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A Murder, a Trial, a Hanging: The Kapea Case of 1897–1898

KAPEA WAS A 20 year-old Hawaiian man executed by hanging for the murder of Dr. Jared K. Smith of Kōloa, Kaua‘i.¹ Kapea’s 1897–98 arrest, trial, and execution in the final years of the Republic of Hawai‘i illustrates legal, political, and cultural dynamics which found expression in Hawai‘i’s courts during the critical years preceding Hawai‘i’s annexation to the United States.

In 1874 David Kalākaua succeeded Lunalilo as monarch of the Hawaiian Kingdom. Aware that Native Hawaiians were increasingly dispossessed of their land and were further disenfranchised as disease drastically diminished their numbers, Kalākaua set out to have his cabinet and legislature controlled by Native Hawaiians. Inevitably, he clashed with the white population, primarily missionary descendants. A duel ensued between a “willful Hawaiian King and a headstrong white opposition.” This was a new “band of righteous men,” who like earlier missionaries, felt it was their moral duty, the white man’s destiny, and in their own self-interest to govern and save the natives.²

In 1887 Kalākaua’s reign began its swift descent. A new constitution, forced upon the King at “bayonet” point, brought changes in

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policies relating to law, leprosy, and governance. Ever fewer Native Hawaiians held cabinet and legislative positions. Lili'uokalani's accession to the throne, following Kalākaua's death in 1891, did not stem these changes.

Despite her struggles to establish a new constitution and the efforts of her supporters to maintain the monarchy, Queen Lili'uokalani was forced to abdicate. Most of the white men who deposed Lili'uokalani in 1893 and formed the Republic of Hawaii were lawyers who believed that the Western legal system, imposed in Hawai'i more than a half-century earlier, should be strictly interpreted.³

Kapea's hanging on April 11, 1898, is but one dramatic consequence of the forces at work during this time. Hawaiian and English language newspaper accounts from this period, the trial transcript, official and personal letters, as well as government records provide rich resources for the examination of this little known and complex death penalty case in Hawai'i.

THE ISSUE OF ANNEXATION

The years before Kapea's hanging were marked by political uncertainty and conflict about the future of the Hawaiian Islands. In Washington, the Congress of the United States continued to debate the merits of the annexation treaty, deliberations that had been ongoing for four years.

U.S. Senator David Turpie, a leader of the anti-annexationists, favored respect for the Hawaiian monarchy and for the Hawaiian people:

There is a native population in the islands of about 40,000. They are not illiterate; they are not ignorant. A very large majority can read and write both languages, English and Hawaiian, and they take a very lively and intelligent interest in the affairs of their own country. This is an element which on the proposition of annexation is to be consulted prior to any other; it must accompany any treaty; and any treaty which had been made without consulting this element was properly withdrawn and ought never to have been sanctioned.⁴

The sentiments against annexation ranged from moral uneasiness to racist polemic. Some opponents believed that the islands had been

stolen from the Hawaiians by the white planter's party during the Revolution of 1893. Others objected to "a loathsome horde of 'Kanakas' (aboriginal Hawaiians), 'lepers,' and 'coolies' who eventually might participate in American electoral politics."⁵ These islanders were not "savages" but as non-white peoples, they were deemed unqualified for American citizenship.⁶ Missouri Congressman Champ Clark queried whether Americans wanted "two mongrel Senators . . . from that leprous island"?⁷

In Hawai'i the leaders of the Republic supported the expansionists in Congress. Early in 1897 the Republic sent a commission to Washington to lobby for annexation. Commission members included Lorrin Thurston, Francis M. Hatch, and William A. Kinney, who were among those who had successfully deposed Queen Lili'uokalani in 1893.⁸ As lawyers with a commercial outlook, they saw annexation as a way to achieve political, social, and economic stability for Hawai'i. Certain that native peoples were incapable of self-government and needed the protection of white men, Lorrin A. Thurston and his colleagues believed, "The most compelling reason for annexation . . . was that good government was impossible without it."⁹ Historian Gavan Daws noted that these men, as annexationists and "mission boys" (descendants of missionaries), had expressed "a desire to do good for the unfortunates regardless of what the unfortunates thought about it."¹⁰

To enhance the prospect of annexation, some Hawai'i proponents were eager to show American critics that the Western legal system prevailed in Hawai'i.¹¹ The Kapea case may have been a way for annexationists to demonstrate their authority and the rule of law in the islands. However, this case and three other capitol murder cases during the period 1893 to 1898, also set in motion a capital punishment system that would endure for 60 years and take the lives of 47 men, until the death penalty statute was repealed in 1957.¹²

THE MURDER

On Friday, September 24, 1897, shortly before ten o'clock in the evening, Dr. Jared K. Smith of Kōloa, Kaua'i, retired to the office bedroom of his home to write a letter to his fiancée, Miss Margaret Brewer.¹³ There was a knock at the outside office door. The doctor

called out in Hawaiian, *Owai kela?* (Who is that?). Someone standing near the verandah either coughed or grunted. As Dr. Smith stepped through the doorway of his office, a shot fired from a 38-caliber pistol entered Dr. Smith's left side and passed through his heart and both lungs. Powder burns later found on the doctor's shirt attested to the proximity of his assailant.¹⁴

Dr. Smith's sister Emma, hearing the gun shot, rushed from her bedroom to the doorway and found her brother with both hands pressed to his chest. He collapsed and died within minutes. Another sister, Juliette, would report that she heard horses galloping away after the gun went off.

In the absence of information, initial speculation regarding the identity of the murderer reflected culturally-based assumptions of the time. If a gun were used, a white man and not a Native Hawaiian seemed the most likely suspect, someone who was familiar with the doctor's house and habits. But the grunt heard by Emma in response to the doctor's query was said to be a more typical Native Hawaiian reaction.¹⁵ Another theory was that the doctor may have been killed by an Asian plantation laborer. The weapon used appeared to discount this explanation, for "[W]hen a Chinaman or Japanese wants to get even for a wrong, real or imaginary, he uses a cane knife or a bludgeon."¹⁶

A rumor circulated that the murderer was a man whose wife had been ordered by Dr. Smith to go to Honolulu for tests to confirm a diagnosis of leprosy. The outcome of such tests was often banishment for life to the leprosy settlement at Kalaupapa, Moloka'i.¹⁷ Dr. Jared Smith was the Republic of Hawaii's Board of Health agent for the island of Kaua'i. At the time of the murder, his older brother, Attorney General W.O. Smith, was the president of the Board of Health.

It seemed unlikely to most residents of Kōloa that any Hawaiian could have committed the murder. Jared Smith was said to be a beloved physician. He was born in Kōloa and had spent most of his childhood in the area. He spoke fluent Hawaiian. His parents—his father, James, a doctor before him—were well-known and respected missionaries who had come to Kōloa to establish a school for Native Hawaiians in 1842.¹⁸ According to Senator William H. Rice of Kaua'i, who was interviewed shortly after the murder, Dr. Smith was so

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Sat, 2^o, P.M.

Koloa, Kauai, Sept. 25th, 1897.

W. O. Smith,
Honolulu.

Dear Will,

Jared was shot by an unknown person on the verandah of his room last evening at about 10 o'clock and died immediately.

W. H. Rice Jr. who goes up tonight on the Mikahala will tell you all about it - and what we have done & ^{how we} are getting along - better than I can write it. He says he will go right to your house from the wharf.

