapter 38 of the Revised Ordinances of Honolulu constituted a bill of attainder. 378 F. Supp. 2d 1258.

#### **Obligation of contracts.**

District court did not abuse its discretion in granting plaintiffs' motion for a preliminary injunction, where court granted a preliminary injunction

against operation of Act 355, L 1997 (which amended §78-13), State's "pay lag" law, on the ground that it impaired the obligations of the employees' collective bargaining agreement in violation of the contract clause. 183 F.3d 1096.

Where lessees claimed that the ordinance that repealed chapter 38 of the Revised Ordinances of Honolulu impaired their contracts with the city and county of Honolulu in violation of the contracts clause, the reserved powers doctrine did not apply and U.S. Trust Co. v. New Jersey's heightened scrutiny test provided the mandatory analysis. 512 F.3d 1148.

Plaintiffs' motion for a preliminary injunction granted, where plaintiffs filed motion seeking to enjoin defendants from delaying payroll under Act 355, L 1997 (which amended §78-13), with respect to University of Hawaii faculty members, arguing that Act 355 violated the contract clause because a five-day delay in pay violated the collective bargaining agreement between the State and the faculty members at the University. 16 F. Supp. 2d 1242.

Where there was no existing contract that Act 355, L 1997 (amending §78-13), impaired, no contracts clause violation possible and injunction no longer needed; the case was moot. 125 F. Supp. 2d 1237.

Zoning regulations did not impair development contract but only affected property which was subject matter of contract. 649 F. Supp. 926.

The legislature may alter or abolish public positions. 48 H. 370, 405 P.2d 772.

State law requiring lessor to purchase leasehold improvements upon termination of lease unconstitutionally impairs obligation of preexisting lease contract. 69 H. 112, 736 P.2d 55.

Clause does not prohibit execution of state laws on Hawaiian home lands merely because Congress has not expressed its consent to the exercise of such enforcement power. 80 H. 168, 907 P.2d 754.

No violation by repeal of court reporter temporary certification rule where repeal did not substantially impair plaintiff's contractual relationships, repeal served a significant and legitimate public purpose, and was reasonably and narrowly drawn. 82 H. 329, 922 P.2d 942.

#### **Ex post facto law.**

Not violated by rule that, for purposes of criminal history calculation, state conviction for conduct which occurred after defendant's federal offense, but for which defendant was sentenced before defendant's sentencing on the federal offense, is counted as a prior sentence. 44 F.3d 749.

Inmates' claim that sex offender treatment program violated ex post facto clause was ripe; sex offender treatment program did not violate ex post facto clause. 131 F.3d 818.

Prison's policy of not placing untreated sex offenders in minimum custody did not violate ex post facto clause. 905 F. Supp. 813.

General definition of. 50 H. 351, 440 P.2d 528.

1964 amendments to the negligent homicide statute, as applied to prior wrongdoers, were not ex post facto. 50 H. 351, 440 P.2d 528.

Law providing for increased punishment for repeat offenders, was not violative of the ex post facto clause. 61 H. 262, 602 P.2d 914.

Retrospective application of §291-4, as amended by Act 128, L 1993, did not violate ex post facto clause. 76 H. 360, 878 P.2d 699.

Chapter 846E not violative of this clause as legislature's express purpose was for chapter to be remedial rather than punitive and statutory scheme is not so punitive as to negate the State's remedial purpose. 105 H. 222, 96 P.3d 242.

**Import-export.**

No violation in exempting certain locally produced products from liquor tax. 65 H. 566, 656 P.2d 724.

**Duty of tonnage.**

Mooring and anchoring fees imposed by state regulations not a duty of tonnage. 42 F.3d 1185.

Where plaintiffs argued that mooring and anchoring fees charged by State were duty of tonnage in violation of this section, plaintiffs' Article I challenge denied. 823 F. Supp. 766.

Division of boating and ocean recreation's assessment of a two per cent ocean recreation management area fee against vessel was an impermissible tax in violation of prohibition against tonnage duties; two per cent use fee assessed other vessel was not a prohibited duty of tonnage. 195 F. Supp. 2d 1157.

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**ARTICLE II**

Section 1. The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

[The Electors shall meet in their respective States, and vote by Ballot for two Persons, of whom one at least shall not be an Inhabitant of the same State with themselves. And they shall make a List of all the Persons voted for, and the Number of Votes for each; which List they shall sign and certify, and transmit sealed to the Seat of the Government of the United States, directed to the President of the Senate. The President of the Senate shall, in the Presence of the Senate and House of Representatives, open all the Certificates, and the Votes shall then be counted. The Person having the greatest Number of Votes shall be the President, if such Number be a Majority of the whole Number of Electors appointed; and if there be more than one who have such Majority, and have an equal Number of Votes, then the House of Representatives shall immediately chuse by Ballot one of them for President; and if no Person have a Majority, then from the five highest on the List the said House shall in like Manner chuse the President. But in chusing the President, the Votes shall be taken by States, the Representation from each State having one vote; A quorum for this Purpose shall consist of a Member or Members from two thirds of the States, and a Majority of all the States shall be necessary to a Choice. In every Case, after the Choice of the President, the Person having the greatest Number of Votes of the Electors shall be the Vice President. But if there should remain two or more who have equal Votes, the Senate shall chuse from them by Ballot the Vice President].\*

The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.

No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.

In Case of the Removal of the President from Office, or of his Death, Resignation, or Inability to discharge the Powers and Duties of the said Office, the Same shall devolve on the Vice President, and the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.\*\*

The President shall, at stated Times, receive for his Services, a Compensation, which shall neither be increased nor diminished during the Period for which he shall have been elected, and he shall not receive within that Period any other Emolument from the United States, or any of them.

Before he enter on the Execution of his Office, he shall take the following Oath or Affirmation:-- I do solemnly swear (or affirm) that I will faithfully execute the Office of the President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the

United States.

### Attorney General Opinions

State legislature may not impose additional qualifications to federal offices. Att. Gen. Op. 75-22.

### Case Notes

Migratory Bird Treaty Act was upheld by Supreme Court under Article I, Section 8 necessary and proper clause and Article II treaty-making power. 103 F.3d 1475.

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\*Superseded by XIIth and XXth amendments.

\*\*See the XXth and XXVth amendments.

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**Section 2.** The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons, for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

### **Law Journals and Reviews**

Peeking Abroad?: The Supreme Court's Use of Foreign Precedents in Constitutional Cases. 26 UH L. Rev. 385.

### **Case Notes**

Temporary judicial commissions valid. 751 F.2d 1008.

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**Section 3.** He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

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**Section 4.** The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

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**ARTICLE III****Law Journals and Reviews**

The Constitutional Structure of the Courts of the United States Territories:  
The Case of American Samoa. 13 UH L. Rev. 379.  
Judicial Review and Sexual Freedom. 30 UH L. Rev. 1.

**Case Notes**

Not violated by magistrate's review of motion to dismiss, where district court exercised own judgment. 764 F.2d 690.

Plaintiff lacked standing under Article III to maintain action regarding U.S. Army's decision to award computer service contract, because plaintiff conceded that plaintiff had no substantial chance of receiving the award. 113 F.3d 1129.

**Section 1.** The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation which shall not be diminished during their Continuance in Office.

**Law Journals and Reviews**

The Price of Precedent: Anastasoff v. United States. 23 UH L. Rev. 795.

**Case Notes**

Recess appointee to federal bench cannot exercise judicial power of United States. 726 F.2d 1328.

Not violated by magistrate-conducted voire dire in criminal case without defendant's consent. 760 F.2d 999.

Rule that jury selection by magistrate without defendant's consent violates Federal Magistrate Act did not apply retroactively to final conviction challenged on collateral review. 944 F.2d 523.

Defendant has constitutional right to have all stages of a criminal trial conducted by a person with jurisdiction to preside. 42 F.3d 473.

U.S. Sentencing Commission Guidelines Manual was not rendered unconstitutional by Title IV of the Prosecutorial Remedies and Tools Against the Exploitation of Children Today Act of 2003 (PROTECT Act), Pub. L. No. 108-21. 302 F. Supp. 2d 1170.

Congress need not make an Article 3 court available for adjudication of disputes arising out of events occurring within a United States territory. 550 F. Supp. 1227.

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**Section 2.** The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party; to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

### **Law Journals and Reviews**

The Judicial Improvements Act of 1990: Historic Changes in Federal Civil Procedure Aimed at Improving the Efficiency of Federal Courts and Reducing the Uncertainty and Cost Associated with Federal Litigation. 23 HBJ 41.

Hawaii's Thousand Friends v. Anderson: Standing to Challenge Governmental Actions. 12 UH L. Rev. 435.

Evolution of the Act of State Doctrine: W.S. Kirkpatrick Corp. v. Environmental Tectonics Corp. and Beyond. 13 UH L. Rev. 687.

Hawai'i's Justiciability Doctrine. 26 UH L. Rev. 537.

How to Transfer Venue When You Only Have One: The Problem of High Profile Criminal Jury Trials in American Samoa. 29 UH L. Rev. 325.

### **Case Notes**

Standing of various taxpayers to challenge alleged unconstitutionality of OHA programs. 741 F.2d 1169.

Case or controversy requirement satisfied by cloud on title created by litigation and language of court decisions. 753 F.2d 1468.

Native Hawaiian group had standing to bring injunctive action for violation of Admission Act. 764 F.2d 623.

Alleged past mistreatment of litigant, by itself, was insufficient to demonstrate likelihood of future deprivations for purposes of meeting case or controversy requirement. 961 F.2d 852.

Congress had power through "arising under" clause to enact alien tort statute. 978 F.2d 493.

District courts have original jurisdiction under Alien Tort Act for suit by alien for wrongful death, committed by military intelligence officials through torture prohibited by the law of nations. 25 F.3d 1467.

Foreign Sovereign Immunities Act does not apply when action is against estate of an individual foreign official whose actions were outside the official's scope of authority. 25 F.3d 1467.

Plaintiffs, Hawai'i medicaid recipients who suffered from tobacco-related illnesses, had standing in suit against state officials, where plaintiffs alleged that the officials violated and continued to violate federal

disbursement rules for medicaid recovery. 311 F.3d 929.

Plaintiffs lacked standing to challenge the restriction on office of Hawaiian affairs trustee appointments to Hawaiians, because plaintiffs neither alleged nor provided evidence of any injury related to the appointment process. 314 F.3d 1091.

Appellant lacked standing to challenge (1) office of Hawaiian affairs business loan program where appellant failed to demonstrate an injury in fact; and (2) native Hawaiian eligibility requirement for Hawaiian homestead leases because appellant's injury was not redressable. 342 F.3d 934.

Appellant who contended, among other things, injury by the provisions of article XII of the state constitution and chapter 10 personally subjecting appellant to racial classification, lacked standing as appellant did not suffer an injury in fact. 342 F.3d 934.

Appellant was properly tried and convicted in the U.S. district court for the district of Hawaii for committing federal crimes in American Samoa, where, inter alia, venue was proper in the district of Hawaii under 18 U.S.C. §3238. 472 F.3d 638.

Plaintiffs who challenged the department of Hawaiian home lands (DHHL)/Hawaiian homes commission (HHC) lease eligibility programs in their capacity as state taxpayers, lacked standing to sue the United States and the United States remained an indispensable party to any challenge to the DHHL/HHC lease eligibility criteria; plaintiffs did not have standing as state taxpayers to challenge the appropriation of state revenue to the office of Hawaiian affairs. 477 F.3d 1048.

Statute authorizing search and seizure of psychiatrist's records inflicts "injury in fact" which satisfies case or controversy requirement. 481 F. Supp. 1028.

Case or controversy presented. 588 F. Supp. 889; 590 F. Supp. 778.

No standing to sue for price-fixing and monopoly since no showing that alleged price-fixing caused injury. 606 F. Supp. 584.

Whether liability coverage existed was case or controversy even before insured's liability determined. 608 F. Supp. 383.

No alienage jurisdiction where aliens on both sides of litigation. 778 F. Supp. 1535.

No case or controversy where plaintiffs not threatened with nor subject to application of Hawaii employment discrimination statute, chapter 378. 800 F. Supp. 882.

Plaintiff had no standing to bring Truth in Lending Act claims unless plaintiff could show claims were exempt from bankruptcy estate or abandoned by bankruptcy trustee. 949 F. Supp. 1447.

Requests for injunctive and declaratory relief rendered moot by the cessation of the disputed low-frequency active sonar research and the expiration of the subject permit. 14 F. Supp. 2d 1198.

Plaintiff did not have standing to bring lawsuit, where plaintiff asserted mishandling of annual social security trust funds from 1960-1996, by improperly allowing social security trust funds to be spent for deficit reduction. 37 F. Supp. 2d 1176.

Plaintiff was without standing, where plaintiff sought to enjoin State and city and county of Honolulu from implementation or enforcement of any and all state statutes and city ordinances that might apply to the business that plaintiff claimed to be developing, involving a commercial boating activity on the Ala Wai canal. 57 F. Supp. 2d 1028.

Plaintiff, disabled individual who required a wheelchair to gain mobility, met constitutional minimum of Article III standing to seek injunctive relief for alleged Americans with Disabilities Act of 1990 violations plaintiff

encountered at fast food franchised restaurant and had standing to sue for injunctive relief for barriers not initially encountered; plaintiff's claims not specifically related to nonmobility denied due to lack of standing. 96 F. Supp. 2d 1065.

Department of education's appeal of hearing officer's award of compensatory education moot; student had already received award of three months of compensatory education and had already graduated from high school. 127 F. Supp. 2d 1103.

Defendants' motion to dismiss plaintiff's appeal of plaintiff's claim for compensatory education granted, where appeal of hearing officer's award moot; among other things, plaintiff had received a high school diploma. 127 F. Supp. 2d 1117.

Defendants' issuance of supplemental environmental assessment for routine training at Makua Military Reservation and PFC Pililaau Range Complex (SEA) and finding of no significant impact (FONSI) constituted a final agency action ripe for judicial review at commencement of litigation under Administrative Procedure Act; plaintiff's claims had not been rendered moot by defendants' voluntary withdrawal of SEA and FONSI. 136 F. Supp. 2d 1155.

Plaintiff challenging constitutionality of article XII of state constitution insofar as it created Hawaiian Homes Commission and office of Hawaiian affairs and established native Hawaiian gathering rights, lacked standing, where, inter alia, as to OHA's programs, plaintiff had not suffered injury-in-fact. 188 F. Supp. 2d 1219.

Plaintiff challenging constitutionality of article XII, §§5 and 6 of state constitution and chapter 10, lacked standing, where plaintiff had not suffered any injury-in-fact. 188 F. Supp. 2d 1233.

Where plaintiffs, seeking an order enjoining the executive director of the campaign spending commission, the commission, and the commissioners from taking any action adverse to plaintiffs, had not demonstrated a case or controversy for Article III purposes, court dismissed complaint for lack of jurisdiction and denied plaintiffs' motion for preliminary injunction as moot. 199 F. Supp. 2d 1018.

Plaintiffs alleging systemic harassment of lesbian, gay, bisexual, and transgender youth at a secure juvenile correctional facility, as well as differential treatment by staff and administrators, had standing to seek injunctive relief; one plaintiff's claims had become moot where there was no realistic possibility that the plaintiff would be returned to the facility. 415 F. Supp. 2d 1129.

Employees' retirement system (ERS) trustees had standing as fiduciaries of the system and its members to challenge legislation that would impair the ERS where, because of the legislature's diversion of excess investment earnings to reduction of employer contributions, ERS had continued to suffer a large unfunded actuarial liability, at the very core of the dispute was the impact of Act 100, L 1999 on the viability of the system, and injunctive relief would provide assurance that the legislature would honor its representations that excess investment earnings would be retained by the ERS. 114 H. 302, 162 P.3d 696.

Plaintiffs did not have standing where they failed to allege an "actual or threatened injury"; argument that impairing the employees' retirement system by removing "actuarial investment earnings in excess of a ten per cent investment yield rate" to be credited against employer contributions required for 1997 and 1998 would ultimately affect all members of the employees' retirement system was "abstract, conjectural, or merely hypothetical" with respect to each individual plaintiff. 114 H. 302, 162 P.3d 696.

Plaintiffs, retired and current employees challenging the State's removal of

excess earnings from the retirement system, did not have standing where they were unable to show that they had "not received any pension benefit to which he or she was entitled", nor were they able to show any "immediate threat that the pension fund would become insolvent". 114 H. 302, 162 P.3d 696.

Plaintiff-county, acting on behalf of the county council, had standing to maintain action where it (1) sufficiently alleged a threatened injury--the usurpation of the county council's taxing authority, (2) the council's threatened injury was fairly traceable to the defendants' duty to enforce the charter amendment, and (3) a favorable decision of invalidating the charter amendment would likely have provided relief for the threatened injury. 115 H. 15, 165 P.3d 916.

Clause 2 did not grant original jurisdiction to U.S. Supreme Court in a case between a state and one of its own citizens; additionally, original jurisdiction did not lie in the U.S. Supreme Court because the instant case involved state penal statutes and was not civil in nature. 77 H. 222 (App.), 883 P.2d 644.

Where plaintiff failed to demonstrate in plaintiff's complaint "such a personal stake in the outcome of the controversy as to warrant plaintiff's invocation of the court's jurisdiction and to justify exercise of the court's remedial powers on plaintiff's behalf," plaintiff lacked standing to challenge two city zoning and development ordinances. 96 H. 134 (App.), 28 P.3d 350.

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**Section 3.** Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or in Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attained.

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**ARTICLE IV**

**Section 1.** Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

**Law Journals and Reviews**

Re-Evaluating the Limits of the Full Faith and Credit Clause After Baker v. General Motors Corporation. 21 UH L. Rev. 747.

Love and Let Love: Same-Sex Marriage, Past, Present, and Future, and the Constitutionality of DOMA. 22 UH L. Rev. 185.

**Case Notes**

Divorce decrees of foreign countries. 4 U.S.D.C. Haw. 563; 252 F. Supp. 313.

This clause inapplicable to mere commencement of action in another jurisdiction. 14 H. 80, app. dismiss'd 187 U.S. 308.

Divorce. 24 H. 239.

Finality of the judgment, whether a requisite. 40 H. 397.

Hawaii has as much leeway to depart from foreign judgment as does state rendering it. 41 H. 246, reh'g den. 41 H. 651; 49 H. 273, 291, 414 P.2d 925.

Inapplicable to right to practice law. 44 H. 26, 30, 352 P.2d 607; 44 H. 597, 598, 358 P.2d 709, reh'g den. 44 H. 611, 359 P.2d 294.

Applicability of clause to foreign custody decrees. 49 H. 20, 407 P.2d 885.

A divorce decree in case when defendant did not appear in person but was represented by counsel who made general appearance is entitled to full faith and credit. 51 H. 173, 454 P.2d 122.

Basic considerations in sustaining foreign court's assumption of personal jurisdiction over nonresident and according full faith and credit to its judgment. 59 H. 272, 580 P.2d 66.

Divorce proceedings. 1 H. App. 496, 621 P.2d 387.

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**Section 2.** The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

No Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due.

### Case Notes

Right to harbor berth at the same rates residents receive is not a fundamental privilege of citizenship. 651 F.2d 661.

None of plaintiffs' "fundamental" rights, for purposes of the privileges and immunities clause, were at stake with respect to charging nonresidents an access fee to enter bay that was designated a marine life conservation district and nature preserve. 215 F. Supp. 2d 1098.

Where plaintiffs challenged the constitutionality of the pre-employment residency requirement for public employment set forth in §78-1(c), plaintiffs had standing to challenge the constitutionality of §78-1, and the court granted plaintiffs' motion for preliminary injunction to bar defendants from enforcing the pre-employment residency requirement of §78-1(c). 423 F. Supp. 2d 1094.

Scope of habeas corpus proceeding to resist extradition considered. 48 H. 508, 405 P.2d 309.

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**Section 3.** New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislature of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

### **Law Journals and Reviews**

The Commonwealth of the Northern Mariana Islands' Rights Under United States and International Law to Control Its Exclusive Economic Zone. 13 UH L. Rev. 477.

The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands. 14 UH L. Rev. 445.

Resolving the Hostility: Which Laws Apply to the Commonwealth of the Northern Mariana Islands When Federal and Local Laws Conflict. 21 UH L. Rev. 237.

How to Transfer Venue When You Only Have One: The Problem of High Profile Criminal Jury Trials in American Samoa. 29 UH L. Rev. 325.

### **Case Notes**

Authority of Congress to provide for the government of Hawaii prior to statehood was derived from clause 2 of this section. 44 H. 634, 361 P.2d 390.

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**Section 4.** The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

#### **Law Journals and Reviews**

Trailblaze or Retreat? Political Gerrymandering After Vieth v. Jubelirer.  
27 UH L. Rev. 269.

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**ARTICLE V**

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

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## ARTICLE VI

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges of every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

### Attorney General Opinions

Article 8, titled "Nuclear Energy", of chapter 14 of Hawaii County Code and proposed amendment to the article, that would prohibit the transportation into or storage of any radioactive material that could be used, e.g., in an irradiation facility, were preempted by the Atomic Energy Act of 1954. Att. Gen. Op. 99-1.

### Law Journals and Reviews

Hawaiian Self-Determination: A Need for Debate. III HBJ No. 13, at pg. 121.  
Center for Bio-Ethical Reform, Inc. v. City & County of Honolulu:  
Demonstrating the Need to Abandon the Field Preemption Doctrine. 29 UH L. Rev. 501.

### Case Notes

#### Supremacy.

No implied preemption of state mooring and anchoring regulations where congressional intent to preempt state action is not clearly manifest, federal regulation has not occupied the field of navigation, and the federal interest in navigation is not so dominant as to assume federal preemption of state laws. 42 F.3d 1185.

No preemption of state mooring and anchoring regulations by Submerged Lands Act where there was no actual conflict between federal Act and Hawaii's regulations. 42 F.3d 1185.

Act 243 [L 1995] preempted by Newspaper Preservation Act, because Act 243 intruded upon a field preempted by Congress; plaintiffs' preemption claim was ripe. 103 F.3d 742.

State regulation that prohibited commercial tour boat operators from operating their tour boats in Hanalei Bay, in conjunction with relevant federal shipping laws, violated the supremacy clause. 340 F.3d 1053.

Device implanted in plaintiff's leg had no requirements imposed upon it by Medical Device Amendments to Federal Food, Drug, and Cosmetic Act or Food and Drug Administration which would preempt state tort claims. 841 F. Supp. 327.

Where plaintiffs filed motion for preliminary injunction regarding Act 359 of 1993 Hawaii legislature (relating to Hawaiian sovereignty), as amended in 1994 and 1996, no supremacy clause violation found regarding native Hawaiian vote.

941 F. Supp. 1529.

Complaint did not allege conduct which would constitute state tort exception to area of labor relations otherwise preempted by federal law. 65 H. 189, 649 P.2d 1119, cert. denied, 461 U.S. 904; 73 H. 276, 831 P.2d 1335.

Implied warranty claim not preempted by Medical Device Amendments to Federal Food, Drug, and Cosmetics Act. 74 H. 1, 837 P.2d 1273.

Federal Aviation Act did not preempt state's power, under §239-6, to tax gross receipts attributable to the ground transportation portion of air packages that common carrier transported interisland and/or between Hawaii and the mainland. 88 H. 336, 966 P.2d 648.

Public utilities commission correctly determined that it could not assume jurisdiction over federal military camp and dismissed complaint for lack of subject matter jurisdiction as this Article preempted any state regulation over the military camp; it was not shown that camp was not an instrumentality of the United States and therefore not entitled to invoke immunity or that the camp was an instrumentality of the United States, but there was a clear and unambiguous congressional authorization waiving camp's immunity from direct state regulation. 112 H. 150, 145 P.3d 693.

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**ARTICLE VII**

The Ratification of the Conventions of nine States, shall be sufficient for the Establishment of this Constitution between the States so ratifying the Same. Done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and of the Independence of the United States of America the Twelfth In Witness whereof We have hereunto subscribed our Names.

Go: Washington\_\_\_\_\_  
Presidt. and deputy from Virginia

*New Hampshire**John Langdon**Nicholas Gilman**Massachusetts**Nathaniel Gorham**Rufus King**Connecticut**Wm. Saml. Johnson**Roger Sherman**New York**Alexander Hamilton**New Jersey**Wil: Livingston**David Brearley**Wm. Paterson**Jona: Dayton**Pennsylvania**B. Franklin**Thomas Mifflin**Robt. Morris**Geo. Clymer**Thos. Fitzsimons**Jared Ingersoll**James Wilson**Gouv Morris**Delaware**Geo: Reed**Gunning Bedford jun**John Dickinson**Richard Bassett**Jaco: Brown**Maryland**James McHenry**Dan of St. Thos. Jenifer**Danl. Carroll**Virginia**John Blair-**James Madison, Jr.**North Carolina**Wm. Blount**Richd. Dobbs Spaight**Hu Williamson**South Carolina**J. Rutledge**Charles Cotesworth Pinckney**Charles Pinckney**Pierce Butler**Georgia**William Few**Abr. Baldwin**Attest William Jackson**Secretary*

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**AMENDMENTS TO THE CONSTITUTION**

For decisions applying to U.S. Constitution and Amendments to the Territory of Hawaii, see notes to Organic Act, §§5, 55, 86.

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**[ARTICLE I.--1791]**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Attorney General Opinions**

Statute which would include newspapers within definition of public utility and subject them to PUC jurisdiction would be violative of freedom of the press. Att. Gen. Op. 74-11.

Licensing of church-sponsored day care programs constitutional. Att. Gen. Op. 85-25.

Section 445-112(11), regulating political signs, was unconstitutional and unenforceable. Att. Gen. Op. 96-4.

Section 452-23(a)(4), (5), and (6) was overly broad and infringed upon commercial speech rights afforded by First Amendment. Att. Gen. Op. 98-2.

Section 11-204(b): violates First Amendment because it restricts persons or other entities from making contributions to noncandidate ballot measure committees. Section 11-204(j): statutory provision prohibits contributions based upon length of time that noncandidate committee has been registered; this durational requirement is unconstitutional because it imposes limitations on the right of association and the right of expression when contributions are made to noncandidate committees. Att. Gen. Op. 98-5.

Zelman v. Simmons-Harris, in which the U.S. Supreme Court held that an Ohio school voucher program did not violate the establishment clause, was inapposite in Hawaii; a publicly-funded Hawaii school voucher program would violate article X, §1 of the state constitution. Att. Gen. Op. 03-1.

**Law Journals and Reviews**

The Decision to Disobey: A View of Symbolic Civil Disobedience. 7 HBJ 5.  
The Dissenting Cop. 9 HBJ 59.

The Power of the Courts to Protect Journalists' Confidential Sources of Information: An Examination of Proposed Shield Legislation. 11 HBJ 35.

Cameras In Court-Focusing In On Constitutional Problems. 15 HBJ 83.

Estes v. Kapiolani Women's and Children's Medical Center: State Action and the Balance Between Free Speech and Private Property Rights in Hawaii. 13 UH L. Rev. 233.

The Lum Court, Land Use, and the Environment: A Survey of Hawai'i Case Law 1983 to 1991. 14 UH L. Rev. 119.

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.

The Lum Court and Native Hawaiian Rights. 14 UH L. Rev. 377.

The Lum Court and the First Amendment. 14 UH L. Rev. 395.

Burdick v. Takushi: Yes to Equal Voice in Voting, No to a Fundamental Right to Vote for Any Particular Candidate. 14 UH L. Rev. 715.

The Law and Politics of Dancing: Barnes v. Glen Theatre and the Regulation of Striptease Dance. 14 UH L. Rev. 925.

Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah: Reaffirming the Supreme Court's Religious Free Exercise Jurisdiction. 16 UH L. Rev. 401.

Curing A Bad Reputation: Reforming Defamation Law. 17 UH L. Rev. 113.

Non-Profit Peddling in Waikiki: To Permit or Not to Permit? 17 UH L. Rev. 539.

Son of Simon & Schuster: A "True Crime" Story of Motive, Opportunity and the First Amendment. 18 UH L. Rev. 201.

Rosenberger v. Rector & Visitors of University of Virginia and the Equal Access Rights of Religious People. 18 UH L. Rev. 339.

Confidentiality Breeds Contempt: A First Amendment Challenge to Confidential Ethics Commission Proceedings of the City & County of Honolulu. 18 UH L. Rev. 797.

The Inherent Hostility of Secular Public Education Toward Religion: Why Parental Choice Best Serves the Core Values of the Religion Clauses. 19 UH L. Rev. 697.

The Jurisprudence of Justice Scalia: A Critical Appraisal. 22 UH L. Rev. 385.

The Primacy of Political Actors in Accommodation of Religion. 22 UH L. Rev. 403.

Justice Scalia and the Religion Clauses. 22 UH L. Rev. 449.

Full and Equal Rights of Conscience. 22 UH L. Rev. 469.

Transcript of the University of Hawai'i Law Review Symposium: Justice Scalia and the Religion Clauses. 22 UH L. Rev. 501.

Federalism and Federal Spending: Why the Religious Land Use and Institutionalized Persons Act of 2000 is Unconstitutional. 23 UH L. Rev. 479.

Legal Services Corporation v. Velazquez: A Correct Application of the U.S. Supreme Court's First Amendment Limited Public Forum Analysis. 24 UH L. Rev. 331.

Hawai'i's Response to Strategic Litigation Against Public Participation and the Protection of Citizens' Right to Petition the Government. 24 UH L. Rev. 411.

Revisiting San Francisco Arts & Athletics v. United States Olympic Committee: Why It Is Time to Narrow Protection of the Word "Olympic". 24 UH L. Rev. 729.

Child Pornography on the Internet: The Effect of Section 230 of the Communications Decency Act of 1996 on Tort Recovery for Victims Against Internet Service Providers. 24 UH L. Rev. 763.

Evolution-Creationism Debate: Evaluating the Constitutionality of Teaching Intelligent Design in Public School Classrooms. 25 UH L. Rev. 9.

Preserving the Religious Freedom and Autonomy of Religious Institutions After Equal Employment Opportunity Commission v. Kamehameha Schools/Bishop Estate. 26 UH L. Rev. 203.

Emergency Contraception in Religious Hospitals: The Struggle Between Religious Freedom and Personal Autonomy. 27 UH L. Rev. 65.

Your Body, Your Choice: How Mandatory Advance Health-Care Directives Are Necessary to Protect Your Fundamental Right to Accept or Refuse Medical Treatment. 27 UH L. Rev. 201.

Kniesel v. ESPN: Demonstrating the Need for a Common-Sense Subjective Standard for Meaning in Defamation Law. 28 UH L. Rev. 231.

A Public Lecture by Anthony Lewis, The First Amendment in Perspective. 29 UH L. Rev. 13.

Free Exercise and Hybrid Rights: An Alternative Perspective on the Constitutionality of Same-Sex Marriage Bans. 29 UH L. Rev. 23.

Compelled Expression of the Religiously Forbidden: Pharmacists, "Duty to Fill" Statutes, and the Hybrid Rights Exception. 29 UH L. Rev. 97.

Playing by the Rules of Intellectual Property: Fantasy Baseball's Fight to Use Major League Baseball Players' Names and Statistics. 29 UH L. Rev. 301.

Restricting Student Speech that Invades Others' Rights: A Novel Interpretation of Student Speech Jurisprudence in Harper v. Poway Unified School District. 29 UH L. Rev. 479.

An Analysis of Hawai'i's Tradition of "Local" Ethnic Humor. 30 UH L. Rev. 219.

### Case Notes

#### Generally.

State's ban on write-in voting does not unreasonably infringe upon voters' constitutional rights. 504 U.S. 428.

Military bases are at least one location in which First Amendment restrictions are permissible. 582 F.2d 1194.

If government creates a public forum, even though under no duty to do so, its power to exclude expression is severely limited. 710 F.2d 1410.

Recalled officials likely to succeed on claim that two-year ban on their election to office is unconstitutional. 775 F.2d 1393.

Section 11-216(d)'s prohibition on complainant publicly disclosing that complaint was filed with campaign spending commission and on other disclosures by third parties unconstitutionally overbroad. 30 F.3d 1115.

Prison officials entitled to 42 U.S.C. §1983 qualified immunity from inmate's claim of retaliatory punishment for exercising inmate's First Amendment rights where reasonable prison official would have believed that inmate's transfer from minimum to medium security facility was lawful, advancing legitimate penological goals. 55 F.3d 454.

Where appellants claimed, inter alia, that restrictions imposed on organizations who chose to receive Legal Services Corporation funds were unconstitutional because they conditioned the receipt of a benefit, the grant of federal funds, on the relinquishment of the right to engage in protected activities, appellants' unconstitutional conditions argument was without merit because neither the congressional enactments nor the implementing regulations infringed on First Amendment rights. 145 F.3d 1017.

Government cannot require an individual to relinquish First Amendment rights as a condition of employment. 437 F. Supp. 368.

Joint efforts to influence officials in the exercise of their public duties are beyond scope of antitrust laws in that to prohibit such activity would impair right to petition government. 460 F. Supp. 1359.

County ordinance which allows refusal to issue, suspension, or revocation of license to exhibit public shows on grounds of (1) presentation of obscene, indecent, or immoral show; or (2) past violation of certain pornography statutes is unconstitutional on its face. 488 F. Supp. 820.

Service of process is an expressive act protected by the First Amendment. 823 F. Supp. 806.

With the ability to control the separately incorporated and insular second organization, alternative channels existed for Legal Services Corporation-funded organizations to pursue their constitutionally protected activities; thus, the Legal Services Corporation regulations did not constitute an unconstitutional condition and thus, were not violative of plaintiffs' First Amendment rights. 981 F. Supp. 1288.

State's motion for a preliminary injunction granted, where State sought a preliminary injunction to enjoin defendants from taking any further steps to implement termination agreement and close newspaper, and defendants claimed, among other things, that any injunctive relief would necessarily violate their First Amendment rights to refrain from speaking or publishing. 99 F. Supp. 2d 1241.

Ordinance prohibiting use of streets for soliciting sales does not abridge freedom of press or freedom of speech. 43 H. 71.

"Loitering" statutes, effect of First Amendment, section 265-52

distinguished. 49 H. 624, 632, 425 P.2d 1014.

Narrowing of statute by common sense interpretation where no First Amendment rights involved. 49 H. 624, 634, 425 P.2d 1014.

Obstructing use of university office constituted conduct outside First Amendment rights, and ex parte temporary restraining order was not constitutionally invalid. 52 H. 427, 478 P.2d 320.

Exercise of First Amendment rights and the trespass statutes. 54 H. 450, 509 P.2d 1095.

Obscenity is outside protection of First Amendment. 58 H. 440, 573 P.2d 945.

Not violated by disqualification of recalled officials from running for vacancy created by recall. 68 H. 263, 711 P.2d 723.

Section 842-2(3) does not implicate First Amendment concerns because it is neither directed at, nor does it regulate or proscribe First Amendment freedoms, i.e., membership in a political organization or certain beliefs held by an individual. 84 H. 211, 933 P.2d 48.

Section 712-1200 does not proscribe constitutionally protected conduct and was not overbroad as applied to defendant's actual conduct; the language of the section also was sufficiently clear that defendant was not required to guess at its meaning, the statute gave defendant fair warning that defendant was prohibited from offering or agreeing to engage in sex for a fee. 107 H. 360 (App.), 113 P.3d 811.

### **Freedom of press.**

Reporter's right of access to government news conferences. 369 F. Supp. 906.

Factors used to determine whether news reporter must reveal sources in libel action. 507 F. Supp. 880.

Freedom of press guarantee is not sufficient in itself to protect reporter from being compelled to disclose confidential news source. 45 H. 317, 367 P.2d 472.

Is not an absolute. 45 H. 317, 367 P.2d 472.

In libel action by county supervisor against newspaper, plaintiff at trial must show knowledge of falsity or reckless disregard of the truth, but upon defendant's motion for summary judgment situation different. 49 H. 675, 427 P.2d 79.

In libel action, newspaper publisher not entitled to have case withdrawn from the jury merely because the article is not clearly defamatory. 49 H. 675, 681-83, 427 P.2d 79.

Libel action by public official against newspaper; summary judgment for defendant granted when. 50 H. 648, 448 P.2d 337.

Defamation; concept of "public figure" discussed. 56 H. 522, 543 P.2d 1356.

News media liable for negligent defamation of private person. 56 H. 522, 543 P.2d 1356.

Right to freedom of press not denied by the closing of judicial proceedings to the public. 59 H. 224, 580 P.2d 49.

Where plaintiff in defamation action failed to prove that newspaper had acted with actual malice when it erroneously published story naming plaintiff as the target of an investigation, summary judgment for newspaper properly granted. 89 H. 254, 971 P.2d 1089.

### **Establishment of religion.**

Statute declaring Good Friday as state holiday does not violate establishment clause. 932 F.2d 765.

Parole officer did not have qualified immunity. First Amendment was violated where the parole officer allegedly required a parolee to attend a drug treatment program rooted in religious faith and then recommended revoking

parole because the parolee refused to participate; pertinent establishment clause law was clearly established on this point such that a reasonable official would know that the official's conduct was illegal. 504 F.3d 705.

University policy of not funding student organizational activities intended to or actually promoting particular religious points of view, even if secular in context, constitutional if funding criteria evenly applied to all eligible groups seeking funding of nonsectarian events. 15 F.3d 922.

Religious Land Use and Institutionalized Persons Act of 2000 does not violate the establishment clause in a land use context. 298 F. Supp. 2d 1010.

Plaintiffs' motion for preliminary injunction denied as to their establishment clause claim, where they claimed, inter alia, that certain staff members at a secure juvenile correctional facility promoted religion, often discussing religious teachings and quoting from the Bible, and that the facility ratified the conduct of these staff members. 415 F. Supp. 2d 1129.

### **Freedom of religion.**

Compelling government interest in preventing trespass to military land outweighs defendant's free exercise of religion. 582 F.2d 1194.

Sex education films, shown to 5th and 6th grades, with excusal system which permitted parents to have their children excused from viewing the films did not violate the free exercise of religion clause. 52 H. 436, 478 P.2d 314.

Not violated by requiring church-run school to make unemployment contributions on behalf of its lay teachers and staff. 68 H. 410, 718 P.2d 267.

Geothermal plant does not regulate or burden religious beliefs nor does it inhibit religious speech. 69 H. 255, 740 P.2d 28.

Under the First Amendment and article I, §4 of Hawai'i constitution, civil courts have no authority to resolve disputes that turn on matters of church doctrine, practice, polity, or administration or that cannot be decided without resolving underlying controversies over such matters. When faced with such claims, civil courts must dismiss them. 77 H. 383, 885 P.2d 361.

Not violated by director's failure to grant building height restriction zoning variance for temple hall where plaintiff Buddhist temple failed to demonstrate substantial burden on its free exercise of religion because of height restriction. 87 H. 217, 953 P.2d 1315.

Trial court did not err in concluding that defendant failed to prove that §712-1249.5 unconstitutionally burdened the free exercise of defendant's religion where defendant failed to establish that the trial court clearly erred in finding that defendant did not demonstrate that defendant's religion required possession or cultivation of fifty or more marijuana plants. 108 H. 169, 118 P.3d 652.

Under the circumstances of the case, the free exercise clause of the First Amendment was not a viable defense to prosecution under §712-1249; §712-1249 is a neutral law of general applicability to the extent it purports to prohibit, without exception, the possession of marijuana and any other substance defined as a "Schedule V substance" by chapter 329, it does not interfere with other constitutional rights, and it does not create a mechanism for governmental assessment of individual applicants for exemptions. 115 H. 396, 168 P.3d 526.

Statute prohibiting possession of marijuana did not burden defendant's free exercise of religion. 5 H. App. 411, 695 P.2d 336.

### **Right of privacy.**

Where plaintiff failed to show sufficient likelihood that state child protective services agency would violate plaintiff's privacy rights in the future, plaintiff lacked standing to seek injunctive relief against agency. 68

F.3d 331.

