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Proposed Investigation of the Government of
the Territory of Hawaii

*U.S. Congress, Senate, Committee on
Territories...*

HEARING

BEFORE

THE COMMITTEE ON
TERRITORIES AND INSULAR AFFAIRS
UNITED STATES SENATE

SEVENTY-SECOND CONGRESS

FIRST SESSION

ON

S. J. Res. 81

A JOINT RESOLUTION PROVIDING FOR AN INVESTIGA-
TION OF THE GOVERNMENT OF THE TERRITORY
OF HAWAII, AND FOR OTHER PURPOSES

JANUARY 16, 1932

Printed for the use of the Committee on Territories and Insular Affairs



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III

PROPOSED INVESTIGATION OF THE GOVERNMENT
OF THE TERRITORY OF HAWAII

SATURDAY, JANUARY 16, 1932

UNITED STATES SENATE,
COMMITTEE ON TERRITORIES AND INSULAR AFFAIRS,
Washington, D. C.

The committee met, pursuant to call, at 10.30 o'clock a. m., in the committee room of the Committee on Commerce, in the Capitol, Senator Bingham presiding.

Present: Senators Bingham (chairman), Robinson of Indiana, Metcalf, Vandenberg, Pittman, Harris, Hayden, Hawes, and King.

Also present: Hon. Victor S. K. Houston, Delegate in Congress from Hawaii.

The CHAIRMAN. The committee will be in order. The hearing to-day is on S. J. Res. 81.

(S. J. Res. 81 is here printed in the record, as follows:)

[S. J. Res. 81, Seventy-second Congress, first session]

JOINT RESOLUTION Providing for an investigation of the government of the Territory of Hawaii, and for other purposes

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby created a joint congressional committee which shall be composed of three Members of the Senate, who are members of the Committee on Territories and Insular Affairs, to be appointed by the President of the Senate, and three Members of the House of Representatives, who are members of the Committee on the Territories, to be appointed by the Speaker of the House of Representatives. Such committee shall conduct a thorough investigation of the government of the Territory of Hawaii, the administration of civil affairs and criminal law in such Territory, the conditions as to law enforcement therein, and the relations between the government and the people thereof and the agencies of the United States Government within such Territory, with a view to determining whether changes in the status of such Territory, in its organic law, and in the administration of its civil affairs and criminal law are advisable.

The committee shall report to the Senate and House of Representatives not later than June 1, 1932, the results of its investigation, together with such recommendations for legislation as it deems advisable. Upon the filing of its report such committee shall cease to exist.

The committee is authorized to conduct its investigation at such times and places in the United States or in the Territory of Hawaii as it may deem advisable.

For the purposes of this joint resolution the committee is authorized to select a chairman and hold such hearings, to employ such experts and such clerical, stenographic, and other assistants, to require the attendance of such witnesses and the production of such books, papers, and documents, to take such testimony to have such printing and binding done, and to make such expenditures as it deems necessary.

Subpoenas shall be issued under the signature of the chairman, and shall be served by any person designated by him. The provisions of sections 101,

102, 103, and 104 of the Revised Statutes (U. S. C., title 2, secs. 191, 192, 193, and 104) shall be applicable in respect of any person summoned as a witness, in the same manner as such provisions are applicable in respect of any person summoned as a witness in the case of an inquiry before a committee of the House of Representatives.

The CHAIRMAN. I have called this meeting of the committee on account of the general interest in the situation in Hawaii. Various articles and statements have appeared in the newspapers. A subcommittee of the Naval Affairs Committee of the House of Representatives has made a partial report on the situation. This committee wants to know whether it is necessary for us to go into the matter extensively. In order that this committee may have on its records sufficient information to enable it to come to a preliminary decision in the matter, I have asked the heads of the various Government departments who in one way or another are intimately concerned with the Hawaiian Islands to appear before us and make a brief statement of conditions, and put into the printed record anything that they care to have appear.

In the first place, I shall call on the Secretary of the Interior, Doctor Wilbur, whose department exercises jurisdiction over the Territories, to tell us what reports he has received from Governor Judd, what the present conditions are in the islands, and what Governor Judd recommends. Doctor Wilbur.

STATEMENT OF HON. RAY LYMAN WILBUR, SECRETARY OF THE INTERIOR

Secretary WILBUR. In the first place, I think it might be important to get a little explanation of the relationship of the Department of the Interior to the islands. A book has recently been written on the government of Hawaii, in which there is this paragraph in the foreword:

Probably the explanation of the fact that Hawaii's government has escaped the attention of scholars is that it has worked well. We are not conscious of a thumb until it becomes sore. The pieces of government machinery which are most often in the headlines are those which are most troublesome. The Territorial government in Hawaii has been successful. It has caused little, if any, trouble. Therefore, men have paid it scant attention.

That about represents the situation in so far as the relationship of the Department of the Interior to the government of the islands is concerned.

Until this present series of circumstances came along, the department has occupied a position of connecting up the Hawaiian government, which practically acts like an ordinary State government; with the Federal Government in regard to a very few things—the relationship to other departments, the appropriations of Congress, and such questions as bond issues for cities or areas in Hawaii, and so on.

A study of our actual relationships shows that, while there is control over the Territory similar to that existing for all Territories in the past, for the most part the self-governing quality is the prominent one in connection with this particular Territory.

During this present difficulty I have been in touch by cable with Governor Judd, and I have brought along for the information of the committee all the reports submitted with reference to the attack

upon the wife of a naval officer last September, and the recent murder of one of the five supposed culprits. I have included also a summary of the course of the trial of the five persons accused of the September attack which resulted in a mistrial. Included also is a telegraphic summary of the police report upon the recent murder and a telegram dealing with press reports as to the alleged frequency of such attacks, giving what purports to be the actual figures. The actual figures in this record are very different from those that have been widely current in the press, and reduce the number of attacks of the type indicated above to a very few.

My information is based solely upon the governor's reports, recently received, and such newspaper reports as have been available. This material can speak for itself, or I can read it into the record if you so wish.

I have also attached extracts from the report of the governor for 1931, giving the criminal statistics, and the disposition of criminal cases tried during the past year.

The Federal courts and their jurisdiction will probably be covered by the Attorney General. But criminal cases of the types involved here fall solely within the jurisdiction of the Territorial courts. The Honolulu police force is chosen locally and is under the supervision of an elected officer.

I might recall to your minds that the governor is appointed by the President, with the advice and consent of the Senate, and is under the general supervision of the Secretary of the Interior. In the normal course of events problems of law and order are handled locally and not in Washington. As a matter of fact we have never had occasion, so far as the records of the department go, to have any case of this sort come even to the attention of the department. These two crimes, however, have focused attention upon a stiffening of the local law-enforcing agencies, and have raised the question of whether there should be more Federal control over the situation. Assistant Attorney General Richardson has been dispatched to the islands by the Attorney General, and it seems to me that he will be in a position to make a thorough and expert survey of the whole problem.

We have to recognize frankly that our difficulties here are increased by the racial situation. I have also available a table giving the statistics in regard to the different races in the islands, and the high percentage of those that have in their blood more than one race.

The question of the jury system there will probably come up for discussion. The Attorney General has looked into that. The same rights of jury trial that exist on the continent exist in the Territory.

Apparently this recent murder was prompted by dissatisfaction with the disagreement of the jury in the attack case. As has been brought out in the history of the trial—I have telegrams giving it in some detail—it appears that the judge, after overruling all of the defendant's motions for a bill of particulars, plea in abatement, demurrer, and motion to quash, and overruling three of the defendant's motions to declare a mistrial, gave instructions which were as satisfactory to the counsel for the prosecutrix as the local laws allowed and thereafter held the jury for 90 hours. We do not know how the jury stood, but we understand it was eight for conviction and four for acquittal. The judge discharged the jury for

disagreement and declared a mistrial, holding the defendants for a new trial. While one of the five accused was thus in the custody of the court awaiting retrial, according to the governor's report, the man was lured into an automobile, kidnaped, and murdered. I have no information as to the character of the evidence offered at the trial, nor whether it was adequate to sustain a conviction. The local law requires corroboration of the prosecutrix in a case of this type.

Naturally, we have no sympathy at all with any lax administration by the police, and particularly resent any such a situation as developed through possible attacks on women.

I anticipate that there will be quite a revamping of the Honolulu police system. The governor has called a special session to consider the question. It had already been up at the last session of the legislature, but it was not passed, although the governor sought to secure it. The aim had been to bring the police more definitely under the control of the governor rather than of the city of Honolulu.

The CHAIRMAN. Have you a copy of the governor's recommendations to the legislature?

Secretary WILBUR. It is available.

The CHAIRMAN. Will you have it put in the record?

Secretary WILBUR. Yes.

(The recommendations of Governor Judd to the legislature, furnished by Secretary Wilbur, are printed in the record at this point.)

[Naval message]

HONOLULU, January 20, 1932.

SECRETARY INTERIOR, Washington:

Complete text of report of my advisory committee on crime of February, 1931, was transmitted to sixteenth legislative session by message dated February 25, 1931, with general comment, "I believe that the recommendations contained therein are worthy of your careful consideration." Refer to recommendation in report at page 23. Bill prepared by committee on crime was handed by me to Senator Heen with the thought that "it would be introduced in the senate of the sixteenth legislature for consideration." Bill was returned to me on March 7 by Senator Heen "apparently for lack of an introducer among the gentlemen of the senate representing the third senatorial district." On same date I addressed letter to chairman of committee on crime, appraising him of this and asking his advice and recommending in the premises. Such chairman was speaker of house representatives. Reply received March 13 that at an early date he would present matter to a meeting of committee and would advise me of the action taken thereon. Further letter received April 2 making no comment on my letter of March 12. On April 8, 1931, bill was introduced into house representatives as house bill 388. In my naval radio to you January 11, 1931, I informed you of action taken on this measure. Regarding recommendations to special session on this measure, my message of January 18 reads: "The happenings of the recent past have focused attention upon Hawaii, and the consideration of the Congress of the United States has been directed to charges of deficiencies in local police administration, with particular reference to the city and county of Honolulu. The requirements of self-government demand that we establish a police system in accordance with the best-known standards. I therefore submit a bill entitled "An act to amend chapter 118 of the Revised Laws of Hawaii, 1925, by adding thereto 14 new sections to be numbered section 1831 A to 1831 N, inclusive, by amending sections 1826 and 1831 and by repealing sections 1752 and 1825, relating to the government of the city and county of Honolulu and reorganizing the police department thereof," and urgently recommend that it receive your immediate and favorable consideration.

JUDD.

[Naval message]

HONOLULU, January 20, 1932.

SECRETARY INTERIOR, Washington:

Referring your radio January 19, I have prepared and will transmit to legislature a bill to amend section 4156, Revised Laws of Hawaii, 1925, so that the said section will read: "evidence period the female upon whom rape is alleged to have been committed, or who is alleged to have been abducted or seduced, is a competent witness in a prosecution for the rape, abduction, or seduction." Territorial attorney general advises me that this bill, if enacted, will have effect of bringing rape under common law rule under section 1, Revised Laws of Hawaii, 1925. Would appreciate your informing Delegate Houston of above.

JUDD.

(Further data referred to by Secretary Wilbur in his statement and presented to the committee are here printed in the record, as follows:)

[Telegram]

HONOLULU, January 10, 1932.

SECRETARY INTERIOR, Washington, D. C.:

January 7th commandant 14th naval district wired Secretary Navy statement from me concerning fleet activities Hawaii as affected by local conditions. This was preliminary to written report I am now compiling for your information and of Navy Department at your discretion. Situation prior to yesterday exactly as stated by radio through commandant. Following is report to me from territorial attorney general: "Yesterday morning one of Ala Moana defendants, a Hawaiian, was kidnaped after reporting to court at Honolulu into a car rented by an enlisted Navy man after being pointed out by mother of complainant to two men in car. About hour and half later same car apprehended in country with same woman driving and two men in rear one being husband of complainant other an enlisted Navy man with dead body of defendant in car. Search of home of complainant's mother indicates conclusively defendant killed there. Shot heard there by neighbors and much evidence found. The three found with body charged yesterday with murder and at request commandant turned over to Navy officials by territorial circuit court for custody. Indications another enlisted Navy man implicated who is being held. Other four defendants Ala Moana case incarcerated at own request so no reason to anticipate further disorders." Reports from mainland this morning that militia called out absolutely false. No occasion for this or other such steps. Situation calm. Authorities are controlling situation and are able control all situations.

JUDD, Governor.

[Telegram]

HONOLULU, January 11, 1932.

SECRETARY INTERIOR, Washington, D. C.:

Am informed by press that United States Senate has adopted resolution calling upon attorney general to conduct investigation of conditions in Hawaii. If correct I urge attorney general immediately send investigator as it is most important to all concerned that true facts be known.

JUDD, Governor.

[Telegram]

HONOLULU, January 12, 1932.

SECRETARY INTERIOR, Washington, D. C.:

To-night's dispatches indicate mainland press printing colossal and unforgivable falsehoods regarding local conditions and causing such tremendous

injury to Hawaii and consequently to the Federal Government as will require years to overcome. Fairness and mutual welfare demand immediate and thorough investigation in order that Hawaii may not be further defamed.

JUDD.

[Telegram]

HONOLULU, January 12, 1932.

SECRETARY INTERIOR, Washington, D. C.:

Referring your cable just received. My answer to your naval radio requesting information regarding powers and duties high sheriff and changing police administration was filed with local office naval communication service 11 o'clock p. m., Honolulu time, January 11. Am informed by such office that my message was received Washington 2 p. m., Washington time, January 12. Have received no other messages from you. Please wire me immediately if message not yet received. Appreciate your efforts in advancing investigation and your expression of confidence.

JUDD, Governor.

[Telegram]

HONOLULU, January 13, 1932.

SECRETARY INTERIOR, Washington, D. C.:

Late dispatch states House Naval Subcommittee charged Judge Steadman's instructions in Ala Moana case were "thinly veiled instructions to acquit."

Judge Alva Edgar Steadman, who presided, was born in the mainland United States, where he had his preliminary education and holds a bachelor of arts, 1916, from Stanford and bachelor of laws from Harvard, 1922. During war he was in service over two years, being commissioned officer all but three months, retiring as captain of Infantry. He came to Hawaii in 1922 and entered law firm of former Governor Frear, from which he went to the bench in 1927. His record on bench has been outstanding, receiving much favorable editorial comment from time to time. He is married to a daughter of one of Honolulu's most prominent bankers, his wife being all white and descended from the oldest New England missionary stock. The transcript of the evidence which is being forwarded will speak for itself as to Judge Steadman's conduct of the trial. Shall also forward all editorial comment thereon. After arraignment defense counsel filed motion for bill of particulars, plea in abatement, demurrer, and motion to quash, all of which judge denied. Prior to and during trial defense repeatedly moved for election by prosecution as to which defendant was principal and which accessories, all of which denied. During the jury's deliberations defense counsel three times moved the court for mistrial, manifestly in belief a conviction impended. Two of these motions were summarily denied by Judge Steadman and on the third the Territorial Attorney General and prosecutor were called in.

It was patent that prosecution's objection, which was voiced, was unnecessary as judge indicated call was merely formality and promptly denied motion. All connected with prosecution believed conviction would result, but after over four days and nights deliberation, which is longest any judge has ever held jury in Hawaii, the judge declared mistrial after definite word from jury that agreement was absolutely impossible. I respectfully suggest instructions be submitted in full to Attorney General for his opinion. Thirteen instructions were requested by prosecution and 12 given. Twenty-six instructions were requested by defense and 11 given. Law on instructions in criminal cases covered in sections 2426 to 2430 revised laws Hawaii, 1925. Section 4156 required corroboration of prosecutrix in rape charge. It is apparent, when charges extend even to judiciary sponsored by best element of community and appointed by President, that some sinister and ulterior motive is in the background which will be dealt with in my written report being prepared. This report has taken and will take time as it will be based on nothing but facts. I am authorized to state that this message has been subscribed to by the Territorial attorney general, the city and county attorney, the president, vice president, secretary, and the treasurer of Hawaii Bar Association. I am further authorized to state that each and every member of the law firm now representing Mrs. Fortescue, Lieutenant Massie and

codefendants, which firm was identified with the prosecution during the trial, assert that the instructions were eminently fair to the prosecution. Would appreciate your furnishing Delegate Houston with foregoing information.

JUDD.

HONOLULU, January 13, 1932.

SECRETARY INTERIOR,
Washington, D. C.:

Territorial attorney general has rendered following report to me:

Résumé of final report of 1931 Territorial grand jury. Indictments of sex cases involving violence were rape, 1; assault with intent to ravish, 11; total, 12. (Note one additional rape case occurring on a white woman on Wilhelmina Rise, Honolulu, by an escaped prisoner was included in the report, as it was indicted January 6, 1932, and before the grand jury made its final report.) The report also shows one indictment for assault with intent to ravish a female under 12, but this is one of the above 11 cases indicted for assault with intent to ravish, which was, subsequent to January 1, 1932, reindicted for the same crime for assault with intent to ravish a female under 12. The report also shows the following indictments for sex crimes involving no violence: Sexual intercourse with female under 16, 15 (note these are cases of sexual intercourse with full consent with girls between 12 and 16); indecent assault, 3 (note these involve no intercourse, but indecent fondling of children); incest, 3 (note these also were with consent and two cases were offenses by the same father); seduction, 1 (note consent under promise of marriage or by deceit).

The following offenses, many of which are included in the list of cases examined by the hospital authorities and falsely reported on the mainland as 40 assault cases, are not felonies and are therefore not taken before the grand jury but are disposed of in police court: Fornication—merely consent intercourse between two unmarried persons; lascivious conduct—lewd conversation, indecency, etc., where female is over 12 and no sexual intercourse involved; bastardy cases—civil proceeding for support of illegitimate child and handled in the court of domestic relations. Furthermore, certain reports from Washington carry statements that 40 criminal assaults similar to the Massie case had been perpetrated on American women during the year 1931. These statements were based on the records of physical examination of females made by the city physicians in the emergency hospital of the city and county of Honolulu during said year. The city physician, his deputy, the attorney general of the Territory, and the city criminal prosecutor have carefully checked all cases of said examinations and report as follows: Sex crimes involving violence as follows: Rape, 1; assault with intent to ravish, 4; assault with intent to ravish female under 12, 1; carnal abuse of a female under 12, 1; total 7.

Sex crimes involving violence on basis of nationality of female: 1 rape—1 American; 4 assault with intent to ravish—1 part Hawaiian, 1 American, 1 Portuguese, 1 Chinese; 1 carnal abuse of female under 12—1 Filipino; 1 assault with intent to ravish female under 12—1 Filipino. Sex crimes not involving violence: Incest, 5; indecent assault, 2; fornication, 17; seduction, 1; sexual intercourse with female under 16 and over 12, 18; lascivious conduct, 5; bastardy cases, noncriminal, 2; cases in which no crime was involved but females have been examined, 13; total, 63. Sex crimes not involving violence on basis of nationality of female: 5 incest—2 Hawaiian, 2 Chinese, 1 Porto Rican. Two indecent assault—two Portuguese. Seventeen fornication—6 Hawaiian, 2 Portuguese, 4 Chinese, 2 Korean, 1 Porto Rican. One seduction—1 Chinese. Eighteen sexual intercourse with female under 16—4 Japanese, 1 Korean, 1 Portuguese, 2 Americans, 6 Hawaiians, 2 Filipino, 1 Porto Rican, 1 Spanish. Five lascivious conduct—3 Hawaiians, 2 Portuguese. Two bastardy cases, non-criminal—1 Portuguese, 1 Japanese. Thirteen cases in which no crime was involved but female was examined—2 Americans, 4 Portuguese, 7 Hawaiians. To-day I discussed the situation and foregoing reports with Messrs. J. W. Waldron, Frank Atherton, and John Waterhouse. We all firmly believe that the foregoing facts indicate as high moral standards as any city of like size in the country.

