

Harriet Bouslog: Labor Attorney and “Champagne Socialist”

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“. . . there’s no such thing as a fair trial in a Smith Act case. . . .
All rules of evidence have to be scrapped or the government
can’t make a case.”

—Harriet Bouslog, December 14, 1952

IN DECEMBER 1952 Hawai‘i labor lawyer Harriet Bouslog was asked by local union leader Jack Hall to explain what was happening with the indictment of the “Hawaii Seven” and with the Smith Act trials more generally in America. In a village 182 miles from the courtroom in Honolulu, surrounded by pineapple fields, she had the audacity to exclaim, “There’s no such thing as a fair trial in a Smith Act case. All rules of evidence have to be scrapped or the government can’t make a case.”¹ For this and other statements critical of the government witnesses and prosecutorial conduct, as well as the remoteness of the evidence to the alleged conspiracy, the Bar Association of Hawaii investigated and suspended Bouslog. Indeed, the organization amended its own rules to do so—and her suspension was upheld by the Territorial Supreme Court. She lost at the Ninth Circuit Court 4-3, but eventually

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won at the U.S. Supreme Court. Today her case is remembered not only for preserving the independence of the bar, but also for critically forwarding the proposition that lawyers have First Amendment rights. More generally, her case is one of the many important decisions that flow from the original Smith Act case, *United States v. Dennis et al*, which resulted in a 1951 Supreme Court decision that significantly altered the “clear and present danger” test of free speech and paved the way for fifteen additional trials. This article situates Bouslog’s career and her case within this larger story and concludes with an argument that her case has been underappreciated in legal history and in the extant scholarship on the Smith Act trials.

Harriet Anna Williams was born in Florida on October 21, 1912, of strong middle American and progressive lineage: her parents, Charles and Ada Williams, were community-oriented, both teachers from agrarian backgrounds and members of the Republican Party.² Their values included decency, fairness, and an enduring commitment to the ideal of democracy; they also placed great emphasis on hard work and education. Bouslog grew up in Indiana and came of age during the Depression; her future political leanings were stirred by her interest in the Spanish Civil War, a cause that her literary heroes, such as Ernest Hemingway, avidly supported. Bouslog attended Indiana University and in 1932 switched her major from literature to law; in so doing she became the only woman in her 1936 graduating class. One of her mentors was Fowler Harper, a civil libertarian forced to leave the university for advocating the free speech rights of communists.³ While she was clearly ambitious in forging ahead in law, she also married Charles Bouslog the same day she graduated and moved to Boston so her husband could complete his doctorate in English at Harvard. It was his career that took them both to Hawai‘i, and in 1939 they traveled to O‘ahu together so he could take up a position at the University of Hawai‘i.

A locally produced documentary on Bouslog’s life elaborates simply on the reasons for her political engagement in Hawai‘i: “. . . she arrived with a dream of paradise and found a feudal society.”⁴ At that time, Hawai‘i was not the tourist paradise of today, but rather a plantation society deeply divided along the class and race lines. The sugar and pineapple plantations that formed the backbone of the agrarian economy were controlled by oligopolistic enterprises known as the

“Big Five”—with interlocking boards of directors whose influence on local politics and society was substantial and oriented to their mutual corporate self-interest.⁵ Workers were hired from immigrant labor pools, lived in company-controlled housing, with low-wage policies and segregation designed to keep ethnic groups apart. Bouslog was a keen observer of the human condition, and what she saw in Hawai‘i effectively transformed her from a “parlor liberal” to a radical. She could not practice law immediately, so she sought secretarial work in a business-oriented law firm. She was licensed to practice law just 16 days after the attack on Pearl Harbor on December 7, 1941. As a result, the territory was immediately subject to martial law—which translated into no access to the Bill of Rights or procedural safeguards such as *habeas corpus*.

Nevertheless, Bouslog picked up stakes and managed to secure a position as a staff lawyer at the National War Labor Board in Washington from 1942 to 1944.⁶ In the spring of 1944 she was hired to replace Harry Bridges as lobbyist for the International Longshoremen’s and Warehousemen’s Union (ILWU) and the Committee for Maritime Unity—unfortunately, and likely due to the fact she was a junior woman lawyer, she was the lowest paid registered lobbyist in Washington at the time.⁷ Bridges interviewed her himself for the job and in the process effectively became her mentor. The ILWU was in the process of becoming the most powerful voice for organized labor in the Territory of Hawai‘i, where both dock and plantation workers were organized under the charismatic leadership of Jack Hall. In the late 1940s, the ILWU staged two major work stoppages, first in 1946 on the sugar plantations and then in 1949 on the docks. The 1946 “Sugar Strike” was the first multi-ethnic and “racially unified” strike effort—it was a hallmark of ILWU organizing to bring together the many ethnic minorities of the Islands in integrated bargaining units in order to counter the “divide and conquer” strategies of the Big Five.

In October 1946 Bouslog was requested by Hall and Bridges to defend more than four hundred strikers charged with a variety of criminal offenses, ranging from serious felony charges to unlawful assembly and misdemeanors, even though the acts were minor picket-line incidents.⁸ Bridges judged Bouslog as smart, trustworthy, and incapable of selling out. Most importantly, she could already practice

law in Hawai'i. With trademark brashness Bridges promised the strikers that no one would go to jail, so expectations of Bouslog were high. She delivered.

