

1 to do the one thing at a federal level that would make a
2 difference, I would go back to the Federal Juvenile Justice
3 Act. When we amended the Federal Juvenile Justice Act to
4 require states to study the issue of disproportionate
5 minority contact, to come up with good faith remedial plans,
6 to basically require that as a condition of federal support,
7 a lot of good things happened. The problem has not
8 disappeared, but we began to move a difficult issue forward.
9 And I think I would recommend that you consider an amendment
10 to the Federal Juvenile Justice Act requiring that every
11 state, number one, conduct an investigation or study of this
12 problem, come up with recommendations for action, and then
13 condition receipt of federal funds, at least, on the
14 submission of a good faith plan to remedy the issue of
15 sexual violence in juvenile facilities.

16 Thank you very much.

17 CHAIRMAN WALTON: Thank you, Doctor.

18 Dr. Bidwell.

19 DR. BIDWELL: Good morning, and aloha. And thank
20 you for the chance to speak with the Commission today.

21 I'm going to preface my testimony, my official
22 testimony, with a few words that I hadn't intended.

23 I'm a pediatrician that works at the Honolulu
24 Juvenile Detention Facility and at the Hawaii Youth
25 Correctional Facility, and I've known Cyryna Pasion, who

1 testified earlier this morning, for three years, and
2 although those of us in the Health Unit I think have been
3 the most active and vocal advocates, at least within the
4 Youth Correctional Facility, for her safety and the other
5 youths' safety, clearly we failed her. I don't even know
6 how some -- how I could have driven home at night knowing
7 that Cyryna was staying there under those conditions and the
8 other youth that I have worked with. Next time we're going
9 to lock ourselves to the Administrator's car and not open
10 the door until she makes the place a safe place for youth
11 such as Cyryna.

12 As I mentioned, I am a pediatrician; I work at the
13 Youth Correctional Facility under a contract between the
14 School of Medicine at the University of Hawaii and the Youth
15 Correctional Facility. The Health Unit staff did play an
16 active role in advocating on behalf of three youths at HYCF
17 who during 2004/2005 were sexually, verbally and physically
18 harassed and assaulted because of their sexual orientation
19 and gender identity, both by staff and by other youths
20 without the intervention of staff or the HYCF administrator.

21 Cyryna Pasion has told her story that she was joined by two
22 other youths, J.D., a boy perceived to be gay, and R.G., a
23 lesbian youth who brought a federal lawsuit against HYCF and
24 the Hawaii Department of Human Services with the help of the
25 American Civil Liberties Union because of the daily

1 harassment and assault that they were facing because of
2 their sexual orientation and gender identity.

3 I'll be shortening lesbian, gay, bisexual and
4 transgender to LGBT to make my testimony a little shorter.

5 The stories of J.D. and R.G. appear in my written
6 testimony and, again, involved tremendous daily harassment
7 that was either perpetrated or witnessed by HYCF staff with
8 no intervention.

9 To make a long story short, the three youths won
10 their lawsuit against the State. In February 2006, Federal
11 Judge J. Michael Seabright issued an injunction against HYCF
12 and the Hawaii Department of Human Services which oversees
13 HYCF, "To refrain from harassing, abusing, discriminating
14 against, or isolating the plaintiffs based on their actual
15 or perceived sexual orientation, gender identity or sex,"
16 and "to refrain from failing to protect plaintiffs from
17 anti-LGBT harassment and abuse."

18 This injunction was based on the following
19 findings of fact.

20 Number one, verbal abuse by staff and other wards
21 based on wards' actual or perceived sexual orientation is
22 pervasive at HYCF. In other words, these were not isolated
23 instances.

24 Number two, the pervasive abuse of HYCF harmed the
25 plaintiffs.

1 Number three, two of the three plaintiffs endured
2 physical and sexual assaults because of their sexual
3 orientation and gender identity.

4 Number four, the defendants were aware of the
5 abuse, that is, the State was aware, and yet took no
6 meaningful action to end it.

