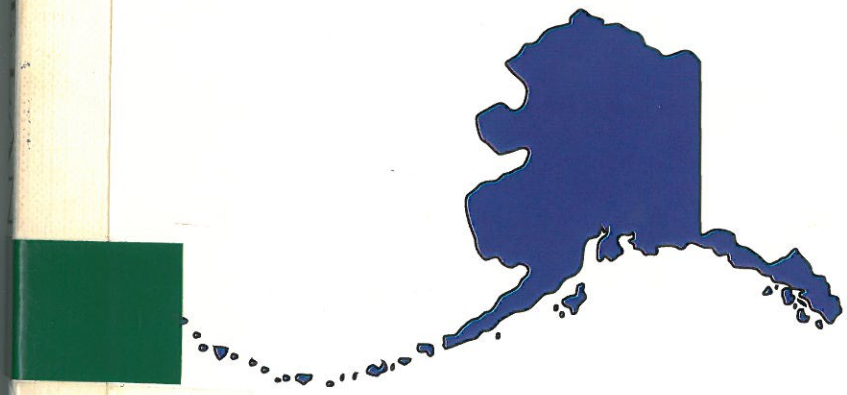
THE LAW OF THE LAND

A History of the
Office of the Attorney General
and the
Department of Law in Alaska



Stephen Haycox

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THE LAW OF THE LAND

A History of the Office of the Attorney General and the Department of Law in Alaska

Stephen Haycox

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PREFACE

This history is a project of the Department of Law of the State of Alaska. Appreciating the significance of historical memory, in 1994 Attorney General Bruce Botelho undertook to record and document the history of the state's attorneys general, commissioning a series of oral interviews with all the individuals who have served in that office and enlisting assistant attorneys in the department to research and write narratives outlining the major development during each person's tenure. Dean Guaneli wrote a separate report on the history of the criminal justice division.

In the spring of 1994 Botelho gathered together in Anchorage as many of the former attorneys general as could attend. All present commented on their experiences in the office. In 1996, Botelho commissioned a history of the attorneys general within the broader context of the history of the state, and as their work impinged on the Department of Law.

Many thanks to all those who made this work possible. It was funded by a grant from the Alaska Bar Foundation and generous contributions from other supporters, whose names are listed elsewhere. The author conducted the oral interviews, and a score of attorneys in the department wrote the research reports in their off-time and critiqued the first draft. Others within the department contributed in a myriad of ways and an editorial team comprised of Carolyn Jones, Elizabeth Hickerson, David Stebing, and Dean Guaneli provided expert advice as the project came to a close. Special thanks to Chrystal Stillings Smith for her meticulous and essential final editing.

This work is based primarily on the recollections and views of the attorneys general themselves, as expressed in the oral interviews and as interpreted by the author with the editorial assistance of attorneys in the Department of Law. The history of early Alaska, as reported in pages 3 to 37, is based on the author's research and historical interpretation. It does not necessarily reflect the opinions of the State of Alaska or the Department of Law.

The author wishes to express his gratitude to Attorney General Botelho for his vision and his unfailing support of the project, to the former attorneys general of Alaska who generously and forthrightly shared their memories and impressions, to the assistant attorneys general for their dedicated work, and especially to the editorial team for their patience, expertise, and commitment. The author takes full responsibility for errors of fact and any misrepresentations that may have crept into the completed work.

Stephen Haycox
Professor of History
University of Alaska Anchorage

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ATTORNEYS GENERAL OF ALASKA

From 1913 to 1916, the Territory of Alaska was served by Territorial Counsel John H. Cobb. In 1915, the legislature created the Office of the Attorney General, to become effective after the general election in 1916.

George B. Grigsby
1916 - 1919

Jeremiah C. Murphy
1919 - 1920

John Rustgard
1920 - 1933

James S. Truitt
1933 - 1941

Henry Roden
1941 - 1945

Ralph J. Rivers
1945 - 1949

J. Gerald Williams
1949 - 1959

John L. Rader
1959 - 1960

Ralph E. Moody
1960 - 1962

George N. Hayes
1962 - 1964

Warren C. Colver
1964 - 1966

D.A. Burr
1966 - 1967

Edgar Paul Boyko
1967 - 1968

G. Kent Edwards
1968 - 1970

John E. Havelock
1970 - 1973

Norman C. Gorsuch
1973 - 1974

Avrum M. Gross
1974 - 1980

Wilson L. Condon
1980 - 1982

Norman C. Gorsuch
1982 - 1985

Harold M. Brown
1985 - 1986

Grace Berg Schaible
1987 - 1989

Douglas B. Baily
1989 - 1990

Charles E. Cole
1991 - 1994

Bruce M. Botelho
1994 -

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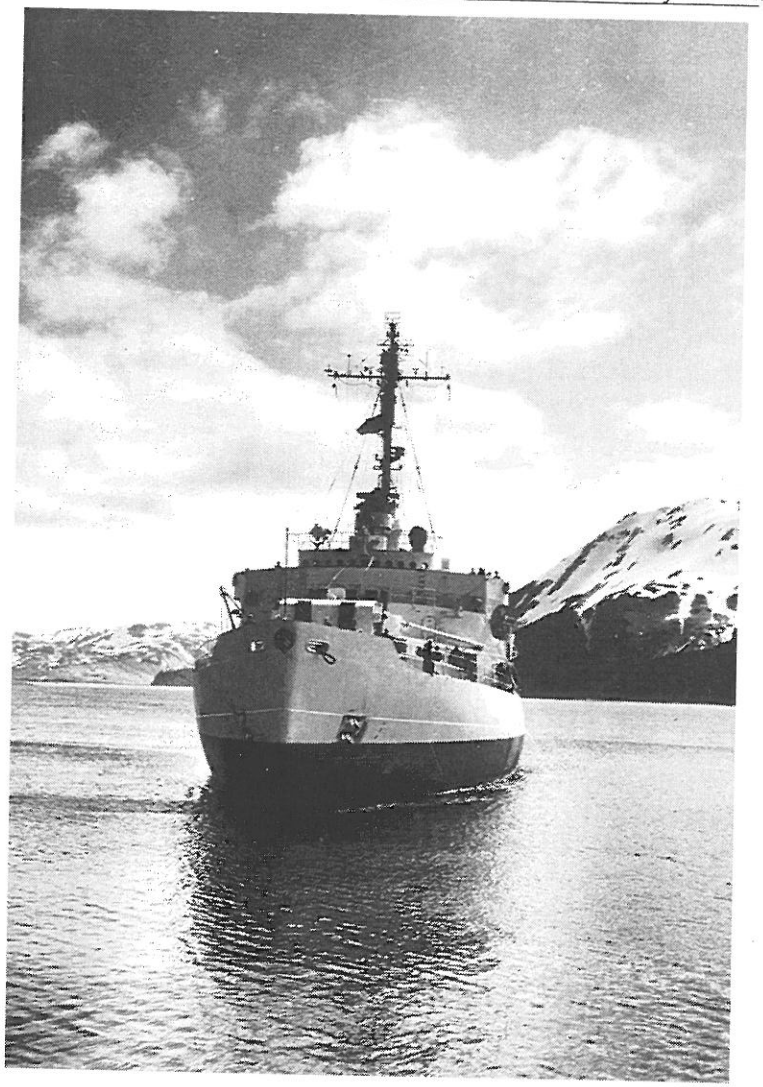
INTRODUCTION

Alaska has been fortunate in its choice of attorneys general. The history of the Alaska Department of Law and the sixteen attorneys who have served as head of the office in many ways reflects the history of the State of Alaska since statehood. Not only have the department and attorneys general been integrally involved in the developments that mark the principal events and developments in the state since 1959, but in many instances they have been the force behind them. The department is central to the administration of government in Alaska, both in the civil structure of the society and in criminal prosecution, and the attorney general has often been a close advisor and confidante of the governor and the governor's staff. By law, the attorney general serves as general counsel to the governor, to the other departments of the executive branch, and to the legislature. Moreover, critical issues affecting the development of the state have been fundamentally legal in character. The discovery of oil in Alaska, the resolution of Native land claims, and the implementation of national and state environmental policy all have basic legal aspects in which the department has played a central role. In addition, the character of the people who have led the department has been exceptional. They have been unusually competent, dedicated, and honest individuals, committed to the integrity of government, to the best interests of the people of Alaska, and to the highest standards of professional conduct. As a result, the department and its people are highly respected in Alaska by the general public as well as by the legal and law enforcement communities, and the rule of law prevails unquestioned and effective, contributing profoundly to order and stability in the society.



In pre-statehood days, the U.S. Coast Guard's *Northwind* served coastal Alaska villages as a "floating court." The court was an annual affair headed by Judge Joseph Kehoe. This photo was taken in 1948. *Photo courtesy of Alaska Historical Collection, Alaska State Library.*

BEFORE STATEHOOD: LAW IN THE TERRITORY OF ALASKA

Alaska's history begins with the region's original inhabitants, aborigines who migrated through Beringia at least 14,000 years ago. The history of law in Alaska begins with the story of Alaska Natives' eventual integration into the legal system of the United States, and ultimately, the state of Alaska. In 1867 when the United States purchased Alaska from Russia there were approximately 30,000 Natives in the territory, Indians descended from the original Paleolithic migrants and Eskimos and Aleuts who came by water across the Bering Strait as long as 8,000 years ago. The Russians had subjugated the Aleut population and made them subject to Russian law, while depending heavily on them for labor. Although the Russians had also tried to subject the Tlingit Indians to Russian culture, in general the Tlingits had successfully resisted. In fact, the Russians became dependent upon the Tlingits for a substantial quantity of the food they consumed as a colonizing force. Although the Russians founded a post near the mouth of the Yukon River in 1833, and another among Athabaskan Indians at Nulato 500 miles upriver the next year, Russian contact with Yukon River Indians and with the people of the Yukon-Kuskokwim delta region was minimal and considerably less than with either the Aleuts or the Tlingit Indians.[1]

With the exception of the Aleuts, Alaska Natives maintained their cultural integrity throughout the Russian period, relying upon traditional customs and mores to maintain

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[1] James R. Gibson, "Russian Dependence on the Natives of Alaska," in *Russia's American Colony,* ed. S. Frederick Starr (Durham: Duke University Press, 1987), 77-104; Katherine L. Arndt, "Russian American Company Fur Traders on the Middle Yukon River, 1839-1867," in *Proceedings of the 2nd International Conference on Russian America,* ed. Richard A. Pierce (Kingston: Limestone Press, 1990), 180-191.

order and stability. At the time of European contact, Eskimos were organized in small bands with loose kinship ties, most Athabaskans by loose extended bands, and the Tlingits by exogamous competitive clans.[2] While all had important forms of social and economic organization, none had permanent political institutions, and law was a function of band or clan leadership.[3]

While the 14th amendment to the U.S. Constitution provided equal protection of the law for all American citizens, American law did not recognize Indians as citizens. Congress did not make a comprehensive grant of Indian citizenship until 1924.[4] A few Indians voted before 1924 by virtue of having demonstrated their acculturation to American values. In 1915, a Native service society, the Alaska Native Brotherhood, lobbied successfully with the territorial legislature for a Native citizenship act; few Natives, however, subjected themselves to the humiliating conditions required.[5] Forced acculturation into

[2] Steve J. Langdon, *The Native People of Alaska* (Anchorage: Greatland Graphics, 1993) *passim;* James R. Gibson, *Otter Skins, Boston Ships, and China Goods: The Maritime Fur Trade on the Northwest Coast, 1785-1841* (Seattle: University of Washington Press, 1992), 3-11, 42-43, 114-17, 153-57.

[3] Langdon, *Native People,* 72; David S. Case, *Alaska Natives and American Laws* (Fairbanks: University of Alaska Press, 1984), 333-370. For legal purposes, all laws and executive and judicial orders that apply universally to Indians apply also to Eskimos and Aleuts.

[4] *Elk v. Wilkins,* 112 U.S. Reports 94 (1995), 102; 43 U.S. Stat. 253; Francis Paul Prucha, *The Great Father: The United States Government and the American Indians,* Vol. II (Lincoln: University of Nebraska Press, 1984), 684, 793.

[5] Stephen Haycox, "Alaska Native Brotherhood: Officers and Convention Sites," *Alaska History,* 4 (Fall, 1989): 39-44; Terrence Cole, "Jim Crow in Alaska: The Passage of the Alaska Equal Rights Act of 1945," *Western Historical Quarterly,* 23 (November 1992): 429-449. The act required Natives to obtain statements from the village school teacher and five white residents attesting to the fact that the Native was living a "civilized life"; upon review, the federal judge might then issue a certificate of citizenship.

American culture was the foundation of federal Native policy in the post-Civil War era, as manifested most clearly in the Dawes General Allotment Act of 1887, which provided for grants of land to Indian heads of households who severed formal ties with their tribes and adopted American mores and behaviors.[6] The Dawes Act did not apply strictly in Alaska, for there were no traditional Indian reservations and, in the 19th century, no recognized tribes. However, the missionary effort and the rapid growth of Alaska's non-Native population during the Gold Rush era gradually brought Alaska Natives within the orbit of American law, and an informal Dawes test was used to determine which Natives were acculturated, and thus could vote. As more Natives adopted western mores, mission and government teachers urged the formation of village councils, and in 1906 Congress passed the Alaska Native Allotment Act, which provided up to 160-acre sites for Native heads of households, subject to such rules as the Secretary of the Interior might establish.[7] In 1926 Congress passed the Alaska Native Townsite Act, which provided for the survey of Native villages and the deeding of town lots.[8] Both acts indicated growing interaction between Natives and non-Natives, and there was subsequent pressure on Native communities to acculturate.

However, such interaction took place within the context of an American society still characterized by institutional segregation and discrimination against minorities. Alaskan society was no different. In 1925, for example, the Alaska territorial legislature passed a voters' literacy act, denying the franchise to illiterate persons.[9] The bill was a reaction to a large bloc of illiterate Indian voters which the Tlingit leader William Lewis Paul had organized and with which he was able to control

[6] 24 U.S. Stat 388; Prucha, *Great Father,* II, 666-686.

[7] 34 U.S. Stat 197; Case, *Alaska Natives,* 135-139.

[8] 44 U.S. Stat 629; Case, *Alaska Natives,* 157-166.

[9] SLA 1925, ch. 27.

the outcomes of close elections in Southeast Alaska in the 1920s.[10] Paul succeeded in amending the act before it became law so as to guarantee retention of the right to vote by anyone who had ever exercised the franchise. This provision vitiated the act.

In such a climate, gains in the recognition of Native equality and Native rights were slow. The ANB became nearly moribund for a time in the 1930s due to the Depression, but in 1943, when the territorial legislature failed to adopt an anti-discrimination measure which had been introduced, Governor Ernest Gruening urged Alaska Natives to take political action once again. With Alaska Native Brotherhood and Alaska Native Sisterhood backing, several Natives were elected to the 1945 legislature, including Andrew Hope and Frank Peratrovich from Southeast and William Beltz from Nome. Elizabeth Peratrovich, married to ANB president Roy Peratrovich, brother to Frank, took the lead in successfully lobbying the new legislature to pass the antidiscrimination bill that year.[11]

Natives were subject to American law from the beginning of the American possession of Alaska. All groups had traditional tribal and clan methods of determining and meting out justice, both internally and between clans and villages. All such traditions were gradually circumscribed through acculturation, although some groups today seek to revive them. After 1867 but before civil government, military commanders subjected Natives to discipline, and Indians were tried in the nearest federal court, at Port Townsend, Washington Territory.[12] After enactment of the first civil government act for Alaska in 1884, the federal district court created by that act exercised

[10] Stephen Haycox, "William Paul, Sr., and the Alaska Voters' Literacy Act of 1925," *Alaska History*, 2 (Winter 1986-87): 17-37.

[11] Terrence Cole, "Jim Crow in Alaska," 429-49.

[12] Morgan Sherwood, "Ardent Spirits: Hooch and the *Osprey* Affair at Sitka, 1879," *Journal of the West*, 4 (1965): 301-344; Bobby Dave Lain, "North of 53: Army, Treasury Department, and Navy Administration of Alaska, 1867-1884," unpub. doct. diss., University of Texas, 1974, 121-156.

jurisdiction over Natives. They were charged by U.S. marshals and tried in Alaska. Federal services for Natives were administered by the U.S. Bureau of Education in the Interior Department until 1931 when the Congress transferred that responsibility to the Bureau of Indian Affairs.[13] After Congress amended the Indian Reorganization Act to apply to Alaska in 1936, the BIA urged the formation of IRA councils in Native villages: four organized in the 1930s, forty in the 1940s, five in the 1950s, and two in 1971, for a total of 71.[14] Few of these functioned effectively before Congress granted Alaska statehood, however. With statehood, Congress made Alaska a "P.L. 280" state, granting state government some civil and criminal jurisdiction over Natives and their lands.[15]

The quality of justice for Natives and villages in Alaska has been a constant concern of the Alaska Department of Law and the state's attorneys general. Few have been satisfied that the civil and criminal justice systems in the state operate equitably in Native Alaska, and considerable attention has been devoted to trying to address that problem effectively.[16]

It is often assumed that law was not always held in as high regard in territorial Alaska as in modern times. Casual histories have suggested that early Alaska was lawless and disorderly because appreciable numbers of non-Natives arrived at the end of the "frontier period" of American history and were isolated from centers of civilization. Such spectacular events as a ruthless claim jumping incident during the Nome gold rush and the misdeeds of the "Soapy" Smith gang in turn-of-the-

[13] Stephen Haycox, "'Races of a Questionable Ethnical Type': Origins of the Jurisdiction of the U.S. Bureau of Education in Alaska, 1867-1885," *Pacific Northwest Quarterly*, 75 (October 1984): 156-163.

[14] Case, *Alaska Natives*, 373.

[15] Case, *Alaska Natives*, 374.

[16] See various publications of the Alaska Judicial Council and issues of the journal *Alaska Justice Forum*. See Marcia Vandercook, *The Alaska Criminal Justice System* (Anchorage: Alaska Judicial Council, 1995).

century Skagway have invited that presumption,[17] yet, Alaska was not necessarily a place without the rule of law. In fact, incidents such as the Noyes case in Nome and the shooting of Smith by vigilante Frank Reid were exceptions, not the rule.[18] For one thing, the first census to show more than a few hundred non-Natives was 1890, at which time the Census Bureau declared the frontier closed.[19] People who came to Alaska to settle often came from places considerably more culturally sophisticated, and well governed, and they expected no less in their adopted home. One historian of law enforcement and justice in the territorial period finds that compared with earlier frontiers, Alaska "seems to have been more law abiding."[20] As is the case today, most people who came to Alaska in the territorial period did not settle alone in the wilderness to hand-mine distant claims or tend isolated trap lines. Instead, they congregated in communities for mutual support, and to have

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17 Ernest Gruening, *State of Alaska* (New York: Random House, 1954), 335, e.g.,: "Deficient law enforcement has been a condition in Alaska . . . ."; also, 336 on "Soapy" Smith; Terrence Cole, *Nome* (Edmonds, Washington: Alaska Geographic Society, 1984); on violence in the American West, see Robert R. Dykstra, *The Cattle Towns* (New York: Random House, 1968), and "Field Notes: Overdosing on Dodge City," *Western Historical Quarterly*, 37 (Winter 1996): 505-514.

18 See Ken Coates, "Controlling the Periphery: The Territorial Administration of the Yukon-Alaska, 1867-1959," *Pacific Northwest Quarterly*, 78 (October 1987): 141-51.

19 See Frederick Jackson Turner's classic essay, "The Significance of the Frontier in American History," *Proceedings of the Forty-First Annual Meeting of the State Historical Society of Wisconsin* (Madison: 1894) (and widely reprinted over the last century), and analysis of the Turner thesis in Clyde A. Milner, II, ed., *Major Problems in the History of the American West: Documents and Essays* (Lexington, MA: D.C. Heath, 1989), 21-34, and especially the essay by William Cronin, 668-681.

20 William R. Hunt, *Distant Justice: Policing the Alaskan Frontier* (Norman: University of Oklahoma Press, 1987), 338.

reasonable proximity and economic access to those amenities of life they had come to regard as necessities. A scholar who has studied urban settlement in the territorial period found that crime rates were lower than national averages in Alaska's towns, where there were police and courts, while rural rates were higher, probably because of loneliness and boredom.[21]

Before 1959, Alaska was a territory, not a state, and it was sparsely populated compared to other regions of the country. Because it was not contiguous with the continental states, and was so far north, Alaska was somewhat isolated. At times, distance combined with a "frontier mentality" on the part of some of the non-Native immigrants, and a cumbersome judicial system, to produce less law enforcement and less efficient adjudication of crime than in the rest of the nation, even though urban crime rates were low. This was true both early in the territory's history, after its purchase from Russia, and just after World War II, when rapid increases in population outstripped the limited capacity of the system to keep order. Still, the nature of crime tended more toward theft and fraud than the lawless violence of western fiction.

Following the purchase of Russian America by the United States in 1867, Congress did not immediately establish civil government in the territory. This was not necessarily unusual: military governors had administered the American West before civil government was established.[22] In Alaska, there was no significant non-Native population[23] and no identified

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21 K. S. Kynell, *A Different Frontier: Alaska Criminal Justice, 1935-1965* (Lanham, N.Y.: University Press of America, 1991), 218.

22 Lain, "North of 53."

23 The first census taken in the territory, in 1880, found 435 non-Natives. Though the author of the report, Ivan Petrov, may have fabricated some of his information, the figure nonetheless seems representative. See Morgan Sherwood, "Ivan Petroff and the Far Northwest," *Journal of the West*, (1965), and Richard A. Pierce, "New Light on Ivan Petroff, Historian of Alaska," *Pacific Northwest Quarterly*, 57 (March 1968): 23-30.

economic base to support such migrants, in any case.[24] The immigrant population seemed bent on finding investments rather than bringing families and building a new society. In those circumstances, Congress' reluctance to create civil government can be interpreted as fiscal and practical prudence. A military garrison was established at Sitka, and the Army was directed to keep order. Several violent incidents with the highly autonomous Tlingit Indians, most the result of the military's lack of understanding and sensitivity, led the Army to abandon Alaska in 1877. The incidents were well covered by the national press, and Army officials did not relish keeping order among an Indian population they could not adequately monitor and could not easily acculturate. Two years later the Navy replaced the Army, but with little more success.[25]

Responding to increasing non-Native immigration encouraged by the Juneau gold discovery in 1880,[26] and to persistent lobbying by Christian missionary and Indian reform groups concerned about the future of the Native population,[27]

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[24] The first significant gold discovery was not until 1880, at Juneau; the salmon fishery did not begin until 1878; and trapping of the interior river valleys began in 1875, but was never a major economic factor. The Pribylov Islands seal fishery was economically substantial but Congress granted a monopoly lease for its production to the Alaska Commercial Company in 1870. By 1873, Sitka, a settlement of perhaps 500 Russians and 1,500 Tlingits in 1867, had atrophied to about 200 non-Natives, and perhaps 1,000 Tlingits; Ted C. Hinckley, *The Americanization of Alaska, 1867-1898* (Palo Alto: Basic Books, 1978).

[25] Morgan Sherwood, "Ardent Spirits," 301-344; Lain, "North of 53," 224.

[26] Although the 1880 census showed only 435 non-Natives, by the late fall of 1880, after the Juneau rush, there were probably upwards of 2,000 non-Natives in Juneau (then called Harrisburg) alone.

[27] Ted C. Hinckley, "Sheldon Jackson: Presbyterian Lobbyist for the Great Land of Alaska," *Journal of Presbyterian History* 21 (1962): 34-43.

Congress finally extended minimal civil government to Alaska in the Act of 17 May 1884. The act provided for an appointed governor and an agent of education. It also demarked the entire territory as a single, federal judicial district, with an appointed judge, marshal and deputies, a district attorney and clerk, and unpaid court commissioners (local magistrates serving at the judge's pleasure) in the four principal non-Native communities in Southeast.[28] The laws of the State of Oregon, the geographically nearest state with a civil and criminal code thought to be adapted to frontier conditions, were to be used as a civil and criminal code, insofar as they might apply. The court exercised "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."[29] The commissioners often conducted their own supplementary investigations and witness interrogations, and their proceedings often had the character of judicial hearings.[30]

Historians have soundly criticized the 1884 Act.[31] It did not provide for any measure of self-governance, not even the raising of revenue. Congress justified the act by the still small

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[28] Act of 17 March, 1884, 24 U.S. Stat. 53: 24

[29] 24 U.S. Stat 53: 26; see Brown, "The Sources of the Alaska and Oregon Codes," *UCLA-Alaska Law Review*, 2 (1982): 15, 87, 94-97.

[30] I am indebted for this information about the application of the 1884 act to Alaska to Prof. Claus-M. Naske of the University of Alaska Fairbanks.

[31] Earl S. Pomeroy, *The Territories and the United States, 1861-1890* (Philadelphia: University of Pennsylvania Press, 1947), 2; Naske quotes Pomeroy as writing that the act seemed designed to govern Alaska "more like the Newfoundland fisheries of the Seventeenth Century British Empire than like a territory." "The Creation of the Alaska State Court System," unpub. mss., 1993 (copy in possession of the author); see also, Jack E. Eblen, *The First and Second United States Empires: Governors and Territorial Government, 1784-1912* (Pittsburgh: University of Pittsburgh Press, 1968), 151.

non-Native population, by the fact that the early territories had been governed temporarily by similar mechanisms, and by Alaska's physical separation from the contiguous states and territories. It should be remembered that in 1884 the U.S. Army was just concluding its war with the Plains tribes, settlement of much of the West was still quite new, and Alaska was viewed as a very exotic place.[32] The meager nature of this first civil government in Alaska was consistent with the mechanism Congress had worked out for governing newly acquired territories at the beginning of national government. Charged in the U.S. Constitution with jurisdiction over the territories, Congress had implemented a civil governance apprenticeship program, whereby the people of the West would come, over time, to statehood on an equal footing with all the previously recognized and admitted states. Following a period of governance by an appointed governor, a territory would eventually be authorized a bicameral legislature for self-governance, but with Congress retaining the authority for disallowance. This program had served the early republic well in maintaining order and democracy in the frontier areas. On the other hand, it was a post-colonial model, and by the 1880s it was clearly no longer appropriate because of the long history of territorial and state self-government.

The shortcomings of the 1884 Act for purposes of self-governance were readily apparent. Following the 1890 census, which found over 5,000 non-Natives in the territory, Congress adopted legislation in 1891 providing for platting and sale of town lots by the General Land Office and granting 80-acre

[32] The Northwest Ordinance of 1787, which set the pattern for territorial governance, based on Article IV, Sec. 3 of the U.S. Constitution, provided for the appointment of a governor, judge, and minor officials (marshal, recording clerk, and the like). When the territorial population reached 5,000 free, white, adult, male inhabitants, Congress might authorize election of a biennially elected, bicameral territorial legislature. Upon reaching 60,000 inhabitants (undifferentiated), citizens might draft a state constitution and petition the Congress for statehood.

homesteads for business purposes.[33] These measures represented the first provision for the acquisition of private property by citizens in the territory, although the burgeoning canned salmon industry was the chief beneficiary of the business homestead provision.

Prospectors and traders on the interior rivers were not interested in town sites, however. Unlike the later gold rushers who flocked north to Dawson and Nome, the men who cruised the territory from the mid-1870s lived off the land, always on the lookout for promising geology. They were professional prospectors, a mobile force constantly ready to leave current diggings for the latest new find. Seventy-five of them camped at the mouth of the Stewart River in Canada in 1881, and more than a hundred appeared in the Alaskan interior after a small, ultimately disappointing, strike on the Stewart in 1885. Then, in 1886, Harry Madison and Howard Franklin struck gold on the Fortymile River on the American side of the Alaska-Canada border.

For the most part, the traditional miners' meeting met the prospectors' needs for government. There was little need for an extensive array of deputy marshals in the Interior as long as there were a limited number of people. The only significant non-Native towns in the territory were in the Panhandle region, where the local commissioners and the single judge meted out rudimentary justice.

