

A History of the
Alaska Federal District Court System,
1884-1959, and the
Creation of the State Court System.

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University of Alaska, Fairbanks,
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Claus-M. Naske
Professor of History
University of Alaska
Fairbanks, Alaska

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THE FIRST ORGANIC ACT OF 1884 CREATES A JUDICIAL SYSTEM

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." 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 had been well described as a "legislative fungus, without precedent or parallel in the history of American legislation."¹

Congress on previous occasions 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

responsibilities of the officers of the court. His colleagues often put Senator Harrison on the spot. For example, Senator James B. Beck of Kentucky desired to know why the laws of the State of Oregon, which had to be more complicated than those of Washington territory, had been selected. It would have made sense, Beck insisted, to apply the simple laws of Washington territory to the district of Alaska. Harrison replied that his committee had not studied the Oregon nor Washington laws very carefully. His committee had felt, however, that it was preferable to apply to any territory a code of laws adopted by the mature legislature of a state than a code of laws adopted by the immature and imperfect legislature of an adjacent territory. Additionally, Alaska already had been attached to Oregon for some judicial purposes. Harrison also speculated that the adoption of the Oregon code "was in the mind of the person who framed the original bill, and in...remodeling it, as I presented it to the Senate this session, I took it just as I found it in that respect."⁶

Senator George F. Hoar of Massachusetts desired to know what laws were to govern land ownership since the measure under discussion made no provisions at all. Harrison responded that the bill at least confirmed land titles in missionary stations and provided for title to mining properties. The measure, however, did not extend the United States land laws to Alaska. Harrison explained that the Senate Committee on Public lands was considering extensive revisions to the land laws, and his committee members therefore had thought it prudent to wait until these changes had been submitted for scrutiny by the full Senate. The answer satisfied Senator Hoar. Senator Elbridge L. Lapham of New York objected to a committee amendment which eliminated "appeals and writs of error" from Alaska's district "to the United States circuit court for the district of Oregon." Harrison's amendment read that the "final judgments or

General Assembly of the Presbyterian Church, in session at Saratoga Springs in May 1883, to draft a memorial to the 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 industrial schools be established. Jackson soon found an ally in Republican Benjamin Harrison, whom Indiana citizens had elected to the U.S. Senate in 1880. Intrigued by problems posed by the still undeveloped West in time attracted Harrison's attention. He became a member of the Committee on Territories and inspected western lands, and as committee chairman he pushed statehood for North and South Dakota, Montana, Washington, and Idaho. The Senator also took an active interest in the Committee on Indian Affairs.²

In the meantime, Jackson and his Presbyterian missionaries had established several mission schools, 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 Senator Harrison. The two might have met as early as 1874 when they attended the 1874 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

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depended on his help in that body, and he promised to aid. Lawmakers, however, once again defeated the legislation.³

Harrison, however, had gained an interest in Alaska's problems. As a member of the Committee on Territories he had become acutely aware of Alaska's legal and governmental deficiencies. Jackson quickly recognized the Senator's interest, and linked his own proposals for an educational system to it. 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, approaching all the leading Protestant denominations and solicited the 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 backed it during committee consideration. During the following months he reconciled the provisions of his bill with related but different bills.⁵

The full Senate debated the measure on five consecutive days in January 1884, and on May 13 the House adopted the Senate bill unchanged after a brief discussion lasting approximately two hours. Senators Harrison and Augustus H. Garland (Arkansas) reported the measure from the Committee on Territories to the Senate. Harrison submitted a number of clarifying amendments, particularly to sections three through nine, and eleven, which established a judicial system for Alaska. These sections dealt with the jurisdiction of the proposed court, the extent to which the Oregon laws were to apply to Alaska, and the

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decrees of said district court may be reviewed by the Supreme Court of the United States, as in other cases." He argued that the measure provided an appeal in both civil and criminal cases from the commissioner's court to the district court where more than \$200.00 was involved. Lapham complained that Harrison's proposed amendment "entirely wipes out any appeal from the judgment of the district court to the circuit court for the district of Oregon." It entirely eliminated "any intermediate hearing of a case, civil or criminal," and left only an appeal to the Supreme Court. Lapham argued that "a large class of cases tried in the district court can never be reviewed, and it will be seen that, as in the case of a man who is tried for the crime of murder for a capital offense," the section provided that the "district court shall have exclusive jurisdiction in all cases in equity or those involving a question of title to land, or mining rights, or the constitutionality of a law, and all criminal offenses which are capital." Lapham stated that "a man may be tried for an offense involving his life under this bill in the district court, and there is no mode of review left to him." Lapham maintained that a criminal defendant could not "get to the Supreme Court. There is no review of a criminal case in the Supreme Court of the United States, except upon a certificate of division, which is a rare occurrence."⁷

Senator Charles W. Jones of Florida thereupon asked Lapham if an Alaskan resident fared worse under the provisions of this bill than any citizen of a state? Was it possible now to appeal a case of murder from the decision of the circuit court of the United States to the Supreme Court of the United States? Senator Lapham conceded that it was not possible currently to do so, but that several bills were pending to change that. Senator Harrison remarked that whenever Lapham's measure passed "it would be applicable here, and allow an appeal to the Supreme Court of the United States." Lapham was uncertain about

such an outcome, however, and stated that it would depend entirely "upon the provision of the bill." He reiterated his contention that Harrison's proposed amendment, if adopted, would prevent an appeal from the district court to the circuit court of the district of Oregon, thereby eliminating "any intermediate examination of either a civil or criminal case."⁸

Senator Harrison reminded his New York colleague that the proposed amendment adopted a long-standing tradition, and that was "constituting a district court for certain purposes and conferring upon it the jurisdiction of a circuit court." Harrison stated that the district court of Alaska was to be a circuit court of the United States as well. Sincere there was to be one judge exercising the functions of circuit and district judge both, the law allowed appeals in capital criminal cases only to the Supreme Court. There was no such appeal under the general law. Harrison maintained that the bill left "the jurisdiction of the courts and the rights of parties as to appeals precisely where they were left by the present law in all those cases where a district court of the United States is given the functions of a circuit court." Harrison hoped that Congress would pass the necessary amendments to the general law regulating the jurisdiction of the courts, because he regarded "it as an extremely hard case that a man should be tried in any court upon a capital charge and not be allowed to bring the proceedings of his trial in review before another court...." Once Congress had repaired this defect in the law, Alaska, under the terms of his measure, would benefit like the states.⁹

Senator Lapham still was not satisfied. He pointed out that current legislation allowed a review of a criminal case tried before a district court in the circuit court. Harrison's proposed amendment not only eliminated that right, but also took away "all right of appeal in civil actions from a district to a circuit court" in cases involving less than \$5,000. Harrison's amendment,

Lapham charged, was "absolutely unjust to suitors. The great mass of litigation in that Territory will be for amounts that never would justify coming to the Supreme Court of the United States, and yet they will be cases which ought to be reviewed in a circuit court." And since the Oregon code had been adopted for Alaska, he maintained, "a review in the circuit court of Oregon is the proper reference, as was first proposed in the bill."¹⁰

Senator Harrison responded that "the commissioners' courts are constituted courts of record for the trial of causes, and an appeal is allowed to the district court." Thus one appeal was allowed in all of those cases, "and it seemed to us that to allow appeals in these cases, especially civil cases below \$5,000, from the district court in Alaska to the circuit court in Oregon, so remote from the place of trial, would be more likely to produce ill results than good results." Senator Lapham still was not satisfied by Harrison's answer. Why, he asked, was an appeal right granted from the commissioner's court, "the inferior court," but once in the district court, "where important rights are involved, no right of review whatever is given." Harrison reiterated that "we give from this circuit court, called a district court, an appeal to the Supreme Court of the United States upon precisely the same terms and in the same classes of cases that appeals under the general laws of the United States may be prosecuted from any circuit court." When the framers of the bill had constituted "there inferior courts with the jurisdiction of justices of the peace," they had thought it proper that "there should be a review in the Territory in the district court, where it could conveniently be had." The presiding officer thereupon called the question on agreeing to the amendment, and the Senate overrode Lapham's objections and adopted it.¹¹

Senator Jones then mentioned that there had been a very thorough discussion in regard "to the operation of the Constitution and laws of the United

States over a Territory." Jones wanted to know "what opinion the Committee on Territories holds in regard to the question of the operative force of the Constitution and laws of the United States within a Territory when they have not been extended to it by positive legislation of this Government." For example, would the Constitution be in force in Alaska without a Congressional act applying it, he asked? To which Senator Harrison replied that the Committee on Territories 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. We did not meet at all in the course of our discussion the constitutional question" which Senator Jones had mentioned. Harrison concluded that he did "not feel now like going out of my way...to introduce into the discussion here so wide a question" as the one Jones had brought up. That finished the discussion about Constitutional questions.¹²

The next day, January 22, 1884 the Senate again took up the measure providing for a civil government for the territory of Alaska. Senator Harrison for the Committee on Territories introduced minor clarifying language for section nine which provided that the President, with the consent of the Senate, was to appoint the governor, attorney, judge, marshal, clerk, and commissioners, and that these officers were to serve four year terms. The section also specified the salaries these officers were to receive. The governor and judge were to be compensated at the rate of \$3,000 per annum, while the attorney, the marshal and the clerk were to receive \$2,000 annually, payable quarterly from the Treasury of the United States. The commissioners were to receive "the usual fees of United States commissioners and of justices of the peace for Oregon and such fees for recording instruments" as were allowed by Oregon's laws for similar services. They also were to receive a modest salary of

\$500.00. In addition to the usual fees as deputy United States marshals and of constables of Oregon, their Alaskan counterparts were to receive each an annual salary of \$500.00. Each of the officials was to "take and subscribe an oath" promising to faithfully execute the duties of his respective office. The officials also were required to execute bonds in varying amounts. The Senate accepted the clarifying language without dissent.¹³

Harrison next moved to section ten which his committee had rewritten. The new language directed the Attorney General to speedily compile and print in pamphlet form "in the English language" those "general laws of the United States" as were "applicable to the duties of the governor, attorney, judge, clerk, marshals, and commissioners appointed for said district," and he also was to supply as many copies of the laws of Oregon applicable to Alaska as might be needed. The Senate accepted these revisions as well.¹⁴

Senator Preston B. Plumb of Kansas wanted to know whether, "under the general provision extending the statutes of Oregon over the Territory of Alaska, it is intended to provide any means of collecting taxes or that any taxes shall be collected for any purpose whatever." Harrison replied negatively, stating that his committee had not provided for any scheme for the assessment or collection of taxes within the district. There were too few people and settlements, not enough property, and no legislature to make assessments and collect taxes. Senator Plumb persisted. He understood that there were about four hundred Caucasians in Alaska. These people had gone north to profit from the pioneer conditions. They had established schools at their own expense, and this was entirely proper. Harrison's measure now proposed to "select this community above all the other communities of the United States and educate their children at the expense of the general Treasury without imposing on them any taxes whatever." If that was not offensive enough, Harrison's measure

proposed to bear all governmental expenses as well. Plumb wanted harrison to "adapt his amendment to the Indians who are there and who are the proper subjects of national charity." Harrison was on the defensive. He explained that "the situation of this Territory or district is a peculiar one." The population was small and scattered, and the committee therefore thought "that we ought not to attempt to give them a full Territorial organization." No legislative body had been provided which might have assessed properties and collected taxes. Harrison admitted that there indeed might be some American citizens able to pay for the education of their children; but it would be impossible to separate these few, and by not providing educational facilities for Natives and whites alike, it probably would deprive the majority of white children of educational opportunities. Plumb still was not satisfied with Harrison's explanations. The government never before had provided for the education of all of the white and Indian children anywhere. Now it was making an exception in Alaska. Plumb continued that he did not object "to a reasonable appropriation for the purpose of establishing schools for the Indians. I do object, however, that the children of white people up there, who are not to be taxed, but for whose benefit this government is to be provided, shall also have their schools paid for out of the public Treasury." In the Senator's opinion "the people up there are satisfied." Not one white resident had ever asked for "one dollar of appropriation to educate his children." These pioneer residents had settled in Alaska, "being relieved from all the other burdens of government, and have been perfectly willing to educate their own children at their own expense." The education provision, Plumb concluded, was "too wide,...too ample, too expensive, too loose, and will lead to nothing but expense and trouble and annoyance."¹⁵

Senator John J. Ingalls of Kansas now vented his displeasure with the northern territory. A believer in "manifest destiny," he advocated the unification of the continent under the American flag. America's northern shore was "to be washed by the Polar Sea, and...our southern boundary will be the interoceanic canal that connects the Atlantic and Pacific." If it were not for the imperative of "manifest destiny," he continued, "I should be willing to relinquish Alaska to any power that would undertake to carry on its government and provide for its future welfare." In fact, Ingalls regarded "Alaska as the most worthless territorial acquisition with which any government was ever afflicted." The Senator thought that "we have gone far enough when we have provided for the extension of a system of laws over this wandering and nomadic population in Alaska,...and enabled them to have a tribunal in which their wrongs can be redressed and their rights can be enforced."¹⁶

Senator Charles W. Jones of Florida also objected that Alaska's residents were not to be taxed. In fact, the federal government exercised the same powers over territories as it did over the District of Columbia, and therefore should tax and collect revenue in Alaska. What bothered Jones even more was the fact that even though "an oath is required to be taken by the officers provided for in this bill, it violates the Constitution of the United States" in not requiring these officials to support the fundamental law of the land. The oath simply required the officers to discharge the powers of the office. Even if the Constitution and laws of the United States were not operative in Alaska, he argued, officials at least should be required to take an oath to support the laws of Oregon to be operative in Alaska. Harrison's measure was most remarkable, he continued, because there was not "anything like it in our annals." All the territorial bills Congress had ever passed had always provided for a legislature. That always had been the chief desire of territorial

residents, "to have some authority near by them capable and competent to look into their wants, so as to legislate for them." Neither the Constitution nor the laws of the United States were in force in Alaska, "but the whole code of Oregon is carried there by the force of this bill...." Jones suggested that Harrison incorporate a provision in his measure stating "that the Constitution and laws of the United States not locally inapplicable to this Territory should have full force and operation within its borders...." Jones then called Harrison's attention to the third article of the Treaty of Cession which, in part, stated that "the inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages, and immunities of citizens of the United States and shall be maintained and protected in the free enjoyment of their liberty, property, and religion." Clearly, every Russian subject who had chosen to remain was entitled to the protection and benefits of the Constitution of the United States. Senator Augustus H. Garland of Arkansas interrupted Jones at this point and called attention to section 1891 of the Revised Statutes which made the Constitution and all the laws of the United States applicable in "organized Territories and Territories that shall be organized." In view of this section the committee felt it unnecessary to include specific language specifying that "the Constitution and all laws of the United States which are not locally inapplicable" were to be in force in Alaska.¹⁷

There followed a lengthy discussion about the definition of what constituted an organized territory. Senator Garland maintained that "organized" did not mean "organized in a particular way, but it means organized in any way Congress shall think proper." Garland, however, shared Senator Ingalls' doubts

about Alaska. He had never understood the necessity of purchasing Alaska, "but we did buy it, and now the question is, what shall we do with it?" Garland thought that Harrison's measure attempted to somewhat organize the territory. It did not grant a full territorial government, but it was a bill "providing for the exigencies as they now exist there" and "getting the territory into some shape, looking to a better and more thorough and more perfect form of government after a while."¹⁸

Senator Henry L. Dawes of Massachusetts finally reminded his colleagues that the question before the Senate was not a constitutional one. "However weighty it might be in a proper forum," he continued, "I do not think that we have occasion now to trouble ourselves with it." Instead the Senate had to deal with "accepted obligations, expressed as well as implied," which had come with the purchase of Alaska. The express obligations were that the federal government was to assume the care and protection not only of the residents but also "of all who should go there under our flag." In addition, "we expressly stipulated that so far as they were civilized people and chose to remain there, they should be treated in all respects as citizens of the United States." Unfortunately, up to the present the government had disregarded all implied and expressed obligations to Alaska's residents. It was high time, Dawes urged his colleagues, to disregard mere dollars and cents and educate these northern citizens so that they understood the institutions under which they lived and the laws they had to obey. Dawes proposed that the Secretary of the Interior be given broad discretionary powers in spending, as he saw fit, a certain amount of money for public education. This ended the debate for the day and the Senate adjourned shortly before five o'clock in the evening.¹⁹

The next day, January 23, Senator Jones once again discussed constitutional questions, and maintained that Harrison's bill did not intend to organize

the territory. Senator Harrison became impatient with Jones' lengthy dissertation, and suggested that the Floridian propose some practical amendments "which shall avoid the difficulties that he finds in this bill"...and "which will show his friendliness to the bill and that this discussion was not one to embarrass its passage." Harrison further explained that his committee had thought it unwise to "confer upon the few people residing there a full territorial organization. Harrison's committee had described the territory "as a civil district, and have organized for it a government simple in form, inexpensive in its character, and yet one that we believe will be efficient to bring to every resident of the Territory," and to every home, "the reasonable protection of life, liberty, and the pursuit of happiness...." That framework, Harrison believed, would be sufficient to end the lawlessness which had existed there since the purchase in 1867. Creating such a simple government had been difficult. The measure under discussion provided a governor and a judicial system, "so that the Government may properly be represented in those courts in the defense of its interests, and that each one of them may be accessible to every citizen of the Territory in the assertion of his own personal rights and in the defense of his person against aggressors and criminals." 20

Senator Harrison next launched into a historical discussion, recalling the arguments for and against the purchase, mentioning Alaska's resources and population, and insisting that the establishment of schools was a necessary obligation. In short, Harrison asked for support and indicated that his committee would entertain amendments to make the education section, a stumbling block to agreement, palatable to all. Debate then centered on what agency within the Department of the Interior would manage Alaska's schools. Harrison, influenced by Dr. Sheldon Jackson, insisted that the Commissioner of Education be specifically named to run these schools, while Senator Preston B. Plumb

wanted to leave the choice to the Secretary of the Interior. He assumed that the Commissioner of Indian Affairs would be given the responsibility of managing these schools. The Senate adopted Plumb's amendment, and rejected Harrison's attempt to specifically name the Commissioner of Education.²¹

The Senators turned their attention to section fourteen which restricted, regulated, or prohibited the manufacture and sale of intoxicating liquors in the district. After spirited debate, the Senators adopted an amendment which prohibited the importation, manufacture, and sale of intoxicating liquors in the district, and provided for appropriate penalties. Much discussion then revolved around the administration of the mining laws in section eight. Harrison wanted to keep the process as simple as possible. He proposed that the Secretary of the Interior appoint "suitable persons to make surveys of mining claims; and the commissioners...shall discharge the duties now required by law of registers and receivers of public lands in relations to such claims." Several of Harrison's colleagues were unhappy with this wording, and proposed to create a fully-staffed land office in Sitka. Without much machinery to secure titles to mining property, Senator Plumb feared, there could be "no social order," because serious contests, often "liable to lead to bloodshed," often arose over mining claims.²²

Harrison clearly was unhappy with the idea of creating a land office in Sitka. Such an establishment, he argued, was far too complex for Alaska's simple needs. He did, however, agree that the secretary of the Interior, who was to order the surveys, was far removed from the locality where they were to be made. He therefore suggested that the following language might meet the objections, to wit that "the marshals shall be ex officio surveyors-general...,and the commissioners...shall be ex officio registers and receivers of the land office within their several districts." One Senator

immediately objected, remarking that if a land office was established, there had to be land districts. Harrison countered that the "commissioners are located. They are not land district, but their districts are to be designated by the judge, and they are to be assigned by districts." Senator Hoar wanted to know if each commissioner was to be a land officer. Harrison affirmed that each was to be a register and receiver. The presiding officer asked Harrison if he proposed to modify his amendment. The Senator declined to do so, stating that he simply had made a suggestion to change the language in order to meet the objections.²³

Senator John F. Miller of California was not satisfied. Land districts, he maintained, had to be defined by law in order to have a register and receiver. Harrison reiterated that the districts of the commissioners were indeed defined by law, "because the bill provides that the district judge shall define the districts of the commissioners." At this point the presiding officer called for a vote on the amendment establishing a full land office in Sitka. Senator John P. Jones of Nevada, however, launched into a lengthy dissertation dealing with the general subject of providing a civil government for Alaska. After he had delivered himself of his oration, several of his colleagues offered a variety of amendments to Harrison's measure which were to be printed and considered the next. The Senate, thereupon went into executive session and then adjourned.²⁴

The Senate continued consideration of Harrison's civil government bill on January 24, 1884. In the meantime, Harrison had reached a compromise agreement with his critics on section eight dealing with the establishment of a land district. Harrison and his critic withdrew their amendments, and then Harrison introduced the compromise which stated that "...Alaska is hereby created a land district, and a United States land office...is hereby located in Sitka." The

commissioner was to reside at Sitka, and be the ex officio register of the land office, while the clerk was to be the ex officio receiver of public monies, and the marshal to be ex officio surveyor-general, "but nothing contained in this act shall be construed to put into force in said district the general land laws of the United States." The Senate accepted the compromise amendment, a victory for Harrison, for he had averted the creation of a full land office with all its expenses, and instead had been successful in keeping it simple and inexpensive by saddling judicial officers with additional duties.²⁵

Senator Brown of Colorado next proposed clarifying language for sections three and four dealing with the judiciary. The Senator specified that the district court judge, the clerk, the district attorney and the marshal all were to reside within the district "during their terms of office. In section four the Senator also enlarged the duties of the clerk who was to be the ex officio recorder of deeds and mortgages and other real estate contracts, and now also was to record "certificates of location of mining claims...." Bowen and Harrison briefly discussed language in section seven which dealt with appeals. They agreed that the language should read: "Upon the filing of a sufficient appeal bond by the party appealing, to be approved by the court or commissioner." The Senate concurred. Senator George B. Vest of Missouri next brought up the liquor question which had already been discussed. The language in section fifteen of the bill read that the "importation, manufacture, and sale of intoxicating liquors...is hereby prohibited." Best desired to change it to read that "the commissioners...shall be authorized to restrict, regulate, or prohibit the manufacture and sale of intoxicating liquors." Vest assured his colleagues that he did not wish to deal with the "irritating question of prohibition or the temperance agitation...." A federal statute forbade the "selling or giving of intoxicating liquors to any Indians, "but it gave the

Secretary of War the power to allow the importation of liquor "into any reservation at his discretion. Alaska, however, was not an Indian reservation, he protested. It was an unorganized territory, "an inchoate State. If we propose now to establish the principle of prohibition, let us do it in a fair, just, and manly way. Do not let us sneak in the doctrines as to a country which is hibernated for eight months in the year and force the inhabitants...in the midst of thick-ribbed ice to live on ice-water, while in the rest of the Territories the inhabitants are drinking any quantity of alcoholic stimulants at their own sweet will and pleasure." If prohibition was to prevail in Alaska, Vest argued, then it should be extended to all U.S. territories "in the name of fair play, consistency, and honest dealing...." Vest vowed to vote against the measure with the prohibition provision intact.²⁶

There followed a lively exchange between various Senators about the ravages liquor had inflicted on both savage and civilized members of the human family. Finally Senator John J. Ingalls of Kansas moved to amend the offending section by adding the words "except for medicinal, mechanical, and scientific purposes." Harrison thereupon stated that he accepted the amendment without a vote, "if the Senate will consent that it may be so, as an amendment to my amendment." Additional debate followed about the propriety of legislating for Alaska's citizens, and the suggestion was made that since liquor was prohibited, why not deal with polygamy and slavery as well. Eventually, the Senate accepted Ingalls' amendment to the amendment.²⁷

Senator Jones next desired to amend section nine. He proposed to insert after "judge" the following language, to wit: "That all officers appointed for said Territory, before entering upon the duties of their offices, shall take an oath to support the Constitution of the United States; and the Constitution and laws of the United States not locally inapplicable to said Territory are hereby

extended thereto." Harrison listened, and then asked Jones to accept a couple of changes in his amendment. Territory, he stated, should be changed to district as Alaska was called throughout the bill. A few more changes and an addition finally resulted in the following language: "That all officers appointed for said district, before entering upon the duties of their offices, shall take the oaths required by law; and the Constitution and laws of the United States not locally inapplicable...and not inconsistent with the provisions of this act, are hereby extended thereto; but there shall be no legislative assembly...nor shall any Delegate be sent to Congress therefrom." This did not satisfy Senator Hoar who desired to strike out the words "the Constitution" and because he thought it preposterous to say "that the Constitution of the United States not locally applicable is extended by an act of Congress to a portion of the territory of the United States...." The Senate agreed to the new language. There were some other minor changes, and then Senator Charles H. Van Wyck of Nebraska argued that U.S. marshals be paid salaries rather than receive fees. The fee system, he stated, had led to abuses, encouraging litigation, "to the annoyance of the people" and at the expense of the government. Harrison agreed with Van Wyck that it would be much better "if all these officers were put upon the basis of a fixed annual salary," but unfortunately corresponding in the contiguous states also received commissions. Harrison thought it unwise to inaugurate a new system in Alaska. In fact, his committee had been "very much at a loss to know what salaries to fix for these offices...." The marshals, however, were to receive annual salaries of \$2,000 and such fees as were customary in the states. Harrison suggested that the judicial system be allowed to operate for a year. At the end of that time, it would be known what amount of fees had been collected. It then would be possible to fix an adequate salary. His colleagues, however, overruled him and

adopted Van Wyck's amendment and provided salaries for all officers based on a sliding scale, the judge receiving the highest annual salary at \$3,000, the attorney, marshal and clerk each were to receive \$2,500, the commissioners \$1,000 and the deputy marshals a mere \$750 annually in addition to the "usual fees of constables in Oregon...." The district judge, marshal and district attorney also were to be paid "their actual necessary expenses when traveling in the discharge of their official duties," and they were to keep detailed accounts. The district judge was to approve the expenses of the marshal and district attorney, while the attorney general was to approve the accounts of the judge.²⁸

This concluded Senator Harrison's amendments. Senator Lapham then offered an amendment to section seven which read that "writs of error in criminal cases shall issue to the said district court from the United States circuit court for the district of Oregon in the cases provided in chapter 176 of the laws of 1879; and the jurisdiction thereby conferred upon circuit courts is hereby given to the circuit court of Oregon." Lapham wanted to provide for a rehearing in the appropriate circuit court on a writ of error of criminal cases tried in the district court which involved imprisonment or a fine larger than three hundred dollars. The Senator pointed out that chapter 176 of the laws of 1879 had been prepared very carefully, providing for the settlement of the bill of exceptions at the trial, the presentation of the bill of exceptions to the circuit judge, "who on consideration of the importance and difficulty of the questions presented in the record may allow a writ of error." The writ of error was not to be given as a right but simply at the discretion of the circuit court "in important cases where manifest error has been committed to allow a review in the circuit court." Lapham argued that without his amendment the district court in Alaska "may try a man and send him to execution, and

there is no mode, whatever error or errors may have been committed in the trial, by which the accused can have any rehearing of his case." Even in minor criminal cases tried in the district court, Lapham insisted, serious constitutional questions might come up. Without his amendment, however, making the law of 1879 applicable there was no possibility of review. Lapham had chosen the circuit court of Oregon because the laws of Oregon had been made applicable to the trials in the district and commissioners' courts. Lapham added another sentence, which stated that the final judgments or decrees of the circuit and district courts could be reviewed by the Supreme Court of the United States. After some discussion about the merits of Lapham's amendment, his colleagues adopted it, and the bill then was reported to the Senate as amended, read for the third time and passed.²⁹ The date was January 25, 1884.

The House resolved itself into Committee of the Whole House on the state of the Union on May 13, 1884 and considered the Senate measure. Representative John H. Evins of South Carolina acted as the floor manager for the bill on behalf of the Committee on Territories. He explained to his colleagues that national honor and good faith demanded the establishment of some form of government for Alaska. For seventeen years Congress had neglected to provide any sort of government, "in violation of the treaty obligations and in violation of good faith to those people who have trusted us." The Senate bill, he continued, met this obligation. It provided for the appointment of a governor and a slate of judicial officers. In essence, it created "a judicial district of the Territory of Alaska." In essence, Evins explained the provisions of the bill to his colleagues, going over the same ground the Senate had covered already.³⁰

Representative George W. Cassidy of Nevada urged his colleagues to vote for the bill because Alaska's development had been greatly retarded because

"there has been no form of law or of protection for life or property within its boundaries." During the last two sessions of Congress, Cassidy had received nearly sixty letters from businessmen on the Pacific coast who desired to go north and develop Alaska's mineral resources but had not done so because "there was no protection for their investment or for their property." Even worse, in the previous summer "a native of that country who had committed a cold-blooded murder was brought to San Francisco" for prosecution, but at the hearing "there were no witnesses" and the man "was allowed to go at large--turned loose for want of prosecution." He concluded that it was "of the highest importance" to enact the Senate measure to alleviate these conditions. Others produced evidence supporting Cassidy's claims of lawlessness, not only on the part of civilians but government officials as well. In a particular incident the superintendent of a fishing station at Killisnoo reached Sitka in October 1882 and requested protection from the United States Revenue Marine. He reported that while the company's whaling boat was fishing in Hootsnoo Lagoon, one of the whaling bombs accidentally exploded and killed one of the Native crew members, a shaman. The Natives, as was customary, demanded 200 blankets in compensation for the death. They seized the whaling boats and held two white men prisoners until their demand should be met. In case no payment was made, they threatened to burn the company store and buildings, destroy the boats, and kill the prisoners. Thereupon Captain E. C. Merriman of the Adams took the Corwin and a detachment of Marines to the scene of the incident. The Natives immediately released the two prisoners after the Corwin had anchored. The Marines captured some of the Indian ringleaders, and had the property released. Captain Merriman then demanded that the Natives pay a 400 blanket fine. If not paid, he threatened to destroy their canoes and villages. Apparently unable to pay the fine, Merriman ordered the Marines to destroy forty canoes and burned

their summer camp, sparing only the property of those individuals who had remained friendly to the whites. Merriman also ordered the shelling of the village of Hootsnoo, and then ordered the Marines to burn all of the houses, except those belonging to the friendly Indians. Captain Merriman had acted as "judge, jury, and sheriff," and destroyed food and shelter for a whole group of people. "There are few other countries in the civilized world," one angry Representative asserted, "where such acts of an officer would not be followed by dismissal."³¹

After some additional debate, the clerk read the bill section by section. Evins asked his colleagues not to amend the measure in order to speed its passage. Representative Joseph D. Taylor of Ohio reminded his colleagues that the bill had been considered very carefully in the Senate. Any amendment, he warned, would necessitate the return of the measure to the Senate. Nevertheless, several attempts were made to amend the Senate bill, but always unsuccessfully.³² After about two hours of debate, the House voted to adopt the Senate measure unchanged. On May 17, 1884 the President signed the measure into law.

Although far from perfect, a beginning had been made in bringing civil government to Alaska, albeit in a very primitive form. Amended on several occasions, the First Organic Act served Alaska's governmental needs until replaced by the Second Organic Act in 1912, which, however, retained many aspects of the 1884 measure, including the judicial system.

FOOTNOTES

1. Jeannette P. Nichols, Alaska: A History of its Administration, Exploitation, and Industrial Development During Its First Half Century

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2. Ted C. Hinckley, The Americanization of Alaska, 1867-1897 (Palo Alto, California: Pacific Book Publishers, 1967), p. 114; Ted C. Hinckley, "Sheldon Jackson and Benjamin Harrison" Presbyterians and the Administration of Alaska," Pacific Northwest Quarterly, vol. 54, April 1963, pp. 66-67.
3. Ibid., pp. 67-68.
4. Ibid., p. 68.
5. Ibid., p. 69.
6. Cong. Record, 47C., 2S., pp. 527-529.
7. Ibid., pp. 529-530.
8. Ibid., p. 530.
9. Ibid.
10. Ibid.
11. Ibid.
12. Ibid., p. 531.
13. Ibid., p. 565.
14. Ibid.
15. Ibid., pp. 565-566.
16. Ibid., p. 566.
17. Ibid., pp. 566-567.
18. Ibid., p. 567.
19. Ibid., pp. 567-568.

20. Ibid., pp. 594-595.
21. Ibid., pp. 595-598.
22. Ibid., pp. 598-601.
23. Ibid., p. 601.
24. Ibid., pp. 601-602.
25. Ibid., p. 627.
26. Ibid., pp. 628-630.
27. Ibid., pp. 630-634.
28. Ibid., pp. 635-637, 656-657.
29. Ibid., p. 657.
30. Ibid., pp. 4118, 4120.
31. Ibid.
32. Ibid., p. 4122.

THE FIRST U.S. DISTRICT COURT, SITKA

A few months after the U.S. Army had left Alaska, Dr. Sheldon Jackson, a Presbyterian home mission organizer, arrived at Wrangell. Only a little over five feet tall, Jackson possessed a scrappy personality. Ever since he had first heard the Scripture he had desired to serve the Lord. Educated at Union College and Princeton Theological Seminary, he labored in an Indian school in Kansas, served as a chaplain during the Civil War, and at its conclusion performed parish duties in Minnesota. Throughout the 1870s, Jackson devoted his time to establishing churches throughout an eleven-state area from the Canadian boundary to the Rio Grande. Never a modest man, he liked to be called the "Rocky Mountain Superintendent." In time he yearned to plant churches in new lands. In 1877 he had the chance to escort the widow Amanda McFarland to a missionary assignment in distant Wrangell, Alaska. At the time nobody realized that Alaska had just found its most influential spokesman.¹

Jackson found Alaska to be exciting and challenging. In 1883 he sold his Denver home and moved to the nation's capital. He knew that without ceaseless lobbying in Washington, D.C., Alaskans would be unable to communicate the district's peculiarities and needs to Congress. Annually he traveled between Alaska and Washington, D.C., telling legislators of the needs of the far northern frontier. 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.²

As Jackson soon realized, unless the aborigines first acquired a rudimentary grasp of Caucasian 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 elsewhere such as in Africa or Polynesia, primary education had to accompany Christian conversion. Jackson therefore campaigned to educate and convert Indian, Aleut, 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 propangandistic 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 part of the United States.³

Jackson soon realized that Alaska contained considerable natural resources, but that the Congress and the federal government neglected this sub-arctic region. This federal apathy soon brought avaricious merchants, prostitutes and saloonkeepers, real estate speculators 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.⁴

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 Chester Arthur for the district's first governor, judge, attorney, marshal, clerk, and four commissioners. As historian Ted C. Hinckley has observed, "their importuning were wasted; senatorial patronage had to be served." It is probable that Nevada's U.S. Senators named John H. Kinkead, a

veteran Far West politician, as the district's first governor. The new chief executive 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.⁵

As early as December 8, 1883, Ogden Hoffman, one of California's federal district court judges, urged U.S. Senator John F. Miller to nominate Ward McAllister, Jr. for the yet-to-be-created office of U.S. 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." The applicant had served two years as assistant district attorney for California, which added to "the qualifications for the office which he otherwise possessed." Hoffman mentioned that McAllister's age (he was merely 30 years old) had been held against him. The judge found that argument without merit because he had been nearly a year younger when appointed to the bench. Furthermore, Hoffman expected "that at first there will be little business before the court. Mr. McAllister will have abundant opportunity, as it grows, to grow up with it."⁶

Ward McAllister, Jr., the nephew of prominent San Francisco attorney Hall McAllister, and the grandson of Matthew Hall McAllister, the first Circuit Judge of California, was educated at Princeton College. From there he 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." According to the Daily Alta California, McAllister had "many high recommendations for the position and his appointment would be very popular here." Many San Francisco

merchants with business interests in Alaska backed his appointment. Although a young man, he possessed a sound knowledge of the law, and, as one remarked, "judicial minds are hereditary in his family." For those opposing the appointment because of age, the editor advised that "on this coast, young judges have been extensively tried, and have always proven satisfactory." In fact, "the present Superior bench of this State includes five very young men, and among them are some of the most respected judges in the State." The editor concluded that youth might be considered a fault on the East Coast, but that was not the case on the West Coast. The Daily Evening Post announced that McAllister's many friends in San Francisco "will be gratified to know that he has every assurance of his appointment to the United States District Judgeship of Alaska." California's U.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.⁷

Further support came from many members of the San Francisco Bar, and perhaps most importantly, from Attorney General Benjamin H. Brewster who told the President that "it is my desire for the first and only time since I have been Attorney General to present a person for appointment to a judgeship upon my own personal recommendation, and to gratify my own personal wishes." Brewster asked that the President appoint McAllister. Indeed, Brewster confessed that his mind had "been pre-occupied with a wish to obtain this gentleman's [McAllister's] advancement." Brewster concluded by stating "that in the strongest way I personally request his appointment," but if his wish conflicted with the President's personal desires or political necessities he asked him to disregard it. It was no surprise that McAllister received the appointment as

Alaska's first U.S. district court judge on July 15, 1884. On August 25, McAllister sent his oath, taken before the Honorable Ogden Hoffman, United States District Judge of California, to the department of justice.⁸

E.W. Haskett, an Iowa Republican, became the district's first U.S. 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 U.S. marshal, 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, also appointed on July 25, 1884 were located at 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 administer oaths, take bail and affidavits, imprison or bail offenders of the law, issue search and arrest warrants, and discharge poor convicts.⁹

President Chester Arthur made the appointments on July 5, 1884; but it took the new officials 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.

Historian Hinckley 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. 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.¹⁰

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 of May 17, 1884 on November 4, 1884 in a room set apart for court use in the old military barracks building at Sitka. Ward McAllister, Jr., the district judge, Andrew T. Lewis, the clerk of the court, Munson C. Hillyer, the U.S. Marshal, and Edward W. Haskett, the district attorney were present for the occasion. 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 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 Willoughby Clark, John F. Maloney, R. D. Crittenden, and Commissioner John G. Brady.¹¹

In the meantime, the judge tried various cases, and on December 2, 1885 he 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 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 prisoners, and the court was not to convene again until May, 1885. This necessitated, if a jail could be found, the longterm 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, now operable in Alaska, 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. U.S. Attorney General Benjamin H. Brewster took his time in replying to queries, and his answers did not clear the questions. And 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 mileage than the twelve hundred miles separating the two points, for no direct transportation existed. He had to go and come via San Francisco, involving a distance of almost four thousand miles.¹³

The judge 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. The governor, 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 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 Jackson and his followers.¹⁴

What seems apparent is that Kinkead, McAllister and Haskett misjudged Jackson's influence and determination. Physically he was a small fellow, a leading missionary and very much of a Puritan. In addition, he 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, however, empathized with the governor's realistic and earthy attitudes.¹⁵

Kinkead certainly did not desire to fight with Jackson. The latter's Sitka Training School, however, soon sparked a bitter controversy. Creoles 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 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, 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.¹⁶

For the next couple of months, 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, he was shouted down. At another one 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.¹⁷

In the meantime, 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 pupil 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. The U.S. attorney 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. 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.¹⁸

In an angry letter to the Reverend Wm. 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, no more than 1,200 were Caucasians. Therefore, the government was mainly dealing with Natives, and the officers should be men who, through "their temperance, virtue and upright conduct" set a good example to these people. 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 told the President's brother that Congress had granted Alaska provisional government in 1884 "largely through the efforts of the Presbyterian Church." Thereupon, 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."¹⁹

Jackson then lit into the district's civil governmental officials. Kinkead, from Nevada, was "a broken down politician. He gets drunk & 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." Kinkead had obviously neglected his duties, 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 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 acceptable. The former, also from Nevada, did not drink, but gambled. He had treated the teachers pleasantly, and neither interfered with nor assisted their work. "He is a fair man as politicians go." The latter

neither drank nor gambled, and as a former school teacher took a natural interest in the "education and elevation of the Native people."²⁰

Jackson reserved his most vitriolic criticism for the U.S. attorney and the judge. 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 latter was but a young man, "not long admitted to the bar," with little legal experience and "still less knowledge." Jackson observed that 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." Jackson was less than fair in his assessment of the judge, for McAllister was a competent and well-connected San Francisco attorney who probably had only accepted the appointment to gain further experience in the federal judiciary. Jackson, however, was relentless. He accused McAllister of having left Alaska in the fall of 1884 and not returned until the middle of March 1885. This was patently untrue, because McAllister had only taken a couple of weeks in March.²¹

Upon his return to Sitka in the middle of March, McAllister held court at eight o'clock that night. And 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 then related 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 was not outrageous enough, another incident occurred a few days later. Jackson related 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 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. They then offered to replace the girl with a boy, and even offered the school official ten dollars. All 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."²²

As a result of these actions, throughout March and April 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."²³

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 Wm. M. 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."²⁴

Jackson ally John G. Brady held a similarly low opinion of the judge. The Chicago Tribune quoted Brady as having stated that McAllister's legal experience had consisted of a brief term as assistant United States district attorney at San Francisco. McAllister's father, a New York caterer, was a close friend of Attorney General Brewster who had insisted on the appointment. Less than thirty years old, he was an eastern dude and Anglomaniac. Young McAllister had spent but a short time on the Pacific Coast "and was destitute on almost every attribute which would entitle him to the supreme control of the judicial...affairs of a great, half-civilized Territory." Historian Hinckley concluded that Brady's dislike for McAllister was personal as well as professional. The commissioner jested that "with his little velvet jacket, high collar, gloves and dandy cane...he was a rare curiosity in Sitka."²⁵

Lt. 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.²⁶

The climax to this whole affair came in May when a grand jury, composed of numerous Creoles, indicted Jackson on numerous charges. Alaska's general agent for education found himself imprisoned for a few hours. By that time, also, the new President, Grover Cleveland, had received numerous 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."²⁷

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 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 Haskett for many of the troubles, a sentiment echoed by Commissioner Brady who stated that he was a

drunkard. In fact, the largest saloon keeper 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 "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."²⁸

While most critics condemned Haskett and Hillyer, some had kind words for the judge. J. B. Metcalfe of the Sitka Agency of the Pacific Coast Steamship Company had found McAllister 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, 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 ago he had telegraphed the Commissioner of Indian Affairs an unfavorable report about the judge in connection with his rulings on the Indian School cases.²⁹ Jackson did not

mention the critical letters about McAllister he had 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.

Shortly after the removal of the officials, 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."³⁰

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 stated that he "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, Jr. 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.³¹

As for Jackson, he had disgraced the highly respected Presbyterians whom he represents "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 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."³² In short, Cleveland had been taken in by a clever, ruthless and dishonest man.

The McAllisters, father and son, were extremely unhappy with Cleveland's decision and attempted, albeit unsuccessfully, to persuade the President to review his decision. Both felt that the removal was a disgrace and that only a reappointment could remove the blot from the family. The former judge even traveled to Alaska in November 1885, circulating a petition for signatures to be sent to the President asking for reinstatement. Henry States, the commissioner at Juneau, informed Jackson of McAllister's plans. According to States, the petition was in the hands of the saloon men "and the way they obtain signatures is the saloon man says take a drink and then presents the petition for his signature in this way they get quite a number of signatures." The commissioner assured Jackson that no member of the Juneau Bar would sign it, and some of the leading businessmen had withheld their signatures as well. Jackson was only too happy to pass this information to the President.³³ Jackson was not a magnanimous man, and apparently took a personal delight in kicking a foe when he already was down.

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 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 13 nationally-known 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.³⁴

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 the new district court judge, and the new official took the oath of office on August 20 of that year and traveled to Alaska to assume his duties.³⁵

Soon after Dawne's appointment, disquieting news about the man reached the department of justice and the President. R. W. Thompson of Salem told Cleveland that Dawne's appointment had come as a surprise to many. Everybody knew that he was seeking the position, and many signed his petition "not thinking that there was any probability that it would meet with favorable consideration." Many of those who had signed, Thompson claimed, now regretted it and declared "that Dawne was totally unfit for the place or any position of

trust." This appeared to be the general sentiment among both lawyers and laymen in Salem.

Dawne had boasted that the new Attorney General, A. H. Garland, was a good friend, and that the secretary of the interior had offered him a consulship in Japan. In short, the man was a braggard, and "his want of veracity is notorious wherever he is known." The legal fraternity did not consider Dawne "a lawyer in any proper sense of the term" Admitted to the bar only five years ago, he had been a broker since that time, but no longer engaged in that business since he had "lost the confidence of those whose money he formally loaned." Thompson listed scores of Salem citizens, lawyers, judges, businessmen, and investors who opposed the appointment. Most of these, though, had signed Dawne's petition, "but admit their error in so doing."³⁶ Obviously, most of those who had endorsed and supported Dawne initially had been untruthful in their evaluations of the man.

Dawne apparently had come to Salem from somewhere in Arkansas in about 1872. "Through the most barefaced falsehood and misrepresentation [he] obtained a chair as professor [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 preferred [sic] against him." He never did. Thereafter, Dawne and his wife, "a very fine lady [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."³⁷

Other Oregon citizens followed suit in denouncing Dawne's appointment. B.F. Harding represented working democrats in Salem, and they all felt that Cleveland "had been grossly deceived" in the Dawne appointment. In the meantime, however, the new judge acknowledged receipt of his commission on August 21, 1885 and indicated that he would leave for Alaska in a few days. By that time, however, a controversy had developed about the Dawne appointment. Newspapers published correspondence in which the President emphatically blamed someone for making an insincere recommendation of a man [Dawne] to a territorial judgeship. The published correspondence brought forth some support for Dawne who now had arrived in Alaska. By September, Alaskans had heard rumors that Cleveland planned to suspend the judge from office.³⁸

In early November, criticism of Dawne's performance reached the department of justice. The U.S. attorney, M. 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 revealed themselves. Dawne was supposed to 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. It contained a small settlement of Indians and only a couple of 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 apparently 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 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.³⁸

Help was on the way, for on December 3, 1885, Cleveland appointed Lafayette Dawson to fill the vacancy created by Dawne's flight from prosecution. Dawson was to serve until 1888, a record incumbency at that point, while Barton Atkins, the new marshal, served from 1885 until 1889, and M. D.

Ball, the new U.S. attorney, served until the fall of 1887.³⁹ With these new officials, Alaska's court system was finally ready to function normally.

FOOTNOTES

1. Ted C. Hinckley, The Americanization of Alaska, 1867-1897 (Palo Alto, California: Pacific Books, Publishers, 1972), pp. 113-114.
2. Ibid., pp. 114-115.
3. Ibid., pp. 115-119.
4. Ibid., pp. 119-120, 159.
5. Ted C. Hinckley, Alaskan John G. Brady: Missionary, Businessman, Judge, and Governor, 1878-1918 (Published for Miami University by the Ohio State University Press, 1982), pp. 89-90.
6. 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, N.A.
7. Daily Alta California, January 14, 1884; Daily Evening Post, January 11, 1884; Morning Call, January 13, 1884.
8. 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, N.A.
9. Hinckley, Americanization, p. 164; Hinckley, John G. Brady, pp. 90-91.

10. Ibid., p. 92.
11. Arthur K. Delaney, Alaska Bar Association and Sketch of Judiciary Anno Domini 1901, (San Francisco: Sanborn, Vail & Co., Printers and Binders, 1901), p. 21; Tom Murton, The Administration of Criminal Justice in Alaska, 1867 to 1902, Master of Criminology Thesis, University of California, Berkeley, 1965, p. 58.
12. Hinckley, John G. Brady, p. 92; Murton, Administration, pp. 59-60.
13. Hinckley, John G. Brady, pp. 92-93.
14. Ibid.
15. Ibid., p. 93.
16. Ibid.
17. Ibid., pp. 93-94.
18. Ibid., pp. 94-95.
19. Ibid., Jackson to Wm. 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, N.A.
20. Ibid.
21. Ibid., Hinckley, John G. Brady, p. 94.
22. 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, N.A.
23. 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, N.A.

24. Ibid.
25. Hinckley, John G. Brady, pp. 94-95.
26. Ibid., p. 96.
27. The Women's Executive Committee of Home Missions of the Presbyterian Church to President Cleveland, 1885.
28. 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 17, R.G. 60, N.A.
29. J. B. Metcalfe to Stephen J. Field, May 18, 1885, Jackson to A. H. Garland, June 16, 1885, General Jackson to A. H. 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, N.A.
30. 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 17, R.G. 60, N.A.
31. 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 17, R.G. 60, N.A.
32. Ibid.
33. Mayor of Albany to Cleveland, September 28, 1885, Henry Clews to Cleveland, September 9, 1885, Henry States to Jackson, November 20, 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, N.A.

34. 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 17, R.G. 60, N.A. The following is a list of those signing the petition and writing letters of recommendation for Dawne:

Copy of Petition and No. of Letters of Recommendation.

Salem, Oregon, March 7, 1885.

To His Excellency,

Grover Cleveland,

President of the United States:

We, the undersigned attorneys of Salem and other cities of Oregon, respectfully recommend and ask that EDWARD J. DAWNE, of said city and State, be appointed Judge of the Territory of Alaska:

1. B. F. Bonham, Ex-Circuit and Supreme Judge.
2. Warren Truitt, Attorney-at-law (Blaine Elector).
3. N. B. Knight, Attorney-at-law.
4. T. B. Odeneal, Attorney-at-law, Rep'r. Sup. Court.
5. T. C. Shaw, Attorney-at-law, County Judge.
6. W. G. Piper, Attorney-at-law, Ex-Dist. Attorney.
7. J. W. Hamilton, Attorney-at-law, Dist. Attorney.
8. C. Ball, Attorney-at-law.
9. G. H. Burnett, Ex-District Attorney.
10. John C. Peebles, Attorney-at-law, Ex.-Co. Judge.
11. J. T. Gregg, Attorney-at-law.
12. M. L. Chamberlin, Ex-County Clerk.
13. R. P. Boise, Attorney-at-law, Circuit Judge 3d Judicial District.
14. R. S. Stahan, Attorney-at-law.
15. H. Bryant, Attorney-at-law.
16. Joshua J. Walton, Attorney-at-law, Ex.-Co. Judge.
17. J. K. Weatherford, Attorney-at-law, State Senator.
18. Geo. E. Chamberlain, Attorney-at-law, Dist. Att'y.
19. J. W. Rayburn, Attorney-at-law.
20. A. Bush, President Bank of Ladd & Bush.

21. J. H. Albert, Cashier Bank of Ladd & Bush.
22. Wm. N. Ladue, Pres. First National Bank, Salem.
23. John Moir, Cashier First National Bank, Salem.
24. R. H. Dearborn, Merchant.
25. J. M. Rosenberg & Co., Merchants.
26. W. Breyman, Banker.
27. Rufus Mallory, Attorney-at-law, late Member of Congress, and U. S. Attorney for Oregon.
28. E. B. McElroy, State Superintendent of Schools.
29. S. F. Chadwick, Attorney-at-law, Ex-Secretary of State and Governor.
30. J. M. Siglin, Attorney-at-law and State Senator.
31. T. J. Black, Attorney-at-law and State Senator.
32. H. M. Miller, Attorney-at-law.
33. H. H. Hewitt, Attorney-at-law.
34. J. J. Whitney, Attorney-at-law, Ex-Dist. Att'y.
35. L. H. Montanye, Attorney-at-law, Representative.
36. L. Flinn, Attorney-at-law, County Judge.
37. T. J. Stites, Attorney-at-law, Editor "Democrat".
38. W. R. Bilyeu, Attorney-at-law, State Senator.
39. John Burnett, Attorney-at-law, Ex-Supreme Judge.
40. Harvey Shelton, Representative.
41. Enoch Hoult, State Senator.
42. W. S. McFadden, Attorney-at-law.
43. P. P. Prim, Attorney-at-law, Member Supreme Bench 25 years, now State Senator.
44. W. M. Ramsey, Attorney-at-law, Ex-Co. Judge.
45. R. P. Earhart, Secretary of State.
46. Edward Hirsch, State Treasurer.
47. W. H. Holmes, Attorney-at-law, Ex-Dist. Att'y.
48. W. H. H. Waters, Attorney-at-law.
49. W. C. Johnson, Attorney-at-law.
50. P. H. D'Arcy, Attorney-at-law, Secretary State Central Committee.
51. Eugene Semple, Attorney-at-law.
52. C. B. Bellinger, Attorney-at-law, Ex-Circuit Judge and Clerk of Supreme Court.
53. H. Y. Thompson, Attorney-at-law, Ex-Dist. Att'y.
54. O. S. Savage, Attorney-at-law, County Judge.
55. J. M. Bowers, Attorney-at-law.
56. James Gleason, Attorney-at-law.
57. Loyal B. Stearns, Attorney-at-law, Circuit Judge.
58. Emanuel Meyer, Brig. Gen. O. S. M.
59. Samuel H. Greenberg, Capitalist.
60. W. F. Trimble, Attorney-at-law.
61. W. H. Watkins, Ex-Superintendent Penitentiary.
62. L. S. Howlett, Register, Yakima City, W. T.
63. A. J. Nicklin, Ex-Physician to Insane Asylum.
64. Frank E. Hodgkin, Assistant Secretary of State.
65. Geo. I. Washburn, Attorney-at-law, County Judge.
66. J. A. Stratton, Attorney-at-law, Clerk Sup. Court.
67. W. P. Lord, Attorney-at-law, Justice Sup. Court.
68. W. W. Thayer, Attorney-at-law, Justice Supreme Court.
69. Chas. B. Moores, Attorney-at-law, Private Secretary to Governor.
70. J. Wolford, Merchant.
71. Geo. Williams, Banker.

72. B. N. Hayden, Attorney-at-law.
73. Mark A. Fullerton, Attorney-at-law.
74. E. L. Bristow, Editor "Daily Standard."
75. J. B. Fithian, Local Editor "Daily Standard."
76. W. W. Baker, Editor "Rural Spirit."
77. W. S. Ladd, President Bank of Ladd & Tilton.
78. Van B. DeLashmutt, President Cosmopolitan Bank.
79. Joseph Meyer, Merchant.
80. Sol. Hirsch, State Senator and late Republican candidate for U.S. Senator.
81. L. Fleischner, Ex-State Treasurer.
82. W. Lair Hill, Attorney-at-law, Ex-Editor "Daily Oregonian."
83. R. Williams, Attorney-at-law, Ex-Congressman.
84. W. M. Kaiser, Attorney-at-law.
85. L. F. Grover, Attorney-at-law, Ex-U.S. Senator.
86. James K. Kelly, Attorney-at-law, Ex-U.S. Senator.
87. L. Scott, Attorney-at-law.
88. Wm. Foley, Attorney-at-law.
89. Geo. W. Yocum, Attorney-at-law.
90. Wm. Gregory, Attorney-at-law.
91. Frank V. Drake, Attorney-at-law.
92. John M. Gearin, Attorney-at-law, District Att'y.
93. R. W. Bybee, Attorney-at-law.
94. W. Scott Beebe, Attorney-at-law.
95. Henry E. McGinn, Attorney-at-law.
96. Sidney Dell, Attorney-at-law.
97. Raleigh Stott, Attorney-at-law, Ex-Judge 4th District.
98. Seneca Smith, Attorney-at-law, Circuit Judge 4th District.
99. John R. Wheat, Attorney-at-law.
100. Charles Gardner, Attorney-at-law.
101. J. C. Moreland, Attorney-at-law, Ex-Dist. Att'y.
102. Robert L. McKee, Attorney-at-law.
103. E. Mendenhall, Attorney-at-law.
104. John Adair, Jr., Attorney-at-law.
105. B. F. Dowell, Attorney-at-law.
106. J. G. Chapman, Attorney-at-law.
107. W. W. Chapman, Attorney-at-law.
108. X. N. Steeves, Attorney-at-law.
109. W. T. Burney, Attorney-at-law.
110. V. K. Strobe, Attorney-at-law.
111. G. G. Ames, Attorney-at-law.
112. A. S. Bennett, Attorney-at-law, Ex-Dist. Judge.
113. E. D. Shattuck, Attorney-at-law, Ex-Sup. Judge.
114. Chas. H. Carter, Attorney-at-law.
115. J. A. Campbell, Attorney-at-law.
116. Chas. H. Hewett, Attorney-at-law.
117. A. F. Wheeler, Assistant State Treasurer.
118. John Kelsay, Attorney-at-law, Ex-Judge Supreme Court.
119. S. T. Richardson, Attorney-at-law.
120. S. A. Starr, Professor Willamette University.
121. L. L. Rowland, Physician, Ex-State Superintendent of Schools.
122. Seth R. Hammer, Attorney-at-law.
123. W. F. Cornell, Printer and Publisher.

LETTERS OF RECOMMENDATION FROM:

1. Hon. L. F. Grover, Ex-U.S. Senator.
 2. Hon. James K. Kelly, Ex-U.S. Senator, and late Supreme Judge of Oregon.
 3. Hon. Rufus Mallory, Ex-Congressman and late U.S. District Attorney for Oregon.
 4. Hon. W. D. Fenton, Cleveland Elector.
 5. Hon. L. F. Lane, Ex-Congressman.
 6. Hon. Edward Hirsch, State Treasurer.
 7. Hon. R. P. Earhart, Secretary of State.
 8. Col. N. B. Knight, Attorney-at-law.
 9. Hon. T. B. Odeneal, Supreme Court Reporter.
 10. Hon. John Kelsay, Ex-Supreme Judge.
 11. Hon. Warren Truitt, Blaine Elector.
 12. Hon. Geo. H. Williams, U.S. Senator and U.S. Attorney General.
 13. Z. F. Moody, Governor of Oregon.
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35. 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, N.A.; Delaney, Alaska Bar Association, p. 21.
 36. 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, N.A.
 37. Ibid.
 38. Ibid.; B. F. Harding to the President, August 31, 1885, Dawne to Garland, August 21, 1885, unidentified newspaper clipping, August 14, 1885, Emanuel Meyer, Sidney Dell, Wm. Foley, L. F. Glover to President, August 15, 1885, Metcalfe to Cleveland, September 28, 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, N.A.
 39. M. D. Ball to A. H. Garland, November 9, 1885, James Carroll to Cleveland, 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, N.A.

40. Delaney, Alaska Bar Association, pp. 21-22.

JUDGE JAMES WICKERSHAM

James Wickersham was born in Patoka, Illinois, on August 24, 1857. He attended the public schools in that town, and after graduating from eighth grade, he taught school in a one-room country school a few miles outside of Patoka. In the spring of 1877 Wickersham moved to Springfield, the state's capital, where he worked as office boy and janitor in the law office of former Governor John McAnley Palmer. He slept in a back room of the office, swept the floors, kindled the fire, and washed windows. For this work he earned five dollars a month. Soon Wickersham read law in Palmer's office, and taught school in the small town of Berry in Sangamon County. By that time he lived in postmaster Isaac Bell's home in nearby Rochester. In January 1880, Wickersham passed the Illinois bar examination and took a job as a law clerk with the United States Census Bureau in Springfield. Late that year, on October 27, he married Deborah Susan Bell, the daughter of his landlord. Their first child, a son named Darrell Palmer, was born on April 2, 1882 in Springfield where the Wickershams lived.¹

Lured by the opportunities the West offered, the Wickershams left Illinois in the spring of 1883 and moved to the port city of Tacoma in Washington Territory. They found a sparsely settled wilderness, the townsite was covered with stumps and brush, and wooden plank sidewalks graced only one side of the downtown main street. During the first summer Wickersham worked as a carpenter, shingling roofs and building fences, and he also constructed a home for his family. By the fall he had formed a law partnership with Ezra Meeker. The two attorneys were listed as among the charter members of the newly organized Tacoma Bar Association in November 1883. In the fall of 1884, Wickersham entered politics when he ran for the county probate judgeship and won. He

served four years in that capacity, being reelected in 1886. He ran as a Republican and Independent simultaneously the first time, and on the People's ticket the second time.²

Two years later, Wickersham joined the new Labor Union party, but his Republican opponent defeated him handily when he ran for a third term as probate judge. The Labor Union party fielded a slate of candidates for city officials, but the businessmen's ticket soundly trounced the Labor Union candidates. Next Wickersham became a part-owner of the Tacoma News, a pro-Democratic paper as opposed to its two competitors, the pro-Republican Tacoma Ledger and Evening Telegraph. During this period of political experimentation, he changed law partners three times within the same number of years. He also became the subject of front-page newspaper headlines for weeks because Sadie Brantner, an attractive young woman, accused him of seducing her. The case came to trial and the jury found him guilty as charged. While a motion for a new trial was pending before the district court, Ms. Brantner signed several conflicting affidavits, sometimes accusing Wickersham of duress and at other times absolving him of all wrongdoing and admitting that she had lied at the request of his political enemies. Finally, on July 19, 1889, the prosecuting attorney moved to dismiss the case because the contradicting affidavits proved Sadie Brantner to be totally unreliable. The judge agreed and dismissed the case. Wickersham's biographer, Evangeline Atwood, wrote that he lived with this "skeleton in his closet" for the rest of his life. She recounted that Wickersham referred twenty-three times to "that old 1888 affair" in his voluminous diaries. Opponents aired the incident during every one of his political campaigns, even his last one in 1930 when he was seventy-three years old. Repeatedly, former Seattle and Tacoma acquaintances threatened to blackmail him by retelling the story. Wickersham, however, recognized that he

could not afford to accede to blackmail and instead retold the story himself, hoping that the truth would exonerate him.³

The affair and his involvement in radical politics did not last long and he reverted to his former conservative behavior pattern. He moved to a farm near Gig Harbor in 1889 and daily commuted by steamer to his law office in Tacoma. He bought land and subdivided it into residential lots, and also filed a plat of some 85 acres of land bordering Henderson Bay, naming it Springfield city, later changed to Wauna. After a couple of years, they leased their farm and moved back into town. Two more sons were born but did not survive for long.⁴

In 1889 Wickersham rejoined the Republican party and from then on played an active role in its councils. Washington Territory was about to enter the Union as a state, and politicians were competing for the first state offices. In 1894, his friend Edward S. Orr was elected mayor of Tacoma, and promptly appointed him city attorney. Denied confirmation by the city council, Orr kept him in office for two years through recess appointments. Orr's successor, A. V. Fawcett, employed Wickersham as special counsel to assist the city attorney in continuing a utility suit which Wickersham had originated during the Orr administration. It was a long and complicated suit, and while he still fought it, the Republicans of Pierce County nominated him for a seat in the state house of representatives in 1898. He made a successful race, and continued his efforts to regain party prominence, organizing the first Benjamin Harrison Club to promote the latter's reelection to the presidency. Harrison, however, lost to Democrat Grover Cleveland. Not deterred, he called a meeting at his home to organize a Republican Club designed to aid the reelection of Frank Cushman to the U.S. House of Representatives. It was a quick-witted parliamentary maneuver at a party caucus which won a United States Senate seat for his friend,

Addison G. Foster of Tacoma, and his own judgeship appointment in Alaska. Foster owed Wickersham a debt, and therefore recommended him for two alternative presidential appointments, consul general to Japan or district court judge in Alaska. For both positions he faced numerous competitors. Foster endorsed Wickersham for the judgeship first. Seven individuals from Tacoma, one from Seattle and two from Olympia vied for the same position. Senator Foster told Attorney General John William Griggs that "the bar of the Coast, particularly the State of Washington, feels that there should be no question about the justice of our state having the privilege of recommending the man who is to succeed Judge [Charles S.] Johnson in the District of Alaska." James Wickersham and Charles Bedford had been endorsed, "in a faltering manner, as have the others also." Bedford, however, withdrew in favor of Wickersham. Senator Foster assured the attorney general that the candidates met all the requirements for the position, such as "ability, the present extent of their professional duties, their success as members of the bar," and availability.⁵

The Senator asked Wickersham to send as many endorsements as possible, and this he did. The list of fifty included judges, legislators, and other prominent politicians, including John B. Allen, former U.S. Senator and then a general counsel for the Northern Pacific. In his diary, Wickersham remarked that a contest, a scramble had developed for the Alaska judgeship because of the gold discoveries at Cape Nome. "I declined to be a candidate, but yielded at request of [Senator] Foster & delegation." A fellow attorney working for the White Pass & Yukon Railway called him and stated that there were good investment opportunities in Alaska and urged him "to go up there as judge if appointed, as attorney if not." Wickersham's closest rival for the position was T.J. Humes of Seattle whom the Post-Intelligencer supported, but only to

get him out of town because the candidate and the management of the newspaper had been feuding.⁶

Wickersham was mightily pleased when Washington state's Governor John H. McGraw promised to endorse him for the judgeship. Evidently, the governor had not forgotten that the Harrison Republican Club had been organized in Wickersham's office when McGraw had been a nominee for chief executive, and how Wickersham had "worked for him then, almost at a risk of personal violence." Others, however, objected, among them Ezra Meeker and H. F. Norris. The latter wrote President William McKinley stating that "in my humble way I desire to, and do, object to the appointment of James Wickersham...to any position under your administration, and especially to that of Judge for the Territory of Alaska...." Norris then launched into a lengthy recounting of the Sadie Brantner affair. Wickersham had escaped sentencing on a mere technicality, he claimed. John Mayo Palmer, the attorney of the accused, petitioned the court for a new trial, but before the motion could be heard, the President appointed the trial judge to the position of U. S. district judge, and he therefore could not hear the motion. The Honorable Judge Frank Allyn then heard the motion and decided that "no one but the Judge who had heard the case could hear and determine the motion for a new trial; and thereupon the motion was dismissed" because he could not be sentenced until his motion for a new trial had been heard. Wickersham was free, "but the record of the 'guilty' verdict stands just the same, and he escaped technically, and not by reason of his innocence." Norris failed to mention that the prosecuting attorney had moved to dismiss the case because Miss Brantner had signed contradictory affidavits, making her an unreliable witness. Norris did not like Wickersham, and simply wanted to make certain that the candidate was not appointed, masking his dislike by concluding that "the Judiciary of these United States cannot be stained by the appointment

of attorneys whose past life and reputation as honest men has to be explained and apologized for."⁷

That was not the end. E. C. Bellows, one of Wickersham's political friends from Vancouver who had been endorsed for the position of collector of customs in Alaska, told Wickersham that Frank Richards showed friends letters and telegrams from Senator Foster which endorsed him for the position. Richards threatened that if he was not endorsed and given the appointment ahead of Wickersham "he would file charges of my old troubles then to prevent my appointment." Bellows thereupon offered to withdraw, but Wickersham would not hear of it. "Let them file anything they please but none of my friends shall suffer for it." Early in April one of Wickersham's political allies returned from a trip to the nation's capital. He told Wickersham that he talked to the President in Senator Foster's presence and discussed the Alaska judgeship. The President expressed the opinion that Wickersham's qualifications were entirely satisfactory and then asked if the candidate would accept the position of U.S. attorney. After some further conversation the chief executive "bluntly asked...if I would accept the place of Consul General of Kanagawa [city and prefecture in central Japan]." Wickersham told Senator Foster that he would not accept the position of U.S. attorney, but would "consider it an honor & compliment to be appointed U.S. Judge in Alaska or Consul General in Kanagawa." A few days later he learned that J. Mickus, the mayor of Tacoma, and state senator L. B. Andrews of King County aspired to the Consul Generalship, and his political advisors thought that Andrews probably had the necessary endorsements for the position. With Wickersham's consent he telegraphed Senator Foster urging his immediate appointment. On April 17, Wickersham noted that the "affairs in the Alaska judgeship are in chaotic state. It looks as if the President intended to pay all debts due this state by giving us the appointment

of Consul General to Japan, which we are entitled to anyway." Senator Thomas H. Carter, the sponsor of the civil code measure for Alaska which, among other things expanded the judicial districts from one to three, had been promised the appointment of one judge "which leaves but one other judge to appoint and all the states grasping at it." Wickersham's friends telegraphed Senator Foster urging his immediate appointment, and Wickersham also contacted the Senator but told him that he much preferred Japan, "but leave everything with you." At the end of April Wickersham noted in his diary that "the matter of my appointment to the Alaskan Judgeship or Japanese Consul Generalship is in process of evolution." Senator Foster had talked with the attorney general and been assured that Wickersham would be appointed judge. The Senator was inclined to appoint E. C. Bellows to the position in Japan. Wickersham consulted with his political cronies and together they telegraphed Foster stating that if the appointment "to Alaska was assured beyond doubt to appoint Bellows Marshal in Alaska." On May 4, 1900 Wickersham learned that E. C. Bellows had been appointed Consul General to Japan. He noted that "I desired this place very much, but my endorsements were all for Judge in Alaska, and evidently Senator Foster thought I ought not to have two choices...."⁸

Toward the end of May Wickersham had an opportunity to talk at length with Alaska's Governor John G. Brady who had told him that the attorney general had received "a very flattering report about me." Wickersham observed that the governor was "stout, short, straight, vigorous; he has a clear eye and is a fearless man. I judge that their [sic] is never but one side of any case to him, and that he sometimes makes mistakes." A few days later, Wickersham received a telegram from Senator Foster assuring him that his case was "not dead yet by any means." Wickersham replied: "Thanks for assurance have had no doubt of your success." Finally, on June 6, 1900, he received a telegram from

Foster informing him that his appointment to the Alaska judgeship had just reached the Senate. Although disappointed in not receiving the consulship, Wickersham wired Foster that "assignment perfectly satisfactory--wife especially pleased. Hurry Commission and instructions. Am ready to go." The Senate confirmed him unanimously, and he learned that Melville C. Brown of Wyoming and Arthur H. Noyes of Minnesota had also been appointed to judgeships in the north. Two days later Foster informed him that he would probably be assigned to the third judicial district with headquarters at Eagle City on the Yukon River. With the receipt of his commission as district judge, he took his oath of office and assumed its duties. He told the attorney general that his business affairs were "in such a shape that I can start for Eagle City at a moment's notice...." He also hired Albert R. Heilig, a young Tacoma attorney and accountant as his clerk of the court. Heilig had been elected Tacoma city controller, and served from 1892 to 1894, and served in the state house of representatives with the judge and helped get Foster elected U.S. Senator.⁹

Late in the afternoon of July 2 Judge and Mrs. Wickersham and their seven-year-old son Howard boarded the S.S. Flyer for Seattle. They probably left Tacoma, which had been their home for the past seventeen years with mixed emotions. They were no longer young, he was 43 and she was 37, and her poor health made continuous medical care mandatory. Their oldest son, Darrell, had received an appointment to the Naval Academy, at Annapolis. The Wickershams were about to start a new phase of their life on the northern frontier.¹⁰

Traveling with the Wickershams were the Heiligs and their two children and Mrs. Heilig's sister, Mrs. Whittaker, a nurse, and George Jeffery, the stenographer. And at Seattle, Alfred M. Post, an attorney from Nebraska who had been appointed U.S. attorney for the third division, joined the party, as did George C. Perry of Iowa and his wife. Perry had been appointed U.S. marshal for the

same district. In Seattle, Wickersham met Noyes who was to fill the bench in Nome. 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. The Eagle City group seemed to be rather unimportant while the Nome party seemed 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."

On July 2 they sailed on the steamer City of Seattle bound for Skagway. Stopping at Ketchikan, Wrangell, Treadwell, Juneau, and Haines, and 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.¹¹

Soon thereafter, Wickersham and his party left Skagway on the narrow-gauge White Pass and Yukon Railway to Bennett, "a busy town of tents and shacks" at the head of the lake by the same name. Here they transferred to the steamer Australian which carried them to Cariboo Crossing at the foot of the lake, where they reboarded the train to Whitehorse. There the party went on board the sternwheeler Yukon bound for Dawson. Since no boats went downriver 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 had met Ed. S. Orr, a Dawson resident and head of a freighting firm who, as mayor of Tacoma, had appointed him city attorney. Orr invited the group to visit the El Dorado and Bonanza gulches as his guests. Orr transported them in his stage coach to Grand Forks where they put up in a hotel and then explored the mining operations and washed some gravel and were treated in a royal fashion. They took the John Cudahy to Eagle City where they arrived on July 15, met by the entire population.¹²

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 just 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 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 of Canadian currency in the Yukon basin which was heavily discounted in the United States and therefore did not circulate there, and 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 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 to collect license fees and 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 business men were short on cash and promised to pay on the return of the officials from Rampart.¹³

Wickersham convened the court in one of the warehouses of the North American Trading and Transportation Company. The judge 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 be transacted. A prisoner was charged with stealing a dog and food supplies from a trapper's cache and bound over to the grand jury to hold a term at Circle City in September; "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," the judge reported. Litigants also

filed some papers in a civil suit with the clerk, and after that 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."¹⁴

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. Wickersham had a trial jury called, the accused arraigned and tried them. The jury found the man charged with murder guilty of the lesser offense of manslaughter and the judge 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. Deputy marshals took the two convicted men to the United States penitentiary at McNeill Island in Washington State. They took the first sternwheeler descending the Yukon River to St. Michael where they transferred to an ocean-going vessel. Some of the court officials and all jurymen and witnesses caught an upriver boat for Eagle the day court adjourned. Wickersham, the U.S. attorney, the marshal, the clerk and public accountant had to remain at Circle for a few days longer to write up and sign the records and prepare and settle the accounts for the term. A blizzard caught the group in Circle, because the boat due to arrive in three days did not arrive. Finally, on September 22 two sternwheelers arrived. 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 the local military Fort Egbert in a hunt.¹⁵

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 dogteam, rushed to Rampart, where the judge convened a special term of court on March 4, 1901. On March 11, the judge was on his way home after having finished the court's business and reached Eagle on March 27 after some very demanding travel over rough trails and after braving a vicious snowstorm lasting a couple of days. It had taken 20 traveling days to cover the distance of 520 miles between Eagle and Rampart, an average of 26 miles per day. The return trip took 15 days traveling for an average of 34 miles per day. They were gone 45 days, 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."¹⁶

At the close of 1900, Wickersham reported on his first year's efforts to the department of justice. The judge was of the opinion that the routine business in Eagle was small and not likely to increase. Therefore 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, the judge 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--temporarily at least." Wickersham thought that the contempt citation was "unprecedented--the whole matter to date is that!" Since the steamers for Nome did not leave Seattle before the end of June because of ice in the Bering Sea, and the judge could not reach Unalaska before the return trip of one of these steamers if one went via Nome, Wickersham 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 sternwheeler 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."¹¹ On August 3, 1901, Wickersham boarded the Alaska Commercial Company steamer Leah bound for St. Michael, enroute 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 a grand and trial jury be drawn in Nome. The marshal complied and summoned 16 grand and 18 trial jurors who boarded the St. Paul to accompany the judge to the Aleutians, as did the marshal and various other court officials.¹⁸

When 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 11 a.m. The grand jury was impanelled and sworn in and ready to consider two murder charges. One Fred Hardy stood accused of having slain Con Sullivan, famous Idaho miner, his brother Florance, and their partner, P. J. Rooney, on Unimak Island. The other 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.¹⁹

In the meantime, the judge, who celebrated his forty-fourth birthday on August 24 and who was a physically active and vigorous man, exercised by climbing the approximately 3,000 foot high peak back of Unalaska. He observed mountain marmots to about 1,000 feet above sea level, saw fox tracks, and delighted in the numerous ravens which, when descending from the high to the lower levels, uttered their "tlock-lock" sound and then turned over on their backs for a few seconds with their "feet uppermost." On another occasion he climbed the mountain on the east side of the harbor, about 2,000 feet high, and discovered, upon reaching the top, that on August 24, 1901, his birthday, two men had preceded him and planted a staff at the top, which, in part, read that

they had "agreed to call this peak Wickersham Peak...." Wickersham was touched, and continued to climb higher peaks between Unalaska and Biorka harbor and spent the afternoon "gazing out across the blue Pacific from the highest point--2,500 ft." He admired meadows filled with flowers, enjoying the balmy breezes caused by the Japan current, and gazed at "Makushin volcano." The judge concluded that the region possessed the "most wonderful climate" he had known, "it does not get warmer than 65° above nor colder than 10° above--a range of only 55°!"²⁰

He also found the time to visit Captain Peterson, in command of the Challenge, owned by Captain Dirks. Both captains were retired Alaska Commercial Company skippers who initially had come north in 1865 as employees of the Western Union Telegraph Company which planned to build a line via the Yukon River and Bering Straits to Asia and Europe. The venture fizzled when entrepreneurs successfully laid a trans-Atlantic cable in 1866. The company waited eight months to see whether the cable would maintain operations, and when it did, abandoned the project. The two men had married Native women at Atka, and "now are lords of Athka and Attou." The judge noted that the crew of the Challenge consisted "of the half breed sons of the two old sea dogs, and a daughter attends as a cook." The ship carried a cargo of furs, fish, and Native baskets which the skipper sold at Unalaska and with the proceeds bought the necessary supplies for the winter to take back to their islands. Peterson told Wickersham that there were no settlements, even of Natives, west of Unalaska, and that only Atka and Attu were inhabited. The two captains were the only Caucasians living west of Unalaska.²¹

Finally, 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, were prospecting on Unimak Island. They left their camp,

and the murderer crept up, stole the rifles, and when the prospectors returned, shot and killed them. Only Jackson escaped after often incredible hardships and finally reached Unalaska where he reported to the authorities. Thereupon, the 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 & perpetrator ought to suffer death."²²

During the trial, the following facts emerged. Fred Hardy turned out to be a Tennessee drifter who had enlisted in the U.S. Army for the Spanish-American War. He encountered trouble in the Philippine Islands, was sentenced to a prison term at Alcatraz penitentiary, and was among the thousands of argonauts who came north during the gold rushes intent on seeking their fortunes. Hardy, however, was a thoroughly unscrupulous and depraved character who earned the nickname "Dimond Dick" for his voracious reading of dime novels while confined in prison.²³

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 1982. The Bunker Hill discovery made Idaho's Coeur d'Alene district one of the greatest silver producing regions of the country and greatly aided the growth and development of Spokane. Sullivan sold his share to Simeon G. Reed for \$75,000, and years later he was still prospecting, hoping for another great find, probably regretting that he had sold out for such a trifling sum. His luck ran out for when he came north to investigate the mineral potential of Unimak Island. There he met Hardy.²⁴

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 Owen 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, and 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 his exertions. 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 couple of 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.²⁶

Hardy apparently was not a very bright individual or perhaps he felt secure enough not to leave Unimak Island. The search party found him with a large sum of money and the property of the Sullivan party. He offered various alibis: that he had still been on the fishing boat at the time of the murder;

that he had found the property of the Sullivan party, and that the cash represented his separation pay from the army. As already stated, 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, representing Judge Noyes from the second division, 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 ragged skin clothing smelling like an Aleut fish camp on a summer day. His general facial expression was that "of a 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 court room 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.²⁷

On September 7, 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 Hardy to hang. After the sentencing, Hardy was taken to Nome where his fate created a sensation amongst the residents. Hardy provided plenty of copy for journalists with his speculations about the forthcoming hanging.²⁸

In June 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 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 Natives. Guards, however, discovered Hardy's letters in Priess' possession. As a precaution, the guards thereupon put Hardy in irons. In the meantime the appeals process moved Hardy's hanging date from December 1901 to September 1902. Catholic priests and nuns visited the condemned man, who, for diversion counted the words in the Bible, reporting a total of 407,283 words in the Old and New Testaments. On schedule, Hardy died at the gallows on September 19, 1902 at age 28, protesting his innocence to the very last.²⁹

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 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 the judge did not relish. "My visit home is gone," he complained, "hard work--thankless task, too, at Nome. Hope the wolf wont 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, would evolve 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.

