

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

R.G., an individual; C.P., an individual by
and through her next friend, A.W.; and
J.D., an individual,

Plaintiffs,

v.

LILLIAN KOLLER, Director of the State
Department of Human Services, in her
individual and official capacities;
SHARON AGNEW, Director of the Office
of Youth Services, in her individual and
official capacities; KALEVE TUFONO-
ISOSEFA, Hawaii Youth Correctional
Facility Administrator, in her individual
and official capacities; *et al.*,

Defendants.

CIVIL NO. 05-566 JMS/LEK

[CIVIL RIGHTS ACTION]

DECLARATION OF [C.P.]

████████████████████;

EXHIBITS A-B

DECLARATION OF [C.P.] [REDACTED]

I, [REDACTED], hereby declare:

1. I make this declaration based on my own personal knowledge and if called to testify I could and would do so competently as follows.

2. I am a 17-year old, transgender girl. I will turn 18 on [REDACTED]. My legal name is [REDACTED] but I go by [REDACTED].

3. I knew I was a girl and liked boys from a very early age. I first told a few friends when I was 12 or 13 years old. I first mentioned to my parents when I was about 13 or 14 years old that I was gay, and after that I had a lot of conflicts with my family about my sexual orientation.

4. On or about May 24, 2003, I got into a fight with my mom. I was trying to get the car keys from my sister and she would not give them to me and we started arguing and yelling pretty loudly. I then hit my sister in the shoulder. I hit her pretty hard. I left the house and walked toward the garage and one of the neighbors came over to our property and started yelling at me for hitting my sister, saying things like “Why did you do that, she is just a kid!” That neighbor started beating me up pretty badly and I got into my mother’s car. I tried run away from him, getting out of the car but he followed me and kept hitting me. Then his brother or brother-in-law joined in and they were

both on top of me hitting me. I finally got up and another neighbor (one of the men's wives or girlfriends) was coming down the stairs and started swearing at me. I swore back at her and pulled her hair.

5. I think another neighbor called the police. When the police arrived, my mom said that she did not want to press charges against the men, but charges were pressed against me. Right after the fight, we all went to the hospital to get checked out. My sister was ok but I had to have a CAT scan on my head and other tests like a jaw x-ray because the neighbors had beaten me so badly and I had suffered head trauma.

6. After the hospital I was sent straight to Alder Street Detention Home ("DH") for a couple of days for that, and I think I may have met Dr. Bidwell, who is the HYCF doctor, then. I was charged with Assault III of a family member. [REDACTED]

7. Just before all that happened, in May or June, I had started dressing as a girl and began identifying publicly as transgender. I also began taking hormones that I purchased on the black market. I took the hormone shots weekly until I was sent to HYCF in February of 2004.

8. On or about November 15, 2003, when I was 15 years old, I was living at home. That day was the very first time that I had tried solicitation on the streets and I was arrested. I was sent to back to DH for a couple of days.

9. After I got out of DH for solicitation, I was put on probation and went back home. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. I was very independent and wanted to live on my own so I often would not come home. After awhile, my mom started to worry about me and reported me as a run-away. I came home, but on the night of February 5, 2004, the police came to my house and took me to DH again. I was in DH until my [REDACTED]. The court sentenced me to HYCF until my 18th birthday. I went to HYCF that day.

11. During my first stay at HYCF, I was there for most of 2004. For the first eight months, I was in my own cell in the girls' side, the O & A cottage. There was one other transgender girl at the girls' cottage at the same time.

12. When I got to HYCF I was given the clothes that are standard for boys (2 gray shorts, 2 gray shirts and boxer shorts), along with sheets, blankets, pillows and hygiene stuff. I wasn't allowed to have a bra or any girls' clothes.

13. I had breasts already because I was taking hormones before I got sent to HYCF. One of the female staff, Aunty Kelly, told me in private that they should give me a bra because you could see my breasts through my shirt, but at least two times when I asked YCOs at O & A, they wouldn't let me have a bra.

14. I asked one of the medical staff, maybe Dr. Bidwell, about continuing to take hormones while I was at HYCF, but he told me that the Administrator has to say ok and would not do that until I was 18.

