The Shaky Beginnings of Alaska's Judicial System

By Claus-M. Naske

Yankees love a good bargain, and therefore the acquisition of Alaska in 1867 pleased most everyone. Alaska's 586,400 square miles added considerably to the land domain of the United States. Problems, however, soon arose, for the far North did not readily fit into the traditional American frontier. Alaska was noncontiguous, a maritime rather than an agricultural frontier, and perhaps most importantly, it was subarctic, arctic, and subcontinental in proportion.

Congress and the presidents clearly were at a loss as how to deal with the new possession, and therefore the early years of the American era were not marked by aggressive moves in assuming administrative responsibilities. Perhaps there was no hurry in doing so, because the 1880 census estimated Alaska's population at 33,426, with only 430 Caucasians, excluding military personnel. The Natives included the Tlingits and Haidas of the southeastern region, the Inupiaq Eskimos of the arctic and the Yupik Eskimos of the Bering Sea and Pacific coasts, the Aleuts of the Aleutian Islands, and the Athapaskan Indians of the interior.[1]

The first boom in Sitka accompanying the American take-over soon collapsed, and the second was attributable to the discovery of gold on Gastineau Channel which led to the founding of Juneau in 1880-1881. Juneau soon became the most important town in the district of Alaska, and its prosperity was a magnet which lured other adventurers to the North. From Juneau, many prospectors drifted over the Chilkoot Pass into the interior and discovered gold along the Yukon River.

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[1] Phyllis D. Carlson, "Alaska's First Census: 1880," *The Alaska Journal* (Winter 1971) 48-53.

THE ORGANIC ACT OF 1884

From time to time Congress had devoted some attention to Alaska's governmental needs, but the approximately two dozen civil government bills introduced between 1867 to 1883 had aroused scant interest and were stillborn. Dr. Sheldon Jackson, a Presbyterian home-mission organizer, finally served as the catalyst to prompt congressional action. Jackson had first come to Alaska in 1877. He had escorted the widow Amanda McFarland to a missionary assignment in Wrangell in southeastern Alaska. Historian Ted C. Hinckley has stated that Jackson's 1877 action "established the Protestant church in Alaska." Jackson subsequently became an effective spokesman for Alaska, and he persuaded the General Assembly of the Presbyterian Church, in session at Saratoga Springs in May 1883, to draft a memorial to Congress to be presented to the president and the secretary of the interior by a committee of eight. This group urged that a civil government be conferred upon the district and that industrial schools be established.[2]

In the meantime, Jackson and his Presbyterian missionaries had established several mission schools in the north, numbering six in 1880. Jackson was very ambitious, however, and undertook a campaign of lecturing, publishing, and lobbying in the United States on behalf of the district. He became a popular speaker, maintained extensive contacts with federal officials in Washington, D.C., and corresponded with the key leaders in Congress. He intended to gain public support for more adequate legislation for Alaska. In these efforts he eventually won the backing of Republican Benjamin Harrison, whom Indiana citizens had elected to the U.S. Senate in 1880. The two may have met as early as 1874 when they attended the General Assembly of the Presbyterians at St. Louis, Missouri. By 1882 Alaska bills were introduced in both houses of Congress, but, as before, they died in committees. Representative J. T. Updegraff introduced a measure to provide schools for Alaska. Jackson, who appeared before the Committee on Education, was greatly encouraged by this gesture. He immediately attempted to organize the Protestant churches in support of the bill. Presbyterian leaders reminded Senator Harrison that they depended on his help in that body, and he promised to aid. Lawmakers, however, again defeated the legislation.[3]

Harrison, nevertheless, had developed an interest in Alaska's problems. As a member of the Committee on Territories he

[2] Ted C. Hinckley, *The Americanization of Alaska, 1867-1897* (Palo Alto, 1967) 114; Ted C. Hinckley, "Sheldon Jackson and Benjamin Harrison: Presbyterians and the Administration of Alaska," *Pacific Northwest Quarterly* 54 (1963) 66-67.

[3] Ibid. at 67-68.

had become acutely aware of Alaska's legal and governmental deficiencies. Jackson quickly recognized the senator's interest, and linked to it his own proposals for an educational system. Consequently, the measures calling for federal support for education in the district became closely related to those calling for an adequate civil government for the district.[4]

Between 1883 and 1884 there was much popular interest in Alaska. Jackson worked hard to take advantage of it by approaching all the leading Protestant denominations and by soliciting the

The Reverend Sheldon Jackson, Presbyterian home-mission organizer, 1880. (The Andrews Collection, Stratton Library, Sheldon Jackson College)

[4] Ibid. at 68.

support of the National Education Association and other teachers' organizations. When Congress convened in December 1883, the lawmakers were swamped with petitions from more than twenty-five states. Prospects for Alaska legislation, therefore, were bright, and by December 11 representatives had introduced four civil government measures in the House. On December 4, 1884 Harrison introduced his own measure (Senate Bill 153) and after extended debate, both houses passed the senator's measure and President Chester A. Arthur signed it into law on May 17, 1884.

Senator Harrison perhaps best stated the intent of his committee when drafting the measure. When asked by a colleague whether or not the constitution and laws of the United States were operative in the North without having been specifically extended by legislation, he replied that his committee had been able "to devise this simple frame of government for Alaska without meeting any constitutional stumps. We provided for the extension of such laws as we thought the few inhabitants, the scattered population, of that Territory needed."[5]

During the debate on the measure many questions arose. One senator wanted to know if any provisions had been made for the assessment and collection of taxes. Harrison replied negatively, stating that Alaska had too few people and settlements, not enough property, and no legislature to perform these tasks. In fact, his committee had decided to deny "a full Territorial organization" to Alaska because of its small and scattered population.[6]

Although far from perfect, a beginning had been made in bringing civil government to Alaska, albeit in a very primitive form. The Organic Act of 1884 ended Alaska's uncertain status and made it a civil and judicial district with the capital city located at Sitka. The act contained fourteen sections. It provided for a governor, judge, attorney, clerk of court, a marshal, four deputy marshals, and four commissioners who were to function as justices of the peace. These officers were to be appointed by the president and confirmed by the Senate for four-year terms of office. It also declared that the general laws of the state of Oregon "now in force are hereby declared to be the law in said district, so far as the same may be applicable and not in conflict with the provisions of this act or the laws of the United States."[7]

Those who have analyzed the act have found it wanting.[8]

[5] 14 Cong. Rec., 47th Cong., 2d Sess., 531 (1882).

[6] Ibid. at 565-66.

[7] Organic Act of 1884, ch. 53, 23 Stat. 24 (1884).

[8] Jeannette 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) 72; *Annual Report of the Secretary of the Interior*, in *The Executive Documents of the House of Representatives for the First Session of the Fiftieth Congress, 1887-1888*, vol. I (Washington, D.C., 1889) 64-65.

In his 1887-1888 annual report to the 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 revenue." 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 protection of municipal law. It had created a single tribunal "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." In fact, the Organic Act has been well described as a "legislative fungus, without precedent or parallel in the history of American legislation." Historian Jeannette P. Nichols has stated that Alaska's Organic Act of 1884 "evolved from a composite of honest intentions, ignorance, stupidity, indifference, and quasi-expediency."

Dr. Sheldon Jackson presumably was satisfied with the Organic Act of 1884. He found Alaska to be exciting and challenging, and moved to Washington, D.C. in 1883 to begin his lobbying activities to communicate to Congress the district's peculiarities and needs. Above all, he desired the "Christian elevation" of Alaska's population, and since the majority of the district's residents were aboriginals, this then meant primarily the conversion of the Natives.[9]

As Jackson soon realized, unless the aborigines first acquired a rudimentary grasp of white "civilization," Christianity must fail. Such a rudimentary grasp included sanitary living habits, the mutual obligations of wedlock, and the dignity of the individual. Therefore, as was happening in similar circumstances in Africa and Polynesia, primary education had to accompany Christian conversion. Jackson, therefore, campaigned to educate and convert Indians, Aleuts, and Eskimos. Within a decade, Jackson bound his denomination to Alaska, convinced thousands of his fellow countrymen of the northern frontier's promise, and importuned a wide range of public officials on the district's behalf. He used many magazines to tell the Great Land's story, and wrote a propagandistic book entitled *Alaska and Missions on the North Pacific Coast*, published in 1880. In addition, he delivered lectures on the North all over the northeastern parts of the United States.[10]

Jackson realized that Alaska contained considerable natural resources but that Congress and the federal government neglected this sub-arctic region. This federal apathy soon brought avaricious merchants, prostitutes, and saloonkeepers, real estate speculators

[9] Hinckley, *The Americanization of Alaska*, supra note 2 at 114-15.

[10] Ibid. at 115-19.

and bunko artists north. Jackson despised these groups and considered them social lepers. What Alaska needed to assure its long-range future were resident home builders. Jackson was determined to encourage the latter, and in April 1885 he had gained such wide recognition that Congress appointed him as the district's first General Agent of Education with his office located in Washington, D.C.[11]

OFFICERS, OFFICIALS, AND THE DISTRICT COURTS

While Jackson built his power base, various aspirants for the administrative positions created under the Organic Act of 1884 vied for appointment. The Reverend S. Hall Young, a Jackson protege, wanted his mentor to block the appointment of a Catholic, miner, or trader to one of these positions, while other citizens advised Jackson whom he should or should not recommend to President Arthur for the district's first governor, judge, attorney, marshal, clerk, and four commissioners. As historian Hinckley has observed, "their importunings were wasted; senatorial patronage had to be served." It is probable that Nevada's senators named John H. Kinkead, a veteran Far West politician, as the district's first governor. Kinkead was no stranger to Alaska, having served as Sitka's first postmaster in 1868. Later he moved back to Nevada, and advanced from businessman to that state's governor.[12]

As early as December 8, 1883, Judge Ogden Hoffman of the Northern District of California urged Senator John F. Miller to nominate Ward McAllister, Jr. for the yet-to-be-created office of federal district court judge for Alaska. The judge considered McAllister to be "a man of ability and good professional attainment," and one whose "integrity was beyond question." Ward McAllister, Jr. was the son of Ward McAllister, Sr. who, together with his brother Hall and their father Matthew Hall, had established a prestigious law firm in San Francisco. In addition, Matthew Hall McAllister had served as the west's first federal circuit judge.[13] Judge Hoffman mentioned that McAllister's age (he was merely thirty years old) had been held against him. The judge found that argument without merit because he himself had been nearly a year younger when appointed to the bench. Furthermore, Judge Hoffman expected "that at first there will be little business before

[11] Ibid. at 119-20.

[12] Ted C. Hinckley, *Alaskan John G. Brady: Missionary, Businessman, Judge, and Governor, 1878-1918* (Columbus, 1982) 89-90 [hereinafter cited as Hinckley, *John G. Brady*].

[13] Dumas Malone, ed., *Dictionary of American Biography* (New York, 1933) 945-47.

the court. Mr. McAllister will have abundant opportunity, as it grows, to grow up with it."[14]

The McAllister family had spared no expenses in educating young Ward. He attended Princeton College and from there went to the Albany Law School, and finally studied for three years at the Harvard Law School before returning to California. He passed the bar examination, and gained appointment as assistant United States attorney. Within weeks several California newspapers announced that it was understood that the young man "will probably be appointed the U.S. District Judge of Alaska." California's senators as well as others supported him, and it was "settled that with the passage of the bill providing for a territorial government the commission as Judge will issue to Mr. McAllister," to be met with universal approval. The San Francisco *Morning Call* stated that his friends believed that his appointment to the judgeship was certain.[15]

Many members of the San Francisco Bar supported the young man's appointment, as did Attorney General Benjamin H. Brewster.[16] It was no surprise that McAllister received the appointment as Alaska's first U.S. district court judge on July 15, 1884. Unfortunately, however, his distinguished family background failed to give the young judge either wisdom or strength of character, and instead may have given him the impression that his Alaska duties offered no serious challenges. Although a federal judgeship is a coveted prize beyond the attainment of most young attorneys, his assignment to primitive Sitka probably appeared as a hardship to McAllister. He may have longed to return to the civilized pleasures of his hometown when he stepped ashore and surveyed the raw little town and its motley inhabitants he was to serve. In addition, the inexperienced judge did not enjoy a strong supporting cast.