The first judges were not promising. Several seem to have accepted this far-flung frontier post only for the money, and at least one had a criminal record.[34] Soon, however, the governors and a better class of judges settled down to making do with the materials at hand. Their task was not easy. The Oregon legal codes left considerable latitude and confusion. In addition, fundamental questions remained unanswered, including the

[33] Act of 3 March 1891; 26 U.S. Stat. 1095. See criticism of this act in Gruening, *State of Alaska*, 80 ff. Hutchinson, Kohl and Co., precursor of the Alaska Commercial Co., and a few individuals had purchased Russian American Co. properties in Sitka, Kodiak, and Unalaska in 1867.

[34] Hunt, *Distant Justice*, 14-32.

status of the Natives and how to deal with indigents and the insane. But with a non-Native population of less than 5,000, Congress did not consider it prudent to do more.

The Klondike gold rush moved Congress to improve on the meager judicial and legal structure in Alaska. The non-Native population in the 1900 census, two years after the great trek to Dawson and a year after the Nome rush, had reached about 30,000, a six-fold increase.[35] The Canadian government had dispatched official surveyors to the region in 1887, and in 1895 Charles Constantine of the North-West Mounted Police arrived at the Fortymile gold camp with a force of twenty constables, organized as the Yukon Field Force. Superintendent Samuel B. Steele expanded their number to 288 soon afterward. In September 1898, 203 men from the regular Canadian Army joined Steele's force.[36] On the American side of the international boundary, Captain Charles Ray and Lieutenant Wilds

[35] See James H. Ducker, "Gold Rushers North: A Census Study of the Yukon and Alaskan Gold Rushes, 1896-1900," *Pacific Northwest Quarterly*, 83 (July 1994): 82-92. Although George Carmacks, his Indian wife Kate Carmacks, and the Yukon Indians Tagish Charlie and Skookum Jim discovered gold on the Klondike River in late July 1896, persistent reports of the magnitude of the find did not break down the incredulity of the general public until after the first shipments arrived in San Francisco and Seattle the next summer. Most Argonauts were unable to get their outfits together before the summer of 1898.

John Brynteson, Erick Lindblom and Jafet Lindeberg discovered gold on Anvil Creek near Cape Nome in late 1898, and the Nome rush occurred in the summer of 1899. Perforce, by the time trekkers from the contiguous states reached the gold fields, most land had already been staked. Pierre Berton reports that while 100,000 left the West Coast ports (of a population of over 100 million), only 40,000 went over the passes to Dawson. Of those, only 4000 struck gold and perhaps but 400, 1 percent, in quantities which could be said to have made their fortunes; *Klondike Fever: The Life and Death of the Last Great Gold Rush* (New York: Alfred A. Knopf, 1982), 417.

[36] The deployment of the North-west Mounted Police in the Canadian Yukon and American Army forces in the Alaskan interior is discussed in Melody Webb, *The Last Frontier* (Albuquerque: University of New Mexico Press, 1985), 88-89, 110-114, 143-170.

Richardson arrived on the Yukon in late August 1897. They found volatile conditions at Circle and Fort Yukon, where hundreds of veteran and would-be prospectors were collecting to spend the winter. Their reports to Washington, together with urgent dispatches from Alaska governor John G. Brady, prompted military officials to dispatch four companies of infantry to the Alaska Panhandle. Later, Army posts would be established at Haines, St. Michael, Rampart, Circle, Eagle and Valdez. In the absence of a local constabulary, the Army would constitute the principal force for law and order in Alaska once again.

Congress responded quickly and comprehensively to the substantial increase in the non-Native population of the territory. Legislation in 1898 included a homestead and railroad right-of-way leasing act, authorization for a U.S. Signal Corps survey for a telegraph line, and provision for a series of agricultural experiment stations.[37] Over the next two years several acts constituted a revolution in civil government for Alaska. One repealed the prohibition of the sale and importation of spirituous liquors, first extended to Alaska in 1868, and replaced it with a system of business and liquor licenses intended to generate territorial revenue.[38] Then, in 1900, further legislation moved the territorial capital to Juneau, which had become the center of non-Native population. Another act provided for the incorporation of towns, a substantive move toward self-government, for incorporation included limited self-taxing power. Congress also authorized the creation of independent school districts.[39] Most significant for legal and judicial development, an act two years later mandated establishment of a separate civil and criminal code for Alaska, where the laws of Oregon still applied. The act

[37] Act of May 14, 1898, 30 U.S. Stat. 409.

[38] Act of March 3, 1899, 30 U.S. Stat. 1253. See the discussion of this legislation in Gruening, *State of Alaska*, 107 ff.

[39] 31 U.S. Stat. 321; Act of March 3, 1901, 31 U.S. Stat. 1438.

also created two new judges, and judicial divisions.[40] Seats of the new districts were in Nome and Eagle; the latter moved to Fairbanks in 1904. Finally, following refinement of the license code,[41] in 1906 Congress authorized the biennial election of a delegate to the U.S. House of Representatives.[42] That the delegate had no vote was not significant, because all the territories had been authorized non-voting delegates as part of Congress' civil governance apprenticeship program. Far more important was the fact that the delegate was the first elected representative of the citizens of the territory, carrying both the focused concerns and the moral mandate of the electorate with him to Washington, D.C.[43]

The Delegate Act was passed as Progressive sentiment flourished in national politics. Alarmed by new and unprecedented accretions of economic and political power, Americans sought to restrain such power and restore democratic force to the citizenry through substantive constitutional change and a broad extension of governmental authority.[44] Monopoly and "the Interests," large corporations that gained control over a majority of manufacturing capacity and markets in their

[40] Act of June 13, 1902, 32 U.S. Stat. 385.

[41] The Nelson Act, 33 U.S. Stat. 61

[42] 34 U.S. Stat. 169

[43] In the same year, Congress created a fourth judicial division, and judge. Southcentral Alaska was retained in the old Third Division with a new seat at Valdez (it would be moved to Anchorage in 1927). The remainder of the old division became the Fourth, with the seat remaining in Fairbanks.

[44] National constitutional changes included the direct election of U.S. Senators (1914), validation of the federal income tax (1914), and the extension of the electoral franchise to women (1919). Regulatory measures included antitrust and pure food and drug legislation, child labor and industrial safety laws, oversight of interstate commerce and the banking system, and the creation of a federal reserve bank.

particular industry, came to be viewed as enemies of the public interest and of equal opportunity. In some instances, however, aggregations of corporate wealth seemed to make possible some economic development that could not be undertaken without it.

In Alaska, several groups of investors had attempted to build railroads, but the harsh environment, together with high labor and materials costs, limited their success. Then, unparalleled copper deposits near the headwaters of the Chitina River in the Wrangell Mountains attracted the Guggenheim Corporation, the largest private trust in America. But even for the "Gugs,"[45] as they were known throughout the territory, the cost of constructing a 160-mile line through the coastal Chugach Range and into the Interior proved prohibitive. They could undertake the venture only by attracting America's most powerful banker, J.P. Morgan, to invest with them. The "Alaska Syndicate," as they styled their effort, completed construction of the Copper River and Northwestern Railway to the Kennecott copper mines in March 1911. This development of Alaska's economic potential by corporate power would have important political ramifications, which would still be manifest when Alaskans gathered to write a state constitution in 1955 and, later still, when they created a permanent state investment fund from revenue generated by petroleum development. Absentee control of mining and fisheries left a legacy of fierce commitment to self-governance and a fair return on Alaska's development for residents of the territory.[46]

Alaska's first full-term delegate to Congress, politically astute James Wickersham, utilized anti-monopoly sentiment to generate support for greater self-government in Alaska.[47]

[45] Pronounced "Googs."

[46] Gruening, *State of Alaska*, 460 ff, and *passim*.

[47] Wickersham's career is recounted in Evangeline Atwood, *Frontier Politics: Alaska's James Wickersham* (Portland: Binford and Mort, 1979). Having served as Tacoma city attorney and in the Washington State House of Representatives, Wickersham was appointed judge of the newly created Third Division in Alaska in 1901. Before assuming his office, he was ordered to Nome to

Arguing that the Alaska Syndicate, the country's largest monopoly combine, held Alaska's economic development hostage because they controlled the only transportation route to the vast interior of the territory, Wickersham called on Congress to provide Alaska's citizens with a territorial assembly which would at least empower Alaskans to tax the Syndicate. When the 1910 census showed that the number of non-Natives was stable at 25,000, Congress authorized the bicameral legislature. Congress would go even further in 1914 and authorize a federally constructed and operated railroad.[48]

Reflecting the reform mood of the period, much legislation produced by the early territorial legislatures was Progressive in nature. For example, the first enactment, in 1913, granted the electoral franchise to women. Other laws dealt with labor conditions, regulated banking, provided for the compulsory education of children, and created the office of mine inspector.[49] Members also established a Pioneers' Home for "aged and indigent prospectors," and the new legislators spent considerable time on legal matters. Of eighty-four measures adopted, 38 specifically amended the civil and criminal codes authorized in 1900 and enacted soon after. In addition, they provided that many federal offices in the territory would be used for territorial purposes.

Legal matters received significant attention in the 1915 legislature, as well. In particular, the members created the office of attorney general, to be filled by election to a four-year term. As did any democratic assembly, particularly one with a number of non-lawyers, the Alaskan legislature needed sound legal advice as it sought to create a governmental system intended to meet the needs of the citizens. This function did not necessarily

investigate and resolve the famous Noyes-McKenzie claim-jumping scandal, in which he was successful. He left the bench in 1908 to run for territorial delegate.

[48] Act of March 12, 1914, 38 U.S. Stat. 305.

[49] See the discussion of the work of the first territorial legislature in Gruening, *State of Alaska,* 162 ff.

need to be entrusted to an attorney general, however. Prior to creating the office of attorney general, the first legislature hired a territorial counsel for the duration of the session. He was John H. Cobb, a lawyer from Texas who had joined the Klondike gold rush in 1898. Staying in Alaska, he had practiced in Juneau from 1902 to 1908, and in Valdez for a year afterward. He returned to Juneau by the time of the election of the first legislature in 1912.

The second Alaska legislature, however, wanted more than just general legal advice. Legislators also saw the office of attorney general in political terms, as a partial declaration of independence from the federal government. For that reason, the office was made elective and its powers were expanded beyond those of simply providing advice.[50] Duties included serving as a general advisor to the legislature, a function more comprehensive than simply providing legal counsel. In addition, the attorney general was to serve as an advisor to the governor. Whoever served in the office might be expected to advise the governor informally, commenting on the implications of legislative and executive actions. The provision in the formal legislation for the attorney general to advise the governor revealed some of the intent in creating the office: to circumscribe the governor, a federal appointee, wherever possible. This would become a major concern of the legislature in later years as the number of federal bureaus grew, and as Alaskans chafed under the limitations imposed by dependence on federal power. The attorney general also served as an *ex officio* member of a number of territorial boards and commissions, the number of which would grow with nearly every legislature, again as a way of circumscribing the governor's independence and power.

Seven individuals served in the office of Alaska territorial attorney general. The legislature authorized the first election to take place in 1916, with the occupant to take office the following April. George Barnes Grigsby was the first elected to the post. Grigsby's beginnings in Alaska had been suspect because of his association with his father, who had left the territory under unfavorable circumstances. George Grigsby

[50] SLA 1915, ch. 77.

arrived in Alaska in 1902 as Assistant U.S. Attorney in Nome, to assist his father, Colonel Melvin Grigsby, the U.S. Attorney. Colonel Grigsby had won his U.S. Attorney post as a reward for service as a "Rough Rider" in the Spanish-American War. The rules of procedure at the time permitted the U.S. attorneys to take private cases in addition to their official duties. The elder Grigsby took a retainer from one of the biggest mining companies in Nome, whose interests the company then expected him to protect in the federal court. He also attempted to overturn convictions which Judge James Wickersham had validated in the notorious Nome claim-jumping scandal. The U.S. Justice Department allowed Grigsby to resign for having deserted his post to return to Washington, D.C.[51]

George Grigsby was born in Sioux Falls, South Dakota. He was admitted to the South Dakota bar in 1896 and had worked as a miner and attorney in Missouri, Colorado, and Montana before joining his father in Nome. George Grigsby showed his capability and character by transcending his rocky beginnings in Nome, even though in his early career he was often associated with anti-reform interests at a time when reform enjoyed immense popularity with the general public. He was appointed as U.S. Attorney in Nome in 1908 in the waning days of Roosevelt's administration. Two years later, he took the position of city attorney in the community and in 1914 he was elected mayor. Also in 1914, he also sought, but did not obtain, the Democratic nomination for territorial delegate. Afterward he moved to Juneau, where he ran for and was elected attorney general in 1916.[52]

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[51] The story of the Grigsbys is told in William Hunt, *Distant Justice,* 131 ff. See also Pamela Cravez, "Seizing the Frontier: Alaska's Territorial Lawyers," unpublished manuscript in the University of Alaska Anchorage Library and offices of the Alaska Bar Association, 1984, 25.

[52] An Anchorage newspaper reported that in the election, Grigsby and his opponent wagered on the results, the loser having to pull the winner from downtown Anchorage to Lake Spenard and back on a hand sled; *Anchorage Daily Times,* Nov. 7, 1916, 7.

Appointed by President Wilson in 1913, John F. A. Strong was governor during Grigsby's tenure as attorney general. Grigsby's term was uneventful except for the fact that he did not complete it. James Wickersham's fifth election as delegate was quite close and was contested by his opponent, mine owner Charles Sulzer. Grigsby found irregularities in the returns and declared Sulzer the winner.[53] Wickersham appealed to the U.S. House of Representatives, which declared him the winner, but not until after the two-year session ended.

In 1918 the election results were still more bizarre. Sulzer was again Wickersham's opponent, and Grigsby declared him the winner by thirty-three votes, but Sulzer had died two days before the election. President Wilson had replaced Governor Strong, whom he found to be ineligible to serve as Alaska governor because he was Canadian-born and never naturalized, with Thomas Riggs, a mining engineer. Riggs called a special election to fill the delegate seat, but Wickersham refused to run. Wickersham argued that he already had been elected, on the grounds both that his nearest opponent was dead and that another vote count would find him the winner. Grigsby ran for the seat and was elected. Again, the House of Representatives eventually declared Wickersham the winner, but not until there were but three days left in the session. Up until that time Grigsby served as Alaska's delegate in Congress, having resigned as attorney general to do so.[54]

George Grigsby went on to a distinguished career in Alaska, becoming a widely respected figure among Alaska lawyers in his later years. Elected president of the Anchorage Bar Association in 1945, he was known as a formidable trial lawyer. In 1954 the bar presented him with a testimonial

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[53] The election results were argued first in the Alaska District Court: *Territory v. Canvassing Board,* 5 Alaska Reports 602 (1917).

[54] See *In re Wickersham,* 6 Alaska Reports 167 (1919); Atwood, *Frontier Politics,* 307-336.

acknowledging his leadership and position among Alaska attorneys. He retired to California in 1959.[55]

Governor Riggs appointed Jeremiah (Jerry) C. Murphy in 1918 to complete Grigsby's unfinished term as attorney general. Murphy had come north with the gold rush from North Dakota, where he had taught school and had been admitted to the bar. In Alaska he served as a deputy marshal in Hot Springs (near Livengood), Fairbanks, Ft. Gibbon (at the mouth of the Tanana), Iditarod, Ruby, Koyukuk, and on the Kuskokwim, finally settling in Cordova. Over the next ten years, he served again as deputy marshal until appointed Assistant U.S. Attorney (Third Division). When the new town of Anchorage was established by the Alaska Engineering Commission, he moved there to open a private law practice.

Murphy's term as attorney general was apparently routine. In 1920 he ran for election to the office in his own right, but was defeated by John Rustgard. Murphy remained in private practice in Anchorage until dying of a heart attack in 1925.[56]

John Rustgard was Alaska's longest-serving attorney general, in both the territorial period and after statehood. Elected in 1920, he served with the three Republican appointed governors of the 1920s. Rustgard was born in Norway the year the United States purchased Alaska from Russia. After leaving home as a cabin boy on a clipper ship, he settled in Minnesota, where he earned a law degree from the University of Minnesota. He practiced in Minneapolis before coming to Alaska in 1900. He served as mayor and as city attorney in Nome at the same time George Grigsby was there. In 1910 he was appointed U.S. Attorney for the First Division, and served in that capacity until 1914. He went into private practice in Juneau until his election as attorney general.

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[55] Cravez reports that in Washington, D.C., Grigsby was noted as an amiable but penniless poker player; Cravez manuscript, 28.

[56] Hunt, *Distant Justice,* 184-185, 205-209, 230-231, 325-326; Gruening, *State of Alaska,* 241, 244.

Rustgard's work as attorney general was highly competent and involved him in a number of important issues of the 1920s. The 1925 voters' literacy act, for example, was in part a response to the growing political power of the Native attorney William Paul, who had organized illiterate Native voters into an effective bloc.[57] Some members of the legislature called upon Rustgard to prohibit Native voting, but he found he could not do so. Because some Natives had always voted in elections in Alaska, including Wickersham's contested elections, and since the criteria for what constituted a "civilized" Native were unclear, Rustgard found that illiterate Native voting was not necessarily illegal. The only remedy, he told the legislature, was territorial legislation.[58] Although the legislature passed the literacy act, it was only able to do so after Paul had successfully amended it with the provision protecting the franchise for anyone who had ever exercised it.[59] Since the canvassing board destroyed all ballots after certifying each election, Rustgard conceded that there was no way to prove who had and had not voted.

Rustgard also became involved in the question of Native status and Native land rights. The fact that there were no traditional Indian reservations in Alaska[60] complicated the

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[57] Haycox, "William Paul, Sr, and the Alaska Voters' Literacy Act," 21.

[58] Rustgard to Secretary. of Interior, June 24, 1923, Box 65, file Alaska, General Correspondence, 1908-1935, Alaska Division, Bureau of Indian Affairs, Record Group (RG) 75, National Archives (NARS), Washington, D.C.

[59] SLA 1925, ch. 27: 52; *Senate Journal,* April 20, 1925, 143; *Alaska Daily Empire,* April 14, 1925, 1.

[60] The Annette Island Indian Reserve for Coast Tsimshian Indians from Metlakatla in British Columbia, established by the Congress in 1891, was an exception. The Congress had prohibited any further treaties with Indians after the Civil War, in 1871, four years after the Alaska purchase. Thus Alaska Natives were effectively subject only to an informal Dawes test to determine whether or not they were sufficiently civilized to exercise citizens'

question of Indian status, for it was unclear whether non-reservation Indians without recognized tribal affiliation qualified for direct benefits. In 1930 the Interior Department announced its intention to transfer the Alaska Native Service from the Bureau of Education, which had provided Native services in Alaska since 1885, to the Bureau of Indian Affairs, which had not previously operated in Alaska. The transfer was effective in 1931.[61] The powerful Alaska Native Brotherhood opposed the transfer, fearing that it would lead to greater scrutiny of, and involvement in, Native lives by the federal government.[62] In 1929, the ANB had voted in convention to ask Congress to authorize a suit by the Tlingit and Haida Indians of Alaska for land claims in the southeast Panhandle. Again, uncertain of their standing, the ANB asked Rustgard for a clarification. The attorney general found that Indians probably were wards of the

rights. This had been formalized in the Alaska Indian Citizenship Act in 1915, which provided for affidavits from white citizens and a judge's review to determine suitability for citizenship. See David S. Case, *Alaska Natives,* 244-248. Created under unusual circumstances, the Annette Island Reserve was the only Congressionally established Indian reservation in Alaska. Feeling threatened by such corrupting white influences as alcoholism, gambling, and prostitution near their village of Metlakatla in British Columbia, a majority of villagers supported Episcopal lay missionary William Duncan in a petition to the U.S. Congress for an isolated location for a new village in Alaska. The villagers located their site in 1885 and the Congress created the reservation in 1891. Although the village is technically named New Metlakatla, the "New" is usually dropped in vernacular conversation. See Peter Murray, *The Devil and Mr. Duncan* (Victoria: Sono Nis Press, 1985); Ivan Doig, "The Tribe That Learned Capitalism," *American History,* 12 (1974): 23-39.

[61] U.S. Department of the Interior, *Annual Report of the Commissioner of Indian Affairs . . .* June 30, 1931 (Washington, D.C.: Government Printing Office, 1931), 12.

[62] *Alaska Fisherman,* January 1932,1, 12-13.

federal government, but, in any case, the territory did not have any official responsibility toward them.[63]

That the legislature viewed the position of attorney general in political as well as strictly legal terms became quite clear in debate in the 1927 legislature over the so-called Comptroller Bill. Previous legislatures had conferred a variety of territorial responsibilities on the governor, a federal appointee, but in the 1920s Alaskans began to chafe as the size of the federal brigade, employees of the various federal agencies and bureaus operating in the territory, grew dramatically and their competing jurisdictions became increasingly inconvenient and irksome. The Comptroller Bill would have transferred all responsibilities previously granted to the governor to the attorney general, strengthening the attorney general's authority and, by extension, Alaskans' control over their own affairs. Legislators narrowly defeated the bill. Rustgard argued that the bill might be disavowed by Congress, both because some of the responsibilities conferred upon the governor by the legislature were actually powers he enjoyed independent of the territory and because Congress might take political offense.[64]

In 1929, however, the legislature created a large number of new elective territorial offices, all designed to circumscribe the governor's freedom of decision as much as possible. Disaffection with the current governor, George Parks, was not the issue; displeasure with federal power and territorial status was.

Rustgard represented the territory in one of the most famous legal cases in Alaska's history, *Alaska v. Troy.* [65] In 1920 the U.S. Congress passed the Jones Act, which mandated that shipments of goods between any two American ports be carried

[63] Solicitor to Secretary of the Interior, February 24,1932, File "Alaska, 1932," Central Office Corresp., Box 43, Records of the Office of the Interior, RG 48, NARS; see also *U.S. v. Lynch,* 7 Alaska Reports 568 (1927).

[64] Gruening, *State of Alaska,* 285-286.

[65] 258 U.S. 101 (1922).

in ships of American registry.[66] A number of exemptions were written into the act but Alaska was excluded from them, a concession to the two main carriers of Alaska freight, Alaska Steamship Co. and Pacific Steamship Co. Alaska sued to have the exclusion eliminated, but the Supreme Court found that while states must be treated equally in the legislation of interstate commerce, nothing in the Constitution requires Congress to regulate a territory in a like manner.[67] Rustgard not only argued the case before the Court but prepared detailed analysis of the profits being made on Alaska traffic, all to no avail. The Jones Act would continue to be a thorn for Alaskans.

In 1930 Rustgard ran in the primary election for territorial delegate against James Wickersham, but lost. Upon the expiration of his third term he left the territory and spent a year in Italy before settling in Florida. He wrote a number of books, including *The Problem of Poverty, Sharing the Wealth,* and *The Bankruptcy of Liberalism.* He died in 1950.

James Steele Truitt was elected attorney general in the Democratic sweep in 1932. A lawyer who had practiced in Oklahoma and Bellingham, Washington, he came to Anchorage in 1916, where he established a private practice and served as Assistant U.S. Attorney from 1919 to 1921.[68]

Truitt served during difficult years in the territory. The Great Depression had a significant effect in Alaska. Price and wage declines led to unemployment and some migration out of the territory. A precipitous fall in the price of copper led the Kennecott Copper Corporation to close the Guggenheim mines during the winter, beginning in 1934, and in 1938 the mines closed permanently. As a consequence, the Copper River and Northwestern Railway from Cordova to Chitina and Kennecott

[66] Act of June 5, 1920, 41 U.S. Stat. 999; Gruening, *State of Alaska,* 240-243.

[67] *Territory of Alaska v. Troy,* 5 Alaska Fed. Reports 104 (1922).

[68] Mary Gilson, "Pre-Statehood," unpublished manuscript, report for the Attorney General History Project (copy at Department of Law), 9.

ceased operations. Unsuccessful in obtaining a satisfactory price for the road from the federal government, the corporation took up the tracks and moved them to its operation in Montana.

Massive federal aid saved the territory from economic collapse. Newly elected territorial delegate Anthony Dimond worked with Truitt to mitigate the effects of the Depression and to implement New Deal relief and reform measures throughout the territory. Although its actions were not directed specifically at Alaska, the government set the price of gold at $35 an ounce, up from $20.77 an ounce, which stimulated gold mining to some extent. Many Native communities made use of Federal Emergency Relief Administration aid, which was administered by the Bureau of Indian Affairs. When the Social Security Act was passed in 1935 it affected territorial residents, and Alaskans became eligible for unemployment benefits and old age insurance benefits through additional legislation.

Around the same time, Alaska Railroad General Manager Otto Ohlson implemented a program of economic austerity, curtailing both passenger and freight traffic and cutting rates below those charged by trucking companies operating on the Richardson Highway between Valdez and Fairbanks. Attorney General Truitt found himself attempting to mediate disputes between angry freighters on the highway and the federally funded and operated railroad.[69] Ohlson kept the railroad operating, but at some considerable cost to private enterprise.

One of the more spectacular New Deal programs for Alaska developed east of Anchorage in the Matanuska Valley. The Rural Rehabilitation Administration was charged with developing underutilized agricultural lands there. Social workers selected families from the Upper Midwest who were willing to participate in a government-directed agricultural homestead program. The program failed in its objectives of moving Alaska toward agricultural self-sufficiency and

[69] "Rates and Tolls," Alaska *Life,* IV (January 1941): 2; "History of the Richardson Highway," *Alaska Life,* 7 (April 1944): 10-13.

increasing the settler population, but the project brought over $200 million in federal funds into the Southcentral region.[70]

The Indian New Deal had considerable effect in Alaska, and it posed new legal questions for the territory. The Indian Reorganization Act of 1934, organized around the idea of Indian self-determination and some level of tribal self-governance and sovereignty, initially excluded Alaska because no Alaska tribes had been formally recognized and because of the absence of traditional reservations.[71] William Paul, representing the ANB, worked with Delegate Dimond and Congressional leaders to modify the act so it could be applied in the territory, which it was by amendments in 1936. Attorney General Truitt issued an opinion in which he argued that there were no Indian tribes in Alaska; he observed that the village had been the traditional social and political unit, and that therefore the IRA was inapplicable. The 1936 amendments to the act identified any group with a common bond or association as the operating unit, allowing the act to be applied in Alaska and circumventing Truitt's objection.[72]

In 1935, Congress authorized the Tlingit and Haida Indians of Southeast Alaska to bring a suit before the Court of Federal Claims for title to land in the Alexander Archipelago. Truitt argued that the Natives who had not taken allotments to land they actually lived on had no land claims.[73] His opinion was of little utility, however, for the Interior Department had already asserted the federal government's trust relationship with

[70] Orlando Miller, *The Frontier in Alaska and the Matanuska Colony* (New Haven: Yale University Press, 1978), 188.

[71] 48 U.S. Stat. 984. With the exception of the Annette Island Reserve for Metlakatla; see above n. 61.

[72] Kenneth Philp, "The New Deal and Alaskan Natives, 1936-1945," *Pacific Historical Review*, 69 (October 1978): 145-158.