We further firmly believe that when it is considered that Honolulu is a seaport city visited by ships from every nation, that the largest Army post in the United States is located here, that there are over 14,000 soldiers and sailors on the island of Oahu, the great majority of whom are young unmarried men, that there are in excess of 60 nationalities here, Honolulu has been and is

remarkably free from prevailing criminal conditions now existing in many cities on the mainland and that Honolulu is coping with its social and criminal problems in a manner comparable with the best records of cities elsewhere having far less problems confronting them. Would appreciate your furnishing delegate Houston with foregoing information.

JUDD.

[Naval message]

JANUARY 13, 1932.

SECRETARY INTERIOR, *Washington*:

Legislative conferees appointed at my request by presiding officers territorial legislature have agreed to recommend and have recommended the immediate calling of a special session of territorial legislatures for the sole purpose of considering and acting upon matters brought to the attention of the legislature by the governor.

JUDD, *Governor*.

[Naval message]

HONOLULU, *January 12, 1932.*

SECRETARY INTERIOR, *Washington*:

Answering your radio of January 11. Powers and duties of high sheriff are prescribed by following statutes. Sections 79 and 80 of Hawaiian organic act, United States Code, title 48, sections 544 and 546, and following sections of revised laws of Hawaii 1925 and/or act of legislature amending same, to wit, sections 147, bond of high sheriff; 188, inventories of government assets; 268, as amended by Act 135, Session Laws 1927, execution of sentences of courts-martials; 366, making complaints re idle or dissolute children; 366, high sheriff charged with custody of children committed to industrial school until delivered; 375, high sheriff cooperates in recognity of deserters from reform school; 856, high sheriff had right to search vessels without warrant; 927, high sheriff executes warrants to abate health nuisances; 928, high sheriff furnishes prisoners to abate health nuisances; 929, high sheriff to report health nuisances; 1314, as amended by Act 192, Session Laws 1925, enforcement of dog tax; 1489, entitled to aid and advice of attorney general; 1497, chief of police of Territory; 1500, appointment of deputies; 1501, general duties; 1502, Territorial police officers; 1504, as amended by Act 38, Session Laws 1927, fees; 1505, removal of Territorial police officers by judge of court of records; 1506, Elisor, when disqualified; 1507, executing process on high sheriff's death; 1508, records delivered, Session Laws 1927, successor; 1509, as amended by Act 10, Session Laws 1931, of process by, high sheriff; 1510, address to, and office accounts and reports to attorney general; 1511, quo warranto re high sheriff's office; 1612, administering oath in certain matters; 1514, as amended by Act 125, Session Laws 1931, warden Oahu prison and appoints jailers; 1516, as amended by Act 125, Session Laws 1931, prison records; 1517, records on commitments; 1519, as amended by Act 125, Session Laws 1931, sanitation of prisons; 1520, bibles for prisoners; 1523, as amended by Act 125, Session Laws 1931, prison labor; 1526, as amended by Act 125, Session Laws 1931, prison labor; 1528, amended by Act 125, Session Laws 1931, female prisoners, Act 129, Sessions Laws 1931, adding new chapter 110 act revised laws 1925, and amending sections 1537 to 1540, board of prison directors; 1549, as amended by Act 128, Session Laws 1931, prison visitors; 1558, commutation records; 1561, as amended by Act 126, Session Laws, 1931, execute orders re paroles; 1568, as amended by Act 110, Session Laws 1931, compensation for prison labor; 1569, 1570, 1571; and 1574, all as amended by Act 110, Session Laws 1931, originating to compensation and pay rolls for prisoners, custody and withdrawals of prisoners money and reports by warden; 1984, auction sales; 2255, adjournment of terms of circuit courts; 2341, as amended by Act 13, Session Laws 1929, service of prosecutors; 5384, enforcement of court orders; 2441 to 2461, executing 2541 and 2542, as amended by Act 58, Session Laws 1929, and section 2544, as amended by Act 183, Session Laws 1927, and Act 215, Session Laws 1931, fees; 2555, accounts for fees; 2556 to 2558, subpoenas; 2694, service writ of mandatu; 2723, service in quo warranto; 2739, service of writ of habeas corpus; 2784, writ of possession; 2794 to 2804, recovery of personal property; 2805 to 2825, attachment; 2967, service libels for divorce; 3055, as amended by Act 14, Session Laws 1931, service

In bastardy cases; 39,445 inquests; 3959 to 3960, search warrants; 3967 to 3976, arrests; 3,980, as amended by Act 231, Session Laws 1931, sale by high sheriff; 4007, warrant in criminal cases in district courts; 4007, collection of fines; 4093 and 4095, execution of sentence; 4103, as amended by Act 41, Session Laws 1931, high sheriff as prosecuting officer; 4300, bail for persons unlawfully using explosives; 4324, summoning assistance in emergencies; 4352, dispersing of riots and unlawful assemblies; 4353 and 4354, summoning of posse committing and orders; 4507, inspection of artesian wells.

In connection with consideration of high-sheriff duties and powers, history of legislation discloses that prior to enactment of Act 39, Session Laws of Hawaii, 1905, which first created counties and county sheriff and other county officers, attorney general was head of police department of Territory, high sheriff being subject to his control in police matters. When county act was passed in 1905, county sheriffs were made elective officers of counties and independent of control by attorney general or high sheriff thus breaking continuity of police control of entire Territory by attorney general, heretofore existing. In view of fact that most of high sheriff's police powers are derived from old statutes dating prior to 1905 (see chs. 108 to 110, revised laws of Hawaii, 1925) and powers of county sheriffs concerning police matters are derived from later legislation, there is serious question in many cases whether general police powers of high sheriff have not been modified by implication in favor of county sheriffs. Uniform practice since 1905 has been for county sheriffs to exercise almost exclusive jurisdiction in all police matters relating to crime except where Territorial felons were involved. While under chapter 109 to revised laws of Hawaii, 1925, high sheriff still possesses power to appoint Territorial police with approval of attorney general and this power has recently been invoked in meeting present situation, Territorial legislature has never since 1905 made any appropriation for Territorial police but has left matter of policing county to the various counties concerned. Attention is invited to fact that by Act 194, Session Laws of Hawaii, 1929, Territorial legislature required Honolulu board of supervisors to increase police force of district of Honolulu which embraces city proper to one police officer to every 600 inhabitants and prescribed minimum salaries for them.

The following information is offered concerning appointment and removal of Honolulu police officers. City and county sheriff is elected under section 1751, revised laws Hawaii, 1925. Under section 1752, as amended by Act 97, Session Laws 1929, deputy sheriffs are appointed by sheriff. Section 1783 provides for removal of sheriff by impeachment proceedings before board of county voters. Sections 1825 to 1830 prescribe certain powers and duties of city and county sheriff. Section 1831, as amended by Act 22, Session Laws 1927, and by Act 194, Session Laws 1929, provides for appointment by sheriff of police officers, deputy sheriff, and other employees, all police officers with certain exceptions to be appointed under civil-service regulations as provided by chapter 122 revised laws Hawaii 1925, as amended by Act 205, Session Laws 1927, which chapter provides for appointment by municipal mayor with approval of board of supervisors of civil-service commission for employees of police and fire departments. Under this chapter as construed in practice and the rules and regulations of the commission, sheriff of city and county may remove police officers for cause subject to appeal within 10 days to Civil Service Commission which may confirm or modify order of removal.

Bill for changing police administration and appointment of chief of police of Honolulu introduced at last session of legislature as house bill 388. Mailing copies printed bill also copies suggested improvement. Action had thereon as follows: Introduced April 8, 1931, same day passed first reading and referred printing committee; April 9, reported printed and ready for distribution, same day referred to municipal committee; April 21, reported out by municipal committee with statement, "There are many angles to this measure, and inasmuch as it affects the city and county of Honolulu only, the majority of your committee being from the outside districts are somewhat uncertain as to the real desires of the delegation from Oahu with respect to this measure." Committee recommended to committee of whole house. This recommendation was not concurred in and on final action bill was indefinitely postponed. Am mailing you house and senate journals of sixteenth legislative session. Refer to pages 805, 833, 849, and 1177 on house journal. Also refer to report of governor's advisory committee on crime issued February, 1931, at page 22. Copies this report in your files but am mailing additional copies. Trust this fully answers your inquiry.

JUDD.

(The material referred to in the foregoing communication as House bill No. 388, etc., is as follows:)

[HOUSE BILL NO. 388]

AN ACT To amend chapter 118 of the Revised Laws of Hawaii, 1925, by adding 11 new sections to be numbered sections 1831A to 1831K, inclusive, by amending sections 1825, 1826, and 1831, and by repealing sections 1752 and 1825, relating to the police department of the city and county of Honolulu

Be it enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Chapter 118 of the Revised Laws of Hawaii 1925, is hereby amended by adding thereto 11 new sections to read as follows:

"SEC. 1831A. *Organization.*—The police department of the city and county of Honolulu shall consist of a police commission, chief of police and force of police officers and such other officers, clerks, and employees, as the board of supervisors may from time to time prescribe, appointed in the manner provided for by this act.

"SEC. 1831B. *Police commission—Appointment.*—A police commission is hereby created, to consist of five members who shall be appointed by the mayor with the approval of the board of supervisors. No member of the commission shall be a salaried officer or employee of the Territory or any political subdivision thereof. Each commissioner must be at the time of his appointment an elector of the city and county and must have been such for at least three years next preceding his appointment. Any commissioner may be removed from office by the mayor with the concurrence of the vote of five members of the board of supervisors. The commissioners shall serve without remuneration, but may be reimbursed for their reasonable traveling and other expenses incurred in the discharge of their duties. The commission may employ such clerks, employees, and other assistants, and at such salaries as may be allowed by the board of supervisors. Civil-service regulations shall not apply to the appointment or removal of such persons.

"SEC. 1831C. *Term of office.*—Upon the first appointments, which shall be made as near as may be after the enactments hereof, one of said commissioners shall be appointed for a term ending January 1, 1933; one for a term ending January 1, 1934; one for a term ending January 1, 1935; one for a term ending January 1, 1936; and one for a term ending January 1, 1937. Upon the expiration of the respective terms of said commissioners their respective successors shall be respectively appointed for a term of five years. Upon a vacancy occurring in said commission, a commissioner shall be appointed to fill such vacancy for the remainder of the unexpired term.

"SEC. 1831D. *General powers of the commission.*—The commission shall hold regular public meetings at a designated time and place. The commission shall elect its own chairman and a majority shall constitute a quorum for the transaction of business, provided that a vote of four members shall be necessary to validate the appointment or removal of the chief of police. The commission shall adopt such rules and regulations as it may consider necessary for the conduct of its business and regulation of the matters herein committed to its charge.

"SEC. 1831E. *Classifications and promotions.*—The rules and regulations of the commission shall, among other things, provide for a system of classification of the force of police officers and a merit system, having for its purpose a systematic method of promotion of said police officers based upon efficiency, service, and the specific performance of official duties.

"SEC. 1831F. *Chief of police.*—The commission shall appoint and may remove a chief of police. The civil-service regulations shall not apply to such appointment or removal. Subject to the rules and regulations prescribed by the commission, he shall have control, management, and direction of all officers and employees serving under him with full power to detail any of said officers or employees to such public service as he may direct.

"SEC. 1831G. *Police force, employees.*—The chief of police shall have the power to appoint under civil-service regulations, as provided by law, such police officers and other employees, and at such salaries as may be allowed by the board of supervisors, provided that no civil-service regulation and no rule or regulation of the commission shall be construed to prevent the board of supervisors from abolishing any position in the department, and revoking the salary or commission therefor, and, in case a position be abolished, the person dismissed, if in good standing, may by written request to the chief of police within

30 days be placed at the top of any list of eligibles for civil-service appointment. This section shall not be construed to require the examination of any person who is in office at the date of the approval of this act.

"SEC. 1831H. *Powers and duties of chief of police.*—Subject to the provisions of this act, the chief of police shall have, concurrently with the sheriff of the city and county, the powers and duties which said sheriff now has, except such as are enumerated in section 268 as amended by act 135 of the Session Laws of 1927, sections 327, 328, 363, 681, 1826 as amended, sections 1827, 2828, 1829, 1984, 2087, chapter 129 as amended by Act 73 of the Session Laws of 1929, sections 2407, 2441, 2694, 2739, 2784, chapter 161 as amended, chapter 162 as amended, and sections 2849, 3954, 4016, 4095 of the said Revised Laws. The chief of police shall not have the care, custody, or control of Honolulu jail.

"There are hereby transferred to the chief of police from the sheriff of the city and county the powers and duties of said sheriff enumerated in section 1306 as amended by Act 180 of the Session Laws of 1925 and Acts 172 and 246 of the Session Laws of 1927, sections 2002 to 2015, inclusive, as amended by Acts 7 and 246 of the Session Laws of 1925, section 2106 as amended by Act 212 of the Session Laws of 1929, chapter 128 of said Revised Laws as amended by Act 206 of the Session Laws of 1927, and Act 127 of the Session Laws of 1929.

"He shall at all times diligently and faithfully discharge his duties and enforce all laws of the Territory and all ordinances of the city and county for the preservation of peace and good order, and the protection of the rights and property of all persons. He shall consult and advise with the police commission, and act with its approval on all matters pertaining to the police department not herein specifically provided for, and shall make such reports from time to time as the police commission shall require, and shall annually make report to the police commission of the state of affairs and condition of the police department.

"SEC. 1831I. *Specific duties.*—Chief of police shall have the following duties:

"(1) To preserve the public peace and prevent and suppress affrays, riots, and insurrections.

"(2) To arrest and take before the nearest qualified magistrate for examination all persons who have committed or attempted to commit a public offense, and to prosecute the same under the direction of the city and county attorney.

"(3) In any emergency requiring the same to command the aid of such inhabitants of the city and county as he may think necessary in the execution of his duties.

"(4) To exercise general police supervision and control over all pawnbrokers, peddlers, junk-shop keepers, auctioneers, and dealers in secondhand merchandise to examine the books and premises of any such persons when in search of property feloniously obtained or of evidence of the commission of crime.

"SEC. 1831J. *Service of process.*—The chief of police may at the request of the sheriff of the city and county of Honolulu serve processes and notices which are permitted by law to be served by police officers in the manner prescribed by law, indorsing thereon the year, month, day, hour, and minute of reception, and he shall issue to the person delivering the same on payment of fees therefor a certificate showing the name of the parties, title of paper, and when received. He shall certify under his hand upon every process or notice served by him the manner and time of service, or if he fails to make service the reason of his failure, and shall return such process or notice without delay.

"SEC. 1831K. *Suspension—Removal.*—The removal and suspension of any officer or employee under the chief of police shall be in the manner provided by the rules and regulations of the Civil Service Commission, provided that the chief of police shall have the absolute right to suspend for a period of periods, not exceeding in the aggregate thirty days in any calendar year, any officer or employee under him for incompetence, neglect of duty, drunkenness, or failure to obey orders given him by proper authority, or for any other just cause. Such suspension shall be final and without repeal or review."

SEC. 2. Section 1825 of the Revised Laws of Hawaii, 1925, is hereby repealed.

SEC. 3. Section 1826 of said Revised Laws is hereby amended so that the first line thereof shall read:

"SEC. 1826. *Specific duties.*—The sheriff shall:" and so that paragraph 6 thereof shall read:

"6. Take charge of and keep the Honolulu jail and prisoners therein."

SEC. 4. Section 1831 of said Revised Laws, as amended by Act 22 of the Session Laws of 1927 and Act 194 of the Session Laws of 1929, is hereby amended to read as follows:

"Sec. 1831. *Deputy sheriffs.*—The sheriff shall appoint under civil-service regulations as provided by law such employees and at such salaries as shall be allowed by the board of supervisors, and he shall have power to appoint and remove at pleasure one or more deputies who shall not be under civil service, at such salaries as may be allowed by the board of supervisors."

Sec. 5. Section 1752 of the Revised Laws of Hawaii, 1925, as amended by Act 97 of the Session Laws of 1927, is hereby repealed.

Sec. 6. This act shall take effect upon January 2, 1932, provided that sections 1831B, 1831C, and 1831D shall take effect upon the approval of this act.

AN ACT To amend chapter 118 of the Revised Laws of Hawaii 1925, by adding thereto 11 new sections to be numbered sections 1831A to 1831K, inclusive, by amending sections 1825, 1826, and 1831 and by repealing sections 1752 and 1825, relating to the police department of the city and county of Honolulu

Be it enacted by the Legislature of the Territory of Hawaii:

SECTION 1. Chapter 118 of the Revised Laws of Hawaii, 1925, is hereby amended by adding thereto eleven new sections, to read as follows:

"Sec. 1831A. *Organization.*—The police department of the city and county of Honolulu shall consist of a police commission, chief of police, and force of police officers and such other officers, clerks, and employees as the board of supervisors may from time to time prescribe, appointed in the manner provided for by this act. The provisions of chapter 122 of the Revised Laws of Hawaii, 1925, shall be deemed to be, and are hereby made, inapplicable to the police department as defined by this section.

"Sec. 1831B. *Police commission—Appointment.*—A police commission is hereby created to consist of five members who shall be appointed by the mayor, with the approval of the board of supervisors. No member of the commission shall be a salaried officer or employee of the Territory or any political subdivision thereof. Each commissioner must be at the time of his appointment an elector of the city and county and must have been such for at least three years next preceding his appointment. Any commissioner may be removed from office by the mayor with the concurrence of the vote of five members of the board of supervisors. The commissioners shall serve without remuneration, but may be reimbursed for their reasonable traveling and other expenses incurred in the discharge of their duties. The commission may employ such clerks, employees, and other assistants and at such salaries as may be allowed by the board of supervisors.

"Sec. 1831C. *Term of office.*—One of said commissioners shall be appointed for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years from and after the date of approval of this act. Upon the expiration of the respective terms of said commissioners their respective successors shall be appointed for terms of five years, respectively. Any vacancy in said commission shall be filled by appointment for the remainder of the unexpired term.

"Sec. 1831D. *General powers of the commission.*—The commission shall hold regular public meetings at a designated time and place. The commission shall elect its own chairman and a majority shall constitute a quorum for the transaction of business, provided that a vote of four members shall be necessary to validate the appointment or removal of the chief of police. The commission shall adopt such rules and regulations as it may consider necessary for the conduct of its business and regulation of the matters herein committed to its charge.

"Sec. 1831E. *Classifications and promotions.*—The rules and regulations of the commission shall, among other things, provide for a system of classification of the force of police officers and a merit system having for its purpose a systematic method of promotion of said police officers based upon efficiency, service, and the specific performance of official duties.

"Sec. 1831F. *Chief of police.*—The commission shall appoint and may remove a chief of police. Subject to the rules and regulations prescribed by the commission, he shall have control, management, and direction of all officers and employees serving under him with full power to detail any of said officers or employees to such public service as he may direct.

"Sec. 1831G. *Police force, employees.*—The chief of police shall have the power to appoint such police officers and other employees and at such salaries

as may be allowed by the board of supervisors, provided that the board of supervisors may abolish any such position in the department and revoke the salary or commission therefor.

