

Biography Hawai'i: Five Lives

A Series of Public Remembrances



HARRIET BOUSLOG LAWYER, RISK TAKER, AND CHAMPION OF THE UNDERDOG

by Esther K. Arinaga

Out of the gloomy crowd of plantation workers and their families comes a shout "There she is—Bouslog!" Heads snap and the crowd parts as a startling woman makes her way to the platform. She climbs the podium and faces the crowd. "Brothers and and sisters," she opens in a loud and confident voice. The crowd is immediately silent—tired women who have been up since before dawn, unschooled men who have never before heard any lawyer speak, much less one beautiful, and female, and calling herself their sister.

—Called From Within: Early Women Lawyers of Hawai'i

Harriet Bouslog exhibited a flair for theatrics and a hint of bravado in any role she played during her long and illustrious career as Hawai'i's first female labor and civil rights lawyer. In the courtroom or in public appearances she was outspoken, fearless, unabashed by criticism, and always ready to confront the predominantly male members of the local bar association, with whom she often disagreed. Bouslog's critics, as well as her admirers, considered her a radical lawyer because she defended poor persons, ordinary laborers, union sympathizers, accused Communists, and others supporting unpopular causes. Her glamour and sophistication in dress were often in striking contrast to the modest and sometimes shabby appearances of her clients. Yet throughout her long career Bouslog never wavered from her belief that the Constitution and the Bill of Rights were the cornerstones of American democracy, and that everyone—even those who could not pay—deserved legal representation in upholding these rights.

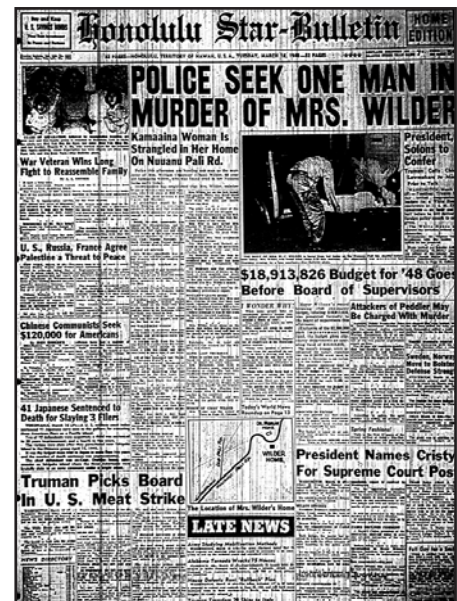
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Two cases illustrate Bouslog's consummate legal skills and her astute ability to use law as an instrument of public policy. In the Wilder murder case, as it was popularly known, Bouslog handled the appeals of two indigent Hawaiians who had been convicted in 1948 of murdering Therese Wilder, a widow from a prominent white family. The case provoked public outcry and intense debate in the community, and eventually led to the repeal of Hawai'i's capital punishment statute. In a rare case, *In Re Sawyer*, Bouslog herself was at the center of controversy. She faced suspension from the practice of law for one year, following a decision by the Supreme Court of the Territory of Hawai'i that she had "impugned the integrity" of a trial judge by publicly criticizing the government's handling of the Smith Act cases. In 1959 the Supreme Court of the United States disagreed, setting an important precedent for lawyers: the right to speak publicly and to criticize the government within the canons of ethical conduct.

THE WILDER CASE

The Wilder murder case had all the drama of a murder in a small town—public hysteria, irate community leaders, newspaper calls for "swift justice," and late night requests for a stay of execution. Throughout the trial the underlying concern among Native Hawaiians and the laboring class was whether poor non-white individuals could receive a fair sentence in the conservative milieu of post-World War II Hawai'i. Historically, the statistics in capital cases were not reassuring: out of forty-seven men executed in the islands since the end of the nineteenth century, only one was a white man.

The alleged murderers were John Palakiko and James Majors, uneducated petty criminals who in March of 1948 had escaped from a prison work crew and chanced on the Wilder residence in Nu'uanu Valley while looking for food. Despite questions about police brutality, forced confessions, and the constitutionality of the statute—the definition of murder—under which they were charged, both men were convicted and sentenced to death. The last recorded execution in Hawai'i had occurred on January 7, 1944. Bouslog had not represented the men at trial but had followed the case closely. On the eve of the scheduled execution, she swiftly took up the death-row appeals after being challenged by a friend at a dinner party: "I'll bet you can't do anything about it." With typical self-confidence and with just fifteen minutes to spare, she convinced the Territorial Governor, Oren E. Long, to grant a brief stay of execution. Even after "the lengthiest hearing in the history" of the Territorial Supreme Court, Bouslog failed to obtain relief after filing a writ of habeas corpus. She immediately filed an appeal and requested a stay of execution. It was 4 a.m. The prisoners were being given last rites.



