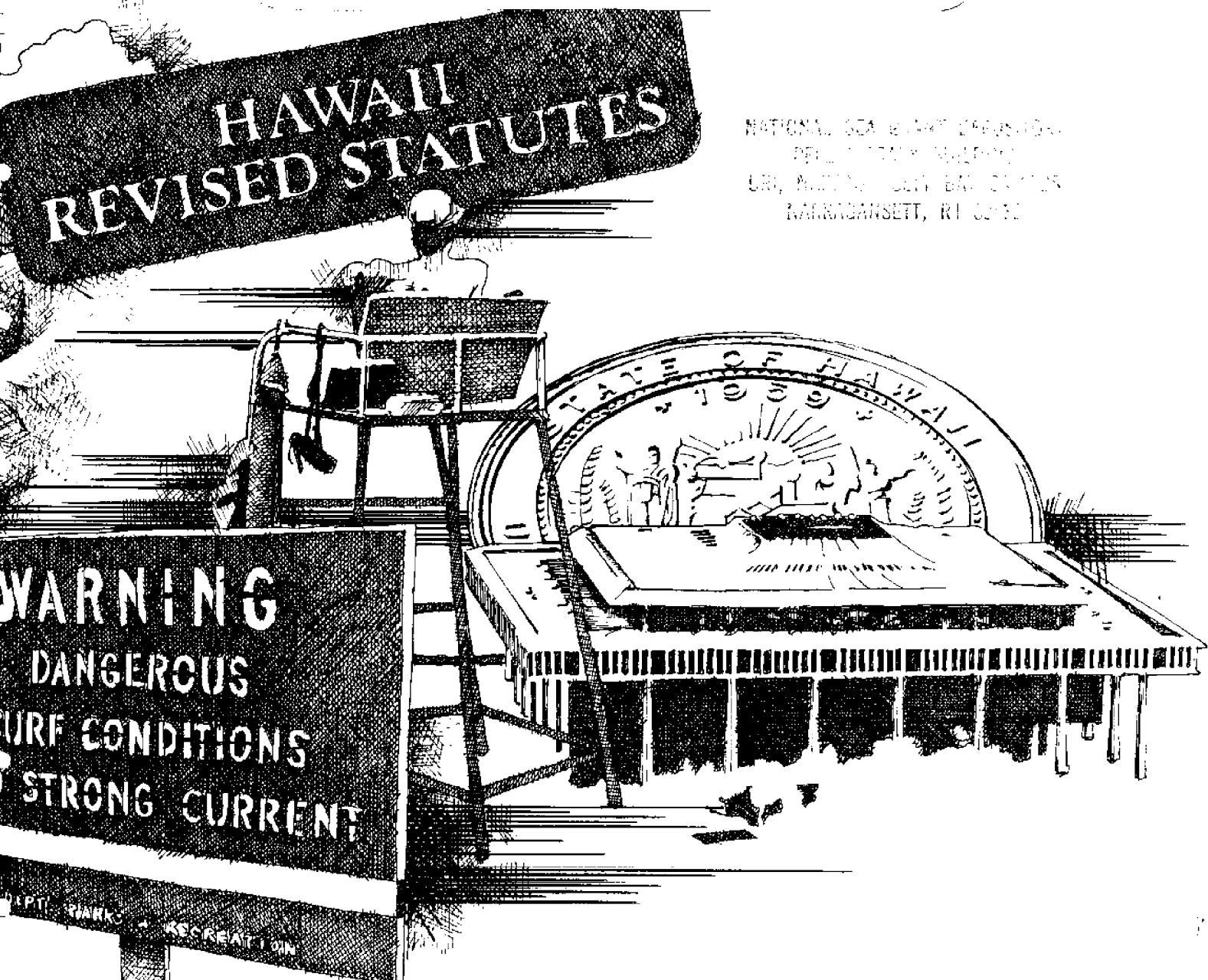


# Studies on Marine Policy and Law



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION  
DEPARTMENT OF COMMERCE  
U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON, D.C. 20513

PROCEEDINGS OF THE SEMINAR ON WATER SAFETY

*Ho'ike I Ke Kai*  
(To Understand the Sea)

**CIRCULATING COPY**  
**Sea Grant Depository**

October 28, 1983  
Hilton Hawaiian Village Hotel

Rose T. Pfund, Editor

STUDIES ON MARINE POLICY AND LAW NO. 1

NATIONAL SEA GRANT DEPOSITORY  
PELL LIBRARY BUILDING  
URI, NARRAGANSETT BAY CAMPUS  
NARRAGANSETT, RI 02882

March 1984

UNIHI-SEAGRANT-MP-84-01

University of Hawaii  
Sea Grant College Program  
Honolulu, Hawaii



*This symposium was funded in part by the "Program Development" project (PM/M-2) of the University of Hawaii Sea Grant College Program under Institutional Grant No. NA81AA-D-00070 from NOAA Office of Sea Grant, Department of Commerce. The U.S. Government is authorized to produce and distribute reprints for governmental purposes notwithstanding any copyright notation that may appear hereon.*

#### About the editor

Rose T. Pfund is Acting Associate Director of the University of Hawaii Sea Grant College Program.

---

The views expressed in this study on marine policy and law do not reflect those of the University of Hawaii or the University of Hawaii Sea Grant College Program. Any commercial product or tradename mentioned herein is not to be construed as an endorsement.

## TABLE OF CONTENTS

SEMINAR OVERVIEW . . . . .	1
PANEL I. LEGAL PRINCIPLES: LIABILITIES AND RESPONSIBILITIES. . . . .	3
Landowner's Liability (Steven Hisaka) . . . . .	5
Some Suggestions for Protection Against Liability: A Private Sector View (Robert Henry). . . . .	10
Questions and Answers . . . . .	14
PANEL II. WATER SAFETY STANDARDS: CURRENT PRACTICES. . . . .	17
Water Safety (Ralph Goto) . . . . .	19
User Conflict (Ian Birnie). . . . .	25
The HVB Visitor Satisfaction Program (Barbara Mills). . . . .	30
Questions and Answers . . . . .	32

## SEMINAR OVERVIEW

Rose Pfund, Associate Director  
University of Hawaii  
Sea Grant College Program

Ladies and Gentlemen; Good Morning!

I am truly delighted to have been given the job of welcoming you all to this "Seminar on Water Safety" on behalf of the four sponsors: the Hawaii Visitors Bureau; Robbins, Reilly and Hisaka, a Law Corporation; the Department of Parks and Recreation of the City and County of Honolulu; and the University of Hawaii Sea Grant College Program. You are participants in a historical event--the first meeting of this particular mix of individuals representing the legal sector, the private and public oceanfront property owners, and tourist-related businesses. The fact that so many of you are here on such short notice is evidence of the growing urgency of the problems related to water safety which affect both government and private enterprise.

I am charged also with providing a short overview of what is planned for this morning and to raise some possibilities for future follow-up action.

This seminar is the end-product of a chance phone call to our office, the University of Hawaii Sea Grant College Program, by John Reilly, of the law firm Robbins, Reilly and Hisaka, which I answered because the secretary was not present that day. He was looking for materials on water safety because he felt that there should be a positive program for educating the public about water safety to prevent accidents before they happened. Now I must admit I was more than a little surprised by John's attitude since he doesn't make any money unless he represents a client in court. I do apologize to the attorneys present at this seminar for my past beliefs about attorneys. Thanks to John, I no longer believe that attorneys are by nature adversarial and after the fast buck. There is some altruism there, although, I think, we'd still be pretty hard put to get most people to believe it. But I believe it -- John certainly has made a believer out of me.

John's phone call precipitated a series of meetings which included Steve Hisaka, his partner; Barbara Mills; Ralph Goto; Ray Tabata, a Sea Grant extension agent; and myself. Others also participated in one or two meetings, but the core of the planning team consists of those named. The team is unique in that it brought together the private sector and government and the university to begin the process of addressing a critical community problem.

This morning, in the short time that we have, we will begin to look at the first cut approximations of what is involved in the ownership of waterfront property. What is the scope of the

responsibility or duty of the owner? What is the extent of individual or corporate liability? At this seminar, we will only begin to suggest what these might be. Currently, lacking a commonly accepted criteria of water safety, each case is being settled by litigation. And it is the present method of settling water-related accidents that we will need to address. That is, is it possible to define criteria for water safety outside of the courts in a non-adversarial forum? This is the basic question being posed to you this morning.

The first panel will provide a legal framework and the second panel will provide the nuts-and-bolts of the practitioners' art and the conflicts brought on by competing uses of the beaches and nearshore waters. There will be opportunity for questions from the floor, although in all probability there will not be enough time for all questions.