"Sec. 1831H. *Powers and duties of chief of police.*—Subject to the provisions of this act the chief of police shall have concurrently with the sheriff of the city and county the powers and duties which said sheriff now has except such as are enumerated in section 268 as amended by Act 135 of the Session Laws of 1927, sections 327, 328, 363, 681, 1826 as amended, sections 1827, 2828, 1829, 1934, 2087, chapter 129 as amended by Act 73 of the Session Laws of 1929, sections 2407, 2441, 2694, 2739, 2784, chapter 161 as amended, Laws of 1929, sections 2407, 2441, 2694, 2739, 2784, chapter 161 as amended, chapter 162 as amended, and sections 2849, 3954, 4016, 4095 of the said Revised Laws. The chief of police shall not have the care, custody, or control of Honolulu jail.

"There are hereby transferred to the chief of police from the sheriff of the city and county the powers and duties of said sheriff enumerated in section 1306 as amended by Act 180 of the Session Laws of 1925 and Acts 172 and 246 of the Session Laws of 1927, sections 2002 to 2015, inclusive, as amended by Acts 7 and 246 of the Session Laws of 1925, Section 2106 as amended by Act 212 of the Session Laws of 1929, chapter 128 of said Revised Laws as amended by Act 206 of the Session Laws of 1927, and Act 127 of the Session Laws of 1929.

"He shall at all times diligently and faithfully discharge his duties and enforce all laws of the Territory and all ordinances of the city and county for the preservation of peace and good order, and the protection of the rights and property of all persons. He shall consult and advise with the police commission, and act with its approval on all matters pertaining to the police department not herein specifically provided for, and shall make such reports from time to time as the police commission shall require, and shall annually make report to the police commission of the state of affairs and condition of the police department.

"Sec. 1831I. *Specific duties.*—The chief of police shall have the following duties:

"(1) To preserve the public peace and prevent and suppress affrays, riots, and insurrections.

"(2) To arrest and take before the nearest qualified magistrate for examination all persons who have committed or attempted to commit a public offense, and to prosecute the same under the direction of the city and county attorney.

"(3) In any emergency requiring the same to command the aid of such inhabitants of the city and county as he may think necessary in the execution of his duties.

"(4) To exercise general police supervision and control over all pawnbrokers, peddlers, junk shop keepers, auctioneers, and dealers in secondhand merchandise; to examine the books and premises of any such persons when in search of property feloniously obtained or of evidence of the commission of crime.

"Sec. 1831J. *Service of process.*—The chief of police may at the request of the sheriff of the City and County of Honolulu serve processes and notices which are permitted by law to be served by police officers in the manner prescribed by law, indorsing thereon the year, month, day, hour, and minute of reception, and he shall issue to the person delivering the same on payment of fees therefor a certificate showing the name of the parties, title of paper, and when received. He shall certify under his hand upon every process or notice served by him the manner and time of service, or if he fails to make service the reason of his failure, and shall return such process or notice without delay.

"Sec. 1831K. *Suspension—Removal.*—The removal and suspension of any officer or employee under the chief of police shall be in the manner provided by the rules and regulations of the police commission; provided that the chief of police shall have the absolute right to suspend for a period or periods, not exceeding in the aggregate thirty days in any calendar year, any officer or employee under him for incompetence, neglect of duty, drunkenness, or failure to obey orders given him by proper authority, or for any other just cause and such suspension shall be final and without repeal or review: *Provided further,* That any such officer or employee removed or suspended for a period exceeding, or which, added to any previous suspensions exceeds, thirty days in any

calendar year, may, within ten days from the date of the service upon him of a certified copy of the order so removing or suspending him, or, in case he can not be found within twelve days from the mailing of such certified copy by registered mail addressed to him at his last known address, apply to the commission for a review of the case; the commission shall thereupon have power, in its discretion, either to entertain or to refuse to entertain such appeal; if it entertains such appeal, it may affirm, set aside, amend or modify such order, or make such further order, as in its judgment the facts shall warrant. The decision of the commission refusing to entertain an appeal, or its order upon any appeal allowed, shall be final."

Sec. 2. Section 1825 of the Revised Laws of Hawaii, 1925, is hereby repealed.

Sec. 3. Section 1826 of said Revised Laws is hereby amended so that the first line thereof shall read:

"Sec. 1826. *Specific duties.*—The sheriff shall" and so that paragraph 6 thereof shall read:

"6. Take charge of and keep the Honolulu jail and prisoners therein."

Sec. 4. Section 1831 of said Revised Laws, as amended by act 22 of the sessions laws of 1927 and act 194 of the session laws of 1929 is hereby amended to read as follows:

"Sec. 1831. *Deputy sheriffs.*—The sheriff shall appoint under civil-service regulations as provided by law such employees and at such salaries as shall be allowed by the board of supervisors, and he shall have power to appoint and remove at pleasure one or more deputies who shall not be under civil service, at such salaries as may be allowed by the board of supervisors."

Sec. 5. Section 1752 of the Revised Laws of Hawaii, 1925, as amended by act 97 of the session laws of 1927, is hereby repealed.

Sec. 6. This act shall take effect upon its approval.

(The following is from the report of the governor's advisory committee on crime, dated February, 1931, with specific reference to the police department:)

POLICE DEPARTMENT

From our study of the police department in the city and county of Honolulu we have arrived at the very definite conclusions that for a city of its size the police department should be headed by an appointive police chief.

We do not criticize our present police department, because we know that in the main it is composed of well-meaning men, most of whom are capable and would make good guardians of the peace of the community. We are of the opinion that in any large city the immediate head of the police should not be an elective official nor should he be so intimately connected with politics as to be liable to removal for political reasons.

The maintenance of a proper police department requires strict but impartial discipline, the enforcement of laws without fear or favor, and the certain knowledge that the position of each member is contingent on faithful and efficient service and not on the vote-procuring ability of the member or his family or his friends.

We in Honolulu can point with extreme gratification to an efficient fire department. This department is entirely out of politics. Its officers are men who started in at the bottom and through ability, study, and hard work received by promotion their present positions. The fire department is an outstanding example of what may be accomplished in an organization depending entirely upon merit for promotion and that keeps away from the turmoil of municipal politics. It has discipline, and it has men trained to do their jobs. It is an ever present proof of what could be done in a police department organized along the same lines.

Bruce Smith, in his report on rural police protection in Illinois, prepared by the Illinois Association of Criminal Justice in May, 1928, in speaking of police training, said:

"No lesson of American or foreign police administration could be more clear than that the making of a policeman has only begun when he receives his warrant of appointment. The training which he must receive must be both of a theoretical and a practical nature. An intensive training course for the recruit should include study of the penal laws and of the statutes controlling criminal procedure, the use of police weapons, self-defense, the rules and regulations of the police force, the extent and limitations of the policeman's

powers, and his relation to the public. These do not in themselves qualify the recruit for police duties, but if he has been rigorously drilled in their meaning and importance, he may be placed on patrol with a larger degree of confidence than is now possible."

Very little is done in the Honolulu police department in regard to the training of policemen. Some attempts were made to have a police school but nothing very tangible was achieved. We do not see how a police department can be adequately maintained without the continuous training of its personnel. Certainly no one should be permanently attached to the force who has not received thorough training and shown an aptitude for the work.

It is our opinion that there should be a police commission appointed by the mayor of the city and county of Honolulu, with the approval of its board of supervisors, whose duty it would be to appoint a chief of police and to supervise the operating of the police department. The chief of police should serve during good behavior and as long as he gives efficient service. The chief should have the immediate charge of the department and all of its operations. In order to insure fixed policies of organization the terms of the commission should be long and should expire at different periods. The men in the department should be assured of their positions so long as they discharge their duties faithfully and they should be assured that long and faithful service would be recognized by promotion or by increased compensation.

We hear much of the efficiency of the European police. In Rome there is a policeman for every 130 inhabitants; in Berlin, one for every 225; and in Paris, one for every 276; while London has one for about every 250. Our police have been undermanned and there should be at least one policeman for every 600 inhabitants.

While we would not attempt to work out a merit system for the department, such a system should be adopted by the commission.

The civil service should be retained. Properly functioning it insures an effective means of appointing men for ability and retaining them as long as they serve well. It should not be used to harass the head of the police department nor to force the retention of men unsuited for their positions. While a man should be assured of a fair hearing before dismissal the hearing should be expeditious and free from technicalities.

We believe that the police department should be concerned only with the enforcement of law and should not deal with the civil side of our law. It would be our recommendation that the office of sheriff be retained and that the sheriff be charged with the duty of serving civil process, of keeping the Honolulu jail, and of acting as coroner. This is needed work but work that should be separated from the police department.

We are submitting a bill containing the changes that we have recommended to be made.

[Telegram]

HONOLULU, January 17, 1932.

SECRETARY INTERIOR, Washington, D. C.:

While it seems to me that the legislation I have in mind for consideration by special session Territorial Legislature convening January 18 will cover situation, would appreciate receiving by radio any suggestions you or Attorney General have for improvements Hawaiian laws.

JUDD.

[Telegram]

HONOLULU, January 18, 1932.

SECRETARY INTERIOR, Washington, D. C.:

United States Attorney Wood, of District Hawaii, leaves Honolulu Wednesday noon for San Francisco to meet Richardson party and will return here with them. Wood has requested copy of report I am preparing for you in order he may study same en route and deliver it to Richardson at San Francisco. Kindly wire your desire in premises. Expect mail report to you Wednesday.

JUDD.

[Naval message]

HONOLULU, January 18, 1932.

SECRETARY INTERIOR, Washington:

The statement in the account sent from Washington and published in the Honolulu Advertiser to-day of the hearing before the Senate Committee on Territories that I had reported to you, that the evidence in the trial of the Ala Moana assault case did not warrant a conviction is absolutely unfounded and untrue. It must have resulted from some error in understanding what was said at the hearing or in transmission. The only reference in my report to any evidence was my calling attention to the fact that the statutes of Hawaii require corroboration of the testimony of the prosecutrix in a rape case by other evidence in order to secure a conviction, and this was in connection with and for the sole purpose of explaining the instruction of the presiding judge on corroboration which had been questioned in Washington. It would manifestly be grossly improper for me to express in any manner my belief as to the guilt or innocence of the defendants or to offer any comment on the strength or weakness of the evidence, with the case still pending and another trial soon to be begun. For Hawaiian statute requiring such corroboration, see section 4156, Revised Laws, Hawaii, 1925. New York State has similar requirements. See Birdseyes, Cumming, and Gilberts Consolidated Laws of New York, annotated volume 3, section 2013, page 4075. See also 52 corpus juris, page 1102, section 134.

JUDD.

SUPERVISION BY SECRETARY OF INTERIOR OVER TERRITORY OF HAWAII

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SOLICITOR,
WASHINGTON, January 15, 1932.

Section 486, United States Code, title 5, continues in effect section 442 United States Revised Statutes, and reads as follows:

"The Secretary of the Interior shall exercise all the powers and perform all the duties in relation to the Territories of the United States that were prior to March 1, 1873, by law or custom exercised and performed by the Secretary of State."

The organic act of April 30, 1900, relating to Hawaii, found in sections 491 et seq., Title 48, United States Code, is silent as to the powers or duties of the Secretary of the Interior with respect to that Territory.

Section 531 of the code provides that the executive power of the government of the Territory shall be vested in the governor to be appointed by the President, with the advice and consent of the Senate, and that such governor shall hold office for four years and until a successor has qualified, unless sooner removed by the President. The governor is to be commander-in-chief of the militia, may grant pardons or reprieves for offenses against the laws of the Territory, and reprieves for offenses against the laws of the United States, until the decision of the President is made known thereon.

Section 532 provides that the governor shall be responsible for the faithful execution of the laws of the United States and within the Territory, and may call on military and naval forces, call out the militia or summon posses.

Section 533 confers on the governor all the powers and duties which the laws of Hawaii conferred upon the president or ministers of the former Republic of Hawaii.

The Secretary of the Territory is to be appointed by the President with the consent of the Senate.

The supervision exercised by the Secretary of the Interior over the Territory of Hawaii appears to have been largely administrative, consisting of such items as the following:

1. The annual report of the governor is transmitted to Congress through the Secretary of the Interior.

2. The moneys appropriated by Congress for payment of salaries of the governor, the secretary of the Territory, and for expenses of the legislature are carried in the Interior Department budget and thus presented through the Secretary of the Interior.

3. It has been the practice of the governor of the Territory when in doubt upon legal matters involving Federal relations, to call upon the Secretary of the Interior for advice, and that has been rendered through opinions by the solicitor of the Interior Department for the advice of the governor.

4. It has been the practice when Territorial bond issues were proposed for public improvements, to transmit the request for approval by the President through the Secretary of the Interior for his concurrence or otherwise.

5. It has also been the practice of the committees of Congress to refer any bills introduced into Congress relating to the Territory of Hawaii to the Secretary of the Interior for report and recommendation.

Solicitor.

POPULATION STATISTICS

Estimated population, Territory of Hawaii, by racial descent, June 30, 1931

Hawaiian.....	22,391	Chinese.....	27,817
Caucasian-Hawaiian.....	16,454	Japanese.....	143,754
Asiatic-Hawaiian.....	13,549	Korean.....	6,583
Portuguese.....	28,219	Filipino.....	66,049
Porto Rican.....	6,886	All others.....	786
Spanish.....	1,255		
Other Caucasian.....	41,968		375,211

Population of Hawaii, by islands, 1930

Hawaii.....	73,325	Midway.....	36
Kahoolawe.....	2	Molokai.....	5,032
Kauai.....	35,806	Niihau.....	136
Lanai.....	2,356	Oahu.....	202,887
Maui.....	48,756		

The population of the principal cities, according to the Federal census of 1930, is as follows: Honolulu, 137,582; Hilo, 19,468; Wailuku, 6,998; Waipahu, 5,874; Lihue, 2,399.

Area and population of counties, Federal census, 1930

County	Area (square miles)	Population		
		Total	Per square mile	Per cent increase since 1920
City and County of Honolulu ¹	600	202,923	338.2	64.3
County of Hawaii.....	4,015	73,325	18.0	12.9
County of Maui ²	1,182	55,541	46.9	48.6
County of Kauai ³	641	35,942	56.07	22.1
County of Kalawao ⁴	11	605	55.0	49.0

¹ Includes Midway.
² Includes islands of Maui, Kahoolawe, Lanai, and all of Molokai except Kalawao.
³ Includes islands of Kauai, and Niihau.
⁴ Decrease.

Race, nativity, and citizenship	Population of Hawaii by race, Federal census			Per cent distribution		
	1930			1920 total	1930	1920
	Total	Male	Female			
Total population.....	368,336	222,640	145,696	255,912	100.0	100.0
Hawaiian.....	22,636	11,311	11,325	23,723	6.1	9.3
Caucasian Hawaiian.....	15,632	7,760	7,872	11,072	4.2	4.3
Asiatic Hawaiian.....	12,592	6,282	6,310	6,955	3.4	2.7
Portuguese.....	27,588	13,870	13,718	27,002	7.5	10.6
Porto Rican.....	6,671	3,635	3,036	5,602	1.8	2.2
Spanish.....	1,219	631	588	2,430	.3	1.0
Other Caucasian.....	44,895	30,570	14,325	19,708	12.2	7.7
Chinese.....	27,179	16,561	10,618	23,507	7.4	9.2
Japanese.....	139,631	75,008	64,623	109,274	37.9	42.7
Korean.....	6,461	3,999	2,462	4,950	1.8	1.9
Filipino.....	63,052	52,566	10,486	21,031	17.1	8.2
Negro and all other.....	780	447	333	658	.2	.3
Native born, all races.....	299,744	180,593	119,151	168,671	81.4	65.9

Race, nativity, and citizenship	Population of Hawaii by race, Federal census			Per cent distribution		
	1920			1930	1920	
	Total	Male	Female			
Native parentage.....	161,541	108,142	53,399	79,242	43.9	31.0
Foreign or mixed parentage.....	138,203	72,451	65,752	89,429	37.5	34.9
Foreign born, all races.....	68,592	42,047	26,545	87,241	18.6	34.1
Naturalized.....	5,260	3,282	1,978	4,566	1.4	1.8
First papers.....	828	708	120	518	.2	.2
Alien.....	62,336	37,975	24,361	81,784	16.9	32.0
Unknown.....	168	82	86	373		.1

Prisoners serving June 30, 1931

Racial classification	Male	Female	Total	Percentage
American.....	16		16	3.03
Chinese.....	62	1	63	11.93
Filipino.....	163	2	165	31.19
Hawaiian.....	99	1	100	18.90
Caucasian-Hawaiian.....	21	1	22	3.97
Chinese-Hawaiian.....	16	2	18	3.40
Japanese.....	42		42	7.94
Korean.....	24		24	4.51
Portuguese.....	37	1	38	7.18
Porto Rican.....	30		30	5.67
Russian.....	2		2	.38
Spanish.....	6		6	1.14
Samoan.....	2		2	.38
Brazilian.....	1		1	.19
German.....	1		1	.19
Total.....	521	8	529	100.00

Classification of crimes, Territorial and Federal prisoners, serving June 30, 1931

Crime	Male	Female	Total	Percentage
Murder.....	75	1	76	14.36
Manslaughter.....	11		11	2.09
Burglary.....	111		111	20.98
Assault with weapon.....	21		21	3.99
Rape.....	28		28	5.29
Indecent assault.....	35		35	6.61
Sodomy.....	5		5	.94
Arson.....	1		1	.19
Sexual intercourse.....	31		31	5.86
Carnal abuse.....	16		16	3.04
Incest.....	6	1	7	1.33
Larceny and malicious conversion.....	52		52	9.83
Forgery.....	22	2	24	4.52
Embezzlement.....	1		1	.19
Conspiracy.....	5		5	.94
Melicious burning.....	1		1	.19
Violation of sec. 4391, Revised Laws of Hawaii, 1925.....	2		2	.38
Robbery.....	31		31	5.86
Procuring.....	1		1	.19
Perjury.....	1	1	2	.38
White slavery.....	3	2	5	.95
Violation of postal laws.....	3		3	.57
Violation of drug act.....	45	1	46	8.70
Violation of sec. 8, U. S. C. C.....	2		2	.37
Violation of secs. 35, 82, 148, 151, U. S. C. C.....	5		5	.94
Violation of national prohibition act.....	3		3	.56
Counterfeiting.....	4		4	.75
Grand total.....	621	8	629	100.00

Racial classification of crimes committed

TERRITORIAL PRISONERS, SERVING JUNE 30, 1931

Racial classification	Murder	Manslaughter	Burglary	Assault with weapon	Rape	Indecent assault	Arson	Sodomy	Sexual intercourse	Carnal abuse	Incest	Embezzlement	Larceny and malicious conversion	Forgery	Melicious burning	Conspiracy	Violation sec. 4391 (automobile laws)	Robbery	Procuring	Perjury	Total	
American.....	1		3			1					1		2	4				2				14
Chinese.....	3		8		2				1				2	2								24
Filipino.....	47	5	15	13	7	20	1	11	11	2	2	10	4	4		3		1				154
Hawaiian.....	9	3	48	3	8	6	3	5	2	3	1	21	8	2			1	12		2		135
Japanese.....	9	1	11	1	4	1			1	1		1	2	2								35
Korean.....	3		9	1	2	1		1	1			7	7	2		1						29
Portuguese.....	1		10		2	1			9	1	1	1	1	1				2				37
Porto Rican.....	2	1	6	2	2	1			2	2			1	1				3				25
Russian.....	1																					2
Samoan.....	1		1									1										6
Spanish.....	1		1			1			2													6
Brazilian.....						1							1									1
German.....													1									1
Total.....	76	11	111	21	28	35	1	5	31	16	7	1	52	23	1	5	2	31	1	2	460	

FEDERAL PRISONERS SERVING JUNE 30, 1931

Racial classification	White slavery	Forgery	Violation of postal laws	Violation of drug acts	Violation of sec. 8, C. C. ¹	Violation of secs. 35, 82, 151, title 18, C. C. ²	Violation of prohibition act	Counterfeiting	Total
American.....					1				2
Chinese.....					38				39
Filipino.....	3				2				11
Hawaiian.....	1			2					4
Japanese.....	1	1	1			1			7
Korean.....					4				4
Portuguese.....					1				1
Porto Rican.....	1								1
Total.....	5	1	3	46	2	5	3	4	69

¹ Violation sec. 8, immigration act.

