

ALASKA'S FLOATING COURT

CLAUS-M. NASKE

When President William McKinley appointed Tacoma lawyer James Wickersham, an active Republican, to the position of U.S. District Court judge in Alaska in 1900, Congress had recently passed a civil code and a code of civil procedure for Alaska. Among other provisions, the measure divided Alaska into three judicial districts and added to the already-established district court at Sitka, in Alaska's panhandle, additional district courts at Nome on the Seward Peninsula and at Eagle City on the Yukon River.¹

The Department of Justice assigned Wickersham to the third judicial division, encompassing 300,000 square miles, with fewer than 1,500 Caucasian residents, according to the just-completed 1900 census. During 1900, Wickersham held court at Eagle City, Circle, and Rampart, but he soon realized that there would be little litigation in the immediate future. At the close of the year, the judge rendered his report to the Department of Justice. He was of the opinion that the routine business in Eagle City was small and not likely to increase. Since the courts in the first and second divisions were swamped with litigation, he offered to help out by holding special terms of court for them. On March 28, the attorney general directed Judge Wickersham to hold a special term of court at Unalaska in the Aleutian Islands, located in the second judicial division, "provided Judge [Arthur H.] Noyes made no objection." Judge Noyes, headquartered in Nome, welcomed the help.²

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¹Thomas A. Morehouse and Victor Fischer, *The State and the Local Government System* (College, Alaska, 1970), 3:8.

²Ibid., 321-22.

Alaska's vast size, difficult terrain, and lengthy coastline dictated that people travel by boat during the short summers. On August 3, 1901, at Eagle City, Judge Wickersham boarded the Alaska Commercial Company's steamer *Leah*, the first of three ships he would take en route to Unalaska. Down the Yukon River, Wickersham and the other passengers transferred to another vessel, the *Herman*, and had to lay by for a day while the ships' crews moved the cargo from one boat to the other. At the town of St. Michael, where the Yukon emptied into Norton Sound on the Bering Sea, the judge transferred ship again and went to Nome on the steamer *St. Paul*.³

While briefly in that city, Judge Wickersham was told by U.S. marshal Frank H. Richards that he would be unable to summon enough jurors from Unalaska's small population. Consequently, the judge ordered that the needed individuals be summoned in Nome. The marshal complied and called sixteen grand jurors and eighteen trial jurors, all of whom boarded the *St. Paul* to accompany the judge and his party to Unalaska. Thus was born Alaska's "floating court."⁴

Wickersham convened court in Unalaska on August 19. Five days later, the judge celebrated his forty-fourth birthday, and to commemorate the day climbed the three-thousand-foot peak overlooking the settlement. He noted in his diary that he saw mountain marmots and fox tracks and delighted in the numerous ravens that swooped down from the sky, uttered their distinctive sound, and quickly rolled over on their backs in midflight for a few seconds with their "feet uppermost." On the eastern side of the Unalaska harbor rose another mountain about two thousand feet high. A physically active and vigorous man, Wickersham climbed that peak on another occasion and discovered a pole planted on top inscribed with the words "agreed to call this peak Wickersham Peak" and dated August 24, 1901, the judge's birthday. He was moved by the gesture of the two men who inscribed the pole. The judge enjoyed Unalaska's setting, especially the breezes caused by the Japan Current, and concluded that the area possessed the "most wonderful climate" he had known, observing that "it does not get warmer than 65 above nor colder than 10 above—a range of only 55 degrees!"⁵

Wickersham cleared the court calendar in Unalaska and returned to Eagle City in the fall, proud of having conducted

³Ibid., 323–24.

⁴Judge Wickersham diary, August 16, 1901, University of Alaska, Fairbanks, Archives.

⁵Ibid., August 19, 20, 22, September 1, 1901, August 26, 1901.

the first court ever convened in the Aleutian Islands. He held several more, utilizing the revenue cutters of the Treasury Department instead of commercial ships, for transportation.

Alaska certainly was remote from the rest of the United States, and members of Congress and the executive branch had little understanding of this vast territory, which the United States had purchased from Russia in March 1867. The U.S. had assumed ownership of the territory when American occupation troops arrived in New Archangel (Sitka), the capital of Russian America, in October of that year. On July 27, 1868, Congress passed a customs act extending over Alaska the U.S. laws of customs, commerce, and navigation. It also prohibited the sale, importation, and use of firearms and distilled liquors, and provided that suspected criminals be prosecuted in the U.S. district courts of California, Oregon, or the territory of Washington. The act, however, contained no law enforcement provisions, and consequently it fell to the military, which governed the new possession, to enforce the laws.⁶

Congress passed Alaska's Organic Act in 1884, which made the region a civil and judicial district. It was a wholly imperfect piece of legislation, widely criticized. For example, in an 1887-88 annual report to Congress, the secretary of the interior described Alaska's conditions in its civil relations as "anomalous and exceptional." He referred to the Organic Act as "an imperfect and crude piece of legislation," because it provided only "the shadow of civil government, without the right to legislate or raise revenues." It had not extended the general land laws of the United States to Alaska, but declared the mining laws to be fully operational. There was no mechanism to incorporate towns and villages, and this deprived district residents of the benefits and protections of municipal law. It had created a single district court with "many of the powers of a federal and state court, having a more extensive territorial jurisdiction than any similar court in the United States, but without providing the means of serving its process or enforcing its decrees." The Organic Act had been well described as a "legislative fungus, without precedent or parallel in the history of American legislation."⁷

Despite these shortcomings, the act gave Alaska its first resident judge. He was a statutory rather than constitutional

⁶15 Stat. 240.