E. W. Haskett, an Iowa Republican, became the district's first United States attorney. Historian Hinckley has described the man as "not so much callow as dreary, inadequately educated, banal, and often boorish." Manson C. Hillyer, a former San Francisco flour merchant, accepted appointment as Alaska's first federal marshal,

[14] Ogden Hoffman to John F. Miller, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[15] *Daily Alta California*, January 14, 1884; *Daily Evening Post*, January 11, 1884; *Morning Call*, January 13, 1884.

[16] San Francisco Bar to His Excellence, the President of the United States, January 14, 1884; Benjamin H. Brewster to President, May 17, 1884; John F. Miller to Benjamin H. Brewster, May 23, 1884; Ward McAllister to Benjamin H. Brewster, August 25, 1884; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

and Andrew T. Lewis of Illinois became the clerk of the court. John G. Brady, Presbyterian minister and another Jackson protege, became one of Alaska's four commissioners stationed in Sitka, the capital, while the other three were located in Wrangell, Juneau, and Unalaska in the Aleutians. The position of commissioner was a familiar one across the Far West. Brady and his fellow commissioners quickly learned that they were to be probate judge, justice of the peace, land office registrar, notary public, and much more. The Federal Blue Book was not of much help. This 1884 publication, entitled *Compilation of the Laws of the United States Applicable to the Duties of the Governor, Attorney, Judge, Clerk, Marshall, and Commissioners of the District of Alaska*, contained only eight pages on the laws which applied to commissioners. It contained twenty specific instructions detailing the duties of commissioners. They could, for example, administer oaths, take bail and affidavits,

The District of Alaska's first governor, John H. Kinkead, ca. 1860. (Purchase Centennial Album Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

imprison or bail offenders of the law, issue search and arrest warrants, and discharge poor convicts.[17]

The new officials took several months to travel to Sitka. The first to arrive was Governor Kinkead. He quickly realized that the civil government would face formidable obstacles created by the district's small, fluid settlements scattered over a huge area together with a very difficult terrain and climate. It has been stated that the governor and his fellow public servants inherited many administrative headaches. For example, Sitka's jail was unfit, and a recent fire in the Customs House had eliminated an adequate courtroom. Further, there were no funds to pay for the subsistence or transportation of prisoners. In fact, the governor remarked, the district did not even have a tax system.[18]

While the judge and several other judicial officials were delayed in San Francisco, Kinkead reinstated the Indian police force created by Navy Commander L. A. Beardslee at a monthly salary of $25 each to assist in controlling the Native population. When the officials finally arrived, they organized the United States District Court established by the Organic Act on November 4, 1884 in a room set apart for court use in the old military barracks building at Sitka. Later that same day, the new court admitted John F. McLean, an officer with the U.S. Signal Service, Major M. P. Berry, a veteran of the Mexican and Civil Wars, and E.W. Haskett to the Alaska bar. These three individuals comprised the Alaska bar until June 20, 1885 when John G. Heid gained admission. In October the number of attorneys practicing in Alaska increased when the district court admitted four more attorneys to practice.[19]

In the meantime, the judge tried various cases and on December 2, 1885 detained Michael Travers on a liquor violation in lieu of $1,000 bail. Where to jail Travers, however, presented a problem. The Organic Act had provided $1,000 for the repair and alteration of the old army guardhouse to convert it into a jail. The naval commander, however, had the authority to determine which buildings to turn over to the collector of customs. Captain H. E. Nichols decided to use the army guardhouse for naval prisoners rather than to use the facilities aboard ship. When Judge McAllister appealed to Nichols for aid, the latter replied that he felt obliged to assist Alaska's civil authorities in the execution of the laws, but could not accommodate the judge. McAllister noted that lack of a prison was not the only problem. He also had no funds to feed

[17] Hinckley, *The Americanization of Alaska*, supra note 2 at 164; Hinckley, *John G. Brady*, supra note 12 at 90-91.

[18] Hinckley, *John G. Brady*, supra note 12 at 92.

[19] Arthur K. Delaney, *Alaska Bar Association and Sketch of Judiciary Anno Domini 1901* (San Francisco, 1901) 21; Tom Murton, "The Administration of Criminal Justice in Alaska, 1867 to 1902" (Unpublished dissertation, University of California, Berkeley, 1965) 58.

prisoners, and the court was not to convene again until May, 1885.[20] This necessitated, if a jail could be found, the long-term detention of prisoners.

These and other difficulties made officials wonder if the new civil government would operate at all. It would be difficult to impanel juries given the small resident population of Americans in Sitka. The town's lawyers doubted that a jury was even legal in Alaska, for the Oregon Code required that, in order to be a member of a grand or petit jury in a civil or criminal case, one had to be a taxpayer. Neither Congress nor Alaska's residents, however, had been able to levy a tax. The U.S. attorney general took his time in replying to queries, and his answers did not clearly answer the questions. Although there was a commissioner at Unalaska, an Aleutian litigant taking his case to the district court at Sitka had to travel a considerably longer distance than the twelve hundred miles separating the two points, for no direct transportation existed. He had to go and come via San Francisco, a distance totalling almost four thousand miles.[21]

Judge McAllister probably was surprised when he learned that, although Alaska was legally dry, breweries operated in both Sitka and Juneau and it was not difficult to purchase liquor. Governor Kinkead, a "good Christian," recommended that Congress recognize reality and abolish prohibition and in its place substitute a system of licensed liquor distributors. This would provide the district with some badly needed revenue, he argued, and would also exclude irresponsible traders who bartered "fire water" to the Natives. The governor's proposal soon became known as "high license," supported by many but rejected as dangerous by Sheldon Jackson and his followers.[22]

What seems apparent is that Kinkead, McAllister, and Haskett misjudged Jackson's influence and determination. The missionary championed Native rights, and there were few members of the Panhandle's floating population who could identify themselves with a minister who insisted that Indians also possessed rights. Most empathized with the governor's realistic and earthy attitudes.[23]

Kinkead certainly did not desire to fight with Jackson. The latter's Sitka Training School, however, soon sparked a bitter controversy. Creoles (offspring of Native women and Russian men) had become upset as newer arrivals encroached on their property and status. They became envious of the attractive, Presbyterian subsidized houses built adjacent to the training school, believing

[20] Hinckley, *John G. Brady*, supra note 12 at 92; Murton, "The Administration of Criminal Justice in Alaska, 1867 to 1902," supra note 19 at 59-60.

[21] Hinckley, *John G. Brady*, supra note 12 at 92-93.

[22] Ibid.

[23] Ibid. at 93.

them to be on their land. They complained to U.S. Attorney Haskett. He checked the boundary claims of the Sitka Training School in January 1885 and found them to be extensive. Earlier, Commissioner Brady had laid out and cleared this tract with Native help. Haskett wrote to the U.S. attorney general that this was the only land adjoining the city of Sitka which was suitable for constructing residential buildings. He complained that the missionaries had taken over the entire tract and "fenced up the road to the grave yard" and had assumed control of all of the improvements on the land.[24]

For the next few months, U.S. Attorney Haskett apparently encouraged Creole jealousies at several public meetings by drawing comparisons between them and the local Indians. Haskett created racial hatred, and at one meeting, when Jackson attempted to be heard, the latter was shouted down. At another meeting Brady tried to speak and ended up in a fist fight, while Jackson fled to the woods for safety. After some disgruntled individuals invaded his office, Jackson boarded the steamer south.[25]

Judge McAllister decided to go south to enjoy some of the amenities of civilized life since the court was not in session during March of 1885 at either Sitka or Wrangell. When the judge returned after a brief absence, he discovered that Haskett had created a nasty controversy with Jackson. Haskett told McAllister that the people disliked the missionaries. Clearly, there was no love lost between Jackson and most of the officials.

During McAllister's absence, Haskett had been summoned to appear before Commissioner Brady on charges of assault and battery. Although the case was settled, it seemed impossible to divert the U.S. attorney's anger at the missionaries. The judge then agreed with Haskett that the Sitka Training School's boarding public contract was close to indentured servitude. Haskett called it slavery, and refused to accept Brady's explanation of the contract — namely, that unless the Native children were removed from their parents for five years it would be impossible to implant American values. United States Attorney Haskett convinced two Sitka Indian parents to withdraw their child. When he asked Brady to begin legal action to free the Indian girl, the commissioner refused to act. A. J. Davis, the director of the training school, wrote Jackson that the school had lost more than half of its children. Haskett had been violent and promised to cause further troubles. Judge McAllister dissolved the injunction when it came before him, probably because he was told that it was dangerous to stir up the Tlingits, who six years earlier had threatened to burn the capital.[26]

[24] Ibid.

[25] Ibid. at 93-94.

[26] Ibid. at 94-95.

In an angry letter to the Reverend William M. Cleveland, the new Democratic president's brother, Jackson recounted the Presbyterian missionary activities among the Natives designed to bring education and civilization to these people. Out of the approximately 34,000 inhabitants of Alaska in 1886, no more than 1,200 were Caucasians. Therefore, the government was mainly dealing with Natives, and government officials should be men who, through "their temperance, virtue and upright conduct" set a good example. Furthermore, these men should "make it a study how best to lead this native population in their efforts to emerge from barbarism to the higher plane of American civilization..." These officials, most importantly, should be "in full sympathy with the efforts of all the Missionary Societies." Jackson continued that leading U.S. senators had urged President Arthur to appoint "exceptionally good men to these offices." Unfortunately, however, it was just before the Republican Convention at Chicago, and "it was feared that President Arthur traded the offices for votes."[27]

Dr. Jackson then lit into the district's civil governmental officials. Kinkead, from Nevada, was "a broken down politician. He gets drunk and is said to gamble. He is a man of no intellectual or executive force & and accomplishes nothing for the country or the people." Smooth in words and profuse in his expressions of friendship "to your face" he was "treacherous behind your back." Jackson reasoned that Kinkead had obviously neglected his duties as governor because he had spent only two out of his eleven months' term in Alaska. The remaining nine months he had been in Nevada and Washington. Worse yet, the governor was hostile at heart to the school's work and cared "nothing for the elevation of the people, although in public he makes great pretension in that direction." The marshal and the clerk of court were considered acceptable to Jackson.[28]

Dr. Jackson reserved his most vitriolic criticisms for U.S. Attorney Haskett and Judge McAllister. The former he characterized as "an uneducated man — rowdy in his manner — vulgar & obscene in his conversation — low in his tastes, — spending much of his time in saloons — a gambler and habitual drunkard with but a smattering of legal knowledge." Jackson failed to understand how such an individual could have been appointed to office unless it had been as a reward for political service. The judge was but a young man, "not long admitted to the bar," with little legal experience and "still less knowledge." Jackson observed

[27] Jackson to William M. Cleveland, May 5, 1885, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[28] Ibid.

that Judge McAllister "gets drunk & is a fast young man in every sense of the word. It is reported that his family had him sent out here to keep him from ruin in New York & San Francisco." He accused McAllister of having left Alaska in the fall of 1884 and not having returned until the middle of March 1885 although this was patently untrue because McAllister had only taken a few weeks off in March.[29]

Cityscape of Sitka, Alaska, ca. 1900. (Huntington Library)

Jackson further related that upon McAllister's return to Sitka in the middle of March, McAllister held court at eight o'clock that night. Here was the rub: the judge took "a Christian Indian girl of about 16 years of age an orphan from our school & gave her over into the keeping of an Indian woman of bad character, who wanted her for prostitution at Victoria British Columbia." Jackson wrote that "rumor says that the judge slept with this woman on the steamer on their way to Alaska together. Rumor has it that several of the Govt. officials are in the constant habit of cohabiting with Indian women." If this were not outrageous enough, another incident occurred a few days later. Jackson remarked that the previous winter an "Indian Sorcerer & his wife brought their daughter a girl of about 12 years of age to the school, asking the superintendent to take & bring her up as his own daughter in the white man's ways — giving her up for a period of five years." A few

[29] Ibid.; Hinckley, *John G. Brady*, supra note 12 at 94.