15. Even though HYCF put me with the other girls, most of the male staff at HYCF still referred to me a boy and would say "he" and call me "██████████" instead of calling me "she" and "██████████." That made me feel bad, like they didn't understand me or care about my feelings at all. Most of the staff would refer to us by our last names, so most called me ██████████.

16. Anytime the YCOs didn't like the way I did something or got mad at me, they would insult me based on my sexual orientation and being transgender, or put me in isolation or lock down, or they would threaten to cut off my hair, or tell me they would send me "over to the boys," and tell me that my life would be much worse over there.

17. For example, YCO Mitch Simao called me "cupcake" and "fruitcake" during my first couple of days at HYCF. He did it in front of other

wards and HYCF staff. The staff didn't say anything to him.

18. YCO Tavako would always call me "twinkle toes" and "fairy."

19. The guards didn't do anything to protect me when other wards were harassing me, which started out some of the time even when I was with the other girls. On the first or second day I was there, I got into a fight with one girl, [REDACTED], because she was yelling and calling me a "fucking faggot" and a "fucking mahu." Everybody could hear her and there were staff there but they didn't do anything. Pops Alvaro was there. I know he must have heard her because she was loud and the space at O & A is small. When no one did anything to back me up, I got mad and figured I'd have to stand up for myself. I stood up and yelled at her. I said what are you calling me a mahu for? I was so angry I felt like the only thing I could do was attack her. Pops grabbed me and took me to my cell and said if I swear or hit the girls they would send me to the boys' side. No one did anything to [REDACTED], even though she was the one who was yelling and calling me names.

20. Also during the first few days I was HYCF, one of the other girls put up my hair in little ponytails and one of the guards, YCO Simao, said to take them out and not play with my hair or put it up "like the girls." He said it loud enough, projected it so that everyone could hear him, and he said it with attitude. I started crying because he told me to take them off. When he said

that stuff, it insulted and humiliated me, and I started crying. The other girls were nice about it though; they asked, “How come he gotta be so mean to you?”

21. Soon after that, I was having problems adjusting to HYCF. I told one of the counselors that I was going to try and kill myself and I was sent to isolation. When I came back, I started acting up because I hated being in there. YCOs Kim and Haina took me outside to lecture me. YCO Kim told me to stop acting like a little kid. When I asked why couldn't I put up my hair, YCO Kim told me that their handbook says I couldn't put up my hair. YCO Haina said, “You know most guys don't grow out their hair.” Both YCOs told me that I was still a boy and that I did not have same privileges as the girls. Mr. Kim told me that because I'm a boy, I was “just a guest here on the girls' side.” They told me they got to decide what I was allowed to do with my hair and other stuff. YCOs Kim and Haina told me that if I did not calm down and behave right they would send me to the boys' side.

22. Even though they weren't being fair, I was only put on early dorms a couple of times while I was on the girls' side, and I didn't get into trouble much at all. Once I got into a fight with another girl, ■■■, but the next day we were friends again.

23. During my first couple of months, we were not allowed to have

any personal effects in our cells at all. A couple of months after I got to HYCF, a bunch of us said we need something inside our rooms. After that, a church group started coming every week. They gave us Bibles and they would bring us treats and do singing with us to God. We were not allowed to have anything else in our rooms at that time, just our Bibles. Later on, we were allowed to have three pictures but then they changed it again and we couldn't have anything at all.

24. Aunty Lani brings a bible to work with her. She would sit at a table outside while watching us and read her bible. I heard from the other wards like [REDACTED] and [REDACTED] that Aunty Lani and Aunty Cat would talk to them about the Bible and tell them that being gay is a sin.

25. In July of 2004, I was released on parole from HYCF to a foster parent named [REDACTED]. I was only with [REDACTED] for a couple of weeks because I ran away. I turned myself into [REDACTED] and then [REDACTED] took me to the police station. Then they sent me back to HYCF in early August of 2004.

26. When I got back to HYCF I asked Mr. Kale Au about other programs for me he said I could either go to [REDACTED] or stay at HYCF. When I asked about other foster homes and stuff he said I could not go because of my gender and sexual orientation.