⁷Jeannette P. Nichols, *Alaska: A History of Its Administration, Exploitation, and Industrial Development During Its First Half Century under the Rule of the United States* (New York, 1963), 73; *Annual Report of the Secretary of the Interior*, 50th Cong., 1st sess., 1887, *Executive Documents of the House of Representatives*, vol. 1, 64-65.

judge, serving renewable four-year terms. The territory also received a U.S. attorney, a U.S. marshal, and other court personnel. For the next seventy-five years these federal officials, later increasing in number, administered civil and criminal laws in the huge region under the close supervision of the U.S. attorney general and Justice Department staff in Washington, D.C.⁸

The Department of Justice soon realized, albeit reluctantly, that Alaska was unlike any other territory or state in the Union. It was a remote, maritime frontier, with both arctic and subarctic climates and a difficult geography. It possessed subcontinental proportions and only a rudimentary transportation system. In short, Alaska baffled and challenged Department of Justice personnel in the nation's capital who supervised operations in the far-off territory.

As noted above, the Department of Justice had authorized Judge Wickersham to hold the first "floating court" in 1901, and Wickersham had utilized commercial transportation. In 1910, when Peter D. Overfield, the district court judge of the fourth division, headquartered in Fairbanks, proposed to hold a "floating court" along the west coast of Alaska and the Aleutian Islands, he asked the U.S. Revenue Cutter Service to make available one of its vessels stationed in the Bering Sea. Congress had established the U.S. Revenue Cutter Service, the forerunner of the U.S. Coast Guard, in 1790. The Bering Sea Patrol Fleet was established after the acquisition of Alaska to control and protect the territory's islands and coastline in that region and to halt incursions by foreign vessels. Of particular concern to the U.S. was the taking of seals by ships from Canada, Russia, and Japan, and the Bering Sea Patrol Fleet was called into action many times from 1886 to 1911, when the practice was halted by treaty.⁹

Judge Overfield was born in Auburn, Pennsylvania, in 1875. He fought in the Spanish-American War, and afterwards earned a law degree from the University of Pennsylvania. In 1903, he went to Nome and worked as a miner and a lawyer. Six years later, President Howard Taft appointed him district court judge for the fourth division in Fairbanks, where he served until 1912. He took over the third division judgeship in Valdez, serving just a year before leaving Alaska for California.¹⁰

Overfield had proposed to hold the "floating court" and had requested that a revenue cutter steam to Valdez in mid-July to

⁸23 Stat. L., 24. (May 17, 1884).

⁹Briton Cooper Busch, *The War Against Seal Fishery* (Kingston and Montreal, 1985), 292, 145, 151-52.

¹⁰Evangeline Atwood and Robert N. DeArmond, *Who's Who in Alaskan Politics* (Portland, Ore., 1977), 75.

pick up and transport court officials to the various towns and settlements along the coast, including Kodiak, Chignik, Unga, Unalaska, Dillingham, and Koggiung, locations accessible only by water, for the most part. Making the case for the floating court, Overfield pointed out that the Bristol Bay precinct, for example, was open to navigation only from July to September. Transportation to Valdez was intermittent at best. Many petitioners for citizenship naturalization were not afforded a reasonable opportunity for a hearing at the court in Valdez, the judge argued, except at considerable cost amounting to more than five hundred dollars, including the expenses of the necessary two witnesses per case. As for criminal and civil cases, the judge noted that, by trying the cases in the distant parts of the division, the floating court would eliminate the cost of bringing government witnesses to Valdez. Both a trial juror and a grand juror from Valdez would be brought along, he proposed, to assist jurors summoned locally. A former U.S. commissioner in the Bristol Bay precinct, Dr. J.H. Romig, had already presented this idea to the Department of Justice, and the Revenue Cutter Service had indicated its willingness to make one of its ships available.¹¹

It is likely that Judge Overfield was aware that the Departments of Justice and Treasury had entered into a formal agreement three years earlier to investigate and prosecute officers and crewmen in the whaling fleet who allegedly were sexually exploiting native women and girls. The agreement called for the skipper of a revenue cutter to be appointed as a U.S. commissioner, and for the ship also to carry an assistant U.S. attorney and a U.S. marshal. For several years, court officials out of Nome had roamed the northern seas aboard revenue cutters, alighting at native villages and boarding whaling vessels in pursuit of sexual offenders.¹²

¹¹Peter D. Overfield to attorney general, February 2, 1910; attorney general to the secretary of the treasury, March 19, 1910; secretary of the treasury to attorney general, April 18, 1910, File 146772, Section 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

¹²Subsequent investigation revealed, however, that native women offered "themselves and their daughters, and husbands their wives to accompany these officers" on whaling cruises and regarded the trip as "a privilege." Nevertheless, the federal government pursued cases of fornication and adultery for several years. See "Interdepartmental Arrangement as to Whaler's Offense," April 29, 1907, file 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives; 62d Cong., 3d sess., Senate Document No. 1093, The Joint Committee on Territories of the Senate and House of Representatives, *The Compiled Laws of the Territory of Alaska* (Washington, D.C., 1913), chap. 7, Sec. 2000, 2001, 2003, 673; J.J. Glover, "Memorandum for the Attorney General," March 19, 1910, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

Before the court got under way in 1910, however, a number of problems had to be resolved. Judge Overfield had indicated that he desired to sail from Valdez on the cutter about July 15. The Department of Justice, however, had transferred Overfield, much against his wishes, to the newly created fourth judicial division (formerly the third judicial division), headquartered in Fairbanks. The transfer was effective the first of July.¹³