weeks afterward the Indians "hearing an opportunity to sell the girl (for Indian parents in Alaska sell their children into slavery or to miners & others for prostitution) the parents came & wanted to get her out of the school." The superintendent refused the request. The parents then offered to replace the girl with a boy, and even offered the school official ten dollars. This plan failed. The parents thereupon hired two Indians to steal the girl. The two prowled around the school buildings for a week before they were discovered and caught. When all had failed, the U.S. attorney encouraged the parents "to get out a writ of habeas corpus." Judge McAllister then ruled that the verbal contract of the parents giving up the child for five years was not binding; that the superintendent, a Caucasian, "could not make a written contract with a native parent;" and if "the superintendent should use restraint in preventing the children from running away or leaving school when they chose he would be liable to both fine & imprisonment."[30]

As a result of these actions, throughout March and April of 1885, Jackson stated, "the combined efforts and malice of the Judge, District Attorney, & Government Interpreter George Kastrimentinoff" caused the removal of "47 of the 103 children gathered in the Government & Mission Boarding School..." They were "taken out from under Christian care & industrial training & remanded back to the filth, degradation & vice of their native homes."[31]

For seven long years, Jackson mourned "our teachers have toiled amid privation & hardship, and both the Church & Government expended thousands of dollars to bring the school to its present size & efficiency." In one month, the judge, U.S. attorney, and the interpreter had destroyed half of that work. Jackson told the Reverend Cleveland that he already had appealed to his sister to prevail upon the president "to suspend the Judge & Dist. Attorney at once before they do still further mischief." The situation was urgent. "We feel desperate to sit still & see these drunken officials destroy the work of years & know that by one word your brother can suspend them, & thus stop their work of destruction."[32]

Jackson ally Commissioner John G. Brady held a similarly low opinion of the judge. The *Chicago Tribune* quoted Brady as having stated that McAllister "was destitute on almost every attribute

[30] Jackson to Cleveland, May 5, 1885; Jackson to Cleveland, April 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[31] Jackson to Cleveland, May 5, 1885, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[32] Ibid.

which would entitle him to the supreme control of the judicial... affairs of a great, half-civilized Territory." Brady's dislike for McAllister may have been personal as well as professional; the commissioner jested that "with his little velvet jacket, high collar, gloves and dandy cane...[McAllister] was a rare curiosity in Sitka."[33]

Lieutenant T. Dix Bolles, the executive officer of the *Pinta*, had observed the Haskett-McAllister assault on the school. He made a sworn statement that Haskett was an intemperate man who had "incited the Russians and Indians to overt acts of violence and arson." When McAllister had allowed a woman, who was not the mother of the child, "to take the child away from the school where its parents had placed it," this quickly "led to a loss of almost one-half of the scholars, many of them young girls, who represented to their parents just so much coin by the sale of their virtue." The effects were felt by the missionary who worked among the Chilkats at Haines. These Natives heard that the government officials reported that the teachers were not good, that they mistreated the children under their care, and "starved, beat and witched them to death." The Chilkats became insolent, unteachable, suspicious, and contemptuous toward the missionary. For the first time they openly brewed *hoochinoo*, and men, women, and children became drunk. The situation worsened to such a degree that the work of the Haines mission had to be suspended.[34]

The climax to this whole affair came in May of 1885 when a grand jury, composed of many Creoles, indicted Jackson on numerous charges. Alaska's general agent for education found himself imprisoned for a few hours. By that time, the new president, Grover Cleveland, had received a number of pleas to remove Alaska's officials. The Women's Executive Committee of the Home Missions of the Presbyterian Church petitioned the president to remove the attorney, judge, and marshal because they persistently had "used the powers and privileges of their office to the great injury of these schools [Presbyterian mission schools] and the distress of the teachers." Worse yet, these same officials were attempting "to secure the displacement of...Dr. Sheldon Jackson, a man who has the perfect confidence of all the prominent religious denominations by whom he was recommended for appointment."[35]

Others supported Jackson's plea for the removal of the officials. Lieutenant Bolles refuted complaints Creoles had made against Dr. Jackson, and stated that "certain members of the Civil Government have spent their energies & time in striving to break up this

[33] Hinckley, *John G. Brady*, supra note 12 at 94-95.

[34] Ibid. at 96.

[35] The Women's Executive Committee of Home Missions of the Presbyterian Church to President Cleveland, 1885.

Indian School, instead of attending to flagrant breaches of the law which took place daily under their eyes & into which they joined." Bolles particularly blamed U.S. Attorney Haskett for many of the troubles, a sentiment echoed by Commissioner Brady who stated that Haskett was a drunkard. In fact, the keeper of the largest saloon in town had told him that Haskett "owed him a large sum for drinks at the bar & that he did not expect to get a cent out of him." Brady was also highly critical of Governor Kinkead, who had "been drunk most of the time & spends his intervals in cursing Jackson." An Indian woman had told Brady that the marshal, Manson Hillyer, "is her current sweetheart & I have every reason to believe that she told the truth." In short, the behavior of these officials toward the mission school and Jackson was "without excuse."[36]

While most critics condemned Haskett and Hillyer, some had kind words for Judge McAllister. J. B. Metcalfe of the Sitka Agency of the Pacific Coast Steamship Company had found the judge to be "a very pleasant gentleman...and a very agreeable Judge before whom to try a case." Metcalfe recognized that McAllister had gotten into hot water by issuing the writs of habeas corpus freeing school children. He speculated that the Presbyterians had become upset about the loss of children because the larger number of students reported in attendance, the more money the Sitka Training School would receive from the Home Board. Metcalfe stated that he would regard it "as unfortunate, at this time to have the Judge removed as he has been here just long enough to know the wants of the Territory" and had tried very hard "to make fit the crude and at best clumsy act creating the civil government of Alaska." In fact, Metcalfe believed, McAllister served the interests of the government well and should be retained. On June 16, 1885 Jackson apparently had a change of heart and told the new U.S. attorney general, A. H. Garland, that the first term of the U.S. district court at Sitka had just ended and that it gave him "great pleasure to write you that I have been pleased with Judge McAllister's conduct on the Bench." Jackson explained that he was even more pleased because a month earlier he had telegraphed the Commissioner of Indian Affairs an unfavorable report about the judge in connection with his rulings on the Indian School cases.[37]

[36] Bolles to Commissioner of Indian Affairs, June 16, 1885; Brady to Commissioner of Indian Affairs, June 17, 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[37] J. B. Metcalfe to Stephen J. Field, May 18, 1885; Jackson to A. H. Garland, June 16, 1885; Jackson to A. J. Garland, June 16, 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

Jackson did not mention the critical letters about McAllister he had recently sent to the president's brother and to the chief executive himself. In any event, it was too late by then, because President Grover Cleveland had decided to fire all of the officials with the exception of Jackson, Brady, and Lewis.

May 1885 group photograph taken in front of the Customs House in Sitka, Alaska. Left to right: U.S. Attorney Edwin W. Haskett; U.S. Marshal Munson C. Hillyer; Governor John H. Kinkead (seated); U.S. District Court Judge Ward McAllister, Jr.; and U.S. District Court Clerk Andrew T. Lewis. (Alaska Historical Library, Juneau)

Shortly after the removal of the officials in late 1885, Jackson thanked President Cleveland, stating that he had lived in frontier territories for the last twenty-six years, "and I have never, not even in Arizona, which had some hard cases, seen a more worthless set of public officials than" the Alaska group. He was grateful for the retention of Brady and Lewis "who have soberly & honestly tried to do their duty." He was convinced that once the president's new appointees reached Alaska to "assume the reins of Government, law-abiding citizens will breathe freer."[38]

[38] Jackson to Cleveland, August 20, 1885, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

Dr. Jackson and his followers breathed easier, but at least two of the removed officials were profoundly unhappy. Kinkead, although acknowledging the right of the president to dismiss him, complained that he was not informed of any cause for the removal. "My resignation," he continued, was at "any moment" at the president's disposal, and he "would have been gratified had the resignation been asked for, and thus saved the necessity for the order of suspension." Kinkead continued that he had been "only too glad to be relieved from an unsatisfactory and thankless position" which had to continue so for his successors under "the present crude and ineffective Organic Act creating the District of Alaska." Kinkead had learned from Ward McAllister, Sr., who had talked with the president, that Cleveland "had been informed by the most estimable and reliable" citizens of Alaska that the government officials there were "unworthy and hence you removed them." Kinkead reminded the president that he had been in Alaska on and off since the cession of the territory by Russia in 1867. He knew nearly every white resident and it was, therefore, not difficult to determine who these "reliable estimable and trustworthy" citizens had been, namely, Dr. Jackson and a few others controlled by him. Kinkead assured Cleveland that this group had misrepresented the federal officials, and in no way represented the wishes and opinions of Alaska's people. In fact, Alaskans would find it unpleasant to discover that the government was unable to find any trustworthy citizens except Jackson and his small group. Kinkead did not care about his job at all, but felt obliged to protest against the removal of Judge McAllister, who had "been falsely and malignantly misrepresented" to the president. Jackson's accusation that McAllister was a scoundrel, drunkard, and dishonest man was a "willful and malicious" lie without any foundation. In fact, he continued, these accusations "could only have emanated from the diseased brain of a lunatic which I in charity believe Jackson to be." As for his own character, Kinkead simply referred the president to Nevada's and California's congressional delegations for references.[39]

Kinkead maintained that Jackson had disgraced the highly respected Presbyterians whom he represented "by his ill-judged and unwarrantable disregard of the rights of citizens and his expressed contempt for the law." He had "antagonized the entire people against himself and the cause he so fearfully misrepresents has paved the way for the advent of the Church of Rome" whose representatives would control the Natives. Kinkead told the president that Jackson was "an Archhypocrite, a liar and a

[39] Kinkead to Cleveland, January 5, 1886, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

dishonest man, a malicious libeler and defamer of honest men." Jackson repeatedly had threatened the court and juries "with the power and displeasure of the Sister of the President." He had boasted publicly that eighteen U.S. senators would vote as he directed them upon any proposition, and read to Kinkead an extract of a letter from Miss Cleveland which stated that "hereafter the President will look to you [Jackson] for all truthful information in regard to matters in Alaska."[40] In short, Cleveland had been taken in by a clever, ruthless, and dishonest man.

The McAllisters, father and son, also were extremely unhappy with Cleveland's decision and attempted, albeit unsuccessfully, to persuade the president to review his decision.[41] Jackson was not a magnanimous man, and apparently took a personal delight in kicking a foe when he already was down. He was certainly ambitious and resourceful, yet relentless and impatient with anyone who resisted him. He was also a petty, vindictive individual who often damned opponents by broadcasting unconfirmed slanders. Crusading for Alaska's Natives, Jackson spared no charity, or even basic justice, for his enemies.

"A GENTLEMAN POSSESSED OF EXCELLENT LITERACY AND LEGAL ATTAINMENTS"

With the change in administration, the department of justice had received applications for appointment to various offices even before Cleveland had dismissed most of the Alaska slate of officials. As early as March of 1885, supporters of Edward J. Dawne of Salem, Oregon recommended him for the Alaska judgeship. Dawne, an attorney and counselor practicing before "all the courts" of Oregon, appeared to be "a gentleman possessed of excellent literacy and legal attainments...well fitted and qualified to perform the duties of any Judicial position which it may please President Cleveland to bestow upon him." The man seemed to fit the position. E. J. Jeffery, the chairman of the Democratic State Central Committee of Oregon, strongly recommended Dawne, and so did scores of other worthy citizens. Those endorsing the applicant variously referred to him as a "lawyer and counselor," a "colonel," or even "Dr. E. J. Dawne," hinting at an eventful past. On March 17, 1885 Dawne sent his application together with a petition, signed by 123 prominent citizens and another thirteen nationally-known

[40] Ibid.