I heard it by telephone at ~~our~~ our house in ^{Hibue} & came over, arriving about 3 o'clock this A.M. - I had a talk with E. N. W., and Sheriff Carter to first which delayed me & it was a dark night.

We are going to keep the body on ice (400 lbs is on its way from Makena).

First Page of Letter Written by Alfred H. Smith on September 25, 1897. Alfred informs his elder brother, William O. Smith, of Jared's death. The five-page letter includes descriptions of the murder, the reaction of their sisters, the arrangements being made, and the family's shock. Private Collection.

well-liked that had his murderer been immediately apprehended, “. . . the people would probably have made short work of him.”¹⁹

THE INVESTIGATION

On Sunday, September 26, 1897, two days following the murder, the steamship *Mikahala* brought word of Dr. Smith’s death to Honolulu. As Dr. Jared Smith was the younger brother of the Republic’s politically powerful attorney general, William O. Smith, the news shocked the island’s residents. W.O. Smith, hearing of his brother’s murder, immediately chartered a steamer for Kōloa. Smith took with him Marshal Arthur Brown, General A.S. Hartwell, and Kaapa, a detective.

A few days later, Smith’s former law partner, William A. Kinney, arrived in Kōloa to serve as the official government representative in charge of the case. Just hours after disembarking, Kinney had the alleged murderer and his accomplices in custody.²⁰ Kinney would later be appointed special prosecutor for the trial.

Soon after the murder, Deputy Sheriff Hipa of Kaua’i had developed suspicions that a Hawaiian family living about two miles from Dr. Smith’s residence was involved. The head of the family was Kaio Kaahea who owned cattle and horses and occasionally worked for Dr. Smith.²¹ Kaio was half-Malay and half-Hawaiian. He lived with a full-blooded Hawaiian woman, Paupau, and her twelve year-old daughter, Pua, on property owned by Paupau. Kaio’s two nephews, Iosepa, 18, and Johnny, 16, and Kaio’s son by a previous marriage, Kapea, 19, also lived on the family property. Kapea was alleged to be betrothed to Pua.²²

Shortly before the murder, both Paupau and Pua had received orders from Dr. Smith, agent for the Board of Health, to undergo examination at the leprosy hospital in Honolulu. Their confinement at Kalaupapa appeared likely because Paupau had already lost a toe to the disease. Deputy Sheriff Hipa believed that Dr. Smith’s order gave both Kapea and Kaio strong motives for the killing. However, even after extensive questioning by Kaua’i detectives and Attorney General Smith, Kaahea family members maintained that they were all at home on the night of the murder.

With the arrival of William Kinney, interrogation intensified. English language newspapers reported that Kinney “muddled up” the

younger nephew, Johnny, and “half scared him to death.”²³ Kinney determined that Kapea and Iosepa had been out of the house on the night of the murder and had returned just prior to a visit by Deputy Sheriff Hipa. Kinney suspected that Kapea was the man who fired the fatal shot, but he needed a witness. After repeated examination of Iosepa, Kinney offered him immunity from punishment in exchange for his confession. Iosepa allegedly “jumped at the offer” and agreed to become the prosecution’s witness.²⁴

IOSEPA’S CONFESSION: THE MOTIVE AND THE PLAN

The first words of Iosepa’s statement of confession expressed the anger and despair felt by members of a Native Hawaiian family facing separation from their loved ones because of the leprosy law.

When Dr. Smith ordered [Paupau] and [Pua] to report for examination as lepers, we were all very mad. We talked about it a good deal and it was settled that Dr. Smith should be killed. We thought if he was out of the way, they would not have to go to Molokai.²⁵

Many Native Hawaiians thought that the law of segregation was “a special device aimed at them only to cause trouble, injustice, and [to] break up their homes . . . a tyrannical act . . . wholly unnecessary.”²⁶ Even those who supported the law had difficulty reconciling themselves to its devastating effect. Leprosy was not a crime, but those who resisted the order of confinement at Kalaupapa were regarded as criminals, rounded up, and transported to the leper colony.²⁷

Hawaiians had their own way of dealing with leprosy. They chose not to isolate family members diagnosed with the disease. Instead they cared for their afflicted within the household. Rarely did anyone diagnosed with leprosy go voluntarily to the leper settlement on Moloka’i. Native Hawaiians, especially those in remote neighbor island communities, often defied arrest. Dozens of recorded incidents of violence and bloodshed indicate the extent of resistance by Native Hawaiians.²⁸

Repeated dismissals of governance by Hawaiians no doubt fueled opposition to the law. After King Kalākaua was forced to sign the Bayonet Constitution, the self-selected Reform Cabinet instituted a policy of strict enforcement of the leprosy law. The effect and severity of this

policy, as well as other changes brought about by the new constitution, were noted in a dispatch sent by the British Commissioner in Hawai'i, James Hay Wodehouse, to his home office in August, 1887.

I think the Natives have begun to realize the extent of change which has taken place. There is no doubt that at first they were taken by surprise. They must see that their power is gone, that is to say, that they can no longer hope to control the 'foreign element' as they have done during the last five years.²⁹

Between 1893 and 1895 it was primarily this "foreign element" that accused, tried, sentenced, and incarcerated the sovereign of the Hawaiian Nation, Queen Lili'uokalani, for "misprision (concealment) of treason." Lili'uokalani's trial has been described by law professor Jon Van Dyke as "the event that most fully exemplified the hollow nature" of "an illegitimate and inappropriate government."³⁰

During this period the most celebrated incident of resistance to the leprosy law took place on the island of Kaua'i. To avoid arrest and a life sentence at Kalaupapa, a group of lepers and their families sought refuge in isolated Kalalau Valley. Kaluaiko'olau (Ko'olau) was the leader of this resistance. Told that his wife Pi'ilani could not accompany him and his son to Moloka'i—a practice that had formerly been permitted, he declared that he and his wife were joined by God in Christian marriage and could not be separated. However, in keeping with the spirit of the law instituted to stop the spread of this disease, their chosen refuge in a remote Kaua'i valley was to be a self-imposed exile, a Native Hawaiian solution to keep families intact.³¹

Government officials, frustrated by incidents of resistance occurring throughout the islands, decided to undertake the arrest of Ko'olau with the use of guns and cannon. The outcome of this heavily armed expedition ended in tragedy. Ko'olau, an expert rifleman, held off his pursuers. The attempt to capture Ko'olau was abandoned after Deputy Sheriff Stolz of Kaua'i and three government soldiers were shot and killed.³² Ko'olau was never captured and eventually died from the disease in 1897. He was laid to rest in Kalalau Valley by his wife, Pi'ilani.

W.O. Smith was convinced that Ko'olau's successful resistance to

the leprosy law influenced the defendants in the Smith murder case. Responding to a letter of condolence received after the death of his brother, Smith wrote:

Koolau having killed the deputy sheriff and also three of the of the soldiers who were sent down to capture him, and never being punished for it, he became a hero and was almost glorified by a certain class of Hawaiians. And this young native who shot my brother, evidently thought he could imitate Koolau and escape detection.³³

The leprosy law and Native Hawaiian opposition to the law would become central issues in the trial of Kapea and his father, Kaio.