FOOTNOTES

1. Evangeline Atwood, Frontier Politics: Alaska's James Wickersham (Portland, Oregon: Binford & Mort, Thomas Binford, Publisher, 1979), pp. 9, 11-14.
2. Ibid., pp. 14-15, 16-18.
3. Ibid., pp. 22-23, 31-34.
4. Ibid., pp. 22-23.
5. Ibid., pp. 24-29. A. G. Foster to John William Griggs, December 16, 1899, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals, and Attorneys, 1853-1901, box 25, Alaska 1885-1889, Abbott-Kincaid, R.G. 60, N.A.
6. Wickersham Diary, January 1, 2, 1900, University of Alaska, Fairbanks Archives.

7. Ibid., January 11, 1900, H. F. Norris to McKinley, March 12, 1900, General Records of the Department of Justice, Records Relating to the Appointment of Federal Judges, Marshals, and Attorneys, 1853-1901, box 31, Alaska 1885-1889, Abbott-Kincaid, R.G. 60, N.A.
8. Wickersham Diary, February 27, April 2, 8, 12, 17, 29, May 4, 1900, University of Alaska, Fairbanks Archives.
9. Ibid., May 23, June 4, 6, 8, 10, 1900; Wickersham to John W. Griggs, Attorney General, June 11, 1900, Department of Justice, Alaska Files, box 25, R.G. 60, N.A.; Atwood, Frontier Politics, pp. 30, 58-59.
10. Ibid.
11. Ibid., James Wickersham, Old Yukon, Tales--Trails--and Trials (Washington Law Book Co., Washington, D.C., 1938), pp. 3-4.
12. Ibid., pp. 5, 10-11, 24-26; Wickersham Diary, July 11, 15, 1900, University of Alaska, Fairbanks Archives.
13. Wickersham, Old Yukon, pp. 36-46.
14. Ibid., p. 47.
15. Ibid., pp. 48-51.
16. Ibid., pp. 57, 72, 77.
17. Ibid., p. 321; Wickersham Diary, March 28, May 13, 1901, University of Alaska, Fairbanks Archives; Wickersham, Old Yukon, p. 322.
18. Ibid., pp. 323-324; Wickersham Diary, August 16, 1901, University of Alaska, Fairbanks Archives.
19. Ibid., August 19, 1901: U.S. v. Fred Hardy, trial record, case # 109, R.G. 21, Federal Records Center, Seattle, Washington.
20. Wickersham Diary, August 20, 22, September 1, 1901, August 26, 1901, University of Alaska, Archives, Fairbanks, Alaska.
21. Ibid., August 22, 1901.

22. Ibid.
23. U.S. v. Fred Hardy, trial record, case # 109, R.G. 21, Federal Records Center, Seattle, Washington.
24. Ibid.
25. Ibid.
26. Ibid.
27. Ibid.; Wickersham, Old Yukon, p. 334-335.
28. Wickersham Diary, September 7, 1901, University of Alaska Archives, Fairbanks, Alaska; Nome Nugget, September 14, 1901.
29. Ibid., August 23, 1902.

JUDGE ARTHUR H. NOYES AND THE NOME SCANDALS

In 1897 news reached the west coast that George Carmack had discovered gold on the Klondike River, a tributary of the mighty Yukon River in Canada's Yukon Territory. It touched off a stampede that changed Alaska's history forever.

In the years to come, many individuals thought that gold could be found anywhere and everywhere in Alaska. Daniel B. Libby of Mendocino County, California, was one of thousands who quit his job to search for gold. Soon after the first shipment of gold from the Klondike reached San Francisco, Libby launched an expedition, consisting of himself, L.F. Mesling, H.L. Blake and A.P. Mordaunt, to prospect in the Golovin Bay area on the Seward Peninsula. Thirty years earlier, Libby had spent a winter in the forlorn region, and believed that he had discovered signs of gold while working for the Western Union Telegraph Expedition which attempted to build a telegraph line around the world in the 1860s.¹

In 1897, Libby and his group joined the stampede north. While a member of the Western Union Telegraph Expedition he had prospected on the Fish River and found some color. After the abandonment of the Western Union work, he had always wanted to return and investigate further. The great Klondike rush rekindled his desire. He and his companions took passage for St. Michael near the mouth of the Yukon River, and from there chartered a schooner for Golovin Bay. They prospected on Mesling and Ophir Creeks, which they named, and found good colors. After wintering at Golovin, they resumed their work in the spring of 1898. Libby's group founded Council City. On April 23 N.O. Hultberg, in charge of the Swedish mission at Cheenik, and others came to Council City, and

organized the Discovery Mining District, and two days later, the Eldorado Mining District.²

This discovery of gold on Anvil Creek in September 1898 by Jafet Lindberg, Erik O. Lindblom and John Brynteson far eclipsed the finds on Ophir Creek. It caused the great stampede of 1900 which led to the development of these gold fields. Other discoveries followed quickly, and in late September 1898 a number of individuals organized the Cape Nome Mining District, and news of the strikes spread rapidly, and during the winter it reached Dawson. Many argonauts rushed down the Yukon River with their dogteams, so before the 1900 navigation season opened in the spring of 1899 Nome had a population of several hundred. During the summer of 1900 steamers brought prospectors and others to what quickly became the town of Nome. The first civic endeavor in the camp was the establishment of a townsite committee, which also was charged with maintaining public safety. From the very beginning, there was much friction over town lots and mining claims, and some men were mad because they claimed that aliens had staked most of the valuable property. Foreseeing problems, some individuals requested that General George Randall, the commander of all military forces in Alaska, send a squad of soldiers to Nome to assist in preserving order. The general complied, and put Lieutenant Oliver Spaulding in charge of the men.³

Dissatisfied prospectors, who believed that the district had not been properly organized and who wanted to restake much of the ground, called for a miners' meeting on July 10. They had prepared a preamble and set of resolutions expressing their exasperation, but a number of people knew that serious trouble would follow if the mining district was dissolved and then reorganized. They believed that if the ground had been properly staked, the courts were the proper institution to determine the matter. They called Lieutenant Spaulding

and informed him of the proposed action of the mass meeting and its probable results. Spaulding and his soldiers entered the meeting and dispersed the crowd. The preamble and resolutions were never passed. There was much muttering, but tensions were relieved a few days later when gold was discovered on the beaches of Nome and everyone rushed there to mine.⁴

In the meantime, the people who came to Nome believed that there was gold in every stream. They did not comply with the law which stated that a mineral discovery had to be made before a claim could legally be staked. Instead, they staked everything, using the power of attorney, and staked liberally for their relatives and friends. Soon they were called "pencil and hatchet" miners because they spent the season with a pencil and location notices, and a hatchet to cut willows for stakes to mark their claims. The staking craze led to complications which promised much litigation and on a few occasions nearly caused riots.⁵

In the summer of 1899, C.S. Johnson, the judge for the district court of Alaska headquartered in Sitka, realized that the establishment of various mining camps necessitated holding court in a number of these new settlements. Johnson left Juneau accompanied by A.J. Daly, the U.S. attorney, and Governor John G. Brady. The party went to Dawson and from there traveled down the Yukon River, holding terms of court at places 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, the judge replied that only the United States government had the right to question the validity of such locations. Judge Johnson 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 the judge told him not to try any title cases because his jurisdiction did not extend to this sort of litigation. The judge held court in a leaky but spacious tent decked out in long rubber boots and a yellow rain slicker. 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."⁶

Before the judge left Nome he advised the citizens to form a "Consent Government." Such a government was not an absolutely legal civic body, but since the law did not yet permit the organization of a municipality, a "Consent Government," in essence would apply the common law of the United States which recognized the right of communities to govern themselves. Following Johnson's advice, the citizens of Nome held an election on October 16, 1899, and elected T.D. Cashel of the miners' ticket mayor, J.P. Rudd, treasurer and assessor, W.M. Eddy, chief of police, and Alonzo Rawson, the municipal judge. They also elected a six-member council. Key Pitman, who later became a powerful U.S. Senator from Nevada filled the appointive office of city attorney, D.P. Harrison, city clerk, D.R.B. Glenn, city surveyor, Dr. Gregg, city physician, and W.J. Allen, chief of the fire department. All taxes were paid voluntarily, and unfortunately, the "Consent Government" had no authority to enforce the payment of taxes. Public services were expensive, however, for decent salaries had to be paid to the various officials. For example, the chief of police received \$2,500 and the city treasurer \$2,000 per year. During the winter the

government took in about \$17,000 in taxes, but by March 1900 the funds had run out and the "Consent Government" was in debt. At first the government was fairly effective, but toward the end of the winter lack of funds and distrust on the part of some weakened the power and effectiveness of the government.⁷

In the spring of 1900 there were indications that Nome would experience a great population boom. The town, however, was filthy and in order to make it liveable it needed to be ditched and drained. There had been several cases of typhoid fever, and many feared that hundreds or even thousands might die if an epidemic of typhoid fever or pneumonia swept the town. In March, Nome's representative citizens called a meeting and organized a chamber of commerce. An executive committee was appointed to find ways and means to perform the work which the municipality should have done if they had the money. Citizens of Nome subscribed \$20,000, and Commissioner Rawson furnished ten deputy marshals to maintain order. Work crews cleaned up the town and deposited the garbage on the ice of the Bering Sea, while others dug ditches and built drains. The chamber of commerce paid for the work.⁸

With the beginning of the navigation season, dozens of ships came out and unloaded new arrivals and piles of cargo, while other vessels took those aboard who wanted to return home. Thousands of tents quickly covered the shoreline, and still more argonauts came daily. This rapid population increase caused severe problems. In just three short weeks Nome's population jumped from approximately 2,700 to about 20,000. Crimes increased, and soon Nome's civilian leaders realized that they were unable to manage the situation. On June 24, the chamber of commerce asked recently arrived General George Randall to take control of Nome. They asked the general not only to police the camp, but also to enforce sanitation and quarantine regulations, and to promote the general welfare and protect life and property. Randall complied with the

wishes of the Nome Chamber of Commerce. When he took control, anarchy seemed imminent, and town lot and claim jumpers added to the confusion. The general intended to keep Nome under military rule only until newly appointed district court Judge Arthur H. Noyes, due to arrive several weeks hence, took over. The new judge then could settle the hundreds of bitter disputes which had arisen over mining claims and town lots, and he could also supervise the establishment of a legally organized local government.⁹

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 couple of 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 to also draft a civil code and code of civil procedure 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.¹⁰

The Nome goldrush 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 a part of the contemplated fraud.

The individual behind the Nome gold conspiracy was Alexander McKenzie, the Republican National Committeeman from North Dakota for twenty-one years. Eventually 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, as has been suggested, top officials in the department of justice had participated in the plot.¹¹

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 one judge of the Ninth Circuit Court of Appeals stated that the evidence showed "beyond any reasonable doubt" that a conspiracy did exist. McKenzie almost succeeded in pulling off one of the most spectacular frauds in American legal history. He started by manipulating the Alaska civil code in the Congress, and 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 the three Scandinavians had made their rich strike on Anvil Creek and Snow Gulch in 1898. 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, however, 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.¹²

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 18, 1898. In the spring of 1899, Louis Melsing, the brother-in-law of Libby,

jumped the Tornanses claim because he alleged that the reindeer herder was an alien and therefore could not locate a mining claim. Lieutenant Oliver Spaulding had arrested Melsing and kept him in confinement at St. Michael for three weeks when the angry prospector had refused to drop his claim. Melsing'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. Melsing continued to maintain that he and Daniel Libby and H.L. Blake 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. As their attorneys they hired 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.¹³

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 the nation's capital. 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 an interest in the contested claim if winning the case. 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.¹⁴

During the winter of 1899-1900 Hubbard attempted to gain the interest of investors in Chicago, New York, Washington, D.C. and London 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 for the first time, the North Dakota Republican boss 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 elective officials in the state, including the election of nearly every U.S. Senator from the state during its first twenty-four years of existence, including Senator Henry C. Hansbrough in 1891. The senator was to play a key role in McKenzie's Alaskan scheme. When Hubbard and McKenzie met, the North Dakota political boss recognized the chance to make a fortune out of the turbulent conditions at 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 what strategy to 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 hundred of jumpers' titles to alien claims in the Nome district and other areas in Alaska as well. He paid the three lawyers \$ 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.¹⁵

McKenzie did not put anything in writing, and therefore it has been impossible to identify all of his backers. The 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 during his first term in Congress had been the chairman of the House Committee on Mines and Mining. 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 population boom brought about by the gold rush. Carter disavowed any personal interest in the measure, but told his colleagues that it was their duty to pass the bill.¹⁶

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 figured 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 passed out of 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 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."¹⁷

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 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 rouse 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.¹⁸

Carter warned of dire consequences to the nation of the Hansbrough amendment failed to be adopted. He claimed that the alien he feared most were not the Swedes and Laps, 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 participate like our own citizens in the benefits which accrue to the locator of mining claims," he asked? 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."¹⁹

Some Senators realized that they were being asked to pass special interest legislation which would have given the plaintiffs in the many mining title disputes in the Nome area a favorable decision without a trial. Hubbard was frequently seen with Hansbrough and Carter while the two were pleading his case in the Senate. But it was Charles D. Lane who impeded the schemes of the "spoilers." He organized the opposition, and had Senator William M. Stewart of Nevada explain to his colleagues what the amendment meant. Stewart had gone to California during the 1850 gold rush, and in subsequent years he became a top expert on American mining law. Stewart and several of his colleagues successfully opposed the Hansbrough amendment which retroactively would have invalidated Lane's claims which he had purchased in good faith. Stewart considered this "grossly unjust" and an "unheard of proposition," and managed to have the

debate drag on. Soon the exchanges among the Senators became bitter, and Carter finally withdrew the Hansbrough amendment in favor of one of his own that was identical except for a preamble declaration which stated that it did not change existing mining law, although in fact it would. Senator Bate from Tennessee thereupon exposed Carter's devious language by stating that it presented "a very attractive and innocent look; but when penetrated and read between the lines, ugly and dangerous features appear." In fact, there was "a serpent coiled beneath that rose, a dagger behind the smile." Carter finally compromised and withdrew the amendments in return for deletion of the sections of the Oregon Code which had guaranteed aliens the right to hold mining claims. This, then, left the alien matter to be settled in court, although a court following precedent would most likely hold for the aliens.²⁰

McKenzie did not get his amendment. The President signed the Alaska civil code into law on June 6, 1900, and after that the North Dakota boss got his wish with the appointment of his old friend, Arthur H. Noyes, to the judgeship in the second judicial division headquartered at St. Michael which included the Nome goldfields. One may safely assume that Noyes and McKenzie reached an accord how to proceed with their scheme to rob the rich claims in the Nome region.

Noyes was forty-six years of age in 1900, a member of the bar who had been actively engaged in his profession since 1878. In 1881, Noyes and D.E. Morgan had established a law partnership in Grand Forks, North Dakota, where the two men subsequently developed an extensive practice. Noyes remained in Grand Forks until 1887, when he moved to Minneapolis, Minnesota. In recommending him for the Alaska district court judgeship in March 1900, his former partner described him as "a gentlemen of great learning and scholarship, a lawyer of profound attainments and a man of high moral character and honesty of purpose."

Morgan considered Noyes to be "well fitted for such an honorable position." since he possessed "the learning, judicial temperament and high sense of justice to make a model judge."²¹

Noyes received endorsements from politicians and lawyers, judges and businessmen who praised his "high character and eminent fitness "for the judgeship. These included Knute Nelson and C.K. Davis, U.S. Senators from Minnesota, and all six members of the state's delegation in the U.S. House of Representatives; Walter H. Sanborn, Circuit Judge of the U.S. Court of Appeals in St. Paul, Minnesota, and John E. Carland, District Judge for the U.S. District Court of South Dakota; the Chief Justice and Associate Justices of the Minnesota State Supreme Court; and Thomas H. Shevlin, the president of the Shevlin-Carpenter Lumber Company and F.M. Prince, the Vice President of the 1st National Bank of Minneapolis. In short, the "best people" of several states had endorsed the applicant.²²

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 anything but establish law and order in that city. In fact, 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 novel by the same name.

Within four days after their arrival, 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.

W.T. Hume later testified that his law partner O.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 him 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.²³

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 to immediately 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 Sunday night and all day Monday producing the necessary legal papers. Late Monday afternoon the complaints, motions, affidavits, summons and writs were ready 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.²⁴

McKenzie waited with two horse drawn wagons and a deputy U.S. marshal when Hume returned with the signed orders. McKenzie 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.²⁵

The attorneys for Charles D. Lane and Jafet Lindeberg, the chief opponents of the McKenzie forces, protested the receivership to Judge Noyes but did not get any 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."²⁶

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 defendant's 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 Noyes to allow them to appeal their cases 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.²⁷

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. Noyes had dismissed all motions to dismiss McKenzie until the cases were decided on their merits. "In this, as in all other matters, Judge Noyes has acted within his judicial discretion and, I firmly believe, with justice and fairness to all parties and without bias or prejudice." Unfortunately, the defendants had not been satisfied with the judge's decisions "and have undertaken to force an appeal to the appellate court in San Francisco." In addition, these parties had also attempted to intimidate Noyes by using newspaper headlines and accounts in the states to discredit him and the court officials. Frost was convinced that Noyes and his court did their duty "in conscience and according to the law to the best of its ability. Nothing anyone may say to the contrary," Frost told Attorney General John W. Griggs, was "worthy of belief or serious consideration." 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."²⁸

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."²⁹

While Noyes justified his actions to the attorney general, the attorneys for the 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 Circuit Court of Appeals for the Ninth Circuit. Judge Morrow 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 surcease 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.³⁰

On September 14, 1900 Morrow's orders were served upon Judge Noyes, the plaintiff and 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 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 news that Noyes and McKenzie had been overruled, but jubulations were premature because the receiver decided to ignore the orders of the Circuit Court, claiming they were invalid. 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. Noyes came out of seclusion long enough to order the Army to ignore the writs from California.³¹

There were those in Nome who feared that McKenzie, who had deposited about a quarter of a million dollars in gold, which he had taken out of the Anvil Creek mines, 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 now 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. They took the receiver back to California for trial where he was convicted of contempt of court in February 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.³²

Sentenced to a year in the Alameda county jail, President McKinley, as previously stated, pardoned the prisoner after only three months because of his

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.³³

Judge Arthur Noyes never went to prison. He stayed in Nome through the winter and drank a great deal. His work in 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. Then 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.³⁴

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."³⁵

Not until 1906 did the Nome scandal receive national exposure when Appleton's Booklovers' Magazine published a series of articles by Rex Beach who had witnessed the events in Nome, entitled "The Looting of Alaska: The True

Story of a Robbery by Law." In the series which appeared between January and May 1906, Beach told of the corruption that had been hidden from the people. The scandal "was smothered and the public kept in ignorance," he charged. "Criminals were pardoned, records expunged, thieves exalted to new honors." The exposure resulted in the defeat of the McKenzie ring in North Dakota in the 1906 elections. That same year Beach published his first novel, The Spoilers, one of the most successful of the more than thirty books he produced. By 1916, The Spoilers had sold close to 800,000 copies, and more in reprintings since then. Five movies between 1914 and 1955, featuring stars like Marlene Dietrich, John Wayne, Gary Cooper, Rory Calhoun, William Boyd, and Randolph Scott, retold Beach's story.³⁶

The testimony which W.T. Hume gave to the Ninth Circuit Court of Appeals implicating his partner Hubbard with McKenzie, Noyes, and several U.S. Senators in a conspiracy helped to convict the spoilers. U.S. Attorney Joseph K. Wood was enraged after he had read Hume's affidavit of July 1901 which called him a grafter. Wood interrupted a city council meeting and demanded that Hume, who served part-time as city attorney, be fired. If not, he threatened to "close down every gambling game in town and drive out every women of ill repute." Wanting no clashes with federal authority, and unclear whether federal or municipal officials were responsible for regulating gambling and prostitution, the city fellows urged Hume to resign. He resisted, but the council insisted.³⁷ It was more than a little strange that Wood had linked his concern for the control of gambling and prostitution with his enmity toward Hume who had exposed his corruption.

In February 1902, the Nome Nugget ran a story from San Francisco dealing with the Noyes trial, entitled "Alaskans All Liars--According to Judge Noyes an Eminent Authority." The judge had denied the truth of Hume's affidavit,

statements by U.S. Marshal Cornelius L. Vawter as well as Charles S. Johnson, his predecessor as district court judge. The former judge recalled that when defending a client whose mine had been placed in receivership he had told Noyes in chambers and in open court that he could prove a conspiracy with McKenzie to control the mines. Noyes accounted for the disparity between his account and those of others that "if you live one winter in Alaska you'll hate everybody and everybody will hate you."³⁸

Finally, what knowledge did Washington possess of affairs at Nome and when? What did the principals in the scandal have to offer in defense of their conduct? Is there any evidence that the attorney general or his staff were reluctant to move against the corruption? The correspondence to the department of justice, which includes letters from all of the principals except McKenzie, as well as many of their opponents, offers some insights.

As early as August 7, 1900, Marshal Vawter and U.S. Attorney Wood reported to the attorney general in which they described the town's overcrowding, with "twenty to thirty thousand people along the beach," including "more murderers, cutthroats, thieves, confidence men, gamblers, prostitutes and bad characters than any camp I ever saw or heard of...." Vawter asked for permission to hire six more deputies, and Wood confirmed the presence of many criminals, and asked that the department approve his hiring of W.T. Hume, "a splendid lawyer, familiar with criminal law and procedure," as his assistant, and W.N. Landers as official clerk. Since these appointments, Wood stated, "the entire time of my force has been employed in trying to relieve the congestion of criminal business."³⁹ Unfortunately for Wood, Hume proved less cooperative than the spoilers had expected.

Special examiner C.A.S. Frost told the attorney general about the trouble over the judge's appointment of unnamed receivers in mining disputes which had

been appealed to Noyes. He added that Noyes, "with justice and fairness to all parties and without bias or prejudices" rejected their appeals. He warned the attorney general that these litigants planned "to force an appeal on the appellate court," were trying to intimidate the judge, and were planning to send somebody to Washington, D.C. to discredit the court. Frost was certain that "any statements made by persons who seek to discredit Judge Noyes...will...if sifted well, be found utterly without foundation." Noyes sent his first report less than a week later, complaining that most of Nome's population seemed to be engaged in litigation over lots or mining properties. He also justified his appointment of a receiver for valuable mining properties. He complained about the oppressive case load, but then requested that U.S. Attorney Wood be authorized to come to the nation's capital to explain Alaska's needs. Obviously, this would have protected the spoilers as their protests reached Washington, but the department thought that Wood should stay in Nome and work.⁴⁰

After the Ninth Circuit Court of Appeals had issued its writ of supersedeas ordering McKenzie to return the mines and all gold and equipment to their owners, and ordering Noyes to stay all proceedings on mining claims, he told the attorney general that "my conduct will bear the most severe and strictest scrutiny," and asserted that the conduct of the receiver "also has been most exemplary...." Noyes regretted that there was "troubles among the officials," a reference to Marshal Vawter's damaging affidavits to the Circuit Court. Noyes complained about his long working hours, and stated that every attorney felt "that he should have a hearing and so far as has been in my power I have tried to be accommodating." Noyes traced the difficulties of his court to mine owner C.D. Lane, a heavy contributor to the William J. Bryan Presidential campaign, who was the party guilty of bringing the court into disrepute.⁴¹

On October 29, 1900 Noyes admitted to the attorney general that "the McKenzie receivership matters are in unfortunate shape" and he felt that this had "been something of an injury." This, however, he asserted, did not "in anywise reflects upon me...."⁴²

On March 30, 1901, Noyes told the attorney general that he had received some letters and newspaper clippings from 'outside' which annoyed him very much, particularly "the part that Gov. [John G.] Brady is taking in the affairs of the Court here." He complained that Brady had been in Nome only for three days before the close of navigation, and had seen little of "affairs here and is no more able to judge...than as though he had never been here." Noyes and Brady had met briefly, exchanged some pleasantries, and the governor had expressed his confidence in the judge. Now, complained Noyes, he had advised the authorities in Washington that his [the judge's] life was in danger. He assured the attorney general that the "better class of this community" as well as the miners supported him. Only "the Pioneer Mining Company and The Wild Goose Mining Company, their attorneys and henchmen [are] against me; they have fought me from the beginning...." Noyes then reminded his boss of his wish to exchange places with Judge Brown in Juneau for the coming winter, but asserted that he "would as soon be entirely removed from office as to be transferred from this division at this time." Noyes also bragged about the court's accomplishments during his tenure, stating that "my labors have been great; have held court every day and have tried a great many important cases." The criminal docket had nearly been cleared, and Nome had become "as quiet, as peaceable and as law abiding as almost any town of its size in the states...." The court had opened for business on July 21, 1900, when the judge had issued orders creating the Cape Nome Recording District and called for a special term of court to convene in Nome on August 22, 1900. The court had convened in

chambers every day thereafter, except between July 26 and August 1 when it was in St. Michaels. The special term began on August 22, and on September 22 the court again went to St. Michael, to return to Nome on October 8. It had been in session continuously, and still was, in June 1900. Since July 21, 1900, 368 civil, 50 admiralty, and 80 criminal cases had been filed, a total of 498 cases. Of these, 70 final judgments, and ten additional judgments for possession had been entered, 19 judgments on conviction by juries in criminal cases and another eleven on pleas of guilty, for a total of 110 judgments. Noyes had reserved two days each week for hearing law motions. In addition to the trials of issues the court had heard and disposed of 529 contested motions, demurrers, and the like. Three grand juries had been empanelled, returning 56 indictments, and another grand jury deliberated in June of 1901 and had not yet returned any indictments. Finally, over 100 attorneys practiced before the court in Nome, and both they and their clients "always wanted and were anxious to have their troubles heard first." In short, Noyes had been more than busy since his arrival in town.⁴³

On June 21, 1900, U.S. Attorney Wood acknowledged that he, Judge Noyes, and T.J. Geary of San Francisco had been cited to appear before the Ninth Circuit Court of Appeals on October 14, 1901 to show cause why they should not be adjudged guilty of contempt of that court. "We are charged...with disobedience of an order issued by the Court of Appeals in the case of Chipps vs. Lindeberg, in which Alexander McKenzie was appointed and acting as receiver." In a lengthy letter, Wood set out to prove that he had "never advised or counseled the disobedience of any order of that Court, or any other tribunal whatever." Wood blamed attorneys W.H. Metson and Samuel Knight, representing the Pioneer Mining Company and the Wild Goose Mining Company, for instigating the contempt proceedings against Noyes and himself.⁴⁴

In examining the correspondence, one has to conclude that the timing of decisive events did not allow the attorney general the time to investigate Noyes, much less replace him before the navigation season closed in October 1900. Because of Nome's inaccessibility during the winter, nothing much could be done then either, and when spring arrived in 1901, the Ninth Circuit Court of Appeals summoned Noyes and his accomplices to San Francisco to answer contempt charges. There was another factor which helps explain the inaction, and that was the change in leadership in the department of justice when Philander C. Knox replaced John Griggs as attorney general. It must have seemed safer and easier politically for the new Attorney general to await the outcome of the circuit court proceedings.

During the winter of 1900 to 1901, the department heard complaints about Noyes. Senator Stewart discussed the Circuit Court's actions on the floor of the Senate and criticized the officers of the court. The press elaborated on Stewart's comments, and W.L. Leland was one of several individuals to call for Noyes' removal, stating that while he was a good Republican, he was "ashamed of the present administration." Another complaint to the President referred to the lawless reign of the receiver in Nome.⁴⁵

Judge Noyes responded to the formal charges made by former Attorney General Griggs on July 19, 1901. He explained that he had not received the correspondence from Washington until July 4th because he had traveled to St. Michael on June 17th to open court, but his ship had been caught in the ice for fifteen days. Upon returning to Nome he received the summons from the Ninth Circuit Court of Appeals. Noyes offered the suggestion that Congress appoint a committee and make a "searching investigation." No doubt the attorney general rejected this idea, because his department was not in the habit of requesting

Congressional help for a house cleaning. Noyes, of course, knew that any hope for protection rested with friendly Senators.⁴⁶

Noyes left Nome in August 1901 to visit his home in Minneapolis and to meet an appointment in Washington before the Circuit Court hearing. In the meantime, C.L. Vawter, a North Dakotan picked by McKenzie for the U.S. marshal's job, accused Noyes of wrongdoing. It seems that the marshal had not been a willing and informed partner in the spoiler's schemes, nor had he been involved in any criminal activities. Since he did not wish to ruin his career, he documented some of the Noyes court's wrongdoing to the attorney general. Since some of these unlawful acts occurred as early as July 1900, Vawter might have spoken up earlier. But he was not a brave man willing to sacrifice his job. Allowed to resign his U.S. marshal's job in 1901, he took a deputy U.S. marshal's position on Unga in the remote Aleutian Islands, one of several he held until his retirement many years later. Vawter reported that A.K. Wheeler, the judge's private secretary, used Noyes' chambers as his private law practice. Wheeler arranged many deals with clients "by holding out improper inducements to them that he had unlimited influence with...Judge Noyes." With the judge's knowledge, for example, he blackmailed the Alaska Commercial Company and the North American Transportation and Trading Company into paying \$500 each for Wheeler's service, a fee split with Noyes. The two companies had been concerned that the court wanted them to pay higher wholesale rather than retail liquor license fees. After explaining that their operations were retail, Wheeler arranged the matter in the favor of the companies. Vawter also charged that C.A.S. Frost, private secretary to Judge Noyes and previously the assistant U.S. attorney, had been the special examiner for the department and had also served as McKenzie's attorney. For this he had received at least

\$600, and Noyes had known about this. Frost also had advised Vawter to ignore the writs of supersedeas issued by the Ninth Circuit Court of Appeals.⁴⁷

Nome's lawyers, aside from those representing the Pioneer and Wild Good Mining Companies, did not summon their courage to complain about Noyes until August 1901, and they only did so when attorney T.M. Reed gathered the signatures of seventeen colleagues attesting that Noyes was "honest, upright, able and conscientious...." Reed argued that "if the judge erred it was of the head not of the heart." Thereupon fifty-four members of the bar wired the President, asking that Noyes be removed "to prevent riot and bloodshed," charging that the judge was "vacillating and dilatory, weak, petty, negligent, careless and absolutely incompetent." Furthermore, Noyes had "lost the confidence and respect of the attorneys of Bar and his Court, and of the residents of his judicial district." Despite their professional belligerency, lawyers are not inclined to oppose judges. But by the end of August, the attorneys knew that if the department did not act before the close of the navigation season in October, they would have to put up with Noyes for another year. This time the attorney general acted and directed Judge James Wickersham to go to Nome in September and temporarily replace Noyes.⁴⁸

Upon the assassination of William McKinley, Theodore Roosevelt became President on September 6, 1901. It was not long before the new chief executive learned much about Nome. C.W. Wiley, a Montana man, pointed out the involvement of U.S. Senators with the spoilers. He wrote that "careful investigation will show that Senator Carter was about as deeply involved in the mire of Cape Nome scandals as was Alex McKenzie. Yet Carter is the disreputable political crook who has been allowed to work his will as boss and dictator of the Republican party of Montana and he and his corrupt sycophants and minions are in absolute control of the party machinery here."⁴⁹ The President, of course,

knew better than to investigate U.S. Senators, and he did not need to do so, for the former Dakota cowboy already knew about Carter and McKenzie.

After the convictions of McKenzie in February 1901 and those of Noyes, Wood, Frost, and Dudley Du Bose in January 1902, the Washington friends of the spoilers continued to fight for their vindication. Perhaps they felt that they owed their friends some help, or else were afraid to be drawn into the scandal. In any event, after some favorable comments had been made about Noyes on the Senate floor, Attorney General Philander Knox held a departmental hearing to determine if the contempt prosecution developed from a plot to remove the judge rather than from "the vindication of the processes of the [circuit] court." E.S. Pillsbury was among those invited, to participate in the hearing. He also had written an amicus curiae brief at the request of the Circuit Court. Pillsbury was not sympathetic to Knox's investigation, for he had labored three months on his brief, and the Circuit Court, acting on it and other evidence, had convicted Noyes and the others. He therefore refused to appear at the Knox hearings, but lectured Knox on constitutional processes, namely that he did "not consider that the Court has need of vindication from any source. If it is desired to review the action of that tribunal, the law provides the method for so doing."⁵⁰

In any event, the attorney general soon perceived the mood of departmental staffers, legal colleagues, and the President. Noyes helped out when pleading ill health as a reason for not leaving California for Washington, and he finally removed him from office on February 24, 1902.

FOOTNOTES

1. For details of this scheme, see Charles Vevier, "The Collins Overland Line and American Continentalism," Pacific Historical Review, XXVII (August, 1959), pp. 237-253; William R. Hunt, Arctic Passage (New York: Charles Scribner's Sons, 1975), pp. 159-170.
2. Edward S. Harrison, Nome and Seward Peninsula (Seattle: Metropolitan Press, 1905), p. 47.
3. Ibid., pp. 47-51.
4. Ibid., pp. 51-52.
5. Ibid., p. 53.
6. Ibid., p. 54.
7. Ibid., pp. 54-55.
8. Ibid., pp. 56-57.
9. Ibid., pp. 57-60.
10. U.S. Congress, House, Laws Other Than Criminal Relating to Alaska, Letter from the Attorney General Transmitting the work of the Commission charged with the codification of the laws other than criminal of the district of Alaska, and with the framing of a code of procedure, 55 C., 3S., H. Doc. No. 99 (Washington: Government Printing Office, 1898); for an excellent discussion of the origin of the Alaska and Oregon Codes, see Frederic 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," UCLA-Alaska Law Review, Vol. 2, No. 1 (Fall, 1972), pp. 15-33, and Vol. 2, No. 1 (Fall, 1973), pp. 87-112.
11. Terrence Michael Code, A History of the Nome Gold Rush: The Poor Man's Paradise, unpublished Ph.D. dissertation, University of Washington, 1983, pp. 161-162.
12. Harrison, Nome and Seward Peninsula, pp. 197-201.

13. Cole, A History of the Nome Gold Rush, pp. 164-166.
14. Ibid., p. 166.
15. Ibid., pp. 166-169.
16. Ibid., pp. 169-171.
17. Cong. Record, 56C., 1S., p. 4418.
18. Ibid., pp. 4418, 3739.
19. Ibid., p. 4310.
20. Cole, A History of the Nome Gold Rush, p. 177; Cong. Record, 56C., 1S., pp. 3928, 3934; Cole, A History of the Nome Gold Rush, pp. 178-179; Cong. Record, 56C., 1S., p. 4471.
21. 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, N.A.
22. List of Endorsements for Arthur H. Noyes, n.d., D.F. Morgan to President McKinley, April 19, 1900, Appointments-Alaska, R.G. 60, N.A.
23. United States Ninth Circuit Court of Appeals, "In the Matter of Arthur H. Noyes, et. al.," Transcript of Proceedings and Testimony, "Statement of W.T. Hume," 2:394,391.
24. Ibid., pp. 400-404; In re Noyes, 121 F 209, (1902).
25. Cole, A History of the Nome Gold Rush, pp. 198-201.
26. In re Noyes, 121 F 209 (1902).
27. Cole, A History of the Nome Gold Rush, p. 203.
28. C.S.A. Frost to Attorney General John W. Griggs, August 16, 1900, file 10000/1900, box 1215, Records of the Department of Justice, R.G. 60, N.A.
29. Noyes to Attorney General, August 20, 1900, file 10000/1900, box 1215, Records of the Department of Justice, R.G. 60, N.A.

30. William W. Morrow, "The Spoilers," California Law Review, 4 (January 1916), p. 108; In re Alexander McKenzie, 180 U.S. 536-551 (1901); William H. Metson to Attorney General, October 8, 1900, file 10000/1900, box 1215, Records of the Department of Justice, R.G. 60, N.A.
31. Cole, A History of the Nome Gold Rush, pp. 204-205.
32. Ibid., pp. 206-208.
33. Ibid., p. 209.
34. In re Noyes, 121 F 209 (1902).
35. James Wickersham, Old Yukon: Tales-Trails-Trials (St. Paul: West Publishing Co., 1938), p. 371.
36. Rex Beach, "The Looting of Alaska," Appleton's Booklovers' Magazine, January through May, 1906, p. 2; Charles N. Glaab, "John Burke and the Progressive Revolt," In The North Dakota Political Tradition, ed., Thomas W. Howard (Ames: Iowa State University Press, 1981), pp. 55-56; Morrow, "The Spoilers," p. 90.
37. Nome Nugget, July 12, 1901.
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39. Cornelius L. Vawter to Attorney General, August 7, 1900, Wood to Attorney General, August 7, 1900, file 10000/1900, box 1215, Records of the Department of Justice, R.G. 60, N.A.
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THE CASE OF VUCO PEROVICH

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Jacob Jaconi, a Greek immigrant, had been attracted to Dawson in Canada's Yukon Territory. But instead of digging for gold, he fished on the Yukon and supplied the city's residents with fresh fish. In about 1903, he left Dawson and came to Fairbanks. He claimed a site four miles below Fairbanks on the Chena River and there built a fishwheel. He lived in an unfinished log cabin partially covered with a canvas tent, on the bank of a small slough, called the "Jennie M. Slough" because the steamboat by the same name had tied up there in the winter of 1903.¹

Jaconi had enjoyed a good season in 1904, because by October he had more than 2,000 pounds of whitefish, dried salmon and other fish at his camp, valued at about \$500. On October 28, the Greek fisherman took his dogteam and mushed the four miles to town where he spent some time at the Northern Commercial Company store, and then deposited some money at the Fairbanks Banking Company. Then he returned to his camp, never to be seen alive again.

Early the next morning one of Jaconi's neighbors heard the Greek's dogs barking as if they had chased cats up a tree. Then there were two shots from the direction of the camp. At about noon, B.L. Jelich, one of Jaconi's former partners, came by the camp and found the half-finished cabin on fire. He rushed inside the burning structure and at the back of the building where the bunk had been he saw "the back part of a head, a leg bone, and the trunk of a man," with the "head sunk on the chest."

News of the murder spread fast and the curious came to inspect the scene. The remains smouldered for two days, and when the charred body was touched it crumbled into dust. A physician examined what was left of Jaconi and determined that his skull had been split and the breastbone shattered, probably

with an ax or a cleaver, before the blaze. Someone had murdered Jaconi, mutilated the body, poured about a gallon of olive oil on the floor of the cabin and set it ablaze. The U.S. marshal found tracks in the snow heading downriver on the Tanana Trail. Officials started to hunt for the murderer, and six days later the deputy marshal arrested Vuko Perovich fifteen miles north of the Nenana River. He wore Jaconi's clothing and had in his possession the dead man's gold watch and jackknife. Perovich claimed that he was Jaconi's friend, but most citizens of Fairbanks and the surrounding gold camps believed that he was the murderer. Rumors had it that Perovich's clothes had been soaked with blood from the murder which had forced him to change into the clothes of his victim. The deputy marshal brought Perovich to Fairbanks where he was arraigned. By then, officials had gathered Jaconi's remains, and put them into a bag to show to the court. Perovich remained in the Fairbanks jail in the winter of 1904-1905, and was indicted for the murder and tried in the summer of 1905.

On the night of August 7 to August 8, 1905, three prisoners escaped from the Fairbanks jail. Perovich was one of them. Two men, awaiting trial for thievery, cut a hole through the roof of the water closet and left the jail. Perovich, who had not been in on the plan, went into the closet a few minutes afterwards and evidently saw the hole and crawled out. The next morning Judge Wickersham reported that Perovich had been recaptured the same night while the other two were still at large. The escape prompted the judge to observe that the facility was a poorly constructed log house, built in 1903 at a cost of \$1,750 when labor and material was both scarce and high. In any event, the marshal was not to blame.²

For days in late July and early August 1905, U.S. Attorney N.V. Harlan, the prosecutor, and Leroy Tozier, the defense attorney, argued the case before

Judge James Wickersham. The trial attracted much attention, and the courtroom was packed every day. In fact, those unable to gain admission stood outside the window on boxes to gain a view of the proceedings.³

During the trial, it developed that three weeks before Jaconi's cabin-tent was burned, the defendant had stated in a Fairbanks saloon that he was broke, and a week later, in another saloon, told another witness that he was broke but could get some money if he could get a partner for he knew a man who lived about five miles from Chena who possessed about \$500, a watch and chain, a ring, and a gun. Perovich repeated this statement to still another witness, and asked the latter to come with him. Perovich stated that he would steal the money. On October 15, 1904 Perovich had been at Jaconi's cabin early in the morning. Asked what he wanted, he stated that he was travelling and looking for a job. He remained at the cabin for a couple of hours, ate a proffered breakfast and then departed for Chena. After having gone but a short distance, Perovich "turned and looked back, and took a short crosscut to Fairbanks," and was seen there at "9 o'clock the same morning." Another witness had testified that on the evening of October 20, 1904, he and Perovich went to Chena and on the way stopped at Jaconi's place. Perovich asked the distance to Chena and was told that it was four miles. He thereupon told the witness that he had visited Jaconi several times before, and that the latter "had a roll of money--a thousand or fifteen hundred dollars--and that he would 'lick him with an ax' some day and throw him in the water, or that he would make a fire and burn everything up." On the evening of October 28 Perovich was in Fairbanks and stated that he intended "to go to the cabin of one of his countrymen" to see if he could find anything. On October 29 in the afternoon Perovich arrived at a camp about twenty miles below Chena, dressed in a corduroy coat and vest, overalls, and a fur cap, stating that he had neither money, clothes, or food.

He did have in his possession a rifle and a canvas bag, and another witness testified that Perovich wore a Yukon ring initiated "T.M." as well as a gold watch and chain. Asked where he had obtained these items, Perovich stated that he had paid \$30 for the watch and bought the ring from a Dawson friend for \$8. Perovich tried to sell a suit of clothes to still another witness which, he claimed, his brother in Dawson had given him. To another witness he stated that he had won the watch in a raffle at Douglas. When arrested on November 5, 1904, some 45 miles below Chena, Perovich first gave his name as Charlie Mitchell. In his possession he had various gold pieces and a gold watch. Later a bag of clothing was found where he had left it. Perovich claimed that he had traded a nugget chain with two men for the sack of clothes and the watch. He also said that he and his partner had made the chain, and that he had bought his partner's interest in it. Perovich's former partner, however, testified that he and the defendant had owned a nugget chain and that it had never been out of his possession. Severely damaging Perovich's case was the fact that the articles described, and many others found in his possession, were identified as the property of Jaconi. In addition, on cross-examination the defendant admitted that the various statements he had made to various witnesses as to how he had acquired the articles subsequently identified as belonging to the deceased had all been false. He had lied, he stated, because he had feared that he would be accused of having stolen the items in question.⁴

The jurors debated the case all night, and not until 3:30 the next morning did they announce that they had arrived at the verdict--guilty of murder in the first degree. The jury recommended the death sentence, and in his diary entry for September 15, 1905, Wickersham noted that he "sentenced Vuco Perovich to be hanged for the murder of Jacob Jaconi." Perovich had the distinction of being the first man ever sentenced to death in Fairbanks, but he was never executed.⁵

The jury had reached its verdict in the early morning hours of August 3, 1905. Immediately, the defense filed a series of motions designed to overturn the judgment, including one in arrest of judgment, another for a new trial, and defendant's exceptions to court's instructions to jury.⁶

On August 9, 1905, Tozier filed a petition with the court stating that his client believed that numerous errors had occurred which prevented him from having a fair and impartial trial and that, therefore, he was entitled to a new one. A motion for a new trial had already been filed, but in order to properly present his motion for a new trial to the court, the defendant needed a transcript of the proceedings and exceptions taken at the trial. Perovich was indigent, and could neither pay the costs of such a transcript nor was he able to pay his attorneys. He therefore asked the court that a copy of such a transcript be furnished free of charge. Judge Wickersham ordered that to be done, but on September 13, he overruled the motions for a new trial and arrest of judgment, and as already stated, ordered that Perovich "be hanged by the neck until he be dead" on December 8 of that year.⁷

Attorney Leroy Tozier thereupon appealed the case to the United States Supreme Court which heard the case in its October term of 1906. The high court carefully reviewed the trial transcript. Alford W. Cooley, the assistant attorney general who had prepared the brief for the department of justice, urged the Supreme Court to affirm the decision of the lower court. This it did on March 11, 1907, and on May 29, Judge Royal A. Gunnison resented Perovich to be hanged on August 14 "in the United States jailyard in the Town of Fairbanks...until he be dead...." Tozier, however, did not give up his attempts to save the life of his client. He filed a petition with the President of the United States asking for a commutation of the death penalty to imprisonment for life, and also appealed to Alaska's Governor Wilford B. Hoggatt

for a reprieve until the President had made a decision. Hoggatt issued a writ of reprieve on July 13 staying the execution until February 1, 1908, the new date on which Perovich was to be hanged. On the advice of his attorney, John F. Dillion, Perovich thereupon applied for a writ of habeas corpus in the commissioner's court in Fairbanks, claiming that Governor Hoggatt had exceeded his authority "in attempting to fix the date of execution in said writ of reprieve," and that since August 14, 1907, the date fixed by the court for the execution had passed, the marshal was "now without warrant or authority of law, or any authority at all to execute" the defendant. Guy W. Erwin, the commissioner, issued the writ of habeas corpus on January 15, 1908, returnable at Valdez before Judge Silas H. Reid. Cecil H. Clegg, the assistant U.S. attorney, was present at the hearing and protested the proceedings strenuously, maintaining that the petition "for writ was wholly lacking in all necessary allegations." Clegg complained to the attorney general of the "arrogant assumption of authority...and the inconsiderate use of the commissioner's "powers in a matter of such grave importance." Clegg maintained that Erwin's actions embarrassed the law officials and impeded the orderly administration of justice and asked that steps be taken to appoint competent individuals "of some legal ability and judicial temperament to fill the important offices of Commissioners in this Division." While waiting for instructions from the attorney general, Clegg advised Marshal George G. Perry that the writ of habeas corpus was void and should not be obeyed.⁹

The department of justice was unclear as to how to proceed in this case. In the meantime, the President had denied the application for a commutation of the death penalty to life imprisonment. The question to be decided was whether or not Perovich could be executed after the expiration of the governor's reprieve if the habeas corpus proceedings had not been determined at that time.

Did the trial court possess the authority to set a new date for execution, or could the judge who heard the habeas corpus case take such action? Research showed that the order of the court and the order of commitment were superseded by the writ of habeas corpus, and the custody of the prisoner was under the authority of the court or officer before whom the habeas corpus proceedings were pending. Should the habeas corpus proceedings be determined before the expiration of the governor's reprieve, then the marshal had to execute the defendant on the day to which execution had been respited. If, however, the habeas corpus proceedings had not been determined at the date to which the execution had been respited, then the court which had passed the sentence had to set a new day, for the time fixed for the execution was not a part of the sentence.¹⁰

Following Clegg's advice, Marshal Perry refused to honor the writ of habeas corpus on January 18. Three days later, however, the department of justice decided that the marshal could not be instructed to disregard the writ of habeas corpus, because Alaska's commissioners had the power to issue writs of habeas corpus binding on the marshal until acted on by the judge before whom it was returnable. During this time of uncertainty, Perovich attorney Dillon filed a petition asking the court to issue an order and writ of prohibition forbidding the marshal to execute the defendant on February 1, 1908 "or at all." Judge Reid dismissed the habeas corpus proceedings on January 29, whereupon Dillon asked, and was allowed, to appeal Reid's decision to the Circuit Court of Appeals for the Ninth Circuit at San Francisco. Thereupon, the President granted Perovich a reprieve until March 6, 1908 to give the appeals court time to make a decision. On February 21 the Fairbanks Daily News-Miner told its readers that attorney John Dillon had made a splendid fight for his client, giving Perovich a new lease on life. The court had stayed the

defendant's execution. If the Circuit Court of Appeals turned down the appeal, Dillon intended to take it again to the Supreme Court. The attorney bragged that "if the hanging of Perovich takes place within the next three years, I shall be the most surprised man in the community...and anyone trying to bring about the execution within that time will be about the busiest lot of men ever interested in a criminal case in Alaska."¹¹

Nathan V. Harlan, the U.S. attorney for the third division, clearly was unhappy with the latest developments in the Perovich case. He complained to the attorney general that in addition to perfecting their appeal to the Circuit Court of Appeals from the decision of the District Court at Valdez denying their application for a writ of habeas corpus, the attorneys for Perovich had also prepared two commutation petitions to the department asking that their client's death sentence be changed to life imprisonment. What bothered Harlan particularly was the fact that one petition was prepared in the office of ex-Judge Wickersham who had tried the case. Harlan had heard a rumor that Wickersham had been retained as attorney for Perovich, in addition to Dillon. Harlan thought it improper that Wickersham should act as attorney for Perovich. The U.S. attorney acidly observed, however, that Wickersham's activities "can be readily accounted for by the fact that he has received a substantial retainer from the friends of Perovich and those who are endeavoring to have him relieved from the penalty of death." Furthermore, Harlan was convinced that the attorneys for Perovich did not pursue their appeals in good faith but only for the purpose of delaying the course of justice.¹²

There was still another matter Harlan wanted to relay to the attorney general, and that was that "quite a large number of Slavs, natives of the same country as Perovich," resided in the Tanana Valley. Recently, many of these had threatened to kill certain individuals, including Wickersham, if Perovich

should be executed. Many of the Slavs apparently were superstitious. Perovich claimed to have visions where a spirit in the form of an old man appeared in this jail cell, sat on the edge of his bed and told him that, if executed, certain individuals would be killed, among them Peter Vidovich, a wealthy leader in the Slav community. In fact, Vidovich had become "so wrought up and alarmed...that he is very busy and has put up money to aid Perovich in having his sentence commuted and in trying to save his life." At the time of the trial, Harlan concluded, Vidovich had been a major prosecution witness who had aided materially in helping to convict Perovich.¹³

On February 1, 1909 the Circuit Court of Appeals for the Ninth Circuit in San Francisco affirmed the order of the District court denying the writ of habeas corpus, and on June 5, 1909, the new chief executive, President William Howard Taft, considering "Vuko Perovich, alias Charlie Perovich,...a fit object of executive clemency" commuted his death sentence to life imprisonment, to be served at an institution to be determined by the attorney general. The latter first designated the United States penitentiary at McNeill Island in Washington State, but in May 1911, Perovich was transferred to the U.S. penitentiary at Leavenworth, Kansas. How Perovich spent his time at Leavenworth is not apparent from the record.¹⁴ He applied for parole on numerous occasions, however, which was always refused.

On December 21, 1921, Perovich applied for executive clemency. He concluded his petition with these words: "This application is made at the request of the Warden of the United States Penitentiary, Leavenworth, Kansas, with a view of being considered as a second choice for a holiday clemency." No action was apparently taken, so a few years later, on February 18, 1925, Perovich filed an application for a writ of habeas corpus in the U.S. District Court in the first division for the district of Kansas. The prisoner argued

that the deputy U.S. marshal who delivered him to Leavenworth in 1911 did not present, "nor has any authorized person since such time, presented any legal authority in the form of a legal commitment...why your petitioner should be imprisoned or confined..." and "that there is not now nor has there ever been any legal commitment or paper upon which your petitioner could be legally deprived of his liberty and confined and imprisoned...." In fact, the warden had often admitted to Perovich that he had never received a legal commitment and therefore held the prisoner illegally. Perovich also claimed that all prisoners were entitled to know the term of their confinement, and that life prisoners were entitled to parole and other benefits of the law. The petitioner was deprived of all such privileges "as the record clerk has nothing upon which to base the term of his imprisonment...." Perovich claimed that under existing laws he would have been eligible for parole, but that unless he was released by habeas corpus he would be forced to spend the rest of his life in jail "as there is nothing upon which to base a release, no judgment or commitment." Warden W.I. Biddle responded to the petition by asking the court to deny the writ of habeas corpus.¹⁵

Soon a sympathetic attorney helped Perovich in his quest for freedom. He drafted an explanatory memorandum for the petitioner in which he summarized the case for the court. More than twenty years ago Perovich, a foreigner unfamiliar with the English language, went to Alaska to make his fortune in the gold fields. The attorney stated that Perovich was arrested for being in a fight, tried before a court and jury in a language foreign to him and "finally made to understand that he had been convicted of murder, and was sentenced to be hung." The attorney took liberty with the facts, because Perovich possessed a working knowledge of English, and in any event, the court had supplied an interpreter. There had been no fight, and Perovich had been arrested because he wore the

slain man's clothes and had in his possession various items belonging to the victim. In addition, the accused had confessed the murder to the arresting deputy marshal. But never mind, such facts were inconvenient for the prisoner's case--so they were not mentioned.¹⁶

The attorney waxed eloquent, continuing that "some good people of that wild and stormy country interested themselves in his cause, sued out a writ of habeas corpus which was denied: probably for good reasons and thereafter "these same good people secured from President Taft a conditional pardon." That happened more than four years after sentencing. In the meantime, the petitioner languished in the Fairbanks jail, later to be taken to McNeill Island and then Leavenworth. For better than twenty-one years Perovich had been incarcerated. In the meantime, he had improved his mind, learned English and acquired a "considerable knowledge of the institutions of our country. When the petitioner inquired by what warrant he was held at Leavenworth, the warden advised him that it was "by virtue of the pardon of the President, and nothing else." The question arose: Could the executive department of the government sentence a man to life imprisonment, and this without any acceptance on the part of the prisoner of a substituted sentence? The writer held "that while the pardon from the sentence of death is effective, the condition imposed upon it, that of life imprisonment, cannot be effective as an executive act without the affirmative assent and acceptance by the prisoner." In short, society would not be harmed by issuing the writ of habeas corpus. The petitioner was "born under other skies; while little more than a boy, he followed the lure of gold to the Alaska mining camps; he became involved in a fight; he disclaims ever having taken human life. Whether that be true or not, it is not for us to inquire." The writer was convinced that Perovich had atoned for the offense

for which he was convicted. Additionally, the prisoner boasted of an excellent conduct record. Therefore, the writ should be issued.¹⁷

Judge John C. Pollock studied the voluminous case record with great care and had the matter under his advisement for some months. On November 7, 1925, he filed his opinion. He stated that the merits of the petitioner's case depended upon the validity of the document the President had issued, directing that Perovich be imprisoned for life instead of being executed. The government contended that this was a commutation of sentence. The petitioner denied that, insisting that instead of decreasing the extent of punishment, it entirely changed the nature of the punishment and therefore was void as lying beyond the power of the chief executive.¹⁸

Unfortunately, the judge observed, this question had never been decided by the courts of the United States, and there seemed but little precedent in the decisions of the state courts. Pardon was not involved in this case, he held, because to become effective it had to be accepted by the prisoner. Perovich had never accepted the change of sentence ordered by the President. The question still remained, then, of whether or not the President's action was a commutation of the prisoner's sentence or did it entirely change the nature and character of the punishment. If the former, it was within the President's power and valid, but if the latter, it was not within his power and therefore void.¹⁹

Pollock observed that the facts surrounding the murder case of which Perovich had been convicted had been largely circumstantial. The petitioner had always insisted that he was innocent, and now stood before the court "protesting his innocence, although realizing that if his contention that the order of the President was void is upheld...the result will be that he will then be facing the original sentence of death. Knowing this...he prefers the

sentence of...[death] to the substituted punishment which the President ordered." Pollock was convinced that President Taft had entirely changed the nature of Perovich's punishment. Therefore he granted the writ of habeas corpus and released the prisoner on his personal bond.²⁰

Alton H. Skinner, the assistant attorney general who had argued the government's case before the judge was unhappy with the decision. He maintained that Pollock should have remanded the petitioner to the United States district court in Alaska for resentencing as clearly required by the appropriate precedent (*Bryant v. United States*, 214 Fed. 51). He warned the attorney general that Judge Pollock, who had appreciated the gravity of the issue raised in Perovich's application, had appointed George T. McDermott of Topeka, Kansas, "one of the ablest attorneys practicing in this district," to represent Perovich. Skinner observed that McDermott generally did not handle criminal cases, but had become extremely interested in this one. He had studied the case record "with such carefulness that he is now convinced that the petitioner was innocent of the crime of which he was convicted...." Skinner advised the attorney general that every effort should be made to overturn Pollock's decision and to establish the validity of the commutation of the original sentence by President Howard Taft. But even Skinner, who had studied the case files and read all of the correspondence, concluded that "without the evidence before us...there is in our mind at this time a substantial doubt as to the guilt of the petitioner and the justness of the original sentence." Skinner urged that Pollock's opinion be appealed to the Supreme Court, if necessary, because there might be other prisoners at Leavenworth who were confined because of a similar commutation not accepted by the petitioner.²¹

The government, thereupon, filed an application for rescinding the order granting the writ of habeas corpus. Should the court not grant this request,

Skinner asked that the writ be modified, requiring Perovich to be returned to Alaska "so that the sentence as originally imposed might be executed...." Judge Pollock heard the government's arguments on December 23, but overruled the motion in both particulars. In the meantime Perovich had left Kansas and moved to Rochester, New York where he had found employment as a barber.²²

The government was uncertain how next to proceed. William J. Donovan, the assistant to the attorney general, told the solicitor general that he had wired the U.S. attorney in Alaska directing him to apply to the District Court for a bench warrant ordering Perovich to be arrested and brought before the court in order to set a date for execution. Donovan had ordered this procedure so that Perovich could be taken into custody, and he had also directed the U.S. district attorney in Kansas to apply to Judge Pollock for an order directing that Perovich be held in custody pending appeal from the judge's decision. The solicitor general was dubious about the steps taken by Donovan, pointing out that if Pollock modified his order and directed to hold Perovich in custody pending appeal, there would be a conflict involving Perovich's custody under his order and under a bench warrant. If Judge Pollock reversed his decision, the trip to Alaska for setting a new date for the execution "would be found to be a useless proceeding." The solicitor general asked: If Judge Pollock refused to modify his order was there not some procedure allowing the appeals court to order a stay of execution of Judge Pollock's order pending appeal? There seemed to be no answer, but in any event the department of justice was confident that the Circuit Court of Appeals for the Eighth Circuit would reverse Judge Pollock's decision. But even if the judge's decision was not reversed, the department maintained "that the law would require the carrying out of the original death sentence." In the meantime, special agents of the

Federal Bureau of Investigation continued their surveillance of Perovich in Rochester.²³

Perovich moved to Rochester after his release from confinement, and there took temporary employment, but soon decided to start a business of his own in one of the trades in which he had become proficient in prison. With the aid of the Unity Society, which lent him \$1,000, he purchased the lease of a barber shop on Park Avenue between Vassar and Berkeley Streets. He named it "The Golden Rule Barber Shop." Perovich worked long hours in his new business intending to pay back the loan. A genial businessman, his shop soon attracted a growing patronage. The Rochester Times-Union ran a lengthy article on him, telling its readers that "many of the customers know the romantic story of the tall, broad-shouldered man..." and all agreed "that he knows his job and does it well." To his attorney McDermott he wrote that the government should have no fear that he would skip the country to avoid the judicial process, "not if I be even hanged." Had he wanted to run away, he "could have been in Russia long ago." In any event, the government knew his whereabouts and "can get me here at any time they wish to if need be done," namely at his barber shop. There had been discussions about bonding, but he told McDermott that he was unable to "produce one dime for that," and did not have the "nerve to ask my friends for it after they did so much for me already...." In light of all these facts, McDermott believed that there was no reason for the government to imprison Perovich pending appeal. In fact, he felt so strongly about the case that he was willing to come to Washington at his own expense and discuss it with the department of justice, confident that he "could make them see it as I see it, for I believe I am right on many grounds."²⁴

In June of 1926 the government argued its appeal to the Pollock decision before the Circuit Court of Appeals for the Eighth Circuit in Kansas City.

Since the questions to be decided were of such a fundamental nature and would have far-reaching impact as a precedent in other cases, the court certified the case without a decision to the Supreme Court. On the day of the hearing, the department of justice issued a press release entitled "Power of the President in Commuting a Sentence of Death," which spelled out the questions to be decided and summarized the case:

POWER OF THE PRESIDENT IN COMMUTING A SENTENCE OF DEATH.

The United States Supreme Court has set down for hearing on Monday, May 2, a case that has engaged widespread attention, because, in one way or another, it has been before the courts of the country for many years. It is the case of one Vuco Perovich, who was convicted and sentenced to death for murder in Alaska twenty-two years ago. In 1909 the President commuted his sentence to life imprisonment. After sixteen years in prison Perovich applied for release by habeas corpus claiming that he had never consented to the commutation, and that the President had no right to change his punishment from death to imprisonment, without his consent.

Early in 1926, under the direction of the Department of Justice, an appeal was taken to the Circuit Court of Appeals for the Eighth Circuit, from a decision of the United States District Court for the State of Kansas, which court had liberated Vuco Perovich from the Leavenworth penitentiary upon habeas corpus.

The United States Circuit Court of Appeals for the Eighth Circuit, instead of passing upon the appeal, submitted to the Supreme Court of the United States the following question, "a decision of which is deemed desirable to the determination of this case before it, and to a proper discharge of its duties herein:

1. Did the President have authority to commute the sentence of Perovich from death to life imprisonment?

If the answer to question 1 is in the negative, then we ask:

2. Can the document above set forth, signed by the President, by legally considered a conditional pardon?

If the answer to question 2 is in the affirmative, then we ask:

3. Was express acceptance by Perovich of the conditional pardon necessary to its validity?

In a brief filed in this case the Department of Justice enters into an elaborate examination of pardon cases and commutations of sentence covering practically the entire legal history of the United States. Also,

consideration is given to many cases under English law. The brief of the Department states that "the questions presented are whether the President may without the consent of the convict, who has been sentenced to death, change his sentence to life imprisonment; and if not, whether consent must be expressed by the prisoner at the time of the commutation, or whether it may be presumed or implied from a failure to object at the time or through long service of the life sentence."

The brief further states that "the argument for Perovich is that pardons, absolute and conditional, are not effective unless accepted by the convict, although commutations are; that a change from death penalty to imprisonment is a conditional pardon and not a commutation."*** "The correct rule is that no exercise of the pardon power requires acceptance except a true conditional pardon which imposes a condition not known to the law and which requires voluntary action by the prisoner."

Considerable attention is given in the Department's brief to the case of *Burdick v. United States*, in which Burdick refused to answer questions before a grand jury on the ground that it might incriminate him. Thereupon, the President issued to him a general absolute pardon of all offenses connected with any matter concerning which he might be interrogated before the grand jury. Burdick declined to accept the pardon and again refused to answer the questions.

The Department's brief further states, "the rule that a convict may reject an absolute pardon places too much emphasis on his personal choice and not enough on the paramount public interest involved. The idea that a convict sentenced to death may insist on execution and that the executive acting in the public interest may not pardon without the prisoner's consent, or that a convict sentenced to life imprisonment has the right to insist on staying in prison and refuse a discharge by absolute pardon but may be forced out of prison by commutation seems without support in reason."

In summarizing and concluding its brief on the questions involved, the Department of Justice says:

"The questions certified are such that the Court may not find it appropriate to reexamine the question dealt with in Burdick's case. We have covered that ground in this brief because the certified questions assume that pardons, as distinguished from commutations, must be accepted, and we question this assumption and feel that a rule requiring acceptance should not become more firmly entrenched than it is.

"The sound rule is that a convict has no power to reject or obstruct the effect of any exercise of the pardoning power and force execution of his sentence, except in the case of a true conditional pardon, the condition of which is of such a nature as to require voluntary compliance by the prisoner, and excepting also that his action in failing to bring a pardon to the attention of a court, followed by similar failure of the prosecution, may prevent

the court from giving effect to it, and in that sense amount to a waiver or rejection; that the public interest and not the whim of the convict should be paramount. If, on the other hand, the rule stated in Burdick's case is accepted, the conclusion should be that it has never been applied to commutations; that a reduction of punishment from death to life imprisonment, where life imprisonment is by law made an alternative punishment for the crime in question, is a commutation and a mitigation and not a conditional pardon, and does not require the consent of the convict; that if the act of executive clemency in this case should nevertheless be treated as a conditional pardon requiring acceptance, express acceptance was not necessary, but should be presumed and implied. The certified questions should be answered accordingly."

Perovich was indicted in 1905 and convicted of murder in the United States District Court for the District of Alaska. He was sentenced to be hanged. On writ of error to the Supreme Court of the United States the judgment was affirmed in 1907. Respites were granted by executive authorities pending applications for writs of habeas corpus on behalf of Perovich, and prior to June, 1909, several applications were made on his behalf asking commutation of his sentence. In June, 1909, the President of the United States commuted the sentence of Perovich to imprisonment for life in a penitentiary to be designated by the Attorney General of the United States. Perovich was for a time confined in the federal penitentiary at McNeil Island and later was transferred to the Leavenworth prison.

In 1918 Perovich made an application for pardon. In December, 1921, he filed another application for executive clemency in which he stated that he had been sentenced to be hanged in 1905, which sentence was commuted in 1909 to life imprisonment. Then followed, in 1925, the application by Perovich to the United States District Court of Kansas for a writ of habeas corpus, on the ground that he was in prison in Leavenworth penitentiary contrary to his rights as guaranteed by the Constitution and laws of the United States. He claimed that he was illegally removed from the jail at Fairbanks, Alaska, to the penitentiary at McNeil Island, and that his removal to the Leavenworth prison was without legal authority. The court in releasing him upon habeas corpus held that "the order of the President in changing the nature of the petitioner's punishment from death to life imprisonment was without authority of law;" also, that Perovich never accepted commutation of his sentence from hanging to imprisonment for life. It is on account of these issues that the Circuit Court of Appeals propounds the above questions to the Supreme Court of the United States.

Since his liberation from the penitentiary at Leavenworth Perovich is reported to have²⁵ been living in Rochester, N.Y., engaged in operating a barber shop.

On May 2, 1927 the Supreme Court heard the case and validated the President's act of clemency in 1909, substituting life imprisonment in a federal penitentiary for the death penalty. The case had attracted national interest and received considerable publicity from time to time. After the decision, Perovich would have been returned to jail, but McDermott appealed to the chief executive, and on July 25, 1927 President Calvin Coolidge pardoned Perovich. The morning papers of August 7 carried the news that Vuco Perovich had received a pardon. George T. McDermott was relieved and happy. He told Solicitor General William D. Mitchell that there had been much "rejoicing among my youngsters. Their faith in their dad has been vindicated--and that is something." McDermott was convinced that "it is your fairness and sense of mercy that did it. It would not have been unnatural for your department to have resisted the application for pardon right on the eve of winning your lawsuit. That you did not indicate^g that the department is manned by men big enough for the job." McDermott believed that he "had the better of the strictly legal position" when the government appealed the Pollock decision, but in the end he recognized "that the rule laid down by the Supreme Court is a wholesome rule."²⁶

Vuco Perovich obviously was happy about the pardon. He thanked Solicitor General Mitchell "with a heart full of gratitude...for your kind interest and tireless efforts in my behalf, which have been rewarded by President Coolidge in granting me a pardon for a crime which I never committed." His future looked bright, and he intended to prove to everyone in the years to come that they would have no cause to regret their efforts on his behalf.²⁷

Obviously, nobody will ever know who murdered Jacob Jaconi on that dark and wintry October day in 1904. It is equally impossible to determine whether or not Perovich was framed for the murder and skirted death for years,

eventually serving twenty-one years in prison. What is important is that the case established an important precedent in defining the Presidential power to issue commutations. Perovich expressed his sentiment in 1927 when he wrote that "with the help of God and my friends, I shall strive to forget the past and live for the future, so that my friends will be proud to remember the fact that it was through their efforts that I was able to have a chance to make good."²⁸

FOOTNOTES

1. Terrence Cole, "Dead Man on Deadman Slough," Alaska, September 1978, pp. A9-A10. The account of Jaconi's murder is based on Cole's article.
2. James Wickersham Diary, July 8, 1905, University of Alaska, Fairbanks, Archives.
3. Cole, "Dead Man on Deadman Slough," pp. A9-A10.
4. No. 404, In the Supreme Court of the United States, October Term, 1906, Vuko Perovich, Plaintiff in Error, v. The United States, In Error to the District Court of the United States for the Third Division of the Territory of Alaska. Brief for the United States, in United States of America v. Vuco Perovich, #104, R.G. 21, Federal Records Center, Seattle, Washington, hereafter cited as #104.
5. James Wickersham Diary, September 15, 1905, University of Alaska, Fairbanks Archives.
6. Criminal, Motion in Arrest of Judgment, Motion for New Trial, Defendants Exceptions to Courts Instructions to Jury, August 5, 1905, #104.
7. Petition, Order, August 9, 1905, Order Overruling Motion for New Trial and Arrest of Judgment and Fixing Time for Judgment and Sentence, September 13, 1905, Judgment and Sentence, September 15, 1905, #104.

8. Judgment and Sentence, May 29, 1907, United States of America, District of Alaska, In the Name of the United States of America, By the Governor of the District of Alaska, July 30, 1907, #104.
9. In the Commissioner's and Ex Officio Justice of the Peace's Court for the Territory of Alaska, Fairbanks Precinct, Vuco Perovich, plaintiff v. George V. Perry, United States Marshal, defendant, In the matter of the application of Vuco Perovich for writ of habeas corpus, January 15, 1908, Writ of Habeas Corpus, January 15, 1908, Cecil H. Clegg to Attorney General, January 16, 1908, Clegg to Perry, January 16, 1908.
10. Memorandum for Mr. Sanford. In Re Habeas Corpus Proceedings in Alaska, January, 1908, Memorandum for Mr. Sanford. In Re Alaska Habeas Corpus Proceedings, January, 1908, #104.
11. Return of United States Marshal to Writ of Habeas Corpus, January 18, 1908, Assistant Attorney General, Memorandum for the Attorney General in the matter of the habeas corpus proceedings, in the Vuko Perovich case, January 21, 1908, Petition, January 29, 1908, Citation, January 31, 1908, Clegg to Attorney General, January 31, 1908, Order Allowing Appeal, February 5, 1908, #104; Fairbanks Daily News-Miner, February 21, 1908.
12. Harlan to Attorney General, March 4, 1908, #104.
13. Ibid.
14. No. 1567, United States Circuit Court of Appeals, For the Ninth Circuit, Vuko Perovich vs. George G. Perry, United States Marshal, etc. Mandate, February 1, 1909, Copy of Commutation of Sentence, June 5, 1909, #104.
15. Alton H. Skinner, Assistant U.S. Attorney, to Attorney General, November 19, 1925, In Re: Vuco Perovich, Habeas Corpus, #2848, in the United States District Court for the District of Kansas, First Division, February 18, 1925, In Re: Vuco Perovich, petitioner for writ of habeas corpus,

- Response, #2848, in the United States District Court for the District of Kansas, First Division, February 24, 1925, #104.
16. Memorandum Brief of Petitioner and Statement of Facts, #2848, February, 1925, #104.
 17. Ibid.
 18. Skinner to Attorney General, November 19, 1925, Judge John C. Pollock "Memorandum Opinion on Petition For Habeas Corpus," #2848, November 3, 1925, #104.
 19. Ibid.
 20. Ibid.
 21. Skinner to Attorney General, November 19, 1925, #104.
 22. Skinner to Attorney General, December 21, 1925, Skinner to Attorney General, December 24, 1925, #104.
 23. William J. Donovan, assistant to the Attorney General, to Solicitor General, December 28, 1925, Solicitor General, "Memorandum for Colonel Donovan," December 28, 1925, O.R. Luhring, Assistant Attorney General, to Frank H. Foster, U.S. Attorney, December 29, 1925, #104.
 24. G.T. McDermott to Skinner, January 20, 1926, #104.
 25. Skinner to Solicitor General William D. Mitchell, May 31, 1927, Press Release, Department of Justice, "Power of the President in Commuting a Sentence of Death," April 27, 1927, #104.
 26. Presidential Pardon Document, July 25, 1927, McDermott to Mitchell, August 7, 1927, McDermott to Alfred E. Wheat, Acting Solicitor General, August 13, 1927, #104.
 27. Perovich to Mitchell, August 12, 1927, #104.
 28. Ibid.