[41] Mayor of Albany to Cleveland, September 28, 1885; Henry Clews to Cleveland, September 9, 1885; Henry States to Jackson, November 29, 1885; Jackson to Cleveland, December 16, 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

individuals, to the president. He stated that he was forty-two years old, had been a resident of Salem, Oregon for thirteen years, and was a member of the Oregon bar. Dawne considered himself fully qualified for the job, "having made the administration of the Oregon Code, which is extended to Alaska, a special study." Three days later he also mailed his application for the Alaska district court judgeship to Attorney General Garland. He stated that he applied at "the urgent request of my friends." He assured Garland that he neither claimed nor asked for any reward for party services. For an ex-Confederate, Cleveland's victory was all he had desired. If appointed he promised to honestly fulfill the duties of the position.[42]

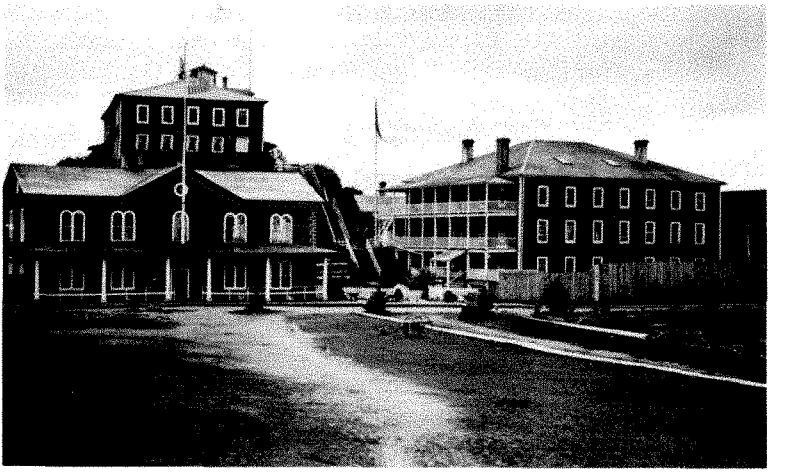
Jackson had heard of Dawne. He considered him to be "a Christian man with a Christian wife, & while I would not have chosen him," he admitted that "he is well spoken of in Oregon & I think will make an efficient acceptable Judge." On July 21, 1885 Cleveland appointed Dawne district court judge. The new official took the oath of office on August 20 of that year and traveled to Alaska to assume his duties.[43]

The news of Dawne's appointment stunned the citizens of Salem. Why, they asked, would the president give a judgeship to a notorious charlatan, liar, braggart, and crook? Several of those who had recommended the candidate now felt remorse and wrote the president retracting their recommendations and apologizing for their thoughtless support of Dawne's petition. No one had assumed that the administration would take his bid seriously. In fact, one of his petition signers had once described Dawne in a public speech as "a preacher without a pulpit; or doctor without a diploma; a broker without a dollar; and an attorney without a brief."[44] As details of Dawne's astounding career unfolded, the department of justice acted to add the distinction of "a judge without a bench" to his long list of credit. What was clear was that a man with nerve could make his way in Oregon. Dawne apparently had come to Salem from somewhere in Arkansas around 1872. "Through the most barefaced falsehood and misrepresentation [he] obtained a

[42] T. B. Odeneal to A. H. Garland, March 7, 1885; Edward Hirsch to Garland, March 12, 1885; Rufus Mallory to Attorney General, March 11, 1885; La Fayette Lane to Garland, March 11, 1885; E. J. Jeffery to Cleveland, March 18, 1885; Dawne to Cleveland, March 17, 1885; Governor of Oregon to Attorney General, March 17, 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives.

[43] Jackson to Cleveland, May 5, 1885, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 18, R.G. 60, National Archives; Delaney, *Alaska Bar Association*, supra note 19 at 21.

[44] Samuel Ramp to President Grover Cleveland, August 11, 1885; R. W. Thompson to President Grover Cleveland, August 18, 1885; Department of Justice Correspondence, copies at Alaska State Library, Juneau, Alaska.



Sitka Courthouse, ca. 1905. [Photograph Collection, Alaska and Polar Regions Archives, Elmer E. Rasmusson Library, University of Alaska]

chair as professer [sic] in the Medical Department of the Willamette University." Within a year the administration of the University discovered that Dawne "never had a Diploma of Medicine nor even a Medical Education," whereupon the faculty summarily dismissed him, probably with red faces. Thereupon Dawne, a very resourceful fellow, insinuated himself into the Methodist Church South and worked as a preacher. In 1874 at the annual conference at Dixie in Oregon, Dawne was "tried, silenced and suspended from the Church until such time as he would clear himself of the charges then and there prefered [sic] against him." He never did. Thereafter, Dawne and his wife, "a very fine laday [sic]," taught school for several years, after which he became a broker and finally was admitted to the bar. His colleagues, however, did not consider him a lawyer but rather looked upon him "as what is usually called a shyster by the profession."[45]

In early November, criticism of Dawne's performance as district court judge reached the department of justice. The U.S. attorney, Mottrom D. Ball, wrote that Dawne had been involved in two cases in Sitka, dealing with a hearing and decision of a motion and a demurrer. Dawne reached the correct conclusion, "yet his want of depth as a lawyer was shown in the prolixity & irrelevancy of some of his dicta." Still, there was hope that he might make a fair judge — but that hope disappeared as his professional and personal weaknesses further revealed themselves. Dawne was supposed to

[45] R. W. Thompson to Cleveland, August 28, 1885; G. W. Goucher to Cleveland, September 6, 1885; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 17, R.G. 60, National Archives.

be in Wrangell on the first Monday in November to open court, as required by law. On October 26 Dawne left Wrangell in a canoe manned by three Indians bound for Tongass, about 150 miles distant. Tongass contained a small settlement of Indians and only a few whites. Before departing, the judge stated to some that he intended to break up the sale of liquor, and to others that he had instruction to assist the Canadian authorities in finding the murderers of a certain shipowner found slain about his craft in British Columbia waters. The U.S. attorney suspected that Dawne had "gone a little daft, from trouble at the publications against him out here, & I fear he had not far to go." Furthermore, Dawne appointed several commissioners in various communities without authorization. Since his departure by canoe, nobody had heard from him. Apparently, he had instructed the marshal to adjourn court from day to day until his return. But Dawne did not return, and on November 17 Governor A. P. Swineford informed the attorney general that Judge Dawne "is missing, with every evidence of having fled the district to evade threatened arrest on charges of forgery and embezzlement." Dawne apparently had intended to return from Tongass via the mail steamer in time to hold a term of court ordered to have started on November 2, 1885. He knew, however, that the steamer was not due at Wrangell before November 12. His failure to return greatly alarmed his wife, "who received and opened his letters, thinking they might throw some light on his mysterious actions." On November 16 she called the governor and read letters to him which proved conclusively that Dawne "is both a forger and embezzler, and leaves no doubt in [my] mind that he has fled to British Columbia." Swineford concluded that "while no judge at all is better than such a one as Dawne, his disappearance nevertheless completely blocks the wheels of justice in the Territory." On December 1, 1885 James Carroll, the captain of the Alaska mail steamer, wired Cleveland that Dawne had "left the territory and gone to British Columbia for reasons best known to himself." Alaska's judicial system was in disarray, and its citizens asked for an honest and reliable individual to fill the position.[46] Dawne eventually made his way to Montreal and then sailed to Europe. He left his wife and family at Sitka to find their own way back to Salem.

[46] M. D. Ball to A. H. Garland, November 9, 1885; James Carroll to Cleveland,n.d.; General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals and Attorneys, 1853-1901, Alaska 1885-1889, Abbot-Kincaid, Box 17, R.G. 60, National Archives; *The Alaskan*, November 7, 21, 28, 1885 and February 6, 1886.

JUDGE LAFAYETTE DAWSON

The other replacement officers performed better than Dawne. U.S. Attorney Ball worked diligently until ill health forced his resignation in 1887. Barton Atkins, the new U.S. marshal, served until 1889. Although Sheldon Jackson demanded Atkins' removal in March 1889 charging that he did not treat prisoners well, that he used them "for his personal gain," and that his accounts were "in great confusion," a later examination found all to be in good order after Atkins left office in 1889.[47] It is unclear whether or not Jackson forced the marshal's resignation, but neither he nor any other officer ever again interfered with the Sitka Industrial Training School which today functions as Sheldon Jackson College.

It was not until 1888 that the Justice Department sent its examiner, J. W. Nightingale, to Sitka to unravel the financial snarls created by Marshal Hillyer. Nightingale was annoyed to find no records of Hillyer's ten months in office, except a few expense vouchers. Apparently fearing scrutiny of his administration, the marshal had destroyed his files, leaving his successor in the dark and the examiner perplexed. None of Hillyer's deputies or former deputies was around to shed any light on his administration.[48]

President Cleveland appointed as Alaska's third judge Lafayette Dawson, who was to serve until 1888 — a record incumbency at that point. Dawson established justice and order. In his grand jury charges the new judge stated his views of the priorities of law enforcement. There were two murder cases in 1887, one involving an Indian charged with killing his wife. Dawson instructed the jurors not to consider the question of what tradition or custom might have prevailed among the Natives. In 1885 Congress had made all Indians answerable to the criminal laws of the United States. Dawson's ruling on the legal status of the Natives convinced the grand jurors but subsequent trials challenged it.[49]

Judge Dawson considered other charges jurors would have to consider: liquor sales; the manufacture of liquor; smuggling to evade customs duties; and the prohibition on the sale of breech-loading rifles to Natives, a restriction dating back to Russian days and often protested by officials who explained that the aborigines needed the modern arms to hunt game which had become scarce.

[47] Jackson to Attorney General, March 27, 1889, Department of Justice Correspondence, copy in Alaska Historical Library, Juneau, Alaska.

[48] Nightingale's report, November 23, 1888, Letters Received, R.G. 60, National Archives; Hinckley, *The Americanization of Alaska*, supra note 2 at 116; *The Alaskan*, November 21, 1885.

[49] Henry E. Haydon, *List of Cases Reported From the District Court of Alaska By Lafayette Dawson, Judge, Covering the Period of Time from March 13, 1886 to August 25, 1888* (Maryville, MO, 1888) 113.

Dawson also criticized a Juneau municipal arrangement which required Indian men "to retire at an early hour in the evening while Indian women are invited, enticed and persuaded into the dance halls, where they partake of the hilarity of the dance, drink deep of the rude vulgarity of such places, where modesty has no resting place and where the licentious machinations of the libertine leads them to debauchery and ruin."[50]

The judge disapproved of defamation of character "by words spoken or by writing." He considered this to be "libelous and... a crime at common law, and also under the criminal laws of Oregon, which I shall hold to be applicable here." He also inveighed against the cohabitation of unmarried men "with Indian or Russian women," because "every precept of morality, every incentive to good society, every thought and desire for elevated morals, and every rational idea of the proprieties of life, cry out unmistakably for the suppression of this heathenish, immoral, practice of illicit cohabitation and abiding together of sexes." If a couple lived together, they "must marry and satisfy the law" and "show a regard for the moral sentiment of the community..."[51]

Judge Dawson repeated these sentiments in other forms to many other grand juries over the years. It was not perhaps a puritanical aversion to unsanctioned sex, but a desire to help the solid citizens of Alaska's towns build stable communities against the tendency of many single males to acquire Native partners who could be discarded in time. Those who brought their wives north or wished to do so urged the court to deal severely with the footloose males who used communities but made no commitments in return.

Judge Dawson concluded his charges to jurors with an appeal to enforce the law. He urged jurors to be "vigilant, cautious, and to exercise your best judgment in the investigation of these important questions." He urged them to "remember the history of the past. You, gentlemen, know something of the confusion that prevailed here for long years before the establishment of a civil government." Shirk your responsibility "and abandon the law, you will find yourself at once adrift, cast upon the great ocean of chance, confusion and uncertainty, driven by the waves of individual passion and interest against each other." The law, he stated, was "the ark of safety to all. Without it life itself is a mere negative birthright and particularly here in our present condition emerging from a chaos of seventeen years' growth, attempting to establish and uphold a civilized society..." Do your duty and stand by the law. "Let it crush whom it may crush, save whom it may save. It is the only bulwark against the return of licentiousness, brute violence, unspeakable cruelty and revolting barbarism."[52] Thus inspired, the

[50] Ibid. at 115-16.

[51] Ibid. at 116-17, 119.

[52] Ibid. at 120-21.

grand jurors usually worked with determination. Trial jurors, however, had to complete the task and sometimes lacked the virtues the judge appealed to.