27. I was at O & A the day that [REDACTED] and [REDACTED] tried to kill

themselves the same day in September of 2004. It still gives me flashbacks because it was so upsetting and scary to me. I have a hard time remembering all of the details – I want to block it all out.

28. In September of 2004, HYCF was going to do some repairs so Kaleve called a meeting with staff on duty and wards at the girls' side and in front of everyone she said all the girls were going to Utah. I asked whether I was going too, and she said, "No, you're going to stay with the boys." That made me shocked and very scared. The next day or so, I told Dr. Bidwell and the nurses that I was scared to be with the boys.

29. Dr. Bidwell and some other medical staff wrote a letter to Kaleve and her boss telling them that I should not be housed with the boys. They didn't listen. One of the nurses told me that I should not be with the boys at all but that I should not be in isolation either.

30. Just before the other girls were leaving for Utah, they took everything out of our cells for two or three days, and all of the wards were on 24 hour lock-down with only our mattresses and nothing else, no sheets, no pillows, or books, no nothing. From the way the staff acted, I think HYCF was scared that other kids might try to hurt themselves because of the move to Utah.

31. The other girls were transferred to Utah in two trips. The night

the last two girls went to Utah, on or about September 21, 2004; I stayed there by myself. When the third shift came on duty, the male staff (a big guy) moved you to isolation over by Central Control. The next morning Aunty Cat and Aunty Lani were talking to other staff and saying that I was not supposed to be sent to isolation because the nurse said that I was not supposed to be in SCF (the boys' side). Another staff then moved me back to O & A where I had to help clean up. That day around lunchtime the boys came over to O & A too and there were about 20 of us altogether. We stayed there for a week and there were new boys coming in still, up to about 25, a couple of cells had three boys in the cell. I had my own cell during that time.

32. The boys were all from different modules. When they first got there, the first time they saw me, they were starting making noises, saying "you fucking faggot," saying "fucking mahu" to me. They did all this in front of Aunty Nora, Aunty Cat, and a lot of other staff, including two male staff. After the boys all came in, Aunty Nora told them to sit down and shut up and show respect, no calling names. None of the male staff said anything to the boys. At first, the boys stopped bothering for me for a couple of days but when we moved to Ho'okipa it all started again. Other wards would call me "faggot," "mahu," and "gay" repeatedly and would ask me "Oh how come you gay? Why can't you be straight?" I started sitting on the side, separate from

everyone else because I was so scared of what would happen to me.

33. Some of the boys started touching me, pull my hair and start throwing things at me. Some boys starting saying stuff to me too. They would say “give me head,” and some would tell me that being gay was bad and they just kept putting me down. Some boys would ask permission to rub to my legs. Inside I was so angry and so depressed and I couldn’t handle it. The boys would say these things when the staff was around but the staff was not paying attention and the staff did nothing to stop it.

34. Some boys would make comments like “I want to feel your ass,” “I want to fuck you,” they would ask me to “show them my breasts.” When we were in the common area watching television and some sex scene would come on, the boys would get erections and would pull their erect penises out of their pants and show it to me. Some boys started playing with themselves in front of me. It really grossed me out.

35. One time when I was in the kitchen, a couple of the boys mooned me and pounded on the kitchen window to make sure I could see them.

36. When we were in the van going to rec or going to school, the boys would touch me and pull me hair or rub against me. The staff knew how bad it was, Aunty Kelly, Aunty Bonnie and Uncle would let me sit in the front of the van so I wouldn’t be in the back with them behind the cage. But the other staff

kept me with the boys and treated me like a boy.

37. One time I was writing a grievance about some boys and they called me a “rat,” and threatened to kick my ass. I didn’t want to tell anyone what happened to me because I was scared.

38. Instead of protecting me, the staff had orders to not let me interact with the male wards. When I was not locked down, I was instructed by most of the male staff, including Mr. Haina, not to have anything to do with any of the male wards - I was not supposed to sit with them, not even sit close to the boys, speak with them, look at them or interact with them in any way. I was told to sit a chair or two away from the boys in the common area during free time and meals.

