GAMBLING IN TERRITORIAL HAWAII

Robert M. Jarvis

ABSTRACT

This article collects and discusses gambling cases decided during Hawaii’s territorial period (1898–1959). Previous commentators have overlooked these decisions, even though they provide a rich source of information about life during this distinct period of Hawaii’s history.

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I. INTRODUCTION

To date, no previous work has collected, much less discussed, the numerous gambling cases decided during Hawaii’s territorial period (1898–1959). In these six decades, which followed the end of the Kingdom of Hawaii (1810–93) and the Republic of Hawaii (1893–98), and preceded the State of Hawaii (August 21, 1959–present), gambling cases frequently were on the

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1 Elsewhere, however, I have pointed out that such cases exist. See Robert M. Jarvis, Gambling in Hawai‘i and Utah, 14 GAMING L. REV. & ECON. 755, 759 n.22 (2010). These cases appear in Volumes 11–43 of Hawaii Reports, which, in addition to Lexis and Westlaw, can be found online at Harvard Law School’s “Caselaw Access Project.” See Caselaw Access Project, Hawaii Reports (1847–2017), https://cite.case.law/haw/ [https://perma.cc/H6FM-5YUB]. Because concurrent federal jurisdiction existed during the territorial period, one also must check the Federal Reporter (1898–1924), Federal Reporter, Second Series (1924–59), Federal Supplement (1932–59), and, of course, United States Reports (1898–1959). It is not surprising that these cases have been overlooked. First, territorial judicial opinions historically have been given short shrift. See, e.g., Joseph T. Gasper II, Visible and Invisible: The Case for a Territorial Reporter, 91 FORDHAM L. REV. 1711, 1724 n.81 (“The decisions of Alaskan and Hawaiian courts would not be added to the Pacific Reporter until volume 347 of the second series, published in 1960, a year after each had become a state in 1959.”). Second, Hawaii rarely figures in discussions about gambling law because Hawaii and Utah are the only two U.S. states that do not have any form of legalized commercial gambling. Indeed, each has a detailed set of laws prohibiting such activities. Because of their holdout status, gambling scholars have all but overlooked Hawaii and Utah. In doing so, however, they have missed a good story. Jarvis, supra note 1, at 755. But it is not merely the Territory’s gambling cases that have been ignored. Instead, the entire subject of gambling during the territorial period has gone unnoticed. See, e.g., David Kittelson, A Bibliographical Essay on the Territory of Hawaii, 1900–1959, 6 J. PAC. HIST. 195 (1971) (omitting the topic entirely).

2 See The Center for Legislative Archives, Hawaii Statehood, August 21, 1959, NAT’L ARCHIVES, https://www.archives.gov/legislative/features/hawaii# [https://perma.cc/CG42-9WBJ] (providing Hawaii’s date of statehood). A complete recounting of Hawaii’s four modern eras (Kingdom, Republic, Territory, and State) is beyond the scope of this article. For works addressing these periods, see, e.g., SUMNER LACROIX, HAWAI‘I: EIGHT HUNDRED YEARS OF POLITICAL AND ECONOMIC CHANGE (2019) (economic and political history of Hawaii); DEAN ITSUJI SARANILLIO, UNSUSTAINABLE EMPIRE: ALTERNATIVE HISTORIES OF HAWAI‘I STATEHOOD (2018) (opposition to U.S. occupation, the move toward statehood, and other settler colonialist actions); JAMES L. HALEY, CAPTIVE PARADISE: A HISTORY OF HAWAI‘I (2014) (unification of the islands, the arrival of the first missionaries, the overthrow of the Hawaiian monarchy, and the annexation of Hawaii by the United States); TOM COFFMAN, THE ISLAND EDGE OF AMERICA: A POLITICAL HISTORY OF HAWAI‘I (2003) (political history of Hawaii from the late nineteenth century to the present day; annexation of Hawaii by the United States, the development of Hawaii’s Democratic Party, and the rise of native Hawaiian nationalism); RALPH S. KUYKENDALL & A. GROVE DAY, HAWAI‘I: A HISTORY FROM POLYNESIAN KINGDOM TO AMERICAN STATEHOOD (rev. ed. 1976) (history of Hawaii from the time of the Polynesian kingdom to the annexation of Hawaii by the United States; arrival of Captain
The bulk of these lawsuits involved parties from Hawaii’s two largest immigrant communities: the Chinese and the Japanese. The importance of gambling in Chinese and Japanese culture, and the marginalized status of the Chinese and the Japanese in territorial Hawaii. 

In her landmark study of the Hilo criminal courts, for example, anthropologist Sally Engle Merry found that in 1903, nine percent of the cases concerned gambling offenses and “50 percent of the defendants [in these cases] were Japanese, 34 percent were Chinese, 9 percent were Portuguese, and 3 percent were Puerto Rican.” Sally Engle Merry, *Colonizing Hawai’i: The Cultural Power of Law* 339 n.9 (2000).

Both Chinese and Japanese immigration to Hawaii began in the 19th century to provide workers for the Islands’ sugar plantations. See, e.g., John M. Liu, *Race, Ethnicity, and the Sugar Plantation System: Asian Labor in Hawaii, 1850 to 1900, in Labor Immigration Under Capitalism: Asian Workers in the United States Before World War II* 186–210 (Lucie Cheng & Edna Bonacich eds., 1984) (explaining that “[f]rom the middle of the eighteenth until the beginning of the twentieth century, Hawaii underwent an economic metamorphosis. In this relatively short period of time, a market economy devoted to the production and exportation of a single agricultural commodity, sugar, supplanted the native Hawaiian subsistence economy. Accompanying this transformation was the near extinction of the native populace and the importation of over 400,000 people from various parts of the globe beginning in the 1850s. More than 75 percent of these migrants came from China, Japan, and the Philippines. Prior to 1900, however, all recruited Asian laborers were either Chinese or Japanese. . . . Asians dominated the work force because they were the cheapest available labor.”). For a further look at the Chinese and Japanese in Hawaii, see, e.g., Nancy Foon Young, *The Chinese in Hawaii: An Annotated Bibliography* (1973); Joan Hori, *The Japanese in Hawaii: A Bibliography of Publications, Audiovisual Media, and Archival Collections* (1988).

For the importance of gambling in Chinese culture, see generally Chi Chuen Chan, William Wai Lim Li & Amy Sau Lam Chu, *The Psychology of Chinese Gambling: A Cultural and Historical Perspective* (2019). For the importance of gambling in Japanese culture, see generally William N. Thompson, *Gambling in Japan, in [The] Casino Industry in Asia Pacific: Development, Operation, and Impact* 59–76 (Kaye Sung Chon & Cathy H.C. Hsu eds., 2006), and Nagashima Nobuhiro, *Gambling and...
II. BACKGROUND

When the Territory of Hawaii was established in 1898,7 numerous enactments already existed banning gambling in the Islands. These included: the Sixth Law of the Code of 1827; Chapter XXIX of the so-called “Blue Laws” (1841); Chapter XL of the Penal Code of 1850 (and its successors); Act 21 of the Provisional Government (1893); and Article 98 of the Republic of Hawaii’s Constitution (1894).8 In 1900, when Congress passed the Hawaiian Organic Act (“HOA”), which organized Hawaii’s territorial government, these laws were continued in force.9 In

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7 Hawaii was made a U.S. territory by the Newlands Resolution, which was the handiwork of Congressman Francis G. Newlands (D-NV). See Joint Resolution to Provide for Annexing the Hawaiian Islands to the United States (Newlands Resolution), no. 55, § 1, 30 Stat. 750 (1898). For a biography of Newlands, see William D. Rowley, Reclaiming the Arid West: The Career of Francis G. Newlands (1996). As has been explained elsewhere, Newlands’s main objective in pushing for Hawaii’s annexation was to ensure that Pearl Harbor remained in American hands. See Thomas J. Osborne, Trade or War? America’s Annexation of Hawaii Reconsidered, 50 Pac. Hist. Rev. 285, 305–06 (1981). Some Americans, however, objected to Hawaii’s annexation on the ground that the Islands were not “white enough” to be part of the United States. For further discussion, see, e.g., Eric Love, White is the Color of Empire: The Annexation of Hawaii in 1898, in Race, Nation, and Empire in American History 75–102 (James T. Campbell, Matthew Pratt Guterl & Robert G. Lee eds., 2007).

8 See Jarvis, supra note 1, at 756–759, 759 n.20 (explaining that the only deviation was the short-lived 1893 lottery bill).