Sex education film series shown to 5th and 6th grades with excusal system which permitted parents to have their children excused from viewing films did not contravene parents' right of privacy. 52 H. 436, 478 P.2d 314.

### **Freedom of speech.**

Does not prevent defendant's exclusion from military base after being barred. 472 U.S. 675.

HRS §291C-77(c), banning political signs on public sidewalk, denies freedom of speech. 516 F.2d 892.

Section 11-216(d) unconstitutional to the extent that it prevents an individual from disclosing that the individual filed a complaint with campaign spending commission. 30 F.3d 1115.

Defendants' statements implying attorney's poor client representation not defamatory where general and specific contexts in which statements were made did not imply assertion of an objective fact and statements were incapable of being proved true or false. 56 F.3d 1147.

Plaintiffs' sales of T-shirts imprinted with philosophical and inspirational messages fell within ambit of First Amendment; peddling ordinance prohibiting sale of merchandise on city streets was content-neutral, narrowly tailored to serve substantial interests throughout Waikiki, and left ample alternative channels of communication. 76 F.3d 1009.

Plaintiffs' free speech claim rejected, where plaintiffs argued that Hawaii's policy of putting all questions on the same physical ballot, when combined with Hawai'i State AFL-CIO v. Yoshina's method for calculating a majority, "coerced" votes in violation of First Amendment. 140 F.3d 1218.

District court judgment in favor of plaintiff affirmed, where defendants, state officials, contended, among other things, that there was insufficient evidence to support court's findings of retaliatory motives on the part of defendants. 283 F.3d 1070.

Mt. Healthy mixed-motive analysis applies to First Amendment claims, regardless of whether the plaintiff uses direct or circumstantial evidence to prove there was a retaliatory motive behind the adverse employment action. 283 F.3d 1070.

Ordinance requiring all publishers who wished to distribute their publications along sidewalks in the Waikiki special district to use one of two sets of newsracks, one reserved solely for publications that charge readers and one just for free publications, did not violate the First Amendment. 298 F.3d 1037.

Section 446E-5(f) is not an unconstitutional restriction on free speech. 486 F. Supp. 2d 1132.

Ordinance prohibiting aerial advertising did not violate the First Amendment or the equal protection clause of the Fourteenth Amendment. Honolulu's airspace was a nonpublic forum, and the ordinance was reasonable, viewpoint neutral, and rationally related to legitimate governmental interests. 455 F.3d 910.

Violated by city ordinance purporting to prohibit outdoor political signs on private and public property. 762 F. Supp. 280.

Rule 3.5(b) of Hawaii rules of professional conduct unconstitutional, where, inter alia, language of rule 3.5(b) prohibiting ex parte communication with jurors "except as permitted by law" was unconstitutionally vague and overbroad. 916 F. Supp. 1525.

Statements in editorial about plaintiff (when plaintiff was mayor) were protected by First Amendment and thus, not actionable. 930 F. Supp. 1403.

Where plaintiffs filed motion for preliminary injunction regarding Act 359 of

1993 Hawaii legislature (relating to Hawaiian sovereignty), as amended in 1994 and 1996, plaintiffs unlikely to prevail on First Amendment claims as to native Hawaiian vote. 941 F. Supp. 1529.

Plaintiff (who previously held a position at correctional facility), was not entitled to First Amendment protection, where plaintiff's repeated grievances and complaints regarding plaintiff's lack of safety at correctional facility, i.e., plaintiff's requests for a personal security guard, did not substantially involve matters of public concern. 25 F. Supp. 2d 1124.

Where plaintiff-physician claimed that plaintiff had been illegally harassed and retaliated against by the defendants who acted as part of an illegal conspiracy against plaintiff and that all of the defendants' actions constituted retaliation against plaintiff for exercising plaintiff's First Amendment right to speak out about inmate abuse at correctional facility, defendants, among other things, engaged in a conspiracy to deprive plaintiff of constitutionally protected rights to free speech in violation of 42 U.S.C. §1983. 99 F. Supp. 2d 1216.

Where defendants argued that plaintiff waived constitutional right to free speech by voluntarily signing Code of Fair Campaign Practices (Code), plaintiff did not waive ability to assert First Amendment rights; campaign spending commission's (commission) administrative decision did not have preclusive effect on the court proceeding; Code unconstitutionally burdened protected speech; commission's censure of plaintiff violated plaintiff's First Amendment rights to free speech. 135 F. Supp. 2d 1114.

In lawsuit involving a challenge to city and county of Honolulu's practice of charging nonresidents a \$3.00 fee to enter bay designated a marine life conservation district and nature preserve, plaintiff's First Amendment rights not violated and ordinance instituting the fee not overbroad. 215 F. Supp. 2d 1098.

Plaintiff maintained that defendant union provided inadequate information to nonmembers prior to making union payroll deductions pursuant to §89-4, in violation of Chicago Teachers Union v. Hudson. Defendants were preliminarily enjoined from taking any action to demand and/or collect from plaintiff and class members, by any means, agency fees and from taking any other action to enforce §89-4(a), until a mechanism for withdrawing agency fees that was in compliance with Hudson was devised and approved, where plaintiff alleged, among other things, irreparable injury by arguing that any violation of Hudson notice requirements infringed upon plaintiff's First Amendment rights. 269 F. Supp. 2d 1252.

Plaintiffs asserted that an ordinance preventing them from flying their aerial tow banners over the city's beaches violated their rights under the First Amendment; the ordinance was a reasonable, viewpoint neutral restriction on speech in a nonpublic forum. 345 F. Supp. 2d 1123.

Defendants' motion to dismiss or for summary judgment denied, where, inter alia, taking plaintiff's allegations as true, the complaint set forth sufficient facts to support plaintiff's claim that defendants' actions infringed upon plaintiff's First Amendment rights, either because defendants' actions caused plaintiff actual harm or because those actions chilled future speech, and defendants were not entitled to qualified immunity. 400 F. Supp. 2d 1223.

Right to receive information and ideas not infringed by statutes proscribing possession of marijuana. 56 H. 501, 542 P.2d 366.

Standard for suppression of evidence where seizure violated freedom of speech or expression. 63 H. 596, 634 P.2d 80.

Ordinance prohibiting distribution of commercial handbills in Waikiki impermissibly regulated commercial speech. 64 H. 148, 637 P.2d 1117.

Peddling ordinance unduly restricted commercial speech. 64 H. 499, 643 P.2d 1058.

Attorneys' extrajudicial statements may be subject to prior restraint by trial court upon demonstration that the activity restrained poses a serious and imminent threat to defendant's right to a fair trial and to the fair administration of justice. 73 H. 499, 835 P.2d 637.

Section 707-716 not unconstitutional where threats sufficiently unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and imminent prospect of execution. 75 H. 398, 862 P.2d 1063.

Where plaintiff was removed from project, State did not violate the Hawai'i Whistleblowers' Protection Act or the First Amendment when it reassigned the project to someone else. 76 H. 332, 876 P.2d 1300.

Defendant's statement not false or defamatory where statement was rhetorical hyperbole--figurative or hyperbolic language that would negate the impression that defendant was asserting an objective fact about plaintiff. 88 H. 94, 962 P.2d 353.

Neither the free speech clause of the U.S. Constitution nor that of the Hawaii constitution impose a temporal "immediacy" requirement that must be met before words become subject to criminal prosecution as "true threats" under §§707-715 and 707-716. 95 H. 465, 24 P.3d 661.

Where student manager was a public agent of the university and manager did not identify any matter of public concern addressed by manager's racial slur directed at complainant or accompanying threatening statements, manager's speech was not protected speech. 102 H. 307, 76 P.3d 550.

A "misrepresentation" made under the mantle of "self-advocacy" at a department hearing is not constitutionally protected by this Amendment. 113 H. 1, 147 P.3d 785.

Where there was no evidence that the "interior work area" of the state department of transportation building where the union bulletin board was located had been transformed from a "non-public forum" into a public forum, bulletin board remained a non-public forum; thus, where the State's bulletin board posting prohibition was against all campaign materials, and not simply against materials advocating a particular viewpoint, the prohibition against campaign materials on the union bulletin board was not in violation of this Amendment. 116 H. 73, 170 P.3d 324.

Section 852-1 not unconstitutional as it does not prohibit picketing or the communication of messages altogether, is specifically aimed at conduct causing an obstruction of ingress to or egress from public or private places, and individuals may continue to exercise rights guaranteed by the First Amendment and article I, §4 of the Hawaii constitution as long as they do not do so in a manner prohibited by section. 89 H. 27 (App.), 968 P.2d 194.

Defendant's continuing physical obstruction of the lawful work by the Hawaii county department of water supply on Hawaiian home lands property constituted conduct clearly outside the scope of any First Amendment right to freedom of speech. 105 H. 319 (App.), 97 P.3d 395.

As the First Amendment does not protect speech which is part of a course of criminal conduct, and defendant's words were an integral part of defendant's conduct in violating a valid statute prohibiting offers or agreements to engage in sex for a fee (§712-1200), defendant's prosecution did not violate this Amendment. 107 H. 360 (App.), 113 P.3d 811.

#### Hawaii Legal Reporter Citations

Freedom of press. 78-2 HLR 78-781.

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**[ARTICLE II.--1791]**

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**Case Notes**

Defendant could not claim that state firearms regulations infringed upon rights protected by Second Amendment. 82 H. 143, 920 P.2d 357.

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**[ARTICLE III.--1791]**

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

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**[ARTICLE IV.--1791]**

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Attorney General Opinions**

Bargained for random drug testing program for public school teachers with appropriate procedural protections is constitutional and would not violate either the federal or state Constitution. If a court were to find such a program to violate either the federal or state Constitution, the doctrine of qualified immunity would bar personal liability for any state official; if a court were to impose personal liability, based upon past history and practice, the legislature would fund payment of the claims. Att. Gen. Op. 08-1.

**Law Journals and Reviews**

Suppression of Evidence Without the Aid of the Fourth, Fifth and Sixth Amendments. 8 HBJ 109.

In Search of Reason at the Border. 10 HBJ 101.

"Totem Pole" Hearsay and the Search Warrant Affidavit. 12 HBJ No. 4 Winter 1977, pg. 3.

State v. Sherlock: Police Use of a Controlled Purchase of Contraband to Corroborate an Informant's Tip. 12 UH L. Rev. 237.

Reasonable Searches Absent Individualized Suspicion: Is There a Drug-Testing Exception to the Fourth Amendment Warrant Requirement After Skinner v. Railway Labor Executives' Association? 12 UH L. Rev. 343.

State v. Rothman: Expanding the Individual's Right to Privacy Under the Hawaii Constitution. 13 UH L. Rev. 619.

The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.

State v. Quino: The Hawai'i Supreme Court Pulls Out All the "Stops". 15 UH L. Rev. 289.

Criminal Procedure Rights Under the Hawaii Constitution Since 1992. 18 UH L. Rev. 683.

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Cyberprivacy on the Corporate Intranet: Does the Law Allow Private-Sector Employers to Read Their Employees' E-mail? 20 UH L. Rev. 165.

Wyoming v. Houghton: The Bright Line Search Includes Passengers' Belongings. 22 UH L. Rev. 645.

United States v. Montero-Camargo Elimination of the Race Factor Develops Piecemeal: The Ninth Circuit Approach. 23 UH L. Rev. 703.

Kyllo v. United States: The Warrantless Use of Thermal Imagery Devices, and Why the Public Use Standard Proves Unworkable. 24 UH L. Rev. 383.

Still Wondering After All These Years: Ferguson v. City of Charleston and the Supreme Court's Lack of Guidance over Drug Testing and the Special Needs Doctrine. 24 UH L. Rev. 797.

Reconsidering Hawai'i's HIV Statute: The Need to Protect an Individual's Basic Liberties. 28 UH L. Rev. 169.

**Case Notes**

**Generally.**

Plaintiff contended that police officer used deadly force against plaintiff's son in violation of son's Fourth Amendment rights and that the district court erred in granting the officer qualified immunity; district court's judgment affirmed. 511 F.3d 901.

There was no constitutional violation and individual police officers were entitled to qualified immunity in the 42 U.S.C. §1983 civil rights suit stemming from allegations of excessive force, where unwanted visitor died as a result of a heart attack sustained during the encounter with police. 414 F. Supp. 2d 965.

**Standing to invoke immunity.**

Defendants occupying vehicle unlawfully had no standing to contest search of vehicle. 45 H. 295, 367 P.2d 499.

When property is seized in defendant's home, defendant may invoke protection without asserting ownership of property. 45 H. 622, 372 P.2d 365.

Overnight guest of tenant of apartment had right to privacy in premises of that apartment; a person has right to privacy wherever the person may legitimately be. 51 H. 62, 451 P.2d 257.

One who is the victim of search and seizure directed against oneself has standing to raise question of validity of search. 52 H. 100, 470 P.2d 510.

**Suppression of evidence.**

Timely motion to suppress evidence prior to trial, or justification for interruption of trial, is necessary. 45 H. 295, 367 P.2d 499. When pre-trial motion unnecessary. 45 H. 622, 372 P.2d 365.

Under HRCF 41(e), trial judge has discretion to entertain motion even if untimely made. 51 H. 62, 451 P.2d 257.

**Search and seizure generally.**

Drug enforcement officers had reasonable suspicion that defendant was transporting drugs to make investigative stop. 490 U.S. 1.

If inaccuracies in warrant affidavit are not deliberate and remaining allegations support probable cause, seizure based on the warrant is lawful. 575 F.2d 209.

Absent exigent circumstances, seizure of items alleged to violate Food, Drug, and Cosmetic Act must comply with basic 4th Amendment requirements. 641 F.2d 1289.

General requirements for probable cause. 703 F.2d 408.

Even though article seized illegally, forfeiture may proceed if requirement for forfeiture can be satisfied with untainted evidence. 715 F.2d 1339.

Probable cause for search of vehicle and plastic bag within. 757 F.2d 969.

Defendant's purchase of printing equipment and ink, questions about printing, and conversation established probable cause for defendant's arrest for counterfeiting. Untainted information independently established probable cause for search of vehicle. 790 F.2d 789.

Under circumstances, affidavit provided substantial basis for warrant though based on allegedly anonymous and conclusory allegations. 795 F.2d 841.

Seizure was reasonable when defendants were detained at airport while dog sniffed their luggage, and during detention federal agent held their airplane tickets and drivers' licenses; dog's sniff of luggage not a search; admissibility of notes discovered in envelope in defendant's luggage, after search, where warrant covered only drugs. 796 F.2d 257.

No "plain view" seizure since government agents' presence no longer

justified. 807 F.2d 792.

Defendant was seized when grabbed by the arm and sat down for questioning; seizure not based on reasonable suspicion. 808 F.2d 1366.

A person who is detained illegally is not immunized from prosecution for crimes committed during the person's detention. 812 F.2d 1250.

Detention of packages suspected of containing marijuana for seven to twenty-three days prior to obtaining a search warrant violated the 4th Amendment. 849 F.2d 414.

Investigatory detention was justified. 871 F.2d 1497.

Warrant authorizing search and seizure of art gallery's entire works was overbroad. 875 F.2d 747.

Detention was reasonable where police detained party for interview but waited until party was sober. 879 F.2d 607.

No seizure occurred when defendant voluntarily gave agent airline ticket. 887 F.2d 232.

No reasonable expectation of privacy in illegally taken seal meat stored in freezer where defendant merely had possession to store meat, not right to exclude others from freezer. 945 F.2d 254.

Not applicable to search of nonresident aliens on ship in international waters. 946 F.2d 608.

Probable cause demonstrated for warrant authorizing drug raid on defendants' home independent of readings taken by infrared device during helicopter surveillance of home. 984 F.2d 1053.

Defendant had no reasonable expectation of privacy in hallway outside defendant's apartment in high security high rise apartment building. 3 F.3d 1239.

Employee's contention that employee's designation as a witness in IRS summons to obtain handwriting exemplars was a calculated maneuver to circumvent employee's Fourth Amendment privilege against unreasonable searches and seizures and employee's due process rights under both Fifth Amendment and IRS regulations, rejected. 94 F.3d 1342.

Where an undercover agent is invited into a home, establishes the existence of probable cause to arrest or search, and immediately summons help from other officers, the other officers' warrantless entry does not violate Fourth Amendment. 103 F.3d 1475.

Search warrant authorizing search of a residence also authorizes without so stating the search of the residence's curtilage. 104 F.3d 272.

District court's denial of appellant's motion to suppress evidence acquired after Federal Express employees opened appellant's package and contacted Drug Enforcement Administration because they suspected it contained illegal drugs, affirmed, where appellant failed to establish Federal Express was acting as an instrument or agent of the government. 153 F.3d 1079.

When an administrative search scheme encompasses both a permissible and an impermissible purpose, and when the officer conducting the search has broad discretion in carrying out the search, that search does not meet Fourth Amendment's reasonableness requirements. Secondary purpose for administrative search was improper, where primary purpose behind search at federal building was to look for weapons and explosives, and secondary purpose was to look for other materials that violated regulations, e.g., drugs. 156 F.3d 963.

Fourth Amendment had no application, where defendants challenged "walk and talk" procedure in which police officer made initial contact with defendants, arguing that, although in form consensual, the approach was in fact coercive, defendants yielding to pressure exerted by a police officer showing officer's identification and asking if they were willing to speak. 177 F.3d 1130.

Where defendants contended that officer lacked probable cause to arrest

either of them, probable cause that was sufficient for officer to arrest [other person] also was sufficient for officer to arrest the two persons officer had observed acting in concert with [other person]. 177 F.3d 1130.

District court judgment affirmed, concerning order denying defendant's motion to suppress evidence obtained by police during allegedly illegal search of defendant's home; defendant contended, *inter alia*, that observations made by officers while standing within curtilage of defendant's home were made in violation of defendant's Fourth Amendment rights, and were wrongfully relied upon by magistrate in issuing search warrant, arguing that officers had no right to approach defendant's home in an attempt to investigate their suspicions, officers violated defendant's Fourth Amendment rights by leaving front door and circling defendant's home, and marijuana plants were not in plain view of officers. 236 F.3d 1054.

Defendants lacked standing to challenge police entry into hotel room at 12:40 p.m., where a defendant had checked out of the hotel before noon and other defendant's expectation of privacy was reasonable only until 12:30 p.m. 241 F.3d 1124.

Where police stopped defendant's rental car after they had received a report from the car's owner that the car was overdue, police had reasonable suspicion to stop the car, even if the report turned out to be mistaken due to its timing, because the police were acting on a police report from the car's owner, whose honesty had not been questioned. 241 F.3d 1124.

Prosecutor entitled to qualified immunity where the right allegedly violated, *i.e.*, Fourth Amendment right not to have a prosecutor, in order to obtain a bail revocation, personally attest to a false statement of a biased source with no investigation of the statement's truth or falsity, was not "clearly established" at the time of the alleged violation. 279 F.3d 1064.

Detention of express mail package addressed to defendant was reasonable, where defendant challenged postal inspector's initial detention of the package and the delay in calling for a canine unit to sniff the package. 313 F.3d 1206.

In 42 U.S.C. §1983 case against an elementary school vice principal who taped a second grade student's head to a tree for disciplinary purposes, student's claim was appropriately brought under the Fourth Amendment, and district court correctly denied vice principal's motion for summary judgment on basis of qualified immunity. 334 F.3d 906.

Where defendant had no privacy interest in an illegal gambling room, defendant could not challenge the protective sweep. The fact that defendant was arrested outside the gambling room did not automatically preclude police officers from conducting an appropriate sweep of the interior of the room to dispel suspicion and protect themselves; police officer's search behind the sofa did not exceed the scope of the protective sweep. 469 F.3d 760.

Defendant's Fourth Amendment rights were not implicated by the brief pre-sniff detention of defendant's package and thus could not be violated. Once the narcotics detection dog alerted to the package, probable cause supported the further diversion of the package, and the search was properly conducted pursuant to a warrant. 486 F.3d 1156.

Airport screening search of defendant was a constitutionally reasonable administrative search, where defendant elected to attempt entry into the posted secured area of the airport when defendant walked through the magnetometer, thereby subjecting defendant to the airport screening process. 497 F.3d 955.

Telescopic surveillance of apartment by government agents without a warrant held to be an unreasonable search. 415 F. Supp. 1252.

Section 346-42, authorizing inspection of offices and records of medical providers, violated 4th Amendment because it did not require that facts upon

which inspection is based be measured against objective standard. 481 F. Supp. 1028.

Prevailing federal law is that warrantless recordings do not violate Fourth Amendment where one party to conversation consents to recording. 526 F. Supp. 1198.

Postal parcel held for seven days without a warrant was an unreasonable seizure. 666 F. Supp. 1424.

The warrantless entry of a home by deception is not a violation. 673 F. Supp. 387.

Applicable to searches and seizures on the high seas. 685 F. Supp. 732.

Exclusionary rule is completely irrelevant to issues involving the operation of grand juries. 707 F. Supp. 1207.

Agent was entitled to open notebook located on passenger seat to see if it contained a weapon. 751 F. Supp. 161.

Police department did not exhibit a deliberate indifference to warrantless stops and arrests. 751 F. Supp. 1385.

Government must demonstrate probable cause to believe that seized property was involved with illegal drugs or money laundering transactions prescribed by statutes. 754 F. Supp. 1467.

Defendants had no objectively reasonable expectation of privacy in heat emanations, as incidental byproduct of energy sources used in marijuana cultivation, detected by instrument in helicopter flying above defendants' residence. 773 F. Supp. 220.

Probable cause existed to believe that search of defendant's residence would uncover specific evidence relating to drug trafficking. 800 F. Supp. 892.

Seizure of vehicle proper where probable cause existed to believe vehicle had been used to transport drugs. 803 F. Supp. 352.

Airport "walk and talk" encounter was a consensual exchange under federal law; even if a seizure, it was supported by reasonable suspicion and was therefore valid. 823 F. Supp. 792.

Federal law governed admissibility of evidence in case involving investigatory detention where there was no federal investigative involvement at time of encounter and arrest. 823 F. Supp. 792.

Where plaintiff asserted that defendant police officer and defendant resident manager unlawfully arrested plaintiff, both defendants had probable cause to arrest plaintiff for harassment. 855 F. Supp. 1167.

No government action, where defendant's law partner (off-duty reserve police officer), former secretary, and former secretary's husband (off-duty full-time police officer) removed documents and on-duty police officers sent to law firm did not remove any files or property from law firm. 14 F. Supp. 2d 1194.

Defendant's motion to suppress evidence denied, where government demonstrated that defendant's initial encounter with officer and search were consensual, that there was probable cause for defendant's arrest, and that evidence in issue was therefore lawfully obtained. 191 F. Supp. 2d 1173.

Plaintiffs challenging city and county of Honolulu's practice of charging nonresidents a \$3.00 fee to enter bay designated a marine life conservation district and nature preserve were not "seized" in violation of the Fourth Amendment or article I, §7 of the Hawaii constitution; stopping to pay \$3.00 entrance fee at turnstile did not constitute an impermissible seizure. 215 F. Supp. 2d 1098.

Police officer had not established that the officer was entitled to summary judgment on qualified immunity grounds, where in plaintiff's version of events, the officer could see plaintiff's hands in the air and therefore knew that shooting plaintiff would clearly violate plaintiff's Fourth Amendment rights. 294 F. Supp. 2d 1179.

Where plaintiff sued defendant for allegedly violating plaintiff's rights under the Fourth, Fifth, and Fourteenth Amendments, based on defendant's involvement in the removal and subsequent destruction of motorcycles and mopeds in the area of plaintiff's motorcycle repair shop, genuine issues of material fact existed and precluded the court from determining whether defendant was entitled to qualified immunity under federal law. 333 F. Supp. 2d 942.

Police officers did not violate a civil process server's Fourth Amendment rights, because the officers had probable cause to arrest the process server for impersonating a law enforcement officer; since no constitutional violation occurred, the officers were entitled to qualified immunity. 348 F. Supp. 2d 1165.

Defendant's ownership interest in a mailed parcel, where defendant was neither the sender nor the addressee of the parcel, along with defendant's control and supervision of the parcel, was sufficient to manifest a subjective expectation of privacy, and the expectation was objectively reasonable; defendant's motion to suppress evidence obtained through an initial warrantless search and an ensuing sting operation and subsequent home search granted. 351 F. Supp. 2d 1040.

"Automobile exception" permitted police officers to search defendant's car without a search warrant, provided that the government had probable cause to believe that defendant's car contained contraband or evidence of a crime; the police had probable cause to believe that they would find a shotgun and ammunition in the trunk and center console of the car, based on the totality of the circumstances. The police were entitled to search the car to protect the public safety. 388 F. Supp. 2d 1185.

Defendant had standing to challenge the search of the vehicle defendant was driving and the search of the locked duffel bag removed from the vehicle. DEA special agent's affidavit in support of the search warrant for the bag contained sufficient detail to establish probable cause; even if the affidavit failed to set forth sufficient facts to establish probable cause, the DEA agents acted in good faith and the evidence obtained from the bag need not be suppressed. 470 F. Supp. 2d 1202.

Effect on confession. 45 H. 622, 372 P.2d 365. Confession tainted by illegal search and seizure must be excluded. 48 H. 204, 397 P.2d 558.

Illegal arrest does not render defendant's statement inadmissible. 48 H. 204, 210, 397 P.2d 558; 49 H. 522, 529-30, 423 P.2d 438.

Use of flashlight by police officer in scanning interior of automobile lawfully stopped for traffic offense is not per se unreasonable search and seizure. 50 H. 461, 443 P.2d 149; 430 F.2d 58.

Place protected; test is whether the place is of such a character as to give rise reasonably to expectation of freedom from governmental intrusion. 52 H. 100, 470 P.2d 510.

Under the facts, warrantless search held not justified by "exigent circumstance" and not "incident to an arrest." 52 H. 100, 470 P.2d 510; 66 H. 499, 666 P.2d 592.

Probable cause: General definition; defendant's reputation as a factor. 52 H. 226, 473 P.2d 567.

Police officer may in appropriate circumstances stop a person to investigate possible criminal activities even though there is no probable cause to make an arrest. 52 H. 497, 479 P.2d 800.

No warrant is required when government secret agent is invited to private home to purchase marijuana and later goes there and makes purchase. 54 H. 513, 510 P.2d 1066.

Exists when facts and circumstances would warrant reasonable person to believe crime is being committed. 54 H. 552, 512 P.2d 551.

Search or arrest without warrant valid only when officer has probable cause to believe that a crime is being, was, or is about to be, committed. 54 H. 552, 512 P.2d 551.

Search warrants; manner of executing warrants covering drugs; scope of warrants. 55 H. 90, 516 P.2d 65.

Sufficiency of affidavits based on informer's tip to support issuance of warrant. 55 H. 90, 516 P.2d 65.

If facts in affidavit together with reasonable inferences support existence of probable cause, appellate court is constrained to uphold that finding by lower court, even though other inferences might point to opposite conclusion. 55 H. 565, 524 P.2d 290. Staleness of information forming basis of affidavit. 55 H. 565, 524 P.2d 290.

Requisites of affidavit for warrant based on informer's tips. 55 H. 565, 524 P.2d 290.

Warrant to search premises does not authorize search of identified possessions of visitors present during execution of warrant. 55 H. 583, 525 P.2d 573.

Street interrogation by police did not constitute "seizure". 56 H. 8, 525 P.2d 1099.

Although initial stop of vehicle was proper, when police without justification required defendant to leave vehicle, unlawful seizure of person occurred. 56 H. 216, 533 P.2d 270.

Disclosure of informer's identity is not required where sole purpose is to challenge finding of probable cause. 58 H. 19, 563 P.2d 990.

Sufficiency of affidavit based on informer's tip to support issuance of warrant. 58 H. 19, 563 P.2d 990.

Helicopter observation of open marijuana patch did not constitute search. 58 H. 412, 570 P.2d 1323.

Sufficiency of affidavit based upon hearsay. 58 H. 485, 572 P.2d 856.

Informant, actively recruited by police, may be considered agent of State, and Fourth Amendment prohibitions would apply to searches made by informant. 58 H. 530, 574 P.2d 1330.

Where officer had to stand upon a crate stacked on a bench to peer through a hole in the drawn drapes covering a window, the occupants had a reasonable expectation of privacy. 59 H. 23, 575 P.2d 462.

Sufficiency of affidavit based on informer's tip. 59 H. 120, 577 P.2d 335.

Discretionary stop of automobile by police officer to investigate possible violation of laws regulating motor vehicles may be made only if supported by a reasonable belief of a violation. 59 H. 130, 577 P.2d 781.

Strip search of prison visitor not unreasonable. 59 H. 366, 580 P.2d 1282.

In seizure of gun without warrant, knowledge of one officer was imputed to the other to establish probable cause. 59 H. 375, 581 P.2d 758.

Investigative stop of automobile held not justified under the circumstances. 59 H. 386, 581 P.2d 765.

Use of evidence wrongfully obtained--permissible scope. 59 H. 572, 584 P.2d 127.

Whether governmental visual surveillance was an unreasonable search depended on whether defendant had exhibited a reasonable expectation of privacy. 60 H. 301, 588 P.2d 447.

Marijuana plants exposed to viewing by public are not within reasonable expectation of privacy. 60 H. 318, 589 P.2d 527.

Elements of legitimate expectation of privacy. 61 H. 117, 596 P.2d 773.

"Open view" doctrine applied. 61 H. 124, 596 P.2d 777.

Arrest without warrant for a specific offense was valid where police had probable cause to arrest for a different but closely related offense. 61 H.

291, 602 P.2d 933.

Pre-incarceration search. 61 H. 291, 602 P.2d 933.

Investigative stop and warrantless search of automobile. 61 H. 316, 603 P.2d 143.

Warrantless search of automobile, when permissible; exigent circumstances. 61 H. 492, 605 P.2d 930.

Warrantless entry of residence to effect arrest, when justified. 61 H. 505, 606 P.2d 913.

Where police allowed no one to touch box until a search warrant was obtained, there was a seizure without warrant. 61 H. 505, 606 P.2d 913.

"Stop" or "seizure" occurs when. 61 H. 566, 606 P.2d 1329.

Strip search of prison visitor not unreasonable; opening of balloon recovered from visitor and examination of contents similarly not unreasonable. 62 H. 1, 607 P.2d 1048.

Absent exigent circumstances, police may not enter private building without a warrant. 62 H. 44, 609 P.2d 131; 62 H. 52, 609 P.2d 637.

Where gambling was observable by anyone on adjoining premises, observation by police who trespassed on adjoining premises did not constitute unreasonable search and seizure. 62 H. 44, 609 P.2d 131.

Squatters on government property. 62 H. 52, 609 P.2d 637.

What is knowingly exposed to view and hearing of outsiders is not a subject of protection. 62 H. 52, 609 P.2d 637.

Warrantless search of automobile. 62 H. 59, 610 P.2d 502.

Pre-incarceration search. 62 H. 79, 611 P.2d 130.

Requirement that a warrant "particularly describe the things to be seized" discussed. Severability of provisions violating the particularity requirement. 62 H. 166, 613 P.2d 645.

Warrantless search of footlocker unreasonable in absence of exigency despite existence of probable cause to arrest owner and seize footlocker. 62 H. 238, 615 P.2d 84.

Warrantless search of automobile justified when probable cause and exigent circumstances are present. 62 H. 252, 614 P.2d 393.

Police impoundment of house which curtailed occupant's freedom of movement pending arrival of search warrant constituted seizure of house and contents. 62 H. 377, 615 P.2d 740.

Where valid investigative stop has been made, police may not order person to leave vehicle or conduct protective search unless specific conduct of defendant, reliable information or attendant circumstances indicate person is armed and dangerous. 62 H. 453, 617 P.2d 76.

Sufficiency of informer's tip to support warrantless search. 62 H. 459, 617 P.2d 565.

Warrant required for police to use optical aid to view activity which could not be seen with naked eye. 62 H. 459, 617 P.2d 565.

"Hot pursuit" is merely a criterion to use in determining whether exigency justifies warrantless search. 62 H. 495, 617 P.2d 89.

Warrantless search authorized by exigent circumstances. 62 H. 495, 617 P.2d 89; 64 H. 130, 637 P.2d 1105.

Warrantless automobile search exception did not extend to search of knapsack taken from automobile. 62 H. 660, 619 P.2d 108.

Sufficiency of affidavit to support warrant; citizen informer; eyewitness informer; conduct which is as consistent with innocent activity as with criminal activity. 63 H. 36, 620 P.2d 1072.

Use of binoculars to view contents of greenhouse not visible to naked eye constituted search. 63 H. 90, 621 P.2d 370.

Establishment of probable cause to search house and adjacent areas from

discovery of marijuana growing in vacant lot. 63 H. 95, 621 P.2d 374.

Arrest and seizure held valid. 63 H. 488, 630 P.2d 619.

Warrantless search. Exigent circumstances lacking. 63 H. 553, 632 P.2d 1064.

Procedural requirements for seizure of materials in obscenity prosecutions. 63 H. 596, 634 P.2d 80.

City policy requiring inspection prior to entering concert, of all containers or clothing capable of concealing bottles or cans held unreasonable. 64 H. 17, 635 P.2d 946.

Warrantless searches. Probable cause existed to search automobile for firearm. 64 H. 101, 637 P.2d 770.

Illegal arrest or seizure of evidence, without more, does not bar prosecution. Exclusion of tainted evidence is appropriate remedy; purchase of allegedly obscene material from "willing sellers" by private citizen under police direction prior to arrest was actually "preconceived seizure" designed to evade warrant procedures; warrantless arrest for promoting pornography and seizure of material cannot be premised on ad hoc determination by police officer that material was obscene. 64 H. 109, 637 P.2d 1095.

Evidence inadequate to support probable cause for issuance of warrant. 64 H. 399, 641 P.2d 1341.

Warrantless recordation by party to conversation upheld. 64 H. 659, 649 P.2d 346.

No reasonable expectation of privacy in airspace surrounding luggage. Use of dog to sniff luggage for narcotics upheld. 65 H. 104, 649 P.2d 366.

No unlawful search where binoculars used only to confirm unaided observations into area where no reasonable expectation of privacy. 65 H. 152, 648 P.2d 194.

No reasonable expectation of privacy shown. 65 H. 159, 649 P.2d 737.

Warrantless body cavity search not justified under circumstances. 65 H. 488, 654 P.2d 355.

Expectation of privacy under circumstances was not one which society is prepared to recognize as legitimate. Strip search of prisoner was reasonable under circumstances. 66 H. 21, 656 P.2d 1330.

Checking an engine number located inside a vehicle constitutes a "search". 66 H. 202, 659 P.2d 70.

Police may conduct warrantless search of lost property to identify and safeguard it, protect police from false claims, or negate danger presented. A police inventory of lost and found property is a search. 67 H. 107, 678 P.2d 1088.

Use of dog to sniff all packages in cargo room was reasonable in light of balance of interests. Prior suspicion of particular package not absolute prerequisite to use of dog to sniff for drugs. 67 H. 168, 681 P.2d 980.

Protective weapons search; scope of, when justified. 67 H. 181, 683 P.2d 822.

Warrantless search of probationer's person, property, or residence; when justified. 67 H. 268, 686 P.2d 1379.

Ordering driver out of car and to take sobriety test was reasonable seizure. Flashlight-aided inspection of vehicle's interior to confirm unaided observation of object in open view, not a search. 67 H. 293, 687 P.2d 544.

Circumstances, including anonymous tip, did not warrant search of car. 67 H. 535, 696 P.2d 346.

Any co-inhabitant of commonly held property has right to consent to search of property; no expectation of privacy in property abandoned; abandonment primarily a question of intent. 67 H. 644, 701 P.2d 171.

Extraction of cigarettes from purse at defendant's request not a search; if search, consent given; warrantless seizure as valid protective measure incident

to lawful arrest. 67 H. 650, 701 P.2d 1277.

Based on record, no consent to search; legitimate expectation of privacy in area searched; warrantless seizure; exigent circumstances lacking. 68 H. 32, 703 P.2d 680.

Stopping automobile for a brief period during traffic stop is a "seizure". 68 H. 184, 706 P.2d 1305.

Warrant to install beeper not excused by difficulty in satisfying particularity requirement; sufficient basis for warrant. 68 H. 213, 708 P.2d 820.

Reasonable expectation of privacy in closed public toilet stall; no probable cause to search stall. 68 H. 404, 716 P.2d 493.

No reasonable expectation of privacy in defendant's yard where defendant made no attempts to screen neighbor's view, construct or maintain a fence. 69 H. 534, 750 P.2d 932.

Per se reasonable for arresting officer to conduct a warrantless, limited pat-down search. 70 H. 107, 762 P.2d 803.

Search warrant was valid although informant had no history of reliability because other corroborated information indicated informant was reliable. 70 H. 271, 768 P.2d 1290.

Constitutional right was not voluntarily waived by defendant's consent to search car where waiver was predicated on prior illegal search and State failed to meet burden of showing that taint of illegal search had been dissipated or that there was an independent source inducing defendant to waive right. 72 H. 505, 824 P.2d 833.

Although no force was used, officers' show of authority and questioning constituted seizure under Hawaii Constitution. 74 H. 161, 840 P.2d 358.

Traffic stop was justified; police officer was permitted to invite appellant to exit appellant's vehicle for further investigation. 75 H. 1, 856 P.2d 1207.

Children in school have legitimate expectations of privacy that are protected by article I, §7 of Hawai'i constitution and the Fourth Amendment. 77 H. 435, 887 P.2d 645.

High school principal's search of student's purse was lawfully conducted. 77 H. 435, 887 P.2d 645.

Where handgun on floor of defendant's truck under corner of driver's seat was observed in plain view, presence of exigent circumstances was not required to justify a warrantless seizure. 78 H. 308, 893 P.2d 159.

Detective's entrance into defendants' home, whatever the purpose, over six hours after everyone had left was a "search" in the constitutional sense. 78 H. 433, 896 P.2d 889.

Clear plastic packets not "closed" containers as contents were within plain view of officer conducting search under warrant; defendant thus could not claim any reasonable expectation of privacy in the packets' contents. 80 H. 382, 910 P.2d 695.

Obtaining warrant as precondition to testing suspected cocaine in clear plastic bags unnecessary where defendant could not have reasonable expectation of privacy in clear plastic bags. 80 H. 382, 910 P.2d 695.

Valid search incident to lawful arrest where there was probable cause to make an arrest prior to and independent of search of defendant's pants, search was limited to finding narcotics bindles, and arrest was made immediately after search. 80 H. 419, 910 P.2d 732.

As Hawaii constitution provides greater protection for Hawaii's citizens, determination of probable cause for issuance of search warrant warrants de novo review on appeal. 81 H. 113, 913 P.2d 39.

Defendant lacked standing to challenge seizure of search warrant evidence where evidence seizure did not violate defendant's personal rights; defendant

was not owner of any of items seized and did not allege any reasonable expectation of privacy in items. 82 H. 474, 923 P.2d 891.

No "seizure" where private individual, acting on own initiative, secured videotape and voluntarily transferred possession to police. 82 H. 474, 923 P.2d 891.

Drug evidence admissible and wrongly suppressed where police intrusion into hotel room pursuant to valid arrest warrant was justified and evidence seizure was permissible under plain view doctrine. 83 H. 13, 924 P.2d 181.

"Totality of the circumstances test" correct test to determine whether private individual's search and seizure of evidentiary items was as a government agent, and subjective motivation of individual irrelevant to this determination. 83 H. 124, 925 P.2d 294.

Warrantless seizure justified where witness' identification of defendant as person who terrorized witness with gun gave officers probable cause to believe defendant committed a crime and officer's observation of defendant sleeping with gun in immediate reach presented sufficient exigent circumstances for officer to board boat and seize gun. 83 H. 229, 925 P.2d 797.

Officer lacked specific and articulable facts sufficient to warrant a person of reasonable caution in believing that defendant was engaged in criminal activity; officer was thus unjustified in initiating investigative "encounter" at airport with defendant. 83 H. 250, 925 P.2d 818.