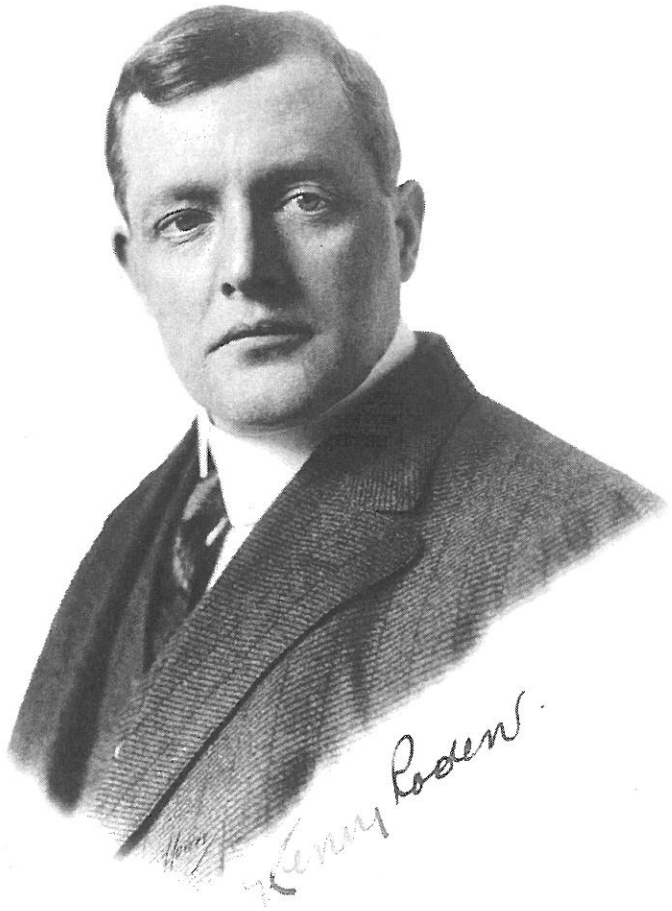
[73] Truitt to Dr. W. Henry Scattergood, Office of Indian Affairs, Sept. 13, 1935, Box 198, file U.S. Status of Indians, Gen. Corresp., BIA Alaska Division, RG 75, NARS.

all Alaska Natives. The bill provided that any compensatory award in the suit would be managed by a central council of Tlingit and Haida Indians.

Henry Roden was elected Attorney General in 1940, just as American military leaders began the remilitarization of Alaska in response to growing tensions in Europe and east Asia. Born in Basel, Switzerland, Roden had joined the Klondike gold rush in 1898, coming by ship directly from Europe. He worked as a miner and woodcutter, studying law in his spare time. He was admitted to the bar by James Wickersham in 1906. Though he had experience in private practice, Roden had also served as Assistant U.S. Attorney in Fairbanks and as city attorney at Iditarod. Iditarod became essentially a ghost town in 1914-1915, however, as the minor placer deposits played out, and most settlers relocated to the new town of Anchorage. Roden ran for the first territorial legislature from Iditarod. In 1914 he moved permanently to Southeast Alaska, establishing a practice and investing in a variety of business ventures. He ran successfully for the legislature again in 1934, serving three successive terms. In 1940, he ran successfully for attorney general. After one term, he challenged E. L. "Bob" Bartlett for the Democratic nomination for Congressional delegate, but lost.[74]

Since he served as attorney general during World War II, many of Roden's responsibilities centered on wartime regulations. The population of the territory boomed as construction and military workers were sent north. Crime began to be a more serious problem than before, and providing basic services taxed the civic as well as the material resources of the territory. Roden worked with the Selective Service Board on draft procedures, with the Office of Price Administration on rationing and pricing and with the War Labor Board on the role of unions in the canning industry, among a host of other duties.

[74] Gruening, *State of Alaska*, 162. While campaigning, he addressed the charge that he did not have appropriate political and legislative experience by arguing that he knew what it was to pull a sled by the back of the neck, to sink shafts or work in the drifts, and to rustle (i.e., assemble) a payroll; those things, he argued, were experience: *Fairbanks News-Miner*, March 13, 1944.



Henry Roden, elected attorney of the Alaska Territory in 1940, served in that capacity until 1944. He was later elected territorial treasurer, a post he held until 1955. *Photo courtesy of Alaska Historical Collection, Alaska State Library.*

Roden represented the territory in meetings with the Bureau of Indian Affairs, the Alaska Defense Command and the U.S. Public Health Service regarding the disposition of Aleut Natives who were evacuated from their villages after the Japanese bombed Dutch Harbor in June, 1942. Housing, medical care and supplies for the Natives were inadequate, but war concerns and shortages interfered with an effective response, despite repeated pleas from the territory and Public Health Service personnel.[75] Also during his tenure the legislature established the Board of Territorial Law Examiners, of which he was *ex officio* president. Part of his duties included a role in both administering and grading the territorial bar exam.[76]

After 1944 Roden returned to private practice but in 1948 he won election as territorial treasurer, serving until 1955. By then he had become a well-respected senior member of the Alaska bar. The 1955 legislature memorialized him for his contributions to the territory.[77] Roden stayed in the territory until statehood; he then moved to Seattle where he died in 1966.

Ralph J. Rivers was elected attorney general in the 1944 election. Rivers was one of two brothers, born in Seattle but raised partly in Flat and Fairbanks, who held public office in Alaska in the pre-statehood period. Victor Rivers was mayor of Fairbanks, a territorial senator, and a delegate to the 1955-1956 territorial constitutional convention. Ralph Rivers was U.S. Attorney for the Fourth Division from 1933 to 1944; he served one term as attorney general, was later elected to the territorial

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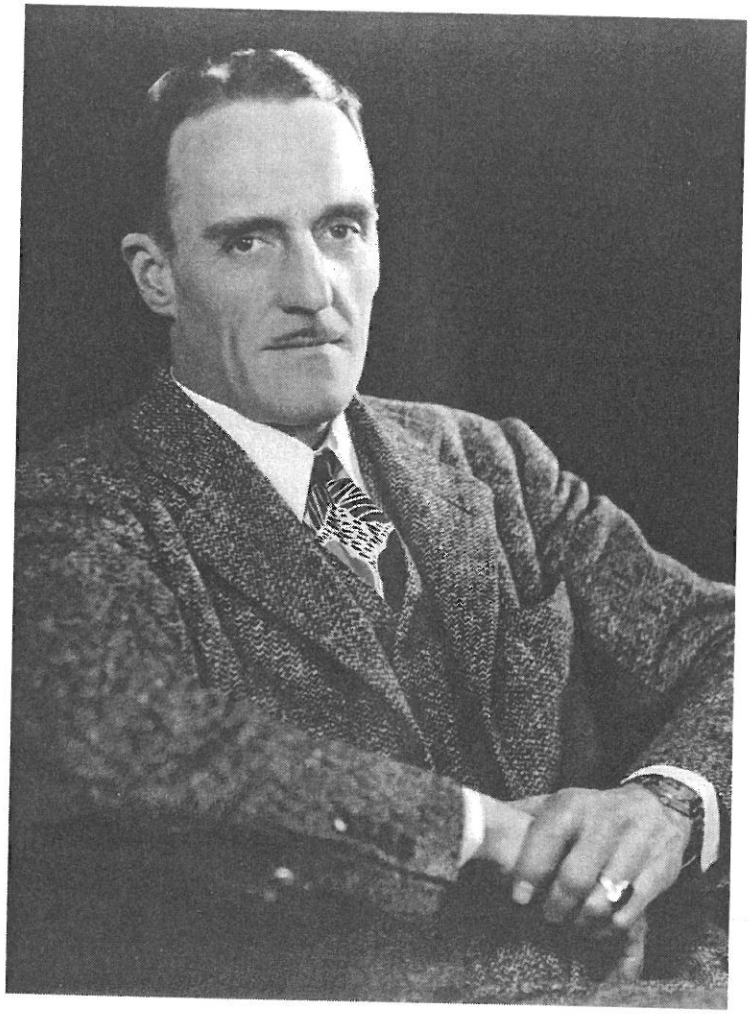
[75] Dean Kohlhoff, *When The Wind Was a River* (Seattle: University of Washington Press, 1995), 108-134.

[76] After the 1952 bar exam, three unsuccessful applicants filed suit, alleging various irregularities. Their petition ultimately was dismissed, but it has been credited as a factor in creation of the Alaska Bar Association and its board of governors under the 1955 Alaska Integrated Bar Act: *Application of Fink,* 109 F. Supp. 729 (Alaska 1953); *Affirmed,* 14 Alaska Reports 468 (Ninth Circuit, 1953).

[77] SLA 1955, House Joint Memorial No. 24.



Ralph J. Rivers, elected in 1944, served one term as attorney general, was a delegate to the constitutional convention, and was the elected "Tennessee Plan" "congressman" before statehood. *Photo courtesy of Alaska Historical Collection, Alaska State Library.*

senate, was a delegate to the constitutional convention, and was the elected "Tennessee Plan" "congressman" before statehood.[78]

After a brief hiatus, the economic bonanza continued in Alaska, mostly as a function of "Cold War" defense spending and the logistical role played by Alaska bases during the Korean War. Rivers' legal challenges included those of a rapidly growing population making the adjustment to a relaxation of war-time controls on the society. In addition, he helped to organize the first major statehood effort. Perhaps for this reason, Governor Gruening supported his successful campaign for election as attorney general.[79] The territorial legislature approved a referendum on statehood for the 1946 election; it passed handily, 9,600 votes to 4,800 votes. Rivers testified on Alaska statehood before the Congress in 1947.[80]

J. Gerald Williams was the last territorial attorney general. Elected first in 1949, he would be re-elected twice but his final term would be interrupted by the successful statehood

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[78] Gruening, *State of Alaska,* 500-508; Gilson, "Pre-Statehood," 11-12; Hunt, *Distant Justice,* 235, 241; Kynell, *Different Frontier,* 135, 163. In the territorial election to approve the draft state constitution in 1956, using a publicity and lobbying tactic first used when the Territory of Tennessee sought statehood, voters in Alaska elected two "senators" and a "congressman" to travel to Washington, D.C., as the representative delegation. Former governor Ernest Gruening and future governor William A. Egan were the two "senators" elected. The three helped to lobby the 1957-1958 U.S. Congress for Alaska statehood.

[79] *Daily Alaska Empire* (Juneau), April 20, 1944. In the primary, Rivers' opponent, Karl Drager, argued that the governor should not endorse candidates and asserted that he, Drager, did not wish to "go to Juneau to take over the duties of the attorney general under handicap, the handicap of being under obligation to any official, governor or otherwise." The major Juneau newspaper editorialized that the ballot would be easier to understand if the candidates were labeled "with the tag of the governor, or the tag of the people." *Daily Alaska Empire,* April 20, 1944.

[80] Claus-M. Naske, *An Interpretive History of Alaska Statehood* (Anchorage: Alaska Northwest Publishing Co., 1973), 72, 78, 100, 146, 156-157.

J. Gerald Williams was the last territorial attorney general. He was first elected in 1949 and served until statehood in 1959.

campaign. Williams came to the territory as a school teacher in 1930 and taught in several locations in Southeast, the Alaska Peninsula, the Fairbanks district, and Southcentral Alaska. He also served as a U.S. Commissioner in Hoonah. Having earned a law degree at the University of Washington, he was in private practice several years before becoming attorney general. A gregarious, ebullient man, sometimes described as profane, Williams was well known throughout the territory.[81]

By the time of his election in 1949, increased population in the territory had outstripped the capacity of the judicial system to administer justice effectively. In addition, the statehood campaign, grown vigorous during the 1950s, had prompted significant criticism of the federal courts and their territorial offspring. The judicial process was complicated by a certain lack of clarity in jurisdiction, and by what amounted to some duplication. Unlike a number of other western territories, Alaska had no distinct territorial court system separate from the federal court. The territorial court was the U.S. District Court for Alaska, which, with its four divisions was the court of general jurisdiction. The Federal Code of Criminal Procedure applied in that court for federal, as distinct from territorial, matters, and the territorial criminal and civil codes and codes of procedure, first written at the turn of the century and revised in 1935, applied for territorial matters, even though all actions were taken "in the name of the United States." Virtually all felonies were acted on through grand juries, and a grand jury true bill was needed to indict. Misdemeanors were handled by U.S. Commissioners, who were *ex officio* justices of the peace, and by magistrates' courts and municipal courts. The Commissioners served at the pleasure of the federal judges, whose officers they were. Municipal courts, authorized by the legislature for the incorporated towns, handled virtually all offenses against city ordinances, including petty theft, traffic offenses, and drunk and disorderly conduct. U.S. Commissioners often held preliminary hearings in the form of informal citizens' courts of inquiry. They

[81] Gilson, "Pre-Statehood," 12-13; Gary Thurlow Interview, Department of Law History Project, 1-2.

also handled probate, but the lines of jurisdiction were inexact and the process was cumbersome. Matters could be appealed from the municipal court to the Commissioner's court, and all actions in magistrates' or Commissioners' courts could be appealed to the district judge. As the court of general jurisdiction, the federal court also handled divorce. Federal prosecutions originated with the U.S. Attorneys, and local politicians often tried to influence their appointment.[82]

While the territorial attorney general had quite limited jurisdiction and responsibility, often serving more as a chief representative of territorial political interests than as a quasi-judicial or chief law enforcement officer, the symbolic role of the office was considerable. In an effort to prepare for statehood, the legislature had created a number of additional territorial boards and commissions in the 1950s and added important changes to the legal code. In particular, property taxes were levied on the salmon canning industry, and the attorney general was given explicit authority to prosecute civil and criminal violations of territorial revenue laws. In addition, a Board of Police Commissioners was established in 1953, with the attorney general as an *ex officio* member. He was also an *ex officio* member of the Board of Road Commissioners, who had jurisdiction over water as well as land transportation.[83]

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[82] Claus-M. Naske, "The Creation of the Alaska State Court System," Department of Law History Project, 3-5; Judge Thomas Stewart Interview, Department of Law History Project, 88-89.

[83] During Williams' first term, in 1952, the Board of Road Commissioners acquired for the territory a small, unprofitable ferry, the *Chilkoot,* to preserve the service it provided between Juneau and Haines. When the crew threatened to quit if they were not paid promptly, Roden suggested that fares collected be deposited in a special bank account from which the purser could pay wages; Williams approved the plan. Later, a Juneau paper charged that the governor and the board had diverted the fares, public funds, to a private bank, implying that the account was for their private use. The governor and the board successfully sued the paper for libel: *Alaska Daily Empire,* September 25, 1952; Ernest Gruening, *Many Battles: The Autobiography of Ernest Gruening* (New York: Liveright, 1973).

Williams played a marginal role in the Alaska Constitutional Convention in 1955-1956. The statehood committee had hired a research advisory group that drafted position papers on items for discussion and judgment by the various convention committees; these served as the working draft documents for the convention's work. The convention debated at length the question of whether the office of attorney general should be elected or appointed. Most states have an elected attorney general, but opinion in the convention favored a strong executive form of government, partly because of the need to act quickly in a state characterized by vast distances and difficult communications. Most of the debate, however, quite naturally focused on the political nature of the office. The territorial office had been created as much for political as for procedural reasons. Perhaps for that reason, the convention opted for an appointed attorney general, confident that those who should serve in the office would be able to remain objective and give advice on the merits rather than the politics of the questions that might come before them.[84] In point of fact, the office of attorney general is not named within the constitution, and the governor theoretically could govern without appointing an attorney general. The constitution provides that executive and administrative offices shall be limited to "major purposes," not to exceed twenty in number, and shall be established by law, i.e., by the legislature.[85]

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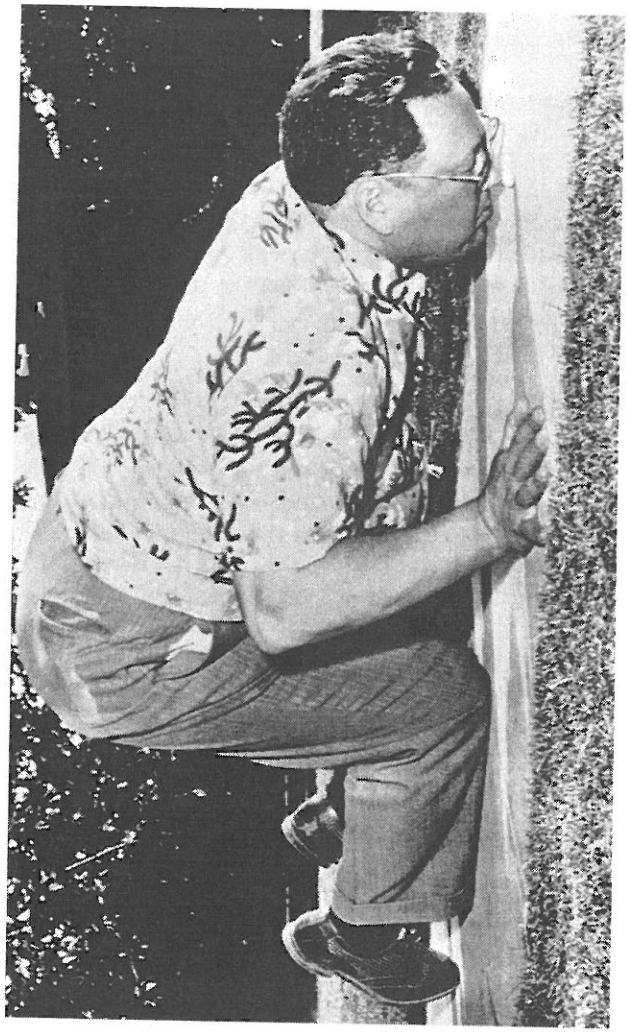
[84] See discussion of the office in *Alaska Constitutional Convention Proceedings* (Juneau: Alaska Legislative Council, 1965), 2193-2200, 2215-2226; see also Victor Fischer, *Alaska's Constitutional Convention* (Fairbanks: University of Alaska Press, 1975), 109-110.

[85] See art. III, secs. 22-27, Alaska Constitution. The establishment of the Department of Law and the powers of the attorney general are in SLA 1959, ch. 64, sec. 9, and ch. 128; Stewart Interview, 40-92.



Attorney General J. Gerald Williams was so sure Congress would not approve the statehood bill that he offered to push a peanut with his nose all 111 miles from Tok to Big Delta if it passed. Here he's shown getting his nose in shape. *Photo courtesy of Anchorage Daily News.*

FRAMEWORK FOR AN ATTORNEY GENERAL'S OFFICE

The attorney general is the chief legal officer of the State and head of the Department of Law, which functions within a unified justice system. The state constitution does not specifically provide for the office of attorney general or a department of law. The Department of Law was established by the state legislature; the attorney general is the head of the department.[86] It is the attorney general's responsibility to prosecute violations of state law. All the district attorneys in the state are appointed by and are answerable to the attorney general. All criminal justice actions under state law are thus within the purview of the office. The attorney general is also head of the civil law functions of the state. Consumer protection, environmental regulation, federal-state relations, civil actions against or on behalf of the state, and all other civil activity are within the jurisdiction of the office. In addition, the Department of Law provides legal advice to all other executive agencies; other executive departments do not have their own attorneys and legal staffs. As the judicial system is also unified, with the district and superior courts under the supervision of the supreme court, communication between the judiciary and the Department of Law is uncomplicated by competing tiers of independence. Because the bar is integrated into the judicial system through its participation in the choice of judges, with members rating names of qualified applicants for the Alaska Judicial Council, there is an unusual degree of communication within the legal community. Although there is a political aspect to all human activity, the

[86] SLA 1959, ch. 64, sec. 9 (Dept. of Law), ch. 128 (duties of the Attorney General).

Alaska legal and judicial systems are as bipartisan and free of external political pressure as any in the United States.[87]

The attorney general is appointed, making Alaska one of only seven states in which the attorney general is not elected by the public. The attorney general is legal counsel to the governor and usually an important part of the governor's policy team, along with the chief of staff, the governor's principal aides, and various commissioners. Whether or not a part of the governor's advisory team, the attorney general has the responsibility to provide legal advice to the office, and therefore he or she will necessarily be included in many discussions between the governor and the governor's aides and department heads for purposes of rendering legal counsel. It has been argued that the appointed attorney general in the state of Alaska has considerably greater power than many elected attorneys general in the other states, and perhaps more than any other attorney general in the United States, with the exception of Delaware, which also has a unitary system under the attorney general.[88] The attorney general is responsible for providing legal counsel to the Alaska Legislature, although increasingly the legislature relies on its own counsel as well. In addition, the attorney general represents the court system in litigation.

The territorial attorney general's office, a very small enterprise, was on the fourth floor of the five-story Alaska Office Building in Juneau. The main physical office was not spacious, and there were a few smaller offices for the few assistants. Most territorial offices were in the same building, including Revenue, Education, Roads, and Veterans' Affairs, which was indicative of the size of territorial government.

[87] Alaska Court System Juneau. *First Annual Report* (State of Alaska, 1960), 1-5; McBeath and Morehouse, *Alaska Politics and Government*, 192-211; Andrea Helms, "Courts in Alaska," in Gerald A. McBeath and Thomas A. Morehouse, eds., *Alaska State Government and Politics* (Fairbanks: University of Alaska Press, 1987), 319-334.

[88] Norman Gorsuch I Interview, Department of Law History Project, 18-19.

The passage of the Alaska Statehood bill in the U.S. Congress in 1958 created a once-in-a-lifetime opportunity for those people then in Alaska, and those who came shortly to be part of the process -- the chance to take part in creating a completely new state government, using the best advice possible and with all the benefits that hindsight might provide from territorial government and from other states. Yet executing that opportunity became problematic when a substantial crisis developed at the very moment statehood was to be implemented. On inauguration day, January 3, 1959, Governor William A. Egan was extremely ill, suffering from acute gall bladder disease which had not been properly diagnosed until in an advanced stage. He had undergone an operation in early December but was not yet fully recovered. After taking the oath of office, he reentered the hospital, underwent yet another operation, and subsequently went to a hospital in Seattle for recuperation, remaining for several months. The acting governor,[89] Hugh Wade, did not want to establish precedents which he believed were the prerogative of the governor, and so was reluctant to take much action. Wade had little interest in the challenges of the transition to state government, in any case.[90] Attorney General Williams, who might have provided leadership in establishing the rudiments of executive governance, was absent from Juneau most of the time since by his last term Williams spent a great deal of time traveling. Most office business was handled and allocated by David Pree, the

[89] The lieutenant governor assumes the powers of the governor if the governor is incapacitated, and the governor may delegate to the lieutenant-governor whatever power he or she may wish. This office was called secretary of state until 1970 when the name was changed by a vote of the people; Alaska Constitution, art. III.

[90] Thurlow Interview, 8-9; John Rader Interview, Department of Law History Project, 5-9.

chief assistant.[91] Thus, a virtual vacuum existed in the seat of government at the moment of its creation.

A number of dedicated individuals stepped into this void and took on the responsibility for establishing fundamental portions of the framework of governing. Foremost among these were Thomas Stewart, chairman of the judiciary committee in the new state Senate, and John L. Rader, chair of the majority caucus in the newly elected House.[92] Along with Burke Riley, an attorney who had served as Territorial secretary of Alaska and became one of Governor Egan's executive assistants, and Gary Thurlow, an assistant attorney general n the territorial attorney general's office who also became an Egan assistant. Rader and Stewart set about drafting an administrative procedure act and writing administrative codes for the executive departments.[93] By the end of the first legislative session in April 1959 they had completed most of their work. In addition to framing the Department of Law, the legislature established the Department of Natural Resources and the Department of Fish and Game. Manifesting his confidence in the work Rader had done, Egan selected him to be Alaska's first attorney general. Rader assumed office in April 1959 and was confirmed on the last day of the session.[94]

John L. Rader was born in Kansas. After service in the Navy, he worked for an oil shipping company and spent a summer working for Fairbanks Exploration Company in Alaska

[91] Thurlow Interview, 2-3. In remarks at the annual convention of the Alaska Bar Association in Anchorage in May, 1996, former attorney general Charles Cole related that, in his last full year in office, Williams was out of his office 312 days.

[92] Stewart, who had been a delegate to the state constitutional convention, would later be appointed a Superior Court judge.

[93] SLA 1959, ch. 143 (Administrative Procedures Act), ch. 64 (State Organization Act); Rader Interview, 4.

[94] SLA 1959, ch. 64, sec. 16 (Natural Resources), sec. 17 (Fish and Game); Rader Interview, 10.

before completing law school at the University of Kansas. He returned and opened a private practice. He interrupted the practice in 1954-55 to serve as city attorney in Anchorage at a time when the physical boundaries of the community had nearly doubled. In 1958 he managed the Anchorage portion of Governor Egan's election campaign, and at the same time he successfully ran his own campaign for election to the new state House of Representatives.[95]

John Rader was a fortunate choice as Alaska's first state attorney general; he was representative of the integrity and competence of Governor Egan and his advisors and of the lofty commitment to public service of those who worked for Alaska statehood. In addition to establishing the new Department of Law, Rader sought to demonstrate that the new State of Alaska stood for a new era in responsible government, characterized by law and order, and dedication to principle. As the department evolved, Rader realized the need for a separation of the criminal and civil work of the Department. He appointed Jay Rabinowitz, later to serve on the Alaska Supreme Court, as the civil deputy. Rabinowitz was succeeded later by Gary Thurlow.[96]

Rader appointed George Hayes of Anchorage to oversee the criminal work. Hayes had a reputation as a particularly astute and successful trial lawyer. He was also a man of impeccable honesty. As John Rader said of him, "he was absolutely incorruptible." The district attorney in Anchorage was Warren Colver. The other district attorneys included Jack O'Hair Asher in Juneau, Robert Erwin in Nome, and Warren William Taylor in Fairbanks. This was an August group: Asher had served as one of the few assistants in the territorial attorney general's office; Erwin would later serve on the state Supreme Court; Taylor, son of a well-known, distinguished attorney, would later serve as a superior court judge.[97]

[95] John Rader Narrative, unpublished manuscript., report prepared for the Department of Law History Project, 1.

[96] Rader Interview, 12-13.

[97] Rader Interview, 14.

John L. Rader, the State of Alaska's first attorney general, was appointed by Governor William Egan in April 1959.

But the challenge of creating the new Department of Law was a formidable one, and Rader knew he needed help. The territorial office, which had been more political than operational, did not have the quality and number of personnel to function as the chief legal firm in the state. Soon after taking office he went east on a recruiting trip, one which yielded great dividends for the State of Alaska in the caliber of people he attracted to work with him. The principle Rader applied in this enterprise can be discerned in the advice he said he would give to anyone who might be appointed attorney general today: "select people in [whose] integrity you have absolute confidence, and [who] hopefully are brighter than you are in as many ways as possible." Among others, he found John Havelock, Michael Holmes, and Herbert Soll, many of whom would have important public careers in Alaska. Soll would serve later as district attorney in Fairbanks, and still later as head of the state public defender's office and head of the criminal division in the Department of Law. Holmes would be deputy attorney general and Havelock would serve as attorney general and have a long and distinguished career of public service in the state.[98]

After taking office, Rader moved quickly to define the department. Rapidly increasing population and the backlog and uncertain jurisdiction in the courts had invited some unsavory activities in Anchorage that brought the law and its enforcement into some disrepute. For example, one problem in Anchorage was created by raucous and dangerous bars in the Eastchester Flat area, outside the city limits, which were frequented by construction workers and others who were encouraged by women working in the bars to run up high bills. When the patrons could not pay their bills, the bar owners often resorted to violence. A number of local attorneys routinely represented the bar owners in the resulting litigation. One way to exercise control over the situation was to enforce closing hours. In Anchorage, District Attorney George Hayes persuaded the court that the Alcohol Beverage Control Board had the authority to do that, in a case that was as significant for its signal to the

[98] Rader Interview, 35.

underworld that the law was going to count and be used to discourage abuse as it was for saving unsuspecting drinkers from getting in over their heads. Additionally, the decisions upheld the validity of the Administrative Procedure Act which Rader had guided through the legislature.[99] Other cases which made the same point involved gambling and prostitution, the responsibility of accomplices in violent crimes, and bank and investment fraud. The state prevailed in its effort to protect the citizenry from those who would prey upon them in the name of free enterprise.[100]

Setting in place the structure of executive government, organizing the Department of Law, and devising and implementing a policy designed to generate respect for the legal apparatus of the new state would seem quite enough for one administration.[101] Very soon after Rader began his tenure as attorney general, however, a crisis of extraordinary proportions arose. The state constitution provided for a unified state court system with district and superior courts, a supreme court, and an integrated bar. Judicial candidates were to be selected by a judicial council consisting of three attorneys, three lay persons, and the chief justice of the Alaska Supreme Court, with the governor making the final selection. Under the statehood act, the state had up to three years to establish the court system. In the meantime, the U.S. District Court continued to function; it was deemed an interim Alaska district court for purposes of state adjudication. A number of attorneys challenged the authority of

99 *Boehl et alii v. Sabre Jet Room, Inc.*, 349 P. 2d 585 (1960).