² Violation secs. 35, 82, 151, title 18, making or presenting false claim.

TERRITORIAL COURTS

The Territorial courts are composed of a supreme court of 3 members; 5 circuit courts, of which 1 has 4 members who sit separately and the others 1 member each; and 29 district courts. The supreme court and circuit court judges are appointed by the President and the district magistrates by the chief justice of the Territory. The circuit courts are the courts of general original jurisdiction, trying criminal, law, equity, probate, and divorce cases. The first circuit court also acts as a court of land registration. The circuit and district courts also act as juvenile courts. The principal juvenile and divorce court is the court of domestic relations in Honolulu. The legislature of 1921 established this division of domestic relations in the first judicial circuit. Its judge is one of the four judges of the first circuit court and is known as the judge of the division of domestic relations.

Court statistics, calendar years

TOTAL CASES IN ALL COURTS¹

	1928	1929	1930
Criminal cases.....	12,848	10,570	8,407
Civil cases.....	8,887	8,613	9,036
Total.....	21,735	19,183	17,443
Convictions in criminal cases.....	8,111	6,010	5,289
Percentage of convictions.....	63	41.55	46

¹ 241 insanity, 54 drug addicts, 808 juvenile, and 1 feeble-minded case not included.

CASES CLASSIFIED BY COURTS

[Civil and criminal]

	1928	1929	1930
Supreme court.....	62	86	57
Circuit courts.....	3,004	3,253	2,956
District courts.....	18,669	15,844	14,430
Total.....	21,735	19,183	17,443

CASES IN SUPREME COURT

	1928	1929	1930
On appeal, error, or exception:			
Law.....	19	21	16
Equity.....	13	11	16
Probate.....	1	3	2
Criminal.....	4	6	3
Divorce or separation.....	6	3	5
Miscellaneous.....	19	42	15
Total.....	62	86	57

CASES IN CIRCUIT COURTS

	1928	1929	1930
Civil:			
Law.....	454	686	516
Equity.....	79	92	99
Divorce.....	999	736	778
Probate.....	909	1,089	1,033
Special proceedings.....	49	29	40
Total.....	2,490	2,642	2,466
Criminal.....	514	611	490
Grand total.....	3,004	3,253	2,956
Convictions in criminal cases.....	493	418	383
Percentage of convictions.....	95	52.25	43

CASES IN DISTRICT COURTS

	1928	1929	1930
Civil.....	6,339	5,891	6,516
Criminal.....	12,330	9,953	7,914
Total.....	18,669	15,844	14,430
Convictions in criminal cases.....	8,111	6,010	5,289
Percentage of convictions.....	65	60.4	66.8

CONVICTIONS IN CRIMINAL CASES, BY CLASSES OF CASES

	1928	1929	1930
Offenses against property.....	392	422	457
Offenses against chastity.....	198	226	178
Offenses against the peace.....	783	789	833
Gambling.....	2,616	660	515
Liquor laws, violating.....	412	331	382
Drunkenness.....	411	521	304
Homicide.....	11	14	9
Miscellaneous.....	3,288	3,047	2,521
Total.....	8,111	6,010	5,289

RACES OF PERSONS CONVICTED

Races	Census of 1930	Number convicted, 1930	Per cent of population
Hawaiian and part Hawaiian.....	50,860	853	1.67
Chinese.....	27,179	325	1.19
Japanese.....	139,631	801	.57
Caucasian.....	73,702	1,454	1.83
Filipino.....	63,052	1,516	2.40
Korean.....	6,461	109	1.53
Porto Rican.....	6,671	191	2.86
Others.....	780	40	5.12
Total.....	368,336	5,289	1.43

Land court cases

	Number of cases	Square feet	Acres	Assessed value
Applications for registration of title pending June 30, 1930.....	93			\$2,852,806.53
Applications filed during period of this report.....	46	904,708	21,181.36	2,872,672.00
Total.....	139	904,708	45,181.34	5,725,478.53
Decreases of registration of title granted during fiscal year.....	40	1,421,135	427.73	1,008,688.54
Applications discontinued during fiscal year.....	4	288,438	505.00	102,111.00
Applications pending June 30, 1931.....	95	2,795,907.98	44,158.35	4,694,606.73
Total.....	139	4,505,480.98	45,091.08	5,805,406.27

Petitions for subdivision filed and granted.....	82
Petitions for reregistration filed and granted.....	14
Petitions for notation of change of name on certificates of title filed and granted.....	2
Petitions for new certificates of title filed and granted.....	26
Petitions for correction of certificates of title filed and granted.....	11

FEDERAL COURT

The Federal court located in Hawaii is a United States district court with the jurisdiction also of a United States circuit court. There are two district judges, a United States district attorney, and three assistant district attorneys affiliated with this court.

Cases in Federal court

	1930		1931	
	Filed	Concluded	Filed	Concluded
Bankruptcy.....	121	102	169	170
Admiralty (United States not a party).....	2	2	1	2
Admiralty (United States a party).....	1	1	2	2
Civil (United States not a party).....			2	1
Civil (United States a party).....	26	15	12	10
Equity (United States not a party).....			2	
Equity (United States a party).....			105	71
Deportation.....	4	6	6	5
Habeas corpus.....	8	8	8	13
Criminal.....	404	434	360	327
Classification of criminal cases noted above:				
Assault on high seas.....			1	1
Arbitry.....			6	
Contempt of court.....			3	
Violation of temporary order and writ of injunction.....	6	6	3	2
Violation of permanent order and writ of injunction.....	2	2	12	8
Not complying with subpoena.....			1	1
Conspiracy.....				
Importing smoking opium.....	3	4	1	1
Violation of national prohibition act.....	2	4	2	2

	1930		1931	
	Filed	Concluded	Filed	Concluded
Classification of criminal cases noted above—Continued.				
Counterfeit.....			1	1
Embezzlement—				
Internal revenue funds.....	1	1		
Narcotic funds.....	1	1		
National Guard funds.....			2	
Forging and passing U. S. Treasury checks.....	33	33	8	8
False claims against United States, presenting for payment.....	8	8	19	2
Government property—				
Destroying.....		1	2	2
Purchasing unlawfully.....	1	1	1	1
Removing and stealing.....			2	1
Immigration.....			2	2
Military reservation, trespassing on.....	1	1	1	1
Narcotic violations.....	136	146	69	71
National prohibition violations.....	199	211	214	210
Post-offices offenses.....	5	9	3	3
Private property, destroying on high seas.....			1	1
Shipping prohibitive fruits to mainland, United States.....	3	3	2	2
Smuggling smoking opium into United States.....	1	1	1	1
Uniform U. S. Navy, unlawfully wearing.....			2	2
United States veteran, wrongfully charging in application for loan.....			1	1
Whiteslavery.....			3	3
Total.....	404	434	360	327

Disposition of criminal cases

	1930	1931
Convictions.....	356	313
Acquittals.....	38	2
Nolle prosequi.....	16	3
Dismissed.....	24	9
Total.....	434	327
Pending.....	9	41
Total.....	443	368
Aggregate amount of judgments obtained during the year in favor of the United States.....	\$3,484.10	\$4,144.88
Amount realized from such judgments obtained during the year.....	957.10	1,479.58
Aggregate amount of judgments obtained during the year against the United States.....		437,285.50
Aggregate amount of fines, forfeitures, and penalties imposed during the year.....	26,870.10	51,803.76
Amount realized on fines, forfeitures, and penalties imposed during the year and former years.....	6,499.13	7,439.82

Senator HARRIS. Mr. Secretary, when the governor was here in December the chairman of the committee, Senator Bingham, called the Members of the committee to confer with him, and we talked for about two hours about conditions in Hawaii, and Governor Judd did not refer in any way to this serious condition of affairs that exists over there. I asked the chairman if he discussed the matter with him, and he said no. What I can not understand is that the governor would allow things to go practically beyond his control before doing anything. Certainly he did not think it of enough importance to even mention it to you.

Secretary WILBUR. What do you mean by going beyond the governor's control?

The CHAIRMAN. May I say to Senator Harris what I should have said on the floor the other day when he asked me the question and my memory of the entire situation was not quite sufficient to give him a proper answer. The governor left Honolulu on his annual

visit to the Secretary of the Interior, my recollection is, some time in October. Is that correct, Mr. Secretary?

Secretary WILBUR. I think that is right.

The CHAIRMAN. That was before the trial of the five men had been held. While he was over here the trial was held and a new trial was directed.

Secretary WILBUR. Yes.

The CHAIRMAN. No acute situation had arisen before he left here, and it was quite natural that he should not have referred to this particular thing because of his absence at the time of the mistrial. One other thing. He did speak to me about the fact that he had made certain recommendations to the legislature which had not been adopted. I should have called that to the Senator's attention.

Senator HARRIS. The newspapers said—maybe the AP—that there were 40 cases over there.

Secretary WILBUR. Well, the information that the governor has sent over in regard to the actual record shows those cases break down into a number of classes. Those that would be classified as of the type of assault, which we have here in mind, are at the most only 1, 2, or 3. The others are just the ordinary grist that comes up in every community, just as it does here in Washington. In fact, looking over his report it is just the report you would get from the juvenile court here in Washington, or Richmond, or New York, or Philadelphia. It is just the ordinary sex crimes that appear; not at all a series of assaults of the type of the principal case.

The CHAIRMAN. Have you any special statement here?

Secretary WILBUR. I have the whole thing here.

The CHAIRMAN. Is it very long?

Secretary WILBUR. Well, it is more adapted to the clinic than it is to anything else.

The CHAIRMAN. There was a telegram, though, which he sent, of which I have a copy in my office, relating to this particular matter of the 40 cases.

Secretary WILBUR. Yes; we have that all in the record here.

The CHAIRMAN. Will you read that telegram?

Secretary WILBUR. You might look at that if you will, Senator. "Indictments of sex cases involving violence were rape, 1; assault with intent to ravish, 11; total, 12." There was the case of rape by an escaped prisoner. And then it goes on with a series of various things from incest and all that kind of thing. Just as I say—the ordinary grist. I see no great advantage in reading it into your record.

Senator HARRIS. Well, it might go in the record without taking the time of the committee to read it.

Secretary WILBUR. Yes.

(The cablegram dated January 13, 1932, to the Secretary of the Interior from Governor Judd, referred to in the foregoing, is printed in full on pp. 7 and 8.)

Senator HAWES. Mr. Secretary, were these four men admitted to bail?

Secretary WILBUR. Do you mean the ones, Senator, that were up for trial?

Senator HAWES. Yes.

Secretary WILBUR. I do not know whether they were or not. I can not answer that question.

Senator HAWES. And the amount of bail you do not know?

Secretary WILBUR. No; I can not answer that.

Senator HAWES. I think it is very important to find out whether they were admitted to bail and the amount.

Senator HARRIS. Mr. Secretary, I do not imagine that you approve of the governor's pardoning this man?

Secretary WILBUR. Well, I would like to read you what the governor has to say about that in the message I got yesterday.

Secretary HARRIS. Yes; I wish you would read that.

Secretary WILBUR (reading):

HONOLULU, January 15, 1932.

SECRETARY INTERIOR, Washington:

Am informed through Washington press dispatch and wire from Delegate that Naval Subcommittee of House desires complete statement of facts regarding "Pardon" granted "within a very short period" to "a native athlete who had been tried and convicted of a similar offense." This refers to case wherein six boys of average age of 18 were charged with rape on a Chinese girl in 1929.

This is 1932. (Continuing reading:)

Five were tried together and sixth, the one so-called native athlete, demanded separate trial. The five were tried before Judge Albert M. Cristy, a mainland man who is well known to Assistant Attorney General Sisson, holding degrees from Brown University and Harvard Law School. A brilliant lawyer who has occupied bench for the last five years. A religious man married to a mainland woman and father of four small children. Although the charge was rape, the five boys were found guilty of assault with intent to ravish. Judge Cristy informs Territorial attorney general of following facts: That all evidence indicates girl's willingness but that she had lied about her whereabouts to aunt with whom she lived, whose persistent questioning finally caused girl to charge rape; that entire evidence disclosed her freedom to leave scene between various acts, as left alone while each boy left to call another for turn; that evidence showed nothing but multiple fornication. Record showed jury recommended leniency and he imposed minimum of four months which with good behavior would result in about three months' imprisonment. Judge pointing this out as maximum for crime of fornication. Imposed maximum of 15 years but from bench recommended to prison board paroles at expiration of minimum sentences if conduct good. The sixth defendant, who is one of Ala Moana defendants, later pleaded guilty to assault with intent and given same sentence by same judge. At expiration minimum with good conduct the prison board, under chairmanship of a vice president Bishop Trust Co., of which Judge Frear is president, a mainland man holding law degree from Stanford, married to white woman and father two children, recommended parole after going thoroughly into case with Judge Cristy and others. Parole granted by me after investigation and personal interview with prisoners.

Boy has never been pardoned, but on January 22, 1931, the warden, acting on sponsorship of several estimable and white citizens, including chairman local association of Amateur Athletic Union of United States, recommended to prison board his final discharge, which is not a pardon. (See section 1566. Revised Laws Hawaii.) After investigation and on February 9 the prison board approved such recommendation and on February 25, after further investigation, I approved and granted final discharge. Judge Cristy states it is unthinkable to consider this case in any way as "similar" to Ala Moana case; that this was clear case of fornication only and sentence commensurate with crime disclosed at trial. Anyone informing committee crimes similar or defendant pardoned is grossly misinformed. Am informed also that Naval Subcommittee desires "full and complete report on whether or not it would be advisable to recommend to the legislature capital punishment for the crime of rape." Would advise that prior to receipt of press report I had had prepared and shall submit to special session called yesterday an amendment to section 4147, Revised Laws Hawaii, reading as follows: "Rape; punishment. Whoever commits a rape, that is, ravishes or has carnal intercourse with any female, by force and against her will, shall, upon conviction thereof, suffer the punishment

of death or shall be punished by imprisonment at hard labor for life or for any term of years, in the discretion of the court." Shall probably supplement this dispatch later. Would appreciate your informing Delegate Houston of foregoing.

JUDD.

So that put rather a different light on that.

Senator ROBINSON of Indiana. I was wondering, Mr. Secretary, how the complaint was lodged; if they were brought up on the charge of rape, or what the charge was. There must have been some indictment there.

Secretary WILBUR. The Chinese girl told that story at first. The facts came out later on.

Senator ROBINSON of Indiana. Precisely. But there must have been some corroboration under the statute of the islands, of the testimony of the woman.

Secretary WILBUR. Which case are you talking about, Senator?

Senator ROBINSON of Indiana. This case of the Chinese girl.

Secretary WILBUR. It was, under the law, a case of fornication, and not of rape.

Senator ROBINSON of Indiana. Evidently there was an indictment for rape or assault with intent to rape, by a grand jury. And if the indictment was finally laid against these five or six, then they were charged with that crime, and there must have been something to support the indictment, some evidence besides the evidence of the woman herself.

Attorney General MITCHELL. Did I not see something in the file that that was a Chinese girl under the age of consent?

Secretary WILBUR. Yes; I think so.

Attorney General MITCHELL. And that became a statutory rape case?

Secretary WILBUR. Yes; in so far as I know.

Senator ROBINSON of Indiana. Well, then, she may have made the charge, and if she was under the age of consent, of course it was rape. It would be in this country. And we send them up right along to the penitentiary, and they ought to go up for just such offenses as that.

Attorney General MITCHELL. I think you are right about that. That is the information I had.

Senator ROBINSON of Indiana. In other words, that statement by the governor seems to me to be a weak statement, that this was only a case of fornication, constructive rape at the most, because she could not give her consent, so it could not be fornication. It seems to me that is loose; in other words, it is a defense, perhaps, but a weak one.

Senator HARRIS. Mr. Secretary, you saw the governor when he was here?

Secretary WILBUR. Yes.

Senator HARRIS. Did he mention any of these matters to you?

Secretary WILBUR. They were not on his mind. There was no particular reason that I could see for it, in looking back. It was anticipated that the jury would deal with this case. There was no such general impression in his mind as has been pictured in the press at all.

Senator HARRIS. He has called the legislature into session. I wondered if he mentioned to you that he was going to do that.

Secretary WILBUR. That call for the legislature is based, I think, on the present situation. He did speak to me about a special session because of some taxation difficulties that they had, and that is included in this present call.

The CHAIRMAN. I should like to read to the committee a part of this long cablegram, which I think clears up some of the matters which have been disturbing us. This is a cablegram from the Governor of Hawaii to the Secretary of the Interior, dated January 13, 1932. [Reading.]

Territorial attorney general has rendered following report to me: "Résumé of final report of 1931 territorial grand jury. Indictments of sex cases involving violence were: Rape, 1; assault with intent to ravish, 11; total, 12."

Then he refers to the statement about the 40 cases that have been so frequently mentioned, and says:

* * * Certain reports from Washington carry statements that 40 criminal assaults similar to the Massie case had been perpetrated on American women during the year 1931. These statements were based on the records of physical examination of females made by the city physicians in the emergency hospital of the city and county of Honolulu during said year. The city physician, his deputy, the attorney general of the Territory, and the city criminal prosecutor have carefully checked all cases of said examinations and report as follows: Sex crimes involving violence as follows: Rape, 1; assault with intent to ravish, 4; assault with intent to ravish female under 12, 1; carnal abuse of a female under 12, 1; total, 7.

Which would seem to show that the official records do not bear out the statement which has been given such wide publicity.

Senator ROBINSON of Indiana. I suppose those are just indictments, are they not, returned by the grand jury?

The CHAIRMAN. No, Senator; the last statement that I read was that it was the combined report of the city physician, his deputy, the attorney general of the Territory, and the city criminal prosecutor; that they checked all cases of examinations made by the emergency hospital. The statement of the 40, it was said, was based on physicians' reports. The statement of indictments gives a total of 12.

Senator ROBINSON of Indiana. I would like to ask, Mr. Secretary, how many of the Navy personnel, if you know, are now under arrest as a result of this?

The CHAIRMAN. May I suggest that we have the Secretary of the Navy here, and Admiral Pratt, who might better be able to answer that.

Senator ROBINSON of Indiana. Excepting this, that the Department of the Interior administers the affairs of the Territorial government.

Secretary WILBUR. Three.

Senator ROBINSON of Indiana. Three?

Secretary WILBUR. That is, a lieutenant and, I think, two classified seamen.

Senator ROBINSON of Indiana. Two enlisted men?

Secretary WILBUR. Yes.

Senator ROBINSON of Indiana. And one lieutenant?

Secretary WILBUR. Yes.

Senator ROBINSON of Indiana. And Mrs. Fortescue?

Secretary WILBUR. Yes, sir.

Senator ROBINSON of Indiana. What is their status out there now? Where are they under arrest? Where are they being lodged at the present time?

Secretary WILBUR. I understand they are lodged for the time being under the custody of the Navy on a ship which is grounded in Pearl Harbor.