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Capital Punishment in Hawai'i: A Call for Research and Reflection

Historians have paid a great deal of attention to some of the more sensational criminal cases in Hawai'i, like the Ala Moana/Massie-Fortescue cases or the Myles Fuku-naga case. Racial and cultural conflicts loomed large in all these cases. But against this backdrop of sensationalism remain almost four dozen forgotten cases that involve the death penalty in Hawai'i. Between August 18, 1897, and September 16, 1943, 47 people were executed at Oahu Prison under Hawai'i's capital punishment law. All were male. They ranged in age from 19 to 61. One was Caucasian, 3 were Hawaiian, 24 were Filipino, 10 were Japanese, 6 were Korean, and 3 were Puerto Rican.

What can be learned from these executions? For what crimes were the men executed? Did they plead "guilty"? Who defended them? How were their trials conducted? Who made up the juries? Were most of the defendants immigrants? Does the pattern of executions correlate with patterns of immigration to Hawai'i? The record of executions suggests that only non-whites committed serious crimes during this period. Do police and judiciary statistics support that premise?

Further study of the history of capital punishment in Hawai'i may have much to contribute to the legal, social, and political histories of these islands.

Appeals to the federal Court of Appeals and to the United States Supreme Court followed without success, but the lengthy process of appeals enabled a groundswell of public support to develop for the commutation of both sentences in 1954 by the new governor, Samuel W. King. In 1957 the death penalty was abolished in Hawai'i. Bouslog had written the Democratic Party Platform plank calling for the abolition of capital punishment.

IN RE SAWYER

In contrast to the Wilder case, *In Re Sawyer* (Sawyer was Bouslog's married name) was a case with little drama or emotion, yet the issue was one of paramount importance to all attorneys. In 1952 Bouslog joined a team of lawyers to defend seven members of the International Longshoremen's and Warehousemen's Union (ILWU) accused of being Communist conspirators under the Smith Act. Outside the federal courtroom she spoke critically, often in fiery language, about the government's handling of the Smith Act cases. In a speech without notes to ILWU members on an early Sunday morning in Honoka'a on the Big Island, Bouslog said she wanted to tell the union workers about some "rather shocking and horrible things that go on at the trial." She proceeded to chastise the prosecution, the FBI, and the state of the law. Her remarks were published in the local paper.

After the trial was over, the presiding federal judge, Jon Wiig, asked the Bar Association of Hawai'i to look into Bouslog's conduct. Investigating the charges, the Territorial Supreme Court held that Bouslog had engaged in a willful attack on the federal district court, and by implication had created disrespect for Judge Wiig. Facing disbarment for a year, Bouslog appealed to the United States Supreme Court. In a 5-4 decision, Justice William Brennan wrote that it was permissible "to litigate by day and castigate by night." Reversing the judgment of the lower court, the Supreme Court of the United States affirmed an attorney's right to speak freely and openly, even if she were involved in a case pending in any court proceeding.

From the outset of her legal career Harriet Bouslog relished her role as the champion of the underrepresented in the community. Long before the advent of the Legal Aid Corporation and the Office of the Public Defender, she chose to offer her legal services to clients at the bottom of the socioeconomic scale.

And for the record, she never turned away a client or a cause because of a lack of funds.



U.S. Supreme Court: In re Sawyer, 360 U.S. 622 (1959)

"Certainly courts are not, and cannot be, immune from criticism, and lawyers, of course, may indulge in criticism. . . . But when a lawyer goes before a public gathering and fiercely charges that the trial in which he is a participant is unfair, that the judge lacks integrity, the circumstances under which he speaks not only sharpen what he says but he imparts to his attack inflaming and warping significance. He says that the very court-room into which he walks to plead his case is a travesty, that the procedures and reviews established to protect his client from such conduct are a sham. . . . Certainly this Court, the supreme tribunal charged with maintaining the rule of law, should be the last place in which these attacks on the fairness and integrity of a judge and the conduct of a fair trial should find constitutional sanction."

—Justice Felix Frankfurter, Dissenting

"We start with the proposition that lawyers are free to criticize the state of the law. Many lawyers say that the rules of evidence relative to the admission of statements by those alleged to be co-conspirators are overbroad or otherwise unfair and unwise . . . and that a Smith Act trial is apt to become a trial of ideas. Others disagree. But all are free to express their views on these matters, and no one would say that this sort of criticism constituted an improper attack on the judges who enforced such rules and who presided at the trials. . . . Such criticism simply cannot be equated with an attack on the motivation or the integrity or the competence of the judges. And surely permissible criticism may as well be made to a lay audience as to a professional; oftentimes the law is modified through popular criticism."