9 See An Act to Provide a Government for the Territory of Hawaii, ch. 339, § 6, 31 Stat. 141 (1900) (replaced 1959) (“[T]he laws of Hawaii not inconsistent with the Constitution or laws of the United States or the provisions of this Act shall continue in
addition, section 55 of the HOA specifically banned the holding of lotteries and the sale of lottery tickets.\textsuperscript{10}

In the 1905 Revised Laws of Hawaii (“RLH”), the first compilation of the territory’s statutes, chapter 217 (titled “Gambling”) defined gambling broadly,\textsuperscript{11} made engaging in gambling (as a dealer, facilitator, or player) a misdemeanor,\textsuperscript{12} specified fines or prison terms (at the court’s discretion) for those found guilty of gambling,\textsuperscript{13} authorized the forfeiture of any money or property offered as gambling prizes,\textsuperscript{14} required persons who observed gambling activities to testify if summoned,\textsuperscript{15} provided

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\textsuperscript{10} Id. § 55. While appearing before Congress in 1953, Cyrus N. Tavares, Hawaii’s former attorney general, credited this provision with helping to keep gambling out of Hawaii:

Mr. [Samuel W.] Yorty [D-CA]: There is not any gambling in Hawaii now, is there?
Mr. Tavares: No, under our law; that is not, legally [sic].
Mr. Yorty: I mean legalized gambling in the hotels, etc. I do not ever recall any.
Mr. Tavares: No; the Hawaiian Organization Act had a provision which forbid lotteries, and the word “lottery” has been interpreted pretty broadly down there and we have laws against them. Hawaii has traditionally enforced laws against gambling. We have it [gambling] as any other locality has it, but it is not done with any connivance or sanction of the government. We are pretty hard on the professional gamblers when we catch them.


\textsuperscript{11} See Revised Laws of Hawaii, ch. 217 (1905) [hereinafter RLH (1905)] § 3172 (including che fa and pakapio in the definition of “Lottery”); § 3175 (prohibiting fan tan, faro, monte, roulette, tan, and all banking and percentage games); § 3176 (prohibiting all bunco [i.e., “confidence” or “trick”] games, including three card monte and shell games); and § 3177 (prohibiting betting on all athletic games, ball games, bicycle races, boat races, contests, horse races, and sports).

\textsuperscript{12} Id. § 3173 (making the conducting, maintaining, or assisting of any gambling game a misdemeanor); § 3174 (making the selling, buying, or possession of any gambling ticket or similar item a misdemeanor); and § 3178 (making it illegal for owners or tenants to use, or allow others to use, their buildings or vessels for gambling).

\textsuperscript{13} Id. § 3179 (“Every person guilty of [gambling] shall be punishable by a fine of not more than one thousand dollars, or imprisonment at hard labor not exceeding one year.”).

\textsuperscript{14} Id. § 3180 (instructing that such money or property be forfeited to the Territory “by information filed or by action brought by the attorney general or his authorized representative.”).

\textsuperscript{15} Id. §§ 3181–3182 (the former section making it a misdemeanor to decline to testify and the latter section providing immunity from prosecution for those whose testimony was self-incriminatory.).
civil causes of action for those who lost money at gambling, and declared void all instruments in which any part of the consideration was based on money won or lost at gambling. With only slight changes, these provisions appeared in each of the RLH’s succeeding five decennial editions (1915, 1925, 1935, 1945, and 1955).

Throughout the territorial period, legislators introduced numerous bills seeking to legalize gambling. When

16 Id. §§ 3183–3185 (the last of these sections provided that if the loser did not file suit within three months, any other person could “sue for and recover, treble the value of such money or thing, with full costs of suit, the one half of which shall go to the person so prosecuting, and the other half to the Territory for the use of [the] common [i.e., public] schools.”).

17 Id. § 3186.

18 See Revised Laws of Hawaii, ch. 260 (1915) [hereinafter RLH (1915)] (adding sections 4173 and 4174, which prohibited displaying gambling “implements” in “barricaded places,” defined as places intentionally made difficult for the police to enter or look into, and making it illegal to be present in such places, and section 4180, which allowed the police to seize as evidence all money or property used in connection with gambling); Revised Laws of Hawaii, ch. 282 §§ 4461–4478 (1925) [hereinafter RLH (1925)]; Revised Laws of Hawaii, ch. 190, §§ 5940–5957 (1935) [hereinafter RLH (1935)] (changing the chapter’s title from “Gambling” to “Gambling, Lottery, Etc.”); Revised Laws of Hawaii, ch. 262 §§ 11340–11358 (1945) [hereinafter RLH (1945)] (adding section 11352, which allowed innocent owners to recover their forfeited property); and Revised Laws of Hawaii, ch. 288 (1955) [hereinafter RLH (1955)], §§ 288-1 to 288-19 (changing the chapter’s title from “Gambling, Lottery, Etc.” to “Gambling, Lottery”).

19 See, e.g., Foolish Flings at Dole People: House Members Would Instruct Department Heads How to Manage Affairs, COMM. ADVERT. (Honolulu) (Mar. 13, 1901), at 9 (explaining that the effort to legalize gambling began in Hawaii’s first territorial legislature (1901), when Representative Samuel K. Mahoe introduced a bill to repeal Chapter 39 of the Civil Laws of 1897, “Prohibiting Gaming and Gambling.”); Gambling, THE HAWAIIAN STAR (Honolulu) (Mar. 27, 1901), at 4 (when Mahoe’s bill “was turned down by the very narrowest majority,” the Star predicted that “the octopus which has so long been eager to get Hawaii into its maw, will once more have a try.”); He Calls for Race Track Gambling, HONOLULU STAR-BULL. (Nov. 1, 1944), at 4 (noting that many of the gambling bills during the territorial period concerned horse track betting). In 1944, the Honolulu Star-Bulletin summarized the effort to legalize horse track betting by writing: “The effort to legalize race track gambling extends over many years. It bobs up at every session of the legislature. Sometimes it nearly gets through. Sometimes it’s defeated quickly by the force of public sentiment which wakes up to the definite evils and dangers of legalizing public gambling in this community, no matter what language is used to mask the real intent of the bill.” See also Protests Against Horse Race Gambling Bill, HONOLULU STAR-BULL. (Mar. 17, 1951), at 6 (“The pari-mutuel bills have made their progress in the legislature only through deals and trades, inside the legislative halls. . . . There is no large public demand now for the pari-mutuel bill and legalized horse race gambling. The legislation will never get through on the basis of public support.”); ’Improving the Breed’—Familiar Fiction, HONOLULU STAR-BULL. (Mar. 30, 1955), at 8 (“The 1955 horse racing gambling bill introduced and backed by Democratic Legislators, says: ‘A purpose of the act, in addition to raising revenue, is the encouragement of
one managed to squeak through the legislature in 1957, it was vetoed by Governor Samuel W. King.20

20 See King’s Veto of Pinball Bill is Applauded by [Police] Chief Liu, HONOLULU STAR-BULLET. (May 21, 1957), at 1B (had this bill passed, it would "have legalized ‘any game’ in which ‘skill’ predominates over ‘chance.’"). For a discussion of King’s veto, see Ed Kemper, Perspectives from Territorial Lawyers, 10 HAW. B.J. 104, 108–09 (July 2006) (quoting Peter Howell, a former assistant public prosecutor, who years later took credit for King’s veto: “[T]he gambling interests took their case to the Territorial legislature and were able to get an act passed that, in a tricky way, amended the gambling and lottery laws and that, in my opinion, would have legalized gambling in the Territory of Hawaii. The act passed both houses before I became aware of it, just before it was to go to the Governor for signature. When I became aware of it, I took a look at the Act and thought, ‘Wow, this really is going to legalize gambling in Hawaii.’ So I went to my boss, John Peters, who was the Prosecuting Attorney at that time, and told him that the Governor should be made aware of the effect of this Act if he signed it. Peters was very conservative and did not want to be involved in any political fight that this might generate. He told me in no uncertain terms to stay out of it or he would fire me. But I felt quite deeply about the issue, perhaps due to my religious convictions. So I gathered my data together and secretly went to see the Governor of the Territory of Hawaii, who at that time was United States District Judge Samuel P. King’s father, Samuel Wilder King. When I knocked on his door, he welcomed me into his office. After I introduced myself, we spoke briefly about his friendship with my grandfather, Hugh Howell, Sr., a civil engineer, and how both of them worked on some Federal legislation in the middle 1930’s, that would have funded a water project on the Island of Molokai, Governor King being Hawaii’s delegate to Congress at the time. I then told him about the gambling law problem and the bill that amended the law that was before him. He said: ‘Well, you know, I’m opposed to legalized gambling. Why don’t you give me what you have or take it over to my Attorney General, Shiro Kashiwa, and let him take a look at what you have, and then he can advise me as to what to do.’ I did so; and about a week later, I received a telephone call advising me that the Governor had vetoed the Bill. Apparently, Mr. Kashiwa read my memorandum about it and the effects flowing from the proposed amendment to the gambling and lottery laws, and he agreed with me and so advised the Governor. I heard later, that on the day that the Act was coming up for the Governor’s signature, (if he approved it, which he didn’t), the gambling interests had their attorneys sitting in front of the Governor, pleading with him to sign the bill. He refused, saying: ‘My Attorney General tells me that this is going to legalize gambling in Hawaii. I don’t want that since it will not be good for Hawaii.’ Ever since then, the gambling interests have tried to get legislation passed that would legalize gambling in Hawaii. Fortunately, they have been unsuccessful, since it has never happened for the last fifty years. John Peters never knew of my involvement, and I still kept my job.”).
III. TERRITORIAL GAMBLING CASES