Senator ROBINSON of Indiana. In Pearl Harbor. Now, has there been any indictment of any kind returned, or any indictments returned against any of these people that stand charged with this offense?

Secretary WILBUR. I understand that the prosecuting attorney there is building up information, but that he has not as yet acted definitely.

Senator ROBINSON of Indiana. Have there been any representations made that they be let to bail, do you know? That is following the question of Senator Hawes?

Secretary WILBUR. I do not know. I think there has been nothing of that kind. I think they have not really been before the court yet in any way.

The CHAIRMAN. Mr. Secretary, with regard to the four men who were concerned in the rape case, are they at the present time in prison?

Secretary WILBUR. They have been taken into custody, I am informed.

The CHAIRMAN. They are not out on bail?

Secretary WILBUR. No. They were reporting each day for the second trial. But since this murder they have been put into custody.

Senator HAWES. But they were out on bail and were not arrested until this recent excitement; is that correct, Mr. Secretary?

Secretary WILBUR. They were under trial first. And then after there was no conviction by the jury they were kept under daily report to the court preliminary to another trial.

Senator HAWES. But they were not confined in the way they are now? They were on bail, were they?

Secretary WILBUR. No; they were not confined.

Senator ROBINSON of Indiana. I suppose they were out on their own recognizance. They did not even get bail, is that right? There was no bail bond attached at all?

Secretary WILBUR. I do not know. They were reporting each day.

Senator ROBINSON of Indiana. That would indicate to me that there was no bail given at all. I wonder if that is true.

Secretary WILBUR. I do not know.

Senator ROBINSON of Indiana. If they were ordered to report they were probably out on probation or something of that sort.

Secretary WILBUR. Of course conditions are very different on a small island. Nobody gets away from there.

Senator ROBINSON of Indiana. But they have their freedom. That is it.

Senator HARRIS. The governor's statement about the conditions on the island seems to be different from what the Navy Department thinks. The fleet was ordered there, I understood, and part of it was ordered not to go because of conditions. Is that not true?

Secretary WILBUR. I could not say, of course, just what took place. Secretary Adams could answer that. But there have been, naturally, some difficulties because of this lynching, and that sort of thing has developed an attitude of antagonism there. There has been a case which has been taken up by the committee of the House regarding the death of a sailor in which nobody was convicted or even tried.

Senator HARRIS. It seems strange that even the American fleet should think it unwise to go there.

Senator VANDENBERG. Mr. Secretary, you spoke about the law-enforcement structure in Hawaii. Will you amplify that a bit? Do I understand that the chief law officer at the head of the police service is an elected official?

Secretary WILBUR. If you would be willing I would like to have the attorney general, who has gone into that, cover that so that you will be sure to have it right.

Senator VANDENBERG. All right. Then may I ask you this, Mr. Secretary. Based on your experience and contact with Governor Judd, and speaking generally, would you describe him as a dependable and capable administrator?

Secretary WILBUR. Very much so. He has lived in the islands all his life. He comes from a family that has long been there. He is experienced in the affairs of the island. He is, I think, one of the most capable men that could have been secured.

Senator VANDENBERG. With the exception of this particular matter his record stands entirely clear as far as the department is concerned?

Secretary WILBUR. He has a splendid record.

There is one other thing about it, Mr. Chairman. Since there has been something in the press about it, I think on account of the governor I ought to put it into the record. This is a cablegram from the governor. (Reading:)

SECRETARY INTERIOR, Washington, D. C.:

HONOLULU, January 15, 1932.

Further reference my wire January 14 regarding recommendation House Naval Subcommittee and particularly with reference statement that "the attitude of local law-enforcing officers is typified by their action in the case of the murder of Isadore Wolfe, seaman, first class, United States Navy," report after investigation by Territorial attorney general as follows: "Prior to July 15, 1927, there had been several altercations between naval men and hoodlums in Kaimuki, a residential section of Honolulu. On that night Navy men so attacked. On evening of July 16, group of Navy men came into city from naval wireless station at Wailupe near Honolulu armed with baseball bats and melee followed in which Wolfe was killed."

Naval court of inquiry convened by Rear Admiral McDonald reported above facts also that Wolfe was one of 15 Navy men in brawl which was "premeditated by the participants of the opposing factions, but was not without provocation on the part of the naval personnel engaged"; that he "had in his possession and used during the fight a baseball bat" and that he "met his death not in line of duty and as the result of his own misconduct." Two civilians indicted for murder second degree July 22 but case not brought to trial on belief of then prosecuting officer not sufficient evidence to convict and that identification assailant very indefinite. I can not presume to say whether prosecutor justified, as is legal question, but admittedly some police officers did not acquit themselves very creditably in the incident. On January 2, 1930, new city attorney nolle prossed case, telling naval legal representative would reindict should additional evidence be secured. Reference statement "in past there have been frequent occurrences of the crime of rape resulting in the majority of cases in light sentences or acquittal." I have previously pointed out there has been only one acquittal for rape in last three years.

Believe committee bases charge of light sentences on Ahakuelo case, nature of which I stated in previous wire. Feel subcommittee should make more thorough investigation of facts before making such charges which continue to do Hawaii untold harm. Would appreciate your furnishing Delegate Houston with foregoing information.

(Signed) Judd.

Senator ROBINSON of Indiana. Mr. Secretary, what is the population of that island? That is, Hawaii?

Secretary WILBUR. I could not say without looking it up exactly what that population is. We have the figures here.

The CHAIRMAN. About 250,000.

Secretary WILBUR. Honolulu, 202,000; the Hawaiian Islands, 375,000.

Senator ROBINSON of Indiana. How many of them are Japanese?

Secretary WILBUR. The proportions run very much the same. It is there as elsewhere, and the Japanese in the whole islands are 139,000.

The CHAIRMAN. A little more than one-third of the total population.

Senator ROBINSON of Indiana. Well, it is even more than that, is it not?

The CHAIRMAN. According to the enumeration, in the last few years the number of births of Japanese parentage has been about the same as all the rest put together. The population is about 375,000. The number of Japanese about 110,000.

Anything further on this, Mr. Secretary?

Secretary WILBUR. I think that is all, with the exception of any further questions anyone desires to ask.

The CHAIRMAN. I should like to ask the Attorney General if he will tell us what he has done in carrying out the request made by Senate Resolution 134, which reads as follows:

Resolved, That the Attorney General of the United States is requested to report to the Senate at the earliest practicable date upon the administration and enforcement of the criminal laws in the Territory of Hawaii by the police authorities, the prosecuting officers, and the courts of said Territory, and whether in his opinion any change in the organic law for the Territory of Hawaii is desirable in the interest of prompt and effective administration of justice in said Territory.

STATEMENT OF HON. WILLIAM DE WITT MITCHELL, ATTORNEY GENERAL

Attorney General MITCHELL. Mr. Chairman, any action I have taken in the Hawaiian situation arose out of that resolution requesting me to do it. None of the agencies that are involved in this present situation is under my direction or control, or would be a subject of administrative investigation by me.

When this resolution was received requesting me to examine into the condition of law enforcement in the Islands and examine into the machinery of justice and see whether any legislation by Congress is necessary, we started in immediately in the department to review the set-up there and ascertain just what the organization is so we could proceed intelligently. In addition to that, we examined all of the dispatches from the islands to the Navy, to the Interior

Department, and what had appeared in the Congressional Record and in the newspapers.

It became very evident to me that there were a great many conflicting statements about conditions over there that could not be reconciled, and that the only way to get at the facts was to make an inquiry on the ground. So I assigned Mr. Richardson, assistant attorney general, to go to Honolulu at once and take charge of the inquiry, with a force of Bureau of Investigation agents and any other assistants he needed. He is planning to leave within a day or two, to sail for Honolulu, I think, about the 29th. I think there is a vessel leaving on that date.

I outlined for him in a general way the subject of the inquiry as it occurred to me. I think a copy of that is in the Congressional Record and I will not repeat it.

The CHAIRMAN. That will be made a part of the record at this point.

(The communication referred to is as follows:)

DEPARTMENT OF JUSTICE,
January 14, 1932.

The Hon. SECRETARY OF THE INTERIOR,
Washington, D. C.

MY DEAR MR. SECRETARY: ASSISTANT Attorney General Richardson has been designated to proceed at once to the Hawaiian Islands to make the inquiry requested by Senate Resolution 134. By way of suggestion, I have made a general outline of subjects for investigation. Copy is transmitted herewith. As the Territorial legislature is about to be convened and some of the matters mentioned in this outline may be considered by the legislature, I suggest you transmit a copy of this document to Governor Judd so that he and the legislature may know what this department is directing its attention to, with the possibility that some progress may be made in the consideration of these matters before Mr. Richardson reaches Honolulu.

If you have any suggestions as to further subjects of inquiry, I shall be glad to have them.

With personal regards, very truly yours,

WILLIAM D. MITCHELL,
Attorney General.

JANUARY 14, 1932.

Hon. SETH W. RICHARDSON,
Assistant Attorney General,
Department of Justice, Washington, D. C.

MY DEAR MR. RICHARDSON: I am obliged to ask you to proceed at once to Honolulu to examine into the conditions affecting law enforcement in the Hawaiian Islands. Your attention is called to Senate Resolution 134, requesting me to report to the Senate upon the administration and enforcement of criminal laws in the Territory of Hawaii by the police authorities, the prosecuting officers, and the courts of the Territory, and to suggest any changes in the organic law desirable in the interest of prompt and efficient administration of justice in the Territory. Because of the conflicting statements about conditions there, it is necessary that representatives of this department ascertain the facts by inquiry on the ground.

A preliminary review of the organization of the machinery of justice in the Hawaiian Islands has been made. In order to assist you, here is an outline of the subjects of the inquiry:

1. *Courts.*—The principal courts for the enforcement of criminal law in the islands are the United States district court and the circuit courts. The United States court has jurisdiction only of violations of acts of Congress. The circuit courts have jurisdiction of the enforcement of Territorial criminal laws as well as of some Federal statutes. The judges of both the district court of

the United States and the circuit courts of the Territory are appointed by the President with the advice and consent of the Senate.

Appeals from the Territorial circuit courts go to the Territorial supreme court, and appeals from the United States district court go to the United States Circuit Court of Appeals for the Ninth Circuit. Cases in the United States district court are conducted by a United States attorney appointed by the President. Criminal cases in the circuit courts in Honolulu are conducted by the city and county prosecutor who is an elective officer. The city and county of Honolulu appear to be coterminous.

Cases of the type which have recently attracted public attention are not within the jurisdiction of the United States district court nor of the United States attorney. They are triable in Territorial courts. And the prosecutions are conducted by the city and county prosecutor.

I suggest you inquire into the operations of the office of the city and county prosecutor to ascertain whether it is efficient, and whether any change in the method of selection of the local prosecutor, such as an appointment of the governor of the Territory, would tend to make the work of that office more effective.

2. *Police.*—In the island of Oahu, on which Honolulu is situated, the principal agents for the detection of crime are the police. The head of the police force is a sheriff, elected by the people. There seems to be some sort of civil-service system applicable to the police force. The organization and efficiency of the police force should be examined, and consideration should be given as to whether the discipline and efficiency of the police are open to improvement, and, if so, whether that could be accomplished by legislation for appointment of a chief of police by the governor, and to change the system respecting the appointment and removal of officers. A bill for reorganization of the police force appears to have been introduced in the last session of the Territorial legislature but not passed.

3. *Jury system.*—The provisions of the Constitution of the United States relating to trials of criminal offenses by jury appear to be applicable to the Hawaiian Islands. The organic act, under which the Territory is organized, provides:

"All juries shall be constituted without reference to the race or place of nativity of the jurors; but no person who is not a male citizen of the United States and 21 years of age and who can not understand English, speak, read, and write the English language, shall be a qualified juror or grand juror in the Territory of Hawaii. No person shall be convicted in any criminal case except by unanimous verdict of the jury. No plaintiff or defendant in any suit or proceeding in a court of the Territory of Hawaii shall be entitled to a trial by a jury impaneled exclusively from persons of any race."

The Territorial laws enacted by the Territorial legislature also provide that a juror must possess the qualifications for registration as a voter, be a resident of the circuit from which selected, of ordinary intelligence, and must not have been convicted of any felony or misdemeanor involving moral turpitude.

I suggest you inquire into the methods of making up the lists of eligible persons for jury service so as to determine whether jurors of the best type available are obtained. The Territorial laws provide a jury commission for each circuit, composed of the circuit judge and two citizens, members of opposite political parties, who annually make up lists of qualified persons for jury service. It should be ascertained whether this system works satisfactorily and whether any improvements may be brought about by legislation or judicial action.

4. *Parole board.*—The Territorial law provides for granting of paroles upon the recommendation of the board of prison inspectors. The parole system having a bearing on the problem of law enforcement, the operations of the existing system should be considered to determine whether it proceeds on principles followed by up-to-date penal systems, and if not, whether any legislation is desirable on that subject.

5. *Weight of evidence required in certain criminal cases.*—The Territorial laws now provide that no person shall be convicted of the crime of rape on uncorroborated evidence of the prosecutrix. I can understand the reason for requiring corroboration as to the fact that force was used, but where that fact is properly established it is not so clear to me that corroboration of the testimony of the prosecutrix should be required as to the identity of the offender.

A memorandum reviewing the statutes of the States of the Union on this subject is being prepared and will be furnished you.

6. *Operation of the Federal courts in narcotic drugs and prohibition matters.*—While offenses of the kind which have recently attracted attention are not within the jurisdiction of the United States court and are not dealt with by the United States attorney or officials of this department, it would be well to consider how efficiently violation of Federal statutes are prosecuted within the district, as this has a bearing on the general crime situation.

The bureau of the Treasury, having charge of the investigation of offenses against Federal laws relating to narcotics, has a force of men in Honolulu. The prohibition unit of this department has a force at that place. I am informed that the local police also have authority to detect and arrest offenses under these laws; that the prosecution of prohibition cases may be conducted in either the United States court or the circuit courts of the Territory; and that the practice varies in the different districts in the islands.

The foregoing suggestions do not mean that any conclusion has been reached here as to whether any of the agencies referred to are deficient, or as to the extent to which they may require reorganization. These are matters for you to inquire into. While many of the problems mentioned are local in their nature, it must be remembered that there are important naval and military establishments on the Hawaiian Islands, and for that reason it is of especial importance that law and order should be efficiently maintained.

This outline does not limit your inquiry. You are free to go into any phase of the matter that you deem advisable. My impression is that under the organic act under which the Territory is organized, the territorial legislature has ample authority to enact any legislation that may appear to be desirable for the improvement or endorsement of criminal justice. A special session of that legislature is about to be convened.

I am transmitting a copy of this letter to the Secretary of the Interior for transmission to the governor of the Territory, so that the Territorial legislature may consider the subjects here mentioned. It is desirable, if any legislation is required, and it is within the powers of the Territorial legislature, that it be dealt with by that body. The important thing for you is to get at the real facts, which I have no doubt you will do with your accustomed vigor.

You might also consider whether it is desirable that the powers of the governor of the Territory be enlarged by Congress. Under existing law his power to deal with the agencies for enforcement of criminal laws is quite limited.

Mr. Edgar Hoover, director of the bureau of investigation, has arranged to place at your disposal a sufficient force of his men, headed by one of his agents in charge.

Very truly yours,

WILLIAM D. MITCHELL, *Attorney General.*

Attorney General MITCHELL. Mr. Richardson is not limited to what I suggested. He is free to make his inquiry in his own way.

The CHAIRMAN. Is there anything the Senate or Congress can do to further your investigation?

Attorney General MITCHELL. The only thing that has been thought of at present is a small special appropriation to cover the expenses of the inquiry. I want to make a record of the facts they develop, statements of any persons they interview; and I think my administrative division showed me yesterday a bill for an appropriation of \$15,000 to cover the expense. That is the only place I can think of at present where we need any help.

The instances that have caused so much disturbance recently are matters wholly within the Territorial jurisdiction. I think I explained in that letter that went in the record that there are two sets of courts, the United States courts and the Territorial courts. The United States attorney has nothing whatever to do with offenses in cases such as you have been discussing. The Territorial courts handle those. The judges of those courts are appointed by the President, with the advice and consent of the Senate. The prosecuting attorney before the Territorial courts who has to do with offenses of this

nature is an elective officer. The police force is a local organization, handled by a sheriff, who is an elective officer. And so it goes.

There is a parole board, a pardons board, which consists of a board of prison inspectors, and their action has to be approved by the governor.

It appeared to me that the governor has a very limited power over any machinery of justice there, under the organic act. I think Mr. Richardson intends to examine into all those agencies there to see if there appear to be any deficiencies in discipline or effectiveness.

I have called Mr. Richardson's attention to the fact that the Territorial legislature is about to be in session, and a copy of the outline of the investigation that I have made has already gone forward to the governor and the Territorial legislature, so that they will have an opportunity to consider the very things we have in mind.

The general set-up is that we have an organic act that establishes the general outline of the government. The Territorial Legislature has authority, so far as I have been able to see, to enact any legislation that may be reasonably necessary to reorganize or improve the organization of any of these agencies, except the constitution of the courts. Of course, I think it is a wise provision for a good many reasons. The Territorial Legislature can take hold of this thing and do whatever is reasonably necessary in the way of legislation to improve the organization out there. That is a good way to handle it. If they do not, then it is a matter for Congress to consider.

At any rate, these investigators who go out there will move as speedily as possible and make a record of their inquiry and what they develop and be prepared to come back here as speedily as possible with a full report of what they develop and any recommendations the resolution calls for.

Senator VANDENBERG. How much of a staff is Mr. Richardson taking with him, General?

Attorney General MITCHELL. I have asked the Chief of the Bureau of Investigation to assign to him one of his best agents in charge—an agent in charge is a man who has general charge of a district in the United States—and to assign to him such bureau agents as he calls for. They are organizing a party now. I can not tell you offhand how many men they propose to take, but it will be a group of investigators from the Pacific coast.

Senator ROBINSON of Indiana. General, do you think from what you know of the situation that these native people can get a fair trial in the civil courts there?

Attorney General MITCHELL. I do not like to discuss, Senator, any of these pending cases. They are undisposed of. How am I able to say here, Senator, whether they will get a fair trial or whether they won't?

Senator ROBINSON of Indiana. Of course, it is tremendously important to them, even now, whether we decide it or not, and I wanted to know what your opinion was, from what you have heard of conditions out there. I think what everybody is interested in is to see that they get a fair trial by an unprejudiced jury, if they are to be tried by the civil courts.

Attorney General MITCHELL. One of the things I have asked Mr. Richardson to do is to examine into the jury system, the method of

making up lists of eligible jurors and choosing them, and all that, to see whether there are any defects in the machinery of the law, whether or not the best quality of jurors are chosen, the best that are available. Of course, trial by jury is a fixture out there. There are some difficulties attending the application of the jury system to a place where there is a mixed population, and they are not all Anglo-Saxons who are accustomed to our common-law jury system. I recognize that there are a great many practical difficulties about it.

Senator HARRIS. Do you think that Governor Judd's action was unwise and uncalled for?

Attorney General MITCHELL. I heard two sets of facts about that. The Secretary of the Interior has given you the governor's statement about it. It was because of this conflicting and uncertain information that we had about it that I felt we ought to make an inquiry on the ground. I am not prepared, after examining all the telegrams and all the dispatches and all of the available information here, Senator, to reach any conclusion on any of these things that have been discussed. I doubt very much if a conclusion from the present information is very dependable. That is why I thought the facts ought to be ascertained by experienced and independent investigators right there, and when they report to me I will then have some basis for a judgment. I do not think I have it now.

