



## Ho‘omaluhia Award Seeks Nominations

It's that time of year again for the presentation of the annual Ho‘omaluhia Award to the person (or persons) in the state who have made a significant contribution to drug policy reform. Last year's winners (Roger Christie and Rev. Dennis Shields) were recognized for their work on the Big Island which resulted in major modifications in the marijuana eradication program.

**Nominations should be submitted in writing to DPFH no later than January 12, 2002.**

The award will be presented at our annual membership meeting, which will take place in late winter at a time and place to be announced. —Pau

## Dr. Charles Grob Leads Panel On Ecstasy

In response to the increased media coverage of the "Rave drug" Ecstasy, DPFH held its first morning forum, co-sponsored by Harm Reduction Hawai‘i, featuring Dr. Charles Grob of the Harbor-UCLA Medical Center, where he is Director of the Division of Child and Adolescent Psychiatry. Dr. Grob was joined on the panel by Alan Shinn, Executive Director of the Coalition for a Drug-free Hawai‘i, and Kai Takayama of Gregory House Programs.

Dr. Grob, who conducted the first FDA approved investigation examining the effects of Ecstasy on human subjects, first gave an overview of the history and chemistry of Ecstasy, as well as the studies on animals that

have been conducted by government sponsored researchers. His presentation also reviewed the positive testimony of therapists who had used the drug as a therapeutic agent before it was declared illegal in 1985.

While pointing out that the use of Ecstasy is not without potential risk (the major one being the phony pills passed off as Ecstasy), he hoped to see the day when it would be re-scheduled to permit therapeutic use.

Kai Takayama described his efforts in reducing harm by going to raves where he counsels young people on the dangers of the drug, such as dehydration, over-heating and water-toxicity. Yes, you can literally drown yourself by drinking too much water. He lamented the fact that the local law enforcement will not permit him to provide pill-testing, as is done on the west coast by DanceSafe, where testing kits are used to determine if the substance in hand is really Ecstasy or one of the common, and dangerous, substitutes.

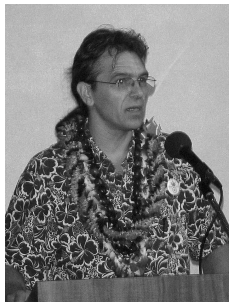
Alan Shinn reiterated his organization's goal of a drug-free Hawai‘i, while admitting that some of the audience might feel that is an unrealistic scenario. While he embraces certain types of harm reduction activities (such as clean needle exchange), he stands against any measures that might encourage or facilitate drug use.

This event had the best attendance (50 plus!) of any event we have held in the past several years. Could it be that mornings are really the best time for people to come out? —Pau

## DPFH September Recap

In case you were not able to attend, here's a brief recap of two events sponsored by DPFH during the month of September.

On September 27 Chris Conrad, author of *Hemp: Lifeline to the Future and Hemp for Health*, was the featured speaker at an evening event at McCoy Pavilion. Following an hour of live jazz provided by a group of local musicians



Chris Conrad

(The Cannabinoids), Chris gave an overview of current issues involving cannabis: medical marijuana, industrial hemp, and religious freedom.

He noted that other countries, e.g. Canada, Great Britain, Germany and Switzerland, are moving in the direction of decriminalization of cannabis, while the U.S. Government continues to wage its war, with more than 700,000 arrests for marijuana during the past year. Chris ended his presentation with a call for "Pot Pride", a nascent movement calling for the millions of pot-smoking, productive, employed and otherwise respectable citizens to stand up and be counted. As Chris explained, it's a way

(Continued on page 4)

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## Guam Court's Acquittal of Rastafarian for Importing Marijuana Argued in Honolulu before Federal Court

**E**arly in 1991 Ras Makahna, a Rastafarian from Guam, was arrested by Guam officials at the Guam International Airport for carrying marijuana. In the Rastafarian religion, use of marijuana, called *ganja*, is an essential sacrament. Ras was then indicted and charged with importation of a controlled substance ***under Guam (not federal) law.***

Evidently the government did not contest that Rastafarianism is a legitimate religion or that Guam's prosecution of Ras Makahna substantially infringed on his right to freely exercise his religion. The trial court dismissed the charge on the ground that the "Free Exercise of Religion" clause of Guam's Organic Act, as well as the federal Religious Freedom Restoration Act (RFRA), applied and gave protection to Ras' use of marijuana.