A. Definitions

Despite the RLH’s expansive definition of gambling, the Hawaii Supreme Court twice was confronted by defendants who insisted that their activities did not constitute gambling. The first of these defendants was successful; the second was not.21

In Territory v. M.A. Gunst and Co.,22 the government claimed that the defendant’s business promotion plan, which involved giving customers trading stamps that they could redeem for merchandise, constituted an illegal gambling scheme.23 In a lengthy opinion reversing the defendant’s conviction, the Hawaii Supreme Court wrote:

The scheme carried on by defendant is a form of advertising. It is intended to attract new and retain old customers on the theory of making them believe that they are getting something for nothing. In reality, a concern can well afford to give away these premiums by virtue of the additional profits made by the larger sales. . . .

Of course, contracts containing lotteries, advantages dependent upon chance, or any kind of gambling scheme, may be regulated or suppressed. But a trading coupon has none of these characteristics; it is not a lottery; its redemption does not depend upon chance, and it has no element of gambling of any kind. Its holder selects what goods he wants; he is not compelled to take what chance may give him, or to get nothing if the throw of the dice, or the event of some other gambling device, shall so determine.24

21 Conversely, in Territory v. Pierce, 43 Haw. 287 (1959), the defendants’ enterprise was so clearly an illegal lottery that the Hawaii Supreme Court remarked: “The facts being undisputed, the [trial] court could have gone further and determined as a matter of law that such procedure constituted a lottery.” Id. at 288.
22 Territory v. M.A. Gunst & Co., 18 Haw. 196 (1907).
23 Id. at 196–97.
24 Id. at 199–200 (quoting Ex parte Drexell, 82 P. 429, 431 (Cal. 1905)).
Many years later, in *Territory v. Tsutsui*, the defendants rigged a game of “high card” to fleece an unsuspecting player. After being found guilty of gambling, one of the defendants (Tsutsui) appealed on various grounds, including that because the game had a pre-determined outcome, it did not constitute gambling. In rejecting this argument, the Hawaii Supreme Court remarked:

Counsel’s argument that this was a crooked game in which nothing was left to chance cannot be a defense to a charge of gambling; in fact, it is rather an aggravation to point out that nothing was left to chance but one of the participants was to be fleeced. This is an aggravation rather than a defense to the gambling charge.

**B. Types**

During the territorial period, nearly every type of gambling imaginable came before Hawaii’s courts, including bingo, cards, cockfighting, craps, lotteries, raffles, slot machines, sports bets, and wheel of fortune.

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26 *Id.* at 290. The Court did not describe how the game was played, except to say that “Quack drew the high card[].” *Id.*
27 *Id.* at 288.
28 *Id.*. Two of Tsutsui’s other arguments involved, respectively, the Fourth and Fifth Amendments. The Hawaii Supreme Court refused to consider these arguments because “these questions were not raised below.”
29 *Id.* at 289.
30 *Id.*.
31 *See, e.g.*, Territory v. Pierce, 43 Haw. 246 (1959).
32 *See, e.g.*, Territory v. Tsutsui, 39 Haw. 287 (1952).
33 *See, e.g.*, Territory v. Caminos, 38 Haw. 628 (1950). Cockfighting (and the betting that goes along with it) has deep historical roots in Hawaii. For a further discussion, see Kathryn M. Young, *Criminal Behavior as an Expression of Identity and a Form of Resistance: The Sociolegal Significance of the Hawaiian Cockfight*, 104 CAL. L. REV. 1159, 1178–84 (2016) (discussing the social impact of highly-localized cockfighting in Hawaii).
34 *See, e.g.*, Territory v. Ouye, 37 Haw. 176 (1945) (referring to the game as “seven-eleven”).
35 *See, e.g.*, Territory v. Furomori, 20 Haw. 344 (1911).
36 *See, e.g.*, Rego v. Bergstrom Music Co., 26 Haw. 407 (1922) (explaining that the raffle’s prize was an electrical piano).
Late in the territorial period, the issue of whether pinball machines were subject to Hawaii’s gambling laws became a hot political issue. It also led to three opinions, the last of which reached the Ninth Circuit.

In the first, Territory v. Shinohara, the Hawaii Supreme Court held that pinball machines that included a “free game” prize feature were not illegal lotteries because only one player at a time could win. Five months later, however, in Territory v. Uyehara, the Court held that such pinball machines did violate Hawaii’s gambling laws because a free game was “a thing of value”:

Territory v. Shinohara is limited in its application to a charge of violation of the lottery statute. We stated in that case: “This opinion does not extend to the question as to whether the operation of such device, in the manner alleged in the complaint, violates any other criminal statute. As to such question, we

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37 See, e.g., Territory v. Beeson, 23 Haw. 445 (1916) (noting that the machine cost a nickel to play).
38 See, e.g., Territory v. Sur, 39 Haw. 332 (1952) (holding that although skill was involved in picking the winners from a list of upcoming college football games, such bets constituted gambling because the outcome was partially determined by chance).
39 See, e.g., Fugita v. Motoshige, 22 Haw. 136 (1914) (the Court does not indicate how the wheel’s segments were arranged).
40 See supra note 20 and accompanying text.
42 Territory v. Shinohara, 42 Haw. 29 (1957).
43 Id. at 31 (“[I]n a lottery . . . a participant . . . competes against other participants for the chance of obtaining the prize. The examples given in our statute, such as raffle, che fa, pakapio, and gift enterprise, all involve participation by more than one person for the prize.”). Justice Ingram Stainback entered a strongly worded dissent: “Although dissenting opinions are usually futile and of little value, I cannot concur with the majority of this court in upsetting what has been the law of this Territory for decades (at least since the decision in Territory v. Beeson, 23 Haw. 445, of August 10, 1916) that the operation of a slot machine is the operation of a lottery within the provisions of sections 11340 and 11341; there is in essence no difference between the operation of a slot machine and that of a pinball game (called the offspring of a slot machine), and this is especially true unless in certain types of pinball games the success is a question of skill and not of chance. No such claim is made in the instant case and it is admitted that the winner of free games may elect to receive cash in lieu of playing more games. The defendant comes not only within the intent but within the express wording of the statute.” Id. at 37.
44 Territory v. Uyehara, 42 Haw. 184 (1957).
express no opinion because it has not been presented to this court.” Here we are presented with such question because the Territory alleges a violation of the gambling statute, in addition to a violation of the lottery statute. The language of the gambling statute includes within its prohibition every game in which money or anything of value is lost or won . . . . In this case there is no cash pay-off. The pay-off comes in the form of a right to play additional games free. So, the crucial question is whether such right is “anything of value.” We are of the opinion that it is [because a] right to obtain amusement has value.45

Fourteen months later, the Hawaii Supreme Court reaffirmed Uyehara in Territory v. Naumu.46 When Naumu appealed to the Ninth Circuit, it sided with the Hawaii Supreme Court:

Naumu contends that . . . a free game cannot be regarded as a thing of value . . . . In support of his contention of uncertainty, Naumu cites many cases from other jurisdictions in which it has been held that a pinball game in which free games are given does not constitute a gambling game under the provisions of the applicable statutes. There is no doubt a division of authority upon this proposition generally. In most of the cases cited, however, the statutes are not as broad in scope as is Hawaii’s. Among states having statutes similar to those of Hawaii, authority would appear to be overwhelmingly in accord with Hawaii’s construction of the phrase ‘anything of

45 Id. at 187. Once again, Justice Stainback filed a separate opinion: “I concur in that portion of the opinion of the court holding that the ‘free games’ on the machine are something of value as used in the Revised Laws of Hawaii 1945, section 11343 (R. L. H. 1955, § 288-4), but I respectfully dissent in the holding that the operation of a pinball machine is not a ‘lottery.’” Id. at 190–191.