In 1903, on a visit to Alaska, four members of the Senate subcommittee of the Committee on Territories had taken testimony on the subject of adding judges. They had found that the third judicial district was so geographically extensive and its business so large that it had recommended "that a portion of it be set off to form [a] fourth judicial district" with its own judge. Members of the subcommittee asked Judge Wickersham, who at that time was holding a term of court in the third judicial district, for his opinion. Wickersham stated that his division was indeed huge, extending from "the British [now Canadian] lines to the outer Aleutian Islands; from the Pacific to the Arctic oceans." As a result, he traveled constantly. He told the subcommittee that during the navigation season he had to travel the whole length of the American Yukon River, some fifteen hundred miles, holding courts at Eagle and Rampart. If he had to go to the Koyukuk country, that trip added another eleven hundred miles of river navigation and 120 trail miles to his annual journey into Alaska's interior. At St. Michael, the government placed a revenue cutter at his disposal, which took him to Bristol Bay, Dutch Harbor, and then along the southern coast of Alaska as far as Valdez. This made for a sea journey of sixteen to eighteen hundred miles. In 1905, a measure to create a fourth judicial district passed the Senate, but was defeated in the House.¹⁴

It was not until 1909 that Congress passed a measure that amended the Civil Government Act of June 6, 1900. Among other provisions, such as raising the annual salary of district court judges in Alaska from \$5,000 to \$7,000, the amendment created another judicial division, with a court and the necessary personnel. The new district court, designated the third judicial division, was to be headquartered at Valdez. Fairbanks lost its designation as the third judicial division and became the fourth.¹⁵

¹³Overfield to attorney general, April 1, 1910, File 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

¹⁴59th Cong., 1st sess., House Document No. 5, *Report of the Governor of Alaska*, 10–11.

¹⁵*Report of the Governor of the District of Alaska to the Secretary of the Interior, 1909* (Washington, D.C., 1909), 43–44.

The judge then sitting in Fairbanks, Thomas R. Lyons, was sent to Juneau, and Judge Overfield was assigned to Fairbanks. Overfield was not happy with this new position. Writing to the attorney general, he predicted that he would be greeted with skepticism in Fairbanks, since he was considered to be a supporter of Alaska's recent delegate to Congress, former judge James Wickersham, who had used his influence to secure Overfield's appointment. In addition, Wickersham could be expected to argue cases before his court in Fairbanks during congressional summer recesses. Any decision Overfield rendered in favor of Wickersham would be criticized, Overfield predicted, and regarded as repayment of a political debt.¹⁶

Furthermore, Overfield was worried that Judge Lyons, who had made a splendid record in Fairbanks, would meet with disaster in Juneau, because he was the former partner of lawyer Louis P. Shackleford, then the national Republican committeeman for Alaska. Shackleford practiced law in Juneau and represented some of the largest mining corporations in the territory. Overfield was certain that Lyons would be charged with conflict of interest in decisions favorable to his former law partner. Overfield conceded, however, that if the department insisted on the change, Judge Lyons could "conquer the situation at Juneau," and his own difficulties at Fairbanks did not appear insurmountable. Alaska's governor, Walter E. Clark, dismissed Overfield's reasons for resisting the reassignment and remarked that the judge preferred Valdez as his residence, and that his professed feeling of embarrassment about fancied political obligations to Wickersham was "unworthy of a courageous judge." The transfer took place as planned.¹⁷ The implementation of the next "floating court" would come from Overfield's successor, Judge Edward E. Cushman.

Although the Departments of Treasury and Justice had signed an agreement to investigate the whaling fleet in 1907, the question remained in 1910 which agency would foot the bill for the next "floating court." After some internal inquiries, the attorney general determined that his department "could and would pay all related costs from a

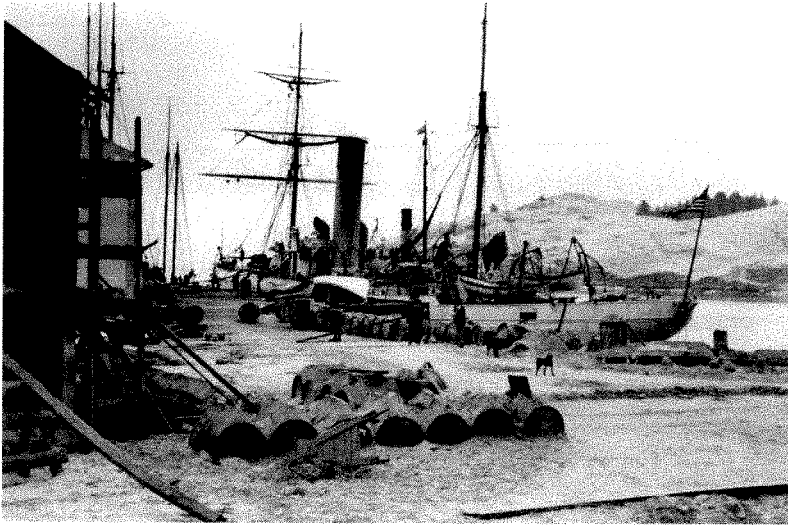
¹⁶Overfield to attorney general, March 20, 1910, File 146772, Section 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

¹⁷Ibid.; Clark to attorney general, April 1, 1910, File 146772, Section 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

variety of accounts available." Just as this issue was resolved, Judge Cushman, who was to convene the "floating court," wrote the attorney general that there were no attorneys licensed to practice west of Seward. Since U.S. commissioners handled misdemeanors, the only necessity for the district court in this region was to try felonies. The judge doubted that any felony case could be tried in the western part of the third division unless a government-paid defender accompanied the floating court. He suggested that he had the authority to pay the salary from discretionary funds accumulated from fines and forfeitures. The attorney general agreed that Cushman was authorized to pay for a public defender.¹⁸

