

H. BRETT MELENDY

Delbert E. Metzger, Hawai'i's Liberal Judge

FEDERAL JUDGE DELBERT E. METZGER was one of Hawai'i's pioneer liberal Democrats until his death in 1967. Throughout the islands' territorial years, he demonstrated an unquenchable thirst for public office. A controversial figure in the eyes of the conservative Big Five sugar factors and their interlocked directorates, he proved a ray of hope to Hawai'i's workers.

He was born on March 4, 1875, in Ozwakie, Jefferson County, Kansas, a small town located on the shores of Lake Perry, some 15 to 20 miles northeast of Topeka. His parents died prior to 1879, leading to a difficult and strange childhood. In 1880, he and his older brother Ford were living with their grandparents, Jacob and Cathrine Metzger. After attending private and public schools, he enrolled in Topeka's Washburn College for one year, 1893–94.

He started his business career at the age of 20 as a realtor and grain dealer, apparently working for his uncle, Eli W. Metzger of Meridan, Kansas, a few miles west of Ozwakie. From 1895 to 1897, he searched for his occupational niche. He was joint publisher of the *Meridan Tribune* until it was sold. He tried his hand as a theatrical producer and an accountant. He served briefly as Meridan's justice of peace and city attorney without any apparent prior legal experience. According to L. M. Whitehurst, Chief Engineer for Honolulu's Department of Public Works, Metzger was also a "mining engineer" in Montana and eastern Oregon.¹

Kansas, during his time there, was billed in the 1870s and 1880s as

H. B. Melendy is professor emeritus of history at the University of Hawai'i.

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a land of milk and honey. He was greatly influenced, however, by the economic disaster that confronted the small farmers of the Midwest who had chanted "In God we trusted, In Kansas we busted." During his years at Meridan, the Granger movement and the Northwest Alliance of Farmers fought bankers, middlemen, and railroads.² This experience led him to sympathize with Hawai'i's plantation and blue collar workers.

In 1898, he volunteered as an engineer during the Spanish American War. The Army had sent his detachment to Oahu in 1899 to make the first land survey of Pearl Harbor. Metzger became a permanent resident of Hawai'i in 1899 and Lucius E. Pinkham employed him to drill artesian wells on O'ahu, Hawai'i, and Kauai plantations and on Niihau. When owners denied any responsibility to a worker or to his widow when workers had accidents or were killed using drilling equipment, Metzger became greatly upset, leading him later to introduce legislation to provide for workers' compensation. In 1900, the year that saw the beginnings of political parties in Hawai'i, he joined two others to organize the Democrat Party on Kauai. The Hawaiian's Home Rule Party proved successful in 1900 but Republicans dominated territorial politics from 1902 until 1954. Metzger thought that Kauai's Hawaiians would support the Democrats but the Home Rule Party won the Hawaiian vote. When Republicans gained control in the following election, they awarded Hawaiians patronage jobs. Democrats, without patronage, were able to woo only a few Hawaiians.³

Metzger's association with Pinkham in their drilling operations ended when Governor George Carter appointed Pinkham as President of the Territorial Board of Health in 1904. Metzger went to work first for Benjamin F. Dillingham, first at the Oahu Railway & Land Company and then as superintendent of Benjamin Dillingham's Hilo Railroad Company that served the Olaa sugar mill.⁴

During his years as superintendent, he became interested in politics. In July 1907, he sought Walter Dillingham's advice about running for public office. In later years, Dillingham, founder of the Hawaiian Dredging Company, became an economic and political power equaling that of the Big Five interests. Dillingham, with little knowledge then of Big Island politics, recommended remaining uninvolved. He worried that if Metzger ran for office and lost, his defeat might hurt the railroad. Dillingham thought Metzger might better encourage a

candidate seeking to represent the Big Island at the territorial Democratic convention. Having said that, Dillingham opined that a person, even after receiving advice, had to decide the question for himself.⁵

Congress in 1907 appropriated funds to build a breakwater at Hilo Harbor and Metzger received the first contract, worth \$400,000 in his own name. The Dillingham interests backed him as a person known to them and knew he would contract with their railroad to carry rock from a Puna quarry to the breakwater site. The Dillinghams soon felt that Metzger had treated them unfairly by haggling about hauling fees. They tied up his bank assets through legal action but Metzger was able to keep most of his resources. Walter Dillingham held a deep enmity for Metzger thereafter.⁶

The 1909 territorial legislature created the Territorial Harbors and Docks Commission to investigate charges by Neighbor Island small farmers that private docks discriminated against them and overcharged. The commission, consisting of Metzger, Hugh Howell of Maui, and J. H. Moragne of Kauai found that plantations received preferential treatment and that the docks discriminated against small farmers.⁷ Thus began Metzger's career of championing Hawai'i's underdogs.