We are recording for later transcription, the proceedings of this seminar to begin the documentation of the issues involved in water safety. Also, you will find in your packet an evaluation sheet which will give us an idea of your interests and desires, if any, for developing future workshops, seminars, etc.

And, finally, we have gathered some informational materials which you can look at during the coffee break after the first panel, if you haven't already done so.

In summary, then, this is the first step toward an ultimate goal of developing criteria for water safety, which protects both the user public and the property owner. It is critical that this balance be struck if the criteria are to be just and equitable. It will take further dialog to develop the kind of criteria which are acceptable to both user and owner. As the numbers of visitors and residents increase, the probability of water-related accidents will increase in numbers and diversity over time. Water safety is not only a tourist industry problem, it is clearly a problem affecting every resident in the state -- even those who do not go to the beach or indulge in water-related sports and recreation. The cost of litigation is paid for by all of us through the taxes we pay.

So, this morning, we have an opportunity to take the first step forward.

PANEL I

LEGAL PRINCIPLES: LIABILITIES AND RESPONSIBILITIES





## Landowner's Liability

Steven Hisaka, Partner  
Robbins, Reilly & Hisaka, A Law Corporation

Most of you are here because of concern over potential liability as a result of injuries or damages to guests, visitors, customers, etc., who may be on your property or in the ocean adjacent to your property. Although some of what will be discussed here today will have applicability to injuries and accidents which occur on dry land, such as slips-and-falls, trips-and-falls, and pool accidents, our focus will not be on situations or accidents which occur on land. Our discussion today will be limited to those situations which result in accidents or injuries in the ocean and surf.

Let me also preface my remarks with the statement that although my discussions will be about hotels, most of what I have to say will have applicability to other groups who are here such as representatives of the various governmental agencies, tour groups, and beach concessions.

The reason why I will be discussing lawsuits is that I am unaware of any statutes, ordinances, or regulations, either at the city and county or state levels, which have specific application to the liability of a hotel to guests injured on the premises. Where there is no statute on point, the courts look to the Hawaii Supreme Court, the Intermediate Court of Appeals, and other courts to determine the law. There is a section under our Hawaii Revised Statutes, Chapter 486-K, which abrogates a hotel's common law liability as an insurer of its guests' personal property. This addresses the hotel's liability for personal property and not the hotel's legal responsibility for the safety of its guests. There are county ordinances which govern registration of guests but we could find nothing else directly on point.

Hawaii does have another statute, Chapter 520 of the Hawaii Revised Statutes, known as the "Landowners Liability Statute," which provides limited immunity to landowners who open their property for recreational use. This particular statute only applies to those landowners who do not charge a fee to the people using the property. I am unaware of this statute being applied to a hotel. I assume that the reason is that a hotel charges its guests for the use of their rooms and, therefore, probably makes it inapplicable. I do not know if the statute has been successfully argued on behalf of any governmental body.

Hawaii has joined the ranks of the progressive states and abolished the old common law distinctions between licensees and invitees and the legal liability of the landowner to them.<sup>1</sup>

Traditionally, the law considered that there were three classes of people who entered another person's property: trespassers, licensees, and invitees. The trespasser was owed the least duty by the landowner. The licensee, someone who entered the property with the permission of the landowner, but for his own purposes, was owed a higher duty: such as warning of known dangerous conditions or the obviation of their risk. The last class was the invitees or guests. The landowner owed these people the highest duty of care of the three classes. The landowner was liable to the invitee if he knew, or in the exercise of reasonable care should have known, of the existence of dangerous conditions.

Very briefly, I would like to summarize the various cases so that you will appreciate how the law was made and how the cases and their interpretation can affect the landowner. Now I am going to do as all lawyers have been known to do and that is talk about something that I said I would not talk about, that is, accidents which occur on the land. The reason why I must address these types of accidents is to give you an understanding of the law. Unfortunately, the law does not always work the way we would like it. One of these situations is the development of law concerning the landowners responsibility to people who are injured in the surf or ocean. The law in this area has developed from lawsuits involving accidents on land. These lawsuits have created a body of law which has applicability to ocean-related accidents. So please bear with me while I take you through a short history of the development of the law.

In Pickard vs. the City & County of Honolulu, a 1969 case, the plaintiff fell through a hole in the floor of a county courthouse restroom. The plaintiff argued that the defendant, the City and County of Honolulu, failed to exercise ordinary care in maintaining the premises and in providing adequate warning of the hole. The defendant argued that it did not owe a duty, i.e., to exercise ordinary care, to a mere licensee. The Supreme Court of Hawaii stated:

---

<sup>1</sup>Pickard vs. City and County, 51 H 134, 452 P.2d 445 (1969); Gibo vs. City and County, 51 H 299, 459 P.2d 198 (1969); Tarshis vs. Lahaina Investment Corp., 480 F.2d 1019 (9th Cir. 1973); Friedrich vs. D.O.T., 60 H 32, 586 P.2d 1037 (1978); Harris vs. State, HA, 623 P.2d 446 (1981); Kaczmarczyk vs. City, 65 H       , No 7191 (12-28-82); Littleton vs. State, 66 H 56, No. 7232 (12-30-82).

We believe that the common law distinctions between classes of persons have no logical relationship to the exercise of reasonable care for the safety of others. We therefore hold that an occupier of land has a duty to use reasonable care for the safety of all persons reasonably anticipated to be up on the premises, regardless of the legal status of the individual. At page 135.

The next case following Pickard was Gibo vs. The City & County. In this case, the plaintiff slipped and fell while at a city hospital. The plaintiff was on the premises to identify the body of his deceased son. The Hawaii Supreme Court interpreted Pickard as eliminating the common law distinctions between licensees and invitees.

Tarshis vs. Lahaina Investment Corp. was the next case chronologically and is the first real case involving an injury in the ocean. The Tarshis case involved a hotel and was a lawsuit in Federal Court. The plaintiff, who was a guest of the hotel, was injured while swimming in the ocean adjoining the hotel's property. Without referring to the Hawaii Supreme Court decisions, the Ninth Circuit Court of Appeals reversed and remanded on the grounds that the plaintiff was entitled to present her theory of the defendant's negligence to a trier of fact. The court also stated that the hotel owned a duty to warn its guests of dangers which reasonably prudent persons would not be aware of or discover on their own.

Friedrich vs. D.O.T. involved a situation where the plaintiff slipped and fell from a state-owned pier into the water, injuring himself. The Hawaii Supreme Court agreed that the plaintiff realized or should have realized that the risk of falling from the pier was an obvious danger. The court cited the Restatement (Second) of Torts Section 343A (1965):

The duty of care which the State, as an occupier of the premises, owed to appellant traditionally does not require the elimination of known or obvious hazards which appellant would reasonably be expected to avoid.  
At page 36.

The court then found two exceptions to the general rule. The first is where the danger which is obvious under optimum conditions are excusably overlooked. The second is where the obvious danger could not readily be avoided. However, the court found that these were not applicable to the Friedrich case.

In Harris vs State of Hawaii, the plaintiff slipped and fell twice while a patient at a state hospital. In this case, the Hawaii Intermediate Court of Appeals found that the owner of the land is not an insurer of the safety of people who come onto the land.

To support recovery in an action where an owner or occupant is charged with negligence, it must be shown that the owner or occupant knows or should have known of the hazard or defect which caused the injury. Liability cannot be imposed where a landlord or an owner or occupant of the premises has not been put on actual or constructive notice of the unsafe condition or defect that causes plaintiff injury. Further, negligence law does not require an owner to be an insurer against all accidents that occur on the premises. Generally, no liability is incurred for every "trivial departure from perfection." At page 448.

Kaczmarczyk vs. The City & County is another case involving a person who was swimming in the ocean and disappeared while swimming. The Supreme Court, although following Tarshis, held that the plaintiffs were entitled to present evidence on the issue whether the city was negligent in failing to warn the decedent of "extremely dangerous conditions which were not readily apparent to persons of ordinary intelligence."

The Littleton case, involves a plaintiff who was injured by a log floating in the ocean while the plaintiff was picking seaweed at a state park. The Hawaii Supreme Court, again citing the Tarshis and the Friedrich cases, stated that the city was required to exercise reasonable care for the Plaintiff's safety or, at the very least, the city was then "under duty to warn the plaintiff of dangerous conditions which were not known to her or obvious to persons of ordinary intelligence, which were either known or in the exercise of reasonable care ought to have been known to the city."

The most recent case is one that applies specifically to a hotel and its obligation to a guest, Bidar vs. Amfac Inc. No. 8587 Hawaii Intermediate Court of Appeals (1982). This case involved a guest of the hotel who was injured while using the toilet in her hotel room. When she attempted to rise from the toilet she grabbed a towel rack which broke under her weight causing her to fall and injure herself. Aside from its humorous aspects, this case reasserts the law that the hotel has an obligation to maintain the room in a reasonably safe condition for use of the guests.