More specifically, the trial court held that RFRA (though not constitutional when applied to the States) was constitutional as applied to Guam, a territory. It also held that under the "Free Exercise" clause of the Organic Act of Guam, a law of general applicability like the controlled substances law is invalid if it burdens the free exercise of religion unless the government can demonstrate that prosecution under the Act is the least restrictive means of vindicating a "compelling state interest."

The prosecution appealed the trial court's dismissal of the case to Guam's new Supreme Court. The Supreme Court of Guam upheld the trial court's dismissal. It based its decision, however, only on its interpretation of the Free Exercise Clause of the Organic Act (a federal law passed by the U.S. Congress which serves as Guam's Constitution until Guam adopts its own constitution) and not on RFRA. It held that it could interpret the Organic Act to provide broader protection to the free exercise of religion than the U.S. Constitution.

The Attorney General of Guam appealed the Guam Supreme Court's decision to the 9<sup>th</sup> Circuit Court of Appeals. The appeal was heard by a three-judge panel in Honolulu on November 5<sup>th</sup>. The Attorney General

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**The trial court held that . . . the controlled substances law is invalid if it burdens the free exercise of religion**

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argued that because the Organic Act is an act of the U.S. Congress, the United States Constitution's First Amendment Free Exercise Clause should apply, and that the Guam Supreme Court cannot interpret their Organic Act's Free Exercise Clause to provide *more* protection than provided by the First Amendment. And, under the U.S. Constitution, the U.S. Supreme Court has unfortunately held that the right of free exercise of religion does *not* relieve an individual of the obligation to comply with a "valid and neutral" law of general applicability, such as a law making marijuana possession a crime, just because the law prohibits conduct that his religion requires.

Representing Ras Makahna, attorneys Graham Boyd and Nelson Tebbe of the ACLU Drug Policy Litigation Project, and attorney Daniel Abrahamson of the Lindemith Center, came to Hawai'i to argue the case. The thrust of their argument was that like every *state* supreme court, the Guam Supreme Court should be allowed to give a broader interpretation to its "Constitution" (the Organic Act) than the U.S. Supreme Court's interpretation of the federal constitution.

For example, the Hawai'i Supreme Court can, and sometimes does, interpret the Hawai'i State Constitution to provide greater protection than the federal courts allow under similar provisions of the U.S. Constitution. Other state courts do the same for their constitutions. The ACLU attorneys also argued that RFRA should apply to this case and protect Ras Makahna's right to import or possess marijuana.

As to the first issue, the problem is that state constitutions are adopted by the people of each state. The Organic Act of Guam, however, is really a federal statute adopted by Congress, and the question is whether that form of statute and its Free Exercise Clause permits an interpretation different from the interpretation of the Free Exercise Clause of the U.S. Constitution.

Indeed, federal law allows the people of Guam to form their own constitution, similar to the 50 states, but Guam has not yet done so.

As to the Religious Freedom Restoration Act, while it has been held inapplicable to the States, the question is whether it remains applicable to Guam, which is a territory within the realm of federal law.

Much of the argument in court centered on the issues of Guam's status and autonomy. Therefore, the outcome of the case — which was very well argued by ACLU attorney Nelson Tebbe — will have no binding effect on action regarding the religious use of marijuana in the 50 states.

It is already possible, for example, for the Hawai'i Supreme Court to interpret the Hawai'i Constitution to give greater protection to religious smokers of marijuana here *who are prosecuted under Hawai'i law* than the U.S. Constitution would provide. Whether the Hawai'i Supreme Court will provide such protection when the question arises — pretty soon perhaps if a Big Island prosecution for marijuana possession, distribution, and use results in a conviction of a minister — remains to be seen. —*Pau*

# DPFH Board Welcomes New member: Tim McCormick

**T**im McCormick is an HIV Prevention Program Specialist at the State Health Department where he works with community-based organizations funded by the state to provide HIV, sexually transmitted disease, and viral hepatitis prevention interventions to injection drug users, men who have sex with men, sex industry workers, transgender individuals, and others at high risk for these diseases. Prior to this, he worked for about seven years in health and social service programs for immigrants, refugees, and political asylees, in Honolulu and in Washington, D.C. He has a Bachelor's degree in psychology from the University of Virginia, and a Master's degree in medical anthropology from UH Manoa.