In his confession statement, Iosepa revealed that there had been more than one attempt on Dr. Smith's life.³⁴ He and his cousin Kapea had tried and failed to waylay the doctor on two previous occasions. Finally, on Friday, September 24, 1897 the cousins rode again to the Smith property. Iosepa said that he held the horses while Kapea went onto the verandah and knocked at the office door. When Dr. Smith stepped outside, Kapea shot him. The cousins then leaped onto their horses and took a roundabout route back to their home. Their return covered six or seven miles of hard riding. The actual distance between the two residences was about a mile and a half.

In his statement, Iosepa said that he and his cousin put their horses in the corral and hid their pistols. On his return to the family home, Kapea allegedly boasted that his gun "had feasted on a man and his anger was appeased."³⁵ By the end of his confession, Iosepa had implicated the entire family as well as two other men who had stayed at Paupau's house on the night of the murder: George Rathburn, a part-Hawaiian, and Upapa, a middle-aged Native Hawaiian.

PRELIMINARY PROCEEDINGS

Six days following the murder, on September 30, the District Magistrate of Kōloa, Kaua'i committed five defendants for trial at the March 1898 term of the Fifth Circuit Court of Kauai. None of the defendants was represented by counsel. Unknowingly, they waived their right to examine the four witnesses who presented testimony against them:

Johnny, Iosepa, the attending physician, and Deputy Sheriff Hipa. Kapea was charged with murder in the first degree. Kaio, Paupau, Upapa, and George Rathburn were charged as accessories for planning the murder and attempting to avoid detection and arrest during the investigation.³⁶ Following their indictments, the prisoners left on the steamship *James Makee* for Honolulu, where those awaiting trial in criminal cases were held at Oahu Jail. Customarily during this period, prosecution witnesses were put in prison until the trial. Thus, Johnny and Iosepa, were held in Oahu Jail with the five defendants. Paupau's daughter, Pua, age 12, was also imprisoned. Upon arrival this "gang of eight prisoners" was paraded from the inter-island wharf up Fort Street to Oahu Jail.

. . . in their midst with his head hung down, was a tall, lean native Hawaiian with dejected mien. . . . The tall fellow was none other than Kapea, against whom there seems to be unmistakable evidence that he was the one who committed the dastardly act. . . . About him were his relations against whom there seems likewise to be conclusive proof that they were implicated in the murder.³⁷

Attorney General W.O. Smith decided not to bring an indictment against Paupau, but she would remain in jail as a material witness for the Republic of Hawaii. Following the trial, Paupau and Pua were both sent to Kalaupapa. Pua arrived on December 7, 1897, and Paupau, a week later on December 15. Pua lived only six months. Paupau died five years later, on April 15, 1902.³⁸

At the September hearing, trial had been set for March 1898, which was the next regular term of the Fifth Circuit Court of Kaua'i. However, Circuit Judge Jacob Hardy ordered that a special term of the court be convened on November 6, 1897. The order was unusual, since special terms were normally called when there was an accumulation of business left unfinished at the end of the prior term. By statute, a Circuit Judge had discretion to call a special term, with the written approval of the Chief Justice of the Supreme Court of the Republic of Hawaii.³⁹ In reviewing the Kapea case, Judge Hardy and Chief Justice W. F. Frear agreed the special term was "essential to the promotion of justice."

On November 10, 1897 the defendants returned from Honolulu to Kaua'i's Fifth Circuit Court where they heard the indictment against

them read in Hawaiian. Defense attorneys, Antone Rosa, representing George Rathburn and Upapa, and A. G. M. Robertson, representing Kapea and Kaio, challenged the right of the court to take jurisdiction of the case at this special term. It was long established practice that when a case arose between terms, it would be scheduled for the next regular term. They argued that there was no obligation for a defendant to appear at a special term or to go to trial before the regularly specified term.⁴⁰

Native Hawaiians were concerned that the government of the Republic of Hawaii was acting hastily in order to bring the case to resolution. *Ke Aloha Aina* (The Hawaiian Patriot), a Hawaiian daily newspaper, criticized the Court's imposition of a special term.

[We] are puzzled why this entanglement is being hurried along. But we understand the reason. They (prosecutors and Court) all have the authority of the government and when they work on this case, no one will stand in their way because all authority is in their hands. Innocent or guilty, there will be only one decision according to them. No one is in consultation, there will be complete silence until the case is over.⁴¹
[Translation by Esther Mookini]

Rosa and Robertson next moved for a change in venue. Because of strong community prejudice, they cited the impossibility of obtaining a fair trial on Kaua'i. Affidavits submitted to the court confirmed the defendants' belief that both Native Hawaiians and *haoles* were biased against them. Judge Hardy granted the motion; the trial was moved to the First Circuit Court in Honolulu.⁴²

OF COUNSEL: THE PROSECUTOR AND THE DEFENSE ATTORNEYS

Few lawyers admitted to practice in Hawai'i during the latter part of the 19th century had received formal legal training. Attorneys, such as W.O. Smith and Antone Rosa, read the law for several years with a distinguished lawyer or jurist. Many lawyers served in the Hawai'i legislature or began public service in government agencies such as the police department or district boards (roads, agriculture, and water). Through their involvement in the business and political life of Hawai'i, lawyers were able to shape the policies of government and influence the administration of the legal system.

In the late 1880s, as the debate over the ability of Native Hawaiians to rule intensified, lawyers favoring either side began to realize the enormous political and economic power at stake. The groups were not always divided on racial lines. White men were among the Royalists who supported King David Kalākaua and later, Queen Lili'uokalani. However, second generation "mission boys" like W.O. Smith and his law partner, Lorrin Thurston, recognized the advantage of merging law and Christian morality to justify the dominance of white rule. In the Kapea case, the law could not be a means to permit "the grosser desire for vengeance upon the assassins."⁴³ But it could be touted as a principle of deterrence.

Soon after the murder of his brother, W.O. Smith articulated this purpose in a report that also revealed the extent of his carefully reasoned outrage.

[T]he machinery of government punishes for the offence . . . in order to prevent its repetition . . .

Having stated the moral premise, he proceeds to call the accused Hawaiians "short-sighted and ignorant," while proclaiming his brother the community's "most valuable citizen" and declaring his murderers deserving of torture.

[T]he community, on due reflection, may see this crime was committed by ignorant, short-sighted, yet morally and legally responsible persons. . . .

[I]t is not wise or just to measure the moral nature or degree of the offense, by the irreparable loss which the community suffers in the death of its most valuable citizen. The matters are clearly distinct. For if we applied the punishment for the crime, in a manner proportionate to the extent of the calamity, only torture would be adequate.⁴⁴

During the decade before the annexation of Hawai'i by the United States, the law offices of Smith, Thurston, and Kinney were the central meeting place of revolutionaries and reformers. Included in this group were members of the *haole* community who favored an end to the monarchy and the establishment of legal ties to the United States. The critical decision to depose Queen Lili'uokalani was made in W.O.

Smith's law office. In the aftermath of the Revolution of 1893, Smith became the Attorney General of the Provisional Government and later, of the Republic of Hawaii.⁴⁵

As Attorney General for the fledgling Provisional Government of Hawaii, W.O. Smith wielded considerable power. He was an *ex officio* member of the Board of Health, which had the authority to make laws when necessary. He was later elected president of the Board of Health. Attorney General Smith also supervised the police department of every island, managed and controlled prisons and prisoners, handled inquests in every judicial district, and brought indictments on all criminal cases.

In 1897 Smith prosecuted the first three capital cases of record in Hawai'i: *Noa*, *Yoshida*, and *Tsunikichi*.⁴⁶ In the case involving the murder of his brother, Smith appointed a special prosecutor to serve in his stead. He chose his former law partner, William Kinney.