Where nothing in objective facts available to police at time they obtained search warrant for house suggested defendant's bedroom was separate residential unit completely secured against access by other dwelling occupants, search warrant not overbroad and search of bedroom reasonable. 84 H. 462, 935 P.2d 1007.

Police may not prolong the detention of individuals subjected to brief, temporary investigative stops, once such stops have failed to substantiate the reasonable suspicion that initially justified them, solely for the purpose of performing a check for outstanding warrants. 91 H. 80, 979 P.2d 1106.

Officer's warrantless seizure of pouch containing handgun was justified based on exigent circumstances where, based on totality of the circumstances, including dark and deserted nature of area of traffic stop, truck occupants' unusual degree of movement in truck and refusal to obey officer's order to stay in truck, officer reasonably believed that occupants of truck posed a danger to officer. 93 H. 87, 997 P.2d 13.

When an airline passenger consents to a search of his or her effects at an airport security checkpoint, the scope of the search reasonably extends to those receptacles, the contents of which cannot be identified, contained in luggage. 97 H. 71, 34 P.3d 1.

A mandatory blood test, pursuant to §286-163, absent an arrest, violates neither this Amendment nor article I, §7 of the Hawaii constitution, so long as the police have probable cause to believe that the driver has committed one of the enumerated offenses and that the driver's blood contains evidence of intoxication or drug influence, exigent circumstances excuse a warrant, and the test is performed in a reasonable manner. 98 H. 221, 47 P.3d 336.

Assuming arguendo that, because drug detection dog jumped into the truck's passenger compartment, this canine screening constituted a "search" within the meaning of either this Amendment or article I, §7 of the Hawaii constitution, defendant did not have a reasonable expectation of privacy in the truck (or specifically in the airspace within the cab of the truck); thus, neither the dog's nor police handler's conduct violated defendant's rights. 98 H. 426, 49 P.3d 1227.

In detaining defendant for the purpose of determining if defendant was impaired and if defendant would consent to a search of defendant's vehicle,

officer did not exceed the scope of a temporary investigative stop premised upon circumstances that gave rise to a reasonable suspicion that defendant was driving while impaired or that defendant's vehicle might contain illicit substances. 99 H. 370, 56 P.3d 138.

Based on the totality of the circumstances, pool hall owner's actions in searching and detaining defendant were as a private citizen, not as a government agent; thus, owner's search and/or seizure of defendant was not constrained by this Amendment nor article I, §7 of the Hawaii constitution. 100 H. 195, 58 P.3d 1242.

Section 803-37 does not apply to the interior office door of a store; however, as an objectively reasonable expectation of privacy exists at the interior office door of a store, police are required to provide reasonable notification of their presence and authority before making a forced entry; police satisfied this requirement by knocking three times, announcing "police department, search warrant", and waiting fifteen seconds before forcibly entering the locked interior office door of the store. 100 H. 210, 58 P.3d 1257.

Use of thermal imager device to detect heat emanating from defendant's apartment constituted an unreasonable warrantless search; thus, information gained should have been excluded in the establishment of probable cause. 102 H. 13, 72 P.3d 485.

Officer's additional observations, considered in concert with the reasonable inferences arising from defendant's screeching of tires, warranted an objectively reasonable suspicion that defendant had, at a minimum, committed the offense of reckless driving of a vehicle, in violation of §291-2; thus, officer's investigative stop was within the parameters of permissible police conduct. 102 H. 228, 74 P.3d 980.

Police may act on an anonymous tip of reckless driving, but only under very narrow circumstances; based on the totality of the circumstances, including the reliability of the tip and the imminence of the harm, an anonymous tip was sufficiently reliable to justify an investigatory stop. 103 H. 451, 83 P.3d 714.

Even assuming the crime stoppers' anonymous tip was not "tainted" as a result of it being relayed to school officials via a police officer, the anonymous tip failed to provide even reasonable suspicion, much less probable cause, to justify the search of minor; the anonymous tip bore no indicia of reliability--the identity or status of the informant, the time the tip came in, the basis, if any, for the informant's knowledge, and the reliability of its assertion of illegality. 104 H. 403, 91 P.3d 485.

Reasonable suspicion for detaining defendant for the sole purpose of a canine screen did not exist where there were no specific facts to suggest that criminal activity was currently afoot (that defendant had drugs or drug paraphernalia in defendant's possession); the fact that defendant was a known drug dealer, when coupled with the fact that defendant had stolen an item that could have been used to smoke crystal methamphetamine, gave rise only to the inchoate suspicion that defendant might intend to engage in drug activity in the future. 111 H. 392, 141 P.3d 1039.

Officer's one-week-old knowledge that defendant's truck did not carry valid insurance - and that defendant had not acted to remedy the insurance violation in the preceding week-long interval - and officer's two-week-old knowledge that defendant was unlicensed were together sufficiently fresh to give rise to reasonable suspicion to execute the traffic stop. 116 H. 351, 173 P.3d 498.

Lack of "exigent circumstances" necessary to justify exception to search warrant requirement. 1 H. App. 3, 612 P.2d 119.

Failure to show that arresting officer knew that person providing information

was an eyewitness results in lack of proof of probable cause. 1 H. App. 60, 613 P.2d 909.

Probable cause required before person can be detained for custodial interrogation. 1 H. App. 60, 613 P.2d 909.

Affidavit in support of search warrant was adequate. 2 H. App. 606, 638 P.2d 338.

Search or seizure need not be preceded by arrest in order to be "incident to" lawful arrest; conditions. Seizure valid under "plain feel" rule. 4 H. App. 143, 662 P.2d 517.

Search of receptacles on premises; seizure of property; when within scope of warrant. 5 H. App. 547, 705 P.2d 54.

Unconstitutional search of backpack where officer had exclusive control of backpack. 7 H. App. 261, 752 P.2d 598.

Suspicionless drug testing of firefighters by urinalysis in conjunction with annual physical examination is not an unreasonable search. 8 H. App. 571, 816 P.2d 306.

Officer's order for defendant to exit vehicle was unlawful; thus, subsequent plain view of, search for, and seizure of incriminating evidence was tainted and should have been suppressed. 80 H. 75 (App.), 905 P.2d 50.

Probable cause existed for issuance of warrant based on officer's affidavit that relied on police investigation as well as on informant's information. 81 H. 29 (App.), 911 P.2d 1101.

Where warrant only authorized search of specific room of business and another subsequently discovered room of business separated by a hallway and other numbered and unnumbered rooms were also searched, other room was not within scope of warrant and constituted illegal search. 82 H. 162 (App.), 920 P.2d 376.

Evidence found in defendant's living room illegally seized where no exigent circumstances or search warrant to enter living room and person consenting to police entering living room did not have "actual authority" to consent. 82 H. 394 (App.), 922 P.2d 1007.

Where private individual was not informed by police of discretionary nature of warrant issuing process and consequently assisted police by searching son's bedroom for evidence, individual became agent of police and individual's actions constituted improper warrantless search by government. 83 H. 209 (App.), 925 P.2d 379.

Where police had probable cause to arrest defendant without a warrant for fourth degree theft, a petty misdemeanor under §708-833, and simple trespass, a violation under §708-815, and §803-6 authorized them to cite, rather than arrest, defendant for those offenses if defendant did not have any outstanding arrest warrants, outstanding warrant check on defendant by police not unconstitutional. 91 H. 111 (App.), 979 P.2d 1137.

Right not violated where defendant did not have a reasonable expectation of privacy on busy public street, defendant took no precautions to insure privacy by screening defendant's presence or defendant's drug dealing activity from public view, and no objectively reasonable expectation of privacy for persons, objects, or activities which were visible to the public and captured by non-intrusive video camera. 92 H. 454 (App.), 992 P.2d 723.

Feeling of the contents of defendant's fanny bag through its cover by officer was an intentional warrantless search of the interior of the fanny bag. 93 H. 314 (App.), 2 P.3d 718.

Defendant had a constitutionally protected expectation of privacy not only in the general premises of the house, but also in the specific area that was defendant's bedroom; defendant's lack of property interest in defendant's parents' house was not a bar to a claim that defendant had a protected privacy

interest in that house. 96 H. 472 (App.), 32 P.3d 116.

Exigent circumstances did not exist to justify warrantless police entry into and search of house, where, by securing the house believed to hold their quarry, the police had eliminated the perceived threat posed by a free-roaming, allegedly armed suspect, and by closing off the street, the police were in control of the situation, thus having sufficient time to consider their options, plan and obtain a search warrant. 96 H. 472 (App.), 32 P.3d 116.

Where defendant exhibited an actual, subjective expectation of privacy in defendant's bedroom by keeping door locked at all times, and no other person had the key or access to the room, and as an adult child living with parents is not uncommon in this State, defendant's expectation was one that society was prepared to recognize as objectively "reasonable"; thus, defendant's privacy interests in common areas of parents' house and in defendant's bedroom were constitutionally protected. 96 H. 472 (App.), 32 P.3d 116.

The federal and state regulatory schemes, which establish security and screening procedures at airports governed by both the Federal Aviation Administration and the state department of transportation, made private security employee's search of passenger's toolbox a governmental search for purposes of the Fourth Amendment and article I, §7 of the Hawaii constitution. 97 H. 77 (App.), 34 P.3d 7.

Warrantless search of passenger's toolbox at airport by private security company employee was reasonable under the Fourth Amendment and article I, §7 of the Hawaii constitution. 97 H. 77 (App.), 34 P.3d 7.

Where totality of circumstances clearly showed that store asset protection agent conducted a purely private search of defendant with no governmental involvement, trial court did not err in denying defendant's motion to suppress evidence. 97 H. 247 (App.), 35 P.3d 764.

Right not violated where police officer's search of defendant's fanny pack found by hotel guest and already inventoried by hotel security fell under the lost property inventory exception to the warrant requirement. 101 H. 112 (App.), 63 P.3d 420.

Warrantless seizure of plaintiff's vehicle not unconstitutional where seizure was from a public place and officers had probable cause to believe it was forfeitable contraband. 101 H. 422 (App.), 70 P.3d 648.

Applying the totality of the circumstances test, trial court correctly determined that adult video store clerk was not acting as a "government agent"; clerk was not actively recruited, directed, or paid by the police, and clerk's actions were for a private purpose--to make sure defendant was complying with video store's no-smoking policy and not doing anything that would harm the store. 103 H. 11 (App.), 78 P.3d 1159.

Warrantless seizure of defendant's glass pipe and its contents justified where police had probable cause to arrest defendant after viewing defendant smoking glass pipe in video booth, and exigent circumstances existed as defendant was lawfully observed ingesting an illegal drug and any delay would allow more, if not all, of the drugs to be consumed, and as defendant rented video booth for only half an hour, defendant would likely have finished defendant's "business" long before police could have obtained a warrant. 103 H. 11 (App.), 78 P.3d 1159.

Where defendant took no steps to cover up "glory hole" in adult video preview booth, defendant could not have reasonably expected that defendant's conduct would not be viewed through the glory hole; thus, defendant could not have had a subjective expectation of privacy in the video preview booth that society would recognize as objectively reasonable. 103 H. 11 (App.), 78 P.3d 1159.

Defendant was not subject to a de facto arrest not supported by probable cause where officers' use or display of force was reasonably necessary to

protect their personal safety, was in response to defendant's erratic and hostile behavior, and defendant's conduct made it reasonable for the officers to insist that defendant submit to a pat-down search for weapons. 107 H. 144 (App.), 111 P.3d 39.

When police officers encounter someone while lawfully at a residence to execute an arrest warrant, the officers may detain that person and perform a pat-down search for weapons if the officers have a reasonable and articulable basis to suspect that the person may possess a weapon and pose a danger; the officers may compel such person to submit to a pat-down search for weapons even if the officers have no reasonable suspicion that the person is involved in criminal activity. 107 H. 144 (App.), 111 P.3d 39.

Authorization in search warrant to search any personal, rental, or borrowed vehicle that defendant was operating or occupying was not unconstitutionally overbroad, and was sufficiently particularized where authorization was based on probable cause that defendant would be in possession of ice, and would be transporting it in any number of different vehicles in which defendant was either the operator or an occupant. 108 H. 361 (App.), 120 P.3d 260.

Where defendant removed defendant's fanny pack from waist and attempted to discard it four different times, defendant did not exhibit a subjective expectation of privacy in the fanny pack; even assuming defendant did, defendant's expectation of privacy was not objectively reasonable where defendant failed to establish that defendant had a privacy interest in the places defendant attempted to throw the fanny pack; thus, where defendant voluntarily threw the fanny pack onto a building roof top, defendant abandoned defendant's expectation of privacy. 116 H. 29 (App.), 169 P.3d 981.

Cited: 56 H. 366, 537 P.2d 8.

#### **Search incident to arrest.**

Use of black light to detect presence of substance was a permissible search incident to arrest. 860 F.2d 911.

Contemporaneous arrest of defendant of search of automobile, discussed. 867 F.2d 561.

Defendant did not have any reasonable expectation of privacy once police opened address book. 871 F.2d 1497.

Search not unreasonable where, after defendant was handcuffed and seated in hallway, black bag within defendant's control was searched within three minutes of defendant's arrest. 3 F.3d 1239.

Search of defendant's handbag in vehicle valid where search made contemporaneous to arrest. 800 F. Supp. 892.

Search without warrant after a lawful arrest is not constitutionally interdicted. 45 H. 295, 367 P.2d 499.

Validity of search incidental to arrest as dependent upon probable cause for the arrest, whether probable cause may be based on hearsay. 50 H. 138, 433 P.2d 593.

In making search of handbag incidental to lawful arrest for being present at gambling game, officers may seize marijuana cigarettes though the evidence is of a different crime. 50 H. 275, 439 P.2d 212.

Search of automobile without warrant incident to arrest upon probable cause. 52 H. 226, 473 P.2d 567.

Warrantless search not made pursuant to valid arrest. 65 H. 104, 649 P.2d 366.

Where search of coin purse conducted for drugs two hours after arrest was not reasonably related either in time or to the circumstances which might have justified it (the shoplifting arrest and a search for evidence of that offense), search was not incident to the shoplifting arrest. 111 H. 392, 141

P.3d 1039.

### **Right of privacy.**

Arrest of defendants sunbathing nude on public beach did not violate their right of privacy. 52 H. 336, 475 P.2d 684.

Not violated by use by police of a ruse to effect the voluntary opening of a door and the subsequent entry without use of force for purpose of executing a lawful arrest warrant. 83 H. 13, 924 P.2d 181.

Regardless of the number of times that the police tested defendant's blood sample for its DNA, no violation of defendant's constitutional right to privacy occurred because the analyses did not exceed the objective for which the original warrant was sought--DNA testing for the purpose of identification. 103 H. 38, 79 P.3d 131.

### **Consent.**

Person entrusted with photos by co-owner had authority to consent to police examination of them. 575 F.2d 209.

"Voluntariness" of consent to search is a factual question to be determined from the totality of the circumstances. 577 F.2d 473.

Court agreed with district court's reasoning rejecting contentions that, inter alia, consent to undercover agents' entry into home was vitiated when, in response to direct question, they denied that they were police officers, and that warrantless entry of additional uniformed officers was unlawful and therefore invalidated subsequent consent to search. 103 F.3d 1475.

Not violated where homeowner voluntarily consented to search for marijuana even if co-owner's later consent was involuntary. 779 F. Supp. 1272.

Entry and search of hotel room was nonconsensual where government agents threatened to break door down and were observed with weapons drawn. 803 F. Supp. 352.

Defendant's consent to search and waiver of search warrant was voluntary; scope of consent was not exceeded. 894 F. Supp. 1384.

Authority of defendant's wife to consent to search and seizure considered. 45 H. 622, 372 P.2d 365.

Right to privacy is a personal right that can be waived by possessor only. 51 H. 62, 451 P.2d 257.

To be valid, consent to warrantless search must be voluntary. 55 H. 442, 521 P.2d 376.

Determination of voluntariness of consent. 58 H. 462, 571 P.2d 745.

Consent implied where visitor applies for admission to prison with knowledge of practice of strip search. 59 H. 366, 580 P.2d 1282.

Question raised but not decided. 63 H. 95, 621 P.2d 374.

Consent to search was given under duress. X-ray should have been conducted as least intrusive means of conducting body cavity search. 65 H. 601, 655 P.2d 864.

No showing of voluntary consent by defendant to search car. 67 H. 126, 681 P.2d 553.

Babysitter did not have authority to consent to search of suspect's room. 67 H. 496, 692 P.2d 1156.

Finding that defendant not coerced by police officers and voluntarily consented to search of defendant's truck not clearly erroneous. 81 H. 358, 917 P.2d 370.

Evidence found in defendant's living room illegally seized where no exigent circumstances or search warrant to enter living room and person consenting to police entering living room did not have "actual authority" to consent. 82 H. 394 (App.), 922 P.2d 1007.

Warrantless search of defendant's bedroom in defendant's parents' house unreasonable where mother did not have actual authority to consent to search of son's bedroom; son had, by implicit agreement and in practice, exclusive possession of bedroom, and there was no indication that son gave mother access to room or permission to allow others access. 96 H. 472 (App.), 32 P.3d 116.

### **Stop and frisk.**

For police officers to conduct valid stop and frisk, they must have observed conduct or have reliable information causing them to believe that criminal activity is afoot and that the person is armed and dangerous. 53 H. 593, 499 P.2d 657.

Sufficiency of informer's tip. 55 H. 601, 525 P.2d 580.

Self-protective search for weapons. 56 H. 374, 537 P.2d 14; 59 H. 305, 580 P.2d 847.

Investigatory stop, when justifiable. 58 H. 333, 568 P.2d 1207.

Scope of search incident to investigative stop. 58 H. 333, 568 P.2d 1207.

Was not improper under the circumstances. 61 H. 566, 606 P.2d 1329.

Basic guidelines. 62 H. 59, 610 P.2d 502.

Where valid investigative stop has been made, police may not order person to leave vehicle or conduct protective search unless specific conduct of defendant, reliable information or attendant circumstances indicate person is armed and dangerous. 62 H. 453, 617 P.2d 76; 62 H. 459, 617 P.2d 565.

Where informant's tip is specific as to time and place, firearms are involved, and police observations verify information received, investigatory stop is authorized. 62 H. 464, 616 P.2d 1374.

When justified; sufficiency of informer's tip. 63 H. 160, 622 P.2d 122.

Investigatory stop justified by circumstances. 63 H. 488, 630 P.2d 619.

Justified. 63 H. 553, 632 P.2d 1064.

Standard of review for search for concealed weapon. 64 H. 376, 641 P.2d 979.

Investigatory stop not justified by informers tip. 65 H. 261, 650 P.2d 1358.

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**[ARTICLE V.--1791]**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

**Attorney General Opinions**

Section 486H-10 prohibiting manufacturers and jobbers of petroleum products from operating a retail service station for retail sale of petroleum products did not violate eminent domain clause of federal constitution. Att. Gen. Op. 95-4.

**Due process.**

Student regulations at state universities are subject to the vagueness standard but do not require the same specificity required of criminal statutes. Att. Gen. Op. 71-9.

**Law Journals and Reviews**

Suppression of Evidence Without the Aid of the Fourth, Fifth and Sixth Amendments. 8 HBJ 109.

Hawaii's Noncommitment to Civil Commitment: Out of Sight, Out of Mind, Out of Theory. 13 HBJ No. 4 Winter 1978, pg. 40.

Included Offenses in Hawaii Case Law and the Rights to Trial by Jury: Coherence or Confusion. II HBJ No. 13, at pg. 77.

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The Manoa Valley Special District Ordinance: Community-Based Planning in the Post-Lucas Era. 19 UH L. Rev. 449.

The Japanese American Cases and the Vagaries of Constitutional Adjudication in Wartime: An Institutional Perspective. 19 UH L. Rev. 649.

Critical Excavations: Law, Narrative, and the Debate on Native American and Hawaiian "Cultural Property" Repatriation. 20 UH L. Rev. 261.

Justice Ruth Bader Ginsburg And Gender Discrimination. 20 UH L. Rev. 699.

The Jurisdictional Limits of Federal Criminal Child Pornography Law. 21 UH L. Rev. 73.

A New Segregation? Race, Rice v. Cayetano, and the Constitutionality of Hawaiian-Only Education and the Kamehameha Schools. 23 UH L. Rev. 109.

IOLTA in the New Millenium: Slowly Sinking Under the Weight of the Takings Clause. 23 UH L. Rev. 221.

"If a Policeman Must Know the Constitution, Then Why Not a Planner?" A Constitutional Challenge of the Hawai'i Public Access Statute. 23 UH L. Rev. 409.

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Kelo: A Case Rightly Decided. 28 UH L. Rev. 365

Text-Mess: There is No Textual Basis for Application of the Takings Clause to the States. 28 UH L. Rev. 373.

Re-Defining Public Use: Kelo v. City of New London. 28 UH L. Rev. 485.

The Role and Content of the Character of the Governmental Action Factor in a Partial Regulatory Takings Analysis. 29 UH L. Rev. 437.

### Case Notes

#### Generally.

Exhibition of individual to jury in criminal prosecution not per se improper. 81 H. 15, 911 P.2d 735.

#### Indictment.

Indictment dismissed due to prosecutorial misconduct. 607 F.2d 871.

Government did not constructively amend appellant's indictment, where appellant contended that grand jury indicted appellant for a conspiracy to distribute cocaine in Hawaii but proof at trial failed to connect appellant to Hawaii. 255 F.3d 714.

Indictment not affected by examination of defendant's wife by grand jury. 45 H. 221, 365 P.2d 202.

Indictment not affected by noncompliance with statutory or criminal rule provisions relating to preliminary examination. 45 H. 604, 372 P.2d 356.

Preliminary hearing is not a constitutional requirement and not a prerequisite to issuance of indictment. 51 H. 318, 459 P.2d 376.

Prosecutorial misconduct before grand jury must be extreme and clearly infringe upon jury's decision-making function in order to serve as basis for quashing indictment. 62 H. 209, 614 P.2d 373.

Hearsay admissible if not deliberately used in place of better evidence to improve case for indictment. 62 H. 518, 616 P.2d 1383.

Prosecutor was not required to instruct grand jury on option to indict for lesser offense unless evidence clearly establish lesser offense. 62 H. 518, 616 P.2d 1383.

Mere absence of independent grand jury counsel does not establish that the due process rights of accused were violated. 63 H. 412, 629 P.2d 1111; 63 H. 633, 633 P.2d 1113.

Evidence established probable cause that defendant was driving under

influence of drugs. 68 H. 184, 706 P.2d 1305.

Section 485-21 provides an essential element of offense charged, when a defendant is charged with a criminal violation of Uniform Securities Act; counts of indictment, which cited to §485-21, were insufficient, as counts did not include essential elements of offenses charged. 78 H. 373, 894 P.2d 70.

Although prosecution's oral charge failed to include the word "bodily" to modify "injury", the omission did not alter the nature and cause of the accusation such that a person of common understanding would fail to comprehend it; thus, the oral charge was not so obviously defective that by no reasonable construction could it be said to charge the offense for which conviction was had; because omission of the word "bodily" did not constitute an essential element of the offense, harmless error. 99 H. 312, 55 P.3d 276.

#### **Defendant's out-of-court statements.**

Exclusionary rule not applicable where Miranda rights violated by foreign police in foreign country even though in violation of foreign law. 783 F.2d 1052.

Defendant's second statement was voluntary even though it followed a previous unwarned admission. 889 F.2d 819.

Where M.P.s allowed defendant to consume beer there was no coercion and defendants' statements were voluntary. 666 F. Supp. 1421.

Miranda warnings not required where defendant was not in custody at the time of hospital bedside discussion. 800 F. Supp. 892.

Although Miranda warnings properly given, where government fails to prove accuracy of defendant's written statement due to defendant's limited understanding of English, statement inadmissible. 803 F. Supp. 352.

Defendant's waivers of defendant's Miranda rights at time of defendant's arrest and before defendant's first interview were valid; defendant's statements made after defendant made request for attorney to Canadian law enforcement officer suppressed. 888 F. Supp. 1521.

Upon new trial after reversal, doctrine of *Miranda v. Arizona*, 384 U.S. 436, applicable, even though statements taken, and first trial held before *Miranda*. 49 H. 504, 506, note 3, 421 P.2d 305.

Confession obtained while defendant in custody after being retaken following an escape not voluntary when defendant previously had been found by a psychiatric commission to be suffering from a major mental illness, and upon consideration of other circumstances. 50 H. 42, 430 P.2d 330.

Doctrine of *Miranda v. Arizona*, 384 U.S. 436, inapplicable to defendant tried before that case decided. 49 H. 522, 532, 423 P.2d 438. Where *Miranda* inapplicable, question is whether confession was given "freely and voluntarily without any compelling influences." 50 H. 42, 430 P.2d 330.

Waiver of constitutional protection. 51 H. 260, 457 P.2d 505.

In application of *Miranda*, the test is whether the words used give a clear, understandable warning of accused's rights. 56 H. 428, 539 P.2d 1200.

*Miranda* applies only to custodial interrogation. 58 H. 94, 564 P.2d 1271; 61 H. 124, 596 P.2d 777.

Voluntary statement that didn't result from custodial interrogation is not restricted by *Miranda*. 58 H. 323, 568 P.2d 1200; 66 H. 499, 666 P.2d 592.

Custodial interrogation. 59 H. 357, 581 P.2d 752; 64 H. 479, 643 P.2d 541; 67 H. 126, 681 P.2d 553.

Without *Miranda* warnings, statements made during custodial interrogation must be excluded although they may be wholly voluntary; volunteered confession independent of interrogation is outside of *Miranda* rule. 61 H. 356, 604 P.2d 45.

Defendant not entitled to *Miranda* warnings before being questioned by

probation officer. 61 H. 571, 606 P.2d 1332.

Circumstances indicate that interrogation was not custodial interrogation. 62 H. 259, 614 P.2d 386; 2 H. App. 462, 634 P.2d 421.

Roadside questioning to obtain information to issue traffic citation not a "custodial interrogation". 68 H. 184, 706 P.2d 1305.

Miranda rights violated where defendant was questioned after polygraph examination. 70 H. 351, 772 P.2d 113.

No custodial interrogation prior to arrest where police officer lacking probable cause to arrest temporarily detained defendant for on-the-scene questioning in open view. 73 H. 41, 828 P.2d 805.

Right to remain silent waived where defendant, after being properly given Miranda warnings and additionally being told that everything defendant said was "on the record", initiated dialogue with officer. 80 H. 439, 911 P.2d 74.

Defendant's response to police matron's question during strip search was inadmissible, absent Miranda warnings. 1 H. App. 430, 620 P.2d 263.

Validity of waiver of rights; standard of review. 1 H. App. 625, 623 P.2d 1271.

No right to suppress unsolicited, spontaneous, and voluntary statements made while in custody. 3 H. App. 107, 643 P.2d 807.

Confession not tainted by earlier confession which had been obtained illegally. 4 H. App. 248, 665 P.2d 181.

Question to defendant "do you know why you are being detained?" was interrogation because officer should have known that it was reasonably likely to elicit an incriminating response from defendant. 85 H. 171 (App.), 938 P.2d 1190.

### **Self-incrimination.**

See also notes on defendant's out-of-court statements.

State involuntary commitment statute does not violate privilege by penalizing refusal to speak. 617 F.2d 173.

Prior silence cannot be used for impeachment where silence not probative and where prejudice to defendant might result. 639 F.2d 466.

No abuse of discretion in allowing witness broad privilege to refuse to answer all substantive questions. 646 F.2d 365.

Prosecutor's comments not improper comment upon defendant's failure to testify. 730 F.2d 1292.

Not violated by requirement that passenger notify carrier of firearm shipment. 777 F.2d 494.

Prosecutor improperly commented on defendant's failure to testify. 807 F.2d 805.

Defendant's exercise of right to appeal or privilege against self-incrimination cannot be used as basis for denying reduction of offense level under sentencing guidelines for acceptance of responsibility. 998 F.2d 1460.

Where defendant contended that pursuant to constitutional right to testify, district court was required to permit defendant to explain to jury that defendant behaved in manner that defendant did because defendant was acting under duress, whether or not defendant had demonstrated prima facie evidence of duress, since proposed testimony pertained to a defense that was not relevant as a matter of law, the district court did not err in excluding the evidence during the trial. 102 F.3d 994.

Requiring inmates labeled as sex offenders to admit their offenses and take responsibility for their sexual behaviors as part of treatment program did not violate privilege against self-incrimination. 131 F.3d 818.

Prosecutor's prejudicial references to defendant's privilege against

self-incrimination made during grand jury hearing are grounds for dismissal of indictment. 450 F. Supp. 1097.

Prosecutor's comments in regard to defendant's failure to testify were prejudicial. 674 F. Supp. 788.

Where after never asserting the privilege, petitioner argued that petitioner failed to file a bond and contest the administrative forfeiture because the acts would incriminate petitioner, because the self-incrimination dilemmas never materialized and the remedy sought was well beyond those provided for such dilemmas, petitioner's argument concerning self-incrimination found without merit. 887 F. Supp. 1371.

Defendant was not in custody for either of two conversations, where defendant had freedom to move anywhere on island when both conversations occurred; consequently, Miranda warnings not required and defendant's right not to incriminate defendant not violated. 961 F. Supp. 1398.

Defendant's pre-search statements admissible: (1) where statement about the shotgun and ammunition was volunteered to a police officer and was not made in response to custodial interrogation; (2) where an officer's response to defendant's second request to make a statement did not constitute custodial interrogation; and (3) pursuant to the "public safety exception" to Miranda, regarding the location of the shotgun and ammunition; defendant's responses to the officer's final two questions suppressed. 388 F. Supp. 2d 1185.

Claim of privilege against self-incrimination by minor under 18 cannot be supported on the basis of possible juvenile court proceedings against minor, nor on the basis of possible prosecution for misdemeanor where the statute of limitations will run before the minor reaches 18. 44 H. 271, 353 P.2d 631.

Right against self-incrimination being personal to witness, defendants cannot object to court's failure to warn witness. 51 H. 40, 450 P.2d 996.

Comment on defendant's assertion of right against self-incrimination in civil proceeding is not permissible. 51 H. 649, 466 P.2d 452.

Statute cannot destroy one's right to silence by empowering police and judiciary to compel communication, nor may statute impose criminal liability for failing to speak. 52 H. 527, 480 P.2d 148.

Comment on defendant's silence not automatic grounds for reversal. Standard. 63 H. 488, 630 P.2d 619.

Not violated by requirement to undergo field sobriety test. Roadside questioning of defendant after stop for traffic violation not a custodial interrogation. 67 H. 293, 687 P.2d 544.

Officer's remarks intended as greeting, not an interrogation. Confession was unsolicited, spontaneous statement. 67 H. 563, 698 P.2d 281.

Presentation to defendant of apparently overwhelming inculpatory evidence was an interrogation; right to remain silent violated where functional equivalent of interrogation begun immediately after right exercised. 68 H. 28, 702 P.2d 1352.

Privilege does not extend to defendant implicated by another whose right against self-incrimination was violated. 68 H. 569, 722 P.2d 1036.

Default judgment for failure to make an accounting did not violate privilege where no evidence that information sought by accounting would incriminate defendant. 68 H. 608, 726 P.2d 254.

Miranda warnings for one offense provide sufficient notice as to potential criminal liability for another offense. 69 H. 398, 744 P.2d 514.

Scope of protections guaranteed by Hawaii constitution are broader than federal requirements. 69 H. 461, 748 P.2d 365.

Defendant's statement to police, made while wearing blanket during custodial interrogation, was not coerced under totality of circumstances. 72 H. 327, 817 P.2d 1054.

Constitutional right was not voluntarily waived by defendant's confession to theft where waiver was predicated on prior illegal search and State failed to meet burden of showing that taint of illegal search had been dissipated or that there was an independent source inducing defendant to waive right. 72 H. 505, 824 P.2d 833.

Not violated where court requested defendant to identify self for purposes of identification in compliance with Hawaii Rules of Penal Procedure 43(a) (requiring presence of defendant at trial). 72 H. 573, 827 P.2d 648.

Defendant's mental and physical condition at time of defendant's interview with detective did not render defendant's statement involuntary; where defendant complained detective repeatedly exhorted defendant to tell the whole story and wheedled a confession out of defendant through misrepresentations, detective's tactics did not amount to mental or psychological coercion, rendering defendant's consequent statement involuntary and inadmissible. 74 H. 479, 849 P.2d 58.

Circuit court's error in failing to expressly state findings of fact and conclusions of law with respect to alleged violation of appellant's right against self-incrimination was harmless error; reversal of appellant's original conviction was not based on prosecution's use of illegally obtained confessions and appellant had never alleged that appellant was in any way compelled to testify at first trial. 76 H. 237, 873 P.2d 775.

Defendant did not invoke right where, after being properly informed of Fifth Amendment rights, record did not support conclusion that defendant did request attorney during first police interview and defendant admitted to failing to request attorney at last two interviews. 83 H. 443, 927 P.2d 844.

Right voluntarily, knowingly, and intelligently waived where no one threatened defendant to sign police waiver forms or during subsequent interviews, defendant knew defendant could terminate interviews at any time, and defendant was not a "neophyte" to criminal justice system. 83 H. 443, 927 P.2d 844.

Where Miranda warnings not first given to defendant in custody, defendant's statements to officer regarding device found in defendant's truck and device's purpose were unlawfully obtained and thus inadmissible. 87 H. 71, 951 P.2d 934.

Where "public safety" exception to Miranda inapplicable to case, statements by defendant subjected to custodial interrogation without Miranda warnings inadmissible in evidence. 87 H. 71, 951 P.2d 934.

A trial court must pass on a defendant's attempted withdrawal of the prior waiver of his or her right to testify, tendered before the commencement of closing arguments, pursuant to the "liberal approach", whereas such an attempted withdrawal tendered thereafter is subject to the "manifest injustice" standard. 88 H. 407, 967 P.2d 239.

Where defendant did not meet burden of establishing plausible and legitimate reasons for withdrawal of defendant's prior waiver of defendant's right to testify, defendant failed to present "fair and just reasons" for defendant's request to exercise defendant's right to testify in defendant's own behalf; thus trial court did not abuse discretion by ruling that it would not reopen case. 88 H. 407, 967 P.2d 239.

Where trial court's denial of defendant's post-verdict motion for a new trial--based on defendant's claim that defendant's attempt to withdraw defendant's waiver of right to testify in defendant's own behalf should have been allowed--was not "manifestly unjust", no abuse of discretion. 88 H. 407, 967 P.2d 239.

Where defendant initiated contact with police for purpose of making a confession and police adequately determined that defendant's mind was clear and

defendant had made a voluntary decision to waive defendant's rights and make a statement, trial court properly determined defendant knowingly and intelligently waived constitutional rights. 92 H. 19, 986 P.2d 306.

Where no evidence that defendant felt compelled to give statement to police because defendant feared defendant would be beaten, felt dizzy and in pain, and had not slept in four days prior to defendant's arrest, trial court erred in concluding statement was not voluntarily and freely given. 92 H. 135, 988 P.2d 200.

Where trial court was put on advance notice that defendant intended to invoke privilege against self-incrimination, court abused discretion by permitting prosecution to question defendant about false identification cards; risk of unfair prejudice occasioned by compelling criminal defendant to invoke privilege in front of jurors was substantial and not outweighed by probative value of prosecution's unanswered questions. 97 H. 206, 35 P.3d 233.

Trial court violated defendant's constitutional privilege against self-incrimination by imposing an enhanced sentence pursuant to §706-662(4) based solely on defendant's refusal to admit defendant's guilt with respect to the offenses of which defendant was convicted by the jury. 103 H. 315, 82 P.3d 401.

Where defendant's statements were not the product of "interrogation", but, rather, were "volunteered confessions or admissions, obtained independent of express police questioning or its functional equivalent", defendant's constitutional rights against self-incrimination and due process of law not violated. 104 H. 224, 87 P.3d 893.

Where defendant gave a full and voluntary statement to detective but then declined to repeat the statement on tape, defendant did invoke right to remain silent, not because defendant refused to make a statement on tape, but because that refusal appeared to have caused a termination of all questioning by the police and acted as a de facto invocation of defendant's right to refrain from answering further questions. 113 H. 41, 147 P.3d 825.

Where prosecutor merely elicited the fact, without further comment, that, following a full, voluntary explanation of how accused came to possess the welder and trailer, accused declined to agree to an audiotaped reiteration of accused's statement to detective, information elicited by prosecutor from detective was not manifestly intended or of such character that the jury would naturally and necessarily take it to be a comment on the failure of the accused to testify. 113 H. 41, 147 P.3d 825.

Where (1) prosecutor argued the unreasonable inference that defendant was guilty in light of defendant's post-arrest silence, (2) the trial court declined to give a curative instruction when defendant objected to prosecutor's comments, and (3) the evidence against defendant was not so overwhelming that prosecutor's intrusion into defendant's right to remain silent may not have contributed to defendant's conviction, prosecutor's improper comments were not harmless beyond a reasonable doubt, and defendant was entitled to a new trial. 117 H. 235, 178 P.3d 1.

Prosecutor's statements not improper comment upon defendant's failure to testify. 3 H. App. 107, 643 P.2d 807.

Defendant's constitutional and statutory right to testify in defendant's own defense was violated where judge reproached defendant to follow defendant's attorney's advice and thus refrain from testifying, and the violation was plain error; denial of the right to testify was prejudicial and not harmless beyond a reasonable doubt. 78 H. 115 (App.), 890 P.2d 702.

Because defendant's refusal to take the field sobriety test was neither testimonial nor compelled, this Amendment and article I, §10 of the Hawaii constitution were not offended. 94 H. 17 (App.), 7 P.3d 193.

Where detective made clear to defendant that "in accordance with the mandate of Miranda, the right to counsel may be invoked at any point, and when invoked, all substantive questioning must cease unless and until counsel is provided," trial court did not err in denying defendant's motion to suppress statement defendant made to detective. 101 H. 97 (App.), 63 P.3d 405.

Where defendant was properly informed of defendant's Miranda rights against self-incrimination, and expressly waived this right and the right to counsel prior to being examined and prior to giving the suppressed statements, defendant's rights not violated. 101 H. 344 (App.), 68 P.3d 618.

Defendant's right violated where, based on the specific facts of the case, trial court abused its discretion in directing, over defendant's objection, that defendant testify before defendant's other defense witness; error not harmless beyond a reasonable doubt as there was a reasonable possibility that trial court's error contributed to defendant's conviction. 102 H. 369 (App.), 76 P.3d 612.

State did not comment on defendant's exercise of right to remain silent as, placed in its proper context, prosecutor's question to evidence specialist--"did the defendant attribute any apparent injuries to the complainant?"--was not an attempt to elicit evidence that defendant had exercised defendant's right to remain silent. 106 H. 365 (App.), 105 P.3d 242.

Right not to testify at trial not compromised by family court's consolidation of the hearing on motion to suppress identification and the trial itself where minor could have advised the court that minor would only testify with respect to the issues presented by minor's motion to suppress, that minor was not giving up minor's Fifth Amendment right not to testify at trial, and that absent minor's consent, the court must not consider minor's testimony when deciding the merits of the case. 107 H. 439 (App.), 114 P.3d 945.

Where trial court misinformed defendant about defendant's eligibility for a deferred acceptance of no contest plea, defendant did not proffer defendant's plea knowingly and voluntarily, and it was constitutionally invalid. 109 H. 50 (App.), 122 P.3d 1148.

Trial court did not abuse its discretion by prohibiting defense from calling witness in order to have witness invoke witness' privilege against self-incrimination in front of the jury where, under HRE rule 513(a), witness' invocation of privilege in front of jury would not have been entitled to any probative weight and could not properly have been considered by the jury. 110 H. 386 (App.), 133 P.3d 815.

Trial court properly suppressed defendant's statements disclaiming fanny pack where police failed to apprise defendant of defendant's Miranda rights before subjecting defendant to custodial interrogation; when officers took defendant to the hospital for treatment, defendant was in custody because defendant had been "formally and physically arrested" and the "express questioning" of defendant by police regarding the ownership of the fanny pack constituted interrogation. 116 H. 29 (App.), 169 P.3d 981.