Other judges followed Dawson. John H. Reatley served from 1888 to 1889, John S. Bugbee from 1889 to 1892, Warren D. Truitt from 1892 to 1895, Arthur K. Delaney from 1895 to 1897, and Charles S. Johnson from 1897 to 1900.

"MAKING FURTHER PROVISION FOR A CIVIL GOVERNMENT FOR ALASKA"

As one gold discovery followed another, the judges soon realized that the establishment of various mining camps necessitated holding court in the new settlements. The great gold discovery on the Seward Peninsula on Anvil Creek in September of 1898 soon resulted in a rush to the region. In the summer of 1899, C. S. Johnson, the judge for the district court of Alaska headquartered in Sitka, left Juneau accompanied by A. J. Daly, the U.S. attorney, and Governor John G. Brady. The party went to the city of Dawson and from there traveled down the Yukon River, holding terms of court at settlements along the river. They stopped at St. Michael, went to Nome, and then returned by way of Dutch Harbor, stopping at various places on the return trip to administer the laws of the land. It was a long circuit, spanning approximately 7,000 miles and taking almost all summer to complete. In Nome, when asked if aliens had the right to locate mineral lands, Judge Johnson replied that only the United States government had the right to question the validity of such locations. He denied the many applications for injunctions and the appointment of receivers on mining property. There just was no time to deal with the many complicated cases. Johnson appointed Alonzo Rawson as U.S. commissioner, and told him not to try any title cases because his jurisdiction did not extend to this sort of litigation. The judge, decked out in long rubber boots and a yellow rain slicker, held court in a leaky but spacious tent. Historian Edward S. Harrison described the first session of the court as follows:

> ...the judge instructed a bailiff to convene court, and the 'Hear ye! Hear ye!' was punctuated by the patter of rain on the roof. The litigants and attorneys sat upon improvised chairs and boxes and the spectators uncovered and remained standing, and for the first time in Nome the Federal Court of the District of Alaska was in session.[53]

[53] Edward S. Harrison, *Nome and Seward Peninsula* (Seattle, 1905) 54.

In response to the gold discoveries, Congress passed, and President William McKinley signed into law on June 6, 1900, a measure "making further provision for a civil government for Alaska..." Section 4 of the act divided Alaska into three judicial districts and provided for the appointment of three district court judges each presiding over a court "of general jurisdiction in civil, criminal, equity, and admiralty cases" in the "district to which they may be respectively assigned by the President."[54]

President McKinley appointed James Wickersham, an attorney from Tacoma, Washington to fill the bench at Eagle on the Yukon

Judge James Wickersham. (Huntington Library)

[54] Act of June 6, 1900, ch. 786, 32 Stat. 321 (1900).

River in the third judicial division; Arthur H. Noyes, a lawyer who had practiced in Grand Forks, North Dakota and Minneapolis, Minnesota to the judgeship in the second judicial division at Nome; and Melville C. Brown of Wyoming to the bench in the first judicial division headquartered in Juneau. In Seattle, Wickersham met Noyes. The department of justice had requested that the two meet in Seattle to jointly determine the boundary between the second and third divisions. That was the only meeting between the two men. Recalling the event years later, Wickersham was impressed with the Nome group when comparing it to his own. He described Noyes as "an agreeable man, though he seemed to be immoderately fond of the bottle." The Eagle City group seemed to be rather unimportant while the Nome party appeared to be alert, aggressive, and engaged in planning large mining ventures. The Seattle crowds watching the departure were not interested in Wickersham's party but "stood open-mouthed about those bound for Nome." Under the circumstances, members of Wickersham's "modest party felt that they were being shunted to an obscure place in the Yukon wilderness."[55]

On July 2, 1900 they sailed on the steamer *City of Seattle* bound for Skagway with stops at Ketchikan, Wrangell, Treadwell, Juneau, and Haines. On July 6 the steamer tied up at the White Pass and Yukon Railway dock at Skagway. A hack took them to the sprawling Fifth Avenue Hotel. Wickersham observed that construction on the railroad continued night and day, an army of men blasting cuts and tunnels in solid mountain walls over the pass and along Lake Bennett. Wickersham met Judge Melville C. Brown who was conducting court in Skagway. The two talked and agreed on a temporary boundary between the first and third judicial divisions, deciding to postpone determination of the permanent boundary until they had learned more about the geography of the region.[56]

Soon thereafter, Wickersham and his party left Skagway for Dawson. Since no boats went down river to Eagle City for several days, Wickersham had the opportunity to visit the city and the Klondike mines. Dawson was then in its heyday as the richest mining camp in the Yukon basin. Its buildings had been hastily constructed from green lumber, "its streets were quagmires; its waterfront was filled with hundreds of small boats and scows which had brought its inhabitants from Lindeman and Bennett through the dangers of the Whitehorse rapids." Wickersham and his party visited the El Dorado and Bonanza gulches, explored the mining operations and washed some gravel, and were treated in a

[55] Evangeline Atwood, *Frontier Politics: Alaska's James Wickersham* (Portland, OR., n.d.) 59.

[56] Ibid. at 60; James Wickersham, *Old Yukon, Tales — Trails — and Trials* (Washington, D.C., 1938) 3-4.

Judge James Wickersham's courthouse at Eagle, Alaska, 1900. (Guilbert Thomas Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

royal fashion. They took the *John Cudahy* to Eagle City where they arrived on July 15, met by the entire population.[57]

Judge Wickersham wasted no time in building quarters for himself and organizing the court. The third judicial division was sparsely settled with fewer than 1,500 Caucasians according to the newly completed census. It was enormous in extent, however, containing approximately 300,000 square miles. In this vast area there was no courthouse, jail, or other public building. Congress had neither appropriated nor promised funds for any of these purposes, except that the district court judge had the authority to reserve two town lots and to build a courthouse and a jail, financed by receipts from license funds. Personal finances were in even worse shape, because paychecks for the period from June to November were not received until the following February, and thereafter were always three to four months late. Another financial handicap involved the use in the Yukon basin of Canadian currency which was heavily discounted in the United States and therefore did not circulate there; the federal bureaucracy refused to accept it as part of the official remittances to be made quarterly by the clerk of the court. The latter had to accept Canadian money

[57] Wickersham, *Old Yukon*, supra note 56 at 5, 10-11, 24-26; Wickersham Diary, July 11 and 15, 1900, University of Alaska, Fairbanks Archives.

or stop public business. Therefore, at the close of the quarter the clerk had to ask mercantile companies and businesses to exchange the currency for American money because there was not a single bank in the region. Wickersham recalled that it took five years to get enough American gold coins and currency into the district to carry on the public business with the proper money. Despite these handicaps and others, Wickersham instructed the clerk of the court to collect license fees from the saloons and mercantile establishments, and soon there was enough money to build a courthouse and a jail. On August 20, the judge held a special term of court at Rampart on the Yukon to collect license fees and to enable officials to become acquainted with the country. He had determined that it was not necessary to call a special term at Circle since the court officials had to pass it on their way to Rampart. While in Circle City, "a bleak, log-cabin town" which prior to the Klondike gold discovery had been a busy port of entry but had since been all but abandoned, the clerk and the marshal visited the saloons and stores to collect the license fees. They had some success, but several businessmen were short on cash and promised to pay on the officials' return from Rampart.[58]

Judge Wickersham convened the court in one of the warehouses of the North American Trading and Transportation Company. He sat behind a rough lumber counter while the clerk had a table. The clerk and marshal collected license fees, and Wickersham signed the orders. There was little business to report: a prisoner was charged with stealing a dog and food supplies from a trapper's cache and was bound over to the grand jury term at Circle City in September; and "two or three miners were trying to get into a lawsuit, but fortunately for them there were no lawyers in Rampart to prepare their cases for trial, so they settled it." Litigants also filed some papers in a civil suit with the clerk, after which the judge adjourned the court. Thereafter, while waiting for transportation, the court officials talked with "businessmen, prospectors and Indians about general conditions in the Rampart district and found them not bad."[59]

The first jury term ever held by the district court in the third division convened at Circle City on September 3, 1900. The court met in the Episcopal log church and hospital rented from the mission for that purpose. A grand jury was impanelled and it returned three indictments, one for murder, another for rape, and a third for larceny of a dog and supplies from a trapper's cache. Judge Wickersham had a trial jury called, and had the accused arraigned and tried. The jury found the man charged with murder guilty of the lesser offense of manslaughter and the judge

[58] Wickersham, *Old Yukon*, supra note 56 at 36-46.

[59] Ibid. at 47.

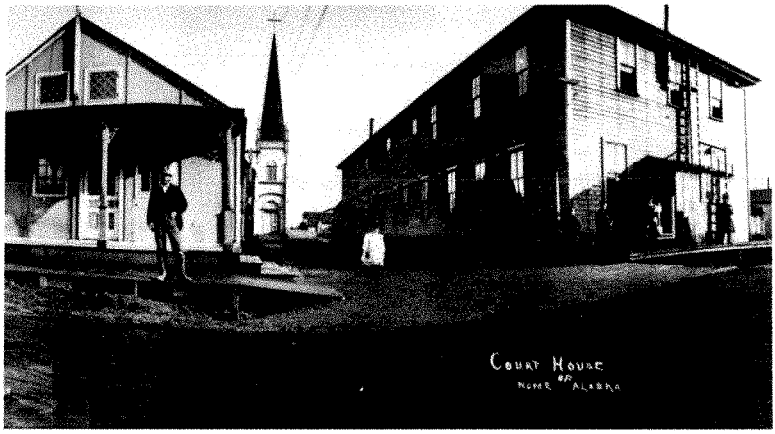
sentenced him to ten years in the penitentiary; the jury acquitted the man charged with rape, and the larcenist pleaded guilty and received a sentence of two years. After only seven days the court concluded all of its business and adjourned. Wickersham, the U.S. attorney, marshal, clerk, and the public accountant had to remain at Circle to write up and sign the records and prepare and settle the accounts for the term. On September 22, in the midst of an early blizzard, two stern-wheelers arrived and the crew hurriedly exchanged the mailbags, unloaded the Circle freight, and took the new passengers on board. Then they hauled in the gangplank and steamed upriver, having to reach Dawson before the river froze. Once in Eagle, the court officials prepared for the winter, splitting and piling wood and banking the walls of the cabins to keep the cold from getting beneath the floor. After having attended to these chores, Wickersham joined Captain Charles S. Farnsworth, the commander of Fort Egbert, in a hunt.[60]

In midwinter of 1900 Wickersham received urgent requests to come to Rampart to settle problems which had arisen with claim jumping. The court officials answered the call, and using a dog team, mushed to Rampart, where the judge convened a special term of court on March 4, 1901. By March 11 the judge was on his way home and reached Eagle on March 27 after some very demanding travel over rough trails and after braving a vicious snowstorm. He had traveled more than 1,000 miles and spent a total of $705.00 for the dog team, driver, roadhouse expenses, meals, and beds. The judge took the receipts and noted in his diary that "these I must send to Washington, D.C. & I trust to luck to be reimbursed."[61]

At the close of 1900 Judge Wickersham reported to the department of justice on his first year's efforts. The judge was of the opinion that the routine business in Eagle was small and not likely to increase. He suggested that since the courts in the first and second divisions were swamped with litigation, he was willing to help out by holding special terms of court for them. On March 28, 1901 the attorney general directed Wickersham to hold a "special term of court at Unalaska-Dutch Harbor in Judge Noyes' district, providing he makes no objection." On April 29 Wickersham contacted Judges Noyes and Brown and offered to enlarge his district so as to include the Copper River country and the Aleutian Islands, thereby relieving "both their courts to that extent." On May 13 Judge Wickersham received clippings from the San Francisco *Call* which stated that Noyes had "been cited to appear before the Circuit Court of Appeals at San Francisco for contempt in relation to the difficulties at Nome, and that I had been directed by the President to go to Nome in his place —

[60] Ibid. at 48-51.

[61] Ibid. at 57, 72, 77.



Nome courthouse, ca. 1910. (Nome Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

temporarily at least." Wickersham thought that the contempt citation was "unprecedented — the whole matter to date is that!"