Soon she joined Myer Symonds, a National Lawyers Guild founding member, and formed the practice of Bouslog and Symonds.⁹ The ILWU became a prominent client, and Jack Hall's spouse Yoshiko worked as their office administrator.¹⁰ But by the late 1940s the ILWU was repeatedly associated with communism—because of the political sympathies nationally of Bridges and locally of Hall. It was also in the interests of the Big Five, given the strength of union organization and popular support, to paint their adversaries as dangerous communists.

Meanwhile, a local Red Scare implicated the ILWU directly in 1947 due to an inflammatory pamphlet authored and published the same year by former communist Ichiro Izuka titled *The Truth About Communism in Hawaii* (1947).¹¹ Izuka was typical of the former-communist-turned-informant and, encouraged by territorial and Big Five patrons, was all too willing to name names. First targeted were progressive teachers and ILWU supporters John and Aiko Reinecke, immediately suspended on November 25, 1947, for being members of the “secret, underground organization . . . calling itself the Communist Party” and not holding the “ideals of democracy,” pending a hearing before the Territorial Department of Commissioners of Public Education.¹² In that hearing, Bouslog represented Aiko, and Myer Symonds, together with mainland and longtime ILWU defender Richard Gladstein, represented John. The hearing was in many respects a “dress rehearsal” for the first Smith Act trial in 1949 of the national leadership of the Communist Party of the United States of America (CPUSA), complete with the testimony of “star witness” Louis Budenz and his portrayal of the Party as secretive, conspiratorial, and dangerous. Bouslog was tireless in her efforts to defend her client; she sent letters to all lawyers in Hawai'i and asked the ACLU to work on the case. Foreshadowing their later actions on the mainland, the organization declined to work for alleged communists. In response, Harriet Bouslog was instrumental in organizing the Hawaii Civil Liberties Committee (HCLC) to support the Reineckes both financially and morally.¹³ Unfortunately, and despite the best efforts of the legal team, and although no evidence was adduced at trial as to any influence of their political convictions

on their delivery of curriculum, John Reinecke lost both his teaching certificate and his contract. Aiko Reinecke only lost her contract, but was unable to find work.

Amidst the growing communist paranoia, the House Committee on Un-American Activities (HUAC) came to Hawai'i in 1950 for a series of hearings, an effort viewed by the local left as yet one more of Governor Ingram M. Stainback's tactics to undermine the ILWU. Thirty-nine individuals refused to testify, asserting Fifth Amendment protection. Bouslog advised her clients not to answer on constitutional grounds and was headstrong in her attack on HUAC, calling the hearings a forum for American fascism, a censor, an arbiter of political thought, purposefully engineered to sow "terror and fear." The "Reluctant 39," as they came to be known, were eventually acquitted in court.¹⁴

Following the US Supreme Court decision upholding the 1949 trial verdict and appeal against Eugene Dennis and the leadership of the CPUSA, the FBI and the Department of Justice worked closely in a series of arrests and follow-on trials from Puerto Rico to Hawai'i, dubbed by the defendants the "second string" and even "third string" Smith Act trials.¹⁵ As with the first case, they were charged with conspiracy to teach and advocate the overthrow of the U.S. government by force and violence. In August 1951 the members of the group soon to be known as the "Hawaii Seven" were arrested: ILWU leader Jack Hall, now-disgraced teacher John Reinecke, Charles and Eileen Fujimoto, Dwight Freeman, Jack Kimoto, and newspaper publisher Koji Ariyoshi. Again Richard Gladstein was pressed into service—having escaped a disbarment effort by the State of California following his imprisonment and contempt conviction, a punishment meted out by New York judge Harold R. Medina to all defense counsel in the original 1949 trial. Also involved were A.L. Wirin, who agreed to act privately and not as a member of his organization, the American Civil Liberties Union (ALCU) of Southern California, Myer Symonds, and Harriet Bouslog.¹⁶ Despite her local success and growing reputation as a tough and well-prepared attorney, Bouslog was relegated to a relatively junior role. The entire legal team, despite its concerted and collective efforts in filing briefs both individually and severally for its clients and its strategy in approaching the cases as litigators and not ideologues, was doomed.¹⁷

Whereas other lawyers, perhaps even sympathetic to the trampling of the rights of the accused on civil liberties grounds, might have distanced themselves from politically unpopular clients, Bouslog did the complete opposite. She delivered a speech, reprinted in pamphlet form under the title *Fear*, to the Labor Day rally held by the ILWU just after the arrest of the Seven. She likened the prosecution of Jack Hall to that of Harry Bridges, as part of a larger concerted effort to “. . . silence all who dare to challenge the right of government to freeze wages, while profits soar . . .”¹⁸ She then turned her attention to the Smith Act trials:

How does the government . . . prove its point? Here is where the stool-pigeon, the professional witness, the political opportunist, the renegade . . . come in. They announce that they were once Communists, and that when they were Communists, they were terrible people who engaged in all sorts of illegal activity, but now they have seen the light, they would like to help the government put behind bars all their former associates whom they now hate. They are paid with publicity, with witness fees, with royalties from their books and pamphlets.¹⁹