THE SHORT AND UNHAPPY JUDGESHIP OF SILAS HINKLE REID

On June 14, 1909, the department of justice accepted the resignation of Judge Silas Reid, to take effect as soon as his successor had been appointed. The judge had served less than two years. President Theodore Roosevelt had appointed Reid as judge of the third division of the district of Alaska on November 6, 1907. The attorney general transferred him in 1909 to the fourth division in the spring of 1909. In the summer of that year the department requested, and received, Reid's resignation.¹

Reid, an ambitious young man, was born on September 27, 1870 in DuQuoin, Illinois. After attending the public schools in that city, young Reid attended Northern Illinois Normal School at DeKalb from 1887 to 1890, and then transferred to Wesleyan Law College in Bloomington, Illinois where he received an L.L.B. degree in 1891. He worked some time in his father's law office, and then established his own firm in his hometown. Tiring of his practice, he became city attorney in DuQuoin, and in 1901 married Nellie Goodwin in Decatur, Illinois. The young couple subsequently moved to El Reno, Oklahoma territory. After a stint in private practice, he became attorney for the County of Canadian, El Reno, Oklahoma, and unsuccessfully ran for attorney general after Oklahoma's admission to statehood in 1906. Endorsed for federal judgeships in Alaska and Puerto Rico, the President, as already stated appointed him to the Alaska slot. After his resignation, Reid returned to Illinois and opened a law practice in Chicago. He died of Bright's disease in his sister's home in St. Louis, Missouri, and was buried in his hometown.

What circumstances wrecked Reid's career as a federal judge? Briefly, on December 28, 1908, Alaska's Governor Wilford B. Hoggatt called the attention of the attorney general and the secretary of the interior to certain of Judge

Reid's actions, namely that after a separate hearing in Fairbanks in May of that year, the judge had appointed John A. Goodwin, his brother-in-law and the U.S. commissioner in Fairbanks at that time, the receiver of the Alaska Central Railway and the Tanana Railway and Construction Company. Five months later Reid allowed Goodwin \$7,500 for services and another \$675 for expenses. The department of justice notified Reid of the charges and subsequently dispatched L.A. Wilmer, the special assistant to the attorney general, to Alaska to make an investigation. Wilmer criticized Reid for bad judgment, but absolved him of any wrongdoing. Other charges, however, were later brought against Judge Reid and also investigated. Thereupon, the attorney general submitted a report to the President containing a summary of Governor Hoggatt's charges as well as most of the other important accusations and suggested that Reid be asked to resign. The chief executive concurred, and as a result the department accepted Reid's resignation on June 14, 1909.³

The attorney general had instructed Wilmer in January 1908 to investigate the charges in relation to the appointment of Goodwin as receiver of the Railway and Construction Companies. Wilmer was to ascertain whether or not Reid had allowed excessive receiver fees and expenses, and if the appointment of the receiver upon a bill of complaint had been made as part of a corrupt bargain between the plaintiff, John A. Ballaine, Judge Reid, Goodwin and perhaps others, whereby the fees were to be divided between the parties to the bargain. The attorney general realized that it would be very difficult to secure any proof of the alleged corrupt bargain because the pertinent facts, if they existed, were probably known only to the alleged conspirators. In any event, Wilmer was to do his best in securing the necessary facts, and especially give Judge Reid an opportunity to be heard. Time was short and the

President wished "to have the incident closed during his administration," if at all possible.⁴

Before leaving Washington, D.C. for Alaska on January 16, 1909, Wilmer interviewed Governor Hoggatt who happened to be on business in the capital. The two men met at the Metropolitan Club, and Wilmer soon discovered that the governor was convinced that Reid was corrupt and had appointed his relative with receiver fees in order to share in the money. Hoggatt told the investigator that there was no need to go to Alaska since Reid "should be deposed forthwith upon information already furnished," an opinion the governor's superior, the secretary of the interior, shared. Nevertheless, Hoggatt furnished the names of individuals who might supply information needed to establish Reid's guilt. These were A.C. Frost of Chicago, the president of the Railway Company; F.H. Graves of Spokane, the attorney for the bondholders who had filed the bill of complaint to foreclose the deed of trust given to the Trusts & Guarantee Company, Ltd., and who had asked for the appointment of a receiver and allegedly knew about the exorbitant receiver fees allowed Goodwin under the bill of complaint filed by Ballaine; and James A. Haight of Seattle, Fred M. Brown of Valdez, and L.V. Ray, assistant U.S. attorney at Seward, Alaska, all counsel for Frost.⁵

Before Wilmer left on his trip, the attorney general decided that the investigator should interview the individuals Hoggatt had mentioned as well as some others and accordingly arrange his trip. Wilmer talked to Frost who told him about his involvement in the Railway and Construction Companies. Frost had endeavored to further finance these enterprises in order to continue construction of the railroad which only had laid fifty-two miles of track out of Seward, operated no trains and had not yet developed any business. By appointing a receiver in May 1908, Judge Reid had destroyed the financing scheme and

caused Frost to lose \$900,000. He maintained that the allegations in the bill of complaint upon which the receiver was appointed were all false, and that Reid could have appointed a receiver under the circumstances only to provide for his brother-in-law. Still, Frost was unable to provide any facts showing that a corrupt bargain had been struck by and between the plaintiff, Ballaine, his attorney, James Wickersham, Judge Reid, the receiver or others. Nor did he produce any evidence which would have shown that the receiver fees were agreed upon to be exorbitant and thereafter apportioned among the grafters.⁶

In Spokane, Wilmer interviewed various individuals, including F. H. Graves who gave the most valuable information. He recounted that the bondholders employed him, and they and the trust company decided to foreclose and apply for the appointment of a receiver under the provisions of the deed of trust. Graves traveled to Valdez in October 1908 to file the bill to foreclose, to appear in the suit, and arrange for paying proper fees and expenses to the former receiver appointed under his bill. Graves found that neither Goodwin nor J.M. Lathrop, the receiver's assistant, or Judge Reid had considered the amount of compensation to be allowed to the receiver and his assistant. The two men then rendered an account of expenses incurred which came to \$2,500. Graves agreed to pay that, and proposed that Goodwin should receive \$7,500 and Lathrop \$2,500. The total amount paid, Graves stated, was well within the sum his clients had authorized for these purposes. Graves was pleased with the settlement because he found it inexpensive, in fact "very much less than he would have been willing to accept for similar service." Goodwin made his report in accordance with the agreement, and asked the court to sign an order allowing the fees and expenses agreed upon. Judge Reid had not been consulted. He merely signed the order in open court. Graves stated that while Reid "did not impress him as a profound lawyer..." he did seem to be "an honest,

straightforward man and a fair-minded judge." The court appointed O.G. Laberee as the new receiver, and Graves requested the appointment of Goodwin as a co-receiver to coach the new man, but to serve without compensation. This was done. Graves also told Wilmer that the appointment of a receiver in May 1908 "was the best thing that could then have been done for the bond holders and for other legitimate interests in the Railway and Construction Companies."⁷

Along the way to Alaska, Wilmer interviewed as many of the principals in the tangled business deal as time would permit. The investigator was careful to impress upon everyone with whom he talked the confidential nature of his investigation. He wanted to avoid any leaks to the press, but before he left Seattle for Alaska on the Ohio, the town's newspapers had carried comments detailing Reid's appointment of his brother-in-law as receiver and that he had been ordered to Washington to answer charges. Apparently Wilmer's confidential investigation was still that and nobody had given the press any information. While on board the steamer, the investigator talked to the twenty-odd passengers. Most praised Reid and expressed regret that he should be under a cloud because of the receivership matter. They spoke of his promptness and fairness in dispatching the court's business, and favorably discussed his actions and efficiency in closing saloons and dance houses and in repressing vice. One individual described "the marked improvement in conditions in and about Fairbanks since Reid had been judge" and stated that "the only people there who were unfriendly to him were the saloon, dance-house and brothel-keepers, and those traders who profited by the custom of these keepers." In fact, before Judge Reid "imposed restraints and inflicted punishments a reputable woman dreaded to walk the streets from apprehension of the dissolute."⁸

Two passengers, however, made remarks which caused Wilmer to consider "whether or not it would be my duty to inquire into the character and conduct

of Judge Reid's appointees" which might reveal facts corroborating the charges of corrupt dealings in appointing his friends which might "make another, or different, case against him." Some individuals condemned Reid's import of men from Oklahoma to supplant Alaskans in desirable jobs. The term "Oklahoma Bunch" applied to them was used as a term of reproach. Passengers accused one of the appointees of being a grafter, but believed that Reid neither knew about or profited by the alleged misdeeds of his appointee. Wilmer decided to investigate all of these matters more carefully once he had arrived in Alaska.⁹

In Juneau, the investigator met with R.V. Ray, one of Frost's attorneys and also the assistant U.S. attorney headquartered at Seward who happened to be in town on business. The two went to Ray's hotel for the interview. Ray told Wilmer that a cablegram had been received from Juneau giving the information that he was a passenger on the Ohio bound for Valdez to investigate the charges against Reid. The Juneau newspaper had published it, so now the investigation had become common knowledge. When asked if he believed that the judge had shared in Goodwin's receiver fee, he emphatically answered "yes," stating that the fee "had been fixed and allowed at the time of the appointment of Goodwin...." Asked for proof, Ray went to get a copy of the order which would show the date. On his return, however, Ray stated that "I find I am mistaken; I take back all I have said." But why, Wilmer wondered, had Ray displayed such strong animus against the judge? He soon discovered the reason when Ray remarked that before his marriage to the young woman who had recently become his wife Reid had advised her not to marry him. This fact had nothing to do with the truth or falsity of the charges against Reid, Wilmer observed, but it did illustrate a feature of the Alaskan character, namely "the making or repeating of charges against any one held by the complainer in disregard for personal, social, political or other reasons." In fact, one northern resident

assured Wilmer that "if one of the Apostles should come down from Heaven to assume office in Alaska, or if an emissary should come from the Almighty, charges would be made against him within forty-eight hours." Alaskans were obviously cantankerous, Wilmer stated, and delighted in demanding that their federal officials be investigated whenever they were displeased by their actions. A recent copy of the Valdez Daily Prospector lend further credence to this propensity. It told the story of how Judge Wickersham, who had been the victim of charges when on the bench and who had been much investigated, once told a leading member of the bar that "you are the only lawyer in Alaska who ever lost a case in may Court who did not immediately demand an investigation of the Judge."¹⁰

The Ohio docked in Valdez on January 31, 1909. Wilmer described the town as containing about 1,000 residents, 13 saloons and 3 churches. He rented a room at "The Saint Elias," the only hotel which did not sell liquor. During the ensuing week Wilmer examined the record and all papers filed in the case of "John E. Ballaine, suing for and on behalf of himself and for...all other stockholders, bondholders and persons similarly interested in the property, stocks and bonds of defendant corporations, Plaintiffs, vs. The Alaska Railway Construction, a Corporation, The Tanana Railway Construction, a Corporation, A.C. Frost and H.C. Osborne, Defendants." Wickersham had filed the voluminous bill of complaint for Ballaine. It summarized the history of the two corporations together with the involvement of Frost and Osborne. The two entrepreneurs, among other stipulations, had agreed to finance and build the railroad in a 1904 contract. They also had agreed not to increase the indebtedness of the companies. As railroad construction proceeded, the two had promised to pay about seventeen percent of the common stock, "and in the aggregate the sum of \$4,000,000 par value" to Ballaine and his associates. In return for these

promises, the owners of the two companies immediately transferred all the stocks and bonds to Frost and Osborne. Now in full control, the two entrepreneurs put themselves and their men on the board of directors. In June of 1906 the two launched a second mortgage and trust deed authorizing the issuance of \$30,000,000 of first mortgage bonds. Frost and Osborne then took the bonds of the second mortgage and trust deed and falsely represented them to be bonds secured by a first mortgage and trust deed upon the property. In short, the two overcapitalized the companies and then skimmed the cash and terminated construction. It was a clever scam, and they used the money thus gained for speculative purposes.¹¹

Frost allegedly had mismanaged other companies in the same fashion, including the Chicago and Milwaukee Electric Railway Company, and all had been placed in receivership and were threatened with bankruptcy. To make matters worse, the right-of-way and roadbed of the Alaska Central Railway was deteriorating and agents of Frost and Osborne had already sold thousands of dollars worth of equipment of the two companies. Judge Reid, after studying the complicated financial arrangements, had ordered the appointment of Goodwin as receiver to safeguard what remained of the companies.¹²

At the request of Graves who represented the bondholders of the first mortgage and deed of trust, the judge had ordered that all the papers in the case be moved from Fairbanks to Valdez in order to enable Graves to file a suit in behalf of The Trusts and Guarantee Co., Ltd. against Frost and Osborne and their companies as well as Ballaine. As already stated, Graves succeeded in having Judge Reid appoint a new receiver and also to allow Goodwin's fees and expenses. Wilmer had gained much understanding of the affairs of the Railway Construction Companies, and had become convinced of the truth of many of the allegations in the bill of complaint which resulted in Goodwin's appointment as

receiver. The investigator discovered that no one had condemned the appointment of Goodwin as unlawful, in fact, no member of the Valdez bar seemed to know the statutes prohibiting the appointment of relatives by a judge of a court of the United States. The provisions of these statutes had never before been invoked in Alaska, and Wilmer gained the impression that Reid knew nothing of them. Neither could any evidence be obtained to show that Goodwin and Reid had agreed upon a fee-splitting scheme. Wilmer had talked with every member of the Valdez bar, and two members of those had informed him that at least one of Reid's appointees had shown bad conduct, although neither believed that Reid was implicated. Nearly all questioned replied that if Judge Reid fired these undesirable appointees, he would be wholly acceptable as judge, and "that such a riddance would be complete answer to all charges and would allay all suspicions." Other thought that Reid's appointees were no "worse than others," but considered it "bad policy to bring strangers into the Territory to supplant old residents."¹³

Reid had made 19 appointments, including 3 deputy clerks. Of these, 11 were reappointments, including 3 deputy clerks. Of the 8 new appointments, 5 constituted the "Oklahoma Bunch," namely O.A. Wells, the clerk of the court, two deputies, A.L. McDonald and G.F. Gates, all at Fairbanks; W.T., Beeks, the U.S. commissioner at Valdez, and Goodwin, the receiver and former U.S. commissioner at Fairbanks. There was no doubt that Judge Reid's reputation had suffered because of his relationship with them. For example, in early February the Valdez Daily Prospector remarked that Reid had made mistakes," particularly in his appointments, and his worst mistake has been in standing by fool friends." Specifically, the paper designated Fairbanks clerk of the court Oscar A. Wells and his deputy clerk, A.L. McDonald. "These men have been millstones around Judge Reid's neck for many months and he ought to have fired

both of them long ago. They have brought more disrepute upon him than all other causes combined." The two were charged with having made the clerk's office a political headquarters; that some individuals in that office were connected with the "Federation of Labor" which resulted in packed juries and miscarriages of justice; that McDonald had some connection with the "California Saloon." He allegedly had received \$1,000 from the proprietor for having used his influence with the court to have a previously revoked license restored; that Beeks maintained business relations with one "Dell" Clark, alleged keeper of a notorious place in Valdez, who had escaped punishment through Beek's intervention; and that Charles A. Parkes, court stenographer, appointed by Reid, was crooked, faithless, and a grafter and that he spied on Judge Reid.¹⁴

On February 7, 1909, Wilmer cabled the attorney general giving him the results of his investigation so far. On the whole, those interviewed considered Reid to be an upright judge who meant to be fair and who dispatched the business of the court in a prompt and efficient manner; that his rulings were fair, and that he imposed adequate sentences impartially. Respondents considered Reid honest and efficient in his efforts to suppress dance and gambling houses and to restrict certain inevitable immoral practices. In the mass of charges, countercharges, exaggerations, rumors, and suspicions, Wilmer had found no evidence of graft, corruption or lack of judicial integrity on the part of Reid in either appointing Goodwin or in allowing the fees and expenses critics had complained about. It was undeniable, however, that Goodwin was Reid's kinsman and has been his former law partner in Oklahoma. The judge obviously trusted Goodwin and had probably desired to benefit him financially by the appointment. Wilmer was convinced that Reid was unaware of the prohibition against appointing relatives to office.¹⁵

Wilmer found no fault with Reid's appointment of the receiver in May, 1908 and pointed out that fees and expenses had been agreed upon by Graves, Goodwin and Lathrop without Reid's knowledge. The judge subsequently had signed the order in open court. Only since Wilmer's arrival in Alaska in January 1909 had attorneys for Frost filed exceptions, and the matter was still open and might be reviewed on appeal. No evidence was found that Reid had profited by the alleged misdeeds of some of his appointees beyond the fact that he brought these individuals with him from Oklahoma. Wilmer suggested that Reid be allowed to investigate the charges against his subordinates and discharge those found guilty, thus clearing himself of suspicion and strengthen his judgeship. If Reid refused to follow this course of action, then he should be removed immediately.¹⁶

The attorney general concurred with Wilmer's recommendation. Before he had a chance to talk with Reid, however, who was on the trail between Fairbanks and Valdez, Wickersham, now the delegate-elect to Congress from Alaska arrived in town on his way to Seattle and Washington, D.C. The two men had a long talk. The delegate-elect stated that he knew of nothing in the receivership matter which implicated Reid, and that he had not objected to the appointment of Goodwin. Wickersham considered the clerk's office in Fairbanks to be the headquarters of a political machine opposing him, a fact of which Reid was well aware, he alleged. Wickersham thought that Reid might do well as a judge but for the company and influence the "Oklahoma Bunch" exerted, but that the judge apparently did not dare or have the courage to discharge them "on account of his relations with them." When asked whether or not he thought that Reid's usefulness as a judge was already impaired or destroyed because of all the charges, rumors and suspicious, Wickersham was noncommittal, remarking that Wilmer had to decide that question.¹⁷

On February 16, Wilmer finally met with Reid. With much emotion and occasional indignation, Reid denied every charge or insinuation against him. He told Wilmer that in August and September he had written clerk Wells at Fairbanks complaining about the political activities and conducts of some of his appointees. The judge asserted that he had never profited monetarily from any of the alleged connections or dealings of any of his appointees. He promised to investigate all charges against his appointees and if any were found guilty, to discharge them immediately. The judge denied the suggestion that "his relations with any of those appointees were such as to prevent him from doing his duty...although he admitted that his political affiliation with Beeks and McDonald had been very close in Oklahoma...." He had appointed the two to reward them for their faithful service during his campaign for the post of attorney general in Oklahoma in 1907. In short, Wilmer believed Reid's denials explanations, assertions of innocence, and his solemn assurances of fidelity to duty and discretion in all things for the future. He therefore suggested to the attorney general that Reid return to Fairbanks to resume his official duties. The attorney general concurred in the recommendation.¹⁸

Before the investigator left Valdez for Washington, D.C., however, he received a communication from Cecil Clegg, the assistant U.S. attorney at Fairbanks, who informed him that Wells and Parks possesses facts important to the investigation and that they should be heard. Wilmer immediately requested, and received, copies of the pertinent information. In sifting through the mass of new evidence, he discovered by comparing an original wire with one furnished to him that language damaging to Reid had been added. That convinced him to reject all of the documents, and to reaffirm his original recommendation.¹⁹

No sooner had Wilmer returned to Washington, D.C. and made his recommendation to retain Judge Reid when a blizzard of affidavits and communications

reached the department of justice containing accounts of alleged misconduct by Reid and demands that he be removed. For example, on April 10, 1909 Delegate Wickersham gave the attorney general a letter from J. Y. Ostrander, the leader of the bar in Valdez, recommending the removal of Reid, a recommendation which the delegate approved. Ostrander's letter contained a request, signed by most members of the Valdez bar withdrawing their wish, made the previous fall, to have Reid assigned to the new judicial division embracing Valdez. There were various reasons which had caused this change of mind. First off, Wilmer's report and recommendation were unsatisfactory for he had investigated only the receivership problem, and not looked at the charges of graft and incompetency in Fairbanks. Ostrander asserted that "there seems to be a general unanimity of opinion that the crowd that accompanied . . . Reid . . . to Alaska are a bad lot." The judge must have been aware of this before he left for the north. Graft charges had been current for over a year, and yet Reid had taken no action until directed to do so by Wilmer. Notwithstanding all of this, the Valdez bar had tried to make the best of a bad situation and "so far as possible, supported Reid." And although Ostrander could not complain about the judge personally because he had been very unsuccessful in all of his cases, he had nevertheless "become convinced, by the happenings of the last two or three months that Judge Reid is absolutely unfit for the position now held by him." Since arriving in Valdez from Fairbanks, Reid had been hospitalized "in a state of partial collapse." The physician in charge of the hospital had made it known that Reid had "no disease or ailment that should confine him in the Hospital or prevent him from returning to Fairbanks" to assume his duties. Valdez residents who at first had sympathized with Reid now ridiculed him. They obviously did not recognize a nervous collapse as a legitimate ailment. Ostrander observed that the judge seemed "afraid to act in matters submitted to

him whether because of fear of persons, or from moral cowardice, or both, is not clear." Yet he continued to talk a great deal about his honesty and fearless disposition, matters he should leave to be determined by his constituents "and not undertake to settle it by judicial ukase." Ostrander considered Reid to be a man of little learning, and without experience "that is sometimes a fair substitute for learning." Ostrander concluded that Reid was "without moral or physical courage, both of which qualities are essential to the satisfactory and efficient discharge of the duties of his high office." Therefore, Reid had to be removed and a proper man appointed in his place.²⁰

In the meantime, administration had changed and the new attorney general called for a another investigation, occasioned by the voluminous affidavits and other documents filed with the department of justice since L.A. Wilmer had delivered his report. The attorney general instructed the U.S. attorney at Fairbanks to secure affidavits from those individuals who had wired or written to the department making charges against Reid. All documents were duly copied and made available to the judge. Reid submitted answers to all of them. On May 26, 1909, the attorney general submitted his report to President William H. Taft.²¹

The document summarized the various charges which had been levied against the judge since his arrival in Alaska in 1907. Contrary to Reid's contention that he had not known about the prohibition against the appointing relatives to office, E.J. Stier, the ex-clerk of the court had called the judge's attention to the statute in April 1908. O.A. Wells, ex-clerk of the court testified that he had informed the judge of the same statute in the presence of Charles E. Parkes, the official court stenographer from January 1908 to March 1909. Reid, on the other hand, had sworn that he was unaware of the matter until the attorney general called his attention to it. Actually it was immaterial

whether or not the judge's attention had been called to the statute. It was totally improper for him to have appointed his brother-in-law first as U.S. commissioner and then as receiver.²²

As to the fees and expenses allowed, it may well have been that the attorneys for the various parties agreed to them, but the fact that Goodwin was Reid's brother-in-law may well have suppressed the objections and comments which would otherwise have been made. A charge had been made that Reid accepted free transportation for himself and members of his family in traveling to and from Valdez to Seattle from Thomas McGowan, the counsel for Northern Navigation Company. Reid admitted that he and his party had been offered free transportation on his first trip. "If that is wrong, I committed it." On another occasion he received half fare from Skagway and told McGowan to pay the refund to Goodwin to whom Reid owed some money. In any event, the judge had stated that the Northern Navigation Company had no suits pending in his court. The attorney general concluded that the judge had acted improperly.²³

W.T. Beeks, the deputy clerk at Valdez appointed by Reid, agreed with ex-clerk of the court Edward J. Stier to hire C.E. Parkes, the official court stenographer, to transcribe records on the condition that Parkes divide the fees paid to him. The stenographer did the work for which he charged \$200, and gave half of that to Beeks. In addition, Parkes paid Beeks another \$35 out of the \$100 he had retained. O.A. Wells, on learning of what had happened, wrote Reid on September 11, 1908, enclosed an affidavit and requested that the grand jury in Valdez be authorized to make an investigation. Reid never mentioned the letter nor conducted an investigation. The kickback scheme continued, apparently sanctioned by the judge. Beeks denied these allegations, as did Reid. In short, the judge was unable to satisfactorily explain why he failed

to act on these charges, and his disclaimer of knowing about the situation left the impression that he was unwilling to interfere in the practice.²⁴

Another accusation was that Reid charged for subsistence in excess of amounts actually paid, and procured false vouchers to collect the difference. Court officials since removed at the suggestion of investigator Wilmer had made these allegations in their affidavits. Reid emphatically denied these charges, but the attorney general stated that the truth of the whole business could hardly be ascertained without an investigation by the grand jury. And finally, Judge Reid had surrounded himself with individuals with bad character who created an atmosphere of fraud and corruption about his court. Ironically, his former appointees whom he had recently removed had sworn affidavits damaging to Reid. They were all from Oklahoma, and, as already stated, known as the "Oklahoma Bunch." In any event, the affidavits clearly revealed that these people were unscrupulous men who were using their intimacy with the judge for their financial advantage and prejudiced the judge in the eyes of the community.²⁵

The attorney general concluded that Reid had committed no great crimes, but rather had shown a lack of judgment and discretion which showed his unfitness for his position. He recommended that "a due regard for the administration of justice in Alaska demands the removal of Judge Reid from his incumbency." The President agreed, and accepted Reid's resignation on June 14, 1909.²⁶

The record dealing with the investigation of Judge Reid is voluminous, often contradictory, and confusing. What clearly emerges is the picture of a man, not confident in his own abilities, who relied too heavily on his close associates. Their misdeeds brought him disrepute, and even when he discovered

that his "Oklahoma Bunch" acted unlawfully, he closed his eyes to their misdeeds. This, eventually, proved fatal to his career as a federal judge.

FOOTNOTES

1. Attorney General A. Mitchell Palmer to Senator Wesley L. Jones, December 21, 1920, General Records of the Department of Justice, R.G. 60, N.A.
2. Evangeline Atwood and Robert N. DeArmond, Who's Who in Alaskan Politics (Portland, Oregon: Binford & Mort, 1977), p. 83; Judges of the United States, 2nd edition, published under the auspices of the Bicentennial Committee of the Judicial Conference of the United States (Washington: Government Printing Office, 1983), p. 415.
3. Attorney General to Jones, December 21, 1920, General Records of the Department of Justice, R.G. 60, N.A.
4. Memorandum, "Relation to the Charges against Silas H. Reid, Judge, Third Division of Alaska, and the Investigation Thereof made by L. Allison Wilmer, Special Assistant to the Attorney General," April 22, 1909, General Records of the Department of Justice, R.G. 60, N.A.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid.
9. Ibid.
10. Ibid., Valdez Daily Prospector, January 13, 1909.
11. Memorandum, "Relation to the Charges against Silas H. Reid....," April 22, 1909, General Records of the Department of Justice, R.G. 60, N.A.
12. Ibid.

13. Ibid.
14. Valdez Daily Prospector, February 1, 1909; Memorandum "Relation to the Charges against Silas H. Reid....," April 22, 1909, General Records of the Department of Justice, R.G. 60, N.A.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.
20. James Wickersham to Attorney General, April 10, 1909, J.Y. Ostrander to Wickersham, March 27, 1909, General Records of the Department of Justice, R.G. 60, N.A.
21. "In the Matter of the Charges against Silas H. Reid, Judge, Third Division of Alaska," May 26, 1909, General Records of the Department of Justice, R.G. 60, N.A.
22. Ibid.
23. Ibid.
24. Ibid.
25. Ibid.
26. Ibid.

PELAGIC SEALING IN THE BERING SEA

On July 16, 1906, a clear and pleasant day, four Aleut watchmen, John Fratis, Innokenti Sevick, Aleck Murculoff, and Mike Kosloff observed Japanese schooners lying near shore at the Northeast Point fur seal rookery, on St. Paul Island, well within the three-mile territorial limit. Walter I. Lembkey, the Commerce Department's agent in charge of the Seal Islands, as the Pribilofs were then known, was notified by the Aleuts. He arrived within a short time and observed a sailboat leave the schooner. After a while the boat landed and its six crewmen climbed the cliffs behind the beach to a grassy plateau above. Here they conferred among themselves and pointed in various directions. At that point, Lembkey and about thirty Aleuts apprehended the Japanese, searched them, but found no weapons. Lembkey then examined the boat which had been pushed ashore and found that it contained six crude large and one small club, two skinning knives and a sharpening steel, several poles with hooks on the ends, an almost full water cask, and food.

The next morning a dense fog covered the island when John Fratis and Michael Kosloff discovered three Japanese landing from another boat. The poachers ignored orders to surrender, and the Natives fired three warning shots in front of the boat as it attempted to pull away. The two waited a couple of minutes for the effect of this warning salvo. The boat still moved, so they fired into it, killing two Japanese and wounding another. The boat drifted ashore, and Lembkey, who had arrived at the scene in the meantime, searched the boat. He found two bodies and the wounded man, two shotguns and shells, and a dead seal, a cask of water and some food. Lembkey called a physician and administered emergency care to the wounded man. All day the Americans heard

gunfire as approximately seven boats from the Mei Maru continued their poaching activities just offshore, hidden by the fog.¹

That evening, crewmen from at least three schooners engaged in raids on two rookeries. Native guards fended off attempts to take seals from the Zapadni rookery, while a larger landing party consisting of perhaps the entire crew of one ship in five boats landed undiscovered at Northeast Point until they had killed about 200 seals. Lembkey and his force of Aleuts eventually reached Northeast Point and ordered the poachers to surrender. Unarmed, the Japanese attempted escape, whereupon Lembkey's men opened fire, killing three and capturing five. Several boats escaped with about 120 seal skins.² By now the Americans had captured twelve Japanese poachers, including two wounded, and killed five others. On only one occasion did the Japanese carry firearms, and these were shotguns used to kill seals.

On the evening of August 6, 1906, a deputy U.S. marshal arrived in Valdez with the twelve Japanese prisoners charged with illegal sealing on St. Paul Island. Lembkey and four Natives, John Fratis, Innokenti Sevick, Aleck Murculoff, and Mike Kosloff, accompanied the prisoners as prosecution witnesses.

A few days after the arrival of the party, and after the judge had communicated with the department of justice, the cases were presented to the grand jury then in session. That body returned three indictments, and the defendants were arraigned through an interpreter, a fellow by the name of Brooks. They stated that they desired to be represented by legal counsel, but lacked the funds to employ anyone. Thereupon the judge appointed John Y. Ostrander and J. W. Leedy of Valdez, and L. V. Ray of Seward as counsel for the defendants. The attorneys filed demurrers to each indictment, and the indictments were held to be defective, sent back to the grand jury, and three new indictments were

returned. The first one charged K. Heoka, M. Kamie, T. Shikora, R. Mashida, and D. Oto with killing seals on St. Paul Island. Arraigned, the five pleaded "guilty" the next day. The next indictment charged Kozo Matsumoto with killing seals and using fire arms in the waters adjacent to St. Paul Island. The defendant entered a plea of "not guilty." The third indictment charged the other six Japanese, namely Y. Kamada, K. Yoshida, K. Iko, C. Goto, Y. Hamazaki, and I. Ishikuro with attempting to kill fur seals. The six entered a plea of "not guilty."³

The court held the trial of these last defendants first. On the first trial, the jury was unable to agree, and after having been out for more than twenty-four hours, the judge discharged it. A new jury was empanelled and the defendants tried a second time. This trial resulted in a verdict of "guilty as charged." In the case of Matsumoto, the jury was unable to agree on a verdict after thirty hours of deliberations so the judge discharged it. Since the available jurors in the immediate vicinity of Valdez had, by this time, been almost exhausted in the Japanese cases, and the judge was convinced that an attempt to secure an impartial jury for a second trial of this case would result in delaying the court, he granted a government request for a change of venue to Ketchikan. Shortly thereafter, K. Heoka and his co-defendants pleaded "guilty as charged." Thereupon the defendants who had entered a plea of "guilty" and those who had been convicted were sentenced to three months imprisonment at the federal jail in Valdez. Judge Royal Arch Gunnison made the sentences uniform so that "there might be no confusion or additional trouble when the time for deporting the men arrived. A few hours after the others were sentenced, Matsumoto, in whose case the venue had been changed to Ketchikan, announced to the judge that he desired to change his plea to "guilty."

Gunnison vacated the venue order and reinstated the case in the Valdez court, and also sentenced the defendant to serve three months in the Valdez jail.⁴

Soon after the trial, the Japanese government dispatched Masanao Hanihara, the second Secretary of the Japanese Embassy, to Alaska to investigate the matter. The available evidence indicated that the Japanese were poaching, except perhaps in the case of Y. Kamada et. al. where the trial record indicated that the Japanese sailors had been searching for water. The prisoners were brought to Port Townsend, Washington for further questioning, and there the Japanese spokesman for the men apprehended on July 16 protested the group's innocence and stated that they had landed to obtain fresh water, not to kill seals. One of the poaching schooners, the Toyei Maru No. 2 had been identified, yet the Japanese Foreign Minister, Hayashi, told the American ambassador that he did not know of any Japanese law under which those raiders who escaped could be prosecuted.⁵

Viscount S. Aoki, the Japan ambassador to the United States, was vacationing at the Buena Vista Springs Hotel in Pennsylvania when news of the incident reached Washington. He noted the severity of the American response on the Pribilofs, and the Japan Herald stated that the Japanese believed that if the intruders had been Caucasians they would not have been dealt with so summarily. But Japanese newspapers disagreed amongst themselves, for the Japan Mail of Yokohama remarked, that the Herald should not assume to interpret the nation's feelings. The Japan Times of Tokyo agreed and observed that the Japan Herald liked to publish anything to disrupt cordial Japanese-American relations. The Times knew that there was considerable anti-Japanese feelings in some western states, but that anti-European feeling was also strong in some eastern states. It reminded its readers that American opinion should be seen with an open mind. In short, the incident did not spark an international controversy.⁶

Historian Morgan Sherwood has pointed out that certain individuals in San Francisco got excited about the Japanese poaching activities. And there existed tensions in that city about Asian immigration during the early twentieth century. Officials and supporters of Boss Abe Reuf's corrupt city government reacted in a hostile fashion to Asian immigration. Perhaps the Japanese defeat of Russia in 1905 heightened anti-Japanese feelings because it firmly established Japan as a Pacific power. Paradoxically, it is also possible that Japanese charity toward San Franciscans contributed toward anti-Japanese feelings. Three months before the Pribilof incident, a violent earthquake had destroyed much of the city and killed more than 400 of its citizens. Japan sent \$246, 000 to alleviate the suffering, more than the total contributed by all other nations. Still, the school board of San Francisco, in an act of ingratitude of considerable dimension, used the earthquake as an excuse to segregate Japanese, Korean and Chinese children in a special school, justifying the decision by stating that classroom space was limited. Japan resented the school board order, and a major newspaper stated that all Japanese had been humiliated by that action. Tensions mounted, and President Theodore Roosevelt decided to defuse the crisis. He previously had mediated the Russo-Japanese War, for which he had received the Nobel Peace Prize. He considered cordial relations between the United States and Japan to be the keystone of his Pacific policy. The President eventually negotiated a "gentlemen's agreement" by which the San Francisco school board rescinded its segregation order, and Japan agreed to restrict migration to America.⁷

The Pribilof raids contributed to the racist elements in San Francisco who inflamed Japanese public opinion, but contributed only slightly to the "Japanese-American Crisis" of these years. In the meantime, the Alaskan lawyers who had defended the poachers asked the department of justice to be

compensated in the amount of \$3,000 for the time spent on these cases. The department, however, informed the three that there was no provision in the law authorizing a payment of this kind. The three lawyers were unhappy, acknowledging that the Alaska Code did not provide for compensation of attorneys designated and appointed by the district judge to defend indigents. Still, the three wanted to know "whether the immense amount of time used, the labor involved, the loss of money had in living expenses and the many other items of loss occasioned by defending in the Japanese sealing cases is to be recompensed." L. V. Ray, one of the lawyers, added that he had suffered severe financial hardships in the Japanese poaching cases because he had been unable to handle civil cases involving substantial amounts of money. He had been compelled to be absent from Seward, his hometown, and live in Valdez, and that was an expensive proposition, and finally, the department "can readily realize what absence from a fairly large and active practice means in a financial way." Leedy and Ostrander had devoted their entire time for about three weeks to the Japanese cases. All three recognized that it had been as important to secure a fair and impartial trial as it had been to prosecute the cases. In case there was no compensation forthcoming, the three were willing to perform "charitable service" the United States Government may require of members of the Bar of Alaska, but when the same Government refuses self government to Alaska and bestows it on all except Guam and [Samoa]...we think charity in that case begins at home." The case ended when the department acknowledged that the three lawyers had suffered financial hardships in defending the Japanese sealers, but that it was "powerless to help you."⁸

The Imperial Japanese government was unhappy about the killing and wounding of its subjects on St. Paul Island. It had considered Hanihara's extensive report, and now wanted to know what formal investigation, such as a coroner's

Inquest, had been made in accordance with Chapter 37 of the Alaskan Criminal Code and code of Criminal Procedure. The department of justice pointed out that section 365 of the code required a commissioner "to inquire by the intervention of a jury into the cause of the death or wound" when reasonable grounds existed to suspect that a death was a suicide or had "been occasioned by criminal means...." The Americans maintained, however, that this had not been the case in the poaching offenses. Officers of the United States government had wounded and killed Japanese citizens attempting to kill seals on Saint Paul Island in violation of section 176-178 of the Code of Alaska. In addition, there had been a careful judicial inquiry, the accused pleaded "guilty" and had been sentenced, and the department also investigated the matter. That closed the affair.⁹

The Imperial Government apparently did not warn its citizens to stay away from the Pribilof Islands, for a year later, in July 1907, Captain J. C. Cantwell of the steamer Manning, United States Revenue Cutter Service, reported the seizure of two Japanese schooners, the Nitto Maru of Miyako and the Kaiwo of Tokyo, captained by Satura Watanuki and Iegiro Kadata, respectively, both engaged in taking seals within the three mile territorial limit of St. Paul Island. Cantwell had observed these two schooners and an additional one, and dispatched a boarding officer to warn the Japanese that sealing within the three mile territorial limit was prohibited. The two schooners mentioned had several boats out, sealing in a wide radius. Only the Kompira Maru of Tokyo showed no evidence of illegal sealing. Early in the afternoon, Cantwell saw two boats hastily pulling away from land. He hailed the boats, and one of them had a fresh seal skin. Both were equipped with the usual outfit for taking seals at sea, namely shotguns, ammunition, gigs, compass, and water keg in addition to the ordinary boat gear. Both boats belonged to the Nitto Maru.

The Manning allowed the boats to proceed and ran toward land to measure the distance, and there discovered a third boat lying under cliffs less than a quarter mile from shore. Three short blasts of the Manning's whistle indicated to the crew in the boat that they had been discovered. They pulled alongside the steamer, and Cantwell learned that the boat belonged to the Kaiwo and was taking seals. He found two fresh fur seal skins and one unskinned animal in the boat. Considering the evidence of illegal sealing complete, the Manning overhauled the Nitto Maru and Kaiwo and took both in tow. In the evening, after all the hunting boats had returned to the schooners, the Manning with the schooners in tow headed for St. George Island. Cantwell had told the Japanese captains that their schooners had not been seized but were merely retained for a further investigation. From St. George the Perry towed the two vessels to Unalaska, where the schooners and crew were turned over to the U.S. deputy marshal. By July 8, the Revenue Cutter Service had seized an additional schooner but soon released it for want of evidence, but Captain F. M. Munger, the commander of the Bering Sea fleet, suspected that other seizures would be made. Some twenty-six Japanese sealing schooners were observed around the Pribilof Islands and it was evident that all intended to hunt as close to shore as possible. The captain complained that there was no commissioner at Unalaska, necessitating the transportation of the prisoners to Unga for trial. This, however, would require valuable time "and cripple the work of the Fleet, as the Service of all the vessels is needed all the time." He requested that the commissioner and U.S. attorney stationed at Seward be sent to Unalaska. L. V. Ray, who a year earlier had acted as one of the defense lawyers in the poaching cases now had been appointed assistant U.S. attorney. Ordered to Unalaska, Ray visited the Native village of Aechok on Alatak Bay at the southwest end of Kodiak Island which allegedly had been raided by a Japanese sealing

schooner. The Japanese reportedly carried away watches, jewelry, ranges, sewing machines, stoves, and women's and men's apparel. They entirely stripped houses of furnishings while the inhabitants worked at a cannery some fifteen miles distant. When Ray visited the village he found it deserted. None of the inhabitants had yet returned from work. An investigation had failed to reveal the name of the schooner, and rumor had it that the sealer conducting the raid had a Canadian master and mate. After Ray reached Unalaska, he made arrangements that the Japanese be tried in Valdez. In August District Court Judge James Wickersham appointed Henry Fukuaga interpreter for the two groups of Japanese, numbering twenty-nine and thirty-four individuals, who had been indicted for killing seals within the territorial waters of the United States, a misdemeanor. The defendants pleaded "not guilty" as charged. Judge Wickersham tried the thirty-four men from the schooner Kaiwo first. Here the jury convicted three individuals who had taken seals close to the island, and acquitted the other thirty-one, and also convicted the captain and six crew members of the Nitto Maru while acquitting the remaining twenty-two defendants. The question then arose what to do with the crew members acquitted. The department instructed Ray that these individuals "must be returned to their vessel," located at Unalaska. Nathan V. Harlan, the United States attorney, however, had filed a libel against the Japanese schooners. He suggested that those freed be deported from Alaska by way of Seattle. In the meantime, the secretary of state emphasized that Judge Wickersham be alerted that it was of the utmost importance "that the prisoners be treated with consideration, and that their cases be dealt with in a manner so painstaking and technically correct as to preclude the possibility of subsequent complaint, while at the same time to discourage the continuance of Japanese depredations."¹⁰

Judge Wickersham sentenced the three convicted poachers of the Kaiwo to pay a fine of \$300 each, and if failing to do so, they were to serve 150 days in the federal prison in Valdez. He sentenced the captain of the Nitto Maru to pay a fine of \$500, and the six crew members to pay a fine of \$200 each, or in lieu of the fine they were to serve at the rate of one day for each two dollars imposed. The judge ordered the acquitted crew members into the custody of the U.S. marshal who was to detain them until receiving specific instructions from U.S. immigration officers. Should the two schooners be released from U.S. custody, then the crew members were to depart the United States on these vessels.¹¹

Ray and the crew of the Kaiwo left Valdez for Unalaska where they arrived on September 8. Thereupon thirteen crew members became mutinous and refused to proceed to sea unless they were furnished American food for the return voyage to Japan. The captain stated that his supplies, together with those furnished by the marshal, were sufficient for the return voyage. He was afraid of the mutinous crew members, however, and asked that American guards be posted to protect him. That was done, and on September 9, Ray formally released the schooner to the captain. The Kaiwo finally left Unalaska on September 10, but as soon as it left the docks, eleven of the crew lowered a boat and attempted to land. Officers of the Revenue Cutter Service compelled the deserting Japanese to return to their vessel, and the Kaiwo sailed off. At the end of September 1907, U.S. Attorney Harlan signed a formal memorandum of agreement with the captain of the schooner Nitto Maru. On September 26 the captain had paid the fines for himself and his crew at a reduced rate for time already served. The court agreed to transport the men to Unga where they were to take charge of the schooner and return to Japan, the department in the meantime having revoked its approval of forfeiture proceedings against the Nitto Maru.¹²

As in 1906, the judge in these poaching cases had to appoint defense counsel for the Japanese who claimed to be indigent. John Y. Ostrander and J. W. Leedy were tapped again, as was their partner, E. E. Ritchie. As in 1906, the lawyers performed credibly in cases which the United States deemed of more than ordinary importance because they impinged upon relations with Japan. The lawyers helped to demonstrate to the Japanese government and its people that U.S. courts could "at all times and under all circumstances be depended upon to administer the laws impartially and honestly, and to protect the rights of the people of all Nations." Judge Wickersham endorsed the request for compensation in the amount of \$3,000 which sum he found to be reasonable. Once again the department turned down the request, stating that it had no authority in law to make such a payment.¹³

Eventually, three prisoners were left serving their time in Valdez, and their terms were to expire in January 1908. The department desired to know if it was possible to have the three rejoin their schooner or have them taken to Victoria, British Columbia, or elsewhere, with their consent. Above all, how expensive would that be? That was a question the ever cost-conscious department of justice asked thousands of times over the years when dealing with justice in Alaska. The prisoners startled their jailers by expressing their wish to remain in Valdez. The question immediately arose over whether or not these three had to be deported to Japan or could be permitted to remain in the United States. Elihu Root, the secretary of state, argued that the men had come into the United States under arrest and without regard to the immigration laws. Therefore, it did not seem unreasonable to take the view that once released, "they should be placed...outside of American territory." The three were Japanese citizens and laborers "and presumably without passports and as such excludable" under prevailing laws. Without admitting any obligation to

return them to Japan, the question that needed to be answered was whether or not the three should be deported under the immigration laws. Oscar S. Straus, the secretary of the department of commerce and labor, thought that to allow these Japanese laborers to remain in the United States would be contrary to the immigration laws. He suggested that the three be deported under the provisions of the general immigration laws rather than under the regulations applying specifically to Japanese and Korean laborers. The immigration laws provided for deportation of aliens who had entered the United States surreptitiously, or had become "public charges from causes existing prior to landing." He argued that these men had entered the United States unlawfully when poaching, for which they were convicted; and their jail confinement had made them public charges. Straus voiced the opinion that the Japanese and Korean laborers specifically excluded were those who had received passports to enter Mexico, Canada, or Hawaii and then came "to the continental territory of the United States." Still, there remained the question whether the phrase "continental territory of the United States" included outlying territorial possessions like Alaska. In summary, however, Straus did not "regard the provisions of the immigration laws and regulations as of such a mandatory and peremptory nature, as applied to a case of this unusual character, as to imperatively require deportation, should that course be deemed...improper or undesirable."¹⁴ The record does not reveal what happened to the three Japanese poachers. It was clear, however, that the department of justice had expended considerable funds in the prosecution of the poaching cases.

Despite the efforts of the Revenue Cutter Service and the Alaska courts to enforce the laws, seal poaching continued unabated. On April 4, 1908 the deputy marshal at Sitka wired the marshal at Juneau that a Japanese sealer was anchored fifteen miles south of the city, "killing deer wholesale besides

sealing." Arresting the poachers would require the assistance of the U.S. Marines stationed at Sitka. The U.S. marshal could not compel the Marines to help, and receiving permission from Washington, D.C. would take valuable time. Marshal James McCain Shoup obtained an arrest warrant and told the deputy marshal to charter a boat and take four possemen with him. The party left Sitka on April 4, and when it arrived at the anchorage found that the sealer was gone. Reliable Natives related that the sealer had killed many deer driven to the beach by the snows, as well as waterfowl in great numbers. Unfortunately, no Revenue Cutter Service steamer was in Alaskan waters at that time to aid Shoup. In May, the steamer Perry of the Revenue Cutter Service followed the Alaskan coastline "as far as...practicable" and stopped at Sitka, Yakutat, Port Etches, Seward, and Karluk on Kodiak Island. It did not sight any Canadian sealers. On May 24 the steamer passed the Hoan Maru of Tokyo with her boats down and sealing sixteen miles west of Cape St. Elias. At Yakutat, Lieutenant F. J. Haake, the commander of the Perry, learned that the Kaise Maru had entered the harbor in search of wood and water, and left again five days later. The same vessel returned on April 29 during a gale to seek protection from the elements and left a few days later after the weather cleared. The vessel carried a Japanese crew and one Caucasian, and had not yet caught any seals. On May 10, the schooner Matsu Maru entered Yakutat harbor to repair her rudder. She also had a Japanese crew and one Caucasian, and left after a few days. Men from both vessels came ashore and traded with the Natives. They were well behaved and did not hunt.¹⁵

In May of that year, the commander of the Bering Sea fleet, Senior Captain F. M. Munger, visited Victoria, British Columbia, where he called on the U.S. consul as well as collector of customs. From the latter he received a list of six Victoria sealing schooners licensed for the 1908 season, flying Japanese

flags but commanded by Canadians. One of these had been lost at sea, which left only five vessels of the Victoria fleet. A month later Munger reported that the four steamers of the Bering Sea Patrol fleet were deployed. The vessels visited the Aleutian Islands as well as the Pribilofs. The agent on St. Paul related that he had installed rapid fire guns, his crews had been trained in their use, and they "thought themselves able to defend the rookeries." As of early June, no sealing vessels had been spotted around the islands, but then only a few seals had appeared on their annual migrations to the rookeries.¹⁶

As predicted, arrests were made. On August 2, 1908 Captain E. P. Bertholf of the steamer Bear took on board the masters and crews of the Japanese sealing schooners No. 2 Kinsey Maru and the Saikai Maru. Both vessels had been seized while sealing near the Northeast Point rookery of St. Paul Island on July 22. The Bear took them to Unga where U.S. commissioner F. C. Driffield heard the cases against them and held them for action of the grand jury at Valdez. The Bear then transferred the prisoners to the custody of the U.S. deputy marshal. The commanding officer of the Bear and other officers who had been witnesses in the cases were to appear before the grand jury at Valdez on October 1. On his patrol, Captain Bertholf talked with the masters of numerous schooners of the Japanese sealing fleet and learned that it usually left Japan in April, planning to arrive on the Fairweather Grounds in the early part of May. From there the schooners followed the seal herd as it proceeded to the westward and through the Aleutian passes into the Bering Sea. This put the main part of the Japanese sealing fleet into the vicinity of the Pribilof Islands from the middle to the end of June. Canadians were not allowed to seal in the North Pacific and Bering Sea between May and July. The Canadian sealing fleet, therefore, was not supposed to appear in the Bering Sea until after the first

of August. Bertholf found, however, that at least some Canadian vessels left Victoria, B.C. before the first of August bound for the Bering Sea. Thus, during May and part of June the Japanese sealing fleet passed along the islands of southwestern Alaska between the Fairweather Grounds and the passes in the Aleutian Islands, and during June and July, the Canadian sealing fleet passed along the same route. On many of the islands between Kodiak and Unimak Pass, there were cattle and other property belonging to individuals who not always resided there continuously. Those few who lived permanently on these islands were too few in numbers to oppose lawless acts contemplated or committed by marauding parties from the sealing fleets. The remedy, of course, was to station a Revenue Cutter Service steamer in those waters during those crucial months.¹⁷

The Japanese poachers seized in July were duly tried in Valdez, convicted, and sentenced to each pay a \$600 fine and court costs, and forfeit their vessels. If unable to pay the fine, each individual was to serve one day in the Valdez federal prison for each two dollars of fine imposed.¹⁸ It was the same story in 1909 and 1910. In short, pelagic sealing, hunting the animals on the open sea, had become a profitable business as early as the 1880s. By 1894, about 110 vessels followed the animals north to the Pribilofs each year, and American attempts at controlling this form of hunting proved to be very expensive and not effective.

Historian Morgan Sherwood has recounted that the United States first took action in 1886 when it seized three Canadian sealers. The crews were tried and one captain sentenced to thirty days in jail and fined \$500. The British protested this action, so negotiations began. Pelagic sealing continued, however, and so did American seizures of foreign vessels. An international tribunal met in Paris in 1893 to resolve the dispute and decided in Britain's

favor because the seizures had taken place outside the American territorial waters. A count showed that between 1886 and including 1893, the United States had seized a total of thirty sealing schooners in the Bering Sea. It had boarded and warned another eight-eight vessels.¹⁹

The tribunal eventually fashioned regulations designed to protect the fur seals. Killing was prohibited within sixty miles of the Seal Islands, and there was a closed season from May through July in a wider area around the islands. In order to hunt during the open season, vessels had to be licensed, and nets, explosives, and firearms, except shotguns, were forbidden. Alas, Japan did not become a party to the agreement and announced that it would not abide by the regulations the tribunal had imposed. The Imperial Government thought it unfair to prohibit its subjects from hunting seals in the specified area when others were allowed to kill the animals between the unprotected area and Japan. In 1897, President William McKinley put the settlement of the "Bering Sea Controversy" at the top of his foreign policy priorities list, but it proved to be unyielding. By the first decade of the 20th century, Japan was the only major nation engaged in pelagic sealing. By 1910, twenty-five Japanese schooner hunted fur seals, often near the Pribilofs.²⁰ Revenue cutters regularly seized Japanese schooners and their captains and crews were tried in Valdez, at great cost to the government. In the meantime, the fur seals did not fare well.

Estimates made in 1860 placed the number of fur seals at approximately five million animals. By 1910, only about 125,000 fur seals remained. It had become clear that an international agreement was needed, which had to include Japan, to protect these animals. Finally, in 1911, Japan, Russia, the United States, and Britain (for Canada) signed a treaty of conservation limiting the hunt and restricting pelagic sealing. It was the first international agreement

these four Pacific nations had signed. In 1940 the Japanese abrogated the treaty, claiming that the fur seals hurt the fishing industry; but in 1955 agreement was reached once again when the original signatories ratified the North Pacific Fur Seal Convention. Only Indians, Eskimos, Ainus, and Aleuts, living on coasts contiguous to the convention waters are allowed pelagic sealing "in canoes...propelled entirely by oars, paddles or sails and manned by not more than five persons and without the use of firearms." Canada and Japan each receive fifteen percent of Russian and United States fur seal harvests.²¹ These agreements have worked well. It took a long time to work them out, and the federal government spent considerable sums to prosecute poachers in the first decade of the 20th century before the agreement was reached in 1911. It comes up for renewal in the mid-1900s and thoughtful conservationists hope for its renewal because they would like to prevent a recurrence of the wasteful practice of pelagic sealing.

FOOTNOTES

1. Royal A. Gunnison to Attorney General, October 16, 1906. Transcript of Testimony, No. 78, The United States of America versus Y. Kamada, K. Yoshida, C. Goto, Y. Hamazaki, K. Ito, and I. Ishokuro, Defendants, August 23, 1906, United States versus Kozo Matsumoto, No. 77, Transcript of Evidence, August 29, 1906, United States versus Y. Kamada, K. Yoshida, K. Ito, C. Goto, Y. Hamazaki, and I. Ishikuro, No. 78, Transcript of Evidence, August 27, 1906, Department of Justice Files, R.G. 60, N.A.
2. Morgan Sherwood, "Seal Poaching in the North Pacific: Japanese Raids on the Pribilofs, 1906," Alaska History, vol. 1, fall 1984, p. 45.

3. Royal A. Gunnison to Attorney General, October 16, 1906, J. W. Leedy, L. V. Ray, and John Y. Ostrander to Attorney General, October 10, 1906, Department of Justice Files, R.G. 60, N.A.
4. Gunnison to Attorney General, October 16, 1906, Department of Justice Files, R.G. 60, N.A.
5. Sherwood, "Seal Poaching.....," p. 46.
6. Ibid.
7. Ibid., p. 48.
8. J. W. Leedy, L. V. Ray and John Y. Ostrander to Attorney General, October 10, 1906, Acting Attorney General to Messrs. Leedy, Ray & Ostrander, November 7, 1906, L. V. Ray to Attorney General, December 10, 1906, Attorney General to Ray, December 28, 1906, Department of Justice Files, R.G. 60, N.A.
9. Viscount S. Aoki to Robert Bacon, Acting Secretary of State, January 19, 1907, Bacon to Attorney General, January 26, 1907, Attorney General to Secretary of State, February 4, 1907, Department of Justice Files, R.G. 60, N.A.
10. J. C. Cantwell to Captain F. M. Munger, U.S.R.C.S., Commanding Bering Sea Fleet, July 3, 1907, F. M. Munger to Secretary of the Treasury, July 6, 1907, Munger to Secretary of the Treasury, July 8, 1907, Attorney General to L. V. Ray, July 15, 1907, United States of America vs. S. Watanuki et. a., Order No. 107, August 16, 1907, United States of America vs. E. Kadota et. al., Instructions to Jury, August 19, 1907, Attorney General to Secretary of State, August 23, 1907, Acting Secretary of State to Attorney General, August 27, 1907, Department of Justice Files, R.G. 60, N.A.

11. United States of America vs. E. Kadota et. al., Judgment and Sentence, August 21, 1907, James Wickersham, Order, August 21, 1907, Department of Justice Files, R.G. 60, N.A.
12. Ray to Attorney General, September 30, 1907, Memorandum of Agreement, Nathan V. Harlan and S. Watanuki, September 27, 1907, Ray to Attorney General, November 1, 1907, Department of Justice Files, R.G. 60, N.A.
13. Ostrander, Leedy and Ritchie to Attorney General, August 23, 1907, Attorney General to Ostrander, Leedy and Ritchie, October 8, 1907, Department of Justice Files, R.G. 60, N.A.
14. Nathan V. Harlan to Attorney General, October 16, 1907, Department of Justice to U.S. Attorney, December 28, 1907, Elihn Root to Oscar S. Straus, Secretary of Commerce and Labor, January 8, 1908. Straus to Root, January 9, 1908, Department of Justice Files, R.G. 60, N.A. The following compilation by Edward J. King, the American Consular Agent at Hakodate, Japan, gives some impression of the dimension of the problem:

REPORT ON JAPANESE PELAGIC SEALING VESSELS
FOR THE HUNTING SEASON OF 1907
COMPILED BY EDWARD J. KING, AMERICAN AGENT AT
HAKODATE, JAPAN

Thirty Eight vessels under the Japanese flag engaged in the hunting of fur seals and sea otters during the season of 1908, taking in all: 13,524 fur seal skins and 78 sea otter skins. In addition to this 132 seals were taken by fishermen in nets along the coast and 14 seals were taken by hunters on Raikoke Island in the Kuriles, the total number of seal skins taken therefore being 13,770.

Comparing these figures with my report on the subject for 1907, they show an increase of two vessels, while the catch shows an increase of 3,265 seals and an increase of 39 sea otter skins taken.

1,974 seal skins were taken during the Spring months and in the early Summer off the east coast of Japan and in the Japan Sea. 11,649 seal skins were taken off the American coast in the Spring and during the Summer months in the Behring Sea and off the Commander Islands.

The 78 sea otters were nearly all taken close to the Commander Islands and also in the vicinity of Kadiak Island.

One vessel, the Third Tohoku Maru, was sunk in a collision off the Kuril Islands. One vessel, the Miye Maru was seized off the Commander

Islands and is now at Petropaulski. Two vessels, the Kinsei Maru and Saikai Maru, both of Hakodate, were seized in the Behring Sea.

29 vessels hunted during the Spring and early Summer around the coast of Japan and in the Japan Sea. Nine of the larger vessels fitted out for the whole season and crossed the Pacific, hunting off the American Coast and on what are known as the Fairweather Grounds and all of them entered the Behring Sea towards the end of June. The schooners that hunted on this side of the Pacific during the Spring, landed their catches at Hakodate in May and June, and then proceeded as in former years to the Commander Islands and the Behring Sea. Out of the 29 schooners probably 22 proceeded to the Behring Sea, so that in addition to the nine schooners that crossed over, there were no less than 31 Japanese vessels hunting in the vicinity of the American rookeries in the Summer.

Early in the season one vessel, the schooner Kaisei Maru, raided the seal and sea otter rookery on the northern end of Copper Island, securing 65 seal skins and 11 sea otter skins. The crew of the vessel also plundered the village of the natives, destroying what they could not take away, after which the vessel returned to Japan.

About two weeks after the natives returning and finding that during their absence their property had been destroyed, sent word of the outrage to the Russian Governor on Behring Island, and the commander of the Russian guardship which arrived shortly after was also informed. The Russian guardship sailed immediately on receiving the information and on the following day sighted the sealing schooner Miye Maru off Copper Island, and suspecting her as the vessel responsible for the raid seized her, she being at the time eight miles off Copper Island.

The vessel was towed to Petropaulski and the crew sent to Vladivostock via Nicolaefski for trial. While the crew were at Nicolaefski a fracas occurred between the Russian guards and the Japanese prisoners during which some of the Russians were badly injured. The crew of the Miye Maru were summarily tried by court martial and six of them condemned to death. They were however pardoned and later the whole of the crew were released. The Japanese Government protested against the seizure of the vessel as she was eight miles distant from the islands, therefore well outside of three mile limit. The Russian commander having seized the vessel no doubt under agreement of 1892 between the United States, Great Britain and Russia, by which all vessels inside of the 50 mile line were liable to seizure and confiscation.

The owners of the vessel, the Dai Nippon Engiyo Giongiyo Kaisha, (Great Japan Deep Sea Fishing Company) of Tokio, were informed that the vessel would be returned to them at Petropaulski, but instead of receiving the vessel, the Company claims that on account of the usage the vessel has received from the Russian authorities the Miyo Maru is at present valueless and they have therefore presented a claim through the Japanese Government for Ten 80.000.000 damages.

On their return from the Behring Sea the 1st and 2nd Tohoku Maru, also the Boso Maru raided the rookeries on Copper Island and secured a number of seals. They were surprised by the Russian guards and five of the crew of the 1st Tohoku Maru were killed while seven others were wounded, and 12 of the crew of the Boso Maru were captured, their trial not having taken place as yet.

Quite a number of the skins taken in the Behring Sea were landed at this port and from an examination that I made of them I am ready to state that many of them were killed on the rookeries; there being no shot holes

in the skins, while they were also covered with more or less sand showing that they had been skinned ashore. This especially applies to the skins taken by the following vessels. 2nd Toyei Maru. Unohi Maru. Kompira Maru and Kaiko Maru.

I may here say, what it is much more difficult to obtain information from the sealers than in former years. Whereas formerly there was no trouble in obtaining any and whatever desired information, at present the crews of the vessels are very reticent.

By careful questioning I have however ascertained, that many of the otter skins were taken in American territorial waters, and it would be well if a number of Revenue Cutters were detailed to watch the vicinity of Kadiak Island, Semidi Island and Sannak Islands. There is no doubt that the 19 sea otter taken by the Midori Maru, were caught in this vicinity. The Japanese sealers also say: that quite a number of the Victoria sealers hunt otter around these islands. The time that the otters are hunted is usually in May and June.

From information received in Japan the schooners Kinsei Maru and Saikai Maru were seized off the Pribilof Islands and the crews heavily fined and this is a step in the right direction. I would however once more call the attention of our Government to the fact: that according to an Imperial ordinance issued on the 12th of June, 1906, the owners of Japanese sealing vessels are prohibited from hunting within thirty miles off Robben Island, the rookery acquired by the Japanese Government by the cession of the southern half of Saghalien. How then, can the Japanese Government, consistently claim the right for its subjects to hunt seals up to three miles off the Pribilof Islands.

I have already pointed out on various occasions that these vessels are breaking a Japanese law by being in the Behring Sea, as they are only licensed for the home trade in the northern and eastern limits of which are 50 North Lat. and 160 East Lon. At present this law is not enforced, or at least no notice is taken of the vessels going beyond these limits. I would suggest that in future when Japanese sealing schooners are boarded by American vessels in the Behring Sea, that the log books of the Japanese vessels be endorsed to the effect that on this date the vessel was in such and such latitude and longitude, outside of the limits in which she was licensed to ply.

The principal sealing company here, the Dai Nippon Engiyo Kaisha, paid a dividend of 8% last year, that being the first year of its existence. During the present year, despite the fact that two vessels were seized, the company will probably declare a dividend of 20%. The total number of skins taken by the companies vessels is 4,556 seal skins and 58 sea otter skins. All the other vessels made good returns to the owners. Detailed account of the vessels and their catches is as follows:

Vessels Name	Spring Catch	Fall Catch	Sea Otters
Kinsei Maru, (1) (2)	?		
Tenyu Maru	142	377	
Kompira Maru	70	396	19
Tora Maru, (2)		376	2
Sei Fu Maru,	68	109	
Eitoku Maru	45	174	
Miye Maru, (1)	?		
Hokuyo Maru, (3)		489	2
Matsu Maru, (2)		299	
Hoan Maru, (2)		433	
Domei Maru,	59	347	
Hosho Maru,	98	417	
Kaiwo Maru, (2)		535	
Kaiko Maru,	37	80	
Tokiwa Maru, (3)		4	17
Midori Maru, (3)		1	18
Saikai Maru, (1) (2)	?		
Unoho Maru,	59	428	
Chiyokuni Maru,	96	592	
Tokai Maru, (3)		582	
Nitto Maru, (3)		660	
1st Tohoku Maru,	148	168	
2nd "		430	
3rd " (4)	51		
Eiun Maru,	131	363	
1st Chitose Maru,	212	437	
2nd "	272	463	
Koyei Maru, (2)		330	2
Kaisei Maru,	65		11
Gongen Maru, (2)		568	
Oshima Maru,	51	167	
Boso Maru,	151	413	1
2nd Toyei Maru, (2)		896	
Houkou Maru,	56	395	
Iwaki Maru,	14	268	
Hokushin Maru, (5)	48		
Kofuji Maru,	45	217	6
Chidori Maru,	79	213	
Taken in Fish Nets	132		
Taken in the Kuril Islands,	14		
Total,	2,143	11,627	78

Remarks.

(1) Vessels seized. Catches unknown.

(2) These vessels hunted on the American coast crossing over from Japan in the early part of the year. As their catches were landed at one time I have been unable to ascertain how many of the skins were taken off the coast and how many in the Behring Sea.

(3) I have been unable to ascertain whether these vessels hunted on this side of the Pacific or on the American side, so that the number of vessels crossing over was in reality 14 instead of 9.

(4) This vessel was lost.

(5) This vessel was dismantled and had to return.

Former reports on this subject are dated: 12/5/04. 3/8/04. 28/10/04.
16/10/05. 28/2/06. 22/8/06. 27/8/06. 27/8/06.6/9/06. 22/11/06. 4/11/07.

E. J. King
American Consular Agent,
Hakodate, Japan.

Department of Justice Files, R.G. 60, N.A.

15. James M. Shoup to Attorney, April 16, 1908, Attorney General to Secretary of the Navy, May 5, 1908, Lieutenant T. J. Haake to Captain F. M. Munger, May 30, 1908, Department of Justice Files, R. G. 60, N.A.
16. Munger to Secretary of the Treasury, June 8, 1908, Munger to Secretary of the Treasury, June 20, 1908, Department of Justice Files, R.G. 60, N.A.
17. E. P. Bertholf to Munger, August 15, 1908, Department of Justice Files, R.G. 60, N.A.
18. The United States of America vs. Y. Sugimura et. al., Judgment and Sentence, November 21, 1912, Department of Justice Files, R.G. 60, N.A.
19. Morgan Sherwood, "Seal Poaching....," pp. 48-49; S. Allen to W. L. Jones, November 8, 1912, file 611, box 1836, R.G. 26, Bering Sea Patrol, N.A.
20. Morgan Sherwood, "Seal Poaching....," p. 49.
21. J. Arthur Lower, Ocean of Destiny: A Concise History of the North Pacific, 1500-1978 (Vancouver: University of British Columbia Press, 1978), pp. 189-190.

TAKING CARE OF ALASKA'S INSANE

In territorial days Alaskans maintained that life offered three opportunities: to live and work "inside," meaning Alaska; to go "outside," meaning the rest of the world, for a vacation or retirement; or to be shipped to Morningside, the Portland, Oregon facility for Alaska's mentally ill. Jokes about Morningside amused Alaskans over the years. The laughter, however, did not reflect cruelty or cynicism; rather it lent some relief to a dark and besetting problem of all communities--the care and treatment of the mentally ill. Solving the problem in Alaska was especially difficult because of the territory's isolation, its vast physical size, and the high costs of construction and operation.¹

As already stated, the Organic Act of 1884 provided Alaska with a governor, clerk, district judge, district attorney, four commissioners, and a marshal. Appointed by the President for four year terms, these officials were to use the laws of Oregon to govern the territory. These laws, however, did not adequately meet the needs of this vast frontier area, especially in regard to the care of the mentally ill. Thomas G. Smith, a historian who has studied the treatment of Alaska's mentally ill between 1884 and 1912, has stated that territorial administrators followed the Oregon code for apprehending and examining suspected insane individuals, but were unable to provide for the treatment of a person who had been declared insane. And although the institutionalization of the mentally ill in hospitals specially designed, equipped, and staffed for their care was firmly established in mid-century America, and the western states and territories boasted of such institutions, Alaska possessed no such hospital. Indeed, there was no law which would enable Alaskan administrators to commit the insane to a mental institution in one of

the western states or territories. As a result, territorial officials felt bewildered and frustrated by the lack of federal leadership and Congressional legislation governing the care of the insane.²

Fortunately, before the great influx of population brought about by the Klondike gold discovery in 1896, the number of people judged insane averaged about one per year. In the year 1900, however, nine persons were declared insane, and by October 1905, sixty-five Alaskans received treatment in a mental institution in Oregon.³

For better than a decade after the passage of the Organic Act of 1884, the question of what to do with insane individuals remained unanswered. As early as 1885, the United States attorney general recommended to the House of Representatives legislation allowing Alaska's mentally ill to be transported to asylums in the contiguous states or territories for treatment. His request went unheeded, however. In January 1889, the attorney general received an inquiry from the district judge at Sitka desiring instructions what to do with a prisoner whom he had declared insane. After some thought, the attorney general decided that since the man was serving a prison sentence before he had been found insane, under United States laws he could be treated at the Government Hospital for the Insane in Washington, D.C. The attorney general instructed Marshal Barton Atkins to transport the prisoner to the Government Hospital. The marshal and one guard accompanied the prisoner to Washington, D.C. Although the officials had been frugal, the trip from Sitka to the Government Hospital cost the government a total of \$1,121.05. This large expense made the attorney general extremely reluctant to transfer any other mentally ill prisoners from Alaska to the Government Hospital.⁴

Obviously, federal policy toward Alaskan insane prisoners was unsatisfactory, but it was totally deficient in the treatment of those mentally disturbed

territorial residents who were not prisoners. Between 1884 and the late 1890s Alaska's U.S. marshals and district court judges queried the Justice Department about what to do with civilian insane, and Alaska's governors, in their annual reports, often criticized the government for its neglect of the mentally ill. In 1888, for example, Governor A. P. Swineford urged that "provisions should...be made for the proper care and treatment of insane persons," some of whom, after they had become violent, had been imprisoned by U.S. marshals. Between 1890 and 1892 Governor Lyman E. Knapp unsuccessfully pressed the secretary of the interior to provide adequate care for Alaska's mentally ill. His successor, James Sheakeley, also recommended that the federal government and Congress provide care for Alaska's mentally ill. In 1896, for example, Sheakeley reminded his superiors that several mentally ill individuals who represented a threat to the community had to be imprisoned. Two of these dangerous individuals were confined in the Sitka jail at the expense of the United States marshal, as no appropriation or other means have been provided for their support."⁵

Since Congress was unwilling to pass legislation providing for the treatment of noncriminal insane in mental institutions, territorial judicial officials developed a scheme to force the national government to assume responsibility for all of Alaska's indigent insane. Before a mentally ill person was found to be insane, he was convicted of a misdemeanor and sentenced to jail. Shortly after the prisoner began serving his sentence, he was pronounced insane. Under United States law, this obliged the Department of Justice to provide care for the insane prisoner at the Government Hospital. Furthermore, since the insane individual was a criminal, the federal government had to assume all medical and maintenance costs until the mentally ill prisoner could

be transported to Washington, D.C., and there lodged in the federal mental institution.⁶

Alaskans vigorously protested this state of affairs, but to little avail. It was not until the Klondike and Nome gold discoveries brought thousands of fortune seekers to Alaska toward the end of the century that Congress finally acted. It passed legislation designed to meet some of the needs of the north. Among the new legislation was an act of 1898 which extended the United States homestead laws to Alaska, although with special restrictions, and enabled entrepreneurs to obtain railroad rights-of-way. In the following year, Congress enacted a comprehensive penal code. It not only specified crimes and provided for their punishment, it also provided for the criminally insane. Heretofore, only those northern residents who had become mentally ill while serving prison sentences were to be treated in mental institutions. The new penal code provided that a jury could find a defendant not guilty on the grounds of insanity. If a jury rendered such a verdict, the court had to commit such an individual to a lunatic asylum authorized by the United States if it found it dangerous to the public peace or safety to leave him at large.⁷

In 1900, Congress complemented the penal code when it passed a civil code which met many of the needs of the settlers. This code subdivided the huge judicial district into three divisions, each with a full complement of officials. Commissioners were thenceforth appointed, not by the President, as previously, but by each of the judges. The code also provided for the civilian insane, directing Alaska's governor to advertise and contract on behalf of the United States with an asylum or sanitarium located west of the main range of the Rocky Mountains which had submitted the lowest bid for the care and custody of Alaska's legally adjudged insane. The secretary of the interior had to

approve such contracts, and the federal government was to assume all maintenance and transportation costs.⁸

Historian Thomas G. Smith has stated that "although legislation for the care of the Alaskan insane" passed Congress in June 1900, seven months passed before an appropriate institution could be found. After some negotiating, Alaska's Governor John Brady signed a contract with the Oregon State Asylum at Salem on January 16, 1901. The institution agreed to care for the territory's insane at a rate of \$20,00 per patient per month.⁹

A contract system now provided care for all of Alaska's mentally ill, but various problems prevented the smooth operation of the new system. Alaska's waterways afforded transportation during the summers, but with the onset of winter the rivers in the second and third judicial divisions froze over. If an individual residing in one of these divisions was declared insane in the winter, he had to wait until breakup to be transported to an asylum in the states. A regulation requiring marshals to obtain a permit from the governor authorizing them to transport an insane to the Oregon Asylum also hampered the operation of the contract system. The governor's permit certified that the individual in question was insane, but the governor could only issue it after he received duplicate copies of the court trial from the marshal, and that was expensive. After the marshal had finally received a permit, he presented it and the court trial transcript to the superintendent of the insane asylum. At that point was the patient finally admitted. After the marshals had complained at length about this unnecessary red tape, the governor and the department of the interior finally agreed to abolish the permit system.¹⁰

Another question involved the expenses marshals incurred when transporting an insane individual to the Oregon asylum. In the fall of 1900, the secretary of the interior had requested an opinion from the office of the comptroller of

the treasury clarifying some language in the Act of June 6, 1900. This act, among other things, provided that the secretary of the treasury pay the accounts and vouchers incurred in caring for the insane after these had been approved by the governor and the secretary of the interior. The comptroller of the treasury had ruled that the specific appropriation for "executing the contract" with the asylum also provided for all "care and custody covering all of the other expenses for caring for the insane required by the law," including the cost of transportation of the insane to the asylum, as well as the expenses of attendance. With this decision in hand, the secretary told Alaska's governor "that the expenses incurred by United States marshals for guarding and transporting the insane" would be paid after vouchers had been submitted and approved by both officials.¹¹

Shortly after the secretary had promulgated his rule that vouchers had to be submitted and approved, U.S. Marshal Frank H. Richards of the second judicial division protested the secretary's action. He stated that submitting expense vouchers imposed undue hardships for it required him and his fellow officers to pay the expenses of transporting the insane from Alaska to the Oregon Asylum from personal funds. Then they had to wait long periods of time for reimbursement, never knowing whether or not claims would be honored. The acting attorney general, appraised of the problem, suggested that marshals be paid these expenses from the appropriation for salaries, fees and expenses of marshals of United States courts. The comptroller of the treasury told the secretary of the interior that his former decision concerning the expenses of U.S. marshals for guarding and transporting the insane had been wrong. U.S. marshals transporting "prisoners, including convicts," were to be "paid from the appropriation 'salaries, fees, and expenses of marshals, United States courts' under the provisions of law governing such expenses and the regulations

of the Department of Justice...."¹² In other words, the officers no longer had to pay expenses out of their own pockets and then wait for compensation.