Metzger sought election to the Territorial Senate in 1910. Given the Republican Party's entrenched power in the Big Island's First Senatorial District, he lost but by only a few votes. Encouraged by his showing, he tried again in 1912 and won, joining nine other Democrats in the Senate. He served until 1915.

With Woodrow Wilson's 1912 election as President of the United States, Hawaii's Democrats had their first opportunity to control the territorial governorship. Three prominent Honolulu Democrats, Lincoln L. McCandless, Gilbert J. Waller, and Edward M. Watson announced their candidacies. With McCandless and his cohorts in control of the territorial central committee, other Democrats coalesced to oppose McCandless. Senator Metzger characterized McCandless as a "really very active capitalist of considerable wealth, whose holdings are largely in sugar stocks, public utilities and numerous small tracts of lands, and whose pastime is politics." He described Waller, a member of the Reorganized Church of Latter Day Saints, as a "wealthy beef and meat merchant with a religious turn of mind."⁸

Watson, Metzger's choice for governor, had suffered stroke in 1912, making his candidacy doubtful.

It soon became clear that these three candidates had not gained favor with the Wilson administration and Metzger wrote Secretary of Interior Franklin Lane and Secretary of State William Jennings Bryan that if Watson's health disqualified him, Metzger wanted to be considered for the position. The Wilson administration delayed naming a governor and Metzger traveled to Washington D.C. to push his own candidacy. Wallace Farrington, Republican publisher of the *Honolulu Star-Bulletin*, informed California Republican Congressman William Kent that Metzger had shown progressive views as a freshman senator, much in keeping with the ideals of the Wilson administration. Farrington favored Metzger over the three announced candidates despite the fact that Metzger's legislative record did not impress him. Farrington also believed that the Organic Act of 1900 that prohibited appointment of elected officials to territorial office disqualified Metzger from the governorship.⁹

E. A. Jewett, a small businessman in Hilo, wrote in 1930 that Metzger introduced "more good legislation for the common people than anyone had done since." He reported that among Metzger's bills were worker compensation and pensions for school teachers. Howell, a member of the Harbors and Docks Commission, wrote in 1913 to Interior Secretary Franklin K. Lane that Metzger was endowed with a "soundness of view, keenness of vision, and [a] high sense of fairness and justice and fearlessness."¹⁰

Carl S. Carlsmith, a prominent Hilo attorney, also commented favorably in 1913 on Metzger's impact as a senator:

During the session of the legislature just closed, Mr. Metzger introduced and fought for more progressive measures than any of the other Senators and his work has been generally accepted by both his friends and opponents as in the highest degree brilliant and successful. He introduced and worked for the passage of a public utility bill which if passed would have placed this Territory in the advance guard of American states in the protection of the public against the activities of powerful public service corporations. I think you can scarcely understand the courage which his action in this matter required. The most powerful and wealthiest interests of the Territory were opposed to him. As a result of his work an act was passed which while it differs from his own bill is a step forward which can be completed at the next session.

In his public life and as well as in his business and personal actions, Mr. Metzger has exemplified in an excellent degree the type of American manhood of which we can justly be proud. Like most advanced thinkers and men of action he has not failed to bring down upon him powerful and wealthy opponents.¹¹

In Washington, Metzger, in a meeting with President Wilson, said that Watson was “the best man in the Territory for the place [governor] and I believe I am the second best man. . . .” Metzger informed Congressman Kent that Wilson and Lane had not revealed their views about Watson. In early June, Joseph Tumulty, Wilson’s private secretary, informed John H. Wilson, National Democratic Committeeman from Hawai‘i, that the three men seeking the office were no longer under consideration. Those now on the White House list were Samuel Damon, A. A. Wilder, Lucius Pinkham and Metzger. John Wilson felt that none of these four was competent to lead the territory.¹² Wilson, still holding out for McCandless, said that Metzger had too many voting irregularities to be pleasing to island Democrats. Meanwhile, Kent was lobbying his fellow Californian, Secretary Lane, to gain the nomination for Pinkham, an effort that led to the latter’s appointment.¹³