All of these cases, including those involving accidents on dry land as well as those in the ocean, indicate that the landowner has a similar duty. The duty applies even though the adjacent landowner doesn't own the beach on which the accident took place. As most of you know, the State of Hawaii owns all of the beaches in the state. So even though you don't own the beach and cannot exercise any real control over who uses the beach, you may have liability.

Now let me give you two types of situations which show what can happen when a landowner tries to protect people who are entering the ocean on or adjacent to his property. The first involves a situation where the landowner provides trained lifeguards. While the lifeguards are on duty, someone drowns. The deceased's family files a lawsuit and claims that the lifeguard was negligent in that he was not being attentive. As a result, the deceased drowned. The second situation is where the landowner does not have any lifeguards but posts signs warning of dangerous conditions in the ocean. A young man goes to the beach, apparently sees the sign, and yet elects to enter the ocean anyway. He drowns and his family files suit against the landowner for failing to provide an adequate warning. These are two factual situations. The first has gone to trial and the jury found that the landowner was liable. The second will be going to trial shortly.

What these two cases mean is that if the landowner hires a lifeguard and someone is injured in the ocean, the landowner may be sued if the lifeguard was negligent. If the landowner elects not to hire lifeguards and simply put warning signs up, he may still be sued over the adequacy of the signs. Now if the landowner does nothing, as in the Tarsis case, the landowner may be sued since the Federal Court found that the landowner had a duty to warn. So according to Tarsis, even though the hotel did not own the beach, it still had a duty to warn its guests using the adjacent beach.

Now that I have told you how difficult the situation can be, I am not, contrary to what you might hope, going to give you the answer on how to cope with these problems. I believe that is a topic of discussion for the future where many more brains than I have can be brought to bear on the subject.

I have asked Mr. Robert Henry, a businessman like many of you, to briefly discuss some methods that he has used to address these problems. Now, Bob isn't here because he or I are saying that if you do these things you will have immunity from lawsuits. He is here to simply share his responses to the problems from a businessman's standpoint. Some of what he has to say may not apply to anyone else simply because of the nature of his business. However, you may hear some principles that can assist you.

Thank you for your kind attention.

**Some Suggestions for Protection Against Liability:  
A Private Sector View**

Robert Henry  
Owner-Operator  
Wailea Water Sports and Alii Sports

My talk will underscore the implications of some of the things that Steve was talking about. About two years ago there was a lawsuit in Wailea on the island of Maui. A man went out boogie-boarding on a board that he had rented from one of the concessions in the area and was injured. Fortunately it wasn't my concession! The injury was a broken neck and the man became a parapalegic. The suit he instituted named the County of Maui, as well as the hotel and the concessionaire, asking for about ten million dollars. At that point, I realized that what we're dealing with is a very serious problem and something that can continuously pop up on a daily basis on Maui (where my business is located) as well as throughout the rest of the islands.

I've been involved in the recreation programs on the island of Maui, in two businesses on hotel properties in Wailea at the Inter-Continental Maui and in Kaanapali. I was the director of recreation at Hyatt Regency Maui and we also had a smaller recreation program at the Kaanapali Alii Hotel. So we're dealing on a daily basis with tourists who come to Maui, and I'd like to say a few words about the types of individuals that come to Maui and their relation to the environment. They come from every country and every walk of life. They have all been exposed to the tremendous marketing job that we've done in Hawaii. The photographs of windsurfers and people that jump waves and go scuba-diving certainly market very actively a profile of water sports where an individual can have a good time and fun. And I think that the average person that comes here is convinced that when he arrives he is going to take part in all these exciting things. So, right away, when the person comes here and walks into the Hyatt Regency Maui or any hotel, he's looking at participating in a number of these sports that are considered active. To give you an idea of the scope of the program in one hotel alone, people spend over \$1,500,000 a year on recreational activities that are directly related to the hotel property. So, there is a tremendous demand for this type of activity.

When I became concerned about the potential liability I contacted a few people. One of these persons was a product-liability lawyer. His name is Rick Scripter, a very successful lawyer from Michigan, who's made a living by looking at liability situations and representing clients who have been injured by products or by property situations. So, as a property owner, I hired someone who's really an expert in the reverse role of someone who's trying to sue a property owner or a product manufacturer. And I felt that in that thinking, he would look at our situation and the water sports business from a different angle

rather than just looking at it from the standpoint of protection. He'd be looking at how he would go about suing a business, such as a hotel or a beach concession.

The second person I dealt with was Robert Duty, who is the director of risk management at the corporate level of the Hyatt Hotels. And over a period of about three or four months, I began to develop some ideas as to how we could defend ourselves as well as develop an adequate response to the responsibility that we had as operators.

Rick Scriptor looked at my business operations as a customer and examined all facets of the business. I, then, asked him what he thought my vulnerability was to a lawsuit and he talked for about half an hour on exactly how he would go about suing my business. Needless to say, I wrote him a check for his fee the same day!

We began to develop a program where we take responsibility for providing safety advice to the people that we do business with. The key area that we focused on in the business end of water sports was the transaction that occurs between a guest of the hotel, or an invitee of the hotel, and our personnel in either renting a set of fins, a sailboat, a windsurfer, or in signing someone up for a scuba-dive. In that transaction the key is, well-trained and educated personnel who are providing "warnings," a word that Steve Hisaka mentioned many, many times. And so, what we're trying to come up with is, what constitutes an "effective warning."

At this time, I'm going to pass around two things that we use very heavily in our business. One is called, "Water Sports Warnings" (Appendix A). This is a sheet that was developed by about fifteen of our employees who are scuba instructors, windsurfing instructors, diving instructors, sailing instructors, and lifeguards. What we did is to distill basic common knowledge. Most of the items are things that probably all of you in this room have heard at one time or another. We put them on paper and we made them a part of our warning program. The second item is a voucher that we use when we rent equipment to people (Appendix B). On the back of the voucher, we have a participatory arrangement with the person who rents a piece of equipment, such as a boogie board or snorkeling equipment. I'd like to take a few minutes and go through these two items.

The "Water Sports Warnings" is one of the results of the consultation with Rick Scriptor. As a liability attorney, he put me into a courtroom three years from now, in a situation where a person that worked for me was no longer employed, where there was no record of the transaction that occurred, and I'm up on the witness stand with a tough attorney cross-examining me. What am I going to do to defend myself? In that situation, the mechanism that we came up with was the voucher. If you turn to the back of

the voucher, WARNING is printed in large letters. "Read carefully. This is a Contract." And following that is "legalese" for about four or five paragraphs of "Lessor-Lessee" relationships. But, the main thing in any type of situation, and I'm sure the rental car companies are also well aware of this because they all have boxes that people have to initial and check, is at the bottom part of the form. It says,

I understand that water sports can be dangerous. I acknowledge that I have received a copy of "Water Sports Warnings," advising me of specific hazards that may from time to time exist.

There's a little box which they check and initial. They also check and initial two other statements.

I understand that I am fully responsible for any equipment leased to me. I attest that I am in good physical condition and can swim with the skill of the appropriate activities that I am engaging in.

So what you have is a participatory arrangement. The person who is involved in the transaction with the guests goes through a series of explanations that summarize what's said in legalese and the lessor initials the three particular items noted above.

Now, more than anything else, what this procedure does is to force the employees who are involved in the beach areas to recognize their responsibility to the guests. When I had the attorney come in to talk to my employees, the response I got was incredible. The employees were really not aware, in most cases, of their obligation to give adequate warnings to people who were unaware of potential dangers that could exist. And one of the points that the attorney made to me is that in a case involving a farmer from Iowa almost any condition in Hawaii would be dangerous from a legal standpoint. Therefore, in each situation, you'd almost have to treat the lessors as if they had no specific knowledge of any item listed in the "Water Sports Warnings." While the warnings may be common knowledge to people that live in Hawaii and participate in water sports, such warnings are new information to tourists.

The other thing which is of considerable importance is, if the person enters this transaction as a minor and he uses the equipment owned by a hotel or a beach concession and there's no consent by a parent, you have a very heavy liability situation. So, I would say that in most of the businesses that I was involved with prior to getting Rick Scriptor to look at the way I transacted my business, my typical transaction was: you want a boogie board, here, take it, go out and use it; you want a set of snorkeling equipment, same process would apply. There was no care taken in those transactions as to just how they were done.