7 And number five, HYCF lacks policies and
8 procedures to ensure the safe conditions of confinement for
9 LGBT youth.

10 In March 2006, Judge Seabright ordered HYCF and
11 the Hawaii Department of Human Services to establish
12 specific policies, and you'll be hearing me saying that
13 again, I think there need to be specific policies protecting
14 LGBT youth at HYCF from discrimination, harassment and
15 abuse.

16 The question that some of us are asking but not
17 enough are asking in our facility is how did we come to this
18 point? How did we allow this to happen to the LGBT youth
19 under our care at HYCF? From my vantage point as a
20 pediatrician working at HYCF, it appears that there are
21 several interrelated, systemic factors, and I emphasize the
22 word "systemic," that came together and allowed ongoing
23 violence against these youth. I believe these factors are
24 not unique to HYCF but are common to nearly all youth
25 detention and correctional facilities in the U.S. Also,

1 while I acknowledge that all the detained and incarcerated
2 youth are at risk of violence, the following factors
3 interact in specific ways that make these settings
4 especially dangerous for LGBT youth.

5 Factor number one, a total lack of effective
6 policies and procedures, which you've heard about several
7 times today. In 2005, following an extensive investigation
8 of HYCF by the U.S. Department of Justice, HYCF was
9 described as being in "a state of chaos with no effective
10 policies and procedures," which led to a "culture of
11 unfettered abuse" against the youth at HYCF across the
12 board.

13 Factor number two, and I believe that this is
14 actually the most important one, and that is the
15 institutional anti-LGBT sentiment at HYCF, and I believe at
16 most institutions across the country. This anti-LGBT
17 sentiment has made HYCF a dangerous place for LGBT youth.
18 Institutions and the people who run them reflect the
19 communities that they are a part of, and despite the
20 standpoint of the American Academy of Pediatrics and most
21 other child welfare professions that homosexuality is a part
22 of the spectrum of normal human sexuality, large parts of
23 the U.S. continue to view it as sick, sinful and disgusting.

24 In the absence of specific policies and procedures
25 mandating respectful treatment of LGBT youth, they will

1 continue to be treated as they are now, as sick, sinful and
2 disgusting and deserving of the violence that they receive.

3 Factor number three, lack of advocates for LGBT
4 youth, both outside and inside institutions. Incarcerated
5 youth in general have few community advocates, and given
6 community attitudes, LGBT youth have even fewer. Even the
7 most natural of advocates, parents, often reject their LGBT
8 children or believe they deserve the abuse they receive.
9 There are even fewer advocates within institutions, even
10 among those professions committed to the welfare of
11 children. In part, this may come from their own disapproval
12 of LGBT children as professionals often reflect their own
13 communities. But to be honest, the greatest fear in
14 standing up in advocacy for these children is that one's own
15 sexuality will be called into question immediately, and, so,
16 we watch the abuse and we do nothing.

17 Factor number three, lack of effective grievance
18 procedure, which has been mentioned before, but it's
19 especially scary for a gay youth or a lesbian youth to make
20 a grievance because often they are outed in the process. In
21 fact, we had a staff member at HYCF when a grievance was
22 instituted by one of the youths announced to all the wards
23 on the boys' wards that so-and-so was "a legal known fag,"
24 and this -- there was no consequence for the staff because,
25 in fact, he's still working there today.

1 Factor five, a lack of visible LGBT supportive
2 messages and role models within the facility.

3 Number six, a lack of staff training on LGBT youth
4 issues.

5 Number seven, placement of LGBT youth in settings
6 almost guaranteed to subject them to violence such as Cyryna
7 experienced.

8 Factor number eight, the fact that HYCF is part of
9 actually a continuum of anti-LGBT placements in programs
10 that often extend from childhood until the point after a
11 child leaves HYCF. It's not just HYCF that does not approve
12 of LGBT youth.

13 And finally factor number nine, the lack of
14 nationally recognized standards for the treatment of LGBT
15 youth in confinement. Until there are such standards, the
16 standards that do cover youth in facilities will be those of
17 the community's norms of no-acceptance.