100 *American Building and Loan Association v. State and A. H. Rorick*, 376 Pac. Rep. 2d 370; see also *Hallback v. State*, Alaska 361 P. 2d 336, dealing with responsibility of accomplices in violent crimes.

101 Prior to statehood the territorial legislature authorized the attorney general to prosecute civil and criminal violations of revenue laws. Several important cases relating to revenue pending when the state was created were taken over by the new attorney general; see, e.g., *State v. American Can Co., State v. Libby, McNeill & Libby*, Alaska 362 P. 2d 291.

the interim court and the challenge was dismissed by Judge James L. McCarrey of Anchorage. Before statehood, appeals from the U.S. District Court had gone to the Ninth Circuit Court of Appeals, and the challengers appealed to that court. In a decision which quite surprised some, the Ninth Circuit Court ruled that it would hear cases arising from the U.S. District Court for Alaska before statehood but that it would not function as a state appellate court because the statehood act had not designated it as such. Appeals from the interim Alaska court would thus have to go directly to the U.S. Supreme Court. The U.S. Supreme Court had no intention of being an effective appellate court for Alaska and, in any case, such a procedure would have been more than unusually time consuming and unwieldy. In the meantime much legal and judicial activity in Alaska ground to a halt as attorneys filed appeals in cases which could not advance until there were courts to hear them. The state, therefore, had no choice but to establish its own, full court system immediately.[102]

The Judicial Council immediately set to work to solicit names for judges and to make its selections. At the same time adequate facilities had to be located and funds found to provide for hiring of court personnel. With advice and counsel from the new Alaska Department of Law, and from many others, these tasks were completed with dispatch. The Alaska Supreme Court assumed its jurisdiction on October 5, 1959, and the superior court positions were announced in November. The superior courts began their jurisdiction on February 20, 1960; so, too, did the new U.S. District Court for Alaska, the newly comprised federal court.[103]

Egan appointed Buell Nesbett as the chief justice of the Supreme Court. Nesbett had been in private practice in Anchorage since 1945, had twice served as magistrate in the

102 *Parker v. McCarrey*, 268 Fed. 2d 907 (1959). The court announced its decision on June 16, 1959.

103 Alaska Court System, *First Annual Report*, 1960, 1 and *passim*. See the minutes of the Alaska Judicial Council for May, June, and October, 1959.

town, and had been a bankruptcy referee. He was active in Democratic politics, and a good friend of Governor Egan. The chief justice acted as chair of the Judicial Council, and in that position Nesbett had conscientiously overseen the creation of the state system. Among other things, he worked assiduously to clear the backlog of cases from the territorial period. In doing so, he found literally hundreds of probate cases which had not been resolved, some dating to the beginning of the 20th century, and some involving substantial property.

Nesbett shared both Rader's commitment to the ideals of the law and his determination to make the law work effectively to bring order and a high moral character to Alaskan society.[104] However, in implementing this determination Nesbett precipitated a crisis in the legal community. The Alaska Bar Association had the primary responsibility for disciplining attorneys. But as Chief Justice Nesbett was dissatisfied with the Bar Association's performance of that responsibility. He decided that the court should both implement better discipline and chastise the bar, but when he attempted to act on his resolution the Bar Association naturally resisted. The struggle led to a bizarre incident in which Nesbett, acting as the court, ordered the confiscation of the Bar Association treasury and directed a court officer to remove the money physically from an Anchorage bank. The local press, alerted to the confrontation, printed stories about it that had the effect of discrediting lawyers and their work in the public view.

Partisan politics also played a substantial role. Nesbett was a Democrat, as were Egan and Rader. The Judicial Council was dominated by Democrats as well, and Republicans in the Bar Association used the bar's fight with the court as a rallying point for Republican protest. The state constitution provides that judges, once recommended by the Judicial Council and selected by the governor, must stand periodically for retention by election. In 1965 in the first retention election following what has come to be known as the "bar fight," Supreme Court Justice

[104] John Rader, Remarks at the Memorial Service for Buell Nesbett, October 28, 1993, Alaska 884 P. 2d Preface.

Harry O. Arend, a Democrat, lost his seat on the court, becoming the first of only three judges to lose a retention election in Alaska. Commentators agree that the result of the election was a function of the disrepute brought upon the legal community by the "bar fight" and partisan use of that publicity.[105]

Although establishing the court system was not the attorney general's responsibility, Rader and the new department were concerned observers, perforce, and worked closely in an advisory capacity through all of the process.

In addition to his other work, Rader had a deep interest in local government. In the legislature he had tried to direct attention to the need for legislation that would encourage municipal planning.[106] In the waning days of territorial government, assistants in the attorney general's office had initiated a number of land condemnations which, when completed, would provide room for expansion and for the construction of traffic arterials. After statehood was conferred, the new department pursued and prevailed in the condemnations, providing necessary room for growth, particularly in Anchorage and Fairbanks, and avoiding politically disruptive annexation struggles in the future. This initiative, fully supported by Rader, also helped municipalities focus on zoning and planning needs, and encouraging controlled rather than haphazard development.

In Alaska, the nation's physically largest state and the one with the largest concentrations of federal land, federal-state relations are a matter of constant review and adjustment. Much of the rhetoric of the statehood campaign relied upon

[105] Address of Hon. Thomas Stewart, Superior Court judge, to the Alaska Bar Association, Anchorage, May 17, 1996. The Alaska Bar Association made tapes of the presentations at this conference, which are available from the ABA office in Anchorage; Pamela Cravez, "Revolt in the Ranks: The Great Alaska Court-Bar Fight," *Alaska Law Review*, XIII (June 1996): 1-32.

[106] Rader Narrative, 4; Thurlow Interview, 12, tape 2, 4; in 1988 Rader published an article on the history of the mandatory borough act: *AML Newsletter*, IX (October 1988), 1.

expectations of greater independence from federal jurisdiction and control. The salmon canneries, owned mostly by stateside companies but regulated by the U.S. Commerce Department, had long used elaborate fish traps to make their fishing more efficient, and these had become a focal point of sentiment on independence. Many residents thought that federal regulation of the industry and the traps was lax and that control of the fishery by the territory, or by the new state, rather than by the federal government would allow more fish to be taken by local operators than by absentee corporations. Calls for elimination of the traps had become routine, but the federal government pronounced itself basically powerless to act. Feeling on the issue was so strong and of such long-standing that political leaders pushed for a territory-wide plebiscite. The statehood act provided for a territorial vote of the people on whether or not to accept the conditions of statehood outlined by Congress, a vote which was held in November 1958, following the Congressional approval of the statehood act the previous summer. Voters also considered whether to abolish fish traps and approved their elimination by a wide margin. The new state legislature included the prohibition in the fish and game code adopted April 17, 1959. Several Native communities in Southeast Alaska routinely operated fish traps. Soon after the legislature enacted the code into law, Governor Egan, acting on Rader's advice, informed Native communities that their use of traps would be illegal also, even if approved by the Secretary of the Interior acting in his capacity as trustee of Native rights.

The Native communities refused to relinquish their traps, giving rise to a significant court challenge. With the exception of the Annette Island Indian Reserve, where the village of Metlakatla is located, Alaska did not have traditional Indian reservations. Metlakatla, however, had operated a fish trap since the early part of the century. Two separate cases were filed, therefore: one for Kake and Angoon, and another for Metlakatla.[107] The cases ultimately went to the U.S. Supreme

[107] *Organized Village of Kake v. Egan,* 369 U.S. 60; *Metlakatla Indian Community, Annette Island Reserve v. Egan,* 369 U.S. 45.

Court, which ruled differently in each case, based on reservation status. For Kake and Angoon the court ruled that state law abolishing the traps did not interfere with any Indian property right in either village. Moreover, Section 4 of the statehood act, in which the people of Alaska disclaimed any right or title to lands or property (including fishing rights) held by Natives does not authorize Indian communities to use fish traps in Alaska waters in violation of state law.[108] In the case of the Metlakatla Indian community, however, the U.S. Supreme Court vacated the Alaska Supreme Court judgment and remanded the case to the Alaska court. This allowed the Secretary of the Interior to determine if he wished to exercise his authority under the 1891 statute that authorized him to promulgate regulations permitting the community to erect and operate salmon traps. Subsequently, the Secretary of the Interior did issue regulations giving the Indians on the reserve control over fishing rights there, which would take precedence over state law.

The final decision in *Kake v. Egan* had not been reached when Rader left office as attorney general. One assistant who worked on the case was Avrum Gross, who had initially been hired by the Alaska Legislative Council to advise the legislature, but soon joined the Department of Law as an assistant on fish and game issues. *Kake v. Egan* would have long-term implications for Alaska, implications that were not fully appreciated at the beginning of statehood, as would another decided in 1959, *Tlingit-Haida Indians of Alaska v. U.S.,* the Indian land claim to Southeast Alaska.[109] In its ruling in this case the court announced that the "use and occupancy title" of the Indians "was not extinguished" by the purchase treaty, "nor were any rights held by these Indians arising out of their occupancy or use" of the lands in question. "It was left to the United States" the court continued, "to decide how it was going to deal with the Native population of the newly acquired Territory." Though it

[108] 72 U.S. Stat. 339; see Case, *Alaska Natives,* 109-111.

[109] 77 F. Supp. 452, 463-464 (1959). See also the compensatory award, *Tlingit and Haida Indians of Alaska v. U.S.,* 389 F. 2nd (1968).

could not be seen at the time, these cases became harbingers for Alaska's future. The U.S. Supreme Court would continue to endorse the notion that aboriginal rights would take precedence over other land titles granted in the history of western land settlement.[110]

In assessing the events of his term as attorney general, Rader concluded that the fish-trap cases were among the most significant because they ushered in several decades of debate on how to clarify and protect Indian rights and how to balance them against state rights, a debate that would be manifest in the later Alaska Native claims settlement and in the question of Native sovereignty.[111]

John Rader's service as attorney general established an immeasurably valuable precedent for character and competence in the office and, as head of the department, a model of commitment and dedication to public service and the public's business which has served the department and the people of Alaska well. In addition to the high moral tone of his work, Rader says he never felt pressured by Governor Egan to alter or reverse any decision he made. Egan respected the independence of the office, and the two worked well together.

Rader returned to private practice in Anchorage in 1962, resigning because he believed that the principal focus of his attention, the transition from territorial to state government, had been accomplished. In addition, Governor Egan had not indicated that he wanted to run for re-election, and political leaders in the state were urging Rader to consider running. As it developed, Egan decided to seek another term, and Rader would not run against him. Later, in 1968, Rader ran

[110] See the discussion of both cases in Case, *Alaska Natives*, 67-68, 109; see also Felix Cohen, "Original Indian Title" in *The Legal Conscience: Selected Papers of Felix S. Cohen*, ed. Lucy Kramer Cohen (New Haven: Yale University Press, 1960; reprint New York: Archon Books, 1970), 273 ff; see also Stephen Haycox, "Felix S. Cohen and the Legacy of the Indian New Deal," *Yale University Library Gazette* 68 (April 1994): 135-156.

[111] Rader Interview, 20-25.

unsuccessfully in the primary for the U.S. House of Representatives. The same year, however, he was elected to the state senate, where he served until 1978.

Rader was succeeded as attorney general by Ralph E. Moody, who later served as Superior Court Judge in the Third District. After wartime service in the Army Signal Corps, Moody had served as an attorney for the Corps of Engineers at Elmendorf Air Force base in 1946-1947. He was appointed Assistant U.S. Attorney for the Third Division in 1947 and Anchorage city attorney in 1951. He remained in that position until 1954, when he went into private practice. He was elected to the last territorial senate, heading at the same time the legislative council, the body which did research on bills and other general staff work for the legislature. At statehood, Moody was elected to the first state senate and served as majority leader until he resigned to accept appointment as attorney general. Through his many years of public service in Alaska before his appointment Moody had come to know Governor Egan well.[112]

Moody retained George Hayes as head of the criminal division and Gary Thurlow as his principal civil deputy. In some respects, the work of the department became routine during Moody's tenure. The transition was essentially complete, although some fundamental work remained, including final revisions to the new criminal and civil procedural codes and the adoption of the state's commercial code. A first order of business was to increase the staff of assistant attorneys general to address the increased work demands. Toward this end, Moody made two recruiting trips outside Alaska each year he was in office.[113]

In Anchorage, Hayes continued to prosecute insurance fraud, and also brought several actions for securities fraud. Since the state had little experience in this area, Hayes approached U.S. Attorney General Robert Kennedy for advice and counsel.

[112] Ralph Moody Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.

[113] Ralph Moody Interview, Department of Law History Project, 7-8.

Ralph E. Moody, attorney general from 1960 to 1962, had served in the state senate prior to his appointment. During his term, final revisions were made to the new state's criminal and civil procedural codes.

The Justice Department dispatched several attorneys to the state to help organize these prosecutions.

A number of important civil matters were decided during Moody's term of office. Moody successfully presented the fish-trap cases, *Kake v. Egan* and *Metlakatla v. Egan,* before the Ninth Circuit and before the U.S. Supreme Court. Because John Rader had supervised the preparation of the briefs, he appeared with Moody before the Supreme Court.

Another major case, *Alaska v. Arctic Maid,* involved a problem that arose because of the three mile territorial-limit of state sovereignty. The *Arctic Maid* was one of a fleet of freezer ships that came up from Seattle for the summer salmon season. The ship would lie outside the three-mile limit and collect salmon from individual fishing vessels. The owners argued that they were exempt from state taxation on a number of grounds, including that they were fishing in federal waters, that many of the individual fishermen were Alaska Natives, and that they were engaged in interstate commerce. The state argued that the resource they were taking was a state resource and that the ships stayed outside the three-mile limit not for safety, but specifically to avoid the property tax levied on the resource. The case ultimately went to the U.S. Supreme Court, where the state prevailed.[114]

One of the first cases presented to the new state supreme court, *Matthews v. Quinton,* tested the constitutionality of public transportation for students attending religious schools. The case actually was appealed from the former territorial court. David Pree, for the territorial attorney general's office, had disallowed the practice as a violation of the church and state clause of the Organic Act. The state supreme court held that there was a violation of separation of church and state, but based its decision on the new state constitution. This issue continues to arise in various municipalities around the state.

In 1962, Moody accepted appointment to the Superior Court bench for the Third Judicial District. At the end of a long and distinguished career in Alaska, Moody still opposed the

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[114] 366 U.S. 199 (1961).

notion of an elected attorney general, as do most who have served in the post, and for the same reason: the office would become politicized, and the independence of action which would be the supposed advantage is already possible. Moody said he was never pressured by Governor Egan to render any particular decision or service. He moved to insulate the department from political pressure within the administration by refusing to provide staff attorneys for the various departments, although requested to do so. These assistants would become advocates for the divisions for which they were doing work, he thought, and in that way damage the department's objectivity. Moody's advice for current attorneys general was to stay out of controversy and out of things not within the purview of the office.[115]

When Ralph Moody resigned, Governor Egan appointed George N. Hayes as attorney general. Hayes had left the Department of Law for private practice several months before Moody's resignation, but, by virtue of his service as district attorney and effective deputy for the criminal division, he was thoroughly familiar with the work of the department. He had first come to Alaska in 1957 as Assistant U.S. Attorney, in Fairbanks, and then filled the same position in 1958-1959 in Anchorage. His obvious ability as a trial lawyer attracted the attention of all in the legal community who came in contact with him and led John Rader to appoint him as district attorney for the Third District, operating as *de facto* deputy attorney general in charge of the criminal division. In that position Hayes undertook the work of setting up the district offices, finding space, hiring attorneys, working out procedures, and generally directing the flow of activity and responsibility.

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[115] Moody Interview, 29. Earlier in his career Moody had participated as an attorney in Alaska's "floating court," an annual visit by the judge and other officials of the court to villages in the Aleutian Islands and along the Alaska Peninsula: Russ Arnett, "Floating Court: 40 Years Ago They Handled It All," *Alaska Bar Rag*, 20 (January-February, 1996): 8. Judge Moody died in Anchorage on February 19, 1997.

As attorney general, Hayes was confronted with something of a national revolution in criminal procedure. The famous *Miranda* decision by the U.S. Supreme Court required special care by police and prosecutors in handling individuals accused of crimes.[116] Judges became particularly sensitive to the rights of the accused and many time-honored methods of dealing with known criminals were brought into disrepute. In Anchorage, for example, the district attorney worked with an informant who had participated in planning a robbery of a downtown business; the informant was the inside man on the job. The police set up an ambush and apprehended the robbers as they were breaking in. Although the robbers were convicted by a jury, the Supreme Court dismissed the case on the grounds that the work with the informant constituted entrapment, a conclusion that surprised even the defense attorney.[117]

To help law enforcement personnel cope with the changing legal requirements, Hayes drew on his prosecutorial experience to write a manual of procedure for police officers. Many of the municipal police and even members of the state police were not well educated. Some were political appointees. At first, Hayes sought assistance from other states but he found that they did not have procedure manuals and relied on traditional approaches. He created a comprehensive manual and handbook that police could use to guide them in handling arrests, in assembling and presenting evidence, in protecting the rights of the accused, and to avoid contaminating cases so that they could not be decided on their merits. The handbook continues to be used in Alaska and as an example for law enforcement personnel and attorneys general in other states.

Hayes first appointed John Havelock and then Michael Holmes, both recruited to the department by John Rader, to head the department's civil division. An important question involved oil leases in Upper Cook Inlet, in the vicinity of Kalgin Island.

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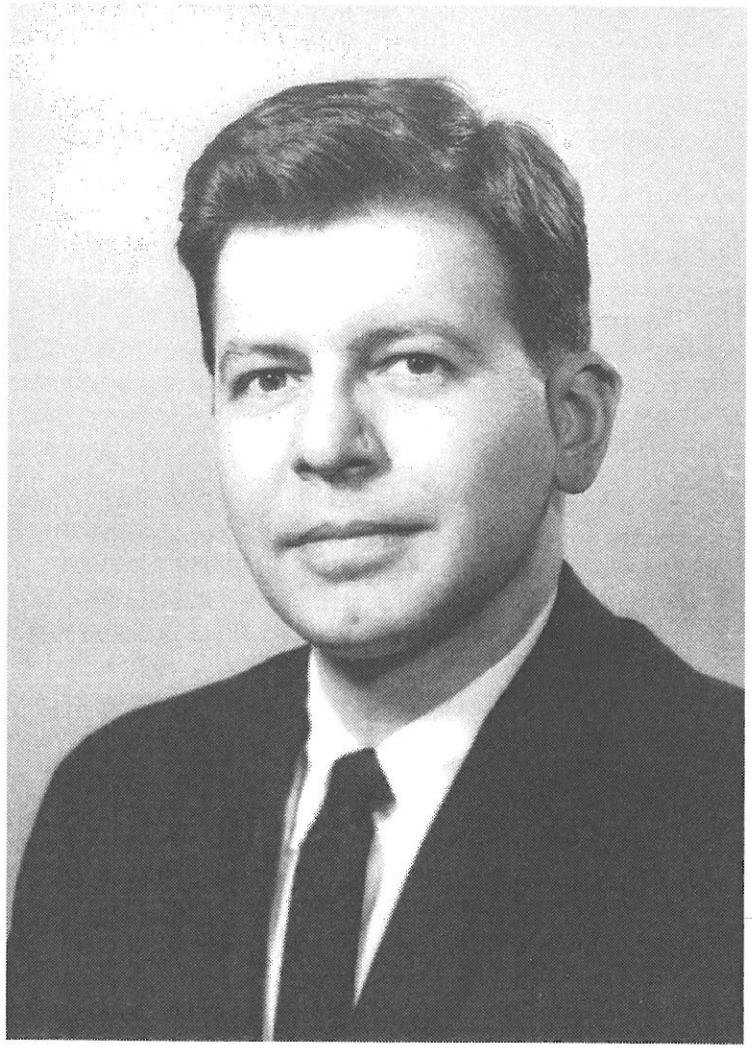
[116] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[117] *Mahle v. State*, 371 P. 2d 21; George Hayes Interview, Department of Law History Project, 17-18.



George Hayes served as attorney general from 1962 to 1964 and played a critical role in the state's response to the devastating earthquake in 1964.

Oil had been discovered in 1957 near the mouth of the Swanson River, and subsequent investigation suggested to industry analysts that oil probably underlay Upper Inlet waters. The width of the Inlet posed a problem, however, for some of the area of interest lay outside the strictly defined state territorial limit. The state wanted to argue that Upper Cook Inlet was historically an inland waterway and thus subject to state ownership. The federal government cautioned that there were sensitive questions of national defense involved and argued that a highly visible case might invite unwanted Soviet attention, resulting in Russian submarines haunting Inlet waters. The federal government suggested instead that the state test the question of inland waterways at Yakutat, an area less likely to attract foreign interest.[118] In assessing these arguments Hayes decided to file an *amicus* brief in a historic waters case in California.[119] The decision in the case supported Alaska's position, and the state did not run afoul of Defense Department concerns.

Corrections was one of Hayes' major concerns. There were not enough facilities in the state to house prisoners, many of whom were being held in federal prisons in the contiguous states. Hayes worried particularly about psychologically disturbed prisoners with a propensity to violence. Housing the criminally insane had been a problem in the territorial period, and although Congress had approved funds in 1956 for the Alaska Psychiatric Institute, that facility could not handle individuals facing long prison sentences. After visits to a number of states, Hayes negotiated a contract with the State of Indiana to take such prisoners.

After two years as attorney general, Hayes thought he had done all he could do and decided to return to private practice in Anchorage. He did not consider himself an administrator, and he was somewhat frustrated at not being able to practice law as he wanted to. While he was having dinner in

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118 Hayes Interview, 7.

119 *U.S. v. State of California,* 381 U.S. 142 (1965).

a restaurant on his last night in Juneau, State Senator Jack Coghill came to his table to tell Hayes there had been a devastating earthquake in Anchorage. Hayes called the governor, and Egan said to him, "You're not going to go now, are you?" Hayes stayed on as attorney general for several months, traveling to Washington, D.C., to work with Senators Gruening and Bartlett and Representative Ralph Rivers, and with the ad hoc Federal Field Committee for Reconstruction Planning in Alaska, on earthquake emergency relief and reconstruction. There was considerable sympathy in Washington for the situation in Alaska and lobbying the budget appropriations through Congress turned out to be less arduous than anticipated. Congress matched monies allocated by the state legislature. The principal bill passed in Washington on August 20, 1964, and Hayes then left the city to return to Alaska.

By that time, however, he had ceased to be attorney general. Warren C. Colver, the U.S. Attorney for Alaska and a long-time resident, had indicated his desire for the post, and Governor Egan had promised him the appointment. Learning of this, Hayes happily resigned, taking an appointment as the governor's special assistant on earthquake matters. When that work was completed, Hayes resumed his private practice and did not seek public service again.

Hayes did not harbor political ambitions, and he devoted himself to his Anchorage practice. However, given the small population of Alaska, and the limited number of people in the legal community who have long experience in the state, most former attorneys general know most of their successors and Hayes has been asked by a number for advice on a number of occasions.[120] Hayes does not support the notion of an elected attorney general. His relations with Governor Egan were uniformly positive, he says, and at no time did he find his independence circumscribed.

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[120] George Hayes Narrative, unpublished manuscript., report prepared for Department of Law History Project, 4; Hayes Interview, 24.

Warren C. Colver had first come to Alaska in 1947. He studied at the University of Alaska, worked at various jobs around the territory and became acquainted with William Egan. Upon his return from law school in 1956 he was appointed Deputy U.S. Commissioner in Anchorage and served for a year under Judge J. L. McCarrey. He then went into private practice with Ralph Moody, who had been elected to the territorial senate. In 1959 George Hayes appointed him district attorney for the Third District in Anchorage, where he served until being appointed U.S. Attorney in 1961.[121]

Within days of Colver's appointment as attorney general, the U.S. Supreme Court handed down a landmark decision with broad ramifications, a decision mandating that all state legislatures would have to be apportioned on the principle of "one man, one vote," i.e., any one member of a representative body would have to represent roughly the same number of constituents.[122] In Alaska, representation was based on communities, regardless of population. Because of distances and the expense of conducting elections, representation by communities was in some ways more practical in Alaska, and could be traced back to the first territorial legislatures when representation was by the judicial divisions, regardless of population.[123] But unquestionably, the towns were under-represented, and rural areas, particularly Native villages, were over-represented.

Upon hearing word of the Supreme Court decision, Governor Egan asked Colver to assess its impact on Alaska. Working with his civil deputy, Michael Holmes, Colver issued a formal opinion in August. The composition of the state senate,

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[121] Warren Colver Narrative, unpublished manuscript., report prepared for Department of Law History Project, 1.

[122] Reynolds v. Sims, 377 U.S. 533 (1964).

[123] The early legislatures had two senators and four House members from each judicial division. Reapportionments had increased the number of both bodies as a function of increasing population in the various towns.

While Warren. C. Colver was attorney general, from 1964 to 1966, reapportionment, shipping rates, and oil leases were major issues.

he said, was clearly out of balance, and thus unconstitutional. Anchorage was under-represented, while the smaller communities of Southeast Alaska held the majority of votes in the senate. In Colver's judgment, the apportionment was unconstitutional. Based on Colver's opinion, the governor convened the state Reapportionment Board, which issued a proclamation in September calling for reapportionment and redistricting.

Predictably, a lawsuit soon followed as a representative from Ketchikan protested that the governor did not have the authority to reapportion. In May 1966, the state supreme court upheld the governor's authority, however, and reapportionment proceeded.[124] The state subsequently filed suit in federal court seeking an exemption from the Voting Rights Act of 1965, which guaranteed equality in voting rights.[125] The state's argument dealt again with distance and cost, and the few numbers of people disadvantaged, but the court ruled against the state's protest.

Colver undertook two significant initiatives during his two-year appointment as attorney general. Maritime transportation to Alaska had always been problematic. The Jones Act provision that goods must be shipped in ships of American registry and Alaska's failure to obtain an exemption from that restriction had increased the cost of freight coming into the territory.[126] After the Wagner Act passed the U.S. Congress in 1935, guaranteeing the right of labor unions to organize and to bargain for wages and working conditions, and to strike, several dock strikes held Alaska hostage to union demands.[127] When the Guggenheim Corporation liquidated much of its Alaska holdings in the late 1930s, it sold the Alaska Steamship

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124 *Wade v. Nolan,* 414 P. 2d 689 (Alaska 1966).

125 79 U.S. Stat. 437.

126 41 U.S. Stat. 988.

127 49 U.S. Stat. 449.

Company to David and Gilbert Skinner of Seattle. During World War II the new company had secured a guarantee of a monopoly, and artificially high freight rates, from the U.S. Maritime Commission (created in 1936 and authorized to regulate freight tariffs), on the grounds that Alaska was a theater of war and, as such, a high-risk shipping route. In general, the Maritime Commission had upheld the high rates after the war, when the company argued that the volume of peacetime freight was not enough to justify its investment without high enough rates to guarantee some level of profit.[128] Investigators for the Territory of Alaska, however, demonstrated that the rates were, in fact, exorbitant, and that they were the highest in the world under the factors applied by the Maritime Commission to approve rates.

Colver undertook a thorough reexamination of the rates and the circumstances of the coastal trade and presented testimony protesting the rates to the Maritime Commission. Though some adjustments were made, they were not substantial. However, Colver learned that Sea-Land Services, Inc., a world wide shipping company operating out of Seattle, was interested in entering the Alaska market. He encouraged the company to do so, and it began sailing from Seattle to Anchorage, and to Kodiak, in 1964. At the same time, the State of Alaska acquired a ferry for service between Southeast ports. These new competitors broke the Alaska Steamship Company monopoly and drove freight rates down to a more manageable and fair level.[129]

When Alaska statehood was being debated in the U.S. Congress in the mid-1950s, a recurring question was whether or not the economic base in the territory was sufficient for the new state to be able to assume the burden of governing itself. A solution to this concern emerged in the treatment of federal lands

[128] See the discussion of the Alaska Steamship Co. and the U.S. Maritime Commission in Gruening, *State of Alaska*, 412 ff.