Metzger cabled Secretary Lane that he wished to apply for the office of Secretary of the Territory. When Lane inquired of Pinkham about Metzger, the governor asked Lane to delay replying. Pinkham added that he had brought Metzger to Hawai‘i to work for him and “he was a most faithful and trusted representative in one of his departments of business.” He also noted that Metzger had applied for every federal and territorial “position of profit.” Pinkham also reminded Lane that a member of the territorial legislature was ineligible for territorial or federal appointive offices while his term was still in effect and intimated that Metzger already knew he was ineligible. Pinkham recommended Honolulu attorney Wade Thayer to be territorial secretary and Thayer gained the appointment.¹⁴

Metzger took Lane to task for ruling that a legislative member was ineligible to appointment to either a territorial or federal position. Metzger claimed that no island Democrat would knowingly disqualify himself from holding a federal position. He observed that the Territorial Senate was packed with Republican plantation managers and corporation lawyers with salaries from \$8,000 to \$12,000 that contin-

ued while the Senate was in session. They would not accept a federal position unless their employers urged them to do so. In order to build the Democratic Party in the islands, he argued, it was necessary to have "honest, intelligent, capable men get the local federal offices of trust and responsibility." Not to be deterred, Metzger was soon a candidate for Collector of the Port of Hawaii. Lane, alerting Secretary of the Treasury William Gibbs McAdoo of the application, indicated that the Organic Act disqualified Metzger since he was currently a territorial senator.¹⁵

After his Senate term ended, Metzger returned to Hilo where he became District Magistrate for South Hilo from May 9, 1917, until June 22, 1918.¹⁶ The 1900 Organic Act established the territorial court system consisting of a federal district court, a three member supreme court, and five circuit courts assigned to the various islands. Of these, the Big Island had two circuits, the Third in Kona and the Fourth in Hilo. Beneath the circuit courts were 29 district courts that heard civil cases involving less than \$300 in damages and certain misdemeanors.

Governor Pinkham, with no support from the McCandless faction of the Democratic Party, had a difficult four years and the Wilson administration sought a successor. Metzger wrote to President Wilson in March 1918 that he supported long time island Democrat James Coke to be the next governor. However, with Coke's appointment as Chief Justice of the Territorial Supreme Court, Metzger applied for the office. Wilson, upon the advice of Interior Secretary Lane, appointed Territorial Treasurer Charles McCarthy to be governor.¹⁷

McCarthy appointed Metzger territorial treasurer and he took office on June 22, 1918. As treasurer, he headed the taxation department, was insurance commissioner and served on the territorial Harbors and Docks Commission. He was also a member of the Mutual and Fraternal Benefit Societies Commission and the Farm Loan Board. When Republican Governor Wallace Farrington took office, he removed Metzger from these offices on June 30, 1921.¹⁸

Metzger returned to Hilo, where, according to John H. Wilson, he opened a bank only to meet fiscal opposition from the Big Five who denied him their business. He returned to the mainland and enrolled in the Indiana Law School. In 1923, he passed the bar examination, gaining admission to the territorial bar. On January 31, 1930, to the

dismay of sugar interests, particularly on the Big Island, he asked Herbert Hoover's Attorney General William D. Mitchell to recommend him for the Fourth Circuit judgeship to replace Homer C. Ross, the incumbent judge. President Warren Harding had appointed Ross, a Republican, in 1921. Ross sought reappointment as his second term expired in 1929 but encountered difficulty because of charges from several quarters that the territorial supreme court had reversed too many of his rulings. Hilo attorney Charles Weatherbee claimed that 12 of 20 cases were reversed during Ross' second term. Weatherbee claimed that reversals stemmed from Ross' decisions "against litigants of small means and influence."¹⁹

Metzger claimed that the Hawaiian Bar Association endorsed him. Many of these attorneys were Republicans. The Justice Department received more than 30 letters of endorsement but Big Island lawyers contested Metzger's claim of Bar Association endorsement. Over the years, he had made a wide range of friends among small businessmen and several ethnic groups. According to Walter H. Schoening, a Hilo dentist, "many persons with plenty of troubles but small purses have found him out, for he is always sought after and is busy, but has acquired less property than most other lawyers." W. H. Hill, Treasurer and Manager of The Realty Investment Company of Hilo, wrote:

We doubt if the plantation owners or sugar interests have any fault with the present order of things, but we believe that the great majority of the population would feel a particular security and protection in having Mr. Metzger as judge. . . . Mr. Metzger would give everyone an impartial square deal, in accordance with his views of the law.²⁰