Senator HARRIS. I think the members of the committee and others who met Governor Judd when he was here, and who made such a good impression on us, were surprised to find out about conditions there, and when he was here not saying anything about it.

Attorney General MITCHELL. One of the things I have asked Mr. Richardson to do is to inquire into the pardon and parole system there, the character of the organization of this board of prison inspectors that acts as a parole board, that makes recommendations to the governor, and see whether that is run on modern principles, see whether it is handled intelligently. My own inquiry is mainly directed at the system and the machinery rather than at individual cases. But, of course, we will have to examine these past incidents to see to some extent whether the system is working properly.

The CHAIRMAN. I hope you will take advantage in your investigation to go into the particular instances that have come to our notice and investigate them, in order that we may have the result of your independent investigation of them. Furthermore, general, I wanted to ask you whether you feel you have sufficient authority to prosecute this investigation thoroughly.

Attorney General MITCHELL. Yes; I haven't any doubt of it. I think technically I can get at it this way: It is an inquiry into the general crime situation there and the Federal courts and the United States attorney, which are in my department, deal with certain classes of offenses not involved in this situation directly, but nevertheless bearing on the crime situation. So I felt I did not need any more legislative authority for the inquiry than the Senate resolution, and the authorization contained in the appropriation bill I have mentioned.

Senator HAWES. General, who appointed the judge who tried this case?

Attorney General MITCHELL. All of the Territorial judges and the United States district judges are appointed by the President, with the advice and consent of the Senate.

Senator HAWES. Apparently all of this trouble or the greater portion of it was precipitated by the admission of these four men to bail, after, according to the Secretary's statement, the jury were, eight of them, for conviction. These men were admitted to bail and were out on bail when this second event took place. Isn't that rather unusual, to admit men charged with rape and assault to bail?

Attorney General MITCHELL. No. Persons charged with a crime, as I understand it, have a constitutional right to bail, except in capital cases where the proof is evident or the presumption great and unless there is reason to think they are about to escape the jurisdiction. The court has a right to deny bail in a noncapital case if there is definite evidence that the accused is likely to escape the jurisdiction, is planning to do it, or something of that kind. I do not know anything about the facts in this case. I am not forming any judgment about it. But the purpose of bail is to prevent the escape of a defendant when he is awaiting trial. I infer from your statement that you have in mind that the object of withholding bail in this case would have been to protect the accused from attack.

Senator ROBINSON of Indiana. General, I gather from the statement that the Secretary of the Navy made that no bail was required that if they reported back every so often they did not require bail.

Attorney General MITCHELL. I did not get that inference from what occurred. As I say, I have not accurate information about that, but from what I read in the dispatches I infer that bail was granted.

Senator ROBINSON of Indiana. If they are out on bail, there would be no occasion to report back to the court.

Attorney General MITCHELL. Let me say what I read about that. It has been reported that the judge, after releasing them on bail, required them to report daily, and that he had exceeded his authority a little bit by going so far as to insist that they come back daily and report. That is the story that is sent here.

Senator ROBINSON of Indiana. Is it not a fact that the judge would have no right to require that?

Attorney General MITCHELL. I do not know what the facts are, but every bit of information I have seen in the way of dispatches confirms the proposition that these men while they were awaiting their second trial were on bail, as other offenders are.

Senator ROBINSON of Indiana. I am just assuming if they were on bail the court had no right to require them to report. It is either one or the other.

Attorney General MITCHELL. It may be you are right about that, but I think there is a dispatch from the governor reporting the fact that the judge strained the law a little by requiring them to come back daily in addition to bail.

Senator HAWES. Was the amount of the bail stated in any of the communications?

Attorney General MITCHELL. I have not seen that, sir. As I say, the whole law about bail is that a man who is not charged with a capital offense, where the proof is evident, is entitled to bail, under the Constitution; that is, before he is convicted. He is not consti-

tutionally entitled to bail after conviction on appeal, and the only basis on which a court may deny bail in a noncapital case is where there is definite reason to think he is going to escape the jurisdiction. He is likely to—well, I think that states it.

Senator HAWES. But that is a matter of discretion with the judge, the whole subject of bail.

Attorney General MITCHELL. Not entirely so. There is a recent case here where the question of the constitutional right to bail in noncapital cases was pretty well dealt with and the discretion in the court is in respect of the amount of bail and as to whether the accused is planning to leave the jurisdiction. The amount of the bail has to be fixed in accordance with the nature of the offense, for the purpose of being large enough to assure the attendance of the accused when he is called to trial.

Senator HAWES. This is a noncapital case then?

Attorney General MITCHELL. I so understand. Is that right, Mr. Secretary?

Secretary WILBUR. Yes.

Attorney General MITCHELL. You have read the statute upon that.

Secretary WILBUR. Yes.

The CHAIRMAN. I understand the governor is going to recommend to the legislature that the law be changed to make this a capital offense.

STATEMENT OF HON. PATRICK J. HURLEY, SECRETARY OF WAR

The CHAIRMAN. I should now like to ask the Secretary of War whether the soldiers, of whom we have some 15,000—is that right?

Secretary HURLEY. Approximately 12,000.

The CHAIRMAN. Twelve thousand. Whether there has been any difficulty in connection with the soldiers at the garrisons there in their dealings with the populace?

Secretary HURLEY. I might say in the beginning, Mr. Chairman, that under the Articles of War the crime of rape is punishable by death. We have had no cases of that kind among our soldiers in Hawaii. We, of course, have no connection whatever with the administration of the civil government. We have no official record of any difficulty of the nature involved before this committee between our soldiers and the civilian population.

The CHAIRMAN. Are your men given the usual amount of leave when they are not on duty?

Secretary HURLEY. Yes, sir.

The CHAIRMAN. Is there anything that you would like to add to what has already been said? In view of the large number of soldiers that are there, the War Department has a very direct interest in the situation in Hawaii.

Secretary HURLEY. Nothing, except that the service has the deepest sympathy for the officer of the Navy whose wife has suffered in this matter, and, of course, would like to contribute anything that the Army may do to assist in remedying the situation.

The CHAIRMAN. Has the Army been called upon to give any assistance in policing the streets of Honolulu?

Secretary HURLEY. No.

The CHAIRMAN. And so far as your reports have been received from your officers there and the general commanding that department, there has been no need of protecting the Army personnel against any attacks in the city of Honolulu or on the island?

Secretary HURLEY. If there has been anything of that nature, it has not been of sufficient gravity to come to the attention of the War Department. It has been taken care of by the department commander who has jurisdiction there.

The CHAIRMAN. Thank you, Mr. Secretary. If there are no further questions, you may be excused.

Attorney General MITCHELL. Are you through with me?

The CHAIRMAN. Yes.

Attorney General MITCHELL. Thank you.

The CHAIRMAN. May I ask Secretary Wilbur a question? I know he has an engagement and is anxious to get away.

In your opinion, is there anything further that can be done in the way of investigation to aid the Federal Government in its duty of looking after the Territory, so as to permit the securing of prompt and efficient justice, than what is already now under way?

Secretary WILBUR. I think not. I think with what the Attorney General is doing, with the legislature in session, and what we will try to do in connection with this end, that the situation is already covered.

Senator VANDENBERG. Women are not admitted to juries, are they, in Hawaii?

Secretary WILBUR. I have seen that statement in the press—I have tried to find out from any law that we had—that they were denied admission, but there is nothing to show that they were denied admission under any information we have. You are not entitled under the law there to a jury trial by a jury of one race.

Senator VANDENBERG. My recollection is that women have tried to get jury service legislation from us and it has always been opposed by the Hawaii Bar Association.

The CHAIRMAN. Yes, the organic act provides that jury duty is limited to male citizens. The legislature itself has still further limited the kind of male citizens that may serve. At the request of the committee, the Bar Association took a poll in regard to whether it was advisable to change the law, and by a vote of something like 72 to 7 voted against any change in the organic law in that regard.

Thank you, Mr. Secretary.

STATEMENT OF HON. CHARLES FRANCIS ADAMS, SECRETARY OF THE NAVY

The CHAIRMAN. Now, Secretary Adams, the committee would be glad to hear from you in regard to the present condition of affairs as they concern the Navy personnel there. Perhaps the first question that interests us is with regard to any changes of plans that you have felt were necessary or that have been made in regard to the visit of the fleet.

Senator HARRIS. And why the change.

Secretary ADAMS. As we all know, there is a rather excited condition there, in which our liberty parties from the fleet might have

a little pleasant fighting with the natives, which might lead to difficulty, and it seemed to us wiser that the fleet should not in connection with these operations stop there. There were plenty of other opportunities in the islands for whatever liberties and opportunities were desirable for the fleet.

Senator HARRIS. You changed your orders then on account of the deplorable conditions there?

Secretary ADAMS. In the normal operation of things we would have stopped there, yes.

The CHAIRMAN. Have your orders for maneuvers been changed?

Secretary ADAMS. In detail, but the maneuvers in general will go on.

The CHAIRMAN. Is the general problem to be worked out as planned?

Secretary ADAMS. The general problem is to go ahead. The ships, in the period which elapses after the first problem, and instead of going to one place, go to another in the same general region. There were some minor exceptions, but that is the general situation.

The CHAIRMAN. What is the present condition? Are men granted shore leave?

Secretary ADAMS. I will ask Admiral Pratt to answer that.

STATEMENT OF ADMIRAL WILLIAM V. PRATT, CHIEF OF NAVAL OPERATIONS

The CHAIRMAN. What is your answer to that question, admiral? Are they granted shore leave?

Admiral PRATT. Yes.

Senator HAWES. Just as formerly, or are there certain restrictions imposed?

Admiral PRATT. No; they go out just as they did before, except, of course, they are cautioned to be on their good behavior. There is a tense situation which we all have to take precautions against.

Senator HAWES. Had you known of any of this tense condition before, or did you just learn of it recently?

Admiral PRATT. Can I answer that at length?

Senator HAWES. Yes.

The CHAIRMAN. The Senator is asking the Admiral.

Admiral PRATT. The situation in Hawaii, and I mean by that the islands, is one that I am quite familiar with, having been there a number of times in the fleet.

Senator HAWES. How recently were you there?

Admiral PRATT. As commander in chief of the United States Fleet a year ago.

Senator HAWES. A year ago?

Admiral PRATT. And many times previous to that. I would like to state that with the one exception of these sex crimes, the Hawaiian Islands are as law abiding as any place I have ever seen, but there is a laxity in that particular matter, which is due very largely just to the nature of things.

As far as our men are concerned, we face a somewhat different situation from that which confronts the Army. The types of ships which we send out there, submarines, require a high class of sailors. They are almost all of them petty officers. They do not live in bar-

racks. We have no barracks at the navy yards which will accommodate our large naval personnel. Therefore, they are bound to be scattered throughout the town. The amount of compensation they receive for quarters is not great and they can not live in the best residential portions, so they are forced to come somewhat closer in contact with the average element, say the native element, than, I think, the majority of the soldiers would be.

In the matter of liberty, we have not had a great deal of trouble there, because we send ashore patrols, and they are supposed to handle cases in which the Navy personnel are concerned.

The result, however, to the Navy has been this: That in the last day or two we have had a request from the commandant of the district to cut short the participation of the Hawaiian group in our fleet problem, in order that the men might be left ashore and the women of the families protected. We have that under advisement. And there has been a demand made on our naval relief society to issue loans to the dependents of the sailors that are in Hawaii, in order that they may make their way back to the States. They would prefer to do that.

There has always been the best of feeling between the naval element and the shore, in the main. There have been a number of brawls. There was a case that was cited, that of this Isadore Wolfe. It happened some time ago. The man was killed. The commandant at the station tried 10 sailors for creating a riot, and four of them were convicted. We take care of our cases that way. On the other hand, these men that were indicted for manslaughter, nothing happened to them.

Senator ROBINSON of Indiana. Do you mean the two natives there?

Admiral PRATT. Yes. Secretary Wilbur spoke about that.

Senator ROBINSON of Indiana. I mean, they were indicted and nothing ever came of that?

Admiral PRATT. Nothing happened to them.

Senator ROBINSON of Indiana. How long ago were they indicted?

Admiral PRATT. The court said they were released after the case had been held up about two years. Nothing happened in the meantime.

Senator ROBINSON of Indiana. Was there ever a trial?

Admiral PRATT. No; but it is incidents of that kind which have led—

Senator ROBINSON of Indiana. Just a moment, Admiral. You say they have been indicted and they have never been tried, and it is two years ago and it has been held up all that time. Do I understand you correctly?

Admiral PRATT. That is a report that came to me. I have the statement.

Senator ROBINSON of Indiana. If you are sure of it, it is a very interesting statement. I just wondered about it.

The CHAIRMAN. I think Secretary Wilbur has the details about that.

Admiral PRATT. I think he has given them.

Secretary WILBUR. I gave that.

Senator ROBINSON of Indiana. That was before I came in, I assume then.

Secretary WILBUR. Yes; that was before you came in, I believe. It is already in the record.

Admiral PRATT. Secretary Wilbur gave the details of that.

Senator ROBINSON of Indiana. Yes; all right.

Admiral PRATT. That has led to a certain amount of tension, which has been in existence for two or three years, but it has not led to anything very serious until the time of the Massie case.

Senator ROBINSON of Indiana. Do you know why they were not tried in all that time?

Admiral PRATT. No, sir.

Senator ROBINSON of Indiana. Do you know, Mr. Houston?

Delegate HOUSTON. The Secretary read the dispatch from the Governor this morning. I can repeat it to you, if you like.

Senator ROBINSON of Indiana. You do not need to repeat the dispatch. I just wondered if you knew in a general way.

Delegate HOUSTON. Insufficient evidence as to the identity of the individuals.

The CHAIRMAN. There was a big fight between the sailors and the people on shore and it was difficult to identify the people who actually killed the American sailor who was in the fight.

Admiral PRATT. When it comes to the Massie case, apparently this happened about the middle of September, but they kept it very quiet, because the Navy took no action then, leaving this case entirely in the hands of civil authorities, with the expectation they would get a fair trial. In fact, they said so little about it that I had not heard of it myself until in December, when due to what the Navy thought was a failure to receive justice this Ida case happened, where the man was taken out and beaten. That started a series of radios between the commandant and ourselves. We began to inquire into the matter, asked Admiral Stirling to submit his reports, which he did. Then the affair began to look so serious that I started asking Stirling if it was safe to send the fleet out to Hawaii, because I knew that there was a difference of opinion in the attitude toward women of our men in the service and a certain lower element that is found everywhere. So that warning was issued.

The governor had been very anxious to have the fleet come out there, as was natural, but I issued the warning, for I felt sure that something of the nature of what did happen in the case of the murder would happen if our men got ashore.

Senator HARRIS. Did the governor mention the conditions to you when he was urging the fleet go there?

Admiral PRATT. No; the Massie case was never brought up. I saw the governor when he was here in Washington and that Massie case was never mentioned. I did not know of its existence at the time.

Senator HARRIS. You did not know of the serious situation there?

Admiral PRATT. No. To be perfectly fair in the matter, I do not think it is entirely the fault of the Hawaiian boys out there. In order to be very blunt, I think you have got to trace it right down a little beyond that. You can not allow too great intimacy or laxity, let me say, of relationships between women and men without something growing up.

The Hawaiian is a different sort of bird from the average American. I have been there enough to know it. These beach boys are fine, upstanding men, but their attitude toward women is not any-

thing like the attitude of our men toward women. They do not know what rape is, many of them. They think pretty nearly everything is consent. And when you introduce too large a tourist element into the islands, coming there with the idea that they have of our own women, that womanhood is going to be respected, and then you let them take too many familiarities with the boys on the beach, something is going to happen. I have been fearful of something of the sort for a year or two. I mean, I have had enough experience on the islands, and I am trying to tell you the truth as I see it. So I have been watching for something of the sort to happen, and it dropped after a while.

As far as sending the fleet away from Honolulu is concerned, it is done because it just is not safe to send it there, but that restriction does not apply to any other part of the Hawaiian Islands. We received a message from the mayor of Hilo that they would be glad to have the fleet come there. We have not curtailed the maneuvers, except, as I say, to a limited extent, to keep sufficient of our naval personnel in Honolulu to handle the situation during this tense period.

The CHAIRMAN. Mr. Secretary, have you anything to add to what Admiral Pratt has said?

Secretary ADAMS. Not unless you have some questions.

The CHAIRMAN. The first question that occurs to me is this: Is there anything more that we can do here toward helping the Navy in the normal proper performance of its functions, its first line of defense, using the island of Oahu as one of its principal bases?

Secretary ADAMS. I think not, with the understanding, of course, that Mr. Mitchell is going to send out and conduct this investigation.

Senator ROBINSON of Indiana. The prosecutor out there is chosen by the people directly, is that true, Mr. Secretary Wilbur?

Secretary WILBUR. The prosecuting attorney of the city of Honolulu, I think, is chosen by the people.

Senator ROBINSON of Indiana. I understand in the case of the sailor for which these two natives were indicted and then the case dragged on for a long while, that undoubtedly the prosecuting attorney was instrumental in having the indictments returned, but then it dragged along and finally he said for some cause or another the evidence did not justify a trial. Then subsequently his successor was elected, a new man came in, and he nolle-prossed the indictments, so that the whole thing is ended. They have never had a trial. That is what it amounts to, doesn't it?

Secretary ADAMS. I think so.

Senator HARRIS. I would like to ask Admiral Pratt, knowing the conditions as they are, if he thinks these people will get a fair trial.

Admiral PRATT. Yes, I think they will get a fair trial. I do not think they dare give them anything else now.

Senator ROBINSON of Indiana. With a jury of natives out there, how could they get a fair trial?

The CHAIRMAN. I understand, Senator, that the organic act provides that no jury can consist of one race entirely.

Senator ROBINSON of Indiana. Of course not, but these people, if they should disagree, it is a stain on them as long as they live. There apparently will be no chance for acquittal, if they are prejudicial as much as the newspapers say they are.

The CHAIRMAN. The Senator is correct.

Admiral PRATT. I am not a lawyer, but I will tell you how I feel about that. I think it will result in just exactly the same sort of a trial as happened in the rape case, where they could not come to an agreement.

Senator ROBINSON of Indiana. Then there will be a disagreement, and these people stand the rest of their lives as having been at least partially guilty, anyhow, to some degree. The jury could not agree as to whether they were guilty or not guilty.

Admiral PRATT. After all, those matters come down to public opinion.

Secretary ADAMS. I should hardly like to have it appear that the Navy is wholly satisfied with the present system of justice out there.

Senator ROBINSON of Indiana. To have what?

Secretary ADAMS. To have it appear that we were satisfied with the present system of justice out there.

Senator ROBINSON of Indiana. Are you, Mr. Secretary?

Secretary ADAMS. No. I was pointing out that I was not satisfied with the present system of justice.

Admiral PRATT. The commandant has repeatedly said that he thought if the sheriff would cease to be an elective officer, but was an appointive one, that would do as much to clear up the situation as anything. He places the root of the evil right there.

Senator ROBINSON of Indiana. Two of these original assailants were Japanese and one Chinese.

Senator HAWES. What is that?

Senator ROBINSON of Indiana. Of the five assailants, two were Japanese and one was a Chinese.

Secretary ADAMS. You are talking about the Massie case?

Senator ROBINSON of Indiana. Yes.

Secretary ADAMS. Yes.

The CHAIRMAN. If there are no further questions, I would like to hear from the Delegate from the Territory, Commander Houston.

STATEMENT OF HON. VICTOR S. K. HOUSTON, DELEGATE IN CONGRESS FROM HAWAII

The CHAIRMAN. Will you tell us, Mr. Delegate, what the plans are at the coming session of the legislature, in so far as they have been communicated to you by your friends out there?