—Justice William Brennan, for the Court

A Harriet Bouslog Timeline

- 1912 Born in Maxwell, Florida
- 1916 Family moves to Indiana
- 1936 Graduates with LL.B. degree from the University of Indiana, the only woman in her class
- 1936 Marries Charles Bouslog, a graduate student in English, and moves to Massachusetts, where she gains admission to the bar
- 1939 Moves to Hawai'i, when Charles becomes an English instructor at the University of Hawai'i
- 1941 Works for Stanley, Vitousek, Pratt, and Winn while preparing for the Hawai'i Bar, which she passes in December
- 1942 Leaves Hawai'i for Washington, D.C., partially in response to the imposition of Martial Law
- 1942–46 Works for the National War Labor Board, meets Harry Bridges, and goes to work for the ILWU
- 1946 Returns to Hawai'i in September as a lawyer for the ILWU, to defend workers arrested during the 1946 sugar strike; soon establishes a law partnership with Myer Symonds
- 1948 The Wilder Murder
- 1950 Harriet and Charles Bouslog divorce; Harriet marries Stephen T. Sawyer
- 1952 The "Hawai'i Seven" Smith Act Trial
- 1957 *In re Sawyer*
- 1978 Dissolution of Bouslog and Symonds



Clockwise from top: Baby Harriet, with mother, father, and sister; the Indiana University co-ed; back in Hawai'i (two photos); in court; with Steve Sawyer and their dog; and reflecting at home.

AN ADVOCATE FOR ALL HAWAI'I

by Teresa Bill

Compelling biographies not only celebrate the individual strengths, challenges, and philosophies of a particular person (the “great woman” formula); they reflect the life and times of their subjects’ communities. Harriet Bouslog’s biography is more than the “larger than life” tale of a dramatic, intelligent person whose worldview demanded the full expression of constitutional rights for all. Harriet’s life work is a public record interweaving the class, race, and civil rights issues confronting post-WWII Hawai‘i. It is too simplistic to chart Bouslog’s legal cases and label them—this one is about working people; that one is about Hawaiians; this one is about free political expression. But a few early cases in Harriet’s career reflect and intersect the complex layers of Hawai‘i’s communities and history.

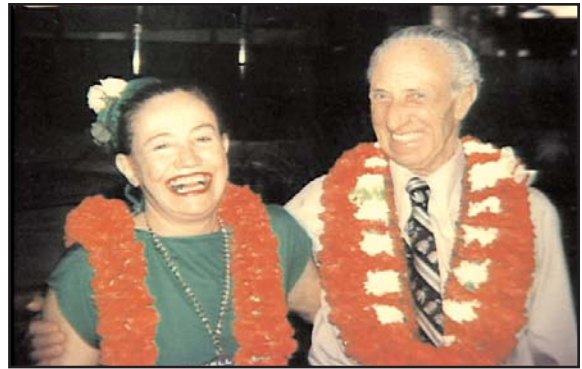
Harriet Bouslog’s education, race (Caucasian), and class status afforded her the opportunity to challenge the class structure of Hawai‘i. In 1941, after working two years at the law firm of Stanley, Vitousek, Pratt & Wynn, one of the law firms representing the “Big Five,”¹ Harriet became the eighth woman admitted to the Hawai‘i Bar. She clearly understood the power structure of the Territory of Hawai‘i, and the Big Five’s grip on economic, legal, and political power. A female attorney in an otherwise white, male profession,² Harriet was an “outsider” in more ways than one, using her legal education and social position for radical social change.

CHALLENGING THE SOCIAL STRUCTURE

Released from the restrictions of martial law, post-WWII Hawai‘i was a maelstrom of social change, and the working people of Hawai‘i were at the core of this new social wind, challenging the unilateral power of the Big Five on all fronts. ILWU (International Longshore and Warehouse Union) members and their Political Action Committees challenged the economic and legislative pillars of the Big Five’s power, while Harriet Bouslog challenged the legal framework that supported their power.

When Harriet Bouslog stepped off the plane in Honolulu in October 1946 she knew exactly what she was getting into, as she jumped into the middle of the ILWU’s sugar strike. She had over one hundred cases, ranging from unlawful assembly, contempt of restraining orders, conspiracy, and assault, that had arisen out of the strike. While the judicial system is independent, laws are enforced to maintain the social order. In 1946 Hawai‘i that social order included the economic and political dominance of the Big Five. It is more than “labor folklore” to claim that the ILWU and their members couldn’t find a lawyer in the Territory to defend them. It is a truth that illuminates the far-reaching machinations of power. How could local, working-class citizens receive justice in the legal system if they couldn’t even acquire an attorney?