39. I got really lonely and wanted to talk to some of the nicer boys so I kept asking the staff for permission. It was really hard on me to be separated from everyone; I wanted to socialize with some people. The staff always said no. I had always helped out and kept busy while I was at HYCF. I figured that if I could keep busy and away from people they couldn’t hurt me as much.

40. When boys on the work-line truck would pass me they would scream out “faggot,” and “mahu” in front of their supervisor, but the supervisors never did nothing.

41. My stress grew worse and I was unable to sleep and found myself

crying all the time. Some days it was so bad that I wouldn't eat at all. Other days I would stuff myself. I was miserable.

42. I asked YCO Haina for a grievance form in early October of 2004. Defendant Haina asked why I wanted a form and I told him that I wanted to complain about being harassed and abused because I am transgender. YCO Haina said, "It's your choice. You can stop this."

43. I filed two written grievances in October 2004 asking for recreation time and permission to interact with the nice male wards. I told them that there was no reason to segregate me from the male population in doing recreation. I told them that I have committed no misconduct and no misconduct was committed against me. I told them that I have been in good behavior towards wards & staff in Ho'okipa Cottage as well as in school. I had never, at that point gotten, any write-ups or early dorms whatsoever. I told them that I felt that I have been discriminated in not letting me have rec. because of my sexual orientation - me being transgender. A true and correct copy of that grievance is attached to this declaration as Exhibit A.

44. I told HYCF that no misconduct was committed against me because even though I was getting harassed and abused all the time when I was with the boys, no one treated it like there was anything wrong with the way they were acting, and I couldn't stand being alone all the time.

45. One week later, on October 21, 2005, I filed a second grievance complaining about the imposed isolation, and asking that the ban on my interaction with the male wards be lifted. A true and correct copy of that grievance is attached to this declaration as Exhibit B. I never got a response of any kind from anyone during my 2004 HYCF stay. I don't even know if my grievances went to Kaleve like they were supposed to.

46. After I filed the two grievances, YCOs refused to discipline the wards who were harassing and torturing me, even refusing to tell them not to call me names.

47. I was miserable. I was depressed and couldn't sleep. I felt tired all the time and was anxious, sick and couldn't eat. I kept trying not to let the guards or male wards see me cry, fearing additional stuff against me.

48. I tried to talk about being harassed and alone and the abuse I was suffering with several of the more caring female staff like Aunty Bonnie and Aunty Kelly and with Dr. Bidwell. Aunty Bonnie and Aunty Kelly would tell me to "just hang on." Aunty Bonnie and Aunty Kelly knew that everyone was teasing me and abusing me every day but they just told me to ignore it and not fight back when the boys abused because the boys would just do more to me and make it worse. No one other than Dr. Bidwell cared or did anything to help me. Dr. Bidwell wrote a letter to Kaleve for me talking about the verbal

and physical harassment, taunting, insults, threats of violence and rape and repeated demands for sexual acts, all known by the guards and staff and without the staff doing anything to stop it.

49. No one at HYCF ever talked to me about Dr. Bidwell's letter. The abuse just kept happening to me and HYCF never stopped it – they never did anything.

50. I was later put on parole from HYCF in a foster home and released on or about December 23, 2004.

51. After I was released from HYCF on about December 23, 2004, I worked several jobs and got my high school diploma. I recently started college in Honolulu. During this time, I first lived with [REDACTED] for until April of 2005 or so but things did not work out. On occasion I would go to another foster family on a respite. Next I lived with a foster family in Ewa Beach for most of the time, until approximately August 10, 2005. I had been staying with some other foster families on occasion for a few days or weeks.

52. I was sent back to HYCF because I had gotten into a dispute with my foster family in Ewa Beach. When I got back to HYCF, Chief [Devon Enesa] told me there were no other options for me because I am a transgender teenager. I had asked Randy Quemmel about placing me in Catholic Charities, Hale Kipa, and even Bobby Benson but Randy Quemmel said they would not

take me because I am a “gender.” He said something about my sexual orientation too.

53. I was first taken to the isolation cell by Central Control in the administration building at HYCF. I was issued the same standard boys’ clothing again. I had breasts because I had been taking hormones again, which I started taking the second time I left HYCF in December of 2004. They did not give me a bra – just shorts, shirts and boxers.