Delegate HOUSTON. The governor has advised me that the legislature was called into special session for the 18th of this month.

The CHAIRMAN. In the call for the legislature has he mentioned any specific matters that he wants them to take up?

Delegate HOUSTON. The only matters that are to be taken up are in connection with this emergency. There are, I believe, matters having to do with this emergency. There are, I believe, matters having to do with taxation that may be brought to their attention. I am not positive as to that.

Secretary WILBUR. And taxation.

Delegate HOUSTON. It has been stated in the dispatch, which I think the Secretary read, where detailed reference was had to that.

The CHAIRMAN. Have you a copy of the governor's recommendations to the last legislature regarding a change in the laws in connection with the administration of law enforcement in Honolulu?

Delegate HOUSTON. I probably have that in the journal of the House and of the Senate, but not here. It is in my office.

The CHAIRMAN. Will you get a copy of it, so we may have it for the record?

Delegate HOUSTON. Yes, sir.

(The material referred to is incorporated within the testimony of Secretary Wilbur.)

Secretary WILBUR. There is the telegram regarding that call for the legislature, if you want it.

The CHAIRMAN. I will put in the record at this point the governor's telegram to the Secretary of the Interior, saying he is convening the legislature for the consideration of police measures and any appropriate legislation in relation thereto.

(The telegram referred to is as follows:)

[Naval message]

HONOLULU, January 13, 1932.

SECRETARY OF INTERIOR, Washington:

I have to-day issued proclamation convening Territorial legislature in special session on Monday, January 18, 1932, for consideration of police measures and any appropriate legislation relating thereto; the taxation question in all its phases, and legislation affecting education.

JUDD, Governor.

The CHAIRMAN. Mr. Delegate, have you any statement you would like to make on behalf of the Territory at this time?

Delegate HOUSTON. I would just like to make a general statement that we in Hawaii—and I think I can speak for all those who are law-abiding, and that represents the large majority of the people of the community—are distressed beyond measure at the atrocious happenings that took place in September last. No one has attempted or does attempt to excuse or minimize the horror which we all have of that affair. I do want to say, however, that we think that our community is no worse, nor no better, than is the average community on the mainland.

We have confidence in Governor Judd and in the ability of the legislature working in cooperation with the Governor to bring about a satisfactory, we hope, solution of this matter. It should be remembered that it takes two, the community and the military establishment, to bring about satisfactory relations.

We welcome any investigation that the Federal administration and the Congress may see fit to make. There is nothing that we can hide. I am prepared to answer any question with respect to this unfortunate occurrence.

Senator HAWES. Mr. Houston, you are a lawyer?

Delegate HOUSTON. I am not, sir; I am a retired naval officer; and may I not point to that particular fact as showing that there is no bias in anything that I might say.

What I am I owe to the fact that I was brought up in the Navy. My father was a naval officer. I have lived in the Navy all of my life. I love it.

Senator HAWES. Are you familiar with the court procedure in criminal matters in Hawaii?

Delegate HOUSTON. Not particularly, but I have looked up some of the statutes with respect to this particular case, and I may be able to answer you with reference to those things.

Senator HAWES. Here are five men identified by the victim and the jury was eight to four for acquittal, and the men were put on bail and permitted to walk the streets of Honolulu. How can you explain that? It could not be done in our country.

Delegate HOUSTON. The statutes with respect to bail are to be found in section 3978 of the Hawaiian law. They say that all persons charged with criminal offenses shall be bailable by sufficient sureties, unless for capital offenses. This did not happen to be a capital offense. Therefore, the judge, according to his own statement and to press reports, was not allowed to deny bail. He suggested, so I am given to understand, that the men be surrendered by their counsel, but their counsel did not care to agree to that.

Senator ROBINSON of Indiana. The judge would have had a very easy way around it if he thought it was a dangerous situation, by holding the men in such amount of bail that it could not have been met.

Delegate HOUSTON. You are more familiar with such matters, probably, than I am.

Senator ROBINSON of Indiana. The amount of bail is in his own discretion. I am not saying he should have done that, but I am merely mentioning, if it was a dangerous situation, that there was a way out.

Delegate HOUSTON. Bail is referred to in chapter 226 of the Revised Laws of Hawaii, covering a matter of some twenty-odd sections. I do not believe that I can give you any further detailed information in respect to that matter, but it is available here, and I think that the action of the judge was in accordance with the law. He has been supported by the unanimous stand of the Bar Association in respect to his action.

Senator HARRIS. May I ask when you last—

Delegate HOUSTON. If I may, I would like to continue just a minute, Senator.

Senator HARRIS. Certainly.

Delegate HOUSTON. Senator Hawes referred to the standing of the jury. Of course, we do not know how the jury stood, unless it has been disclosed by one of the jurors. They are reported to have been out for 97 hours, which is the longest time that any single jury has ever been out in the Territory. They are reported to have taken about a hundred ballots, and the newspaper reports that I have seen say that at no time were there either more than seven or six on one side of the question, which way is not said. And in respect to the judge's action, the charge to the jury has been placed in the Congressional Record; also a telegram from Governor Judd in support of the charge to the jury, in which the whole of the Bar Association and all of the counsel for the present unfortunate accused agree that the charge was eminently fair and that it was in accordance with the law.

Senator HAWES. Here was the case of the wife of one of our naval officers assaulted by five men. The judge certainly had some discretion in the matter of holding them.

Delegate HOUSTON. I believe so; yes, Senator.

Senator HARRIS. May I ask you now when you were last in Hawaii?

Delegate HOUSTON. I left there the 26th of October, Senator.

Senator HARRIS. You saw Governor Judd when he was here, I presume?

Delegate HOUSTON. I saw him just before I left Honolulu and I saw him while he was here; yes.

Senator HARRIS. Did the Governor say anything to you at that time or while he was here about the serious condition in the islands?

Delegate HOUSTON. As far as either I or the governor knew, there was no anticipation of strained relations. I know personally Admiral Sterling. I have had the pleasure of knowing Admiral Pratt. I know Admiral Pettengill personally. He and I were at Naval Academy together. At no time, either by word or suggestion, did they say anything to me or give me any impression that the question of that particular situation was at that time serious.

The CHAIRMAN. That was before the trial, was it not?

Delegate HOUSTON. Yes, that was before the trial.

The CHAIRMAN. And naturally, they supposed, as all did, that the prisoners would be found guilty.

Delegate HOUSTON. That was my own personal belief at the time. I had no reason to anticipate difficulty. Gangsters had been taken into custody and we insist that these boys were gangsters. I had not any information as to the character of the evidence that the police had been able to collect, but because of the fact they had bad records, we presumed that everything was in a fair way to a logical solution.

The CHAIRMAN. In view of what actually happened and in view of the charge to the jury given by the judge, does it not appear to you that the law in this regard requires radical change by the Territorial legislature?

Delegate HOUSTON. I have upon request of the governor made several suggestions with respect to a change in the law. I have suggested one of the things which he has accepted, that capital punishment be added to the punishments for the crime of rape. In that event bail could be denied. So that fact alone would take care of two of these particular situations.

Senator HAWES. What was the actual amount of the bail, do you know?

Delegate HOUSTON. I do not know, sir.

Senator HAWES. It seems strange that no one knows.

Delegate HOUSTON. But if they were granted bail they were apparently, according to reports, required to report daily to the court.

Senator PITTMAN. Mr. Houston, is it true that under the statute of Hawaii it is expressly provided that the defendant may not be convicted upon the evidence, the uncorroborated evidence, of the victim?

Delegate HOUSTON. Yes, that is quite true. That is one of the things I have suggested to the governor as possibly needing amendment.

The CHAIRMAN. What is your suggestion?

Delegate HOUSTON. That corroboration in such cases need not be required. I would like to say, if I may, without appearing—

Senator PITTMAN. Mr. Houston, couldn't it be accomplished by simply repealing that statute? Leaving the law as it exists everywhere else in the United States under the common law and everything else, that the weight to be given the testimony should be left to the jury?

Delegate HOUSTON. You probably, Senator, are more familiar with legal methods than I am. I would bow to your superior judgment in that respect.

Senator ROBINSON of Indiana. Am I to understand that you have a statute out there that requires in the case of rape there must be corroborating testimony of another witness besides the testimony of the victim?

Delegate HOUSTON. Not necessarily direct, but circumstantial evidence is required of a corroborative nature.

The section reads as follows:

REVISED LAWS OF HAWAII, 1925

SEC. 4156. *Evidence*.—The female upon whom rape is alleged to have been committed, or who is alleged to have been abducted or seduced, is a competent witness in a prosecution for the rape, abduction, or seduction; but no person shall be convicted of rape, seduction, or abduction, upon the mere testimony of the female uncorroborated by other evidence, direct or circumstantial.

Senator ROBINSON of Indiana. Is it not all left as a question of fact for the jury to determine whether corroboration is needed? If they believe the testimony of a victim, isn't that sufficient? Must there be, under the statute, corroborating testimony?

Delegate HOUSTON. A review of the charge to the jury by the judge will bring out the fact that he referred to that particular requirement of the statute.

Senator ROBINSON of Indiana. I have not noticed it. I am just asking for information.

(Subsequently the following information on this phase was furnished by the Secretary of the Interior:)

DEPARTMENT OF THE INTERIOR.
Washington, January 22, 1932.

HON. HIRAM BINGHAM,
Chairman Committee on Territories and Insular Affairs,
United States Senate.

MY DEAR SENATOR BINGHAM: Recalling our discussion at the hearing of your committee on the subject of laws requiring corroboration in rape cases, you may be interested to know that two States, New York and Iowa, require corroboration of the testimony of the prosecutrix for conviction. The statutes of Washington formerly required corroboration, but that provision was repealed in 1913.

The New York law is as follows: "No conviction can be had for rape or defilement upon the testimony of the female defiled, unless supported by other evidence." (Ch. 41, sec. 2013, Consolidated Laws of New York (1930).)

The Iowa law provides that the defendant "can not be convicted upon the testimony of the person injured unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense." (Sec. 13900, Code of Iowa (1931).)

For purposes of comparison, I repeat the clause of the Hawaii statute, with which you are already familiar: "* * * but no person shall be convicted of rape, seduction, or abduction upon the mere testimony of the female uncorroborated by other evidence direct or circumstantial." (Sec. 4156, Revised Laws of Hawaii (1925).)

Sincerely yours,

RAY LYMAN WILBUR.

MEMORANDUM.

Examination of the respective State and Territorial statutes discloses that only three of them expressly require corroboration of the testimony of prosecutrix for conviction in rape cases.

The New York law is as follows: "No conviction can be had for rape or defilement upon the testimony of the female defiled, unless supported by other evidence." (Chap. 41, sec. 2013, Consolidated Laws of New York (1930).)

The Iowa law provides that the defendant "can not be convicted upon the testimony of the person injured unless she be corroborated by other evidence tending to connect the defendant with the commission of the offense." (Sec. 13900, Code of Iowa (1931).)

The Hawaii statute provides: "* * * but no person shall be convicted of rape, seduction, or abduction upon the mere testimony of the female uncorroborated by other evidence direct or circumstantial." (Sec. 4156, Revised Laws of Hawaii (1925).)

The statutes of Washington formerly required corroboration but that provision was repealed in 1913.

No other statutes, so far as disclosed by the search, require corroboration in cases of rape, but a few require corroboration where the female is below a certain age, and in certain other sex crimes. The other jurisdictions appear to follow the common law or the general rules of evidence, and they are not entirely uniform in application. The following citations are given for general information on the subject. Wigmore does not appear to favor statutes requiring corroboration. He says:

"Furthermore, a rule of law requiring corroboration has probably little actual influence upon the juror's minds over and above that ordinary caution and suspicion which would naturally suggest itself for such charges; and the rule thus tends to become in practice merely a means of securing from the trial judge the utterance of a form of words which may chance to be erroneous and to lay the foundation for a new trial. Finally, the purpose of the rule is already completely attained by the judge's power to set aside a verdict upon insufficient evidence, and under this power verdicts are constantly set aside, in jurisdictions having no statutory rule, upon the same evidence which in other jurisdictions would be insufficient under the statutory rule requiring corroboration.

"Nevertheless, in many jurisdictions, a statute, based on a plausible but questionable purpose of protecting against false accusations, has introduced a rule requiring corroboration. This rule is made applicable, in some jurisdictions, to rape only; in others, to seduction under promise of marriage; in others, to bastardy; in others, to abortion; and in others, to two or more such offences having in common the feature that an alleged injured woman is likely to be the principal witness." (Sec. 2061, Wigmore on Evidence.)

The following is quoted from Corpus Juris, volume 52, page 1099, et seq.: "At common law, and in the absence of a statute requiring corroboration, it is generally held that the unsupported testimony of the prosecutrix, if not contradictory or incredible, or inherently improbable, if believed by the jury, is sufficient to sustain a conviction of rape or of attempt or assault with intent to rape, even though she may be under the age of consent, and even where, being under the age of consent, she has consented to the act of intercourse, since such consent does not render her an accomplice so as to render corroboration of her testimony necessary. It has also been held that the uncorroborated testimony of the prosecutrix is sufficient to sustain a conviction, even though she is shown to have a bad reputation for chastity. There are jurisdictions, however, in which, even in the absence of statutes changing the generally accepted common-law rule, it is held either that the uncorroborated testimony of the prosecutrix is insufficient to support a conviction, at least in cases of rape by force, or is insufficient, unless the circumstances surrounding the commission of the offense are clearly corroborative of the statements of the prosecutrix and her character for chastity as well as for truth is unimpeached. It has also been said that no hard and fast rule can be laid down on the subject of corroboration, each case depending on its own merits and surrounding circumstances.

"Limitations and qualifications of rules. Where the testimony of the prosecutrix bears on its face indications of unreliability or improbability, and is contradicted by other evidence it is insufficient to support a conviction without corroboration; and where the evidence preponderates in favor of defendant, or the verdict appears to have been influenced by passion or prejudice, it should be set aside unless there be corroboration of the prosecutrix. The mere fact that defendant testifies in his own behalf and positively denies his guilt does not render corroboration of the prosecutrix necessary, although

in such a case corroboration is, of course, necessary in a jurisdiction requiring corroboration of the prosecutrix generally. In a jurisdiction requiring corroboration of the prosecutrix to support a conviction, the rule has not been extended to her identification of accused, or evidence as to her previous chastity where it is an element of the offense; and in a jurisdiction requiring corroboration in cases of rape by force, such corroboration has been held not required in cases of assault with intent to rape. Even in a jurisdiction recognizing the general rule as to the absence of necessity for corroboration, it has been held that there must be corroboration in the sense that the testimony of the prosecutrix must bring together a number of surrounding facts and circumstances which coincide with and tend to establish the truth of her testimony. In considering the sufficiency of the uncorroborated evidence of the prosecutrix to sustain a conviction, it has been variously stated that it must be most clear and convincing, or that it must be scrutinized carefully, or rigidly, or most closely, or with more than ordinary care, or specially, or with all remote and near circumstances and probabilities. Although the mere fact that the prosecutrix contradicted herself in her testimony as to minor matters has been held that to make conviction upon her uncorroborated testimony erroneous, such testimony should be scrutinized with discriminating care. The refusal of the prosecutrix to submit to a medical examination does not, as a matter of law, so discredit her as to require her testimony to be corroborated."

Delegate HOUSTON. May I add, as we happen to be on this matter of judge and jury, that the criticisms of the Naval Department have been aimed in one respect at apathetic juries of mixed blood. The judge himself who tried this case referred to their actions and said:

As a group you have given every evidence of conscientious attention and devotion to your duty and great responsibility. The court not only does not know but has no idea as to how you stand as to division now or at any time. Since you began your deliberations you have heeded well its instructions as to secrecy and I appreciate it.

And he goes on to say quite a lot of things about them. In no sense was it critical of their action, and, as Secretary Wilbur has said, there has been but one case of acquittal where the crime of rape has been charged.

I do not vouch for that myself, but I do want to say this, that in some previous cases where rape has been charged or sex crimes have been charged, and where juries have found the defendant guilty, the community has found fault with the judges for being lenient in their punishment. So that I think I may properly say that we feel that our citizens, who have been brought up in American traditions, in American schools, are as good as are the average citizen who does service upon a jury here; and to say that they are apathetic in such circumstances is unfortunate to say the least.

Senator HAWES. Mr. Houston, I may be in error, but I do not know of any other country in the world where rape is not made a capital offense. Do you know of any?

Delegate HOUSTON. If you speak of the country as a whole, there may be States in the Union where rape is a capital offense, but I am inclined to the belief that there are several States, not many perhaps, that no longer have capital punishment.

Senator HAWES. It is a capital offense, of course, in each one of our 48 States, but I ask, in addition to that, is there any other civilized country in the world in which it is not a capital offense?

Delegate HOUSTON. I can not answer you, Senator. I do not know.

The CHAIRMAN. Senator, we realize there are a number of our States that do not require capital punishment for murder.

Senator HAWES. You do not mean capital punishment. You draw a distinction between death and life imprisonment. That is the distinction you are drawing. But it is a capital offense.

The CHAIRMAN. I am drawing that distinction because in Connecticut we do believe that hanging is a proper punishment for murder.

Delegate HOUSTON. If I may correct myself there, the Hawaiian statute provides for life imprisonment for rape, if that is what you mean.

Senator HAWES. Is not that a capital offense?

Delegate HOUSTON. If you ask that as a lawyer, I say I can not answer you, but the law is so technical that I would be inclined to the belief that that would be held not to be a capital offense. I regret that the law should be so technical.

The CHAIRMAN. Mr. Delegate, is there any doubt in your mind that there will be a fair trial?

Delegate HOUSTON. Senator, I think that there is a better chance for doing justice to the unfortunate victims under this circumstance in Hawaii than perhaps anywhere else. Our people are fully as conscientious and they realize the situation there as well as anybody might. They all sympathize with these unfortunates. They were driven to it by a repetition of stories, by the printing in the press of the interchange of dispatches between the commandant and the Navy Department and the drifting through of dispatches of a provocative character, and it is just possible that they were trying even at that time merely to obtain or wring a confession, and that in the heat of the argument the casualty occurred. I do not pretend to know, but I am sure there is as much sympathy there, or perhaps more, than there would be anywhere else. In another community, with a change of venue, if it were possible, it would merely be regarded as a cold-blooded crime of vengeance because the circumstances would not be as familiar to the people.

Senator HAWES. Mr. Houston, do you believe that the investigation by our Attorney General will satisfy all the purposes that you want?

Delegate HOUSTON. I have a dispatch from the president of the chamber of commerce, in which he says:

We deem it appropriate that the Attorney General's office is to make an investigation of the situation here with your approval. It meets with general favor, as we know of no better way of placing before the people of the mainland the facts of our real situation, which, fortunately, are not in accord with many of the exaggerated reports which have been appearing in the press.

Senator HAWES. May I ask the Secretary if he approves of the idea of this investigation being made by the Attorney General. Do you, Secretary?

Secretary WILBUR. It seems to me to be particularly appropriate and to satisfy the situation.

Delegate HOUSTON. Permit me, please, to read the final words of the judge to the jury before it was discharged:

I will respect this opinion of expression on your part. One of the most extraordinary features of the case was the fact that it was 72 hours before you first indicated your inability to reach a verdict. Ordinarily a jury in which difference of opinion exists reports that fact in a few hours. I was surprised and very glad to see that you gentlemen did not give up hope in that manner. The jury will be discharged and a mistrial entered.