While U.S. marshals complained about the voucher system, officials in the department of justice questioned the wisdom of the one-year contracts with the Oregon Asylum. Designed to keep costs down through competition, few mental institutions submitted bids because they already were overcrowded. In 1902 and 1903, the department of the interior awarded the Alaskan contract almost uncontested to the Oregon Asylum. The cost of caring for the mentally ill rose to \$30.00 per month, but despite this increase the Oregon Asylum refused to admit any more Alaskan patients after January 15, 1904, because it had outgrown its facilities. Eventually, the secretary of the interior made a deal with Dr. Henry Waldo Coe, treasurer and founder of the Mount Tabor Nervous Sanitarium near Portland. With the help of an act of Congress and a reasonable rate structure on the part of Coe, the secretary was able to enter into a multi-year contract for the care of Alaska's insane. Variouslly called "Mt. Tabor," "Crystal Springs," and "Mindease," the name "Morningside" stuck, and Coe and his son took care of Alaska's insane until Congress transferred this responsibility to the territory in 1956.¹³

The civil code of 1900 had provided for the care of the mentally ill after they had been removed from Alaska. It did not, however, establish regulations for the apprehension, trial, and confinement of the insane before their commitment to an asylum in the states. In order to correct this situation, judicial officials told members of a Senate subcommittee visiting Alaska in 1903 that the Commissioners presiding over the numerous precincts in each judicial division be given the authority to determine an individual's mental condition and to order those found insane committed to a mental hospital.¹⁴

Under current practice, the insane were jailed until they could be transported to the district court for examination before a judge. Considering the weather and Alaska's vast distances, the alleged insane often spent several months in jail before he could be transported to the district court. This cost the federal government considerable sums of money. For example, in the spring of 1904, Representative Edward L. Hamilton, the chairman of the Committee on the Territories, told the attorney general that he had been informed of a deplorable incident which occurred in Coldfoot, Alaska, located in the southern foothills of the Brooks Range. J.H. Johnson, the U.S. Deputy Marshal at Coldfoot, had related that one Dominic Zehnder had been brought into the little settlement from Wild Creek in a state of violent insanity. Pertinent statutes did not cover the case so F.E. Howard, the U.S. Commissioner, "not knowing what else to do, followed the Oregon code and took jurisdiction." After a formal examination Howard judged the man insane and "committed him to jail for safe-keeping and treatment until the district court could act." The commissioner had to employ guards, furnish subsistence, and pay the physician's fees. Zehnder could not be turned loose, and "the citizens could not care for him and brought him to the officials. The Alaska code is silent on the subject of procedure in insanity cases." The commissioner worried about the expenses he was incurring in the case, and yet he could not transport Zehnder to Eagle City, the seat of the district court, more than 1,000 miles away across a roadless wilderness. "Besides, I could not finance the trip," he remarked, "which would cost at least \$1,500, and then I would have to face the prospect of having the whole expense repudiated" (by the department of justice or the comptroller of the treasury). Howard urged that Congress pass legislation to cover cases such as this one.¹⁵

The complaints of judicial officials together with the testimony gathered by the 1903 Senate subcommittee trip to Alaska induced Senator Knute Nelson to introduce a measure on January 22, 1904 which was to grant commissioners broader powers of apprehension, examination, and commitment of the insane. It passed the Senate on March 10, but the House took its time. At the beginning of May 1904, District Court Judge Melville C. Brown of Juneau inquired if the measure giving Alaska's probate courts jurisdiction to adjudge persons insane has passed. He was told that it had not.¹⁶

While the House debated the Nelson measure, Alaskan officials continued to complain about existing conditions. For example, on December 15, 1904, U.S. Marshal George G. Perry of the third judicial division at Valdez complained that subsistence of insane persons committed by commissioners and expenses of their imprisonment were charged by jailers and paid by the marshal but disallowed by the auditor on the recommendation of the attorney general. Washington officials simply could not comprehend Alaskan conditions. Perry explained that the third judicial division was very large indeed with a coast line of 3,500 miles on the Pacific Ocean to the Bering Sea, and on the interior from the boundary line along the Yukon River down that great waterway some 1,300 miles. This huge judicial division had only one district court judge, and was divided into fifteen commissioner precincts. District court was held at only two places in the interior, Eagle City and Fairbanks, and at these locations only during the summer when the waterways were navigable, approximately from May 15 to September 15. On the coast, district court was held only in Valdez during the winter months. Therefore, for about eight months each year all the district court business from each coast precinct accumulated and was then brought to Valdez. In nearly all of the precincts there had been insanity cases and commissioners had been obliged to jail these individuals until they could be

brought before the judge of the district court. In all cases, this had "been done at the earliest possible hour." If these procedures were not followed, Perry asked, what was "to become of the unfortunate insane?" The marshal maintained that "in the majority of instances privation and exposure have brought about" insanity. Within his jurisdiction winter brought "from three feet to any amount of snow...and the thermometer ranging from zero to seventy below...." If the judicial officers did not take care of these unfortunates they inevitably would freeze or starve to death. For example, the previous year the commissioner of the Forty Mile precinct had refused to commit an insane, indigent miner. Shortly thereafter the Canadian police found the individual "in an almost frozen condition, and was cared for by them but died from the effects" of his ordeal. Residents of the Forty Mile region, hearing of this tragedy, severely censored the American authorities. In summary, Perry considered it his duty as an officer to take care of individuals committed for insanity. Each precinct had a jail and it was occupied most of the time, therefore there were "no additional expense for guard hire, rent of jail and light and heat."¹⁷

In the meantime, the House had passed and the President approved the Nelson measure reapportioning the money received for licenses outside of incorporated towns. It designated such fees the "Alaska Fund" and gave 5 percent to the secretary of the interior for the care of the insane, 25 percent to elected school boards under the superintendency of the territorial governor for the education of white children, and the remaining 70 percent to the secretary of war for road construction. It also enabled commissioners to commit individuals judged insane in their district to the asylum under contract for the care of Alaska's mentally ill. Commissioners also were to impanel a jury of six resident male adults to determine whether or not an individual was

insane. A lawyer was to represent a person accused of insanity at the trial, and one or more physicians were to testify as to the mental condition of the individual. After a unanimous verdict of the jury and the approval of the commissioner, the insane person would be committed to the proper mental institution. Thus, between 1900 and 1905, the Congress enacted three pieces of legislation which governed the care of the territory's mentally ill, namely the civil code of 1900, enabling the governor of Alaska to provide care for all of the territory's insane by concluding a one-year contract with a mental institution submitting the lowest bid; in 1904 Congress authorized the secretary of the interior to accept a bid for the care of the Alaskan insane on a multi-year basis; and in 1905 the Nelson Act defined the powers of U.S. commissioners in dealing with the mentally ill. These policies governed the care, custody, and treatment of the Alaskan insane until Congress divested itself of these responsibilities and transferred them to the territorial government in 1956.¹⁸

Eventually, Marshal Perry was successful in persuading the attorney general to reverse his decision and allow marshals to pay for the expenses of jailed, allegedly insane individuals, awaiting transportation to the nearest district court for a final disposition of their cases. The attorney general's decision covered all cases before the Nelson Act became law on January 27, 1905.¹⁹

While all of Alaska's mentally ill were transported to Dr. Coe's Crystal Springs Sanitarium, Mount Tabor, Oregon after the award of the multi-year contract in 1904, not all territorial judicial officials were satisfied with the care provided by that facility. For example, Nathan V. Harlan, the United States attorney for the third judicial division in Fairbanks complained to the attorney general about the management of Crystal Springs Sanitarium in the summer of 1905. In essence he argued that dangerous lunatics had been released

after a few weeks spent at the sanitarium and had returned to Alaska. In October 1903, Isaac Banta, a Canadian male in his fifties, had been tried on a first-degree murder charge. Banta testified on his own behalf and stated that at the age of thirteen he had received a head injury. Examination revealed a large scar in his skull, indicating that a piece of bone had been removed. Ever since that incident, Banta had experienced periods of insanity. In his derangement he killed "a good, inoffensive young man, without provocation" and "but little motive." Harlan considered Banta "a very dangerous, quarrelsome, bad man" and when drinking he was "probably partially insane." The jury found Banta "not guilty" by reason of insanity. Banta was committed to Crystal Springs Sanitarium in December of 1903. The district court submitted "a strong statement of Finding of Facts," maintaining that the man was "incurably insane according to the evidence, and dangerous to be at large," and recommended that he be detained permanently. Two weeks after Banta had entered the asylum, the superintendent of the institution discharged him.²⁰

Another case concerned Ole Peterson who had been charged with insanity at the June term of the district court in Fairbanks. Testimony showed beyond any doubt that the man was insane and dangerous to be at large. Committed to the asylum, he reached the institution in the middle of September 1904, but was released in January 1905. Peterson returned to Alaska and reached Fairbanks in April of that year. Old acquaintances instantly recognized that the man's mental health was no better than when he had been committed. After a few days in Fairbanks, he became violent and entered the courthouse "with a Winchester rifle containing seven cartridges, demanding an explanation of why he had been sent out" and threatened all around. "He had to be overpowered and disarmed and was placed in jail." Under the Nelson Act, a jury of six men heard his case before the U.S. commissioner and once again found him insane and committed

him to the asylum. Peterson soon was on his way to the asylum again. There were other, similar cases. Harlan complained that it was very expensive to send an insane individual to the Portland facility, and under the present management almost useless to do so. Harlan suggested an amendment to the law allowing the district court to commit "such persons as Banta, where the charge is murder, to an asylum for life. If a man charged with murder is committed by reason of chronic insanity, he should never be permitted to run at large." The attorney general, however, did not respond.²¹

Territorial officials also worried about the indigent poor. Numerous pathetic cases had come to the attention of the public as well as officials, and the question had arisen what, if any, federal agency was responsible in such cases. A typical example involved one H. W. Meyer, a young trapper, who the unusually severe weather had caught unprepared. He wandered into the Minto military telegraph station, with both feet frozen, suffering intensely and asking for help. Lieutenant Lewis, in charge of the military telegraph line stationed at Fairbanks, informed U.S. Marshal H. K. Love that his department "was entirely without authority or funds to render other than the most temporary aid to civilians, but that he would have him brought by his men to the Ohio Road House, if the civil authorities would take charge of him from there." Marshal Love was more than sympathetic, knowing that "the unfortunate man was without relatives, friends or means. He decided to act promptly to aid the man. In order to do so, he charged Meyer with vagrancy, secured a warrant for his arrest, and sent his deputy, as arranged with the military, to the Ohio Road House to pick up the young trapper. Love admitted that the proceeding was not "entirely regular, tho it is hoped it may satisfy the necessary technical requirements." Love had Meyer taken to St. Mathews Hospital where both his feet were amputated. The expenses promised to be considerable, and in fact,

amounted to \$675. Love appealed to the attorney general "to allow the disbursements that this sad affair will entail." The marshal also suggested that legal provisions be made "to properly render aid, in this far North-land, to such unfortunates."²²

Apparently, this was not the first time U.S. marshals in Alaska had used vagrancy "charges to aid the indigent in dire emergencies." On January 13, 1910 the attorney general finally complained to federal District Court Judge Alfred S. Moore about this practice. He stated that U.S. marshals in Alaska frequently presented the department with "large bills for surgical operations and medical services for prisoners charged with, or undergoing sentence for, vagrancy." The explanations accompanying the vouchers showed that in many cases individuals "were found in isolated sections and along the winter trails of Alaska with frozen hands or feet, or in a precarious condition from scurvy...." Brought into town, they were charged with vagrancy, imprisoned and furnished necessary surgical and medical services at government expense. The attorney general cited a number of these cases, and stated that he was aware of the fact that this was a widespread practice in Alaska. And although the department of justice could not question the judicial action of the commissioners in sentencing such persons to imprisonment for vagrancy charges, he urged Judge Moore to discuss the matter with the commissioners "with the view of correcting this evil." Moore promised to caution the commissioners "to execute the vagrancy section of the law to advance the true object of the statute." He admitted that the vagrancy section of the law had at times been employed "to save the lives of men who were so poor and friendless in a land of strangers, in the depth of winter, that to administer relief in this manner "was the only choice justified on grounds of humanity...even though not warranted by a strict construction of the law." All states had laws to help the needy and deserving

poor--with the exception of Alaska. Until the federal government found a way to help the poor and suffering in "their time of extreme calamity and distress," Moore suggested that the commissioners would probably continue to sanction the liberal violation of the law to save lives.²³

On April 25, 1910, Senator Knute Nelson and Representative Edward L. Hamilton introduced identical measures in their respective chambers designed to deal with the problem. Entitled "Providing for assisting indigent persons, other than natives, in the District of Alaska," the bills directed that five percent of the funds collected by district court clerks for licenses and occupation taxes in Alaska and now paid into the "Alaska Fund" and to the treasuries of the several incorporated towns in the district were instead to be paid into the treasury of the United States and held there as a separate fund for the relief of indigent Alaskans, but excluding Natives. Alaska's governor was to disburse these monies at his discretion. It took three years, however, before Congress approved and the President signed a measure for the relief of Alaska's indigents into law.²⁴

In the meantime, the debate over the use of the vagrancy statute continued within the bureaucracy in the nation's capital and in Alaska as well. In May 1910, U. S. Marshal H. K. Love submitted a medical bill of \$1,090.00, submitted by Dr. T. B. Craig of the Otter precinct of the fourth judicial division, for the surgical care and treatment of one Neil McGregor, badly injured by a gunshot. The attorney general balked at the size of the voucher and demanded a detailed explanation. Chas. B. Hanover, Deputy U.S. Marshal in Fairbanks, quickly supplied a full account of the arrest and care of Neil McGregor at Richmond City. The man's gun accidentally discharged while he was hunting and the bullet entered "the calf of the leg at the back and came out in front shattering both bones and leaving a hole you could put both fists in."

McGregor fell over backwards into the snow, and after some struggle he managed to detach his snowshoes. He tied a thong around his injured leg, and then fastened the snowshoes to his hands and dragged himself through the brush toward his cabin. He went about three-quarters of a mile, and in the process his injured leg often got caught in the willows. He called for help, and eventually one August McDonald came to his rescue, loaded him on his sled and took him fifteen miles to Richmond City. As both men were without friends or money, McDonald swore out a complaint charging McGregor with vagrancy. The latter pleaded guilty and was sentenced to serve out a fine of \$25.00 and 150 days plus court costs of \$14.15. Hanover engaged Dr. Craig to care for McGregor. The physician had to amputate the leg "only after it became apparent that it was absolutely impossible to save it." In the late fall of 1910, the attorney general decided to pay the substantial bill for McGregor's medical care, stating that "bills of this kind in meritorious cases" were to be paid from the appropriation "Support of Prisoners" until Congress dealt with the whole question.²⁵

In effect this meant that each case was to be examined separately and decided individually. Abe Spring, a Fairbanks lawyer, was not particularly happy with the use of the vagrancy statute. In the fall of 1910, Tanana Valley newspapers widely printed a small item entitled "New Commissioner Tries First Case: Commissioner Sam Weiss, of Chatanika, Handles the Law Like a Veteran." This item caught Spring's attention and he sent it to the attorney general. One Joseph Boothroyd of Chatanika, about 55 years of age, was unemployed and slowly starving to death. Charged with vagrancy, the marshal brought the man before Commissioner Weiss who assessed him \$250.00 and court costs. Having no funds, Boothroyd was transferred to the Fairbanks jail to serve his prison sentence in lieu of the fine. At \$2.00 per day, that meant about five months

in jail, costing the federal government about \$500.00. At least Boothroyd was now assured of comfortable quarters for the long winter. Spring commented there was a nonchalant tone throughout the entire proceedings, as well as a general spirit of commendation and approval. This, according to Spring, proved that where the federal government did "not assume its proper function and responsibility, the public will find a way to beat it out of it." The attorney general simply repeated to Spring his decision to continue paying for meritorious cases out of prison funds until Congress passed proper legislation.²⁶

U.S. Attorney B. S. Rodey of Nome presented the attorney general with a different problem. What was to be done in case of death of indigent persons and paupers occurring outside of incorporated towns? Early in September, a squawman and his stepdaughter drowned a few miles west of the town of Nome. Rodey claimed that the Natives, because of some superstition, "would have nothing to do with the matter, and the bodies lay on the beach...after the sea had cast them up." Rodey's office received many phone calls about the incident. He was in a quandry. There was no necessity for a coroner's inquest since the cause of death was well known, preventing the matter being taken up under that statute. After the district court judge indicated that he would approve the bill and pay it from "Fund C", controlled by him, Rodey ordered the commissioner to have the bodies buried. Rodey urged that Congress pass legislation providing monies for defraying such expenses, because the department of justice had charged the "C" fund with so many payments for the hire of clerks and other matters that it now was very meager and could not stand further charges against it.²⁷

In the meantime, some of Alaska's hospitals experienced considerable difficulties surviving without subsidies. The Catholic Church had built St. Joseph's Hospital in 1906, and the Sisters of St. Benedict managed the institu-

tion until 1910, when the Sisters of Providence took over. The Sisters appealed to the Attorney General for financial aid, since in four years the institution had incurred a deficit of approximately \$32,000, mainly because a large number of patients never paid their bills because of destitution or other causes. Like other hospitals, the Sisters appealed for private donations and held an annual fair to raise additional funds. Still, the deficit grew. Attorney General George W. Wickersham favored government support to at least some hospitals, in fact, that it was the "duty of the Federal Government to see to it that the best practicable hospital service is rendered in Alaska." Wickersham, of course, realized that charitable cases contributed considerably to the financial duress of St. Joseph's Hospital as well as other institutions. Obviously, the federal bureaucracy had to pass legislation designed to properly and lawfully deal with Alaska's indigents.²⁸

C. H. M. Glasson, the acting superintendent of prisons, reviewed the situation for the attorney general in November 1910. He pointed out that the judicial divisions had been using the vagrancy statute to take care of indigent individuals. They continued to do so after having been asked repeatedly to control the practice. And although the department of justice had invariably questioned bills of this kind when they appeared in the accounts of the marshals, they had always been paid, if often late. In 1909, Alaska's governor had unsuccessfully endeavored to have Congress make an appropriation for these purposes to the department of the interior. And although Glasson favored the continuation of these payments, he thought it somehow wrong "to charge these unfortunates with crime for the sole purpose of giving them proper medical attention." Attorney General Wickersham shared Glasson's views, but expressed the opinion that "the matter must be put squarely up to Congress and an effort made to clearly legalize the practice or deal with the evil in another way."

In his next annual report, the attorney general fully discussed the matter and reminded lawmakers that it was entirely wrong "to charge these unfortunates with vagrancy and that the United States Commissioners should be called upon to prostitute the law in such cases, for the sole purpose of furnishing relief to the persons." Wickersham thereupon urged Congress to make appropriate provisions "for the care of this class of persons in Alaska."²⁹

On June 25, 1910 the President signed legislation into law which provided for the construction of detention hospitals in Fairbanks and Nome "for the temporary care and detention of the insane, wherein all insane and other patients in charge of the United States marshal shall be detained until transported to the asylum...for their permanent care and cure, or otherwise disposed of as provided by the laws of the United States." A lack of precise language unfortunately did not take care of the indigents, as many had hoped. In response, the judicial officers of the fourth division, with the help of interested citizens, drafted a lengthy amendment to the 1910 law designed to cure the defect. Shortly thereafter, Alaska's delegate to Congress James Wickersham introduced legislation identical to the draft submitted by the judicial officers.³⁰ Since it was too late in the session, however, Congress did not deal with the delegate's measure.

In the spring of 1913 Congress finally passed, and the President signed into law, legislation to provide assistance to Alaska's indigent. Although well-intentioned, the act did not provide sufficient funds to take care of indigent needs. By appropriating ten percent of the "Alaska Fund" derived from liquor, occupation and trade licenses outside collected of incorporated towns for such purposes, Congress transferred financial responsibility to the territory. The act stated that the secretary of the treasury was to divide the ten percent at the end of each quarter into four equal parts, transmitting the

cash to the four U.S. district court judges. For the quarter ended June 13, 1913 this amounted to the princely sum of \$1,866.50, giving each judge \$466.60. Congress appeared to have settled the matter to its satisfaction.³¹

In the meantime, the number of Alaskan insane at Morningside Asylum, as the relocated facility now was called, increased steadily. This meant that costs increased as well. On February 27, 1912, Franklin MacVeigh, the secretary of the treasury department, asked the speaker of the House of Representatives for an increase of \$10,000 in his estimate for the 1913 appropriation, and a \$3,500 deficiency appropriation for the current fiscal year. How could these expenses be cut down? The secretary of the interior soon discovered that as of march 29, 1913, ninety-six patients at Morningside were foreign nationals. The secretary thereupon asked that immigration officials from the Department of Labor inspect the records of these individuals at the asylum to determine if any of the insane aliens were deportable under the provisions of U.S. immigration laws. The secretary also wanted to know whether or not Alaska's courts examined deportability before transporting these aliens to Morningside. John Rustgard, the U.S. attorney for the first division, informed the attorney general that aliens committed to Morningside had been "in the country far too long to enable the Government to deport them" under the provisions of the immigration laws. He assured his superior that should there be a deportable alien in the future, his office would act quickly. The U.S. attorney for the second division stated that either he himself or his assistant had always conducted a thorough investigation to determine whether or not the deportation laws applied. In the third division no efforts had ever been made to determine whether or not the deportation laws applied to such insane aliens. Furthermore, it would have been difficult to procure this information "because of the condition of the patient when taken into custody...." The U.S. attorney

thought that with perhaps the exception of a few Japanese, none of the insane aliens would have been deportable. The U.S. attorney for the fourth division stated that the Act of January 27, 1905 which gave commissioners original jurisdiction over insanity cases did "not make it the duty of commissioners to inquire into the citizenship of the accused." As far as he could ascertain, no special inquiry had ever been made to determine whether or not the deportation laws applied. He had, however, instructed the sixteen commissioners in his division to examine this matter and report their findings to the clerk of the district court. Soon thereafter, the attorney general issued instructions to Alaska's judicial officers to determine the deportability of all insane aliens before transporting them to Morningside.³² What, if any, savings resulted is not ascertainable from the record.

The costs for caring for Alaska's insane increased steadily. This was due primarily to the greater number of patients committed each year, and a steady but modest increase in the rates charged by Morningside. During the Great Depression, the budget bureau expressed its concern about these increasing expenses. It suggested to the attorney general a change in the wording of the appropriation which would make care and custody available only to those insane individuals who had been "actual residents" of Alaska for one or more years. Those who did not meet this qualification were to be returned "to their legal residence, or to their friends...." The department of justice queried Alaska's four district court judges about these proposed changes.³³

The four district court judges reacted negatively to the proposed change. District Court Judge Justin W. Harding of the first division considered the proposal to be very unsatisfactory. Most individuals committed to Morningside had been Alaskan residents for more than a year. He doubted that it would be possible to send nonresidents to their state of last residency or their

friends--many had no friends, and legally there was no possibility to compel "the state from which they come, or their local community, to take them...." Nevertheless, he had instructed the commissioners to avoid committing insane to Morningside who were not a menace to themselves or others, and to make every effort to dispose of nonresident "by sending them to their friends or to their legal place of residence...." G. J. Lomen, the district court judge of the second division considered the proposed amendment to the appropriation act "unfortunate." He reminded his superior that the Supreme Court had held that "writs de lunatico inquirendo are exercised for the protection of the community and the protection of the person and property of the alleged lunatic." Nothing indicated "why it should be confined to cases in which the unfortunate persons are residents of or have property in the state. It is their presence within the limits of the state that necessitates the exercising of the power to protect their persons and the community in which they may be placed, and the jurisdiction of the court does not depend upon whether they have property within the state," or, Lomen added, as long as they had resided therein. Although the judge realized that the federal government had to practice economy, he thought that it should "not be practiced in the case of the insane or shift the burden to other communities." If, however, an amendment was necessary, "one would hardly look to the appropriation acts for an amendment of jurisdictional matters." It would be better, he suggested, to amend the laws conferring jurisdiction upon the courts. In conclusion, Lomen thought that the "retrospective character of the amendments" made them of "doubtful validity." Judge E. Coke Hill of the third division considered the proposed amendments "indefinite" in meaning and "ineffective" to accomplish the desired purpose, namely to effect a saving to the United States. Hill criticized the proposed amendments in detail. Governments were charged with the care of the insane, he

asserted, and Hill knew of no law requiring friends of an insane individual to care for him. Furthermore, commissioners certainly "could not make a commitment binding upon persons outside" of Alaska "who had never had their day in court. Furthermore, the term "legal residence" was an elastic one, depending upon a combination of intent and actual personal presence. Above all, he stated, he had never experienced a case of fraud in his nineteen years in government service in Alaska. "I have yet to know of a single case," Hill stated tongue-in-cheek, "where any person came to Alaska for the purpose of going insane or where he was brought to Alaska for the purpose of charging the government...with his care as an insane person." Judge Cecil H. Clegg of the fourth division stated that the proposed amendment to the appropriation act should properly be made the subject of substantive law by an amendment to the existing statute. For the change contemplated affected the jurisdiction of the probate courts, and if adopted, he feared, would prevent such courts from conducting insanity inquiries unless the individual concerned had been "a bona fide resident" of Alaska for at least one year.³⁴

Despite these objections, the appropriation act for the department of the interior for the fiscal year ending June 30, 1932 contained language which provided that the commitment papers of any individuals thereafter adjudged insane in the territory were to include a statement by the admitting authority giving the legal residence of the patient. Those not legal residents of Alaska were to be returned "to their places of residence or to their friends...as soon as practicable...." The department of justice thereupon contacted each judicial official in Alaska calling attention to the language in the appropriation act. A few years later, in October 1938, Secretary of the Interior Harold L. Ickes reminded the attorney general that the secretary was "charged by law" to provide for the care and custody of Alaska's legally adjudged insane.

Furthermore, it was his responsibility to return inmates not residents of Alaska at the time of commitment to friends or their places of legal residence. Unfortunately, the latter responsibility had often been materially hampered by insufficient data accompanying the commitment papers. Ickes suggested that this probably was due to the high turnover of commissioners where new incumbents were perhaps unfamiliar with the manner in which the department of the interior used such information. He urged that the district court judges be reminded to inform the commissioners of the importance of obtaining detailed information concerning the legal residence of patients.³⁵ Ickes may have been correct in his assessment that the lack of continuity in the commissioner posts was responsible for the poor residency records accompanying patients to Morningside. An alternative explanation is that officials of the Alaska judicial system simply did not cooperate with requirements they felt to be inhuman and largely unenforceable. Throughout American history there have been examples where a recalcitrant bureaucracy has frustrated the desires of the executive.

FOOTNOTES

1. Claus-M. Naske, "Bob Bartlett and the Alaska Mental Health Act," Pacific Northwest Quarterly, vol. 71, no. 1, January 1980, p. 31.
2. Thomas G. Smith, "The Treatment of the Mentally Ill in Alaska, 1884-1912: A Territorial Study," Pacific Northwest Quarterly, vol. , no. 1, January 1974, pp. 17-18.
3. Ibid., p. 22.
4. Ibid., p. 18.
5. Ibid., p. 19.

6. Ibid., p. 20.
7. 30 Stat. 409-415, 1253-1343 (1899).
8. 31 Stat. 321-552.
9. Smith, "The Treatment of the Mentally Ill in Alaska, 1884-1912," pp. 22-23.
10. Ibid., p. 23.
11. Assistant Comptroller L. P. Mitchell to Secretary of the Interior, October 9, 1901, File #48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
12. Ibid.
13. Smith, "The Treatment of the Mentally Ill in Alaska, 1884-1912," pp. 23-24. For the story of the fight in Congress to transfer control over Alaska's mentally ill to the territory, see Claus-M. Naske, "Bob Bartlett and the Alaska Mental Health Act," Pacific Northwest Quarterly, vol. 71, no. 1, January 1980, pp. 31-39.
14. U.S., Congress, Senate, Hearings Before Subcommittee of Committee on Territories Appointed to Investigate Conditions in Alaska, S. Rept. 282, 58 C., 2 S., (Washington: Government Printing Office, 1904), pp. 140-144, 260-264.
15. Hamilton to Attorney General, File 48962-A, Part 1, Box 656, Straight Numerical Files, R.G. 60, N.A.
16. Brown to Attorney General, May 2, 1904, Attorney General to Brown, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
17. Perry to Comptroller of the Treasury, December 15, 1904, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.

18. 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: Russell & Russell, Inc., 1963), pp. 231-233. Smith, "The Treatment of the Mentally Ill in Alaska, 1884-1912," pp. 25-26. The segment of the Nelson Act providing 5 percent of the Alaska Fund for the care of the insane was repealed in 1909, and the federal government again assumed the total cost of the care and treatment of Alaska's insane.
19. Attorney General to Comptroller of the Treasury, February 7, 1905, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
20. Harlan to Attorney General, June 9, 1905, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
21. Ibid.
22. Love to Attorney General, Jan. 8, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
23. Attorney General Moore, January 13, 1910, Moore to Attorney General, March 23, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
24. S. 7917, 61 Cong., 2 S., April 25, 1910, H. R. 24940, 61 Cong., 2 S., April 25, 1910.
25. Love to Attorney General, May 14, 1910, Hanover to Love, May 12, 1910, Attorney General to Love, November 23, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.

26. Unidentified newspaper clipping, 1910, Spring to Attorney General, October 13, 1910, Attorney General to Spring, November 30, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
27. Rodey to Attorney General, September 10, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
28. Claus-M. Naske and Ludwig J. Rowinski, Fairbanks: A Pictorial History (Norfolk, Virginia: The Donning Company/Publishers, 1981), p. 36; Herbert L. Jaynes to Attorney General Geo. W. Wickersham, October 18, 1910, Chairman, Hospital Fair Committee to Dear Friend, no date, Assistant Attorney General to Attorney General, November 29, 1910, Herbert L. Jaynes to Attorney General Geo. W. Wickersham, January 3, 1911, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
29. C. H. M. Glasson to Attorney General, November 8, 1910, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
30. H.R. 24833, 61 Cong., 2 S., (1910); Judicial officers of fourth division to Attorney General, January 18, 1911,

BE IT ENACTED by the Senate and House of Representatives of the United States of America, in Congress assembled, That the several commissioners in the District of Alaska are hereby constituted overseers of the poor within their respective precincts, and such adjacent precincts within their respective Divisions as may not have a duly appointed Commissioner, or in the absence of such, and as such overseer, it shall be the duty of the Commissioner to inquire into all cases of destitution that may come to his knowledge, and when convinced of the necessity and deserving character of an alleged indigent, he shall so find and order the Marshal to take charge of such person for the purpose of rendering necessary assistance.

Section 2.- Upon a person being committed to the care of the Marshal as provided in the preceding section, he shall provide the

aid that seems best suited to the need of the particular case. Where detention hospitals are established as provided by Act approved June 25, 1910, entitled "An Act to provide for the care and support of insane persons in the Territory of Alaska," the Marshall shall utilize such as far as practicable, where the indigent does not require medical hospital accommodations and treatment. Where aid to families or other person is proper and desirable without detaining them, such shall be provided, and where the public good will be best served, indigents may be transported beyond the District.

Section 3.- When a person dies without an incorporated town and in destitute circumstances the Commissioner may order that he be buried by the Marshal at the expense of the United States.

Section 4.- Where a destitute person is in need of urgent and immediate assistance and action by the Commissioner for any reason cannot be had, the Marshal or any deputy, or other person may render such aid and forthwith submit the facts to the Commissioner, and the same shall be a legal charge under this Act if the Commissioner find that the aid was necessary and could not be delayed, and that the disbursements are just and reasonable.

Section 5.- That in the absence of the Marshal or deputy marshal, the Commissioner may appoint a person to act as such in indigent cases and until the services of a marshal can be had.

Section 6.- That the Act approved June 25, 1910, above referred to, is hereby amended so that the hospitals therein provided for may be known as Houses of Detention for Indigents and Insane, and the sum of \$_____ is hereby appropriated for the maintenance thereof and for the expenditures provided for under this Act, and the same or as much thereof as may be necessary shall be disbursed by the Marshal and accounted for as in case of other judiciary funds; but his accounts therefor shall be examined and approved by the District Judge and United States Attorney, for the Division wherein expended.

Section 7.- That the actual and necessary expenses of the Marshal or any deputy or person appointed by the Commissioner as above provided for travel and subsistence incurred in indigent cases shall be payable from the appropriation herein provided, but no compensation shall be made for voluntary services rendered under this Act;

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31. Comptroller to Secretary of the Treasury, August 26, 29, 1913, Assistant Secretary of the Treasury to Attorney General, September 8, 1913, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
32. U.S., Congress, House, Insane in Alaska, 62 Cong., 2 S., House Doc. 576 (Washington, D. C.: Government Printing Office, 1912); Jesse C. Adkins, Assistant Attorney General to John Rustgard, U.S. Attorney, May 10, 1913,

- Rustgard to Attorney General, May 22, 1913, Rustgard to Attorney General, May 22, 1913, Walker to Attorney General, May 26, 1913, James J. Crossley to Attorney General, June 11, 1913, Ernest Knaebel, Assistant Attorney General to Secretary of the Interior, August 2, 1913, Assistant Secretary of the Interior to Attorney General, August 9, 1913, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
33. Charles P. Sisson, Assistant Attorney General, to District Court Judges Justin W. Harding, G. J. Lomen, E. Coke Hill, and Cecil H. Clegg, August 31, 1931, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
34. Justin W. Harding to Charles P. Sisson, Assistant Attorney General, September 18, 1931, Harding to U.S. Commissioner W. C. Arnold, September 18, 1931, G. J. Lomen to Chas. P. Sisson, September 23, 1931, E. Coke Hill to Attorney General, September 25, 1931, Cecil H. Clegg to Attorney General, September 14, 1931, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.
35. Assistant Secretary of the Interior to Dear Sir, March 4, 1932, Excerpt from Interior Department Appropriation Act approved February 14, 1931, Assistant Secretary of the Interior to Attorney General, March 17, 1932. Circular No. 2907 to United States Commissioners for the District of Alaska, October 26, 1936, File 48962-A, Part 1, Box 656, Straight Numerical Files, Department of Justice Central Files, R. G. 60, N.A.

INSANITY IS IN THE EYE OF THE BEHOLDER

Alaska attracted its share of individuals who must have experienced difficulties fitting into the more settled environment encountered in the contiguous states. Alaska offered an opportunity to live an existence largely untrammelled by rules and regulations. Thomas Gray was perhaps such an individual.

Gray had staked a parcel of ground on Moore Creek, 8 miles below Old Hamilton. He fenced his property planning to establish a fox ranch, built a fish cache and smokehouse and a home for himself. On June 15, 1925, Gray wrote to George F. Marsh, the U.S. Commissioner at Fortuna Ledge in the second judicial division, complaining that members of the Waskey Kameroff family had vandalized his property while he was prospecting on the creeks. He alleged that someone from that family had broken into his fishhouse and removed fish, stolen the fish table and the inner door, the bottom of a dory, some boards, and the fish poles. They tore down the fence, removed a pile of wood from the front of the fishhouse and used it to build a fish rack for their own use, but burned most of it. Gray discovered that some of the boards taken from his fishhouse the Kameroffs used for bunks in their tent. "This is not the first offense of the bunch down here," Gray stated. He had been robbed once too often. He suspected that the Kameroffs did not like the fact that he was a Caucasian. Gray demanded that the commissioner take action in the matter because he did not want to be shot while least suspecting it.¹

Commissioner Marsh acknowledged Gray's complaint on July 5, 1925 in which he accused "certain natives, collectively," of destroying his property. Marsh stated that in order for him to act in the matter, Gray would have to make "a specific complaint against some person or persons," and he would have to do so

under oath. Marsh reassured Gray that he had asked Chas. D. Jones, the U.S. marshal, to investigate the matter on his way down the Yukon River.²

Gray denied using the term "accused" and insisted that he had filed a complaint for housebreaking, destroying property, larceny for three cords of wood, taking of boards and racks from the fishhouse and stealing \$50.00 worth of fish. He was irate that the U.S. marshal had not immediately responded to his complaint, while the alleged violators "were still on the ground." Deputy Marshal D. McDonald had stopped by and "found evidence enough to convict on every charge," Gray claimed, but merely promised to write the Kameroffs and warn them to leave the complainant's property alone. McDonald, however, was in such a hurry to return to Fortuna Ledge that he did not get around to writing the note. Gray discovered why the deputy was in a haste to leave. "The old fossil [sic]" courted a young squaw at Fortuna Ledge. Gray observed with relish, however, that McDonald lost out and another won the favors of the young Native woman.³

Gray took the occasion to generally grumble about the enforcement activities of the U.S. Bureau of Fisheries headed by Henry O'Malley. Gray felt that the Bureau favored the Natives and the Carlisle Cannery to the disadvantage of the Caucasians fishing on the Yukon River. In fact, O'Malley, on his first inspection trip after being appointed commissioner had failed to consult the old sourdough fishermen on the river. Obviously, Gray was frustrated with what he perceived to be a lack of zeal on the part of the officials to enforce the laws.⁴

That off his chest, Gray immediately penned another missive to Commissioner Marsh. "I differ with you in general," he wrote, adding that he had lodged a complaint against the Waskey Kameroff family. It had been difficult to get individual names. He had recently learned that one of the Natives was called

Luke and "he is married to Mrs. Wasky [sic] daughter dont know her name. also her boy cannot get his name." Waskey Kameroff, however, had been there, but Gray did not know "which one destroyed, broken into the fishhouse stole fish around 500 lbs torn the inner door of [sic] and are using the same or were when I arrive here for bunk boards also part of a boat stalls out of the dog kennell [sic]. taken board off the fish cach [sic]. erecting a look out station. using my ladder fish poles & racks." Gray had told the Kameroff family that he expected them to restore "things as they found them" and restore the stolen items. Kameroff thereupon told him that he had taken only one pole and a part of the fence, and furthermore stated that "the fence gave me no title to the lot." Kameroff claimed that the "women folks done what damage that was done," but Gray doubted that because no woman was strong enough to move the long and thick poles. Three of these had been used to construct a fishwheel while the family used the fourth at their tent as a wind brace. "So you see why I differ with you," Gray repeated. The Kameroffs had destroyed property and committed "larceny or stealing...and it's grand larceny breaking into the smoke house." Gray had sold approximately 300 pounds of fish out of the 1,000 pounds in the smokehouse to a Mr. Backlund. When he returned only 150 pounds of fish remained in the smokehouse. Gray listed half a dozen witnesses who had seen his full smokehouse and could vouch for the veracity of his statements. In short, Gray had lost a "summer's fishing as I did not want a misscarrige [sic] of justice. the evedence [sic] Here was enough if you came down and looked into the matter." Gray stated that he was unable to walk 200 miles to Fortuna Ledge and make a complaint under oath. He was broke, and furthermore "there is not another prospector that has been robbed oftener than I have how long shall I blindly and foolishly allow this outrage to continue." Gray concluded that if Marshal Jones did not stop to investigate the matter "I will send your letter

Gov. place to act as prosecuting witness. I could not travel 200 miles to take oath of said complaint." U.S. Marshal Chas. D. Jones of the second division read Gray's letter, and about two months later the deputy marshal from Fortuna Ledge came down to Gray's place and inspected the alleged damage but did not take any action. "The long shot of it was I went to the Hill on strait [sic] fish as I could not use the smoke House or sun rack without eracing [sic] the evidence left by them before I arrived." Gray came back to his place in the fall of 1925 and found that the mail carrier had broken into his cabin to get a part of an engine. In addition, about \$400 worth of personal property was missing. Gray could not prove that the Kameroff family entered after the mail carrier had "broken in altho He claimed they did and taken the tools dishes traps & so fort [sic]." Gray had learned that the Kameroffs had camped at his place before he came back in the fall of 1925. They moved away when he arrived, but apparently returned when Gray left for the winter and had just moved away once again when he returned in the spring of 1926. He thereupon nailed up the door to the cabin and notified Commissioner Marsh before he left for the South Fork to fish. The evidence of the 1926 vandalism was there, but Marsh did not act. When Gray returned on August 14, 1926 he discovered that he smokehouse had been broken into once again and his property had suffered other damages as well. In exasperation Gray asked "have I got to take the law in my own hands, like Fitzhugh. there [sic] store on the flats was robbed this spring He must hold a dam [sic] poor opinion of the law officials in this neck of the woods as he went over and flogged the native and made him dig up the cache [with the stolen goods] which was in the brush with a tent over it." But Gray knew that "taking the law into one [sic] own hands leads often to the pen or Hell, so I am making this appeal to you to right this question."⁶

also a copy of this to the Dept. of Justice Washing. D.C." Gray also sent a copy of his complaint to the Federal Territorial District Court Judge for the second judicial division, Gudbrand J. Lomen. The judge instructed U.S. Attorney Fred Harrison to furnish Gray with an answer. The U.S. attorney restated the obvious, namely that Gray seemingly had been the victim, "for a long time, of acts of vandalism by somebody" in his neighborhood. He also understood that Gray had complained to Commissioner Marsh but that the latter had taken no action because no formal complaint had been filed. Harrison stated that he understood that Gray was unable to go to Fortuna Ledge to swear to such a complaint, and seemed to feel that he had been wronged, was "very much put out with Commissioner Marsh and law officials generally." Harrison thereupon proceeded to lecture Gray on the formalities of the law. "Neither Commissioner Marsh nor any other prosecuting officer has either the right or the power to cause a person's arrest upon the receipt of a letter from someone who makes an accusation," he told Gray. Law enforcement officials could only act within the confines of the law, otherwise "our boasted liberty would be a mere matter of words because you or anybody else could be thrown into prison upon the bare word of anyone who wished to see you there." Harrison quoted the appropriate section of the Compiled Laws of Alaska dealing with the functions and authority of a commissioner which made it abundantly clear that Gray would have to swear out a complaint at the nearest commissioner's office if he desired to start prosecution of the alleged vandals. The commissioner nearest Gray's residence was located at St. Michael.⁵

As promised, Gray had sent his complaint to Judge Gudbrand J. Lomen as well as the department of justice in which he once again had summarized his complaints against the Waskey Kameroff family. He told Judge Lomen "being broke & sick at the time I wrote to the U.S. Com. at Fortuna Ledge. It was the

Gray's incessant complaints and unwillingness to comply with formal judicial procedures finally prompted Marshal Jones to file a complaint against Gray in 1928 alleging that the latter was insane, and was "at large in the Wade-Hampton Precinct, Second Division, Territory of Alaska," and that proceedings should be undertaken "to inquire into, and determine" his mental condition. On August 14, a day after Jones had filed his complaint, the U.S. attorney in Nome instructed Commissioner Marsh at Fortuna Ledge to investigate the complaint against Gray since he seemed to be mentally deranged and threatening trouble with the Natives. In case no physician was available, the U.S. attorney suggested to have Gray sent to Nome for observation. There was no physician at either Fortuna Ledge or St. Michael, so the U.S. attorney suggested that Marsh issue an arrest warrant and have Gray transported to Nome. On August 17, Marsh issued a warrant of arrest for Gray, as suggested, and directed the U.S. marshal to take the prisoner to Nome for observation and a sanity hearing.⁷

On August 23, Deputy U.S. Marshal E. Johnsson arrested Gray at Bill Moore Slough on the Yukon and transported him to Nome. It was not a cheap proposition. It had cost \$3 to serve the warrant, another \$38 for subsistence, \$30 for hiring a guard, and \$110 apiece for the transportation to Nome. On August 27, Chas. W. Thornton, Nome's commissioner, ordered that Gray be held in the custody of the U.S. marshal and be put under the "care, observation and examination" of physician Curtis Welch.⁸

On September 17, 1928 Commissioner Thornton directed the U.S. marshal to summon six private citizens to appear early the next day in the commissioner's court for the Cape Nome Precinct to serve as jurors in the inquiry into the mental condition of Gray. The inquiry, as directed, took place the next day.⁹ The jurors listened to the evidence presented by Dr. Welch and Deputy U.S.

Marshal Johnsson, and carefully studied a long letter Gray had penned to the U.S. Attorney General. In it he recited a long list of grievances. His home had been broken into three times within a year, and much property had been stolen and destroyed. Gray explained that he considered himself a "roughneck Prospector" who had been searching the hills near his home for the last sixteen years" trying to dig up something that would develope [sic] this part of Alaska," and he cautioned the attorney general "to have patience to get my complaint under your cap." Gray then proceeded to describe his tale of woes. His initial letter to Commissioner Marsh was delayed for six weeks even though it lay in the mailbox with a flag flying indicating mail to be picked up. The mail carrier, a Native and related to the Kameroff family, refused to transport the letter. He finally entrusted the letter to U.S. Marshal Jones when he came by on an inspection trip. Instead of investigating the matter, Jones sent Deputy U. S. Marshal D. McDonald a month later. Still no action. Commented Gray: "Its [sic] look hard but its [sic] a fact just the same Justice here is a joke if the Marshal or Commissioner can at there [sic] pleasure arrest or modify the cource [sic] of justice as has been done and is being done." He continued that in the last sixteen years "in this neck of the woods my Cabins, Fish House & Caches have been robbed every year." He had lost much personal property over the years, and being old and poor he could not afford that. While away at the prospect hole the Natives would take advantage of his absence and rob him blind. It had to be the Natives, he insisted, because besides two Caucasian traders no other white settlers lived within a fifty square mile radius. "Its [sic] hard to understand," Gray continued, "why things or times are harder now than 25 years ago. its [sic] becoming intolerable if the Natives can absutely [sic] arrest the progress of the white settler." The

Waskey Kameroff family was at fault and had committed the robberies and various acts of vandalism over the years, he charged again.¹⁰

Gray had been plagued with extremely bad luck over the years. He told the attorney general that as early as "1913 or spring of 1914 my lower cabin was robbed also the cabin and cach [sic] in the Hill." He had sent a complaint to the U.S. commissioner at "Fortuna Ledge or Marshall, as it was named then," but no action was taken. At that robbery he had lost a new shotgun and scope as well as new clothing, worth several hundred dollars. A Native by the name of Christensen from St. Michael acknowledged taking the rifle and scope and promised to pay for these items that coming winter. Unfortunately, however, that was the last Gray heard from the man. All this equipment and gear had to be replaced. A couple of years later he planned to return to the "lower Hills" to prospect, but experienced trouble with his outboard engine at the mouth of the Andreafsky River. He made it partway up the river, but rains, high waters and the troublesome outboard engine prevented him from reaching his destination. Although he had eight dogs, Gray had not brought a sled along, so he had to go to Fortuna Ledge to get one. On the way, he broke through the ice and dislocated his knee which "laid me up 3 months." While thusly marooned "a party I don't know his name but white in color went and took possession of my outfit." Claiming "it was a dam [sic] shame to leave new tents, clothing & good bedding," this unknown individual gave these items to Chas. Backlund, the caretaker of the Keller dredge, putting this man in possession of much of his outfit. When challenged, Backlund claimed that the owners of the dredge had left the articles. One item was a 303 rifle. Backlund stated that the dredge owners had instructed him to return the weapon to a Mr. Heckman, who had been Gray's partner during his first year of prospecting. Backlund intimated that Heckman had loaned the rifle to the dredge owners. "As luck would have it,"

Gray related, "Heckman was back on the river, located on "Willow Creek, so he went up and asked his former partner if he had authorized the loan of the weapon. Heckman declared that he knew nothing about the whole affair. So Backlund, who now owned the dredge as well as a store at the mouth of the Yukon River, still held on to some of Gray's tools and dishes. The rifle he had sold a few years ago. Obviously Backlund, by now a fairly prosperous individual, had been none too honest in his dealings. Gray explained to the attorney general that he mentioned this affair only "because you people go to that class for first Hand information, business men. I never got one article [back] from that outfit about \$300.00 more shot in the air."¹¹

In the fall of 1921 Gray moved to his present location to avoid further losses. He had an outfit worth \$2000 "and \$800.00 Bucks in my jeans. I thought I could do something [though] prices jumped to the sky here." He located on the river because he needed to catch fish to feed all of his dogs. He needed the animals to haul a big boiler and wood over a steep divide to his mining claim, he explained. Gray fixed up an abandoned shack on the river, and then allowed a chief reindeer herder to use his first cabin with the understanding "that He was not to make a public House out of it as all my earthly goods with the exception of a few articles I had on the river was in the cabin." After getting established in his new location, Gray returned to his first cabin only to find that the herder had left and given the cabin key to his old nemesis, Backlund. Gray discovered that several parties had used his cabin during his absence, given permission and the key by Backlund. In any event, after Gray retrieved the key and checked his cabin he discovered that he once again had lost tools, household goods, and part of his boiler.¹²

The following year, Gray collected much driftwood and piled it up near his cabin. When he returned from tending his fishing nets, the wood was gone. "A

native fishing below the wood piles cut it up for cord wood and sold the same to N.C. Co." He reported the theft to the U.S. marshal at St. Michael, who took no action.¹³

That fall Gray returned to his mining claim back in the hills "and was laid up 3 months could not walk, with Rheumatism one leg black & blue and twice in normal size at knee, also left arm same condition." As a result, Gray had to pay a Native for cutting and hauling wood for his stove, and bringing in some necessary supplies. The following spring, returning to his cabin on the river, he discovered that members of the Kameroff family had occupied his habitation "and taken possession of everthing [sic] in reach." The place had been vandalized. Gray took over his place after evicting the intruders and complained to the U.S. marshal. No action, and to make matters worse, he became involved in a fishing dispute with several members of the same family and they destroyed one of his nets. His arm gave out again, and one of the Kameroff boys challenged him to a fistfight. Discovering that Gray held his ground, having been a prizefighter in his youth, the young man gave up. A few days later, as already related, Henry O'Malley, the commissioner of the Bureau of Fisheries, visited on an inspection trip. Gray complained that the Natives, in violation of the regulations, put the nets too close together, only to be told that the Natives did not have to obey the regulations. Gray's fishing season ended miserably, he did not catch enough salmon to satisfy his needs. Since the Kameroffs had destroyed his smokehouse and he did not want to destroy any evidence, Gray left for his mining claim with some dried salmon. He commented that "no one knows what hardships I went through that Justice would get one square deal in this neck of the woods. I'll swear with the exception of about 1 qt. of Blueberries & 2 Rabbits that was my grub until the 24th of the following Nov." Arriving back at his river cabin, he discovered that it

had been broken into once again and \$400 worth of tools and household utensils were missing. Gray discovered that Axel Kameroff, a cousin of the family and the mail carrier, had been the culprit this time. When finally confronted, Axel denied all. When told that the individual who had accompanied him had spilled the beans, Kameroff offered "to settle for the Engine as he claimed that was all He had taken." He also told Gray that Kameroff and his son had stolen all the other property. Gray settled with the mail carrier, but got less than the engine was worth. Having not enough money to replace his traps, Gray was unable to trap that fall, so he went back into the hills "and sunk some holes prospecting. I come out this spring broke of course after a hard winter," only to find his place vandalized once again. In desperation Gray concluded that "nature would not stand such personal abuses, no food, it would be an early grave year." In order not to destroy the evidence, Gray departed for the South Fork there to put out his nets for salmon fishing. He once again wrote to Commissioner Marsh, but without getting any results. After the fishing season had ended, Gray discovered once again that the damage to his place had been compounded during his absence. Gray described his suffering, living on fish and tea, going without salt or tobacco. It seemed to Gray that the federal government was compounding the difficulties. For example, Natives were exempted from paying a license fee for trapping, but Caucasians had to pay it. The hospital boat with a physician and two nurses cruising the Yukon River catered to Natives only but did not treat whites. Physicians stationed in various parts of Alaska to care for the Natives "refuse aid to the broken white that [needs] medical aid without pay." Why, he asked, was "so much stock put in that leach of a class Priest & missionaries [sic] all creeds are alike." It was about time "some one back East there would look after the interest of the

tax payers...give the old Sourdough that are left a breading [sic] spell," he concluded, "it won't be long before we will be a thing of the passed [sic]."¹⁴

The six jurors listened carefully to the testimony presented by Dr. Curtis Welch and Deputy U.S. Marshal Eric Johnsson. They perused the written testimony and paid attention to Gray's oral testimony. They concluded that the accused was not insane. Indeed, they must have concluded that Gray had suffered an inordinately long streak of bad luck.¹⁵ Chambers' story was a very different one.

J.J. Chambers, M.D., approximately fifty years of age in 1910, "of respectable appearance" and "with a respectable wife and daughter," came to Nome in September 1906 to protect certain interests he had acquired in some mining claims. Chambers apparently had lived in New Mexico for some time, and practiced medicine in Utah and in Seattle, Washington. He grubstaked several individuals to come to Alaska on mining expeditions, and later felt that several of these individuals had tried to defraud him. He finally came to Nome to settle his affairs, and a great deal of litigation resulted between himself and his agents and others.¹⁶

Specifically, three mining claims, known as the "Bon Voyage," the "5½ Little Creek" and "Rocky Bench" were important. The first was the most valuable claim worth about \$200,000. Chambers and the individuals he had grubstaked disagreed as to the amounts of their respective interests in the "Bon Voyage." The resulting lawsuits involved Chambers in constant litigation from 1906 until 1911, involving about fifteen hard-fought cases in which he was either a plaintiff or defendant. These suits involved complex questions of law and much contradictory evidence. In some of these cases, Chambers prevailed, while others were decided against him. Most of the cases tried in the federal

district court in Nome were taken to the Circuit Court of Appeals, and some were even appealed to the Supreme Court of the United States.¹⁷

In the first of these cases, J. J. Chambers v. Andrew Eadie, J. Potter Whittren and F. H. Waskey, the plaintiff won and Judge Alfred S. Moore awarded him a half interest in the "Bon Voyage" claim, and damages from the defendants amounting to \$20,441.83. A supersedeas bond was given, the case was appealed, and about \$14,000 that was to have been applied in partial payment of the judgment became tied up pending the decision of the circuit court of appeals on October 11, 1909. In the meantime, however, Chambers complicated matters by filing an action against LaFarge et al. and pledged his interests in the Eadie judgment to protect the sureties on a bond given in the LaFarge case to secure an injunction pending litigation. If that was not enough, matters became further complicated when W. A. Gilmore secured an attachment levied on all the property and funds covered by the Eadie judgment. Gilmore had sued Chambers for the value of his services as an attorney in the Eadie and other cases, and obtained a judgment against him for \$8,569.50. Gilmore later on secured another attachment levied on about \$500 which Chambers had deposited in the Miners and Merchants Bank of Nome. Thereupon Chambers claimed that he was penniless and unable to employ legal counsel to take care of his numerous pending cases. He claimed that his financial hardships were brought about by the poor management of his attorneys, and the alleged perjury of Gilmore who had brought a suit to recover attorney fees. Gilmore, a practicing attorney, had become involved in Chambers' affairs when the latter had asked him in 1907 to join Judge Cornelius D. Murane, then a Nome attorney, as Chambers' legal counsel. With the concurrence of Murane, Gilmore agreed and handled about fifteen different lawsuits, some very simple and others complex and hotly contested involving large mining interests and substantial sums of money, as

well as appeals on writs of error to the circuit court of appeals, applications for injunctions, securing of bonds, trial of causes, and interventions, to name but a few. Chambers stated that he had entered into a specific contract to pay Murane a \$5,000 fee, of which amount Gilmore was to receive \$2,000. At a later date Chambers apparently agreed that in case a certain recovery was made in some pending suit he would allow an additional fee of \$2,000. Gilmore, however, categorically denied that there had been a contract specifying the amount of compensation to be paid, and instead claimed that Chambers understood that he would collect for the value of his services at the end of the litigation. Murane affirmed his contract with Chambers, but was unable to say what kind of a bargain Chambers had struck with Gilmore.¹⁸

Murane than accepted a position as U.S. attorney in Valdez and left Nome. By that time, Gilmore had performed a great deal of legal work for Chambers and had made an attempt to reach some kind of understanding with him about legal fees. Negotiations, however, broke down and resulted in a violent dispute between the parties. According to Gilmore, Chambers thereupon vowed that he would never pay a cent more than he had bargained, and that only at the end of litigation. Furthermore, he told Gilmore that he had merely been employed as Murane's assistant. Gilmore thereupon sued. In the meantime Murane had been appointed U.S. district court judge for the second division. Since he had served as Chambers' legal counsel, he disqualified himself from the case. Counsel on both sides then agreed to have B.S. Rodey, the U.S. attorney for the second division try the case as judge under the provisions of a local statute permitting that to be done. Rodey agreed to try the case in order to save the expense and delay to the parties of taking a change of venue to some other, distant district.¹⁹

The trial for attorney fees took about a week before a jury. At the same time, Rodey also presided on the motion for a new trial. In the end, Gilmore recovered a verdict for about \$8,500, and Rodey overruled the motion for a new trial. Shortly after the judge had overruled the motion for a new trial, Chambers called upon Rodey and asked that Gilmore be prosecuted for alleged perjury, committed during the trial. Rodey refused to do that because the jury had passed upon Gilmore's veracity and found in favor of the plaintiff and against Chambers. There was no other evidence to commence prosecution for perjury. Chambers thereupon stated that Rodey and his two assistants were disqualified to prosecute Gilmore for perjury and that he would apply to the attorney general to have a prosecutor named.²⁰

Chambers was angry, and apparently brooded over his troubles, deciding that everyone was against him. Having an irritable temper, he had experienced various personal difficulties with private individuals and officials in Nome. Shortly after the trial and his visit to Rodey, Chambers appeared on the street in front of Gilmore's office, and with a gathering crowd pointed toward it and shouted over and over again that there lived a perjurer and a blackmailer. Judge Murane thereupon called Chambers and severely reprimanded him.²¹

Chambers next penned a long missive to the attorney general in which he accused Nome's court officials of serious wrongdoings. He charged Murane, his former counsel and now the district court judge for the second division with having failed him as his lawyer and mishandled one of his cases as a judge. U.S. attorney Rodey came in for similar criticism, as did Assistant U.S. Attorney N. H. Castle. Eventually, A. L. Hicks from the department of justice traveled to Nome where he thoroughly investigated the court records, and talked with most of Nome's lawyers and others familiar with Chambers' accusations. He found that there were no reasonable grounds for criticizing the court

officials. In addition, Hicks found that Judge Murane enjoyed the respect and confidence of the bar members and was regarded as a fair and impartial judge, eminently satisfactory to the people of Nome.²²

In addition, Chambers had drafted a libelous memorandum, purporting to portray the "General Conditions of Nome, Alaska, June 1st.1911" which he had also sent to the attorney general:

There was elected a City Council in the month of April, of which one William A. Gilmore received the highest number of votes cast, and was, by custom elected Mayor of the city of Nome.

Mr. Gilmore was indicted for subornation of perjury in the year of 1906, tried by a jury in 1907 and acquitted as is usual in such cases in Nome. In the winter 1909-10 he was arrested for gambling but being a friend of the then Mayor, a brother attorney, the case was not tried. In the city election a year ago Mr. Gilmore being manager of one ticket for councilman, was giving away liquors on election day at their headquarters near the voting place contrary to law, the man in charge was arrested and fined.

One of the councilman recently elected was found guilty of running a gambling house some years ago and fined.

Another councilman recently elected was found guilty of running of gambling house some years ago and fined.

Another councilman recently elected, has the reputation of being a prize fighter, gambler and bar tender.

Another councilman buys gold dust and has a common reputation of running a "fence" (that is buys gold dust regardless, whether it has been stolen or not).

The city council elected Geo. B. Grigsby city attorney, who was removed from the position of U.S. District Attorney for cause last year.

The city clerk elected by the council, bears the reputation of being, at one time, a member of the "Soapy" Smith gang at Skagway some years ago.

The chief of the fire department, selected by the council, owns and is renting a number of houses in the "red light" district for immoral purposes contrary to the Alaska code.

Another man, at the time he was appointed to a position in the fire department, was under bond to appear before the grand jury for cutting a woman in the "red light" district, was indicted since and found guilty.

The city council appointed the judges and clerks for the school election which was held recently in which the women are allowed to vote under the Alaska laws, one of the judges so appointed was at one time arrested for giving or selling liquors to natives, tried but was not convicted, he had associated with native women for a great many years.

One of the school clerks appointed was expelled from the Eagle lodge a few months ago for being a "Maque," the respectable women of Nome were compelled to go to the polls and vote under these conditions, the conditions being publicly known.

The grand jury which convened May 29th., Judge Murane appointed a Federal Official, Collector of Customs, as foreman. Many regular salaried government officials and employees names were in the jury box. Shortly after Judge C.D. Murane and U.S. District Attorney B.S. Rodey were installed into office last August, through some understanding or agreement with certain property owners, the "red light" district was moved to the very heart of the town where school children as well as others were forced to pass by the part of town so occupied. Shortly after the denizens were properly located in the center of town and the exorbitant rents pouring into the coffers of the owners of the buildings so occupied, the man who was more benefited than all others combined by the removal of the restricted district to the present location, owned a house in the respectable part of town which he sold or gave to Judge Murane where the judge now resides.

The examiner's report and findings should have concluded the matter, but that was not to be. On December 2, 1911, Chambers met Rodey on the street in Nome and handed him a piece of paper, purporting to be a copy of a telegram the former apparently had sent to Washington. Rodey inquired at the cable office to find that it had not been sent. It read as follows:

Nome, Alaska, Nov. 28, 1911.
Alaska Square Deal Club, Seattle. Wash.
Honest Judge and District Attorney Greatest Need Seward Peninsula
Property interests unsafe under Judge Murane and District Attorney
Rodey's administration. I have been robbed by Gilmore committing
perjury by aid in and protection of Government Officials. Urge
Senate Judicial Committee investigate, have absolute proof. (Sgd)
Dr. J. J. Chambers²⁴

Chambers apparently gave a similar copy of the above to one of the local newspapers which reprinted it without mentioning names. Chambers apparently had telegraphed the "Alaska Square Deal Club," a crowd of people who had formed around the Arctic Club in Seattle and formed a committee to "urge legislation for and protect Alaska" before Congress in the coming winter. Members of this club had wired municipal officials and prominent Alaskans in various communities asking for suggestions as to what legislation Congress needed to pass for the territory. Chambers apparently had decided that the "Alaska Square Deal Club" should ask the Senate Committee on the Judiciary to investigate his complaints.²⁵

Rodey and Murane had discussed the possibility of citing Chambers for contempt of court because of the criminal and civil libel involved in the publication of the telegram, even omitting specific names, but concluded that the matter was without any foundation in fact and should be forgotten--unless "some more brazen occasion arises that may force one or more of us to action of some kind against him."²⁶

Chambers, however, did not give up easily. On May 6, 1912 he addressed a petition to the mayor and town council of Nome in which he requested that body to wire the attorney general and ask that a qualified jurist be sent to the city to hear and determine the various pending cases from which Judge Murane was disqualified. Chambers then repeated his long list of charges against various court officials and others. Neither the mayor nor the council acted on the request, so a couple of months later he contacted the attorney general and once again repeated his charges. His language now was intemperate. He stated that Judge Murane "in collusion with Wm. A. Gilmore had deliberately made plans to defraud me out of property valued at more than \$100,000.00." He reiterated that "Judge Murane is a cowardly blackmailer, thief, perjurer, deliberately laid plans in collusion with Wm. A. Gilmore to rob me of my liberty and property." He demanded an investigation, but none was forthcoming. Nearly a year later, on March 17, 1913, Chambers again sent a lengthy complaint to the attorney general, in which he repeated his earlier charges and demanded that Judge Murane be removed from office.²⁷

Chambers could not keep his mouth shut in public, and finally he was indicted for criminal libel and the commissioner sentenced him to serve ten months in jail. By that time, however, many of Nome's citizens, both Chambers' friends and foes, had come to believe that the doctor's mind had become confused. Confinement apparently aggravated his mental condition. One of his

friends summed up the situation by stating that "Dr. Chambers' many troubles here have been too severe a strain on his mind." Alaska's delegate to Congress James Wickersham intervened at this point. He told the attorney general that Chambers was insane and needed protection. The delegate remarked that "everybody except Judge Murane and his friends" had noticed that Chambers was insane and therefore not responsible for his libelous statements. Wickersham, who had won reelection to Congress in 1912 as a Roosevelt or "Bull Moose" Republican, continued that Chambers, unfortunately, had also been politically opposed "to the Judge and the Justice of the Peace appointed by the Judge, both of whom have been big-interest stand-pat Republicans." The delegate hastened to add that he did not know "that that fact is to their discredit except that it is a part of the controversy arising between the judge and Dr. Chambers." Wickersham suggested that Chambers might have been mentally unstable throughout his long legal battles in Nome. He asked that Chambers be given a sanity hearing.²⁸

Two days later, on September 3, 1913, U.S. Attorney B.S. Rodey conducted a sanity trial before the commissioner's court. The six men jury, after a short deliberation, declared Dr. J. J. Chambers insane and directed that he be committed to Morningside Hospital near Portland, Oregon. Rodey commented that "the poor man showed himself on the stand to be hopelessly insane," and he was not certain that Chambers could be cured. The U.S. attorney further remarked that a couple of months ago, just before he returned to Nome from a trip outside, it was "strange to say" that "a jury held him sane," and then convicted him of criminal libel. Just a short time ago territorial Governor John F. A. Strong, who had known Chambers for more than ten years, visited Nome and called at the jail to see the doctor. Afterwards he expressed the opinion to

Rodey that he had always believed Chambers to be insane, but that he was so much worse now that there was no question about it.²⁹

Chambers, like Gray, filled the files of the department of justice with voluminous complaints against federal officials. Both men greatly annoyed the communities in which they lived, but nobody contested their right to voice their opinions, whether right or wrong. Both men were typical of many other northern residents who prided themselves on their adversarial relationship with the federal bureaucracy. Gray was stubborn and persistent, while Chambers, exhibiting these same qualities, had lost his mind.

FOOTNOTES

1. Thomas P. Gray to George F. Marsh, June 15, 1928, Inquiry as to Mental Condition of Thomas Gray, Criminal # 2053, Nome Courthouse Records, Nome, Alaska.
2. Ibid., Marsh to Gray, June 15, 1925.
3. Ibid., Gray to Marsh, July 1925.
4. Ibid.
5. Ibid., Fred Harrison to Gray, Aug. 31, 1926.
6. Ibid., Assistant Attorney General to Frederick Harrison, November 19, 1926; Gray to Lomen, August 15, 1926.
7. Ibid., Complaint, In the Matter of the Inquiry into the Mental Condition of Thomas Gray, August 13, 1928; U.S. Attorney to Marsh, August 14, 1928; U.S. Attorney to Marsh, August 15, 1928; Marsh to Chas. W. Thornton, August 17, 1928.

8. Ibid., Return, U.S. Deputy Marshal E. Johnsson, August 23, 1928, Order, In the Matter of the Inquiry into the Mental Condition of Thomas Gray, August 27, 1928.
9. Ibid., Venire, In the United States Commissioner's Court in and for Cape Nome Precinct, Second Division, Territory of Alaska, The United States of America, Plaintiff, In the Matter of the Inquiry into the Mental Condition of Thomas Gray, September 17, 1928, Marshal's Return, September 18, 1928.
10. Ibid., Gray to Attorney General, 1928.
11. Ibid.
12. Ibid.
13. Ibid.
14. Ibid.
15. Ibid., Verdict, In the Matter of the Inquiry into the Mental Condition of Thomas Gray, September 18, 1928.
16. B. S. Rodey to Attorney General, May 24, 1911, A. L. Hicks to Attorney General, September 3, 1911, Department of Justice Files, R. G. 60, N.A.
17. Ibid., Most of the Chamber case is based on the account given by A. L. Hicks.
18. B. S. Rodey to Attorney General, January 24, 1911, Department of Justice Files, R.G. 60, N.A.
19. Ibid., Rodey to Attorney General, December 10, 1910, Department of Justice Files, R.G. 60, N.A.
20. Ibid.
21. Hicks to Attorney General, September 3, 1911, Department of Justice Files, R.G. 60, N.A.
22. Chambers to Attorney General, June 20, 1911.

23. Chambers, "General Conditions of Nome, Alaska, June 1st. 1911," Department of Justice Files, R.G. 60, N.A.
24. Rodey to Attorney General, December 4, 1911, Department of Justice Files, R.G. 60, N.A.
25. Ibid.
26. Ibid.
27. Chambers to the Honorable Mayor and Common Council of Nome, May 6, 1912, Chambers of Attorney General, March 17, 1913, Department of Justice Files, R.G. 60, N.A.
28. W. W. Getchell to James Wickersham, August 16, 1913, Wickersham to Attorney General, September 1, 1913, Department of Justice Files, R.G. 60, N.A.
29. Rodey to Attorney General, September 3, 1913, Department of Justice Files, R.G. 60, N.A.

JUDGE CHARLES E. BUNNELL

On November 1, 1956, Dr. Charles E. Bunnell, president-emeritus of the University of Alaska died of a heart attack in a nursing home in Burlingame, California. Bunnell had been in poor health throughout the summer and fall of that year, and finally Jean Bunnell, his daughter who was assistant to the Dean of Student Personnel at San Francisco State College decided to place her father in the nursing home adjoining the Peninsula Hospital.¹

Bunnell was born on January 12, 1878 in Dimock, a crossroad village in Susquehanna County, Pennsylvania. He attended Bucknell University in Lewisburg, Pennsylvania, and graduated with a Bachelor of Arts, Summa Cum Laude, on June 20, 1900. In the fall of that year, the graduate accepted a teaching position on Wood Island, located five miles east of the town of Kodiak. He arrived at Kodiak in September of that year, taught for a term, and returned to Winfield, Pennsylvania, where he married Mary Ann Kline. The couple came north that fall to teach at the U.S. Public School at Kodiak. During his two years of teaching, Bunnell completed work on a Master of Arts, and Bucknell University granted him the degree by examination at its 1902 commencement exercises. The Bunnells then taught school at the mining settlement of Valdez on Prince William Sound in southcentral Alaska. Mrs. Bunnell taught primary grades until 1904 and then resigned her position, while her husband continued as a principal for another two years. He resigned in 1907 and became assistant cashier of the Reynolds-Alaska Development Company Bank. Within nine days, the bank collapsed, and Bunnell lost his job and most of his savings. Since the Phoenix Hotel needed a manager, he took the job for the winter. He had been studying law by himself and by correspondence courses, and soon Edmund Smith, a local attorney, hired him to work in his real estate

office. He continued to study law under Smith and passed the Alaska bar examination in November 1908. Immediately after receipt of his license on November 23 he joined his employer in a partnership which continued until 1912 when Bunnell bought Smith's interest and continued the practice under his own name. Besides his law practice, Bunnell engaged in a variety of business enterprises, served one year as president of the Valdez Chamber of Commerce and was elected to the school board. Bunnell soon gained a reputation as a man of high principles and sound business judgments and as a foe of the liquor, gambling, and prostitution elements.²

In 1912, he was elected territorial committeeman for the third judicial division, and two years later he ran as a democrat for the delegateship, opposing the redoubtable Judge James Wickersham, the incumbent delegate to Congress. Bunnell waged a vigorous campaign but lost to Wickersham, the seasoned politician, by a vote of 3,091 to 4,876. A week after the November 7 election, Frederic E. Fuller, the district court judge of the fourth judicial division, resigned, and Bunnell immediately applied for the position. T.W. Gregory, the attorney general, favored the appointment. Delegate Wickersham went to see Gregory on December 20 to talk about Alaska appointments, and especially that of district court judge. Gregory proved unreceptive to the delegate's suggestions, so he surmised that the territorial democrats had "seen him first" and suggested names. Wickersham thought that Bunnell would be appointed judge, and therefore he and his "friends may as well take our hats and go!" On December 29, Wickersham noted in his diary that "Bunnell was appointed Judge in Alaska today---well, why not? They promised him the office if he would run against me--and he ran--and now he is entitled to the office." The delegate did congratulate the new judge upon his confirmation. A new career had begun for Bunnell.³

Bunnell was to assume his duties in Fairbanks, headquarters of the fourth judicial division. The judicial appointment occasioned much positive and negative discussion in Alaskan newspapers, all along party lines. Bunnell took all of the uproar in stride, and in a very short time he had organized a smoothly-operating court where the morale of the employees was high. Although young and inexperienced, observers found Bunnell to be a capable judge and administrator, one who was scrupulously fair and totally committed to administering justice to the best of his abilities. Even his political enemies recognized that Bunnell conducted court according to the highest standards, although his fellow democrats complained that he had appointed two Republicans to the most lucrative offices at his disposal.⁴

There were some individuals, however, who disliked Bunnell immensely. Louis K. Pratt, a Fairbanks attorney, was such a one. In 1916, he complained to President Woodrow Wilson about the judge. He recounted that prior to his appointment, Bunnell had lived in Valdez where he had served as the receiver of the Reynolds-Alaska Development Company Bank which had become insolvent. Pratt observed that the attorney for the receiver possessed an extensive library "and Judge Bunnell during that period doubtless read some of the law books in the attorney's office and was admitted to the bar. Without any real preparatory training and with little or no actual practice, he was appointed to his present position." In Pratt's opinion, Bunnell was a man "of very mediocre ability" and that it was "out of the question for him to ever develop into a lawyer in any fair sense of the word." In fact, Pratt believed that L. T. Erwin, the U.S. Marshal "and a man of considerable ability and force," one of the "oldtime practical, ruthless... politicians" was "strong willed enough to dominate the Judge," and the other court officials. This state of affairs had resulted in packed grand and petit juries, "indictments and sentences that are illegal,

unjust and wicked, and decisions and verdicts in civil cases that are travesties in justice."⁵

Pratt assured the President of his sterling credentials entitling him to the role of critic. He had been a lawyer since 1877, served as judge in the seventeenth judicial district of Kansas from 1886 to 1890; practiced law in Denver, Colorado from 1891 to 1898 during which time he had served for two years as first assistant city attorney; and in 1898 he had moved to Skagway and Juneau, Alaska. In September 1904 he had gone to Fairbanks and practiced in that city ever since. "This [record] ought to qualify me to speak of these matters," Pratt stated. He then asked that the President have an experienced lawyer sent to Alaska to examine the territorial court system, and particularly the district court in the fourth division.⁶ The record does not show whether or not the President responded to Pratt's complaints.