18 As a pediatrician, just a word about the effects
19 of sexual violence and other abuse on LGBT youth at HYCF.
20 Childhood and adolescence are such critical times in life
21 for learning who one is and becoming comfortable with and
22 accepting of that emerging reality, and one's sexual
23 orientation and gender identity are among the deepest and
24 most important parts of who one is. Unfortunately, many
25 LGBT youth grew up in homes and communities who are

1 unaccepting of who they are. In fact, this is in part why
2 many of them end up in the juvenile correctional setting.
3 The tragic thing to me is that these youths now find
4 themselves in the care of the state where the legacy of
5 harassment and abuse continues.

6 Research has repeatedly shown that when LGBT youth
7 are surrounded by supportive families and communities that
8 they thrive and grow into happy, healthy and productive
9 adults, but when they are surrounded by negative messages
10 about who they are and subjected to daily violence and
11 harassment with no protection from those who should be
12 protecting them, very predictable and damaging things happen
13 to their spirit, and worst of all, they usually come to
14 believe that they deserve the abuse they receive and turn to
15 self-destructive behaviors out of anger or despair or pain.

16 In my testimony I provide thoughts about how HYCF
17 could have been more responsive, and I have also referred
18 the Commission in a section on recommendations to a document
19 entitled "The Model Standards Project: Creating Inclusive
20 Systems for LGBT Youth," that was developed by the National
21 Center for Lesbian Rights and Legal Services for Children,
22 Incorporated. Basically, they call for LGBT-affirming
23 environments and strong policies that specifically prohibit
24 harassment against LGBT youth. I believe that if these
25 standards were adopted or used as a basis for standards that

1 you might adopt that LGBT youth would no longer experience
2 the discrimination and violence, including sexual violence
3 that they've experienced at HYCF.

4 I should say that based on the federal lawsuit I
5 described above, the State of Hawaii has also hired a
6 consultant that will be working on standards for Hawaii that
7 we hope will become state-of-the-art standards around LGBT
8 policy, and I believe she's asked to turn those in within
9 the next month, so, that might be another resource that you
10 could turn to.

11 In conclusion, the experience of LGBT youth at
12 HYCF is not unique; it's, I think, the reality across the
13 country. It occurs every day at scores of youth facilities.
14 This is why the work of this Commission is so vitally
15 important to these youths; they have so few advocates in the
16 community or within their institutions that you may be one
17 of the few advocates that can be there for them, and the
18 harm they endure goes so deep, lasting a lifetime. Having
19 listened to the voices of LGBT today and those who work with
20 them, the Commission is in a position to enunciate national
21 standards of care and confinement that specifically address
22 the experience and needs of LGBT youth. This will help end
23 the extraordinary suffering that they endure and allow them
24 to become the happy, healthy and productive members of
25 society that they were meant to be.

1 Thank you very much.

2 CHAIRMAN WALTON: Thank you, Dr. Bidwell.

3 Mr. Gibson.

4 MR. GIBSON: Thank you, Mr. Chairman. I've Steve
5 Gibson. I really feel privileged to be here. I'm going to
6 take a little different approach to this. I will follow my
7 testimony. The severity of the problem obviously varies in
8 jurisdiction; I'll go through some of the reasons why, and
9 you've heard some of those.

10 Just a little bit on my background. I've been
11 fortunate, I guess, that I started in 1974 as a line staff
12 in a Maine secure facility; I've been a counselor, a parole
13 officer, I worked with Child Protective Services, I've been
14 the superintendent of that facility which I was fired from
15 for not watering the superintendent's lawn, and now I am a
16 bureaucrat.

17 I think a lot of things have been talked about,
18 and rather than just -- we talked about leadership
19 attitudes, policy procedures, facility design operation,
20 training programs for staff, offenders, recruitment,
21 staffing ratios, facility design, I think they're all
22 connected. I'd just like to go a little farther on some of
23 these things as suggestions in relationship to what's
24 already been said.

25 As far as zero tolerance, of course, that should