If you look at the "Water Sports Warnings," I won't go into them in detail, we point out that no one should swim, snorkel, or dive alone. Almost everyone can recall personal incidents where somebody did one of the things that's on the warning list and got severely injured or hurt. So, the warnings have been written in blood. I'm continuing to revise the items as I get new information. But the key word is "warnings," and the more we can do as operators to give people effective warnings the better. Warnings are educational processes. I feel that through effective warnings, we can prevent probably 70 to 80 percent of all potential accidents. And the warnings occur on a very personal level. They are not in the form that you develop, nor are they all based on legality alone. What is needed is to make employees aware of their responsibilities on a day-to-day basis. At the Hyatt for example, they have fifty employees on the recreational staff. And these employees are interacting with as many as sixteen hundred guests on the property at any one time. I think that it's through that personal contact that education and awareness of safety and the real warning process come in. The key to my approach is education of the employees so they can educate the guests.

For example, there's no uniform standards at the present time as to what constitutes dangerous surf conditions, something that I've talked about at length. Let's say that we have a responsibility to put up a red flag or a warning flag -- when exactly does that flag get put up? Does it get put up when the surf is 3 feet, or 4 feet, or 5 feet? What constitutes dangerous conditions? I think that's certainly an area that has some merit for future review by the Sea Grant Program and other agencies.

## Questions and Answers

S. Hisaka. One of the areas to be examined in the future is to look at what Bob just mentioned, that is, to look at warning signs. There could be some standardization across the board as to what type of warning sign is appropriate for particular situations. The appropriateness of the language used is important, as attested to by many lawsuits. If a person puts up a warning sign, the question would be, is that an adequate warning sign? So I think what Bob has said is an excellent suggestion. We hope further work can be done on it. I would like to make a few comments before taking some questions. I think you'll all agree that Bob has done an excellent job on the forms that he has developed. He's probably done more than most other concessionaires. However, that's not to say that this will provide him immunity from lawsuits. There's always room for lawsuits. For example, one thing that could be said of Bob's form is, "Boy, this is awfully small print." You may laugh, but it is, as a matter of fact, an argument produced many times to throw out a contract.

Another is something that we hope to discuss later this morning, the language in which warnings are given. In Hawaii, we have people from all over the world. At what point does the duty of the businessman end? Does he have to produce forms in four different languages? And if he doesn't write it in four different languages, is he negligent in some way? What about a situation where a person from some small country in Southeast Asia or Africa is a visitor here. The issue is going to be does he/she understand the warning or should the warning have been written in the language of that country? So I think that there are a lot of areas that need to be addressed, but we do not have enough time this morning. Now, maybe we could take just a few minutes for questions, if there are any, and if you want to ask us off the record or during the break you may do so. Any questions?

Question. I'll ask one. You made a comment that there is no legislation. Would it be wise for the landowners or the hotels to try and put something in the statutes that is a little clearer in providing the business operators immunity or limited immunity or limited liability? Is that a direction that should be considered?

S. Hisaka. I will say, yes, I have done some work myself in that particular area. I have no connection or knowledge of any state legislator, who has a great deal of interest in this area, although I'm sure there would be interest in the subject. Anyone who may have had some adverse judgement rendered against him as a landowner would have an interest in legislation. My own experience, however, is that you as an individual need to take a united effort. Yes, I think the legislative route is one alternative that has not yet been looked at adequately.

R. Henry. Let me just comment on that briefly. If you go down the same highway, there's standardization: every stop sign is the same and there is uniformity in every speed limit sign and traffic lights. And I think that same kind of uniformity is needed for ocean warnings. I don't think there's any standardization, correct me if I'm wrong, in marine warning signs, or flags, or anything that exists in the warning process in Hawaii.

S. Hisaka. I think Bob has gotten into another area where there should be some legislation, either at the county level or at the state level to standardize warning signs.

Question. Do you have the language of that statute regarding immunity?

S. Hisaka. No, I did not make a copy of it. I have studied that particular statute in detail as one particular statute that I looked at to provide greater flexibility. The problem I had, to be very honest with you, is that you cannot create a situation where you provide so much immunity for protection of the landowner that the person who is injured does not have a remedy where it's appropriate. The difficulty is drawing the lines and I think my own personal standpoint is that I would like to draw the line a little further to protect the hotels or beach concessions, simply because among them are my clients.



**PANEL II**

**WATER SAFETY STANDARDS: CURRENT PRACTICES**



## Water Safety

Ralph Goto  
Water Safety Director  
Department of Parks and Recreation  
City and County of Honolulu

Before I present my prepared material, I'd like to talk about the difference in responsibility between a government agency and a private operation such as the one that was described in the previous panel. Government agencies, such as the City and County of Honolulu Department of Parks and Recreation, are in the business of serving the public. I am very impressed with the handouts and the warnings that are given to a select group of people that are staying at a hotel, the hotel guests. I think that the difference between our problem and the problem that's faced by a private corporation is that government agencies cannot afford to hand out individual warnings to every beach user who comes down to the beach. We average 18 to 20 million users annually on the island of Oahu at beach parks that are guarded by city guards. We have a staff of 120 lifeguards, and on any given day we have 50 people out. While we share the same kind of concern as private enterprises, the difference is that we have the general public to deal with.

With that as background, I am going to talk about water safety standards in general and existing water safety standards in particular. Black's Law Dictionary defines standards as stability, general recognition in conformity to established practice, and a type, model, or combination of elements accepted as correct or perfect. Further, Black's defines standard care, as the degree of care which a reasonably prudent person would exercise under the same or similar circumstances. We take these definitions and try to discuss this general topic of water safety standards. When we do that a few things come to mind.

First, who are the experts and who are the people that develop these water safety standards? Second, once the standards are developed, through what process are they accepted, rejected, ignored, or implemented? And third, who's charged with the responsibility of enforcing the standards? Do we wait until a decision is made through our judicial system, i.e., by a jury or a judge, to realize what a standard of "reasonable care" means? My contention this morning is, no. I think that all of us are collectively responsible to define and develop standards whether we are "water safety experts," or just concerned individuals. We're all involved in the process of acceptance and rejection of the standards and that alternately we're all responsible, if we're going to change those standards. If you're an administrator of a program, a pool manager, an attorney, someone involved in the visitor industry, someone involved with the legislature,

or the city council, you're involved. Whether you are an individual lifeguard, dive shop operator, an executive officer, or just a concerned person, you're involved.

The common concern is the prevention of death, injury, and suffering resulting from injuries that can and are occurring. The loss of a life is a tragedy. But the loss of a life that could have been prevented by adhering to established standards is even more tragic. I make the point because you may have come here this morning hoping to learn something from the experts. I honestly do not purport to be more of an expert in all areas of water safety than any of you are.

I'd like to refer to some people who are sitting in the room. John Clark has written some excellent books about the beaches of the islands of Maui, Oahu, and Hawaii. A colleague, Alan Hong, is an expert scuba instructor. We have some lifeguard supervisors here this morning who have probably forgotten more about lifeguarding in their years as lifeguards on the beach, than I've ever known. I do know enough, however, to consult with the people who are intelligent and have that knowledge in their areas of expertise when I need to make a decision regarding the operation of beach lifeguards on Oahu. I think what we've learned in the past three years is that we cannot respond to every situation as a crisis. I think that the establishment of sound principles and sound policies is better than to react to each individual case as an individual judgment brought down through the courts. That brings us back to the subject of standards.

In the operation that I have the responsibility of administering, our standards are most clearly defined in the recruitment and training of beach lifeguards. All applicants must possess a valid certificate in lifesaving and first aid. They must pass a rigorous physical examination administered by the city physician. Once they get through that hurdle, they take a performance test which requires them to swim 1,000 m under a certain time, paddle 400 m on a rescue board, and pass a run-swim-run event.

These standards that applicants are required to meet are based on national criteria. We have certification requirements established by the Red Cross, a nationally recognized agency, in lifesaving and first aid. The standards that were developed by the city physician and the city health department are standards that each city employee has to meet. And the physical requirements that we set, in terms of the swim and the other tests, are standards that have been developed as a result of our experiences. Each standard has its purpose and justification: standards are not arbitrarily pulled out of the air and included because we were faced with a problem. Let me elaborate a bit on our existing standards.



Life saving and first aid certificates show that the applicant possesses at least basic minimum knowledge and skills in lifesaving and emergency care. The physical examination screens out many people who might have a condition that would prevent them from doing the job of a lifeguard. If a person has a back problem, or a vision problem, or a weight problem, we certainly do not want them out on the beach as a lifeguard. The very nature of lifeguarding places some extreme limits on a person's mental and physical capacities. That's the reason for having physical exams. The performance test measures proficiency swimming, paddling, and running -- the obvious and most common requirements in beach lifeguarding.