Officially, Judge Bunnell's four-year term of appointment ended on January 12, 1919. In December 1918, the President renominated him for another four year term, and sent his name to the Senate in 1919. Shortly thereafter Senator Wesley Jones of Washington filed objections to his confirmation, and early in 1919 Bunnell learned that Delegate Wickersham had filed charges against him. The delegate accused Bunnell of using his judgeship for political purposes, namely that he had interfered in the 1916 delegate race between Charles Sulzer and Wickersham by encouraging soldiers to vote for Sulzer. The latter, having lost his seat in Congress to Wickersham in 1918, had returned to his mine on Prince of Wales Island. Sulzer had already explained to the Department of Justice that Bunnell had not been involved in the contest in any way. Nevertheless, Wickersham was intent on preventing the judge's confirmation and succeeded in his efforts. The President submitted Bunnell's name twice to the Senate, and on both occasions Senator Wesley Jones blocked Senate

consideration. In November 1920, Bunnell went to the capitol and talked about Wickersham's charges with Jones who then agreed to withdraw his opposition. In fact, Jones arranged a hearing before the appropriate subcommittee where Bunnell explained the delegate's charges. He left Washington convinced that subcommittee members had been "entirely satisfied" with his answers to the charges. Still, no confirmation was forthcoming. Bunnell explained to the attorney general that "but for the fact that during 1918, and 1919, I was attending to the greater part of the Court work in the Third Division on account of the illness of Judge Brown, together with my own work. I should have been able to go to Washington and request the privilege of appearing before the Sub Committee and make answer to the malicious and vicious charges originated by James Wickersham." Bunnell felt that he had been treated extremely unfairly yet still hoped that an executive session would be convened and he would be confirmed.⁷

That was not to be, however, because these charges had the effect of holding up his confirmation until it became Republican party policy to table the appointments made by President Wilson. Judge Bunnell continued in office until December 4, 1921, waiting for a successor appointed by President Warren G. Harding. In August of that year, the board of regents had selected Bunnell as the first president of the Alaska Agricultural College and School of Mines. On December 7 of that year he assumed his new duties and proceeded to organize the college. Bunnell had begun still another phase in his life.⁸

During his incumbency as a judge, Bunnell's most celebrated criminal cases included those of two murderers he sentenced to be hanged. The first of these two was Mailo Saguro, an East European immigrant who had murdered George E. Riley, the proprietor of Riley Investment Company. The company operated a dredge on Otter Creek. At the beginning of April, the thawing crew started its

work enabling the dredge to start operations on May 1. Thawing the ground required much wood to keep the boilers going around the clock. Each boiler burned one cord of wood every six hours. Cut into four-foot lengths, the wood cost six dollars per cord on the bank of Otter Creek some 18 miles above the dredging operations. After breakup, the woodcutters floated the logs down to near where the boilers were installed ahead of the dredge. When the logs arrived at the site, the woodcutters took them out of the water and piled them in long rows. From here it was loaded on a four-wheeled flanged truck which the workers pushed on a track down to the boiler. After its arrival there, the price of wood had risen to \$17.00 per cord.⁹

Charles Lee Cadwallader, an Oregonian, had taken the job of bookkeeper for the Riley Investment Company. That spring he related that his employer, George Riley, "had received a black hand note...threatening his life." Riley asked Cadwallader to go to Iditarod and tell the U.S. marshal about the note. This he did and Riley hired some guards to protect company property. He also trained Cadwallader to take over operations because he expected to be on the dredge all summer and travel to the contiguous states in the fall. Cadwallader remembered that one Billy Bristol had a wood camp above Otter Creek where he employed Russians and Montenegrins. Winter cutting ended, and Bristol asked that a company representative come out and estimate the cordage cut during the winter. Riley detailed Cadwallader to this job. After that the woodcutters came to the company office to receive their credits for cordage cut. After all had appeared and agreed on the division and the proper numbers had been entered into the books, "one tall Montenegrin returned the next day and stated that he should be given credit for two cords and take it from one of the other members of the party, but he did not bring the other fellow with him." Cadwallader explained that somebody would have to reassign a cord, and to bring that

someone along. Mailo Saguro would not listen and became mad, even after Riley tried to explain the matter to him. Saguro angrily left the office, slamming the door behind him.¹⁰

On May 5, 1918, Riley shut off one of the boilers in order to weld some leaks which had developed. While Riley worked at the repair shop, Saguro showed up at the office and asked for the boss. Informed where he was, Saguro left. About an hour later a member of the thawing crew came running into the office and informed Cadwallader that a man had shot Riley. The bookkeeper called Claud Baker, the Vice President of the Miners and Merchants Bank in Iditarod to ask for help. While the two men were talking, four men carried Riley past the office window on a canvas stretcher. He was dead. Cadwallader called the physician and U.S. marshal at Flat. Shortly thereafter two workers brought in Saguro. A search of the suspect failed to produce a gun. Asked what he did with it, he said "I threw it away up by the dredge." A search located the weapon in the snow near where he had shot Riley. Saguro had been captured a quarter mile from the scene of the crime. Saguro apparently had helped handle some flue pipe putting it into position for welding. After the two men helping Riley had left, Saguro pulled his gun and shot Riley twice in the back, the first one passing through the heart.

A short time later U.S. deputy marshal Guy Gehrity came for Saguro who was waiting under guard at the company office. When Gehrity took charge of the prisoner and started for Flat, Saguro asked him: "Why are you going to put me in jail, I pay my bills."¹¹

There was much turmoil in the district. Riley had been one of the biggest employers. For a time it looked "like a lynching might take place, as this was a cold-blooded murder, shot in the back and then for a cause that had no angles and never did show any at the trial." In any event, Saguro had stated that he

had just wanted to kill Riley, and the accused's countrymen stated that "he never would have shot Riley if he couldn't have shot him in the back."¹²

At the trial it developed that Saguro became mad after making his last appeal to Riley for money owed him. Saguro had supplied the Riley boilers for two years with split wood, but Riley denied that he owed the woodcutter \$800.00, a claim which Saguro had presented again and again. He intended to leave the district and needed the money, but once more Riley refused to pay, and at that point, Mailo Saguro, not a brave man, twice shot Riley in the back.¹³

Leroy Tozier, Saguro's defense attorney, attempted to have the trial venue shifted from Flat because he suspected that the witnesses, who were aliens, would be afraid to testify honestly for the defense. The venue change was denied, however, and the Flat jurors convicted Saguro of murder without recommending mercy. Judge Bunnell therefore sentenced Saguro to be hanged on October 4, 1918. The convicted man did not keep his date with the hangman, because there was an unsuccessful appeal to the Circuit Court and stays of execution by the governor to allow time for presidential clemency. John A. Clark, a Fairbanks attorney, won the governor's stay of execution by arguing that Saguro had shot Riley in self-defense, although evidence for this course of action was not convincing. The lawyer also stated that Riley had really not been shot in the back but had twisted his body somewhat while facing Saguro and reaching for his gun. This movement had allowed Saguro's bullets to enter his back.

President Woodrow Wilson refused to grant executive clemency, so the execution was rescheduled for April 15, 1921 to take place at Fairbanks. On the day of the hanging, Saguro, dressed in a new suit, bid his guards and others goodbye. He was very brave until led to the improvised gallows where he

refused to stand up. The scaffold had been constructed by building a passageway from a second floor window of the courthouse to another one in the old, vacant Fairbanks Banking Company building next door. The carpenters cut out a trap door midway across and built a frame of some two-by-tens over it to hold the hangman's rope. The guards strapped the terrified Saguro to a board, placed the noose around his neck and sprang the trap door. Three minutes later Dr. Sutherland, a local physician who stood beneath the improvised gallows, pronounced Saguro dead.¹⁴

The William Stewart alias William Dempsey case was a much more sensational one because it involved the slaying of a deputy U. S. marshal in performance of his duties. It also involved the killing of pretty, buxom Marie Lavor, who left her place of business on Sixth Avenue and C Street where she was plying her ancient trade on the night of August 25. When she left, she apparently told "a frequenter of her place" that she would return shortly and asked him to sell cigars and soft drinks during her absence. The individual remained the night, and when Miss Lavor had not returned by eight o'clock the next morning he told one of the local taxi drivers who, in turn, alerted the marshal's office. Subsequent investigations revealed that Marie had cashed \$600 worth of checks. Only \$25 was found in the cash register, so it was presumed that she carried this amount with her. Her friends also knew that she always wore a very valuable diamond necklace and other jewelry which led them to believe foul play was involved in her disappearance.

U.S. deputy marshals C. W. Mossman and Sturgis conducted a preliminary search in the southeast part of Anchorage and promised to search every empty cabin for a clue which might lead to finding the woman. The two officers discovered that the Lavor woman had an appointment with a friend on the night she disappeared. This friend apparently left Anchorage a couple of days later

for his work on Turnagain Arm, and the officers were attempting to identify the individual and contact him. The initial investigation did not reveal any clues to Lavor's whereabouts, but both deputies suspected that the woman probably had been murdered for her money and valuables. On August 30, the marshal's office advised that all her friends had been questioned, and that nothing had escaped "the eagle eyes" of the two deputies. In fact, they had "taken the measurements of footprints and for the first time in Anchorage have taken finger impressions." The officers also had identified the man last seen with her, and had made arrangements to apprehend the suspect. In short, nothing had been left undone by the marshal's office. The woman's disappearance deeply worried her friends as well as the law enforcement officials.¹⁶

A few days later, a searcher hired by the marshal was alerted by his dog who found blood on the ground at the southeast corner of Dempsey's cabin. Following the trail, T. R. Wilson found a blood-soaked shirt, vest and trousers in the outhouse back of Dempsey's cabin. On the afternoon of September 4, W. H. Weaver and J. R. Herzer, accompanied by the same dog, visited the premises of John Krikoroff, locally known as "Crazy John" because of the numerous odd additions to his house. The two men conducted a careful search, and then the dog acted strangely. He whined and sniffed around the top of the well situated on the inside of one of the additions to the main house. Both men knew that something was wrong, so Weaver climbed down the well to investigate. The cribbed well measured about two and one half feet at the top but enlarged at the false bottom made of heavy boards and about three feet from the real bottom of the well. Weaver cleared out rubbish, and beneath it found the body of Margaret Lavor. They notified the marshal's office, and with the assistance of volunteers removed the body, no small task since Margaret weighed about 210 pounds. The case of death was obvious. The lower left side of the woman's

head had been crushed by the blow from a blunt instrument. There were no other marks of violence on her body other than those caused by the fall when she was thrown down the well. The unfortunate victim was dressed in her street clothes, and a gold bracelet, gold ring, diamond breast pin, gold nugget chain and earrings were found on her body, but no money.¹⁷

Evidence suggested that the crime had been premeditated, for the top curbing of the well had previously been removed and the opening made large enough to admit a body the size of Lavor's. In the meantime, several people had told the marshal that Lavor had been seen with William Dempsey the night of August 25. The fellow who lived with Lavor had watched her dress to meet Dempsey, and later somebody knocked on the cabin door but fled when Lavor's friend came to answer. Obviously, he had hoped to find the place empty. A couple of Dempsey's friends admitted to the marshal that he had told them of a scheme to rob the cabins of the prostitutes while a partner took the women for a walk. Also damaging was the testimony of another acquaintance who identified the bloody clothing found in the outhouse on B Street as those Dempsey had been wearing on the night in question.¹⁸

The suspect was missing, and presumably he had left town to work at one of the railroad construction camps between Anchorage and Seward. He had not been seen since the day after Lavor's disappearance. Marshal F. R. Brenneman, therefore, informed deputy marshal Isaac Evans in Seward to keep an eye open for the murder suspect. Brenneman suspected that whether Dempsey wanted to work or catch a steamer outside, he would probably have to go to Seward. And sure enough, on September 1 Evans arrested the suspect near the post office, witnessed by a number of citizens. Dempsey made no effort to resist, and quietly accompanied Evans to his office where the deputy superficially searched him for weapons. On leaving the office to walk to the federal jail, only a few

feet distant, Dempsey stopped to pick up a bundle of clothing he had been carrying. From the bundle he pulled a .38 caliber automatic pistol and fired four shots at Evans at close range. The first shot mortally wounded the deputy, while the others went wild, fired as Dempsey ran for safety. Evans still managed to pull his weapon and sent two shots after the fugitive before he passed out. Dempsey ran down the railroad tracks and found a handcar which he mounted, and "pumping frantically," sped north toward the Resurrection River. J. Lindley Green, an employee of the Alaska Engineering Commission, tried to stop the handcar by throwing a plank across the railroad track, but under high speed, the car jumped the obstruction and held to the rails. Later, a posse of twenty-five well armed men found the handcar ditched and abandoned above Resurrection River. At the point where Dempsey left the handcar, he held up D.C. Brownell, a lineman, and relieved him of a .45 caliber Colt automatic pistol and fled into the woods. Although hot on his trail, Dempsey eluded the posse.¹⁹

While the chase for the murderer continued, the physicians attending Evans issued a bulletin stating that the deputy, though weak from the loss of blood, would probably recover because of his splendid physical condition. Evans, however, died early on the morning of September 3rd. The shot fired at such close range had torn a big hole through his lungs and brought on internal bleeding to which he succumbed. Well liked, Seward citizens mourned the deputy's death and were determined to apprehend the murderer. Journalists reported that "every avenue of escape is closely guarded; reliefs are leaving Seward daily to assist in the search." Most hoped that Dempsey would not be captured alive, hoping that he would "meet with justice from the hands of the stern-faced, determined bunch of men who will follow him to his last hiding place, which will probably also be his last resting place."²⁰

Early the next afternoon, Ben Little and Frank Martin captured Dempsey at the water intake near Seward. He had apparently doubled back on his trail after leaving the railroad and escaped members of the posse guarding the line into Seward. When captured, he was building a fire and apparently in poor condition, suffering from hunger and exposure. He did not resist arrest, but refused to talk about the Lavar murder, insisting that he was not connected with it, and also refused to talk about the Evans shooting. Brought into town, newspapermen observed that "while unkempt, bedraggled and dirty," Dempsey did not "have the appearance of a bad man or a killer." He was cowering and very nervous. Deputy Marshal Mossman phoned the Anchorage Daily Times not too long after the arrest and announced that he thought Dempsey would confess to the Lavar mystery within the next few hours. He predicted that the murderer "will certainly breakdown under the examination...."²¹

Journalist Charles E. Herron interviewed Dempsey on September 5, and announced that the slayer of Deputy Marshal Evans confessed that he had killed Margaret Lavar. Herron gained the impression that Dempsey enjoyed the notoriety his crimes had brought him. "He appeared lighthearted and cheerful, exhibiting no evidence of remorse." Dempsey answered Herron's questions candidly and seemed "anxious only that the world should know of and read about his exploits." Callous to any human feelings, at no time did he express any remorse or pity for his victims. Dempsey implicated Mike Sovouski in the killing, and stated that his partner had crossed him and taken all the money. He told Herron that the two had planned to lure the woman to his cabin. There his partner was to have knocked the woman unconscious or killed her, and Dempsey was to have robbed the cabin. At first, he had planned to lure Mrs. Hall, one of the prostitutes, to his cabin and kill her because he believed she

had the most money. Mrs. Hall, however, had become scared and the plan had not worked.²²

Herron relayed the confession to Deputy Marshal Frank Hoffman who was suspicious of the accomplice story, but nevertheless checked it out. It proved to have no basis in fact. Thereupon the deputy marshals "applied the stringent measures of the third degree which included the physical torture necessary to make a prisoner talk...." Dempsey was denied food, water and sleep, and although he lasted for hours, he finally broke down "under the severe strain and told his story in a rambling manner." He confessed that he alone killed Margaret Lavor on the night of August 25. Dempsey told the officials that he had made an appointment to meet the Lavor woman at his cabin. As an added inducement he told Margaret that he wanted to sell a cache of whiskey cheaply because he wanted to leave town. Margaret remained in Dempsey's cabin for an hour, and then the killer lured her to "Crazy John's" abandoned place where the booze supposedly was hidden. The two left Dempsey's cabin about two o'clock on the morning of August 26 and walked to the place Dempsey previously had selected for committing the crime. Arriving at the well, Dempsey struck Margaret on the back of the head with a Stillson wrench to stun her. The woman screamed, so he struck a second violent blow which killed her. He then lost his nerves and did not search the body for money or jewelry, but hurriedly placed the skirt over the victim's head to keep the blood from dripping and marking the ground and dumped the body head first into the well. Dempsey admitted that the bloody clothes T.R. Wilson had found belonged to him. After the confession, Dempsey, a nervous wreck, fainted and medical attention was necessary to revive him.²³

Deputy marshal Frank Hoffman subsequently found the murder weapon where Dempsey had said he had thrown it. Furthermore, the murder did not net Dempsey

any money, because investigators found \$145 in Lavor's place of business and learned that she had loaned \$600 to friends before the murder. On September 5, William Stewart, alias William Dempsey, alias William Nichols, alias William Cummings, Alias Jack Smith, was bound over to the grand jury without bail in the United States Commissioner's Court. Arraigned on having killed Deputy Evans, the government did not introduce any evidence to link him with the death of Margaret Lavor.²⁴

The government transported Dempsey to Valdez where he was to await trial. Here he told another story and denied that he had killed Lavor. He explained that he had shot Evans simply because he wanted to escape from the deputy's attention. In Valdez, Judge Bunnell appointed Anthony J. Dimond to defend the accused. Dimond was aware of the story Dempsey had told in the Seward jail, namely that he was of unknown parentage and reared in the Children's Aid Society, a foundling institution, at White Plains, New York. At the age of twelve he was sent to a farm near Syracuse but ran away within the month. He then spent his time with criminals and hoboes until he came west at the age of seventeen. He came to Montana and worked for a time as a sheepherder near Mills City, then went to Seattle in 1918, and eventually reached Juneau. There he worked in the Preseverance Mine, and reached Seward in November 1918. From there he walked to Kenai Lake, and then took the train to Anchorage. In Valdez, Dimond learned that Dempsey was from Ohio and as a boy had suffered a serious skull fracture years before and experienced periods of irrational behavior, several times threatening his sister with a knife. In fact, he had acted so bizarre that family friends had advised the boy's father to commit him. Dimond presented this background information to the jurors as part of an insanity defense in the form of sworn affidavits because family members were unable to afford the expense of traveling to Alaska.²⁵

Bunnell was convinced that Dempsey was not who he claimed to be, and that he was older than nineteen years he had given as his age. Dempsey asserted that he did not know the name of either his mother or father, but remembered the first names of his brothers and sister. Dimond had wired a Mrs. Dempsey in Cleveland, Ohio, and received a reply signed by one John Dempsey, a brother. Slowly it developed that the father's name was John, that he was a Pole, and his mother a German. Bunnell was convinced that the murderer had traveled with the real Dempsey and learned the names of brothers and a sister and now impersonated the real William Dempsey. Frank Smith, the Cleveland chief of police informed the judge that the Joseph Dempseys had seven children, four girls and three boys, and that William was indeed their child and would be twenty years of age in January 1920. The parents claimed that William left school at the age of fourteen and worked on farms, but returned to Cleveland three years ago. The parents claimed that years ago a keg had fallen from a wagon striking William on the head. Since that time, they asserted, their son had complained of dizziness.²⁶

Dempsey was tried for the murder of Evans in November. The trial began on November 24 and ended four days later. Seventy jurors were examined, and the defense exhausted eighteen peremptory challenges and many for cause. The jury was out for an hour and a half and returned a verdict of guilt of first degree murder and rejected the qualification of mercy it was entitled to make. Under Alaska law the judge was required to order the hanging of anyone convicted of murder in the first degree who did not receive a recommendation "without capital punishment" from the jury. Judge Bunnell sentenced Dempsey to be hanged on February 20, 1920. The Lator trial started on November 29. Sixty-five jurors were examined, and the defense exhausted twenty peremptory challenges. The jury was out for two hours and returned the same verdict as in the

Evans case. Judge Bunnell again sentenced Dempsey to be hanged. In effect, the accused's life had been forfeited twice and on December 12, the judge repeated the words of the sentence twice, namely that Dempsey was to be hanged by the neck until dead on February 20, 1920. On the witness stand, Dempsey admitted killing Evans because he had wanted to escape arrest for the "Anchorage affair." It also developed that Dempsey had made a full confession in the Lazor murder to Marshal Brenneman and Deputy Mossman, admitting that his motive had been to rob her to obtain money to go to Mexico. As he was about to sign the confession, he called for a lawyer who advised him not to sign. And although he had made the confession in the presence of several officials, Judge Bunnell did not allow it admitted as evidence. There was, however, enough circumstantial evidence in the case. Dempsey had told a journalist about the Lazor murder, and admitted robbery as a motive.²⁷

Both trials had been eminently fair. In both cases jurors were selected from localities 250 to 500 miles distant from the murder scenes. No jurors from Anchorage or Seward were allowed. Continuances were granted in both cases to allow the defense to prepare the cases and get witnesses or relatives. Court appointed defense attorney Anthony J. Dimond represented Dempsey and gave all of his "zeal and ability in defense." Dimond filed an appeal on grounds of procedural errors, and one based on his incompetency as a criminal defense lawyer, claiming that most of his practice had been in civil cases. Dimond, who was born in New York in 1881, taught high school in rural New York before moving to Alaska in 1905 as a prospector and freighter in the Copper River Valley. After suffering a severe wound from an accidental gunshot, Dimond took up law, and started a practice in 1913. He may not have had much experience as a criminal lawyer in 1919, but he gained much in later years. He served as mayor of Valdez, in the territorial legislature, and was elected as Alaska's

delegate to Congress in 1932. He served ably from 1933 until 1944, when he resigned to return north. Dimond crowned his career with an appointment to the third division district court bench in 1945, a position he very ably filled until his death in 1945.

The defense presented an insanity plea in the Evans murder, but witnesses who had known Dempsey for more than a year in the territory and worked with him testified to his entire sanity. Letters and telegrams Dempsey had written showed him to be sane. Three expert witnesses testified to his absolute sanity. One was a physician connected with the army who had a "large practical experience in insanity cases." He examined Dempsey over a period of two months while in the Valdez jail. An army physician from Fort Liscum in Valdez also examined the accused in the Valdez jail, and still another evaluated him in Seward. The physician in Seward also took X-rays of Dempsey's head and found the scar there superficial and not showing any sign of fracture. In short, the evidence was so overwhelming that Dempsey did not attempt the insanity defense in the Lavor case. In short, the government prosecutor found Dempsey to be a "cold blooded murderer and desperado," and he protested that "any commutation would be a mockery of justice, a license to murderers of his kind." The prosecutor protested, because the Dempsey family had hired attorney Raymond J. Logan of Cleveland to try and obtain a commutation of the sentence from death by hanging to life imprisonment.²⁹

Dempsey's appeal record was not completed in time for the Circuit Court of Appeals to consider his petition and the court dismissed it without a hearing. Judge Bunnell had not approved government funds for the trial transcript and other appeal expenses, although Judge Frederick Brown did extend Dempsey's filing time. The failure of this appeal would have ended Dempsey's life but

for the intervention of President Woodrow Wilson, who, through his Attorney General Mitchell Palmer, commuted Dempsey's sentence to life imprisonment.

Judge Bunnell and other officials were thoroughly annoyed at Wilson and Palmer and tried to find out who had influenced the commutation. Apparently, the attorney general had acted on the petition attorney Logan, retained by the family, had submitted. Commutations, however, were fairly common during Wilson's administration and the result should not have surprised Bunnell. Instead, it shocked him. He had a certain uneasy feeling about the murderer and would have been relieved to see him hung.

Dempsey was sent to McNeil Island to begin his sentence, and then was transferred to the federal prison at Leavenworth, Kansas, in March 1921. In time, Dempsey tried to educate himself in law, real estate, finance, and English grammar. In 1923 he began his campaign to gain his freedom. He directed his early letters to Alaska's Governor Scott Bone, a former Seattle newspaperman unfamiliar with the case. He received no help. By 1926, Dempsey had begun to badger Bunnell, by then the president of the Alaska Agricultural College and School of Mines, asking him to make a recommendation for clemency. Bunnell was convinced that Dempsey had murdered the Labor woman. At the time of the trial, he recalled, Dempsey contended that he was not involved in the murder. Nothing in the trial, however, enabled officials to determine "who the guilty party was in the event you...did not commit the murder." Bunnell stated that he was unable to see how Dempsey could hope "to expect any clemency on the part of anyone unless you are willing to disclose all the information you have." Bunnell declined to make the requested recommendation.³⁰

Dempsey wrote again, arguing that he was barely twenty years of age at the time of trial and totally ignorant of "our National Laws and their meaning...." He maintained that he was convicted of the shooting of Evans because of "the

bond of friendship you and Mr. Munley [sic], as well as the other Court or Law officials had for Isaac Evens [sic]...." Furthermore, Dimond was not qualified to represent him in a criminal case because of his lack of experience. Having received a guilty verdict in the Evans case, the "same being equivilent [sic] to a death-sentence, I lost all interest in my second trial, and believed it little mattered if I was convicted for her death too or even a hundred similarly additional charges." Had he been tried for the Lavor murder first, he claimed that "I could have easily proved my innocence, i.e. before a Fair and Unprejudiced Jury and Court." Dempsey accused Bunnell of having formed the opinion that he was a "murdering desperado," but that was not the case. For proof to the contrary, Dempsey stated that "before and during my trials, I had made a key to fit the Oregon boot I was compelled to wear all the time I was in Jail and even to McNeils [sic] Island." Had he indeed been the cold-blooded desperado, he could easily have freed himself of the leg restraints, overpowered the two guards, "and rushing the few unobstructed steps" gained access to the room where the marshal kept his arsenal. This would have gained his freedom, "with of course a more or less loss of life." The guards accompanying him to McNeil Island could testify that Dempsey had freed himself of the Oregon boot on the ferry and thrown it overboard within sight of the penitentiary wharf. Yet he did not escape because he feared that he would have to "resort to violence of a fatal nature before completing my escape."

Now why did Dempsey not avail himself of all these opportunities of escape? He answered with the one word, "mother." At the time of his detention he had used an alias to "shield my parents and relatives from the shame and humiliation of my arrest." So before, during and after his trials, knowing that his parents, and especially his mother believed him incapable of committing the crimes he was accused of, and loving his mother a great deal, he did

not permit his associates to free him. For had they done so this would have taken lives and forever branded him "as a real murderer in her mind." Dempsey admitted killing Evans, but asserted that "morally and legally [he] was Not murdered, in the real sense of the word," for he shot first and Dempsey merely defended himself. As for Margaret Laver, Dempsey claimed that one of the men "present at the party-brawl where she had been fatally wounded is now married, has a family, is leading a legitimate career and respected in his whole community." Dempsey could not comply with Bunnell's request and reveal the man's identity for it would destroy his life. With these facts in mind, Dempsey urged Bunnell to help him gain freedom, for if kept in prison "many years more," he would "become calloused to human emotions, adamant, devoid of tender human sentiments and become a menace to not only myself but all Gentle Organized Society. This future, good or bad, lies in the hollow of your hand, to do with as you please." Dempsey concluded that the Bible stated to "'do unto others as you would want done unto you.'" You undoubtedly are a Christian, if so prove your worthiness of its term or name." Dempsey's arguments for his innocence were not convincing, but he continued to pester Bunnell. On June 30, 1926, the president of the Alaska Agricultural College and School of Mines wrote Dempsey telling him that he found his correspondence to be critical "of everyone having to do with your affairs with the exception of yourself," and refused to recommend clemency "unless there is presented to me some good reasons." Dempsey had killed two people, and it seemed to Bunnell that "society is best protected by keeping you where you are. Men do not have to be at large in order to be good men. You were not a benefit to society or to yourself when you were at large." He reminded Dempsey to be grateful to have escaped death.³⁰

The prisoner did not give up, however, and continued to badger Bunnell for a recommendation for clemency so that he could start a legitimate life "while in my prime of life and while mentally and physically fit..." resulting in his becoming "an undisputable [sic] asset to Society." Dempsey also asked various acquaintances to contact Bunnell and try to persuade him to make a recommendation for clemency. Bunnell refused, but he became increasingly uneasy over Dempsey's continued efforts to gain freedom. In December 1930, the former judge received a brief Christmas card from Dempsey which stated that "although you wish me and my family misery this Christmas, I shall prove the better Christian by wishing you and family a Merry Christmas." Early in 1931, Dempsey wanted to know whether or not Bunnell was still interested in obtaining the identity of the persons who were present at the party where Lator died. Bunnell replied in the affirmative, and stated that he would do his best to help apprehend and convict "any other person or persons who took part in the murder of the Anchorage woman." After some months of meditation, Dempsey decided that he could not reveal the names of these individuals, that it would be "condemnable and unutterably despicable for me to cause them, to suffer, or jeopardize their happy homes and lives merely to satiate the relentless & vengeance of a Law." Dempsey then proceeded to reconstruct a drunken brawl where many received wounds and the Lator woman was accidentally killed--by whom, however, was unknown. In conclusion, he told Bunnell that prison authorities had informed him that if a recommendation for executive clemency was forthcoming, President Herbert Hoover would grant it. Bunnell refused, telling a friend of the prisoner that he considered "him a menace to society."³²

Dempsey tried again in 1934, and again cited many reasons why he should be freed. His family was destitute and needed him, and his childhood sweetheart was "still faithfully waiting" for him. Dempsey was certain that President

Franklin D. Roosevelt would issue an executive clemency if recommended by Bunnell, so "I beg you to recommend my release. Please!" Dempsey had another year and a half before becoming eligible for parole, and expected to be released then, so he could see "no true, good Justice in compelling me to wait that long...." Dempsey suspected that his parole might be extended "to some distant date," perhaps several years. Bunnell denied the request, as he did the appeal of an old Dempsey family friend and selfstyled "lady of the old southern blood," telling her that Dempsey was "a very dangerous man to be at large...." Bunnell remembered well the threats he had made at the time of sentencing to kill all court officials connected with the case.³³

Dempsey contacted Bunnell again that same year and now accused him of narrow-mindedness and a vindictiveness which went beyond reason and provided ample proof "that you were unqualified to preside at my trial, for a 'Fair and impartial trial,' such as the Law States I was entitled to was utterly [sic] impossible to obtain in your court." Dempsey also refused to reveal the names of the individuals who attended the party where Lator allegedly was killed, in "the name of Humaneness and Christianity...." This last letter Bunnell considered to be a most aggressive one, revealing no repentance "by one who claimed to have reformed and to be entitled to further leniency." Two years later, Bunnell informed Ray L. Huff, the parole executive of the department of justice, that he considered Dempsey, if released, to be a menace to society. Bunnell did not feel that "I ought to have to be under guard to protect myself against such a vicious criminal. He was convinced that, once released, Dempsey would head north to exact revenge from those connected with his trials. He therefore requested to be furnished with a photograph of Dempsey at the time of release so he could defend himself, in fact he was entitled "to be given a fair opportunity."³⁴

Early in January 1940, Bunnell listened to the radio and learned that Dempsey had escaped from McNeil Island where he had been shifted from Leavenworth in 1939. The former judge immediately contacted J. Edgar Hoover, the director of the Federal Bureau of Investigation. He complained that Dempsey's letters during the last five years had been abusive, and he wondered why murderers were permitted "to send out the kind of stuff they do and get it into the United States Mail." Bunnell frankly was afraid for his life, and asked Hoover to keep him posted on the escape. Hoover wrote a soothing letter to Bunnell, expressing his gratitude for background materials the former judge had made available and assuring him that all was being done to recapture the prisoner.³⁵

Dempsey probably had decided that he had little chance of gaining freedom legitimately so he decided to take matters into his own hands. Therefore, on a foggy day, January 30, 1940, he escaped from the McNeil Island penitentiary road camp. Guards searched the island for him but failed to find him. The authorities issued a poster and offered \$50 for information leading to his recapture, and the March 1940 issue of Master Detective ran a bulletin on Dempsey offering a \$100 reward.³⁶

Authorities had no clues as to what had happened to Dempsey. They had searched the entire island and covered fourteen miles of beachline without finding anything. Police also were searching the Olympic Peninsula on the theory that the convict "either by swimming or by clinging to a piece of driftwood, was able to get across the 800 yards of frigid Puget Sound water and reach the peninsula near Longbranch."³⁷

In October 1953, Master Detective featured a lengthy story entitled "Blonde In the Wilderness: She Thought He Was A Good Businessman, But His Business With Her Was...Murder," by one R.J. Gerrard. Dempsey was never found.

Gerrard wrote that two days after the January 30, 1940 escape a bedraggled individual approached a local clergyman in Bremerton, Washington, and pleaded for some cast-off clothing. The clergyman gave him a decent outfit. That night a photograph of Dempsey appeared in the local paper and the clergyman at once notified the federal officials and told them that he had, unwittingly, lent aid and comfort to the fugitive killer.³⁸ Perhaps the killer survived the swim to safety, or he may have drowned. If he survived, Dempsey did not make the single small slip which would have led to his recapture. He presumably had learned to control his braggart nature and quick temperament, avoid brawls and keep clear of anything that could have aroused suspicion. He was never recaptured, and did not return to Alaska to exact revenge, as Bunnell probably feared to the end of his life. It is clear that Dempsey was a vicious killer, and he certainly caused much anxiety to Charles E. Bunnell.

FOOTNOTES

1. William R. Cashen, Farthest North College President: Charles E. Bunnell and the early history of the University of Alaska (Fairbanks, Alaska: University of Alaska Press, 1972), p. 377.
2. Ibid., pp. 3-30.
3. Ibid., pp. 39-60; Wickersham Diary, December 20, 29, 1914, University of Alaska, Fairbanks Archives.
4. Cashen, Farthest North College President, pp. 61-72.
5. Louis K. Pratt to Woodrow Wilson, November 20, 1916, General Files of the Department of Justice, R.G. 60, N.A.
6. Ibid.

7. Bunnell to Attorney General, February 5, 1921, General Files of the Department of Justice, R.G. 60, N.A.; Cashen, Farthest North College President, pp. 93-94; Bunnell to Attorney General, February 5, 1921, General Files of the Department of Justice, R.G. 60, N.A.
8. U.S. v. Mailo Saguro court record, case #72, R.G. 21, Federal Records Center, Seattle, Washington.
9. Reminiscences of Charles Lee Cadwallader: Mainly his experience mushing in and out over the Iditarod Trail in 1917 and in 1919 and his two years' work in the Iditarod-Flat area, n.d., n.p., February 22, 1918, University of Alaska, Fairbanks Archives.
10. Ibid., April 1, 1918.
11. Ibid., May 5, 1918.
12. Ibid.
13. U.S. v. Mailo Saguro court record, case #792.
14. Ibid.; Cashen Farthest North College President, p. 73.
15. Charles E. Bunnell Papers, Law and Judgeship, 1907-1921, Correspondence 1921, William Dempsey files, box 2, University of Alaska, Fairbanks Archives; Anchorage Daily Times, August 29, 1919.
16. Ibid., August 30, 1919.
17. Ibid., September 5, 1919.
18. Ibid.
19. Ibid., September 2, 1919.
20. Ibid., September 3, 1919.
21. Ibid., September 4, 1919.
22. Ibid., September 6, 1919.
23. Ibid.
24. Ibid.

25. U.S. v. William Stewart; Anchorage Daily Times, September 6, 1919.
26. Bunnell to Chief of Police, Cleveland, Ohio, December 8, 1919, Frank Smith, Chief of Police, to Bunnell, December 19, 1919, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
27. William Munly to Finch, Pardon Attorney, December 10, 1919, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
28. Ibid.; Smith to Bunnell, December 19, 1919, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
29. Munly to Finch, December 10, 1919, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
30. Dempsey to Bunnell, March 19, 1926, Bunnell to Dempsey, April 7, 1926, Dempsey to Bunnell, June 11, 1926, Bunnell to Dempsey, June 30, 1926, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
31. Dempsey to Bunnell, November 16, 1927, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
32. Bunnell to Gertrude W. Webster, July 7, 1928, Bunnell to Mrs. F. Barnard, February 7, 1934, Dempsey to Bunnell, December 1930, Dempsey to Bunnell, February 17, 1931, Bunnell to Dempsey, March 10, 1931, Bunnell to Mrs. M. Louise Lynch, January 30, 1932, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.

33. Dempsey to Bunnell, February 7, 1934, Mrs. Flerine Barnard to Bunnell, March 5, 1934, Bunnell to Barnard, March 21, 1934, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
34. Dempsey to Bunnell, April 6, 1934, Bunnell to Barnard, June 1, 1934, Bunnell to Ray L. Huff, April 14, 1936, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
35. Bunnell to J. Edgar Hoover, February 1, 1940, Hoover to Bunnell, February 21, 24, 1940, Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
36. Unidentified newspaper clipping, n.d., "Lifer Escapes Prison Camp In Dense Fog;" clipping, "Master Detective Line-Up," Master Detective, March 1940, in Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
37. Unidentified newspaper clipping, February 1, 1940, "Fugitive Still At Large," Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.
38. R.J. Gerrard, "Blonde In The Wilderness," October 1953, pp. 21-23, 76-78, in Charles E. Bunnell Papers, box 2, folder Dempsey, William, criminal case, 1919-1954, University of Alaska, Fairbanks Archives.

MOVING THE DISTRICT COURT FROM VALDEZ TO ANCHORAGE

Anthropologists believe that a sparse Tanaina Indian population occupied the Cook Inlet region by the 1770s and 1780s, subsisting entirely on the fisheries and wildlife resources. These peoples, however, were relatively late arrivals, archaeologists suspect, since Pacific Eskimos occupied the Cook Inlet region, at least seasonally, beginning sometime before A.D. 1000 and lasting perhaps as late as A.D. 1700. The Tanaina Indians probably moved into the area no earlier than A.D. 1650 and no later than the 1770s, when a number of Europeans encountered them, including Captains James Cook, Nathaniel Portlock, George Dixon, and John Meares. By the 1780s the Russians established various trading posts in the area, and by 1850, former employees of the Russian-American Company had founded small agricultural settlements along Cook Inlet at Seldovia, Ninilchik, and Eklutna.¹

In 1867 the Russians sold Russian America to the United States. U.S. Army troops arrived in 1869 in the Cook Inlet area and constructed and occupied Fort Kenai. American fur traders built trading posts in 1868 at Knik, Kenai, and English Bay, and a lively trade with the Native population developed. The Alaska Commercial Company had started building trading stations on Cook Inlet in 1868, and by the end of the century it owned and operated a dozen of these, extending from Cape Douglas in the south to the head of Knik Arm in the north. A number of smaller trading companies offered competition. By the turn of the century, however, the fur trade had declined so sharply that most stations closed.²

In the twentieth century, several of the settlements along Cook Inlet grew in population, and the general merchandise stores which dealt with furs merely as a sideline supplanted the traditional trading posts. Fish and fish

processing became major activities on Cook Inlet after the turn of the century, and had been important for at least twenty years before that. Over the years, operators built dozens of fish-packing plants on the shores of the inlet and on the banks of the various rivers flowing into it. Salmon fishing provided the greatest financial returns, but herring, halibut, crabs, and clams also contributed to the regional economy.³

By the late 1800s, the region contained a number of traders and settlers, and around 1880, one George W. Palmer kept a store at Knik Arm, another branch of Cook Inlet. By the 1890s prospectors had found gold on Resurrection Creek, a stream emptying into Turnagain Arm. The Sunrise mining district was not a great gold field. Soon, miners and prospectors hacked out primitive trails connecting the scattered camps, ultimately unifying the region between Cook Inlet on the south and the Talkeetna Mountains on the north, the Matanuska River in the east and the Susitna River in the west. Palmer's trading post at Knik served as a supply center for the Willow Creek Mining District, organized in 1898. Soon Knik became a viable community, but mining was not enough to sustain the settlement.⁴

Fortunately, a number of developments elsewhere positively affected Knik, among these the start of construction on the Alaska Central Railroad, extending northward from the new town of Seward on Resurrection Bay, to various gold discoveries in the Talkeetna Mountains north of Knik, and in the interior as well as on the Iditarod River far to the northwest. Knik quickly became the major trading center for the gold and coal mines for the greater region, and it also supplied the various sawmills in the Matanuska Valley, the Susitna River Basin, and the Willow Creek Mining District. Knik also became a major stopping point for the winter route between the Iditarod discoveries and Seward on tidewater. In 1905, the federal government recognized the settlement's

importance when it established a post office there. By 1910 Knik had become a respectable little town which even had its own newspaper, the Knik News.⁵

Congress passed the Alaska Railroad Act in 1914, and that led to the development of Anchorage and the eventual abandonment of Knik until it had become a ghost town. Prior to the summer of 1915, the area which is now Anchorage was known by various names, but primarily as Ship Creek. That name was used because the settlement expanded from the mouth of that stream. The Alaska Engineering Commission, entrusted with overseeing the construction of the Alaska Railroad, picked Anchorage as a headquarters site. Beginning as a tent city, the roots of permanent Anchorage rapidly spread. By 1917, the town boasted 1,349 buildings, valued at approximately \$1 million, and in 1923 it had an airport. In 1920 Anchorage had a population of 1,856 residents, in 1930 some 2,736, and by 1942 it had 6,000.⁶ Anchorage has grown ever since, and has aggressively promoted its location and economic opportunities for a long time.

In 1916, when Anchorage barely had left its tent town origins. Frederick Mears, a member of the Alaska Engineering Commission, argued that the federal government should establish a fifth judicial district to meet the requirements of the Cook Inlet region and the areas beyond. He maintained that the territory adjoining Cook Inlet reached all the way to Broad Pass in the Alaska Range. This vast region contained only a few hundred prospectors, fishermen, and trappers. This was bound to change quickly because the railroad afforded reliable transportation. Soon settlers would be attracted, and the region was "bound within a short time to witness a wonderful development and rapid increase in population." More than 100 square miles were suited for agriculture because of good soils and "a fairly moderate climate." The area was heavily mineralized with some gold mines already producing, and it also contained coal. In addition, Cook Inlet had rich fisheries.⁷

He estimated that since the start of railroad construction in 1915, about 5,000 people had come to the area, and Anchorage alone had a population of about 3,000. Mears thought that as soon as the navigation season opened in the spring, "at least ten thousand people will come during the year," and with typical frontier braggadocio he stated "that fifteen thousand people will be a very conservative estimate of the population this year." These residents would be spread from Seldovia in the south to Broad Pass in the north, "including the towns of Kenai, Tyonek, Hope, Sunrise, Susitna, McDougal, Knik, Matanuska and Chicken, in addition to Anchorage." The railroad construction boom had provided the settlement impetus, but Mears was certain that the variety, extent, and richness of the region's resources would bring speedy and permanent development unlike that "of the transitory migratory kind attending a gold stampede," and bring with it a permanent population.⁸

Mears cautioned that it was important to embrace the region in a new judicial division. Waiting for another session of Congress, he warned, would merely leave a large population "without any adequate police protection and judicial control." Mears explained that the Anchorage area was included in the third judicial district, extending "from the eastern boundary of Alaska as far north as Mount Kimball on the east, Mount McKinley on the west, thence over to the Kuskokwim River, down that river to its mouth, then all the Alaska Peninsula and Aleutian Islands," an area of approximately 162,000 square miles. The district court was headquartered at Valdez on Prince William Sound, "and from there one set of officers are required to attend to the judicial business of all this immense domain." The Cook Inlet region, he argued, was distinct from the rest of the third division with its peculiar natural resource endowment. It took three or more days to travel the 400 miles from Valdez to Anchorage by steamship. That was too long to guarantee adequate judicial protection. Mears

also predicted "a considerable number of the lawless and disorderly element" would be attracted to the booming Cook Inlet region, "believing...that its remoteness will afford them a fair field to carry on their old trade." Establishing a fifth judicial division headquartered in Anchorage would prevent the kind of disorder which had occurred in Skagway in the 1890s. Commissioner Mears proposed boundaries for the proposed new fifth division, and urged Chairman Edes to make all efforts to have Congress pass the necessary legislation.⁹

Secretary of the Interior Franklin K. Lane fully supported the proposal, reiterating that Alaska's principal economic activities would occur in the vicinity of Anchorage with the construction of the railroad. Lane also suggested the boundaries of the proposed fifth division, but added that if Congress did not act, then the judge at Valdez should henceforth be relieved from making the trip with the floating court so as to be immediately available for both Seward and Anchorage. Although officials discussed the possibility of either moving the judge from Valdez to Anchorage or establishing a fifth division, they took no action. Thereupon a group of Alaskans with "no personal or political aspirations" retained the Philadelphia law firm of Wescott, Wescott, McManns and Moffett to lobby the bureaucracy and Congress for establishing a court in Anchorage. Partner Harry D. Wescott informed Assistant Attorney General Samuel J. Graham that Valdez had a population of only approximately 700, sharply contrasting with an Anchorage population of about 7,000, a vastly inflated figure from the official total of 3,928. Wescott, like Mears, argued that Anchorage, "aside from being developed by the government...will undoubtedly be the populous [town] in the Third Judicial Division." Cost was

another consideration. The last jury term of the court at Valdez probably cost the federal government \$35,000 than if the term had been held at Seward, or been divided into two terms at Seward and Anchorage. Of the 82 criminal cases on the calendar at Valdez, 75 had originated west of Seward. Every witness and juror brought past Seward and Valdez cost at least \$60.00 in additional mileage and per diem. Locating a court in Anchorage would save taxpayer's money, and be considerably cheaper to litigants. Additionally, the Alaska Engineering Commission already had built some public structures, such as a municipal building, post office, federal jail, school house, and telephone facility, and more were in the planning process. Above all, the lobbyists declared that their clients were "public spirited men who want to do that for Alaska which will be for its greatest benefit and they believe that it is for the best interest all together to have a court house and an official judicial home at Anchorage." Wescott recognized that there was much rivalry between the different towns. Valdez citizens desired to keep the court in their home town because it represented prestige and jobs, while the people of Seward desired it for the same reasons. He concluded, however, that "present economies and future outlook" indicated that the federal government would serve the judiciary best by locating "the court in what is now, and undoubtedly will be, the center of population and commercial activity."¹⁰

There could be no doubt that business had increased substantially in the third division. Advances made under the appropriation "Fees of Witnesses, U.S. Courts," showed the amount of business transacted:

<u>Year</u>	<u>Third Division</u>	<u>Fourth Division</u>	<u>First Division</u>
1916	\$24,675.97	\$19,315.84	\$13,328.97
1917	\$26,500.00	\$ 8,500.00	\$12,500.00

Expenses under other appropriations in the third division had increased correspondingly. What made it all so expensive was holding court in Valdez when the

bulk of the cases originated in the Cook Inlet region. Perhaps the Wescott law firm of Philadelphia was correct in urging the transfer of the court from Valdez to Anchorage. And the Philadelphia lawyers lost no time in bombarding the department of justice with factual materials. Valdez was a small place "with no businesses and nothing else calculated of making it a town of importance." Fire had partially destroyed the city twice and citizens seemed to be uninterested in rebuilding it. Anchorage, on the other hand, although settled only a year and a half ago, was "one of the finest sites for a metropolis in the world. The ground is high and level. The streets are paved. The buildings are almost entirely substantial and built of stone and concrete. It has a good sewage system." Wescott corrected the population figures he had recently furnished the department. The city itself had a population of 2,500, while the immediately surrounding area increased this to about 7,000. Anchorage was the railroad center, and was "clearly destined to become the metropolis of Alaska." The federal government was in the process of building enormous docks. Besides, the city boasted of good schools, hospitals, an electric light plant, water works, and other federal offices already had located in the town. Perhaps, most importantly, some public figures in Alaska, such as Delegate James Wickersham, and William C. Edes, the chairman of the Alaska Engineering Commission, favored the move. Wescott hoped that these arguments would "successfully appeal" to the attorney general's "sound, practical and patriotic judgment" and merely stated that he would carefully consider Wescott's arguments in favor of the move."¹¹

The attorney general had, indeed, been impressed with Wescott's arguments. He told Frederick M. Brown, the U.S. district court judge in Valdez, to consider such a move. He pointed out that "under Section 259 of the Judicial Code" Brown, as all district court judges, had "the right to fix your own

official residence, provided it is at the closest point to your actual resident at which a term of court is held." Since a regular term of court was held at Valdez, Brown was perfectly within his rights to live in Valdez. The attorney general then pointed out that he interpreted "the Act approved March 3, 1909 (35 Stat., 840), that I have the power to fix a regular term of court at Anchorage." This he had done, and Brown, therefore, could move his residence to Anchorage if he so desired. Brown, however, was not impressed with Wescott's arguments and proceeded to demolish them one by one. True enough, Valdez was a small town---but so were all Alaskan towns. The judge admitted that the population in the various towns fluctuated greatly, as first one city and then another forged ahead and then went through a period of inaction, but that appeared "to be the case in all new countries." Brown then enumerated the strong points of Valdez. It was the center of an important mining region, headquarters of the U.S. Army Signal Corps and the Board of Road Commissioners for Alaska. The town featured good schools, boasted of an electric light and telephone system, and offered all the conveniences of a modern town. Furthermore, although Valdez had suffered two destructive fires, no government buildings had been destroyed (which was not true since the Board of Road Commissioners burned out) and he had no doubt that rebuilding efforts would begin rapidly. Brown did not argue with Wescott's description of the location and conditions of Anchorage, but stated that "the opinion as to the future development of that town is rather the expression of a hope which may or may not be realized." The Valdez court records did not support Wescott's claim that at the last term of court out of 82 cases 75 had come from points west of Seward and from Anchorage. Of the criminal cases tried, 22 had originated at Seward and points west, and 22 came from LaTouche Island, south of Valdez, on which was located a large coppermine employing several hundred men. Of the civil cases,

22 came from Seward and points east. And rather than having cost the government an additional \$35,000, holding court in Valdez had resulted in savings of \$15,000. Brown admitted, however, that Alaska's great distances and underdeveloped transportation system made the administration of justice expensive. Above all, the present development of Anchorage simply did not justify moving the court headquarters at this time. In fact, moving now would be to the disadvantage of the area lying east of Cook Inlet where three-fourths of the court cases arose. Brown explained that, under the present system, a court term with a trial jury was held each year at Cordova, Seward, and Anchorage. Because of the expense involved, Brown convened a grand jury only once, or under exceptional circumstances, twice a year, and that in Valdez where criminal cases could be handled more economically and conveniently than anywhere else. Valdez had a courthouse, a law library, and a jail, established at great cost, and certainly sufficient for the needs of the division for some time into the future. Brown conceded, however, that future development might "justify the change urged by Mr. Wescott." The judge opined that the matter reminded him of the country where two towns, contending as rivals for the business and prestige, seek to be designated as a headquarters for the court and other governmental business." The residents of these towns always "see most of the weak points in their rival's case and put forth none but the best in their own behalf." He concluded that self interest always motivated these efforts.¹² Brown then furnished statistics which were designed to buttress his argument. During the November 1916 elections, 1,486 votes had been cast in the Anchorage area, 2,335 in Valdez and vicinity, and another 479 to the west of Cook Inlet, including Kodiak Island, Bristol Bay, and the Aleutians. Of the 225 cases filed in the district court between June 18, 1915 and March 14, 1917, some 138 had been filed in Valdez, 8 in Cordova, 38 in Seward, and 41 in

Anchorage. Of the amounts sued for, settled by stipulation or obtained in judgments, the record showed the Valdez docket with \$643,307, Cordova with \$15,814, Seward with \$74,051, and Anchorage with \$10,176, for a total of \$743,348.

In the meantime, rumors about the possibility of a move mobilized the chambers of commerce of the affected towns. Cordova "strenuously protest against removal" of court headquarters since Valdez was located in the most highly developed section of the third division. Furthermore, litigants would have to travel between five to seven hundred miles each way to obtain justice. Valdez protested in the strongest terms, and pointed out that half of the population of Anchorage consisted of railroad construction workers who would leave when the project was finished. The Seward chamber was cagey in its protest and demanded a full investigation before any such move. Members believed that the third judicial division would have to be divided shortly, "making Seward headquarters of the new division to take care of the Islands to the Westward and the U.S. Government road and territory adjacent."¹³

While the towns protested, the Philadelphia lawyers continued to present the department of justice with facts and figures supporting the cause of Anchorage. They also had the advantage of being able to arrange personal conferences with judicial officials, a convenience unavailable to the Alaskans. Harry D. Wescott discounted the argument that Valdez and Seward had ice free ports all year long. Cook Inlet had ice flows, but government tugs had landed at Anchorage in March proving the Inlet's navigability during the winter. Officials in the department of the interior had assured him that Anchorage was a permanent settlement, and had expressed the opinion that it would soon be the territory's population center. In addition, the law firm had interested investors in the Matanuska coal fields, in fact in a variety of economic

enterprises designed to assure the success of the railroad and the town of Anchorage. The firm's intention presumably were highly patriotic. "Our idea is, that everything that we can do to aid the railroad is aiding our government. The railroad cannot succeed unless it carries the proper amount of traffic and freight, and, failure in this particular, we do not want to be chargeable to this administration." If this were not enough, there were plenty of signs indicating the permanency of the town. The Elks had constructed a \$75,000 club; the Masons had broken ground for a building which, they claimed, would cost more than that of the Elks'; there were two moving picture theaters, and one had cost \$30,000; two banks and "two hustling newspapers;" a school, hospitals, doctors, and lawyers, "as well as a jail. If this doesn't make for permanency, what does? Especially the jail." Harry D. Wescott told Assistant Attorney Graham that his father, John W., had "incidentally mentioned the subject to the Attorney General." Then came the clincher. He told Graham that the investors the firm represented were about to leave for Anchorage. "It will be a great thing for them, and would help instill a healthy... hopefulness in all the people of that district," he concluded, "if they could carry back the glad news that Anchorage is to possess judicial residence."¹⁴

The department of justice certainly experienced contrasting pressures. As soon as the Philadelphia lawyers had presented another plausible case for the relocation of the district court to Anchorage, Alaskan communities and individuals protested the proposal. For example, on March 26, 1917 the McCarthy Commercial Club wired the attorney general a strong protest against the removal, stating that Valdez was the population center of the largest and richest mining district in Alaska. "Removal toward westward is outrage, better divide the division." Chas. A. Sulzer, Alaska's delegate to Congress, also protested the proposed relocation. The Seward bar association, like the town's chamber

of commerce, called for the creation of an additional division, to be located at Seward. The new division should include Seward, Anchorage, Knik and the mineral and agricultural regions contiguous and tributary to the Alaska Railroad, the Kenai and Alaska Peninsulas, and the Aleutian Islands. The remainder of the third division, after the partition, would include all of the territory east of Port Wells, including Prince William Sound which is a natural tributary to Valdez, Cordova, the Copper River Valley and Katalla. Seward, bar members asserted, was the geographic and economic center of the proposed new division, "accessible all of the year around, in contrast to the interior and ice-blockaded town of recent birth--Anchorage." Maurice D. Leehey, a well-connected lawyer who practiced in Seattle and in Alaska's third division, also advocated the creation of a new division with headquarters at Seward. With such conflicting advice, the department of justice acted cautiously by doing almost nothing. Instead of sending Judge Brown away from Valdez on the annual floating court, it kept him in town in order to be available for court in Seward and Anchorage. In his stead, the department detailed Judge Robert W. Jennings of the first division. In the meantime, department officials had discussed possible changes in the boundaries of the second, third and fourth divisions, and considered, but rejected, the creation of a fifth division.¹⁵

Anchorage boosters were not easily discouraged. A year later, the town's chamber of commerce protested that the term of court had been far too short, and requested that general court terms be held in their town to clear up all pending cases, and also that grand and petit juries be called. The chamber also suggested that the department of justice authorize the construction of a courthouse, boasting that "about one hundred thousand dollars have been converted into court funds from this precinct in the last four years...." That, the petitioners felt, was more than sufficient to build a commodious structure

to conduct the judicial business, and be "a safe place for court and precinct records." Judge Brown pointed out that the claim that \$100,000 had been converted into court funds from Anchorage was typical of the exaggerated claims of the chamber. The total had amounted to \$20,000 during the last four years. The judge had grown a bit weary from having had to face the various demands of the different towns. He once again pointed out that litigation originating in Anchorage had been very minimal. A term of court had been held there in June 1917, and the next in August 1918--where only a half dozen cases had been tried, and those without a jury. There had been one case on appeal from the commissioner's court requiring a jury. Judge Charles Bunnell had refused to call a jury because the expense could not be justified. Brown assured the chamber that he had "carefully watched the docket cases from Anchorage," and always been willing to dispose of them when the parties had been ready. It was difficult to satisfy the various towns in the division in the matter of holding court. In 1917 he had held a term of court at Anchorage, only to have the citizens of Seward protest vigorously that they should not be required to try their cases in Anchorage. Brown told the chamber that he had called a term of court in Seward on September 8 where he expected to dispose of all pressing Anchorage cases. He added, however that if there were enough cases to reasonably justify the expenses, he would hold a term of court in that city. The judge told the attorney general that Seward and Anchorage competed fiercely with each other, "and anything that operates to the advantage of one meets with the violent opposition of the other." In fact, all of Alaska's cities were "anxious to have terms of court, juries and witnesses as often and for as long a time as possible for the business and money it brings to the town." The department of justice simply told the Anchorage boosters that it had full confidence in Brown and accepted his views in the matter.¹⁶

Despite repeated appeals to Attorney General A. Mitchell Palmer, the department deferred to Judge Brown. He and his colleagues thereupon scheduled two special terms of court in Anchorage in the late fall and early winter of 1919, clearing the dockets. Undaunted, the chamber of commerce mobilized numerous civic organizations two years later which petitioned the department of justice to order that a term of court be held in the city at least once a year. Judge Brown had not changed his opinion. The department, however, began to waver. It examined the accounts and returns and determined that the U.S. commissioner had transacted "a rather considerable volume of business in that locality." In the face of "the persistence of the local authorities...instructions might properly be given for the holding of court at that place this year and next." This surely would enable the department to determine whether or not the business justified the expense.¹⁷

Once again, the familiar forces aligned in favor of keeping the court in Valdez, or moving it to Anchorage or Seward. There were differences, however, because the administration changed, and with it many of the appointive officers were replaced. Judge E. E. Ritchie replaced Brown in 1921, and Sherman Duggan became U.S. attorney. At the same time, Anchorage kept growing. In 1924, most cases originated in Anchorage while Cordova held second place. Seward still advertised itself as superior to Anchorage in accessibility. L. V. Ray, a crafty Seward attorney pointed out that section two of the act approved March 3, 1909, had amended section four of the Act of June 6, 1900 (35 Stats. at Large, 839) which stated, in part, that "one general term of court shall be held each year at Valdez, and such additional terms at other places in the Third Division as the Attorney General may direct." Ray suggested that the department introduce legislation amending the section by inserting after the word 'Valdez' "and at Seward," thus reading "one general term of court shall be

held at Valdez and at Seward...." The department did not introduce the suggested amendments.¹⁸ By 1924, both Valdez and Seward probably had already lost to Anchorage. U.S. Attorney Duggan compiled a list of criminal and civil cases showing their distribution geographically. It showed that the majority of cases arose in and contiguous to Anchorage, "and in my judgment [they] will continue to do so permanently. Duggan reminded the attorney general that all of the judicial officers favored one town or another. He favored Anchorage because that was his home. Judge E. E. Ritchie and marshal H. P. Sullivan favored Valdez because their homes were located there. "Therefore our own statements would not be worth much on account of their leaning." In his own case, Duggan wished the attorney general to believe "that I am not prejudiced against Valdez...but the place has shrunk so badly and is so inconvenient that I think it wrong to hold court headquarters here." Duggan's case distribution tables follow:

DISTRIBUTION OF CRIMINAL CASES, 1920 to 1924:

Anchorage 58	Cordova 14	Valdez 8	Seward 12	
Anchorage & Contiguous Places:	Cordova & Contiguous Places:	Valdez & Contiguous Places:	Seward Seldovia 3	12
Anchorage 56	Cordova 14	Valdez 8		
Kenai 4	McCarthy 7	Ellamar 2		
Seldovia 3	Chitina 1	Latouche 2		
Talkeetna 1				
Cache Ck. 2				
Total 68	Total 22	Total 12	Total 15	

Seldovia is more contiguous to Anchorage in Summer but in Winter must go through Seward to get to Anchorage. I have given LaTouche to Valdez, also Ellamar, but both are as handy to Cordova as to Valdez. The places to the Westward, Kodiak, Unga, Cold Bay, Unalaska, Naknek, Ugashik, King Cove, Nushagak, et al are as near to Anchorage as to Seward for all practical purposes. They are in summer, and in winter they cannot be reached anyway, to any advantage.

CIVIL CASES IN THE DISTRICT COURT, THIRD DIVISION,
TERRITORY OF ALASKA, FROM 1920 to 1924

Anchorage	236	Cordova	125	Seward	24
Valdez	58	McCarthy	27	LaTouche	8
Kenai	4	Seldovia	6	Kodiak	16
Unga	3	Unalaska	5	Cold Bay	3
Talkeetna	3	Chitina	1	Katalla	3

Anchorage & Contiguous Places:		Cordova & Contiguous Places:		Valdez & Contiguous Places:		Seward & Contiguous Places:	
Anchorage	236	Cordova	125	Valdez	58	Seward	24
Kenai	4	McCarthy	27	LaTouche	8	Seldovia	6
Seldovia	6	Katalla	3			Cold Bay	3
Talkeetna	3	Chitina	1				
Total	249	Total	156	Total	66	Total	33

Seldovia is more contiguous to Anchorage in Summer but in Winter must go through Seward to get to Anchorage. I have given Latouche to Valdez but she is as close to Cordova as to Valdez. The places to the westward, Kodiak, Unga, Unalaska, and the places in Bristol Bay are as close practically to Anchorage as to Seward; especially in summer, and we can hardly reach them in winter any way, either from Anchorage or Seward.

While Duggan made a strong pitch for Anchorage, Judge Ritchie was far more ambivalent, although he pointed out that Seward's court building was inadequate, particularly since it only had a few jail cells in the basement and inadequate safes to keep court records. Wherever court headquarters were located, he argued, would be inconvenient for somebody. Alaskan towns competed for the court business because it meant an infusion of federal spending. In the final analysis, he argued as a good bureaucrat, it was necessary to have an officer of the department of justice conduct an impartial investigation in order to solve the matter of court headquarter and terms. In the meantime, J. D. Harris, an examiner of the department of justice, had investigated the situation and recommended that Anchorage be made court headquarters. He summarized the advantages of Anchorage, which included a population of 3,500 in comparison to 700 in Seward, 250 in Valdez, and about 800 in Cordova. The department admitted, however, that there was a diversity of opinions on the

subject in the third division, reflected in its voluminous files. Harris recommended that the department convince Alaska's delegate to Congress, Dan A. Sutherland, to introduce legislation to enable construction of a suitable courthouse building in Anchorage.²⁰

While the department of justice attempted to gain Sutherland's cooperation in introducing necessary legislation, the Anchorage Daily Times ran editorials in support of a new courthouse. A murder case had finally started and it attracted much public attention. The "small, bare room where the case is being tried is neither large enough, nor does it carry the proper environment to be honored with the name of 'court room;' it is merely a place to hold meetings." And although the presence of "the august judge, court officials and array of legal talent and the stalwart officers of the law lands a certain dignity and force to the room," it was devoid of the necessary essentials and as a court town it was "a disgrace to Anchorage, and certainly a misnomer." A few days later the editor commented that the "judge and court officials are certainly undergoing a trying ordeal in attempting to hold a court session in Anchorage's inadequate court room, so-called." In fact, the editor thought that Judge Ritchie might find it "difficult to rule wisely and well" when realizing that many of the spectators were uncomfortably seated, many more standing and still others hanging on the window sills. Other towns in Alaska had adequate court quarters, the editor stated, and so should Anchorage. The Anchorage bar association had mobilized its modest number of members and drafted a strong memorial requesting the removal of the district court from Valdez, and requesting the construction of a federal building. Not only did the attorney general receive a copy of the memorial but so did sympathetic members of Congress. Like members of the chamber of commerce before them had done, the lawyers packed their petition with pertinent facts supporting their case.

One of the problems with a Seward location was the lack of space. The department of justice owned a building in town which it shared with the U.S. post office. It had a large courtroom, space for grand and petit jurors, and everything necessary except adequate jail space. At this point the Harriman National Bank of New York, which had opened a branch in Seward some years earlier, offered to sell its commodious, reinforced concrete building to the department for \$40,000, a bargain since the New York office claimed it had cost almost twice that to construct it. That, however, was not quite truthful, since Wm. D. Coppernoll, the U.S. attorney, researched the matter and discovered that the original cost had been approximately \$49,000. He also found that the bank had offered the building to private parties for \$23,000. Ever parsimonious, the department of justice declined to buy, deciding to make do with the existing space.²³

All this activity about possible removal worried the citizens and property owners of Valdez. The town already had suffered when the U.S. Army had ordered the closing of Fort Liscum, then the Alaska Road Commission moved to Juneau, and the Signal Corps to Seward. Most large mining enterprises had closed indefinitely, and owners dismantled and removed machinery. An appeal to Delegate Sutherland yielded the assurance that the department of justice "is not considering removal court house from Valdez" because it knew that this required Congressional action. Furthermore, Sutherland told the Valdez Citizens Club to advise federal officials who visited the nation's capital "to attend to their own business of law enforcement and not take on added responsibility to try to change site of court." The delegate referred to U.S. Attorney Coppernoll who had championed relocation in Washington while on a visit in November 1926. Coppernoll asserted that he only broached the subject after having been asked to do so by a large number of people from Seward and

These included the favorite geographical location of the town, the amount of court business originating in Anchorage, and the residence of the grand and petit jurors for the term of court held in Valdez in May 1924; census figures and assessed property valuations in the various towns in the third division, and the number of banks. Finally, concerning the federal building, the bar members pointed out that many federal officers already worked in Anchorage, namely the General Land Office and its field division, located in separate buildings, the U.S. Forest Service, U.S. Bureau of Education, the U.S. Attorney, the Alaska Road Commission, the U.S. Post Office, federal jail, marshal's office, district court, commissioner's office, telegraph and U.S. Signal Corps, and the Alaska Railroad. Of these, only seven were located in government buildings. It was essential to bring all of these together under one roof.²¹ Good arguments, and it seemed as if all the Anchorage organizations were using the same facts, and only packaged them differently.

As in previous years, the Seward Chamber of Commerce soon discovered the efforts of various Anchorage groups and once again inundated the department of justice with reasons why Anchorage was unsuitable and Seward ideal for court headquarters. In 1926, the chamber told Delegate Sutherland that it had received reports from several "authentic sources that because of the decrease in population of Valdez by reason of the disastrous fire suffered there this winter and the moving of the cable terminal to Seward it is almost impossible to get a jury from that town." The chamber assured Sutherland that "regardless of any talk to the contrary Seward has not taken an aggressive attitude in trying to obtain for itself anything now held by other Alaskan communities." If the court was to be moved, however, the chamber insisted that Seward was entitled to be considered as the headquarter site.²²

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Anchorage, and also because he was convinced that such a move would result in substantial savings. The U.S. attorney complained that Valdez property owners expected the federal government to save them from losses by keeping the seat of the court in town. Personally he believed that within three months after the move, Valdez would have less than fifty inhabitants remaining, and buildings could not be sold for any price. In fact, once the court had moved Valdez probably would be another deserted Alaska camp." Coppernoll concluded by stating that he hoped the department would not consider him too partisan in this matter. He wished "to harm no person or town in Alaska," in fact felt sorry for having tackled the issue--"yet, duty demanded [it]."24

Renewed discussion within the department of justice about relocation moved the Seward Chamber of Commerce to once again call attention to its central location, while the Anchorage bar association passed a resolution asking for removal of the court headquarters from Valdez to a location to be determined after appropriate study. Alaska's delegate had told the department that he did not favor the change and would not introduce any legislation to accomplish the purpose. That left the department with only one alternative--to study the matter. E. E. Ritchie, the former district court judge, at this point alerted the department that perhaps Congressional action was not necessary after all to move court headquarters. Ritchie had become interested in the matter, and carefully researched it after listening repeatedly to the delegate who claimed credit for keeping the court in Valdez. Sutherland maintained that Rush L. Holland, a former assistant attorney general, had told him, when requested, that Congress would have to pass relocation legislation. Ritchie did not believe this after looking at the appropriate statutes. He telegraphed Holland who explained that he had told the delegate that it would take an act of Congress "to change places of holding court" in the territory. Ritchie agreed

with this interpretation, for the law of 1909 creating the fourth division provided that "one general term of court shall be held each year at Valdez." The same law stated that the clerk, U.S. attorney and marshal "shall reside at such place in the division as the Attorney General may direct." The law of 1900 creating the three judicial divisions, however, contained the only provision determining the residence of the judge. It assigned each judge to a particular locality, and then stated that "the Attorney General may for cause change the place of residence of the judge." The attorney general subsequently moved the judge for the second division from St. Michael to Nome, and Judge James Wickersham from Eagle City to Fairbanks, in the old third division. No law since that time, Ritchie continued, had "repealed this provision in express terms or by necessary implication." It followed that the attorney general could fix the residence at his discretion. The term "court headquarters" was not found in any statute affecting Alaska, but was necessarily established by fixing the residence of court officials. Ritchie concluded that he merely had wanted the department to "know the use peanut politicians are trying to make of the authority and standing of a great federal department to promote their own... interests." The department, however, did not agree with Ritchie's interpretation, holding that the provision of the Act of June 6, 1900 allowing the attorney general to change the residence of the judge when required had subsequently been repealed. The Act of March 3, 1909 reenacted section four of the Act of June 6, 1900, but omitted the residence change provision. The Act of March 2, 1921 further amended section four of the Act of June 6, 1900 and did not contain the residency change provision or anything similar.²⁵

In the summer of 1928, Robert D. Wise, an examiner for the department of justice, traveled north to study and report on the matter. He concluded that it was very expensive to have court headquarters in Valdez, and recommend that

it would be best, in the interest of convenience and economy, to move operations to Seward. It was a comprehensive report which covered the history of Valdez and listed the advantages of Seward. The general agent of the department of justice agreed with the recommendation Wise had made, but cautioned that "it would perhaps be desirable, before any action is taken, to secure the views of the Honorable E. Coke Hill, the present district judge for that Division." Hill assured the department that he did not object to the proposed change "if the Department thinks it will improve...or render the service more economical. Except for the difference in the cost of living and the fact that I prefer the Valdez climate, there are no reasons why I should not be as contented at Seward as at Valdez...." The judge, however, listed many problems connected with a move. The courthouse in Seward was totally inadequate and needed extensive repairs, it would cost about \$15,000 to expand and equip the jail; the present employees of the court all preferred to live in Valdez, and owned their homes there, and would lose them in a move because there would be no resale market; and it would destroy the remaining economic vitality of Valdez.²⁶

Delegate Sutherland read the Wise report, and responded that during the eight years he had served in Congress the proposal to relocate the court headquarters from Valdez to Anchorage or Seward had "been continuously agitated by the business interests of the two towns...always based on the desire to facilitate the business of the court and to expedite litigation." For years Sutherland had observed movements to change the seats of courts, and in fact, all governmental bureaus within Alaska. In most cases, local merchants backed those movements merely because they wanted "to sell prunes and other supplies to the court officials and their families." These struggles to change capitals and county seats had historical roots in the United States and had "engendered

more animosities between communities than any other feature of our political life." Sutherland stated that he always had refused to be a part to this proposed change of court headquarters. Above all, the present system provided that terms of court were held at Anchorage, Seward, Valdez, and Cordova, thus serving all sections of the third division well. The delegate concluded that he opposed the proposal because it appeared that the strong were "trying to take something away from the weak; of those who already have, wanting more; of making one community prosperous at the expense of another community...." In view of Sutherland's opposition and Judge Hill's less than enthusiastic support, the department of justice decided to drop the matter for the time being.²⁷

This, of course, did not end the matter. In the summer of 1929, Colonel D. P. Quinlan, the personal representative of President Herbert Hoover and special assistant to the chief coordinator, planned to journey to Alaska. He offered to look into the question of changing the court headquarters, a matter which had given the department of justice considerable troubles over the last few years. The decision-makers in the department never traveled to Alaska. They received conflicting information from the competing towns and therefore were skeptical of it, and when they sent out an investigator of their own, they did not quite trust his judgment either. The department had concluded that the population of Valdez was decreasing steadily, and that only a small percentage of the cases tried in the district court originated in the vicinity of Valdez. But ultimately the department seemed to distrust all the information it received.²⁸

Quinlan arrived in Alaska in July 1929. While addressing the Juneau Chamber of Commerce he declared that President Hoover was "determined to bring about sane and substantial development of Alaska's resources...." Quinlan

talked in generalities, but investigated thoroughly. He traveled widely throughout the territory, talked to many civic and governmental leaders, and inspected the public buildings in the various communities. He paid close attention to the expenses should the court be removed from Valdez to any other city. He concluded that it was more costly for the government to leave the court in Valdez than to move it to Cordova, Anchorage or Seward. Quinlan ruled out Cordova on the "score of economy and service efficiency," and then examined Valdez's claim that the court headquarters be retained in that city. Quinlan recounted the city's history, and then painted a rather grim picture of its present state. Its population had declined to about 200 souls. Approximately 25 federal and territorial officials, the prisoners in the federal jail, individuals required to go to Valdez on litigation, intermittent tourist travel over the Richardson highway, an auto passenger line operating from Fairbanks, highway work during the summer months and one salmon cannery sustained the town's economy. Mining had practically ceased, and the Alaska Steamship Company had suspended its weekly trip to Valdez. The colonel noted that the federal government had paid \$5,000 in 1927, and about the same amount in 1928, to maintain the Valdez courthouse. Another \$8,000 went for per diem and travel expenses of court employees during 1927 while attending terms of court at places other than Valdez.²⁹

The colonel ruled out Anchorage as a site for court headquarters because of its lack of adequate headquarters. Quinlan, however, described Anchorage's present condition and future prospects in the most glowing terms, stating that it possessed diversified resources and an ideal geographical location, and its potentialities marked it "as one of the most thriving future cities along the railroad...a fact to which the citizens of the community seem very much alive." The colonel thought that Seward could claim many of the advantages of

Anchorage, except size. It was the most accessible city the year around to all citizens of the third division. Court business could be transacted more economically and efficiently at Seward than at Valdez. The federal government owned a rather complete courthouse in the city, on which about \$15,000 in improvements had been expended in the last seven years. Seward was the terminus of the telegraph cable laid north from Seattle, and the headquarters of the U.S. Army Signal Corps operating that system. The city's population was rising, and mine, fisheries, and wood pulp industries were developing; so was agriculture in the Matanuska Valley, and Seward was to be the water terminus of the proposed international highway from Seattle to Fairbanks. It also was to be the shipping point for the reindeer industry "whose abattoirs and factories for by-products are to be located contiguous" to the Alaska Railroad. There had been talk to eliminate the railroad between Seward and mile 64 because of the rugged nature of the environment, the steep grades and excessive winter maintenance costs. To cure these defects, proposals had been made to build about 14 miles of new road, including 3.4 miles of tunnel to Portage Bay on Prince William Sound and make this the ocean terminus of the Alaska Railroad. Those plans, however, which would have destroyed Seward, were abandoned. Clearly then, all of these promising economic developments marked Seward as "the coming port of Alaska." In short, Quinlan believed that the affairs of the court would be nearer the logical center of business if it were established at Seward."³⁰

Quinlan's visit, and his apparent preference for Seward led civic and governmental organizations in Anchorage to once again undertake a determined lobbying effort on behalf of their city. The department of justice and the President soon received reams of statistics, facts, and arguments assembled to prove that Anchorage was the logical choice for court headquarters. In 1930,

Assistant U.S. Attorney General Charles P. Sisson traveled to Alaska to clear up the confusion. He held hearings in Valdez to give residents the opportunity to tell him why the court should not be moved. There was no question that Valdez had lost its preeminent position at the turn of the century as the gateway to the interior and as the most northern port navigable throughout the year. Still, Valdez had stayed aggressively alive. An Alaskan editor stated that "Cordova should work with Valdez in its effort to keep the court in that city," because he felt that "the benefit received by any one town in securing the court, would be more than offset by the tremendous harm done Valdez...." In any event, the department of justice, in the face of so much competition and conflicting voices, decided to maintain the status quo.³¹

For two years there was little agitation for the court removal. In 1932, the city of Seward once again made a bid, and this brought about another round of discussions within the department of justice. The consensus was that "Valdez, as a town is dead and has been for a number of years, and the fact that the Judge, the Marshal, the District Attorney, and the Clerk of the Court and their staffs live there is the only reasons it is still on the map." The last census showed a population of 442, taken during the fishing season when temporary residents came to town. The regular population amounted to no more than 200 souls. Only one steamship line called at Valdez, and its calls were far apart. It was an expensive proposition to maintain the court, and either Seward or Anchorage as headquarters would save the federal government approximately \$15,000 per annum. Of course, the real question revolved not so much around whether or not the court should be moved from Valdez but rather if it should go to Seward or Anchorage. The battle between the respective civic groups and chambers of commerce had been a lively and continuous one. The department of justice still favored Seward. There was some hope, however, that

the problem might be solved in the near future because the treasury department planned to construct a new post office, courthouse, and general federal building in Anchorage. The department of justice thought that the whole move question might be tackled when new officials were appointed. If these individuals came from Anchorage or Seward, move agitation would be strong. If the officials now residing were reappointed they would undoubtedly insist strenuously to maintain the status quo. In any event, no resolution of the problem appeared to be possible in the immediate future. Seward, therefore, launched an intensive lobbying effort on its behalf. Salmon canning representatives from Seattle and various Alaskan localities asked the attorney general to move the court headquarters to Seward, using the familiar arguments supplied by the Seward Chamber of Commerce. The department responded to this effort by establishing the headquarters of the recently appointed U.S. attorney at Seward.³²

Valdez citizens obviously could not sit by idly in the face of this renewed effort. The mayor and common council and chamber of commerce prepared an elaborate presentation justifying the retention of the court in the city. The list of advantages favoring Valdez was a long one. In particular, the court and jail quarters in Valdez were housed in a well-kept frame building designed and built for this purpose, while the federal building was of "cheap and hasty construction" which had served the Alaska Central Railway as temporary office quarters in 1905. It was obviously totally inadequate for court uses. There were other arguments for Valdez. Private efforts and investments, such as the Kennecott Copper Corporation and individual operators and prospectors, had built the economy of the eastern part of the third division for about thirty-five years. Mostly federal activities, particularly the Alaska Railroad, had established the economy of the western part of the

third division. If, however, all other arguments failed, the chamber and common council fell back on nostalgia and history. Valdez was one of the oldest pioneer towns on the Alaskan coast north of Juneau. Western pioneers of the best stock had settled the town in 1898, and these same pioneers and their descendants still lived in the town. The chamber and city fathers, therefore, felt "a just pride and a pardonable amount of sentiment in knowing that the headquarters of the United States Court for the Third Judicial Division of Alaska has for thirty-years uninterruptedly remained in our city."³³

In the meantime, H.C. Cox, the supervising examiner of the department of justice had gone to Alaska and made yet another study of the relocation question. He concluded, as had Colonel Quinlan and others before him, that the court headquarters should be located in Seward, "convenient to Anchorage, and less inconvenient to Cordova than Anchorage." The department knew that Seward was the logical city for court headquarters, but it had received strong protests from the Valdez Chamber of Commerce and others, and Delegate Anthony J. Dimond, who called the town home, did not favor the change. The department, therefore, decided to ask Judge Cecil H. Clegg of the third division for his frank opinion on the matter. The judge thought that the government "would gain or lose nothing by a change from Valdez. The Public would gain or lose nothing by a change to any other town." No matter where the headquarters were located, Clegg stated, "the cost of the Court, of witnesses, of officials and of justice generally will not materially change." Clegg thought that Seward was "merely a transfer point located on the end of a projecting peninsula" and possessed no "resources of its own to give it stability or permanency." Clegg mentioned the possibility of Portage Bay replacing Seward as the terminus of the Alaska Railroad. In short, the judge saw no need for any precipitate action in changing the court headquarters at the present time. Clegg made an exception.