Steamers for Nome did not leave Seattle before the end of June because of ice in the Bering Sea. Judge Wickersham knew he could not reach Unalaska before the return trip of one of these steamers so he called a general term of the district court to be held at Eagle starting July 1. This, he hoped, would enable him to clear up the work in his own division in case his services at Unalaska were extended to Nome. The work in Eagle, however, was greatly delayed because of the late break-up of the Yukon River, and it was not until July 24 that the stern-wheeler *Susie* reached Eagle with the officers, prisoners, and witnesses from Rampart, Fort Yukon, and Circle. Thereafter, the work went quickly and smoothly, and the judge was able to adjourn the court on August 1, "leaving a clear docket in that division." On August 3, 1901 Wickersham boarded the Alaska Commercial steamer *Leah* bound for St. Michael, en route to Unalaska via Nome. While briefly in that city, U.S. marshal Frank H. Richards told Wickersham that he would be unable to summon enough jurors from among the small population at Unalaska. Since Wickersham knew that a couple of murder cases had to be investigated, he ordered that grand and trial juries be drawn in Nome. The marshal complied and summoned sixteen grand and eighteen trial jurors who boarded the *St. Paul* to accompany the judge to the Aleutians, as did the marshal and various other court officials.[62]

[62] Ibid. at 321; Wickersham Diary, March 28 and May 13, 1901, University of Alaska, Fairbanks Archives; Wickersham, *Old Yukon*, supra note 56 at 322-24; Wickersham Diary, August 16, 1901, University of Alaska, Fairbanks Archives.

"AN OUTRAGEOUS AND COLD BLOODED MURDER & PERPETRATOR"

When Judge Wickersham awoke early on the morning of August 19 to the sounds of a bellowing cow and a crowing rooster, the *St. Paul* had docked at Unalaska. The judge was delighted with the scenery which greeted him when he came on deck: "high, round, grass covered mountainous islands, bays" and "a clean, bright town along the waters [sic] edge, with schools, churches, stores, docks and several small vessels at anchor; the sun light struggling through the clouds and a general...mist such as we have on Puget Sound gave me a feeling of being in a familiar climate — near home —I am much pleased with Unalaska. It is an attractive spot, historic and interesting." He was to hold court in a large room above the Alaska Commercial Company bath house and laundry. He convened the court at eleven o'clock in the morning. The grand jury was impanelled and sworn in and ready to consider two murder charges. One Fred Hardy stood accused of having slain famous Idaho miner Con Sullivan, Sullivan's brother Florance, and their partner, P. J. Rooney, on Unimak Island. The other case involved an Aleut who was charged with killing his wife. Since the U.S. attorney was not yet familiar with the evidence in these cases, Wickersham expected that it would take the grand jury some time to get to work.[63]

The grand jury indicted Fred Hardy on August 22, 1901 for the murder and robbery of three men on June 7 of that year. The three, together with Owen Jackson, had been prospecting on Unimak Island. They left their camp, and the murderer crept up, stole their rifles, and shot and killed the prospectors upon their return. Only Owen Jackson escaped after incredible hardships and finally reached Unalaska where he reported to the authorities. Thereupon, the U.S. revenue cutter *Manning* went to Unimak, and Jackson and several officers found and buried the three slain men whose bones, by this time, the foxes had picked clean. They also arrested Hardy. Wickersham considered it an "outrageous and cold blooded murder & [the]perpetrator ought to suffer death."[64]

During Hardy's trial, the following facts emerged. Fred Hardy was a Tennessee drifter who came north during the gold rushes intent on seeking his fortune. Hardy was a thoroughly unscrupulous and depraved character who earned the nickname "Dimond Dick" for his voracious reading of dime novels while confined

[63] Wickersham Diary, August 19, 1901, University of Alaska, Fairbanks Archives; *U.S. v. Fred Hardy*, trial record, case No. 109, R.G. 21, Federal Records Center, Seattle, Washington.

[64] Wickersham Diary, August 22, 1901, University of Alaska, Fairbanks Archives.

The convicted murderer Fred Hardy. Sketch by C. Boundy for the *Nome Nugget* of Friday, September 9, 1902. (Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

years before in Alcatraz.[65] Con Sullivan was a hard-working prospector and miner. He was lucky to be involved in the original staking of Idaho's Bunker Hill and Sullivan mine, a mountain producing vast amounts of silver from 1885 to 1892. Sullivan sold his share to Simeon G. Reed of Oregon for $75,000 but continued prospecting with moderate success. His luck ran out, however, for

[65] *U.S. v. Fred Hardy*, No. 109, United States District Court for the District of Alaska, Second Division, R.G. 21, National Archives, Seattle Branch.

when he came north to investigate the mineral potential of Unimak Island he met Hardy.[66]

Fred Hardy had deserted a fishing schooner on Unimak Island and subsequently observed the activities of the well-equipped Sullivan party. On June 6-7 the prospectors relocated their camp to the vicinity of Cape Lapin. Jackson and Rooney, who were returning in the party's dory with a final load of supplies, heard four rifle shots. In sight of the tent they saw Florance fall and Con run for the dory hoping to escape. The rifle fire continued and Rooney was hit as the men boarded the dory. At this point Con and Jackson decided to make for the shelter of a nearby bluff, but before the two got very far, a bullet in the back felled Con. Jackson then kicked off his heavy rubber boots and ran toward the old campsite. He hid that night and started out for False Pass the next morning, resting along the way in an abandoned trapper's cabin. On the way, he saw men he assumed to be Natives. Since Jackson thought that the assailants had been Natives, he changed his route and headed for Unimak Pass on the island's west side, traveling high in the hills. On June 24 he reached Scotch Cape near Unimak Pass, weak from exhaustion. Except for a little flour and water and a few beans, he had not eaten since the shooting. Finding a dory on the beach, he crawled under it for protection and passed out. Luckily, a prospecting party found him before he died. Near starvation, he was without coat, blanket, or shoes, although he wore a pair of rubber boot soles he had tied to his feet. After resting a few weeks, Jackson regained his strength. The party then hailed the mail steamer *Newport* moving through the narrow pass and reached Dutch Harbor on July 17, 1901. Nome's U.S. marshal, Frank Richards, took Jackson's statement at Dutch Harbor. Soon the marshal, U.S. Commissioner R. E. Whipple, and a coroner's jury departed for Unimak Island.[67]

Fred Hardy apparently felt secure enough to remain on Unimak Island. The search party found him with a large sum of money and the property of the Sullivan party. The Unalaska grand jury indicted him, and U.S. Attorney John L. McGinn prosecuted while Nome attorney C. P. Sullivan and John W. Corson defended the accused. Judge Wickersham and jurors from Nome listened as witnesses refuted Hardy's testimony as well as his attempts to blame the murders on George Aston, who had been arrested with him. One dramatic incidence in the trial occurred as prosecutor McGinn tried to determine an important date in the sequence of events, namely that Aston, the man Hardy accused of the murder, had been at the fish camp of an old Aleut chief on the date of the murder, fifty or more miles from the scene of the massacre. The old Aleut, according to Wickersham, cut a pitiful figure, dressed in

[66] Ibid.

[67] Ibid.

ragged skin clothing, smelling like an Aleut fish camp on a summer day. His general facial expression was that "of an decrepid idiot. When asked a question he would smile in a senile way and gaze about the court room" until finally prompted to answer by the judge. He finally said that he knew Aston who had come to his camp in his fishing dory about June 2 and was there on June 7, the day of the murder. He knew because "me lote (wrote) it in me log." McGinn then turned his pivotal witness over for cross-examination to two of Alaska's best lawyers. Apparently everyone in the courtroom thought that the man's testimony would be utterly discredited under cross-examination, especially on the matter of the crucial date. Sure enough, the defense attorneys asked the old man how he was so certain about the date. The chief repeated that "me lote (wrote) it in me log." Immediately, one of the defense lawyers gave the witness a piece of paper, a pen and ink and asked him to sit at a small desk in front of the jury and demonstrate his writing skills. It was a tense moment, Wickersham recalled, as the witness "shuffled his ill-smelling clothes for a moment, gave us all a childlike smile...and wrote his name in a clear and legible script — in Russian!" The defense attorney took one look and said, "That will do." The cross-examination was over.[68]

On September 7 Judge Wickersham wrote that "after a long, hard trial," lasting usually from nine o'clock in the morning until past nine o'clock in the evening, the jury brought in a verdict of guilty of murder in the first degree. Wickersham sentenced Fred Hardy to hang. After the sentencing, Hardy was taken to Nome where his fate created a sensation among the residents. Hardy provided plenty of copy for journalists with his speculations about the forthcoming hanging.[69]

In June of 1902 the Ninth Circuit Court of Appeals in San Francisco rejected the condemned murderer's appeal for a new trial. Hardy, however, was not resigned to his fate and planned an escape with fellow inmate John Priess. The scheme involved killing the guards and fleeing to Dutch Harbor where Hardy knew an individual who had $30,000 and a schooner. The potential fugitives planned to rob and kill the Dutch Harbor man, take his schooner and sail to South America where they planned to sell whiskey to the Indians. Guards, however, discovered Hardy's letters in Priess' possession, and as a precaution, put Hardy in irons. In the meantime the appeals process moved Hardy's hanging date from December 1901 to September 1902. On schedule, Hardy died on the gallows on September 19, 1902 at age 28, protesting his innocence to the very last.[70]

[68] Ibid.; Wickersham, *Old Yukon*, supra note 56 at 334-35.

[69] Wickersham Diary, September 7, 1901, University of Alaska, Fairbanks Archives; *Nome Nugget*, September 14, 1901.

[70] *Nome Nugget*, August 23, 1902.

Unalaska in the Aleutians, site of Alaska's "floating court." (Huntington Library)

Judge Wickersham was proud of having conducted the first court ever convened in the Aleutian Islands. While at Unalaska Wickersham received a letter from the U.S. attorney general, ordering him to go back to Nome to conduct court in the absence of Judge Arthur Noyes. The judge was disappointed because he had planned to visit Tacoma for a short time. He suspected that he would probably have to spend a winter in Nome, a prospect he did not relish. "My visit home is gone," he complained, "hard work — thankless task, too, at Nome. Hope the wolf won't [sic] rend my bones asunder as he has poor Judge Noyes." Judicial affairs in Nome were troubled as a scandal rent the community involving the court and other officers of the law. Wickersham was to restore the reputation of the judicial system. His journey to the Aleutians set a precedent which in time evolved into the famous "floating court," where the court moved along Alaska's coasts during the summers in revenue cutters, stopping where needed to hold court.

THE NOME GOLD "CONSPIRACY"

Much has been written about the famous Nome gold rush, the last major placer stampede in the history of the American West, as Nome was one of the last great gold rush boom towns. The stampede lasted only for the short summer of 1900. Although others had found gold on the Seward Peninsula, the men generally credited with the 1898 discovery of the Nome gold fields are Jafet Lindeberg, Eric Lindblom, and John Brynteson, known as the "three

lucky Swedes," though Lindeberg was a Norwegian. Two stampedes followed, one in 1899 by those already in the north and the other in 1900 by outsiders expecting to gain quick fortunes.

While the argonauts were heading for Nome in great numbers, the United States Senate debated a civil code for Alaska, partially designed to remedy the Nome situation. A few years earlier, on June 1, 1898, Congress had adopted a concurrent resolution directing the commission appointed in 1897 to revise and codify the criminal and penal laws of the United States and to draft a civil code for the district of Alaska. The commissioners submitted the fruits of their labor to Congress on December 20, 1898. This document gave lawmakers a basis for deliberation.[71]

The Nome gold rush figured prominently in the congressional debates about the civil code and dominated discussions in the Senate. What few senators seemingly realized was that the 1900 civil code was put together in the middle of a conspiracy designed to steal the richest claims in the Nome district. In fact, framing the civil code was part of the contemplated fraud.