### **Former jeopardy.**

Essence of double jeopardy determination in conspiracy case is whether there is more than one agreement. 681 F.2d 581.

Convictions for possession of unregistered firearms and possession of firearms by a felon not violative. 682 F.2d 799.

Due diligence did not require extraordinary search methods at remote site, based on facts known at that time; greater charges not prohibited if government was unable to prosecute at outset because facts were not discovered despite exercise of due diligence. 707 F.2d 1100.

No jeopardy attached where at pretrial hearing defendant acquitted by trial

court by reason of insanity. 794 F.2d 1458.

Remand for resentencing of an illegal sentence did not constitute double jeopardy. 876 F.2d 734.

No double jeopardy where government appeals a reversal of defendant's conviction. 910 F.2d 617.

Increasing sentence of defendant due to firearm possession while in possession of drugs was not double jeopardy. 924 F.2d 800.

Murder defendant's fourth trial not barred by double jeopardy clause based on contention that prosecutorial misconduct intended to goad defendant into moving for mistrial. 937 F.2d 1409.

Civil penalty imposed for failure to disclose marijuana pursuant to U.S. customs directive was not punishment for purposes of double jeopardy which would bar subsequent criminal prosecution for knowing possession and importation of marijuana. 940 F.2d 442.

Double jeopardy claim failed where appellants failed to show that two conspiracies were the same in law and in fact. 995 F.2d 1448.

Jury's "not guilty" verdicts on attempted second degree murder counts created a double jeopardy bar to petitioner's impending retrial on attempted second degree murder charges, where jury returned a "guilty" verdict on attempted first degree murder charge and "not guilty" verdicts on attempted second degree murder counts, based on the same incidents, and Hawaii supreme court reversed jury's judgment of conviction of attempted first degree murder and held that the "not guilty" verdicts did not, in substance, constitute acquittals and therefore the State could retry petitioner for attempted second degree murder without subjecting petitioner to double jeopardy. 389 F.3d 880.

Reversal of a conviction on a greater offense, coupled with a final conviction on a lesser included offense, does not preclude retrial of the greater offense when the offenses were charged in the same indictment and tried together in the same original trial. 425 F.3d 1237.

District court concluded appropriately that there was manifest necessity for a mistrial, where the court was faced with conflicts that had hindered defendant's lead counsel's ability to adequately represent defendant, and with defendant's refusal to waive the conflict while insisting on continuing with lead counsel as defendant's lawyer. 463 F.3d 858.

Although double jeopardy clause embraces a defendant's right to have bench trial completed by a particular judge, a defendant moving for a mistrial can be retried. 446 F. Supp. 1120.

When judge declares mistrial sua sponte over defendant's objections, determination whether there was valid reason for ending trial is governed by manifest necessity test. No manifest necessity to terminate first trial. 528 F. Supp. 833.

Prosecution not barred because due diligence exception applied. Due diligence means ordinary rather than extraordinary diligence. 546 F. Supp. 805.

Uncontested administrative forfeiture did not offend the double jeopardy clause. Because defendant chose to forego opportunity to contest forfeiture, defendant was not a party to forfeiture proceeding and could not claim an interest in the property; without an interest in the property, defendant could not be said to have been subjected to jeopardy or punished in any way by the administrative forfeiture. 876 F. Supp. 235.

Where plaintiff was subjected to two separate proceedings, i.e., separation proceedings after plaintiff was found not guilty of use of cocaine by military judge in special court martial, question of whether the separation proceedings were sufficiently punitive to implicate double jeopardy was a serious constitutional question, justifying an exception from the exhaustion

requirement for the limited purpose of the temporary restraining order and a finding of a serious question on the merits. 877 F. Supp. 508.

Uncontested administrative forfeiture did not punish petitioner or place petitioner in jeopardy in the sense necessary to trigger double jeopardy clause protection. 887 F. Supp. 1371.

Trial court's decision to declare mistrial was proper exercise of its discretion; accordingly, even if juror misconduct was not certain to result in reversal, defendants' joint motion to dismiss indictment on double jeopardy grounds must be denied. 951 F. Supp. 928.

Double jeopardy clause not violated by a retrial, where jury was unable to reach a verdict. 952 F. Supp. 1426.

Where jury found defendant guilty of attempted murder in the first degree based on two incidents and indicated on verdict form that defendant was not guilty of two counts of attempted murder in the second degree for the same two incidents, and Hawaii supreme court reversed the conviction and remanded the case for retrial on the two counts of attempted murder in the second degree, double jeopardy clause would be violated if defendant were retried for attempted murder in the second degree. 288 F. Supp. 2d 1122.

Where defendant moved for dismissal of defendant's drug case on the ground that any trial would place defendant in double jeopardy, the court denied the motion on the grounds that (1) defendant waived the arguments defendant made, e.g., that any conflict of interest that may have existed was eliminated when the court struck a defense witness' testimony, and (2) even if the court considered the arguments, it was manifestly necessary to declare a mistrial. 369 F. Supp. 2d 1203.

Former prosecution bar to subsequent prosecution, when. 52 H. 321, 474 P.2d 704.

Effects of setting aside former convictions by granting coram nobis and habeas corpus. 52 H. 420, 477 P.2d 630.

Declaration of mistrial--when a bar to retrial. 58 H. 377, 569 P.2d 900; 62 H. 108, 612 P.2d 107.

Resentencing to correct illegal sentence does not violate double jeopardy clause even if correction increases sentence. 61 H. 226, 602 P.2d 13; 67 H. 531, 696 P.2d 344.

Where first indictment was void, no jury was impanelled, and judge heard no evidence on the charge, jeopardy did not attach. 62 H. 364, 616 P.2d 193.

Under circumstances, jeopardy did not attach even though jury was sworn. 64 H. 395, 641 P.2d 1338.

Rights waived by defendant. 64 H. 611, 645 P.2d 1340.

Dismissal of prosecution not required. 65 H. 47, 647 P.2d 705; 65 H. 129, 648 P.2d 192.

No jeopardy attached where at pretrial hearing defendant acquitted by trial court by reason of insanity. 67 H. 70, 679 P.2d 615.

Jeopardy did not attach where case dismissed after defendant arraigned but before State's first witness sworn. 68 H. 238, 709 P.2d 607.

No double jeopardy where crimes charged involved different mens rea requirements and different facts proved each crime. 68 H. 280, 711 P.2d 731.

No double jeopardy where trial court did not accept verdict or discharge the jury. 70 H. 175, 765 P.2d 1091.

Retrial not barred by double jeopardy clause where there was no prosecutorial intent to goad defendant into moving for mistrial. 73 H. 289, 834 P.2d 275.

Reprosecution barred because defendant was subjected to former jeopardy in first trial and trial court erroneously declared mistrial without defendant's consent or a showing of manifest necessity. 75 H. 195, 857 P.2d 585.

Hawaii constitution provides greater protection against multiple prosecutions

than U.S. Constitution; requires application of "same conduct" test. 75 H. 446, 865 P.2d 150.

One year suspension of appellant's license to practice medicine by board of medical examiners after appellant was convicted of attempted first degree sexual abuse and kidnapping did not amount to a violation of double jeopardy clause. 78 H. 21, 889 P.2d 705.

Appellant's new sentence did not contravene right against double jeopardy even if it potentially affected appellant's future eligibility for parole. 79 H. 281, 901 P.2d 481.

Reprosecution not barred by double jeopardy where trial court's declaration of mistrial supported by manifest necessity; court sufficiently considered alternatives available. 79 H. 461, 903 P.2d 1282.

As §286-261(d) did not require defendant to submit to needs assessment nor undergo any treatment for alcohol dependence, application of that section with DUI conviction under §291-4 not "multiple punishments for same offense". 80 H. 8, 904 P.2d 893.

Remanding case for retrial on lesser included offenses following appellate determination that insufficient evidence was presented at trial to support conviction of greater offense did not violate clause. 80 H. 126, 906 P.2d 612.

Defendant not subjected to multiple punishments as a result of administrative driver's license revocation under §286-261 and DUI conviction under §291-4 as administrative revocation non-punitive and purely remedial in nature. 81 H. 226, 915 P.2d 700.

Because counseling and assessment, as consequence of administrative driver's license revocation under §286-261(d), not punitive but purely remedial, subsequent DUI conviction did not expose defendant to multiple "punishments"; defendant's motion to dismiss on double jeopardy grounds thus properly denied. 82 H. 446, 923 P.2d 388.

Denial of defendant's motion to dismiss on double jeopardy grounds, premised on protection against multiple punishments for same offense, not effectively unreviewable on appeal and thus not immediately appealable under collateral order exception. 82 H. 446, 923 P.2d 388.

Jeopardy did not attach where defendant failed to file a timely claim for forfeited property under §712A-10(4). 83 H. 141, 925 P.2d 311.

Where defendant's conviction on non-existent attempted reckless manslaughter charge vacated, remand for retrial on original charge of attempted first degree murder unconstitutional and also violation of §701-110(1). 83 H. 335, 926 P.2d 1258.

Not violated by prosecution's appeal from judgment of acquittal following jury's verdict of guilty pursuant to §641-13(9). 87 H. 108, 952 P.2d 865.

As conviction for manslaughter due to an extreme mental or emotional disturbance under §707-702(2) is deemed an acquittal of murder, double jeopardy barred defendant's reprosecution for second degree murder under §707-701.5. 88 H. 356, 966 P.2d 1082.

Prosecution not barred from reprosecuting defendant for offense of reckless manslaughter under §707-702(1)(a) as reckless manslaughter is a lesser included offense of murder and remanding a case for retrial on lesser included offenses not barred by double jeopardy. 88 H. 356, 966 P.2d 1082.

Where, upon defendant's own motion, place to keep firearms count under §134-6 was dismissed on a basis unrelated to factual guilt or innocence, retrial on the place to keep firearms charge not barred by double jeopardy clauses of U.S. and Hawaii Constitutions. 88 H. 389, 967 P.2d 221.

As family court's "judgment of acquittal" was, in fact, an acquittal "in substance as well as form", clause violated where family court granted prosecution's motion for reconsideration and denied defendant's motion to

dismiss complaint. 91 H. 206, 982 P.2d 340.

Given that any improper remarks in opening statement, closing and rebuttal arguments by prosecutor were harmless beyond a reasonable doubt, and their cumulative effect was similarly harmless and did not deprive defendant of a fair trial, prosecutor's misconduct did not warrant reversal of any of defendant's convictions and did not implicate the double jeopardy clauses of either the U.S. or Hawaii Constitutions. 95 H. 465, 24 P.3d 661.

Trial court abused its discretion in concluding there was manifest necessity for mistrial as circumstances creating apparent need for mistrial did not make it impossible for trial to proceed; in absence of manifest necessity, defendant should have been allowed to choose between continuing with trial or consenting to a mistrial; by moving for dismissal with prejudice, defendant did not "consent" to the mistrial; retrial thus barred by double jeopardy. 97 H. 238, 35 P.3d 755.

The double jeopardy clause does not constrain the legislature from intentionally imposing multiple punishments upon a defendant for separate offenses arising out of the same conduct; the protections afforded by the U.S. Constitution, as set forth in the Blockburger "same elements" test, adequately protect against double jeopardy in "multiple punishments" cases. 107 H. 469, 115 P.3d 648.

Does not bar second trial of charge dismissed before being submitted to judge or jury. 5 H. App. 127, 681 P.2d 573.

Retrial permissible if dismissal due solely to trial error rather than evidentiary insufficiency; jeopardy ended at trial where judge did not return verdict on charge despite having full opportunity to do so and no extraordinary circumstances. 7 H. App. 48, 744 P.2d 783.

No double jeopardy for conviction under §§707-734 and 712-1217. 8 H. App. 535, 813 P.2d 335.

Retrial barred where reversal of DUI conviction based on improperly admitted test result from breath-testing instrument was for insufficiency of evidence, not trial error. 9 H. App. 130, 828 P.2d 813.

Retrial not barred where defendant moved for dismissal and was successful in having the charge dismissed before a determination was made of whether defendant was guilty or not guilty and where defendant did not make any showing that prosecutor intended to provoke a mistrial. 10 H. App. 491, 878 P.2d 739.

Clause violated where defendant, upon being resentenced for same offense, not given credit for imprisonment already served and fines already paid. 82 H. 83 (App.), 919 P.2d 995.

Since kidnapping under §707-720(d) and sexual assault under §707-732(1)(e) require proof of a fact which the other does not, offenses are different and defendant's federal double jeopardy guarantee not violated by defendant's conviction and punishment for both offenses. 85 H. 92 (App.), 937 P.2d 933.

Where purported judgment of acquittal was unrelated to factual guilt or innocence of defendant and was solely based on a question of law, no double jeopardy if defendant retried. 88 H. 477 (App.), 967 P.2d 674.

Retrial of defendant was not double jeopardy and not barred when mistrial was prompted by prosecutorial misconduct, even where the defendant consented to the mistrial, where the prosecutorial misconduct was not so egregious that, from an objective standpoint, it clearly denied the defendant his or her right to a fair trial. 97 H. 166 (App.), 34 P.3d 1065.

As attempted assault in the first degree is an included offense of assault in the first degree, under §701-109(4), the trial court properly instructed the jury on the included offense of attempted assault in the first degree; as trial court's instructing the jury on the included offense of attempted assault in the first degree only placed defendant in jeopardy once, defendant's double

jeopardy rights not violated. 112 H. 278 (App.), 145 P.3d 821.

Discussed. 55 H. 14, 514, P.2d 580.

### **Eminent domain.**

"Public use" requirement is coterminous with scope of sovereign's police powers. Land reform act was rational use of eminent domain power. 467 U.S. 229.

If fear of a hazard would affect price a knowledgeable and prudent buyer would pay to a similarly well-informed seller, diminution in value caused by that fear may be recoverable as party of just compensation. Severance damages not allowed because no prima facie case of causation. 731 F.2d 1443.

Public access to lagoon formed from littoral Hawaiian fishpond could not be imposed without payment of compensation. 944 F.2d 1489.

Courts are not immune from prohibition against taking without compensation. 402 F. Supp. 95.

"Public use" includes "public interest." 471 F. Supp. 871.

Given system of landholding in Hawaii, legislature could, under police power, conclude that general welfare was served by condemning land of large landholder-lessors and allow lessees to purchase land from State under HRS Chapter 516. 483 F. Supp. 63.

Legislative declaration of public use and finding of necessity are not constitutional prerequisites. 43 H. 255.

Application of ordinance regulating outdoor signs did not constitute a taking of private property without payment of compensation. 50 H. 33, 429 P.2d 825.

Law imposing on private employers obligation to pay their employees for service on juries and public boards, constituted taking. 52 H. 327, 475 P.2d 679.

Attorney's fees and expenses are not embraced within "just compensation". 53 H. 582, 499 P.2d 663.

Condemnation of leased fee interests in residential houselots continued to satisfy "public use" prerequisite of Fifth Amendment and article I, §20 of Hawai'i constitution. 79 H. 64, 898 P.2d 576.

### **Due process.**

See also notes to amendment 14.

In absence of exigent circumstances, the due process clause of the Fifth Amendment prohibits the government in a civil forfeiture case from seizing real property without first affording the owner notice and an opportunity to be heard. 510 U.S. 43.

Trial court's finding that defendants had actual notice of trespassing prohibition is not clearly erroneous and does not violate due process. 582 F.2d 1194.

Defendant was not denied due process by alleged prosecutorial misconduct before grand jury. 614 F.2d 214.

Interest in receiving medical care at Hale Mohalu leprosy facility may be a property interest protected by due process clause if more than a "unilateral expectation." 616 F.2d 410.

Federal employee not denied due process because disciplinary action was based on charges in notice, and even though investigative officer asked questions about pending charges. 625 F.2d 285.

Only where defendant alleges governmental conduct "of the most shocking and outrageous kind" will due process be violated and court required to divest itself of jurisdiction. 625 F.2d 308.

Use for impeachment purposes of defendant's silence at time of arrest and after receiving Miranda warnings violates due process. 639 F.2d 466.

No legitimate entitlement to continued employment obtained through deliberate material misrepresentation. 649 F.2d 748.

Range of due process rights at sentencing not as extensive as that at trial. 694 F.2d 200.

Forfeiture rules under federal Food, Drug, and Cosmetic Act did not violate. 715 F.2d 1339.

Not violated by jury instruction's connection between extensive use of currency and wilful criminal tax activity. Not violated by extrajudicial communication between juror and prosecutor regarding matter unrelated to trial. 730 F.2d 1292.

Where legal arguments only are involved, and the material issues have been briefed, no requirement for oral argument covering all legal theories. 738 F.2d 1455.

Defendant's un rebutted allegations of prejudice from absence of counsel at previous trial sufficient to warrant dismissal of indictment on due process grounds. 741 F.2d 1123.

Procedures under which defendant sentenced as second offender complied with requirements. 750 F.2d 787.

Not violated by magistrate-conducted voir dire in criminal case without defendant's consent. 760 F.2d 999.

Where Miranda inapplicable because confession obtained by foreign police, trustworthiness of confession must still satisfy due process. 783 F.2d 1052.

Not violated by issuance, without opportunity for hearing, and enforcement of bar letter excluding defendant from military base. 783 F.2d 1484.

Test of whether prison guard's use of force against inmate denies due process. 795 F.2d 780.

Court's finding that guilty plea was knowing rebuts claim that defense counsel's erroneous advice rendered plea "unintelligent". 800 F.2d 861.

Defendant could rely on appellate court's decision in repeating the same conduct, before the appellate decision was reversed by the Supreme Court. 830 F.2d 985.

Not violated where probationer was not given notice prior to drug testing. 831 F.2d 176.

No sham prosecution by federal authorities if there was sufficient independent federal involvement. 831 F.2d 181.

An acquittal based on a ruling that the government's evidence is legally insufficient to sustain a conviction is not appealable. 833 F.2d 135.

Controversy was not ripe. 887 F.2d 215.

Not violated by sentencing court's reliance on evidence at co-defendant's trial. 909 F.2d 363.

Not offended by exercise of jurisdiction over defendants since sufficient nexus existed where vessel with marijuana off-loaded from Panamanian freighter was ultimately bound for U.S. 946 F.2d 608.

Violated by government's seizure of owner's home pursuant to federal Controlled Substances Act without pre seizure notice or hearing. 971 F.2d 1376.

Supervised releasee's due process right of confrontation violated. 984 F.2d 308.

Violated by prosecutor's comments during closing rebuttal argument on defendants' postarrest silence. 998 F.2d 412.

Federal maritime drug enforcement statute's application to defendants not unconstitutional where there was sufficient nexus between defendant crew members and the U.S. as ship's drug cargo was destined for the U.S. 35 F.3d 426.

Federal wastewater treatment permit not unconstitutionally vague where defendants were knowledgeable in wastewater field, could be expected to have

understood what the permit meant, and took considerable pains to conceal their illegal dumping activities. 35 F.3d 1275.

Not violated by rule that, for purposes of criminal history calculation, state conviction for conduct which occurred after defendant's federal offense, but for which defendant was sentenced before defendant's sentencing on the federal offense, is counted as a prior sentence. 44 F.3d 749.

Not violated by a court's entry of default judgment or other sanction against a party for refusal to cooperate with discovery and if party is later held to the consequences of such judgment in a bankruptcy discharge proceeding. 47 F.3d 365.

Employee's contention that employee's designation as a witness in IRS summons to obtain handwriting exemplars was a calculated maneuver to circumvent employee's Fourth Amendment privilege against unreasonable searches and seizures and employee's due process rights under both Fifth Amendment and IRS regulations, rejected. 94 F.3d 1342.

Where appellants contended that restrictions on organizations that accept Legal Services Corporation funds violated equal protection and due process rights protected by the U.S. Constitution, appellants failed to establish their standing to raise the rights of their clients. 145 F.3d 1017.

Defendant failed to establish the actual, nonspeculative prejudice from government's delay in bringing third superseding indictment that is necessary to prove a Fifth Amendment violation based upon excessive preindictment delay. 322 F.3d 1157.

Department of Interior's regulations acknowledging the federally recognized status of Indian tribes, which excluded native Hawaiians, did not violate the Fifth Amendment under rational basis scrutiny. 386 F.3d 1271.

Defendant's motion to dismiss indictment denied, where defendant asserted that statute of limitations tolling provision, which provided that any time during which the person committing an offense arising under the internal revenue laws is outside the United States shall not be counted towards the limitation by law for the commencement of proceedings, violated defendant's constitutional right to travel under the Fifth Amendment. 248 F. Supp. 2d 970.

Delay of 6 months between date of offense and indictment held not excessive. 316 F. Supp. 892.

Re court's relocation of private land boundary without due process. 402 F. Supp. 95.

Forfeiture proceeding satisfied due process rights of purchaser of property, who was unaware of prior owner's tax debt. 429 F. Supp. 1002.

Congress had a rational basis for preempting state health insurance laws and did not violate due process. 442 F. Supp. 695.

Nonjudicial punishment by way of Captain's Mast procedure does not deny due process. 466 F. Supp. 257.

Law providing for affidavit method of postjudgment garnishment of wages not unconstitutional. 467 F. Supp. 544.

Determination of whether taking is for public purpose is limited to whether there is a denial of substantive due process. Statute is constitutional if: (1) any possible rationale for the statute, expressed or not, is within state police power; and (2) statute is not arbitrary or product of legislative bad faith. 483 F. Supp. 63.

Violated if civilians prosecuted differently than military personnel for traffic violations on military bases. 604 F. Supp. 416.

Thirty-three month delay between alleged offense and return of indictment was not a violation of defendant's due process rights. 666 F. Supp. 1428.

Award of punitive damages for wanton, oppressive, or malicious actions did not violate due process. 728 F. Supp. 1461.

Legislature's decision not to define statutory terms does not render such statutes unconstitutional. 751 F. Supp. 853.

Administrative segregation of prisoner invoked due process. 751 F. Supp. 1401.

No due process liberty interest in parole is created under §§353-68 and 353-69; inmate had due process liberty interest at stake at misconduct hearing. 795 F. Supp. 1020.

Facts did not support a claim of either procedural due process or takings clause violation; termination of special use permits did not require compensation because they were not property interests recognized by the Fifth Amendment. 875 F. Supp. 680.

Where defendant's phone conversations with person working at behest of FBI were voluntary, defendant's due process rights not violated. 961 F. Supp. 1398.

Where plaintiffs filed action for temporary restraining order claiming, inter alia, that by not allowing enough time for plaintiffs to challenge the agency decision to launch the Cassini Mission, defendants violated plaintiffs' right to procedural due process, court assumed that judicial review under National Environmental Policy Act and Administrative Procedures Act was the protected right at the center of the procedural due process claim; plaintiffs had an adequate opportunity to obtain judicial review of the agency decision. 980 F. Supp. 1160.

Motion to dismiss indictment on ground that deportation order, an essential element of crime charged (unauthorized reentry into the United States after previous deportation), was procured in a proceeding that was fundamentally unfair, granted. 107 F. Supp. 2d 1248.

Where plaintiff protested Federal Aviation Administration requirement that plaintiff retire as air traffic controller at age fifty-six, while other air traffic controllers were allowed to work past that age, defendant's motion for partial summary judgment granted as to plaintiff's right to equal protection under the Fifth Amendment claim. 128 F. Supp. 2d 672.

Law providing for service of summons on nonresident motorists by publication does not violate due process clause. 50 H. 484, 443 P.2d 155.

Discussion of preindictment delay resulting in deprivation of due process. 53 H. 652, 500 P.2d 1171.

Courts' construing prior land court decree was not a taking of private property even though it established a different shoreline boundary. 57 H. 585, 562 P.2d 771.

Constitutional permissibility of lifting of bar of statute of limitations to restore a remedy previously barred. 59 H. 259, 581 P.2d 310.

Condition of probation that defendant "refrain from company of people of questionable character" was not invalid for vagueness. 59 H. 366, 580 P.2d 1282.

Defendant who leaves trial voluntarily waives right to be present at trial, which may continue as if defendant were present. 62 H. 309, 615 P.2d 91.

Accused's right to a fair trial includes right to present matters in the accused's defense, and government may not by its conduct render a material witness unavailable to defendant. 63 H. 27, 620 P.2d 728; 63 H. 34, 620 P.2d 732.

Lineup of accused and due process rights. 63 H. 354, 628 P.2d 1018.

No violation in court's refusal to order production of letter concerning dismissal of charges against prosecution witness because no material effect on trial's outcome. 66 H. 175, 657 P.2d 1052.

Requires that State fulfill its end of plea bargain if defendant's guilty plea based in significant degree on promised resolution of cases against

defendant. 66 H. 342, 662 P.2d 1112.

Not violated due to thirty-one month preindictment delay; a showing of memory loss alone is insufficient to demonstrate substantial prejudice. 67 H. 247, 686 P.2d 9.

Not violated by methodology used by public utilities commission rate making proceeding. 67 H. 425, 690 P.2d 274.

Due process denied where lessee's property seized without proper service of process, time to answer, evidence presented by lessor, and opportunity to contest case. 68 H. 466, 719 P.2d 397.

Not violated by court's entering of judgment against defendants for violating court order. 68 H. 608, 726 P.2d 254.

One year limitation on right to former spouse's property does not violate due process. 69 H. 1, 730 P.2d 338.

Police tactics designed to detect drug-related offenses, including officer posing as drug dealer and supplying and selling drugs in "reverse buy" operation, were not so outrageous as to deprive defendant of right to due process. 73 H. 179, 830 P.2d 492.

Right not violated by defendant's absence from conference settling jury instructions as conference does not involve jury's presence or witness testimony. 74 H. 141, 838 P.2d 1374.

Section 703-309(1) not unconstitutionally vague as it describes with sufficient clarity level of force that may be justifiably used in discipline of a minor. 81 H. 5, 911 P.2d 725.

A vessel and its accompanying mooring and live-aboard permits are constitutionally protected "property", of which an individual may not be deprived without notice and an opportunity to be heard. 91 H. 1, 979 P.2d 586.

Procedural due process violated where State informed boat owner by letter of impoundment and possible disposal of vessel, but made no mention of any procedures available for challenging that action, administrative or otherwise, and boat owner was never provided with an opportunity to be heard on matter of vessel's impoundment. 91 H. 1, 979 P.2d 586.

Right not violated by administrative driver's license revocation hearing procedure where defendant was afforded a hearing where witnesses were called and defendant was represented by counsel, and hearing officer advised counsel of the procedure that hearing officer was going to follow. 108 H. 31, 116 P.3d 673.

Right not violated where pregnant wife had qualified right to be present at her civil trial and right was unobstructed as family court did not preclude wife from attending; court merely denied wife's motions to continue and wife had no fundamental right to have trial commence at the time of her choosing; family court did not abuse its discretion as it considered conflicting testimony of doctors and other evidence in denying wife's motions. 112 H. 374, 146 P.3d 89.

Refusal of court to permit defendant at an identification suppression hearing to examine the identification witness was not violative of constitutional rights. 1 H. App. 335, 619 P.2d 1078.

Testimony presented through interpreter was understandable, comprehensible, and intelligible. 5 H. App. 20, 686 P.2d 28.

Show up identification was sufficiently reliable. 5 H. App. 127, 681 P.2d 573.

Materiality of evidence suppressed by prosecution. 5 H. App. 350, 692 P.2d 1166.

Termination or reduction of welfare benefits pursuant to original notice even though adopted rules invalidated. New notices after readoption not required. 5 H. App. 419, 697 P.2d 43.

Not violated by revival of paternity action. 5 H. App. 558, 705 P.2d 535.

Right to participate in interscholastic sports not protected interest. 6 H. App. 397, 721 P.2d 165.

Violated where petitioner whose driver's license was administratively revoked denied right to cross-examine director's representative regarding basis for continuance of administrative hearing. 80 H. 358 (App.), 910 P.2d 129.

Defendant entitled to elicit evidence of complainant's past sexual behavior, not to attack complainant's character, but to determine whether complainant was mentally defective and whether defendant knew that complainant was mentally defective. 81 H. 447 (App.), 918 P.2d 254.

Where building addition was permitted structure under zoning ordinance in existence at time subsequent land use ordinance was adopted, requiring landowner to remove addition and pay daily fines until addition was removed constituted interference with landowner's vested property rights under this clause. 86 H. 343 (App.), 949 P.2d 183.

Right violated by trial court entering free-standing restitution order where no notice was provided to defendant that defendant's original sentence might be modified at the hearing on the probation officer's motion to revoke restitution. 92 H. 36 (App.), 986 P.2d 987.

Where trial court did not apply clear and convincing standard of proof on complainant as required by §604-10.5, applied a subjective rather than objective reasonable person standard in evaluating whether defendant's conduct caused complainant emotional distress, and violated defendant's due process rights, court erred by denying defendant's motion for reconsideration of injunction order. 92 H. 330 (App.), 991 P.2d 840.

### **Taking.**

The "substantially advances" formula announced in *Agins v. City of Tiburon* is not a valid method of identifying regulatory takings for which the Fifth Amendment requires just compensation. Since oil company claiming that the rent cap provision of Act 257 [L 1997 (§486H-10.4(c))], on its face, effected a taking of its property argued only a "substantially advances" theory in support of its takings claim, it was not entitled to summary judgment on that claim. 544 U.S. 528.

Federal government could not require free public access to Kuapa Pond without paying just compensation. 444 U.S. 164.

Public use limitation not subsumed under police power/due process analysis. 702 F.2d 788.

No cases finding a substantive due process violation based on a planning document. Qualified immunity is not available as a defense to private parties in a Bivens suit. 869 F.2d 1312.

Government does not take an individual's property unless it has denied the economically viable use of the land; a substantial reduction of the attractiveness of the property to potential purchasers does not entitle the owner to compensation. 913 F.2d 573.

Ordinance, a rent control measure limiting increases in ground rent due owner of land under condominium units, effected a regulatory taking and was unconstitutional. 124 F.3d 1150.

Where landowners argued that ordinance creating mechanism through which condominium owners could convert their leasehold interests into fee simple interests violated public use clause of U.S. and Hawaii Constitutions, ordinance was constitutional; landowners' claim under just compensation clause not ripe for federal adjudication. 124 F.3d 1150.

Where plaintiff sued defendant for allegedly violating plaintiff's rights under the Fourth, Fifth, and Fourteenth Amendments, based on defendant's

involvement in the removal and subsequent destruction of motorcycles and mopeds in the area of plaintiff's motorcycle repair shop, genuine issues of material fact existed and precluded the court from determining whether defendant was entitled to qualified immunity under federal law. 333 F. Supp. 2d 942.

Right to develop property, including right to lease land to build hotel, not a protectable property interest; Queen's Beach is separate parcel for determining "taking". 649 F. Supp. 926.

City ordinance purporting to impose maximum ceiling on renegotiated lease rents for residential condominiums was unconstitutional taking of property without just compensation. 759 F. Supp. 1477.

City ordinance imposing ceiling on renegotiated ground lease rents for owner-occupied residential condominium units unconstitutional; ordinance providing mechanism for transfer of fee interest from condominium lessors to lessees by payment of just compensation constitutional. 802 F. Supp. 326.

Condominium lease-to-fee ordinance did not effect an impermissible taking. 832 F. Supp. 1404.

Facts did not support a claim of either procedural due process or takings clause violation; termination of special use permits did not require compensation because they were not property interests recognized by the Fifth Amendment. 875 F. Supp. 680.

Enforcement of referendum did not result in taking because referendum certified before any post-zoning approvals were obtained. 65 H. 318, 653 P.2d 766.

54 H. 174 did not address question of whether cessation of any particular diversion would in fact constitute a taking. 65 H. 641, 658 P.2d 287.

As Hawaiian custom and usage have always been part of the laws of the State, court's recognition of customary and traditional Hawaiian rights did not constitute judicial taking. 79 H. 425, 903 P.2d 1246.

No violation by impoundment of vessel where impoundment was undertaken in substantial advancement of legitimate state interests--to prevent the sinking vessel from obstructing a public waterway; owner thus not entitled to compensation. 91 H. 1, 979 P.2d 586.

As water is a state public trust resource to which no individual, including Waiahole Ditch water use permittees, could claim an exclusive right, permittees being required to fund subsequent stream studies and monitoring activities was not an unconstitutional "regulatory leveraging". 94 H. 97, 9 P.3d 409.

No unconstitutional taking of petitioner's property without just compensation by water resource management commission's denying petitioner's request to use the ground water underlying its lands and allocating it instead to other leeward parties where the right to absolute ownership of water exclusive of the public trust never accompanied the "bundle of rights" conferred in the Mahele. 94 H. 97, 9 P.3d 409.

Where power plant developers did not acquire a vested interest in the lease because it was not preceded by the requisite environmental study, which in Hawaii is a condition precedent to approval of the request and commencement of the proposed action, the lease was void and no rights could have vested in the developers; thus, developers failed in their takings claim. 106 H. 270, 103 P.3d 939.

#### **Police power.**

Statute requiring motorcyclists to wear safety helmets is reasonable exercise of the police power. 51 H. 516, 465 P.2d 573.

Exclusive use of hearsay testimony before grand jury. 78-1 HLR 78-301.  
Due process; hearing. 78-2 HLR 78-1295.

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**[ARTICLE VI.--1791]**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

**Attorney General Opinions**

Proposed legislation did not violate federal constitutional law to extent it diminished the number of members on jury panels in either civil or criminal trials. Att. Gen. Op. 97-2.

**Law Journals and Reviews**

Suppression of Evidence Without the Aid of the Fourth, Fifth and Sixth Amendments. 8 HBJ 109.

Included Offenses in Hawaii Case Law and the Rights to Trial by Jury: Coherence or Confusion. II HBJ No. 13, at pg. 77.

State v. Breeze: Custodial Interrogation. 6 UH L. Rev. 653.

State v. O'Brien: Right to Jury Trial for Driving Under the Influence of Intoxicating Liquor. 8 UH L. Rev. 209.

State v. Smith: The Standard of Effectiveness of Counsel in Hawaii Following Strickland v. Washington. 9 UH L. Rev. 371.

The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands. 14 UH L. Rev. 445.

State v. Furutani: Hawai'i's Protection of a Defendant's Right to a Fair Trial--Verdict Impeachment Made Easy. 17 UH L. Rev. 307.

State v. Lindsey: "Petty" Offenses and the Right to Jury Trial under the Hawai'i Constitution. 17 UH L. Rev. 331.

Criminal Procedure Rights Under the Hawaii Constitution Since 1992. 18 UH L. Rev. 683.

An Evaluation of the Summary Contempt Power of the Court: Balancing the Attorney's Role as an Advocate and the Court's Need for Order. 19 UH L. Rev. 145.

State v. Sinagoga: The Collateral Use of Uncounseled Misdemeanor Convictions in Hawai'i. 19 UH L. Rev. 813.

State v. Rivera: Extended Sentencing and the Sixth Amendment Right to Trial by Jury in Hawai'i. 28 UH L. Rev. 457.

How to Transfer Venue When You Only Have One: The Problem of High Profile Criminal Jury Trials in American Samoa. 29 UH L. Rev. 325.

**Case Notes****Generally.**

Defendant has constitutional right to have all stages of a criminal trial conducted by a person with jurisdiction to preside. 42 F.3d 473.

No violation of defendant's due process right to a fair trial by prosecution's refusal to reveal exact dates of confidential informant's observations as exact dates were not necessary in order for defendant to challenge district court's findings of probable cause. 88 H. 396, 967 P.2d 228.

**Speedy trial.**

Despite government's negligent delay in bringing third superseding indictment, defendant not entitled to dismissal of the indictment on Sixth Amendment grounds because defendant had not shown prejudice attributable to the delay. 322 F.3d 1157.

Right under this amendment does not arise until after formal charge or indictment is lodged; whether the delay occurring thereafter amounts to unconstitutional deprivation depends upon circumstances. 316 F. Supp. 892.

Delay of thirty-six months between indictment and trial was not a violation of defendant's right to a speedy trial where delay was caused by the inability to locate defendant. 666 F. Supp. 1428.

Whether preindictment delay warrants dismissal of indictment rests within the discretion of the trial court. 43 H. 203.

Provision has no application to delay occurring when there is no pending prosecution. 47 H. 361, 389 P.2d 439.

Provision has no application until putative defendant becomes an accused through charge or detention. 53 H. 652, 500 P.2d 1171.

Burden upon movant to show prima facie case. 54 H. 443, 509 P.2d 549.

In determining whether right to speedy trial has been violated, a balancing test must be used; factors that go into such a test. 54 H. 443, 509 P.2d 549.

Right arises only when a person becomes an accused, which occurs when an indictment or information is returned against a person or when the person becomes subject to restraints on the person's liberty imposed by arrest. 54 H. 443, 509 P.2d 549.

No deprivation of right where delays were a result of defendant's acts or the result of benefit granted defendant. 59 H. 456, 583 P.2d 337.

Juvenile facing criminal charges as an adult becomes an "accused" upon issuance of family court's order waiving jurisdiction. 61 H. 12, 594 P.2d 1069.

Speedy trial clause has not been extended to the resentencing procedure, so seven-year delay between original incorrect sentence and correction did not contravene the clause. 61 H. 226, 602 P.2d 13.

Factors considered in determining deprivation of speedy trial. 62 H. 518, 616 P.2d 1383.

In consenting to be tried with co-defendants, defendant could not claim that co-defendant's motions were not attributable to defendant's self. 64 H. 65, 637 P.2d 407.

One-year-and-three-week delay between arrest and trial is presumptively prejudicial. 64 H. 65, 637 P.2d 407.

HRPP rule 48 (dismissal) has broader purpose than constitutional right to speedy trial. 73 H. 352, 833 P.2d 66.

Defendant not deprived of right, where although the reason for the delay leaned marginally in defendant's favor, the weight attributed to that factor was offset by defendant's eleventh-hour assertion of defendant's right and defendant's failure to even attempt to demonstrate that defendant was actually prejudiced by the delay in the commencement of trial. 76 H. 415, 879 P.2d 520.

Defendants not deprived of constitutional right to speedy trial where although the reason for the delay factor weighed in favor of the defendants, it was outweighed by the facts that defendants failed to assert their right and failed to demonstrate that they were actually prejudiced by the delay in bringing them to trial. 78 H. 54, 890 P.2d 291.

Where defendant was substantially responsible for pretrial delay and failed to assert right to speedy trial, allowing defendant's case to proceed to trial after eleven-month delay was not error. 92 H. 192, 990 P.2d 90.

Presumption of prejudice arising from 9-month delay between indictment and trial was rebutted by the record. 1 H. App. 31, 613 P.2d 919.

To determine whether right to speedy trial has been denied, a balancing test is used; factors that go into such test. 1 H. App. 121, 615 P.2d 109.

Among factors to be considered is prejudice to defendant caused by oppressive pretrial incarceration, ignominy occasioned by pending criminal charges, and difficulty of preparing for trial. 9 H. App. 232, 832 P.2d 284.

Right not violated where delay was caused by defendant's own absence from Hawaii and consequent unavailability for trial, and defendant failed to produce evidence that defendant suffered any prejudice. 83 H. 496 (App.), 927 P.2d 1379.

Right not violated where, although the prejudice prong of the Barker analysis weighed in favor of defendant, this prejudice was outweighed by the delay attributable to defendant and defendant's failure to demand a speedy trial; that the unavailability of victim as a witness caused the "possibility of prejudice" to defendant's defense did not support defendant's position that defendant's speedy trial right was violated. 103 H. 490 (App.), 83 P.3d 753.

### **Public trial.**

Defendant waived right to testify. 883 F.2d 750.

District court's exclusion of spectators during brief mid-trial questioning of jurors to determine if they were concerned for their safety was so trivial as to not implicate defendant's Sixth Amendment rights. 316 F.3d 955.

Defendant who intentionally failed to appear at trial waived Sixth Amendment rights to appear. 666 F. Supp. 1432.

Courts are open to the public subject to the supervision of the presiding judge and there was no error in court's refusal to clear courtroom of police recruits. 47 H. 185, 389 P.2d 146.