Fear was reprinted and distributed in pamphlet form. Perhaps Bouslog was emboldened by the reception she received: in the fourteen months between the arrests and the trial of the Seven, IMUA responded with its own literary efforts: *The Answer to “Fear”* and a special edition of its newsletter *Spotlight* titled “The American Way of Life.”²⁰

Indeed, when asked by Jack Hall to explain the Smith Act trials to union members, she delivered a rousing speech early on a Sunday morning on December 14, 1952, in a pineapple field near Honoka‘a on Hawai‘i Island. This time she went even farther, taking on court process and judicial procedure. She told the workers she wanted to tell them some “rather shocking and horrible things that go on at the trial.”²¹ Uttering fateful words that would soon be used against her, she exclaimed: “. . . there is no such thing as a fair trial in a Smith Act case. . . . All the rules of evidence have to be scrapped or the government can’t make a case.”²² Bouslog went further, stating “. . . they just make up the rules as they go along” and provided examples from the trial where hearsay rules were not applied, and criticized the judge for permitting a witness to “tell what was said when [one of the criminal defendant[s]] was five years old.”²³ Regarding the testimony of

an informer witness named Johnson, she echoed the civil libertarian critique that the Smith Act trials put books and ideas on trial:

[He] came back from [S]an [F]rancisco with communist books in a duffel bag. He said when he got to Honolulu he told Jack Hall the names of some of the books. Then the government for two days read from books supposed to have been in the duffel bag...on cross-examination Johnson said he did not tell the names of the books, but just showed Jack Hall the duffel bag. So Jack Hall violated the Smith Act because he saw a duffel bag with some books on overthrowing the government in it. It's silly. Why does the government use your money and mine to put people in jail for thoughts. . . . Unless we stop the Smith trial in its tracks here there will be a new crime. People will be charged with knowing what was included in books—ideas. There'll come a time when the only thing to do is to keep your children from learning to read.²⁴

Indeed, she suggested that Jack Hall was on trial for reading *The Communist Manifesto*. She attacked the FBI's methods, the remoteness of the evidence, and the use of conspiracy law: "Conspiracy means to charge of lot of people for agreeing to do something you have never done."²⁵

Bouslog's remarks did not escape the attention of the press. She spoke with no prepared text and the only record of what she said came from notes taken by an unfriendly reporter.²⁶ She clearly had a point: the years of propaganda, national hysteria and increasing frigidity of relations between the US and the USSR in a "Cold War"—combined with a legal assault on multiple fronts via Taft-Hartley, the Smith Act and the McCarran Act—had rendered the mere mention of the word "communism" a deeply pejorative label impossible for jurors to easily dismiss or even fairly assess, an ostensibly palpable threat to national security.

Presiding Judge John Wiig viewed her remarks as also directed at the conduct of the prosecution and, once the trial was over, ordered further investigation. In 1955, on his request, the Territorial Bar Association filed a complaint in the Territorial Supreme Court, which on April 6, 1956, ruled against her.²⁷ At the time, only an aggrieved person could complain to the Association and file a charge of unprofessional conduct, yet the Association amended its own rules, resulting in

a suspension order on the basis that she “. . . impugned the integrity of the judge presiding” and caused “. . . disrespect for the courts of justice and judicial officers generally.”²⁸ The net effect would have been that Bouslog would be suspended from the practice of law for a year, a result that effectively equaled disbarment as she would have to retake the bar exam and then satisfy the territorial bar—who were her prosecutors—as to her “good moral character.” Her colleagues encouraged her to lie low, apologize, and seek to regain bar admission with appropriate contrition. She pointedly refused and insisted on the zero-sum strategy of taking her accusers to court. Fortunately, Judge William Denman ruled that she could practice law pending her appeal.

Myer Symonds and California lawyers A.L. Wirin and John McTernan appealed her case to the 9th Circuit Court of Appeals. Unfortunately, she lost at the Ninth Circuit, and she was roundly chastised for lack of humility, for not showing any “genuine remorse” or “some appreciation of her error.” Still, Judge Walter Pope’s dissent was important and timely, warning that the appellate decision served notice for lawyers to hold their tongues, as criticism of courtroom procedure could be grounds for disbarment:

Suspending one person like Harriet Bouslog Sawyer from the practice for one year is not merely the imposition of punishment on her. In upholding this judgment this court serves notice on all lawyers everywhere to hold their tongues, to watch their speech lest some court hold criticism of government prosecutions no matter what abuses may exist. That is why this freedom is of the very essence of liberty.²⁹

Again Bouslog made plans to appeal and even Harry Bridges tried his best to talk her out of it. After all, by this time McCarthyism was on the wane, and the Hawaii Seven convictions had already been overturned. Stubborn and convinced of the legal importance of her case, she insisted on going all the way to the U.S. Supreme Court. On June 29, 1959, a majority of the Court found in her favor, noting that a lawyer’s criticism of rules of evidence does not constitute an improper attack on a judge, pointing out that appellate courts find fault with procedures all the time—that is entirely within their role. Her case, *In re Sawyer*, effectively stands for the proposition that attorneys in the U.S. are allowed to criticize the courts regardless of their involve-

ment in the case at hand, so long as no obstruction of justice occurs. When one sees an attorney in a televised media scrum standing on courtroom steps criticizing trial procedure, it is partially due to the early efforts of Harriet Bouslog. Justice William Brennan, writing for the Court, stated:

We start with the proposition that lawyers are free to criticize the state of the law. Many lawyers say that the rules of evidence relative to the admission of statements by those alleged to be co-conspirators are overbroad or otherwise unfair and unwise . . . and that a Smith Act trial is apt to become a trial of ideas. Others disagree. But all are free to express their views on these matters, and no one would say that this sort of criticism constituted an improper attack on the judges who enforced such rules and who presided at the trials. . . . Such criticism simply cannot be equated with an attack on the motivation or the integrity or the competence of the judges. And surely permissible criticism may as well be made to a lay audience as to a profession; oftentimes the law is modified through popular criticism.³⁰

Brennan went further, and used the opportunity to criticize the government's growing habit of using conspiracy charges rather than overt acts, especially when a number of defendants were being charged together, as a "serious threat to the administration of justice."³¹

Still the judgment was hardly unanimous. Justice Felix Frankfurter was direct in his dissent, holding lawyers to a higher standard, while paradoxically suggesting their rights to constitutional expression: "Of course, a lawyer is a person and he too has a constitutional freedom of utterance and may exercise it to castigate courts and their administration of justice. But a lawyer actively participating in a trial, particularly an emotionally charged criminal prosecution, is not *merely* a lawyer."³² His conclusion was a more blistering attack:

Certainly courts are not, and cannot be, immune from criticism, and lawyers, of course, may indulge in criticism. . . . But when a lawyer goes before a public gathering and fiercely charges that the trial in which he is a participant is unfair, that the judge lacks integrity, the circumstances under which he speaks not only sharpen what he says but he imparts to his attack inflaming and warping significance. He says that the very court-room into which he walks to plead his case is a travesty, that the procedures and reviews established to protect his client from

such conduct are a sham.... Certainly this Court, the supreme tribunal charged with maintaining the rule of law, should be the last place in which these attacks on the fairness and integrity of a judge and the conduct of a fair trial should find constitutional sanction.³³

Nevertheless Brennan's 5-4 plurality decision carried the day; in his words, it was permissible for lawyers to "... litigate by day and castigate by night."

Yet Bouslog's victory in *In Re Sawyer* has not been granted the historical and legal recognition it deserves. Margaret Tarkington, in a recent complete and detailed overview of the law governing attorney speech, noted that Justice Brennan did *not* deal with the full range of constitutional issues at stake, because his ruling *did allow* for discipline on arguments based on the obstruction of justice.³⁴ Tarkington effectively relegates *Sawyer* to being one step on the way to the Court's landmark decisions in *Sullivan* and *Garrison* five years later, in which the First Amendment was interpreted to prohibit punishment for all speech regarding government officials unless the tests elaborated in those cases were met.³⁵ Tarkington also noted that Brennan's discussion was also taken out of context to mean that both attorneys in pending cases as well as those not involved might be prohibited from speech, rather than Brennan's obvious point that *even* attorneys involved in cases *should* be allowed to speech without discipline.³⁶ That analysis, however, does not appreciate the overall historical context in which the decision was made.

Bouslog's courage and determination in *In Re Sawyer* is significant in the context of the legal chill of the early to mid 1950s. After all, Judge Harold R. Medina sentenced all five of the lawyers in the 1949 *Dennis* case for contempt. Lead attorney Harry Sacher eventually took his case all the way to the Supreme Court—he lost, but the case did lead to a broader legal discussion as to whether or not a sitting judge should avail himself of a summary procedure for post-trial contempt, especially if the case involved personal attacks on the judge.³⁷ A second case involving Sacher came to the Supreme Court in 1954. After serving his six-month prison term—the longest of any of the attorneys in the 1949 trial—Sacher was then *permanently* disbarred by the Bar Association of the City of New York. Eventually he successfully challenged his disbarment in *Sacher v. Association of the Bar of the City*

of *New York*.³⁸ Given that the decision of the Territorial Bar Association to suspend her membership occurred on April 16, 1956, Bouslog's decision to appeal to the Ninth Circuit would have occurred *after* the Sacher's successful challenge to his disbarment and *after* the California communists found guilty in *Yates* were granted certiorari on October 17, 1955. Her case also occurred *before* oral arguments were heard by the Supreme Court on October 8 and 9, 1956, and "Red Monday"—June 17, 1957—the day four cases were decided by the Supreme Court in favor of left-wing defendants, including *Yates*. Bouslog would have been absolutely aware of these cases and the risks involved, via her membership in the National Lawyers Guild and her efforts spearheading the creation of the Hawaii Civil Liberties Committee. After all, two of her attorneys on the case, John T. McTernan and A.L. Wirin, had also been involved in the case of the "California Reds" in *Yates*. They certainly knew of the potential for the Supreme Court re-hearing of a Smith Act case in terms of the follow-on impact for other Smith Act defendants, but would have also known that, even with a changed composition of the Court since the original 1951 decision in *Dennis*, a victory was far from certain.