Lorrin Thurston once described Kinney as "the most intense man I have ever known."⁴⁷ During his prosecution of Queen Lili'uokalani in 1895, Kinney displayed his ferocity and proficiency at riddling the defense presented by an opposing attorney. As Judge Advocate of the Military Commission that conducted the trials of those who had supported the monarchy, Kinney advocated the death penalty for those convicted of treason against the Republic, especially the white rebels whom he called ". . . cowards of the most malignant type . . . white-skinned and villainous individuals."⁴⁸ As he had already demonstrated in his interrogation of the suspects and his construction of the case against Kapea, Kinney would prove a formidable opponent in the trial.

In 1885 Antone Rosa was a promising young Native Hawaiian attorney when he was selected by King Kalākaua to serve as Attorney General of the Hawaiian Kingdom. During this troubled period Kalākaua was intent on implementing his program to have Native Hawaiians conduct the affairs of his government. But after the Bayonet Constitution was imposed upon Kalākaua, Rosa was forced to leave his cabinet position.

As a Royalist, Rosa supported Lili'uokalani during the 1893 overthrow of the monarchy. However, the queen's forced abdication "removed the last feeling of obligation." He then proceeded to pursue annexation as the best option for the future of Native Hawaiians.⁴⁹

By 1897 Rosa was often the court-appointed lawyer for Native Hawaiians. Earlier that year he had unsuccessfully defended Noa, an alleged murderer who was convicted and sentenced to hang.⁵⁰ Aware of the pressures for conviction and execution, Rosa realized that those accused of Dr. Jared Smith's murder required the strongest possible defense. He secured the services of the highly-regarded A.G.M. Robertson for the defense of Kapea and Kaio. Rosa himself would represent Upapa and George Rathburn.

Alexander George Morison Robertson was 30 years old when he agreed to defend Kapea. Called "A.G.M." throughout his life, Robertson was the son of George M. Robertson, a respected lawyer and justice of the Supreme Court of the Hawaiian Kingdom.⁵¹ After his graduation from Yale Law School in 1893 and admission to the Hawaii Bar, A.G.M. served a year as a district magistrate. In 1895, as a deputy attorney general, Robertson assisted William Kinney in the prosecution of Lili'uokalani's supporters. It was Robertson and two other attorneys who conducted the round-the-clock interrogation of the prisoners and gathered testimony for the trials.⁵² In 1897 Robertson was inexperienced in criminal law but, as the record shows, he would become an energetic advocate for Kapea.

All of the lawyers in the Kapea case were men who played significant roles in government and politics during the late 19th century. Whatever their prior loyalties, in the 1897 Kapea trial they appeared to focus their attention on law and procedure. At trial, Rosa and Robertson reminded the court that traditional practices under the monarchy were being set aside, however a stricter enforcement of the law had already taken hold.

THE TRIAL: PRESIDING JUDGE AND JURY SELECTION

Antonio Perry was the judge of the Second Circuit Court on Maui when he was appointed to the First Circuit Court in Honolulu on November 1, 1897. Judge Perry was twenty six years old. He had studied law with Judge Alfred S. Hartwell and was admitted to the Bar in 1892. After serving a brief term as a district magistrate, Judge Perry moved to the Maui Circuit Court.⁵³ With his First Circuit judgeship appointment to Honolulu coming just two weeks before the Kapea trial, it seemed that the change in venue had been anticipated.

The trial began on November 13, 1897.⁵⁴ Prosecution and defense attorneys questioned more than 65 potential jurors over a three-day period. On some days the sessions went on until nine o'clock in the evening. Both sides conducted exhaustive examinations to determine possible jury bias. Patterns of inquiry began to emerge from the first day.⁵⁵

Special Prosecutor Kinney and defense attorneys Rosa and Robertson focused on each juror's attitude toward the death penalty, as well as the segregation policy of the leprosy statute. The transcript of the first day's proceedings reveals that Native Hawaiian jurors appeared reluctant to commit themselves on the question of the death penalty. This is evident in the *voir dire* (screening) of juror Keliikeaunui by A.G.M. Robertson:

- Q. (Robertson) Now what is your view in regard to the death penalty; do you dread it or you do not fear it, or rather would you allow the law to take its course?
- A. (Keliikeaunui) I have not any view.
- Q. Well, supposed that the death penalty was by being drowned and a stone tied to your head, to drown gradually until you died and then they would haul you up again, how would you entertain—what would be your view in this regard?
- A. I have no views with regard to it.
- Q. You have no dread for hanging?
- A. I have a dread when I see it.
- Q. Well, have you any dread here to pass upon the life and death of these people?
- A. I don't have no opinion as to that.
- Q. Then to sum it up, you are willing that the law should take its course. whatever the death penalty means?
- A. I don't know anything about it.⁵⁶

When Keliikeaunui was asked about the leprosy statute by Prosecutor Kinney, he was unequivocal in his response:

- Q: (Kinney) Now, have you any prejudice against the enforcement of the law relative to the segregation of lepers which would—a prejudice such as would bias and prejudice you

one side or the other here, if it turned out that the deceased, Dr. Smith, had ordered certain relatives of these defendants to report to the Board of Health?

A: (Keliikeaunui) I don't like that law, I object to it.⁵⁷

Later the juror attempted to retract his objection, but Kinney questioned him closely.

A: (Keliikeaunui) I think I made a mistake in my reply, the truth is I don't object to the law.

Q: (Kinney) It affects one's feelings, it is a painful law to enforce, do you mean that?

A. No.

Q: In carrying out the law, it is not because of your feelings that you object to the law, because it is painful to be carried out?

A: This is the power of the law. There is no avoiding it.

Q: Do you have any sentiments, does it hurt your feelings, do you feel sorry?

A: I do have feelings, I feel sorry at the occasions of the separation.⁵⁸

Kinney then told the court that the juror was vacillating and that "he should not sit." Over Robertson's objections, the Court excused Keliikeaunui.

The defense repeatedly explored the possible influence of *haole* employers and landlords on a Native Hawaiian.

Q: (Rosa) Have you any employment at the present time?

A: (Keliikeaunui) Yes, sir.

Q: Where?

A: On the railroad.

Q: Under whom? Who is your boss?

A: Under Dillingham.

Q: Will your being employed by Dillingham have an influence if he should say something, if he should speak to you about this matter, would that have an influence over you?

A: No.⁵⁹

One potential juror, J. Kealoha Kui, verified that his landlord was Sam Damon of Moanalua. Damon was a missionary descendant and a member of the Reform Party that deposed Queen Lili'uokalani. Keenly aware of Damon's close ties to W.O. Smith, Robertson was concerned about the effect of this relationship on some Native Hawaiians who looked favorably upon men like Damon as benevolent "mission boys." Robertson questioned the juror closely about his obligations to Damon.

Q: (Robertson) You have known Mr. Sam Damon all your life, I suppose.

A: (J. Kealoha Kui) Yes, sir.

Q: And you understand that he is a colleague of W.O. Smith's in the government?

A: Yes, sir.

Q: Don't you think that in case of an acquittal of these defendants that Mr. Damon would be put out, offended?

A: I don't think so. I would be doing according to my own sense of feeling.

Q: Do you think that Mr. Damon would be offended at you in case you sat on the jury that acquitted these defendants?

A: Why should he be offended with me?