When a person meets the minimum, he or she gets placed into an extensive training program which now runs about 80 to 100 hours. Emergency medical training is also a part of the program because lifeguards are often first responders in a beach accident. The training program includes certification in CPR which meets nationally established standards. The CPR standards in our operation were established by the American Heart Association. In addition to meeting certification requirements, lifeguard training includes knowledge of rules and regulations. Furthermore, we talk about the ocean environment and we discuss and practice the use of equipment. The training course culminates with on-the-job training when the trainee goes on the beach with an experienced guard. Once training is completed, the new lifeguard is issued a uniform and is put on the work schedule. As you can see, no one is sent out to the beach as a lifeguard until he/she meets what we consider to be pretty rigorous standards.

We've also had the opportunity to compare our training program with other agencies on the mainland and have found that, in terms of the medical care and other areas involved in surf rescue, our program is an outstanding one. Lifeguards are expected to perform their duties in line with a reasonable standard of care. And that reasonable standard of care is something that you're going to hear about this morning, and it's something that we all need to be concerned about. A "reasonable standard of care" in this context means that the lifeguard is competent and that he/she is qualified to perform his/her duties.

We have established a list of duties and responsibilities for people that hope to be lifeguards. In addition to skills as swimmers it may be reasonably assumed, and I'm quoting from an opinion rendered by the court,

. . . that a qualified lifeguard is one who has at least ordinary powers of observation, who is vigilant, and attentive to duty, and who realizes that he should be watchful for any signs of distress or danger, and quick to render assistance.

Our pre-service and in-service training programs and re-certification sessions are delivered with "reasonable standard" in mind. It is the responsibility of our training unit to maintain records of everyone's certification. I think that you can understand the reason for having that kind of training.

As far as duties and responsibilities are concerned, there are some questions as to where we should turn to. I've raised questions, not only to our city corporation counsel, but to other people who might know. Where does one turn to find existing standards? Are there standards for ocean lifeguards?

The Red Cross has just developed a lifeguarding program and will be certifying people in lifeguarding, as opposed to the life-saving type of training that is presently in existence. There are other programs, such as the YMCA lifeguarding program, but these programs primarily deal with lifeguarding in pools and still-water situations. The only nationally recognized agency that we are aware of that has developed surf lifesaving or open-water standards is an organization called, "The United States Life Saving Association." The USLSA has a textbook on the subject that was just released last year. We have copies of it here for your information.

Another question which was discussed this morning: How do you determine whether or not to surf? When is a surf dangerous? When are currents dangerous? These are areas addressed in the textbook I mentioned. The book is available for you to look at today and we're happy to share that with you.

As far as operating procedures go, I think every agency has its own set. I know that in our department, the City and County of Honolulu Department of Parks and Recreation, we have implemented water safety procedures and standards, which were needed in our operation. Hopefully they can be used to protect us from liability suits. In emergency cases, when something actually happens on the beach or in the water, we have established procedures that lifeguards follow. Such procedures are important for any agency, whether it be a lifeguarding agency or an agency concerned with public safety. Overall, the caliber and quality of our people are high. We're constantly working to upgrade that quality.

The water safety standards that have been implemented by the City and County Parks and Recreation govern any activity involving park employees who take people to the beach or near the water. These standards include ratios, that is, how many students or participants per lifeguard. Recommended or desirable levels of certification are also included. We feel that if a group of participants, including children, are going to be taken into the water, the leader of that group needs to meet some certification requirements. In addition to certification requirements, our standards include types of equipment and directions on how they can be used to prevent an emergency.

One of the other existing standards that we are aware of is that put together by the Red Cross. They are probably the best nationally-known organization in terms of water safety. We'd also like to make people aware of the YMCA certification program which is nationally recognized. The Council for National Cooperation in Aquatics (CNCA), which is a kind of an umbrella agency that brings aquatic-related groups together, also sets some standards. I know that they have issued a statement on pre-school swimming. The United States Life Saving Association (USLSA), is the only agency that I know of that has developed standards not only for lifeguarding, but for the operation of an open-water facility.

A very important problem area pertains to warning signs. Warning signs are a very sensitive problem to me personally as well as professionally. If you have been to the beach recently, I think that you are well aware of the type of signs that the city and county has on the beaches. To give you an example, in the Waikiki area when Portuguese man-of-war (jellyfish) come into the area, lifeguards post warning signs on the beach. We've even gone so far as to get the signs translated and printed in Japanese. What I'm concerned about is that unless some universally known signs are developed, we may need to have signs printed in other languages. The question is, in how many languages do we need to have signs posted? Carried to extreme, there's going to be so many signs on the beach that you literally are not going to be able to put your towel down and enjoy the beach for the original reason you went there. To alleviate this problem, we are looking at international symbols. For example, the USLSA has a set of internationally accepted water safety symbols. And those, incidentally, were developed in consultation with the United States National Parks Service. We have copies of those signs. I think this is something we can pursue in future discussions.

Another area of concern in our operation is the topic called "risk management" as opposed to "crisis reaction." Which means that you're not making all of your decisions as a reaction to emergencies. There are cities across the country that have risk management departments. Risk managers, who may or may not be attorneys (I know of an agency that uses insurance adjusters), do inventories of facilities and areas under the control of corporations to identify potential risk conditions and take measures, primarily in forms of warnings, to prevent an accident from happening. Unfortunately, we can't afford to reach everyone who uses beach facilities. We have to look at ways through which we can reach the most people who come down to the beach.

In one of the cases that Mr. Hisaka referred to, the issue was a warning sign. On the particular day in question, the warning sign was posted and people that testified said that the person involved did see the warning sign, but they did not know whether or not he read it. Someone suggested that we have to raise our signs up higher. Our maintenance people, however, told me if we posted signs up higher, people will run into them. So

it's a real problem. I think that this is something that we need to discuss. I know that you folks at the pool have the same kind of problem. Do we have to post signs on every square inch of the pool or along the fence to warn people? Prevention is the overriding principle which needs to be established, but the question is how do we put the principle to work?

I could continue discussing other details of our operation, but I've given you enough information for you to get a general idea of what we're trying to do as a public service organization. We cannot continue to take every incident on an individual basis and react to it. Having established water safety standards will provide policy which can be used to make sure that your operation falls within the limits of that policy.

In summary, we all play an important role in the development and implementation of standards, just by attending seminars such as this. Incidentally, we're really pleased to see so many of you here this morning, we did not expect to see this number of people. But, by attending conferences and through research and analysis, I think we increase our knowledge and at least can come to some intelligent decisions, rather than emotional ones. In our day to day jobs and responsibilities, I think that each one of us makes important contributions to the development of the standards.

## User Conflict

Ian Birnie  
Boating Branch Manager, Harbors Division  
Department of Transportation  
State of Hawaii

I've been asked to present "user conflicts" in beaches and nearshore waters. But before getting into my subject area, I'd like to make a few comments on lifeguard training. I'm very impressed with the training lifeguards receive today. When I was in college on the mainland, because I was from Hawaii, I was asked to be a lifeguard. There was no physical qualification. My being from Hawaii appeared to be the only qualification that was required.

First, I'd like to cover our areas of jurisdiction. We're responsible for boating on the navigable waters of the state. We share this jurisdiction with the Coast Guard. There is a set of rules, formulated under Hawaii Administrative Rules and authorized by our state laws, the Hawaii Revised Statutes, governing boating. These rules govern registration of boats, safety-related items, equipment, speed, and wake and wash restrictions, which are reasonable and prudent for existing conditions. The rules also designate areas in which vessels are restricted. Our basic charter is to promote the full use and enjoyment of the waters of the state, the safety of persons and protection of the property as related to the use of the waters, and a reasonable uniformity with and implementation of federal rules and regulations.

We are also responsible for sets of rules governing state harbors. One of these sets governs the use of small boat harbors; another set governs the use of our commercial harbors. Basically, we're responsible, in the boating branch, for Ala Wai, Keeki, Waianae, Haleiwa, and Heeia-Kea small boat harbors. Our basic charter, provides rules to manage facilities for those actively engaged in transportation across the water and the landing of fish, and stipulates requirements for use of state harbors. Another set of rules governs the inshore waters of the state, including waters off Waikiki, Kailua, Makapuu, Point Panic, etc. Our charter is to further the interest, welfare, and safety of the public. For example, we have banned power vessels from the nearshore waters off Waikiki and we have provisions for licensing catamarans and canoes and their operators and surfing instructors who teach tourists in Waikiki.