Moreover, the legal chill following the contempt citations, and the wider impact of McCarthyism generally, had disastrous consequences for those seeking adequate legal representation, something Bouslog also would have known. In preparation for the "second string" New York Smith Act trial, lead defendant and party stalwart Elizabeth Gurley Flynn reportedly approached and was turned down by more than 200 lawyers in an effort to find representation.³⁹ Some defendants were forced to represent themselves, as was Steve Nelson in his state-level sedition case in Pennsylvania in 1951–1952. Fortunately, and largely because of the financial support provided in the Territory by the ILWU as well as the genuinely popular support for Hawaii Seven defendants, firms such as Bouslog and Symonds could withstand the legal chill. However, on the mainland, only in the Philadelphia Smith Act trial did eminent local defense attorneys *not* connected to the National Lawyers Guild, union clientele, civil libertarian, or left-wing causes band together to construct a formidable legal team, and even they lost at trial, despite the fact that the verdict was handed down the same week Joseph McCarthy was censured by the Senate in 1954.⁴⁰

Not only does Bouslog's case get relegated to minor status in legal

history, it is also sidelined by the scholarship on the Smith Act trials and the history of the McCarthy era. All three books written on the original 1949 trial discuss the impact in terms of generating the follow-on trials around the United States and the critical role of *Yates* in ending the prosecutions, as well the contempt citations against the 1949 lawyers, but none mention the unique victory of Harriet Bouslog in Hawai'i.⁴¹ To be fair, all three books focus almost exclusively on the 1949 trial; there currently exists *no* text that fully discusses *all* the Smith Act trials or *all* the related prosecutions such as both of Sacher's cases, the disbarment case against 1949 lawyer Abraham J. Isserman, or defendant and post-1951 fugitive Gil Green's challenge to his contempt conviction based on his failure to surrender himself to serve his sentence.⁴² Arthur J. Sabin's book, *In Calmer Times*, examining all the "Red Monday" cases does scrutinize the history of Supreme Court jurisprudence from the *Dennis* decision in 1951 through to *Yates*, but it too omits any discussion of Harriet Bouslog's remarkable victory.⁴³ More tellingly, despite the fact that T. Michael Holmes interviewed Harriet Bouslog for his study of communism in Hawai'i and mentions her work on behalf of the "Reluctant 39," the Reineckes, and the Hawai'i Seven, he too makes *no* mention of her suspension or her court case.⁴⁴ Gerald Horne's text *Fighting in Paradise: Labor Unions, Racism, Communists and the Making of Modern Hawai'i* devotes an entire chapter to the Hawai'i Seven trial, yet the only attention he devotes to Bouslog involves her "clashing" with ILWU leader Jack Hall and the sexist jokes of Myer Symonds that Bouslog did not appreciate.⁴⁵ In short, gendered gossip takes precedence over legal import.

Finally, the paucity of attention paid to Bouslog's case is likely related to the short shrift generally granted to the Smith Act trials in the larger literature on free speech. Furthermore, this tendency seems to be getting worse, not better. Christopher Finan's account, *From the Palmer Raids to the Patriot Act: A History of the Fight For Free Speech in America*, pays scant notice to the original 1949 trial and makes no mention of the 15 subsequent trials or related challenges.⁴⁶ Much better is Geoffrey Stone's prize-winning *Perilous Times: Free Speech in Wartime: From the Sedition Act of 1798 to the War on Terrorism*, which discusses the original passage of the Smith Act in 1940, the case of the 29 Trotskyists (members of the Socialist Workers Party) in Minneapolis,

and devotes 16 pages to the *Dennis* trial verdict and appellate and Supreme Court decisions. Yet Stone then predictably jumps to *Yates* and the membership cases.⁴⁷ Again, Bouslog's successful challenge is omitted, even though her case bears directly on freedom of speech.

Bouslog's determination and eventual success was all the more remarkable given her status as a female labor lawyer—often perceived as junior or subject to verbal harassment by her male counterparts and the press. Yet Bouslog purposefully played with gender stereotypes throughout her career. She refused to don conservative clothing and conform to professional expectations—often wearing a trademark scarf or flower in her hair in court, bright red lipstick, dresses that hugged her figure, and no uncomfortable girdle to flatten her natural curves. IMUA *Spotlight* commentator, Tony Todaro, called her the “Proletarian Pin-up” during the Hawai'i Seven trial. Over the years, Bouslog honed her dynamic courtroom presence. She was deliberate in not hiding her sensuality and sexuality to achieve success and hoodwink those who underestimated her. She liked to make a grand entrance, strolling into courtrooms with great confidence. This strategy was successful, however, because she was always incredibly well prepared, her briefs written and finely reasoned with attention to legal detail and precedent, guided by both compassion and clarity.