Republicans, representing the Big Five and their interlocked companies, called for Ross' reappointment. Harry Irwin, former territorial Attorney General and a Hilo lawyer, led the attack against Metzger. He reported that the County of Hawaii members of the bar favored Ross. Nine of the 12 Big Island lawyers signed a resolution favoring Ross. Two attorneys, absent in Honolulu, did not sign but favored Ross. Only Metzger refused to sign because he was a Democrat and opposed Ross for personal reasons. Irwin wrote to Delegate Victor S. K. Houston that the Hawaii Bar Association violated precedent when it did not accept the recommendation of Big Island lawyers as

it had previously. He claimed that leading Democratic attorneys in Honolulu had gained the bar's endorsement for Metzger.

Irwin added that Metzger, while hard-working, was not a well-trained lawyer. He said that Metzger as District Magistrate "was extremely arrogant in his attitude toward attorneys and stubborn in his views." Further, Metzger was "a rabid Democrat and during the last Presidential campaign was an active supporter of Governor Smith and a violent critic of President Hoover."²¹

James Webster, manager of the Pepeekeo Sugar Company, wondering why any change was needed, wrote that "I know that . . . the community in which I have the good fortune to live . . . is undivided in its call for the reappointment of Judge Ross." Walter Dillingham's dislike for Metzger resurfaced in a letter to Delegate Houston. He wrote that Metzger's appointment would be a calamity for he was "morally, scholastically and politically absolutely unsuited. . . . Personally I have never felt a more strongly civic responsibility of preventing an appointment."²²

John Ross, Republican County Committee Chairman for the Big Island, informed Houston that Hilo's business interests wanted to counter Metzger's letter writing campaign but Judge Ross opposed such a move for it could "give the opposition the loop-hole of saying he was a sugar man, a big business man and so forth, you know the sob stuff, and I think he was right. . . ." Houston sent Attorney General Mitchell the views of Republican Governor Lawrence Judd who endorsed Ross; those of Judge Emil Peters, a Republican, who said he stood behind the bar association's endorsement of Metzger and would not be drawn into the controversy; and those of Democrat Judge James Coke who saw the "unusual number of reversals by the Supreme Court" a major reason for Ross' removal and Metzger's appointment. Houston discounted the bar association's vote as he reported that Metzger received 35 votes to Ross' 28 saying that these votes in no way represented the views of the majority of the attorneys.²³ Metzger's fight for the nomination came to naught as Ross gained reappointment.

For the second time in the twentieth century, Democrats won the White House with the 1932 election of Franklin D. Roosevelt. Hawai'i's Democrats now would have a governor hopefully of their own choosing. As in 1913, factional politics squandered this oppor-

tunity. Lincoln McCandless, after years of trying, had won election as Hawai'i's Delegate to Congress. Hawai'i's Democratic Central Committee named McCandless as its first choice for governor and Metzger as its second candidate. Neighbor Island committeemen wanted Honolulu Mayor John H. Wilson as the second choice. Four other island Democrats were seen as possible candidates. Wilson, who had gone to Washington to advance his own nomination, found that Roosevelt would not appoint any person then holding elective office, thus eliminating McCandless. By the Spring of 1933, Secretary of Interior Harold L. Ickes and Louis B. Howe, Roosevelt's confidential adviser, felt that none of the candidates were worthy of consideration.²⁴

Following Roosevelt's election and during the 1932-3 Ala Moana and Massie Cases involving the alleged rape of Navy wife Thalia Massie by local men and the murder of Joseph Kahahawai led to racial tensions in Hawai'i and on the mainland. Admiral William V. Pratt, Chief of Naval Operations, radioed a secret code message to Admiral Yates Stirling at Pearl Harbor, asking what effect the appointment of Metzger as governor would have on the Navy and whether his appointment would lead "to cordial relations under a regime of law and order."²⁵