[129] Warren Colver Interview, Department of Law History Project, 12; Colver Narrative, 3.

in Alaska. The federal government agreed to convey title to 103 million of Alaska's 375 million acres to the new state, about 28 percent of the land base; the remaining 72 percent would remain in federal title. The state would begin to select its lands immediately after the act took effect.[130] To guarantee revenue for state administration, Congress agreed to rebate to the State of Alaska 90 percent of mineral lease revenue generated from federal lands within the state's boundaries.

In addition, in 1957 oil was discovered at the mouth of the Swanson River in Cook Inlet. The state would receive all the lease revenue from those deposits if it selected the lands under which they lay. The revenue would not be enough to support state government, but the discovery held the prospect of more oil in associated fields, should they be discovered, leading the state later to contest federal ownership of the lands farther out in Cook Inlet.

Once statehood was conveyed and the new state selected the relevant lands, a number of oil companies obtained Cook Inlet leases from the state. However, the companies did not develop the leases, many of which were scattered on different tracts not adjacent to one another. There was no guarantee that oil would be found, and drilling exploratory wells is an expensive, risky operation. Naturally, the state encouraged the companies to activate the leases, but with little success until 1965.

Colver sought to stimulate development in the inlet by unitizing the leases, i.e., by encouraging joint venture operations that would allow leases to be developed together by a single

[130] The Alaska Statehood Act passed the Congress in July 1958, was approved by Alaska voters in a statewide election in November 1958, and took effect officially on January 3, 1959. State officials immediately began the selection process, and lands in the vicinity of Prudhoe Bay on the Arctic Coast were among the first selections because oil seepages had been noted there for over one hundred years. However, the land selection process was interrupted in 1965 by an injunction by the U.S. Secretary of the Interior when Native protests to the state's choices revealed a conflict between state selections and Native land claims. At that time, the Interior Department had conveyed title to about 12 million acres of land to the state.

Alaskans called the action a "land freeze" and a "lock up."[136] To the degree to which most non-Native Alaskans had considered Native claims, the general notion seems to have been that some land around villages would suffice to protect their integrity and to provide some hunting opportunities. In particular, few appreciated the significance of the theory of aboriginal title, which might require formal extinguishment by the Congress, and perhaps some sort of compensatory award. Until the areas actually subject to Native title could be identified, the land freeze implied that in areas under Native protest economic development would be suspended, pending some resolution.

The state protested the land freeze, arguing that it constituted a violation of the provision for state land selection in Article 6 of the statehood act. In addition, the state questioned the Secretary's authority to take such an action at all. Native leaders in Alaska, however, applauded the action, as did major attorneys for Native Americans and civil rights leaders nationally. Colver worked with the Congressional delegation and the governor to formulate the state's response to Udall's action and came to understand the magnitude of the crisis and recommended a broad and concerted effort to counteract it. In particular, Colver began to organize a suit in federal court, but, before much could be done to pursue the matter, he returned to private practice in Anchorage.

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[136] Colver Interview, 4-5. Colver suggests that even the congressional delegation in Washington was surprised by Udall's action. The language of the statehood act authorized selections from "vacant, unappropriated and unreserved" lands; the Secretary justified his action on the grounds that the land being selected was not unappropriated, asserting, on behalf of Alaska Natives, that selected lands were subject to Native title "on the basis of aboriginal use, occupancy and continued possession." See *State of Alaska v. Udall*, 420 F. 2d 938 (Ninth Circuit, 1969); *cert. denied*, 397 U.S. 1076; 90 S. Ct. 1522 (1970). The Secretary's action is Public Order No. 4582, 34 Fed. Reg. 1025 (January 23, 1969).

CHANGING OF THE GUARD: WALTER HICKEL'S FIRST TERM

In 1966, Walter J. Hickel won election as the first Republican governor of Alaska. His opponent was the long-time and sometimes controversial Anchorage attorney Wendell Kay. A contractor and real estate developer, Hickel had come to Alaska in 1940, just as military construction had begun, and through his contracting businesses in Anchorage and Fairbanks had become a millionaire. Hickel campaigned on a platform of substantive change in state government, stressing the need to replace the Democratic politicians, who had guided the state through the transition from territorial status well enough but who were allegedly rooted in the past and too preoccupied with government to appreciate the need for greater stimulation for business and economic development. In addition, he charged that the Egan administration had not been vigorous enough in protesting the land freeze. Hickel advocated a confrontational, uncompromising position for the state, effectively telling the federal government to cease interfering with state land selections. Without manifesting any prejudice regarding Natives, he asserted that the state had an equal right to Alaska's land and had been authorized by Congress to take the lands it needed. Those lands, he said, would, through economic development, be used on behalf of all Alaskans.

In his campaign, Hickel also advocated that Alaska's attorney general be elected. He had concluded that the attorney general was too much a creature of the governor and his policies and needed an independence of action which only election could guarantee. That change could only be made by constitutional amendment. Hickel was encouraged in his thinking on an elected attorney general by Edgar Paul Boyko, an aggressive and sometimes flamboyant and controversial Anchorage attorney. A close friend and advisor to Hickel, Boyko had come to Alaska with the Bureau of Land Management in 1952, just as Anchorage was experiencing nearly uncontrolled growth and population

explosion, and just at the time Hickel was rapidly expanding his contracting businesses. A Democrat, Boyko opposed the concept of an appointed attorney general, concluding that the person in the post would always be a pawn of the governor's will. Hickel advocated election of the attorney general in his campaign.[137]

Boyko also advocated changes in the judiciary. Engaged in a long-running feud with Judge Ralph Moody, Boyko wanted legislation that would give lawyers preemptory challenges of judges assigned to their cases. Hickel promised that, if elected, he would sign such a bill, should it pass. A bill with this provision had passed the previous legislature, but after consulting with George Hayes, among others, Governor Egan had vetoed it.

During the election campaign, the Hickel camp made charges that Colver and others in state government had been using state resources for personal use. In particular, they alleged that Colver had used a state plane for a fall moose hunt. The local press gave the charges considerable space, and they were investigated by a legislative committee after the election. Investigators found that Colver and others had not violated any laws and that the charges were effectively baseless.[138]

Soon after the election, Hickel selected Donald A. Burr of Anchorage as his attorney general. The new governor might have been expected to name Boyko, but a number of his advisors told Hickel that Republicans in the legislature might block confirmation since Boyko was a highly visible Democrat. In addition, some considered his controversial and outspoken stands on certain issues to be a liability. Further, some people suggested that Hickel, an active and strong figure, had not been entirely serious in advocating for an elected attorney general.

Burr was an attorney in private practice with George Boney, a well-known Alaska attorney who later served on the Alaska Supreme Court. Burr's work involved mostly corporate

137 Edgar Paul Boyko Interview, Department of Law History Project, 7, 9.

138 Colver Interview, 24.

aviation and civil trial matters. He had come to Alaska with the Air Force and served in the Judge Advocate's office of the Alaska Air Command at Elmendorf Air Force Base from 1953 to 1956. In 1956 he was appointed Assistant U.S. Attorney for the Third Division in Anchorage where he served for two years before going into private practice. Burr relates that after the election George Hayes, whom he knew well, called to urge him to accept appointment as attorney general. Initially reluctant, Burr accepted because of the honor of the appointment, but he agreed to serve no more than one year.[139]

Not long after Burr's appointment, Wendell Kay, perhaps in retaliation for the charges made against Colver, charged that in public statements Burr had carelessly and erroneously linked Kay with persons convicted of various crimes. Burr's statements were campaign rhetoric, which capitalized on Kay's highly visible and sometimes controversial representation of figures in the Anchorage underworld. Burr was confirmed nonetheless, and neither his performance in office nor his effectiveness seems to have been damaged by the charges.

The land freeze presented the new administration with a formidable challenge, and Hickel named Boyko special assistant to work on a solution to the problem. Boyko quickly learned that the crisis was deeper than most had initially appreciated. The Natives were firm in their protest to the state selections, and the Interior Department was not intimidated by the governor's vigorous, sometimes angry, pronouncements on the matter. Boyko continued to assemble and pursue the state's legal challenge, *Alaska v. Udall,* because he considered the Secretary's actions to be blatantly illegal.[140] But Boyko took a more moderate approach to the larger issue than either Hickel or Burr. Boyko believed that the Natives were entitled to lands in Alaska and that the state needed to be sensitive to their protests

139 Donald Burr Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.

140 420 F. 2d 938; *cert. den.,* 397 U.S. 1076.

Donald A. Burr of Anchorage was selected as Governor Walter Hickel's first attorney general. He took office in 1966 and, as he had planned, left one year later to return to private practice.

for both moral and practical reasons. They were, after all, the first settlers and had not always been dealt with equitably. Pragmatically, if there were a compensatory award for extinguishment of title, that money would stay in the state and be invested in the state.[141]

The state prevailed in Alaska District Court. The judge approved the state's motion for summary judgment presented by Boyko on the grounds that past and present Native use did not prevent the land from being "vacant, unappropriated and unreserved," as required for state selection. Later, the Ninth Circuit Court of Appeals reversed this decision and remanded the case for trial, but initially the state had reason to be optimistic.[142]

At the same time, Boyko received help from, among others, Senator Henry M. Jackson of the State of Washington. As chair of the Senate Interior Affairs Committee, Jackson had long been a shepherd of Alaska affairs in Congress. Recognizing the change in sentiment in the country, the broad political support for a more comprehensive settlement in Alaska, and the need to balance minority rights against state sovereignty, Jackson sought a body that could conduct a thorough study of Alaska conditions and make a recommendation to help extricate the matter from the political maelstrom.[143] He found it in the Federal Field Committee for Reconstruction Planning, created by the Congress after the devastating 1964 earthquake. Its work on that project was largely completed, and Jackson charged the committee with surveying Native conditions in Alaska and proposing a solution to the claims issue. The committee began a comprehensive survey throughout village Alaska.

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141 Boyko Interview, 14.

142 Upon remanding the case, the court recommended that further action be held in abeyance because legislation had been introduced in Congress to solve the land claims dilemma.

143 Mary Clay Berry, *The Alaska Pipeline: The Politics of Oil and Native Land Claims* (Bloomington: Indiana University Press, 1975), 55-61.

Meanwhile, oil company officials had requested that the state organize a lease sale on the North Slope. Industry geologists had found promising geologic prospects and were anxious to begin exploratory drilling. The Arctic Slope Regional Association protested a sale, however, arguing that the state should wait until the claims issue was resolved. Following a review of the circumstances, Burr decided that the state could proceed with the sale. The state had selected the lands, and provisional title had already been conveyed by the Bureau of Land Management. Spokesmen for the Native group threatened to sue to halt the sale, but Boyko, as part of his duties to handle Native issues, helped to dissuade them from doing so and the sale proceeded.

Burr had wanted to take a stronger stand with the Native community than Boyko did, an approach more in keeping with Hickel's campaign stance. Like other state leaders, however, Burr appreciated the necessity of compromise. Nevertheless, he was frustrated in his attempts to address the situation by Hickel's reliance on Boyko to handle Native affairs. Although Burr had stipulated that Boyko would work under his general supervision, Boyko's energy and initiative and Hickel's spontaneity probably doomed any such arrangement.[144] In any case, Burr at one point hired a Washington, D.C., law firm to do legal research on the claims question, a decision which irritated Boyko. The claims issue dominated the department and Burr felt increasingly that he did not enjoy the level of confidence with the governor that he needed to do his job responsibly. In addition, he was bothered that the issue of an elected attorney general had faded into the background.

In the meantime, Burr had appointed Edward Reasor his civil deputy and the general work of the division proceeded satisfactorily. Burr's tenure had been somewhat frustrated by chronic housing problems: he had four small children and two dogs, and finding adequate room in Juneau had not been easy. After finally finding a rental, the family moved in, only to be told by the landlady the following day that they would have to

[144] Boyko Interview, 4.

vacate because the she would not tolerate dogs, and didn't particularly like children. The family subsequently found a home, but the adjustment added to the strain of the experience.[145]

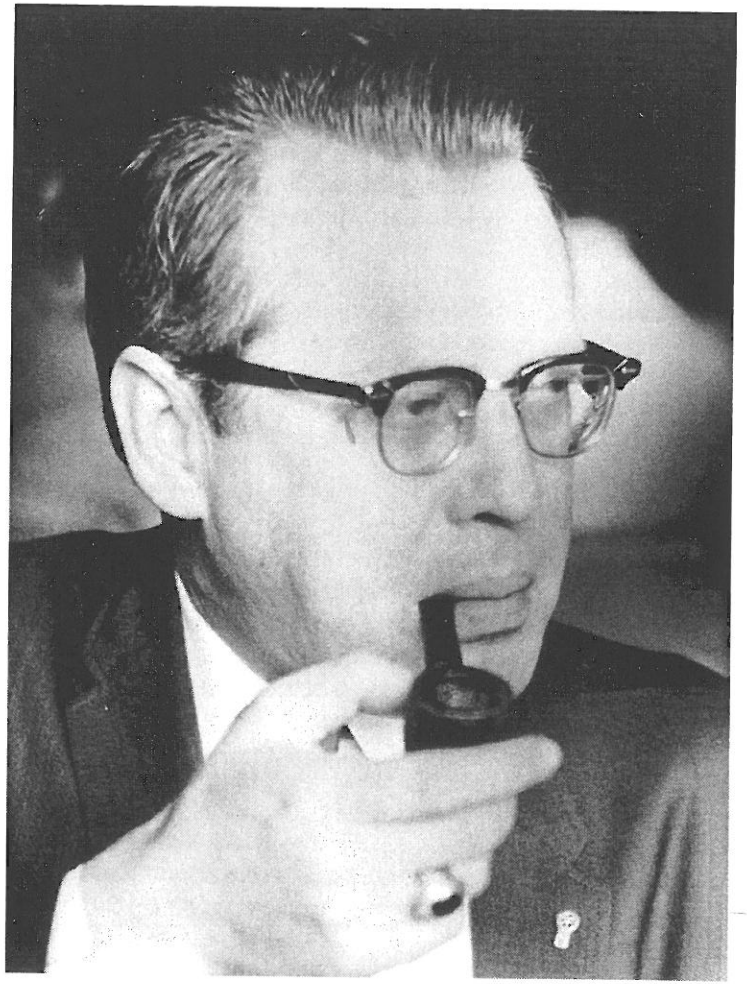
After six months in Juneau, Burr decided to leave and informed the governor. Hickel's two Republican choices for the post, John Savage and Roger Cremo, refused the appointment as attorney general, so he appointed Boyko despite legislative opposition. Hickel made the appointment in June not long after the end of the legislative session. Confirmation hearings could not be held until after the first of the year. Boyko was free to put his stamp on the office at least until then.

Edgar Paul Boyko was born in Vienna and had studied there and in Scotland before coming to the United States. After his work in Alaska for the Bureau of Land Management, he began a private practice as corporate counsel for the Chugach Electric Cooperative Association. In 1957 he transferred his practice to Los Angeles, but he maintained clients in Alaska. A question before the bar at that time was whether or not attorneys not admitted to the bar in Alaska should be permitted to practice here. Outside firms, particularly from Seattle, had routinely practiced before Alaska courts without restriction, but the Alaska Bar Association debated whether to mandate that those firms have an Alaska member for such work. Legislation to implement the Alaska rule passed both houses. At one point, Judge Ralph Moody of the Third Judicial District Superior Court told Boyko he must decide if he were a Los Angeles attorney or an Anchorage attorney, but Boyko resisted such a declaration.[146]

Not long before Boyko became attorney general, judges in the Third District at Anchorage lodged a complaint with the attorney general regarding the conduct of the district attorney's office there. Thomas Curran was the district attorney. The court commented that the office was inefficient and slow, and that some serious crimes which should have been prosecuted were

[145] Donald Burr Interview, Department of Law History Project, 27-28.

[146] SLA 1957, ch. 33; SLA 1955, ch. 196; Boyko Interview, 2.



Edgar Paul Boyko, a native of Austria, became attorney general in 1967 and returned to private practice in 1968.

not, or were backlogged. At the same time, an inordinate number of lesser matters seemed to occupy the attention of the attorneys in the office. Soon after his appointment, Boyko took up the judicial complaint. Boyko had had considerable experience in the Third Judicial District and after a review, he undertook a reorganization of the district attorney's office there. He was particularly concerned that too much time was spent on what he called "victimless" crime, especially prostitution. This was probably a priority remaining from the earlier organization of the office, when making the presence of the law highly visible had been a principle of the operation of the district attorneys. However, Boyko was impatient with this approach and sought to thoroughly change the direction of activity. The priority, he insisted, should be the prosecution of violent crime; everything else should be secondary.[147]

Thomas Curran resigned as a result of the criticism and in his place Boyko named Robert Yandell as acting district attorney. Yandell was a former U.S. Marine and had been with the district attorney's office since 1959, first as an assistant, then as a probate master and a court trustee. Because Yandell was seen more as a law enforcement functionary than as a prosecuting attorney, there was considerable dismay in the office regarding the appointment. Even before Curran's departure, Boyko had directed that Yandell should become the intake officer, thus exerting considerable influence on what matters would be undertaken and which would not. His elevation to district attorney naturally extended that influence. In addition, Boyko added a number of personnel to the office, resulting in a full-scale reorganization. In 1968 Boyko named as district attorney Doug Baily, who would later become attorney general himself. Baily was successful in restoring equilibrium and morale in the work of the office.[148]

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147 Edgar Paul Boyko Narrative, unpublished manuscript, report prepared for Department of Law History Project, 3.

148 Boyko Interview, 10-11.

Boyko's civil deputy was G. Kent Edwards, who was a confidante of Hickel's and who Hickel thought would help quiet Republican criticism of his appointment of Boyko. Boyko left the management of the department to Edwards, considering himself primarily a policy analyst. In addition, he was still involved in pursuing the Native land claims issue and in responding to the appeal in *Alaska v. Udall.*

However, distancing himself from the daily operation of the office sometimes had negative consequences. Boyko often became highly involved in politics, an arena many attorneys general attempt to avoid. During Boyko's term, a faction in the legislature sought to enlist his aid for a measure dealing with the Department of Education, and a member of the House approached Boyko directly on the matter. Boyko provided the information the legislator desired, which included an opinion that a particular bill was probably unconstitutional as written. In the interest of fairness, Boyko also approached the legislator's opponents in the House to tell them what advice he had given and showed them how to achieve their ends constitutionally.

Boyko's deputy, Edwards, likely felt considerable anxiety about Boyko's political involvement. In any case, Boyko came to believe that Edwards was cooperating with members of the legislature without his, Boyko's, knowledge, and to the detriment of his policies and performance. The enmity that developed between them over the matter probably damaged the morale and the performance of the department.[149]

Finally, however, Boyko's preoccupation in the office was the Native claims issue. In 1968 the Federal Field Committee issued its report on Alaska Native conditions, historically and currently. The surveyors found that, when compared with other minority groups in the nation, Alaska Natives generally had the poorest housing, the highest rates of communicable disease, the lowest educational attainment, and the poorest general living conditions involving water, sewage, and power. The conditions were so poor, one analyst concluded, as to deny Alaska Natives equal democratic opportunity.

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149 Boyko Interview, 14.

Chair of the committee was Joseph Fitzgerald, who had been a Civil Aeronautics Board director in Anchorage and was director of the state Public Services Commission at the time of the 1964 earthquake. A former Rhodes Scholar, he had directed the state reconstruction effort. To solve the claims conundrum, the committee offered in its report a "Framework for Decision" based on locating more than a dozen historic areas identified with traditional Native use and occupancy. They recommended that title to land should be conveyed to Natives in these areas, and should be extinguished elsewhere. They further recommended that a compensatory award be paid for the extinguishment, which should be used to capitalize regional Native economic development corporations.[150]

In the meantime, through the Ford Foundation and Malcolm Forbes, the Alaska Federation of Natives had obtained the services of several national law firms and at least two nationally prominent attorneys, Ramsey Clark, former U.S. Attorney General, and Arthur J. Goldberg, former U.S. Supreme Court Justice and United Nations Ambassador. The involvement of such prestigious individuals was an indication of both the national attention attracted to the Alaska Native problem and the rising importance of minority rights in national consciousness.

The involvement of national figures generated considerable resentment in Alaskans, who saw the claims issue as a Alaskan matter that should be solved by Alaskans. Boyko with many state leaders, was sympathetic to the rights of Alaska Natives but resentful of the national attention, which was interpreted as interference. The federal government's interest was justified by its trust relationship with Natives, and Native groups were free to retain the services of whomever they could attract. But all Alaskans, Native and non-Native, increasingly felt as if their futures were being dictated for them by people

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150 Federal Field Committee for Development Planning in Alaska, *Alaska Natives and the Land*(Washington, D.C.: Government Printing Office, 1868), *passim.*

who had no local interest in or understanding of their situation.[151]

Boyko felt this acutely on a trip he made to Washington, D.C., to discuss the state's interests with Secretary Udall. As Boyko described it, the Secretary had only a few minutes, said that the legal advisors in the Interior Department had told him that the injunction was the only way to address the situation and indicated that the department itself would be subject to legal action if it did not act on its trust obligation. Boyko and those with him were then taken to see the Interior Department Solicitor, who repeated the Secretary's message but left promptly to attend another meeting. The group then met with the Deputy Solicitor, who said that it was not really a legal problem but a political one. Boyko interpreted this as meaning that the Secretary had lied in saying it was strictly a legal dilemma.[152] Legal or political, the Secretary's position represented a shift in the national will on the issue of minority rights which Alaskans, Native and non-Native, by and large had not anticipated. Non-Natives seemed particularly ill-prepared to counter this change, which left them feeling violated and powerless.

Boyko appreciated this and had recommended that Alaska take the lead in formulating a solution. This was not a politically palatable position in the state, however, and particularly not for Hickel, who in his campaign had advocated a pugnacious and confrontational stand on the grounds of state sovereignty. In the end, that stand isolated the state and left the solution to the problem in the hands of the Natives and the federal government.

Boyko's successor would inherit this difficult state position on claims. Tiring of the intrigue of politics, Boyko decided to return to Anchorage and his private practice in the summer of 1968, having fulfilled his commitment to serve only one year in the office. He was dismayed, however, when Hickel chose his deputy, Edwards, to be his successor. Boyko's

151 Boyko Interview, 16-17.

152 Boyko Interview, 5.

personality probably had as much to do with his resignation as any other factor: he was not used to working within externally imposed constraints and did not adapt well to them. In addition, his leadership style did not encourage cooperation or necessarily inspire loyalty.

A native Californian, G. Kent Edwards had worked as counsel to the Legislative Affairs Agency in Juneau from 1964 to 1966, which perhaps gave him an appreciation of the legislature that others in the executive branch lacked. He had a private practice in Anchorage before accepting the job as civil deputy in the Department. Governor Hickel thought that he would be able better to work with the legislature than Boyko.[153] Boyko had been involved in the land claims crisis so long, however, that Hickel insisted the state retain him as attorney in suits arising out of that matter.

At one point during Hickel's term, the state requested that a citation of contempt be issued against the Secretary of the Interior for his continued implementation of the land freeze injunction. Judge James von der Heydt, a long-time Alaskan who had been appointed to the U.S. District Court for Alaska in 1966, refused to grant the order. In von der Heydt's view, the Secretary was acting within his legal authority in moving to protect possible Native land rights. Because von der Heydt was held in quite high regard within the community, reaction to his decision was muted, but Alaskans still struggled with the implications of federal sovereignty and the authority which accompanies it. In the meantime, state and federal officials and Native leaders were meeting informally to search for common ground on which to begin to fashion a settlement that would allow Alaska's economic development to go forward. Realizing the serious nature of the circumstances, and sensitive to the matter of Native equity, a growing segment of the Alaska population began to urge a just and fair settlement. The legislative council recommended that the state work with the federal government to reach an agreement. The volatility of the situation was emphasized when by the retaining several

153 Edwards declined to be interviewed for this project.

G. Kent Edwards, appointed by Governor Hickel in 1968, served as attorney general until the reelection of William Egan as governor in 1970.

Kuskokwim villages and Tyonek retained the nationally famous attorney Melvin Belli to represent their claims.

In his inaugural address, Hickel had stressed the need for development, saying that the state was fifty years behind the rest of America. In particular, he thought Alaska's greatest potential lay in the Arctic. The state had sold oil leases on its new North Slope lands in 1964, 1965, and 1967. In January 1968 Atlantic Richfield Oil, the company that had pioneered oil development on the Kenai Peninsula, struck oil in commercial quantities with a well at Prudhoe Bay. Subsequent confirmation wells estimated the field at 9.6 billion barrels, the largest oil find in the history of North America. Development of the find would become a saga greater than the Klondike Gold Rush. In February 1969, a consortium of oil companies holding leases on the field announced plans to build a pipeline south from Prudhoe Bay to a warm-water port on the Gulf of Alaska. In September, the State of Alaska conducted another lease sale in the Arctic on areas adjacent to the Prudhoe Bay find. In contrast to the $12 million paid by companies for the previous leases, the September sale netted the state $900 million.[154]

Even before the announcement of a trans-Alaska pipeline, however, Hickel had left the state. After the November 1968 election the new president, Richard Nixon, had named Hickel to be his Secretary of the Interior. Alaskans celebrated the appointment, widely sharing the perception that Hickel could better advance Alaska economic development as Interior Secretary, but Hickel's confirmation hearings in Washington raised significant doubts about that. Civil rights and environmental groups throughout the nation reacted negatively to both any coercion on the issue of Native claims and the idea of a pipeline across the Alaska wilderness. Before the hearings, Hickel referred to the land freeze injunction and said that what one Secretary of the Interior had done with a pen, he could undo with a pen. When questioned at the hearings, he had to retreat

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[154] Peter A. Coates, *The Trans-Alaska Pipeline Controversy,: Technology, Conservation and the Frontier* (Bethlehem, Pennsylvania: Lehigh University Press, 1991), 164-168.

from the threat, agree to allow an orderly and sensitive settlement of the claims, and to ensure that appropriate environmental safeguards would be maintained for construction of the pipeline. The national mood on both issues had changed dramatically since the statehood battle in the mid-1950s, in ways that few would have predicted, and which continued to keep Alaskans off-guard. With Hickel's departure from the state, Keith Miller, an Anchorage businessman who had been elected lieutenant-governor, assumed the governorship. Somewhat echoing Hickel's earlier position, Miller effectively opposed settlement of the claims issue. He argued that the issue of Native claims was a federal matter and that the state could ignore it. Although his principal advisor on claims was Robert Hartig of Anchorage, Miller retained Edwards as his attorney general.

The discovery of the Prudhoe Bay field greatly exacerbated the crisis of Native claims, for until they were settled, they represented a threat to development of the find. Over the next three years, industry lobbyists, state and federal officials, and the Alaska Federation of Natives worked to find a solution to the dilemma through negotiation. It quickly became clear that only a legislative solution would be able to resolve the many competing interests permanently. The Federal Field Committee report provided the foundation and the framework for a solution, and negotiations proceeded within that framework. The major questions included how much land would be reserved to Native title, how much compensation would be paid for extinguishment of title to the remaining lands and how the compensatory award would be distributed. These negotiations of an extraordinarily complicated problem, which could have taken many years if not decades, were given a keen edge of urgency by the oil find at Prudhoe Bay and subsequent developments in domestic and world politics.

To further complicate the situation, in 1969 the U.S. Congress, responding to a growing environmental consciousness in the nation, enacted the National Environmental Policy Act (NEPA) and established the Environmental Protection Agency to implement Congressional guidelines for impacts on the

environment on public lands.[155] Pipeline construction in Alaska would have to satisfy the requisites of the act.