Should the federal government decide to construct an adequate federal building in Anchorage, "then I would unreservedly be in favor of establishing the headquarter of the Third Division for all officials" at that town. Perhaps best of all, Clegg had no personal interest in any of the towns, since his home and permanent residence were in Fairbanks. Clegg's views carried the day. The department of justice decided to indefinitely postpone any action in the matter. In January, the department informed Delegate Dimond of its decision.³⁴

On February 16, 1935, President Franklin D. Roosevelt appointed Simon Hellenthal district judge for the third division. The new appointee assumed his duties in Valdez. The 1930s saw much turbulence in the contiguous states which experienced the brunt of the "Great Depression." Alaska was not untouched. In 1938 the Kennecott Copper Corporation closed its mining operations and abandoned the Copper River & Northwestern Railway. This move severely affected Cordova. In the meantime, Anchorage continued to grow. In 1940, it had a population of 4,229, Seward had 949, and the population of Valdez had increased from 442 in 1930 to 529 in 1940. By the late 1930s, the federal government had begun to fortify Alaska. Anchorage became the location of two major military bases. In approximately 1939, according to John Hellenthal, an Anchorage lawyer and son of the late district court judge, the department of justice moved court headquarters to Anchorage when the Valdez facilities burned to the ground. The move settled a long controversy.³⁵

FOOTNOTES

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3. Ibid., p. 20.
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5. Ibid., pp. 30-31.
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12. Attorney General to Frederick M. Brown, March 1, 1917, Brown to Assistant Attorney General Samuel J. Graham, March 19, 1917, Department of Justice Files, R. G. 60, N.A.
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THE FLOATING COURT

James Wickersham had pioneered holding court in the Aleutian Islands in 1901. In 1910, Peter D. Overfield, the presiding district court judge for the third division stationed at Valdez proposed to the U.S. attorney general that one of the United States Revenue Cutters stationed in the Bering Sea near the Pribilof Islands be directed to steam to Valdez in mid-July and transport court officials to the various towns and settlements along the coast, including Kodiak, Chignik, Unga, Unalaska, Dillingham and Koggiung, locations for the most part easily accessible only by water. Overfield pointed out that the Bristol Bay precinct, for example, was open to navigation only from July to September, transportation possibilities were meager and intermittent, and the court was not in session in Valdez. Therefore, many petitioners for naturalization were not afforded a reasonable opportunity for a hearing before the court in Valdez, except at considerable cost amounting, with the expenses in each case for the necessary two witnesses, to over \$500. The judge also proposed to take along a trial and a grand juror from the regular panel of the Valdez spring term of the court. Criminal and civil cases in these distant parts of this division, he suggested, could be disposed of by filling in a jury panel at the different locations. This would save the expense of bringing government witnesses to Valdez for the spring and fall terms of court. J.H. Romig, M.D., a former United States commissioner in the Bristol Bay precinct and then a census enumerator for Alaska had already presented the idea to the department of justice and the Revenue Cutter Service had indicated its willingness to make one of its ships available for such an undertaking.¹

In fact, three years earlier, on April 29, 1907, the departments of justice and treasury had signed a formal agreement which directed that a

revenue cutter take an assistant U.S. attorney and deputy marshal from Nome on board and then proceed to check on the whaling fleet. The agreement specified that the skipper of the cutter be appointed a U.S. commissioner for Alaska, and these three officials were to board whalers, disregard the complaints of the crews, and deal only with "offenses against or with women and girls, and only by enforcing purely criminal laws." Offenses by officers were "to be dealt with as may appear lawful and necessary in stopping offenses, regardless of the effect upon the whaling voyage." Missionaries and other concerned Caucasians apparently had notified the department of justice that many whaling officers sexually exploited Native women and girls. Subsequent investigations revealed, however, that women offered "themselves and their daughters, and husbands their wives to accompany these officers" on the whaling cruises and regarded "the trip as a privilege." These circumstances as well as the fact "that various legal questions" had not been adjudicated made "the suppression of the offenses less easy and certain."²

The government, however, was determined to stop these moral offenses. The department of justice advised the Nome officials that it believed that the three marine miles along Alaska and its coast were a part of the territory and, therefore, within the jurisdiction of its code. Accordingly, the U.S. commissioner were to enforce the appropriate section of the criminal code with a jury, if demanded; to punish adultery, including the misconduct of a married man with any woman, and that of a single man with a married woman, by a fine not to exceed \$200 or imprisonment not exceeding three months. An act of Congress of February 9, 1889 could be utilized as well. It stated, in part, "that every person who shall carnally and unlawfully know any female under the age of sixteen years, or who shall be accessory to such carnal and unlawful knowledge before the fact...on any vessel within the admiralty or maritime

jurisdiction of the United States, and out of the jurisdiction of any State or Territory, shall be guilty of a felony," punishable by imprisonment at hard labor for no more than fifteen years for the first offense; and for each subsequent offense by imprisonment for no more than thirty years. The department interpreted this act as applying to the high seas if offenses were committed on American ships. When applying the federal statute, the commissioner was to act as a committing magistrate for the federal district court at Seattle. For offenses committed within the three-mile territorial limit, the federal district court at Nome was to exercise jurisdiction. Department of justice officials cited various other statutes which might be applied in these cases, such as the so-called Edmunds law which had passed Congress on March 3, 1887. It punished adultery and fornication by an unmarried man or woman, while Alaska law punished "cohabiting in fornication, and not the single act." Above all, the officials should make every effort to punish offenders and protect young girls.³ With these orders in hand, Nome court officials on board of revenue cutters had roamed the northern seas for a few years in pursuit of sexual offenders. Cooperation between the departments of justice and treasury had already been well established.

Before the floating court got underway in 1910, however, a number of problems had to be resolved. Judge Overfield had indicated that he desired to leave Valdez on the cutter about July 15. Overfield, however, had been transferred to the newly created fourth judicial division headquartered at Fairbanks effective the first of July, much against his wishes. Therefore the suggestion for a floating court had to come from Overfield's successor, Judge Edward E. Cushman. Judge Overfield was unhappy about the reshuffle of the judges. Thomas R. Lyons, then in Fairbanks, was to go to Juneau. Overfield reminded the attorney general that before he and Lyons assumed their duties, there had

been general unrest and judicial affairs had been in a critical condition. In the meantime, this unrest had disappeared "and been replaced by a feeling of satisfaction." Overfield predicted that his assumption of duties in Fairbanks would be greeted with skepticism since he was considered to be a supporter of James Wickersham, then Alaska's delegate to Congress, who had used his influence to secure the judge's appointment. In addition, Wickersham would practice before his court in Fairbanks during Congressional recesses in the summer. Any decision he rendered in favor of Wickersham would be criticized, he predicted, and regarded as repayment of a political debt.⁵

Overfield was afraid that Judge Lyons, who had made a splendid record in Fairbanks, would probably meet disaster in Juneau, because he had been the former law partner of Louis P. Shackelford, then the National Republican Committeeman for Alaska, and an active politician. Shackelford practiced law in Juneau and represented some of the largest mining corporations in that town. Overfield was certain that Lyons' would be charged with conflict of interest in decisions favorable to his former law partner. In summary, however, Overfield conceded that if the department insisted on the change, Judge Lyons could "conquer the situation at Juneau," and the difficulties at Fairbanks did not appear insurmountable. Alaska's Governor Walter E. Clark dismissed Overfield's reasons for resisting the reassignment and remarked that the judge preferred Valdez as his residence, and that his professed feeling of embarrassment because of a fancied political obligation to Wickersham was "unworthy of a courageous judge."⁶ The transfer took place, as contemplated.

Who was to pay for the expenses incurred by the judicial officers while on board the cutter? The treasury department did not want to get stuck with the bills. After some internal inquiries, the attorney general determined that the "department of justice could and would pay all related costs from a variety of

accounts available. Next Judge Cushman, who was to convene the floating court, told the attorney general that there were no attorneys licensed to practice west of Seward. U.S. commissioners handled misdemeanors, so the only necessity for the district court in those regions was to try felonies. The Carter Code provided, however, that "if the party appear for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned and must be asked if he desires the aid of counsel." Cushman interpreted counsel to mean licensed and qualified attorneys. The judge doubted that any felony case could be tried in the western part of the third division unless a government-paid attorney accompanied the court on the cutter. He suggested that the judge had the authority to pay the salary from the so-called "C Fund," which accumulated monies from fines and forfeitures and which was disbursed at the discretion of the judge. The attorney general agreed that Cushman was authorized to pay attorney costs.⁷

Next the treasury department wished to know whether or not the judge could appoint officers of the Revenue Cutter Service as U.S. commissioners and deputy U.S. marshals. If possible, this would enable the officers of the Bering Sea fleet to maintain law and order in places not reached by the court. That request necessitated some research into the applicable statutes, which revealed that Congress had intended that U.S. commissioners should have a fixed residence, yet their jurisdiction was coextensive with the district, and any act performed within the limits of the district was clearly valid. Assistant Attorney General J. A. Fowler reasoned that the failure of commissioners to have permanent residences only provided grounds for removal but did not deprive them of their official position. Therefore, it was perfectly legal and proper to appoint members of the revenue cutter service as U.S. commissioners. The appropriate statute showed that U.S. deputy marshals were not required to

maintain fixed residences, and it therefore was possible to appoint officials of the revenue cutter service to such positions. In his research, Fowler discovered that the U.S. district court for the third division had appointed the captain of the cutter Thetis U.S. commissioner for the last three successive years, and that officers of merchant vessels had been appointed deputy marshals by the U.S. marshals in previous years. The legal questions clarified, the treasury department recommended that the captains of the cutters Perry, Bear, Tahoma, and Manning be appointed U.S. commissioners and one junior officer on each of these vessels receive a commission as deputy marshal. Notified by the department, Judge Overfield and Marshal Harvey P. Sullivan made the appointments.⁸

Judge Cushman adjourned court on June 21 in Juneau in the first division, and had assumed his duties in the third judicial division when he left on the cutter Rush the next day for the Alaska Peninsula and Aleutian Islands. The judge convened court at various remote locations and returned to Valdez on August 13 after having covered 3,724 miles. Cushman was very satisfied with the floating court, and the clerk of court had estimated that the experiment had saved the government in excess of \$8,000. The judge, therefore, recommended that the court repeat the voyage in the summer of 1911. Cushman recounted that the Rush had picked him up in Juneau on June 22, and left Valdez with the rest of the court personnel on July 2. He had held court at Unalaska for a few days, and then arrived in Bristol Bay around the middle of July. The canneries were still operating, and the judge thought that the court should arrive in Bristol Bay about August 10, the approximate time when the fishing season ended and the canneries shut down. This would enable the court to clear the docket of all cases. In 1910 that had not been possible because criminal and other cases arose after the departure of the court. This required that

prisoners and witnesses be brought to Valdez at great expense. It certainly was not feasible to detain them in prison until the court returned in the following year. Cushman was dissatisfied with the manner in which Natives distilling liquor for home consumption had been handled. The Russians apparently had taught the natives of the Bering Sea the art of making intoxicating liquor by fermenting corn meal, flour, dough, or other simple mixtures of cereals, fruits, and vegetables. The judge observed that these people were of "a very rough simple class...and are thoroughly convinced that having practiced this so long, they have a right to do so." The law provided a minimum fine of \$500 and six months' imprisonment. Cushman considered this penalty excessively harsh, "yet I was called upon to impose [this sentence] in a number of cases, substantially all upon pleas of guilty as juries evinced no inclination to convict in these cases." Cushman had discussed the problem with Millard T. Hartson, the internal revenue collector for this district. Both men agreed that it would be best to have an internal revenue agent accompany the floating court who would negotiate an appropriate fine. Cushman proposed that the court "thereupon discharge the party on his own recognizance and continue the case one year awaiting the approval of the compromise [fine] by the Commissioner of Internal Revenue...." This alternative would avoid removing the offenders to Valdez "and imposing upon them over a year's term of imprisonment, for none are able to pay a \$500 fine...."⁹

Cushman found that the requirement to give fourteen days notice by advertisement in a local newspaper after a vessel had been seized for sealing or fishing violations and the court intended to bring forfeiture proceedings were more than cumbersome. Not a single newspaper was published near Unalaska, the nearest one six-hundred miles away in Nome." Furthermore, testimony could not be taken before the publication of the fourteen day notice. He recommended

that the law be amended deleting the notice requirement, and instead posting such notice in three consecutive places near the point of seizure. Also testimony should be taken at Unalaska rather than having witnesses travel to Valdez at great expense. Cushman praised the officers and men of the Rush who had done everything in their power to make the trip an agreeable one. The vessel, however, was far too small for carrying the court personnel, and everyone had suffered from the lack of space. He therefore asked that a larger cutter be assigned for the work of the floating court in the 1911 season.¹⁰

D.P. Foley, the senior captain of the revenue cutter service in command of the Bering Sea fleet had also been generally satisfied with the work of the floating court. He did, however, have several complaints and recommendations. Unalaska had no suitable jail to confine Japanese prisoners accused of sealing violations. The present jail was one in name only, located in the center of the village without locks or bars. Only few guards could be hired, and even those were none too reliable. Should prisoners be afflicted with contagious diseases these, under present circumstances, would spread quickly to the village and beyond to the patrol fleet. He recommended Expedition Island in Unalaska Harbor as a suitable site for a jail. On the beach near the village lay a practically completed sternwheeler steamer started during the Nome goldrush. It now decayed slowly, and could probably be bought for a small sum and moved to the island and converted into a jail at a very moderate cost.¹¹

None of the captains of the Tahoma, Manning and Perry performed duties as U.S. commissioners during the 1910 season. They did not receive their commissions until July after which time their duties confined them to the patrol of the Pribilof Islands. Any cases occurring there, Foley contended, "could be tried with better grace before the commissioner at Unalaska who would not be in the position of accuser and judge." Japanese sealers frequently landed on the

Pribilof Islands, and if apprehended charged with illegal sealing. The commanding officers of either the Tahoma or the Manning could have tried the Japanese, but both officers had received their commissions but recently and were not prepared to try these cases. Foley thought, however, that all cases involving the subjects or vessels of foreign nations violating American laws first be reported to the commander of the Bering Sea Patrol before any other action was taken. Foley argued that captains and junior officers acting as U.S. commissioners and deputy marshals, respectively, could probably deal with cases arising while patrolling the coast on their way to the Bering Sea. He recommended that the men obtain their commissions before starting the cruise. Foley thought that since the fleet traversed parts of the first and third judicial divisions, the captain of the Rush should be commissioned by the district court judge of that division. The commissions of the others should be for the third judicial division. In 1910 their jurisdiction was restricted to the waters and islands of the Bering Sea, a mistake since their services were most needed along the coast to the east of Unimak Pass in the vicinity of Sannak, Chirikof, and Kodiak Islands where in the past both Canadian and Japanese sealers had committed depredations. Well into the 1910 season, Judge Cushman finally had extended the jurisdiction of the captain commissioners to cover the whole of the third judicial division. The cutter Bear patrolled the Arctic coast, and the judge for the second judicial division had to issue these commissions. Foley concluded that the commissioning of revenue cutter service officers would mean that the laws would be enforced in parts of Alaska where is was but little known or regarded. Officers should be well prepared for this work, and be therefore recommended that each patrol vessel be furnished with a copy of Carter's annotated code of Alaska, while the commander of the Bering Sea Patrol should have a copy of the U.S. statutes annotated.¹²

On March 15, 1911, the attorney general instructed Judge Thomas R. Lyons of the first division to conduct the floating court during that season, departing Valdez early in the summer, while directing Judge Cushman to hold a term of the court at Juneau in May and at Fairbanks in June through August. He also suggested that notices be posted of the terms of the floating court, one in the Valdez paper and one at Seward, and others at least thirty days in advance at the commissioner's offices in each of the places where court was to be held.¹³

In the meantime, however, a complication had arisen with the discovery that individuals being paid \$2,500 per annum could not "be appointed to, or hold the position of United States Commissioner." This ruled out the captains of the revenue cutters, but left the junior officers eligible. The attorney general recommended that the applicable statutes be amended to enable the commanding officers of revenue cutters to be appointed commissioners and ex-officio justices of the peace at large in Alaska serving without compensation at such places where no such officials existed.¹⁴

The floating court finally departed on the Thetis, presided over by Judge Lyons. During the voyage, Lyons became convinced that the court should make the trip annually. Although he did not know how much money was saved by holding court in these distant locations, Lyons estimated that it must have been at least \$8,000 by trying cases in the home of the witnesses rather than having to transport these to Valdez or Seward. He was also convinced that the very presence of the court made a very desirable impression on violators of the law. In fact, many offenses committed in the Bristol Bay region would never be heard of if witnesses were compelled to appear at Valdez or Seward for trial of the cases. In short, Lyons had "a very enjoyable experience, with good weather nearly all the time."¹⁵

While the floating court tried cases in the Bristol Bay region and the Aleutian Islands, the cutter Bear steamed northward to Point Barrow on its annual patrol. Unlike in previous years, no court officials from Nome accompanied the Bear because of a heavy work schedule in town. The district court judge of the second division appointed Lieutenant Jones U.S. commissioner, and instructed him to distribute copies of Carter's code to the various U.S. commissioners along the way. The Bear left Nome in the early part of July and returned in the latter part of August. Commissioner Jones settled a variety of minor disputes among the Eskimos in various villages. At a couple of settlements Jones investigated certain alleged insane Eskimos, but concluded not to take the individuals to Nome for a sanity hearing because they were nonviolent and it would cost a great deal "to have them adjudged insane and sent outside...." The superintendent of the Native schools, who had accompanied the Bear on its northern voyage, discovered that the owners of a couple of shore whaling stations who also conducted general merchandising and bought furs, took unfair advantage of the Eskimos, bordering "on peonage." The captain, the commissioner and the superintendent thereupon met with the owners of the enterprises and reached agreements as to how the Natives were to be treated. The matter was again to be investigated in the 1912 season. On several occasions the Bear saw service as a jail when culprits were incarcerated on the way north and delivered to their home villages on the way south. One Eskimo had caused many problems in his village. On a complaint, the captain of the Bear removed him from his village and took him north a long way, "got him a job and secured his promise to stay there...."¹⁶

Nome's U.S. Attorney B.S. Rodey was delighted that the Bear had not brought any prisoners or witnesses to the town. This saved the government much money, because indicting the accused in Nome, securing a conviction and

returning the witnesses, all to be done before the close of the two months navigation season, entailed heavy expenses. As requested, the captain of the revenue cutter, at the request of the court in Nome, had distributed the latest regulations regarding fur-bearing animals among the Natives, and discovered only minor infractions of the law. In short, Rodey was satisfied with the work the Bear had accomplished in the 1911 season.¹⁷

In early 1912, Judge Cushman requested that the Thetis, a larger cutter than the Rush, be assigned once again to the floating court. He intended to hold terms of court at Nushagak, Unalaska, Unga and Kodiak, and requested that deputy marshal Willard B. Hastings of Unalaska, together with a revenue cutter service officer appointed commissioner, make the first trip of the season west from Unalaska and visit Atka and other outlying islands of the Aleutian chain. Cushman also requested that he be allowed to employ an attorney at the rate of \$250 per month to represent individuals indicted for felonies. These minor matters straightened out, the floating court left Valdez for the work of the 1912 season. In the meantime, the cutter Bear had once again sailed north. As on previous voyages, the commissioner, Lieutenant Dempwolf, and the deputy marshal, Lieutenant Baylis, disposed of a number of minor cases. For example, in Deering the deputy marshal closed up the saloon of Smith & Emerson for selling liquor after the expiration of their license; the commissioner investigated the charge against S.O. Gurney, a Caucasian, for "cohabiting in a state of adultery and fornication" with a Native woman. The commissioner bound Gurney over to appear before the next session of the grand jury at Nome, fixing a bond of \$1,000 which the residents of Kotzebue furnished. At Point Hope, the deputy marshal arrested Daniel Nakok and charged him with committing adultery. Brought before commissioner Lieutenant Dempwolf, he pleaded guilty, was tried and sentenced to a three months term in the Nome jail. Captain J. G.

Ballinger, the commander of the Bear observed that this "was a particularly flagrant case, the offense having been committed at various times with the same woman during the last four years and, as the Native was defiant, it was deemed best to make an example of him." Still, the case bothered the captain. Nakok apparently had associated with the woman for some years "in direct opposition to the advice and admonitions of the school teacher and the missionary at Point Hope." Ballinger thought that Nakok's case illustrated "the evil effects caused by the action of the missionaries in Alaska in seeking to substitute white men's morals and marriage customs for the satisfactory Native custom of marriage." Natives had long been used to trial marriage, and were easily persuaded to be married in the white man's fashion. When the affected parties changed their minds, "not having fully realized the firmness of the tie which binds them together, they are anxious for a divorce, which cannot legally be obtained at any other place except Nome." Distances and the difficulties of the trip mostly proved prohibitive, so Natives in this situation considered themselves free to form other ties, although still legally married. This then brought them into violation of the law. Ballinger proposed that it should be made easier to get a divorce or a "greater caution should be exercised in marrying them." Another Native of Icy Cape, who previously had been warned not to steal had committed the same offense again. Captain Ballinger reported that since no official complaint was made before the U.S. commissioner on board, he ordered the man confined in the brig on board and taken to Point Barrow. There Ballinger landed him, "with a severe lecture and a warning as to his conduct in the future." Ballinger believed that "the trip on foot back to Icy Cape from Point Barrow may have a salutary effect." The captain had also acted on his own account in the case of Solly Augni-nak whom he transported from Point Hope to his village Schischmareff. The year before, Ballinger had punished the man

for the crime of incest. Although there had been insufficient evidence to convict him in court, the captain had been convinced of his guilt. The man's daughter had died the previous winter, and according to reports he had been exemplary during the year. Therefore, Ballinger had "decided to allow him to go back to the village from whence he was taken."¹⁸

Within a short time, the floating court had proven its effectiveness and it quickly became an institution. The cutter Bear also continued to make its annual trip along the arctic coast to as far north as Point Barrow. In the 1913 season, the district court judge in Nome, as usual, appointed one of the officers as a commissioner. In that year, the court hired an Eskimo interpreter to join the Bear and make the work of the commissioner a little easier. The cutter stopped at most Eskimo settlements on its way north, except at Cape Prince of Wales. There was hardly any work for the commissioner and deputy marshal except for a number of domestic relation problems, which the officials did not "consider of sufficient importance to do anything about, owing to the expense, inconvenience and uncertainty of getting the parties back to their homes before the freeze up." Taking his cue from the captain of the Bear, Nome's U.S. Attorney Rodey recommended to the attorney general that divorces among Natives be made easier. Captain Ballinger reported that the relations between the Eskimos and the storekeepers had vastly improved over the previous year. Indeed, it had been a prosperous year where sufficient numbers of whale had been caught, and the fox trapping season had been good.¹⁹

In the 1914 season, the cutter McCulloch left Valdez on July '15 and steamed to Seward, Seldovia, and Knik. From there it proceeded to Iliamna Bay on the west side of Cook Inlet. There all members of the marshal's and clerk's offices disembarked and went overland some fourteen miles to Iliamna village; thence by launch the party crossed Iliamna Lake about ninety miles and went

down the Kvichak River another ninety miles to Naknek on the south shore of Bristol Bay. From there the officials took cannery steamers about the same distance to Dillingham on Nushagak Bay, the first location where a term of court was held. While the judge and U.S. attorney still traveled on the cutter, the marshal summoned the necessary numbers of individuals for grand and petit juries for the term. The marshal chose these individuals from the approximately 200 men who wintered at and around the canneries and claimed their Alaska residence on Bristol Bay and its tributaries. During the fishing season, the population picture changed drastically. Approximately 2,500 men, most of whom the fishing operators imported annually from San Francisco, Astoria, Portland, and Seattle, worked in the eight active canneries on the Nushagak River and Bay, at the northern end of Bristol Bay. Another 4,000 transients worked in the thirteen active canneries and salteries located on the Naknek and Kvichak Rivers along the southern shores of Bristol Bay.²⁰

While the marshal summoned the grand and petit juries, the McCulloch with Judge Fred M. Brown, assistant U.S. Attorney Wm. H. Whittlesey, and J. L. Reed, the attorney appointed to represent defendants in felony cases, left Iliamna Bay and proceeded directly to Unga where one case awaited disposition. Whittlesey directed the resident deputy marshal to subpoena the necessary witnesses and took them aboard the cutter to appear before the grand jury at Dillingham, knowing that Unga did not contain enough qualified individuals to summon grand and petit juries. The McCulloch then steamed to Unalaska where it arrived at the end of July. The little settlement did not contain enough residents qualified for jury service. The defendants at Unalaska had employed private counsel, and the assistant U.S. attorney, with court approval, agreed with the request of the defense attorney to transfer the cases to the term of court to be held at Seward on October 2, 1914.²¹

On the eve of the departure from Unalaska, Lieutenant Hutson, the U.S. commissioner on the Tahoma held hearings on the Pribilof Islands in the cases of United States v. Hatton and United States v. Tongue, where the defendants were charged with having given liquor to Natives. They were held for the grand jury, but the McCulloch with the floating court was unable to proceed to the Pribilofs to investigate or to have the witnesses taken to Dillingham in time for the term of court. The floating court arrived at Dillingham and convened on August 3rd. Grand and petit juries were empanelled and the court conducted its business. The McCulloch boarded the court officials, prisoners, witnesses and guards and sailed to the Pribilofs, investigating conditions for a day, and arrived at Unalaska on August 13. It held court the next day. There were no jury trials. The same was true at Unga where Judge Brown convened the court on August 19. Prisoners held at Unga, having been indicted at the Dillingham term, pleaded guilty. Thirteen individuals received citizenship papers, twelve applied for final papers, and another eight filed their declarations of intention to become U.S. citizens. The court denied three applications for liquor licenses and transacted some minor civil business.²²

Next the floating court moved to Kodiak and disposed of accumulated business. There were no criminal cases, except an alleged murder at a cannery at the lower western end of the island. The marshal detained the witnesses, all foreign nationals, but it proved impossible to find a sufficient number of qualified jurors for grand and petit juries. The prisoner and witnesses, therefore, were put aboard the McCulloch and taken to the term of court at Seward. Deputy U.S. marshals and U.S. commissioners were stationed at Kodiak, Unga, Naknek, and Dillingham. In case a crime was committed some distance from the headquarters at Kodiak and Unga, the deputy marshal had to charter a launch or take the monthly mailboat to investigate the felony and make an arrest. At

Unalaska, the deputy marshal depended for transportation mainly upon the revenue cutters, while the court officers at Naknek and Dillingham depended almost entirely for transportation upon the free use of the cannery steamers and launches.²³

Whittlesey, the assistant U.S. attorney, had participated in the 1913 and 1914 floating court. He discovered that Unalaska, Unga, and Kodiak did not contain enough qualified individuals who could be summoned to serve on grand and petit juries. Many of the residents spoke Russian and understood and spoke but little English. He recommended the discontinuance of terms of court at these locations, and advocated that a term should be held annually at Naknek or Dillingham. Holding court in Bristol Bay, he argued, helped minimize crime among the thousands of foreigners and others who gathered there each year to work in the fisheries. Whittlesey believed that the court would need no more than three weeks each year to finish its business in that region.²⁴

Soon thereafter, the U.S. attorney at Valdez, William N. Spence, suggested to the attorney general that henceforth the court should utilize regular steamers and go from that city to Iliamna, a trip taking about three days. From there it should proceed over the portage to Iliamna Lake and then by boat on the Kvichak River to Bristol Bay and Dillingham. After the term of court at the latter location, the court officials should return by the same route. Prisoners, if any, should be transported on regular mail steamers leaving Bristol Bay. All other terms of court usually held on the trip of the floating court should be abandoned, resulting in considerable savings to the government. Early in 1915, the attorney general directed the McCulloch to Valdez to pick up the court for yet another, but this time abbreviated, season. Court was to be held at Naknek, Dillingham, and Unga. In 1916, the secretary of the interior anticipated labor troubles connected with the construction of the Alaska

Railroad. He asked that Judge Brown remain in the third division instead of conducting the term of the floating court. The attorney general agreed, and no floating court was held.²⁵

On January 25, 1915 an act of Congress had combined the Revenue Cutter Service with the Life-Saving Service. The new organization took the name U.S. Coast Guard. Despite its new name, the cooperation between Alaska's federal district courts and the new organization continued. Judges and U.S. marshals for the second and third divisions continued to appoint officers of the new service as U.S. commissioners and U.S. deputy marshals, to serve without compensation. The floating court, however, was not held annually any longer beginning in 1916. In early 1925, Judge E.E. Ritchie asked the permission of the attorney general to hold a term of court on Bristol Bay. The commissioner there had held for the grand jury one man accused of murder and another for incest, and about eighty individuals had applied for naturalization. If the felony cases had to be brought before a grand jury at Valdez or Seward, the expenses for witnesses promised to be heavy. The applicants for naturalization could not afford the long trip to Seward or Valdez. Unfortunately, however, the U.S. Coast Guard had no vessel for the 1925 season suitable for the proposed floating court. No floating court was held.²⁶

In May 1934, Judge Cecil H. Clegg responded to instructions from the department of justice and called for terms of court to be held at Seldovia, Kodiak, Unga, Unalaska, Naknek, and Dillingham in June of that year. The Coast Guard agreed to make the cutter Tahoe available for the floating court. Clegg resigned, however, and Judge E. Coke Hill of the fourth division took his place. The judge naturalized about 25 aliens, and accepted approximately 45 declarations of intentions and also a number of petitions for naturalization. He also passed upon two motions dealing with civil suits. U.S. Attorney Joseph

W. Kehoe and Clerk of Court Robert Romig accompanied Judge Hill on the trip of the floating court. The judge was satisfied with what had been accomplished. He recommended that the headquarters of the U.S. commissioner and deputy marshal, now located at Dillingham, be moved five miles east to Snag Point, a much larger community with a post office, school and large stores dealing in liquor. In the summer time, transient workers increased the population of Snag Point considerably, and with the easy availability of liquor, conditions often were deplorable. C.J. Todd, the U.S. marshal, complied and moved the deputy marshal's office to Snag Point. The district court judge followed suit and moved the commissioner's office as well.²⁷

The record indicates that Judge Simon Hellenthal conducted the floating court on a regular basis from the time of his appointment to the third division in Valdez in 1935. He did not hold a floating court in 1938.²⁸ After the headquarters of the court of the third division were moved to Anchorage, Hellenthal and his successors resumed the practice, and held floating court as late as the 1950s. What did the floating court accomplish? It helped establish respect for the law among the Natives and also an unruly transient population of fishermen and cannery workers in remote districts. It familiarized court personnel with regions of Alaska not easily accessible to those not involved in Native education or in the fishing and canning business. Perhaps most importantly, it made justice accessible to many who could not afford to travel to Valdez or Seward for a term of court.

FOOTNOTES

1. Peter D. Overfield to Attorney General, February 2, 1910, Attorney General to the Secretary of the Treasury, March 19, 1910, Secretary of the Treasury to Attorney General, April 18, 1910, File 146772, Section 1, box

- 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
2. "Interdepartmental Arrangment as to Whalers' Offenses," April 29, 1907, File 151267, Section 1, box 1009A, Straight Numerical Files, Department of Justice Central Files, General Records of the Department of Justice, R.G. 60, N.A.
 3. Ibid.
 4. J.J. Glover, "Memorandum for the Attorney-General," March 19, 1910.
 5. Overfield to Attorney General, March 20, 1910, File 146772, Section 1, box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
 6. Ibid., Clark to Attorney General, April 1, 1910, File 146772, Section 1, box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
 7. Secretary of the Treasury to Attorney General, April 18, 1910, Attorney General to U.S. Marshal Harvey P. Sullivan, April 23, 1910, Edward E. Cushman to Attorney General, April 29, 1910, Attorney General to E.E. Cushman, May 11, 1910, File 151267, Section 1, box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.
 8. Memorandum for Assistant Attorney General Fowler, April 13, 1910, J.A. Fowler to Attorney General, April 27, 1910, Attorney General to Secretary of the Treasury, April 27, 1910, Acting Secretary of the Treasury to Attorney General, April 29, 1910, J.J. Glover memorandum for the Attorney General, May 6, 1910, Attorney General to Overfield, May 7, 1910, Attorney General to Sullivan, May 7, 1910, File 151267, Section 1, box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.

9. Cushman to Attorney General, June 21, 1910,

Cruise of the U.S. R.C. "RUSH", Summer of 1910, with U.S. District Court, 3rd District of Alaska.

<u>Left</u>			<u>Arrived</u>			<u>Miles</u>
Juneau	June 22,	4:10 A.M.	Sitka	June 22,	8:32 P.M.	153.0
Sitka	" 24,	5:00 A.M.	Yakutat	" 25,	5:40 A.M.	212.7
Yakutat	" 25,	1:25 P.M.	Cordova	" 26,	6:50 P.M.	270.0
Cordova	" 28,	5:00 A.M.	Valdez	" 28,	1:55 P.M.	75.3
Valdez	July 2,	4:50 P.M.	Seward	July 3,	8:45 A.M.	145.0
Seward	" 3,	3:48 P.M.	Unalaska	" 7,	1:35 P.M.	758.0
Unalaska	" 12,	8:00 A.M.	Kvichak Bay	" 14,	7:15 A.M.	439.4
Kvichak Bay	" 15,	6:40 A.M.	Dillingham	" 15,	5:55 P.M.	80.0
Dillingham	" 22,	1:00 P.M.	Chogiung	" 22,	1:25 P.M.	2.5
Chogiung	" 23,	10:30 A.M.	Unalaska	" 26,	7:30 A.M.	466.0
Unalaska	August 1,	9:25 A.M.	Balboa Bay	August 2,	4:30 P.M.	254.6
Balboa Bay	" 3,	9:35 A.M.	Unga	" 3,	12:20 P.M.	25.0
Unga	" 6,	5:10 A.M.	Chignik	" 6,	6:50 P.M.	133.0
Chignik	" 7,	1:07 P.M.	Kodiak	" 8,	7:10 P.M.	267.3
Kodiak	" 11,	3:08 A.M.	Seldovia	" 11,	4:08 P.M.	122.0
Seldovia	" 12,	3:55 A.M.	Seward	" 12,	7:50 P.M.	161.0
Seward	" 13,	4:00 A.M.	Valdez	" 13,	7:55 P.M.	160.0
						Total. . . . 3724.8

Respectfully

Captain, U.S.R.C.S.
Commanding.

Cushman to Attorney General, January 25, 1911, File 146772, Section 1, box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.

10. Ibid.

11. D. P. Foley to Secretary of the Treasury, October 20, 1910, File 151267, Section 1, box 1009A, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.

12. Ibid.

13. Attorney General to Thomas R. Lyons, March 15, 1911, Cushman to Attorney General, April 4, 1911, File 146772, Section 2, box 904, Straight Numerical Files, Department of Justice Central Files, R.G. 60, N.A.

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THE POST WORLD WAR II PERIOD STRAINS ALASKA'S JUDICIAL SYSTEM

During World War II, thousands of construction workers and military personnel came to Alaska to fortify the territory and retake the islands of Attu and Kiska from the Japanese. By 1943, about 150,000 troops defended the north. On May 11, 1943, American and Canadian forces began their amphibious assault on Attu. At the end of that month, the island fell into American hands after fierce fighting. Subsequently, on August 15, 1943, an amphibious landing was made on Kiska. The troops discovered, however, that the enemy had evacuated the island at the end of July under the protection of heavy fogs. Following this action, the military command reduced ground forces in Alaska, and by March 1945, only 50,000 troops were left. Forts closed, bases were dismantled, and airfields turned over to the Civil Aeronautics Administration.¹

Many Alaskans regretted the departure of the military, for without the heavy federal expenditures, the territory's economy threatened to return to its traditional seasonal character, dependent on the mining and fishing industries. Fortunately, however, by 1946 Americans had become disillusioned with the actions of one of its allies, the Soviet Union, in Eastern Europe and elsewhere. Many interpreted these to mean that the Russians desired to rule the whole world. By 1948, the Cold War was in full bloom. The territory, recognized for its strategic military position, once again became the scene of massive federal outlays as contractors built major installations and expanded and modernized existing ones. Military necessity also dictated that these bases be connected with paved highways which gave Alaska's lagging road

construction program a tremendous boost. In short, the Cold War rescued Alaska from the economic doldrums and initiated boom conditions. Once again, thousands of construction workers streamed north together with many shady characters, all hoping to make big money.

Together with this influx of humanity there was a spectacular rise in crime, both in the villages and cities. Events in Galena, site of military construction activities, were typical and repeated elsewhere. With money available, there was much drinking which caused numerous problems. Alaska Native Service teacher Emil Kowalczyk, for example, complained about breaking and entering into his quarters. He explained that he and his wife could not leave their quarters at the same time, "because the natives then try to steal anything they can get their hands on--either inside the quarters or outside." The nearest law enforcement agency was 270 miles away in Fairbanks. The deputy U.S. marshal at Nulato had been transferred to Fairbanks and not yet been replaced. There was a shortage of U.S. marshals. The U.S. district court judge in Fairbanks had suggested that Mrs. Kowalczyk apply for the position of deputy U.S. marshal "but she explained that she could not and would not. It is not a job for a woman." Many of the problems in the villages were connected with liquor consumption. For example, the inhabitants of Deering, a small village on the Seward Peninsula located at the mouth of the Innachuk River on Kotzebue Sound, petitioned the Area Director of the Bureau of Indian Affairs to prevent the shipment of liquor into the settlement. Hugh Wade, the area director, had no authority to prohibit such shipments but asked for help from Joseph W. Kehoe, the U.S. district court judge for the second judicial division. Kehoe knew of no way in which his office could prohibit the shipment of liquor into individual villages. He pointed out, however, that most villages

had petitioned for liquor prohibition in the past. Therefore, Kehoe had denied the issuance of any liquor license outside the city of Nome--and none existed.²

Wade summarized the conditions in rural Alaska for the department of justice. Law enforcement had always been a problem because of the territory's vast size, the distances between the villages, limited transportation facilities, and the small number of law enforcement officers. The postwar population increase, mostly in the cities, increased the work of the U.S. marshal and other officers of the law. In fact, the full time efforts of these officers was required in their own localities and was inadequate there. Most of Alaska's villages lacked law enforcement, and were unable to get the help of a U.S. marshal "for offenses short of murder." Wade explained that the public works program was widely scattered throughout Alaska. Many villages had payrolls "much greater than they have ever experienced. It is well known that these people cannot handle liquor. It leads to nothing but trouble and law violations which, if continued to be ignored, will only result in more serious crimes." Although legal sale of liquor was not permitted in most of rural Alaska, it was still sold widely and most violators went free. This condition existed in all four judicial divisions. The bureau of indian affairs, in an effort to correct these conditions, had appealed for help to U.S. attorneys, marshals, and commissioners. All were unfailingly cooperative and assisted to the best of their abilities, "but with the limitations on personnel and increased demands for their services, they cannot do much to change conditions." In addition, Wade had been informed that since 1949, the federal bureau of investigation could no longer investigate violations of territorial law. U.S. marshals and deputies no longer could travel without a warrant and travel approval by the U.S. attorney. The distances and expenses with the limited budgets meant that only murder or rape were investigated and prosecuted.³

There was much trouble in the cities as well. In the summer of 1951, Brigadier General Walter R. Agee, the commanding general of Elmendorf Air Force Base near Anchorage, urged the U.S. department of justice to assign "sufficient agents within the U.S. marshal's office to suppress and control the unlawful practices which are at present flourishing within the Anchorage area." Agee argued that these "unlawful practices" seriously affected the welfare, health and morale of the troops. The general complained that prostitution, illegal liquor sales, narcotics and other vices flourished outside the city limits, specifically the Eastchester Flats, Smitty's Acreage, and Green Acres. There were numerous houses of prostitution, at least five establishments sold liquor without licenses, and known narcotics dealers, users and pushers resided in or frequented these areas. Because of the extreme shortage of agents within the U.S. marshal's office, the policing of these areas had been impossible.⁴

U.S. Attorney J. Earl Cooper echoed Agee's complaints. He pointed out that the immense defense payrolls had attracted many "past and potential criminals" to the Anchorage area. He stated that in July 1951, his office received about 45 complaints, but there would be many more if there were enough personnel in the marshal's office to undertake investigations. Under the circumstances, many of these complaints had to be ignored. The U.S. marshal's office in Anchorage, with a population estimated at close to 10,000 consisted of an acting U.S. marshal and four field deputies charged with law enforcement. One of the deputies had the primary responsibility for the Anchorage federal jail. That left the three others to serve civil writs, subpoenas, act as bailiff in jury trials, and conduct law enforcement and investigations involving criminal matters. Cooper observed that "obviously the personnel is insufficient to keep pace with the crime situation." He recommended that the Anchorage office staff be increased by four or five deputies. If that was

impossible, perhaps the attorney general could temporarily assign a number of deputies qualified in criminal investigations for a period of six months. Working under cover, they would gather the evidence needed for arrests and successful prosecutions.⁵

The department of justice had investigated Alaska's law enforcement conditions in the past. In fact, many such surveys had taken place. In the summer of 1951, it instructed Roy Webb, a training officer in the department, to make yet another study. Webb, according to Governor Ernest Gruening, worked "assiduously to get a first hand grasp of our difficult and complex law enforcement problems." The governor went on to explain to the President that the law enforcement problem in Alaska was based on certain fundamental and unique factors. Most importantly, Alaska was a territory, and Congress had "never seen fit to entrust it with its own judicial system" Therefore, law enforcement had remained a function of the department of justice , except in municipalities for the narrow responsibilities of the recently created territorial highway patrol. Gruening charged that the department of justice had never adequately exercised its responsibilities. Repeated attempts by the territorial legislature and the delegate to Congress to secure reforms from either Congress or the department of justice had failed. For example, for over half a century, repeated efforts to pay salaries to the approximately fifty U.S. commissioners, Alaska's lower court judges, had failed. Yet the First Organic Act of 1884, which had provided for these unsalaried commissioners who were to be paid solely from fees they collected from the public, had not been modified in sixty-seven years, a period which had "seen the greatest changes in any period of equal length in all recorded history." All of these problems, of course, were multiplied and intensified by the impact of the great defense program which had attracted thousands of workers to the north. The governor

concluded that he hoped that the federal government recognized "this great omission in its past attitude and performance in Alaska" and act effectively.⁶

Truman responded quickly to Gruening's complaints by instructing the secretaries of the interior and agriculture and the attorney general to get together and work out "a program of law enforcement" for Alaska because the "tremendous programs that are going on in the territory leave completely unbalanced the machinery for law enforcement," and created a situation which bordered on "anarchy."⁷

In the early fall of 1951, on August 20, Webb issued his report on the "United States Marshal's Offices, Territory of Alaska." He had done a thorough job. Webb summarized the causes for so much lawlessness in the territory. The construction industry paid very high compensation, and as a consequence many undesirables had come north to "prey on the people drawing these high wages." Prostitution, narcotics, gambling, and illegal liquor sales were the major causes of lawlessness, but violent crimes, such as murder, robbery, burglary, assault, arson, and rape also had increased. Webb discovered that the police departments in Alaska's major cities were "quite good and have, by constant work, been able to keep the cities in control insofar as crime is concerned but their work has caused the criminal element to move outside the city limits into the marshal's territory." Yet there were only four marshals, nine office deputies, and 33 field deputies, for a total of 46, in all of Alaska.

Lawbreakers knew that the marshals neither had the personnel nor equipment "to do more than cause them a minor irritation." Salaries, about \$5,000 per annum, were not competitive with comparable jobs. Most of the men were forced to supplement their salaries by moonlighting and many had working wives. Yet the cost of living was generally 40 to 60 percent higher than in the contiguous

states. In fact, everything was so expensive "that even prostitutes get a minimum of \$20.00 for a few minutes of their time and charms."⁸

Webb journeyed to each of the four judicial divisions and examined the marshal's office. He found Juneau, the headquarters of the first division, in fairly good condition. The town had a good jail capable of handling all prisoners, but it was an old building and therefore very expensive to operate. Although Sitka possessed "a very, very fine jail," all prisoners were transported to Juneau because of the expense of keeping a regular guard force there. There was not much business in Sitka, Skagway and Petersburg, but Ketchikan needed an additional deputy.⁹

Webb found that Nome, headquarters of the second judicial division, was "a rather quiet district, with very little work during the winter time and a little activity during the summer" when the King Island Eskimos came to town to do their ivory carving and skin sewing. Webb reported that these people were "not too much of a social problem except when they get drunk. Then they get out of line and have to be thrown into jail for a time." There were two outlying offices in the second division, one at Kotzebue and the other at Fortuna Ledge. Webb visited Kotzebue and talked with Deputy Neily, a man nearly seventy years of age who was performing well. Few cases reached the court, he discovered, because "Neily apparently administers a lot of justice himself by talking to the people who get out of line and in some instances by putting them into jail overnight until they sober up...."¹⁰

Webb discovered the Anchorage office, the headquarters of the third judicial division, to be in "a state of confusion," and that law violations around the city were the worst of any place in Alaska. There were not enough marshals and deputies in Anchorage, and Judge Anthony J. Dimond reported that he was 390 cases behind in his court. The major reason for these delays, he

explained, was that the U.S. marshal had insufficient personnel "to serve the process necessary to get witnesses into court in order to try the cases." The U.S. attorney complained that he had difficulties "in getting the marshal to present to him the evidence necessary to proceed in criminal cases," not because he was derelict in his duties but rather because his office was woefully understaffed. Webb stated that "I found the areas surrounding Anchorage to be among the most wicked I have ever visited in all my life." The situation was not any better in Fairbanks, headquarters of the fourth judicial division, where he discovered that the prostitutes paid protection money to the marshal. Law violations were flagrant, and "the people engaged in lawlessness all know that the marshal's office is not adequate to cope with their activities" and therefore they all move outside the city limits "into the marshal's territory and operate unmolested for the greater part."¹¹

Webb recommended the immediate appointment of 25 additional deputies, 13 assigned to Anchorage, ten to Fairbanks, and one each to Nome and Juneau. Anchorage and Fairbanks needed three automobiles each equipped with two-way radios, heaters, red light sirens, first aid kits, and riot guns. Furthermore, the offices in those two cities needed to be equipped with cameras, fingerprint and tear gas equipment, fire arms such as submachine guns, side arm guns, and riot guns.¹²

In October, the Senate Appropriations Committee turned down the request for \$100,000 for the employment of additional deputies and marshals in the territory. Committee members stated that the department of justice had advised them that it had begun a study which was to be used to propose legislation both to the Congress and the territorial legislature for strengthening law enforcement in Alaska. The department hoped that this study would form the basis for the creation of a territorial police force which would combat local crime,

thereby allowing U.S. marshals to devote their time to strictly federal matters. Alaska's delegate to Congress, E.L. "Bob" Bartlett, was bitterly disappointed. He told the President that the Senate had failed to recognize that an emergency existed in Alaska which needed to be dealt with immediately, not "in some far-off day when 'studies' have been completed." Truman sympathized with Bartlett's complaint, and told him that "you can see the difficulties we are faced with on this Alaskan situation. People in Congress do not understand it and I am sorry they don't."¹³

Truman was correct in his assessment. Despite the fact that the war and postwar periods had brought national visibility to the territory, most Americans and members of Congress still considered Alaska remote and exotic. There were many federal bureaucrats, particularly in the department of the interior, who were very knowledgeable about the North. Unfortunately, Congress did not often solicit their advice.

In any event, since the passage of the Second Organic Act, the body of Alaskan criminal law was confused and remained so for much of the territorial period. All crimes, including misdemeanors, technically also constituted federal offenses no matter what criminal statutes the new legislature might enact. Magistrates could not be elected locally, and the U.S. marshals were the chief lawmen in the territory. Under this system of federal control, it was not surprising that local law enforcement developed but slowly. Neither federal marshals nor the small local police units characteristic of Alaska's later territorial period were able to provide the kind of effective law enforcement usually taken for granted elsewhere. The marshals certainly tried their best, but there were never enough of them.

Alaska suffered from this lack of effective police organizations. Not until 1941 did the legislature create an Alaska highway patrol. Local law

enforcement in the early period was negligible, and even after 1941, there were relatively few miles of roads in Alaska for the highway patrol to oversee. In 1953, the legislature changed the name of this organization to Alaska territorial police and separated it from the territorial board of road commissioners.¹⁴ Throughout much of Alaska's history, local, familial justice or the miners' code probably handled much of the criminal behavior.

During territorial days, the federal government exercised a rule of benign neglect. Few Alaskans in those areas ever saw a judge or police officer. Formal police record keeping was practically unknown, or if practiced, very unreliable. Historians know little, if anything, about small town Alaskan police departments, their mode of operations or how many officers they had. No formal histories exist of either the Anchorage or Fairbanks police departments nor of those of the smaller cities and town. The Alaska territorial police started annually to report crime in rural areas in 1953, but these statistics are sketchy at best. Yet the local police tradition in Alaska goes back to the early territorial period when Commander Lester Beardslee of the U.S.S. Jamestown employed Indian police at Sitka to help curb local violence caused by the excessive consumption of hochinoo, a powerful home brew. In short, local northern law enforcement was casual at best, and record keeping all but non-existent. Perhaps it was a part of the pioneer's general distrust of bureaucracy and paperwork, resentment toward the "feds," the remoteness and frontier living conditions, and extreme individuality which accounted for these conditions.

The territorial legislature authorized local Alaskan courts, but the extent to which they should exercise any criminal jurisdiction, even over misdemeanors, remained uncertain for many years. For example, in a 1901 case the court held that the "judicial power in Alaska was expressly vested by

Congress in district...courts, and there being no need for them, there was no authority in incorporated towns to create municipal courts independent of those created by Congress."¹⁵ Thus, despite the existence of a territorial legislature and the presence of local police in many Alaskan towns, the Second Organic Act had specifically reserved all law enforcement powers in Alaska for the federal government. This meant for all practical purposes the U.S. marshals, and while federal statutes originally created one such position, later expanded to four, for the territory, together with deputies, Congress failed to appropriate sufficient funds for adequate staffing. This situation prevailed for many years and severely strained the investigatory capabilities of the few salaried marshals. These men often had to travel hundred of miles by dog sleds, river boats, or coastal steamers in the decades before bush pilots, to investigate distant homicides. Local police, until the last few years before statehood, investigated few homicides, confining themselves to misdemeanors and local traffic cases.

As important as the marshals were in Alaska's legal history, they left few if any records. The federal government never standardized marshal's reports nor compiled or classified them. In fact, no formal U.S. marshal files exist in the federal records center in Seattle, Washington, and the few existing are occasional investigative reports among the preserved federal court records. These include the marshal's mandatory returns of court orders which merely indicate that the court's order has been carried out.

Generally, marshals seem to have kept a low profile, and territorial newspapers only mentioned them in connection with sensational arrests. U.S. commissioners usually asked marshals to investigate territorial homicides and other felonies. The Organic Acts of 1884 and 1912 both provided that federal district court judges be backed up by unsalaried commissioners who had to generate their own fees. Dependent on such a financial scheme, commissioners

often speeded up their initial judicial hearings or arraignments by conducting their own supplementary investigations and locating witnesses. Thus, many commissioners also acted as investigating officers. For example, a commissioner might conduct a preliminary hearing to determine whether a defendant should be bound over for a federal court arraignment, but he often expedited that process by acting informally as his own peace officer. Their unpaid positions and local informants gave commissioners unique investigative opportunities. Marshals could not function as commissioners, but commissioners sometimes functioned as marshals.

As Roy Webb in his 1951 report pointed out, the field investigative work conducted by marshals during the territorial period was nontechnical. They were not equipped with sophisticated crime laboratories for the analysis of blood samples, fabrics, or ballistics. Marshals used their common sense in their investigations, such as adroitly questioning witnesses, their knowledge of Alaskan bush conditions, basic fingerprinting, test firing weapons and piecing together bits of physical evidence.

Jailing criminals was never satisfactorily handled in the territorial period. A small population, a primitive tax system, and the lack of jail facilities posed continuous problems. During the gold rush era, Alaskans learned from the Canadian Northwest Mounted Police to issue "blue tickets."¹⁶ In Dawson, this could mean anything from mandatory wood chopping for the mounties to an ultimatum to leave the region permanently. Alaskans issued many such tickets to rid themselves of undesirables in the absence of judges, police, or jails. Although some of the larger communities maintained temporary lockups for drunks and vagrants, the three federal jails at Juneau, Anchorage, and Fairbanks presented the only facilities of any size. A small federal prison was also located at Sitka. These jails were reserved for federal

prisoners, and for holding felony suspects during their court trials. Alaskans convicted invariably served their sentences in federal institutions in the contiguous states. Furthermore, territorial Alaska made no provision for the mentally ill. There were no mental hospitals nor clinics in Alaska, and mentally ill individuals were indiscriminately mixed in with other defendants accused of various crimes. If a mental illness petition was filed against an individual, the marshals or police, until 1956, simply apprehended the subject and placed him in the local jail until the case could be determined. If a defendant was found to be mentally ill during a court trial, or had pleaded not guilty by reason of insanity, the court committed him to Morningside Hospital at Portland, Oregon, an institution under contract with the department of the interior to treat and maintain Alaskan patients.¹⁷ It was not until 1956 that Congress finally transferred mental health responsibilities to the territory.

The federal district court judges occupied a central position in the federal hierarchy which dominated the territory. From 1884 to 1900, there had been but one federal judge and four unsalaried commissioners, as already stated, in all of Alaska. In that year Congress added two more federal judges, and also allowed the incorporation of Alaskan municipalities of three hundred or more residents and the organization of local government. The U.S. district court, however, had to approve any petitions for incorporation. The federal judges in Alaska thus not only completely controlled the criminal justice process, but in large measure the political process as well. They represented the only real federal authority present, because for decades the territorial governor was not a highly visible figure.¹⁸

As a consequence, Alaskans always criticized the federal judges, regardless of their competence or incompetence, because they were perceived as the central figures in the federal hierarchy which dominated the territory. Many

Alaskans also remembered the scandal involving federal Judge Arthur H. Noyes at Nome who, at the turn of the century, had used the power of the bench in a conspiracy to defraud goldminers of their rightful claims.¹⁹

The president appointed the U.S. marshals, U.S. commissioners, and U.S. attorneys, but in reality the judges controlled these appointments, selecting their marshals and commissioners and recommending the U.S. attorneys. There was no formal territorial bar association to lobby for local appointments. Alaska had relatively few attorneys who were practically unorganized. No public defenders existed, and in case of an indigent defendant, the judge issued a writ of Forma Pauperis, or pauper's oath, and appointed a private attorney to act as defense counsel. At the end of a trial, the attorney would be paid nominal compensation from public funds.²⁰

Almost all felonies were acted on through formal grand jury indictments, and jurors were selected for the grand jury by the court with local advice. U.S. commissioners as ex officio justices of the peace heard and settled minor disputes such as assault and battery and drunk and disorderly charges, but their jurisdiction also included felony arraignments in remote areas. Often commissioners also received "payment fees" from local residents which usually consisted of fish or wild game meat.²¹

The Second Organic Act gave federal judges all judicial functions except within municipalities. In theory, an incorporated municipality could elect its own judge, but his jurisdiction included only misdemeanors. Felonies were reserved for the federal courts. This created much ambiguity because both Organic Acts were unclear, and the imposition of a federal code of criminal procedure made all crimes, including misdemeanors, in theory federal offenses. As a result, incorporated municipal judges were little more than police court magistrates, but seemingly gained judicial footholds in the 1950s,

primarily because of the overloads in the district courts. Still, a losing defendant in a municipal misdemeanor case could appeal his conviction to the federal court which often overruled the city magistrate. Furthermore, federal courts heard misdemeanor cases as courts of original jurisdiction. This duplication often caused judicial disharmony, but it was clear that the federal judges retained all essential judicial powers.

In short, the federal territorial system became ever more inadequate. Toward the end of the territorial period, the Anchorage and Fairbanks district courts became totally overloaded, the backlogs became longer and longer. In 1955, lawyers in the legislature introduced a measure establishing the integrated bar. The laymen in the legislature had no reason to oppose it, and therefore it passed. One prominent Alaskan attorney, Wendall Kay, recalled that many lawyers became statehood advocates because they had become increasingly disenchanted with Alaska's federal judicial system and desired to replace it with a state system.²² Alaska gained statehood in 1958 and admission as the forty-ninth in 1959. It was then that Alaskans set to work and build an adequate state judicial system.

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THE CREATION OF THE ALASKA STATE COURT SYSTEM

The majority of Alaska's citizens rejoiced when the United States Senate, following earlier House action, passed the Alaska statehood measure by a vote of 64 to 20 on June 30, 1958. On January 3, 1959 President Dwight D. Eisenhower formally admitted Alaska as the forty-ninth state when he signed the official proclamation.¹

Victory in the long statehood struggle had at long last been achieved. Now the state's first chief executive and legislature faced the task of guiding Alaska from territoriality to statehood, of fashioning a functioning state government based on the constitution Alaskans had approved in 1956. It was no easy task, because now the state had to assume duties and responsibilities formerly performed by the federal government.

Ranking high among these was the creation of a state judicial system. Historically, Congress had been slow in extending the legal system to the north. For example, for seventeen years after the Treaty of Cession in 1867, there was literally no law in Alaska. One could not own property, get married, write a will, or even cut firewood without defying a Congressional prohibition.

Finally, the Organic Act of May 17, 1884 provided a limited civil government for Alaska through the expedient of arbitrarily extending the Oregon statutes to the northern frontier, but without any modifications or changes making such laws suitable for Alaska. Historian Earl Pomeroy characterized the Organic Act of 1884 as one designed to govern Alaska "more like the Newfoundland fisheries of the Seventeenth Century British Empire than like a territory." Other scholars agreed, pointing out that the 1884 Act "made no provision for eventual representative government."²

It did, however, give Alaska a federal judicial system. A federal district court judge presided over the district court possessing "the civil and criminal jurisdiction of district courts of the United States,...exercising the jurisdiction of circuit courts, and such other jurisdiction, not inconsistent with this act, as may be established by law." In addition, there was a clerk, a district attorney, and a marshal as well as four unpaid federal court commissioners who were to subsist on the fees they collected for probate and other services from the public. Being dependent upon a fee structure, commissioners often accelerated their initial judicial hearings or arraignments by conducting their own supplementary investigations and informally locating witnesses. In essence, many commissioners acted as investigating officers. Not only would any given commissioner conduct a preliminary hearing to determine whether a defendant should be bound over for a federal court arraignment, but he often expedited that process by acting informally as his own peace officer. Commissioners investigated felonies along with marshals, and often worked closely with local police on matters such as prostitution and gambling offenses. Eventually, a Congressional Act of 1900 added two more federal judges.³

With further population growth, this court eventually had four divisions, with headquarters at Juneau, Nome, Anchorage, and Fairbanks, each presided over by a resident federal district court judge. These individuals possessed considerable powers, handling many administrative functions usually performed by territorial governors. For example, the Act of 1900 allowed the incorporation of Alaskan municipalities of three hundred or more permanent inhabitants, not transients, and the organization of local government. The U.S. District Court for the area had to approve any incorporation proposals.⁴ This gave federal judges full control over local selection and certification processes. And although the U.S. Marshals, Commissioners, and the U.S. Attorneys,

later called Federal District Attorneys, were presidential appointments in theory, federal judges in fact appointed the Marshals and Commissioners for their own districts, and also recommended U.S. Attorneys.

The Organic Act of 1912 specifically retained the judiciary and law enforcement functions for federal authorities except within incorporated municipalities. There citizens could elect their own judges, but these had jurisdiction only over misdemeanors.⁵ Due to the ambiguities contained in the language of both Organic Acts, and the imposition of a Federal Code of Criminal Procedure, all crimes, including misdemeanors, were considered federal offenses. Thus, offenders dissatisfied with sentences handed out by municipal judges, could, and often did, appeal their sentences to the federal district courts.⁶ These procedures did not contribute to the prestige of the municipal judges, who, in reality, were little more than police court magistrates, because federal district courts often overturned their sentences. Additionally, federal district courts could and did hear misdemeanor cases as courts of original jurisdiction. In short, this duplication worked against judicial harmony, and all concerned understood that federal district court judges retained all essential judicial powers.

With the population influx during and after World War II it quickly became obvious that the federal territorial system of justice simply could no longer cope adequately. It became painfully evident that the structure of federal district courts, urban and rural commissioners generating their own fees, and the ambiguous local municipal courts had to be modified. The increase in population threatened to inundate the federal district courts at Juneau, Anchorage, and Fairbanks with thousands of misdemeanor cases.

Retired Superior Court Judge Thomas B. Stewart recalled in 1982 that the war and postwar boom years placed tremendously increased demands on the federal

territorial judicial system. Congress, however, turned a deaf ear to pleas for more adequate staffing. The problems were particularly acute in Anchorage and Fairbanks. In the former city, the district court frequently sat on Saturdays, and on occasion had been in session from 8:00 a.m. until as late as 9:00 p.m. in futile attempts to keep up with its work. On the average, this court rarely convened later than 9:00 a.m. and rarely recessed until 5:30 p.m. In 1957, the Anchorage district court closed 1,126 civil cases, averaging to something over four cases for each judicial day. In addition to this phenomenal civil case load, it also closed 231 criminal cases in 1957, nearly one case for each judicial day. That was not all, for that court also disposed of 18 bankruptcy cases, or roughly one every three weeks. Still, at the end of 1957, the district court in Anchorage had a backlog of 1,700 pending civil and 96 criminal cases. Worse yet, during 1957, some 1,255 new civil cases were filed. While not quite as staggering, the statistics for district court in Fairbanks showed a similarly impossible situation. At the end of May 31, 1958, it had a backlog of 746 pending civil and 110 criminal cases. As in Anchorage, these were "hard core cases" which had to be tried, for the courts had already disposed of all of the easy, routine cases.⁷

The Anchorage district courts had the aid of seven visiting United States District Court Judges from several states and Hawaii who sat for varying periods between 1956 and 1958. In addition, the district court judge from Juneau each year spent several months in Anchorage, yet despite this aid, the backlog continued to grow. For several years the district court judge from Nome had spent a major portion of his time assisting his Fairbanks and Anchorage colleagues whose case loads were desperate. In fact, so much of his time had been spent in other divisions that the people in his own area "are grumbling that justice in their area is delayed." All to no avail, however,

because the situation was "completely out of hand and steadily becoming worse."⁸

In fact, the Anchorage and Fairbanks district courts had employed all of the usual methods of relieving court congestion. They had cut trial time to a minimum, often below the proper minimum, used calendar control and pretrial procedures, and practically coerced settlements. They had limited argument and the presentation of evidence and endured unconscionably long court days. They had arbitrarily dismissed cases with no recent activity, and still the problem had grown ever more acute.⁹

Appeals from the territorial district courts went to the Court of Appeals of the Ninth Circuit in San Francisco, which was slow and expensive. Appeal briefs had to be printed in paperback form on a designated high quality paper. As a result, there were few appeals.¹⁰

These conditions had generated much dissatisfaction, even outrage, among Alaska's legal fraternity. Even more distasteful was the disciplinary power district court judges exercised over Alaskan lawyers. On numerous occasions district court judges had rendered controversial decisions in such cases. Everywhere but in Alaska, bar associations disciplined members of the profession. Alaska, however, had no formal Bar Association. Lawyers in various communities were loosely organized, but possessed no authority. It was not surprising that most Alaskan lawyers desired to create a territory-wide, or "integrated," bar association, a closed shop to which every practicing lawyer had to belong. Territorial Representative Frederick O. Eastaugh, a Republican and an attorney, introduced a bill to create an Alaska Bar Association in 1953. His measure, however, did not pass.¹¹

In the meantime, a controversy erupted in southeastern Alaska which lent urgency to the creation of a territory-wide bar association which could

discipline attorneys. The dispute arose between Wilfred Stump, a Ketchikan attorney and a member of the southeastern Democratic Central Committee who represented Ellis Airlines, and William Boardman, a Republican member of the territorial House and an underwriter for the Northern Life Insurance Company. Boardman carried the insurance for Ellis Airlines, whose president and principal stockholder was Robert Ellis, a man very active in Democratic Party politics. Near the end of the 1953 legislative session Stump and Boardman both were in the Elks Club in Juneau. After a few drinks, the two men argued, allegedly about the conduct of the 1953 territorial legislative session. Stump allegedly threatened Boardman that he would see to it that the latter would lose his insurance contract with Ellis Airlines. Boardman thereupon lodged a complaint with the federal district court in Juneau. Federal District Court Judge George Folta found Stump guilty of unethical conduct and suspended him from practice for thirty days. Stump was furious, because he considered the dispute in the Elks Club to have been a private matter. Party politics intervened as well. Many attorneys questioned the disciplinary action, and speculated that it might have been politically motivated. Stump was a Democrat, Boardman a Republican. Judge Folta had originally been a Democratic appointee, but his continuation in office as a judge depended on Republican President Dwight D. Eisenhower. Many attorneys suspected that Folta had been influenced by Republican politics and wishes.¹²

The Stump-Boardman case became widely known in the territory and provided the impetus for the lawyer members in the 1955 territorial legislative session to push the territory-wide or "integrated" Alaska Bar bill. It passed easily, placing the responsibility for disciplinary actions in the hands of the Board of Governors of the Alaska Bar Association, and enabled that body to unitedly criticize the overloaded federal district courts and ask for changes.¹³

Subsequently, in the 1955 legislative session, law makers passed a measure which called for the holding of a constitutional convention. Late in 1955, fifty-five elected delegates met on the University of Alaska campus in Fairbanks to draft a constitution for the future state. The proposal dealing with the judiciary branch was the first to be considered by the convention. It came from a committee consisting of five lawyers and two laymen, aided by Sheldon D. Elliott, the director of the Institute of Judicial Administration at New York University and Professor of Law at that institution. The committee was in general accord over the future state's judicial system, and it quickly agreed to follow principles suggested by the American Bar Association and other professional civic groups. The main features of the proposed system consisted of unity, simplicity, efficiency, accessibility, independence from the executive and legislative branches, and accountability to the voters.¹⁴

Members of the judiciary committee proposed a unified judicial system consisting of a supreme court, a superior court, and other courts established by the legislature. The entire court system was placed under the rule-making authority of the supreme court, with the chief justice named as the administrative head of all state courts. These provisions closely followed the 1947 New Jersey constitution which had established a court system recognized for its efficiency.¹⁵

The judiciary article also contained a nonpartisan plan for selecting judges based on the American Bar Association and Missouri Plan models. Under it, the governor appoints judges from nominees presented to him by the judicial council, composed of three laymen appointed by the governor with the consent of the legislature; the state bar named three attorneys, and the chief justice served as chairman. Three years after his first appointment, a judge must submit his name to the voters of the state or of his district for approval or

rejection. Once approved, a superior court judge goes before the voters for reconfirmation every seven years, and a supreme court justice must stand for popular approval every ten years. In short, the delegates wrote a model constitution which the voters ratified in April 1956, but it remained a blueprint until put into operation.¹⁶

Much to the surprise of many, Congress, after a fourteen year long battle, suddenly approved statehood in 1958. Language in the statehood enabling legislation and in the state constitution provided that the federal territorial district courts continue operations for approximately another three years to give the new state an opportunity to establish its own court system.

That language appeared to give the new state plenty of time to organize its court system. As early as September 4, 1958, Fairbanks attorney Charles J. Clasby prepared a draft of legislative provisions for state courts which should be contained in legislation creating a unified court system. The Board of Governors of the Alaska Bar Association widely circulated Clasby's suggestions among its members and asked for changes or revisions in the proposed draft. Local bar associations quickly established numerous committees to deal with various portions of the draft legislation and offer substantive proposals. In the meantime, the Board of Governors of the Alaska Bar Association met in Nome on September 6 and 7, 1958, to consider, among other items, appointments of three attorney members to the seven member judicial council.¹⁷

Those appointments were obviously important, because that body would submit names for appointments to judgeships to the governor. Although appointments were to be made without regard to political affiliation, Alaska's lawyers were only human and had political preferences. Democrats, for example, prided themselves in the fact that a democratic controlled territorial legislature had passed the Alaska Bar measure as well as the bill calling for a constitutional

convention. In fact, Wilfred Stump, an ardent Democrat and the Ketchikan attorney who had been disciplined by Federal District Court Judge George Folta earlier remarked to Charles J. Clasby prior to the Nome meeting "that we would now have to do the necessary to make sure that the judicial council was controlled by the Democratic Party...."¹⁸

At Nome, the Board of Governors nominated Robert Parrish of Fairbanks, an attorney who had specialized in representing plaintiffs in personal injury suits. The board also named Ernie Bailey from Ketchikan, Stump's brother, and Harold Stringer from Anchorage. The nomination of Stringer, a Republican, created an uproar. Buell Nesbett, a Democrat, the president of the Anchorage Bar Association, a New Mexican by birth and a graduate of San Francisco Law School, remarked that Stringer was "not considered an active lawyer but rather a Republican politician. He was a nice enough fellow but not entitled to represent the Bar in an important position like that." After a distinguished five-year career in the Navy, Nesbett had received his discharge after V-J Day in 1945. Offered a job with a large trial firm in San Francisco, he instead opted to go to Alaska to hunt and fish and practice some law. He took his Alaska Bar examination on December 27, 1945 and passed it with high marks. Nesbett decided to settle in Anchorage which had a total of eight lawyers. His worried colleagues told him they doubted that he could earn a living. He threw in his lot with Stanley McCutcheon, an established attorney. They had no problem making a living.¹⁹

On learning of Stringer's nomination, the Anchorage Bar rebelled. It rejected the nomination and protested that the bar had not been consulted in making the appointment, that the Board of Governors had acted in a highhanded fashion. In fact, there was confusion in the minds of many. The constitution stated that the three attorneys be appointed "by the governing body of the

organized state bar." The question immediately arose as to what the governing body of the State Bar Association was, the Board of Governors or the annual convention of the State Bar Association? The constitutional language did not make this clear, nor did the minutes of the constitutional convention clarify whether or not the selection of the attorney members of the judicial council was to be determined directly by the Board of Governors, or by the annual convention of the membership at large. Anchorage attorney Wendell P. Kay, a member of the Board of Governors at the time, in a 1982 interview maintained that the Board should have consulted the Bar. Eventually Harold Stringer withdrew, and Ray Plummer was elected in his stead. As a member of the insurance bar, he balanced the Parrish appointment. Kay explained the differences between the insurance and plaintiff bar by emphatically stating that "insurance lawyers do not like to go to court and find a judge who was a former member of the plaintiff's bar and is known for his liberality [with insurance company monies] and believes that all insurance companies are rascals." Kay recalled that many bar members "were interested in that aspect rather than party affiliation, it was a matter of bread and butter."²⁰

By May 1959, Governor William A. Egan had named the first lay members of the judicial council--Dr. William Whitehead, a Juneau physician, acted as chairman until the first chief justice was named; Roy Walker, a Fairbanks businessman; and John R. (Jack) Werner, a Seward businessman. The three served many distinguished years on the judicial council.²¹

While the dispute on appointments to the judicial council was settled, the first state legislature convened in Juneau in January 1959. Ralph Moody, an Anchorage attorney who was a member of the territorial senate since 1957, now became chairman of the State Senate Judiciary Committee, and John Hellenthal, the Juneau-born son of former Federal Territorial District Court Judge Simon

Hellenthal and himself an attorney, chaired the House Judiciary Committee. Soon after the legislature convened, both chairman received drafts of a proposed judiciary act from the Board of Governors of the Alaska Bar Association. The draft was the result of many months of efforts by the members of the Alaska Bar Association. Wilfred C. Stump, the president of the Board of Governors of the Alaska Bar Association, at the time, transmitted the draft to the legislature on January 24, 1959. Stump and many other members of the Alaska Bar Association, however, were bothered by section 18 of the Congressional statute providing for the admission of Alaska as a state. It stated that terminating the jurisdiction of the Territorial Districts Court and providing for the transfer of cases to the state courts "shall not be effective until three years after the effective date of this Act, unless the President, by Executive Order, shall sooner proclaim that the United States District Court for the District of Alaska....is prepared to assume the functions imposed upon it," and that during such period of time "the United States District Court for the Territory of Alaska shall continue to function as heretofore." Many Alaskan lawyers maintained that Congress could not restrict the powers of the new state to establish its judiciary at a time of its own choosing. The establishment of state courts certainly fell "exclusively within the sphere of state power," and Congress therefore could not postpone the time when a state court could begin to function.²²

Stump and others were afraid that any judgements rendered by the interim court might be declared void if challenged. Should that happen, it would result in judicial chaos and unending litigation. In his transmittal letter Stump expressed these apprehensions by stating that "there is a grave doubt as to the present court system having jurisdiction." He hoped that these fears

might be unjustified, but if true, "it will be necessary to act immediately" to establish an Alaska state court system.²³

Before the jurisdictional question could be dealt with, the measure setting up a state judicial system drafted by the Board of Governors of the Alaska Bar Association was introduced in the State Senate and House on January 29, 1959. Immediately, the Judiciary Committees of both houses first met separately and considered the measure section by section and noted objections or ambiguities to be called to the attention of the other house. Thereafter the joint committees of both houses met repeatedly and discussed and agreed upon desired changes.²⁴ Eventually, the cooperative efforts of the Board of Governors, the various local Bar Associations, and the Senate and House Judiciary Committees provided a bill designed to establish the Alaska Court system. In addition, a study on the implementation of the judicial article of the constitution performed by the Public Administration Service of Chicago under contract tremendously aided the labors of the legislature. As during the constitutional convention in 1955-56, Sheldon Elliott once again made his expertise available. In all their deliberations, members of the legislature expected that the state would have three years in which to make the state court system operable.²⁵

It was not to be. A number of Anchorage lawyers, including Wendell Kay and Buell Nesbett, among others, in a series of cases challenged the jurisdiction of the interim court to try their clients after statehood for offenses committed before statehood and asked J.L. McCarrey, Jr., the interim Federal District Court Judge for Anchorage, to dismiss the cases. McCarrey carefully examined the applicable case law and found that the interim Federal District Court for the District of Alaska indeed possessed continuing jurisdiction

during the transitional period from territoriality to statehood, not to exceed three years. He therefore ruled against the motion to dismiss the cases.²⁶

McCarrey's opinion did not deter the Anchorage lawyers who wanted to have the jurisdictional question settled as soon as possible. In the case of Parker v. McCarrey, Parker was charged with a felony by a federal territorial grand jury in October 1958. He challenged the jurisdiction of the interim court to try him after statehood. Judge McCarrey scheduled Parker's trial. Thereupon, his defense lawyers petitioned the Ninth Circuit Court of Appeals in San Francisco for a writ of prohibition alleging lack of jurisdiction. The defense argued the case in the late spring of 1959. This alerted the members of the State Senate and House members of the judiciary committees to the fact that the integrity of the interim judicial system was seriously threatened. The lawmakers hurriedly prepared and enacted an amendment to Chapter 50 of the 1959 Session Laws of Alaska which had established the Supreme Court and Superior Courts and provided for an effective date of January 3, 1962, three years to the day after President Eisenhower had formally admitted Alaska to the Union.