Q: I would suggest to you his intimacy with W.O. Smith.

A: I don't know about their intimacy.

Q: Well, don't you understand that these people are being tried for the murder of W. O. Smith's brother?

A: I understand that to be the case.

Q: Don't you realize then that Mr. Damon might be interested in securing a conviction of these defendants?

A: That may be with them and not with me.

Q: Well, you are under obligations to Mr. Damon to a certain extent, are you not? . . . Don't all you Moanalua natives consider that you are under Mr. Damon to a certain extent?

A: Not in one sense. Only in the sense that we get money from him and lease lands from him, that is all.⁶⁰

The pool of islanders called for jury duty included a large number of men with Hawaiian surnames, but as the *voir dire* proceedings con-

tinued over the three-day period, more and more of these potential jurors were excused by the Court or challenged by the prosecution and defense. Eight of the 12 men finally selected had haole surnames.⁶¹

It is impossible to determine how many potential jurors were excluded because of their objection to capital punishment or their unequivocal opposition to the leprosy law. These exclusions, if significant, would raise questions today of possible jury bias.

The long process of questioning potential jurors as to their views on the death penalty and the leprosy law may have strengthened the belief of jurors finally selected that the defendants were guilty. The English language press in Honolulu had all but concluded that Kapea was the murderer of Dr. Smith and that the other defendants were his co-conspirators. The trial began with a strong presumption of guilt, the jurors freighted by considerations of motive and the death penalty, even before the first witness took the stand.

Ironically, the first generation of missionaries from New England had brought with them "contempt for royal power and a singular disdain for capital punishment."⁶² But their entrepreneurial descendants, as well as other European and American immigrants to Hawai'i in the latter half of the 19th century, would equate a high moral sense with a favorable attitude toward the death penalty.

With the selection of the final juror, defense counsel Robertson moved for court permission to conduct a private interview of the Republic's witnesses, Johnny and Iosepa, at Oahu Jail. The motion was denied, despite Robertson's contention that the statute requiring commitment of a witness to jail was unconstitutional. Further, in the Court's view, the prosecutor had no obligation to inform the defense counsel of the evidence to be presented by the witnesses, since the defendants had waived preliminary examination during their arraignment.⁶³ They had done so without the benefit of counsel.

THE EVIDENCE

Motive and plan were key elements. The prosecution sought to establish "deliberate premeditated malice aforethought." Relying on the testimony of Johnny and Iosepa, prosecutor Kinney emphasized the ill feelings of the family toward Dr. Smith after he ordered Paupau and Pua to report to Honolulu for leprosy tests.

To establish Kapea's alleged anger, the prosecution attempted to show that a relationship existed between Kapea and Pua. Pages of testimony refer to their "betrothal," with insinuations of sexual misconduct by Kapea.⁶⁴

The social, sexual, and religious practices of Native Hawaiians were closely scrutinized throughout the trial. An omnipresence of Christian morality pervaded the proceedings. Native Hawaiian lifestyles, though occasionally contrary to missionary values, did not violate the law.

Johnny testified that Kapea had "tears" when he learned of Pua's imminent departure and had expressed words of rage, "*ino maoli ka hana keia haole*" against Dr. Smith. "The work of this haole is very wicked." Johnny also stated that Kapea had vowed not to sleep until the doctor was dead.⁶⁵

Johnny's testimony was especially damaging in its detailed description of plans devised to set fire to Dr. Smith's cane fields in order to draw the doctor out where he could be killed. Kaio's suggestion was to gather cow dung, place it in can, and set fire to it. This idea was abandoned when the alleged conspirators realized that the can would be too hot to carry to the fields. Kapea's plan, according to Johnny, was simply to strike a match to the dry leaves and then run away. Upapa's idea was to tie a rag onto a cat's tail, douse it with kerosene, set it afire, and then release the cat near the cane fields.⁶⁶

To discredit Johnny's testimony, defense counsel Robertson hammered at the young cousin's inconsistent statements and his tendency to excuse his mental lapses because of *pihoihoi*, his agitated state. The defense also alluded to a "reward" that Johnny would be receiving from the government for his testimony against his family.⁶⁷

Iosepa testified that the family believed that the doctor had not yet officially notified the Board of Health of Paupau's and Pua's condition. The family had based their assumption on the knowledge that Dr. Smith had asked the women to leave voluntarily, instead of in the custody of the Kaua'i deputy sheriff; they presumed that killing Dr. Smith would end the matter.

Defense attorney Rosa, in his cross-examination of Iosepa, provoked a compelling exchange on the significance of drinking *awa*. Earlier, the prosecution had elicited testimony from both Johnny and Iosepa confirming that all week long, the family had sat together drinking *awa* as a means to assure the success of their plans to murder

Dr. Smith. *Awa* thus became a factor showing evidence of a plan or conspiracy. Johnny insisted he had prayed to the Christian God for help while drinking *awa*. Employing what Nigerian scholar Chinua Achebe, in his analysis of the dynamics of cultural usurpation, terms “the psychology of religious imperialism,”⁶⁸ Rosa proceeded:

- Q: (Rosa) Don't you know that those two things are inconsistent to the Hawaiian mind, that whenever they have *awa* root and *awa* bowl, they pray to their *aumakuas*, they don't use the church prayer?
- A: (Johnny) I don't know (the) *aumakua* prayer.
- Q: What had the *awa* to do with it?
- A: The idea of drinking *awa* was to have assistance, the God, help.
- Q: Don't you know that the missionaries have taught us, taught you that *awa* and prayer . . . are inconsistent with the methods of Christians?
- A: I have not been.
- Q: Then you prayed to God in heaven to save you from doing a crime?
- A: No, I simply prayed that he would assist us in our going.
- Q: Well, that is your frame of mind, hey? That you can ask as a matter of Christianity, and your Christian teaching has been such that you can ask the Lord to protect you in the commission of a crime against your friend, a friend who has been good to the natives?⁶⁹

The defense, in presenting its case, focused on Paupau's preparation for the trip to Honolulu as evidence that the family had no plans to resist the doctor's orders. Testimony from Mika, a Native Hawaiian, revealed that he had drawn up a will for Paupau earlier that week in which all of her property was bequeathed to her two younger children.

Kaio testified that he had planned to accompany the two women and had made arrangements to purchase a new plough while in Honolulu. The witnesses did not deny that they were emotionally affected by the idea of separation.

Kapea took the stand in his own defense as the trial neared its end. The trial transcript reveals that the cadence of his responses was measured and sure. He explained that he had not left the premises all week because of a cold and that his two cousins were the perpetrators of the crime. Kapea's answers were direct and brief, and his words expressed without emotion. He was not betrothed to Pua. He had not spoken ill of the doctor. His cousins appeared to be scheming that fateful week and had not included him in their plans.⁷⁰

The Kapea trial had been in session for 11 days by the time the prosecution and defense rested their cases on November 25, 1897. During this period, it was accepted practice at trial for a juror or an opposing lawyer to interrupt the proceedings in order to ask a question of a witness on the stand. This procedure slowed the process since the questions and answers often required translation. The exchanges were tedious, and the translations no doubt suffered a degree of distortion in meaning. Even with night sessions on ten of those 11 days, the government was hard-pressed to complete the trial by November 27, the final day of the regular term of the Court. The Hawaiian press criticized the extended hours of the trial, noting that trial sessions lasting well into the night would hamper the jurors' ability to arrive at a fair and impartial decision. The editor of *Ke Aloha Aina*, commenting on the Kapea case one month after the trial, expressed the dismay of Native Hawaiians:

This is the kind of work that the Republic is carrying on at this time. It is something the jury sessions of the kingdom rarely did. [P]eople sitting and listening to serious cases like this one, have given good decisions . . . because they were given time to think seriously on the two sides.⁷¹ [Mookini trsl.]