The individual behind the Nome gold conspiracy was Alexander McKenzie, a member of the Republican National Committee from North Dakota for twenty-one years. McKenzie was sentenced on a contempt of court charge to a year in prison for his part in the scheme. President William McKinley, one of McKenzie's personal friends, pardoned him after he had served only a few months in jail. The president justified his action by declaring that McKenzie was in poor health and probably would die in prison. Instead, McKenzie died some twenty years later in 1922 and took most of the secrets of the gold conspiracy to his grave. Neither McKenzie nor anybody else was ever charged with conspiracy, because, it has been suggested, top officials in the department of justice had participated in the plot.[72]

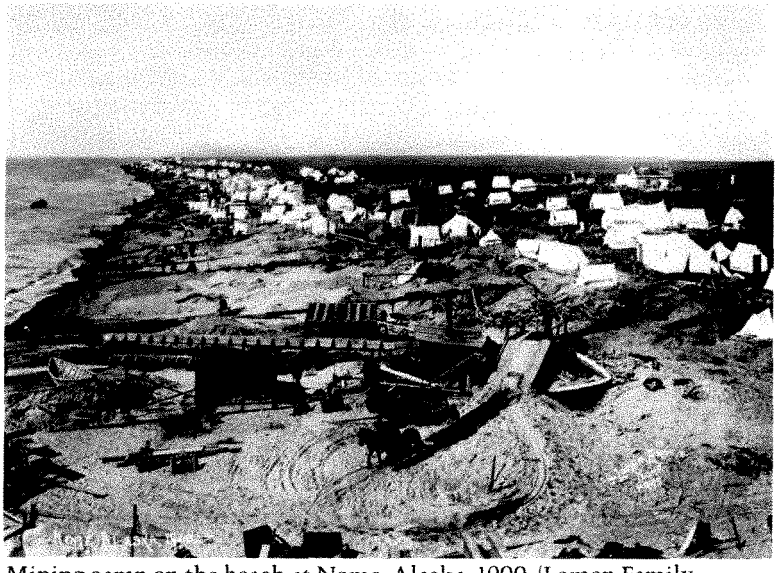
The thousands of pages of documents gathered in the various contempt proceedings still do not answer the question of whether or not there was a conspiracy, but Judge William Morrow of the Ninth Circuit Court of Appeals stated that the evidence showed "beyond any reasonable doubt" that a conspiracy did exist.[73] McKenzie almost succeeded in pulling off one of the most spectacular frauds in American legal history. He started by

[71] *Laws Other Than Criminal Relating to Alaska*, H.R. Doc. No. 99, 55th Cong.,3d Sess. (1898); for an excellent discussion of the origin of the Alaska and Oregon Codes, see Frederick E. Brown, "The Sources of the Alaska and Oregon Codes: Part I, New York and Oregon," and "The Sources of the Alaska and Oregon Codes: Part II, The Codes and Alaska, 1867-1901," 2 *UCLA-Alaska Law Review* (1972) 15-33 and 3 *UCLA-Alaska Law Review*(1973) 87-112.

[72] Terrence Michael Cole, "A History of the Nome Gold Rush: The Poor Man's Paradise" (Unpublished dissertation, University of Washington, 1983) 161-62.

[73] *In re Noyes*, 121 F. 209 (9th Cir. 1902).

manipulating the Alaska civil code in Congress. The basis for his scheme was the uncertainty over whether or not aliens could legally stake mining claims; that was the issue which had agitated the miners in the Nome district since Lindeberg, Lindblom, and Brynteson had made their rich strike on Anvil Creek and Snow Gulch. Many prospectors believed, or wanted to believe, that it was legal to re-stake any claim located by an alien. This, however, was contrary to the mining laws of the United States. Claim jumpers, nevertheless, continued to insist that they were in the right. By 1900 many of the original alien claimants had sold their property, mostly to American citizens who now incurred the anger of the claim jumpers. Charles D. Lane, a mining entrepreneur who early on had realized the mineral potential of the Nome region, had organized the Wild Goose Mining and Trading Company in 1899 with a capital of $1,000,000. Much of this money he spent in purchasing mining claims from the Lapp reindeer herders and the Scandinavians.[74]



Mining camp on the beach at Nome, Alaska, 1900. (Lomen Family Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

Among the claims Lane had purchased was No. 10 Above Discovery on Anvil Creek, which John S. Tornanses, a Lapp reindeer herder, had staked on October 19, 1898. In the spring of 1899 a miner jumped the Tornanses claim because he alleged that the reindeer herder was an alien and therefore could not locate a

[74]Harrison, *Nome and Seward Peninsula*, supra note 74 at 197-201.

mining claim. Lieutenant Oliver Spaulding of the U.S. Army had arrested the claim jumper and kept him in confinement at St. Michael for three weeks when the angry prospector had refused to drop his claim. The miner's arrest and confinement brought about the organization of the Council City Law and Order League in April 1899, which claimed to protect the rights of American citizens against the aliens. The discovery of gold on Nome's beaches in the summer of 1899 had temporarily relieved the claim jumping issue, but it had not died. The claim jumper continued to maintain that he and his two companions were the lawful owners of the No. 10 Above. Since Tornanses, as an alien, had no right to stake the claim in the first place, he could not sell it to Charles D. Lane, and the three men decided to contest Lane's title in court. They hired as their attorneys Oliver P. Hubbard and William T. Hume of the law firm of Hubbard, Beeman and Hume, which represented many of the claim jumpers in Nome.[75]

Oliver P. Hubbard hailed from Chicago where he had clerked in the attorney general's office when Grover Cleveland had been president. This experience had given him good connections in both New York and Washington, D.C. Hubbard came to Alaska in the spring of 1898 and, together with his partners Edwin Beeman and William Hume, agreed to represent anyone with a jumper's title in exchange for contingency interest in the contested claim. Thus the attorneys became partners with their clients and, eventually, the three attorneys gained an interest in approximately one hundred jumpers' titles. The attorneys and their clients had much to gain if the claims of the original locators could be nullified.[76]

During the winter of 1899-1900 Hubbard attempted to gain the interest of investors in Chicago, New York, Washington, D.C., and London who were willing to gamble that the alien claims in Nome would be invalidated. In January 1900 Hubbard arrived in New York City where he met Alexander McKenzie, who was most adept in the art of bribery and influence buying. From North Dakota's admission to statehood in 1889 until the Progressive "Revolution of 1906," the McKenzie ring controlled most of the elected officials in the state, and influenced the election of nearly every senator during North Dakota's first twenty-four years in the Union. When Hubbard and McKenzie met, the North Dakota political boss recognized a chance to make a fortune out of the turbulent conditions in Nome. With the help of several key senators he could influence, McKenzie planned to attach an amendment to the Alaska Code which would have retroactively nullified any mining claims in Alaska staked by aliens. If successful, the jumpers' titles could be worth millions of dollars. McKenzie and Hubbard apparently agreed upon a strategy to

[75] Cole, "A History of the Nome Gold Rush," supra note 72 at 164-66.

[76] Ibid. at 166.

follow and McKenzie formed the Alaska Gold Mining Company, a phony syndicate with a paper capitalization of fifteen million dollars. McKenzie exchanged stock in his paper corporations for jumpers' titles to alien claims in the Nome district and other areas in Alaska as well. He paid Hubbard, Beeman and Hume $750,000 in Alaska Gold Mining Company stock for their interest in the approximately one hundred titles, and made Hubbard secretary of the company. McKenzie hoped to gain control of the richest mines in Nome for a season, enabling his company to take out millions of dollars worth of gold. At freeze-up, he hoped to sell the company's fifteen million dollars of worthless stock on Wall Street, bilking an unwary public.[77]

Alexander McKenzie did not put anything in writing and, therefore, it has been impossible to identify all of his backers. The Ninth Circuit Court of Appeals perceptively observed that McKenzie obviously put the stock of his company in the hands of those who could help him the most. U.S. Senators Thomas H. Carter of Montana, the sponsor of the Alaska Civil Code, and Henry C. Hansbrough of North Dakota helped the Alaska Gold Mining Company a great deal in the spring of 1900. Carter was a lawyer and an expert in the incredibly complex mining laws of the United States. He had tried many mining cases as an attorney, and in 1900 he chaired the Senate Committee on Territories and steered the Alaska Civil Code to passage. It subsequently became known as the "Carter Code." On March 5, 1900 Carter reported the measure out of his committee. It was basically a modification of the Oregon Code, in force in Alaska since 1884. Very little was controversial in the bill, and the senator urged his colleagues to pass it quickly in order to give Alaskans a system of law and order, made necessary by the gold rush population boom. Carter disavowed any personal interest in the measure, but told his colleagues that it was their duty to pass the bill.[78]

Circumstantial evidence and Carter's clever maneuvers on the Senate floor suggest that the chairman and Hansbrough were in collusion with McKenzie, although there is no evidence that they expected to share in McKenzie's Nome booty. Perhaps they believed that if they helped the North Dakota boss get millions they eventually would benefit as well. In the later contempt trials, witnesses testified that they had observed Senators Carter and Hansbrough in McKenzie's hotel rooms in New York City and Washington, D.C. The record of the debates, however, still contains the most incriminating evidence. For as it emerged from Carter's committee, the Alaska Civil Code contained sections taken directly from the Oregon Code which clearly stated that aliens had the right to acquire mining property, and that a title "shall not be

[77] Ibid. at 166-69.

[78] Ibid. at 169-71.

questioned nor in any manner affected by reason of the alienage of any person from or through whom such title may have been derived." This provision obviously protected the rights of those aliens who had staked claims, and others who had bought mining ground from them. On the floor of the Senate, Carter had the nerve to argue that the alien provision had "crept into this compilation" and had to be stricken to prevent the confirmation of "shady, or doubtful titles" and bestow "rights where none existed under the law." Senator Carter shared the patriotic interests of the Nome claim jumpers. He told his colleagues that numerous aliens had illegally and immorally taken the richest claims in Nome, and therefore, the Alaska Civil Code had to be amended to protect the rights of American citizens. Carter also provided the Senate with a version of the discovery of gold at Nome written by H. L. Blake which distorted the priorities of discovery and the actions of the military in breaking up the meeting of the claim jumpers. The chairman warned that "it will be a dark and evil day for this country when the badge of American citizenship will not be at least as good a cloak for protection as the ancient citizenship of Rome was in the days of that Republic."[79]

Carter clearly got carried away with his own rhetoric, and he certainly ignored the rights of Americans who had bought property from the aliens. Carter offered a solution to the dilemma. Senator Hansbrough just happened to have drafted an amendment to the original code, "moved by a high sense of duty to a distant body of his fellow-countrymen, men on an ice-bound coast 8,000 miles away," which would have invalidated the title to any claims purchased from an alien locator and would have given courts the right to inquire into a locator's citizenship. According to American law and Supreme Court rulings, only the government, unlike the litigant in a lawsuit, had the right to raise the question of alienage at the time the claim came up for patent. Another proviso in Hansbrough's amendment stated that unless an alien had filed his declaration of becoming a U.S. citizen before staking his claim, the title would not be valid. This particular part of the amendment was directed at Jafet Lindeberg and other former reindeer herders who had filed their declarations of intention before the U.S. commissioner at St. Michael, not realizing that a U.S. commissioner could not legally receive such a document.[80]

Senator Carter warned of dire consequences to the nation if the Hansbrough amendment failed to be adopted. He claimed that the aliens he feared most were not the Swedes and Lapps, but rather those from China, Russia, Korea, and Japan. Should the government notify the Japanese people that they "may proceed to Cape Nome and Cape York and on the whole of that Alaskan coast and there

[79] 33 Cong. Rec. 56th Cong., 1st Sess., 4418 (1900).

[80] Ibid. at 4418, 3739.

View of the frozen harbor at Nome, 1907, "an ice-bound coast 8,000 miles away." (Lomen Family Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

participate like our own citizens in the benefits which accrue to the locator of mining claims," what would happen then? He answered his own question by stating that this "would be equivalent to turning Alaska over to the aliens who might desire to come there from all over the world."[81]

Despite the valiant efforts of Senators Hansbrough and Carter, and McKenzie's other friends in Washington, D.C., the "Hansbrough amendment" to the Alaska Code was defeated, thanks in part to the opposition of Charles D. Lane and others. McKenzie, however, did not give up easily, and decided to have a friendly judge appointed in Nome. Using his connections with financiers and leading Republican politicians, he pushed through the appointment of Arthur H. Noyes, an undistinguished Minnesota attorney and longtime McKenzie friend as judge for the new second judicial division of Alaska which included the Nome gold fields.[82]

Judge Noyes and his party together with McKenzie arrived at Nome in mid-July 1900, and the new judge fooled all his supporters for he did nothing to establish law and order in that city. In fact,

[81] Ibid. at 4310.