It became known in Hawai'i during November 1933 that Ickes had stated that no local person measured up to his requirements and it might be better to appoint a mainlander who was not under the control of sugar interests. This statement immediately prompted a letter from Metzger that agreed with Ickes that sugar interests dominated Hawaiian politics but the Secretary was wrong that "all Democrats of prominence in the Territory are in some manner subservient to or influenced by this power." In a rambling letter he recounted his own career as a fighter against the sugar interests and included a diatribe against Walter Dillingham who was pleased, Metzger argued, that the delay in replacing Governor Judd benefited Republicans. Ickes, in a reply seeking to clarify his statements, did not, he said, claim that Democrats were under the influence of the sugar interests, but, he added, he "was not yet able to see my way clear to recommend for appointment as Governor any of the names submitted to me for consideration."²⁶ Metzger also wrote Postmaster General James Farley in the fall of 1933 about the governorship, noting that the Central Committee had only given McCandless a complimentary endorsement but had really selected Metzger and that the Roosevelt administra-

tion should not delay in replacing Judd whose actions were denying Democrats their benefits of political patronage. He indicated that out of 4,492 salary warrants issued in July, apart from a few school teachers, not one Democrat was on the territorial payroll.²⁷ Once more, Metzger's quest for appointment failed as the Roosevelt administration selected Joseph Poindexter to be governor.

A new campaign soon began to appoint Metzger as Fourth Circuit Judge to replace Homer Ross whose term expired on May 15, 1934. On April 13, Metzger forwarded to Attorney General Homer Cummings a petition from the territorial bar association, signed by 46 members, endorsing him. In addition, 12 Honolulu lawyers sent personal letters. Eighteen County of Hawaii officials also recommended Metzger as did the territory's Democratic Party Central Committee. Four members of the Big Island members of the Central Committee protested this latter endorsement, arguing that they were not consulted.

Republican Emil C. Peters, Chief Justice of the Supreme Court at the time of Metzger's 1923 bar examination, wrote a warm endorsement on behalf of Metzger's candidacy in 1934. He saw Metzger, well grounded in the law, as one of Hilo's leading attorneys who had become a successful trial lawyer. Peters described Metzger as a man of few words not given to any flippancy in his speech. Socially, he was well-liked and had a large number of adherents on the Big Island. Judge Peters saw Metzger as the "essence of honesty."²⁸

Two interesting letters of support came from Hilo. The first came from Harry Irwin who in 1930 had seen little good in Metzger as an attorney. He stated that he had opposed Metzger in 1930 "by fair means at my command." He now saw him as a "person of integrity and fairness." He still opted for Judge Ross but foreseeing the appointment of a Democrat, saw Metzger as the best local choice and that Hilo lawyers wanted one of their own on the bench. Judge Ross wrote the second letter, saying that he would like to be reappointed, but if this were not to be, he recommended Delbert Metzger. On July 12, 1934, Metzger attained his long sought goal when Roosevelt appointed him Judge of the Fourth Circuit Court. Metzger's tenure as judge proved upsetting to island conservatives but his decisions were often pleasing to liberals. Sanford Zalburg described him as a person who liked to keep a bottle of whiskey in his desk so he could pour a drink for a friend and relax for a time.²⁹

On September 23, 1938, United States District Court Judge Edward Watson died. Once more, political considerations hampered a quick appointment to fill this vacancy. Secretary of the Territory Charles M. Hite informed Governor Poindexter that the Central Committee would endorse Judges Metzger and Harold Stafford but he did not think either had the caliber to serve on the federal court or the territorial supreme court. Poindexter then tested the waters with "leading attorneys and others in whom I have confidence and [the] consensus of opinion is that Judge Delbert E. Metzger of Hilo is the best available man." In June John Wilson urged Metzger's appointment as quickly as possible. With the advice and consent of the United States Senate, President Roosevelt appointed Metzger to a six year term as a federal judge. He took his oath of office on August 25, 1939, joining Sebra C. Huber on the federal bench.³⁰ Upon Huber's retirement, Ingram Stainback succeeded him in November 1940. Metzger then became the senior judge.

On the afternoon of December 7, 1941, Governor Poindexter placed Hawai'i under martial law and suspended habeas corpus. The civil court system came to a standstill until September 1942 when courts were able to try certain civil cases. Early that year, Hans Zimmerman, an American citizen of German extraction, filed for a writ of habeas corpus. The Army had interned him, they claimed, for fear of possible subversive activities. In addition to what Zimmerman saw as "unlawful detention," his case challenged the Army's right to suspend habeas corpus. Judge Metzger, hearing the case, was clear in his own mind that the military governor's general orders had improperly restrained Zimmerman but said he was foreclosed by Order 57 that forbade trial by jury or the issuing of writs of habeas corpus. Zimmerman appealed to the federal Ninth Circuit Court that declared the December 7 suspension of habeas corpus to be valid. Zimmerman then prepared to appeal to the United States Supreme Court, but the Army, seeking to avoid a high court decision, transported him to the mainland one day before his appeal was filed, leading the court to dismiss the case since he was no longer in custody.³¹