The quick amendment provided for the prompt implementation of the state judicial system by designating supreme court justices and superior court judges in case that either the interim federal trial courts or the Ninth Circuit Court of Appeals proved to be without jurisdiction over Alaska state cases. This meant, of course, the possibility of immediate action to create Alaska's courts rather than the availability of a deliberate and planned three-year transitional and implementation period.²⁷

The Ninth Circuit Court of Appeals soon announced its decision in the Parker case. It held that because of imprecise language in the statehood enabling act, it had no appellate jurisdiction over cases decided by the interim federal district court for Alaska. This implied that the interim

federal district court had no jurisdiction, since Parker had no appellate remedy until the Alaska State Supreme Court was established and became operational.²⁸

Thereupon the judicial council immediately met in Juneau in May and June of 1959, and by mid-July it provided the governor with the first nominees for the State Supreme Court. Governor William A. Egan selected Walter Hodge, federal district court judge at Nome; John H. Dimond, a Juneau attorney and the son of former territorial delegate and Federal Territorial District Court Judge Anthony J. Dimond; and Buell Nesbett, an Anchorage attorney. Egan designated Nesbett as the chief justice. Neither the constitution nor statutes made provisions on how the chief justice was to be selected. Egan's action was not challenged, and Nesbett ably served in that office for more than ten years until his disability retirement after a plane accident in 1970. By mid-October, the nominees for the superior court had been chosen by the council, and on November 29, 1959, the governor's choices were sworn into office: Walter Walsh at Ketchikan; James Von der Heydt at Juneau; Hugh Gilbert at Nome; Ed Davis, James Fitzgerald and Earl Cooper at Anchorage; and Everett Hepp and Harry Arend at Fairbanks. These newly selected judges promptly traveled to New Jersey, whose unified court system closely paralleled the Alaska system, in order to receive some orientation and training on judicial and administrative functions.²⁹

In the meantime, the Alaska Supreme Court worked hard to make the new system operational. Former Chief Justice Nesbett recalled in 1982 that he only had about \$900,000 available to get the court system started--and the state had no court buildings. He knew that he needed federal help, and therefore flew to Washington, D.C. to plead his case with Warren Olney III, the administrator of the federal court system. At Nesbett's request Olney came north to appraise

the situation. It was simple in Ketchikan where the state was granted permission to use the U.S. District Court facilities when that court was not sitting. The same permission was granted in Nome. It was different in Anchorage where Nesbett proposed to slice the big court room in half by building a partition. Although disliking the idea, federal officials cooperated. In Fairbanks the state received some surplus space in the federal building. Nesbett had to rent commercial space for the recording, magistrate, and probate offices, an expensive proposition.³⁰

Where to locate the supreme court was a contentious subject. There was much pressure to have it headquartered in Juneau, and Nesbett spent approximately six months in the capital after his appointment. His family remained in Anchorage. The chief justice deferred a decision until a survey of all cases pending at statehood had been completed. He then analyzed the findings and found that 82 percent of all cases originated north of Cordova, and only 5 percent of all appellate cases originated in Ketchikan and Juneau. Most appellate cases came out of Anchorage and Fairbanks. Headquartering the Supreme Court in Juneau would have required clients and lawyers on both sides to travel to Juneau, a not very accessible location, to argue cases. That did not sound practical nor economical to Nesbett, so he polled the chief justices of the contiguous states and found that the justices lived in the various large communities where they took care of the daily business. Under those circumstances, justices discussed pending cases by memoranda. The chief justice secured Dimond's vote to station a justice in Juneau, Anchorage, and Fairbanks. Justice Hodge did not like the arrangement and soon left for a federal appointment. His replacement, Superior Court Judge Harry Arend from Fairbanks, however, went along with the plan. Many Juneau citizens were so bitter about

the arrangement that they snubbed Justice Dimond for months. They could not forgive him for approving the scheme.³²

The Alaska Court system had been launched. It faced many obstacles, but Chief Justice Nesbett proved equal to the task, as did the Superior Court Judges, and David Luce, a California attorney with court administrative experience, recommended by Warren Olney, who became Alaska's first court administrator. According to Nesbett, Luce was "a go-getter and accomplished much." The state court system had to buy machinery, hire secretaries, and purchase equipment and supplies. The chief justice had one man who kept track of the budget on a daily basis so Nesbett always knew how much money was left. It was a trying but exhilarating period. Among the many problems to be solved was the lack of qualified court reporters for eight new trial judges. Warren Olney told Nesbett about Soundsciber, a slow-turning, long-playing piece of equipment which the Federal Aviation Administration had used for years to monitor the airwaves without any problems. Nesbett visited the Soundsciber factory in New Haven, Connecticut, and discussed the situation. After a successful trial in Juneau, Nesbett ordered thousands of dollars worth of Soundsciber equipment with the approval of Justices Hodge and Dimond. This mightily angered the court reporters. Hodge changed his mind, however, and wrote a dissent to the Supreme Court order establishing Soundsciber as the official recording system for the Alaska court system. The new system, however, worked extremely well.³²

Retired Superior Court Judge Thomas B. Stewart best summed up the role Nesbett had played in establishing the Alaska court system in his keynote address to the joint Bar/Bench Banquet of the Alaska Judicial Conference - Alaska Bar Convention on May 19, 1982 in Anchorage:

Here it is important to pay tribute to the energy, grasp, professional competence, imagination, vigor and selfdiscipline of Buell Nesbett, through which he speedily and successfully realized the establishment of the state court system, bringing it from nothing to a viable operating

entity in seven or eight short months. Without his leadership the task could not have³³ been accomplished, but with it the job was done...admirably.

FOOTNOTES

1. Claus-M. Naske, An Interpretative History of Alaskan Statehood (Anchorage, Alaska: Alaska Northwest Publishing Company, 1973), pp. 166-168.
2. A.W. Greely, Handbook of Alaska: Its Resources, Products, and Attractions in 1924 (Port Washington, New York: Kennikat Press, 1925), p. 14; Earl S. Pomeroy, The Territories and the United States, 1861-1890: Studies in Colonial Administration (Philadelphia: University of Pennsylvania Press, 1947), p. 2. Jack E. Eblen, The First and Second United States Empires: Governors and Territorial Government, 1784-1912 (Pittsburgh: University of Pittsburgh Press, 1968), p. 151.
3. 23 Stat. 24 (1884); See United States v. Keith A. Chisholm, No. 1126, U.S. District Court, 4th District, Fairbanks, Alaska, 1940, and U.S. Commissioner David R. Davies in United States v. Sadie (NMI) Coleman, No. 3611, U.S. Commissioner's Court, Anchorage, Alaska, 1957; 31 Stat. 322 (1900).
4. Ibid.
5. 37 Stat. 512 (1912).
6. Records of the U.S. District Court, District of Alaska at Anchorage, Fairbanks, and Juneau, Criminal Case File Series, Federal Records Center, Seattle, Washington.
7. Alaska Bar Association, Anchorage Bar Association, Tanana Valley Bar Association, "A Plea From Alaska," to the Honorable William P. Rogers, Attorney General of the United States and to the delegates assembled at

- the Attorney General's Conference on Court Congestion, June 16, 1958, in the private papers of John Hellenthal, Anchorage, Alaska.
8. Ibid.
 9. Ibid.
 10. Interview with Thomas B. Stewart, June 20, 1982, Juneau, Alaska.
 11. Interview with Clifford Groh, September 8, 1982, Anchorage, Alaska; Interview with Wendell P. Kay, July 8, 1982, Anchorage, Alaska; Judge Thomas B. Stewart (Retired), "The Alaska State Courts: Beginnings," keynote address given to the joint Bar/Bench Banquet of the Alaska Judicial Conference-Alaska Bar Convention on Wednesday, May 19, 1982 at Anchorage, Alaska. Copy in author's files.
 12. Interview with Thomas B. Stewart, June 20, 1982, Juneau, Alaska.
 13. Ibid.
 14. Victor Fischer, Alaska's Constitutional Convention (Fairbanks, Alaska: University of Alaska Press, 1975), p. 113.
 15. Ibid.
 16. Ibid., pp. 113-114.
 17. Charles J. Clasby to the Board of Governors, Alaska Bar Association, September 4, 1958; Sheldon D. Elliott to the Board of Governors, Alaska Bar Association, September 15, 1958, in the private papers of John Hellenthal, Anchorage, Alaska.
 18. Edward V. Davis to Charles J. Clasby, May 9, 1973, in the private papers of John Hellenthal, Anchorage, Alaska.
 19. Interview with Buell A. Nesbett, July 26, 1982, Solana Beach, California.
 20. Ibid.; Interview with Thomas B. Stewart, June 20, 1982, Juneau, Alaska; Interview with Wendell P. Kay, July 8, 1982, Anchorage, Alaska.

21. Judge Thomas B. Stewart (Retired), "The Alaska State Courts: Beginnings," keynote address, May 19, 1982.
22. 72 Stat. 339 (1958); Nicholas Jaureguy of Cake, Jaureguy, Hardy, Buttler & McEwen to Commonwealth Title Insurance Company, January 12, 1959, in the private papers of John Hellenthal, Anchorage, Alaska.
23. W.C. Stump to Ralph E. Moody, January 24, 1959, private papers of John Hellenthal, Anchorage, Alaska.
24. Interview with Thomas B. Stewart, June 20, 1982, Juneau, Alaska.
25. Ibid.
26. Opinion by Judge J.L. McCarrey, February 21, 1959, in private papers of John Hellenthal, Anchorage, Alaska.
27. Judge Thomas B. Stewart (Retired), "The Alaska State Courts: Beginnings," keynote address, May 19, 1982.
28. Ibid.
29. Ibid.
30. Interview with Buell A. Nesbett, July 26, 1982, Solana Beach, California.
31. Ibid.
32. Interview with Buell A. Nesbett, July 26, 1982, Solana Beach, California; Judge Thomas B. Stewart (Retired), "The Alaska State Courts: Beginnings," keynote address, May 19, 1982.
33. Ibid.

APPENDIX A

Bernard Shandon Rodey wrote the following account based on a lengthy sledge journey he undertook in the winter of 1912 when he traveled from Nome to Cordova, and then took a ship to Seattle, Washington. Appointed U.S. attorney for the second division in 1910, he served in that capacity until 1913. The Attorney General of the United States called Rodey to Seattle early in 1912, and on March 6, 1912 appointed him special assistant U.S. attorney, western district of Washington, to assist in the prosecution of coal frauds in Alaska. He returned to Nome after the special assignment and resumed his position as U.S. attorney until December 16, 1913. He left Nome for Albuquerque, Bernahillo County, New Mexico where he practiced law.

Rodey was born in County Mayo, Ireland, on March 1, 1856. His parents immigrated to Canada in 1862. He attended the public schools at Sherbrooke, Province of Quebec, Canada. He left Canada and studied law in Boston, Massachusetts. After completing his studies, Rodey moved to Albuquerque, New Mexico in 1881 and worked as the private secretary of the general manager of the A & P Railroad. In 1882 he took a job as the court stenographer of the second district of New Mexico. In 1883 Rodey was admitted to the bar and started a private law practice in Albuquerque. In 1887 and 1888 he served as city attorney of Albuquerque, and then he was elected to a term in the territorial senate in 1889. Rodey authored the measure which created the University of New Mexico. He became a member of the constitutional convention of New Mexico in 1890, and the voters elected him as their territorial delegate to Congress as a Republican to the fifty-seventh and fifty-eighth Congresses (March 4, 1901 to March 3, 1905). Rodey failed to be reelected in 1904 to the fifty-ninth Congress. After his defeat he served as a delegate to the

Republican National Convention at Chicago in 1908, and served as a judge of the Federal Court of Puerto Rico from 1906 to 1910.

In 1910 he became U.S. attorney for the second division of Alaska, retired from that job in 1913, and resumed the practice of law in Albuquerque. He died in that city on March 10, 1927, after a long and varied life, and was interred at the Fairview Cemetery.

Source: Biographical Directory of the American Congress, 1774-1961.

JOURNAL OF THE TRIP

The following is the journal or log of the trip of B.S. Rodey, from Nome to Seattle, in January and February, 1912, made overland in a dog team from Nome to Cordova. Much is omitted from it that is given in the previous pages of random observation and statement, but it is interesting as giving exact experiences, scenic descriptions, daily occurrences and an account made up of observations regarding the climate, the country and the people.

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First day; January 20th, 1912:

Temperature 5 and 10 degrees below zero. Left Nome at 11:20 a.m., accompanied by Captain Peter Bernard, with his team of eleven dogs hitched to his twelve-foot, twenty-two-inch gauge mushing sled. The Captain is skipper of the S.S. Mary Sacks in the summer, with which he freights around the peninsula for a living, and in the winter he mushes dogs and carries freight and passengers for hire for anybody that employs him. My assistant, Mr. N.H. Castle, and Mrs. Bernard accompany us out of town, Mrs. Bernard stopping about two miles out to take a Kodak picture of us, and the Assistant U.S. Attorney, Mr. Castle, remaining with us for a distance of four miles to Fort Davis, where we were taken in and entertained at lunch by the officers. Unfortunately, the hitching-string of one of my big moose mittens broke and I lost one of the gloves, so I was obliged to get a soldier, to whom I paid a dollar, to ride back on a horse to find it for me, which he did, much to my satisfaction. The gloves were an elaborately embroidered, fur-trimmed pair of moose mittens, I should say, rather than gloves, which I had borrowed from Mr. Castle, and which he prized so highly that I would have hated to lose them. The trail was very heavy, nearly a foot of fresh snow having fallen; however, the captain has skis on the sled and it does not sink as much as it otherwise would.

I had borrowed for the trip, in addition to all the stuff I brought, a nine-foot fox robe that was the best single article of clothing, for that is what it was, which I had during the entire trip. It proved invaluable. I used to spread it over the frame of the rear of the sled, sit in it with all my other heavy clothing, and fold it around

my feet, body and head, and in fact, I could have slept inside of it, with the temperature seventy below, and have been safe from frost, with any sort of care. I had on, when I started, a woolen tuque, two hooded parkas, a khaki one and a fur one, an outer woolen shirt, two heavy woolen undershirts, two heavy woolen drawers, two light woolen socks, one pair deerskin socks, a pair of heavy German socks, reaching above my knees over a pair of military wool-line khaki pants, and a big pair of long seal-skin mukluks. On my hands, I had a double pair of soft woolen mittens with the moosehide mitts outside. The hoods of the parkas pulled over my head and the running string pulled and knotted to keep the fur borders tight around my face. The captain was not clothed quite so heavily as he seemed to be able to stand the cold better than I was. During the day I trotted behind the sled about as much as the captain did, and at such times I had to remove the hoods from my head, as they became too hot.

The officers at the post treated us fine, and after a lunch, we started east along the coast, cheered by the officers and men. I believe I mentioned the crowd that saw us start from Nome, in the previous portion of this account of the trip. I am under great obligation to Mr. Hanks, the jailer at Nome, who lent me the robe, and to Mr. Castle, who lent me the parkas, several shirts and other necessary warm clothing.

I am also under obligation to Captain Wheeler of Fort Davis for permitting me to buy many things from the stores at the post, which I needed and could not get elsewhere, on my certifying that they were for public use. Also, and particularly to Lieut. Boschen, who went to a lot of trouble in fitting me out and in actually donating some things that I needed. I am also under obligations to Lieut. Woods, Rogers and West for courtesies extended. The captain made the first day's journey short, because the dogs were too fresh and the trail was heavy. The three yearling pups in particular tried several times to break out of the procession. On this day we passed by several miles of piles of driftwood along the coast. It was dry wood, well fitted for fuel, and such thousands of cords of it were piled up ten feet high and a hundred feet wide for miles along the beach, that in the evening at the roadhouse, I wrote Mr. Castle that the coal shortage at Nome need not

worry the people, as they could send out a few miles and get this wood hauled in to keep them warm, and that there was enough of it to do the town for two years, if they burnt nothing but wood. The roadhouse at Port Safety, where we stopped the first night, is kept by Dalquist and wife. They are nice people and run a clean, proper place. It is just as comfortable there as it is in any house at Nome. The food and beds are good. The dog kennels are of the best. Mr. Dalquist helped us hostel and feed the dogs, and Mrs. Dalquist put our clothing on the hangers by the big tin stoves to dry. Every roadhouse has a lot of racks around the stoves and above them, on which to hang and to place one's parkas, mittens, socks and moccasins to dry, for be it known in the Arctic regions, if one exercises especially, and at all events usually, his inner clothing, mittens and socks need drying after a day's mushing. The kennel stalls are built like pigeon holes, one above the other, for the dogs. During this day's trip, I had an awful time keeping the captain and a man whom we met from having a fight over the separation of the dogs that got generally mixed as the teams tried to pass; I had quite a time in doing this, but succeeded. This incident led me to think that maybe the captain was quarrelsome, but before the end of the trip, I found I was entirely mistaken in this and that he is a man of peace and discretion, and one of the finest fellows I ever met. I almost learned to love him during the long days of the mush that succeeded. I never saw so much driftwood anywhere in my life and from the quantities that exist for two hundred miles northwest up to Cape Prince of Wales, as detailed to me by Mr. Castle after he made a trip in December to that region, it is no wonder that the Eskimo of the Seward Peninsula and vicinity, which is treeless, have for ages obtained their supply of wood for all purposes from the drift, all of which it is said comes down the mighty Yukon that every spring and summer is continually tearing out its banks and tearing away trees. In the evening all the people -- for there were other mushers besides ourselves -- played cards. I am a poor card player and would rather read anytime. So I listened to the talking machine, which are as numerous in Alaska as they are in Puerto Rico -- you will find them in every cabin almost. This one delivered two speeches by President Taft, one was a part of his message as to the navy and the other referred to foreign missions. The

big round voice of the genial Taft, with whom I am well acquainted, and with whom I have often attended banquets, and had conferences in his office, and who made me the first Chief Justice of the Philippine Islands, but which position I could not take, as I had in the meantime been elected to Congress, seemed like the renewing of an old acquaintance. He afterwards wanted me to go to the Philippines as an Associate Justice, but I could not take the position then, as I hoped to pass the Statehood Bill in the remaining weeks of the 58th Congress, and later the position had been given to another, and I could not get it.

After writing the foregoing I can see that it will be subject to the common criticism that probably my whole account of the trip will be subject to -- that is, that it is not succinct enough -- and that it has too much frivolity mixed with its facts and with whatever more or less of philosophy and wisdom, if any, it may contain. However, I am not one of those that believe wisdom cannot be an accompaniment of geniality or that too much ponderous dignity is always an indication of high attainment. The "Taft smile" is an attribute of a man who is universally conceded to possess legal attainments of the highest character and to be a statesman of the first quality. Only intellectual "tomtits" accuse the versatile Roosevelt of frivolity, in fact, there are those who believe that men may possess more or less ability without being afflicted with melancholia, and there are also those who believe that "he that tooteth not his own bassoon, the same shall not be tooted," and that a modest amount of truthful self-assertion is permissible. The truth and the occasion being what justifies it. Silence is golden, but too much of it is often injurious to the individual himself, and deprives those he might inform of the benefit of his information. Liberty of speech is a grand privilege, but like in the United States Senate, as I learned when they talked eighty-two days to kill my statehood bill, there can be such a thing as too much of it. There can also be too little of it, as, for instance, the present Attorney General of the United States, who does more work and achieves greater results and says less about it than any other person connected with the present national government without exception.

Second day; Sunday, January 21st, 1912:

Port Safety to Bluff. Temperature 10 to 25 degrees below zero, and a blizzard as we passed Solomon in the mid-hours of the day and late into the evening. Left Port Safety 6:30 a.m. It was very dark; the sun did not rise until nearly half past nine. The trail is very heavy. We can see a musher ahead of us, and my glass shows it to be a man with a sled and five dogs. We afterwards learned, as we caught up to him, that it was a giant Scotchman named, or at least they called him "Jake" Eurson. He is mushing from Nome 230 miles to Bonanza, to help his two partners take out a dump of gold gravel during the winter months on one of their placer claims, where as they write him, they have struck moderate "pay." He is carrying a couple of hundred pounds of dog salmon as feed for Captain Pete's dogs, which will all be used up by being fed to the dogs almost before we get there, but it will save expense as it turns out that dog feed has increased out of all reason in price. We passed Solomon about midday without stopping. The wind from the north came down through the Solomon Canyon to the sea where we were on the beach with the force of a hurricane. The cold of Alaska or anywhere else for that matter, is intensified four-fold in hurricane wind. The new soft snow is flying so that you cannot see ten feet from your eyes. The dogs want to stop, but the captain and Jake are urging them on. Those hardy individuals seem to get along in the cold with about one-tenth of the suffering that I am undergoing, although I am saying nothing about it. We are too far from Solomon now to turn back. The trail is splendidly staked by the road commission with long, thin iron tube-rods with little iron flags at their top. This place being noted for blizzards the stakes are not more than fifty feet apart, but as the flying snow has entirely obliterated the trail, and the dogs being unable to feel it under the deep snow, and we being unable to take a line with the flags behind us, we lose ourselves between the fifty-foot stake of flags and often have to stop and hunt for the next flag. Our progress is, therefore, slow. I got a piece of my cheek frost bitten and had to rub snow on it. Several of the dogs got their lips and flanks frozen, and the captain and Jake had to stop and rub snow on them to thaw the parts out. The flank of dogs just behind their front legs

have less hair and, therefore, freeze easier than any other parts of their body except their lips. However, veteran dogs know enough to close their mouths when the weather is extremely cold and only the pups were frozen today. The captain is congratulating himself that he hasn't got a female dog in the bunch because he says that if he had, her teats would surely freeze off on a day like this, as he has often heard happened to them. He will doctor the dogs tonight. We took lunch at an Indian igloo five miles east of Solomon, and then went on in a somewhat abated storm, but with increased snow. After we passed the mouth of the Solomon Canyon which was five miles wide, the bluffs shut out some of the storm. We got in early, about 5:00 p.m., at Bluff. The dogs were all tired out. In the evening took the ski shoes from the sled. The roadhouse is a hotel and store combined and is kept by Mr. Kinney and his wife. They have one little child. They are intelligent, educated, respectable people and made it decidedly pleasant for us during the evening and in the morning before we started. I wrote Mr. Castle about matters connected with the office that I was to look after here. The letter will start in with the mail carrier tomorrow morning. For a couple of hundred miles yet I will be in my own division of Alaska, and I am looking after everything that it behooves me to look after as District Attorney on this trip. We made thirty-two miles during the day. The food was good and the beds were clean. The talking machine entertained us all with music galore. There are one or two very rich placer mines at this placer where a considerable force of men is at work taking out dumps this winter, which they will sluice as soon as the water runs in June.

Third day; Monday, January 22nd, 1912.

Bluff to Chinik, 26 miles. Left at 7:00 a.m. Dogs again fresh but the trail is still somewhat heavy. No matter how you try, or how much opportunity you give them, dogs will not roll or sanitize previous to being started on a trip in the morning and, hence, when you have ten or eleven on a trip the stoppages for the first hour are annoying. We proceeded for fourteen miles along the west shore of Norton Sound, and thence across a divide or portage for eight miles and over the ice of

Golofnin Bay to Chinik, to Dexter's roadhouse. The trail is splendidly staked, and in the afternoon the trail was pretty good and we made good time. Chinik is a port of considerable importance, and is the distributing point for the merchandise that comes in on the boats in the summer and is distributed over a vast area north and east. There is a considerable Indian village located here and two or three very large stores with immense stocks of goods. I could have bought a full outfit here almost, had I not obtained it at Fort Davis. Particularly, I could have secured a large thermos bottle instead of the small one I had. Let me go on record here as blessing the man who invented the thermos bottle. You can put hot coffee in it, roll the bottle in some of your woolens or robes, and any time during the day thereafter, when everything else is frozen and hard as rock including your lunch, if you have any, you will get steaming hot coffee from this divine bottle. Thrice blessed be the man who invented it, say I, and in this benediction I know I am joined by every musher in Alaska.

Dexter's roadhouse is an oasis in Arctic lands. He was formerly a captain of the revenue cutter Bear in the U.S. service. His roadhouse is a sort of an Arctic palace. He is a character, genial and talkative. He entertained us all that evening with modest accounts from his life history from his boyhood in New England into the Pacific and to Hawaii, China, Japan, the Philippines, and told us of his marvelous exploits in the Arctic, even north to Point Barrow. Put in book form, this man's history would be a sailor romance that would surely beat any dime novel that I ever read as a boy. Years ago he nearly froze to death out in Norton Sound on the ice, and his suffering at that time has left him semi-paralyzed, so that he gets around lamely. He is an omniverous reader, and having made a fortune sea-faring and placer mining, is surrounded by a semi-luxury that is seldom seen in the Arctic. His library is a delight. He is one of the best informed men in this country. I did not get the pleasure of meeting her because she was away on a visit somewhere, but I understand he is married to a squaw named Molly, and it is said she is a fairly well educated and handsome woman. The ladies in the roadhouses told me of her and they all like her and speak in the highest terms of her. She went out after him, as it is said, when he was frozen in the ice and nursed him back to health, when

his life hung in the balance, and the result of it was that he married her. Chinik is a meeting point for mushers, prospectors, etc., and as a consequence, Dexter's roadhouse does considerable business. He has a French chef as cook and the dining room accommodates a crowd, so the meals were pleasant. It goes without saying that the quarters were fine and that I slept well.

Fourth day; January 23rd.

Chinik to "Moses." We left Chinik at 7:00 a.m., dogs again fresh and eager to start. We went nine miles south from Chinik on the ice of the bay. Trail fair. Then we went up over a divide long and dreary. It began to snow. My what piles of snow. We met the mail carrier almost buried in it with his twenty dog team. The winds are fierce as we pass over every hill. We took lunch at an Indian igloo. It was our own lunch, which was brought from Dexter, and our thermos coffee was delicious. Then we proceeded northeast along the shore of Norton Sound eighteen miles to Moses's place, which is a bunch of log houses on the shore that used to be an American's roadhouse, which was abandoned and into which an Indian and his family moved. We struck the first timber to amount to anything on this divide and the dogs got wild owing to the smell of rabbits. The snow was soft and deep, and we capsized many times. Finally we got out on the ice of the bay again and proceeded northeast along some very high bluffs. They stand up like a perpendicular wall along the shore, higher than half a dozen skyscrapers. The trail was not staked here and it was extremely hard to keep it. The temperature in the morning was about ten below, but in the afternoon it must have been about ten above, and in the evening a snowstorm came on. It got pitch dark before 3:00 p.m., and we had a time. Both Jake and the captain had to make circles afoot several times to find the trail when the dogs became mired in the snow. On and on we went in the dark, hugging the shore every once in a while, where the hummocks of ice in the bay were piled up, and made detours frequent and troublesome, while the snow drifted in our faces. A veil with a rubber string in it, which I procured a tailor woman to make me before I left Nome, and which clinched over the front of my parka hood on my face,

stood me in good hand in the pricking snow and cold wind this evening. At length we noticed the dim light of Moses's igloo ahead in the fog. It was a welcome sight for the dogs and ourselves were positively played out. I thought we would never get anywhere, but I said nothing about it. I agreed with Captain Pete in the start, that I wouldn't be a kicker on the trip no matter what happened, but I would reserve the right to make, what a friend of mine in New Mexico would call a few "discongruvial" remarks of approval or disapproval, whatever that may mean, at the end of the trip. Happily, the trip was so pleasant on the whole, that I made none save in praise of Captain Pete and the dogs at Fairbanks, and bade him goodbye and shook his hand as well as the right forepaw of every dog with equal regretful pleasure when we parted.

Captain wanted to go to Moses's that night, because an Indian boy of his acquaintance lives there. He and his wife at Nome had raised this boy and educated him, until he left them several years ago, so we were pretty sure of good treatment there. They certainly gave us as good treatment as they could, considering their conditions. It may be that I am fastidious, or it may be that I was new to the aroma of an Alaskan Indian igloo or house, but up to this point in my career, I had never entered a place where human beings lived, not excepting the worst Navajo "hogan," with such a vile smell as Moses's house. The house was filthy; Moses, his wife, his sister-in-law, and everybody else, including the children were all in rags and they were all filthy. They gave us coffee and reindeer steak. The meat was first class. When it came to going to bed, as every human being, men, women and all had to go to bed in the same big room, I was a little bit nervous about the proprieties and about the ventilation. I proposed to Jake that we go outside in the sled shed and put our robes on the ground and sleep there. He whispered back in a Scotch brogue, "I ken yer object, but it's vera cauld and I thenk-we betther thry this," so I acquiesced. I had a package with half a dozen cakes of gum camphor in my kit. It stood me in good hand this night and through this entire trip. Scottie Allen, a genial Scotchman who runs a hardware store at Nome, and who is the hero of several of the great sweepstake dog races there, and the only rival as a musher in Captain Pete's class in the Arctic, put me wise to gum camphor on the trail. Not only can you take a piece of it

and rub your skin under your underclothing with it, and thus absolutely keep the roadhouse livestock from becoming intimate, but the gum itself may often preserve your life. You can shave a piece of it off with your knife an inch or so long, about the size of a pencil, or you can take a piece of it about the size of a pea, and if you have but one match, it will take fire as easily as kerosene, and you can stick this piece on the end of a toothpick before you light it, and light your cigar with it, and it will not become extinguished in the strongest wind. You can light half a cake, and if you have any kindling at all, you are sure of a hot quick fire, under almost any circumstances, however strong the wind, or however low the temperature, for it will burn for ten or fifteen minutes with the heat of a furnace. I stood the smell of the house all night, but in spite of all I could do, arose with a headache, and with the firm conviction, that for filthy smell, Moses's place was surely the limit. I changed my mind later, as this diary will show.

I was nervous as to the proprieties as I stated, but I might have saved myself the trouble. Everybody in the house, including the women, of course disrobed and disappeared behind curtains with the modesty of a nunnery. I never saw a Pullman car conducted with more decency.

Fifth day; January 24th:

Moses' Point to Isaac's Point. We made but a short trip this day owing to the distance of the second roadhouse ahead. We knew this and did not leave Moses's until nearly 8:00 in the morning. We went six miles along the sandspit and a beach, and then eight across an arm of Norton Bay to Isaac's Point or "Julius's Place." The trail was splendidly staked, and the going was first class. The temperature, save in the morning when it was about fifteen below, was warm, ranging from five to fifteen above. Julius's is situated under a mountain perpendicular bluff that juts southwest into the Norton Bay from the mainland. Julius is a genial German; he said there was no use in telling me his other name, because nobody ever remembered it and that it was unpronounceable anyway, that everybody knew him as "Julius." He was a small man, a mechanic and a good one, besides being a good cook. He was about fifty years of age and a bachelor. He had been here for ten

years. He has a fine place. Everything is built out of logs, which he gathered as driftwood. He has two or three houses forming his roadhouse and dog kennels, and an extra house or two in which some visiting prospectors who were waiting to hear the news from the new strike at Kobuk at the head of the bay, were living. Everything Julius has is handmade and he has hardly used a nail in the construction. Everything is wood and wooden pegs. He had a fine supply of food and while we lost half a day there, we enjoyed ourselves. One of the men camping in the next cabin was a Spaniard from Cuba, and when he ascertained I could speak his language, he froze to me and Spanish was the vogue between us the entire day and evening. A piece of the cliff dropped down last spring and pushed one of Julius's log houses into the sea, but he went after it and brought it back, log by log, and re-erected it. He crawled up the mountain and sounded the cliff with a hammer and doesn't think any more of it will come down.

One of the worst features connected with a good many of the roadhouses, such as Moses's, Kaltag, Nulato and other places, but Julius's place is not subject to that objection, is the lack of sanitary conveniences. At the places mentioned and at many others, notwithstanding the good food and the good bunks, it was not pleasant to ascertain that you were obliged to use the wide, wide world when you were obliged to go out for sanitary purposes, even though the temperature might be twenty or twenty-five below zero or even colder. I think this was the only subject on which I broke my resolution made to the captain not to kick.

Sixth day; January 25th.

Isaac's Point to Bonanza. We started, or at least I did, about 7:00 a.m. I ran ahead of the team telling the captain I wanted some exercise. I went at least six miles before he caught me. In the morning the temperature was about ten below, and it ranged from that to about twelve above all day. The trails were positively splendid and after the team caught me, all of us, Eurson on his sled, and the captain and myself on ours, rode all day, because the trails were so good, and the dogs went so fast that we could not keep up running behind. Late in

the afternoon I plow-handled the sled for several miles. The trip we made was twenty-five miles in a straight line, but we had to go about thirty-three miles or more because we struck some open water about a few miles from Julius's and had to go around it from the northeast. The bay is not frozen straight across from Julius's nor south of that this winter. It is my opinion, from views I got of it from the mountain tops later on, that Norton Sound and the Bering Sea does not freeze over in the winter to any extent, much statement to the contrary notwithstanding. I do not believe it ever freezes clear across from St. Michael's to Nome, and it is my belief that Bering Sea, save for large sections of floating ice here and there, is open every winter south to the Pribiloff Islands and Unimak Pass, and that it only freezes out to just beyond the horizon from Nome. From information I received at Nome since I have lived there, all the wonder I had in childhood as to how the Eskimos got from North America to Siberia has faded away. Probably twice in ten years, Bering Strait, between Siberia and Alaska, freezes completely over as it did last winter, for instance, 1910-11, and the natives pass to and fro without restriction over the fifty miles of ice. But even without that, the natives cross in the summer in their skin boats every year. I saw a native and his family start from Nome, and start west from Siberia, at a point where he would be forced to cross three hundred miles of sea, in one of these boats. We arrived at the Bonanza roadhouse early in the afternoon and had to stay overnight owing to the distance of the next place. The roadhouse is kept by a Swede who also runs a store in connection with it. He is married to a handsome, educated squaw. She attended to the household, which had many rooms and was little in evidence. She had a baby, not more than six months old, which she packed around on her back, although she was lithe and young herself, and stood as straight as a soldier, for she was tall. She wore a semi-civilized dress and moccasins, but carried her child in the usual sack in her parka. I bought ptarmigan from some natives here (and donated them to the dogs) at my own expense. The dogs had been smelling them all along the line but did not get a taste of them until I bought them a bird apiece. The captain had a quantity of seal blubber here, which he purchased from the natives, and also fed some of that to them, so the dogs had a feast, and the kennels were strewn with feathers.

Swanson, the roadhouse man, is a morose sort of a fellow, and does not appear to be doing much of a business. Eurson left us at this point to go four or five miles up in the hills to his partners. I was sorry to lose him for he was a jolly, genial fellow. I gave him a lot of mining advice, from day to day, while we were together and he promised if any new strikes were found to locate myself and some of my Washington friends into pieces of ground, wherever it could be done, without interfering with any other person's title. During the day we encountered flocks of ptarmigan miles from the shore crossing the bay.

Seventh day; January 26th.

We left Bonanza at 6:03 in the morning. This was one of the hardest trips we had yet made. The distance traveled was fifty-two miles. In the forenoon we traveled to what is known as the Foothill Roadhouse where we took lunch with a couple of prospectors who are living alone there. We had to wait till they cooked it for us. Then we proceeded over a range of mountains, the first mile being almost straight up in the air. We both had to walk and had to push the sled. I don't know how the mail teams ever get over this route unless they relay their loads. We saw myriads of ptarmigan. It was up and down, ride awhile and walk awhile, push awhile and pull awhile, capsize and get readjusted, all the long afternoon into the night. We met several other dog teams, including the mailman. After crossing the range, we got into a country where the ground was practically bare, or the snow so filled with blowing sand that it ground the flesh from the feet of the dogs, and the captain had to put moccasins on most of them. It is interesting to watch how patiently the dogs submit to this, because they appear to know it will do them good, and then they patter along with their feet looking as though they had on small boxing gloves. We lost our way in a severe storm before we got to Unalakleet in bitter cold. We stopped at Powers's roadhouse. He is a good sort of a fellow, too. It is a big Indian settlement. He appears to be a sort of a trouble maker. I pacified him, and gave him some good advice, and wrote to Mr. Castle about some matters that ought to be attended to here, and left a note for one of our deputy marshalls, who will arrive from St. Michael's

in a day or two, with some prisoners from Nome, asking him to investigate as to a man or two living near the Foothill Roadhouse, of whom I had heard, which it was suspected might be connected with the killing of the Nilson boys in the Kuskokwim Country, the latter part of July last. He did so later, but found no ground for suspicion, as Mr. Castle informed me. Powers is a squaw man, and treated us well, but his place is unnecessarily filthy, even though his food and treatment were real good. His squaw is a willing sort of woman, that took pains to make things pleasant for us, and gave us the best they had in the house.

Eight day; January 27th.

Unalakleet to "Old Woman." We left Powers's at 6:00 a.m. It was fairly cold, about ten below; we made thirty-four miles today; we are now crossing the portage between Norton Bay and the great Yukon. At the start, the wind was blowing strong in our faces and the trails were pretty heavy. At noon, we stopped at an Indian igloo to get an opportunity to eat our lunch, which we brought from Powers's. The captain entered first. I entered the outer room a few minutes later, and when I entered the door to go into the main building -- well, I didn't enter. The captain was seated at the table expecting to spread out our lunch there. He said, "I guess this is a little strong for you in here." I thought it was and backed out and went back to the sled. We took our coffee, which was all that we had, as the bread and other stuff was frozen solid, in the shelter of the house in the bitter cold, and then continued our journey. The getting out and the disarrangement caused me great discomfort, for at this particular hour, it must have been twenty below. Again, I blessed the thermos bottle. A friend gave me a first class bottle of whiskey when I started, but, Lord -- you will never think of drinking whiskey, or any other intoxicant, when it is ten below zero; the bottle of whiskey and the bottle of wine I had lasted more than half of the trip, and if partaken of at all, it was at one of the roadhouses in the evening. The captain, true to his race, although I must say he is a very temperate man, drank most of the wine, while I did manage to get a few sips of the whiskey, which proved to be a great treat to the roadhouse miners met on the way. Contrary to anything that

may be said on the other side, I assert that outside the thickly settled camps or towns, the men of Alaska drink very little whiskey. Tea, not coffee, is the great beverage. Of course, some fellows, who come in from the "outside" bring the custom with them and drink a good deal of whiskey for quite a while after they arrive. The captain related an incident to me about bringing in from Valdez to Nome a couple of genial mining superintendents a few years ago. They had each made faithful promises to their wives before they started from Seattle that they would not take a drink on the trail, but the captain, who was handy with the Kodak, tells me that he got numerous pictures of them on the way in, where in order not to break their promises to their wives, they had stood about six feet off the trail on the snow, while they took numerous drinks. The captain further said that about half the whiskey they had on that trip froze solid, and his passengers stated that if the other half of it had frozen, they would surely have died. The captain pronounced the bottle of whiskey I had to be of first class quality because it didn't freeze. Well, I stated that I did not enter the Indian igloo to take our lunch there. There were three families comprising probably nine or ten people in all in the immense room in the big log house. They were boiling rotten salmon in seal oil for dog feed on two stoves in the room. The smell that arises from that concoction is the limit, and how human beings can live in it, is a mystery to me. When I got back to the sled on that occasion, and got through choking coffee and spitting, I made a mental resolution that if ever I should run across Moses, I would apologize to him for thinking he had the worst smelling house on earth. Old timers along the trail, to whom the captain related my discomfiture on this occasion, appreciated the joke and laughed merrily -- they had smelt rotten salmon and seal oil before. Some time when I have time, I will search the languages with a view to manufacturing a composite word to properly characterize this vilest of odors. Well, we arrived at "Old Woman" late in the evening. It is a Signal Corps station, and in charge of the soldier boys. My, what a neat place it is and what splendid food they had. It was positively enjoyable there. We could not be more comfortable at home and we left the place with sincere regret the following morning. There is a river that heads above this place which enters the bay near Unalakleet, and it

is a good larger river for many miles of the distance. It flooded the whole valley last spring, including the telegraph station, and the boys had to live in the upper story for a week. Their station is situated in the woods, and it is a beautiful place.

Ninth day; January 28th:

From "Old Woman" to Twenty-two Mile Cabin. We left hospitable "Old Woman" telegraph station at 7:30 a.m. and mushed along over a fair trail to Ten Mile Cabin, mostly through small timber. We found a Scotch sailor in charge of this cabin. He was reading a magazine of the vintage of 1890. We drank our coffee here. This Scotchman just keeps cabin for the mail carrier. He is all alone, save when one of them stays over night there. He has a few traps out and has a little fur, but plenty of food; says he is here because it is the cheapest place he knows of to live; that he has no fixed charges to pay, gets his grub for nothing, has no work to do save the little chores with the dogs once in a while and will, in the spring, go down to Unalakleet and re-begin his occupation of sailor. I found hundreds of men in Alaska that are also there because of the easy way of living, after they possess a winter's grubstake. We made nineteen additional miles to Twenty-two Mile Cabin. It is thus called, because it is twenty-two miles from Kaltag on the Yukon. Snow began to get heavy in today's run. Late in the afternoon, we met Mr. Herron, who is mushing in to Nome from Tidewater. I talked with him about five minutes. He appears to be on some political mission, and as it appears to be for the administration, I wished him every success, and wrote some letters from the next stopping place to a friend at Nome to help him out. I learned very little about him otherwise, but had heard some little about him before I left Nome.

At Twenty-two Mile Cabin we found nobody in possession, and had to put away our own dogs and cook our own food. Some portions of it were a mighty cold job, but we got fires going soon, and dug out the utensils and some food besides using our own for our supper and breakfast. It was bitterly cold tonight and this is surely a lonely place.

Tenth day; January 29th:

From Twenty-two Mile Cabin to Kaltag. We started at 6:30 a.m., after an hour's work in fixing fires and preparing the dogs, and eating our breakfast. I might stop here to record, as I have not done before, that mushing dogs get but one meal a day, and that an hour or two after the day's journey is ended. To feed them oftener makes them sick. When we violated this, it always resulted in sickness of the dogs. They got the colic once on this, because of this, when we fed them a lunch of seal blubber, and we had an awful time for two or three hours next day. Each dog stopped about ten times, and as we had eleven dogs, that made about 110 stoppages in the first five miles. This occurred farther up the Yukon.

On the occasion in question, the captain lost his temper with the dogs for a few moments, but soon recovered it, and that night, as well as on the trail, he gave the dogs some sort of powder his wife had put in the kit for them when they started. It did them good for they were all right next day.

After leaving Twenty-two Mile, I ran ahead of the dogs for some six miles over the divide, where we begin the descent to the mighty river. The snow soon became very deep, and after a while the timber grew a little larger, and as it had recently snowed heavily, every branch and limb were loaded down with snow, and the trail was a trench three feet or more through the woods. But it was a good trail, and we came down speedily, and arrived at Kaltag early in the afternoon. My first sight from the divide of the mighty river produced about the same feeling as looking into the Grand Canyon of Arizona did. It awed me. It is about a mile and a half wide at Kaltag, frozen completely over, and I am sure in the summer time, it must be a noble stream. Kaltag is about six hundred miles from its mouth. The roadhouse here is quite a place, and is run in connection with a saloon and a store. The proprietors were away, but the man in charge got one of their wives, a squaw whom we did not see, to fix our parkas and robes for us. One's clothing, robes and general outfit trailing it over Alaska, and catching on trees and driftwood, and being demolished in the capsizing gets pretty ragged at times, and has to be repaired or replaced and that costs money, for

things are high on the Yukon. The food and bunks were good at this place, and I had nothing to kick over save the 580,000 square miles of country that the place used as a toilet.

Eleventh day; January 30th:

Kaltag to Nulato. We left Kaltag at 7:00 a.m., trail the best yet over the flat Yukon, just like a floor with hard snow. The dogs were in splendid health and started down an almost perpendicular hundred-foot bank like a cannon shot. We stopped at an Indian cabin for lunch. We ate our own lunch and just went in to be warm while we did so. The house had two or three families in it, including a rather good looking girl who spoke English well. The men were making fish traps out of willow. While we were there, a big giantess of a masculine-looking squaw came in with a back load of ptarmigan and rabbit which she had secured in her snares. She was on snowshoes, and evidently had been up the mountainous north banks of the river for the game.

For more than a hundred miles after you reach Kaltag, perhaps two hundred, there is nothing in sight on the southeast side of the great river, nothing but flats, on ground that is from twenty-five to fifty feet above the river bed, and all of it completely covered with a dense growth of this tent-pole timber or wattle that I have described. It is, as I ascertained, made up of aspen, poplar, white birch and scrub spruce, with once in a while a willow mixed in, but practically all of it no good as timber. The river yearly tears out miles upon miles of the bank of that side, and carries this brush and timber down to the Bering Sea. On the north side for the same distance until you get to Ruby, the river is bordered by a continuous chain of very high bluffs. The river has shaved off the front of all of these mountains, until they are devoid of timber or soil, and present a bare surface to the river. Lateral valleys run into the river about every half-mile, and therefore, scallop this high mesa or mountain range pretty evenly for all that distance. Behind this mesa high snow-capped mountains appear, and all of it is scrub timber down to the river through the valleys. The Signal Corps line runs over these scallops, and its snow-lines where roadways

cut through, adds a conspicuous border to the whole undulating scenic petticoat, for miles.

Just about an hour after dark, we arrived at the Indian village of Nulato, which is also a Signal Corps Station, and has one of the Northern Commercial Company's great stores there. This concern is the biggest thing in Alaska; it has stores everywhere except at Nome. Some observer said to me once that your Uncle Sam was sovereign of, owned Alaska, and paid its bills but that it was run by and for the M.C. Company. I saw so much of the N.C. Company during the rest of the trip, that I began to think there might be some truth in that apparently extravagant statement, especially when I learned the way this concern dove-tailed into everything in Alaska. It is officered and run by an intelligent lot of genial, able men, but there can be no question that it charges price enough to make a profit, and that it is not in the country for its health. It is said to be mixed in all the stage lines, mercantile lines, boat and other transportation lines in the district, as well as in some of the railroads and mines. I do not know as to this, at least not to a certainty, but I know that they are run under a system as clean-cut and able as is the Standard Oil. The roadhouse at this place is run by a man named Kennedy. I think he is a bachelor, but may be a squaw man for all I know. His food was poor, and his bunks not any too nice. He cooked our meals himself. He runs pool tables and the Indian boys are in there by the dozen playing pool. There must be at least five or six hundred, if not more, living here. They are practically all Indians. The town is situated on a high bluff, probably a hundred feet above the river, and we had a time getting up, and a harder time getting down in the morning; we tipped over a couple of times. Kennedy's place, on the whole, is a poor one.

Twelfth day; January 31st:

Nulato to Stanborg's. The trail yesterday and today is splendid. We left Nulato at 7:00 a.m., and reached the mouth of the Koyukuk at noon. The Koyukuk is a mighty river that comes in to the Yukon from the north, and is said to have rich placer ground, where a good deal of mining is being done, some six or seven hundred miles up from its mouth.

We stopped for lunch at an Indian village, and a good-sized one on the river bank. It has a wireless station, and a big schoolhouse with a teacher or two. A squaw in the roadhouse put down her baby and cooked us some lunch. I have mentioned her before -- she was Martha MacBeth. Mr. Evans keeps a store at this place; I think it is known as Bishop's Mountain. We mushed along the rest of the day, and late in the evening arrived at Stanborg, which is a cabin in the woods on the high point of an island on the south side of the river, where we stayed all night and cooked rice and fish for the dogs. It got bitterly cold in the evening, and must have touched twenty below, although it was nice all day. Three men and a squaw man occupied the house which had several rooms. A Canadian, an Irishman and a Swede. The Irishman and Swede were carpenters, building boats, sleds, etc. The Canadian was married to the squaw. She is the deaf and dumb squaw I have mentioned.

The going up the Yukon these days is positively the best it can be. There is about four to five inches of hard packed snow on the river ice. So much travel has gone over it that it is smooth as plaster of Paris, and the dogs trot the livelong day. The weather is splendid, ranging from ten below to twenty above, with cold nights. I have now got thoroughly acquainted with Captain Pete and with the dogs. I know every one of the animals by name and they appear to know me. I have sung every song I ever knew, beginning in the morning shortly after we start, and keeping it up until I get tired of it in the evening. I only sing while I ride; you can't sing while you run very well. Captain Pete's home is in New Hampshire, and he and his wife, though many years here, are only temporarily in Nome. He has a handsome young lady daughter in his home state, who is a great musician (violin). He showed me her picture. However, as he is of French Canadian parentage, and is a native of Prince Edward Island in the St. Lawrence, he still remembers his mother tongue, and speaks English with an amusing accent, although he is thoroughly American in every other respect. He was decidedly pleased when I suddenly started in to sing in French, as in my own youth I had learned his language and its folk lore songs. Therefore, we made the welkin ring (whatever that may mean -- I never did know) as we chanted in unison "Au Claire de la lune, mon ami Pierrot," "Malbrouck se vent en guerre," and "Chanté rosignol chanté," and the captain actually

stood on tiptoe in the sled when I broke out in the Marsellaise with "Alons enfants de la Patrie." When we exhausted the French and I started in Spanish with "Las golondrinas," "El Trotocito del Coyote" and other Iberian chants, both the captain and the dogs appeared disgusted and took no part -- maybe it was because of the singing, because I have had enemies say that I am a better "yarner" than I am a singer. In American things, the captain joined in them all.

The captain's mode of address to the dogs, and particulary to Jim, the leader, was continuous from day to day, and after a while it began to ring in my ears through the long hours, just about like Mark Twain's streetcar conductor's song of "A red slip ticket for a two-cent fare." Sometimes I talked to them myself so as to get a rest from the captain's song, but usually I had considerable to do to keep warm especially along in the evening. A single glance or two can take in the scenery for many miles, when it is clear, and when it is foggy there is none to take in. The weather up the Yukon, however, was crisp and delightful, as a general thing.

Thirteenth day; February 1st:

Stanborg's to Lewis'. We were late in departing this morning and did not get off until nearly 8:00. The dogs were so wild after the good feed of boiled rice and salmon they received last night, that it was impossible to hold them down the precipitous banks of the Yukon. We had a rope to let us down, hitched to the rear of the sled, and held by a couple of men on the top of the cliff, but in spite of this we capsized and the dogs pulled the sled into a lot of stumps, and injured us and broke several articles in my kit besides tearing my clothing and robe. We were not injured enough to interrupt the trip, and at once proceeded on our monotonous trip over a first class trail in the morning. Eighteen miles out, we stopped at Jimmy's Point for lunch. It is run by a half-breed Russian Indian, named John Antosky, and his squaw. The house is situated on a high point on an island in the woods. They cooked us a bacon and ptarmigan lunch; everything in the house, including the house itself, is homemade.

I have not yet in this diary part mentioned the charges of these roadhouses. It varied very much, and apparently without reason. First, it was \$3.00 for supper, bunk and breakfast for each of us, lunch being \$1.00. At other places it was \$1.50 for each of those accommodations, and still at others, it was as high as \$2.00. Then they charged \$2.00, and then as much as \$6.00 for dog feed, the captain's bill was enormous. I sympathized with him because the trip is certainly a financial loss. I am doing all I can to try and get him a passenger on the return trip. This afternoon we passed Loudon, a telegraph station, on a high bank of the Yukon. I went in to look for dispatches from my assistant. Loudon is a large Indian village; it has a roadhouse, but we did not stop. Along about this point, the snow almost entirely disappeared from the river leaving nothing but absolutely glare ice, save for little streaks of snow here and there. It is cracked in all directions and you can see the cracks down for four feet in its thickness. Around bends, it is often hummocky and great piles of ice are heaped up which we have to waddle through, and in which we often capsize. The cracks amount to nothing as they are glazed over. It makes poor footing for the dogs and whenever the wind catches us, it whirls us around, dogs and all as we have no skates on our sled runners, as the mail carriers have. The shores of the Yukon along here are filled with camps of wood choppers. Hundreds of miners do this work in the winter and sell the wood to the N.C. Company for its boats. I don't know what arrangement, if any, they have for the government to get the wood from the public domain. We arrived at Lewis' roadhouse long after dark, at 7:00 p.m. in pretty cold weather. Lewis runs the store. He keeps a neat roadhouse with his sister as housekeeper; he has been here ten years; she only came in last year. They are proper, decent people and keep a neat place. They are from Hamilton County, Ohio. We made 45 miles today and both ourselves and the dogs are very tired.

Fourteenth day; February 2nd:

Lewis' to Ruby. We left Lewis' at 7:30 a.m., and arrived at Ruby at 4:00 p.m. In the morning the weather was fifteen below, in the afternoon it moderated to ten above. The wind was in our faces and that

made it very bad. I suffered with the cold but said nothing. In the morning the ice continued glare. In the afternoon snow began to fall and by evening the trail was extremely heavy especially as we approached Ruby.

Ruby is a town that was built since last July on the south side of the Yukon at the first place where we saw any mountains on the south side. We passed Melogi in approaching it. This is a telegraph station. We lost the trail and the captain and myself left the dogs and I went a mile and a half to one side of the river, and he half a mile to the other side, hunting for them through the deep snow. I traveled for about two hours in snow above my knees, over miserable, rubbly ice. Finally, the captain found the trail on his side and I came across diagonally to him. I was thoroughly exhausted when I got back to the sled, but perspiring too much to be very cold. I am over clad for snow walking. Ruby is built of lumber. It has about four hundred houses consisting of saloons, restaurants, hotels, cabins, etc. It is a typical mining town. It was built on hot air by a townsite promoter, I think. The N.C. Company has an immense barge filled with merchandise frozen in the ice on the beach, from which the town is supplied with provisions. Probably 600 to 800 people live here or in the vicinity. There isn't a bit of "pay" in any of the creeks. The town is wildly sensitive for fear people will "knock" it. As nearly as I could learn, the only grave in the town is that of a man who a month or two ago offered \$40.00 for an ounce of gold as proof that they had none; he didn't get it, but they got him. This, of course, is a joke but the wag that got it off laughed when he told it to us. A committee waited on us to know what our opinion of the town was. They were appalled when we confessed we had never heard of the place until we got there. They then proceeded to instruct us about the place, and to tell us what we should say about it as we went along. They wanted me to stop and lecture on the future prospects of Ruby, but I had no time. However, I did give them a lecture on good citizenship and mining law, and the evil influence of the "hatchet and pencil location hog." I really believe they have a little pay in a few places some fifty miles to the south, but that is as near the Iditarod as it is to Ruby. I really believe that Ruby was built because it was central and on the river, and is a

good place to stampede from to any new discoveries that may be made in any direction. I can see no other reason for its existence, but it wouldn't be safe to say this in the town while you were there. They had a big meeting a night or two before I got there to celebrate the hope of "pay." They couldn't celebrate the discovery of it, because they had none worth mentioning save fifty miles away, as stated. I had lots of fun with the committee. The captain, who has to come back this way, being a discrete man, boosted Ruby all the way to Fairbanks, and his earnestness kept me from knocking it too badly. The people of Ruby are really as fine a lot of healthy, energetic citizens as you can find.

I might say here about the people of Alaska, that they are a fine lot of citizens, I mean the white people, as distinguished from the native Indians. I do not think I exaggerate when I say that 75% of them are foreign born, but they are good people just the same, and nine-tenths of them speak English. Only Russians and Greeks do not. Probably a fifth or more of the white population permits their American citizenship to rest pretty lightly on their shoulders, and the Irish, English, Scotch, Canadians, Welsh and a few others move up and down the Yukon and engage in mining in Canada or Alaska indifferently, claiming to belong to either country, when they happen to be there. The interested promoters have worked up a feeling among a large part of the white people of Alaska that the government of the United States is abusing the country and denying it a lot of its rights. I took the opposite view to this everywhere I went, and I lectured enough to fill a large volume along that line, and never failed to convince my audience at the roadhouses and in the towns along the trail, at night when we stopped, that the government of the United States is treating Alaska like a petted child, and that they owe it gratitude instead of abuse. I think I put some patriotism into their souls, for there were times when I did not mince my words and I never failed to get applause. It surprised some of them to learn how few they are in numbers relatively and the millions of dollars per annum their Uncle Samuel pays out for their benefit out of the United States Treasury, while they come and take the fish, gold and fur free without tax for themselves. I went after the "hatchet and pencil nuisance" every place I talked. I called

on the commissioner and the deputy marshall at Ruby and they attended my talk.

Fifteenth day; February 3rd.

Ruby to Mouse Point, about 36 miles. Left Ruby at 7:00 a.m., in black darkness. Trail very heavy, temperature ten below, but it moderated later. Stopped for lunch at Corning, where an Irishman keeps a roadhouse; then we mushed on to Kokrine's, a native village. It is said that in the early days everything in Alaska was spelled by the Russians and they never had any use for the letter "C" as the letter "K" was good enough for them, so Cochran's became Kokrine's. We stopped at Kokrine's for a few minutes. The N.C. Company's big store had burned down there that morning and was a complete loss; the ruins were still smoking when we arrived, and the natives were arriving from all directions and had poles digging in the ruins for the cooked hams that were found underneath. A large stock of merchandise, furs, etc., were totally destroyed. Horse teams will haul more goods from the big barge at Ruby to keep the people from starving. There is a Signal Corps station here, and I got a wire from Captain Warfield at Fort Gibbon; inviting me to his quarters when I arrived there. My friends at Fort Davis had wired him that I was coming. I had met the captain in Washington a few years ago. We passed on seven more miles to Mouse Point. It is a native village of very poor people, and the roadhouse is run by a Jap, named Frank, as he told us; his other name doesn't matter, as he said himself.

I am afraid this diary will be misunderstood in my reference to the natives and their rather filthy condition. Let me correct that, for instance, Moses was simply poor, and he can't be blamed for that, and he didn't seem to know enough to keep clean, nor did any of his family, but as a general thing, the half-civilized natives are pretty clean. They do live in bad air, though, which a white person cannot tolerate. The rising generation of boys and girls are often quite clean, and the fact that they all speak English shows that the missions and schools have done good work. I have had lots to do with the Indians in New Mexico, and know something about them. Alaska Indians never beg, and save that

your Uncle Sam does a lot for them, they support themselves. This Jap complained bitterly of the number of wandering bums that come along the river and eat at his house, and then tell him they have no money. He claims that he feeds sometimes as much as twenty-five men in a couple of weeks that way, coming back from Ruby, where he says they spent their money in the saloons and are busted. The Jap's bunks were fairly clean.

Let me tell about these bunks in these roadhouses. They are simply a lot of rough bunks, one above the other, like in a Pullman car. They never have any sheets, but just blankets or robes. If they look too awful, you usually bring your own robe in from your sled, spread it over your bunk and roll up in it. If not, you use the blankets that are there. You never completely disrobe; you sleep in your overshirt, drawers and socks, and it is usually comfortable, as they keep up the fire, and the log houses are warm. In the roadhouses where women are, things are, of course, neater especially when they are white women. As for baths, I don't know whether the average Alaskan miner takes any or not. There is always plenty of hot water on the stove and I got enough for my footbaths every morning, and for an occasional towel body bath. When I got to Fairbanks, the luxury of a tub was indeed delightful. One's bag of soiled socks and underclothing gets to be middling large after you are on the road some days.

Tonight, at this Jap's place at Mouse Point on the north shore of the Yukon, I am at the highest point north I ever was in my life. The Yukon turns southeast from here, or at least comes from that direction. My maps, of which I have a full supply, show that I am in 65 degrees and 10 minutes of north latitude (almost on the Arctic Circle) and in 154 degrees of west longitude. When we get to Fort Gibbon we will be still a little farther north, as I figure it. The Jap has been in Australia, in San Francisco, and came to Alaska in 1901. He is a scholar and showed me a lot of manuscripts where he had compiled a tremendous lot of information and translated it into his own language from magazines and other sources, and had an immense book of pictures of things Alaskan, taken from magazines, with Japanese inscriptions under them. I am wondering if he is a spy for his government, or whether it is merely incidental that he has done this work. He has possessed himself of some good fur, and he procured a most elaborately embroidered pair of moose

mittens trimmed with fur. He got the native who made them to embroider in the right and left hand mitten respectively, the word "zee" and "hoo," meaning as I ascertained on inquiry, the "gee" and "haw" used in dog mushing. He was surprised when I told him it should be spelled "gee" and "haw." He thought "gee" should be pronounced with "g' hard, so even the Jap notices the incongruities of English. He is going to have them changed.

Sixteenth day; February 4th:

From Mouse Point to Birches, and Keland's. Left Mouse Point at 7:00 a.m., trail heavy, with wind in our faces. Temperatures very mild, ten to twenty above. Took 11:00 luncheon out fifteen miles at Barnard's roadhouse. His coffee pot exploded and scalded him pretty badly in the face, and I got a dab or two in my face, but not seriously. We passed Birch's telegraph station about 3:00 p.m., where I wired Mr. Castle and also Captain Warfield. Proceeded on fifteen additional miles and over a portage to Keland's where a squaw man keeps a roadhouse. We arrived at nearly 8:00 p.m. We lost two hour's time in getting through the woods of the portage because it was quite dark. This roadhouse isn't much of a place..

Seventeenth day; February 5th:

Left Keland's at 6:30 a.m., came up the river eighteen miles and took lunch at a mining camp. It is quite cold today ranging from fifteen below to five above; as we approached Fort Gibbon, the snow grew less and less, and the wind was bitterly cold and blew so much sand into the trail that the dogs became lame and the sleds scratched through it. We got in early to Fort Gibbon, which is quite a town of several big stores. Two or three hundred people must live here. The army post is a typical one, plenty of quarters and properly kept. Captain Warfield took me in bodily and had a reception for me that evening, when the major in command and others came in. They entertained me royally and I regretted to leave the following morning. Those in charge of the N.C.

Company's store there are fine men. I am under obligations to these army gentlemen, particularly Captain Warfield.

Eighteenth day; February 6th:

Fort Gibbon to American Creek. We left the fort at 7:00 a.m., and made thirty-four miles. We went north along the Yukon for a mile or two, until we passed the mouth of the Tanana, then crossed the Yukon north of the Tanana, and left the Tanana and steered through the scrub country over a newly-cut trail for Fairbanks. It was bitterly cold, and the wind blowing a small gale, and as there was little snow the wind carried the gravel everywhere. There were piles of pebbles, some of them as large as small eggs, on top of the ice of the Yukon where we crossed. We had to walk, of course, as the dogs couldn't pull us. This day's ride was the worse trail we had. We walked practically all the way because it was nearly all bare ground, moss, sticks and stumps. We capsized many times and had to adjust our load, and smashed portions of the sled, and tore our clothing and our robe, and stubbed our toes and tumbled down many times, as the dogs rushed around turns or up or down hill. There was practically no snow, the only relief being the glare ice where we struck sloughs, which were numerous. We arrived at American Creek, a mining camp, late in the evening and got a good supper. Both the dogs and ourselves are completely worn out. There is considerable activity in placer mining in this vicinity and there is quite a settlement here. A crowd was at the roadhouse during the evening and I lectured to them on good citizenship, the needs of Alaska and the attitude which they should take toward the national government for its good treatment of them. I got applause all right, after I had overcome the usual prejudice which I have stated to exist. It may be tooting, but I'll bet that I left a trail of changed sentiment toward the National Government from Nome to Cordova.

Nineteenth day; February 7th:

American Creek to Dugan Creek, thirty-eight miles. Left American Creek 6:00 a.m., trails improved; in a few miles it was splendid. The trail is really a snow road where horse sleds and stages use it. It has ceased to be a trail. We stopped at a roadhouse run by a homely little sailor. His food was good though. He told me the name of the place was

Little Beauty, and I told him he should be more modest and not name it after himself. This joke nearly broke up the dinner, for there was a crowd at the table. In the afternoon we passed Hot Springs, an elaborate resort, where a lot of money has been spent in building a hotel, bath houses, etc. There is an agricultural experiment station here, or was. It doesn't look like much of a success, although they raise things because the hot water keeps twenty or thirty acres of ground thawed out. There are rivers of hot water coming out of the ground everywhere and the steam rises in clouds. We stopped at the telegraph station. The telegraph line is splendidly built for miles on each side of this place. We hurried on and made good time on that afternoon. The trail at this place and eastward is first class and we are making good time. We made thirty-eight miles today. The roadhouse at Dugan Creek, which we reached about an hour after dark, and by the way, the days have lengthened until now it isn't dark until after 5:00 p.m. -- is kept by a man and wife. They are nice people and keep a good house. It was ten and fifteen below here tonight. Sullivan Creek near here is quite a mining camp, and they are taking dumps to sluice in the spring. The dogs did well today, but were distracted by the tens of thousands of rabbits whose tracks covered the entire snow for miles in places; only once in a while did we see one jumping between the shrub trees in the timber, and it invariably set the dogs on a run.

Twentieth day; February 8th:

Dugan Creek (Lavin's place) to Tolowana and Minto, thirty-eight miles for the day. Trail good and temperature very mild, being from five to twenty above. Made eighteen miles to Tolovana roadhouse for lunch, kept by a Mr. Vashon and his wife. They also keep a store. They have a negress for cook. This man and his wife are refined people, particularly the wife. I think he is a French Canadian but thoroughly American in his ways. She is a Boston woman. It is said she was a teacher in Dawson years ago when they met and were married. Their entire buildings, roadhouse and store, are new here. Two years ago the place caught fire and burned down completely; two of their children, leaving them but one, were burned to death. The poor lady shows the

severe shock. Prices increase here to \$2.00 for everything, but as we only got lunch and passed on, it did not affect us much. It was worth it, however. We passed on and made twenty more miles over a good trail to a place called Minto, rabbits again in evidence. Minto's place is a fairly good roadhouse, run by a man and his wife.

Twenty-first day; February 9th:

Minto's Place to Fairbanks. This was our longest day's journey and a hard one. We made nearly sixty miles and arrived at Fairbanks at nearly 10:00 p.m., in a dense fog and bitter cold, although it was not so cold during the day. The road was all cut up with wood haulers as we approached Fairbanks, because there was so much mining going on in the vicinity. We were impeded many times by teams ahead of us, and the snow was so deep that we could not turn out, nor could they. The dogs would start on the run under a call of the wild, when we approached horses, even though we couldn't see them the dogs could smell them. We got our noon meal hurriedly at a roadhouse, and in the evening lost our way, roads were so numerous, and we had to retrace our steps for a considerable distance. Finally, we got to the bustling mining camp of Esther, some eighteen miles from Fairbanks, or maybe not more than twelve. I plow-handled the sled a good deal today, and both of us did a good deal of running because the roads were pretty badly cut up in the late afternoon, and the dogs were tired, and besides the road was in many places, for miles impeded by icebergs -- as they called them. In hundreds of places on this trip often where there was not much snow, alongside hills for great distances, water from springs in the sides of the mountain would pour out and freeze, and keep pouring out and freezing until it would complete obliterate the trail, and always resulted in crowding the trail into the trees and bushes and when this occurred while we were going down steep hills, and the brake would not catch in the hard ice, we capsized many times and were often thrown completely over the sled into the snow and brush; and sometimes got badly scratched as well as suffering from the cold. This particular evening, when the dogs came to Esther, they were so delighted at the electric lights that they went down the mountain like a cannon ball in

the dark, and the roads were so cut up that though I put my whole weight on the brake, it made no difference and the ground catching my heels pulled me off the sled and I was thrown violently into a rut on the steep mountain side. Happily, I was not hurt, and the noise was such, that the captain, who was astraddle of the front of the sled, did not notice my absence as he was so intent trying to direct the dogs, until he was a good half a mile away, down in the valley, where he got the dogs stopped. He was a surprised man, and hollered for me, and waited until I came up, and he was glad to learn I was not injured. We went into a saloon in Esther, but stopped for a moment. The streets were crowded with miners and dog teams, and we had a time preventing dog fights. Automobiles run between here and Fairbanks over the snow. I ought to have taken one, but did not desire to desert the captain. We started and went for several hours towards Fairbanks, until we thought we ought to be beyond it. It was a new way, which the captain was not familiar with.

It was so dark that we couldn't see that it was foggy until the electric lights of Fairbanks showed it. At length we stopped, believing we were lost. We finally got to a house and were delighted to learn that we were not half a mile from Fairbanks. Soon we were there, and you couldn't see an electric light at five feet, so dense was the fog. We stopped at the Pioneer Hotel. I got a bath. Gee, what a delight. Next day was Saturday and I attended to a good deal of business officially that our division had with this division. I went to dinner Sunday night at District Attorney Crossley's house. I called on Judge Oldfield. He invited me to dinner, but I had to leave the next morning on the stage and regretfully declined. I learned there was friction between the officials here, but I avoided taking any part in it. Prices at Fairbanks are out of all reason as compared to Nome. Little things that the freight rate should not affect very much, are double price. Cheap cigars sell for twenty-five cents each, drinks the same. They have no coin less than twenty-five cents. I got a hair cut and shave and the bill was \$1.50. I paid the man \$1.75 so he wouldn't notice my shock, and then threw up both my hands; when he asked what I meant, I told him down in my country we always did that when we were held up, because we knew the other man had a gun. I was going to wait three or

four days in Fairbanks so as to just catch a boat at Cordova, but the prices scared me out and I started Monday morning at 6:00 a.m.

My, but it was cold, must have been twenty below when we started, and everything was covered with frozen fog. I sent back most of the borrowed stuff that I did not need, by Captain Pete, to Nome, or at least left them for him to take back. The stage company furnished me a foot warmer and a coonskin coat. The stage officials were nice fellows but the fare is right smart, being \$130.00 for the trip to Chitina, which takes eight days, when it could be made in five without trouble. They only allowed forty pounds of baggage. I think I have seventy-five in my sack, but they were decent and said nothing about it. The stage line is owned by the N.C. Company. I was the only passenger, and as the driver was on the front seat fifteen feet ahead of me, I couldn't talk to him without yelling, and he was half hidden behind the big load of canvas covered freight that he had on. My feet were warm, with the stove arrangement they had for that purpose, but the collar of the coat didn't fit well, and I had an awful time keeping warm.

Twenty-second day; February 10th:

Was spent at Fairbanks.

Twenty-third day; February 11th:

Was Sunday, also spent at Fairbanks.

Twenty-fourth day; February 12th:

We had four horses on the sled stage and made forty miles to Munson's roadhouse. The country was very flat. We stopped at a nice place for luncheon, but the prices were double. The establishment was run by two women. The snow is not deep. The Alaska Range is visible in the southeast. The driver is a decent sort of a fellow. Munson's roadhouse would be a good sort of a hotel in almost any town.

Twenty-fifth day; February 13th:

Munson's to Sullivan's, forty-five miles. In the morning it was twenty degrees below, but moderated to fifteen above. We began to enter what is called the Delta, which is a canal between precipitous mountains; the mountains are two or three thousand feet high on each side and the canal is only a mile or so wide, and it is perfectly flat save for the gradual ascent, which is steep, as you can see by looking back. The river meanders through the brush from side to side of it. I am satisfied that under the earth it is a glacier, or frozen gravel like a glacier. We got to Sullivan early in the evening, and it is a fine place, kept by a man and his wife who were formerly at Nome. The dinner was a banquet, it was so good. There were many guests. I got into an extended argument with a lot of miners here regarding Alaska, and I think I gave a lot of information.

Twenty-sixth day; February 14th:

Sullivan's to Miller's, fifty-six miles, up the Delta -- most of the way. This stage company seems to want to do all its traveling before breakfast, for they routed me out at 3:00 a.m., and we started on the trip before 4:00. I remember it was very cold. We stopped at Donnelly's place for lunch. It was a first class place. In the afternoon we made thirty-two miles to a place in the mountains, where we gave up the big stage sled, and took to single horse "double-ender" horse sleds. They are low, flat sleds, with turn-up runners before and behind. It took seven or eight of them to carry the mail and the load of stuff they had on the stage. There is a driver with the first horse and sled, and one on the rear, but none with the intervening horse and sled. They gave me a horse and sled to myself for me to drive. It was second in the procession. The leader horse pokes along and all the rest follow, so it isn't much trouble driving. It began to snow and it reminded me of the stories I have read of the Alps in my youth. The snow got deep as we went on, and at times we went round some pretty dangerous precipices, and I made my horse hug the upper side pretty closely. A blizzard came on and it looked bad for a while, though it

was not very cold. Finally, we got to Bauman's place, or the Miller Roadhouse, and stopped all night. It is not as good a place as Sullivan's because it is not clean. The prices were just as high though. He had a big Swede girl as cook, and she was a good one. We were routed out early the next morning. My Valentine's Day was a stormy one up this appalling pass of Alaska's backbone through a blizzard.

Twenty-seventh day; February 15th:

We started at 3:00 a.m. We don't get more than about three hours sleep every night on this stage line. The early morning was bitterly cold, it must have been the coldest of the trip, and was probably twenty-five degrees below or colder. It was twenty-five the first time we looked after daylight. We made thirty-three miles and had lunch at a good roadhouse; Paxson's was the place we stayed at for the night. It was a very neat place run by a Mrs. Boker and a partner, a man called Taylor. I received a wire from Mr. Castle at this place, telling that all is quiet at Nome. In this day's run we crossed the divide between the Tanana on the north and the Copper River shed on the south. The summit is mountainous and full of enormous glaciers, which send the water both ways. It is the sight of a lifetime; some of these glaciers are on the top of everything.