54. A day or two after I arrived at HYCF, one of the female staff came to get me and transported me by car to Ho’okipa. I brought my sheets and my standard clothes and my hygiene stuff. I put my stuff inside one of the cells at Ho’okipa and walked to the living room area and waited for instructions for what to do next. While I was waiting, Mr. Kim, who was on duty, told the staff that I was not supposed to be there at least not until Monday or until when Kaleve gives the order where to put me. Mr. Kim and the female staff were talking for about 10 or 15 minutes and then they sent me back to isolation.

55. Instead of sending me back to the boys’ side, they kept me in solitary confinement in the central building rather than being with the other girls like I was before they went to Utah. At first, I was isolated and was locked up and under surveillance for 23 hours a day with nothing in my cell other than a pillow and a blanket. I had no privacy, of course because there is a

camera right over me 24-7. The camera could see me using the bathroom, cleaning my face, just everything. It's very intrusive. When I had to go to the bathroom, I would try to hold it and wait for the nurse to use their bathroom. After a few days, staff brought me some reading materials. The staff gave me one hour to wash, to eat and to engage in "recreation." I was not permitted letters, writing instruments, radio, television or to interact or to socialize with any other wards.

56. Five days after I got there, on Monday, August 15, 2005, they gave a tiny bit of freedom. I was allowed to have a book and to walk outside of my cell into the Central Control area. I was still completely by myself and isolated.

57. During that week of confinement, several HYCF staff harassed me. YCO Tavako would stand by my holding cell and call out "twinkle toes" and "fairy" like it was now my nickname . Tavako also made these comments to me when I was being transferred for recreation time and when I being escorting out of the cell to shower.

58. In order for me to go to rec by myself, one of the staff has to escort me to the gym which is a few yards away. The boys would start yelling "faggot," "mahu," "give me head," and stuff like that and banging on the windows. The HYCF staff would hear the boys but they did nothing.

59. Another YCO, who I think is named Smith, threatened me over and over that they were going to cut my hair which is styled long around my shoulders, because YCO Smith thinks I am “really a boy.” During that week, Mr. Smith said to me “Who is [REDACTED]?” I said, “I am.” He said, “No, your name is [REDACTED]. Your legal name is [REDACTED] in the documents and that’s what we go by.” He also said “you still are a boy no matter what.” Smith would say “eh, who do you think you are?” I would try to ignore him.

60. Again I was angry, depressed and confused. All the bad stuff that happened to me before was happening again and no one cared and no one did anything to stop it. The staff is right there and they do nothing, absolutely nothing.

61. One day they made me wear the same clothes because they could not find my clean clothes. Right before they let me out of HYCF, I finally got a response to my 2 grievances that I had filed 10 months earlier. The response to my October 15th grievance is dated April 29, 2005 and is signed by Randy Quemmel. The response says nothing about what HYCF would do to help me. Writing dated August 16, 2005 says: “Ward’s good behavior will not prevent assaults against him from other wards, therefore, he was separated from the other boys who can be assaultive especially toward other males.” 8/16/05. *See* Exh. A.

62. The response to my October 21st grievance is also dated August 16, 2005 and says: “Youth [C.P.] had to be separated from other boys for his safety.” See Exh. B

63. During my stay, Dr. Bidwell told me that they would not let the ACLU in to see me. HYCF was not letting anyone contact me.

64. Since my recent, one-week stay at HYCF, I have been living successfully with my parents for the first time in over 2 years and have returned to my first-year of classes at [REDACTED]. I am living with my parents again right now and things are going fine.

65. When I talk to people about being on the “ins,” I get flashbacks. It is really hard for me to remember the things that happened to me at HYCF – it makes me very angry and I cannot handle what happened to me in there. I am so fearful for any other LGBT to be sent to HYCF because that person is going to be abused and harassed just like I was. HYCF has not solved any of the problems. If I do anything wrong, like getting into a fight with my parents, driving a car, not going to school, not going to work or forgetting to tell them that I changed jobs, I will be sent back immediately. I know that if I go back HYCF is probably going to keep me in isolation again and treat me badly and let me be abused. That really scares me.