The jury received the case on November 26 at 11:42 a.m. Three hours later it had reached a verdict. Kapea was found guilty of first degree murder; Kapea's father, Kaio, of being an accessory before the fact; and Upapa, of being an accessory after the fact. Defendant George Rathburn was found not guilty.⁷²

By statute, the Court could not impose sentencing until 48 hours after it rendered the verdict. The next term of Court would not be

until February 1898. The government was forced, therefore, to call a special jury session in order to impose sentence on Kapea and Kaio.

During the interval between Kapea's arrest and conviction, other capital criminal cases were being decided in the islands. Noa, who had been convicted and sentenced to hang in August 1897, received word at Oahu Jail that his execution would take place on December 13, 1897. On Maui, two other alleged murderers had been awaiting trial; Tsunikichi had been in jail since July 25, 1897, and Yoshida, since November 4, 1897. Early in December, following Kapea's conviction and sentencing, Attorney General W.O. Smith proceeded with the trials of both men. Like Kapea, Tsunikichi, and Yoshida were convicted of first degree murder and sentenced to hang.⁷³ The government appeared eager to speed up the process of executing convicted murderers.

The news from Washington regarding the 1897 Annexation Treaty was grim. Opposition to annexation had escalated with the support of new groups: United States sugar interests from California and the Midwest, organized labor, and those who objected to expansionism on historical, constitutional, and racial grounds.⁷⁴ For leaders like W.O. Smith and Lorrin Thurston, the most problematic opposition came from Lili'uokalani, who in December 1897 hastened to Washington to lead the fight against annexation. In addition the Hawaiian Patriotic League had collected more than 21,000 Native Hawaiian signatures in a petition against the Treaty that was presented to Congress in December.⁷⁵

On December 16, 1897, Kapea and Kaio were sentenced to die by hanging; Upapa received a sentence of three years at hard labor and payment of costs. Robertson and Rosa submitted motions for a new trial. Even before sentencing took place, *Ke Aloha Aina* lamented the uneven administration of the law.

We are with heavy and burdened hearts knowing that there is to be a hanging taking the life of a man on the gallows. This is like a pestilence on the Native Hawaiians of this land . . . [B]ut the precious life of the white-skinned haole will indeed be saved . . . [H]ere is another thing about murder. If there is a haole, the haole jurors will not dare to find their own kind guilty of murder in the first degree. They will look for a lighter sentence, perhaps in the second degree.⁷⁶ [Mookini trsl.]

With Judge Perry's denial of their motions for a new trial, the defense attorneys appealed the Kapea case to the Supreme Court of the Republic of Hawaii.

APPEAL TO THE SUPREME COURT

On January 11, 1898, A.G.M. Robertson submitted a brief that reasserted the 26 objections made by the defense during the lower court trial. These were questions of jurisdiction, the defective indictment, improper jury challenges, the lack of access to government witnesses, and certain elements of testimony. Twenty-five of these objections were readily dismissed by the Court. One objection, Judge Perry's charge to the jury on the degrees of murder, proved more troubling.

- (1) that the jury could not, under testimony in the case, convict Kapea of any offense less than murder in the first degree;
- (2) that the jury could not, under the testimony convict Kapea of murder in the second degree;
- (3) that their verdict as to Kapea should be guilty of murder in the first degree or not guilty.⁷⁷

Judge Perry further instructed that if the jury believed that Kapea had harbored feelings of ill will against Dr. Smith, planned the killing, waited for the doctor several nights in an attempt to kill him, and finally did shoot and kill the doctor, then Kapea was guilty of deliberate premeditated malice aforethought or murder in the first degree. The punishment was death by hanging.⁷⁸

Defense attorney Robertson contended that it was the jury's responsibility to establish the degree of murder, if murder was found. Robertson argued that Judge Perry had erred and invaded the jury's province. Undoubtedly, Robertson recognized the tendency of a sympathetic jury to find the lesser degree of murder, even in the face of overwhelming evidence of premeditated murder. This tendency became more pronounced when the defendant was a Native or part-Native Hawaiian. Judge Perry, however, maintained that the issue was well settled that the jury was not the judge of the law, as well as the facts, in criminal cases. His ruling made it impossible for the jury to find the defendant guilty of a lesser charge. The jury was to apply

the facts according to law laid down by the Court which was “deliberate premeditated malice aforethought.” Finally, this objection too was overruled by the court. On February 3, in an opinion written by Chief Justice Albert Francis Judd, the appeal was denied.⁷⁹

THE EXECUTION

A light rain fell as Kapea was led to the scaffold at exactly 10:00 a.m., on April 11, 1898. Dressed in overalls and a cotton shirt, his arms bound tightly against his body, Kapea looked curiously at the 50 or more gathered spectators. In contrast, the prison guards and Father Clement, the Catholic priest who led the procession, had their heads bowed. At the gallows, Kapea stepped onto the trap door, springing on it lightly as if to test its firmness. His indifference and nonchalance troubled many of the onlookers. Kapea was about to receive “the supreme punishment by law” and yet he demonstrated “neither fear nor nervousness.” He refused the customary last drink of brandy and asserted his desire to die naturally.⁸⁰

What accounted for Kapea’s composure? Most haole newspapers reporting on the execution were puzzled by Kapea’s demeanor. The *Evening Bulletin* observed that Kapea was “a man of sufficient intelligence to appreciate as fully as anyone his situation, but either he did not care or was entirely reconciled.”⁸¹ None of the newspapers suggested that Kapea’s self-possession was a measure of his guilt, his innocence, or a view of the proceedings that was entirely his own.

Earlier that morning, Marshal Arthur Brown had read the warrant of death to Kapea in the Warden’s office. Judge W. C. Wilcox interpreted in Hawaiian. Kapea had no last request except his wish to say farewell to his attorney. A.G.M. Robertson was immediately called to the office. In what must have been an emotional moment for lawyer and client, Kapea expressed his thanks for Robertson’s help during the past five months.

Kapea was silent as the guards placed the black cap and noose over his head. His pride and refusal to be dishonored by rough handling seem inherent in his last words, “Stop, you hurt my neck,” when the guard tightened the noose. Fourteen and one-half minutes later Kapea was dead.⁸²

In a nearby cell Kapea's father, Kaio, heard the rattle of the trap door. Minutes before Kapea was led from his cell, Kaio had received word that the Council of State had commuted his sentence.⁸³

EPILOGUE

Four months after Kapea's execution, on August 12, 1898, the Hawaiian flag was lowered at Iolani Palace, and the American flag was unfurled in its place before a crowd of onlookers—some jubilant, others visibly shaken by loss and grief. The reading of the Joint Resolution of Annexation signified the transfer of sovereignty, enabling Hawai'i to become a territory of the United States.