Defendant's right to be present at all stages of trial; voluntary absence. 58 H. 425, 570 P.2d 848.

Court's authority to close judicial proceedings. 59 H. 224, 580 P.2d 49.

Defendant entitled as of right to public trial but not to private trial. 59 H. 224, 580 P.2d 49.

Manner in which defendant's family was excluded from courtroom violated defendant's right to a public trial. 91 H. 181, 981 P.2d 1127.

The right to a public trial is not implicated by the exclusion of a potential witness pursuant to the witness exclusionary rule; both the witness exclusionary rule and the right to a public trial ensure the appearance of fairness at trial; thus, defendant's right not violated by exclusion of defendant's father from the courtroom as a potential prosecution rebuttal witness. 97 H. 206, 35 P.3d 233.

Defendant's constitutional rights to a public trial were not implicated when the jury was allowed to deliberate, communicate, and return its verdict after normal business hours, when the courthouse was closed to the public, because the closure "was too trivial to implicate the constitutional guarantees". 112 H. 343 (App.), 145 P.3d 886.

### **Jury trials.**

Error to play tape recording without defendant's waiver of right to be present, but error harmless. 781 F.2d 740.

Defendant's sentence violated the Sixth Amendment, where defendant was sentenced under a mandatory sentencing regime, the district judge departed upward under a section of the U.S. sentencing guidelines based on judicially determined facts, and the actual sentence exceeded the maximum authorized at the time based solely on the jury's verdict. 425 F.3d 602.

Jury trials not required in "petty" offenses. 51 H. 612, 466 P.2d 422.

Announcement of waiver by counsel in open court in the presence of accused is effective waiver. 53 H. 551, 497 P.2d 1360.

Demand in open court for jury-waived trial by accused's counsel in accused's presence constitutes waiver of right to jury trial. 54 H. 28, 501 P.2d 977.

Court's refusal to allow voir dire inquiries into specific possible prejudices of prospective jurors upheld as within discretion. 57 H. 492, 559 P.2d 728.

Deferred acceptance of guilty plea program does not impose an impermissible burden on exercise of right to trial by jury. 58 H. 304, 568 P.2d 1194.

Criteria to determine whether offense is petty or serious; person charged with petty misdemeanor carrying maximum penalty of thirty days confinement, a fine, or both, is not entitled to jury trial. 64 H. 374, 641 P.2d 978.

Only if proceeding is criminal is right to jury dependent on magnitude of penalty imposed. 66 H. 461, 667 P.2d 783.

Driving while intoxicated is serious offense. 68 H. 38, 704 P.2d 883.

Waiver of right to jury trial cannot be presumed by silent record. 73 H. 217, 830 P.2d 512.

Because the record was silent as to any colloquy between court and defendant, counsel's waiver of client's right was invalid, violating defendant's right to trial by jury under Sixth Amendment and article I, §14 of Hawai'i constitution. 75 H. 118, 857 P.2d 576.

No right to a jury trial for a first-offense DUI under §291-4, as amended by Act 128, L 1993. 76 H. 360, 878 P.2d 699.

Where no term of imprisonment was authorized under §266-25 for violation of administrative rule regulating boat moorings, violation a presumptively petty offense for which right to jury trial did not attach; consideration of other relevant factors failed to overcome presumption. 84 H. 65, 929 P.2d 78.

Under totality of facts and circumstances, defendant knowingly and voluntarily waived right to jury trial; defendant was aware of right, articulated to trial court the difference between a jury trial and judge trial, defendant's counsel stated counsel had explained difference to defendant, and defendant affirmatively indicated to trial court that waiver was voluntary and a result of defendant's own reflection. 93 H. 63, 996 P.2d 268.

There is no constitutional right to a jury trial for a first-time driving under the influence of drugs offense under §291-7 (1993) as the offense is a "petty" and not "serious" offense. 97 H. 259, 36 P.3d 803.

Where record indicated that trial court conducted a colloquy with defendant regarding defendant's right to a trial by jury and that defendant orally waived this right, defendant subsequently failed to overcome burden of proving by a preponderance of the evidence that defendant's waiver of right to jury trial was involuntary. 99 H. 312, 55 P.3d 276.

Trial court did not err in sentencing defendant to extended terms of imprisonment as a "multiple offender" pursuant to §706-662(4)(a); without this finding that the defendant committed a previous felony, notwithstanding that such an extended term may be considered "necessary for protection of the public", a judge would not be authorized to impose it; and extended term sentencing did not run afoul of this Amendment as interpreted by the U.S. Supreme Court in *Apprendi v. New Jersey*. 110 H. 79, 129 P.3d 1107.

Inasmuch as this section authorizes the sentencing court to extend a defendant's sentence beyond the "standard term" authorized solely by the jury's verdict by requiring the sentencing court, rather than the trier of fact, to make an additional necessity finding that does not fall under *Apprendi*'s prior-or-concurrent-convictions exception, this section is unconstitutional on its face; thus, defendant's extended term sentences imposed by the trial court

violated defendant's right to a jury trial and were illegal. 115 H. 432, 168 P.3d 562.

No constitutional right to trial without a jury. 2 H. App. 506, 635 P.2d 244.

Only way in which remittitur can be granted is as alternative to new trial since otherwise right to trial by jury would be taken away by the court. 2 H. App. 506, 635 P.2d 244.

Defendant must personally give oral or written waiver of right to jury trial; waiver by defense counsel not valid in absence of any colloquy between court and defendant. 80 H. 372 (App.), 910 P.2d 143.

Right not erroneously denied where plaintiff missed ten-day jury demand deadline under DCRCP rule 38(b) without adequate excuse. 83 H. 50 (App.), 924 P.2d 544.

Where trial judge failed to engage in a colloquy with defendant to ensure that the waiver of jury trial was intelligent, knowing and voluntary, and defendant's counsel did not represent in open court that defendant was aware of defendant's right to a jury trial, under the totality of circumstances, trial court failed to obtain a valid waiver of defendant's right to a jury trial. 98 H. 77 (App.), 42 P.3d 654.

Under the totality of the circumstances, where defendant's express waiver of a jury trial was consistently clear, direct, and unequivocal throughout the entire colloquy, defendant orally waived right to trial by jury, and failed to demonstrate by a preponderance of the evidence that this waiver was involuntary. 105 H. 160 (App.), 95 P.3d 14.

Where maximum time in jail for a violation of a Hawaii administrative rule was thirty days and notwithstanding that defendant was subject to a possible maximum fine of \$18,000, defendant's offense was "petty" for Sixth Amendment purposes; thus, defendant had no right to a jury trial under the U.S. Constitution. 105 H. 342 (App.), 97 P.3d 418.

Based on the totality of the circumstances, defendant failed to establish that the waiver of defendant's right to a jury trial was involuntary or improper; the family court's mass advisement, in conjunction with the family court's individualized colloquy of defendant, sufficiently apprised defendant of defendant's constitutional right to a jury trial, and defendant knowingly, intelligently, and voluntarily waived this right. 108 H. 300 (App.), 119 P.3d 608.

Defendant did not have a constitutional right to a jury trial for a violation of §852-1, refusal to provide ingress or egress while walking a labor picket line, where the maximum punishment was thirty days in jail or a \$200 fine, or both, and violation was thus a petty misdemeanor under §701-107(4). 110 H. 139 (App.), 129 P.3d 1167.

### **Confrontation of witnesses.**

Not violated by court's refusal to admit prosecution witness' shoplifting conviction. 789 F.2d 1425.

When substantial cross-examination has taken place, the courts are less inclined to find a violation of the right to confrontation. 819 F.2d 227.

Where trial court asked defense counsel to designate one attorney to conduct "main" cross-examination into basic issues, and expressly allowed all defense attorneys to cross-examine as to issues particular to their own clients, appellants failed to show how court's requirement limited any relevant testimony or caused them prejudice. 127 F.3d 791.

Where defendant argued that statute (18 U.S.C. §3509) setting forth procedure by which an alleged child victim can testify outside of physical presence of defendant via two-way closed circuit television violated the confrontation

clause, statute (1) not unconstitutional; and (2) does not require that television monitor in witness room be located directly in child's field of vision while child testifies. 328 F.3d 493.

Waiver, when effective. 51 H. 99, 451 P.2d 806.

Includes the right of cross-examination. 51 H. 125, 453 P.2d 221.

Right not necessarily violated by admission of business records as exception to hearsay rule. 53 H. 466, 497 P.2d 575.

Admissibility of transcripts of witness' testimony at preliminary hearing. 54 H. 637, 513 P.2d 697.

Sufficiency of proof of unavailability of witness to permit introduction of transcript of pre-trial testimony. 55 H. 346, 519 P.2d 1241.

Admission of oral confession of a defendant implicating a co-defendant violates confrontation rights of the co-defendant. 58 H. 299, 568 P.2d 504.

Not violated by evidence admissible under exception to hearsay rule, provided statement is found to be reliable. 62 H. 518, 616 P.2d 1383.

Defendant's right of cross-examination may not be unduly restricted but it has never been held to be absolutely without restriction. 62 H. 572, 617 P.2d 1214.

Admission of stipulation of testimony of State's witness was not a denial of the right of confrontation. 62 H. 646, 618 P.2d 1142.

Waiver of right by defendant's counsel. 63 H. 186, 623 P.2d 881.

Entry of stipulated testimony into evidence without determining knowing and intelligent waiver. 64 H. 187, 637 P.2d 778.

Unavailability of witness; good faith effort to secure appearance. 65 H. 286, 651 P.2d 470.

Defendant claiming confrontation rights violated had no standing to challenge admission of co-defendant's illegally obtained confession. 68 H. 569, 722 P.2d 1036.

Redacted statement of nontestifying co-defendant did not violate confrontation clause. 70 H. 219, 768 P.2d 230.

No violation where the State made a good faith effort to locate witness. 70 H. 343, 771 P.2d 509.

Criminal defendant's right to be present at all stages of trial cannot be waived by counsel. 73 H. 97, 828 P.2d 280.

Error for trial court to refuse to permit a defense witness to testify as penalty for violating witness exclusion rule. 73 H. 331, 832 P.2d 269.

Right not violated by defendant's absence from conference settling jury instructions as conference does not involve jury's presence or witness testimony. 74 H. 141, 838 P.2d 1374.

Admission of co-defendant's testimony concerning incriminatory out-of-court statements made against defendant did not violate defendant's rights to confront defendant's accuser under the U.S. or Hawai'i Constitutions. 76 H. 148, 871 P.2d 782.

Circuit court's limitation of appellant's cross-examination of witness did not violate appellant's right to confront witnesses against appellant where appellant adequately raised issue of witness' possible bias. 78 H. 383, 894 P.2d 80.

Prior to introduction of videotaped interview, cross-examination of complainant sex assault victim regarding complainant's conversation with police officer satisfied defendant's right of confrontation. 80 H. 107, 905 P.2d 613.

Not violated by admission of declarant's former testimony under HRE rule 804(b)(1) where prosecution established declarant's unavailability, that it had made good faith efforts to secure declarant's presence, and reliability of statement was shown. 82 H. 202, 921 P.2d 122.

Abuse of discretion where trial court excluded evidence of complainant's

prior conviction, by prohibiting cross-examination of complainant, from which jury could have inferred that complainant had a motive to bring false charges against defendant and give false testimony at trial. 83 H. 109, 924 P.2d 1215.

Right violated as prosecution witness not "unavailable" under HRE rule 804(a)(5); prosecution's good faith efforts require a search equally as vigorous as that which it would undertake to find a critical witness if it had no prior testimony to rely upon in the event of unavailability. 83 H. 267, 925 P.2d 1091.

Right not violated where trial court allowed defense adequate opportunity to raise issue of witness' possible bias while imposing modest restriction on defense's cross-examination of witness to avoid risk of prejudicing jury. 83 H. 335, 926 P.2d 1258.

Admission into evidence of witness' grand jury testimony under HRE rule 802.1(4), past recollection recorded hearsay exception, did not violate defendant's right where witness' testimony was supported by numerous guarantees of trustworthiness and defendant was able to cross-examine witness on witness' subsequent failure to remember alleged incident. 92 H. 61, 987 P.2d 959.

Admission into evidence of witness' handwritten statement on the bottom of an identification form, under HRE rule 802.1(4), past recollection recorded hearsay exception, did not violate defendant's right where witness' statement was supported by numerous guarantees of trustworthiness. 92 H. 61, 987 P.2d 959.

Where prior inconsistent statements were properly admitted under HRE rule 802.1(1)(C) and witnesses were cross-examined with respect to their statements, substantive use of these statements did not violate defendant's confrontation rights. 92 H. 61, 987 P.2d 959.

Where jury had sufficient information to gauge adequately witness' credibility and to appraise witness' motivation to fabricate testimony against defendant, trial court did not abuse discretion in limiting scope of defendant's cross-examination of witness. 92 H. 192, 990 P.2d 90.

Right not violated by trial court's imposition of certain restrictions on scope of defense counsel's cross-examination where (1) there was no reasonable possibility that the cross-examination would have changed the outcome of defendant's trial; (2) witness' second forgery conviction on recross examination was beyond the scope of redirect examination; and (3) defense counsel's inquiring into the location of a map given to witness by defendant was not relevant. 99 H. 390, 56 P.3d 692.

When a statutory privilege interferes with a defendant's constitutional right to cross-examine, then, upon a sufficient showing by the defendant, the witness' statutory privilege must, in the interest of the truth-seeking process, bow to the defendant's constitutional rights. 101 H. 172, 65 P.3d 119.

As there is no exception under HRE rule 804(b)(8) for pending or anticipated litigation, such that statements by victim-wife would have been admissible even if a divorce proceeding had actually been underway, trial court did not abuse discretion in determining hearsay statements were trustworthy; however, trial court abused discretion in admitting statements in violation of defendant's constitutional right to confront and cross-examine adverse witnesses. 103 H. 89, 79 P.3d 1263.

Where trial court prohibited all inquiry into the complainant's alleged motive or bias for faking injury, petitioner's right of confrontation under this Amendment and article I, §14 of the Hawaii constitution was violated; appellate court erred and case remanded for new trial. 106 H. 116, 102 P.3d 360.

Where defendant would not have likely been acquitted, witness was not the

only witness to the event, and the conviction did not rest on the witness' credibility alone, trial court's preclusion of defendant's questioning of witness regarding witness' motives for changing witness' mind about testifying was harmless error. 109 H. 314, 126 P.3d 357.

Face to face confrontation is preferred; prosecution failed to show unavailability of the witness. 7 H. App. 80, 742 P.2d 986.

Not violated in DUI case by admission into evidence of log showing breath-testing instrument had been tested for accuracy. 9 H. App. 130, 828 P.2d 813.

Admission into evidence of redacted confessions of defendants-spouses violated defendants-spouses' confrontational rights. 10 H. App. 43, 861 P.2d 24.

Trial court erred in limiting questioning regarding complainant's financial situation and relationship with fiancé; error not harmless. 79 H. 255 (App.), 900 P.2d 1322.

Defendant entitled to elicit evidence of complainant's past sexual behavior, not to attack complainant's character, but to determine whether complainant was mentally defective and whether defendant knew that complainant was mentally defective. 81 H. 447 (App.), 918 P.2d 254.

Clause not violated where questions defendant wanted to ask police officer regarding officer's "motive", and "knowledge of how much cocaine a drug addict would consume" were not relevant to any issue in case. 82 H. 499 (App.), 923 P.2d 916.

Defendant's right to confrontation violated where family court admitted girls' statements, which were "testimonial" hearsay, and the girls were neither unavailable nor subject at any time to cross-examination concerning their statements; as error was not harmless beyond a reasonable doubt and there was sufficient evidence to support defendant's conviction, judgment vacated and remanded. 107 H. 133 (App.), 111 P.3d 28.

Trial court erred by not allowing defendant to introduce evidence of, and cross-examine victim as to victim's drug use and addiction at or near the time of the incident to the extent that it affected victim's perception or recollection of the alleged event, and defendant was not required to present expert testimony to that effect. 108 H. 102 (App.), 117 P.3d 834.

Where, even in the absence of a plea agreement, witness' pending sentencing in two other criminal matters were relevant and probative of a potential bias or motive for testifying in favor of the State, trial court erred in denying defendant's motion in limine with respect to evidence of witness' pending sentencing, and error was not harmful beyond a reasonable doubt as State's case was based on jury finding that witness' testimony was credible and believing the witness over the defendant. 108 H. 102 (App.), 117 P.3d 834.

Where sworn statements made by police intoxilyzer supervisor admitted into evidence pursuant to HRE rule 803(b)(8) as public records could not be considered "testimonial" hearsay, the statements were not subject to the requirements of this Amendment; thus, no showing of the supervisor's unavailability nor a prior opportunity for cross-examination was required prior to admission. 114 H. 396 (App.), 163 P.3d 199.

### **Right to counsel.**

Defendant's out-of-court statement, see notes to Amendment 5.

Pretrial voice identifications are not "critical stages" of the criminal proceeding in which defendant entitled to presence of counsel. 577 F.2d 473.

Defendant not prejudiced by errors of counsel. 652 F.2d 1369.

No showing of knowing and intelligent waiver. 672 F.2d 720; 4 H. App. 614, 672 P.2d 1036.

Government has burden of showing that defendant was represented by counsel or

waived that right if representation at time of earlier conviction is raised as issue. 799 F.2d 1401.

Defense counsel's performance deficient because of erroneous advice regarding effect of defendant's conviction and likely sentence if defendant pled guilty. 800 F.2d 861.

Ineffective assistance of counsel. 817 F.2d 1352.

Miranda warning failed to adequately inform defendant of right to counsel; adequacy of Miranda warning is a question of law. 869 F.2d 1349.

Defendant convicted of wilfully failing to file income tax returns knowingly and intelligently chose to exercise right to defend self. 941 F.2d 893.

Uncounseled misdemeanor convictions may not be used to enhance sentence of later conviction. 957 F.2d 714.

Violation of attorney-client privilege implicates constitutional right to counsel only when government interferes with relationship between criminal defendant and attorney resulting in substantial prejudice to defendant. 961 F.2d 852.

Counsel's absence from portion of post-charge lineup proceeding violated defendant's right to counsel; government has affirmative duty to ensure counsel's presence at entire proceeding. 998 F.2d 1460.

Defense counsel's failure to object to conduct of voir dire and to lack of certain jury instructions, and failure to place more emphasis on certain evidence did not fall below level of professional competence. 1 F.3d 855.

Where defendant remains silent in face of defendant's attorney's decision not to call defendant as a witness, defendant has waived right to testify. 3 F.3d 1239.

Right not violated by §291-4.5 mandatory imposition of prison sentence for driving motor vehicle with revoked license. 26 F.3d 920.

Not violated where defendant who raised no objection at trial to multiple representation failed to show that an actual conflict of interest adversely affected defendant's lawyer's performance. 55 F.3d 1410.

Corporation may use writ of coram nobis to raise ineffective assistance claim. 65 F.3d 1531.

No violation of right to conflict-free counsel where defendant who raised no objection at trial failed to demonstrate that an actual conflict adversely affected defendant's lawyer's performance. 65 F.3d 1531.

Appellants' right to conflict-free representation not impaired by trial court's order, where court asked defense counsel to designate one attorney to conduct "main" cross-examination into basic issues. 127 F.3d 791.

Sixth Amendment guarantee of competent counsel applies to process of cooperation with government because this is a critical stage of the proceeding for those charged with federal crimes. District court's decision not to grant an evidentiary hearing was an abuse of discretion; defendant's factual allegations, taken as true, stated a claim for relief based on defendant's attorney's failure to be a meaningful advocate during defendant's attempted cooperation, and the effect this failure likely had on the government's decision not to make a substantial assistance motion. 326 F.3d 1111.

Where defendant alleged that defendant's attorney rendered ineffective assistance by failing to advise defendant to plead guilty immediately after defendant's arrest, the attorney's conduct did not constitute ineffective assistance. 326 F.3d 1111.

Standard for habeas corpus due to lack of effective counsel: whether, with reasonably competent counsel, it is more likely than not that jury would have acquitted or convicted of a lesser offense. 488 F. Supp. 1384.

Not violated by transfer of defendants to federal correctional facility on U.S. mainland pending trial. 778 F. Supp. 21.

Sixth Amendment rights not violated, where defendant was charged with conspiracy to distribute drugs and obstruction of justice concerning possible money laundering offenses, and defendant's conversations did not concern drug conspiracy charge. 961 F. Supp. 1398.

Government's request that court require defendant to waive Sixth Amendment right to effective assistance of counsel on issue of inadvertent disclosure of defendant's supplemental ex parte application for funds for mitigation investigation or compel defendant to seek new counsel was not justified, where, inter alia, any claim of ineffective assistance of counsel based on inadvertent service of application would be purely retrospective, and although defendant may choose to waive any claim for ineffective assistance of counsel, if any, that defendant might have, court could not compel defendant to waive defendant's claim. 58 F. Supp. 2d 1153.

Where petitioner alleged, among other things, that petitioner's attorney was ineffective by failing to fully investigate mitigating defense of extreme mental or emotional distress until the eve of trial, subsequently failing to seek continuance of trial to investigate the defense, (1) presumption of prejudice was inappropriate, and (2) petitioner's argument that attorney's deficient performance prejudiced petitioner's trial, rejected. 128 F. Supp. 2d 650.

Does not apply to habeas corpus proceedings. 51 H. 318, 459 P.2d 376.

Right to counsel at interrogation is applicable to trials begun after date of Miranda decision and right to counsel at police lineups is applicable to trials begun after decision in U.S. v. Wade, 388 U.S. 218. 51 H. 318, 459 P.2d 376.

Applies at arraignment unless right is intelligently waived. 51 H. 322, 459 P.2d 382.

When Hawaii was a territory, the 6th Amendment applied and rendered invalid a conviction on a guilty plea entered without assistance of counsel. 51 H. 322, 459 P.2d 382.

Where right is a constitutional requisite, it does not depend upon request and presuming waiver from silent record is impermissible. 51 H. 322, 459 P.2d 382; 52 H. 420, 477 P.2d 630.

When Hawaii was a territory, 6th Amendment applied directly, and indigent defendant had constitutional right to court-appointed counsel when entering pleas at arraignment, unless defendant waived defendant's right. 52 H. 420, 477 P.2d 630.

Where record is silent, presumption is that defendant did not enter guilty plea voluntarily and understandingly. 52 H. 420, 477 P.2d 630.

Defendant is entitled to effective assistance of counsel and is entitled to fair hearing on defendant's objections to appointed counsel. 52 H. 484, 479 P.2d 207.

Right means effective assistance of counsel. 54 H. 28, 501 P.2d 977.

To show deprivation of effective assistance of counsel due to denial of continuance following change in court-appointed counsel, defendant must show actual prejudice. 54 H. 502, 510 P.2d 494.

Prerequisites for waiver of counsel and acceptance of guilty plea. 55 H. 336, 519 P.2d 892.

Honolulu Police Department Form 81 accepted as sufficient with respect to right to counsel warnings. 56 H. 428, 539 P.2d 1200.

Failure of counsel to raise issue in briefs was not denial of effective counsel if issue presented orally. 56 H. 675, 548 P.2d 268.

Right to counsel is waivable if voluntary and intelligently undertaken. 57 H. 46, 549 P.2d 727.

When appellate court can determine voluntariness of waiver of counsel from the record, defendant has burden of proof that waiver was involuntary. 57 H.

354, 556 P.2d 577.

Right means effective assistance of counsel; test to determine adequacy of counsel. 60 H. 17, 586 P.2d 1028.

To establish inadequacy of counsel, it must be shown that counsel acted unreasonably and through constitutionally inadequate preparation. 60 H. 259, 588 P.2d 438.

Defendant is entitled to a fair and reasonable time to prepare a defense and to allow counsel to prepare for trial. 60 H. 493, 591 P.2d 119.

Opportunity for closing summation cannot be denied, but court has broad discretion to control duration and scope of closing arguments. 61 H. 233, 602 P.2d 520.

Does not mean errorless counsel, and not counsel judged ineffective by hindsight, but counsel reasonably likely to render and rendering reasonably effective counsel. 62 H. 120, 612 P.2d 526.

Attaches in all trials of offenses punishable by imprisonment. 62 H. 298, 614 P.2d 397.

To establish ineffectiveness of counsel, appellant must establish: (1) specific errors or omissions reflecting lack of skill, judgment or diligence; (2) errors or omissions resulted in withdrawal or substantial impairment of a potentially meritorious defense. 62 H. 346, 615 P.2d 101.

Effective assistance of counsel. 62 H. 620, 618 P.2d 301; 64 H. 62, 636 P.2d 742; 5 H. App. 20, 686 P.2d 28.

Effective assistance--judgment of counsel to stipulate into evidence testimony of State's witness was within range of required competence. 62 H. 646, 618 P.2d 1142.

No right to assistance of counsel at a showup conducted after the arrest of the accused but before indictment or formal charge. 63 H. 354, 628 P.2d 1018.

Incriminating statements not "deliberately elicited" by informant. 64 H. 522, 644 P.2d 964.

Not violated when suspect first requested counsel, then initiated further contact and made a statement after being advised by counsel not to do so. 66 H. 162, 657 P.2d 1044.

Attorney's failure to call witnesses denied effective assistance of counsel. 68 H. 14, 701 P.2d 1287.

Not violated by denial of funds to hire mental health expert to assist defense where defendant already examined. 68 H. 246, 710 P.2d 1193.

Effective assistance of counsel denied where defense counsel caused introduction of highly prejudicial and otherwise inadmissible evidence. 68 H. 304, 712 P.2d 496.

Defendant waived right to counsel. 69 H. 473, 747 P.2d 1276.

Right to counsel for indigent defendant in misdemeanor cases. 71 H. 147, 785 P.2d 1311.

Claim that failure to call expert witnesses to rebut State's DNA profiling evidence introduced at motion in limine constituted ineffective assistance of counsel was meritless. 73 H. 130, 828 P.2d 1274.

Counsel was not ineffective in failing to raise contention that defendant had not waived right to be present at trial where defendant had voluntarily absented oneself after trial had begun. 73 H. 147, 828 P.2d 281.

Defendant has burden to establish ineffective assistance of counsel and meet two-part test; under Hawaii Constitution, defendant afforded greater protection of right to effective assistance of counsel than under U.S. Constitution. 74 H. 54, 837 P.2d 1298.

No denial of effective assistance of counsel where counsel waived defendant's presence at conference settling jury instructions, withdrew insanity defense, and failed to object to examiner's testimony. 74 H. 141, 838 P.2d 1374.

Where petitioner's convictions on counts I (attempted first degree murder), II (second degree murder), and III (attempted second degree murder) violated §701-109(1)(c)'s clear prohibition against inconsistent factual findings, the failure to raise this issue, both at trial and on appeal, resulted in withdrawal of not only a potentially meritorious defense, but a defense that would have altered the outcome. 74 H. 442, 848 P.2d 966.

Post-conviction ineffective assistance of counsel HRPP rule 40 petition not prejudiced where defendant alleges facts that, if proven, would entitle defendant to relief and claim is not patently frivolous and without trace of support in the record. 75 H. 419, 864 P.2d 583.

Trial counsel's alleged errors did not constitute ineffective assistance of counsel where defendant argued, inter alia, that trial counsel should have obtained expert analysis of white powder defendant provided to undercover police officer to determine how much "pure" cocaine it contained; rejection of defendant's claim that trial counsel's failure to interview and subpoena defendant's girlfriend amounted to ineffective assistance was without prejudice to a subsequent HRPP rule 40 petition. 77 H. 72, 881 P.2d 1218.

A proceeding to review revocation of a driver's license under §286-259 is a civil administrative proceeding, not a criminal proceeding for DUI; thus, accused's right to assistance of counsel inapplicable to administrative driver's license revocation hearing. 80 H. 197, 908 P.2d 545.

Knowing, intelligent and voluntary waiver of right to counsel where, inter alia, defendant persistently refused legal assistance despite court's repeated invitation and amply demonstrated capacity to proceed pro se. 81 H. 198, 915 P.2d 672.

No ineffective assistance of counsel where defense counsel's failure to object to prosecution witnesses' testimony did not result in the withdrawal or substantial impairment of a meritorious defense. 81 H. 293, 916 P.2d 703.

No ineffective assistance where defense counsel's opening statement reflected an accurate understanding of defendant's and victim's rendition at trial of events surrounding incident in question. 83 H. 289, 926 P.2d 194.

Defendant knowingly, intelligently, and voluntarily waived rights to counsel and to remain silent and voluntarily gave statement to police where defendant was calm and lucid during taped interview, indicated medication did not affect thinking or judgment, never expressed desire to terminate interview, and was particularly sophisticated with respect to criminal process and rights of accused. 83 H. 308, 926 P.2d 599.

Judicial determination of probable cause proceeding is not a "critical stage" in criminal proceedings such that Sixth Amendment right to counsel attaches automatically. 83 H. 443, 927 P.2d 844.

Where attorney-client privilege was not applicable to communications because they were not "confidential" but "voluntarily disclosed" in known presence of third party who was neither codefendant nor representative of the client or of the lawyer and in a place accessible to the general public, right to effective assistance not violated. 84 H. 229, 933 P.2d 66.

No ineffective assistance by counsel's failure to obtain witnesses' testimony on Japanese organized crime where counsel could not have known trial court would refuse to qualify one as expert, other witness fell ill, and testimony would not have been enough to support duress defense. 85 H. 462, 946 P.2d 32.

Where defendant could have challenged the validity of the search warrant if given a range of dates of the observations by prosecution's confidential informant and defendant's attorney could file the appropriate pre-trial motions and prepare for trial without the exact dates, right to effective assistance of counsel not violated by defendant not knowing the exact dates of the observations. 88 H. 396, 967 P.2d 228.

No ineffective assistance where counsel was able to negotiate a plea agreement of essentially a single life term with possibility of parole from a possible sentence of 610 years. 91 H. 20, 979 P.2d 1046.

No ineffective assistance where counsel's representation, including disclosing defendant's prior criminal history, did not result in the withdrawal or substantial impairment of a potentially meritorious defense; overwhelming nature of evidence against defendant and failure of self-defense claim warranted conviction. 91 H. 261, 982 P.2d 890.

Right to assistance of counsel and to present a defense not violated by trial court's refusal to allow defendant to present oral argument on motion for judgment of acquittal; no constitutional right to argue a motion for judgment of acquittal. 91 H. 288, 983 P.2d 189.

No ineffective assistance where record did not support defendant's claim that defendant's attorney failed to follow through on mental examination report, failed to pursue extreme mental or emotional disturbance defense, and should have called in a mental health professional at suppression hearing. 92 H. 19, 986 P.2d 306.

An attorney "employed and paid by the county" for the benefit of a police officer, to defend the officer in a criminal case pursuant to §52D-8 and in related civil cases, in which the county has asserted claims adverse to the officer, is not per se, by virtue of such employment and payment, deemed ineffective counsel. 95 H. 9, 18 P.3d 871.

Defendant was entitled to a hearing on question of whether counsel who filed motion to withdraw guilty plea should have been substituted as counsel of record before trial court summarily denied defendant's motion on the ground that a withdrawal and substitution of counsel had not been filed under rule 57, Hawaii rules of penal procedure. 95 H. 177, 19 P.3d 1289.

Ineffective assistance where defense counsel failed to object to the prosecution's premature elicitation of testimony regarding defendant's prior conviction during its redirect examination of officer before defendant had "introduced testimony for the purpose of establishing defendant's credibility as a witness," as required by HRE rule 609(a). 96 H. 83, 26 P.3d 572.

Where consolidation of attempted first degree murder cases with murder case was not improper, the charge of first degree robbery did not fail to state an offense, and the trial court's limiting instructions regarding "other bad acts" evidence was not inadequate or untimely, no ineffective assistance of counsel. 99 H. 390, 56 P.3d 692.

Ineffective assistance of counsel as defense counsel's errors and omissions resulted in the possible impairment of a potentially meritorious defense, defense counsel failed to object to prosecution's rebuttal argument commenting on defendant's failure to testify and counsel intentionally elicited detective's opinion that defendant had murdered defendant's wife. 102 H. 504, 78 P.3d 317.

Where a HRPP rule 40 petition raises a colorable claim of ineffective assistance of counsel, the trial court must hold an evidentiary hearing; the hearing on petitioner's claims related to petitioner's multiple sclerosis evidence, other than petitioner's own trial testimony, should have been held, as trial counsel's failure to present evidence that would have further excluded petitioner as the perpetrator - that petitioner could not have run as fast as perpetrator did - would have at least possibly affected the jury's verdict and did in fact result in the possible impairment of a potentially meritorious defense. 116 H. 106, 170 P.3d 357.

Appellant has burden of establishing ineffective assistance of counsel; burden, how met. 1 H. App. 255, 617 P.2d 1235; 1 H. App. 268, 618 P.2d 315.

Counsel's failure to object to prosecutor's questions or to move for mistrial

or to strike as constituting ineffective assistance of counsel. 1 H. App. 536, 621 P.2d 986.

No per se right on the part of an indigent defendant to change counsel in middle of trial. 2 H. App. 462, 634 P.2d 421.

Dismissal of indictment not appropriate remedy for violation absent showing of prejudice or substantial threat thereof. 3 H. App. 107, 643 P.2d 807.

Not violated where imprisonment authorized but not imposed. 3 H. App. 673, 657 P.2d 1062.

Right to effective assistance of counsel was violated by defense counsel's prior and concurrent representation of prosecution witnesses in other matters. 4 H. App. 327, 666 P.2d 612.

Infringement of right presumed prejudicial and State must rebut presumption and prove error was harmless beyond a reasonable doubt. 4 H. App. 614, 672 P.2d 1036.

No right to counsel at post-arrest photographic display. 5 H. App. 127, 681 P.2d 573.

Standard for effective assistance of appellate counsel; right not violated. 6 H. App. 331, 720 P.2d 1015.

No right to hybrid representation. 8 H. App. 330, 802 P.2d 482.

Whether person arrested on basis of indictment and advised of and waived right to counsel under *Miranda v. Arizona* but not advised of right under Sixth Amendment and article I, §14 of Hawaii constitution, has also knowingly and intelligently waived right under the two provisions, discussed. 9 H. App. 447, 845 P.2d 1194.

The court's assumption of defense counsel's role by persuading defendant to relinquish defendant's right to testify was an interference with the attorney-client relationship protected by Sixth Amendment and article I, §14 of Hawai'i constitution; the intervention by the court constituted plain error; the error was prejudicial and not harmless beyond a reasonable doubt. 78 H. 115 (App.), 890 P.2d 702.

Absent valid waiver of right, use of prior uncounseled felony convictions to enhance prison sentence violated defendant's right to counsel. 81 H. 421 (App.), 918 P.2d 228.

No ineffective assistance of counsel where counsel's failure to request trial continuance when police officer was unavailable to testify at trial did not result in prejudice to defendant. 82 H. 394 (App.), 922 P.2d 1007.

No ineffective assistance where, *inter alia*, defendant's counsel adequately prepared for trial, did not fail to offer motion to sever trials, and no evidence that fact that defendant's counsel was not lead counsel was prejudicial to defendant's entrapment defense. 82 H. 499 (App.), 923 P.2d 916.

No ineffective assistance where there was sufficient evidence to convict defendant as accomplice to second degree murder such that motion for judgment of acquittal would not have succeeded. 84 H. 112 (App.), 929 P.2d 1362.

Where right attached at the initiation of adversarial judicial criminal proceedings, and not at the point of the DUI arrest, police did not have to give *Miranda*-like warnings about right to counsel at the point of the DUI arrest. 94 H. 17 (App.), 7 P.3d 193.

Right not violated by trial court's denial of defendant's motion to withdraw and substitute counsel as there was no good cause to warrant substitution where, despite being advised of its inadmissible nature, defendant insisted attorney proffer character evidence and character witnesses at trial, there was no "complete breakdown of trust and confidence" between attorney and defendant, and defendant elected to continue with attorney, without further protest, and did not aver that defendant wanted to go to trial pro se. 101 H. 112 (App.), 63 P.3d 420.

Where defendant had not been charged with any crime when defendant gave defendant's statement, defendant's right not violated. 101 H. 344 (App.), 68 P.3d 618.

Ineffective assistance of counsel where public defender (PD) mistakenly concluded that HRPP rule 16 required PD to turn over defendant's toxicology report to the State and failed to realize that by doing so, PD was waiving defendant's physician-patient privilege, and PD's errors substantially impaired defendant's potentially meritorious defense as evidence that defendant tested positive for cocaine undermined the credibility of the defendant. 107 H. 282 (App.), 112 P.3d 768.

Where record showed that trial court judge was extraordinarily patient and accommodating with defense counsel and that if defense counsel had wanted to make a closing argument, the judge would not have denied that request, defendant waived defendant's right to make a closing argument and court's failure to affirmatively offer defendant's counsel the opportunity to present a closing argument at trial did not deprive defendant of right to present a closing argument. 110 H. 284 (App.), 132 P.3d 852.

The Hawaii paroling authority minimum-term hearing is a critical stage of the criminal proceeding and a convicted person is constitutionally entitled to be represented at the hearing by counsel; where defendant's rule 40 petition presented a colorable claim that defendant was denied the effective assistance of counsel at defendant's minimum-term hearing and did not knowingly and intelligently waive right to counsel, trial court erred in summarily denying the petition. 112 H. 446 (App.), 146 P.3d 606.

Cited: 56 H. 378, 537 P.2d 1187.

### **Impartial jury.**

Jury instructions did not invade province of jury as finders of fact. Not violated by extrajudicial communication between juror and prosecutor regarding matter unrelated to trial. 730 F.2d 1292.

Excusal of college students from venire did not violate right to jury fairly representing cross-section of community since college students did not qualify as cognizable group. 965 F.2d 781.

Though prosecutor's remarks were of questionable relevance and conveyed repugnant images, reversal justified only where alleged prosecutorial misconduct materially affects verdict or deprives defendant of fair trial. 1 F.3d 1523.

Habeas corpus granted due to jury misconduct. 677 F. Supp. 1061.

Defendant's motion for new trial denied where defendant argued, inter alia, that new trial was necessary because juror failed to honestly answer a material question during voir dire. 101 F. Supp. 2d 1304.

Scope of voir dire of prospective jurors in case of extensive pretrial publicity. 55 H. 640, 526 P.2d 94.

Effect of news accounts prejudicial to defendant; protective measures required of trial court. 58 H. 356, 569 P.2d 891.

Trial court's supplemental instruction to deadlocked jury that it must unanimously decide that it was unable to reach verdict was prejudicial. 72 H. 327, 817 P.2d 1054.

Trial court must insure that defendant's right to fair trial is not compromised and at the least prevent or reduce prejudicial pretrial publicity; order imposing restrictions on extrajudicial statements of trial participants was impermissible. 73 H. 499, 835 P.2d 637.

Circuit court did not commit an abuse of discretion in granting defendant's motion for new trial; circuit court's conclusions of law that possible juror misconduct at voir dire and juror misconduct during deliberations deprived

defendant of a trial by twelve fair and impartial jurors not clearly erroneous. 76 H. 172, 873 P.2d 51.

Newscast concerning appellants and their alleged involvement in a burglary other than those charged and prospective juror's account of the newscast and the effect it had on prospective juror that was given in presence of jury panel, discussed as "outside influences". 78 H. 383, 894 P.2d 80.

Not violated by empaneling of anonymous jury where there was strong reason to believe jury needed protection and trial court took reasonable steps to minimize any prejudicial effect on defendant and ensure that defendant's fundamental rights were protected. 83 H. 507, 928 P.2d 1.

Purpose of §612-18(c) is to uphold a criminal defendant's constitutional guarantees of a presumption of innocence and an impartial jury. 83 H. 507, 928 P.2d 1.

Defendant's right not violated by having husband and wife serve on same jury; both expressly stated during voir dire that they would each make their own decisions and would not automatically go along with the other person. 88 H. 19, 960 P.2d 1227.