46 Territory v. Naumu, 43 Haw. 66, 68 (1958). Naumu also raised two constitutional arguments, insisting that the “anything of value” standard was void for vagueness and unconstitutional as applied. The Court brushed off the former by writing: “It can hardly be said that the phrase does not give adequate warning as to what falls under its ban[.]” Id. at 70. As to the latter, the Court remarked: “[This argument] hardly requires our consideration, for the appellant himself has not given any serious consideration to it . . . . [In any event, we] do not see any . . . discriminatory application of the law in this case.” Id.
That some jurisdictions, in their search for legislative intent, have, for various reasons and in various contexts, chosen to place a limited meaning on ‘anything’ or on ‘value’ does not render those words or the phrase in which they appear vague or uncertain. The choice of a lawful course under the Hawaii statute as expressed and construed should have been readily apparent to Naumu. The risk he took was his own free choice: the risk that the Hawaii legislature had not meant to the letter precisely what it had said.47

C. Locations

Throughout the territorial period, operating a “gambling house,”48 or being present at one, was a crime.49 These two seemingly straightforward commands figured in several opinions.50

The earliest case, however, involved a local regulation that went beyond the state’s laws. In Territory ex rel. County of Oahu v. Whitney,51 Oahu County had passed an ordinance “prohibiting the exposure of gambling implements [e.g., cards, chips, or dice] in a room barred [i.e., barricaded] . . . to make it difficult [to] access when three or more persons are present, or the visiting of such a room.”52 In deciding that the ordinance was constitutional, the Hawaii Supreme Court explained: “On the whole we are of the opinion that the legislature could delegate to the county boards of

47 Naumu v. Territory of Hawaii, 273 F.2d 568, 569–70 (9th Cir. 1959). This opinion was handed down on December 21, 1959, four months after Hawaii became a state. Id. at 568.
48 During this time gambling houses formed part of a broader category of places known as “disorderly houses.” See Territory v. Rogers, 37 Haw. 566, 567 n.1 (1947) (citing RLH § 11210 (1945), which listed four types of disorderly houses: those used to conduct gambling; those used to dispense alcohol without a license; those used to facilitate prostitution; and those used to screen pornographic films).
49 See supra note 12.
50 Although the Territory’s laws prohibited gambling on both land and water, see the statutes cited supra note 12, every reported case during the territorial period involved gambling on land.
52 Id. at 175.
supervisors power to make ordinances relating to certain matters of local concern. . . . Gambling is one of [these] subjects . . . .”

1. Operators

In *Territory v. Chang Tai Kun*,54 the defendant was found guilty of conducting fan tan games55 in the rooms above his tailor shop.56 On appeal, he argued that the indictment was faulty because it gave only the shop’s address (231 North King Street in Honolulu) and failed to mention the second floor.57 The Hawaii Supreme Court easily rejected this defense:

> We find no merit in the contention that the description in the indictment of the place where the defendant knowingly permitted gambling does not include the rooms over the tailor shop. All of the witnesses both for the prosecution and the defendant apparently referred to the premises as a whole, both up-stairs and down-stairs, as the tailor shop. There is no separate numbering of the two floors and the effect of the defendant’s own testimony is that the two floors were used as one place of business. It was apparently conceded at the trial that the description of the premises in the indictment included the upper

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53 *Id.* at 181. Such a provision later was added to the state’s gambling code. *See* statutes cited *supra* note 18. Subsequently, the Hawaii Supreme Court twice found it valid. *See* *Territory v. Wong*, 40 Haw. 423 (1954) (applying the provision to a greenhouse that had been turned into a gambling parlor with a heavier-than-normal door that locked from the inside); *Territory v. Ah Fook Young*, 39 Haw. 422 (1952) (holding that the provision only required gambling implements to be present, as opposed to being in actual use). Justice Alfred S. Hartwell concurred in the decision in *Whitney*. After noting that the Hawaii legislature already was authorized to delegate its powers to cities and towns, he concluded that the same rule should apply to counties. *See Whitney*, 17 Haw. at 188 (“Is there any valid reason why like powers may not be delegated to counties?”).

54 *Territory v. Chang Tai Kun*, 26 Haw. 133 (1921).

55 *See* STEWART CULIN, THE GAMBLING GAMES OF THE CHINESE IN AMERICA 1 (1891), https://catalog.hathitrust.org/Record/001670327 [https://perma.cc/HJW3-TCUT] (describing the rules and objectives of fan tan games, which involve correctly guessing which of four numbers will come up).

56 *Chang Tai Kun*, 26 Haw. at 133–34.

57 *Id.* at 134.
floor, no mention of this contention being made until the case reached this court.58

Similarly, in *Territory v. Aki*, 59 the defendant was found guilty of allowing fan tan and pai kou 60 “to be played . . . [in] premises rented . . . by [him] located in the rear of the Tow Yee Kwock Society building on Market [S]treet in the . . . town of Wailuku.”61 On appeal, the defendant claimed that the government had failed to prove that he was the property’s lessee.62 Agreeing with this contention, the Hawaii Supreme Court reversed and ordered a new trial.63 In doing so, it made it clear that the government’s chances of prevailing were not good:

It may further be remarked that we entertain grave doubts as to whether a conviction under the statute involved may be sustained, as intimated by the trial court in its instruction to the jury, if the evidence does not prove that defendant rents the premises but merely tends to show that he occupies and controls the same. Neither of the words “occupies” or “controls” is employed in the statute, and the legislature not having used such words, it is not permissible for the courts in a criminal case to read those words into the statute.64

One year later, the Court, citing *Aki*, reached the same conclusion in *Territory v. Harada*.65 Three men—Harada, Hoshide, and Kimura—were found guilty of conducting gambling games at a

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58 Id. at 135–36.
60 Id. at 515. “Pai kou” appears to be a reference (using Cantonese phonetics) to “pai gow,” a traditional Chinese gambling game involving thirty-two dominoes in which players try to make winning hands. See *Pai Gow*, DOMINORULES.COM, https://www.dominorules.com/pai-gow [https://perma.cc/XJ64-Y26X] [hereinafter DOMINORULES.COM] (describing pai gow).
61 Aki, 28 Haw. at 515.
62 Id.
63 Id. at 517.
64 Id.
65 Territory v. Harada, 29 Haw. 244 (1926).
particular location. On appeal, the Hawaii Supreme Court upheld Hoshide’s conviction because there was sufficient proof that he had rented the premises. But because no such proof had been presented by the government as to Harada and Kimura, the Court ordered new trials for the pair.

2. Patrons

In *Territory v. Apoliona*, the defendants were found guilty of being present at a craps game in Honolulu. On appeal, they argued that they should be set free because craps was neither a “banking” game nor a “percentage” game. In rejecting this argument, the Hawaii Supreme Court wrote:

> It is contended on behalf of the defendants that in order to support a conviction it was necessary to show that the game testified to was a banking or percentage game. This contention is without merit. The language of the statute plainly includes within its prohibition every “other game in which money or anything of value is lost or won,” irrespective of whether or not it is a banking or percentage game. The evidence was sufficient to permit of a finding by the jury that a game was being played and that it was one at which money was lost and won and also,

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66 *Id.* at 244. The Court does not identify the type of games that were played and says nothing about their location.

67 *Id.* at 248 (“The uncontradicted evidence as it stood was such as to require a finding . . . that Hoshide was the actual renter.”).

68 *Id.* at 246 (“Upon the record before us no evidence was adduced sufficient to support a finding that either Harada or Kimura rented the premises in whole or in part.”).

69 *Id.* at 248.


71 *Id.* at 109 (the court refers to the game as “seven-eleven”).