In July 1943, Walter Glockner and Edwin R. Seifert, Americans of German descent, filed petitions for writs of habeas corpus in Metzger's court. Federal attorneys, representing General Robert Richardson, the military governor, sought dismissal but Metzger on August 16 overruled that motion and ordered writs issued. He based his rul-

ing on 1) the Army's and Governor Stainback's joint February 8, 1943, proclamations restoring civil government and 2) that habeas corpus could not be constitutionally suspended. He directed the federal marshal to serve the writs on Richardson but the military police prevented this. The next day, Richardson attended a luncheon at the Pacific Club where military police were stationed at every possible point of entrance to the club's grounds to turn back the marshals.³²

The War Department instructed Richardson not to give in to Metzger's demands if these hampered his primary duty of conducting the war. Metzger, upon the advice of the Justice Department, extended the time of service to August 24. Richardson then accepted the writs but, acting on order from General George C. Marshall, did not surrender the two prisoners. The next day, Metzger found Richardson in contempt of court and fined him \$5,000. Just prior to this action, Richardson issued General Order 31 prohibiting all courts from accepting writs of habeas corpus and ordering proceedings in the Glockner and Seifert cases to stop at once. Failure to do so could bring a \$5,000 fine or five years' imprisonment.³³ The general and judge had reached impasse.

The dangers of Hawai'i's martial law are revealed in a directive to the Army's counter-intelligence division to conduct a "general cursory and discreet investigation of Judge Metzger." The Special Agent's August 25 synopsis of Metzger's life included a few snippets of facts derogatory to the judge. The worst indiscretion that the agent uncovered was a businessman's statement that Metzger and Hans Zimmerman "were obviously good friends" since they called each other by their first names and played cards together. Further, the two "frequently used colloquial expressions in German . . . an indication of the intimate relations existing between the two men." On the other hand, Earl Thacker of the Military Governor's staff told military intelligence that Metzger was an "honest individual who meets his obligations." These Gestapo-like tactics led nowhere because official Washington was shocked by Richardson's latest general order that threatened a presidentially appointed judge with arrests, fines and/or imprisonment. Interior and Justice Department officials called the general's action "a serious affront to all tradition both of judicial power and civil liberties." President Roosevelt told the War Department that he still favored martial law but the Army needed to defuse the situation and solve the impasse.³⁴

Richardson, fearing future lawsuits, rescinded Order 31 and at the same time shipped Glockner, Seifert, and two other Americans of German descent to the mainland. His action prevented the cases from going to the Supreme Court. Metzger, for his part, reduced the general's fine to \$100 but would not set aside the contempt order. A few months later, Roosevelt pardoned the general, an important move because of other civil suits would likely have followed.³⁵

President Harry Truman appointed Metzger in 1945 to a second term. Following World War II, the International Longshoremen's and Warehousemen's Union (ILWU) moved vigorously and successfully to organize sugar and pineapple plantation workers and dock workers. The Big Five's rejection of union demands for higher wages and improved working conditions led to several bitter strikes. After the pineapple strike of 1947, the territory brought suit against strikers under provisions of a 1945 unlawful assembly and riot statute. The ILWU countersued in federal court (*ILWU v. Ackerman*) seeking an injunction against the unlawful assembly and riot law and another concerning conspiracy. In a second suit, the union charged that Maui's Grand Jury demonstrated economic and racial bias as workers, non-Caucasians and women appeared to be excluded from being asked to serve on a grand jury. Circuit Judge Albert M. Cristy ruled against the union's suits. The ILWU lost its appeal to the territorial Supreme Court and its lawyer, Harriet Bouslog, appealed to the federal court. Bouslog and Myer Symonds had formed the law firm of Bouslog and Symonds to defend the ILWU from attacks by the Big Five and dock companies. The case was heard *en banc* by a three judge panel, Metzger, John Biggs, Jr. of Wilmington, Delaware and George Harris of San Francisco. They found the Grand Jury to be illegally constituted and ruled that the two laws were unconstitutional. Bouslog, when hearing the decision, thought that Metzger was "marvelous." The Ninth Circuit Court overturned the panel's decision as an "unwarranted interference with the Territorial courts." The United States Supreme Court refused to hear the case and the laws remained in force. However, territorial grand and petit juries thereafter on all islands were more representative of the population.³⁶