References to race that do not have an objectively legitimate purpose constitute a particularly egregious form of prosecutorial misconduct. 91 H. 405, 984 P.2d 1231.

Where there was a reasonable possibility that prosecutor's comment during closing argument might have contributed to defendant's conviction, prosecutor's comment constituted prosecutorial misconduct that denied defendant right to a fair trial. 91 H. 405, 984 P.2d 1231.

Given that any improper remarks in opening statement, closing and rebuttal arguments by prosecutor were harmless beyond a reasonable doubt, and their cumulative effect was similarly harmless and did not deprive defendant of a fair trial, prosecutor's misconduct did not warrant reversal of any of defendant's convictions and did not implicate the double jeopardy clauses of either the U.S. or Hawaii Constitutions. 95 H. 465, 24 P.3d 661.

Although prosecutor's remark that the reasonable doubt standard "was never meant to provide a shield for a guilty man" had the potential to invite the jury to misapply and erode the standard, and was thus improper, where the trial court immediately corrected the prosecutor and issued a curative instruction, and verdicts suggested that the jury was not unduly swayed by the isolated remark in the two week trial and gave proper consideration to all relevant circumstances, improper comment not reversible error. 98 H. 1, 41 P.3d 157.

Defendant's right not violated where defendant did not assert or show that a "distinctive group" was underrepresented in the pool of potential jurors initially selected in the case. 98 H. 1, 41 P.3d 157.

Where defendant failed to satisfy defendant's burden of establishing a prima facie showing that the possibility of juror misconduct could have substantially prejudiced defendant's right to a fair trial by an impartial jury, the trial court did not abuse its discretion by denying defendant an evidentiary hearing on defendant's motion for a new trial. 103 H. 285, 81 P.3d 1200.

Where, even if juror was sleeping and did not hear a portion of defense counsel's closing argument, juror was given correct instruction, and presumably juror followed it; thus, based on the totality of circumstances, the prosecution met its burden in establishing that the alleged deprivation of the right to a fair trial was harmless beyond a reasonable doubt. 108 H. 474, 122 P.3d 254.

Failure to inquire into circumstances of statement overheard by juror, and reliance on juror's own determination of ability to remain impartial while unaware of influences is reversible error. 2 H. App. 643, 639 P.2d 413.

Not violated by bailiff's statement to jury foreperson that jurors should all

agree with verdict if polled. 6 H. App. 320, 721 P.2d 718.

Where trial court found statements of jurors on voir dire credible, statements were sufficient to establish beyond reasonable doubt that defendant was not denied an impartial jury. 85 H. 49 (App.), 936 P.2d 1297.

Where State failed to rebut presumption of prejudice to defendant resulting from juror's improper investigation of details concerning defendant's welfare status, court properly granted motion for new trial. 89 H. 215 (App.), 971 P.2d 304.

Plain error where trial court's answer to jury communication was prejudicially insufficient, misleading and affected defendant's constitutional right to a unanimous verdict as jury may have wrongly believed based on court's answer that if they failed to reach unanimous agreement as to the affirmative defense of entrapment, the defense was not applicable and a guilty verdict was required. 90 H. 489 (App.), 979 P.2d 85.

Where prosecutor referred to defendants' race in opening statement, there was no curative instruction given to address the inflammatory comment, trial court overruled defense counsel's timely objection, and the case against defendants, which hinged on the credibility of complainant, was not so overwhelming as to outweigh the inflammatory comment, prosecutor's references to race might have contributed to the convictions of defendants; thus, convictions set aside. 98 H. 358 (App.), 48 P.3d 605.

### **Compulsory process.**

District court erred in excluding defense expert witness as sanction for asserted violation of discovery rule where no discovery violation occurred. 937 F.2d 1422.

A sentencing increase based on defendant's false testimony does not unconstitutionally burden defendant's right to testify. 1 F.3d 1523; 35 F.3d 1275.

Where defendant contended that pursuant to constitutional right to testify, district court was required to permit defendant to explain to jury that defendant behaved in manner that defendant did because defendant was acting under duress, whether or not defendant had demonstrated prima facie evidence of duress, since proposed testimony pertained to a defense that was not relevant as a matter of law, the district court did not err in excluding the evidence during the trial. 102 F.3d 994.

Defendant only afforded right to compel attendance and testimony of witnesses who can give relevant and beneficial testimony for defense. 64 H. 217, 638 P.2d 324; 67 H. 59, 677 P.2d 465.

A trial court must pass on a defendant's attempted withdrawal of the prior waiver of his or her right to testify, tendered before the commencement of closing arguments, pursuant to the "liberal approach", whereas such an attempted withdrawal tendered thereafter is subject to the "manifest injustice" standard. 88 H. 407, 967 P.2d 239.

Where defendant did not meet burden of establishing plausible and legitimate reasons for withdrawal of defendant's prior waiver of defendant's right to testify, defendant failed to present "fair and just reasons" for defendant's request to exercise defendant's right to testify in defendant's own behalf; thus trial court did not abuse discretion by ruling that it would not reopen case. 88 H. 407, 967 P.2d 239.

Where trial court's denial of defendant's post-verdict motion for a new trial--based on defendant's claim that defendant's attempt to withdraw defendant's waiver of right to testify in defendant's own behalf should have been allowed--was not "manifestly unjust", no abuse of discretion. 88 H. 407, 967 P.2d 239.

Where witness appeared, exercised witness' right to remain silent, and defendant failed to offer proof beyond conjecture that witness' testimony would be helpful to defendant, defendant's right not violated. 100 H. 210, 58 P.3d 1257.

Refusal of court to permit defendant at an identification suppression hearing to examine the identification witness was not violative of constitutional rights. 1 H. App. 335, 619 P.2d 1078.

Constitutional right to present character evidence no greater than right under Hawaii Rules of Evidence. 5 H. App. 251, 687 P.2d 554.

Defendant's constitutional and statutory right to testify in defendant's own defense was violated where judge reproached defendant to follow defendant's attorney's advice and thus refrain from testifying, and the violation was plain error; denial of the right to testify was prejudicial and not harmless beyond a reasonable doubt. 78 H. 115 (App.), 890 P.2d 702.

Trial court did not violate defendant's due process and Sixth Amendment rights to compulsory process to present a favorable defense witness when it ordered witness to wear western clothing when testifying, thus precluding witness from wearing only a malo and a kihei; to the extent that the effect of the western-Hawaiian clothing combination was bizarre, insulting and undermined the value of the witness' testimony, those consequences were caused by the witness opting for that combination and could not be used by defendant to vacate the jury's verdict. 106 H. 43 (App.), 101 P.3d 652.

### **Appeal.**

Seven-day failure to comply with time requirements for filing criminal appeal does not preclude right to appeal. 2 H. App. 606, 638 P.2d 338.

### **Right to be informed.**

Indictment that charged defendant with "murder-for-hire" may not have given defendant notice that defendant must be prepared to meet a murder charge based on accomplice liability. 807 F.2d 805.

Not violated where burglary indictment alleged all elements of the crime and record indicated the specific crime intended to be committed, though specific crime not alleged. 66 H. 312, 660 P.2d 39.

Indictment charging general intent crime need not contain a particularized allegation of general intent. 66 H. 650, 672 P.2d 554.

Not violated where indictment alleged all elements of the crime and record indicated the specific crime intended to be committed, though specific crime not alleged. 67 H. 105, 678 P.2d 1078.

Not violated though indictment stated in disjunctive, where it tracked definition of crime and record indicated specific crime committed. 67 H. 119, 680 P.2d 250.

Accomplice instruction improper where each defendant was charged separately and charges did not inform them of circumstances in which they acted as accomplices. 72 H. 278, 815 P.2d 428.

Section 485-21 provides an essential element of offense charged, when a defendant is charged with a criminal violation of Uniform Securities Act; counts of indictment, which cited to §485-21, were insufficient, as counts did not include essential elements of offenses charged. 78 H. 373, 894 P.2d 70.

Although prosecution's oral charge failed to include the word "bodily" to modify "injury", the omission did not alter the nature and cause of the accusation such that a person of common understanding would fail to comprehend it; thus, the oral charge was not so obviously defective that by no reasonable construction could it be said to charge the offense for which conviction was had; because omission of the word "bodily" did not constitute an essential

element of the offense, harmless error. 99 H. 312, 55 P.3d 276.

Violated where minutes before trial was to commence, complaint against defendant amended from driving while license suspended to driving without a license. 81 H. 76 (App.), 912 P.2d 573.

### Hawaii Legal Reporter Citations

Right to jury trial for misdemeanor. 77-2 HLR 77-821.

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**[ARTICLE VII.--1791]**

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

**Attorney General Opinions**

Proposed legislation did not violate federal constitutional law to extent it diminished the number of members on jury panels in either civil or criminal trials. Att. Gen. Op. 97-2.

**Law Journals and Reviews**

Hawai`i 2000 Report Regarding Lawyers' Opinion Letters in Mortgage Loan Transactions. 22 UH L. Rev. 347.

**Case Notes**

Right to jury trial of defendant not affected by plaintiff's election to proceed in admiralty in action to foreclose ship mortgage. 934 F.2d 1026.

Right to jury trial not violated by use of random sample of claimants in an aggregate trial. 910 F. Supp. 1460.

Discussed; effect of procedural rules. 50 H. 528, 445 P.2d 376.

Not binding on states. 53 H. 372, 493 P.2d 1032.

Although court may set aside jury verdict, respect for the jury's assessment of the evidence is mandated. 57 H. 378, 557 P.2d 788.

No right to jury trial in paternity action. 5 H. App. 558, 705 P.2d 535.

Where third party leasing agents were not parties to lease agreement between landlord and tenant, express waiver of right to jury trial in agreement did not apply to those third parties. 85 H. 300 (App.), 944 P.2d 97.

Referred to: 43 H. 246, 249.

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**[ARTICLE VIII.--1791]**

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Law Journals and Reviews**

State v. Kumukau: A Case for the Application of Eighth Amendment Proportionality Analysis. 13 UH L. Rev. 577.

Even a War Has Some Rules: The Supreme Court Puts the Brakes on Drug-Related Civil Forfeitures. 16 UH L. Rev. 493.

**Case Notes**

Prison guard's alleged assault against inmate, if proved, violated inmate's Eighth Amendment right. 795 F.2d 780.

Forfeiture under Racketeer Influenced and Corrupt Organizations Act may violate the Eighth Amendment if grossly disproportionate. 817 F.2d 1409.

Allegation of overcrowding in a prison, without more, does not state a claim under the Eighth Amendment. However, if the overcrowding engenders violence, tension, and psychiatric problems, then an Eighth Amendment claim may arise. 832 F.2d 119.

Prisoner was denied adequate medical treatment. 865 F.2d 982.

No qualified immunity on 42 U.S.C. §1983 claim for prison official who allegedly forced inmate to choose between constitutional right to outdoor recreation and law library access. 39 F.3d 936.

Prison officials' failure to provide inmate with outdoor recreation when officials knew of prison's goal to provide five hours of exercise per week precluded summary judgment for officials claiming 42 U.S.C. §1983 qualified immunity. 48 F.3d 1082.

Prison officials not entitled to summary judgment on claim of 42 U.S.C. §1983 qualified immunity where inmate made adequate showing of "actual injury" to court access by officials that, if true, violates clearly established constitutional rights. 48 F.3d 1082.

No merit to claim that forfeiture of real property violated excessive fines clause, where claimant's property bore a close relationship to gambling activity, and forfeiture did not impose upon claimant a grossly disproportionate penalty. 120 F.3d 947.

District court correctly granted defendants summary judgment on claim, where inmate argued that being labeled a sex offender and being forced to participate in sex offender treatment program violated Eighth Amendment prohibition against cruel and unusual punishment. 131 F.3d 818.

Because three-strikes statute (18 U.S.C. §3559(c)) restricted its application to instances where both the defendants' primary and past convictions were "serious violent felonies", defendant's punishment for bank robbery was not sufficiently disproportionate to contravene Eighth Amendment. 192 F.3d 1188.

District court properly entered summary judgment in favor of prison physician on 42 U.S.C. §1983 claim, where plaintiffs alleged that prison physician was deliberately indifferent to prisoner's serious medical needs, by, inter alia, failing to properly monitor prisoner while prisoner was in restraints and failing to employ emergency treatment to save prisoner's life; no genuine issue of fact was raised regarding prison physician's subjective knowledge and conscious disregard of a substantial risk of serious injury to prisoner. 391 F.3d 1051.

Appellant's sentence did not violate the Eighth Amendment, where appellant

appealed the ten-year sentence imposed by the district court following appellant's guilty plea to growing 2,349 marijuana plants. 432 F.3d 937.

Generally out-of-state transfer of prisoner is not cruel and unusual punishment. 387 F. Supp. 912; 396 F. Supp. 196.

Violated by denying inmates regular outdoor exercise and recreation. 816 F. Supp. 1501.

Violated by use of excessive force by prison personnel against inmates. 818 F. Supp. 1333.

Summary judgment in favor of defendant appropriate on inmate's cause of action alleging that adult correctional officer's intentional and sadistic harassment of inmate violated inmate's Eighth and Fourteenth Amendment rights. 823 F. Supp. 750.

Defendants acted neither with deliberate indifference nor maliciously and sadistically in labeling plaintiff as sex offender. 905 F. Supp. 813.

Where plaintiff claimed that defendants state hospital superintendent, registered nurse, and paramedical assistant manifested a deliberate indifference to plaintiff's right to be free from an unreasonable use of force, plaintiff's claims against superintendent and nurse in their individual capacities were barred by doctrine of qualified immunity. 909 F. Supp. 737.

Forfeiture of nine properties involved in money laundering offenses did not constitute an excessive fine under the Eighth Amendment. 164 F. Supp. 2d 1196.

Defendants-prison doctors' motion for summary judgment denied; questions of fact existed as to whether defendants-prison doctors acted with deliberate indifference to plaintiff's serious medical need for a drug. 217 F. Supp. 2d 1095.

Cruel and unusual punishment is such that would shock conscience of reasonable persons or outrage moral sense of community. 56 H. 343, 537 P.2d 724.

Imprisonment for possession of marijuana is not cruel and unusual. 56 H. 501, 542 P.2d 366.

Standard for determining. 61 H. 262, 602 P.2d 914.

Extended prison term under §706-662 not violative. 63 H. 488, 630 P.2d 619.

Life imprisonment with mandatory minimum of fifteen years for attempted murder of infant by abandonment was neither cruel nor unusual. 73 H. 109, 831 P.2d 512.

Given heinous character of offenses committed and primacy of retributive, incapacitative, and deterrent objectives, prescribed punishment not so disproportionate to proscribed conduct and of such duration as to shock conscience of reasonable persons or outrage moral sense of the community. 83 H. 335, 926 P.2d 1258.

Not violated by ninety-day suspension of driver's license under §291-4 for drunken bicyclist where: (1) no showing that disparity of risk between drunken bicyclists and drunken automobile drivers is so great; and (2) suspension not disproportionately onerous compared to more serious crimes in same jurisdiction and for the same offense in different jurisdictions. 87 H. 249, 953 P.2d 1347.

Not violated by trial court's refusal to find strong mitigating circumstances pursuant to §706-606.5(4) (1998) and imposition of concurrent mandatory minimum ten-year terms where defendant could have reasonably been deemed to pose a danger to society, more serious crimes by repeat offenders may be punished in Hawaii by longer mandatory minimum terms, and other jurisdictions permitted significantly lengthier sentences for repeat offenders. 93 H. 87, 997 P.2d 13.

Chapter 846E, as applied to defendant, was not grossly disproportionate to the offenses for which defendant was convicted, as proportionality is not guaranteed under this Amendment; the question was whether the statute itself effects a punishment which was both severe and unknown to Anglo-American

tradition. 105 H. 222, 96 P.3d 242.

As imposition of one-year term of probation, subject to condition that defendant undergo sex offender evaluation and treatment, for tying up and hitting nephew with belt (1) fell within the range of punishment prescribed by the applicable statutory provisions, (2) did not shock the conscience of reasonable persons, and (3) did not outrage the moral sense of the community, it was not cruel and unusual punishment for the family court to impose this sentence. 107 H. 117, 111 P.3d 12.

Given the destructive, deceitful, and wasteful, albeit nonviolent, character of defendant's offenses and the primacy of the retributive, incapacitative, and deterrent objectives, five consecutive ten-year terms of imprisonment did not reflect a plain and manifest abuse of discretion on the part of the trial court; such a sentence was not so disproportionate to defendant's crimes nor of such duration as to shock the conscience of reasonable persons or to outrage the moral sense of the community, in light of the developing concepts of decency and fairness. 111 H. 267, 141 P.3d 440.

Right not violated and trial court did not abuse discretion in ordering that defendant remain shackled during sentencing hearing where transcript of sentencing hearing contained no indication that the shackling in any way inhibited defendant from understanding what was going on, asserting defendant's self or consulting with counsel, or that the shackling in any way actually influenced or inclined the trial court against defendant. 111 H. 457 (App.), 142 P.3d 1286.

Cited: 56 H. 447, 539 P.2d 1197.

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**[ARTICLE IX.--1791]**

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

**Case Notes**

Right to privacy extends to decisions regarding psychiatric care and communication of personal information. 481 F. Supp. 1028.

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**[ARTICLE X.--1791]**

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

**Law Journals and Reviews**

Federalism and Federal Spending: Why the Religious Land Use and Institutionalized Persons Act of 2000 is Unconstitutional. 23 UH L. Rev. 479.

**Case Notes**

Federal preemption of state health insurance law by the Employee Retirement Income Security Act of 1974 did not violate 10th Amendment limits on Congressional authority. 442 F. Supp. 695.

Tenth Amendment does not preclude enforcement of the Endangered Species Act where the species in question exists in nature in only one state. 471 F. Supp. 985.

Application of maritime remedies would not directly impair State's ability to engage in traditional government functions. 557 F. Supp. 1024.

Hawaii has power to extinguish statutory cause of action that was within its power to create. 780 F. Supp. 705.

Court would not strike death penalty notice, as neither Hawaii state sovereignty, the Tenth Amendment, nor equal footing doctrine threatened by possibility of sentence of death. 123 F. Supp. 2d 563.

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**[ARTICLE XI.--1798]**

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.

**Law Journals and Reviews**

Palila v. Hawaii Department of Land and Natural Resources: State Governments Fall Prey to the Endangered Species Act of 1973. 10 Ecology Law Quarterly 281.

Palila v. Department of Land and Natural Resources: "Taking" Under Section Nine of the Endangered Species Act of 1973. Comment. 4 UH L. Rev. 181.

Courts and the Cultural Performance: Native Hawaiians' Uncertain Federal and State Law Rights to Sue. 16 UH L. Rev. 1.

Patricia N. v. LeMahieu: Abrogation of State Sovereign Immunity Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act After Board of Trustees v. Garrett. 24 UH L. Rev. 347.

**Case Notes**

Award of attorneys' fees to Legal Aid Society in civil rights action against State not prohibited. 611 F.2d 1302.

Congress may provide for award of attorneys' fees against state officials acting in their official capacities. 611 F.2d 1302.

Because true purpose of action was to recover from state treasury, failure to name State as defendant was immaterial to state defendants' Eleventh Amendment immunity. Framing of claim as action under 42 U.S.C. 1983 does not abrogate or "override" sovereign immunity. 693 F.2d 928.

State waived immunity where it participated in federally funded and regulated special education program for handicapped children. 727 F.2d 809.

Did not bar action to enjoin state officials from disbursing public funds to "Hawaiians". Principals of qualified immunity do not protect state officials from actions to enjoin exercise of authority under allegedly unconstitutional state law. 741 F.2d 1169.

State did not waive immunity from suit by native Hawaiian group; prospective injunctive relief proper for violation of federal law by state official. 764 F.2d 623.

Bars federal court from hearing suit against State in absence of consent in state law under which suit brought; university personnel shared State's immunity against suit. 791 F.2d 759.

Barred action against State for allegedly violating antitrust laws by entering into exclusive franchise contract for taxi service from airport. 810 F.2d 869.

The United States may bring suits against the State. 832 F.2d 1116.

Bars citizen's suits for retrospective relief (damages) against state official acting in official capacity. 902 F.2d 1395.

Native Hawaiians' claim that trustees of office of Hawaiian affairs violated Admission Act not barred where action was brought against trustees in their individual, rather than official, capacities. 928 F.2d 824.

Grants states immunity from retroactive monetary relief in federal court. 961 F.2d 852.

Barred inmate's suit against State and individual defendants in their official capacities, but not against individual defendants in their personal capacities. 15 F.3d 1463.

Barred suit against state officials in official capacities for alleged breach of trust in approving third party agreements permitting agricultural use of homelands by non-native Hawaiians where plaintiffs sought only retrospective relief. 45 F.3d 333.

Bars federal courts from deciding claims against state officials based solely on state law. 45 F.3d 333.

State officials sued in individual capacities were entitled to qualified immunity where they reasonably believed, based on their good faith reliance on substantial legal opinion, that third party agreements permitting agricultural use of homelands by non-native Hawaiians met the statutory standard. 45 F.3d 333.

Eleventh Amendment bar against some of the claims of an action originally brought in state court does not prevent removal of the action to federal court. 68 F.3d 331.

State employees entitled to 42 U.S.C. §1983 qualified immunity where plaintiff did not have clearly established parental right to be free from state child care intervention in the form of suggested counseling and drug testing. 68 F.3d 331.

Where plaintiff failed to show sufficient likelihood that state child protective services agency would violate plaintiff's privacy rights in the future, plaintiff lacked standing to seek injunctive relief against agency. 68 F.3d 331.

Court did not lack jurisdiction because of Eleventh Amendment. What plaintiffs objected to was not the mere occurrence of an allegedly unfair vote, but the State's decision to give effect to that vote; plaintiffs sought prospective, not retrospective, relief. 140 F.3d 1218.

Where defendants ("State") appealed denial of State's motion for partial summary judgment on question whether punitive damages are available against a state under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and urged panel to ground its subject matter jurisdiction in Cohen collateral order doctrine, State failed to satisfy third criterion of Cohen test, rendering district court's order denying State's motion an unappealable collateral order; State was not claiming sovereign immunity from suit in federal court; State invoked Eleventh Amendment merely as a defense to liability for punitive damages under Title II and Section 504. 165 F.3d 1257.

Did not bar plaintiffs' suits under Title II of the Americans with Disabilities Act or §504 of the Rehabilitation Act. 303 F.3d 1039.

Supreme Court's conclusion that a court of appeals has jurisdiction over a district court's non-final order denying a state's claim to Eleventh Amendment immunity under the collateral order doctrine applies whether or not an Ex Parte Young claim survives the motion stage of the litigation. 309 F.3d 1203.

Lawsuit against state officials by plaintiffs, Hawai'i medicaid recipients who suffered from tobacco-related illnesses, not barred by sovereign immunity under the Eleventh Amendment, where plaintiffs alleged that the officials violated and continued to violate federal disbursement rules for medicaid recovery. 311 F.3d 929.

State defendants did not waive sovereign immunity regarding appellant's state law claims by filing the third-party complaint; they had timely asserted immunity prior to filing the third-party complaint and the third-party complaint was a defensive move which was not incompatible with an intent to preserve sovereign immunity. 488 F.3d 1144.

State of Hawaii was protected from suit by an individual, whether the individual was a citizen of another state or of Hawaii. 315 F. Supp. 729.

A suit to restrain unconstitutional act of state officer is not a suit

against the State. 402 F. Supp. 95.

State could be enjoined from violating the Endangered Species Act and required to eradicate feral sheep and goats in critical habitat at state expense because Act expressly abrogates sovereign immunity under Eleventh Amendment. 471 F. Supp. 985.

Actions for injunctive and declaratory relief against state officials acting in their official capacity are not barred by Eleventh Amendment. 481 F. Supp. 1028.

State waived immunity by voluntarily coming into federal court when state courts also had jurisdiction. 531 F. Supp. 517.

State sovereign immunity does not bar an action when official's actions violated the Constitution. 751 F. Supp. 1401.

Bars inmate's claim for damages against state prison officials in their official capacities. 807 F. Supp. 1505.

State defendants' motion for summary judgment granted on all claims against state officials in their official capacities, where Eleventh Amendment barred state law claims and plaintiffs sought only retrospective relief against the state officials. 824 F. Supp. 1480.

State had not waived its sovereign immunity, thus, plaintiffs' claims against State or its agencies or departments were barred by the Eleventh Amendment. 824 F. Supp. 1480.

Barred plaintiff's 42 U.S.C. §1983 claim and pendent state law claims against State. 874 F. Supp. 1095.

Barred inmate's claims against State and defendants in their official capacities for alleged violations of state law and inmate's 42 U.S.C. §1983 claims for monetary relief against State and defendants in their official capacities. 902 F. Supp. 1220.

Inasmuch as plaintiff's claims under §378-2 against the State were against a state government, they were barred in federal court by Eleventh Amendment; plaintiff's claims against state officials in their official capacities must likewise be barred. 910 F. Supp. 479.

Plaintiff's claims for relief based on allegedly unconstitutional rule of professional conduct enforced by state officials, constituted an exception to Eleventh Amendment doctrine of sovereign immunity under Ex Parte Young. 916 F. Supp. 1525.

Barred plaintiffs' 42 U.S.C. §1983 claims for damages, where plaintiffs sought damages on grounds that State's QUEST health care program prior to April 1, 1996 violated equal protection clause of Fourteenth Amendment by discriminating against the blind and disabled. 939 F. Supp. 765.

Where plaintiffs argued that State waived its Eleventh Amendment immunity through the enactment of §353-14 and the State's Tort Claims Act [sic], §§662-2 and 663-1, no express consent or applicable waiver provisions found. 940 F. Supp. 1523.

Barred claims against defendant state agencies, federal constitutional claims brought under 42 U.S.C. §1983 against state officials in official capacities, and state law claims. 951 F. Supp. 1484.

No waiver of Eleventh Amendment immunity, where defendants removed case to federal court and defendants raised immunity defense in their answer in state court and not in their motion for partial judgment on pleadings. 951 F. Supp. 1484.

Sections 661-1 and 662-2 did not constitute a waiver of defendants' Eleventh Amendment immunity; neither Native American Languages Act of 1990 nor 42 U.S.C. §1983 abrogated the Eleventh Amendment. 951 F. Supp. 1484.

Plaintiffs' suit barred by Eleventh Amendment and prior Ninth Circuit authority, where, inter alia, plaintiffs asked court to compel state defendants

to spend §5(f) (Admission Act) funds on only one (Hawaiian home lands) of the five purposes provided for in the Admission Act, in order to compensate for past breaches of trust. 996 F. Supp. 989.

Where plaintiffs argued that defendant was not an arm of the State of Maryland and thus was unable to obtain protection through the Eleventh Amendment, defendant was vested with sovereign immunity. As there was no named state official in the complaint or elsewhere, that was allegedly violating plaintiffs' rights under federal law, plaintiffs' claims could not fall within exception which allowed suits to enjoin state officials from violating federal law. 3 F. Supp. 2d 1127.

Where plaintiffs asserted claims against defendant based upon Declaratory Judgment Act, and the Longshore and Harbor Workers' Compensation Act, as provided under the Defense Base Act, absent a clear statement that Congress intended to abrogate Eleventh Amendment immunity, such immunity remained intact and protected defendant from suit in federal court. 3 F. Supp. 2d 1127.

State and department of land and natural resources immune from suit, where plaintiff sought to enjoin State and city and county of Honolulu from implementation or enforcement of any and all state statutes and city ordinances that might apply to the business that plaintiff claimed to be developing, involving a commercial boating activity on the Ala Wai canal. 57 F. Supp. 2d 1028.

Barred plaintiff's tort claims and claims that defendants violated two constitutional amendments made actionable under 42 U.S.C. §1983, made against defendants State and Hawaii paroling authority ("HPA") parole administrator and HPA chairman in their official capacities. 109 F. Supp. 2d 1262.

Where defendants removed action to federal court, defendant State had not waived sovereign immunity; Eleventh Amendment barred plaintiff's claims against State and defendant-physicians in their official capacities. 109 F. Supp. 2d 1271.

Plaintiff's claims dismissed, on Eleventh Amendment immunity grounds, to extent they were asserted against defendants in their official capacities. 110 F. Supp. 2d 1312.

Defendants' motion to dismiss based on Eleventh Amendment immunity denied as to plaintiffs' claims against the State based on §504 of the Rehabilitation Act. 141 F. Supp. 2d 1243.

On and after July 1, 1998, the date §304-6 [as amended] took effect, the University of Hawaii continued to be an arm of the State for purposes of Eleventh Amendment immunity. 159 F. Supp. 2d 1211.

Defendants' motion to dismiss based on Eleventh Amendment immunity denied as to plaintiffs' claim under §504 of the Rehabilitation Act. 165 F. Supp. 2d 1144.

No Eleventh Amendment immunity for county in lawsuit based on county planning commission's denial of a special use permit sought under §205-6. 229 F. Supp. 2d 1056.

City and county had no Eleventh Amendment immunity, where city and county had not demonstrated that any judgment issued against it in the case would be a judgment against the State. 307 F. Supp. 2d 1149.

State defendants' motion for judgment on the pleadings and summary judgment as to Eleventh Amendment immunity (1) denied regarding claims under §504 of the Rehabilitation Act, where State waived its Eleventh Amendment immunity as to §504 by accepting federal funding; and (2) granted regarding 42 U.S.C. §1983 and state law claims against defendants in their official capacities and defendants state agency and agency program. 351 F. Supp. 2d 998.

Barred federal law claims against department of education (DOE) and against a defendant in the defendant's official capacity to the extent that plaintiff

sought damages; did not bar federal law claims for prospective relief against the defendant in defendant's official capacity; barred state law claims against both DOE and the defendant in defendant's official capacity, regardless of the relief sought. 396 F. Supp. 2d 1138.

Court declined to dismiss plaintiff's claim asserting violation of the Americans with Disabilities Act and the portion of the claim asserting a violation of the federal Constitution, as against the State, to the extent that plaintiff sought prospective relief, where, inter alia, plaintiff sought reinstatement as a teacher. Where the State had not consented to be sued for the state claims in federal court, the State was immune from the claims and the claims were dismissed. 405 F. Supp. 2d 1225.

Requested relief that trust status of exchanged lands be restored by constructive trust is equivalent to nullification of the exchange and return of exchanged lands to trust res; as such, relief seeks compensation for past actions of state officials and is barred by State's sovereign immunity. 73 H. 578, 837 P.2d 1247.

Appellants' claims not barred by sovereign immunity where appellants' requested relief not a request for compensation for past action of Hawaiian homes commission members. 81 H. 474, 918 P.2d 1130.

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**[ARTICLE XII.--1804]**

The Electors shall meet in their respective states, and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;--The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;--The person having the greatest number of votes for President, shall be the President, if such number be a majority of the whole number of Electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President, shall be the Vice-President, if such number be a majority of the whole number of Electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

**Attorney General Opinions**

State legislature may not impose additional qualifications to federal offices. Att. Gen. Op. 75-22.

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**[ARTICLE XIII.--1865]**

**Section 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**Case Notes**

Family court did not violate father's right to be free from involuntary servitude by ordering father to pay \$50 per month to support his child, despite father's preference to remain unemployed. 109 H. 240, 125 P.3d 461.

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**[ARTICLE XIV.--1868]**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Attorney General Opinions****Due process.**

This clause guarantees a jury trial in all serious criminal cases but not for petty offenses. Att. Gen. Op. 68-10.

Student regulations at state universities are subject to the vagueness standard but do not require the same specificity required of criminal statutes. Att. Gen. Op. 71-9.

**Privileges and immunities.**

A bill to provide for a capitation tax on all persons arriving in State by commercial airline would abridge the privileges and immunities of citizens of the United States. Att. Gen. Op. 69-7.

**Equal protection.**

Statutes requiring United States citizenship or declaration of intention to become a citizen as a condition of obtaining a license are invalid. Att. Gen. Op. 74-18.

**Law Journals and Reviews**

The New Resident: Hawaii's Second-Class Citizen. 5 HBJ 77.

Hawaii's Land Reform Act: Is it Constitutional? 6 HBJ 31.

Suppression of Evidence Without the Aid of the Fourth, Fifth and Sixth Amendments. 8 HBJ 109.

Discussion of the First Amendment rights of the policemen, see the Dissenting Cop. 9 HBJ 59.

The Hawaii Prison Inmate's Emerging Right to Due Process. 10 HBJ 115.

Included Offenses in Hawaii Case Law and the Rights to Trial by Jury: Coherence or Confusion. II HBJ No. 13, at pg. 77.

Res Judicata and Collateral Estoppel in Hawaii: One of These Things is Not Like The Other. III HBJ No. 13, at pg. 1.

The Death Of The Living Will And The Making of Health Care Decisions Under Hawaii's New But Not Quite Uniform Health-Care Decisions Act. III HBJ No. 13, at pg. 29.

Real Property Tax Litigation in Hawaii. III HBJ No. 13, at pg. 57.

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

National Collegiate Athletic Association v. Tarkanian: The End of Judicial Review of the NCAA. 12 UH L. Rev. 383.

Stop H-3 Association v. Dole: Congressional Exemption from National Laws Does Not Violate Equal Protection. 12 UH L. Rev. 405.

State v. Suka: Balancing the Need for Witness Accompaniment Against Its Prejudicial Effect. 12 UH L. Rev. 461.

Sandy Beach Defense Fund v. City and County of Honolulu: The Sufficiency of

- Legislative Hearings in an Administrative Setting. 12 UH L. Rev. 499.
- Hawaii's Quarantine Laws: Can Spot Come Home? 13 UH L. Rev. 175.
- The Constitutional Structure of the Courts of the United States Territories: The Case of American Samoa. 13 UH L. Rev. 379.
- The Hostile Work Environment: Are Federal Remedies Hostile, Too? 13 UH L. Rev. 537.
- The Protection of Individual Rights Under Hawai'i's Constitution. 14 UH L. Rev. 311.
- The Evolving Legal Relationships Between the United States and Its Affiliated U.S.-Flag Islands. 14 UH L. Rev. 445.
- Burdick v. Takushi: Yes to Equal Voice in Voting, No to a Fundamental Right to Vote for Any Particular Candidate. 14 UH L. Rev. 715.
- Hawai'i's New Administrative Driver's License Revocation Law: A Preliminary Due Process Inquiry. 14 UH L. Rev. 853.
- The Law and Politics of Dancing: Barnes v. Glen Theatre and the Regulation of Striptease Dance. 14 UH L. Rev. 925.
- Foucha v. Louisiana: The Keys to the Asylum for Sane But Potentially Dangerous Insanity Acquittees? 15 UH L. Rev. 215.
- For Better or for Worse, in Sickness and in Health, Until Death Do Us Part: A Look at Same Sex Marriage in Hawaii. 16 UH L. Rev. 447.
- The Kamehameha Schools/Bishop Estate and the Constitution. 17 UH L. Rev. 413.
- A Biologic Argument for Gay Essentialism-Determinism: Implications for Equal Protection and Substantive Due Process. 18 UH L. Rev. 571.
- Criminal Procedure Rights Under the Hawaii Constitution Since 1992. 18 UH L. Rev. 683.
- Adarand Constructors Inc. v. Pena: A Color-blind Remedy Eliminating Racial Preferences. 18 UH L. Rev. 939.
- A Constitutionally Valid Justification for the Enactment of No-Growth Ordinances: Integrating Concepts of Population Stabilization and Sustainability. 19 UH L. Rev. 93.
- An Evaluation of the Summary Contempt Power of the Court: Balancing the Attorney's Role as an Advocate and the Court's Need for Order. 19 UH L. Rev. 145.
- Rethinking Race for Strict Scrutiny Purposes: Yniguez and the Racialization of English Only. 19 UH L. Rev. 221.
- Should The Right To Die Be Protected? Physician Assisted Suicide And Its Potential Effect On Hawai'i. 19 UH L. Rev. 783.
- Justice Ruth Bader Ginsburg And Gender Discrimination. 20 UH L. Rev. 699.
- Tired of Your Masses: A History of and Judicial Responses to Early 20th Century Anti-Immigrant Legislation. 21 UH L. Rev. 131.
- The Future of Same-Sex Marriage. 22 UH L. Rev. 119.
- The Fine Line Between Love and the Law: Hawai'i's Attempt to Resolve the Same-Sex Marriage Issue. 22 UH L. Rev. 149.
- Love and Let Love: Same-Sex Marriage, Past, Present, and Future, and the Constitutionality of DOMA. 22 UH L. Rev. 185.
- The California Civil Rights Initiative: Why It's Here, Its Far Reaching Effects, and the Unique Situation in Hawai'i. 22 UH L. Rev. 279.
- A New Segregation? Race, Rice v. Cayetano, and the Constitutionality of Hawaiian-Only Education and the Kamehameha Schools. 23 UH L. Rev. 109.
- Unfair Punishment of the Mentally Disabled? The Constitutionality of Treating Extremely Dangerous and Mentally Ill Insanity Acquittees in Prison Facilities. 23 UH L. Rev. 623.
- Saenz v. Roe: The Right to Travel, Durational Residency Requirements, and a Misapplication of the Privileges or Immunities Clause. 23 UH L. Rev. 685.
- The Akaka Bill: The Native Hawaiians' Race For Federal Recognition. 23 UH

L. Rev. 857.

The Defense of Marriage Act: Sex and the Citizen. 24 UH L. Rev. 279.

Akaka Bill: Native Hawaiians, Legal Realities, and Politics as Usual. 24 UH L. Rev. 693.

Driving into the Sunset: A Proposal for Mandatory Reporting to the DMV by Physicians Treating Unsafe Elderly Drivers. 25 UH L. Rev. 59.

Punishment and Deterrence: Merely a Mantra; A Casenote on State Farm v. Campbell. 26 UH L. Rev. 229.

Arrow of Time: Vested Rights, Zoning Estoppel, and Development Agreements in Hawai'i. 27 UH L. Rev. 17.

Emergency Contraception in Religious Hospitals: The Struggle Between Religious Freedom and Personal Autonomy. 27 UH L. Rev. 65.

To See or Not to See? The Real Question Behind the Supreme Court's Grutter & Gratz Decisions. 27 UH L. Rev. 165.

Trailblaze or Retreat? Political Gerrymandering After Vieth v. Jubelirer. 27 UH L. Rev. 269.

Wiping Out the Ban on Surfboards at Point Panic. 27 UH L. Rev. 303.

Adarand Constructors, Inc. v. Slater and Concrete Works of Colorado, Inc. v. City of Denver: Breathing Life into Croson's Passive Participant Model. 27 UH L. Rev. 469.

Prudent Use of Judicial Minimalism: Why Minimalism May Not be Appropriate in the Context of Same-Sex Marriage. 27 UH L. Rev. 501.

Price Controls in Paradise: Foreshadowing the Legal and Economic Consequences of Hawai'i's Gasoline Price Cap Law. 27 UH L. Rev. 549.

Text-Mess: There is No Textual Basis for Application of the Takings Clause to the States. 28 UH L. Rev. 373.

Free Exercise and Hybrid Rights: An Alternative Perspective on the Constitutionality of Same-Sex Marriage Bans. 29 UH L. Rev. 23.

Physician Assisted Suicide: Expanding the Laboratory to the State of Hawai'i. 29 UH L. Rev. 269.

Prostitution: Protected in Paradise? 30 UH L. Rev. 193.

### Case Notes

#### Generally.

State's ban on write-in voting does not unreasonably infringe upon voters' constitutional rights. 504 U.S. 428.

As birth in Philippines during U.S. territorial period does not constitute being born "in the U.S.", U.S. citizenship does not arise for such persons under citizenship clause. 35 F.3d 1449.

No qualified immunity on 42 U.S.C. §1983 claim for prison official who allegedly forced inmate to choose between constitutional right to outdoor recreation and law library access. 39 F.3d 936.

Has no bearing on requirement that applicant must take bar examination. 44 H. 597, 358 P.2d 709.

Program of board of land and natural resources for introduction of axis deer to island of Hawaii not unreasonable, arbitrary or capricious. 50 H. 207, 436 P.2d 527.