72 *Id.* at 110. A banking game is a game in which the players bet against a dealer (acting as the management’s representative) instead of each other. Blackjack is an example of a banking game. A percentage game is a game in which the management collects a share (known as the “rake”) of the total amount bet. The rake acts as the management’s commission. Poker is an example of a percentage game. Banking games also are called “house-banked” games and percentage games also are called “player-banked” games. See WILLIAM N. THOMPSON, GAMBLING IN AMERICA: AN ENCYCLOPEDIA OF HISTORY, ISSUES, AND SOCIETY 211–13, 330–31 (2d ed. 2015) (detailing house-banked games and player-banked games).
although this need not have been proved, that it was a percentage game.\textsuperscript{73}

In \textit{Territory v. Wong},\textsuperscript{74} the defendants were convicted of being present at a gambling game.\textsuperscript{75} On appeal, they argued that the law was unconstitutionally vague, a claim the Hawaii Supreme Court brushed aside:

We conclude that the provision of section 11343 of the Revised Laws of Hawaii 1945 relating to persons present at a gambling game does not violate the Fifth Amendment to the Constitution of the United States. It contains an ascertainable standard of proscribed conduct, and in order to avoid absurdity in specific factual situations the provision must be interpreted to prescribe intentional presence at gaming in progress with knowledge that said game constitutes gaming.\textsuperscript{76}

\textbf{D. Investigations}

During the territorial period, the police enjoyed a relatively free hand when it came to investigating and arresting gamblers. In \textit{Territory v. Furomori},\textsuperscript{77} for example, the defendants were found guilty of participating in a che fa lottery.\textsuperscript{78} On appeal, they complained that the police had broken down their door, and seized the evidence used to convict them, without obtaining a search warrant.\textsuperscript{79} In finding this protest to be unavailing, the Hawaii Supreme Court noted:

\textsuperscript{73} \textit{Apoliona}, 20 Haw. at 110.
\textsuperscript{74} \textit{Territory v. Wong}, 40 Haw. 257 (1953).
\textsuperscript{75} \textit{Id.} at 258. The Court does not provide any details about the game or where it was played.
\textsuperscript{76} \textit{Id.} at 263.
\textsuperscript{77} \textit{Territory v. Furomori}, 20 Haw. 344 (1911).
\textsuperscript{78} \textit{Id.} at 344. As has been explained elsewhere, at the turn of the century the “most popular game [in Honolulu’s Chinatown] was \textit{che fa}, in which players picked one of thirty-six words on a sheet (e.g., dog, man, arm) and winners were drawn at random.” \textit{George Chaplin, Presstime in Paradise: The Life and Times of the Honolulu Advertiser, 1856–1995}, at 118 (1998) (italics in original).
\textsuperscript{79} \textit{Furomori}, 20 Haw. at 345. According to the Court, the police “carried away a counting board, some che fa tickets, a tin box with a name in it and a book containing rules of the game of che fa.” \textit{Id.}
It is the established rule that the admissibility of evidence is not affected by the illegality of the means through which it has been obtained. The admission of such evidence, if obtained without order or sanction of court, violates no constitutional rights. It is not in accord with the orderly administration of justice for a court, while engaged in the trial of a cause properly before it, to turn aside and determine another distinct matter, which it would be obliged to do on every occasion a question like this should arise, if the rule referred to is not to be observed. The evidence was properly admitted.80

The brazen methods used by the police sometimes led to violent altercations during arrests. In *Territory v. Cheong Jim Kong*,81 for example, an officer named Santos touched off a near-riot when he attempted to arrest the defendant and several other gamblers.82 Following a jury trial, the defendant was found guilty of assault-and-battery on a police officer.83 On appeal, he claimed that he had not known that Santos was a police officer.84 The Hawaii Supreme Court rejected this argument because the facts showed that Santos had been “sounding his police whistle, and calling for help, and the assault, apparently, was committed with the intent to obstruct and hinder [him] in the discharge of his duty.”85

In *Territory v. Machado*,86 a Maui police officer named C.B. Machado was found guilty of using excessive force while arresting a gambler named Felipe Drapesa, who also went by the name Felipe

80 *Id.* In 1961, the U.S. Supreme Court finally made the Fourth Amendment’s exclusionary rule applicable to the states. *Mapp v. Ohio*, 367 U.S. 643 (1961). By this time, of course, Hawaii had been a state for nearly two years. The defendants in *Furomori* also challenged their convictions on the ground that there was no proof that they had taken part in a lottery. The Court easily disposed of this argument by finding that Murakami had been the lottery’s proprietor; Furokawa had sold tickets; Tanaka had sold tickets and been a player; and Furomori, Tominaga, and Yasuoka had been players. *Furomori*, 20 Haw. at 348–49.

81 *Territory v. Cheong Jim Kong*, 14 Haw. 610 (1903).

82 *Id.* at 610–11.

83 *Id.* at 610.

84 *Id.* at 611.

85 *Id.*

Molina.87 On appeal, the Hawaii Supreme Court set aside the verdict after finding that the trial court had misstated the relevant law while instructing the jury.88 In a subsequent decision, the Hawaii Supreme Court ruled that the county’s board of supervisors had the power to cover Machado’s attorneys’ fees and court costs and give him his back pay.89

Gambling investigations also benefitted from the fact that the Territory’s gambling laws authorized prosecutors to offer immunity to witnesses, who then were required to reveal what they knew.90 In In re Y. Anin,91 for example, the defendant refused to answer a question on the ground that it was “immaterial.”92 As a result, he was held in contempt.93 The Hawaii Supreme Court agreed that this was the proper outcome:

[T]he fact that the question was immaterial, if it was so, which we do not decide, would not make the restraint illegal. The effect of the statute which precludes prosecution of a witness in consequence of testimony he may give which might incriminate himself is to take from him the privilege of declining to answer on that ground.94

E. Prosecutions

The Islands’ abhorrence of gambling meant that prosecutors enjoyed a tremendous advantage in any gambling case.95 Indeed,
only in the rarest of circumstances did the government lose a gambling case.96

1. Indictments

In Territory v. Crawford,97 the defendant claimed that his conviction was void because, although the indictment charged that he had been playing fan tan and pai kow98 on October 15, 1906, “and for a period of thirty days next thereto preceding,” the evidence showed that he had been playing these games on November 15, 1906, “and on each and every day prior thereto for a period of thirty days.”99 In finding that the conviction was valid, the Hawaii Supreme Court wrote:

Ordinarily the time of the commission of an offense must be specifically alleged, but unless it is of the essence of the offense it need not be proved as alleged; it is sufficient to allege any time within the statute of limitations . . . and to prove any other time within that period.100

In Territory v. Bollianday,101 the defendants were found guilty of swindling the complaining witness during a game of three card monte.102 As a result, the prosecutor charged the defendants

96 See, e.g., Territory v. Pascua, 42 Haw. 53, 59 (1957) (“[H]owever strong, [a mere] suspicion [that the defendants placed bets on a dice game] is not proof sufficient to overcome the presumption of innocence clothing a defendant and will not warrant a conviction.”); Territory v. Ah Sing, 18 Haw. 470, 471 (1907) (fact that defendant’s name was on bail bond did not prove that he was present at a specific gambling game). The Ah Sing case produced two additional opinions (one before and one after the principal decision). See Territory v. Ah Sing, 18 Haw. 392 (1907) (“The conviction of a number of defendants of being present at a gambling game is a several judgment to which one may prosecute a writ of error without joining the others.”); Territory v. Ah Sing, 18 Haw. 663 (1907) (confirming dismissal of the case).
97 Territory v. Crawford, 18 Haw. 246 (1907).
98 Id. at 246. Pai kow is an alternate spelling of “pai gow.” See DOMINORULES.COM, supra note 60.
99 Crawford, 18 Haw. at 246.
100 Id. at 247.
102 Id. at 595. Three card monte is a type of confidence game (i.e., a con). See RLH (1905), ch. 217, § 3176. In it, an unsuspecting player (the “mark”) must find a specified
with participating in a gambling game. On appeal, they argued that they should have been accused of larceny rather than gambling. In finding no merit to this argument, the Hawaii Supreme Court remarked:

[The defendants] claim that the evidence produced at the trial shows the money was snatched up from the table from the grasp of the complaining witness, Jitchaku, who claims that under the rules of the game, he won and was supposed to take the money; they argue that under these circumstances the prosecution failed to make out a case of gambling because no money was won or lost but that the crime committed was larceny of the victim’s money, and not gambling. . . . The mere fact that there was a dispute as to who won the money under the rules of the game or that the game was crookedly played does not excuse the defendants or mitigate their offense. (*Territory v. Tsutsui*, 39 Haw. 287, 289.) Obviously the defendants conspired to take Jitchaku’s money and the gambling game was the method employed to fleece him.