Next the Treasury Department wished to know whether the judge could appoint officers of the Revenue Cutter Service as U.S. commissioners and deputy U.S. marshals. If so, the officers of the Bering Sea Fleet would be able to maintain law and order in places not reached by the court. Research into the applicable statutes revealed that, although Congress had intended U.S. commissioners to have a fixed residence, their jurisdiction was coextensive with the district, and any act performed within the limits of the district was clearly valid. Assistant Attorney General J.A. Fowler reasoned that the failure of commissioners to have permanent residence provided grounds for removal but did not deprive them of their official position. Therefore, it was perfectly legal and proper to appoint members of the Revenue Cutter Service as U.S. commissioners. The appropriate statute showed that U.S. deputy marshals were not required to maintain fixed residences, and therefore it was possible to appoint officials of the Revenue Cutter Service to such positions. In his research, Fowler discovered that the U.S. District Court for the third division had appointed the captain of the cutter *Thetis* U.S. commissioner for the last three successive years, and that officers of merchant vessels had been appointed deputy marshals by the U.S. marshal in previous years. With the legal questions clarified, the Treasury Department recommended that the captains of the cutters *Perry*, *Bear*, *Tahoma*, and *Manning* be appointed U.S. commissioners and one junior officer on each of these vessels receive a commission as deputy

¹⁸Secretary of the treasury to attorney general, April 18, 1910; attorney general, April 29, 1910; attorney general to E.E. Cushman, May 11, 1910, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.



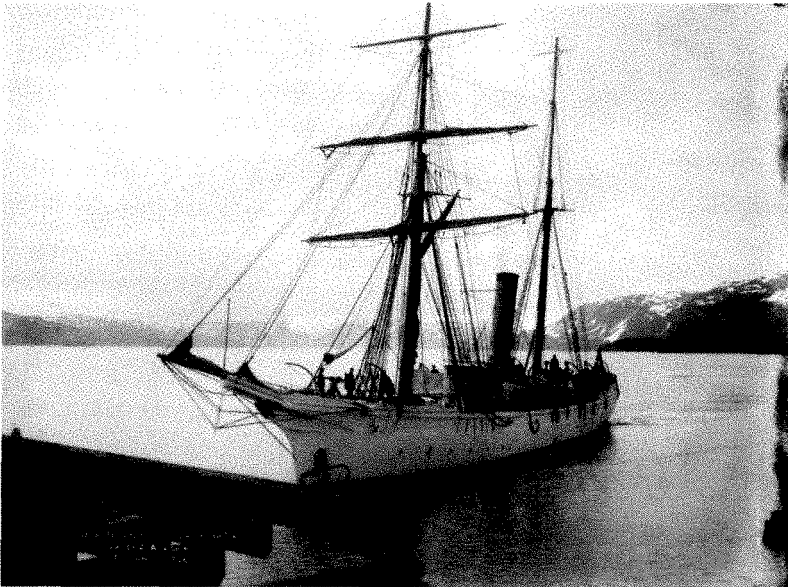
The captain of the cutter *Manning* was appointed a U.S. commissioner, and a junior officer of the vessel received a commission as deputy marshal. (Courtesy of the Amelia Elkinton Photo Collection [acc. 74-175-378N] in the Archives, Alaska and Polar Regions Department, University of Alaska Fairbanks)

marshal. Judge Overfield and Marshal Harvey P. Sullivan made the appointments.¹⁹

Judge Edward E. Cushman adjourned court on June 21 in the first division and had assumed his duties in the third judicial division when he left the next day on the revenue cutter *Rush* for the Alaska Peninsula and the Aleutian Islands. Judge Cushman convened court at various remote locations and returned to Valdez on August 13, having covered 3,724 miles. At the end of the trip, he reported that he was very satisfied with the floating court. The clerk of court estimated that the experiment had saved the government more than \$8,000. The judge, therefore, recommended that the court repeat the voyage the next summer.

The *Rush* picked up Cushman in Juneau on June 22 and left Valdez with the rest of the court personnel on July 2. Cushman

¹⁹Memorandum for Assistant Attorney General Fowler, April 13, 1910; J.A. Fowler to attorney general, April 27, 1910; attorney general to secretary of the treasury, April 27, 1910; acting secretary of the treasury to attorney general, April 29, 1910; J.J. Glover memorandum for the attorney general to Sullivan, May 7, 1910, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.



Aboard the revenue cutter *Rush*, Judge Edward E. Cushman convened court at various locations over a distance of 3,724 miles of the Alaska Peninsula and the Aleutian Islands before returning to Valdez. (Courtesy of the Whalen Photo Collection [acc.75-84-130N] in the Archives, Alaska and Polar Regions Department, University of Alaska Fairbanks)

held court at Unalaska for a few days, and then arrived in Bristol Bay in mid-July, when the canneries there were still operating. Unfortunately, criminal and other cases arose after the court departed from Bristol Bay, requiring that prisoners and witnesses be brought to Valdez at great expense. It certainly was not feasible to detain prisoners until the court returned a year later. So Cushman reasoned that, to enable the court to clear the docket of all cases, he should arrive later the following year, around August 10, the approximate time when the fishing season ended and the canneries shut down.