Legal scholar Mari Matsuda, who knew Bouslog personally and wrote a biographical chapter on her in an edited collection on early women lawyers in Hawai'i, aptly described her physical and rhetorical style:

She dressed like Bacall and fought like Bogart. She talked like Locke and Jefferson, but she could make them sound like Lenin. She called plantation workers “my people” but she enjoyed the trappings of the good life. She grew up in middle America but she preferred the drama of the middle Pacific. She decried the treatment of women in a man's world, but she was comfortable exploiting stereotypical female imagery. Old-time Honolulu lawyers never fail to mention Bouslog's tight skirts. It was rumored, one said, that she didn't always wear undergarments. This claim may say more about the sophomoric obsessions of the male bar than it does about Bouslog's attire. It is clear, nonetheless, that Harriet Bouslog was certainly a provocative woman, self-designed and widely known as such.⁴⁸

Bouslog's last law partner before she retired, Mark Bernstein, described her as a "champagne socialist," noting that she always kept bubbly chilling in the refrigerator at her office.⁴⁹ Her appearance and radical politics belied her hard-nosed business instincts: she invested in Honolulu real estate and furtively bought the building from her landlord on Merchant Street rather than be evicted. She and second husband, Steven Sawyer, ostentatiously drove fine automobiles. "Philosophically, I'm a radical . . . but I live in a capitalistic system and I make money from it," she once told a local reporter, adding, "I like the sybaritic life. You might describe me as a peasant with a taste for the luxurious."⁵⁰

Bouslog's achievements cannot be overestimated. Hers was one of the very few Smith Act-related court cases to be resolved in her favor. In 1978, decades after the Reineckes lost their occupations and reputations due to the Red Scare, she was also successful in pushing for a formal apology from the state and a significant compensation package—perhaps the *only* financial restitution package for victims of McCarthyism at the state level.⁵¹ Her persistence eventually paid off in many other ways: due to legal challenges she was involved in, juries more closely reflected Hawai'i's population. As well, her efforts led to modification of the territory's unlawful riot and assembly act and to the conspiracy statute, making strikers less vulnerable to criminal charges.⁵² She also campaigned tirelessly for the abolition of the death penalty, particularly following her intervention in the case of John Palakiko and James Majors, two underprivileged young men sentenced to death for the murder of a white woman.⁵³ Overall, she did her utmost to change the existing power structure of Hawai'i and never shied away from a case because a client or a cause could not pay, and thus her practice included prostitutes, indigenous groups, and petty criminals.⁵⁴ She received numerous honors in recognition of her long service, including lifetime membership in ILWU Local 142, the Alan Saunders Civil Liberties Award, and the Hawai'i Women Lawyers Distinguished Service Award. Finally, a scholarship was created in her honor for children of members of the ILWU. In the words of Mark Bernstein, who delivered the eulogy at her funeral in 1998, she was the "real deal... flamboyant and provocative, and ahead of her time in every way. . . ."⁵⁵

NOTES

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- ¹ *In re Sawyer* 360 U.S. 622 (1959) at 644.
- ² Mari J. Matsuda, "Harriet Bouslog" in *Called from Within: Early Women Lawyers of Hawai'i*, ed. Mari J. Matsuda (Honolulu: University of Hawai'i Press, 1992), 149.
- ³ Matsuda, "Harriet Bouslog," 151.
- ⁴ *Biography Hawaii: Harriet Bouslog*. Directed by Joy Chong-Stannard. (PBS Hawaii and the Center for Biographical Research, University of Hawai'i-Manoa, 2003), DVD.
- ⁵ The "Big Five" were Castle & Cooke, American Factors, C. Brewer, Alexander & Baldwin, and Theo H. Davies.
- ⁶ Barbara Nutter, "Harriet Bouslog: defender of the 'underdog,'" *HA*, July 22, 1970.
- ⁷ Nutter, July 22, 1970.
- ⁸ Nutter, July 22, 1970 and Mary Adamski, "Attorney fought for underdogs," *HSB*, September 15, 1999.
- ⁹ Symonds met Bouslog while the two worked together during the 1946 Sugar Strike defending the ILWU; Symonds had been a lawyer with the West Coast firm of Gladstein, Anderson, Resner, and Sawyer, which represented the union on the mainland. See T. Michael Holmes, *The Specter of Communism in Hawaii* (Honolulu: University of Hawai'i Press, 1994), 47.
- ¹⁰ Mark D. Bernstein, Personal conversation. March 20, 2013.
- ¹¹ Ichiro Izuka. *The Truth About Communism in Hawaii*, (Honolulu: N.P., 1947). Available in Harriet Bouslog Biography File, Center for Labor Education and Research (CLEAR), University of Hawai'i at West O'ahu.
- ¹² The complete list of charges was published in the *HA*. See Holmes *The Specter*, especially chapter 3, "The Stainback Rebellion," 43–52 and chapter 7, "The Ideals of Democracy," 75–88; chapter 8, "In Their Defense," 89–97; chapter 9, "I neither Deny nor Affirm," 99–113; and chapter 10, "Teachers No More," 114–122.
- ¹³ The organization faced significant and well-organized opposition. On June 14, 1949, the Hawaii Residents' Association, known by the Hawaiian acronym IMUA, was formed to address "the creeping paralysis of Communism in Hawaii" and on June 25, 1949 the Conference of Civic Associations formed "to combat attacks of Communist agents against civic organizations"—both were vocal against the 1949 ILWU strike and eventually the Hawaii 7 trial. IMUA was well known for its anti-Communist broadsheet *Spotlight* and weekly radio broadcasts.
- ¹⁴ Holmes, *The Specter*, 159.
- ¹⁵ Katherine A.S. Sibley, *The Cold War* (Westport, Conn. and London, UK: Greenwood Press, 1998), 40; Michal R. Belknap, *Cold War Political Justice: The Smith*