"I'm happy to be joining the board of the DPFH. I recently stepped down from the board of Harm Reduction Hawai'i (HRH) after serving a two-year term. As many of you probably know, HRH is an organization that grew out of some of the same energy that spawned DPFH a number of years ago.

"Becoming involved in the policy aspects of drug issues represents a bit of a shift for me. My work and my involvement with HRH have been with the programmatic aspects of working with substance users. My relatively recent interest in drug policy reform is the result of frustration that so much of the drug-related harm in our community is a result of bad drug policy. Beyond the lack of adequate drug treatment (to say nothing of adequate treatment *options*), and a lack of effective substance abuse prevention programs, current drug policy has saddled us with staggering costs.

A study earlier this year by the National Center on Addiction and Substance Abuse at Columbia University estimated that substance abuse and its aftermath cost Hawai'i citizens \$438 million (8.6% of the state budget) in state tax dollars in 1998<sup>1</sup>. Just two percent of that represented spending on prevention and treatment; the other 98% represented "clean up" costs (e.g., in the areas of criminal justice, public safety, health, child and family



*Tim McCormick*

assistance). Of course, bad drug policy also comes with enormous human costs. We need to do a better job. Can we afford not to?

"I strongly believe that current drug policy is mostly ineffective, unjust, and an enormous waste of resources, and I have some strong opinions on what effective drug policy would look like. However, in many areas of drug policy, I'm uncertain how much, how quickly or even how change needs to happen. I look forward to hearing others' ideas and opinions on these issues, as well as sharing, refining and changing my own.

"Most of all, I look forward to the exchange of ideas that leads us to advocate for changes that will accomplish things we probably all agree on: more effective drug policy, fewer drug problems, effective, respectful treatment for people with drug problems, effective drug abuse prevention education for our children and others, and a safer, healthier community."

<sup>1</sup> National Center on Addiction and Substance Abuse at Columbia University, *Shoveling Up: The Impact of Substance Abuse on State Budgets* (New York, NY: CASA, Jan. 2001), p. 43. —*Pau*

*From the Desk of . . .*

## Board Member Dick Miller To Rep. Neil Abercrombie

November 6, 2001  
Representative Neil Abercrombie  
1502 Longworth House Office Bldg.  
Washington, D.C. 20515-1101  
FAX: 202-225-4580

Dear Neil,

I understand that you have not registered in support of H.R. 2592, the States' Rights Medical Marijuana Bill.

Even if you are personally opposed to the use of medical marijuana, you should be willing to support a bill that places back in the states the issue of whether medical use of marijuana should be permitted. The Hawai'i legislature, of which you were long a member, has approved medical marijuana. The legislature, as you know, does reflect the will of the people of Hawai'i. Draconian federal controlled substance laws, however, undermined the State's ability to give full effect to the Hawai'i law. At the very least you should be willing to support a bill that places control of this important issue back in the hands of the people of Hawai'i, where a survey has shown that a significant majority of our citizens support the Hawai'i law.

Further, your evident opposition to medical use of marijuana seems to me to be uncharacteristic of your generally progressive views on other issues. There is significant evidence, including a study by the National Institutes of Health, that finds use of marijuana beneficial for many of the conditions set forth in the Hawai'i law. Rather than listen to the HMA, which takes the most self-interested view of the law, largely in fear of federal controlled-substance laws, you should read the works of scholars such as Harvard Medical School's Lester Grinspoon.

I, and many sincere and knowledgeable folks in Hawai'i who have fought for patients' rights, would be very happy to hear that you support H.R. 2592.

With warm Aloha,  
*Dick Miller*

*(To date, Mr. Abercrombie has not responded to this letter.)*

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# Western Australia Decriminalizes Marijuana Possession; Approves Heroin Trials, Rejects Safe Injecting Rooms

The Labor government of Western Australia Premier Geoff Gallop announced a sea change in the state's approach to drugs this week. Delivering its long-awaited response to the state's Community Drug Summit held in August, the government announced it was accepting 44 out of 45 recommendations, including the decriminalization of possession and consumption of small amounts of marijuana and prescription heroin trials. The drug summit had been a key election pledge of the Gallop government.