There is a set of rules for Waikiki Beach itself. This differs from the nearshore water rules, because we are governed by a covenant entered into in 1928 by the Territorial Board of Harbor Commissioners and the beachfront property owners which provides that, whenever there is an easement in favor of the public, the Harbors Division has jurisdiction 75 feet inland from the high

water mark. All other state beaches are governed by the Department of Land and Natural Resources from the high water mark to the "vegetation line." In areas where there is an easement, basically in front of the hotels, we were under the impression, until a couple of court cases recently, that we had jurisdiction from Fort DeRussy to the Elks Club. There has been a ruling in the last couple of years that we only have jurisdiction from Fort DeRussy to the Elks Club. The Department of Land and Natural Resources has jurisdiction over some of the remaining areas and the City and County has jurisdiction over other areas. And, of course, Honolulu Police Department officers are entitled to, or are authorized, to respect and enforce the rules anywhere in their jurisdiction.

Our charter for Waikiki Beach -- not the water, but the beach itself -- also charges us to keep it free and clear of business activities and obstructions and open for the use of the public as a bathing beach and for passing along on foot. Nonetheless, there are concessions on Waikiki Beach. These concessions on the beach area are either at Fort DeRussy or the Hilton Hawaiian Village Hotel. They were granted permits by the Department of Land and Natural Resources (DLNR).

We had a beach "sweep," a couple of years ago, where we went down to the Waikiki Beach shoreline area with teams comprised of city and county parks police, Honolulu police officers, DLNR enforcement officers, and our own enforcement officers, to decide exactly who had jurisdiction over what area. It's a jurisdictional nightmare. Public domain, is from the highwater mark to the vegetation line and the public does have access to all beaches. The Department of Land and Natural Resources as I mentioned earlier, has jurisdiction over beaches. They also have jurisdiction over the land beneath the surface of the water; whereas, Harbors has jurisdiction over the surface.

With this background, let's get into the user conflicts that we have on Oahu. Ala Moana Beach Park has conflicts between swimmers and canoers. We do have one area that is designated for rowers and canoers. The canoe club that principally uses that area has been moved around five or six times. They are finally located down at the Ewa (west) end of Ala Moana Beach Park. And they do get rambunctious at times and leave their area a bit and get in the way of swimmers. But, then, there are also swimmers who deliberately provoke confrontation by swimming into the canoe area. Canoers call us up and complain about the swimmers. Unfortunately, we get called to mediate this situation, that is, to inform the public that there is a boundary which divides the area so that only canoes are allowed on one side and only swimmers on the other side. The last thing we want to do is put more signs up on the beach or in the water. In the canoers-swimmers conflict, those involved are local people who are, or should be, informed of the issues, but are unwilling to compromise or to give in. This is definitely not a tourist-local conflict.

At Point Panic, we recently passed a rule that banned surfboards from the area. For those of you who aren't familiar with the area, it's the Ewa (west) side of the Kewalo Channel, an area that has been used for body surfing for a long time. When we generate a rule that stipulates exclusive use, we have to go through a public meeting and public hearing process. We did take a lot of testimony and we decided that it was for the good of the body surfers to have one area that they are allowed to use without boards cutting them up. We have something like 38 surf breaks off Waikiki, but no area set aside for body surfers.

There are only a few conflicts in the Keehi area, an area on the Diamond Head side of the Kalihi Channel between Sand Island and Mokauea Island. We recently have had a rash of people who wish to live aboard their boats. They don't want to live in the Ala Wai Yacht Harbor or can't get a slip there, so they are down in Keehi, anchored all over the place in what traditionally has been a power boat and waterskiing area.

At Pokai Bay, we have an area set aside for canoers. We closed the launching ramp there and removed all pilings and moorings in the bay. We do allow its use as a harbor of refuge or for vessels to moor for 72 hours, but no longer. There is an area set aside for canoes and one for swimming. A situation similar to Ala Moana exists at Pokai Bay where canoes sometimes leave their designated area and create a boat-and-people confrontation. Here again, the problem involves only local people because this not a tourist-oriented area. We complied with the wishes of the local population when we generated the rules.

Not too many conflicts occur in Haleiwa on the north shore. However, at Kahana Bay there are different types of fishermen and a unique law involving "konohiki" rights, which prevail from ancient Hawaiian tradition. Many fishermen feel they have the right to fish there commercially and disrupt that area. The Harbors Division would like to expand the breakwater and provide a safer haven for boats there, but there are activists who don't want us to do that. The launch ramp was built for 16-foot outboards and now outboards of about 28 feet are being launched there, creating a dangerous situation. The fishermen want us to expand the ramps. But others don't want any expansion or any further encroachment and increased usage of the bay. This scenario also applies to the launch ramps at Kualoa.

An increase in commercial activity among charter boats, both sail and power, has occurred in Kaneohe Bay. There are several proposals for the commercial use of the sandbar, which is traditionally a water skiing area. At present, there are no rules governing this area and we're not sure which way to go. The Harbors Division will certainly be open to public input.

Kailua Bay has many, many user conflicts. There are power boats, windsurfers, hobie and prindle catamarans which use the launch ramp there. People swim out to Flat Island everyday for

exercise or practice for the many triathlons and there are others who snorkle. In addition, there are surfers off one side of Flat Island. Three areas in Kailua Bay are restricted to specific activities. Two are down in the Kalama area for bodysurfing. Boogie boards or surfboards are not allowed there. A third restricted area is designated only for swimming at Kailua Beach Park. The city and county has recently granted commercial permits for windsurfing instruction at Kailua Beach Park. They're supposed to be on the north side, or the Kaneohe end, of the designated swimming area. We have buoys designating the swimming area and they initially had the proper international markings on them banning boats and vessels. We're in the process of repainting the four existing buoys and deploying seven new buoys with international markings. In addition, we'll have a little flag or sign on the buoy which states "Swimming area only- No boating." This designated area was established in keeping with the wishes of the local people.

At Makapuu, the conflicts are between body surfers and board surfers. These conflicts with the surfboards are of fairly recent origin and are related to the advent of small light fiberglass boards and leash. The leash enables a person to lose his board on a wave and keep it within 3 feet, whereas, years ago, if you lost your board you might have to swim a couple hundred yards to retrieve it or it would be tossed upon the rocks. We have an unwritten rule that when the lifeguards aren't on duty, the kids from Waimanalo can board-surf. When the lifeguards are on duty, it's restricted to bodysurfing only.

When it comes to Makapuu (I grew up bodysurfing down there and at Sandy Beach), it's common knowledge to anyone who grew up here that it's dangerous. We heard a lot of common sense, common knowledge, and common law talked earlier this morning. Common sense dictates that a beach with a rip tide is dangerous. And yet, there are people who go to Makapuu and get injured or lose their life there in spite of warning signs.

We have some user conflicts in Maunalua Bay. We are trying now, on an experimental basis, to allow a commercial jetski operation. It's not a good sunbathing beach and the uses there traditionally have been for fishing boats, a few net fishermen inshore who have had to contend with a lot of waterskiers, and jetskiers in recent years. The present arrangement seems to be working out.

Another conflict, we have now is between windsurfers and surfers at Kuilei Cliffs, or the Diamond Head cliff area, because the windsurfers are going out there to catch waves. When they go back out, they're jumping the waves where the surfers are and they don't always see each other. It's very difficult for a windsurfer, even though he has a plastic transparent panel on his sail, to always see through it. He is unable to see someone coming in on a wave. And, of course, we had an unwritten rule here for years and years, when you're coming in on a wave you



have the right-of-way. If you're going out on a surfboard, or however you're going out, you have an obligation to avoid a person who's coming in. That's a rule that a lot of people coming over here from the mainland have no knowledge of.

At Waikiki Beach, the Harbors Division licenses the catamarans, the catamarans' captains, the canoers, the concessionaires, and the surfing instructors. We have a panel of the more senior beach boys with whom many of you are familiar. This panel passes judgement on whether or not instructors are capable of giving surfing lessons, for example. There are requirements, such as a lifesaving certificate. It seems to be a pretty good system and they do pretty much take care of themselves. They all kokua (help). We don't have too much of an enforcement problem in Waikiki except where somebody tries to "cockroach" somebody else's area. There are nine catamarans that are licensed to come in to Waikiki Beach. There will be no additional permits given.

The future conflicts as I see them today are the proliferation of light-weight easily handled equipment as well as increase in population. The increase in the number of windsurfers, a sport which has grown by leaps and bounds, the increases of the number of people getting involved in canoeing and in jetskiing as well as surfjetting, and the use of other small toys that many of us see as the rich man's toy, or which have only nuisance value, are increasing the conflicts on several of the beaches. We cannot outlaw a type of vehicle or vessel simply for its nuisance value. We can only enforce rules for health, safety, and welfare. As many of you may be aware, there was legislation proposed during the last session of the state legislature to ban jetskis completely.