- Act, the Communist Party, and American Civil Liberties* (Westport, Conn. and London, UK: Greenwood Press, 1977), 156–157; Simon W. Gerson, *Record of Smith Act Cases*. (New York: Joint Self Defense Committee, 1956). Available in Box 7, Gil Green FBI Files, Tamiment Library, New York University.
- ¹⁶ Wirin also acted as chief counsel in the California Smith Act trial. See Peter L. Steinberg, *The Great “Red Menace”: United States Persecution of American Communists 1947–1952* (Westport, Conn. and London, UK: Greenwood Press, 1984), 235. The ACLU famously purged its organization of communists in 1940, including national board member Elizabeth Gurley Flynn. See Samuel Walker, *In Defense of American Liberties: A History of the ACLU*. Second edition. (Carbondale and Edwardsville, Ill.: Southern Illinois University Press, 1990), 127.
- ¹⁷ Although all of Hawaii 7 defendants were convicted at trial—as with the vast majority of Smith Act defendants—the decision was reversed following the *Yates* decision. See *Fujimoto v. United States*, 252 F. 2d 342 (9th Cir., 1958) and *Yates v. United States* 354 U.S. (1957).
- ¹⁸ Harriet Bouslog, *Fear* (Honolulu: International Longshoremen’s and Warehousemen’s Union, 1951), 4.
- ¹⁹ *Fear*, 12.
- ²⁰ Holmes, *The Specter*, 194.
- ²¹ *In re Sawyer* 360 U.S. 622 (1959) at 641.
- ²² *In re Sawyer* 360 U.S. 622 (1959) at 644.
- ²³ *In re Sawyer* 360 U.S. 622 (1959) at 645.
- ²⁴ *In re Sawyer* 360 U.S. 622 (1959) at 645.
- ²⁵ Quoted in *Law Guild Review*, 1959, 107.
- ²⁶ Matsuda, “Harriet Bouslog,” 163.
- ²⁷ Harold Morse, “Harriet Bouslog Won Landmark Labor Cases,” *HSB*, 22 April 1998.
- ²⁸ *In re Sawyer* 360 U.S. 622 (1959) at 626.
- ²⁹ *In re Sawyer* 260 F2d (9th Cir., 1958).
- ³⁰ *In re Sawyer* 360 U.S. 622 (1959) at 631–632. Significantly, this decision followed the Supreme Court’s four decisions released on “Red Monday” in 1957, including *Yates*, an appeal of the California Smith Act trial. The decision, while not technically “overturning” the Vinson Court’s 1951 decision, in *Dennis v. United States* 341 U.S. 494 (1951), effectively halted the Smith Act prosecutions. See Arthur J. Sabin, *In Calmer Times: The Supreme Court and Red Monday* (Philadelphia: University of Pennsylvania Press, 1999), 160–172 and Belknap, *Cold War Political Justice*, 236–25.
- ³¹ Brennan cited *Krutevich v. United States* 336 U.S. 440, 453 (1949). My own analysis of political trials suggests that the continuous thread that runs through most Cold War prosecutions—both East and West—is the use of conspiracy charges, allowing the construction of courtroom narratives without having to prove overt acts, demonize an “enemy within,” and effectively prescribe the limits of permissible dissent. See Barbara J. Falk, *Making Sense of Political Trials: Causes and Categories* (Toronto: Munk Centre for International Studies, 2008).