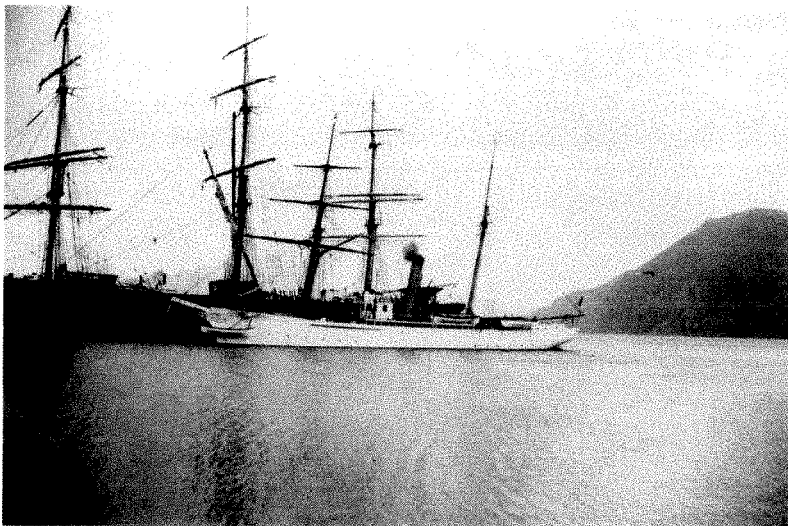
In his report, Cushman praised the officers and men of the *Rush*, who had done everything in their power to make the trip an agreeable one. He noted, however, that the ship was far too small for carrying court personnel and that everyone had suffered from the lack of space. He asked that a larger cutter be assigned for the work of the floating court in 1911.²⁰

²⁰Cushman to attorney general, June 21, 1910, File 146772, Section 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

D.P. Foley, the senior captain of the Revenue Cutter Service in command of the Bering Sea fleet, had also been generally satisfied with the work of the floating court. He did, however, have several complaints and recommendations. Unalaska had no suitable jail to confine prisoners accused of sealing violations. The existing facility was a jail in name only, located in the center of the village and possessing no locks or bars. Few men were willing to serve as guards, and even those few were none too reliable. Foley recommended Expedition Island in Unalaska Harbor as a suitable site for a jail. In addition, on the beach near the village lay a nearly completed sternwheeler built during the Nome gold rush. It was decaying slowly, but it could probably be bought for a small sum, moved to the island, and converted into a jail at a modest cost.²¹

The captains of the *Tahoma*, *Manning*, and *Perry* did not perform duties as U.S. commissioners during the 1910 season. They had not received their commissions until July, after which time their duties confined them to the patrol of the

²¹D.P. Foley to secretary of the treasury, October 20, 1910, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.



Judge Cushman noted that the U.S.R.C. *Rush* was far too small for carrying court personnel, and asked that a larger cutter be assigned for the floating court in 1911. (Courtesy of the Brooks Photo Collection [acc. 68-32-21N] in the Archives, Alaska and Polar Regions Department, University of Alaska Fairbanks)

Pribilof Islands. Any cases occurring there, Foley contended, "could be tried with better grace before the commissioner at Unalaska who would not be in the position of accuser and judge." Japanese sealers frequently landed on the Pribilof Islands and, if apprehended, were charged with illegal sealing. The commanding officers of either the *Tahoma* or the *Man-ning* could have tried the Japanese, but both officers had received their commissions only recently and were not prepared to try these cases. Foley believed, however, that all cases involving the subjects or vessels of foreign nations should be reported to the commander of the Bering Sea Patrol before any other action was taken. Foley felt that captains and junior officers acting as U.S. commissioners and deputy marshals, respectively, could probably deal with cases that arose while they were patrolling the coast on their way to the Bering Sea. He recommended that the men obtain their commissions before starting the cruise.²²

Foley suggested that, since the fleet traversed parts of the first and third judicial divisions, the captain of the *Rush* should be commissioned by the district court in that division. The commissions of the others should be for the third judicial division. In 1910 their jurisdiction was restricted to the waters and islands of the Bering Sea; this limitation was a mistake, since their services were most needed along the coast to the east of Unimak Pass in the vicinity of Sannak, Chirikof, and Kodiak Islands, where in the past both Canadian and Japanese sealers had committed depredations. Well into the 1910 season, Judge Cushman finally extended the jurisdiction of the captain commissioners to cover the whole of the third judicial division. The judge for the second judicial division issued commissions for the cutter *Bear*, which patrolled the Arctic coast. Foley concluded that the commissioning of Revenue Cutter Service officers meant that the laws would be enforced in parts of Alaska where it was but little known or regarded. Since officers had to be well prepared for this work, he recommended that each patrol vessel be furnished with a copy of Carter's annotated code of Alaska, while the commander of the Bering Sea Patrol should have a copy of the United States annotated statutes.²³

On March 15, 1911, the attorney general instructed Judge Thomas R. Lyons of the first division to conduct the floating court during that season, departing Valdez early in the summer. The attorney general directed Judge Cushman to hold a term of court at Juneau in May and at Fairbanks in June

²²Ibid.

²³Ibid.

through August. He also suggested that notices be posted of the terms of the floating court, one in the Valdez paper and one at Seward, and others at least thirty days in advance, at the commissioners' offices in each of the places where court was to be held.²⁴

In the meantime, a complication had arisen with the discovery that individuals being paid \$2,500 or more per annum could not "be appointed to, or hold the position of United States Commissioner." This ruled out the captains of the revenue cutters, but it left junior officers eligible. The attorney general recommended that the applicable statutes be amended to enable the commanding officers of revenue cutters to be appointed commissioners and ex-officio justices of the peace at large in Alaska, serving without compensation at such places where no officials existed.²⁵

The floating court, presided over by Judge Lyons, finally departed on the *Thetis*, and the voyage convinced Lyons that the court should make the trip annually. He estimated that, by trying cases in the home regions of the witnesses rather than transporting them to Valdez or Seward, the floating court saved at least \$8,000. He was also convinced that the very presence of the court made a desirable impression on violators of the law. In fact, many offenses committed in the Bristol Bay region probably would remain untried if witnesses were compelled to appear at Valdez or Seward. In short, Lyons had "a very enjoyable experience, with good weather nearly all the time."²⁶