The council that was involved in water uses for Kaanapali wanted to ban jetskis and the like from the West Maui coast. The constitutionality of this, however, may be questionable.

There are obviously many conflicts here and they seem to be growing. Harbors Division usually tries to go along with the wishes of the majority of the users of any given area. I can't give you all the answers, but I'll certainly help you with the ways and means by which we can develop and adopt the best set of rules to govern these areas.

## **The HVB Visitor Satisfaction Program**

Barbara Mills  
Director of Visitor Satisfaction  
Hawaii Visitors Bureau

Contrary to usual practice I'm going to be the most brief speaker up here this morning. I feel that this is the first of many such seminars. I think that Rose and the people who have put this together should be complimented, because we obviously are addressing something that's a concern to all of us in Hawaii, and certainly those of us in the visitor industry. When I hear the figure 18 million visitors to beaches (is that right, Ralph?), I can't help but think that we're doing a pretty darn good job of our lifeguard service, with the few accidents that we have had. Obviously we're training them well, and doing the job well.

I think I have to review a little bit for you as to what "visitor satisfaction" is all about. HVB was founded in the early 1900s, with the purpose of marketing Hawaii as a visitor destination. By 1975, they had developed a very elaborate marketing department and a very elaborate research department. And they felt that they needed somebody, since we had reached two-plus million visitors per year at that point, on staff who could monitor the visitors while they were here, as to whether they were enjoying their experience and, if not, why not. There was a concern that they not go back home and complain or grumble about how badly they had been treated. That was the idea behind visitor satisfaction in the first place.

But it has developed out into what we now call "people satisfaction." We have become involved with employees of the visitor industry in an effort to provide orientation programs which we felt were needed in order to increase their knowledge of Hawaii. We also became involved with the community-at-large to attempt to inform the general public about what this visitor industry is all about. As you know Waikiki itself is approximately one square mile large, and most of our visitors who come to Hawaii, come to Waikiki. They don't really get out into the community. So, it has become necessary to get involved with residents to orient them as to what the visitor industry is and what its value is to the state. This is roughly what "visitor satisfaction" has developed into.

Some statistical shifts have occurred because our marketing department now operates worldwide. Where in the past, we had a mix of 60 percent visitors from the mainland and 40 from other places throughout the world, we are now looking towards a 50-50 mix, where we will have 50 percent from the mainland and 50 percent from the rest of the world. We're marketing aggressively in the Far East and in Europe and we feel that it's very important to provide a quality experience for those people when

they come here. For this reason, I think water safety is going to be a very important factor. Furthermore, water safety must be addressed on an international level. I think we need the international signs that have been mentioned earlier. I think we need them in foreign languages or we could use international symbols, which provide adequate warnings where needed.

When I use the word warnings, I think we have to be careful with visitors in that we don't want to scare them to death, but we certainly want them to be aware of possible dangers. And so within the visitor publications which you pick up in Waikiki, you are likely to find a block on one of the pages which says: "Observe normal precautions when using the ocean. If it doesn't look safe, don't go in. If you have any questions, ask somebody. If the lifeguard asks you not to go in, please obey."

I can't help but again say that I've seen what happens, for instance, on the north shore when the surf is up. People want to go out and see it because it's fascinating. But it's not unusual that even by sitting on the beach, they may be swept out into the water. And I think the lifeguards have done a magnificent job of warning them and asking them to stay back from where the waves are breaking. However, we have to be careful to do it as diplomatically, yet firmly, as possible so we don't scare them away from using all of our park facilities.

One comment, which has been made about advising visitors as to water safety, has been, "why don't we put movies on the plane." I think with almost every message that we want to get to visitors, this concept is considered. Number one, if you take a film and made prints of it, to equip each of the hundreds of planes that are coming into Hawaii every single day, it becomes a very expensive proposition. Additionally, it's a matter of having enough time. If you have been on an incoming plane lately, you know that they just barely get through the feature before you actually land. Also, the businessman from Hawaii who goes back and forth regularly or families from Hawaii are not interested in seeing the same movies time and time again. So, there are negatives to putting the water safety message on the plane. It may very well be something that we may decide to do in the future, but as of now, it's just too expensive for its effectiveness.

I think water safety in general is a real concern. We do want to get involved and want to assist where possible. Certainly we would like to continue to work on ways of making the water as safe as possible around Hawaii.

## Questions and Answers

Question. I think one of the largest movers of people, if not the largest movers of people, to the beaches, is not represented here judging from the participant sheet. That would be the rent-a-car people. They take more people to the beaches unescorted, then all of the escorted tours combined. The escorted tours at, let's say, Hanauma Bay, for instance, typically consists of groups of 10 to 17 people with one guide, who escorts them and gives them instructions. They stay for an hour and then leave. Now, that same group of 10 people, will take 10 rent-a-cars, go down there and stay all day, unescorted. It seems to me that this situation creates the problem for the lifeguards because there's nobody there except the lifeguards who are watching out for those people. Is there any way of getting the rent-a-car firms to put on some kind of educational program in their vehicles which are rented out as well as getting participation from the tour companies themselves to actually help out with the lifeguarding?

John Clark. That's a very good point. It's true that people who rent cars and go to the beaches here on the islands don't come into any direct contact with someone who will warn them about dangers, unless they happen to walk up and actually ask the lifeguard or some local resident on the beach. Just from my own standpoint as an author, one of the reasons I wrote The Beaches of Oahu is because I was concerned with this personally. I hoped that my publication, which has a rather extensive water safety portion would be used as a water safety guide as they travel around the island of Oahu. Initially, when we printed The Beaches of Oahu, the University of Hawaii Press made arrangements with a car rental company to put the book in the glove compartment of their vehicles so that renters would have this surfline and water safety guide right there in the car with them. This did not work out to be financially feasible. And the rent-a-car company abandoned that particular project. As far as having something that's more economically sound (in their eyes), it is probably an area where Barbara can pick up the ball and provide us with some information.

Barbara Mills. Wish we could put John's books in the hands of all our visitors. The H.V.B. has published a small booklet with suggestions for visitors to enjoy their experience. One suggestion in the booklet is to swim only where it is safe. The booklet presently is out of print, but we hope to reprint it before long. Through our offices on the mainland, this book is distributed to travel agents. They are in the airline ticket jacket before the people even arrive in Hawaii. Your comment specifically about rental cars is a good one and I will take it back to the rental companies. It's entirely possible they may follow your suggestion and post a notice on the dashboard of their cars.

Question. I was just going to mention that Dollar-Rent-A-Car vehicles had a cassette tape player. I noticed that cassette decks are becoming standard in a lot of cars. The rental agency had a little tape tour as you drove around the island. They had a lot of your stuff in there Bob (Henry), on safety in their tour cassette. Maybe this is an area that can be considered for disseminating safety information.

Barbara Mills. I think that's a very good possibility, too. The only drawback that I can personally see is that, we find that rent-a-cars are always prime targets for car thieves. If the word ever got out that every rent-a-car had a tape deck in it, you know that the bad guys out there would be hitting the cars twice as much as they do now. So that, while I think the idea is very good, whether it could be worked out practically is something that we probably have to check out.

Question. This question is directed at Ralph Goto. Ralph, is there any consideration given in opening some of your water safety training programs to some of the hotels, who have their own recreations staff. I don't know of any other program other than the one given by the Red Cross. If others could get training, wouldn't it help to expand water safety expertise?

Ralph Goto. The training that we provide for our people at the City and County Department of Parks and Recreation is training that is provided in our operation by a training unit. When we refer to the training unit, in actuality I'm referring to one person. He's responsible for not only original, initial training for all of the recruits, but to do inservice training as well on a continuing basis. We would be more than willing to share the information and on a consulting basis could possibly develop a training program for people in the industry. At this time, it would be very difficult, considering the resources that we have, to actually provide the training. But we would certainly be open to working with people in the industry in developing their in-house training course.

Question. Has there been pressure or suggestion to place more signs on the beaches?

Ian Birnie. It hasn't come up recently, but the only beach that the Harbors Division has jurisdiction over is Waikiki Beach and then only in the area where there is a public easement. The Department of Land and Natural Resources has jurisdiction over all other areas. I don't see their representative here today. We've been asked to put signs at Ala Moana Beach Park, specifically, and also at Kailua Beach Park. We can't justify putting that many more signs in and I'm opposed to it personally. We don't need to clutter up the beaches with signs, particularly, when I mentioned before, it's not an area where the conflict involves tourists. At Kailua, I'd like to address something I overlooked in my presentation. The neighborhood there has recently come up with a panel and they have representatives from

all the various city and state agencies as well as the Chamber of Commerce, the senior citizens, the Outdoor Circle, and a number of concerned agencies located in Kailua to generate a series of rules concerning water safety, beach safety, the uses of Camp Kailani, etc. I think this is a very progressive move on the part of the Kailua community to form a panel. Its goal is to decide exactly what the uses should be, based on the community input there. I think that we might encourage similar action by other community groups. I get the feeling that most of you represent Waikiki or the tourist industry in Waikiki. But, perhaps, other areas besides Kailua and Waikiki are represented here, I'm not sure.