- ³² 360 U.S. at 366; emphasis added.
- ³³ *In re Sawyer* 360 U.S. 622 (1959) at 669.
- ³⁴ Margaret Tarkington, "The Truth Be Damned: The First Amendment, Attorney Speech, and Judicial Reputation," in *The Georgetown Law Journal* 97 (2009): 1615.
- ³⁵ The test is that false statements are made with a high degree of awareness of the probable falsity, thus protecting the press from making erroneous statements given the overriding interest of free and independent media. *Sullivan* allows for fulsome attacks on both government and public officials. See Geoffrey R. Stone, *Perilous Times: Free Speech in Wartime, From the Sedition Act of 1798 to the War on Terrorism* (New York and London: W.W. Norton, 2004), 73, 270; *New York Times Co. v. Sullivan*, 376 U.S. (1964); and *Garrison v. Louisiana* 379 U.S. (1964).
- ³⁶ Tarkington, "The Truth Be Damned," 1615.
- ³⁷ *Sacher v. United States*, 343 U.S. 1, 72 S. Ct. 451, 96 L. Ed. 717. Interestingly, *Sacher* is cited as a ruling authority in US government efforts to uphold the contempt citations by Judge Julius Hoffman against maverick defense lawyer William Kunstler in the 1969–1970 trial of the Chicago Seven; for more information, see <http://law2.umkc.edu/faculty/projects/ftrials/Chicago7/chicago7.html>.
- ³⁸ *Sacher v. Association of the Bar of the City of New York*, 347 U.S. 388 (1954).
- ³⁹ Ellen Schrecker, *Many Are the Crimes: McCarthyism in America* (Princeton, N.J.: Princeton University Press, 1998), 303.
- ⁴⁰ Sherman Labovitz, *Being Red in Philadelphia, A Memoir of the McCarthy Era* (Philadelphia: Camino Books, 1998), 135–140.
- ⁴¹ Belknap, *Cold War Political Justice*; Steinberg *The Great "Red Menace"*; Scott Martelle, *The Fear Within: Spies, Commies, and American Democracy on Trial* (New Brunswick, N.J. and London: Rutgers University Press, 2011).
- ⁴² See also *In re Isserman*, 345 U.S. 286 (1953) and *Green v. United States*, 356 U.S. 165 (1957).
- ⁴³ Sabin, *In Calmer Times*.
- ⁴⁴ Holmes, *The Specter*.
- ⁴⁵ Gerald Horne, *Fighting in Paradise: Labor Unions, Racism, and Communists in the Making of Modern Hawai'i* (Honolulu: University of Hawai'i Press, 2011), 243–244. Horne quotes from an interview conducted by Sanford Zalburg with Harriet Bouslog, March 11, 1976. Available at the University of Hawai'i at Mānoa Archives.
- ⁴⁶ Christopher M. Finan, *From the Palmer Raids to the Patriot Act: A History in the Fight for Free Speech in America*, (Boston: Beacon Press, 2007), 149–150.
- ⁴⁷ Stone, *Perilous Times*, 255; 395–415. The logic of the Smith Act led to a number of cases of CPUSA leaders who had allegedly and knowingly been aware, as members, of the Party's policy to teach and advocate violent overthrow. As a Justice Department lawyer once expressed to Anthony Lewis: "It's not enough to be a member of the party, you have to be a member." See Anthony Lewis, *Freedom for the Thought We Hate: A Biography of the First Amendment* (New York: Perseus,

- 2007), 123. In *Scales v. United States*, 388 U.S. 203 (1961), the conviction of North Carolina leader Junius Scales was affirmed, although the membership cases were halted after Scales' sentence was commuted by Kennedy in 1961 because of the effect of such prosecutions on legitimate expression. See Lewis, 12–124; Ellen Schrecker, *McCarthyism: A Brief History with Documents*. (Boston and New York: Bedford/St. Martin's, 2002), 1–2. Scales had long ceased being a member of the CPUSA even *before* he began to serve his sentence.
- ⁴⁸ Matsuda, "Harriet Bouslog," 164–165. To support Matsuda's hunch, in the PBS/Biography Hawai'i documentary on Bouslog's life, retired Federal District Judge Samuel P. King pointedly stated that Harriet Bouslog had "juries mesmerized" and that she "didn't wear a girdle. . . ." See Chong-Stannard, *Biography Hawaii: Harriet Bouslog*.
- ⁴⁹ Bernstein, Personal conversation, March 20, 2013.
- ⁵⁰ Quoted in Matsuda, "Harriet Bouslog," 165.
- ⁵¹ Matsuda, "Harriet Bouslog," 164. In the 1970s, Bouslog successfully petitioned to have the case re-opened. Belatedly John Reinecke's teaching certificate was restored, and he received a formal apology and financial restitution from the State of Hawai'i for his loss of income, pension, and the denial of civil rights. For her efforts, Bouslog took no fee from the \$250,000 settlement. See Naomi Sodetani, "Quiet Courage Under Fire: The Life of Aiko Tokimasa Reinecke, 1907–1998," *Hawaii Herald: Hawaii's Japanese American Journal*, June 19, 1998.
- ⁵² Chong-Stannard, *Biography Hawaii: Harriet Bouslog*.
- ⁵³ Both were to be executed on September 13, 1951. Just 15 minutes before the execution was scheduled to occur, Bouslog managed to obtain a stay, yet on September 19 Governor Oren Long stated he knew of no new evidence and set a new date for September 22. 16,000 people signed a petition for clemency. At the last minute, Bouslog managed to secure a new trial by producing new evidence that they were beaten and compelled to testify against themselves, and had no benefit of counsel before interrogation. See Matsuda, "Harriet Bouslog," 157–158. Two years later, the Ninth Circuit upheld. More than six years later, the United States Supreme Court refused the appeal. Governor Samuel Wilder King eventually commuted their death sentences on August 14, 1954, three years later capital punishment was eliminated in Hawai'i. In 1962, Governor Burns signed parole orders freeing both. See also Harriet Bouslog Memorial Service Program, April 26, 1998: available in Harriet Bouslog Biography File, CLEAR and Mark D. Bernstein, *Harriet Bouslog Eulogy*, April 26, 1998. Available in Harriet Bouslog Biography File, CLEAR.
- ⁵⁴ Esther K. Arinaga, "Harriet Bouslog: Lawyer, Risk Taker, and Champion of the Underdog," *Biography Hawai'i: Five Lives, A Series of Public Remembrances*. Available in Harriet Bouslog Biography File, CLEAR, no date.
- ⁵⁵ Mark D. Bernstein, *Harriet Bouslog Eulogy*.