While the floating court tried cases in the Bristol Bay region and the Aleutian Islands, the cutter *Bear* steamed northward to Point Barrow on its annual patrol. Unlike in previous years, no court officials from Nome accompanied the *Bear* because of a heavy work schedule in town. The district court judge of the second division appointed Lieutenant Jones as U.S. commissioner, and instructed him to distribute copies of Carter's code to the various other U.S. commissioners along the way. During the voyage, from early July to late August, Commis-

²⁴Attorney General Lyons, March 15, 1911; Cushman to attorney general, April 4, 1911, File 146772, Section 2, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

²⁵Secretary of the treasury to attorney general, April 22, 1911; J.J. Glover to attorney general, May 24, 1911, File 146772, Section 2, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

²⁶Thomas R. Lyons to Edward E. Cushman, September 26, 1911, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.



A successful voyage on the *Thetis* convinced Judge Thomas R. Lyons that the court should make annual trips to outlying regions. (Courtesy of the Thetis Photo Collection [acc. 81-163-3N] in the Archives, Alaska and Polar Regions Department, University of Alaska Fairbanks)

sioner Jones settled a variety of minor disputes among the Eskimos in various villages. At a couple of settlements, Jones investigated certain allegedly insane Eskimos, but decided not to take the individuals to Nome for sanity hearings, because they were nonviolent and it would cost a great deal "to have them adjudged insane and sent outside." Another issue arose when the superintendent of the native schools, who had accompanied the *Bear* on its northern voyage, discovered that the owners of a couple of shore whaling stations, who also conducted general merchandising and bought furs, took unfair advantage of the Eskimos, bordering on "peonage." The captain, the commissioners, and the superintendent thereupon met with the owners of the enterprises and reached agreements as to how the natives were to be treated. The matter was to be investigated again in the 1912 season. On several occasions, the *Bear* saw service as a jail, when culprits were incarcerated on the way north and delivered to their home villages on the way south. In response to a complaint, the captain of the *Bear* removed one troublesome native from his village, took him north a long way, "got him a job and secured his promise to stay there."²⁷

²⁷B.S. Rodey to attorney general, August 19, 1911, File 151267, Section 1, Box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

Nome's U.S. attorney, B.S. Rodey, was delighted when the *Bear* brought no prisoners or witnesses to town on its return. This saved the government much money, because indicting an accused in Nome, securing a conviction, and returning the witnesses home—all to be done before the close of the two-month navigation season—entailed heavy expenses. The captain of the revenue cutter, at the request of the court in Nome, had distributed the latest regulations regarding fur-bearing animals among the natives and had discovered only minor infractions of the law. In short, Rodey was satisfied with the work the *Bear* had accomplished in the 1911 season.²⁸

In early 1912, Judge Cushman requested that the *Thetis*, a larger vessel than the *Rush*, be assigned once again to the floating court. He intended to hold terms of court at Nushagak, Unalaska, Unga, and Kodiak, and requested that Deputy Marshal Willard B. Hastings of Unalaska, together with a Revenue Cutter Service officer appointed as commissioner, make the first trip of the season west from Unalaska and visit Atka and other outlying islands of the Aleutian chain. He also requested that he be allowed to employ an attorney at the rate of \$250 per month to represent individuals indicted for felonies. Once these minor matters were straightened out, the floating court left Valdez for the work of the 1912 season.

In the meantime, the *Bear* had once again sailed north. As on previous voyages, the commissioner, Lieutenant Dempwolf, and the deputy marshal closed the saloon of Smith & Emerson for selling liquor after the expiration of its license; and the commissioner investigated a charge against S.O. Gurney, a Caucasian, for "cohabiting in a state of adultery and fornication" with a native woman. The commissioner bound Gurney over to appear before the next session of the grand jury at Nome, fixing a bond of \$1,000, which the resident of Kotzebue furnished.

At Point Hope, the deputy marshal arrested Daniel Nakok and charged him with committing adultery. Brought before commissioner Dempwolf, Nakok pleaded guilty and was sentenced to a three-month term in the Nome jail. Captain J.G. Ballinger, commander of the *Bear*, observed that this was "a particularly flagrant case, the offense having been committed at various times with the same woman during the last four years and, as the Native was defiant, it was deemed best to make an example of him." Still, the case bothered the captain. Nakok apparently had associated with the woman for some years "in direct opposition to the advice and admonitions of the school teacher and the missionary at Point Hope."

²⁸Ibid.

Ballinger thought that Nakok's case illustrated "the evil effects caused by the action of the missionaries in Alaska in seeking to substitute white men's morals and marriage customs for the satisfactory Native custom of marriage." Natives had long been used to trial marriage and were easily persuaded to be married in the white man's fashion. When the affected parties changed their minds, "not having fully realized the firmness of the tie which binds them together, they are anxious for a divorce, which cannot be legally obtained at any other place except Nome." Distances and the difficulties of the trip proved prohibitive, so Natives in this situation considered themselves free to form other ties, although still legally married. This then brought them into violation of the law. Ballinger proposed that it should be made easier to get a divorce or a "greater caution should be exercised in marrying them."

Another Native of Icy Cape, who previously had been warned not to steal, had committed the offense again. Captain Ballinger reported that, since no official complaint was made before the U.S. commissioner on board, he ordered the man confined in the brig on the ship and taken to Point Barrow. There Ballinger landed him with a severe lecture and a warning as to his conduct in the future. Ballinger believed that "the trip on foot back to Icy Cape from Point Barrow may have a salutary effect."