For State to convict indigent without first providing indigent with counsel violates indigent's 14th Amendment rights. 56 H. 23, 525 P.2d 1108.

#### Privileges and immunities.

Law requiring three-year residence qualification for jurors does not violate privileges and immunities clause. 51 H. 195, 456 P.2d 805.

**Due process.**

See also notes to Amendment 5.

Prison regulations do not create a protected liberty interest. 461 U.S. 236.

Transfer of prisoner to mainland facility did not implicate due process clause directly. 461 U.S. 236.

Inmate's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a state might conceivably create a liberty interest; neither the Hawaii prison regulation in question, nor the due process clause itself, afforded inmate a protected liberty interest that would entitle inmate to procedural protections set forth in *Wolff v. McDonnell*. 515 U.S. 472.

Defendant was not denied due process by alleged prosecutorial misconduct before grand jury. 614 F.2d 214.

Only where defendant alleges governmental conduct "of the most shocking and outrageous kind" will due process be violated and court required to divest itself of jurisdiction. 625 F.2d 308.

Prison transfer regulations created liberty interest subject to due process protection. 664 F.2d 708.

Standard of proof for invalidation of plea bargain on basis of information submitted for sentencing. 682 F.2d 799.

Hawaii civil service appeals process does not per se violate due process. 707 F.2d 1100.

Patients did not have entitlement to services at Hale Mohalu. Hence, no hearing required in order to close facility. 720 F.2d 564.

State cannot, by judicial decision, divest vested property rights. 753 F.2d 1468.

Not violated in termination of physician's staff privileges. 754 F.2d 1420.

Personal jurisdiction over nonresident manufacturer of military products comports with due process. 785 F.2d 720.

Not violated where civilians prosecuted differently than military personnel for traffic violations on military bases (reversing 604 F. Supp. 416). 786 F.2d 951.

Defendant not denied due process by introduction into evidence of photographs showing defendant's front and profile images; court must weigh prejudicial effect of testimony that defendant had "a long police record" against its probative value; prosecution's disclosure of exculpatory evidence at pretrial conference did not violate due process; individual voir dire, when required. 789 F.2d 1425.

Defendant's conviction violated due process where only evidence was stipulation which followed ambiguous indictment. 796 F.2d 261.

Admission of videotape of autopsy not fundamentally unfair. 800 F.2d 1463.

Jury instructions that erroneously characterized murder as a "lesser included offense" of "murder-for-hire" did not warrant relief, but this error, along with others, may cumulatively have deprived defendant of defendant's rights; limitation of witnesses' prior inconsistent statements for impeachment purposes and not for their substance did not violate due process. 807 F.2d 805.

Defamation, without more is not a constitutional violation. 827 F.2d 1310.

Boat owner did not have a property right to boat slip where permit to use slip expired automatically. 915 F.2d 528.

Award for damages to fired city employee for violation of due process rights upheld where city failed to afford employee a pretermination hearing. 963 F.2d 1167.

Prison rule requiring inmates to communicate in English language only gave inmates insufficient notice that they were forbidden to pray in a foreign language. 994 F.2d 1408.

Bars State from imposing inmate punishment on the basis of an unexpected and unusual interpretation of prison rule forbidding non-English communication. 15 F.3d 1463.

State officials performing discretionary function not entitled to qualified immunity if a reasonable official would have known that prison regulation forbidding non-English communication did not forbid foreign language prayer. 15 F.3d 1463.

Not violated by §286-260 provision allowing for judicial review of administrative revocation of driver's license "as soon as practicable". 17 F.3d 1244.

Federal wastewater treatment permit not unconstitutionally vague where defendants were knowledgeable in wastewater field, could be expected to have understood what the permit meant, and took considerable pains to conceal their illegal dumping activities. 35 F.3d 1275.

Prison policies not sufficiently "mandatory" to create liberty interest in inmate not being transferred from minimum to medium security facility. 55 F.3d 454.

Prison regulations on confinement did not create a liberty interest that would entitle inmate to due process protection. 59 F.3d 931.

No violation where plaintiff's 42 U.S.C. §1983 action against dental board was barred by res judicata as plaintiff failed to seek state court judicial review of dental board's order failing plaintiff on dental exam. 60 F.3d 626.

At time of alleged misconduct, persons in custody had established right to not have officials remain deliberately indifferent to the persons' serious medical needs. 74 F.3d 977.

Where landowners argued that ordinance creating mechanism through which condominium owners could convert their leasehold interests into fee simple interests was arbitrary and irrational, landowners could not meet burden of showing irrationality. 124 F.3d 1150.

Inmate who had never been convicted of a sex offense and had never had opportunity to formally challenge imposition of sex offender label in adversarial setting did not receive required minimum due process protections and was entitled to injunctive relief; inmate who was convicted after formal criminal proceedings of a sex offense received all of process to which inmate was due. 131 F.3d 818.

Where child protective service caseworker's seven-day delay in filing a court petition for temporary custody violated state law, neither the seven-day delay before obtaining post-deprivation judicial review, nor the seven-day delay before filing a court petition, violated appellant's federal due process rights. 141 F.3d 927.

Plaintiff-appellant challenged §667-5 as violating the due process clause; district court's dismissal of the case for failure to state a claim because the sale was a purely private remedy and involved no state action, affirmed. 324 F.3d 1091.

Re applicability of due process to out-of-state prison transfers. 387 F. Supp. 912; 396 F. Supp. 196.

Denying public employment eligibility by erroneous interpretation of law, deprived person of due process. 402 F. Supp. 84.

Courts are not immune from prohibition against taking without compensation. 402 F. Supp. 95.

Re court's relocation of private land boundary without due process. 402 F. Supp. 95.

Law regarding filing of notice of lis pendens held not an unconstitutional seizure of property without due process. 418 F. Supp. 695.

A prisoner's right to classification hearing before an impartial board, as

granted by state correction's regulations, cannot be arbitrarily abrogated. 421 F. Supp. 83.

Garnishment procedures which do not provide safeguards against improper garnishment of AFDC (assistance) grants deny due process. 431 F. Supp. 1369.

Mandatory union service fees collected from teachers not belonging to union cannot be used for political purposes. 437 F. Supp. 368.

Several provisions of state statutes regarding emergency and nonemergency admission to psychiatric facility violated due process. 438 F. Supp. 1106.

Hawaii may not change its laws governing property rights of riparian landowners to use of water without compensating owners for lost rights. 441 F. Supp. 559.

In dispute over water rights, a Supreme Court decision rendered without affording parties a hearing, held to violate procedural due process. 441 F. Supp. 559.

Since prison authorities are granted practically unlimited discretion to transfer state prisoners and the regulations do not provide standards limiting such discretion, defendant does not have a constitutionally protected liberty interest against transfer. 459 F. Supp. 473.

Action of Supreme Court decreeing that property seaward of vegetation line belonged to public deprived owners of due process because there was no hearing on title and it was a radical departure from prior law. 460 F. Supp. 473.

Parents' right to give their child any name they wish is protected from arbitrary state action. 466 F. Supp. 714.

Law providing for affidavit method of postjudgment garnishment of wages not unconstitutional. 467 F. Supp. 544.

"Public use" includes "public interest." 471 F. Supp. 871.

Parental tort liability statute did not contain irrebuttable presumption. 529 F. Supp. 294.

Ex parte appointment of receiver did not constitute taking of property without due process. 547 F. Supp. 988.

Violated by §657-11, which discriminates against actions brought under 42 U.S.C. 1983. 574 F. Supp. 1510.

Alleged conduct of police officers truly "shocks the conscience" and offends "the concept of ordered liberty", and thus violates strictures of substantive due process. 584 F. Supp. 356.

Applicability of "void for vagueness" doctrine; does not apply to county charter provision allocating governmental power. 623 F. Supp. 657.

Zoning and land use regulations for Queen's Beach rationally related to valid planning goals; landowner not entitled to procedural due process with respect to enactment of zoning regulations, which are legislative acts; landowner and prospective developer did not have vested property rights pursuant to general plan and detailed land use map, thus, passage of restrictive zoning did not deny them due process. 649 F. Supp. 926.

No denial of due process where the unauthorized wrongful act is not sanctioned by any established state procedure and the state law provides a realistic means for the plaintiff to be made whole. 694 F. Supp. 738.

Only the United States Supreme Court is empowered to review state court judgments. 735 F. Supp. 963.

No due process liberty interest in parole is created under §§353-68 and 353-69; inmate had due process liberty interest at stake at misconduct hearing. 795 F. Supp. 1020.

Forcing inmates to choose between law library time and outdoor exercise unconstitutional; liberty interest not created by prison regulation governing when officials could administratively segregate inmates. 816 F. Supp. 1501.

Regulation regarding classification of inmates, acting in conjunction with

language of classification scoring system, created protectable liberty interest. Prison policy concerning inmate access to courts, legal services, and legal materials did not create a protectable liberty interest. Inmate's claim based on prison policy regarding participation in employment was without merit; while regulation may create protectable interest, inmate offered no evidence that inmate had been denied the right to participate in activities described in the section. 823 F. Supp. 750.

Any claim based on takings clause of Fourteenth Amendment lacked merit, regarding state mooring regulations; the regulations did not affect plaintiffs in a manner that implicated Fourteenth Amendment. 823 F. Supp. 766.

Where plaintiffs alleged that defendants violated their constitutional rights to due process by depriving them of their dwelling without constitutionally adequate process, plaintiffs received adequate due process. 832 F. Supp. 1399.

Where plaintiff alleged that condominium lease-to-fee ordinance violated plaintiff's substantive due process rights, ordinance was a rational exercise of legislative power. 832 F. Supp. 1404.

Defendants granted summary judgment on plaintiff's procedural and substantive due process claims, where plaintiff contended that testing of Hawaiian terms and the lack of notice thereof constituted a violation of a protected liberty interest without due process; first-time applicant for a surveyor's license had no protected property interest in the license. 846 F. Supp. 1411.

Police officers would have violated plaintiff's due process rights by demonstrating deliberate indifference to plaintiff's need in failing to take plaintiff to receive medical care, assuming the facts as plaintiff stated them. 872 F. Supp. 746.

Neither prison's grooming standards nor memorandum regarding enforcement of grooming policy created a protected liberty interest; enforcement of grooming standards did not impose sufficiently "atypical or significant hardship" to justify due process protection. 902 F. Supp. 1220.

Plaintiff's due process claims against state hospital superintendent, registered nurse, and paramedical assistant, based on defendants' use of force, barred as to superintendent and nurse in their individual capacities by doctrine of qualified immunity. 909 F. Supp. 737.

Correctional facility's law library access policy was reasonable, provided meaningful access to the courts, and did not violate the Constitution. 938 F. Supp. 650.

Section 353-14 (1987) provided Hawai'i paroling authority board [sic] with complete discretion to assess inmates' needs and to award "gate money" as necessary in light of those needs; thus, no protected property interest existed. The right to "gate money" not so fundamental as to warrant constitutional protection apart from its status under state law. 940 F. Supp. 1523.

Defendant's motion to dismiss for lack of personal jurisdiction denied, where defendant based in California had taken action in Hawaii whereby it purposefully availed itself of the privilege of conducting activities in the forum, facts established a prima facie case that but for defendant's activities in Hawaii, plaintiffs' claims would never have arisen, and defendant had not presented any argument that factors rendered jurisdiction unreasonable (court found factors favored exercise of personal jurisdiction). 980 F. Supp. 1134.

Elements for specific jurisdiction, discussed, where defendants filed motion to dismiss complaint based on court's lack of personal jurisdiction in case containing causes of action sounding in both tort and contract. 980 F. Supp. 1362.

Where the court construed allegations of plaintiff (who previously held a position at correctional facility), to, at most, state a claim for negligence

on the part of correctional facility officials in failing to provide plaintiff with a personal security guard, even in accepting these allegations as true, plaintiff failed to state a valid claim under 42 U.S.C. §1983. 25 F. Supp. 2d 1124.

Defendants' motion to dismiss for failure to state a claim granted, where, inter alia, it appeared plaintiff was asserting a federal constitutional right to be free from bad faith prosecution. 45 F. Supp. 2d 794.

Student suspended from school for violating Act 90, L 1996 (§302A-1134.5(a)), which prohibited possession of alcohol while attending school, where student allegedly participated in consumption of alcohol at student's home prior to school luau in violation of school's zero tolerance policy under Act 90. Plaintiffs' (student's parents) motion for preliminary injunctive relief granted in part and denied in part where, among other things, it was very likely that plaintiffs would prevail on merits of claim that defendants violated due process requirements when they allegedly punished student without evidence that student violated Act 90; and plaintiffs very likely to prevail on merits of claim that if student's conduct fell within Act 90, due process violated because the statute was too vague. 84 F. Supp. 2d 1113.

Court had personal jurisdiction over defendants, where plaintiff, allegedly a resident of Hawaii for almost thirteen years, filed complaint in response to article written by a defendant who resided in New York, and published by a newspaper distributed primarily in New York city metropolitan area. 87 F. Supp. 2d 1060.

Where plaintiff, terminated OHA chief financial officer, claimed that defendants, OHA administrator and trustee, in individual capacities, unlawfully deprived plaintiff of plaintiff's property and liberty without due process of law, in violation of 42 U.S.C. §1983, defendants' motion for summary judgment granted with prejudice as to these claims. 120 F. Supp. 2d 1244.

Sufficient minimum contacts existed to give rise to specific in personam jurisdiction where, inter alia, a parent corporation with control over a local facility had purposefully availed itself into the jurisdiction and invoked the benefits and protections of the State's laws. 140 F. Supp. 2d 1062.

Having created a permit structure for commercial vessels, having issued and reissued such permits in the past, and having promised plaintiff renewal, division of boating and ocean recreation violated the due process clause by summarily withholding the promised "vessel moored elsewhere" permit for reasons that were undisclosed or tested through a fair administrative hearing process. 195 F. Supp. 2d 1157.

Two per cent use fee did not violate right to substantive due process of plaintiff, a corporation engaged in offering boating excursions from state boating facilities on the island of Kauai. 195 F. Supp. 2d 1157.

Federal due process requirements discussed, where defendants' motion to dismiss based on personal jurisdiction denied; plaintiff (an Oregon citizen) met plaintiff's burden of demonstrating that the court had specific jurisdiction over each defendant (California citizens) as to each claim. 283 F. Supp. 2d 1128.

Defendants' motions to dismiss for lack of personal jurisdiction granted; among other things, those defendants could not have "reasonably anticipate[d] being haled into court" in Hawaii by responding to communications from various credit reporting agencies regarding plaintiff's credit status. 293 F. Supp. 2d 1156.

Defendant insurer was subject to personal jurisdiction, where plaintiff's complaint alleged state law claims arising from insurer's "wrongful and bad-faith denial of its obligations to defend and indemnify" insured and its president against plaintiff's claims; insurer had issued an insurance policy

indemnifying insured for liability arising from bodily injury and property damage caused by an occurrence within the coverage territory, and the coverage territory included the United States of America, Puerto Rico, and Canada. 304 F. Supp. 2d 1232.

Where plaintiff sued defendant for allegedly violating plaintiff's rights under the Fourth, Fifth, and Fourteenth Amendments, based on defendant's involvement in the removal and subsequent destruction of motorcycles and mopeds in the area of plaintiff's motorcycle repair shop, genuine issues of material fact existed and precluded the court from determining whether defendant was entitled to qualified immunity under federal law. 333 F. Supp. 2d 942.

Plaintiffs' motion for preliminary injunction granted as to their due process claim, where plaintiffs asked the court to require defendants to, inter alia, refrain from failing to protect plaintiffs from anti-lesbian, gay, bisexual, and transgender peer harassment and abuse at a secure juvenile correctional facility. 415 F. Supp. 2d 1129.

Specific jurisdiction test discussed, where court denied nonresident defendants' motion to dismiss for lack of personal jurisdiction. 416 F. Supp. 2d 948.

Statute may be so vague as to violate due process. 43 H. 66.

Ordinance prohibiting use of streets for soliciting sales does not violate due process clause. 43 H. 71.

No constitutional right to preliminary hearing, and denial of hearing does not affect indictment. 45 H. 604, 372 P.2d 356.

Generally speaking, public employment does not create property rights subject to the protection of due process. 48 H. 370, 405 P.2d 772.

Criminal statute must be sufficiently definite, but only a reasonable degree of certainty is required. 49 H. 624, 636-38, 425 P.2d 1014.

Penal sanctions, effect on requirement of legislative standards for administrative agencies in adoption of regulations. 49 H. 651, 657-58, 426 P.2d 626.

Regulation of signs for aesthetic reasons not a denial of due process. 50 H. 33, 429 P.2d 825.

Conduct of trial judge in examining and discrediting witnesses called by defendant may violate requirements of fair trial and due process. 50 H. 287, 439 P.2d 666.

An ordinance proscribing "presence" at a cockfight is too vague to satisfy requirement of due process. 50 H. 384, 441 P.2d 333.

Law providing for service of summons on nonresident motorist by publication does not violate due process clause. 50 H. 484, 443 P.2d 155.

Trial by jury composed only of jurors meeting three-year residence qualification not denial of due process. 51 H. 195, 456 P.2d 805.

Notice by publication provided by HRS §531-14 was constitutionally insufficient by itself and should have been supplemented by notice by mail or personal service. 52 H. 145, 472 P.2d 494.

Public employees seeking accidental disability retirement benefits are entitled to hearing on contested issues before board of trustees. 52 H. 212, 473 P.2d 866.

Law imposing on private employers obligation to pay their employees for service on juries and public boards, constituted taking. 52 H. 327, 475 P.2d 679.

Defendant in criminal proceedings is entitled to fair hearing on objections to appointed counsel. 52 H. 484, 479 P.2d 207.

Law is void for vagueness when it neither gives fair notice of what conduct is prohibited nor prescribes fixed standards for adjudging guilt of accused. 52 H. 527, 480 P.2d 148.

Law making presence in barricaded place a crime, was too vague and overly broad. 52 H. 604, 483 P.2d 997.

Law together with other sections of Part II, Chapter 709, was invalid for failing to require proof of guilt beyond reasonable doubt. 53 H. 40, 487 P.2d 283.

Right of accused to be convicted only upon proof by prosecution of all elements of the crime beyond reasonable doubt is constitutionally protected. 53 H. 110, 488 P.2d 322.

Prejudicial conduct of prosecutor in presenting case to grand jury violates due process. 53 H. 226, 491 P.2d 1089.

Admitting evidence of prior convictions to impeach criminal defendant's credibility imposes unreasonable burden on defendant's right to testify; HRS §621-22 unconstitutional. 53 H. 254, 492 P.2d 657.

Prosecutor's deliberate misrepresentation of law or fact which denies a defendant fair opportunity to prepare for trial may constitute denial of due process. 53 H. 536, 498 P.2d 635.

Penal statute must clearly define proscribed behavior or it denies due process of law. 54 H. 1, 501 P.2d 363.

Right to effective counsel in criminal trial. 54 H. 28, 501 P.2d 977.

Personal jurisdiction over nonresidents--requirement that minimal contacts be such as give rise to or were casually connected with the obligation sought to be enforced in state court. 54 H. 597, 513 P.2d 165.

Necessity of appointing interpreter for defendant who has difficulty understanding English. 54 H. 637, 513 P.2d 697.

Honolulu ordinance prohibiting loitering by juveniles is too vague and overbroad. 54 H. 647, 513 P.2d 1385.

Summary prejudgment garnishment statute, is violative of due process, as applied to bank accounts. 54 H. 656, 513 P.2d 1390.

Method of selection of Bishop Estate trustee by supreme court justices not constitutionally defective; beneficiaries have no "property" right in selection process. 55 H. 104, 516 P.2d 1239.

Mere lack of wisdom in enacting a statute does not render it void under the due process clause. 55 H. 148, 516 P.2d 715.

Prerequisites for waiver of counsel and acceptance of guilty plea. 55 H. 336, 519 P.2d 892.

Penal Code's classification of marijuana along with certain mild narcotic compounds not a violation of due process. 56 H. 501, 542 P.2d 366.

In absence of expectancy of employment, non-tenured faculty does not have property interest in continued employment. 56 H. 680, 548 P.2d 253.

Law requiring payment of taxes prior to judicial hearing, does not violate due process. 57 H. 1, 548 P.2d 246.

Admission of irrelevant, prejudicial evidence of other offenses of defendant denies fair trial. 57 H. 17, 548 P.2d 1397.

Cross-examination of defendant on credibility must be limited to defendant's capacity for truth. 57 H. 17, 548 P.2d 1397.

Trial judge's prejudicial comments violate right to fair trial. 57 H. 17, 548 P.2d 1397.

Constitutional errors in criminal trial that are harmless beyond reasonable doubt do not mandate reversal. 57 H. 26, 548 P.2d 1402.

Convictions based on eyewitness identifications at trial, following a pretrial photograph identification, will be set aside if pretrial identification procedure was so suggestive as to create substantial likelihood of irreparable misidentification. 57 H. 150, 552 P.2d 357.

The basic test of state jurisdiction to tax is whether tax bears reasonable fiscal relation to benefits given by the State. 57 H. 175, 554 P.2d 242.

An accused need not be informed, prior to acceptance of guilty plea, about every collateral effect of a conviction. 57 H. 354, 556 P.2d 577.

Imposition of both an excise tax on an activity and an ad valorem tax on the value of property did not violate due process. 57 H. 436, 559 P.2d 264.

Due process not violated by court's refusal to permit certain voir dire questions. 57 H. 492, 559 P.2d 728.

Statutes may authorize inferences of fact only if there is a natural and rational evidentiary relation between the facts proven and the fact inferred. 57 H. 526, 560 P.2d 110.

Member of prosecution serving as agent of grand jury violated due process requirement of separation of functions. 57 H. 574, 560 P.2d 1309.

Refusal by court to permit withdrawal of guilty plea under deferred acceptance of guilty plea procedure was not violative of due process. 58 H. 304, 568 P.2d 1194.

Effect of news accounts prejudicial to defendant; protective measures required of trial court. 58 H. 356, 569 P.2d 891.

Defendant's right to be present at all stages of trial; voluntary absence. 58 H. 425, 570 P.2d 848.

Consideration of hearsay information by court in hearing on waiver of family court jurisdiction over juvenile does not violate due process. 58 H. 522, 574 P.2d 119.

No duty on State to personally notify individuals of effective date of act. 59 H. 430, 583 P.2d 955.

Failure of state court to observe procedures to protect defendant from being tried while incompetent to stand trial deprives defendant of due process right to fair trial. 60 H. 17, 586 P.2d 1028.

State is required to prove every element of a criminal offense beyond a reasonable doubt. 61 H. 308, 603 P.2d 141.

Pre-trial identification on a one-to-one show up. 62 H. 59, 610 P.2d 502.

"To loiter about" in HRS §445-43 is invalid for vagueness. 62 H. 147, 613 P.2d 354.

Prosecutorial misconduct before grand jury must be extreme and clearly infringe upon jury's decision making function in order to serve as basis for quashing indictment. 62 H. 209, 614 P.2d 373.

Defendant who leaves trial voluntarily waives right to be present at trial, which may continue as if defendant were present. 62 H. 309, 615 P.2d 91.

Hearsay admissible if not deliberately used in place of better evidence to improve case for indictment. 62 H. 518, 616 P.2d 1383.

Accused's right to a fair trial includes right to present matters in accused's defense, and government may not by its conduct render a material witness unavailable to defendant. 63 H. 27, 620 P.2d 728; 63 H. 34, 620 P.2d 732.

The notice-of-alibi rule provides the defendant reciprocal right to discover the State's witnesses who will be used to rebut defendant's alibi witnesses and is not violative of due process. 63 H. 191, 624 P.2d 376.

Lineup of accused and due process rights. 63 H. 354, 628 P.2d 1018.

Notice provisions of tax lien statute failed to meet minimum standards of due process. 64 H. 4, 635 P.2d 938.

Specific finding of unfitness need not be made prior to involuntary termination of parental rights. 64 H. 85, 637 P.2d 760.

No violation in denial by trial court of defendant's request to examine identification witnesses where claim was impermissibly suggestive identification. 64 H. 217, 638 P.2d 324.

Subjection of Nevada corporation to unemployment compensation contributions did not violate due process. 64 H. 274, 639 P.2d 1088.

Peddling ordinance was unduly vague. 64 H. 499, 643 P.2d 1058.

Availability of rehearings process and U.S. Supreme Court review of constitutional violations allegedly created by state supreme court decision provides aggrieved persons adequate opportunity to have arguments considered. 65 H. 641, 658 P.2d 287.

No denial in summary termination of lease of public land. 66 H. 632, 672 P.2d 1030.

Retrospective application of §584-7 to case did not violate due process. 67 H. 63, 677 P.2d 468.

No constitutional right to examine probation officer's sentencing recommendation. 67 H. 408, 689 P.2d 754.

No violation where civilian agent used to obtain prostitution convictions by engaging in sexual acts with defendants. 67 H. 608, 699 P.2d 983.

Rational basis exists for treating public assistance recipients differently from other no-fault insurance policyholders. 68 H. 192, 708 P.2d 129, cert. den. 476 U.S. 1169.

Violated where defendant was denied opportunity to challenge reasonableness of agency recommendation regarding restitution. 68 H. 292, 711 P.2d 1295.

Prosecutorial suppression of favorable material evidence violates due process, regardless of any good faith or bad faith by State; violation where defendant sentenced under attempted murder statute which was not raised until after jury returned guilty verdict. 69 H. 204, 738 P.2d 812.

Shackling of defendant during trial, discussed. 69 H. 633, 756 P.2d 1033.

Not violated by proceedings conducted by city council when acting upon Shoreline Management Act permit. 70 H. 361, 773 P.2d 250.

Violated where counselor of victim-witness was allowed to place hands upon victim's shoulders while victim was testifying. 70 H. 472, 777 P.2d 240.

Bifurcating two methods of proof for the same offense into separate trials violated defendant's rights. 70 H. 528, 777 P.2d 1187.

Plaintiff failed to show existence of clearly established substantive due process right in continued enrollment in university program under 42 U.S.C. §1983 claim where defendants raised defense of qualified immunity. 72 H. 586, 825 P.2d 1060.

Claim that failure to call expert witnesses to rebut State's DNA profiling evidence introduced at motion in limine constituted ineffective assistance of counsel was meritless. 73 H. 130, 828 P.2d 1274.

Counsel was not ineffective in failing to raise contention that defendant had not waived right to be present at trial where defendant had voluntarily absented oneself after trial had begun. 73 H. 147, 828 P.2d 281.

Claim brought under 42 U.S.C. §1983 that exchange of ceded lands by State violated right to due process was barred by statute of limitations and res judicata. 73 H. 578, 837 P.2d 1247.

Right not violated by defendant's absence from conference settling jury instructions as conference does not involve jury's presence or witness testimony. 74 H. 141, 838 P.2d 1374.

Requires unbiased administrative adjudicators; no violation where §88-77 trustees not shown to have pecuniary or institutional disqualifying interest in adjudication. 74 H. 181, 840 P.2d 367.

Written notice of specific charges not required for §710-1077(1)(a) direct summary criminal contempt case; contemnor's misconduct and judge's response did not require contempt trial before different judge. 74 H. 267, 842 P.2d 255.

Section 707-716 not unconstitutional where threats sufficiently unequivocal, unconditional, immediate, and specific as to convey a gravity of purpose and imminent prospect of execution. 75 H. 398, 862 P.2d 1063.

Post-conviction ineffective assistance of counsel HRPP rule 40 petition not

prejudiced where defendant alleges facts that, if proven, would entitle defendant to relief and claim is not patently frivolous and without trace of support on the record. 75 H. 419, 864 P.2d 583.

Third-party agreements homestead lessees entered into with third party non-Hawaiian farmers could not be considered property interests. 76 H. 128, 870 P.2d 1272.

Circuit court did not commit an abuse of discretion in granting defendant's motion for new trial; circuit court's conclusions of law that possible juror misconduct at voir dire and juror misconduct during deliberations deprived defendant of a trial by twelve fair and impartial jurors not clearly erroneous. 76 H. 172, 873 P.2d 51.

Because appellants had been afforded an adequate opportunity to challenge the fine assessed by department of land utilization on appeal--at both administrative and judicial levels--before they incurred any obligation to pay it, the application of the procedural mechanism set forth in section of land use ordinance had not violated their right to due process of law. 77 H. 168, 883 P.2d 629.

Hawaiian Homes Commission Act beneficiaries on pastoral waiting list were entitled to contested case hearings at which Hawaiian homes commission must at least consider their applications for pastoral lot awards of sufficient acreage (within statutory limits) for commercial ranching activities. 78 H. 192, 891 P.2d 279.

Presumption of nonconsent imposed on appellant a burden of persuasion of the nonexistence of an essential element of the crime with which appellant was charged; so construed, the presumption would violate due process clauses of Fourteenth Amendment and article I, §5 of Hawai'i constitution by virtue of improperly shifting burden of proof to appellant. 78 H. 262, 892 P.2d 455.

Reversible error where jury may have reached verdict by improperly shifting burden of proof from prosecution to defense by concluding that defendant had not established defendant's claim of extreme mental or emotional distress before considering whether prosecution had disproved that defense beyond a reasonable doubt. 80 H. 172, 907 P.2d 758.

Section 703-309(1) not unconstitutionally vague as it describes with sufficient clarity level of force that may be justifiably used in discipline of a minor. 81 H. 5, 911 P.2d 725.

Defendant received adequate notice that consecutive sentences may be imposed by sentencing court where court had that discretion by statute, and plain language of §706-668.5 informed defendant that defendant may be sentenced to consecutive sentences. 81 H. 309, 916 P.2d 1210.

No facial violation of substantive due process by repeal of court reporter temporary certification rule as right to work not a fundamental right and certification requirement rationally furthers legitimate state interest in ensuring efficient administration of justice. 82 H. 329, 922 P.2d 942.

No procedural violation where plaintiffs received prior notice and "opportunity to be heard at a meaningful time and a meaningful manner" prior to repeal of court reporter temporary certification rule. 82 H. 329, 922 P.2d 942.

No violation of substantive due process by repeal of court reporter temporary certification rule where board did not apply rule to appellants in arbitrary or unreasonable manner or in a manner that had no substantial relation to public health, safety, morals, or general welfare. 82 H. 329, 922 P.2d 942.

Defendant's due process right to fair hearing violated where circuit court refused to allow defendant's witness to offer relevant testimony in support of defendant's motion to suppress evidence. 83 H. 229, 925 P.2d 797.

In the context of Child Protective Act proceedings involving parents neither

resident nor domiciled in Hawaii, personal jurisdiction may not be exercised over a parent pursuant to §587-11 to terminate their parental rights unless due process requirements are satisfied. 83 H. 367, 926 P.2d 1290.

Water commission's failure to hold contested case hearing on water management area designation pursuant to chapter 174C did not deny aquifer water user procedural due process. 83 H. 484, 927 P.2d 1367.

Section 704-415 does not violate due process principles; at release hearing, insanity acquittee bears burden of proving by preponderance of evidence freedom from mental illness and dangerous propensities. 84 H. 269, 933 P.2d 606.

In products liability action, cumulative effect of three alleged errors by trial court did not deny defendants right to fair trial where overwhelming and substantial evidence supported jury's verdict. 86 H. 214, 948 P.2d 1055.

Prosecution's use of pre-scripted questions and answers in connection with its grand jury witnesses, called in a proceeding resulting in indictment of defendant, did not violate defendant's right by invading province of grand jury or induce unwarranted action by the grand jurors. 86 H. 282, 949 P.2d 122.

Section 134-8 not unconstitutionally vague or overbroad on its face or as applied to defendant for "possession of a bomb". 87 H. 71, 951 P.2d 934.

Although appellant was not afforded an opportunity to cross-examine witnesses who had testified at a public hearing but not before the zoning board of appeals, error was harmless beyond a reasonable doubt. 87 H. 217, 953 P.2d 1315.

Director's exposure to materials outside the record constitutionally harmless beyond a reasonable doubt as director expressly declined to consider material in rendering decision. 87 H. 217, 953 P.2d 1315.

Definition of "sexual contact" in §707-700 not unconstitutionally overbroad as it does not interfere with the constitutionally protected activity of nude dancing; section permits dancing in the nude and allows customers to look at performers dancing in the nude; the conduct prohibited is the touching of sexual or intimate parts. 88 H. 19, 960 P.2d 1227.

Definition of "sexual contact" in §707-700 not void for vagueness as it establishes a bright line rule "you can look but you can't touch", gives a person of ordinary intelligence a reasonable opportunity to know what conduct is prohibited, constitutes an explicit standard that avoids arbitrary and discriminatory enforcement and is not subjective. 88 H. 19, 960 P.2d 1227.

Arrestee's right not violated by administrative driver's license revocation office's practice under §286-259 of denying all prehearing subpoena requests for witnesses other than law enforcement officials submitting sworn statements. 88 H. 55, 961 P.2d 620.

A trial court must pass on a defendant's attempted withdrawal of the prior waiver of his or her right to testify, tendered before the commencement of closing arguments, pursuant to the "liberal approach", whereas such an attempted withdrawal tendered thereafter is subject to the "manifest injustice" standard. 88 H. 407, 967 P.2d 239.

Where defendant did not meet burden of establishing plausible and legitimate reasons for withdrawal of defendant's prior waiver of defendant's right to testify, defendant failed to present "fair and just reasons" for defendant's request to exercise defendant's right to testify in defendant's own behalf; thus trial court did not abuse discretion by ruling that it would not reopen case. 88 H. 407, 967 P.2d 239.

Where trial court's denial of defendant's post-verdict motion for a new trial--based on defendant's claim that defendant's attempt to withdraw defendant's waiver of right to testify in defendant's own behalf should have been allowed--was not "manifestly unjust", no abuse of discretion. 88 H. 407, 967 P.2d 239.

Not violated by county's retroactive change, by ordinance, in property tax classification of time share units where county enacted ordinance to create uniformity in tax treatment of time share units, established a reasonable period of retroactivity of only six months, appellant did not acquire a vested right in a specific tax rate and no evidence that appellant would have been entitled to a refund had ordinance not been passed. 90 H. 334, 978 P.2d 772.

Where an owner's right to a hearing subsequent to impoundment of a derelict vessel was not clearly established under §§200-48, 200-49, or other law at the time of state boating officers' actions, it was not unreasonable for officers to have believed it was lawful to dispose of vessel without a hearing; thus officers, in individual capacities, entitled to qualified immunity in 42 U.S.C. §1983 action. 91 H. 1, 979 P.2d 586.

Where trial court erred by ruling that evidence of defendant's eligibility for HUD assistance was irrelevant under HRE rule 401 and thus inadmissible under rule 402 when evidence was probative of and relevant to defendant's requisite intent, defendant's right to present a complete defense violated. 91 H. 275, 982 P.2d 904.

Three separate findings required by trial court before criminal defendant may constitutionally be involuntarily medicated with antipsychotic drugs, where it is alleged that the medication is necessary because the defendant poses a danger to himself or herself or others. 91 H. 319, 984 P.2d 78.

Out-of-state attorneys, who were granted pro hac vice status, not denied procedural due process prior to revocation of status and imposition of sanctions where three separate oral notices were given to one attorney and to local counsel. 91 H. 372, 984 P.2d 1198.

Right not violated where defendant failed to supply any evidence that prosecution acted in bad faith when it "inadvertently" destroyed evidence. 93 H. 87, 997 P.2d 13.

Adverse party's right to fair tribunal in contested case hearing before water resource management commission not violated by land and natural resources department chairperson also serving as chairperson of water resource management commission under §174C-7(b) where legislature deemed it appropriate for one person to serve in both capacities and could override common law doctrine of incompatible offices which prohibited a person from serving in a dual capacity. 94 H. 97, 9 P.3d 409.

Department of land and natural resources chairperson's dual status as chairperson of the water resource management commission and the department did not constitute a reversible due process violation where, although chairperson should have been precluded from presiding over the hearing, objecting party did not seek chairperson's disqualification, and where chairperson's disqualification would have prevented commission from acting on the case for lack of quorum, the "rule of necessity" demanded that chairperson preside over the hearing. 94 H. 97, 9 P.3d 409.

Petitioners' right not violated, and water resource management commission's decision not invalidated by governor's remarks about merits of case where governor's comments arose in public forums apart from commission's proceedings, and, as there was no evidence of direct communication by the governor with the decisionmakers, petitioners failed to demonstrate the requisite nexus between the external political pressure and the actual decisionmaker. 94 H. 97, 9 P.3d 409.

Petitioners' right not violated by attorney general simultaneously representing two state agencies and the water resource management commission, where dismissal of commission's deputy attorney general effectively cured the conflict of interest and petitioners failed to show that dismissal impaired commission's ability to decide case competently and impartially. 94 H. 97, 9

P.3d 409.

Where department of land and natural resources was a party in a contested case proceeding before the water resource management commission, constitutional mandate that tribunal be impartial precluded chairperson of the commission, who was also chairperson of the department, from presiding over the hearing. 94 H. 97, 9 P.3d 409.

Right not violated by district court affirming administrative driver's license revocation office's denial of motorist's request for continuance of driver's license revocation hearing where administrative driver's license revocation office properly considered the evidence before it at the time of the administrative hearing and imposed the statutorily mandated revocation period. 94 H. 232, 11 P.3d 457.

Section 706-657 not unconstitutionally vague as section provides adequate guidance to a fact-finder charged with determining whether a murder was "especially heinous, atrocious, or cruel, manifesting exceptional depravity" and provides adequate notice to the person of ordinary intelligence that an enhanced sentence may be imposed if he or she intentionally or knowingly inflicts unnecessary torture on the murder victim and the victim in fact suffers unnecessary torture. 95 H. 1, 18 P.3d 203.

Trial court did not err in denying defendant's motion to dismiss for pre-indictment delay where defendant did not demonstrate that defendant's alleged loss of memory, loss of potential witnesses and evidence, or failure of police to tape record defendant's confession caused substantial prejudice to defendant's right to a fair trial. 97 H. 170, 35 P.3d 197.

Juror questioning of witnesses did not deprive defendant of fair and impartial trial where questions posed by jurors were carefully reviewed by the trial court and questions tending to elicit improper or inadmissible evidence were excluded. 97 H. 206, 35 P.3d 233.

The right to a public trial is not implicated by the exclusion of a potential witness pursuant to the witness exclusionary rule; both the witness exclusionary rule and the right to a public trial ensure the appearance of fairness at trial; thus, defendant's right not violated by exclusion of defendant's father from the courtroom as a potential prosecution rebuttal witness. 97 H. 206, 35 P.3d 233.

Trial court abused its discretion in concluding there was manifest necessity for mistrial as circumstances creating apparent need for mistrial did not make it impossible for trial to proceed; in absence of manifest necessity, defendant should have been allowed to choose between continuing with trial or consenting to a mistrial; by moving for dismissal with prejudice, defendant did not "consent" to the mistrial; retrial thus barred by double jeopardy. 97 H. 238, 35 P.3d 755.

As an aspect of procedural due process, individuals must, as needed, be provided an interpreter at family court proceedings where their parental rights are substantially affected. 99 H. 522, 57 P.3d 447.

Where family court conducted an in camera review of the complainant's child protection services records and produced the relevant portions to defense counsel, defendant's due process rights not violated; and family court's order to seal the remaining portions of the child protection services file for appellate review did not constitute an abuse of discretion. 101 H. 172, 65 P.3d 119.

Lost opportunities for concurrent sentencing, parole, and loss of parental rights do not affect a defendant's ability to present an effective defense, and thus do not constitute actual substantial prejudice to a defendant's due process right to a fair trial. 102 H. 183, 74 P.3d 6.

Where there was no evidence that the trial court either reviewed the reasons

for the preindictment delay prior to requiring a showing of actual substantial prejudice to the defendant or required a showing of something less than actual substantial prejudice, the trial court did not misapply the correct standard to be used to determine whether charges should be dismissed for preindictment delay. 102 H. 183, 74 P.3d 6.