Harriet Bouslog with Harry Bridges (top); Steve Sawyer and John and Aiko Reinecke (middle), and Jack Hall (bottom).



Harriet challenged the “Assembly & Riot” charges, arguing that the constitutional right to free speech and assembly was still applicable in the Territory, even for strikers. Arising out of the same picket line arrests, Harriet challenged the racial and ethnic composition of the jury pools assembled for these “assembly & riot” and “assault” charges. She argued that an all-white jury pool systematically excluding local men could not constitute “a jury of one’s peers.”

CHALLENGING CAPITAL PUNISHMENT

While Harriet Bouslog had a personal mission to fight capital punishment, her successful pro bono work to gain a stay of execution for John Palakiko and James Majors reflected and built upon the fierce community feeling that justice would not be served in their execution. The legal questions revolved around forced confessions and the misapplication of first degree murder to a death that was not premeditated. But the community and social questions revolved around why non-white or Hawaiian defendants were disproportionately given capital punishment. In the 1950 trial of Palakiko and Majors, the community’s memory of the racist and class-biased “injustice” rendered in the 1931 Massie case—four elite, white men convicted of the vigilante murder of a young local Hawaiian man were given commuted sentences of one hour—was clear and vibrant. Non-white defendants were receiving disproportionately harsh sentences.

MCCARTHYISM AND FREE SPEECH

John and Aiko Reinecke’s dismissal from their public school positions in 1948 because of their “un-American” teachings was a harbinger of the public assault against Hawai‘i’s leftist political community. Smith Act trials and the Taft-Hartley Act decimated the U.S. labor movement of its leftist leadership, and Hawai‘i’s own Smith Act trial included ILWU leader Jack Hall. Harriet was involved in the defense for both cases, but she made legal history with her own lawsuit (*In re Sawyer*), appealing the suspension of her license to practice law. These disciplinary proceedings arose out of Harriet’s public statements criticizing the Smith Act and McCarthyism. She appealed all the way to the U.S. Supreme Court and ultimately guaranteed attorneys their right to free speech.

By no means the end of Harriet Bouslog’s illustrious legal career, *In re Sawyer* is an instructive place to conclude. The Ninth Circuit Court noted that Harriet “might have helped her cause by showing a little humbleness,” and articulated Harriet’s essence when noting, “Respondent is adamant that she only exercised her constitutional right.”³ Any gendered expectation of humility was soundly rejected. Harriet continued her legal practice, serving Hawai‘i’s working people with cases both large and small until she retired in 1978.

Legal institutions reflect social forces as well as the highest aspirations of our citizens. Harriet Bouslog pursued her legal challenges beyond Hawai‘i’s local courts to federal venues and the U.S. Supreme Court. While some of her appeals were reversed, her arguments convinced the Hawai‘i Territorial Legislature to amend offending laws. We owe a debt to Harriet Bouslog for her vigilant application of the U.S. Constitution to protect all of Hawai‘i’s people.

NOTES

1. The “Big Five” refers to a group of corporations with interlocking directorates whose subsidiaries controlled most of Hawai‘i’s agriculture, transportation, banking, energy and utilities. These companies were Alexander and Baldwin, Castle & Cooke, American Factors, C. Brewer, and Theo H. Davies.
2. When Harriet returned to Hawai‘i in 1946, she joined seven other active female members of the Hawai‘i Bar, including Sau Ung Loo Chan, the first woman from a racial minority to be admitted to the Hawai‘i Bar, in 1943.
3. *In re Sawyer*, 9th Circuit, 260 F2d, 189.

“Whenever I think of democracy, I think of a meeting I attended at Lahaina, Maui, in November 1946 at the end of the 79-day sugar strike. The meeting was to consider whether the Lahaina unit would go back to work under the agreement reached as to the other units, while the Pioneer Mill Company refused to re-employ eleven of the Lahaina strike leaders who had been charged with unlawful assembly and riot. There were 600 to 700 people at that meeting. They were people who had been through 79 days of strike. They were people whose children needed shoes and clothes and food. . . . To a man, those union members voted to refuse to return to work until those eleven men were guaranteed reinstatement without discrimination.”

—Harriet Bouslog, *Fear*

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ILWU v. Wirtz 37 Haw. 404; 170 F.2d 183 (9th Cir. 1948), cert. Den. 336 U.S. 919 (1949).