Lastly, in *Territory v. Santiago*, the defendants were found guilty of playing cho-han. On appeal, they argued that their convictions should be overturned because of the prosecutor’s failure to state whether he was seeking a conviction on their first card (known as the “target” card) from three face-down cards. What the mark does not know is that the dealer has made it impossible to do so by manipulating the cards during the shuffle. See R. Paul Wilson, *The Real Secret of [the] Three Card Monte Trick*, CASINO.ORG (Nov. 27, 2019), https://www.casino.org/blog/three-card-monte-trick/ [https://perma.cc/RF6Q-PU7H] (describing the dealer’s actions).

103 *Bolliaeday*, 39 Haw. at 590.
104 *Id.* at 594.
105 *Id.*
107 *Id.* at 318. Cho-han is a traditional Japanese gambling game in which players bet on whether a pair of dice thrown from a cup will result in an even (cho) or odd (han) number. For more on Cho-han, see *What Are the Rules of Cho-Han?*, GAME RULES, https://gameregules.com/what-are-the-rules-of-cho-han/ [https://perma.cc/53QN-Y7RB] (last visited May 1, 2023).
game or their second game (played two days later). In rejecting this contention, the Hawaii Supreme Court stated:

The argument is made that the prosecution adduced evidence as to two separate and distinct games. . . . [T]he contention is made that a gambling game lasts only until the play stops and the participants separate and go their several ways, and that this was done in the present case although the players were to meet later. . . . However, we think that a conclusive reason for not requiring the prosecution to elect as to separate acts is that the acts here are so related as to constitute but one entire transaction or one offense; election is not required where an offense is continuous in its nature.

2. Trials

In Territory v. Tacuban, the defendant was found guilty of gambling. On appeal, he argued that, as the only witness against him was one of the game’s other participants, his conviction should be set aside. The Hawaii Supreme Court not only rejected this argument, it held that merely knowing that one was doing something illegal was enough to sustain a conviction: “An allegation of participation or taking part in a gambling game connotes guilty knowledge, and inferentially alleges scienter.”

In Territory v. Nakamura, fourteen of sixteen defendants were found guilty of being present at a gambling game. On appeal, they complained, “that the prosecution improperly permitted to be exhibited on a table in the court-room during the progress of a part of the trial seven dice concerning which no testimony whatever

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109 Id. at 320–21.
110 Territory v. Tacuban, 40 Haw. 208 (1953).
111 Id. at 208–09. The Court said the defendant was playing “a certain gambling game, known as Monte,” but provided no other details. Id. at 208.
112 Id.
113 Id. at 210–11.
114 Id. at 211.
116 Id. at 222.
The testimony for the prosecution related solely to a game played with cards. There was no evidence or claim of the use of dice in the game. Under all of the circumstances of the case it would be an unwarranted reflection on the intelligence of the jurors to hold that they were in any degree prejudiced in their consideration of the case by the view which they had of the dice on the table.

Lastly, in *Territory v. Snyder*, the defendant was arrested for running a bunco game. After the defendant’s attorney intervened, the arresting officer promised the defendant that if he pled guilty to being present at a gambling game, the officer would see to it that the defendant was given a $25 fine. When the prosecutor refused to go along with this deal, the defendant pleaded guilty to knowingly and unlawfully permitting a gambling game to be held on premises rented and controlled by him. After doing so, the district magistrate fined the defendant $200. Startled, the defendant tried to change his plea from “guilty” to “not guilty” but the district magistrate refused his request. On appeal, the Hawaii Supreme Court affirmed:

It is not an abuse of discretion for the trial court, after a plea of guilty and sentence in a misdemeanor case, to refuse defendant’s motion to change his plea from that of guilty to that of not guilty, where there is no showing that the defendant was misled by anything said or done by the court or prosecuting attorney, although the defendant was sentenced to pay a larger fine.

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117 *Id.*
118 *Id.* at 224.
120 *Id.* at 637. As explained in the statutes cited supra note 11, a bunco game is a confidence game in which an unsuspecting player is cheated out of his or her money.
121 *Snyder*, 23 Haw. at 637.
122 *Id.*
123 *Id.*
124 *Id.*
fine than he believed from statements made by a police officer would be imposed upon him.\(^{125}\)

3. Appeals

In *Ex parte Higashi*,\(^{126}\) the defendant was found guilty of helping to run a lottery.\(^{127}\) On appeal to the Hawaii Supreme Court, he sought to disqualify Chief Justice Walter F. Frear on the ground that Frear had “expressed to a member of the judiciary committee of the legislature his approval of the bill which became [the Territory’s gambling law of] 1905.”\(^{128}\) The Court’s majority held that Frear had not broken any laws and therefore was not disqualified.\(^{129}\) In a concurring opinion, Frear insisted that the defendant’s position, if accepted, would have absurd consequences:

If a judge were disqualified because he had expressed an opinion on the law or an approval of it, he could not sit in any case in which was involved a question of law upon which he had expressed an opinion as a student, or as an attorney or in a decision or dictum by him as a judge in some other case, or in an opinion to the executive or legislative branch of government such as the justices of this court were for many years and the justices of many other supreme courts are now required by constitutional provision to give under certain circumstances. That would be absurd.\(^{130}\)

In *In re Ching Tai*,\(^{131}\) the defendant was convicted “of being present at a place where gambling games were carried on and [was] sentenced to six months imprisonment and $2.50 costs[.]”\(^{132}\) After posting an appeal bond, the defendant was released on bail.\(^{133}\) Nine

\(^{125}\) *Id.*

\(^{126}\) *Ex parte Higashi*, 17 Haw. 428 (1906).

\(^{127}\) *Id.* at 430–31.

\(^{128}\) *Id.* at 428–29.

\(^{129}\) *Id.* at 430.

\(^{130}\) *Id.* at 444.

\(^{131}\) *In re Ching Tai*, 18 Haw. 473 (1907).

\(^{132}\) *Id.* at 473.

\(^{133}\) *Id.* at 473–74.
months later, the defendant voluntarily dismissed his appeal, which caused the sheriff to take him into custody.\textsuperscript{134} In response, the defendant filed a writ of habeas corpus, arguing that the sheriff had acted even though no “order was made by the circuit court . . . directing the [sheriff], by reason of the dismissal of the exceptions, to arrest him[].”\textsuperscript{135} When the circuit court ruled that the sheriff’s actions had been proper, the defendant appealed to the Hawaii Supreme Court and asked for bail.\textsuperscript{136} In rejecting this rather unorthodox request, the Court explained:

The petitioner does not ask to be heard on the petition [for release]—he does not wish it to be disposed of now—but merely that his motion for bail be granted. . . . [T]he granting of bail is discretionary and while it is not desirable to consider the merits of the case in advance of argument, [this] court in giving its judgment, after looking at the record which has been made part of the motion, under all the circumstances, denies the motion.\textsuperscript{137}

Lastly, in \textit{Brown v. Lee Chuck},\textsuperscript{138} sixty-five individuals were found guilty of being present at gambling games.\textsuperscript{139} When they failed to show up for sentencing, their bail bond was forfeited.\textsuperscript{140} Lee Chuck, their surety, then objected, claiming that the group had not received notice of the sentencing date.\textsuperscript{141} In rejecting this argument, the Hawaii Supreme Court observed:

The bond in this case was joint and several. Notice to one of several persons having common interests in the same subject matter operates as notice to all . . . . It would have been better, perhaps, if the court had ordered service upon the other defendants of the order requiring their appearance, but it is not

\textsuperscript{134} Id. at 474.
\textsuperscript{135} Id. at 473–74.
\textsuperscript{136} Id. at 473.
\textsuperscript{137} Id. at 474.
\textsuperscript{138} Brown v. Lee Chuck, 19 Haw. 4 (1908).
\textsuperscript{139} Id. at 5.
\textsuperscript{140} Id. at 6.
\textsuperscript{141} Id.
apparent that the rights of the surety have been prejudiced by the omission.\footnote{Id. at 7.}

\section*{F. Public Corruption}

Unsurprisingly, some gambling operators tried to bribe territorial officials to look the other way. In \textit{Tong Kai v. Territory},\footnote{Tong Kai v. Territory, 15 Haw. 612, 613 (1904).} for example, a gambler named Tong Kai was found guilty of offering Emil Cornelius Peters, the Territory’s Deputy Attorney General, a $1,500-a-week bribe in exchange for Peters agreeing not to interfere with Tong Kai’s Honolulu lottery business.\footnote{Id. at 613. To put this into perspective, $1,500 in 1904 is the equivalent today of $50,114.62. See S. Morgan Friedman, \textit{The Inflation Calculator}, https://westegg.com/inflation/ [https://perma.cc/5ATN-CK4U] (providing an inflation calculator). Thus, Tong Kai was proposing to pay Peters $2.6 million a year if he would look the other way.} On appeal, Tong Kai made two arguments: 1) the public bribery statute did not cover future criminal acts; and 2) his conviction rested on the word of a perjurer.\footnote{Tong Kai, 15 Haw. at 615–16.}