Vexatious litigant's due process right not impacted in present or future cases where litigant was only restrained from bringing unmeritorious litigation, which could be restricted in any event; as trial court held a hearing to review litigant's objections to prefiling order, order imposed on litigant under §634J-7 satisfied procedural due process because it afforded litigant notice and an opportunity to be heard. 102 H. 289, 75 P.3d 1180.

Section 663-15.5 adequately protects a non-settling joint tortfeasor's right to procedural due process; subsections (b) and (c) afford a non-settling joint tortfeasor notice and an opportunity to be heard regarding the determination whether a settlement has been given in good faith and, consequently, bars cross-claims for contribution against the settling joint tortfeasor. 102 H. 399, 77 P.3d 83.

No prosecutorial misconduct by prosecutor's questions and remarks regarding defendant's failure to "explain away" the DNA evidence as questions and remarks were more analogous to legitimate prosecutorial comment on the state of the evidence and not the improper shifting of the burden of proof onto the defendant. 103 H. 38, 79 P.3d 131.

Where defendant's statements were not the product of "interrogation", but, rather, were "volunteered confessions or admissions, obtained independent of express police questioning or its functional equivalent", defendant's constitutional rights against self-incrimination and due process of law not violated. 104 H. 224, 87 P.3d 893.

Appellants were not deprived of any identifiable property interest by the registration of an apprenticeship program, under chapter 372, initiated by the union, so as to invoke due process protections by way of a contested case hearing. 104 H. 275, 88 P.3d 647.

Where lease was executed in contravention of chapter 343, power plant developers were not "existing Hawaiian homes commission act lessees"; trial court's decision that the lease was void did not deprive developers of any interest they were entitled to under the law. 106 H. 270, 103 P.3d 939.

Applying the covered loss deductible under §431:10C-301.5 to plaintiff's recovery of underinsured motorist benefits did not violate plaintiff's right to substantive due process as the legislature's policy determination to enact this section to reduce one of the costs of the motor vehicle insurance system was expressly within the constitutional purview of the legislature. 106 H. 511, 107 P.3d 440.

Assuming that possession of leased premises and rent to be paid into the trust fund are property interests protected under the due process clause, §666-21 does not offend due process as tenants are afforded an opportunity to challenge summary possession and motions for the establishment of a rent trust fund. 107 H. 73, 110 P.3d 397.

In securing hearings, administrative driver's license revocation office's identification and sign-in procedure did not violate defendant's right to a public hearing as procedure serves an important government interest, the security procedure is unrelated to the content of the information disclosed at the hearings, and there is no less restrictive way to meet the goal of securing the hearings. 108 H. 31, 116 P.3d 673.

Right not violated by administrative driver's license revocation hearing procedure where defendant was afforded a hearing where witnesses were called and defendant was represented by counsel, and hearing office advised counsel of

the procedure that hearing officer was going to follow. 108 H. 31, 116 P.3d 673.

Where effect of administrative driver's license revocation office's default decision was to deprive petitioner of driver's license, a constitutionally protected property interest, the risk of erroneous deprivation of this interest through the procedures the office used was great, and outweighed the government's interest, including the function of the office and the fiscal and administrative burdens that any additional or substitute procedural requirement would entail, procedural due process right denied. 110 H. 407, 133 P.3d 1199.

As §207(c)(1)(A) of the Hawaiian Homes Commission Act does not provide a "statutory entitlement" to any entity which may be granted a license pursuant to it, plaintiff energy producer failed to establish that plaintiff's exclusive telecommunications service license issued under that section constituted "property" which would entitle plaintiff to due process protection. 110 H. 419, 134 P.3d 585.

Where definition of "incapacitated person" in §560:5-101 (2003), when read as a whole, sufficiently apprised ward of the bases on which the court would review the guardianship petition and any ambiguity in the statute did not render it "substantially incomprehensible", so as to overcome the "presumption of constitutionality", definition was not unconstitutionally vague. 113 H. 236, 151 P.3d 717.

Considerations of due process continue to require that the aggravating factors set forth in §291E-61(b) - all of which remain "attendant circumstances that are intrinsic to and 'enmeshed' in the hierarchy of offenses that §291E-61 as a whole describes" - be alleged in the charging instrument and proven beyond a reasonable doubt at trial. 114 H. 227, 160 P.3d 703.

Four-month delay between date of offense and date of indictment was not a violation of due process. 1 H. App. 121, 615 P.2d 109.

Landowner was not vested with a property interest--building a particular sized structure or building in a particular location--sufficient to implicate due process protection where landowner's deed related that the Kauai planning commission retained authority to amend the shoreline setback at the time of building permit review; landowner was nevertheless afforded due process by being given a full public hearing and the commission conducted a site inspection of the property before making its ruling. 115 H. 477, 168 P.3d 929.

Defendant's right to have all elements of an offense proven beyond a reasonable doubt was statutorily protected under §701-114 and constitutionally protected under the Hawaii and federal Constitutions; as only defendant personally could have waived such fundamental right and such right could not have been waived or stipulated to by defendant's counsel, stipulation by defendant's counsel of the fact that defendant committed defendant's crime within two years of a second or prior conviction of abuse for purposes of the §709-906(7) charge violated defendant's due process rights. 116 H. 3, 169 P.3d 955.

County park camping ordinance and rule was unconstitutionally overbroad where rule stated that certain conduct, according to the definition of camping, constituted camping "regardless of the intent of the participants or the nature of any other activities in which they may also be engaging", thus subjecting "innocent, constitutionally protected behavior as well as conduct which may be validly regulated", to a criminal penalty. 116 H. 146, 172 P.3d 458.

County park camping ordinance and rule was unconstitutionally vague where rule stated that a camping without a permit violation occurs where "it reasonably appears, in light of the circumstances, that the participants in conducting certain listed activities were in fact using the area as a living accommodation regardless of the intent of the participants or the nature of any

activities in which they may also be engaging", as this standard was internally inconsistent and incomprehensible to a person of ordinary intelligence and vested virtually complete discretion to the police to determine whether a person had violated the regulation. 116 H. 146, 172 P.3d 458.

The "best interests of the child" standard in §571-46.3(2) (grandparent visitation statute) required the family court to give "special weight" to (i.e., uphold a rebuttable presumption in favor of) the visitation decisions of a custodial parent whose fitness had not been challenged; thus, the family court erred to the extent that it relied on Troxel to invalidate §571-46.3 (2003); however, as a "harm to the child" standard was constitutionally required and could not be read into §571-46.3 without making a substantive amendment to the statute, §571-46.3, as written, was unconstitutional. 116 H. 323, 172 P.3d 1067.

Where (1) prosecutor argued the unreasonable inference that defendant was guilty in light of defendant's post-arrest silence, (2) the trial court declined to give a curative instruction when defendant objected to prosecutor's comments, and (3) the evidence against defendant was not so overwhelming that prosecutor's intrusion into defendant's right to remain silent may not have contributed to defendant's conviction, prosecutor's improper comments were not harmless beyond a reasonable doubt, and defendant was entitled to a new trial. 117 H. 235, 178 P.3d 1.

Where candidates failed to show that the chief election officer had a "direct, personal, pecuniary interest" in the officer's exercise of judicial power, the trial court did not err in holding that candidates were provided with a fair administrative hearing. 117 H. 323, 179 P.3d 1050.

Court did not abuse its discretion in denying motion for deferred acceptance of guilty plea and motion to reconsider. 1 H. App. 157, 616 P.2d 227.

Trial judge has duty to determine admissibility of inculpatory statement prior to jury's exposure to such evidence. 1 H. App. 221, 617 P.2d 98.

Purpose of family court waiver hearing is not to determine whether minor committed offense alleged or even to determine probable cause. Presumption that charges are true does not violate due process. 1 H. App. 243, 617 P.2d 830.

State must prove every material element of offense beyond a reasonable doubt. 1 H. App. 544, 622 P.2d 619.

Testimony presented through interpreter was understandable, comprehensible, and intelligible. 5 H. App. 20, 686 P.2d 28.

Not violated by trial court's refusal to allow further examination of witness. 5 H. App. 127, 681 P.2d 573.

Violated where previously accepted expense item in ratemaking was disallowed without giving utility notice and chance to be heard. 5 H. App. 445, 698 P.2d 304.

Deprivation of property solely on basis of substituted service in adverse possession action violates due process, where, with due diligence, actual notice possible. 6 H. App. 241, 718 P.2d 1109.

Does not require agency hearing before tax director issues notices of tax assessment. 6 H. App. 260, 718 P.2d 1122.

Not violated by bailiff's statement to jury foreperson that jurors should all agree with verdict if polled. 6 H. App. 320, 721 P.2d 718.

Prohibiting defendant from challenging reliability of intoxilyzer test in DUI case violated due process. 7 H. App. 20, 740 P.2d 1017.

In constructive criminal contempt proceedings, sufficient notice of hearing required. 7 H. App. 95, 746 P.2d 574.

Prison rules did not create protected liberty interest. 7 H. App. 247, 753 P.2d 598.

Act of state witness leaving witness stand in presence of security personnel was not so prejudicial as to deny defendant's right to fair trial; jury is presumed to adhere to court's cautionary instruction to draw no inference from event. 8 H. App. 624, 817 P.2d 130.

Claim under 42 U.S.C. §1983 properly dismissed where award of delayed tenure to probationary university employee and alleged damage to employee's reputation alone did not implicate liberty or property interest sufficient to invoke due process protection. 9 H. App. 21, 821 P.2d 937.

Trial court's failure to orally instruct jury about presumption of defendant's innocence and beyond-a-reasonable doubt concept heightened the risk that defendant would be found guilty and thus unfairly deprived defendant of defendant's right to due process and a fair trial. 77 H. 177 (App.), 880 P.2d 1224.

Defendant's constitutional and statutory right to testify in defendant's own defense was violated where judge reproached defendant to follow defendant's attorney's advice and thus refrain from testifying, and the violation was plain error; denial of the right to testify was prejudicial and not harmless beyond a reasonable doubt. 78 H. 115 (App.), 890 P.2d 702.

Motions court's order denying defendant's pre-trial motion to dismiss for pre-indictment delay affirmed, where, inter alia, motions court was correct in concluding that defendant failed to establish that defendant's claimed inability to recollect events prior to defendant's indictment, even with the aid of others, amounted to substantial prejudice to defendant's right to a fair trial. 79 H. 165 (App.), 880 P.2d 217.

Violated where trial court's exclusion of gun-like cigarette lighter prejudiced defendant by precluding jury from properly evaluating essential defense evidence. 79 H. 385 (App.), 903 P.2d 690.

Violated where defendant's assertions and defense counsel's representations raised good faith doubt whether defendant's failure to take medication affected defendant's legal competence to stand trial. 81 H. 332 (App.), 916 P.2d 1233.

Not violated at sentencing where defendant received notice of information court was to consider, received notice that defendant might be subject to consecutive terms of imprisonment, and had the opportunity to participate in the proceedings concerning the information being considered. 81 H. 421 (App.), 918 P.2d 228.

Section 291C-112, which prohibits the use of a vehicle "for purposes of human habitation", not unconstitutionally vague. 82 H. 269 (App.), 921 P.2d 1170.

"Reasonable grounds" standard of §709-906(4) not unconstitutionally vague where standard is an objective standard requiring a trial court to independently assess facts and circumstances which responding officers had before them in determining to issue warning citations. 82 H. 381 (App.), 922 P.2d 994.

Section 709-906(4) not overbroad as issuance of warning citation must be based on objective facts and circumstances, other than merely a complainant's claim, which would lead a reasonable police officer to believe recent physical abuse was inflicted on family or household member. 82 H. 381 (App.), 922 P.2d 994.

Violated where claimant failed to serve employer and insurer with motion and summons; circuit court thus did not acquire personal jurisdiction over employer and insurer and judgment and garnishee summons issued pursuant to §386-91 in absence of personal jurisdiction void. 82 H. 405 (App.), 922 P.2d 1018.

Procedural due process right not denied when guardian ad litem not appointed for mother where mother was provided with court-appointed attorney and, pursuant to §587-34(d), court determined mother was capable of comprehending legal significance of issues. 85 H. 119 (App.), 938 P.2d 178.

Not violated by shooting victim being collaterally estopped in civil action against insurer from re-litigating issue of assailant's intent to cause victim's death where intent issue had already been decided in criminal trial. 85 H. 177 (App.), 938 P.2d 1196.

Application of preponderance of the evidence standard as appropriate judicial basis for issuance of protective order under §586-5.5 does not violate right. 85 H. 197 (App.), 940 P.2d 404.

Where an indictment is valid on its face, the burden is on the defendant seeking dismissal of indictment to prove that any improper presentation of evidence to grand jury was so extreme and flagrant that grand jury was clearly overreached or deceived in significant way. 86 H. 290 (App.), 949 P.2d 130.

Section 707-731(1)(c), providing offense of second degree sexual assault for state correctional facility employee who knowingly subjects imprisoned person to sexual penetration, not unconstitutionally vague. 86 H. 426 (App.), 949 P.2d 1047.

Right not violated: (1) by setting of trial date before previously scheduled pre-trial hearing date where need for pre-trial hearing was obviated by appellant's decision to forgo second genetic test for paternity; and (2) where no showing that judge was not neutral and unbiased in deciding case. 88 H. 159 (App.), 963 P.2d 1135.

As no Hawaii statute governing parole requires a parolee's parole to be automatically revoked upon the parolee's conviction and sentence to imprisonment for a crime committed while on parole, and §353-62 appears to vest Hawaii paroling authority with discretion to revoke parole, parolee's right violated when authority summarily revoked parole without giving parolee a final revocation hearing. 88 H. 229 (App.), 965 P.2d 162.

Section 852-1 not void for vagueness as: (1) a person of ordinary intelligence would have a reasonable opportunity to know that it is unlawful to refuse or wilfully fail to move as directed by an officer; (2) person may then choose between the lawful and unlawful conduct; and (3) the statute provides sufficiently explicit standards for those who apply it. 89 H. 27 (App.), 968 P.2d 194.

Section 52D-8 provides officers with a constitutionally protected property interest--the right to legal representation for acting within the scope of their duty; due process thus entitles an officer to a contested case hearing under chapter 91 before the officer can be deprived of this interest. 89 H. 221 (App.), 971 P.2d 310.

Minor's right to due process and fair hearing not violated where minor failed to show that trial delay was prejudicial, that minor's defense was in any way impaired by the passage of time, or that minor was denied a fair hearing. 91 H. 147 (App.), 981 P.2d 704.

Right violated by trial court entering free-standing restitution order where no notice was provided to defendant that defendant's original sentence might be modified at the hearing on the probation officer's motion to revoke restitution. 92 H. 36 (App.), 986 P.2d 987.

As §604-10.5(h) provides that there can be no criminal conviction unless "[a] knowing or intentional violation of a restraining order or injunction" has occurred, harassment under §604-10.5(a)(1) is not turned into a "strict liability" offense; thus, no violation of due process under §604-10.5(a)(1). 92 H. 312 (App.), 990 P.2d 1194.

Section 604-10.5(a)(1) not unconstitutionally overbroad as it imposes no criminal liability nor places any burden on the reduced punishment or complete defense provisions of the penal code. 92 H. 312 (App.), 990 P.2d 1194.

Where trial court's initial jury instruction and subsequent unanimity instructions, read in conjunction with each other, failed to maintain the

defendant's presumption of innocence during the jury's consideration of the unanimity requirement, defendant's right to a fair trial violated. 92 H. 675 (App.), 994 P.2d 607.

The judicial foreclosure system in Hawaii, pursuant to §667-1, is not clearly, manifestly and unmistakably violative of due process; considering the two basic elements of procedural due process--notice and the opportunity to be heard--appellants were afforded due process. 94 H. 422 (App.), 16 P.3d 827.

Where counsel for successful bidder at a judicial foreclosure sale was aware at time of hearing on motion for cancellation of sale that the damages mortgagee bank had prayed for exceeded bidder's deposit, and had the opportunity to challenge, at the hearing, the damages the bank was seeking, bidder's right not violated. 96 H. 348 (App.), 31 P.3d 205.

Defendant's right violated where, based on the specific facts of the case, trial court abused its discretion in directing, over defendant's objection, that defendant testify before defendant's other defense witness; error not harmless beyond a reasonable doubt as there was a reasonable possibility that trial court's error contributed to defendant's conviction. 102 H. 369 (App.), 76 P.3d 612.

Having been previously convicted of driving without motor vehicle insurance, driver was clearly on notice that driving without motor vehicle insurance was a criminal offense; thus, revocation of driver's suspended sentence for commission of the same offense during the period of suspension did not implicate driver's due process rights. 106 H. 391 (App.), 105 P.3d 1197.

Where family court had neither general nor specific jurisdiction over father, court erred in entering default judgment against father in mother's child support action. 110 H. 294 (App.), 132 P.3d 862.

Right not violated and trial court did not abuse discretion in ordering that defendant remain shackled during sentencing hearing where transcript of sentencing hearing contained no indication that the shackling in any way inhibited defendant from understanding what was going on, asserting defendant's self or consulting with counsel, or that the shackling in any way actually influenced or inclined the trial court against defendant. 111 H. 457 (App.), 142 P.3d 1286.

Although consulting counsel had limited powers and duties in family court's pilot program proceedings for permanent custody, mother had the benefit of full representation of counsel and was not denied her right to due process. 113 H. 499 (App.), 155 P.3d 682.

Loss of photographs did not violate defendant's due process rights where even if the lost photographs failed to depict any packets of crystal methamphetamine within defendant's bag, it would not have exculpated defendant; the lost photographs could only have diminished the strength of the State's evidence; they could not have provided defendant with a complete defense; thus, the potential exculpatory value of the lost photographs was not compelling. 114 H. 162 (App.), 158 P.3d 280.

### **Equal protection.**

Durational residency requirement for preferential rates for mooring privileges in small boat harbors not significant penalty on right to travel. 651 F.2d 661.

No racially discriminatory motive despite disproportionate impact upon Caucasians of residency requirement. 651 F.2d 661.

Claim arose where council made decision to finance the special election with private funds. 849 F.2d 1176.

Not violated by Endangered Species Act where differential treatment between native Hawaiians and native Alaskans justified by importance of subsistence

hunting in native Alaskan culture. 945 F.2d 254.

Young adults do not constitute cognizable group for purposes of equal protection challenge to composition of petit jury. 986 F.2d 1259.

Court's finding that government did not engage in purposeful discrimination in jury selection process was not clearly erroneous. 995 F.2d 1448.

No qualified immunity for state officials where reasonable state official would have known of complainant's constitutional right to be free from sexual harassment. 39 F.3d 1021.

No qualified immunity for supervising state official where state officials knew of sexual harassment complaint and failed to take any action. 39 F.3d 1021.

Not violated by state small boat harbor mooring and anchoring regulations imposing higher fees on nonresidents than residents. 42 F.3d 1185.

Not violated by rule that, for purposes of criminal history calculation, state conviction for conduct which occurred after defendant's federal offense, but for which defendant was sentenced before defendant's sentencing on the federal offense, is counted as a prior sentence. 44 F.3d 749.

Ordinance creating mechanism through which condominium owners could convert their leasehold interests into fee simple interests was constitutional. 124 F.3d 1150.

Ordinance requiring all publishers who wished to distribute their publications along sidewalks in the Waikiki special district to use one of two sets of newsracks, one reserved solely for publications that charge readers and one just for free publications, did not violate the equal protection clause of the U.S. Constitution. 298 F.3d 1037.

Appellants who claimed that article XII of the state constitution and the statutes implementing it violated the equal protection clause because it restricted benefits to only those classified as "native Hawaiians" or "Hawaiians", lacked standing. 342 F.3d 934.

Ordinance prohibiting aerial advertising did not violate the First Amendment or the equal protection clause of the Fourteenth Amendment. Honolulu's airspace was a nonpublic forum, and the ordinance was reasonable, viewpoint neutral, and rationally related to legitimate governmental interests. 455 F.3d 910.

Where plaintiffs alleged that various state programs preferentially treated persons of Hawaiian ancestry in violation of, inter alia, the Fourteenth Amendment, plaintiffs, as state taxpayers, lacked standing to bring a suit claiming that the office of Hawaiian affairs (OHA) programs funded by state tax revenue violate the equal protection clause. If any plaintiffs were able to establish standing, their challenge to the appropriation of tax revenue to OHA did not raise a nonjusticiable political question. 477 F.3d 1048.

Classification according to criminal record is not constitutionally suspect. 402 F. Supp. 84.

Where plaintiffs challenged the constitutionality of the pre-employment residency requirement for public employment set forth in §78-1(c), plaintiffs had standing to challenge the constitutionality of §78-1, and the court granted plaintiffs' motion for preliminary injunction to bar defendants from enforcing the pre-employment residency requirement of §78-1(c). 423 F. Supp. 2d 1094.

Section 13-5-23(L-6), Hawaii Administrative Rules, allowing for construction of single family residences within floodplains and coastal high hazard areas when granted permit approval from the board of land and natural resources, was not facially unconstitutional under the equal protection clause because it was rationally related to the State's legitimate interests. 438 F. Supp. 2d 1186.

Durational residency requirement for public employment has sufficient impact on right to travel to require statute be justified by compelling state interest

test. 443 F. Supp. 228.

Statistical evidence that tenure was awarded to almost everyone on the faculty who applied does not establish denial of equal protection. 469 F. Supp. 443.

Natural parents are not a suspect class. Classifications drawn by parental tort liability statute are not irrational. Parental tort liability statute did not affect any fundamental rights, and has rational relation to legitimate government interests. 529 F. Supp. 394.

Deductions from cost of living allowance paid to civilian employees who had commissary and exchange privileges unconnected to employment did not deny equal protection. 545 F. Supp. 356.

State plan to reapportion house of representatives was unconstitutional because it failed to reasonably further rational policy of providing each basic island unit with meaningful representation. Total population in redistricting of senate, 43.18%, was facially violative of equal protection. 552 F. Supp. 554.

Use of registered voters as population base was impermissible because State failed to show that registered voter base substantially approximated results of using a population base. 552 F. Supp. 554.

No evidence of economic discrimination regarding special elections or that equal access denied to voter lists. 623 F. Supp. 657.

Definition of "Hawaiian" without reference to blood quantum does not violate equal protection. 631 F. Supp. 1153.

Durational residency requirement for gubernatorial candidates does not violate equal protection clause. 639 F. Supp. 1552.

Native Hawaiians have no standing to challenge constitutionality of Hawaiian Homes Commission Act on equal protection grounds as they would be asserting the rights of non-Hawaiian third parties. 795 F. Supp. 1009.

Not violated where city ordinance providing mechanism for transfer of fee simple interest from condominium lessors to lessees did not intentionally discriminate against Native Hawaiians. 802 F. Supp. 326.

Violated by use of excessive force by prison personnel against inmates. 818 F. Supp. 1333.

Condominium lease-to-fee ordinance did not violate plaintiff's equal protection rights. 832 F. Supp. 1404.

No violation, where plaintiff claimed that sex offender treatment program violated right to equal protection because it was overinclusive in that it included inmates who had not actually been convicted of a sex offense. 905 F. Supp. 813.

Petitioner claiming that petitioner's sentence violated equal protection clause because by virtue of petitioner's status as a deportable alien, petitioner had been unconstitutionally excluded from early prerelease programs, failed to state equal protection claim because deportable aliens were not "similarly situated" to U.S. citizens. 940 F. Supp. 275.

Denial of "gate money" where parole board determined that plaintiffs had no immediate needs satisfied rational basis test; thus, there was no equal protection violation. 940 F. Supp. 1523.

Where plaintiffs filed motion for preliminary injunction regarding Act 359 of 1993 Hawaii legislature (relating to Hawaiian sovereignty), as amended in 1994 and 1996, no equal protection violation found regarding native Hawaiian vote. 941 F. Supp. 1529.

No equal protection violation, where petitioner claimed, inter alia, that petitioner was denied parole in violation of equal protection clause because petitioner was classified by Hawaii paroling authority as Hawaiian. 2 F. Supp. 2d 1291.

Student suspended from school for violating Act 90, L 1996 (§302A-1134.5(a)), which prohibited possession of alcohol while attending school, where student allegedly participated in consumption of alcohol at student's home prior to school luau in violation of school's zero tolerance policy under Act 90. Plaintiffs' (student's parents) motion for preliminary injunctive relief granted in part and denied in part where, among other things, it was very unlikely that plaintiffs would prevail on merits of claim that defendants' conduct violated equal protection clause. 84 F. Supp. 2d 1113.

Where plaintiffs challenged city and county of Honolulu's practice of charging nonresidents a \$3.00 fee to enter bay designated a marine life conservation district and nature preserve, appropriate standard of review was rational basis; genuine issue of material fact existed with respect to rationality of ordinance instituting the fee. 215 F. Supp. 2d 1098.

Plaintiffs' Hawaiian home lands lease program claim dismissed, because plaintiffs' claim necessarily involved a challenge to the Admission Act, a challenge that could not be brought by a party with only state taxpayer standing. 299 F. Supp. 2d 1114.

Summary judgment denied as to 42 U.S.C. §1983 claim, where plaintiffs produced sufficient evidence to create a genuine issue of material fact with regard to a defendant's motives for denying craft vendors at an event hosted by a plaintiff, a nonprofit corporation, and for refusing to clean the park used for the event when requested. 300 F. Supp. 2d 1003.

Plaintiffs asserted that an ordinance preventing them from flying their aerial tow banners over the city's beaches violated their rights under the equal protection clause; the ordinance did not violate the Fourteenth Amendment because it did not discriminate against any speaker or form of speech on the basis of viewpoint. 345 F. Supp. 2d 1123.

Federal statute that exempted only Hawaii from the preemptive effect of federal marine mammal statutes and applied only to laws relating to humpback whales, furthered the legitimate governmental purpose of protecting humpback whales, an endangered species; as a whole, that statute satisfied rational basis review. 380 F. Supp. 2d 1166.

Ordinance prohibiting use of streets for soliciting sales does not violate equal protection clause. 43 H. 71.

Classifications in ordinance regulating signs upheld, in absence of showing of discrimination. 50 H. 33, 429 P.2d 825.

Three-year residence qualification for jurors upheld, in absence of showing of discrimination. 51 H. 195, 456 P.2d 805.

Law imposing upon private employers the obligation to pay their employees who serve on juries and public boards, was invalid; reasonableness of classification discussed. 52 H. 327, 475 P.2d 679.

Law authorizing imprisonment of person unable to pay fine, denied equal protection. 52 H. 601, 483 P.2d 191.

Durational residence requirement has no rational basis and violates equal protection clause. 53 H. 557, 498 P.2d 644.

Suggestion of leniency in return for testimony made to one co-defendant but not to another is not a denial of equal protection. 53 H. 574, 499 P.2d 678.

Regulatory classifications are presumed valid and are to be upheld unless no reasonable state of facts is conceivable to support them. 55 H. 148, 516 P.2d 715.

Discrimination in tax statute not invalid if there is rational basis for classification. 55 H. 572, 524 P.2d 890.

Inconsistent with due process and equal protection to say putative father of illegitimate child has no parental rights. 56 H. 462, 541 P.2d 13.

Differing treatment of alcohol and marijuana is not so arbitrary as to

violate equal protection. 56 H. 501, 542 P.2d 366.

University policy relating to retirement of person 65 years or older is not reasonably related to a state interest and is unconstitutional. 56 H. 601, 546 P.2d 1005.

Law requiring payment of taxes prior to judicial hearing, does not deny equal protection. 57 H. 1, 548 P.2d 246.

Requirement that a woman visitor to an all-male prison wear a brassiere is not invalid. 59 H. 346, 581 P.2d 1164.

Sex-based classification must serve important governmental objective and be substantially related to the achievement of the objective. 59 H. 346, 581 P.2d 1164.

Law requiring indigent candidates to submit nomination papers signed by a certain percentage of the voters in lieu of a filing fee, does not deny equal protection. 59 H. 430, 583 P.2d 955.

Providing different means for partisan and nonpartisan candidates to appear on election ballot did not violate equal protection. 60 H. 282, 588 P.2d 915.

A statute does not violate the equal protection clause merely because it could have included other persons, objects or conduct. 61 H. 262, 602 P.2d 914.

Sex-based classification must serve important governmental objectives and must be substantially related to achievement of those objectives. 62 H. 120, 612 P.2d 526.

Law prohibiting play of pinball machines, no longer bears rational relationship to legitimate statutory objective and denies equal protection. 62 H. 147, 613 P.2d 354.

Discriminatory enforcement of a criminal law is unconstitutional and may be raised as a defense. 62 H. 222, 615 P.2d 730.

Exemption of certain products from liquor tax was rationally related to achievement of valid legislative purpose. 65 H. 566, 656 P.2d 724.

No violation in law denying bail pending appeal to convicted felon sentenced to imprisonment. 66 H. 82, 657 P.2d 464.

Defendant failed to meet burden of proving intentional or purposeful discrimination; prostitution prohibition is gender-neutral; even if not, it does not deny equal protection. 67 H. 608, 699 P.2d 983.

Rational basis exists for treating public assistance recipients differently from other no-fault insurance policyholders. 68 H. 192, 708 P.2d 129, cert. den. 476 U.S. 1169.

Not violated by disqualification of recalled officials from running for vacancy created by recall. 68 H. 263, 711 P.2d 723.

No equal protection violation where there is no showing that the two groups are similarly circumstanced. 69 H. 349, 742 P.2d 359.

Reapportionment plan not unconstitutional where there was no identifiable political group whose homogenous interests might be the subject of illegal discrimination and no evidence of invidious purpose. 75 H. 463, 868 P.2d 1183.

Equal protection clause of Fourteenth Amendment not violated by §601-20(b) (court annexed arbitration program). 76 H. 494, 880 P.2d 169.

Where county imposed impermissibly discriminatory tax, county must be given certain options to correct the impermissible discrimination. 81 H. 248, 915 P.2d 1349.

Section 704-415 does not violate equal protection; State may place burden on insanity acquittee to prove by preponderance of evidence that acquittee should be released. 84 H. 269, 933 P.2d 606.

Not violated by trial court's redaction of home street addresses and home and work telephone numbers on juror qualification forms where redaction procedure was not administered differently against other similarly situated criminal

defendants having jury trials in the first circuit. 85 H. 258, 942 P.2d 522.

As chapter 671 rationally furthers legitimate state interest of assuring the provision of affordable health care to Hawaii's citizens by requiring participation in medical malpractice dispute resolution such that the high cost of litigation may be avoided, plaintiff not denied equal protection of the laws. 89 H. 188, 970 P.2d 496.

Not violated by county ordinance classifying time share units into "hotel resort" category where classification was reasonably related to ordinance's stated purpose of eliminating disproportionate tax burdens within that category and classification applied to properties whose actual use was transient or short-term, regardless of whether the units were used personally. 90 H. 334, 978 P.2d 772.

Clause not violated by §709-906 as State has a legitimate interest in protecting the health, safety, and welfare of its citizens, enactment of §709-906 to address family violence within the community is "legitimate" in protecting Hawaii's citizens, and as including family and household members within scope of §709-906 may reduce or deter family violence by imposing upon violators greater criminal punishment than criminal assault, it is rationally related to the State's interest in preventing incidents of family violence. 93 H. 63, 996 P.2d 268.

Search warrant did not violate appellant's rights under the U.S. and Hawaii Constitutions although it was not issued against any other bettors; to raise the selective prosecution defense, appellant needed to present sufficient evidence as to why appellant was prosecuted while the other seven bettors were not; reason provided by appellant that detective arbitrarily "classified" appellant as part of a conspiracy did not explain why only appellant was subject to the search warrant nor did it distinguish appellant from other bettors. 104 H. 323, 89 P.3d 823.

As the imposition of a rent trust fund--requiring tenants to pay rent in exchange for possession for the duration of the dispute--appears rationally related to achieving the purpose of providing landlords with an expeditious alternative to eviction proceedings and tenants with an opportunity to maintain possession so long as rent is paid when properly due, §666-21 does not violate this clause. 107 H. 73, 110 P.3d 397.

Trial court did not err in concluding that there was no unconstitutional deviation in the population count in the county council districts as set forth in the council redistricting plan adopted by the county reapportionment commission where the plan complied with the mandate of the county charter that the districts be comprised of "approximately equal resident populations as required by applicable constitutional provisions". 108 H. 318, 120 P.3d 217.

Chapter 584 did not implicate father's fundamental privacy right to procreational autonomy, but rather father's economic interest in not supporting his child, and although father had standing to raise an equal protection challenge to chapter 584, that standing was based on a non-suspect classification, i.e., the biological relationship of fathers to their children; thus, because chapter 584 bears a rational relation to the public welfare, the statute survives rational basis review and father's privacy and equal protection arguments failed. 109 H. 240, 125 P.3d 461.

Complaint that defendants illegally denied student's right to participate in interscholastic sports stated cognizable claim. 6 H. App. 397, 721 P.2d 165.

Not violated by §291C-112, which rationally furthers legitimate state interest in protecting health and welfare of public at large by prohibiting use of vehicles parked on public property as places of habitation during certain hours. 82 H. 269 (App.), 921 P.2d 1170.

Not violated by use of preponderance of evidence standard of proof for

§586-5.5 as family and household members not suspect class and rational basis underlying this standard adopted by legislature under chapter 571 for chapter 586 was to facilitate and expedite judicial issuance of protective orders. 85 H. 197 (App.), 940 P.2d 404.

As a suspect classification or fundamental right was not involved, and based upon dissimilar statutory treatment generally accorded to possession of marijuana as opposed to alcohol, where there was a rational basis for dissimilar punishment, §710-1022 did not violate defendant's right because it imposed a more severe penalty for a prisoner's marijuana possession than for alcohol possession under §710-1023. 92 H. 217 (App.), 990 P.2d 115.

Not violated by disparate treatment of persons enjoined under §604-10.5(a)(1) and (a)(2) as those enjoined under subsection (a)(1) are not subject to a suspect classification vis-a-vis those enjoined under subsection (a)(2) and the legislature could reasonably omit a state-of-mind element in the more perilous cases under subsection (a)(1) but require an intentional or knowing course of conduct in subsection (a)(2) cases. 92 H. 312 (App.), 990 P.2d 1194.

1998 Amended Child Support Guidelines classification challenged by father was constitutional as it reasonably calculated the child support payable for child without regard to child support owed by the non-custodial parent to other children, whether by a previous court order or a non-adjudicated legal obligation, and reasonably imposed upon the non-custodial parent the burden of proving that exceptional circumstances warrant deviation from the calculated amount. 104 H. 449 (App.), 91 P.3d 1092.

#### **Right to privacy.**

Extends to decisions regarding psychiatric care and communication of personal information. 481 F. Supp. 1028.

#### **Hawaii Legal Reporter Citations**

Criminal prosecutions. 78-2 HLR 78-781; 81-1 HLR 810157.

Lis pendens. 78-2 HLR 78-769.

Vagueness. 78-2 HLR 78-1478; 81-1 HLR 810147.

Administrative agency rules. 80-1 HLR 800114.

Administrative agency hearing. 80-1 HLR 800673.

Vehicular advertising. 80-2 HLR 800861.

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**Section 2.** Congress shall have power to enforce this article by appropriate legislation.

**Case Notes**

Students' cafeteria duty is not involuntary servitude. 403 F. Supp. 1095.

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**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, have previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

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**Section 4.** The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

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**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

### **Law Journals and Reviews**

The Power of the Courts to Protect Journalists' Confidential Sources of Information: An Examination of Proposed Shield Legislation. 11 HBJ 35.

Federalism and Federal Spending: Why the Religious Land Use and Institutionalized Persons Act of 2000 is Unconstitutional. 23 UH L. Rev. 479.

Patricia N. v. LeMahieu: Abrogation of State Sovereign Immunity Under Title II of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act After Board of Trustees v. Garrett. 24 UH L. Rev. 347.

RFRA II: The Failure of the Religious Land Use and Institutionalized Persons Act of 2000 Under Section 5 of the Fourteenth Amendment. 25 UH L. Rev. 131.

### **Case Notes**

Congress acted within its §5 authority in enacting the Religious Freedom Restoration Act. 883 F. Supp. 510; 902 F. Supp. 1220.

Neither the Native American Languages Act of 1990 nor 42 U.S.C. §1983 abrogated the Eleventh Amendment. 951 F. Supp. 1484.

Religious Land Use and Institutionalized Persons Act of 2000 was constitutional. 298 F. Supp. 2d 1010.

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**[ARTICLE XV.--1870]**

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

**Law Journals and Reviews**

To Dwell on the Earth in Unity: Rice, Arakaki, and the Growth of Citizenship and Voting Rights in Hawai'i. V HBJ No. 13, at pg. 15.

The California Civil Rights Initiative: Why It's Here, Its Far Reaching Effects, and the Unique Situation in Hawai'i. 22 UH L. Rev. 279.

Matters of Trust: Unanswered Questions After Rice v. Cayetano. 23 UH L. Rev. 363.

The Akaka Bill: The Native Hawaiians' Race For Federal Recognition. 23 UH L. Rev. 857.

Akaka Bill: Native Hawaiians, Legal Realities, and Politics as Usual. 24 UH L. Rev. 693.

**Case Notes**

State's electoral restriction enacted a race-based voting qualification; Hawaii's denial of petitioner's right to vote, where petitioner was not a "Hawaiian", was a clear violation of the Fifteenth Amendment. 528 U.S. 495.

Limitation of eligibility to be a candidate for office of Hawaiian affairs trustee to Hawaiians invalid under the Fifteenth Amendment and §2 of the Voting Rights Act. 314 F.3d 1091.

Absentee voting; when violative of right to vote. 623 F. Supp. 657.

Where plaintiffs filed motion for preliminary injunction regarding Act 359 of 1993 Hawaii legislature (relating to Hawaiian sovereignty), as amended in 1994 and 1996, plaintiffs not likely to prevail on constitutional claims under Fourteenth and Fifteenth Amendments, articles I, §5 and II, §1 of Hawaii constitution, or Voting Rights Act with regards to native Hawaiian vote. 941 F. Supp. 1529.

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**Section 2.** The Congress shall have the power to enforce this article by appropriate legislation.

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**[ARTICLE XVI.--1913]**

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and without regard to any census or enumeration.

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**[ARTICLE XVII.--1913]**

The Senate of the United States shall be composed of two Senators from each state, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislatures.

When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointment until the people fill the vacancies by election as the legislature may direct.

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

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**[ARTICLE XVIII.--1919]\***

Section 1. After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited.

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\*This article repealed by the XXIst amendment.

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**Section 2.** The Congress and the several States shall have concurrent power to enforce this article by appropriate legislation.

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**[ARTICLE XIX.--1920]**

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

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**[ARTICLE XX.--1933]**

**Section 1.** The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

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**Section 2.** The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January unless they shall by law appoint a different day.

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**Section 3.** If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term or if the President-elect shall have failed to qualify, then the Vice-President-elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President-elect nor a Vice-President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

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**Section 4.** The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

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**[ARTICLE XXI.--1933]**

**Section 1.** The 18th article of amendment to the constitution of the United States is hereby repealed.

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**Section 2.** Transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors in violation of the laws thereof is hereby prohibited.

### **Law Journals and Reviews**

The Law and Politics of Dancing: Barnes v. Glen Theatre and the Regulation of Striptease Dance. 14 UH L. Rev. 925.

### **Case Notes**

Liquor tax exemption for okolehao and pineapple wine not protected because it violates a central tenet of the commerce clause and is not supported by any clear concern of Twenty-first Amendment. 468 U.S. 263.

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**[ARTICLE XXII.--1951]**

No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

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**[ARTICLE XXIII.--1961]**

**Section 1.** The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, but they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of amendment.

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**Section 2.** Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

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**Section 3.** Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

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**Section 4.** Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office of Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both houses that the President is unable to discharge the powers and duties of his office the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

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**[ARTICLE XXVI.--1971]**

**Section 1.** The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

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**Section 2.** The Congress shall have power to enforce this article by appropriate legislation.

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**[ARTICLE XXVII.--1992]**

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

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