The captain had also acted on his own account in the case of Solly Augninak, whom he transported from Point Hope to his village, Shischmareff. The year before, Ballinger had punished the man for the crime of incest. Although there had been insufficient evidence to convict him in court, the captain had been convinced of his guilt. The man's daughter had died the previous winter, and according to reports, he had been exemplary during the year. Therefore, Ballinger had decided "to allow him to go back to the village from whence he was taken."²⁹

Within a short time, the floating court had proven its effectiveness, and it quickly became an institution. The cutter *Bear* continued to make its annual trip along the Arctic coast to as far north as Point Barrow. In the 1913 season, the district court in Nome, as usual, appointed one of the officers as commissioner. In that year, the court hired an Eskimo interpreter to join the *Bear*, making the work of the commissioner a little easier. The cutter stopped at most Eskimo settlements on its way north, except at Cape Prince of Wales. There was

²⁹Cushman to attorney general, March 12, 1912; J.G. Ballinger to secretary of the treasury, August 19, 1912; Ballinger to secretary of the treasury, December 6, 1912, File 146772, Section 3, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

very little work for the commissioner and deputy marshal that season, except for a number of domestic relations problems, which the officials did not "consider of sufficient importance to do anything about, owing to the expense, inconvenience and uncertainty of getting the parties back to their homes before the freeze up." Taking his cue from the captain of the *Bear*, Nome's U.S. Attorney Rodey recommended to the attorney general that divorces among Natives be made easier.

Captain Ballinger reported that the relations between the Eskimos and the shopkeepers had vastly improved over the previous year. Indeed, it had been a prosperous year. Sufficient numbers of whales had been caught, and fox trapping had been successful.³⁰

In the 1914 season, the cutter *McCulloch* left Valdez on July 15 and steamed to Seward, Seldovia, and Knik. From there it proceeded to Iliamna Bay on the west coast of Cook Inlet. There all members of the marshals' and clerks' offices disembarked and went overland some fourteen miles to Iliamna village; thence by launch about ninety miles across Iliamna Lake and down the Kvichak River another ninety miles to Naknek, on the south shore of Bristol Bay. From there, the officials took cannery steamers about the same distance to Dillingham on Nushagak Bay, the first location where a term of court was held.

While the judge and U.S. attorney were still traveling on the cutter, the marshal summoned the necessary numbers of people for grand and petit juries for the term. The marshal chose these individuals from approximately two hundred men who wintered at and around the canneries and claimed their Alaska residence on Bristol Bay and its tributaries. During the fishing season, the population picture changed drastically. Approximately twenty-five hundred men, most of whom the fishing operators imported annually from San Francisco, Astoria, Portland, and Seattle, worked in the eight active canneries on the Nushagak River and Bay, at the northern end of Bristol Bay. Another four thousand transients worked in the thirteen active canneries and fisheries located on the Naknek and Kvichak Rivers along the southern shores of Bristol Bay.³¹

While the marshal was summoning grand and petit juries, the *McCulloch*—carrying Judge Fred M. Brown, Assistant U.S.

³⁰Rodey to attorney general, August 26, 1913, File 146772, Section 3, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

³¹William H. Whittlesley, assistant U.S. attorney, to William N. Spence, U.S. attorney, October 28, 1914, File 146772, Section 3, Box 904, Straight Numerical Files, Department of Justice Central Files, , R.G. 60, National Archives.

Attorney William H. Whittlesey, and J.L. Reed, the attorney appointed to represent defendants in felony cases—left Iliamna Bay and proceeded directly to Unga, where one case awaited disposition. Whittlesey, knowing that Unga did not contain enough qualified individuals to summon grand and petit juries, directed the resident deputy marshal to subpoena the necessary witnesses, and took them aboard the cutter to appear before the grand jury at Dillingham. The *McCulloch* then steamed to Unalaska, arriving at the end of July. That little settlement also did not have enough residents qualified for jury service. The defendants at Unalaska had employed private counsel, and the assistant U.S. attorney, with court approval, agreed with the request of the defense attorney to transfer the cases to the term of court to be held at Seward on October 2, 1914.³²

On the eve of the departure from Unalaska, Lieutenant Hutson, the U.S. commissioner on the *Tahoma*, held hearings on the Pribilof Islands in the cases of *United States v. Hatton* and *United States v. Tongue*, where the defendants were charged with having given liquor to Natives. They were held for the grand jury, but the *McCulloch*, with its floating court, was unable to proceed to the Pribilofs to investigate or to have the witnesses taken to Dillingham in time for the term of court. The floating court arrived at Dillingham and convened on August 3. Grand and petit juries were impaneled, and the court conducted its business. Then the *McCulloch* carried the court officials, prisoners, witnesses, and guards to the Pribilofs, investigating conditions for a day, and arrived at Unalaska on August 13. It held court the next day. There were no jury trials. The same was true at Unga, where Judge Brown convened the court on August 19. Prisoners held at Unga, having been indicted at the Dillingham term, pleaded guilty. Thirteen individuals received citizenship papers, twelve applied for final papers, and another three applied for liquor licenses. The court also transacted some minor civil business.³³

Next, the *McCulloch* moved to Kodiak, where the court disposed of accumulated business. There were no criminal cases, except an alleged murder at a cannery at the lower western end of the island. The marshal detained witnesses, all foreign nationals, but it proved impossible to find a sufficient number of qualified jurors for either grand or petit juries. The prisoner and the witnesses were put aboard the *McCulloch* and taken to the term of court at Seward. Deputy U.S. mar-

³²Ibid.