In the meantime, faced with serious issues which seemed to crash upon one another in incomprehensible succession, Edwards tried to equip the Department of Law to respond effectively. Although the state had established an oil and gas division in the Department of Natural Resources,[156] the magnitude of the new oil discovery threatened to overwhelm state planning. In 1967, Robert Hartig had been brought into the department as an assistant attorney general in charge of the natural resources section. A geologist as well as a lawyer, Hartig had worked for Mobil Oil in Wyoming for over a decade before coming to Alaska in 1967. Edwards entrusted much of the department's responsibility for oil and gas leasing to Hartig, despite considerable protest from critics who thought that Alaska's resources would not be adequately protected by an assistant with such close ties to the oil industry.

In the meantime, the crises associated with maintaining law and order in society did not cease. Edwards had to deal with two domestic matters which captured public attention. One was the trial of an Anchorage dentist charged with manslaughter in the death of a patient while under anesthesia. Testimony indicated a pattern of malpractice but the state reduced the charge to assault and argued that the renewal of the license was the only state issue under consideration, a position that was unpopular with the general public.

Edwards also had to contend with criticism of a former legislator, Harold Strandberg, who took the post of public works commissioner immediately after leaving the legislature, and after having voting to raise the salary for the position. Edwards ruled that the appointment did not violate state statutes or regulations.

Finally, Judge James Hanson, presiding judge in the Third Judicial District, publicly criticized the state for failing to

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155 See the analysis of the genesis of the act in *Congressional Quarterly Almanac* 25 (1969): 525-27.

156 Revenue from oil production had displaced fisheries as the primary source of state income in 1967; "Alaska's Economy in 1967," *Monthly Review of Alaska Business and Economic Conditions,* 5 (1967): 2.

compensate judges adequately, a matter not within the purview of the attorney general's office but one which affected the criminal justice system.

A QUANTUM LEAP INTO MODERN STATEHOOD ISSUES

Former governor William Egan ran again in the 1970 election and won, defeating Keith Miller. One of Egan's acts was to appoint John E. Havelock as attorney general. Havelock went to Juneau soon after the election to help with the transition and suggested that Edwards remain in the attorney general's office until he was ready to leave. Edwards stayed on for several months before transferring to the district attorney's office in Anchorage.

John E. Havelock, born in Toronto, had attended Harvard College and Harvard Law School. He was an assistant attorney general from 1960 to 1963 and after leaving the attorney general's office to join the firm of Ely, Guess, Rudd and Havelock, he was selected as a White House Fellow for 1967-68 and served as a special assistant to the Secretary of Agriculture. In 1970 he worked on the campaign of Emil Notti, a Native from Koyukuk, who ran unsuccessfully for lieutenant governor. Perhaps no one who served as attorney general was as well prepared for the position as Havelock was at the time of his appointment. He had served as deputy under Ralph Moody when the department was being shaped and had worked with various projects after he went to Anchorage which kept him aware of how the office developed. After his work as a White House Fellow he was a principal contact in Alaska for the U.S. Department of Agriculture.[157]

The gubernatorial election had been fought mainly on the question of whether the state would pursue an Alaska Native claims settlement. The new administration's position was going to be that the state should cooperate in forging a settlement.

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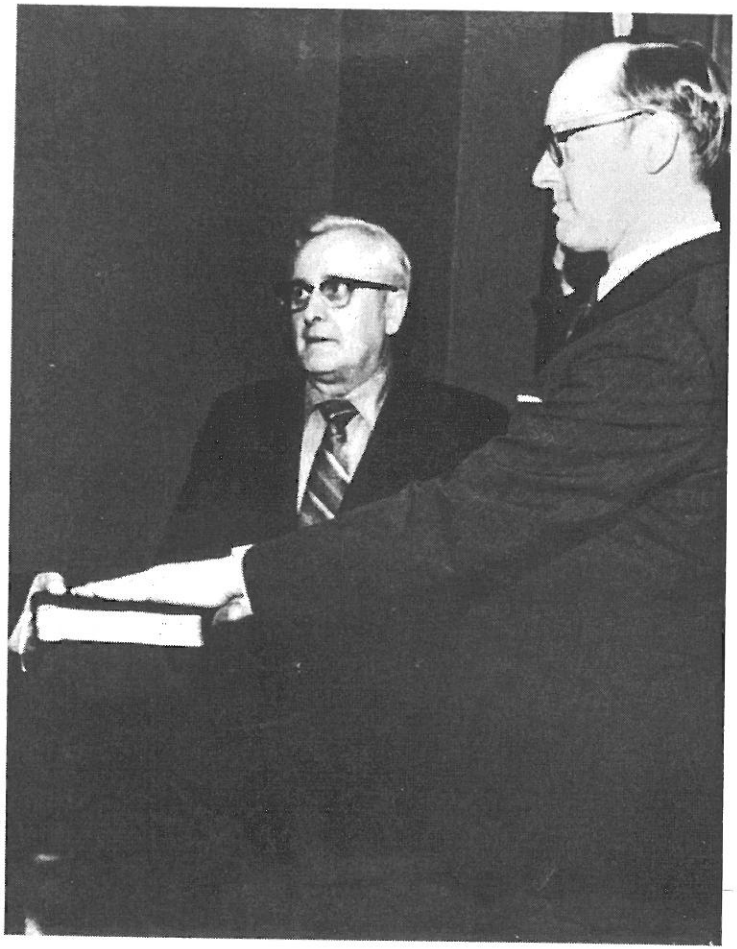
[157] John Havelock Narrative, unpublished manuscript., report prepared for Department of Law History Project, 1.



John E. Havelock, shown here being sworn in by Governor William Egan in 1970, was attorney general at the time of the Native claims settlement act and during development of the Trans-Alaska Pipeline.

Because of Havelock's previous involvement with Native groups and his conviction that a just and fair settlement was appropriate and necessary from a practical standpoint, Egan relied heavily on Havelock to help undertake that work.

One of Havelock's important contributions was to move the discussions out of an adversarial context. He insisted that the state must have a flexible position rather than establish rigid notions of what would and would not be acceptable.[158] This approach had the effect of eliminating a "loser" whenever an agreement or compromise might be discussed. Havelock knew Joseph Fitzgerald well and was aware of the recommendations of the Federal Field Committee; he understood the comprehensive framework proposed in its report, which addressed subsistence resources for Natives, as well as fish and game in the broader context of the total population. The final bill did establish a uniform treatment of fish and game, but Havelock was disappointed when discussions essentially narrowed to a contest over how much land would be conveyed and how much would be paid in compensation for the remainder. Subsistence was a consideration only after the Natives identified lands they wanted, based on their development potential.

Prudhoe Bay was a vital interest for the state of Alaska: oil would pay for a state government the size and scope of which no one could have imagined before 1968. Havelock and other state leaders watched somewhat helplessly as industry planners readied for pipeline construction. Hickel was convinced that the state could build a road linking the settled regions of the state with the Arctic coast and early in 1970 he announced that he was ready to issue a permit for such a road. That it could and would be used by the oil industry to prepare for pipeline construction was a bonus so far as Hickel was concerned. The Interior Department released an eight-page impact statement regarding the road which, spokesmen said, satisfied the requisites of the National Environmental Policy Act.

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158 John Havelock Interview, Department of Law History Project, 12.

Four days after Hickel's announcement, however, five Native villages north of Fairbanks filed suit in the federal district court in Washington, D.C., claiming that the Trans-Alaska Pipeline System had failed to honor a promise made the previous summer to hire Native contractors and workers for the pipeline project. Just over two weeks later, the Wilderness Society, Friends of the Earth, and the Environmental Defense Fund filed suit against construction of the pipeline in the same court. They argued that plans for the line violated the Mineral Leasing Act and NEPA because the planned rights of way exceeded those permitted under the leasing act and because stipulated alternatives to the project had not been provided, as required under NEPA. Three weeks later U.S. District Judge George Hart issued a preliminary injunction halting any road or pipeline construction on the grounds that the road was clearly an integral part of the pipeline project and that it was not yet clear that the requirements for environmental protection had been met.[159]

The environmental suit irritated Havelock because he considered it disingenuous.[160] There had been much discussion about an alternative line through Canada, which would have crossed far too much sensitive land to have ever been approved. Philosophically, Havelock was sympathetic to the environmentalists' perspective, because he thought Alaska wilderness represented a unique and significant environment worthy of protection. However he considered a preservationist approach impractical and not in the state's best interest. The environmental political agenda, however pure the ultimate motives, he concluded, was to kill the pipeline project by obfuscation and delay. On the other hand, he was convinced that Judge Hart did not intend to resolve the suits. Rather, the judge would delay resolution as a way of forcing the Congress to settle the matter. Events proved Havelock correct.

159 Wilderness Society et al. v. Hickel, 325 F. Supp. 422 (1970). See the discussion in Coates, *Trans-Alaska Pipeline,* 190 ff.

160 Havelock Interview, 17.

In the meantime, the claims dispute appeared susceptible of a quicker conclusion. Using the Federal Field Committee formula, the Natives, the Interior Department, and the state agreed that the Native entitlement would be about 44 million acres and that Congress would authorize $962.5 million in compensation for the extinguishment of title to all other land in the state. The money would capitalize twelve regional Native economic development corporations and as many village corporations as members of the 208 identified villages chose to form. All Natives would be given the opportunity to become stock holders both in a regional and a village corporation. Regional corporations would own the subsurface estate in the region, while village corporations would own the surface estate in or near their villages. This settlement passed the Congress on December 17, 1971. Havelock had spent considerable time in Washington, D.C., working on the settlement, which, while too environmentally mute and too corporate in structure for his liking, nonetheless cleared the landscape of a huge roadblock to economic development in Alaska and at the same time recognized Natives as full and equal partners in that development.

Egan subsequently named Havelock the state's "pipeline coordinator," responsible for organizing the state's response to developing issues in the pending suits and generally clarifying the state's interest as construction neared, including working out a cooperative arrangement for surveillance of the pipeline during its construction.[161]

One idea Egan pushed particularly forcefully was that the state should own the pipeline and commission the oil companies to build it. The resource being developed was a state resource, owned by the people of Alaska, and it seemed reasonable to the governor that the people of the state should profit from and control the extraction of the resource. Both of these aims could best be accomplished if the state owned the means of transportation. Havelock prepared a formal proposal

161 Havelock Narrative, 5.

for state ownership but opposition from the oil industry was so strong that the governor gave up the idea.

Havelock took primary responsibility for developing the state's policy on taxation of the pipeline, which was embodied in two bills enacted in 1972. The first increased the tax rate on oil production and established higher minimum per-barrel tax obligations, subject to a credit for royalty payments. The second bill established various conditions for pipeline rights-of-way across state lands, including substantial rentals as well as a requirement that pipeline owners consent to state regulatory jurisdiction over the transportation of oil in interstate commerce. Not surprisingly, the industry opposed the new and higher taxes and filed suit to block them. The cases were resolved in a package of legislative changes that passed in a special session called in Fall 1973.

Governor Egan called the special session after Congress resolved the impasse between the oil companies and environmental critics during the summer. In July, following inconclusive hearings on the feasibility of a Canadian pipeline to the American midwest, Alaska's junior senator, Mike Gravel, introduced an amendment to pending legislation to foreclose further court-ordered delays in construction of the Alaska project, an amendment that was certain to be approved in the House if passed by the Senate. The measure would have effectively waived the requirements of NEPA for construction of the Alaska pipeline. In dramatic balloting on July 17, the vote was a tie, 49-49. Vice-president Spiro Agnew cast the deciding vote, clearing the way for construction of the pipeline to begin.[162]

With the pipeline construction in sight, Egan determined that a legislative compromise would be necessary to resolve the tax suits in Alaska because unending litigation could substantially reduce the state's profit from North Slope production. The resulting legislation lowered the per-barrel minimum severance taxes, raised the percent-of-value rates, and eliminated the royalty credit.[163] In addition, the right-of-way

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[162] Coates, *Trans-Alaska Pipeline*, 246.

[163] The per-barrel minimum tax was established at $0.16875 on each of the first 300 barrels from a well in a month, $0.2025 on each of the next 700 barrels, and $0.2700 on each barrel of production over 1,000 barrels. Similarly, the percentage-of-value rate was established at 5 percent of gross value on the first 300 barrels, 6 percent on the next 700 barrels, and 8 percent on all production above 1,000 barrels; SLA 1973, Ch. 4.

provisions were eliminated or modified. In separate legislation, the corporate income tax had been set at 9.4 percent and the state's royalty share of crude oil production at 12.5 percent. Finally, the package included a new property tax on oil exploration, production, and transportation property. From oil taxes, as well as the state's 12.5 percent royalty share, would come the great economic bonanza that Prudhoe Bay represented for the people of Alaska.

In assembling and securing passage of the package, Havelock had to contend with legislative politics as well as industry critics. Governor Egan was quite distrustful of the oil industry when he went to Juneau in 1970, a consideration which led him to advocate state ownership of the pipeline. He had not studied taxing policy with his usual attention. Some members of the legislature, however, realizing that taxing policy would be the principal means of generating state revenue from petroleum development, already had measures ready for debate. Unwilling to concede leadership on the issue to the legislature, Egan brushed aside their plans and decided to write his own, with most of responsibility falling to Havelock. In the end, the compromise legislation in the special session seemed to put the state in a favorable position to capitalize on development.

In addition to the taxing measures, Havelock also wrote a bill creating the Alaska Pipeline Commission, and measures providing strict liability for the discharge of hazardous substances, including oil.

In the meantime, the state continued to deal with Cook Inlet oil. Two important cases occupied the state's attention. The first arose from a state attempt in 1967 to sell offshore oil and gas leases in lower Cook Inlet.[164] The federal government claimed

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[164] The lower inlet, below Kalgin Island and Kachemak Bay, is distinct from the upper inlet, over which the state had succeeded in gaining control during George Hayes' tenure as attorney general.

jurisdiction there and thus, ownership of the resources. The state prevailed in the U.S. District Court and at the Ninth Circuit Court of Appeals in 1972; however, the U.S. Supreme Court reversed the decision in 1974. Havelock contracted with outside counsel for the case; this was the first time substantial monies had been spent for counsel outside the department.

The second case involved the state's claim that oil producers were underpaying royalties required by existing leases. Mobil Oil had filed a suit over the issue in 1970. Havelock decided that the state should sue all existing producers and Havelock gave this responsibility to Wilson Condon, who would later serve both as deputy attorney general and then as Attorney General. Condon would handle much of the state's oil and gas royalty negotiations over the next two decades. He was able to settle the Cook Inlet pricing case on favorable terms for the state in 1975 and 1976.

When he was appointed attorney general, Havelock asked Norman Gorsuch, an attorney with his Anchorage law firm, to come to Juneau as his civil deputy. Because Gorsuch had a background in natural resource litigation, Havelock considered him ideal for the deputy position. Havelock maintained an open and inclusive administrative style, involving his deputy in executive branch meetings and in budgetary as well as administrative matters.

Havelock also hired Catherine Bittner Chandler as assistant district attorney in Fairbanks.[165] There were not yet many women in the district attorney's offices nor in the department in Juneau. He also opened a civil office in Fairbanks. At the time the department employed 37 attorneys in the civil division and 23 in the criminal division. Havelock complained, however, that few statistics were kept and that record-keeping was inadequate.

Because it was necessary to track claims and pipeline activity in Washington, D.C., Havelock opened a department office there and hired Guy Martin to run it. Martin worked with

[165] Dean Guaneli, "Criminal Division," Department of Law History Project, 7; see Appendix II.

the Congressional delegation, appeared at Congressional hearings to represent the state's interests, and generally acted as a liaison between the two political worlds of Washington and the hinterland. Recognizing the usefulness of the office, Governor Egan soon appropriated it for his own but retained Martin.

Havelock undertook several important initiatives during his tenure. One was an unprecedented change in fishing regulations. As elsewhere in the United States, the fisheries had always been treated as a common property resource, i.e., open to use by all citizens on an equal footing.[166] Significant resentment of "Outside" control of the fisheries by the canned salmon industry, however, had been a major issue in the statehood struggle. Alaskans felt that residents should have first access to their own resources and there was great concern that the absentee-owned industry was exhausting the fishery and paying insufficient regard to its future. Article VIII of the Alaska Constitution provides that the fish and wildlife of the state "are reserved to the people for common use" (Sec. 3) and prohibits any "exclusive right or special privilege of fishery" (Sec. 15). Even with statehood, however, Seattle fishers coming to Alaska only for the season took a great many fish, a circumstance interpreted by many resident fishers to mean that there were fewer fish for them. Havelock sought a remedy for resident fishers by seeking the repeal of the prohibition on exclusive right. Accordingly, in 1972 the voters amended the constitution (Art. VIII, sec. 15) to allow the state to limit the number of fishers in the salmon and other fisheries, and to determine who would receive valuable "limited entry" permits. This was the first significant change in the "commons" policy regarding fish in American history. It is not clear, however, that it has achieved the result intended. Market forces seem to exert as much

[166] The fact that Natives generally were not accorded the status of citizen by the U.S. Congress until 1924 colored their treatment by the salmon industry in Alaska. The Alaska Native Brotherhood included the achievement of citizenship and the abolition of fish traps and guarantees for Native use of the fishery among its principal policy aims from the beginning of its advocacy of Indian rights.

influence on the amount caught in any season by individual fishermen as does the limited entry provision. Moreover, state and federal regulations now allocate catch amounts on the basis of both individuals and communities.

Avrum Gross advised the legislature on limited entry. He recalls that early versions of the amendment did not include transferability, which was added at the last moment by Walter I. "Bob" Palmer, a state senator and commercial fisher and sometime farmer from the Kenai Peninsula.[167] The addition significantly altered the measure, for the state did not place a monetary value on the permits. Because their number was limited, the permits were immediately very valuable. They are now worth many tens of thousands of dollars, and the highest bidders are not always Alaskans.[168]

The environmental suits challenging the pipeline, still in the court and still preventing the start of construction, prompted Havelock to press for a new executive department of environmental conservation, which was approved in 1971. Havelock remembers that the purpose of the new department was to ensure state compliance with both federal and state environmental protection laws and regulations, thereby saving the state, and individual citizens, grief and dollars.[169]

A civil libertarian, Havelock was very interested in the right of privacy. Development of a new computer system to keep track of criminal records, the Alaska Justice Information System (AJIS), generated anxiety regarding privacy and the dissemination of incriminating information. Havelock proposed a constitutional amendment specifically to protect a citizen's

[167] Palmer would serve as an advisor on agricultural matters to Governor Jay Hammond from 1974 to 1978. See Avrum Gross Interview, 7.

[168] See the discussion in McBeath and Morehouse, *Alaska Politics and Government,* 125-126.

[169] Havelock Narrative, 6; SLA 1971, ch. 120; AS 44.46.020 (duties of the department), AS 46.03.010 (declaration of policy), AS 46.03.020 (powers of the department).

individual right of privacy, a right only implied in the federal and most state constitutions. The amendment (Art. I, Sec. 22) reads simply: "The right of the people to privacy is recognized, and shall not be infringed. The legislature shall implement this section."[170]

In 1975 the state supreme court cited the privacy right in *Ravin v. State,* which dealt with the possession of a small amount of marijuana. Reversing the superior court, the Supreme Court in an opinion by Chief Justice Jay Rabinowitz asserted that

> Our territory and now state has traditionally been the home of people who prize their individuality and who have chosen to settle or continue living here in order to achieve a measure of control over their own lifestyles which is now virtually unattainable in many of our sister states.[171]

Whether or not Rabinowitz's comment reflected the reality of most Alaskans, which it probably did not, it clearly reflected a widespread and popular mythology about the state and its history. In any case, the possession of marijuana by adults in their own homes became legal in Alaska, and there was no contest over whatever inconsistency this might have established with federal law eventuated. Shortly after the *Ravin* decision, the legislature set one ounce as the amount which could be possessed legally in public.[172] Any amount could be possessed

[170] Guaneli, "Criminal Division," 7; for the effect of the privacy provision on criminal procedures in Alaska, see *State v. Glass,* 583 P. 2d 872 (1978) (search warrant required for taping by undercover informants). Newspaper coverage at the time emphasized the AJIS system as a primary motivation for the privacy provision: *Anchorage Daily News,* March 21, 1972, 8; *Fairbanks Daily News-Miner,* March 20, 1972, 2; *Southeast Alaska Empire,* March 17, 1972, 2.

[171] 537 P. 2d 494 (1975).

[172] SLA 1975, ch. 110.

in the home for personal use. The distinction between use and intent to distribute continued. The U.S. Attorney's office tacitly accepted these guidelines.

The *Ravin* case is a good illustration of the independence of the court from the legislature and the executive branch. Required to act, the court took a position which was considered radical in a national context, and by many Alaskans as well. The legislature has tried to circumvent the *Ravin* ruling by recriminalizing marijuana possession following passage (by a 5 to 4 margin) of a statewide initiative favoring such a measure in 1990.[173]

Havelock also gave his attention to the criminal division. The Anchorage district attorney's office still reflected some of the upheaval of the Boyko and Edwards years, so Havelock persuaded Seaborn Buckalew, a highly respected member of the Anchorage bar and a strong personality, to head the office there. After coming to Alaska in 1950, Buckalew had served as U.S. Attorney, been elected to the territorial House of Representatives, and served as a delegate to the state constitutional convention in 1955-56. He had also been an assistant adjutant general in the Alaska Air National Guard. Buckalew regularized procedures and, by exerting strict control over intakes, restored the respect and confidence of law enforcement agencies in the integrity of the district attorney's office. As part of this reorganization, a number of people were shifted to different offices in the state. Though no one was fired, a few left voluntarily. Buckalew's leadership effectively quieted criticism of the Anchorage office. Later, Buckalew was appointed to the Superior Court bench.

In the fall of 1973, while campaigning for reelection, Alaska Congressman Nick Begich disappeared on a small airplane flight from Anchorage to Juneau. He was accompanied by Louisiana Congressman Hale Boggs, a major national political figure. Because the presumptive death hearing could not reasonably be held before the deadline, Begich's name appeared on the election ballot, and he garnered more votes than his

173 SLA 1990, ch. 76.

opponent, Republican Don Young. Havelock had the sad duty of working out the procedure to fill the seat declared vacant once the hearing was held. Later, in a special convention, the Democrats nominated Emil Notti, who subsequently lost in a special election.

Because of his role in the claims settlement, the critical nature of the environmental suits in federal court halting pipeline construction, and the initiatives he undertook, Havelock inevitably nudged political sensitivities. Perhaps feeling somewhat challenged in his own position and power, Egan apparently grew to distrust his attorney general. Sensing the change in the governor's faith in him, Havelock determined to step down.[174]

John Havelock had an enormous impact on the development and history of the Department of Law, and on the development of the state of Alaska. Clearly, whoever had been attorney general would have had to deal with the claims settlement and with the crisis brought by the environmental suits which halted construction of the Trans-Alaska Pipeline. However, Havelock's prior involvement with Native groups and leaders, his commitment to a just and fair settlement, and his insistence on a flexible rather than a rigid state negotiating position undoubtedly contributed to the nature of the settlement. In addition, the inclusion of Sec. 17(d)(2), which provided that Congress would set aside 80 million acres of Alaska land in potential conservation units and that a joint federal-state land use planning commission would be created whose duties would include recommendations on which lands those should be owed much to Havelock. He recognized early not only the intellectual but also the political significance of environmental protection.[175]

174 Havelock Interview, 34.

175 Many people urged that the 17(d)(2) provision be added to ANCSA, among them David Hickok, director of the Arctic Environmental Information and Data Center of the University of Alaska. Havelock remembers recommending inclusion of the land use planning commission, as well as supporting a process for identification of lands in four conservation categories: parks, forests, fish and wildlife refuges, and wilderness, the latter a specific

Havelock's initiatives on hiring women, on privacy, and on the limited entry fishery were uniquely his own and all have had lasting impact. Today, women have been thoroughly integrated into the department at all levels, so much so as to represent a commonplace, and to serve as a model. They have held the posts of district attorney in Kenai, Ketchikan, Kodiak and Palmer, chief of the civil sections in Fairbanks, Anchorage and Juneau, head of the Office of Special Prosecutions and Appeals, and deputy attorney general for both the criminal and civil divisions. Their names have become too many to note individually.

The dust from the *Ravin* decision may not yet have settled completely, but unarguably the explicit recognition of the privacy right in the Alaska Constitution provides a broader and clearer context for its protection than is afforded by any other state constitution. And the limited fishery law, however imperfectly it has operated, has probably largely achieved its aims of helping give resident fishers a more equal opportunity to profit from Alaska fisheries and to conserve this much nurtured state resource.

Finally, Havelock significantly increased recruiting activity for the department by sending one of his assistants, Richard Bradley, not just to the East Coast but to the Midwest, to California, and to the Pacific Northwest. Bradley's efforts attracted to Alaska a dozen or more unusually capable attorneys who went on to significant careers in public service, among them, not only Wilson Condon, but Dan Hickey, who would become chief prosecutor in the department, and Peter Michalski, now on the Superior Court bench in the Third Judicial District.

Soon after leaving the department, Havelock decided to run for Congress. Though he had considered that possibility

designation in all of the prior three. These were to be identified as much as possible by ecosystem boundaries, a new concept for the identification of federal conservation lands; see Coates, *Trans-Alaska Pipeline Controversy,* 308; G. Frank Williss, *"Do Things Right the First Time": The National Park Service and the Alaska National Interest Lands Conservation Act of 1980* (Washington, D.C.: National Park Service, 1985), 114.

while still attorney general, he had not discussed it with anyone, thinking it both improper and disruptive to do so while still serving in an appointed position. Unsuccessful in his bid, he later became the first head of the Justice Center at the University of Alaska Anchorage and subsequently re-entered private practice. He has served on a number of important commissions in recent years, including the Bush Justice Commission and the commission to coordinate the state's assessment of the impact of the *Exxon Valdez* oil spill.

Havelock's successor, Norman C. Gorsuch, had been interested in Alaska before going to law school. He remembers being one of only a few people who signed the interview sheets for the two Alaska firms that interviewed his class at Columbia Because Havelock had included Gorsuch in executive meetings, Egan knew him and asked him to become attorney general soon after Havelock announced his intention to leave the administration.[176]

With pipeline construction approved, Gorsuch anticipated there would be an increase in criminal activity in the state. Accordingly, he requested additional staff from the legislature, and moved to prepare the district attorneys offices for what was expected to be an onslaught. Additionally, he appointed Dan Hickey as the assistant attorney general in charge of ensuring consistency in criminal prosecutions, sentencing, plea bargaining, and appeals. Although not so designated officially, Hickey became *de facto* deputy in charge of the criminal division. Gorsuch also named Catherine Chandler as the district attorney in Fairbanks. This move got considerable press notice because, although Dorothy Awes Holland, a former delegate to the Alaska constitutional convention, had headed the civil office in Anchorage in the 1960s, Ms. Chandler was the first woman to be appointed a district attorney in Alaska.[177]

[176] Norman Gorsuch Narrative I, unpublished manuscript, report prepared for Department of Law History Project, 1.

[177] Ms. Chandler subsequently married Alaska U.S. Senator Ted Stevens and moved to Washington, D.C., where she is employed as general counsel to the National Endowment for the Arts.

Norman C. Gorsuch served as attorney general at two different times, from 1973 to 1974 during the term of Governor William Egan and again from 1982 to 1985, during the term of Governor William Sheffield. Here he is shown with Governor Egan. *Photo courtesy of Anchorage Daily News.*

Gorsuch also developed a policy and procedures manual for assistants in the department, especially for new attorneys joining the staff. He named Mike Pederson as his civil deputy.

During Gorsuch's term, the Lower Cook Inlet case concluded when the U.S. Supreme Court reversed the lower court's decision on state ownership. Gorsuch felt that the state's arguments in the case were unassailable, a view that had apparently been shared by the lower courts. He concluded that the decision was politically motivated and that the Court was unable to cope with the prospect of a loss of lease revenue for the federal government.