Not until 1903 would another execution take place; this time in the newly annexed Territory of Hawaii. During the 14 year interval between 1889, when the last executions of the Hawaiian Kingdom occurred, and 1903, the four men who were hanged during a span of four months (December 1897 to April 1898) stand out in sharp relief. All were from small neighbor island communities. All were non-white men.⁸⁴

Kapea's trial and execution were manifestations of a society in transition. The old was dying, and the men in power were eager to give birth to the new.⁸⁵ By 1897 Christian morality and western law had combined to create a social and legal order that diminished the political power of Native Hawaiians and undermined their traditions and values. Former ways of handling disputes, disregarded in the new commercial climate of Hawai'i, gave way to a stricter interpretation of statutes and procedures.

Many Native Hawaiians were troubled by the hasty actions of the men in power who used every legal means to bring the defendants in the Kapea case swiftly to trial. The urgency and force exercised by the prosecution seemed far disproportionate to the customary practice of administering cases. During the six months between the arrest and execution of Kapea, the defense attorneys and the Native Hawaiian press continued to admonish the government's aggression in its enforcement of laws.

Those who enforced the law were lawyer-politicians whose mission was to shape the processes of government to take advantage of rap-

idly changing political, social, and economic conditions. This alliance of well-known annexationists demonstrated their command of the law as a preeminent tool of control. They established laws and, when necessary to advance their purposes, found or created exceptions to their own rules and procedures. At the height of this transition, their insistence upon the death penalty revealed the lengths to which they would go to assert their authority.

The words of contemporary Hawaiian historian Jonathan Osorio might be applied to the Kapea case when, in speaking of the dismembering of the Hawaiian Nation, he declares, "This story is more than a tale of racism, intolerance, and greed." The Kapea trial may be seen as an account of men acting with "little understanding of [the Hawaiian] culture and often a limited understanding of their own."⁸⁶

The murder of Dr. Jared K. Smith was a tragedy for both a missionary family with a long history of service to Native Hawaiians and for a Native Hawaiian family with no record of criminality. After the trial Jared Smith and Kapea Kaahea quickly receded from attention, but other principals in the case went on to play major legal and political roles in the early years of the Territory of Hawaii. Illustrating the profound changes occurring in Hawai'i more than a century ago, the death of Dr. Smith and the trial and execution of Kapea reveal a history that compels continuing inquiry and reflection.⁸⁷

NOTES

¹ Kapea's family name was Kaahea, but throughout the prosecution of his case, he and other Native Hawaiians are referred to by their given names.

² Gavan Daws, *Shoal of Time: A History of the Hawaiian Islands* (Honolulu: U. of Hawaii P., 1968) 241.

³ Jonathan K. Osorio, *Dismembering Lāhui: A History of the Hawaiian Nation to 1887* (Honolulu: U. of Hawai'i P., 2002) 193–229.

⁴ Thomas J. Osborne, "Empire Can Wait": *American Opposition to Hawaiian Annexation, 1893–1898* (Kent, OH: Kent U. P., 1981) 34.

⁵ Osborne, "Empire Can Wait," 34.

⁶ Osborne, "Empire Can Wait," 36.

⁷ William Adam Russ, Jr., *The Hawaiian Republic (1894–1898) and Its Struggle to Win Annexation*, (Selinsgrove, PA: Susquehanna U. P., 1992 [1961]) 317.

⁸ Noenoe K. Silva, *Aloha Betrayed: Native Hawaiian Resistance to American Colonialism* (Durham & London: Duke U. P., 2004) 145–46; Tom Coffman, *Nation Within:*

The Story of America's Annexation of the Nation of Hawai'i, (Kaneohe, HI: Epicenter Press, 1998) 232; Osborne, "Empire Can Wait," 85.

- ⁹ Daws, *Shoal of Time*, 267.
- ¹⁰ Daws, *Shoal of Time*, 292.
- ¹¹ Jane Silverman, "Imposition of a Western Judicial System on the Hawaiian Monarchy," *HJH* vol. 16 (1982) 48–64.
- ¹² "Colonialism and Capital Punishment: Race, Class, and Legal Symbolism" in *America Without the Death Penalty: States Leading the Way*, edited by John F. Galihier, Larry W. Koch, David P. Keys, and Teresa Guess (Boston: Northeastern U. Press, 2002) 147–169. See also Helen G. Chapin, *Shaping History: The Role of Newspapers in Hawai'i* (Honolulu: U. of Hawai'i Press, 1996) 25; Joseph Theroux, "A Short History of Hawaiian Executions, 1826–1947," *HJH* vol. 25 (1991) 147–59. Although Galihier et al. and Theroux list executions from 1826, official government records of capital cases began in 1893, with the execution of Noa.
- ¹³ Mary C. Alexander and Charlotte P. Dodge, *Punahou 1841–1941* (Berkeley: U. of California P, 1941) 384. Margaret Brewer was a teacher and principal of Punahou Preparatory School in the 1890s.
- ¹⁴ Description of the events surrounding the murder are taken from newspaper accounts that appeared after the murder and from the Supreme Court of Hawaii Decision, 11 Hawaii 293 (1898).
- ¹⁵ *Evening Bulletin*, 27 Sept. 1897.
- ¹⁶ *EB*, 27 Sept. 1897.
- ¹⁷ Penal Laws of Hawaii, Ch. 62, para. 989 (1897): "The Board of Health, or its agents, are authorized and empowered to cause to be isolated and confined . . . all leprous patients . . .; and it shall be the duty of every District Magistrate, when [asked] by the Board of Health or its authorized agents, to cause to be arrested and delivered to the Board of Health or its agents, any person alleged to be a leper . . ."
- ¹⁸ Evelyn E. Cook, *One Hundred Years of Healing: The Legacy of a Kaua'i Missionary Doctor* (Koloa, HI: Halewai Publishing, 2003); Francis J. Halford, M.D., *9 Doctors and God* (Honolulu: U. of Hawaii P, 1954).
- ¹⁹ *EB*, 27 Sept. 1897.
- ²⁰ One newspaper heralded the "Fine generalship of Attorney W.A. Kinney." *PCA*, 2 October 1897.
- ²¹ Dr. Smith kept meticulous daily notes on work done in his fields. See Smith Collection, HHS.
- ²² Pua was twelve years old, and during the trial questions were raised about her relationship to Kapea.
- ²³ *EB*, 1 Oct. 1897.
- ²⁴ *EB*, 1 Oct. 1897.
- ²⁵ *PCA*, 2 Oct. 1897. An editorial appearing shortly after Dr. Smith's murder commented, "It is a law, moreover, which punishes with perpetual banishment those who have committed no crime."