Question. How has the recent court decision against the city and county affected the number of lifeguards on the beaches?

Ralph Goto. I don't feel that losing a lawsuit over something to do with lifeguards affects the number of lifeguards.

Question. What is the responsibility or jurisdiction of the counties? How can we get support for safety programs especially on the neighbor islands?

Ralph Goto. As far as the county's jurisdiction goes, it is in the statutes that lifeguard services are the responsibility of the counties. The state does not provide lifeguard services at state beach parks by choice. What they do at state beach parks is to post signs that warn people that there are no lifeguards on duty and that you do enter the water at your own risk.

As far as whether or not each county wants to pursue that, I think that there are some lessons that we learned in the City and County of Honolulu that might be well for other counties to look at. In order to get to a level of service that we are approaching right now, and I don't mean to imply that our service is perfect, it's far from perfect, I think it is important to get the involvement of different elements of the community. What is the concerned community? That community is people who actually go into the water and recreate in and near the water. In other words, the community we serve is people who depend on the ocean or the water to provide recreation. I think that you need support from the community to get things initiated. I hope it will not take drownings or incidents to get people to realize that we need protection on the beaches.

Another avenue you need to pursue is to obtain council support. We are making some headway here on Oahu. We are very, very appreciative of the support that we have been getting from the city council. Our elected officials represent the people in different areas and they are the people that we need to get support from. We also need input from the courts, in terms of legal definitions, and there is need for interpretation and advice from attorneys and legal counsel. And, finally, we need legislative support because we can't do anything without funding.

We are all concerned about our individual agencies, in this period of budget constraints. We feel that the amount of money that it costs the county government, say in Honolulu, to run our operation here is well spent. But I can be accused of personal and professional prejudice. I think that we could operate more effective services with more money. But when you're faced with a lack of funding, you have to do your best, using resources that you have on hand. It's my view that what matters is how you approach it. And I don't think that waiting for tragedies to happen, is the answer.

Question. It's costing me about a bit over \$20,000 a year, per lifeguard station, to man, equip, train, so forth. Would that cost be about right?

Ralph Goto. It's really hard to say how much the cost is on an individual basis. To give you some general idea, just to equip one lifeguard with equipment he needs costs about \$150. To this add 100 hours of individual training, in-service time, then you would have a ballpark figure on the cost of just getting the lifeguard up to speed. In addition, we do have, what I consider to be some pretty sophisticated equipment on the beaches here. Our communications system, will be upgraded by the end of the year. We think that things like communication and lifesaving equipment are essential parts of the operation. Lifeguard services cost money to run. I don't think you could run a system in our country like they do in Australia. Remember when, if you had the responsibility of setting up a lifesaving system, you had to look at the Australian system, because it's the best in the world? It's great, it works in Australia, but, I really don't think it would work here. We can learn from some of the things that the Aussie's have set up, but, I really don't think that you can count on volunteers, as they do in Australia.

Question. You mentioned a lot of services that we have. I'm sure there are a lot of statutes that go along with the services. My question is, what is the goal of the Harbors Division in enforcing these statutes? The second question is, what are you doing to educate the public? In other words, what programs do you have to educate the public and homeowners about the beach?

Ian Birnie. As far as enforcement goes, we have different conflicts in different areas. We inform the people, whenever we can get an officer on the scene. If it is something like a violation in a restricted area, the lifeguards are asked to handle the responsibility for us, and they warn people and ask them to comply with the restrictions. Violators are asked to keep to their own areas and not to infringe on other designated areas.

Question. Okay, the reason why I asked the question is, a lot of times there are conflicts and the Harbors Division has been called. It's normal practice. However, often your personnel come into the area three days later, or your personnel comes

and says, "I'm sorry, I can't come aboard" or "I'm not equipped," etc. I am wondering what the role of your department is?

Ian Birnie. On Oahu, we currently have a sergeant and four officers on land patrol and two on shore patrol to cover the entire island on a 24-hour basis with three watches per day. Our principal responsibility is to the harbors facilities, where we are charging tenants for the occupancy of state facilities, and our principal responsibility there is to those primarily in Ala Wai and Keehi where tenants pay a little bit more than those in Waianae or Haleiwa. We're protecting property as well as enforcing the rules. We do have a dispatcher at our communication center in Aloha Tower which is manned 24 hours a day. The dispatcher is in radio contact with each of the officers, but it's a very difficult problem. If there is a problem in Waianae, it's going to be a couple of hours before we get somebody there from town. I don't think we responded three days later. That's a pretty general statement. We do try to get an officer on the scene as soon as we can. If it involves a boat, we ask whoever the complainant is, or someone else on the scene, to get the registration number. When we explain the rules and the potential penalties to the person who is committing the offense, normally that's sufficient.

For some types of violations, such as, boating violations, the penalty is pretty severe. It may include a fine of \$1,000, a year in jail, the loss of privileges for two years, or any combination thereof. It's also possible that the vessel may be confiscated until released by the court. That should suffice normally, especially because boat owners know we have their name, address, and the number of their boat. It takes six months to train a police officer.

Ralph Goto. I think that part of the problems that are being brought up centers around the jurisdictional problem: Who's responsibility is it? The other part is an enforcement and authority problem. Just as information, the city lifeguard has no authority to cite any violators. A lifeguard can only go up to violators and ask them politely to remove their dog from the beach, for example. But the guard has no authority to cite them. He can't even write a parking ticket. That's an issue that we are concerned about. There have been testimony given before the city council, and the state legislature as well, about the problem with having a lot of rules and regulations to govern people and nobody to enforce them. It's frustrating not only for our agency, but it's frustrating for the public as well. Educating the public is a tremendous marketing problem. You can look at it as a marketing problem or if you're an educator, as a learning problem. But basically the problem is how can you get to all the people, or to the people who use the beach, and make them aware of what is going on.

Question. The question that I have is, I think experience has shown that the elimination of the escorting service to the



city and county beaches by commercial operators has not lowered the number of people who go to the beaches. It stays the same or it increases. Legislation that has been enacted lately, has eliminated the privilege tourists had of being escorted and looked over individually. In the eyes of the water safety people, what would be your preference? Would you rather see people escorted and taken care of in small groups or would you rather have the situation that exists now, where people are not able to obtain such care?

Ralph Goto. Number one, as far as the decision to control that commercial activity goes, we're not exactly sure what the impact might be on visitors and other users as well as on commercial operations. We think the person who goes down to Hanauma Bay or any beach park down here is more than educated as to the dangers or the hazards of that area. The duties of the lifeguards at Hanauma Bay do not include trying to get to every person and to speak to them in whatever language they speak, to warn them of the hazards of the bay. We try to approach that through signage. There is a display at the beach that shows the different sights you're going to see and different kinds of fish you are looking at.

As to the question on what we prefer, it's difficult to say. If you escort people down there and you talk to them about what's going on there obviously they're going to be better informed, hopefully, on the safety issue. But, I think that this can also be done during the half hour drive from Waikiki to the bay. The safety talk could be given then. It's a problem that I don't think we have a real definite solution to. You people as tour operators are going to have to make those concerns known to the people that have the policymaking power. As far as who we'd rather see, I would like to see Bob's (Robert Henry) operational procedures implemented by other commercial enterprises. No matter if we had 10 or 2 or 25 operators, that's not really a guarantee that accidents are not going to happen. I really am sold on the concept of prevention and education.

Question. Does the Honolulu Police Department have the authority to enforce beach-related rules?

Ian Birnie. That's correct. The police officer is authorized and encouraged to enforce all rules. The problem is for the officer to make the correct citation. As I mentioned, it takes 6 months to train a police officer and we get 45 minutes to explain everything about harbors and boating rules in between briefings of the city corporation counsel, the attorney general's office and the Department of Land and Natural Resources enforcement people. The Honolulu Police Department does make the arrests but they need a representative from each of the different agencies to assist in telling them what the specific offense was and whose set of rules they should use.

Question. Does the Department of Land and Natural Resources have enforcement officers on Maui?

Ian Birnie. I'm not sure how many enforcement officers the Department of Land and Natural Resources has on Maui. I know that they have cited one of the concessions there in recent weeks. We have one harbor officer over there and we just got authorization for a second one but the one we have is responsible for the entire County of Maui, which means that he also must occasionally go to the islands of Molokai and Lanai.