The Hawaii Supreme Court easily dismissed Tong Kai’s first argument:

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The \textit{[anti-bribery] statue} (P.L., § 255) reads: “Whoever corruptly gives or promises to any executive, legislative or judicial officer, or to any master in chancery, juror, appraiser, referee, arbitrator or umpire, any gift, gratuity, service or benefit, with intent to influence his vote, judgment, opinion, decision or other acts as such in any case, question, proceeding or matter pending, or that may by law come or be brought before him in his capacity as aforesaid, shall be punished by imprisonment at hard labor not more than two years, or by fine not exceeding five hundred dollars.” . . . \textit{[A]}n attempt by a promise of a gift of money to influence \textit{[an]} officer, before the intended commission of the offense, in his decision and action in such matter, falls within the
\end{flushleft}
\end{quote}
language and scope of the section and is punishable under its provisions.146

Turning to Tong Kai’s second argument, the Court found that the witness was competent to testify:

Ah Kum . . . testified on . . . direct examination that the defendant and himself had been shareholders in a certain pakapio bank called the Tuck Lee Bank and on cross-examination that in the trial of another case he had stated under oath that he did not know anything about the Tuck Lee Bank. Whether the fact testified to was material in the former case does not appear. The witness has not been convicted of the offense of perjury now claimed by plaintiff in error to have been committed on the occasion referred to. Because a person has committed perjury as to a particular fact, it does not follow that he can never afterwards feel the obligation of an oath. He is not, in the absence of a statute to the contrary, thereby rendered incompetent as a witness. The fact that on a former occasion he swore falsely simply goes to his credibility.147

In a lengthy dissent, Justice Clinton A. Galbraith insisted that the case should have been dismissed because the indictment was impermissibly vague:

This indictment has the same weakness and is bad for the same reasons as that in the case of The Republic v. Young Hee, 10 Haw. 114, 116 [1895]. What the Court said in that case is applicable to this. “The proceeding or matter should be described. The court should be apprised of the nature of the matter in reference to which the acts of the officer were intended to be influenced by the bribe. . . . [T]he words of the statute have been followed in the

146 Id. at 615.
147 Id. at 616.
indictment, but they are general words and require a fuller statement of the nature of the purpose which the bribe was intended to subserve.”

In *Territory v. Lau Hoon*, the defendant offered a police officer named Enoka Lovell a $30 bribe if he would “not . . . arrest players at che fa games . . . being carried on unlawfully at Huleia, Lihue, Kauai . . . .” After being found guilty of bribery, the defendant appealed on the ground that the “indictment was insufficient in that it did not state that the officer alleged to have been bribed was a police officer in the jurisdiction of Huleia . . . .” In turning away this argument, the Hawaii Supreme Court commented: “We think that the indictment, while inartistically drawn, substantially followed the language of the statute and stated an offense under the liberal provisions of our criminal procedure . . . .” Nevertheless, the Court reversed the defendant’s conviction and granted him a new trial:

If there was sufficient evidence in the record from which the jury could find that a game of che fa was being conducted at Huleia the defendant would not be entitled to a new trial, but . . . . the absence of any evidence on this point entitles him to a new trial.

In *Territory v. Caminos*, Clarence C. Caminos, the captain of the Honolulu Police Department’s vice squad, was found guilty of accepting $10,800 in gambling bribes. On appeal, Caminos objected to the government’s witnesses because their testimony had included details about other crimes. According to Caminos, this had prejudiced the jury against him. After examining the facts, the Hawaii Supreme Court rejected this contention:

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148 *Id.* at 618–19.
149 Territory v. Lau Hoon, 23 Haw. 616 (1917).
150 *Id.* at 617.
151 *Id.* at 616.
152 *Id.* at 616–17.
153 *Id.* at 617.
154 *Id.* at 619.
155 Territory v. Caminos, 38 Haw. 628 (1950).
156 *Id.* at 630.
157 *Id.* at 632.
The defendant, as a witness on his own behalf, denied that he had received any moneys whatsoever constituting bribe payments. This denial, in addition to his plea of not guilty to the indictments, magnetized the question of intent directly into issue, imposing the burden of proof upon the Territory. Being thus required to prove corruptness on the part of the defendant, . . . the Territory was entitled to introduce any and all evidence competent and material for that purpose.158

In two other cases, attorneys were found to have violated their oaths by helping gambling defendants. In In re Bevins,159 Elmer R. Bevins, the county attorney for Maui County, had his license to practice law suspended for three months for various transgressions.160 One of Bevin’s misdeeds involved a deputy sheriff named Waiwaiole who was being prosecuted by the Territory’s attorney general for keeping the money he had seized during a gambling raid.161 Not only did Bevins advise Waiwaiole not to confess, he also promised to help him beat the charge.162 In rebuking Bevins, the Hawaii Supreme Court wrote: “[T]he respondent’s conduct . . . indicates his motives and clearly shows that the respondent was unfaithful to his clients, the county and the people of Maui, and rendered his assistance, such as it was, to the defendant in a criminal case and not to the prosecution.”163

Justice William S. Edings dissented, insisting that Bevins had done nothing wrong.164 With respect to the charge involving Waiwaiole, Edings noted:

It appears from the testimony that this matter was presented by Bevins to the grand jury who acted upon that presentation and recommended in its report that “pending a final investigation of this matter

158 Id. at 642.
159 In re Bevins, 26 Haw. 570 (1922).
160 Id. at 609.
161 Id. at 595–96.
162 Id. at 597.
163 Id. at 598.
164 Id. at 610.
Waiwaiole be suspended from office.” The sheriff testifies that [Waiwaiole] was suspended and discharged from his office and that [the sheriff] concluded that that ended the matter . . . . That Bevins did not bring the matter again to the grand jury at its next session is true, but the witnesses were all Japanese, unable to understand or speak the English language and residing in a remote district of the island, and it would have been almost impossible for either the sheriff or Bevins to have obtained the necessary evidence within that time. Afterwards the attorney general brought this matter of Waiwaiole and his associates before the grand jury upon evidence obtained from one Eugene Murphy, Esq., the attorney for these Japanese, who was possibly the only man on Maui that was in a position to obtain this testimony, the Japanese coming to him voluntarily as their attorney and making their statements in regard to the matter; and this is the entire substance of this charge. If there was testimony upon this hearing in regard to other matters which appear to have influenced the opinion of the majority of this court this evidence was clearly inadmissible and should have been rejected as irrelevant.165

Similarly, in In re Roberts,166 Claus L. Roberts, an attorney who also was a Honolulu deputy sheriff, was accused of helping gamblers in their efforts to bribe various county officials.167 Roberts admitted his role in the conspiracy but begged for mercy because, after initially participating in the scheme, he revealed it to the authorities, which led to various arrests and prosecutions that “counterbalanced or more than counterbalanced” his wrong.168 In

165 Id. at 612–13 (paragraphing slightly altered for improved readability).
166 In re Roberts, 30 Haw. 588 (1928).
167 Id. at 589.
168 Id. at 594. Although Roberts testified against his former confederates, all but one of them (James Achuck) avoided conviction. See Territory v. Desha, 31 Haw. 474, 474–75, 478 (1930) (convicting Achuck and finding “no evidence of entrapment by any government official. . . .”).
rejecting Roberts’s plea and revoking his license, the Hawaii Supreme Court expressed considerable indignation:

The contention of the respondent, advanced in closing argument, that the good which he did to the public by testifying before the grand jury which found the indictment against the sheriff and others and by testifying at the trial of the sheriff and Achuck under that indictment “counterbalanced or more than counterbalanced” the wrong of which he was guilty in entering into the conspiracy, cannot be sustained. Courts cannot adopt any such doctrine.

Such a giving of testimony on behalf of the public does not indicate with any degree of certainty that the character which permitted the respondent to enter into the conspiracies to give and receive bribes and to pervert the course of justice and to concoct and present false defenses in court had completely changed for the better in the interim between the date of the misconduct and the date of the confession.