Growing out of the 1949 dock strike the territorial legislature passed a Dock Seizure Strike that allowed the territory to seize the docks, operate them and hire longshoremen at pre-strike wages. As a result the ILWU filed a three million dollar damage and injunction

suit against the territory. The case was heard in federal court by Judge Metzger and Judge J. Frank McLaughlin, a stern conservative Republican, who had been appointed in March 1943. Knowing that they were poles apart in judicial philosophy, they requested a third judge from the Ninth Circuit. The Ninth Circuit declined and the two heard the case. After 16 days, the two judges announced that they could not agree. When there was a split decision, the plaintiff could not prevail, leaving the dock seizure law intact. Metzger had declared that the law was "territorial meddling in a labor dispute" while McLaughlin thought the act fell under the territory's police power.³⁷

Accompanying the ILWU's organizing success was the charge that Communism had infiltrated the territory through union activists. In 1949, the House Un-American Committee held hearings in Honolulu where 39 witnesses, later called the Reluctant Thirty-nine, used the Fifth Amendment to refuse to answer committee questions. In August 1950, they were charged with contempt of Congress and a Honolulu federal Grand Jury returned bills of indictment. Their trial began in January 1951 in Judge Metzger's court. After hearing five test cases, he granted the defense motions for acquittal. As for the other 34, defense attorney Myer Symonds demanded that their cases be heard. Metzger agreed and on January 19, he granted a joint verdict of acquittal. Acting U.S. Attorney Howard Hoddick told Sanford Zalburg that Metzger was "one of the kindest, most humane judges that ever sat on the bench. . . ."³⁸ Metzger's actions, however, brought down the wrath of conservatives in Hawai'i and in the halls of Congress. That he no longer had a future as a federal judge was no longer in doubt.

With ILWU and liberal Democrats' demands to replace Governor Stainback, Metzger's name was again mentioned as a possible territorial governor. Letters on his behalf spoke of his judicial career, his kindness and honesty. His adherents also believed that he could reestablish the Democratic Party in Hawai'i.³⁹ President Truman chose Oren Long to be governor, ending Metzger's fourth quest for this office.

On August 28, 1951, the FBI and the Department of Justice announced the arrests of seven Honolulu residents: Kojo Ariyoshi, Dwight Freeman, Charles Fujimoto, Eileen Fujimoto, Jack Hall, Jack Kawano, and John Reinecke for violation of the 1940 Smith Act. The main target, according to the FBI and the ILWU, was Hall. The Justice

Department directed Hoddick to insist on \$75,000 bail each for the Hawaii Seven. It also ordered "immediate preparation of affidavits" to disqualify Metzger. The U.S. Commissioner in Honolulu accepted Hoddick's bail request but Metzger started another fire storm when he reduced bail to \$5,000, claiming that "bail never was intended as a punishment." Once indictments were returned, Metzger increased bail to \$7,500.⁴⁰

Hoddick, following orders from Washington, asked Metzger to disqualify himself because of his actions regarding the Reluctant Thirty-nine and the bail controversy. Metzger rejected that suggestion, saying "I don't have to obey anyone except my reason and my conscience." In Washington, Senator Joseph O'Mahoney, Insular Affairs Chairman, predicted that Metzger's "outrageous decision . . . will speedily terminate his service in Hawaii." Such was not the case and Metzger remained on the bench until June 18, 1952, when Jon Wiig replaced him.⁴¹

Seventy-six year old Metzger had vainly tried to gain reappointment following expiration of his term on September 5, 1951. He wrote to President Truman's White House physician, Maj. Gen. Wallace H. Graham that he needed to serve at least four more years to qualify for a full federal pension. He worried that "covetous contenders" would use his age as a reason to deny him another term. When Riley Allen informed Farrington that the judge was actively seeking reappointment, the Delegate replied that Metzger had no chance of staying on the bench. Allen cabled Farrington on November 2 that the bar association had endorsed Metzger but he understood that this was but a gracious gesture for a man who was not to be reappointed. It was a ploy to denigrate Democrat William Cobb, a candidate for the judgeship, seen by the association as "a political rather than a judicial figure." Farrington told Allen in late January 1952 that the Truman administration for reasons not clear to him had decided not to name Metzger's successor at the present time. However Farrington learned that the Department of Justice objected to reappointment because of Metzger's age. When he learned in early June that Wiig would replace him, Metzger appealed to Truman not to do so until he could come to Washington.⁴² The announcement of Wiig's appointment ended this last effort.