The government rejected a recommendation for safe injection rooms, arguing that the state did not have heroin users in sufficient concentrations to make the sites cost-effective. "Drug use is spread throughout the community," said Gallop. "We don't have the same extent of the problem that they get in Victoria and New South Wales," he explained.

And the heroin prescription trials

will not happen as long as Prime Minister John Howard is around. He will be around for awhile. Howard, an avowed foe of such harm reduction measures, was elected to a new term earlier this month, running largely on an anti-immigrant platform.

"The fact of the matter is the federal government needs to give its endorsement and John Howard has made it clear he is not going to allow any heroin trials in Australia," said Gallop as he announced the new policies. "The notion of the heroin trials should be part of our armory, and we should keep it on the agenda, but the fact of the matter is we in Western Australia can't do it."

Under the state's new marijuana policy, people caught with up to two plants or less than 25 grams will face only civil penalties, such as fines, and will not enter the criminal justice system. Western Australia will join South Australia, which decriminalized in 1987, and Tasmania, Victoria and Queensland in the last four years have also instituted ticketing instead of

arresting marijuana offenders caught with less than 50 grams.

The community drug summit recommendations also called for increased emphasis on prevention and treatment. The government responded with a 10% increase in the drug budget and the establishment of a new Drug and Alcohol Office within the state health department. —Pau

## Request goes to PSD For Medical Marijuana Registry Form

After having been denied a copy of the medical marijuana registration form by the Narcotics Enforcement Division, DPFH has submitted a formal request to access this government record. The NED insists that the form will be made available only to doctors. DPFH maintains that it is a public document, and therefore accessible to the public. DPFH intends to put it on our web site as soon as it is made available. —Pau

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## Is the Tide Shifting?

### Fewer Americans Favor Harsh Penalties for Marijuana

It appears that Americans are changing attitudes toward marijuana. According to an online national poll conducted by Zogby, 61 percent of respondents said that in light of the increased attention to the threat of terrorism since September 11, they oppose arresting and jailing nonviolent marijuana smokers.

Of those, 39 percent "strongly oppose" arresting smokers, 22 percent "somewhat oppose" and 6 percent are undecided. Only 33 percent of those polled say they support arresting and jailing marijuana offenders, and fewer than one in five (18 percent) voiced strong support. —Pau

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## September Recap *(Continued from page 4)*

of bringing respectability to a population that has been demonized through the drug war propaganda.

On September 29, DPFH co-sponsored a half-day mini-conference on "Shattered Lives: How Drug Laws and Prisons Hurt Hawai'i's Families," held on the U.H. campus. Speakers for this event were Chris Conrad and his

wife, Mikki Norris, who were joined by local politicians (Lt. Gov. Maizie Hirono and Rep. Nestor Garcia) and several ex-offenders.

The thrust of this meeting was to generate support for legislation in Hawai'i that would divert first-time drug-law offenders from prison to treatment. —Pau

## DPFH Seeks Your Input

*While the three events sponsored by DPFH since the last newsletter drew pretty good crowds, there was certainly room for more people. DPFH has tried several different times, places, topics and formats for our public events, but the attendance has not been what we had hoped for. Hence, DPFH invites you to submit suggestions on topics, venues, and times that might lead to better attendance. Don't be shy. Let us know your thoughts, either by letter, fax, e-mail or telephone. (See back page of newsletter for contact information.)*

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# Washington State Opinion Leaders Call for End to War on Drugs

(Excerpted from 12/13 article by Jane Hadley, *Seattle Post-Intelligencer*)

**D**octors, lawyers and pharmacists joined yesterday in calling for an end to the state's war on drugs, saying people should no longer be jailed for simple possession of drugs. Releasing a one-year study on illegal drug use, the leaders of five major professional organizations said imprisoning drug users is the most costly and least effective approach to ending drug abuse.

"We need to shift from a punitive legal model to a public health model," said Fred Noland, the Seattle attorney heading the policy review.

Noland is a past president of the King County Bar Association, which conducted the study and won support for it from the Washington State Bar Association, the Washington State Medical Association, the King County Medical Society and the Washington State Pharmacy Association.

