

Judge Cristy and the Grand Jury

The whites who murdered Joseph Kahahawai almost escaped without facing trial. Despite overwhelming evidence, a majority of the members of the Grand Jury convened to examine the evidence were strongly set against returning any indictments in the case. It was essentially one person, Judge Albert M. Cristy, First Circuit, Territory of Hawaii, who was responsible for getting the Grand Jury to indict the defendants.

The Grand Jury convened on Thursday, January 21, 1932. Based on the names of the Grand Jury members it appears that nineteen were Caucasian, one was Hawaiian and one was Chinese. The Grand Jury began deliberations on Friday. Early on during their deliberations, it was clear from questions the Grand Jury had for Judge Cristy that they were looking for reasons not to indict. Judge Cristy re-emphasized the need for them to be impartial. Later the Grand Jury foreman indicated that twelve grand jurors had voted that no bill should be presented against any of the defendants for first degree murder or kidnapping. Judge Cristy refused the no bill and admonished the Grand Jury to not act hastily and directed them to reflect upon their duty. He then adjourned the Grand Jury until the following Tuesday. One of the grand jurors, E.E. Bodge, asked Judge Cristy, "Do I understand you are not accepting this report?" Judge Cristy responded:

There has been nothing presented to me. The Court refuses to accept any further report until the Grand Jury deliberates further upon matters of serious import to the Territory. After Tuesday I will talk to you. I will ask you to seriously deliberate upon it until you return for your deliberations at 10 o'clock on Tuesday next.

The next Tuesday, Judge Cristy excused E.E. Bodge from the Grand Jury because Mr. Bodge had just accepted an appointment to the newly-created Police Commission. Mr. Bodge stated he was willing to serve in both positions, but he agreed with the judge's decision. Judge Cristy was also worried that jurors would side with the defense and justify the kidnapping and murder as an honor killing under the "unwritten law." He told them that under the laws of the Territory of Hawaii no man can kill another unless in legitimate self defense or unless as a police officer justified by official duties. Judge Cristy explained that "Under the laws of the Territory the taking of human life by private citizens, in the nature of a lynching or its equivalent, is prima facie murder. . . ." Judge Cristy, who was white, asked the jurors to "lay aside all race prejudice" and impartially deliberate on the matter before them. After answering more questions from the jurors Judge Cristy assured them he had no intention to "coerce the minds of this jury" and the Court was under a solemn duty, as were the jurors. He also told them:

Further, let's get down to common sense on the situation. You are all religious men, as I know, and God has not left this world for an instant, and if you will sit with your God and your conscience under the evidence, your duties will clarify themselves in your own minds.

Right to No Bill?

A juror insisted they had voted a no bill on the indictments on Friday and the foreman was directed to report the no bill to the judge. The juror asked "Have we a right to bring in a bill or

no bill?” Judge Cristy responded that he was not trying to coerce their consideration of the facts, however:

No matter is finished by this Grand Jury until a report is received in open Court and filed, and this Court refused at the last session to receive and file a report, feeling it was necessary for the Jury to further consider the facts and the law, so there is no finished business until the jury is ready to make a report in open Court and the Court receives and files that report.

Not a Threat But Deliberations Are Not Completely Sealed

A juror then told Judge Cristy that he thought some of the jurors did not understand or were purposely evading their oath of office. Judge Cristy responded:

Those matters I will have to leave with you in your own consciences. Frankly, this is a thing for your information, and you will please not take it as a threat from the Court, but a thing you are entitled to know, — The deliberations of this jury are not completely sealed from any investigations; that if it appears from this Court on proper motion that there has been a situation requiring action by the Court, the Court can require evidence to be taken as to what transpired in the Grand Jury room. So, don't for a moment go under the misapprehension there is no way in the world by which matters which are pertinent to the administration of justice cannot be investigated and disclosed. I am not saying that in any way for the purpose of attempting to coerce you, but so you may understand that the Grand Jury is a body for one purpose and one purpose alone,— that is to listen to the evidence and perform the duties necessary under the evidence

Manslaughter?

Another juror asked if they voted a “no bill” on all three charges whether they should then vote on manslaughter. Judge Cristy answered that a manslaughter indictment was not before them. Another juror asked if after the Grand Jury was discharged whether any member has “the right to show the records as to how he stood, as a protection for himself and the community in which he lives?” Judge Cristy responded:

The only answer I can give to you on that is that the community and the Court know that it requires the vote of twelve men to bring in an indictment, and if, for reasons that are legitimate and not within the instructions the Court has given this jury, the jury is unable to get twelve men to do what might thereafter appear to be a miscarriage of justice, the juror will have to content himself for the time being with the fact and knowledge that the community has not gone insane, and will recognize the fact that there are some on one side and some on another, and any censure that might be raised, if censure was necessary, which the Court is not indicating any opinion on, it would be of course directed towards those who had committed the censorious act. Whether ultimately the facts as to the sheep and goats, if that condition prevailed, were opened, is a matter for time hereafter to tell and not for the time being.

Judge Cristy then informed the juror that it would be a misdemeanor punishable with a fine to disclose the Grand Jury proceedings.

The Grand Jury took another vote and it came out the same as the previous week, except that it was nine for and eleven against indictment because one jury member had been dismissed by the judge. But when Judge Cristy came to hear the vote, the jury foreman told him that he did not have a report to make. They broke for lunch and during this break one of the jurors read an editorial in the *Star Bulletin* which stated that given the evidence, an indictment was the only proper action by the Grand Jury. This editorial was passed to the other jurors. Another vote was taken, but still there was no indictment and the jury foreman again refused to make a report. This was followed by another vote in which the defendants were indicted for murder in the second degree by a vote of 12 to 8. Judge Cristy accepted the report along with the resignation of two jurors who had voted against the indictment.

Judge Cristy Requests Legal Research

After the defense filed a motion to quash the indictment, Judge Cristy took the unusual step of writing a letter dated January 30, 1932 to Lawyers Cooperative Publishing. He asked if their research department could research the legality of his actions before the Grand Jury, including whether the Court had authority to refuse a report of a “no bill” and to “call upon Grand Jurors for further calm reflection so that their judgment ultimately cannot be exercised on the ground of ignorance of the law or hasty judgment.” He also asked about the power of the court to resubmit the matter to the same Grand Jury as he had done, whether his directions to the jurors were “coercive in a legal sense,” and what the judge’s rights are under these circumstances. Judge Cristy also asked whether the defendants’ attorneys had the right to examine minutes of the Grand Jury’s earlier deliberations, when they had attempted to return “no bills.”