Following the 1970 census, Governor Egan had ordered reapportionment of the legislature. When the results were announced, two state legislators, Senator Clifford Groh and Representative Tom Fink, filed suit to overturn the governor's plan. The issues they raised included how military votes should be apportioned and whether Anchorage was under-represented. The court appointed a master who, after consulting with the attorney general and the aggrieved parties and conducting his own study of the issue, approved a plan essentially identical to the governor's.[178]

At one point during his tenure, Gorsuch advised the governor that he should allow himself to be interviewed by the Alaska State Troopers about an irritating matter involving Edwin Glotfelty, the city manager in Kenai. Glotfelty liked to associate himself with power, and he enjoyed a good story. Once, apparently seeking to make an indelible impression, he told friends that he had successfully stolen most of the city treasury. He also told confidantes that he was a good friend of the governor and had met personally with him, and he implied that he had paid the governor a kickback on his Kenai theft. While the troopers were investigating these allegations, the press learned of the affair and printed stories raising questions about Egan's integrity. Gorsuch advised Egan that the only way to maintain the integrity of the government was to allow the troopers to interview him for the record, and thus put any

178 *Groh v. Egan,* 526 P. 2d 863 (1974).

questions to rest. Reluctantly, the governor consented to the interview.[179] The troopers already had determined that Glotfelty could not substantiate his stories. Egan's testimony confirmed the governor's honesty.

Gorsuch took over as attorney general in November 1973 but the election of 1974 brought his tenure to an end quickly. Egan ran for reelection, facing former state senator Jay Hammond, who had defeated Walter Hickel in the Republican primary. events conspired to prevent Gorsuch from leaving the post peaceably. The Division of Elections, headed by Lieutenant Governor H.A. "Red" Boucher from Fairbanks, used a new computer system in the election and new punch-card voting machines in a number of precincts. A fault in the design of the machines resulted in over 60,000 questioned ballots. The machines allowed the voter too much movement of the handle of the puncher, resulting in many ballots having the punch not precisely in the box designated for it and raising the question of whether the ballot had been marked so as to show the voter's intention clearly.

Gorsuch met with Governor Egan to consider the legal implications of the problem and persuaded the governor to allow the attorney general 's office to oversee counting of the ballots to avoid charges that the governor might manipulate the outcome. The governor agreed that the attorney general should do the count, and Gorsuch remembers a tense phone call from the governor to Boucher soliciting his agreement. Boucher acceded, and Gorsuch directed the ballot counting by hand in a Fairbanks high school gymnasium.[180] Hammond won the election on the basis of the flawed ballots, a decision which Egan accepted without protest.

After his tenure as attorney general, Gorsuch returned to Anchorage to private practice. However, he would return to Juneau eight years later as attorney general for Governor Bill Sheffield.

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179 Gorsuch I Interview, 27.

180 Gorsuch I Interview, 15.

THEIR FINEST HOUR: UPHOLDING THE 1978 PRIMARY ELECTION AND GUARDING THE STATE'S OIL WEALTH

Jay Hammond won the gubernatorial election in 1974. A wilderness guide from the Alaska Peninsula, Hammond had served in the state House of Representatives from statehood to 1966 and in the state Senate from 1967 to 1973. He was elected president of the Senate in his last term. He defeated four Republican opponents in the 1974 primary, ran on a platform that advocated a balance between economic development and conservation of natural resources, and, in the general election, after the hand count of the challenged computer ballots, defeated Governor Egan by 287 votes.

Hammond selected Avrum M. Gross to be his attorney general. Gross had come to Alaska from law school in 1959. Initially, he worked for the legislative council, writing bills and advising committees on the legal implications of proposed legislation. Later, he was hired by the Department of Law as an assistant on fish and game matters and worked there until 1963. Gross gained considerable experience in those years, working on the *Kake v. Egan* and *Metlakatla v. Egan* fish trap cases, among others. After entering private practice in 1963, he represented various clients in actions involving state and municipal government.

Gross had come to know Hammond during their early legislative work and had worked on Hammond's various campaigns. Gross was known as a liberal: while in private practice he founded the Alaska chapter of the American Civil Liberties Union. Hammond eschewed party labels, however, and assembled a very bipartisan administrative team.[181]

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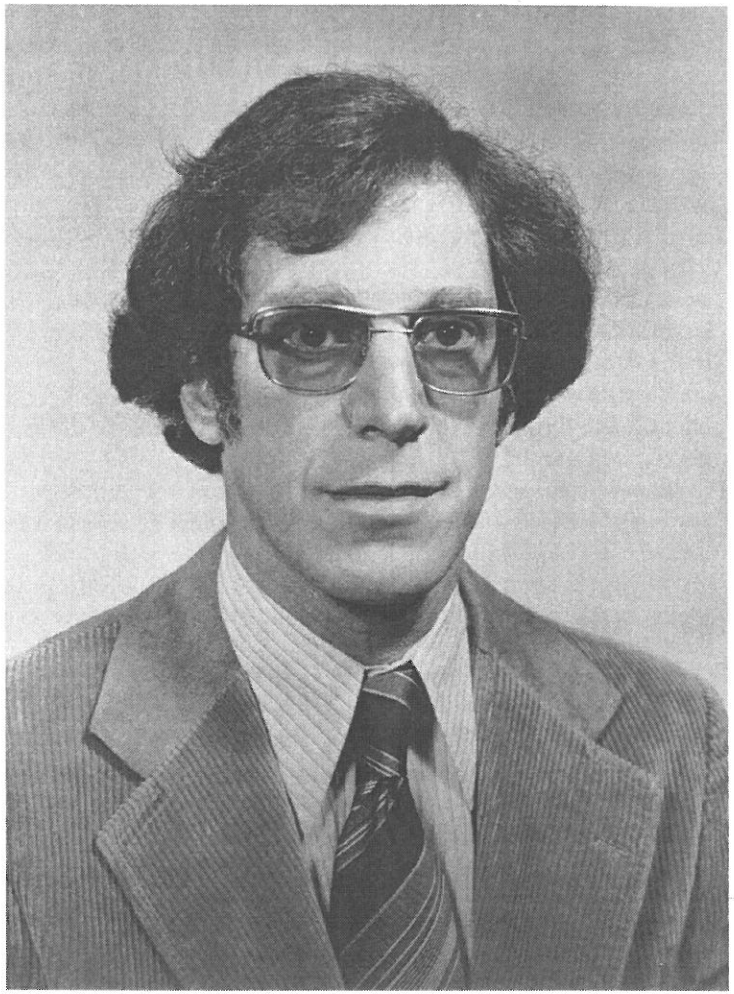
181 Avrum Gross Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.



Avrum M. Gross, attorney general from 1974 to 1980, faced several significant issues during his term, among them the creation of the Alaska Permanent Fund and passage of the Alaska National Interest Lands Conservation Act (ANILCA).

At the beginning of his tenure, Gross named Michael Pederson as his civil deputy but Pederson soon chose to leave the department. Gross then selected Wilson L. Condon. Condon had joined the department in 1971, recruited from Stanford Law School by John Havelock. He had worked on gas and oil litigation and negotiation for the department and had already earned a reputation as an accomplished expert by the time Gross became attorney general. Gross gave Condon the primary responsibility for organizing the work of the office. A natural administrator, Condon established divisions, divided the work, substantially expanded the procedural manual developed during Gorsuch's tenure, developed a brief bank and index, implemented a statewide uniform case management system, analyzed and segregated various aspects of the budget, and otherwise brought a considerably more professional character to the department. In fact, Condon took a series of essentially independent offices within the department and turned them into the largest and probably the best organized law firm in the state. Condon said later that this was his goal. Various career officers in the department agreed that he fully achieved it. Gross supported this effort for he had found the office to be evolving too casually.[182] Until Condon's work the department was organized somewhat loosely. Assistants were being assigned to various cases and initiatives in response to the occasional demand and crisis. Following Condon's restructuring, the department took on more the aspect of a bureaucracy; it was more insulated from the political vicissitudes of the administration, more professionally organized, and more efficient in its work.

Gross' six-year tenure as attorney general was significant both because it was longer than that of any previous Alaska state attorney general and because of the magnitude of the matters that he faced. These included completion of the pipeline and the beginning of Prudhoe Bay production; the creation of the Alaska Permanent Fund and the suits regarding distribution of the fund dividend; the controversy over the

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182 Gross Interview, 10-11.

proposed "d(2)" environmental land withdrawals under the Alaska Native Claims Settlement Act and the passage of the Alaska lands bill in Congress (Alaska National Interest Lands Conservation Act, or ANILCA); the settlement of the Molly Hootch case regarding the state's responsibility to provide village high schools in rural (primarily Native) Alaska; the revision of the state's criminal code; and litigation regarding the primary election in 1978.

The impact of the money associated with pipeline construction and the onset of oil production can be seen in some statistical measures. Construction starts in the state rose by 30 percent between 1977 and 1978. Alaska family income rose to the highest in the nation. Employment in some areas, especially Fairbanks, rose by 100 percent.[183]

In the 1950s, one of the major arguments for Alaska statehood had been that Alaskans did not receive much benefit from the exploitation of the area's resources by absentee investors. This seemed particularly true of the salmon fishery and, to a lesser degree, of gold and copper mining. Governor Hammond was determined that Alaskans should reap a long-term benefit from oil development. The taxes established for oil production by the 1973 special legislative session would generate huge revenue for the state, and Hammond dreamed of establishing a permanent investment fund from some of that revenue that could in some way be used by all Alaskans.[184] In 1974 he proposed that the legislature create such a fund and in

[183] Gross Interview, 1.

[184] Hugh Malone, a former city council member and legislator from Kenai, and Oral Freeman, a merchant, fisherman and long-time legislator from Ketchikan, developed the idea of a permanent fund supported from oil revenue, but Hammond was an early advocate. A precursor for the idea existed in Alberta, where a similar fund was created in the 1960s. The history of the Alberta Heritage Fund has been considerably different from that of the Alaska fund, however; Wilson Condon Interview, Department of Law History Project, 3. Malone would serve as Commissioner of Revenue under Governor Steve Cowper.

1975 the legislature passed a measure creating one. However, Gross advised Hammond to veto the bill, for the Alaska Constitution prohibited the creation of dedicated funds.[185] Gross opposed the fund bill for other reasons: he said that fund created by the legislature would not be immune from legislative action and could be dissolved at any time by a vote of the legislature. Gross did not consider this a fund at all.[186]

Gross prepared a referendum asking the voters if the constitution should be amended to create a permanent dedicated fund from mineral lease and royalty revenues.[187] The referendum passed handily, and the fund was created. The legislature subsequently established the Permanent Fund Corporation and provided that the fund should be managed conservatively as a savings account and that only the earnings, not the principal, would be spent.[188] Eventually, the legislature provided that an annual dividend would be paid to all Alaska residents from the earnings of the fund.[189]

Initial legislation, in keeping with Governor Hammond's dream, provided that distribution of the fund's earnings would

[185] Article IX, sec. 7.

[186] Gorsuch Interview, 33.

[187] Severance tax revenue is excluded from deposit in the fund; therefore, only about 10 percent of royalty income is actually deposited.

[188] Elmer Rasmuson, former president and chairman of the board of the National Bank of Alaska, was the first chair of the board of trustees of the Alaska Permanent Fund. He is given credit for many of the early decisions of the board regarding investment policy (nearly all of the fund monies are invested outside Alaska), and "inflation-proofing" the fund by reinvesting a portion of the earnings annually; Wilson Condon Interview, Department of Law History Project, 3; see Elmer Rasmuson, "Opening Remarks," 20th Anniversary of the Permanent Fund, Anchorage, Alaska, Sept. 25, 1996.

[189] SLA 1982, ch. 102.

be based on length of residence in the state. Two Alaska attorneys, Ronald and Penny Zobel, filed suit, arguing that a discriminatory distribution of the state's resources was unconstitutional. Press coverage of the Zobels' challenge generated widespread ire across the state, but Gross made a point of making several pronouncements regarding their right to bring the suit and the need to clarify the law. Arguing as defendant, the state prevailed before the Alaska Supreme Court, but on appeal the U.S. Supreme Court reversed the decision.[190]

The Alaska Permanent Fund has been judged an extraordinary success. At a result of judicious investment, by 1998 the fund was worth nearly $27 billion. In 1996 investment earnings equaled the state's oil revenues for that year, $1.8 billion. The Alaska Permanent Fund was modeled somewhat on the Alberta Heritage Fund, established in the 1960s. However, Alberta does not have a distribution program for the earnings of its fund, and its fund is not protected from inflation. The Alaska legislature stipulated that sufficient earnings should be transferred to the fund's principal annually to offset inflation; after this "inflation-proofing." most of the annual earnings are distributed equally to all Alaska citizens, the remainder being deposited in an "earnings reserve" account which the legislature also has redeposited in the fund's principal. The distribution has created a political force which mitigates against use of fund earnings for any other purpose, a force manifest in 1990 when Governor Steve Cowper was unsuccessful in generating support in the legislature for a plan to dedicate a portion of the fund earnings to public school education in Alaska.

In another attempt to extend the benefits of the oil boom to Alaska residents, the legislature adopted a law on local hire to establish an oil development hiring preference for persons who had lived in the state for a year or longer. The canned salmon industry had imported a large labor force into the territory annually, virtually eliminating the need for local labor in most areas and Hammond and others favored some method to ensure

190 *Williams v. Zobel,* 619 P. 2d 448 (1980); *Zobel et al. v. Williams,* 457 US 55 (1982).

that Alaska residents would get coveted high-paying jobs in pipeline construction. This measure, too, attracted a challenge. The Alaska Supreme Court found that a general preference for Alaska residents was constitutional, but that any time constraint was not.[191] On appeal to the U.S. Supreme Court, the state lost the preference all together.[192] Since that time the state has tried to work with individual employers to encourage local hire on a voluntary basis.

During his tenure Gross initiated several major oil and gas cases that shaped Alaska's relationship with the major petroleum producers in the state. In 1977 he filed a suit against most of the oil companies involved in Alaska, challenging the method used by producers to compute the oil and gas royalties they owed the state. Wilson Condon oversaw the organization of the suit and was the principal negotiator with the industry in working toward a settlement. The case was not finally settled until 1995, when the last of the various producers agreed to pay additional royalties to the state based on a reassessment of the implications of the royalty formula.[193]

Gross also filed an action before the Interstate Power Commission challenging the method used by the owners of the pipeline to calculate the cost of transporting oil through the line. The amount of tariff charged directly affected the amount of royalty and taxes paid to the state. Again, Condon was a principal negotiator and again, the settlement, reached in 1985, produced considerably greater revenue for Alaska, based on a formula which industry analysts and state negotiators considered fair and equitable.

Throughout the mid-1970s Congress fiercely debated the conservation withdrawals mandated by the 1971 claims settlement act. Congressman Morris Udall of Arizona, leader of pro-environmental legislators, marshaled forces favoring setting aside 100 million acres in Alaska, including substantial acreage

191 *Hicklin v. Orbeck,* 565 P. 2d 159 (1977).

192 *Hicklin v. Orbeck,* 437 US 518 (1978).

193 The suit was in the name of Amerada Hess Oil Company, since alphabetically, they were the first named.

in a new conservation category, wilderness, the use of which would be severely limited.[194] Environmental consciousness ran high in the nation. In the 1960s, clean air and water legislation had passed the Congress, as had marine mammal regulation and migratory waterfowl protection. In 1964 Congress adopted the Wilderness Act, which provided for 50 million or more acres to be withdrawn for preservation, and in 1969 the National Environmental Policy Act had been passed.[195] Executive agency officials and U.S. senators and congressmen traveled throughout Alaska, particularly in summer, surveying the proposed withdrawals. In the summer of 1976, a House sub-committee held hearings in the state. Pro-development Alaskans described the proposed legislation as a "lock-up" of Alaska lands and vented frustration and resentment over federal power in highly charged rhetoric in the press and in countless public meetings, creating a emotionally volatile atmosphere.[196] Congress had established a 1978 deadline for action on the matter, but could not achieve a settlement despite intense negotiations that included the Secretary of the Interior and representatives of the State of Alaska. Senator Mike Gravel threatened to filibuster until the deadline expired.

President Jimmy Carter had appointed as his Secretary of the Interior Cecil Andrus of Idaho, a brilliant administrator and former state governor. To force the Congress to act, Andrus recommended that Carter use the 1906 Antiquities Act, which authorizes the President to withdraw public lands over his own signature alone. The act had been used in a number of instances

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194 85 U.S. Stat. 688; see sec. 17 d(2).

195 78 U.S. Stat. 291; 83 U.S. Stat. 852; the definition of wilderness was "untrammeled" land.

196 U.S. Congress, House, Committee on Interior and Insular Affairs, hearings, *Inclusion of Alaska Lands in National Parks, Forests and Wildlife Refuges, and Wild and Scenic River Systems,* 95th Cong., 1st sess. (Washington, D.C.: Gov't. Printing Office, 1977); Robert Henning, "The Land: Eye of the Storm," *Alaska Geographic,* 3 (1975): 1-64; "Land Issues Still in Headlines," *Alaska Industry,* XI (April 1979): 18; Mike Gravel, "Abuse of Power," *Alaska Miner,* 7 (April 1979): 7.

when Congress deadlocked over proposed conservation withdrawals, but always in acreages of a million or less. In November 1978, Carter withdrew 56 million acres of Alaska land from selection, placing it in monument status, to be managed by the National Park Service.[197] Alaskans were livid, but Congressional leaders agreed to continue to try to fashion the Alaska bill into an acceptable compromise.

With the help of John Katz, who had replaced Guy Martin in the state's Washington, D.C., office, Gross worked with the Alaska Congressional delegation and other officials to find a way out of the conundrum, but with limited success. Senator Stevens, in particular, wrote into the pending legislation a number of exceptions to guarantee that economically viable resources in proposed withdrawals would be open to development on some basis.[198] By November 1980, all work had stopped on the bill. House Interior Committee Chair Udall was determined to get a stronger commitment to environmental protection in Alaska before allowing the legislation to come back to the floor. Then, the results of the presidential and Congressional elections announced a sharp conservative turn in American political life. Judging that the new Congress would reduce the acreages already negotiated, within a week Udall brought the pending bill to the House, where it passed quickly, followed by similar action in the Senate.[199]

The Alaska National Interest Lands Conservation Act (ANILCA) completed the major disposal of lands in Alaska, begun with the statehood act, and interrupted by the 1965 land freeze and the claims settlement act in 1971. Over 100 million acres of Alaska land were added to 54 million acres already in designated federal withdrawals, such as Mt. McKinley National

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197 Stephen Haycox, "On the Politics of Environment: Cecil Andrus and the Alaska Lands Act," Idaho Yesterdays, Fall 1992, 17-28.

198 Gross Interview, 18.

199 94 U.S. Stat. 2371; Jay *Hammond, Tales of a Bush Rat Governor: The Extraordinary Autobiography of Alaska's Governor Jay Hammond* (Fairbanks: Epicenter Press, 1994), 230-243.

Park, Glacier Bay National Monument, Katmai National Monument, and the Tongass and Chugach National Forests. Some of the existing withdrawals were redesignated by ANILCA: 97.3 million acres were withdrawn as parks, refuges and forests, while 56.4 million of those acres were designated as wilderness. To ensure economic viability, ANILCA provided minimum timber harvest quotas and an annual $40 million subsidy to the U.S. Forest Service Alaska Region to facilitate timber lease sales. The act guaranteed access rights to private land owners, designated specific transportation corridors across national parks for future resource development, and severely restricted presidential authority to withdraw national interest lands in Alaska in the future. ANILCA also provided a preference for subsistence activity in most federal conservation areas.

The ANILCA withdrawals seem not to have inhibited economic development in Alaska. Guarantees for mineral development in Northwest Alaska and in the Tongass and Wrangell National Forests, rights of way for mining operations in expanded Denali National Park,[200] and the annual forest subsidy did effectively soften its effect.[201] Moreover, severe restrictions on hunting, fishing and other recreational uses, a matter of grave concern during the (d)(2) debate, are only

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200 Mt. McKinley National Park was renamed Denali National Park in the act; the name of the mountain was retained.

201 The Tongass Reform Act of 1990 reduced the forest subsidy to $4 million annually. In 1992 and 1996 both of the pulp mills in Alaska closed after more than forty years of operation, due partly to costs associated with environmental safeguards mandated by the Environmental Protection Agency. For the history of timber development in the forest see Lawrence W. Rakestraw, *A History of the United States Forest Service in Alaska* (Anchorage: Alaska Historical Commission, U.S. Forest Service, 1981), John B. Sisk, "Charting Forest Policy on a Battleground of Conflict: A Case Study of the Tongass National Forest in Southeast Alaska." unpublished master's thesis, Northern Arizona University, 1989, and Stephen Haycox, "Economic Development and Indian Land Rights in Modern Alaska: The 1947 Tongass Timber Act," *Western Historical Quarterly*, February 1990, 21-46.

effective within wilderness areas, and to a lesser extent in the national parks, and seem not to have unduly inconvenienced state residents. The 154 million acres in federal conservation and other reserves[202] constitute 41 percent of Alaska's lands. The 44 million acres under Native title constitute 12 percent, while the state's 103 million-acre entitlement constitutes 28 percent. The Bureau of Land Management has jurisdiction over the remaining 19 percent, 74 million acres of public domain.[203]

Gross confronted a number of other significant land issues during his tenure. In 1973 the state conducted an oil lease sale in Kachemak Bay, one of the most popular recreation and sport-fishing bodies of water in the state. Citizen protest from tour operators, fishers, and environmentalists persuaded the Alaska Supreme Court to review the sales.[204] At the same time the legislature debated the matter. As it happened, just while the legislature had the question under active review, an exploration drilling rig working in the bay caused a minor spill which fouled some crabbing areas. The legislature quickly authorized the state to condemn and repurchase the leases.[205] Subsequently, the state's negotiations with Standard Oil Company for the repurchase were successful.

Private ownership of land was a major issue during Gross' tenure, also. Few non-Native Alaskans live in conditions which might be called "frontier." Most live in urban centers with the amenities of cities elsewhere in the United States, even if their towns may be small. Framed houses in platted subdivisions accessed by automobiles driven over paved streets characterize the living conditions of most non-Natives, who live

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202 These include the military reserves and National Petroleum Reserve: Alaska.

203 By way of comparison, the State of Washington comprises about 45 million total acres, Oregon 62 million, and California 101 million.

204 *Moore v. State*, 553 P. 2d 8 (1976).

205 SLA 1976, ch. 113.

in coastal communities in Southeast Alaska or along the Gulf coast, or on the Kenai Peninsula, in Anchorage or the Matanuska Valley or along the rail corridor which connects Seward, Anchorage, and Fairbanks.[206] And while the winter may be long, cold and dark, technology and economy facilitate living and working conditions generally comparable with those throughout the rest of the nation.[207]

Many people come to the state, however, with the idea that they will acquire wilderness property. In 1976, when the state's population increased as a result of pipeline construction and the anticipated economic upturn, little property was available for homesteading or purchase. State selections still were frozen, pending the ANILCA settlement, and the state had not developed a policy of facilitating the transfer of large amounts of land into private hands. Dr. Mike Beirne, an Anchorage physician, organized a ballot initiative to mandate the release of 30 million acres to individual residents, with the amount available to an individual to be based on the length of residence in the state. The initiative passed throughout the state, with the exception of Juneau. A suit brought the measure before the Supreme Court, however, where the justices found it invalid. Gross defended the initiative before the court, although he personally opposed it and judged it to be unconstitutional.[208] Article XI, Sec. 7 of the Alaska Constitution prohibits the use of the initiative "to dedicate revenues" or "make or repeal appropriations." The court declared the state's land to be an asset comparable to revenue. The court's finding seemed to many observers to stretch the definition of revenue to include virtually anything with a monetary value. On the other hand, many applauded the breadth of the court's decision, because the

206 The corridor is often referred to as the "railbelt."

207 Alaska Department of Labor Statistics for July 1996 listed the state's total population at 604,000, with 254,000 in Anchorage and 50,000 in the Matanuska Valley.

208 *Thomas v. Bailey,* 595 P. 2d 1 (1979).

transfer of 30 million acres to private individuals would have seriously affected the state's development, and would have strained the state's capacity to provide the services that would certainly have been demanded by citizens who settled on homestead lands.[209] However, concerns persist to this day over the definition of revenue as it relates to the use of the initiative.

Along with Gross, Governor Hammond also opposed the initiative, at one point remarking in public that private ownership "is the ultimate lockup."[210] Some critics interpreted his statement to mean that he opposed economic development and private property. He had campaigned in the primary for a responsible compromise between development and environmental sensitivity. He did not intend his remark to imply opposition to economic activity; nevertheless, it did represent the discomfort many state leaders felt with the Beirne initiative.

The amount of money generated by Prudhoe Bay was extraordinary by any measure, and perhaps the greatest challenge for state leaders was figuring out how to use it wisely. In 1978 Alaska's petroleum revenue was about $700 million; by 1982 it was more than $4 billion, a 600 percent increase. The state operating budget was $1.1 billion in 1979, and it reached $4.1 billion in 1985. With budget figures of such magnitude, things impossible to dream in the early 1970s seemed perfectly feasible in the early 1980s.

One example was village schools. Throughout most of the 20th century, many Alaska Native children had needed to travel outside their home villages to attend secondary school, and some had to leave home even to attend the upper elementary grades. While there were advantages to meeting other Natives and broadening perspective through travel and new cultural experiences, for many these were outweighed by the disadvantages of the students' homesickness and loss of confidence, their teachers' lack of respect for their cultural traditions, and other pressures of boarding school. For a time, the state-operated school system, which had taken over the

209 Hammond, *Bush Rat Governor,* 238-239.

210 Gross Interview, 19.

Bureau of Indian Affairs schools of an earlier period, maintained a home-boarding program in the larger cities in the state so Natives could attend urban high schools.

In the early 1970s a number of Natives brought suit against the state to force the construction of schools in villages. The suit generated considerable publicity, but was denied at the Alaska Supreme Court, the court finding that the state constitution does not obligate the state to provide a school in every rural (mostly Native) community.[211] However, the court did not address the question of whether the failure to provide schools violated the equal protection clause of the U.S. Constitution. Gross was sensitive to the dilemma faced by Native families and thought it not inappropriate to invest state oil revenues in solving it.[212] The Commissioner of Education, Marshall Lind, thought schools could be built in all the villages in Alaska's 208 Native villages for about $30 million, so Gross negotiated an agreement for the state to provide schools. Governor Hammond proposed $79 million in construction bonds, which were approved. By the time the program was complete, however, the cost had soared to $150 million.

Gross strongly opposed the use of public money to finance private schools. Two colleges with religious affiliation, Alaska Methodist University (AMU) in Anchorage and Sheldon Jackson College (Presbyterian) in Sitka sought state money from the legislature. Despite persistent and aggressive lobbying, Gross maintained that the state constitution prohibits appropriating funds for that use. however, the legislature worked out a program of tuition waivers which diverted public monies to each institution. The state supreme court upheld Gross' view in *Sheldon Jackson College v. State.* [213] The court's decision impacted the colleges substantially, however, leaving

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211 *Hootch v. Alaska State-Operated School System,* 536 P. 2d 793 (1975).

212 Gross Interview, 20-22.

213 599 P. 2d 127 (1979).

them scrambling for operating revenue. Sheldon Jackson managed to maintain itself despite some rather desperate years, but AMU closed in 1975.[214] Reorganized, and supported by a substantial private endowment provided by several Anchorage businessmen, it reopened as Alaska Pacific University in 1977.

In a footnote to the *Sheldon Jackson* decision, however, the court suggested that the incidental busing of private school students with public school students might be constitutional.[215] This issue seems to be a persistent one in Alaska judicial annals.

Crime rates in Alaska increased significantly during the late 1970s, as the population grew in response to the economic boom brought by Prudhoe Bay production. Murder, assaults, rapes, and drug cases rose steadily and prostitution increased dramatically, particularly in Fairbanks and Anchorage.