[82] Cole, "A History of the Nome Gold Rush," supra note 72 at 177; 33 Cong. Rec., 56th Cong., 1 Sess., 3928, 3934, 4471 (1900); Cole, "A History of the Nome Gold Rush," supra note 72 at 178-79; Petition to President William McKinley, n.d. (1900); D.E. Morgan to President of the United States, March 21, 1900, Appointments, Alaska, R.G. 60, National Archives; List of Endorsements for Arthur H. Noyes, n.d.; D.F. Morgan to President McKinley, April 19, 1900, Appointments, Alaska, R.G. 60, National Archives.

his arrival in Nome marked the beginning of the reign of "the Spoilers," as novelist Rex Beach called the judge and his gang in a book by the same name.

Within four days after their arrival, Alexander McKenzie controlled the richest placer mining claims of Nome. Judge Noyes had appointed his friend as receiver to administer the mining claims while they were in litigation. Customarily, a receiver holds such disputed property in trust so that its value cannot be dissipated before judicial determination has been made. The best way to preserve the value of the claims was to leave the gold in the ground. Instead, McKenzie hired every able-bodied male he could find before the winter put an end to mining activities. McKenzie was not shy in carrying out his scheme. William T. Hume later testified that his partner, Oliver P. Hubbard, came to Nome on July 21 and told him that McKenzie had succeeded in getting his men appointed to the positions of judge and U.S. attorney. A few hours later McKenzie visited Hume's office and advised Hume and Beeman to cooperate with him as Hubbard had done. In that case, they would make a "large and ample fortune." If they did not cooperate, McKenzie threatened to ruin them and make certain that they would win "no suits in the District Court for the District of Alaska, Second Division, as he controlled the Judge" of that court.[83]

McKenzie also demanded that he and U.S. Attorney Joseph Wood receive a one-quarter interest in the profits of the law firm. Hume understood that McKenzie would hold his one-quarter share of the business "in trust" for Judge Noyes. The new partners signed the agreement on July 22, 1900. McKenzie thereupon instructed his partners immediately to prepare applications for the appointment of receivers for the contested claims on Anvil Creek. Speed was of the essence, because the Anvil claim owners were taking out thousands of dollars each day, an obvious loss to the Alaska Gold Mining Company. While McKenzie paced the floor of the office urging them to hurry up, Hume and his secretaries worked two days straight producing the necessary complaints, motions, affidavits, summons, and writs for Noyes' signature. Hume took the legal documents to the judge's private quarters where he signed them without even reading them, enabling McKenzie to take over five of the richest placer mining claims, including four on Anvil Creek.[84]

McKenzie waited with two horse-drawn wagons and a deputy U.S. marshal when Hume returned with the signed orders. He

[83] United States Ninth Circuit Court of Appeals, "In the Matter of Arthur H. Noyes, et. al.," *Transcript of Proceedings and Testimony*, section titled "Statement of W.T. Hume," 2:394, 391. Records of the Department of Justice, R.G. 60, National Archives.

[84] Ibid. at 400-04; *In re Noyes*, 121 F. 209 (9th Cir. 1902).

immediately rushed out to Anvil Creek with the court orders forcing the owners to give him "immediate possession, control, and management." The miners obviously were caught off guard by these bizarre events or they might have resisted by force. Most of Nome's citizens assumed that everything was in order because the judge had approved it, and because they did not understand that the claim jumpers' suits depended on the alien ownership argument, and that they only had very weak cases, at best. Additionally, the military forces in Nome were prepared to back up the receiver's authority and the orders of the district court. When the Ninth Circuit Court of Appeals in San Francisco reviewed the matter later, it stated that a review of the law would have found that the allegations of the claim jumpers were insufficient grounds to support any legal action, much less the appointment of a receiver.[85]

The attorneys for Charles D. Lane and Jafet Lindeberg, the chief opponents of the McKenzie forces, protested the receivership to Judge Noyes but got no response. When McKenzie complained to Noyes that Lindeberg's employees were interfering with him, Noyes signed an order authorizing the receiver to confiscate all property, equipment and gold on the claims. Later the Circuit Court of Appeals observed that this order was "so arbitrary and unwarranted in law as to baffle the mind in its efforts to comprehend how it could have been issued from a court of justice."[86]

The judge halted the defendants until August 10, when he denied the motions to remove McKenzie, who, in the meantime, was working the properties at a frenzied pace taking out thousands of dollars in gold each day. McKenzie's bond was only $5,000 for each claim, perhaps equal to one day's production, thus the defendants realized that they would have no protection or legal recourse if the receiver gutted the mines. On August 15 Lane's and Lindeberg's attorneys asked Judge Noyes to allow them to appeal their case to the Circuit Court of Appeals in San Francisco. The judge denied the motion, thus leaving the defendants no choice but to appeal directly to San Francisco.[87]

In the meantime C.S.A. Frost, the investigator for the attorney general in Nome in 1900, summed up his impressions for his chief on August 16. He gave Judge Noyes a clean bill of health and criticized the defendants who "have undertaken to force an appeal to the appellate court in San Francisco." In conclusion, Frost observed that law officials who came into the Nome area took "their lives in their hands. An upright Judge needs...the encouragement that your confidence can furnish, and Judge Noyes merits it."[88]

[85] Cole, "A History of the Nome Gold Rush," supra note 72 at 198-201.

[86] *In re Noyes*, 121 F. 209 (9th Cir. 1902).

[87] Cole, "A History of the Nome Gold Rush," supra note 72 at 203.

[88] C.S.A. Frost to Attorney General John W. Griggs, August 16, 1900, Records of the Department of Justice, File 10000/1900, Box 1215, R.G. 60, National Archives.

Judge Noyes reported to the attorney general personally, telling him that the court business was "almost overwhelming." He doubted that it could be disposed of even by holding a continuous term of court through the entire winter. Nome's population was in excess of 20,000 people and all seemed "to be engaged in contests over lots or mining properties..." and others arising "from business misunderstandings and...each and all of them feel that their matter is most urgent and of first importance." Noyes explained that in mining cases he had made it a rule to appoint a receiver and continue the extraction of gold where a property had been opened and was being worked, "believing that that was the proper thing to do inasmuch as this whole camp is depending upon the output of the mines and it would be greatly against the community to...shut down the work." His decisions had "met the serious opposition and harsh criticism of some" as was to be expected. No other judge in the United States confronted the amount of work and the difficulties and trying circumstances accompanying it with which he had to deal, Noyes complained, "however, I am here and will do the best in my power and hope that within a year's time matters may be much improved."[89]

While Judge Noyes justified his actions to the attorney general, the attorneys for Charles Lane's Wild Goose Mining and Trading Company and the Pioneer Mining Company traveled by steamship the nearly 3,000 miles to San Francisco to deliver their petitions and applications for appeal to Judge William Morrow of the Ninth Circuit Court of Appeals. The judge reviewed the applications in late August and ruled that Judge Noyes "had grossly abused the judgment and discretion vested in him by law" and allowed the appeals. He issued a writ of *supersedeas* ordering the judge to halt his proceedings and McKenzie "to forthwith turn back and deliver to the defendants all the property of every kind and character taken by him" under the order appointing him receiver. Morrow also directed the defendants to furnish a *supersedeas* bond of $35,000. This they did.[90]

On September 14, 1900 Morrow's orders were served upon Judge Noyes, the plaintiff and Alexander McKenzie. Anticipating the decision, McKenzie had sent James L. Galen, Senator Thomas H. Carter's brother-in-law, south to notify the senator of the danger and to have him take care of it. As it turned out, McKenzie's friends in Washington,D.C. could not influence the judges on the Ninth Circuit Court of Appeals. Nome's citizens welcomed the

[89] Noyes to Attorney General, August 29, 1900, Records of the Department of Justice, File 10000/1900, Box 1215, R.G. 60, National Archives.

[90] William W. Morrow, "The Spoilers," 4 *California Law Review* (1916) 108; *In re Alexander McKenzie*, 180 U.S. 536-51 (1901); William H. Metson to Attorney General, October 8, 1900, Records of the Department of Justice, File 10000/1900, Box 1215, R.G. 60, National Archives.

news that Noyes and McKenzie had been overruled, but jubilations were premature because the receiver decided to ignore the orders of the Circuit Court, claiming they were invalid. Judge Noyes stayed out of sight, pretending to be sick, and stated that he was powerless to make the receiver return property because the Ninth Circuit Court of Appeals had usurped his jurisdiction in the case. Once more lawyers traveled to San Francisco to complain. At this point, armed men from the Pioneer Mining Company chased McKenzie's men from several claims on Anvil Creek. The receiver complained, and both sides asked the army for help. Major Van Orsdale, the officer in command and a North Dakotan friendly to McKenzie, arranged a conference between the receiver and William H. Metson, the principal attorney for the Pioneer Mining Company. At the meeting the two men almost shot each other but were disarmed by soldiers before any harm had been done. Judge Noyes came out of seclusion long enough to order the army to ignore the writs from California.[91]

There were those in Nome who feared that Alexander McKenzie, who had deposited about a quarter of a million dollars in Anvil Creek gold in the Alaska Banking and Safe Deposit company, would grab the fortune and head outside. After a nearly violent encounter at the bank between McKenzie and the armed men representing the defendants, the receiver agreed that the gold should stay at the bank and nobody should take it out. Armed soldiers thereafter guarded the fortune, and both sides waited for the arrival of new instructions from the Ninth Circuit Court of Appeals. Finally, on October 15, 1900, two deputy U.S. marshals from California landed in Nome with orders to enforce the writs of the Circuit Court. They also carried a warrant for the arrest of Alexander McKenzie, who was sentenced to one year in the Oakland, California jail. The marshals took the receiver back to California for trial where he was convicted of contempt of court in February of 1901. On the day of McKenzie's arrest, the mine owners and operators at Anvil Creek fired their guns in the air celebrating the end of the receiver's three months' rule.[92]

President McKinley pardoned McKenzie after only three months because of the latter's allegedly poor health. McKenzie's debility did not prevent him from sprinting from the jail door to the railroad depot trying to catch the first train out of Oakland, nor from continuing to exercise his political power for twenty more years before he died.[93]

Judge Arthur Noyes never went to prison. His work in

[91] Cole, "A History of the Nome Gold Rush," supra note 72 at 204-05.

[92] Ibid. at 206-08.

[93] Ibid. at 209.

United States District Court Judge Arthur H. Noyes. (Historical Photograph Collection, Alaska and Polar Regions Archives, Elmer E. Rasmuson Library, University of Alaska)

clearing the crowded criminal and civil dockets was ineffective and infuriated attorneys and their clients. When the navigation season opened in 1901, Noyes left to stand trial for contempt of the Ninth Circuit Court of Appeals. He remained judge of the second judicial division until convicted of contempt and fined $1,000, after which President Theodore Roosevelt removed him from office. U.S. Attorney Joseph K. Wood, also convicted of contempt of court, was sentenced to four months in jail. C.S.A. Frost, the investigator for the department of justice was found to have

"grossly betrayed the interests of the United States which were intrusted to his care." He received a one year jail sentence for his contempt conviction.[94]

Many were annoyed that the "Spoilers" got off so easily and conspiracy charges were never brought against the chief actors. The attorney general or the president could have ordered a prosecution, but they probably believed that the gain would not be worth the certain embarrassment to the government, the courts, and numerous leading politicians. This failure perhaps was not a cover-up, for even Judge James Wickersham, sent to clean up the judicial mess in Nome, resisted efforts to get a grand jury indictment, arguing that "the quicker the people of Nome and the court forgot those black days the better it would be for the administration of justice in that district."[95]

[94] *In re Noyes*, 121 F. 209 (9th Cir. 1902).

[95] James Wickersham, *Old Yukon*, supra note 56 at 371.