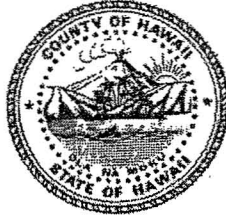


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February 7, 2009

Honorable Jon Riki Karamatsu
Chair, Judiciary Committee
State House of Representatives

Dear Chair Karamatsu and Committee Members:

Re: HB349, Relating to The Hawaii Rules of Evidence

HB 349 reflects the 2008 work of the Standing Committee on Rules of Evidence, which was established by the Chief Justice in 1993. The purpose of the bill is to provide a balanced presentation of character evidence when an accused decides to attack the character of the alleged victim.

A bill similar to HB 349 was introduced in 2007, with the support of the same Judiciary Standing Committee (SB961), and passed the Senate unanimously, but did not have a hearing in the House.

Rule 404 (a) (1), Federal Rules of Evidence, was amended in 2000 to provide the balance we seek here, and a copy of Rule 404 is attached for your easy reference. As you will see, the federal rule is broader than HB 349, in that the federal rule allows evidence about any trait of character of the accused, when that specific trait of character of the alleged victim is raised by the accused. HB 349 has a narrower focus, in that we are asking only that evidence be allowed when the alleged victim's trait of character *for aggressiveness* is raised as an issue by the accused.

This amendment is necessary because current state law does not allow the government to introduce negative character evidence as to the accused, unless the accused introduces evidence of good character. If the accused does not try to prove his own good character, but nevertheless goes after the character of the alleged victim, the government's hands are tied. This imbalance is unfair. HB 349 would correct this, making clear that the accused cannot attack the alleged victim's character and yet remain shielded from the disclosure of equally relevant evidence concerning the same character trait (aggressiveness) of the accused.

Considerable background on this issue is contained in the 2008 Report of the Standing Committee on the Rules of Evidence to Chief Justice Moon, and a portion of the relevant commentary is attached for your easy reference. A full copy of the Report has been given to your staff, but if we can provide you any additional information, please feel free to have your staff contact Charlene Iboshi, member of the Committee and First Deputy, Office of the Prosecuting Attorney, County of Hawaii.

Thank you for this opportunity to testify.

Respectfully submitted,

Charlene Iboshi
First Deputy