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In the Matter of the Application of John Palakiko and James Edward Majors for a Writ of Habeas Corpus, 39 Hawai'i 141 (1951).

Palakiko v. Harper 39 Haw. 167; 209 F.2d 75 (9th Cir. 1953); cert. den. 347 U.S. 956 (1954).

In re Sawyer, 360 U.S. 622 (1959) reversed 260 F.2d 189.

CONTRIBUTORS

Esther K. Arinaga is a retired attorney whose area of practice was public interest law.

Mark Bernstein, a University of Hawai'i graduate, became Harriet Bouslog's last law partner when he arrived back in Honolulu in 1979, having graduated from Southwestern University School of Law in Los Angeles. After Ms. Bouslog's retirement in 1980, he went on to establish what is now one of Honolulu's oldest solo legal practices, operating out of Charles R. Bishop's office at the historic Bank of Bishop building on Merchant Street. Mr. Bernstein's practice has focused on providing general legal services to a select group of clients with a concentration in the area of intellectual property and complex commercial litigation.

Teresa Bill is a Labor Educator, emphasizing labor history and gender equity, at the University of Hawai'i's-West Oahu Center for Labor Education and Research (CLEAR). She is a researcher/producer for CLEAR's *Rice and Roses* television documentary program on Hawai'i labor issues.

Ah Quon McElrath is a retired social worker, a labor educator, and a University of Hawai'i Regent.

Stephen T. Sawyer is a semi-retired entrepreneur.

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Betty Vitousek is the former head of the Family Court of Hawai'i's First Circuit Court. Her private practice focused on family law, specializing in adoptions. Ms. Vitousek was the Executive Director of the Hawai'i State Bar Association. In 1982 she received a Distinguished Service Award from the Hawai'i Women Lawyer's Association.

Biography Hawai'i: Documentary Lives & Public Events

Biography Hawai'i is a television documentary series that focuses on residents whose lives have had a lasting impact on these islands. Featuring people from different ethnic groups and walks of life, but with an emphasis on Hawaiian subjects, *Biography Hawai'i* will appeal to a statewide and national audience through the informative and engaging format of visual biography.

The primary sponsoring organizations are Hawai'i Public Television and the Center for Biographical Research of the University of Hawai'i at Mānoa. For more than a quarter of a century, Hawai'i Public Television has produced and provided programs that enlighten, enrich, and entertain the island community. The Center for Biographical Research is dedicated to the interdisciplinary and multicultural study of life writing through teaching, publication, and outreach activities.

The first six subjects will be Margaret Maiki Aiu Lake, Harriet Bouslog, Koji Ariyoshi, Princess Ruth Ke'elikōlani, Prince Jonah Kūhiō Kalaniana'ole, and Sanford Dole.

Cosponsored by the Center for Biographical Research and the King Kamehameha V Judiciary History Center, *Biography Hawai'i: Five Lives* is a series of life history presentations commemorating people from diverse backgrounds, time periods, and cultural positions who have had lasting impacts on Hawai'i's history, culture, and society. The subjects for these biographical explorations are Harriet Bouslog, Prince Jonah Kūhiō Kalaniana'ole, Princess Ruth Ke'elikōlani, Sanford Dole, and Margaret Maiki Aiu Lake. The public events will feature discussions and commentary enhanced by readings, performance, and audiovisual material. Pre-performance displays and informational guides with bibliographies will complement the public events, which will encourage a look at Hawai'i's history, culture, and society through the lens of biography.

For more information about either program, contact the Center for Biographical Research, 1800 East-West Road, Henke Hall 325, University of Hawai'i at Mānoa, Honolulu, Hawai'i 96822; telephone/fax: 808 956-3774; biograph@hawaii.edu.

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Hawai'i
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Humanities

Prince Jonah Kūhiō Kalaniana'ole Hawaiian Ali'i and Congressional Delegate

Tuesday, May 14, 7:00–9:00 p.m.

The King Kamehameha V Judiciary History Center

Featuring readings from Prince Kūhiō's speeches and writings, and Special Guests Jim Bartels, Preservation Director of Washington Place; Mahealani Kamau'u, Executive Director of the Native Hawaiian Legal Corporation; Linda Delaney, past President of the Prince Kūhiō Hawaiian Civic Club; Davianna McGregor, University of Hawai'i at Mānoa Associate Professor of Ethnic Studies; and Noenoe Silva, UH-Mānoa Assistant Professor of Political Science.

UPCOMING AUGUST 29: *Princess Ruth Ke'elikōlani*

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