King County Prosecutor Norm Maleng disagreed, saying the report offers no alternative to imprisonment of offenders.

"The report ultimately concludes that we should eliminate criminal sanctions for drug users, abusers, manufacturers and traffickers, but it offers no other alternative," Maleng said in a Nov. 5 letter to the state bar.

But Noland and others emphasized that the report does not call for decriminalizing drugs entirely.

The report says simple possession should not result in jail, but does not say it should be legal either. Nor does it say what kind of sanctions should be imposed. Options mentioned include court-required treatment, fines or contempt citations.

While the state has pursued its punitive approach, drug use has increased, the state's courts are clogged to the breaking point and its prisons are overflowing with people

who have done nothing other than possess drugs, said Ken Davidson, a governor of the state bar association.

Every dollar spent on treatment is more effective than \$7 spent on the legal approach, Noland said.

The report says the emphasis should change to treatment, and it calls for a debate on the specifics.

Calling for change is the first step needed to "turn the battleship around," said Mary Alice Theiler, chairwoman of the section dealing with criminal sanctions.

The report said Washington's sentences for possession and sale of drugs are more severe than in many other states. And its punishments for small sales to support addictions are longer than for assault and robbery.

"We can no longer afford to do this," said the state bar's Davidson, calling yesterday's convergence of professional organizations "an historic event."

Jerry Sheehan, lobbyist for the American Civil Liberties Union of Washington, hailed the coalition. "We think it's a tremendous step forward to have these very conservative organizations saying, in their sometimes elliptical way, the same things we've been saying for years," he said. "Putting adults in prison because of what choices they make about their body is simply wrong."

Sheehan and Noland pointed to initiatives passed in California and Arizona in recent years that ended jail for most possession cases.

Arizona spent \$1 million in 1999 on treatment and supervision of 390 inmates kept out of prison under its new law. Imprisonment of those inmates would have cost \$7.7 million, a study by Arizona's court administrator's office found.

Bills are expected to be introduced in the Legislature in January to reduce sentences for drug possession and possibly also small sales. Sheehan said methamphetamines — the current focus of public attention, as crack cocaine and heroin once were — is likely not to be included in the reductions. The savings from not jailing offenders would be sent to local communities to use on drug treatment programs.

"We're going to support anybody who proposes to drastically reduce or eliminate altogether jail sentences for simple drug possession," said Noland.

Among conclusions of the report:

- Prevention programs in schools are largely ineffective, especially the DARE program.
- Though drug use should be strongly discouraged, most teenagers cannot be stopped from experimenting. But only a small percentage develop addiction problems.
- Prevention programs should be focused on high-risk youths and should address underlying social and psychological factors.
- Drug prevention programs must include alcohol and tobacco. Alcohol use among teens is much more widespread than cocaine or heroin.
- Drug addiction treatment should be available on request to every Washington resident, though those who could afford it should pay. Relapse is common, so re-entry should be allowed. Currently, treatment is available to only about 20 percent who want or need it.
- Drug treatment and methadone programs should also be made available to prison inmates.
- Needle exchange programs should be available statewide. —*Pau*

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# DPFH NEEDS YOUR HELP

As most of you know, DPFH depends on membership dues and contributions to cover the costs of this newsletter, announcements and flyers for events that we sponsor. All office expenses are covered by personal funds of the officers, and funds for bringing in speakers from the mainland are provided through a grant from the Lindesmith Center/Drug Policy Foundation. To keep the newsletter and other announcements coming, **we need your help, especially through membership renewal.**

To save the cost of sending out individual reminders, please check your mailing label for your membership expiration date, and take appropriate action. *Mahalo.*

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## YES! I WANT TO HELP DPFH PROMOTE DISCUSSION OF DRUG POLICIES!

Please accept my TAX-DEDUCTIBLE membership donation.

\$10 Student/Low Income or Gift Membership

\$35 Organization Membership

\$25.00 Regular Membership

Other \_\_\_\_\_

<p>From DPFH Changes in current drug policies will not be advanced by elected officials or those with vested interests in maintaining them. DPFH members believe that in an open debate, reason and truth will prevail. Your help is needed in making that happen. MAHALO!</p>
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