³³Ibid.

shals and U.S. commissioners were stationed at Kodiak, Unga, Naknek, and Dillingham. If a felony was committed some distance from the headquarters at Kodiak or Unga, the deputy marshal had to charter a launch or take the monthly mail boat to investigate and make an arrest. At Unalaska, the deputy marshal depended for transportation mainly upon the revenue cutters, while the court officers at Naknek and Dillingham took advantage of the free use of the cannery steamers and launches.³⁴

Assistant U.S. Attorney Whittlesey's participation in both the 1913 and 1914 floating courts led him to realize that Unalaska, Unga, and Kodiak did not contain enough individuals who were qualified to serve on grand and petit juries. Many of the residents spoke Russian and understood and spoke but little English. He recommended that terms of court be discontinued at these locations and advocated that an annual term should be held at Naknek or Dillingham. Holding court in Bristol Bay, he argued, helped minimize crime among the thousands of foreigners and others who gathered there each year to work in the fisheries. Whittlesey believed that the court would need no more than three weeks each year to finish its business in that region.³⁵

Soon thereafter, the U.S. attorney at Valdez, William N. Spence, suggested to the attorney general that henceforth the court should utilize regular steamers and should go from Valdez to Iliamna, a trip of about three days. From there it should proceed over the portage to Iliamna Lake and then by boat on the Kvichak River to Bristol Bay and Dillingham. After the term of court at the latter location, the court officials should return by the same route. Prisoners, if any, should be transported on regular mail steamers from Bristol Bay. All other terms of court usually held on the trip should be abandoned to save the government money. Early in 1915, the attorney general directed the *McCulloch* to Valdez to pick up the court for yet another, though abbreviated, season. Court was to be held at Naknek, Dillingham, and Unga.

On January 25, 1915, an act of Congress combined the Revenue Cutter Service with the Life-Saving Service, creating the U.S. Coast Guard. Cooperation continued between Alaska's federal courts and the new organization, with judges and U.S. marshals for the second and third divisions still appointing officers as U.S. commissioners and U.S. deputy marshals, to serve without compensation. Beginning in 1916, however, the floating court was no longer held annually. That

³⁴Ibid.

³⁵Ibid.

year the secretary of the interior, anticipating labor troubles connected with the construction of the Alaska Railroad, asked that Judge Brown remain in the third division instead of conducting the floating court. The attorney general agreed, and no floating court was held.³⁶

In early 1925, Judge E.E. Ritchie asked the permission of the attorney general to hold a term of court on Bristol Bay. The commissioner there was holding for the grand jury one man accused of murder and another of incest, and about eighty individuals had applied for naturalized citizenship. If the felony cases had to be brought before a grand jury in Valdez or Seward, the expenses for witnesses promised to be heavy. The applicants for naturalization could not afford the long trip to either Seward or Valdez. Unfortunately, the coast guard had no vessel suitable for the proposed floating court, so none was held that year.³⁷

In May 1934, Judge Cecil H. Clegg responded to instructions from the Department of Justice and called for terms of court to be held in June at Seldovia, Kodiak, Unga, Unalaska, Naknek, and Dillingham. The coast guard agreed to make the cutter *Tahoe* available. Clegg resigned, however, and Judge E. Coke Hill of the fourth division took his place. U.S. Attorney Joseph W. Kehoe and Clerk of Court Robert Roming accompanied Judge Hill on the trip. The judge naturalized about twenty-five aliens and accepted approximately forty-five declarations of intention and also a number of petitions for naturalization. He passed upon two motions dealing with civil suits. Satisfied with what had been accomplished, Hill recommended that the headquarters of the U.S. commissioner and the deputy marshal, then located at Dillingham, be moved five miles east to Snag Point, a much larger community with a post office, a school, and large stores dealing in liquor. During the summer, transient workers increased the population of Snag Point considerably, and, with the easy availability of liquor, conditions often were deplorable. U.S. marshal C.J. Todd complied, moving the deputy marshal's office to Snag Point. The district

³⁶William N. Spence to attorney general, November 2, 1914; Fred M. Brown to attorney general to Robert W. Jennings, April 13, 1916, File 146772, Section 1, Box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

³⁷Wayne Andrews, ed., *Concise Dictionary of American History* (New York, 1962), 200; T.J. Spellacy, assistant attorney general, to secretary of the treasury, April 9, 1920, File 151267, Section 3, Box 1009B; E.E. Ritchie to attorney general, March 28, 1925; John Marshal to E.E. Ritchie, May 25, 1925, File 151267, Section 4, Box 1009B, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

court judge followed suit and moved the commissioner's office as well.³⁸ The record indicates that Judge Simon Hellenthal conducted a floating court on a regular basis from the time of his appointment to the third division in Valdez in 1935. He did not hold one, however, in 1938. After the headquarters of the court of the third division were moved from Valdez to Anchorage, Hellenthal and his successors resumed the practice and held floating courts as late as the 1950s.³⁹

What did the floating courts accomplish? They helped establish respect for the law among rural residents and unruly transient populations of fishermen and cannery workers in remote districts. They familiarized court personnel with regions of Alaska not easily accessible to those not involved in Native education or in the fishing and canning industry. Perhaps most importantly, they made justice accessible to many who could not afford to travel to Valdez or Seward for a term of court.

³⁸Cecil H. Clegg to E.C. Stewart, May 4, 1934; Anthony J. Dimond to Homer S. Cummings, attorney general, May 18, 1934; Hill to attorney general, July 18, 1934; C.E. Stewart to C.J. Todd, August 11, 1934, File 151267, Section 5, Box 1009B, Straight Numerical Files, Department of Justice Central Files, R.G. 60, National Archives.

³⁹S.A. Andretta to Stephen B. Gibbons, assistant secretary, Department of the Treasury, February 5, 1937; Hellenthal to attorney general, January 6, 1938, File 151267, Section 6, Box 1009B, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.