In view of the fact that all of six months elapsed between the respondent’s entering into the conspiracy and his confession to the county attorney, that during all of that period he maintained secrecy as to the conspiracies and that he did not disclose his participation in them until after the county attorney commenced an investigation into the subject, a finding would not be justified that the confession was caused by true repentance rather than by a desire to avoid punishment in the criminal courts.169

G. References in Non-Gambling Cases

Due to gambling’s stigma, numerous territorial cases can be found in which a party’s betting habits were used as a weapon by

169 In re Roberts, 30 Haw. at 594 (paragraphing slightly altered for improved readability).
the other side.\textsuperscript{170} In \textit{Cummins v. Carter},\textsuperscript{171} for example, a wife who wanted a divorce threatened to expose her husband’s gambling habits if he did not consent to the divorce.\textsuperscript{172} Similarly, in \textit{Wong Hung v. Wong Hung},\textsuperscript{173} a wife seeking a divorce cited her husband’s gambling as a reason to grant her request.\textsuperscript{174} And in \textit{Daitoku v. Daitoku},\textsuperscript{175} a husband asked for custody of the couple’s children on the ground that his wife’s gambling made her an unfit mother.\textsuperscript{176}

Such tactics were not limited to divorce cases. In \textit{Territory v. Lee},\textsuperscript{177} a larceny prosecution, the government was allowed to ask the defendant about his gambling habits to show his propensity to commit the crime.\textsuperscript{178} Likewise, in \textit{Territory v. Aquino},\textsuperscript{179} a murder prosecution, the defendant sought to undermine the victim’s character by introducing his criminal record, which included two gambling convictions.\textsuperscript{180}

In \textit{Louis v. Victor},\textsuperscript{181} one of the parties involved in a two-vehicle collision sought to prove that the other driver was at fault by pointing to his rap sheet, which listed three gambling convictions.\textsuperscript{182} In \textit{United States v. Koon Wah Lee},\textsuperscript{183} an informer whose assistance led to the arrest of a crooked cop was denied a statutory reward partially because of his gambling activities.\textsuperscript{184} And in \textit{Achiles v. Cajigal},\textsuperscript{185} the plaintiff, in trying to collect a debt, emphasized that the defendant made his living through gambling.\textsuperscript{186}

\textsuperscript{170} The public’s distrust of gamblers also worked its way into government policy. See, e.g., \textit{Territory v. Yeshita}, 27 Haw. 587, 589 (1923) (citing § 1995 of the 1915 RLH, as amended by Act 103 of 1919) (pointing out that a person convicted of a gambling offense was ineligible to hold a public billiards table license).

\textsuperscript{171} Cummins v. Carter, 17 Haw. 71 (1905).

\textsuperscript{172} \textit{Id.} at 72–73.

\textsuperscript{173} Wong Hung v. Wong Hung, 27 Haw. 280 (1923).

\textsuperscript{174} \textit{Id.} at 281.

\textsuperscript{175} Daitoku v. Daitoku, 39 Haw. 276 (1952).

\textsuperscript{176} \textit{Id.} at 277 (finding that both parents liked to gamble, the court granted custody to the mother.)

\textsuperscript{177} Territory v. Lee, 29 Haw. 30 (1926).

\textsuperscript{178} \textit{Id.} at 33.

\textsuperscript{179} Territory v. Aquino, 43 Haw. 347 (1959).

\textsuperscript{180} \textit{Id.} at 367.

\textsuperscript{181} Louis v. Victor, 27 Haw. 262 (1923).

\textsuperscript{182} \textit{Id.} at 268.


\textsuperscript{184} \textit{Id.} at 451–452.

\textsuperscript{185} Achilles v. Cajigal, 39 Haw. 493 (1952).

\textsuperscript{186} \textit{Id.} at 495–496.
In *Hitchcock v. Hustace*, a shareholders’ derivative action, the defendants sought to paint the plaintiffs as intemperate gamblers. The Hawaii Supreme Court pointedly rejected this analogy:

Much stress is laid upon the fact that the time this company was organized was one of active expansion in the sugar industry; that speculation ran riot and prosperity in all of its delightful luxuriance was here; that the major part of the population of the islands were eager and anxious to buy sugar stocks; that the plaintiffs and others who bought shares in the Kamalo Sugar Company, Limited, did so without asking any questions and considered it a privilege to have shares allotted to them; that the transaction was all a gamble and when the excitement subsided the plaintiffs discovered that they had failed to realize on their exaggerated expectations and by this suit seek to avoid the responsibility of their own folly and to shift the burden of their losses to the defendants.

We are not much impressed with this argument. It finds as little support in morals as in law. It is no doubt true that at the time in question there was much reckless speculation in corporation shares but it was not given out by the defendants and we assume, in the absence of proof, that none of the plaintiffs had any reason to believe or did believe that the Kamalo Sugar Company was organized as a lottery or a gambling enterprise. The public who were invited to buy the shares of this company had a right to presume that it was promoted as a legitimate enterprise in whose management business integrity, if not ability and prudence, were to be important constituent elements.

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188 *Id.* at 238.
189 *Id.* at 238–39. In another case, the Hawaii Supreme Court rejected the notion that a “key man” insurance policy constituted impermissible gambling: “The purpose of the
Despite the clear bias against gamblers, in at least one territorial case a criminal defendant had a gambler testify for him as a character witness.\footnote{See Territory v. Yim, 39 Haw. 214 (1952) (explaining that the defendant’s only witness was a professional gambler).} In two other cases, the defendant’s alibi hinged on being at a gambling game, far from the crime site.\footnote{See Territory v. Abad, 39 Haw. 393 (1952) (affiant testified that the defendants were engaged in a gambling game at the time of the alleged robbery); In re Oxiles, 29 Haw. 323 (1926) (defendant sought to have a witness give false statements regarding the identities of the participants in the witness’s gambling games).}

IV. CONCLUSION

As the foregoing cases make clear, gambling, although illegal, flourished in territorial Hawaii.\footnote{This paradox continues to the present day. See, e.g., Special Report: Rolling the Dice, HONOLULU CIVIL BEAT (Jan. 18–Mar. 8, 2022), https://www.civilbeat.org/projects/rolling-the-dice/ [https://perma.cc/TGJ6-662D] (reporting on the numerous trips locals take every year to Las Vegas and the many illegal gambling rooms that dot the Islands). In the meantime, the proponents of legalized gambling remain as determined as ever. See, e.g., Michael Brestovansky, Gambling Bills Go Bust, W. HAW. TODAY (Mar. 19, 2023), https://www.westhawaiitoday.com/2023/03/19/hawaii-news/gambling-bills-go-bust-in-legislature/ [https://perma.cc/58JB-LJXV] (reporting that during Hawaii’s 2023 legislative session, bills authorizing a casino on Oahu, sports betting, and a state lottery were introduced but failed to gain traction).} Indeed, gambling was such an accepted part of the local landscape that in 1902, while waiting for Honolulu Circuit Judge John T. De Bolt to rule on a case, Abram S. Humphreys (himself a former Honolulu trial court judge) suggested to Joseph B. Lightfoot, one of the lawyers for the other side, that they bet on the case’s outcome.\footnote{See Secrets Laid Bare—More Light Cast Upon Sumner Cases—Sidelight on Visit of Federal Senate Commission—Magoon Stands by His Testimony in Chief—Highton Reveals the “Firm’s” Connections, PAC. COMM. ADVERT. (Honolulu) (July 1, 1903), at 2.} During Humphreys’ subsequent disbarment hearing, Lightfoot recounted the incident by testifying: “Mr. Humphreys[, after] producing a large number of

insurance was to protect the interests of Benson, Smith & Company, Limited, against a sudden demand for funds in the event of the death of any of the three men, they virtually owning the entire business; that also was Rumsey’s understanding of the matter, and he regarded it as a perfectly legitimate business transaction and not that he was participating in a gambling scheme—nor was the contract in contravention of the rule of public policy against wager policies.” Rumsey v. New York Life Ins. Co., 25 Haw. 141, 146 (1919).
gold coins from his pocket, offered to wager with me that sum against a small sum that he would so win.”

194 In re Humphreys, 15 Haw. 155, 198 (1903). Although Humphreys was disbarred by a vote of two to one, with Justice Galbraith dissenting on the ground of insufficient evidence, the majority made it clear that Humphreys was not being disbarred solely because of his proposed bet with Lightfoot: “There certainly could be no objection to Mr. Humphreys being confident of his case or to his intention to appeal it from one court to another . . . nor to his expressing himself to that effect in terms as emphatic as he pleased. Even an attempt at a game of bluff resorted to in his ardor for the interests of his clients might, at least if within certain limits, be overlooked. That is not the question. The question is whether his conduct as a whole [merits disbarment].” Id. at 199, 207, 219.