There is no criticism of the jury on the part of the judge. There can be no criticism, I believe, from anyone who will read the charge to the jury and who will take into consideration the facts of the law. To a lay member of the jury the charge may be a little bit difficult to comprehend.

The CHAIRMAN. Are there any other questions any Senator would like to ask of the Delegate or of the members of the Cabinet who are here?

Delegate HOUSTON. I think, Senator, everything has been brought to the attention of your committee. Permit me to run over briefly a few facts here, so as to see whether or not you have got them all.

As to apathetic juries, I think I have stated that juries have convicted and judges have not always awarded what was thought by the community to be a sufficient punishment.

As to defense counsel, it has been brought out, I think, in the reports that the defense counsel are of the highest character, that their fees were not extraordinarily large, as has been charged, and one of the counsel for the defense even was appointed by the court and his fee was fixed by the court.

As to the reports that occurred in the Subcommittee of the Naval Committee in the House, in which criticism was leveled at Governor Judd, he had not had a chance to refer to the matter, and the dispatches which have been put in by the Secretary of the Interior to-day cover that.

The matter as to bail is referred to in the Hawaiian statutes. The question of police will be taken care of, we hope, satisfactorily by the legislature which will meet beginning this coming Monday.

There is only one other phase to which I would like to refer, and that is the unfortunate habit of referring to natives and Americans in the same breath. Those who are citizens and natives of Hawaii are Americans. Just because they happen to have in their veins the blood of different races is no reason for separating them in criticism from that of the body of other Americans. And we do feel hurt when that is done, with a purpose evidently of creating a different point of view with respect to the situation.

May I not leave the parting impression that we are thoroughly ashamed of the situation. As individuals we can not be anything else. We ask for nothing better than that the criminals, whoever they may be, be brought to a speedy trial and conviction, and I would like to submit for the record a short review of this situation by former Gov. Wallace R. Farrington, which appeared in the Evening Star of the 14th of January.

The CHAIRMAN. It will be incorporated in the record at this place.

(The review referred to is as follows:)

HAWAII CAN CARE FOR SELF

FORMER GOVERNOR DECLARES ISLAND PEOPLE FULLY CAPABLE OF CONDUCTING OWN AFFAIRS. CRITICIZES TWO ADMIRALS

Wallace Rider Farrington, governor of Hawaii from 1921 to 1929, is at present publisher of the Honolulu Star Bulletin. He served on the Territorial board of education, and is the authority of "Review of the Revolt of 1895," which served as an appendix to Alexander's History of the Hawaiian Revolu-

tion. In the following story Former Governor Farrington gives his views on the present tense situation in Honolulu.

[By cable to the Star]

HONOLULU, January 13 (N.A.N.A.).—This city is neither riot ridden nor race mad. Hawaii condones neither the assaulting of women nor the lynching and murder of persons in the custody of the courts.

The people of Hawaii are jealous of their reputation for handling their own affairs in a manner that does not suffer when compared with any other section of our common country. You will find no better prepared, no more courageous, no more home-loving community and no judicial officer more schooled in law than the judge who presided over the trial of the five defendants charged by a grand jury with criminally assaulting Mrs. Thomas H. Massie.

When the trial began I was in the Orient, returning only when it was near its close. Public sentiment then was all for Mrs. Massie. The attorneys for the defense, however, established an alibi that caused even trained reporters who had followed the case in its every detail to doubt whether the police had the right men.

The jury was not divided on race lines, nor was the division at any time within a narrow margin. Apparently the prosecution felt it had a sure case. Attorney General Hewitt of the Territory was in close touch with the city prosecutor. Mr. Hewitt served under me as deputy and was later promoted to attorney general. I can vouch for his being hard-boiled and able.

In the light of past events it appears that a mistake was made in not trying the men separately to strengthen the possibility of one or more turning State's evidence, if they are guilty.

FATHER DEFENDS SON

Hawaiians generally do not make hardened criminals, and when involved in a serious crime they traditionally unburden themselves to some friend. The impossibility thus far of shaking the evidence of the Hawaiians in the Massie case has strengthened doubt among some acquainted with Hawaiian characteristics whether the right men are being held.

This probably accounts for the large outpouring at the funeral of Kahahawai, notwithstanding the man's gang record. He had been a student at a local religious school and was prominent in athletics. He was buried from the Catholic Cathedral, and his father declared that his boy had done no wrong.

This attitude on the part of any local citizen apparently embitters Navy people who are resentful that the direct testimony of Mrs. Massie is not taken as final by everyone. Apparently poor judgment was used by the police in selecting the men sent out on the case on the first report of the assault, and wretched judgment in handling persons apprehended. They were willing enough, but apparently lacked experience.

The police administration has been in agitation in Honolulu for nearly four years. The legislature of 1929 provided a larger police force, supposedly the solution. The famous Fukunaga case of 1929, similar to California's Hickman case, showed the sheriff was woefully weak in executive direction and control. He was reelected in 1930 "because he is honest."

Continued agitation resulted in a demand for an appointive chief of police, but the bill failed by a narrow vote to pass the 1931 legislature.

WENT OFF HALF-COCKED

Admiral Stirling has kept his balance, but must have been misled by persons delegated to secure statistical facts. Admiral Pettengill went off half-cocked, and Admiral Pratt has followed his example.

Admiral Stirling repeatedly urged that the defendants in the Massie case be kept confined. I have it on good authority that the judge urged attorneys for the defendants to turn them over to be jailed, but under the law could not refuse to release them on bail. The judge stretched the law in requiring them to report regularly to the court.

The judge was neither indifferent nor neglectful. Up to the kidnapping of Kahahawai from under the very eaves of the court and later the killing, the community sentiment was wholly with Mrs. Massie and still is as concerns the assault.

The citizens, through the chamber of commerce, have been spending time and effort without limit to get the culprits and put them away. But the kidnapping and killing in which Mrs. Fortescue and Lieutenant Massie are involved is regarded as an outrageous insult and a defiance of every law of the Territory and country.

Admiral Pratt's statement added fuel to the flames and caused an outburst from press, pulpit, and legal profession. The people are resentful and alarmed that a conspicuous officer of the Nation should openly sanction contempt for the courts and condone the killing of one whom the laws of the land hold innocent until proved guilty.

CRITIZES ADMIRAL PRATT

Honolulu had an experience in the famous Fukunaga case of an excited demand for the life of one who was proved to be innocent. If the mystery had not been solved, an innocent man probably would have been convicted and hanged on the testimony of a handwriting expert. A frequent reference to that case in local conversation assists one in sizing up what appears to the Navy as a lack of forcefulness of the local public toward Kahahawai and others.

Generally speaking, the declaration of Admiral Pratt is accepted as inferring that Mrs. Fortescue and Lieutenant Massie did a good job. Former Chief Justice Robertson has, in a public statement, declared that the latest issue is whether our Nation is for lynch law or against it, putting Admiral Pratt on the side of lawlessness. The influence of Admiral Pratt's statement on Navy personnel is obvious and must make the position of Admiral Stirling increasingly difficult, because some one has to keep his balance in a time of public excitement.

The citizens of Hawaii have never resorted to lynch law and deeply resent and are outspoken in condemnation of condoning of such methods in any American territory. Thus the running down of Mrs. Massie's assailants is grievously complicated by counterexcitement that stirs the deepest feeling.

But in the midst of it all special committees and city and Territorial officers are continuously seeking every clue and bringing every possible influence to bear to get at facts in such a way that no alibi can be possible for the guilty persons when they are finally brought before the court.

CAN TAKE CARE OF SELF

Reports circulating in the mainland press of riots, race hatreds, and acute danger to women in Honolulu would be laughably ridiculous if they were not so viciously false and did not utterly misrepresent the people and the spirit of Honolulu among all races and all classes, except a few of criminal tendencies.

A special session of the legislature to handle police legislation and other matters was under consideration weeks before the last affair. The governor and legislators were lining up a program to assure results.

Hawaii is fully capable of handling its own affairs.

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Senator PITTMAN. Mr. Chairman, may I ask the Secretary of the Interior a question?

The CHAIRMAN. Certainly.

Senator PITTMAN. Have you made any recommendations to Governor Judd with regard to legislation before the incoming legislature?

Secretary WILBUR. No, Senator Pittman. I have asked the Attorney General, acting through Assistant Attorney General Richardson, if after they have gone into the situation there they have any recommendations to make to the governor, to do so, and have it sent back to Washington so we could look it over here, as well as giving it to the legislature.

Senator PITTMAN. I realize there will be a great many recommendations with regard to police power, and so forth, but don't you believe that you as head of this department should recommend immediately to the Governor that he recommend to the legislature that the crime of rape be punished by death?

Secretary WILBUR. That is already done.

Senator PITTMAN. That is done?

Secretary WILBUR. Yes.

Senator PITTMAN. That ends the bail question then, because if it is punishable by death, then there can not be any bail.

One other question. Don't you think we have sufficient evidence before us now to recommend to the governor that he recommend to the legislature that they repeal that peculiar and special act of Hawaii which prohibits the conviction of a defendant charged with rape on the uncorroborated testimony of the victim?

Secretary WILBUR. I do not know enough about the legal phases of the evidence on that sort of a thing to give you an answer that would be complete, but it seems to me that it would be sound to have no special legislation of that sort.

Senator PITTMAN. That statute does not exist in this country, or under the common law, that I know of, except there, and it seems to me that that is one of the causes of this trouble.

Senator HAWES. I hope you will make an unofficial recommendation to the governor to get Mrs. Fortescue and Lieutenant Massie back to the United States as quickly as possible. I think it would be very agreeable.

Delegate HOUSTON. May I ask here if it would not be interesting to hear a tabulation of the races of persons convicted in the Territory? The percentage of the Hawaiian and the Asiatic races are all smaller than is the percentage of conviction for crimes of the Caucasian. The figures I have here have been inserted in the record by Secretary Wilbur.

The CHAIRMAN. Senator Harris, have you anything further?

Senator HARRIS. No.

The CHAIRMAN. Senator Hawes, have you anything further?

Senator HAWES. No.

The CHAIRMAN. Senator Metcalf?

Senator METCALF. No.

The CHAIRMAN. Senator Vandenberg?

Senator VANDENBERG. Nothing.

The CHAIRMAN. If not, thank you very much, gentlemen, for your time.

(Whereupon, at 12:20 p. m., January 16, 1932, the committee adjourned, sine die.)

(The following material, subsequently furnished by Delegate Houston, summarizes the action of the Hawaiian Legislature at its special session, January 18 to February 2, 1932, in passing corrective measures bearing on the subject matter of this hearing:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D. C., February 3, 1932.

HON. HIRAM BINGHAM,
United States Senate,
Chairman Committee on Territories and Insular Affairs,
Senate Office Building.

MY DEAR SENATOR BINGHAM: In view of the fact that the unfortunate happenings in Hawaii were made the subject of an investigation in your committee, may I not take this opportunity of advising you that the Legislature of the Territory of Hawaii, which had been called into special session on January 18, 1932, for the purpose of passing corrective measures, recessed on February 2, having completed the program that had been set before it.

This program includes measures providing for an appointive police commission, which in turn has the power of appointing a chief of police: this, in place of the then existing statute, which calls for an elective sheriff and chief of police. The commission has been appointed and contains men of the highest character. They in turn have made an acting appointment for the chief of police position.

A bill adding the death penalty to the punishment provided for the crime of rape and amending the statute with respect to evidence in such case removing the statutory requirement as to corroboration, so that such matters of evidence will be based upon the established common law, was passed and is now law.

There was also passed an amendment to the existing antiloitering act, increasing the fine from \$100 to \$250. The statute with respect to challenging of jurors was amended in general terms reducing the number of peremptory challenges and providing for a further reduction in peremptory challenges when two or more defendants are jointly placed on trial.

And finally, the legislature passed a bill providing for the appointment of a public prosecutor for the city and county of Honolulu, which is comprised of the whole island of Oahu. This measure was the most controversial, and went to conference between the two houses. The measure as finally adopted is hereto appended.

I have every confidence that the measures taken by the Territorial administration and the Territorial legislature will prove of immense value in the correction of the defects that have been brought to the fore by the unhappy circumstances of the last six months.

May I not ask that the record of the investigations be completed by the addition of this correspondence?

Very sincerely yours,

V. S. K. HOUSTON,
Delegate in Congress from Hawaii.

[Naval message received at Navy Department]

FEBRUARY 2, 1932.

SECRETARY OF INTERIOR,
Washington.

Both houses of legislature to-day adopted report of conference committee on senate bill No. 2, public prosecutor bill. The measure as passed by legislature reads in full as follows:

"AN ACT To provide for a public prosecutor for the city and county of Honolulu by amending chapter 118 of the Revised Laws of Hawaii, 1925, by adding thereto eight new sections and by amending sections 1751, 1815, 2560, 2562, and 4012 of said revised laws and all other laws relating (100) to the city and county attorney to conform thereto

Be it enacted by the Legislature of the Territory of Hawaii:

"SECTION 1. Chapter 118 of the Revised Laws of Hawaii, 1925, is hereby amended by adding thereto the following sections:

"Sec. 1822 (a). Office of public prosecutor established: There is hereby created the office of public prosecutor of the city and county of Honolulu. The public prosecutor shall be appointed by the mayor of said city and county, with the approval of the board of (200) supervisors, for a term of two years: *Provided, however,* That the term of the first appointee shall be the period expiring January 1, 1935, and that he shall only be removable as immediately hereinafter provided: *Provided, however,* That he may be removed by the attorney general, with the approval of the governor, at any time for reasons which appear to be sufficient, in their discretion, and no person so removed by the attorney general shall be reappointed without the approval of the attorney general.

"Sec. 1822 (300) (b). Deputy of attorney general: The public prosecutor shall be a deputy of the attorney general of the Territory and shall report to the attorney general from time to time as may be required by him.

"Sec. 1822 (c). Assistant public prosecutors, clerks, etc.: The public prosecutor of the city and county may appoint and remove at pleasure such assistant public prosecutors, clerks, stenographers, interpreters, and other assistants with such qualifications and at such salaries as may be allowed by the board of supervisors. (400) At the request of the public prosecutor one or more officers of the police department shall be permanently detailed by the chief of police of

the city and county for the purpose of doing detective work necessary in preparing and presenting the litigation of the office, who shall continue to serve on such detail during the pleasure of the public prosecutor.

"Sec. 1822 (d). Salary: The salary of the public prosecutor shall be \$7,500 per annum, payable monthly out of the city and county treasury.

"Sec. 1822 (500) (e). Private practice forbidden: Neither the public prosecutor of the city and county nor his assistants shall receive any fee or reward from or on behalf of any person for services rendered or to be rendered in any prosecution or business to which it shall be their official duty to attend, nor shall the public prosecutor or his assistants engage in the private practice of law.

"Sec. 1822 (f). Accounts to board of supervisors: The public prosecutor shall make an annual report to the board of supervisors of the city and (600) county of the transactions and business of his department, showing the revenues and expenditures of his office and a summary of all the business transacted by his office for the preceding year.

"Sec. 1822 (g). Duties: Public prosecutors, either in person or by an assistant shall:

"1. Attend all courts in the city and county and, under the control and direction of the attorney general, conduct on behalf of the people all prosecutions thereon for offenses against the laws of the Territory and the ordinances of the board (700) of supervisors of the city and county.

"2. Appear in every criminal case where there shall be a change of venue from the courts in the city and county and prosecute the same in any county in which the same shall be changed or removed. The expense of such proceedings shall be paid by the city and county.

"3. Institute proceedings or direct the chief of police to do so before the magistrates for the arrest of persons charged with or reasonably suspected of public offenses, when he has information that any such offenses have been committed, and for that purpose take charge of criminal cases before the district magistrates, either in person or by an assistant, or by the chief of police or any of his assistants, or by such other prosecuting officers as he shall appoint; draw all indictments and attend before and give advice to the grand jury whenever cases are presented to them for their consideration: *Provided, however,* That nothing herein contained shall prevent the institution or conduct of proceedings by private counsel before magistrates or courts of record under the direction of the public prosecutor.

"4. Deliver receipts for money or property received in his official capacity and file duplicates thereof with the city and county treasurer.

"5. On the first Monday of each month file with the auditor an account, verified by his oath, of all money received by him in his official capacity during the preceding month, and upon receipt of the auditor's certificate thereof pay such moneys over to the city and county treasurer.

"Sec. 1822-H. Sections 2560, 2562, and 4012 of the Revised Laws of Hawaii, are hereby amended by substituting the words "public prosecutor" for the words "city and county attorney" wherever the latter words appear in said sections. In all other provisions of law dealing with criminal law and criminal procedure and other matters which by sections 1822-A to 1822-H, both inclusive, are placed under the jurisdiction of the public prosecutor, the words "city and county attorney," or equivalent expressions wherever used therein, shall be taken to mean and refer exclusively to the public prosecutor in so far as they so deal with criminal law and criminal procedure.

"Sec. 2. Transfer of records—duty to furnish quarters: All the files and records of criminal cases now in the possession of the city and county attorney are hereby transferred to the public prosecutor. The board of supervisors shall make available to the public prosecutors and his staff sufficient and proper accommodations and augment for their use.

"Sec. 3. Section 1751 of the Revised Laws of Hawaii, 1925, hereby amended to read as follows:

"Sec. 1751. Officers: The officers of the city and county shall be a mayor, board of supervisors, a sheriff, who shall be ex officio; a city and county clerk, who shall be ex officio clerk of the board of supervisors; an auditor, a treasurer, and a city and county attorney, all of whom, except the city and county attorney, shall be elected at large by the duly qualified electors of the city and county: *Provided, however,* That commencing January 1, 1933, the mayor, with the approval of the board of supervisors, shall appoint the city and county

attorney for a term of two years: *Provided, however,* That he may be removed by the attorney general, with the approval of the governor, at any time for reasons which appear to be sufficient in their discretion; and no such person so removed by the attorney general shall be reappointed without the approval of the attorney general: *And provided further,* That the public prosecutor may be appointed city and county attorney, in which event he shall only be entitled to receive the salary for one office.

"SEC. 4. Section 1815 of the Revised Laws of Hawaii, 1925, as amended by act 65 of the session laws of 1925, is hereby amended to read as follows:

"Sec. 1815. General duties: The city and county attorney, or his deputy or deputies, shall—

"1. Attend all courts in and for the city and county and conduct on behalf of the people all civil cases in which the city and county is interested.

"2. Appear in every civil case in which the city and county is interested where there shall be a change of venue and prosecute or defend the same in any county to which the same shall be changed or removed; the expenses of such proceedings shall be paid by the city and county.

"3. Defend all suits brought against the city and county wherever brought, prosecute all recognizances forfeited in the courts of record, assist the tax assessor of his taxation division in the collection of delinquent taxes, and prosecute all persons for the recovery of debts, fines, penalties, forfeitures, and other claims accruing to the Territory or the city and county.

"4. Deliver receipts for money or property received in his official capacity and file duplicates thereto with city and county treasurer.

"5. On the first Monday of each month file with the auditor an account verified by his oath of all moneys received by him in his official capacity during the preceding months, and upon receipt of the auditor's certificate therefor pay such moneys over to the city and county treasurer.

"SEC. 5. Constitutionality: If any section, subsection, sentence, clause, or phrase of this act is, for any reason, held to be unconstitutional or invalid such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have approved this act, and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more other sections, subsections, sentences, clauses, or phrases be declared unconstitutional.

"SEC. 6. Repeal of conflicting provisions: All provisions of law in conflict with this act are superseded by the provisions hereof to the extent of such conflict.

"SEC. 7. This act shall take effect upon its approval."

JUDD, Governor.