- ²⁶ Arthur A. St. M. Mouritz, *The Path of the Destroyer: A History of Leprosy in the Hawaiian Islands* (Honolulu: Star Bulletin Press, 1916) 70–76; Edward Joesting, *Kauai: The Separate Kingdom* (Honolulu: U of Hawaii P and Kauai Museum Association, 1990) 235–239.
- ²⁷ *PCA*, 4 Oct. 1897.
- ²⁸ Mouritz, *The Path of the Destroyer*, 58–59.
- ²⁹ Ralph S. Kuykendall, *The Hawaiian Kingdom 1874–1893, Vol. 3, The Kalakaua Dynasty* (Honolulu: U of Hawaii P, 1967) 423.
- ³⁰ Jon M. Van Dyke, “The Trial of Liliuokalani, February 1895,” in *Trial of a Queen: 1895 Military Tribunal* (Honolulu: Judiciary History Center, 1995) 1.
- ³¹ The story of Ko‘olau’s resistance to the leprosy law has been told and retold by historians, medical officers, government officials, and by Ko‘olau’s wife, Pi‘ilani in Frances N. Frazier (Transl.), *The True Story of Kaluaikoolau as Told by His Wife Pi‘ilani* (Lihue HI: Kauai Historical Society, 2001). See also Frances N. Frazier, “The Battle of Koolau as Reported in the Newspaper *Kuokoa*, *HJH* vol. 23 (1989) 108–118.
- ³² There is some doubt that Ko‘olau killed the third soldier. See Joesting, *Kauai: The Separate Kingdom* 237, “A third soldier was killed when he accidentally shot himself in the head;” Mouritz, *The Path of the Destroyer*, 75, “Whether Koolau was responsible for the killing of this soldier is doubtful.”
- ³³ W.O Smith, letter to R.S. Goodhue, October 4, 1897, Attorney General Letter Books, vol. 12, 407–8, AH.
- ³⁴ Descriptions of the plan appear in the daily newspapers of that day and in Supreme Court Decision 11 Hawaii 293 (1898).
- ³⁵ Supreme Court Decision, 11 Hawaii 293 (1898) 296–97.
- ³⁶ Koloa District Court, Fifth Judicial Circuit, September 30, 1897, *Republic of Hawaii v. Kapea, et al* (Cr. 2472), hereinafter *Kapea* (Cr. 2472).
- ³⁷ *PCA*, 2 Oct. 1897.
- ³⁸ Deaths (Kaulapapa) HD 3:226; HD 3:320, AH.
- ³⁹ Civil Laws of Hawaii (1897).
- ⁴⁰ Circuit Court, Fifth Judicial Circuit, November 10, (1897), *Kapea* (Cr. 2472).
- ⁴¹ *Ke Aloha Aina*, 6 Nov. (1897).
- ⁴² *Kapea* (Cr. 2472), 10 Nov. 1897.
- ⁴³ *PCA*, 4 Oct. 1897.
- ⁴⁴ W. O. Smith, “The Police,” HAA (1898) 97–99.
- ⁴⁵ William A. Russ, Jr., *The Hawaiian Revolution (1893–94)*, (Selinsgrove, PA: Susquehanna U. Press, 1992 [1959]) 90.
- ⁴⁶ *Republic of Hawaii v. Noa* (Cr. 2404), First Circuit Court (1897); *Republic of Hawaii v. Yoshida*, 11 Hawaii 334 (1898); *Republic of Hawaii v. Tsunichichi*, 11 Hawaii 341 (1898).
- ⁴⁷ Albertine Loomis, *For Whom Are the Stars?* (Honolulu: U. of Hawaii P, 1976) 212.
- ⁴⁸ Loomis, *For Whom Are the Stars*, 190–191.
- ⁴⁹ Agnes Quigg, “Kalakaua’s Hawaiian Studies Abroad Program,” *HJH* vol. 22

(1988) 170; Kuykendall, *The Hawaiian Kingdom 1874–1893*, 298; Loomis, *For Whom Are the Stars?*, 218.

- ⁵⁰ *Republic of Hawaii v. Noa*, (Cr. 2404) (1897).
- ⁵¹ George Morison Robertson (1821–1867), Biography File, AH.
- ⁵² Loomis, *For Whom Are the Stars?*, 189. A.G.M. Robertson had a long and distinguished career as lawyer, jurist (Chief Justice of the Supreme Court of Hawaii), and public servant. He was Chief Counsel for the Hawaii Statehood Commission in 1948 before hearings in Congress. Biography File, AH.
- ⁵³ Antonio Perry had a notable career as a jurist from 1894–1934. He was appointed Chief Justice of the Supreme Court of Hawaii in 1926 after serving two separate terms as Associate Justice of the Court. Biography File, AH.
- ⁵⁴ Two sources provide information on the trial: (1) the original transcript of the First Circuit Court trial, hereinafter cited as TR; (2) the complete record of the case from Preliminary Hearing to Appeal (Supreme Court of Hawaii), Microfilm Box A-8, (Cr. 2472), located in the Records Office of the First Circuit Court in Honolulu.
- ⁵⁵ TR, Nov. 13, 1897 (First Day).
- ⁵⁶ TR, Nov. 13, 1897, 11.
- ⁵⁷ TR, Nov. 13, 1897, 14.
- ⁵⁸ TR, Nov. 13, 1897, 32–33.
- ⁵⁹ TR, Nov. 13, 1897, 8, 10.
- ⁶⁰ TR, Nov. 13, 1897, 22–23.
- ⁶¹ EB, 17 Nov. 1897.
- ⁶² “Colonialism and Capital Punishment,” 151.
- ⁶³ *Kapea* (Cr. 2472).
- ⁶⁴ TR, Nov. 18, 1897 (Fifth Day), 61–63; November 25, 1897 (Eleventh Day), 13–14.
- ⁶⁵ TR, Nov. 18, 1897 (Fifth Day), 59–60.
- ⁶⁶ TR, Nov. 18, 1897, 39–40.
- ⁶⁷ TR, Nov. 18, 1897, 87.
- ⁶⁸ Chinhua Achebe, *Home and Exile* (Three lectures at Harvard in 1998) (New York: Oxford U. P., 2000) 12.
- ⁶⁹ TR, Nov. 20, 1897 (Seventh Day), 12–13.
- ⁷⁰ TR, Nov. 25–26, 1897 (Eleventh Day, Twelfth Day).
- ⁷¹ *Ke Aloha Aina*, 25 Dec. 1897.
- ⁷² Supreme Court Decision, 11 Hawaii 293 (1898) 297.
- ⁷³ *Republic of Hawaii v. Yoshida*, 11 Hawaii 34 (1898); *Republic of Hawaii v. Tsunichichi*, 11 Hawaii 341 (1898).
- ⁷⁴ Osborne, 85–109; Russ, *The Hawaiian Republic (1894–98)*, 334–337.
- ⁷⁵ Silva, *Aloha Betrayed*, 145–159.
- ⁷⁶ *Ke Aloha Aina*, 25 Dec. 1897.
- ⁷⁷ Supreme Court Decision, 11 Hawaii 293 (1898) 307.
- ⁷⁸ Supreme Court Decision, 11 Hawaii 293 (1898) 307–308.
- ⁷⁹ Supreme Court Decision, 11 Hawaii 293 (1898) 314.

⁸⁰ *PCA*, 12 Apr. 1898.

⁸¹ *EB*, 11 Apr. 1898.

⁸² *EB*, 11 Apr. 1898.

⁸³ *PCA*, 11 Apr. 1898. The Council of State took thirty minutes to commute Kaio's sentence.

⁸⁴ "Colonialism and Capital Punishment," 147–148.

⁸⁵ Antonio Gramsci, *Selections from the Prison Notebooks of Antonio Gramsci* (New York: International Publishers, 1971) 276. ". . . [the] old is dying and the new cannot yet be born; in this interregnum a great variety of morbid symptoms arise."

⁸⁶ Osorio, *Dismembering Lāhui*, 3.

⁸⁷ Esther Arinaga first wrote about the Kapea case for a legal history class, taught by Professor Mari Matsuda at the William S. Richardson School of Law in 1984. Criminal Law Professor Addison Bowman offered access to the original trial transcript, and Esther Mookini provided translations of Hawaiian newspaper accounts of the case. Returning to this interest after many years, Arinaga invited writer Caroline Garrett to join her in investigating avenues of inquiry provoked by this capital case. Their article provides an overview of events that are the basis of ongoing research and collaboration.