Every six months, the two federal judges exchanged civil and criminal court calendars. Thus, when the Hawaii Seven Trial opened on

November 3, 1951, Judge J. Frank McLaughlin was the presiding judge. The ILWU and the Hawaii Seven viewed McLaughlin, the opposite of Metzger in temperament, with distaste and sought ways to disqualify him. McLaughlin refused to disqualify himself. Among the several defense motions was one claiming the Grand Jury was “not validly selected.” This charge was akin to the finding in *ILWU v. Ackerman*.⁴³

Following Judge McLaughlin’s denial of every defense motion, Metzger surprised everyone when on February 11, he directed the Court Clerk to revoke the present Grand Jury list and draw up a new list of 500 names. The next day, McLaughlin ordered the clerk to ignore Metzger’s demand and ordered the impaneled Grand Jury to “convene for consideration of routine matters on March 3. . . .” A problem of immediate concern to the prosecution was that in the second week of April, Metzger would resume control of the criminal calendar.

On March 11, as an FBI agent testified before the Grand Jury, one member asked the agent if the FBI could aid in investigating Judge Metzger because some members believed he was in “close collaboration” with the Hawaii Seven and/or their attorneys. The Justice Department backed away from any action against Metzger because it might be construed as a reprisal or retaliation.⁴⁴

On February 20, Judge McLaughlin granted the defense motion to hold a hearing on how grand juries were selected. The hearing was held the next day with Metzger called to appear. Using data prepared by John Reinecke, Metzger argued that the jury list was not representative of the citizens of Hawaii. Walter Dillingham once more expressed his animosity toward the judge, writing that “He is a misfit on the job. Many feel that his brains are furnished by the two labor union lawyers [Harriet Bouslog and Myer Symonds].” Rex McKittrick, a Justice Department attorney sent to Honolulu to assist in prosecuting the Hawaii Seven case informed his superiors in Washington that he and his clerk had investigated the make-up of the jury and admitted that Metzger was correct.⁴⁵

As the trial moved ahead, Metzger was seen conferring with defense attorneys. He became the final defense witness to testify on Jack Hall’s behalf. Metzger saw Hall as a law-abiding citizen whose loyalty appeared beyond question. Government attorneys Norman

Neukom and Howard Hoddick refused to cross examine Metzger because of Hoddick's indebtedness and friendship toward the judge. In these days of McCarthyism, one Honolulu resident in an interview with the FBI said many persons saw the judge having a friendly attitude regarding Communists. A few years later his friendship with Jack Hall and the ILWU led him to purchase 75 shares in the ILWU's newspaper, *The Hawaiian Reporter* that Hall hoped would report community matters to ILWU members, an idea that appealed to Metzger.⁴⁶

After leaving the bench, Metzger was soon seeking another political career as the Democratic nominee to oppose Joseph Farrington as Delegate. He defeated Stainback's political ally, W. Harold Loper, superintendent of public instruction, in the primary with support coming from the ILWU. Popular Farrington's reelection was never in doubt but the ballots foresaw the coming of the Democratic party to power as Metzger carried Oahu's Fifth District and all Neighbor Islands. The vote was 67,748 to 58,445. In May 1953, Farrington believed that Metzger, then serving as a member of the Statehood Commission, had "destroyed any usefulness he may have had as a public official. . . ." by accepting an award from the Lawyer's Guild in New York. The Delegate claimed that the guild was a "well established Communist front."⁴⁷

Joseph Farrington died of a heart attack on June 19, 1954, and his wife, Elizabeth, sought election to her husband's unexpired term. Democrats encouraged 79 year old Metzger to oppose her. She overwhelmed Metzger with a strong sympathy vote, 43,707 to 19,604, carrying every Oahu precinct and every neighbor island.⁴⁸ This election brought to an end the political career of one of Hawai'i's most determined and loyal Democrats.

Metzger returned to his law practice but limited his case load. In 1958, he was the defense attorney for a group of pacifists who tried to sail into the Eniwetok nuclear test zone. That year he celebrated his eighty-third birthday with a round of golf. On his eighty-ninth birthday, he boasted to a reporter that he smoked 16 cigars a day and consumed three or four bottles of beer in an evening. He spent the last two years of his life at the Hale Nani rest home where he died at the age of 92 on April 24, 1967.⁴⁹

A crusty judge with a soft-spoken voice, Delbert Metzger was one

of Hawai'i's most liberal jurists upholding his firm believe in constitutional rights for all in opposition to the dominant economic and political interests of his day.

NOTES

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