Twenty-eight day; February 16th:

Paxson's to Sourdough. We started at 5:00 a.m., made sixteen miles to Myer's place for lunch. It was quite warm, fifteen above most of the day. Got to Sourdough at 4:00 p.m. The roadhouse is run by a Mr. Kronin and his wife, who run it for another man farther down the line. They are nice people. There were a number of other guests, and I delivered another talk or lecture after they got me started. Our course today was over a very high tableland on the south side of the divide, through scrub timber. Behind us are the great Summit Mountains; in front, to the left, are some of the highest mountains, in Alaska, Mount Stanford, more than 16,000 feet; Mount Drum, more than 12,000; and Mount Wrangle, more than 13,000 feet and a volcano. It is active most of the

time, and smoke was issuing as we passed. They are all many miles away. There are dozens of equally high mountains without names, off to the southeast.

Twenty-ninth day; February 17th:

Sourdough to Volcana, or Copper Center. This was a dreary day over the tableland. It was foggy and we only got a glimpse of Mount Sanford, Mount Drum and Mount Wrangle for a few minutes. It was cold when we got to Golcana. It is quite a little town, and is sort of a county seat or recording office, where the records are kept. The roadhouse was a good one, kept by a man and his wife. I found many recent magazines here, and sat up late to read them.

Thirtieth day; February 18th:

Copper Center to Nefstaad's, forty miles. Same sort of a day and trip as on yesterday, through scrub timber, down Copper River. About 3:00 p.m., the fog lifted and we got a sight of the volcano. It doesn't amount to much as a volcano; in fact, all the mountains are so high (as well as the prices) that none of them stand out with much preeminence save Sanford. I found magazines at Nefstaad's, which is a good roadhouse, where we arrived at about 4:00 p.m.

Thirty-first day; February 19th:

Nefstaad's to Chitina (the railroad). Left Nefstaad's at 6:00 a.m. Traveled sixteen miles in fog and scrub timber, with occasional glimpses of the grand scenery in the distance. Temperature ten degrees below to ten above. Arrived at Chitina, a station on the Copper River and Northwestern Railway, at noon. This is the Guggenheim Road that runs sixty miles farther east to their great Bonanza Copper Mine. Chitina is 130 miles from Cordova at the coast. I stopped at the Chitina Hotel, which is a good country, hotel and saloon combined. The town is a nice little railroad town, situated in a pocket in the mountains in the banks of the Copper River; it has mountains on all sides, the one next to the

river being very low with the tunnel through it for the railroad to pass out toward the mine. I took a walk around the town in the afternoon, as the train did not start until the next morning. There are but a few acres of ground on which the town is built, and the mountains run straight up in the air for several thousand feet on three sides. A glacier comes down out of the canyon, and is pushing the nearest houses in toward the town almost. I saw the commissioner and the deputy marshall here, and had many talks with many people in the hotel lobby. At this town I particularly noticed something that pervades all Alaskans, and that is a proclivity which I characterized as a desire to "let Paw do it," which means that Alaskans think that the government of the United States is in duty bound to pay all the bills and do everything on earth that they need to have done for them as a matter of course. I gave them as sensible a talk as I could on the subject of good citizenship, and the beneficence of the National Government toward Alaska and its people. I think I made many friends, as they were all very cordial after that. I think there are many people in Alaska since I passed through on this trip, that have modified their views a little as to the bounden duty of "paw" to do everything.

Thirty-second day; February 20th:

We left Chitina at 7:00 a.m., in a snow storm, on the Copper River and Northwestern Railway, and came down the gorge to the river bank, and skirted along the water of the river the whole day with the cliffs running up thousands of feet above us. The road is cut for miles out of this cliff, and crossed all the lateral canyons that come in. There is an equally precipitous range on the other side of the river. The train consists of an engine and about eight cars of copper ore in sacks, a dining car and a passenger car. The fare is \$15.60. The meals are first class. The railroad is standard gauge, and is one of the best built railroad for such a country imaginable; it is first class in every way. It is said to have cost \$20,000,000, although it is only 190 miles long. I don't believe it cost more than ten million, and that a quarter of it must have been wasted. I could duplicate it with all of its magnificent bridges, I am sure, for less than seven million. I am sure

that a railroad from Cordova to the Yukon over the pass which I came down, could be built inside of twenty million dollars, and I have seen some railroads and know something about their cost.

Four feet of snow fell in the forenoon; that's awful, isn't it? And it's almost true we got stuck in it, and the engine pulled some of the cars off the track in jerking them through the snow; it took many hours to put them back. We were to arrive at Cordova at 2:00 p.m., but we didn't get in til midnight. It was a dreary ride through the deep canal of snow which, in many places, was higher than the cars themselves along these high cliffs. They had to send for a rotary snow plow down the line. It is a marvelous machine. It spat out a stream of snow from the track and the canal which it dug, over into the river forty feet away for miles, as it progressed, and went along at the rate of twenty miles an hour in some places. A blizzard raged all the way. There must be a dozen great bridges built of steel, and some of them must have cost a fortune. They have many great snow-sheds, but will have more. They are built out of very ponderous timber. The whole road is more or less over glaciers in its lower end. Some of the precipices that loom above us as we pass are positively awe-inspiring. We got into Cordova at midnight, and I went to the Windsor Hotel, first going forward to the engine to see the snow plow, which I couldn't get forward to all day, as the snow was too deep; I could only see it work as it went around bends once in a while.

Thirty-third day; February 21st:

I stopped at Cordova all day. It is a nice little town at the head of a bay with sky-scraping precipitous mountains all around; everything is covered with snow, but right at Cordova there isn't much snow. It is booming little town, with about 1,500 people in it perhaps, maybe less. Fairbanks is the biggest place I struck, and is about the size of Nome. The boat came in late in the afternoon, but had to go over to Valdez and Seward. I thought it was well to go with it and see those towns, and do some business for the office, as to stay at Cordova, and loaf and pay hotel bills, the fare to Seattle being the same at the three towns; so at midnight I got on the boat and got located permanently. During the

day, I went all over Cordova, and applied for mail at the post office but there was none, and talked to many people, and disabused the minds of many, I think, of the same sort of ideas I have been talking about that seem to be prevalent here in Alaska.

Thirty-fourth day, February 22nd:

When I awoke in the morning on the boat, I found that I was at a mining camp called Elamore, which is nothing but a mine, but they had a flag up in honor of Washington's Birthday. My, but the scenery was grand and the day smooth. All the mountains on the south coast come straight up out of the sea, apparently, and are appallingly high. It is surely a grand sight. We delivered some freight here, then proceeded up the narrow bay, with its mountain-side fenced, to Fort Liscum, and delivered some freight there, then crossed over to Valdez. I got off here and went up and met some friends in the town, and saw some of the court officials. Several passengers came over from Cordova also. Valdez is situated in a narrow canyon with the bay fronting it, and it has a great, big green glacier in the canyon behind it, like an immense frozen river, which is really what it is. If this glacier should start, it would push Valdez into the sea. The place is on cold storage the year around, yet you ought to hear them talk of their fine climate. It has about a thousand people, I think. In the evening, we started for Seward.

Thirty-fifth day; February 23rd:

Valdez to Seward. We arrived at Seward at 5:00 a.m., after stopping at La Touche, a mining camp, went up town and had breakfast with Mr. Walker, the U.S. Attorney, and others. Seward is the prettiest place of the three, and is a clean, newly built town with the beautiful bay and the same awful mountains all around it. We started back at forenoon toward Valdez again, and got there next morning. The scenery down from Seward on each side of the beautiful, narrow bay is positively grand. After stopping at Valdez a few hours, we proceeded to Cordova again, arriving there Sunday morning, February 25th.

Thirty-sixth day; February 24th:

Enroute Valdez to Cordova.

Thirty-seventh day; February 25th:

All day at Cordova loading copper ore. It is Sunday. I went up town in the morning and again in the afternoon. The boats during the day took on a thousand tons of copper ore from the Bonanza Mine. I examined the ore several times during the day by taking little pieces from the sacks as they were being piled into the slings. Having seen the ore, I believed the statements made by the citizens of Cordova that it would run seventy to eighty percent copper. I never saw any such ore in all my experience. The mine they got that ore from must surely be a bonanza, and no wonder the expensive railroad was built to it. It must be a fortune of fortunes. They recently, as it is said, paid a million dollar dividend, and repeat that one or more times this same year. The immense weight of a thousand tons of ore steadied the Northwestern, and as the sea was smooth, our trip was uneventful to Seattle, where we arrived late in the evening of February the 29th, Leap Year day.

Thirty-eighth day; February 26th:

Enroute Cordova to Seattle.

Thirty-ninth day; February 27th:

Enroute Cordova to Seattle.

Fortieth day; February 28th:

Enroute Cordova to Seattle.

Forty-first day; February 29th:

Enroute Cordova to Seattle, and end of trip.

The foregoing is a brief account, in a relative sense, of one of the most interesting trips a person can make under the United States flag. I spend nearly a hundred dollars, preparing for the trip when I started from Nome even with borrowing as many things as I did. Most of the things I bought are useless, save for such a trip. I had forty dollars left out of the thousand dollars the night I arrived at Seattle. I have made up my account and sent in to the government for \$988 and some cents. It is costly, but on the whole, considering the time and the country, no one made any money out of it. I have not gone into details of the official business matters I attended to during the trip, as it would take too much space, but it was all good work.

I feel that I have done a lot of good in my talks to the people along the way, and the recorded information, as here set down, may be of value to the government, and it certainly will be interesting to me in future years. Getting out from Nome is pleasant to me in the present critical time in our history, both from a national point of view, and because of things that are taking place at home in New Mexico, politically. I am very grateful to the Attorney General and the President for bringing me out, and hope that the work they give me to do will warrant the confidence they are placing in me.

It happened that we had no cold weather during the trip, and that was pleasant. In a relative sense, they have had very little snow in Alaska this season of 1911-12. Anyway, people stay in roadhouses as a usual thing in Alaska, in severe weather, and when one is properly clad for it, I do not regard Arctic mushing as the frightful thing it is said to be. I do not think that all the polar expeditions, save in a few accidental cases, were such terrible experiences as the average person understands them to be. I don't think Amundsen's expedition to the South Pole was a bit harder than a trip from Nome to Point Barrow in winter would be, and I am sure there are women in Nome who could make that trip.

Very truly

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APPENDIX B

A random, unrevised account of a midwinter "Mush" or overland trip from Nome to Cordova, Valdez and Seward, Alaska with his philosophical, economic and political views regarding the great territory, and his journal of the trip, by B.S. Rodey, U.S. District Attorney at Nome.

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On January 12th, 1912, while wintering at Nome, as U.S. District Attorney of the Second Division of Alaska, I received cable instructions from the Attorney General of the United States to proceed to Seattle, Washington, to attend some public business. I immediately proceeded to prepare for the great trip or "Mush." This trip has not been performed or undertaken by to exceed twenty people in the history of the country. It took several days to find a party with a proper dog team and to purchase proper clothing. The distance to Fairbanks up the Yukon from Nome is about 850 miles, and from there down over the Delta Pass to Cordova is somewhere near 400, I think. I doubt if a trip to the North Pole is much different, save as to the amount of supplies and food to be carried, and the necessity of sleeping out every night instead of in roadhouses, of which there is an abundance along the entire route of the trip I made. Happily the commander of the neighboring military post (Fort Davis) on my certifying that the things were for public use, permitted me to purchase what I needed from the army stores there, and which I could not get elsewhere. These military gentlemen also very courteously made it pleasant for me during the trip, by instructing the Signal Corps boys along the trail and the Yukon to look out for the outfit, and gave me letters to those in charge at Fort Gibbon, where the officers treated me royally. I am under obligations to them all, and let me say before I forget it, that the neatness, order and condition, as well as the courtesy of those in charge of the Signal Corps station along the long route, is and was of the very best. True, we lodged at but two places, with the Corps along the route, at "Old Woman" and Fort Gibbon, but we called at nearly every station for messages or to send some, for I attended to a good deal of Alaskan matters on the way, as I ascertained the necessary facts. It makes a man proud of his country, to see the red-blooded, clean-cut young men in charge of these stations,

and to observe the order and neatness of the surroundings in this wild and bleak Arctic region.

Our route lay from Nome due east and north around Golofnin Sound and Bay, and across the portage to Norton Bay, and northeast around the Bay and then across it southeast to Isaac's Point, and then southeast to Unalakleet, thence northeast over the portage and the divide to the mighty Yukon at Kaltag, and thence northeast with the river, for hundreds of miles to Fort Gibbon and the Tanana, and southeast from there to Fairbanks. From the latter point, we proceeded almost directly south to and over the Delta Pass and down the Pacific Divide, via the Copper River to Chitina, where the Copper River and Northwestern Railway (the Guggenheim Road) is reached, and thence on the railroad south and southwest to Cordova, and then by boat to Valdez, Seward and Seattle.

The trip from Nome to Fairbanks occupied twenty days, but might have been made in two days less time had roadhouses been conveniently located, because on four occasions we were obliged to end our journey at about 3:00 p.m., because of the great distance to the next roadhouse, which it was not feasible to make that same day. At Fairbanks, we lost two days waiting for the sled stage going south. I also lost half a day at Chitina waiting for a train, and another half a day, owing to the deep snow on the railroad line. I also lost a full day at Cordova, waiting for the arrival of the boat, and of course, the trip over to Valdez and Seward was also lost time and amounted to four full days. In fact, I took that trip only because the boat fare was the same from Cordova, Valdez or Seward, and making the trip enabled me to see two additional towns of the territory, and attend to some Alaskan business comprehended within my duties, and if I remained at Cordova for the return of the boat, the hotel bill would have been the same as the fare on the boat over and back.

The present 1911-12 winter has been the mildest in the history of Alaska, insofar as the oldest Eskimo residents can remember. We were detained from starting January the 13th to the 20th because of lack of snow, and while places along the line had heavy snow, still there were several stretches of fifty miles or more each, where the sledding was very difficult, as the ground was almost bare. The temperature was mild, ranging from twenty degrees below to twenty degrees above zero,

the larger part of the time it being from ten below to five above. On one or two occasions, it may have been as cold as twenty-five below zero for a few hours, but generally speaking, it was as stated.

I engaged Captain Peter Bernard, an Americanized French Canadian, to make the trip with me. The poor fellow, although he had wired to Seattle before starting, did not get a return passenger from Fairbanks as he had hoped, nor did my efforts from Fairbanks down to the coast succeed in getting him one, and so he had to return home with an empty sled. Owing to the length of the trip and the return, and to the fact that dog feed had increased in price more than a hundred percent, he had left to himself not to exceed \$3.00 per day net for his month's and a half labor of himself and his eleven dog team, when the current rate for such an outfit is at least \$15.00 per day net. The Captain had made the trip from Nome to the coast on four previous occasions, and is a veteran "Musher," and one of the hardiest men in Alaska despite his age of fifty-four years. His "leader" dog, "Jim," having made the trip, counting this one, five times, is therefore, the greatest veteran dog in all Alaska. Four of the other dogs had also made the trip from one to three times, and were also inured to its hardships. Three of the dogs were yearling pups that I had seen grow up during the previous year at Nome around the kennels of the Captain. Their experience previous to this trip consisted of being permitted to follow the team during two or three six-mile practice drives. It was curious for the first few days to watch their antics, but in a short time, they learned to mush with the procession, and soon were equal to any dogs in the team. It was amusing to see how they balked at entering the first timber we came to. They did not know what the trees were and were afraid of them, but the older dogs pulled them in to the entering trail and soon the smell of the rabbits and other animals in the timber brought to them the call of the wild the same as the other dogs. Also, when we came to the first glare ice on the Yukon, the pups braced themselves and protested against entering on it, no doubt thinking it was water, but the leader, Jim, looked at them in disgust and pulled them onto it by main force, and in a moment their scare was over, and they went along the same as the rest. The Captain was forced to permit the pups to remain loose at the roadhouse kennels, because they would keep everybody awake by their

howling, if confined. The mail dog teams had a hard time this winter over this trail, because of the lack of snow and their heavy loads.

A foot of new snow having fallen at Nome and for a considerable distance east of it by the 20th of January, we managed to get started on that date. Hundreds of people came out to see us start, cold though it was, and we were the objects of many Kodak pictures. Unfortunately, my own Kodak and one I borrowed from the soldier boys on the way both proved to be out of order, and hence I am without pictures of the great trip. Both Kodaks were put out of commission by the sled capsizing, which it did dozens of times during the trip. During the trip we started very early each morning, often before 3:00 a.m., so as to get to the end of our day's journey at some reasonable hour in the evening, the Captain needing the time to cook food for and care for and doctor his dogs. The Captain is one of the most humane "mushers" I ever knew, and it was a comfort to be with a man who used so little profanity and took such splendid care of the animals. His wife, who is as much of a "musheress" as he is a "musher," had put among the stores a surgical and medical chest, containing all things required for man and beast in the medical or surgical line. When the weather-beaten hard ice in places, as well as the sand-filled snow in others, wore the hoof pads of the dogs to rawness, the Captain promptly put moccasins on their feet, and when they tore each other in fights, which they often did, he would sit up away into the night to bathe the wound in warm water, put ointment on it, and on several occasions sewed the wound with the needle and thread he had for that purpose. At times just for the exercise of it, I would get out and run at first, for a mile or two, but later, sometimes as much as ten or more miles, while the Captain rode, but as a general thing, the trails were so good, that we both rode, and even this weight with out baggage was not too much for the dogs, who would trot so fast on these good trails that neither of us could keep up on foot. However, as Captain Peter was the "musher" and a veteran at it, and I was the passenger paying the fare, he did most of the running behind and talked continually to his dogs, which, by the way, they seemed to like. The Captain would sometimes run as much as twenty miles on a dog trot behind the sled, when it was as cold as 20 degrees below zero, or 52 degrees of frost. I never did know why the scientists began to measure cold a

second time at zero, because zero is itself 32 degrees of frost, and zero weather is about as miserably cold as the average man wants to experience. On several occasions, at the beginning of the trip, I bought food for the dogs out of my own pocket, just to get the chance to feed it to them and get acquainted with the animals. At times I took part in urging them on for hours at a time and they seemed to delight in the melody of a polka I used to whistle for them, which seemed to harmonize with their tireless wolf-trot in a way that pleased them. When I would stop whistling, they would stop trotting and wistfully glance around, as if asking me to continue. It was interesting at times to see how a pair of the dogs would get vexed at each other and get into such a vicious fight that the Captain would have to separate them with the vigorous persuasion of his blacksnake whip, and time and again, he had to change the teams so as to get the dogs that were vexed at each other separated, until they forgot about the enmity that they held for each other. No matter how dogs in a team may fight, whenever they meet another dog team, they are all friends, and promptly attack the opposing team as a body, and the strange dogs do likewise as to them. In thickly settled sections of the country, teams will pass each other at times without fighting, but when one team meets another out on a lone trail, it usually means that the one with the lightest load goes many yards off the trail to avoid the conflict.

The mail-dog teams are all composed of about twenty dogs each. West of the Yukon they are harnessed in pairs, but on the river, many of them go single file. They are usually heavy, long-haired dogs and their bushy tails wagging in the wind look, at a distance, like a procession of feather dusters. It is not pleasant for the dogs of teams going in opposite directions to get into a fight in the snow, and when it occurs, all hands have to turn out to separate them, and it often happens that one or more of the dogs are seriously wounded, sometimes to the extent of being put out of commission. Every "musher" loves his dogs and Captain "Pete," even though a man of peace, at times forgot himself when the opposing "musher" would abuse his dogs in an effort to separate them, and on several occasions, I had to be as much of a peacemaker between men as the other men were between the dogs. Just a few miles

east of Nome, the Captain and a man who had violently kicked one of his dogs were very near coming to blows.

I suffered a great deal with the cold at first, because I did not know how to keep warm and exposed my face and hands too much to the cold, and did not know how to keep the ice from my face and from the fur surrounding my nostrils and lips. I had a great desire to keep my head out so as to take in the scenery along the might river, but I soon learned that the best way to avoid frostbites in the face was to cover myself completely in the robe every few minutes, until I warmed up. When we passed Solomon, east of Nome, we struck a violent blizzard that lasted for five or six hours, and we made but poor progress. We had a hard time to keep from freezing ourselves, and several of the dogs had their lips and ears frozen, which the Captain had to anoint and doctor that evening. At times we made as low as twenty miles a day and walked most of it in eighteen inches of snow. At other times we made as many as fifty-six miles a day over a splendid trail and in a continuous trot. The Captain had put wooden skis under the steel runners of his sled when we started, because the snow was so soft and deep, but he had to remove them several times when we stopped at the roadhouses at night. This was quite a mechanical task; he had to do this with the varying trails. On a new trail east of Fort Gibbon, which was cut through the shrub timber, there was practically no snow, and the poor dogs had to pull the sled and the baggage over the moss, stumps and bare ground, and both of us had to walk a distance of nearly fifty miles. Several of the lone men "mushers," who are always on the trail moving from camp to camp, kept up with us all day and away into the night without effort. The Captain had reduced his baggage to the minimum and so had I; trunks are out of the question, and a war-bag and a grip, and those of only moderate size, are all that custom allows in a dog team, so that's all we had. I must buy new clothing at Seattle, or wait until my trunk comes out, after the opening of navigation.

There are along the trail a great many more roadhouses than are necessary, or than the traffic warrants, but as there are so many idle men in the country during the long winter, many of them, and especially squaw men, invite travelers to stop at their houses and provide the usual coarse food, dog-feed, dog-kennels and bunks that are not too

clean for the "mushers." This word, "mush" or "musher," is unique and used only on the Yukon as far as I know. It appears to have come down the river after the Klondike strike in '98, and I think, is a corruption or a Yankeeized effort to say "March dont," in French.

It is astonishing the number of what appear to be clear-cut, clean-blooded white men in Alaska, who after being there a few years, hitch up with and marry squaws. There is something about the loneliness of the country that tends to make men degenerate, after being a number of years in Alaska, in this way, if it can be called such. There are as many as a dozen roadhouses on the Yukon between Nome and Fairbanks that are kept by squaw men and their squaws. Nor is the business without competition from another source, for there are a good many Indians and their squaws who keep such houses. This is the reason why we often pass roadhouses without stopping, because they were too numerous, while at other places, such as for instance, when crossing portages, sounds and bays, the distance between roadhouses was more than a good day's journey, and this is what caused us to lose, as we figured it, four half-days. Some of the squaws, to whom these men are married, are very homely, and that's why I was so harsh as to say that the men who married them must have degenerated, while in a few instances, the squaws were all right and handsome and educated. In one instance, a good-looking, clean-cut Canadian fellow was married to a homely squaw that was deaf and dumb. They had two little children, one an infant about four weeks old and the other about three years of age. Two other white men (Norwegians) occupied a wing of the house with them. They were engaged in boat building, trapping and sled-making. We tried to ascertain from the other men how the squaw managed to know when her baby cried, and they told us they could not figure it out, save that she kept eternal watch, and the three year old child would call her attention to the matter when the infant was restless. The missionaries of Alaska have certainly done good work in times past, because all the "Siwashes," which is the colloquialism for all Indians in Alaska, all speak more or less English, and the boy and girls in the towns speak good English, and are not much different from other poor children elsewhere. Nearly every squaw we met and talked to -- and we ran across many of them out snow-shoeing along the wastes -- coming or going to the traps or on

hunting-trips or snaring trips for rabbits or ptarmigan, spoke English fairly well, and gave us such names as Martha MacBeth or Sarah Jones or some French Canadian name which she did not pronounce very well herself, but indicating in every instance that she was the wife of a squaw man, and probably getting meat for the family and the lazy husband. Ptarmigan is the Alaska name for a species of ruffed grouse, of which there are myriads this year in Alaska; they change color with the seasons and are as white as the snow in the winter. We saw tens of thousands of them on the trip. The spruce hen is another species of grouse not so plentiful, of which we saw a few. It does not change color, but looks just like a New England partridge all winter. Rabbits are legion in Alaska this season; there are sections, where for miles in the bushes and in the scrub-timber, the snow is virtually completely tramped flat by them. It was difficult for us in the evenings after dark to keep the dogs to the road. They were so crazy after the rabbits that were darting in and out in all directions. In places the snow was deep, but the sunken trail in it was good, and the dogs having learned by sad experience, that they must stick to the trail or wallow in the snow, simply got excited when the rabbits came out, and at times for miles would run at top speed along the flat trail through the brush and the timber, trying to catch some of the rabbits that were darting to and fro like shadows, and which the dogs could see and smell often when we couldn't. Fish and ptarmigan and rabbits are the principal food of the Indians on the Yukon this winter, and for that matter, of white men also in the remote regions. Reindeer meat, west of Unalakleet on the Seward Peninsula, is plentiful this year, and the reindeer steaks we ate in the roadhouses in that section were savory and delicious. Alaska will yet, and that soon, raise vast herds of reindeer and ship the meat to the states in cold storage. There is moss enough in Alaska, on which these animals feed, to raise enough meat of this kind, and it is first-class meat, to supply the whole United States. This year it has been ascertained that the herd is infected some little with tape-worm and inspection has to be had when it is butchered. Doctor Neuman at Nome has been commissioned to inspect it there, and is doing good work. Since coming to Seattle, I have consulted with some of the officers of the National Bureau of Animal Industry, with a view to securing some

experts to be sent in there after the opening of navigation, to study the disease and find a way to eradicate it. The officials are interested and I think it will be done. The meat on the Seward Peninsula this winter is largely used instead of the cold storage meat, and that concern is not enjoying its usual monopoly with its consequent high prices. I confidently predict that the raising of reindeer will surpass all other industries in Alaska, save that of mining. The animals hardly need even to be herded, and need to live and fatten nothing but arctic moss of which there is an inexhaustible supply.

I mentioned the efforts of the Siwashes to compete for the roadhouse business. Captain Pete pointed out a house, which we did not stop at, where a Siwash lived in the woods with his squaw and family, and stated that a year or two ago when he passed this same place, this Indian had a sign crudely painted on a big board, posted at the trail half a mile out on the Yukon ice at his house. The sign read, "White man roadhouse plenty far away, you stop here four bits." I guess he failed in the competition because he had no sign in front of his house this year, and notwithstanding the evident competition, because of the numerous places to stop, they must be in a trust, because the prices at times for supper, bed and breakfast, was as much as \$6.00

A curious thing, I noticed at various places along the banks of the Yukon, is the unique graveyards of the natives. Every place where we saw a graveyard -- and there were many of them in the hundreds of miles we traveled -- the graves consisted of unique, vividly painted, wooden houses, boxes or cabinets. They were always surmounted by a long, smooth flag pole with an American flag waving in the breeze above them. I had seen the American flag in some of our new possessions and in other possessions not so new used to designate different things, as, for instance, saloons, etc., but Alaska is the first instance where I saw it used to designate a graveyard. I did not learn that the people buried there were other than Siwashes. The custom appears to be universal up and down the Yukon, and the graveyards are invariably situated on some high bluff just on the riverbank.

In a cold country, such as Alaska is, one learns a good many peculiarities resulting from frost. When I started on the trip, I expected to keep a daily journal or a log, and I expected to write it at

evenings at the roadhouses. For this purpose, I brought along a supply of paper and carbon sheets, but I found that the carbon would freeze in the cold weather and would not transcribe through with the hard pencil or stylus, and so I had to keep my notes, making only a single copy with the pencil, from which the journal at the end of this account of the trip is made up. In addition to this, finding water to drink is practically out of the question, and you cannot carry it with you because it would be solid ice. The dogs supply their thirst by biting the snow as they pass along. Only in a few instances on the Yukon did we find open water, where the water happened to be extremely swift, and the open space was never more than a few feet. You could notice the steam or vapor rising from such places miles before you arrived there. In the vicinity of the Hot Springs, east of Fort Gibbon, the cloud of vapor that arises can be seen for miles around.

I am not at all impressed with the timber of Alaska. I am not very far out of the way when I make the broad statement that the timber of Alaska is nothing but a vast expanse of tent-wattles or poles that set flat on the ground and grow as thick as grass to a height of about twenty-five feet or less on the average. It consists of scrub spruce, aspen, cottonwood, white birch and willow. I understand there is some better timber, such as tamarack and cedar, in other places in Alaska, such as the Susitna Valley and southeastern Alaska, but I saw none of it. I did see considerable stretches of scrub spruce, much of which would measure twelve to twenty-four inches at the stump, but full of knots and branches and usually not very tall, and most of it less than this dimension rather than above it. I also saw vast stretches of very tall aspen or poplar and white birch timber, measuring six to eight inches at the stump, and maybe a little bigger, but I saw no timber really fit to be called timber at all. The country has no soil, and is frozen so solid that all these tent-pole trees do not send down tap-roots into this frozen ground, but send out thin roots flat on the ground into the three or four inches of so-called soil such as it is. In fact, wherever a hurricane strikes it, in the summer time, whenever a few inches of the surface is thawed, acres of this tent-pole timber in a place will be knocked down and the wind-fall roots, with the earth in them, look like a field of candle-sticks. However, this being all the

timber there is for fuel purposes, the careless miners and trappers have set fire to it and there are miles and miles of it burnt to a crisp, and dry with the bark peeling off, which the few settlers or inhabitants are in places cutting for fuel. I saw so many log houses of considerable size that I know there must be places and canyons where quite long sticks of spruce, birch and poplar timber can be obtained, that is quite tall, and from six to twelve inches in diameter, but I am speaking of the rule as to timber, and it is my opinion that 95% or more of the so-called timber of Alaska is not fit even to make wood-pulp out of. I am told that there are few places in Alaska where there is some soil, but I did not see any in the twelve hundred miles which I rushed over, and I saw the banks of the Yukon for hundreds of miles, and paid particular attention for this purpose. There is moss, "nigger-heads," and muck, or poor turf, and Jurassic and other clay and sand and gravel, but there is no soil worth the name.

I interviewed every roadhouse man I met and many others, and the deductions I have drawn from the information I have received are that Alaska as to most of its surface, certainly inland, is not and never will be an agricultural country even to a reasonably limited extent. True, vast quantities of hay can be raised and cut, and while green it is fairly nutritious, but after it ripens and dries in the late fall and summer, it is worthless as fodder and stock starves on it. Every bit of hay used in Fairbanks is brought up the Yukon in boats from the states. All the hay used by the stage company for its large herd of stock from Chitina to Fairbanks is brought from the states. True they turn out their stock to graze in the Delta Pass in the summer, but they cut none of the hay for use in the winter for the reasons stated.

Potatoes of a good quality can be and are raised in a good many places inland, but extreme care has to be taken and the crop has to be planted on the south side of a dry hill, so as to get the sun, and several men, who have raised a crop, have had to water them by hand on the banks of the Yukon and Tanana. At the Hot Springs, between Fort Gibbons and Fairbanks, there is some little effort made at farming, but this is in thawed ground, where for ages the hot water has kept the little ground in that vicinity thawed, and has been making soil.

I have ascertained also that splendid cabbages can be raised inland, and lettuce, radishes, and turnips can also be raised but all the land has to be so manured, that virtually the soil has to be created to raise the stuff in. I met several men who also raised oats, but not a single man would say that it has ripened, and they all concur in saying that the season is too short, even where it can be raised, and that it must be cut green as fodder, for which purpose it is first-class. Wheat, barley and such crops appear to be entirely out of the question. I saw several places where hard effort had been made to raise some sickly crops, but in every instance, it appeared to be a disastrous failure. You will have to show me, as I am from Missouri after what I have seen in Alaska, regarding its agricultural possibilities. I do not mean to say that they cannot raise anything, but that is so nearly the fact, and water transportation being relatively so cheap in the short summers, I do not see how farming can ever prosper in competition with the produce from the northwestern corner of the United States proper. I am not speaking in any pessimistic spirit; I am just voicing my common sense judgment, if I have any. Having spent a year and a half at Nome on the Seward Peninsula, I have seen the country in summer, if one can call the month or two when they have no snow by the name of summer. The climate varies a good deal. I arrived there on August the 10th, 1910, and the remainder of that summer until freeze-up in the middle of September, or about the first of October, I know there was not a single day of pleasant weather. It was misty, cloudy, damp, slushy, rainy, sleety or windy the entire portion of the summer and fall of that year, at least in that section of Alaska. Then the winter came on very early, and an immense quantity of snow fell during the early months of the freeze-up. I do not exaggerate when I say that the snow in the town of Nome was so deep that it left in many places but a few feet of the telegraph poles above its surface, and the piles of snow in the street often hid and sometimes completely buried one-story houses.

Unless you have a made road in Alaska, you cannot get around in what they call the summer season very well with horses or wagons, at least in most of the summers. The coastal plains and even the mountain side of the Seward Peninsula are covered with tundra or "nigger-heads,"

and this is underlaid with from one to ten feet of muck and what I would call attenuated peat or turf. A "nigger-head" surface is the most miserable walking or diving imaginable -- it is just impossible. The freeze-up, which begins often before the first of October, is the time when the people can get around because you can go in any direction everything begin frozen. This, of course, is the rule after Christmas to about the middle of April. The snow lasts, when they have it, from about the fore part of October until the middle of June. The first boat into Nome in 1911 was the Corwin, and she arrived on the 8th day of June but could not land and had to anchor five miles from the shore in the ice. At this time there were patches of snow still on the foothills north of town, and the coastal plain still had plenty of snow, while the high ranges inland were still white. Then, strange to say, the rest of the summer of 1911 was real sunshiny weather, and very dry, the miners complaining of a scarcity of water.

A dry summer for a month or two, such as they had in Alaska in 1911, when the grass and the flowers grow plentifully, and because of the long days in that high latitude, induces people from the states living there to praise the country and its climate. There is no question but what Alaska is a very healthful climate if one is properly clad and stays indoors during the time of extreme cold. The children and women that one meets are the picture of health, the severe cold making their blood circulate and inducing rosy cheeks. If the weather happens to be reasonably free from blizzards, which it usually is, in the latter half of March and all of April and May, the long sunshiny days, with the hard snow underfoot, induces the people to praise the country and its climate, but they always do it in furs or overcoat, if they are on the street. It is pleasant to a person from middle latitudes to experience a day of sunshine of from twenty-one to twenty-three hours in length. The sun rises in the northeast and skims around and hardly sets at all, save for half an hour to an hour or so, and then it appears only to go behind a mountain in the northwest. I have gone to my room at 11:30 p.m. and read the newspaper by daylight. There seems to be a whole day remaining to you after you get your supper. I attended a baseball game that began at 10:00 p.m., and lasted until dark at nearly 1:00 a.m. This was about the 10th of June, 1911.

Of course, you have the opposite experience in December, when if it is cloudy, there is no daylight at all during the twenty-four hours, and at best, there is but thirty or forty-five minutes of it at midday. In the winter of 1910-11 at Nome, the snow was so deep that in spite of all that could be shoveled and scraped away, it was shoulder high when packed hard in the streets. I say shoulder high because the sidewalks in front of the stores were canals or ditches in the hard snow, as people walked along the sidewalk, the sleighs and dog-teams on the street were running along at an elevation equal to their shoulder and heads, and every store had an ice stairway cut from the street down to the sidewalk in front of it.

Per contra the winter of 1911-12, at least up to January 20th when I left there, and in fact, the whole of Alaska suffered from a dearth of snow. I had to wait eight days in January before snow enough fell to enable us to start on our long trip, and as stated, while I encountered fifty-mile patches of almost bare ground, still at other places the snow was deep in February. Something the average man does not notice in lower latitudes is that snow in soft weather falls often in quite large flakes. In Alaska when it is cold and the wind is blowing, the snow is a granulated snow like fine sago, and is very unpleasant when it strikes you in the face. This sort of snow packs hard when it falls, and as a consequence, in extremely cold weather, sledding and skiing are comparatively easy. After a long spell of extremely cold weather, which often occurs, when the temperature ranges from ten to sixty degrees below zero, the snow itself appears to freeze, even without any rain, sleet, thaw, or moisture of that sort, being apparent. This results in the best sort of trail. Many times, however, immense quantities of snow -- sometimes as much as four feet -- will fall in a few hours or in the night, and if it is blizzardy, it buries everything in sight, and it takes days before people get around or trails or roads are again opened.

While the town of Nome and other towns in Alaska are delightful places socially, and the inhabitants become like a ship's company during the eight months of winter, still it is a severe deprivation to a civilized man to be without possibility of getting out of the country for such a long period. From the close of navigation, about the first of November, there is sometimes a month and a month and a half when the

people receive no mail until it comes in overland by a dog sled. The same is true after the Yukon breaks up at the end of March, and no mail is received on the Seward Peninsula or inland in Alaska until the opening of navigation from the middle of June til the Fourth of July. The land lines and the cables which they now have, even though the news received is meager, relieves the situation a little. Now, of course, there is a considerable section of Alaska along the south coast, at Seward, Valdez, Cordova, Sitka, Juneau, Douglas and other places where they have boat communication the year around with the states continually, and the people do not, of course, in those places suffer from a dearth of news.

The terrible winter of the Seward Peninsula has its interesting features. Nome has more secret societies to the acre than any place in America, and every one gives about three entertainments in the winter, so the people have no time to go insane from the solitude like the miners do in the hills. A unique feature is to see the mothers pushing their babies in the sleds all over the town when they chance to have a fine day, but everybody is wrapped in furs, and it not infrequently happens, in spite of the extreme care of the mothers, that the baby's nose or ears get frost-bitten. While an extremely cold climate has its pleasant features, to a man from the tropics and New Mexico as I was, praise of a climate expressed by a person in an overcoat and heavy underclothing and moccasins or rubber boots does not receive the weight the praiser expects it to receive. Of course, there are places where streams have run for ages, where the ground in Alaska is thawed, but outside of such places, which is more than nine-tenths of the entire surface of the country, the ground is frozen so deep that man has never dug or drilled through it. The surface of the ground on side hills and on the coastal plains and in the valleys thaws out down three or four feet during the long hot summer days when they have a dry season, and vegetation often very luxuriant grows in this thawed surface, but it still [is] solid ice below a depth of four feet or so. In the mining operations four or five feet of surface is sometimes washed off for acres. It is usually peat or muck under the tundra, and often there is twenty or thirty feet of an iceberg of solid glare ice underlying it

above the gravel. Having seen these things makes me say that Alaska is not and cannot be an agricultural country in the true sense.

I do not believe there is a single white man in Alaska who can truthfully, without being self-hypnotized, put his hand on his heart and say that Alaska is his permanent home, and that he intends to stay there forever, or as long as he lives, and would not get out if he should happen to make a stake. I am strictly from Missouri on this proposition, and it is my opinion that even a squaw man would leave the country, if they made a stake, and either desert the squaw or take her with him. I know that to some extent this feeling that all the people surely have of wanting to make a stake and leave will grow less as time passes, but it has not begun to grow less yet.

On the other hand, while it is miserable to have to live there, still the extreme cold of Alaska and the "July-August and winter" seasons as to its actual endurableness, is greatly exaggerated by writers. There is a certain comfort in a warm cabin in an extremely cold climate, and when one is well clad, travel in twenty degrees below zero, or even in fifty below, is not such a misery as it is painted. I have known women in Alaska to travel with a dog sled hundreds of miles -- white women, I mean -- such a feat is no feat at all for a squaw; she snow-shoes five or ten miles a day looking after traps and snares on the Yukon. I make the assertion that if there should be a bonanza gold discovery at the North Pole, that a stampede would take place from Nome and vicinity to it, and inside of ninety days the number of men and women who would be in the new camp would make the exploits of Cook, Peary, Shackleton and Amundsen look like thirty cents.

Summer travel in Alaska will for many years be via railroads and rivers; no great amount of overland travel on the surface is possible; there is too much tundra, muck, creeks, sloughs and bogs.

After giving it considerable thought, I have made up my mind that the crowd of men that hibernate in Alaska year after year do so largely because they are independent characters, and also because it is in a sense a lazy place to get along in. Hundreds upon hundreds of them work hard during the summer at \$5.00 a day and board, or perhaps shovel in and sluice gold out of their own mining claims, and make a few hundred dollars. If they make more than that, they go outside for the fall.

With the money they thus save they buy a few tons of coal, a couple of hundred dollars worth of grub, and renew their rough clothing and thus live in a cabin all winter in more or less laziness and semi-filth, cooking for themselves and going to bed and getting up when they please like hermits, and spending a considerable portion of their time and playing cards in the saloons, clubs or other places, and in attending the meetings, parties and dances of the secret societies and in going to church. It is not extravagant to say that the churches of all denominations in Alaska have a larger attendance than that of any other equal population under the flag. Let me not be understood as saying anything against these men who hibernate in this way -- they are not degenerates; they are first-class people, and indulge in more reading through the long winter nights than people do in the states proper, and are usually well informed, even though not always well educated. In such communities, if the peace officers and other officials are of the proper make-up, things go well and crime is reduced to the minimum, while if the opposite is true, crimination, recrimination, gossip and turmoil is the rule rather than the exception. Thousands of men own placer mining claims in Alaska that will merely pay a little more than wages for the working. These men work their claims in the short summer season, sometimes alone and sometimes with hired help, and leave at the close of navigation with their little pokes of gold-dust, for the states, where they stay during the long winter, and crowd back on the first boats on the summer to renew the operation.

ANIMALS

Save as stated we saw no animals during the trip, that is rabbits, but ptarmigan and Spruce hens were numerous. We saw mink the Indians caught. We also saw many fox tracks, and weasel tracks, but we saw neither animals or tracks of caribou, bear, moose, wolf or wolverines, although it is well known that those animals are numerous in other sections. We saw crows or ravens or Jack Daws whichever they were, probably ravens, wintering north of 65° N. Lat. Gulls, divers and other aquatic birds are plentiful down on the open sea on the south coast.

STATEMENT

The arguments I used when talking with the Alaskans was along these lines:

That there are only between 23,000 and 25,000 people in the whole vast territory during the winter.

That the government is paying out and has paid out for two generations vast sums of money annually out of the national treasury to pay their bills. That this sum varies from something less than two millions of dollars a year to more than three millions. That these payments including the purchase price of the district in 1867 and since, would foot up probably more than one hundred and fifty millions.

That the people pay no tax at all, save what they pay in towns to themselves. That all licenses they pay comes back to them, and that the government of the United States has never made a cent out of Alaska. That all the gold, copper, fish and fur that comes out of it, comes out as private property without tax. That to argue that such things go to the country, is no more true than that the crops in the states go to the national government, etc.

I pointed out to them, that the National Government, pays practically every public bill in Alaska. It pays the salaries of their representative in Congress, their governor, their four judges, U.S. attorneys, marshals and all their clerks, assistants and deputies, and all jurors and mileages. That it sends their mail to them in steamboats and dog sleds at a cost that would run a whole state government in some of the smaller states. That it keeps lighthouses on their coasts, life saving stations, quarantine forces, land office forces, and that in fact, one-third of the whole population nearly is made up of public officials and those depending on them. All paid by the government. That it takes care of the insane and the Indians, and spends a fortune annually in educating the natives, etc., etc. Oh, I went into it in detail.

I pointed out, that in my opinion, there is nothing at all the matter with Alaska, that it is the petted child of the nation, and that they did not know when they were well treated, and that as patriotic

citizens they should praise the government instead of complaining of it as many of them were doing, etc.

I showed them my mining bill, now pending before the House of Representatives. How it amended the mining laws, so as to abolish the "Hatchet and Pencil man," and make prospectors work their claims or give them up, and cured every defect in the existing system, etc.

Most of them agreed with me, that if the mining laws are amended, and the coal turned loose on a leasing system throwing it open in small tracts, the Tidewater Yukon railroad built, and the codes amended in a few particulars the territory will have had everything done for it that needs to be done, except for the government to continue paying the bills as heretofore.

I believe my talks did a lot of good.

On the other hand I pointed out the good things about Alaska. What a healthy lot of people were in it, what untold mineral resources it had. What fortunes in gold, copper, tin, silver and other metals it would yet produce, and how its coal supply would fill Pacific markets. How the opening up of the country, when transportation, mining laws and other matters were settled would take place, and pointed out the beneficence of the National Government in making opportunity so free to them all.

I believe there is no other country on earth that permits its citizens to take all the gold he can find for himself without tax.

Alaska will always be a great market for the products of the rest of the country. It is proportionately the greatest under the flag now. Its 25,000 white people, with what the Indians count for, and the mining machinery sent in, must represent a market for the products of the country of about at least a thousand dollars per capita, or \$25,000,000 per annum. Some market! That is what makes the big transportation companies and commercial companies go after it so hard, and induces them to as it is said get up fake stampedes after fake new discoveries. Several are on foot now.

While I am inherently a believer in selfgovernment, I do not think Alaska has any need for any other government than it now has under present conditions, and until its population becomes more permanent. It has the best sort of government right now. Its officials are as a whole

a first class lot of men, and the system is being improved continually. It may be that Alaska is over-officered, and that the government costs a good deal more than it ought to, but the Alaskans do not pay the bills.

Probably the Revenue Cutter service, and the Signal Corp service with the ships, marines, and small standing army maintained must cost as much as the entire government of a western state.

The great rich district is a splendid possession, and when Congress enacts proper laws to so arrange things that its resources will be made to sustain it, it will move forward as never before. In fifty years the U.S. will have 175 million of people or more, and by that time transportation facilities all over the world will have been so improved, that people won't have to live in Alaska, they can go there to do business as they desire. Of course, it will increase in population vastly, but in the future as in the past, human beings, as civilization advances will not live permanently in great numbers north of 58° N. Lat. Norway and Sweden were known before the Aryans moved west, but it has yet less than nine million souls, while little England because of its better climate has over forty million. Siberia's population is on its south line. Labrador is still without a population, and Canada although discovered and settled coequal with Jamestown, still has less than eight million of people in it, and those are largely on its south border. Man will go, and for that matter women will go, anywhere after gold but if it is north of 58° the civilized portion of them will return to a warmer climate when they get the gold.

Before man knew how to combat plagues and fevers, the civilized portion of him lived in temperate zones. Greece is in 37° North. Recently your Uncle Samuel has demonstrated that crude oil eliminates the mosquito and yellow fever, and that rat poison obliterates the plague, and that hence the tropics are about as healthy as anywhere else. Our government has kept plague and yellow fever out of Puerto Rico and Panama for more than ten years. People are not afraid to live in the tropics when it is properly sanitized, then with the coming transportation facilities, such as 100 knot ships, speedy cheap automobiles on good roads and flying machines that will be safe and handy come into use, as they will, mankind will migrate like the birds. He won't have to live in the Arctic, and he won't do it.

I don't permit any fool desire to please people to smother my common sense or my judgment about Alaska or the Arctic. I greatly admire Alaska's people, and am optimistic as to the mineral resources of the country and know it will progress, but I really think that all white men are there to make a stake.

Source:

File 156715

Department of Justice Files

R.G. 60, N.A.

APPENDIX C

Report of a trip made with dog team by Charles E. Bunnell, U.S. District Judge for the Fourth Judicial Division, Territory of Alaska, and E. Coke Hill, Assistant District Attorney, from Fairbanks, Alaska, via Tanana, Ruby, Ophir, Iditarod, Flat, mouth of Crooked Creek, Napaimute and Akiak to Bethel, and return to Flat via Akiak, Ohagamute, Paimute and Holy Cross. Travel period, April 5 to May 9, 1921. Distance traveled, 949 miles.

PART I GENERAL CONDITIONS

From the first week in April until the opening of navigation travel in interior Alaska is attended with much uncertainty and often with considerable danger. This period generally lasts about a month, though occasionally the rivers are not free from ice until the 20th of May. The winter trail, about two feet lower than the snow on either side, is hard and solid and affords excellent sledding during the winter months but as the sun climbs higher and the days lengthen it rapidly changes. The snow on the sides settles and melts and finally becomes so porous that to step off the side of the trail means going down waist deep to solid ground or ice. The trail which has been packed by travel neither settles nor melts so fast and soon it is found to be from one to three feet higher than the snow on the sides. It does not remain level as in the winter but tips badly as it yields to the sun's heat and may even be found standing at an angle of forty-five degrees in places shaded on one side.

Such changes take place rapidly. The melting snow is becoming water very fast. Where there is no chance for the water to drain off as on lakes or rivers the unmelted snow acts much like a sponge and reduces the trail from safe to treacherous and unsecure footing. At this season of the year all rivers and lakes are dangerous especially where creeks and sloughs empty into them. Often it is necessary to break new trail through the deep snow around lakes or marshes fed by warm springs and around rapids in rivers and creeks where the ice is melting underneath as well as above. Overflow on both rivers and lakes are beginning to appear for the water channels are unable to carry off the extra supply

and the quantity of water is not sufficient to raise the anchor ice. On the land the dangerous feature disappears, but not the difficulties of travel. Great stretches of hill-side are bare: the tundra is divided into patches of snow and patches of reindeer moss or grass: going down and climbing up the banks of rivers and creeks is through mud and gravel: stumps and brush well covered during the winter are found to be sticking through the snow just far enough to foul the tow-line or catch the sled.

Most of the traveling must be done either late at night or in the early morning. Darkness interferes only between 10:00 p.m. and 2:00 a.m. Until the trail begins to go too fast a good day's run can be made by pulling out at 3:00 a.m. and driving until 7:00 p.m. with a couple of hours off in the middle of the day. But when the trail becomes so soft that the dogs break through travel between 10:00 a.m. and 8:00 p.m. is practically out of the question. All through the month of April the "musher" can depend upon clear, cold nights, and clear, warm days with an occasional one that is really hot. The reasons for night and early morning travel are apparent. The freezing trail can be traveled over without breaking through. The dogs travel much better when it is cold. One is also able to avoid part of the unrelenting reflected glare and heat of the sun which, but for colored glasses or shades, soon blinds and either tans to a deep copper or burns and blisters almost beyond recognition.

Both Mr. Hill and myself, each with an experience in Alaska of over twenty years, believed we could safely make the trip from Fairbanks to Bethel and return to Flat before the break-up even though we did not leave Fairbanks until April 5. We believed we understood the conditions generally and knew how to make such a trip in safety. We did not plan to accomplish the impossible but did plan to take advantage of all reasonable means at our command to keep going until we had finished our trip as planned.

DOGS AND EQUIPMENT

Naturally the first consideration in making a thousand mile hurry-up trip in the interior of Alaska is dogs. With them such a trip is possible. Without them it is impossible. We used thirteen dogs, a team and a half really. All, however, had been driven together before and worked well as a team. They were mostly of the "husky" type. Three had a strain of English stag hound and one was a quarter-breed wolf. For the first two hundred forty miles we used a rather heavy basket-sled twelve feet in length and twenty-two inches in width with wooden skis on the runners. Skis are better than iron in very cold weather and have an advantage in soft snow on account of being wider but they do not slip so well as iron on melting snow. This style of sled was equipped with the perpendicular bow at the rear of the sled instead of handle bars and had runners projecting two feet in the rear on which the driver stands. For the balance of the trip we used a lighter sled of similar construction but with handle bars instead of a bow and iron shoes without the wooden skis. The weight when loaded was about seven hundred pounds.

The dogs were harnessed and hitched to the sled in the following manner: with the exception of the collar, which was of leather with an inside padding, the harness of each dog was of webbing so arranged that a single tug from the tow-line snapped into a ring fastened to the harness just over the dog's hips. The tow-line was in sections, a section for two dogs, one working on either side. The leader was hitched to the end of the tow-line with a single tug. With the exception of the leader each dog was also hitched to the tow-line with a short line snapped to his tie collar. This style of harnessing and hitching is found to prevent tangling to any great extent, gives the dog an even pull and affords great freedom of action. The tow-line made of $\frac{3}{4}$ inches and $\frac{1}{2}$ inch rope was fastened to a heavy coil spring attached to the center of the sled well under the front. The load consisting of our baggage and supplies together with one hundred and fifty pounds of dried fish and tallow for the dogs was lashed and tied in the sled canvas. For ease in handling the sled at least 75% of the load must be on the rear half of the sled. The sled canvas must be of fairly heavy material completely covering the bottom of the sled with

plenty extra to pull up inside the rail and basket-work over the load and fold to at least a double thickness on top. It should be longer than the sled so that the front can be doubled and folded back to the middle of the load. A piece of canvas fitting the inside of the basket-work at the rear of the sled and long enough to bring forward a couple of feet over the back of the load is sewed to the bottom of the sled canvas and to its rear side ends. The canvas is tied to the bottom of the sled, to the rails and to the basket-work. Such a canvas protects the entire load both from rain and from water in over-flows. If deep water is encountered the whole load will float. A crossing of water so deep that the dogs all have to swim can be made safely with no damage to the load and oftentimes without the necessity of the driver leaving his position at the rear of the sled.

Ample provision must be made to taking care of the dogs' feet and our equipment contained several hundred dog moccasins. At this season of the year the freezing of the thawing snow and ice on the trail produces a footing covered with crystal and needle ice. It cuts away the soles of a dog's feet very fast and, unless his feet are well protected, in a few days he is perfectly useless. Of the different kinds of dog moccasins with which I am familiar I favor the kind largely used by us on this trip. We bought a quantity of canvas, a little heavier than the common drilling and had it sewed on a sewing machine into long tubes about three inches in diameter. These we cut off into fourteen inch lengths. One is put on by pulling it on like a stocking half its length and folding the remaining half back under the dog's foot and tying both portions with a rather wide cloth string. Such a moccasin is easily put on and when the three thicknesses under the dog's foot are worn through the moccasin can be reversed and is good for as much more wear. Any style of moccasin is hard on a dog's feet. No matter how carefully the tying is done the moccasin works down and the dog's feet are bound to get tender and sore. The moccasins must be taken off at night and put on again in the morning. Like a pack on one's back there is nothing about a moccasin that is satisfactory to the dog or to his driver.

Driving a dog team in the spring of the year with a good load over trail such as I have described has none of the sensational or thrilling

features flashed on the screen to educate the people about traveling with dogs in the North. Thirteen dogs possess a lot of pulling power and can lug a load over bad trail faster than any other kind of animal power. The great difficulty is keeping the sled on the trail. If that can be done the dogs will do the rest. The driver may or may not use a "Gee" pole, which is a pole about six feet long fastened to the front part of the right runner of the sled and extending forward and upward to a point where the end of it can be grasped easily by one standing up. If the driver is guiding the sled with a "Gee" pole he walks just behind the dogs and straddles the tow-line. Some drivers handle a sled very skillfully by standing on a short toboggan which is fastened to the tow-line and from such a position guide it with a "Gee" pole. The most experienced drivers now use the following method of handling a loaded sled on bad trail: the driver sits on the front of the sled with his feet straddles the tow-line. He wears a pair of short skis about six feet long and by holding to the sides of the sled he puts such weight on the right ski as is necessary to throw the front of the sled to the left or vice versa. If his sled is also equipped with a "Gee" pole he can come to a standing position on his skis and guide it with the "Gee" pole. If handling the sled alone and using skis or "Gee" pole, or both, the driver carries a chain roughlock which he drops when going downhill. This avoids the necessity of leaving the front of the sled and going to the rear to use the foot brake. If two are traveling together handling the sled is much easier for the extra man takes the driver's position on the rear of the sled, handles the brake and shifts his weight from one side to the other to assist in guiding the sled. We used this method in handling our sled and it is a decided success. Any other method on bad trail is a case of "off the trail" first on one side, then on the other.

In this section of Alaska there is generally but little difficulty in getting plenty of dried fish, salmon, for the dogs. It is excellent feed, is light in weight and if fed together with a small amount of tallow or bacon is quite sufficient. We carried enough most of the time for four or five extra feeds so that we could meet any ordinary emergency. The dogs are fed once each day only, after the day's work is done. To feed a dog and put him right to work is out of the question. He becomes sick and vomits. He works well on an empty stomach. When he

has had a good feed he lies down and goes to sleep. The team should be given water to drink and not required to eat snow as a substitute.

TRAIL CLOTHES

Dressing for a trip at this season of the year is very simple. Heavy furs are not needed, in fact, are seldom needed except by a passenger who in cold weather requires extra warm clothing. I wore medium weight woolen underwear, a woolen shirt and an army style woolen coat and trousers, also of medium weight. For the night and early morning travel I wore a fur cap and moose hide mitts gauntlet style. Of course I wore the indispensable kahki parka with a fringe of fur on the hood. The hood was seldom pulled up over my cap. When the sun was up I used a light weight woolen cap and thin gloves. The most important part of one's dress is his foot gear. A pair of good weight woolen socks over which is worn a pair of warm felt slippers and over all a pair of good water mukluks padded with dry grass in the feet furnishes the best protection of the feet at this season of the year. King Island mukluks are the best. They are very light in weight and must be kept well oiled, with seal oil preferably. It is necessary to have extra socks and slippers available. It is also advisable to have dry grass handy for one frequently gets in over the tops of his mukluks and a change is necessary for comfort. The water mukluks pull about ten inches above the knees. Snow glasses, or a shade for the eyes, are necessary and must be worn when the sun shines brightly. Most experienced travelers in Alaska use the brown colored glass with side protection. I consider them the best and would not think of starting out without an extra pair.

OTHER THINGS

On this trip we had fairly good roadhouse accommodations most of the way. We carried with us some provision and each had a twelve pound eider-down kahki covered quilt seven feet by eight feet. We did not plan to camp out but one must be prepared to do so if the occasion

arises. We had to sleep out only one night through at several places we had to use our own bedding. One may get along and forget to take some things but don't forget the AX or the SNOWSHOES and if you do, go back and get them. At this season of the year the small snowshoes commonly called trailers about three feet in length are large enough. I used the Cook Inlet shoe six feet in length.

DAY BY DAY

We left Fairbanks the morning of April 5 and went on the train to Dunbars, a distance of forty miles. That afternoon we started with the dogs. The following is our trail record:

April 5	Dunbars to Campbell's Roadhouse	17 miles
6	Campbell's Roadhouse to Tolovana	20 miles
7	Tolovana to Clow's Roadhouse	34 miles
8	Clow's Roadhouse to McMullen's Roadhouse	36 miles
9	McMullen's Roadhouse to Maggie Smoke's R.H.	44 miles
10	Maggie Smoke's R.H. to Horner's Hot Springs	65 miles
11	Horner's Hot Springs to Ruby	24 miles
12	At Ruby attending to official business	
13	Ruby to Long City	29 miles
14	Long City to Lone Mountain Jim's	52 miles
15	Lone Mountain Jim's to Cripple	26 miles
16	Cripple to Ophir	45 miles
17	Ophir to Schermeyer's Roadhouse	61 miles
18	Schermeyer's Roadhouse to Iditarod	16 miles
	Half day attending to official business	
19	Iditarod to Flat	8 miles
	Half day attending to official business	
20	Flat to Mouth of Crooked Creek	61 miles
21	Mouth of Crooked Creek to Napaimute	40 miles
22	Napaimute to Cribbee's Cabin	13 miles
23	Cribbee's Cabin to Morgan's	37 miles
24	Morgan's to Tuluksak	55 miles

25	Tuluksak to Akiak	18 miles
26	Akiak to Bethel	30 miles
27	At Bethel attending to official business	
28	At Bethel attending to official business	
29	Bethel to Tuluksak	48 miles
30	Tuluksak to Reindeer Camp on Portage	55 miles
May 1	Reindeer Camp to Paimute	18 miles
2	Paimute to Holy Cross	25 miles
3	At Holy Cross on account of storm	
4	At Holy Cross on account of storm	
5	At Holy Cross on account of storm	
6	Holy Cross to Reindeer Station	22 miles
7	Reindeer Station to Lovett's Cabin	24 miles
8	Lovett's Cabin to Power Plant	18 miles
9	Power Plant to Flat	8 miles

making a total distance traveled of 949 miles.

It will be seen from this record that some drives were very long, others were very short. Roadhouses are not always available when one has made a day's run so he keeps on and makes a shorter run the next day. Most of the short runs were on account of bad trail.

On our return trip from Bethel the trail was getting pretty poor so we came via Holy Cross. On April 30 we went from Tuluksak Forty-three miles up the Kuskokwim to the winter portage across to the Yukon. In crossing this portage it was necessary to have a guide and after securing an Eskimo guide we made twelve miles further that day. We stopped at a reindeer camp for the night. The next day we reached Piamute on the Yukon. It was also necessary to have guides from Holy Cross to Flat. The winter trail is well staked but at this season of the year one cannot cross Reindeer River and Reindeer Lake on the winter trail. It is necessary to go over the mountains until one reaches the river several miles above the lake. The guides would not agree to go with us beyond Lovett's Relief Cabin which is forty-six miles from Holy Cross. There they turned back.

As an illustration of how rapidly trail conditions change from one hour to another and from one day to another I call attention to May 8 on which day I traveled on snowshoes from the Relief Cabin to the Power Plant on the Iditarod River. Starting at 4:30 a.m. I had no difficulty in making over three miles per hour the first four hours. Then a strong wind that sifted snow over the webbing of my snowshoes and a bright sun that melted it as soon as it struck the webbing slowed me down to not more than a mile and a half per hour. The next morning I crossed the Iditarod River on snowshoes. Apparently it was as solid as a pavement. Within forty-eight hours it was running bank full and practically clear of ice. We arrived at Flat early the morning of the 9th of May.

PART II MINING

During the last few years the mining industry in the interior of Alaska has suffered a rapid decline. Along the route of our travel from Fairbanks to Flat there is but little mining activity. This industry awaits the return to normal conditions. A low grade property cannot operate and pay expenses under the present cost of supplies. The result is that in most camps the high grade ground discovered has been worked out. There are but few prospectors in the hills. At Flat considerable mining is being carried on and the camp is still a good producer. Two dredges will operate on Otter Creek during the season and considerable open-cut work will be done on Flat Creek.

REINDEER

The reindeer industry is making rapid progress and within a few years the lower Kuskokwim will be an important center. Bethel seems to be the logical point for shipping to the States and in the near future will undoubtedly have packing and cold storage plants. Bethel is located on the right limit of the Kuskokwim River about ninety miles from the waters of Bering Sea. An ocean going boat can come up the river to Bethel. River steamers operate on the Kuskokwim as far as McGrath, a distance of five hundred miles up the river from Bethel. With the development of the mining industry all along the Kuskokwim and the rapid increase of the reindeer industry on the lower Kuskokwim this section of Alaska is attracting considerable attention. The development of the mining industry is of great importance to the reindeer business for it affords a local market.

FURS

There seems to be a scarcity of furs through this part of Alaska. The price of furs in the States has suffered a serious decline and the trappers have not been very active during the last year.

BETHEL PRECINCT

In area Bethel Precinct must be about half the size of Pennsylvania. It is generally very flat and is mostly tundra. Its population is estimated at two hundred Whites and a thousand Eskimo. The boundaries of the Bethel Precinct are as follows:

Beginning at a point on the Kuskokwim River East of the mouth of the Tuluksak River and at about the 161st Meridian of West Longitude; thence following the height of land separating the Tuluksak River and its tributaries from all rivers and streams easterly thereof and tributary to the Kuskokwim River around the headwaters of the Salmon River to the boundary line between the Third and Fourth Judicial Divisions of the Territory of Alaska; thence along said boundary line in a southwesterly direction to Cape Newenham; thence along the shore of Bering Sea in a northerly direction to the point of intersection of the shore of Bering Sea with the 61st parallel of North Latitude; thence northwesterly to a point on the 161st Meridian of West Longitude midway between the Yukon and the Kuskokwim Rivers; thence South along said Meridian to the Kuskokwim River and to the place of beginning; also Nelson Island and all islands in Kuskokwim Bay.

At Bethel is located the Moravian Mission. The Bureau of Education maintains a government school there and another one together with a hospital at Akiak. At both places there are stores and trading posts. The store at Bethel conducted by Felder and Gale carries a stock of merchandise valued at from \$65,000 to \$70,000. We found an excellent class of white people living in this section of whom about twenty are women. Of these women three are missionaries, three are school teachers, two have been in the government school service and one is a trained nurse in the government hospital at Akiak.

DUKE E. STUBBS

The office of U.S. Commissioner for the Kuskokwim Precinct having become vacant during the incumbency in office of Judge F.E. Fuller, Duke E. Stubbs was appointed by Judge Fuller to this position. He was in office as such Commissioner when I became Judge for the Fourth Judicial Division in January, 1915. I first met him in the summer of 1915 and although I was not favorably impressed with him either as to his ability or veracity I knew of no one else to appoint so I permitted him to remain in office until the spring of 1919. I will admit that I did believe some of his statements concerning conditions in his precinct. He had an air of plausibility and I had no reason to believe that he would falsify for the mere fascination of so doing. In so far as I am advised concerning his many false statements made to Attorney General Palmer concerning myself since I removed him from office I have made answer as will be shown by the files in the Department of Justice. I now speak in defense of the people of the lower Kuskokwim about whom he has made most reprehensible and untrue statements.

Some few years ago Judge F.M. Brown of the Third Judicial Division established a precinct called Reindeer Precinct. This precinct embraced that portion of the Kuskokwim basin then in the Third Division. I am not advised as to its exact boundaries. John L. Heron was appointed Commissioner. Stubbs made many vicious charges against Mr. Heron. He told me that the purpose of the people in petitioning Judge Brown to establish this new precinct was to beat him, Stubbs, out of recording fees for they really were not in the Third Division but were in the Fourth Division and that they had simply imposed upon Judge Brown. Stubbs further claimed that they were trying to beat him out of recording fees because he was a patriotic American citizen and they were pro-German, etc. He also said that they insisted they would never pay any recording fees to an American citizen. He further claimed that Mr. Heron was not a citizen of the United States. Naturally Judge Brown would not and did not establish a recording precinct that embraced any portion of the Fourth Division. These people are not the class Stubbs represented them to be but on the other hand are law-abiding and most loyal to our country. John L. Heron was born in Canada, naturalized in

North Dakota and has been a citizen of this country twenty-five years. He is of Scotch ancestry. Instead of anyone trying to beat Stubbs out of recording fees I now find that during the time Stubbs was Commissioner he accepted for record and recorded and collected the fees there for instruments having to do with property located wholly without his precinct and wholly without the Fourth Judicial Division. It now becomes necessary to have many such records transcribed from the records of the Kuskokwim Precinct and placed with the commissioner of the precinct where the property is located. His action in this regard is of little importance compared to his methods in handling matters in his own court where it would appear that he undertook to act as Judge, Marshal and witness in order to accomplish some purpose he had in mind. It is a great misfortune that such a man ever becomes invested with any authority. The more charitable of the Kuskokwim people consider him insane; some simply call him a joke and pay not attention to his malicious statements; the rest in no uncertain terms pronounce him an unmitigated liar and this I personally know him to be.

U.S. DEPUTY MARSHAL

Upon arrival at Holy Cross I recommended to Marshal Erwin at Fairbanks that a deputy marshal be stationed at Bethel. For this position I recommended John L. Heron.

WIRELESS STATION

When in Washington last winter I took up with the office of the Chief Signal Corps Officer of the Army the advisability of establishing four wireless stations in Alaska, one for the Fortymile, one for the Kantishna, one for the Koyukuk and one for Bethel on the lower Kuskokwim. The matter was referred to Major Lewis of Fort Gibbon and he came to Fairbanks to confer with me on this subject. I explained the great service it would render to the people in these sections and I particularly emphasized the necessity for a station at Bethel. I feel

confident that a wireless station will be installed this summer at Bethel. Such a station will be of much service to the Department of Justice.

ROADS AND TRAILS

The entire section below the mouth of Crooked Creek on the Kuskokwim is practically without any summer roads or trails. Rivers are the principal avenues of communication, by boats in the summer, with dog team over the ice in the winter. It is sixty-one miles from Flat to the mouth of Crooked Creek by the winter trail. Two years ago I came over this trail in the month of July. I am confident a summer pack trail can be scouted out following generally the course of the winter trail. If such a trail is feasible then both the lower Kuskokwim and the upper Kuskokwim as far as McGrath will be placed within four days' travel from Flat, two days by boat and two days on foot or with saddle-horse. I am asking the Alaska Road Commission to make available enough money to pay the expenses and wages of one man to go with me and help scout out such a trail. If my request is granted I shall be able to do this work and return here by the time court convenes on the 20th of June.

Dated at Flat, Alaska, May 12, 1921

Respectfully,

(Signature Charles E. Bunnell)
District Judge

Source: Judicial Districts Administrative Files, 2C343 to 2D26-2, box 28, R.G. 60, N.A. Detailed report of his trip from Fairbanks to Bethel accompanied by E. Coke Hill, Assistant District Attorney to establish the Bethel Recording Precinct, which as accomplished 28 May 1921, L.E. Bonham appointed Commissioner same date.

JUDGES, DISTRICT OF ALASKA

Name	Date of Commission
Ward McAllister, Jr.	July 5, 1884
Edward J. Dawne	July 21, 1885
Lafayette Dawson	December 3, 1885
John H. Keatley	July 19, 1889
John S. Bugbee	October 15, 1889
Warren D. Truitt	January 11, 1892
Arthur K. Delaney	November 8, 1895
Charles S. Johnson	July 28, 1897

In 1900, Congress, in response to the Klondike gold discovery in Canada's Yukon Territory, and subsequently at Nome, and other places in Alaska between 1896 and 1899, passed an "Act making further provision for a civil government for Alaska....(31 Stat. 321-552)." Enacted on June 6, 1900, Section 4 of that act, 48 U.S.C.A., paragraph 101 and note, provided that:

"There is hereby established a district court for the district which shall be a court of general jurisdiction in civil, criminal, equity and admiralty causes; and three district judges shall be appointed for the district, who shall, during their terms of office reside in the divisions of the district to which they may be respectively assigned by the President. The court shall consists of three divisions."

The section further provides that each judge should reside in the division to which he was assigned, and hold regular terms of court therein, and special terms when necessary, or on order of the Attorney General; appoint clerks, etc., and commissioners -- the latter to be ex officio justices of the peace, recorders, judges of the probate courts in their respective precincts, coroners, and exercise the powers of notaries public. The judges were to hold office for four years, and receive a salary of Five Thousand (\$5,000) Dollars per annum, each.

The act of 1900 contained a full Code of Civil Procedure, and in section 698 provided that "the judicial power in the District of Alaska is vested in a district court, in commissioners exercising the powers of

DIVISION NO. 4, FAIRBANKS

	Date of Commission
Peter D. Overfield	June 16, 1909
Frederick E. Fuller	August 16, 1912
Charles E. Bunnell	January 12, 1915
Cecil H. Clegg	December 3, 1921
E. Coke Hill	May 3, 1932
Harry E. Pratt	June 21, 1935
Vernon D. Forbes, served until the state court system became functional in November 1959	November 8, 1954

U.S. ATTORNEYS

Date of Commission

District of Alaska, Headquarters, Sitka

Edward W. Haskett
Motttrone Dulany Ball
Whitaker M. Grant
Charles S. Johnson
Lytton Taylor
Burton E. Bennett
Gen. Robert A. Frederich

1884-1885
1885-1887
1887-1889
1889-1894
1894-1895
1895-1898
1889-1900

Three judicial districts created June 6, 1900

First District Headquarters, Juneau

Gen. Robert A. Frederich
Thomas R. Lyons
John J. Boyce
John Rustgard
John J. Reagan
James A. Smiser
Arthur G. Shoup
Justin W. Harding
Howard D. Stabler
William A. Holzheimer
Lynn J. Gemmill
Robert L. Jernberg
Robert L. Tollefson
Patrick J. Gilmore, Jr.
Theodore E. Munson
Roger G. Connor

1900-1902
1902-1903
1903-1910
1910-1913
1913-1915
1915-1921
1921-1926
1926-1929
1929-1933
1933-1942
1944 (Feb-May)
1944-1945
1945-1946
1946-1954
1954-1956
1956-1959

Second District Headquarters, Nome

Joseph K. Wood
John L. McGinn

Melvin Grigsby
Henry M. Hoyt
George B. Grigsby
Bernard S. Rodey
H.M. Saxton
G.M. Mundy
Gudbrand J. Lomen
J.M. Clements
Fred R. Harrison
Julius H. Hart
Leroy M. Sullivan

1900-1902
1902 (Jan-May);
1903-1904
1902-1904
1904-1907
1908-1910
1910-1913
1913-1917
1917-1918
1918-1919
1919-1921
1921-1929
1929-1931
1931-1933

U.S. ATTORNEYS (Continued)

Date of Commission

Second District Headquarters, Nome (Continued)

Hugh O'Neill	1934-1939
Charles J. Clasby	1939-1944
Frank C. Bingham	1944-1951
James A. von der Heydt	1951-1953
Russell R. Hermann	1953-1960

Third District Headquarters, Eagle, Fairbanks, Valdez, Anchorage

Alfred M. Post	1900-1901
Nathan V. Harlan	1901-1918
James J. Crossley	1908-1909 (transferred to Fourth District)
Cornelius D. Murane	1901-1910
George R. Walker	1910-1914
William N. Spence	1914-1917
William A. Munley	1917-1921
Sherman Duggan	1921-1925
Frank H. Foster	1925-1926
W.D. Coppernoll	1926-1929
Warren N. Cuddy	1929-1933
Joseph W. Kehoe	1934-1942
Noel K. Wennbloom	1942-1946
Raymond E. Plummer	1946-1949
J. Earl Cooper	1949-1952
Seaborn J. Buckalew	1952-1953
William T. Plummer	1953-1960

Fourth District created, 1909, Headquarters, Fairbanks

James J. Crossley	1909-1914
Rhinehart F. Roth	1914-1921
Guy Burton Erwin	1921-1924
Julien A. Hurley	1924-1933
Ralph J. Rivers	1933-1944
Harry O. Arend	1944-1949
Everett W. Hepp	1950-1952
Robert J. McNealy	1952-1953
Theodore Stevens	1954-1956
George M. Yeager	1956-1960

U.S. MARSHALS

Date of Commission

District of Alaska, Sitka

Munson C. Hillyer
Barton Atkins
Orville T. Porter
Louis L. Williams
James McCain Shoup

1884-1885
1885-1889
1889-1894
1894-1897
1897-1900

Three judicial districts created, 1900.

First District, Juneau

James McCain Shoup
Dan Sutherland
Herbert L. Faulkner
Harry A. Bishop
Josiah M. Tanner
George D. Beaumont
Albert White
William T. Mahoney
Walter G. Hellan
Sidney J. Thompson
Glen Byington
Claire A. Wilder

1900-1909
1909-1910
1911-1914
1914-1917
1917-1921
1921-1925
1926-1934
1934-1950
1950-1951
1951-1953
1953 (Feb-Mar 1954)
1954-1960

Second District, Nome

Cornelius L. Vawter
Frank H. Richards
John H. Dunn
Thomas Calder Powell
Emmet R. Jordan
Morris W. Griffith
Charles D. Jones
Thomas Gaffney
Benjamin B. Mozee
Robert W. Oliver

1900-1901
1901-1904
1904-1905
1905-1913
1913-1921
1921-1925
1925-1933
1934-1937
1938-1955
1955-1960

Third District, Eagle, Fairbanks, Valdez, Anchorage

George C. Perry
Henry K. Love
Harvey P. Sullivan
F.R. Brenneman
Harvey P. Sullivan
Chester J. Todd
James H. Patterson

1900-1908
1908-1909
1909-1913; 1921-1933
1913-1921
1921-1933
1934-1939
1939-1948

U.S. MARSHALS (Continued)

Date of Commission

Third District, Eagle, Fairbanks, Valdez, Anchorage (Continued)

Paul Clint Herring	1948-1950
Irwin E. Metcalf	1951 (June-Sept)
Walter Huntley	1951-1954
Fred A. Williamson	1954-1960

Fourth District created 1909, Fairbanks

Henry K. Love	1909-1913
Lewis T. Erwin	1913-1921
Gilbert B. Stevens	1921-1925
Lynn Smith	1925-1933 (Apr)
M.O. Carlson	1933 (Mar-June)
Joseph A. McDonald	1933-1946
Stanley J. Nichols	1946-1951
Ted McRoberts	Dec 1950-Apr 1951
	Aug 1951-Oct 1951
	July 1953-Oct 1953
Frank Barr	1951 (Apr-Aug)
Francis X. Chapados	1951-1953
Albert F. Dorsh	1954-1960