The Department of Law had to grow to keep pace. The number of assistant district attorneys in the Fairbanks district attorney's office, for example, doubled. Other offices were added in Bethel, Kodiak, Sitka, and later Palmer. In addition, the Office of Special Prosecutions and Appeals was opened. Later still, district attorneys were added in Barrow, Kotzebue, and Dillingham. There had never been a formal criminal deputy in the department. Usually an assistant attorney general coordinated criminal prosecution, functioning as *de facto* deputy. Both John Havelock and Norman Gorsuch had attempted to obtain legislative financing for a criminal deputy, but without success. With oil money flowing to the state, Gross succeeded in getting funding for the position in 1975 and appointed Dan Hickey as the state's first chief prosecutor. Further, utilizing federal grants, Gross added a pretrial diversion program for low-risk offenders. The program allowed these defendants to avoid prosecution by complying with stringent conditions under the supervision of counselors employed by the criminal division.

Among other tasks, Dan Hickey undertook a revision of the criminal code. In 1975 the legislature established the

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214 *Anchorage Times,* June 22, 1976, 4.

215 599 P. 2d 130, n 20

Criminal Code Revision Commission.[216] Even though the code had been revised somewhat, it still included many provisions dating from the first code adopted in 1900. Many statutes were outdated, and much terminology was imprecise and obsolete and there were many inconsistencies. For example, the penalty for perjury in a criminal case was less than for in a civil case. The crimes of adultery and cohabitation remained in the code. Legislative leaders selected John Havelock as executive director of the project. Ralph Moody served on the commission, as did Gross and Hickey. Patterned after the Model Penal Code, the new code was implemented on January 1, 1980. It included presumptive sentencing and mandatory sentences for repeat felons.

Today the fifteen offices of the criminal division throughout the state review over 4,000 new felony and 20,000 misdemeanor cases annually. The division also reviews an additional 6,000 probation revocations, appeals, and miscellaneous cases. In addition, the division handles much of the legal work of the Department of Public Safety and the Department of Corrections. All prison litigation falls within the work of the criminal division.[217]

As part of the revision of the codes, Hickey oversaw perhaps the most significant change in the criminal justice system, the adoption of "presumptive sentencing," whereby specific sentences were set for some offenses, limiting the discretion of judges in felony cases. In the years since 1980, when presumptive sentencing took effect through legislative enactment, the Alaska appellate courts have further circumscribed the sentencing authority of judges by adopting certain benchmark sentences and ranges for those cases not specifically addressed by the presumptive sentencing statutes.

Gross had a significant impact on the criminal division, aside from the reorganization and bureaucratization of the office and revision of the codes. Amid considerable publicity and controversy, he implemented a ban on plea bargaining.

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216 SLA 1976, ch. 114

217 Guaneli, "Criminal Division," 2.

Although the ban grew out of long reflection on the nature of prosecution, a proximate cause was a Sitka murder case involving a man named Michael Mangione who had shot and killed a member of a well-known Sitka family. Problems with the investigation and the evidence forced the Juneau district attorney to plea bargain the case in the middle of trial, reducing the charge to manslaughter. Mangione spent just a year in jail. The Judicial Council held hearings on the case, and in August 1975 Gross issued a policy memorandum banning plea bargaining. Police agencies disliked the policy initially, and some prosecutors voiced misgivings about it. Gross affirmed the ban in 1976, and in 1980, Chief Prosecutor Dan Hickey issued detailed guidelines for its continuing implementation.[218] Hickey tightened the ban by directing that charges be filed only when admissible evidence warranted a finding of guilt beyond a reasonable doubt, rather than basing charges on "probable cause." He did, however, relax the ban in two ways. First, Hickey's directions permitted prosecutors to dismiss lesser charges in multi-count cases (except in the case of violent felonies) as long as the defendant pled to the most serious charge reflecting the "essence" of the offense. Second, the guidelines decentralized authority for such "charge bargaining" by permitting the local district attorney to approve it.[219] Although there are a number of exceptions, the policy guidelines remain in effect for Alaska prosecutors.[220]

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218 Michael Rubenstein, Stevens Clarke, and Teresa White, *Alaska Bans Plea Bargaining* (Washington, D.C.: U.S. Department of Justice, National Institute of Justice, 1980).

219 In an important related judicial reform, in 1980 the Alaska legislature created a three-judge appeals court to hear appeals in criminal cases and certain other quasi-criminal matters. Criminal appeals from the district courts can be taken to either the superior court or the appeals court, and a defendant whose appeal is denied in superior court can ask for an appellate court review; the appellate court may refuse to hear the appeal from superior court.

220 Some judges opposed Gross's ban and suggested that they might bargain directly with defendants if prosecutors refused to do

Gross also handled the *Ravin* case on the decriminalization of marijuana. Even before that case was brought before the court, Gross had notified the U.S. Attorney' s Office that the state would not bear the cost of traveling to U.S. Customs stations to apprehend individuals carrying small amounts of marijuana. Gross thought the state's resources could better be used investigating and prosecuting violent crime.[221] In a related matter, during the 1978 election campaign, perhaps wanting to represent the Hammond administration as soft on drugs, a press reporter printed information about an incident in Juneau in which a drug dealer had made statements to an undercover investigator about Gross, asserting that he and his wife used drugs in their home. The matter had been investigated a year before the election, and the charges had proved baseless. Its appearance in the election campaign seems not to have had any particular influence.[222]

Gross also made an important contribution to clarifying the powers of the department and the executive branch. In *Public Defender Agency v. Superior Court,* the Alaska Supreme Court held that the judicial branch does not have the power to control the attorney general's discretion over what cases to prosecute.[223] In *Bradner v. Hammond,* the court held that the appointment of

so. Such actions were rare, however, and in any case the Alaska Supreme Court held that judges should not bargain directly with *defendants: State v. Carlson,* 555 P. 2d 269 (1976); *State v. Buckalew,* 561 P. 2d 289 (1977). The ban had little effect on the number of cases taken to trial: before the 1975 ban, about 94 percent of cases were resolved without trial; in 1996 the percentage was about 92 or 93. In 1991 the Judicial Council reviewed the ban and recommended more consistency between policy and practice. In 1991 Attorney General Charles Cole directed that plea bargaining be reinstated; the policy was officially reversed by Attorney General Bruce Botelho in February, 1994.

221 Gross Interview, 25.

222 Gross Interview, 27.

223 534 P. 2d 947 (1975).

certain non-cabinet officers in the executive branch need not be confirmed by a vote of the legislature.[224]

Near the end of Gross's tenure, the Department of Law confronted one of the most significant crises in its history and prevailed in what may have been its finest hour. In the primary election in 1978, Walter Hickel again challenged Governor Hammond. Hammond had a lead of about 900 votes when regular ballots were counted on election night, August 22, but when all the absentee and challenged ballots were counted, the lead shrunk to a mere 38 votes.[225] Hickel asked for a recount, as was his right by law. When the recount was held on September 18, Hammond won by about 100 votes. But then a number of significant irregularities with the election process came to light. In Anchorage, a temporary worker responsible for transporting about 2,000 challenged ballots from a computer center to the district election office kept them in his automobile overnight.[226] In the Native villages of Kwethluk and Kotlik, 141 ballots were discarded after being counted, rather than being mailed to the lieutenant governor as required by law. Then, 247 challenged ballots were found misplaced in an unlocked file cabinet in the Anchorage elections office. Finally, 15 ballots were found to

224 553 P. 2d 1 (1976).

225 In addition to ballots that may be challenged because of imperfections in their printing or in the way they were marked, either by hand or by machine, voters may cast their ballots in a precinct other than the one in which they reside and in which they are registered. Such ballots are also labeled "challenged" ballots, and are counted with the absentee and challenged ballots, usually several days after the election when all such ballots have been gathered by the Division of Elections. The lieutenant governor in Alaska is head of the Division of Elections.

226 The irregularities are described in detail in the narrative of *Hammond v. Hickel,* 588 P. 2d 256.

have been misplaced in the Juneau elections office during the recount on September 18.[227]

Hickel and other candidates in the race filed a suit in Anchorage superior court asking that the primary election results be set aside on the grounds that the irregularities constituted misconduct which tainted the integrity of the election process. The matter did not catch the Department of Law completely unaware. Anticipating a possible suit, Wilson Condon had assembled a team of assistant attorneys general, secretaries, and temporary staff from around the state. They identified the factual and legal issues likely to be contested and began work on their individual assignments even before the suit was filed. Once it was filed, members often worked around the clock to prepare the case. In the superior court Judge Ralph Moody agreed with the plaintiffs and ordered a new election. Press coverage reported that some in the Hickel organization were persuaded that the Hammond administration had deliberately corrupted the election process.

The state and several of the candidates appealed to the state supreme court. The state filed a petition asking for an expedited review. There were a number of briefs, for not only had a number of candidates in the election cross-appealed, but there were as well a number of *amicus curiae* briefs. Some of the arguments offered seemed obscure, perhaps calculated to take additional time. Some in the press speculated it was possible that the court could not dispose of all the matters before it in time to render a decision that would permit the general election to proceed on schedule. Some suggested this was exactly what some of the appellants hoped for.[228]

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[227] In Anchorage, a reporter for the *Anchorage Times* learned of the ballots in the file cabinet when he phoned the elections office after the recount and jokingly asked about the "missing ballots." He was astonished when, after a pause, the voice on the line asked in shocked surprise, "How did you know about that?"

[228] One such argument was that because three bills dealing with election procedures had been debated in the legislature in 1977, the lieutenant governor should have been intimately familiar with all

What was at stake in this affair was nothing less than the credibility of the election process, and the integrity of the Hammond administration. Lasting five hours, the presentation to the court was carried on live television and radio. Attorney General Gross and Assistant Attorney General Ivan R. Lawner presented the case for the state; more than half a dozen well-known Alaska attorneys represented the plaintiffs. After the state filed the motion for summary judgment in Superior Court, Condon moved the whole department team to Anchorage to continue working on the suit. From the moment the team assembled in Juneau and through the day of oral argument before the supreme court department attorneys and staffed labored nonstop on the case, for many four and for some six weeks of intensive work.

Had the Hickel organization been successful in overturning the election on the grounds of misconduct, from which some voters might have inferred that the Hammond administration had tampered with ballots, i.e., had tried to steal the election, it is not unlikely that Hickel would have won the reballoting, for Hammond would have been seriously discredited. In addition, the whole edifice of state government would have been discredited, with voters left to wonder not only who in the administration was dishonest, but what manner of dishonesty might have obtained in other administrations as well.

Publishing its findings on October 20, two weeks before the scheduled general election, the Alaska Supreme Court reversed Judge Moody's opinion, finding that none of the irregularities cited constituted misconduct, that they were all

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rules and procedures; *Hammond v. Hickel,* 588 P. 2d at 271. Two of the bills had not ever been reported out of committee. The third bill, which included a provision for registration on the day of voting, passed, but was vetoed by Governor Hammond. That bill had also provided for cross-district voting, which, although technically contrary to the election code, had been permitted as a matter of tradition. The Hickel organization had objected to cross-district voting in its brief. In allowing cross-district ballots to be counted, the court noted that Mr. Mead Treadwell, a Hickel aide, had written to the Division of Elections the day before the initial count of the ballots had been completed, requesting that cross-district ballots be counted; *Hammond v. Hickel,* 588 P. 2d at 264-265.

inadvertent and unintentional, and that no ballots had been tampered with or otherwise tainted. This was a total and stunning victory for the Department of Law. The decision was a rebuke to those who had suggested that the administration had tried to steal the election, and in the election on November 7 Hammond easily won reelection despite a last-minute write-in campaign by Hickel.

This was indeed a "finest hour" for the Department of Law, one which manifests clearly both the comprehensive nature of the department's work and, more substantially, the contribution of its integrity to the rule of law in Alaska and the confidence of the citizenry in the validity of state government.

Not only was the 1978 primary election critical in terms of the credibility of state government, but it became something of a watershed in the evolution of the Department, both in terms of its internal development and with respect to its role and status in the legal community in Alaska. Internally, a number of experienced assistant attorneys general soon moved on to private practice, to other work, or out of state. That was not because of dissatisfaction with the outcome of the election challenge. Rather, the episode had been so dramatic in terms of the credibility and demonstrated competence of the attorneys in the department, and had been so emotionally traumatic, that it became a pinnacle of focus and achievement. Nothing would be quite the same afterward. In addition, the Hickel organization departed the fray fully persuaded that the election had, in fact, been stolen, and stolen by a group of young, brash, over-confident and cynical outsiders with no respect for the truth or for Alaska and Alaskans.[229] In particular, Edgar Paul Boyko distrusted Gross, and grew to distrust the department, often making it the object of harsh public criticism. However, the department prospered as a result of its victory in the matter and undoubtedly was strengthened by it.[230]

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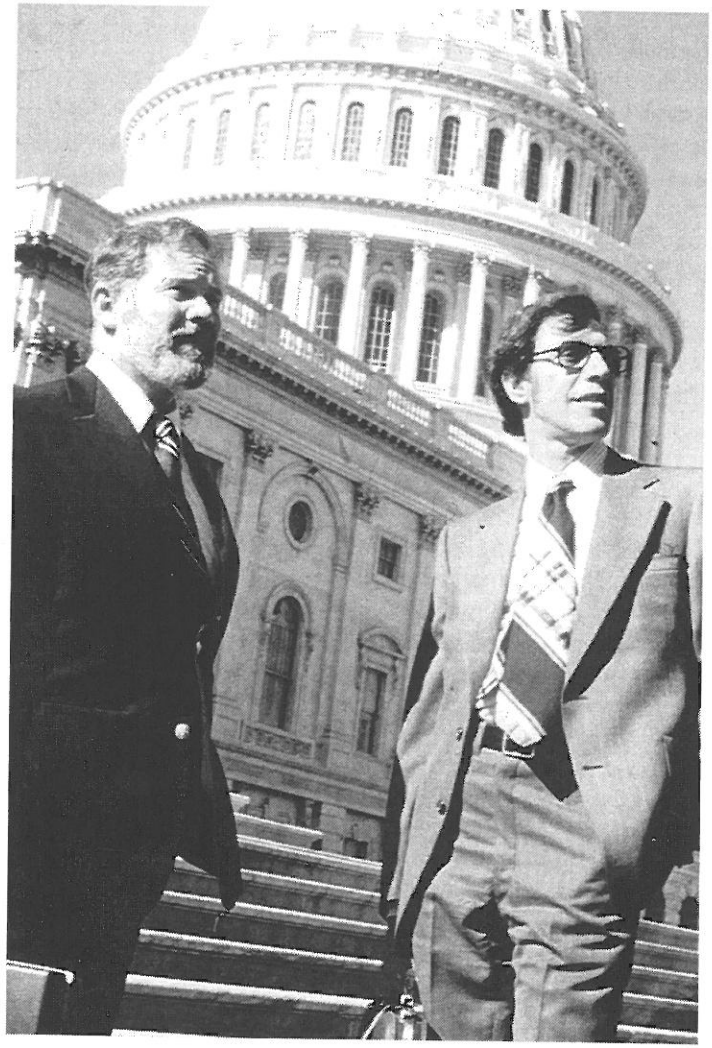
[229] Edgar Paul Boyko, personal communication with the author, November 12, 1996.

[230] Gross Interview, 29-31; Bruce Botelho Interview, Department of Law History Project, 12.

In March 1980, after five and a half years as attorney general, Gross announced his intention to resign to accept a teaching post at Stanford University Law School. His service left an indelible impact on the department. In the face of the impact of pipeline construction and dramatic economic advance in the state, the office had become much more tightly organized, a remarkable series of important challenges had been met successfully, and the integrity and competence of the department had been tested and found to be qualitative and highly professional. After several months at Stanford, Gross would return to Juneau to open his own law firm.



Governor Jay Hammond and Attorney General Avrum Gross, in Washington representing the State of Alaska. *Photo courtesy of Alaska Historical Collection, Alaska State Library.*

THE MAKING OF THE STATE'S LAW FIRM

Before leaving, Gross recommended Wilson L. Condon as his replacement. Governor Hammond accepted the recommendation and appointed Condon Attorney General in June 1980. Condon did not view himself primarily as a policy advisor, a role Gross had come to play increasingly during his tenure. Condon brought an extraordinary level of expertise on oil and gas litigation to his leadership of the department since he had worked on these matters ever since joining the department in 1971. In addition, he brought to the department integrity, management experience and insight, and experience with other significant Alaska legal issues. While his service as attorney general was exemplary, much of Condon's contribution to the department and to Alaska already had been established before he was appointed: his organization of the Department into an efficient, cohesive, ordered office that was capable of resisting volatile changes in state government. In addition, he had already begun work on what would be the other part of his lasting legacy, competent and dedicated pursuit of taxes and royalties from the oil industry.[231]

The Alaska National Interest Lands Conservation Act, ANILCA, passed the Congress in November 1980. As negotiations proceeded in Washington, Condon confined his personal involvement to assuring that the governor had high-quality legal advice from the department staff. This involved considerable effort in analyzing the various proposals debated and in lobbying on the state's behalf. Although there was a strong environmental contingent in the state, many viewed economic development as critical to the state's future. In

[231] Wilson Condon Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.

addition, the guarantee of subsistence in the act loomed as a major challenge for state policy.[232]

Resentment over federal sovereignty in the state, and the long suspension of conveyance of title to the state's lands provided in the 1958 statehood act, motivated the 1980 state legislature to establish a statehood commission, whose charge was to assess Alaska's relationship to the federal government and "to recommend appropriate changes in the relationship of the people of Alaska to the United States."[233] Again, Condon did not have a great deal of personal involvement with the commission, though he provided department services, as mandated by law, and was impressed with the large number of economic studies it sponsored. Although many Alaskans applauded the notion of the commission, its creation represented the great difficulty many citizens experienced in reconciling the mythology of the frontier, with its emphasis on individualism and state sovereignty, with the fact of the supremacy of federal sovereignty. Alaska had been somewhat insulated from the major post-war shifts in thinking in American culture on minority rights and on environmental integrity. ANILCA forced these changes on Alaska and Alaskans, and many could not understand how and why this was possible. Creation of the statehood commission was an expression of the resentment and puzzlement of the moment. Although its studies were worthwhile, there was nothing the commission could do to alter the fact of federal sovereignty, and little to mitigate it.[234]

Not long after Condon began his tenure, the U.S. Supreme Court ruled in the *Zobel* challenge to the residency preference for Permanent Fund dividend distribution. While that suit was pending, the Alaska legislature had passed a bill exempting from the state income tax individuals who had filed Alaska returns and reported income for three or more years. The

232 John Havelock, personal communication with the author, October 26, 1996.

233 SLA 1980, ch.161, sec. 2.

234 Hammond, *Bush Rat Governor*, 239-43.

Alaska Supreme Court ruled the measure discriminatory and unconstitutional.[235] Soon after the U.S. Supreme Court struck down the residence preference for the Permanent Fund,[236] a citizen, Rodney Vest, challenged a longevity bonus program for Alaskans who had lived in the state before statehood and for twenty-five years. Traditionally, many seniors left the state upon or soon after retirement because the cost of living made their residence impossible. This was an important social phenomenon widely commented upon. Alaska had a long history of senior citizens' assistance. The first territorial legislature had established a "Pioneers' Home" program for older persons, and the longevity bonus was an attempt to help seniors remain a part of the society.[237] But once again, the Alaska Supreme Court eventually declared the preferential aspect of the bonus program to be unconstitutional.[238]

Condon did not play a dominant role in these cases; Gross, who had returned from California, argued the *Zobel* case at the U.S. Supreme Court. However, because the case threatened residency requirements for such a wide range of state programs, Condon sought to advise the state on how to make the programs legal. For example, he recommended that the legislature eliminate the residency requirement from the longevity program, making it available to all seniors, and this legislation was enacted. As oil revenues began to decline in the 1990s, however, the program proved too costly, and the state had to begin to phase it out. Condon also issued a formal opinion exploring the means for preserving the Pioneers' Home program.

The 1980 Alaska legislature established the Permanent Fund dividend program.[239] Its objectives were to distribute the

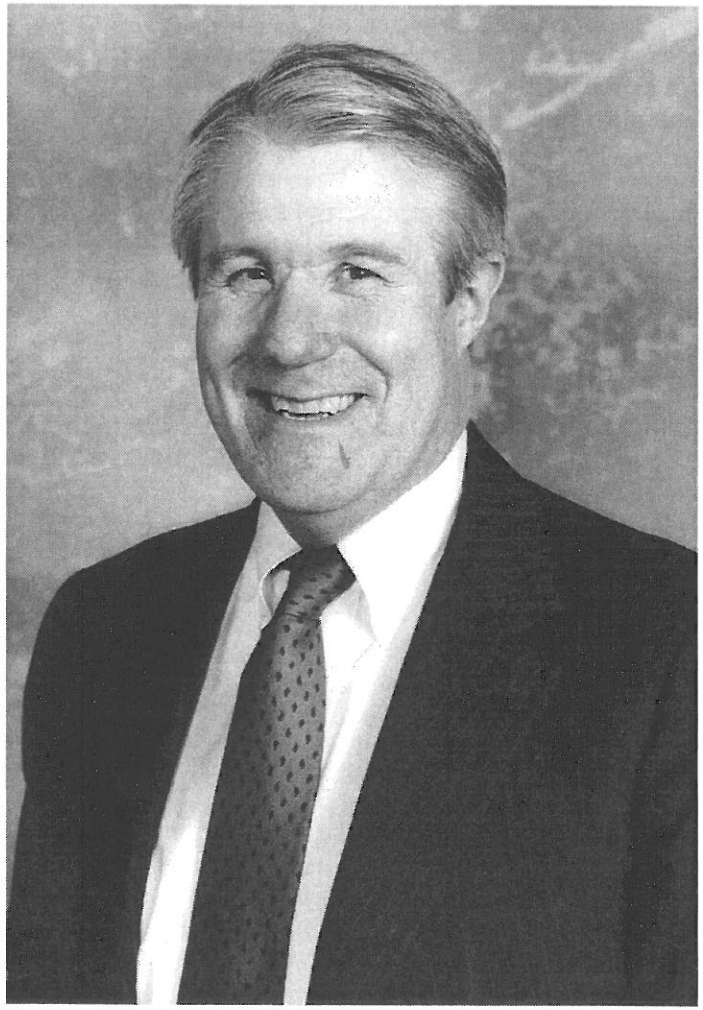
235 *Williams v. Zobel*, 619 P. 2d 448 (1980).

236 See *Zobel et al. v. Williams*, 457 U.S. 55 (1982).

237 SLA 1913, 80.

238 *Schafer v. Vest*, 680 P. 2d 1169 (1984).

239 SLA 1980, ch. 21.



Wilson L. Condon was appointed by Governor Jay Hammond in 1980 after having served in the department since 1971. He returned to private practice in 1982 and was named Commissioner of the Department of Revenue by Governor Tony Knowles in 1995.

wealth from oil development equally, and to create a popular constituency that would protect the fund from raids on its principal. The law provided that one-half the earnings must be distributed annually. However, Condon was initially skeptical of the Permanent Fund. He felt that the public should be able to manage their affairs without a constitutionally mandated savings account.[240] Nevertheless, he soon realized that political pressures would drive legislators to spend all the proceeds from oil production annually, and that the only way to guarantee some savings would be by constitutional requirement. When the legislature created the Alaska Permanent Fund Corporation, Condon served on the first board of fund trustees.

When the legislature created the Permanent Fund dividend distribution program, legislators eliminated the state income tax.[241] They also wanted to refund previous taxes that had been paid. Condon debated how far legislature could do this. After study, he issued a formal opinion supporting refunds for 1980 and 1979, but not before, on the grounds that such refunds would violate the state constitutional requirement that appropriations of public funds be for public purposes.[242] The legislature heeded his advice.

Condon believed the repeal of the income tax to be unwise, however. When oil revenues began to decline, they would have to be reinstituted in order to maintain public services at the levels the citizenry would have come to expect.[243] Gross, too, viewed the repeal of the income tax as a mistake, as did Hammond. Gross thought that a moratorium would have been a better alternative, but in the press of getting the legislation for the dividend fund adopted, repeal seemed one

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240 Condon Interview, 3.

241 SLA 1980, ch. 22.

242 Art. IX, sec. 6.

243 Condon Interview, 4.

way to guarantee enough votes for passage.[244] Even though he supported the repeal, Governor Hammond felt strongly that continuing to pay taxes, even with an annual dividend distribution, would give people a more direct stake in government, and perhaps make them more attentive.

Condon continued to work on oil and gas tax litigation while attorney general. Much of that litigation centered on the ongoing *Amerada Hess* case. To pump oil from state lands at Prudhoe Bay, oil companies paid the state a royalty based on the oil's "wellhead" value, i.e., the value of the oil as it came out of the ground. However, valuing oil at a site thousands of miles from the markets for it quickly produced disputes. In the early 1980s, the state investigated whether the Prudhoe Bay producers were understating the wellhead value and overstating transportation costs, which were deducted from that value.[245] In the *Amerada Hess* suit the state contended that the companies owed the state billions of dollars in additional royalty payments.[246]

Disputes also arose over Alaska's income tax on revenues derived from oil production, which in the early 1980s generated $800 million to $1 billion in annual revenue for the state. It is difficult to estimate industry profits on Prudhoe Bay since the companies do not release complete figures, but analysts have suggested that by 1995 after-cost profits ranged above $100 billion for the nearly twenty years of operation of the field.[247] The oil companies argued that they had overpaid the tax liability, contending that Alaska's method for calculating the tax overstated the income the companies received from their in-state

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244 Gross Interview, 10

245 Condon Interview, 9, 11; "Oil Fees Battle to Court: Amerada Hess Suit a Fight for Royalties," *Anchorage Daily News,* April 13, 1992, B1.

246 711 P. 2d 1170 (1986).

247 McBeath and Morehouse, *Alaska Politics and Government,* 66.

activities. The Alaska Supreme Court, however, upheld the state's method of calculation in a 1985 case, *Atlantic Richfield Co. v. State,* and the U.S. Supreme court dismissed the companies' appeal from that decision.[248] Before that decision was rendered, however, at Condon's urging the state legislature had changed the method for calculating the tax in order to strengthen the state's legal position.[249]

The state also litigated tariffs. The state charged before the Federal Energy Regulatory Commission (FERC) that Alyeska Pipeline Service Company, the industry consortium which built and operated the pipeline, had mismanaged the construction process, generating $1.5 billion in excess costs. The state predicted that a victory before FERC would require the pipeline owners to reduce the tariff they charged for oil to pass through the pipeline and would add $720 million to the state treasury over a 25 year period.[250]

Condon was involved in all of these challenges, and he made oil and gas litigation a priority during his tenure as attorney general,[251] when the work engaged department resources and time beyond his expectations. His solution was to retain private attorneys to handle some of the work, a move which generated some criticism.[252] However, the return on that investment was enormous. In the late 1980s the royalties disputes were settled on terms Condon considered fair for the state. The state recovered $960 million, including $287 million

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248 705 P. 2d 418 (1985); appeal dismissed, 474 U.S. 1043 (1986).

249 See note 220.

250 "Law Agency Asks Record Funding," *Anchorage Times,* December 18, 1980, A1.

251 Condon Narrative, 1-5; Condon Interview, 11-12.

252 "Condon to Head Review," *Juneau Empire,* January 6, 1993, 1; "Oil Company Foe to Lead Review," *Anchorage Daily News,* January 7, 1993, B1.

from ARCO Alaska, $185 million from BP Exploration (Alaska), $128 million from Exxon, $95 million from Mapco Alaska, $10.2 million from Tesoro (and an additional $115 million over a ten-year period), $87.7 million from Chevron, and $319,000 from Amerada Hess.[253]

During Condon's tenure two major scandals involving state legislators vied for public attention and raised important questions about legislative ethics. The first, involving State Senator George Hohman of Bethel, actually began while Avrum Gross was still attorney general.[254] Throughout the 1970s Hohman was a powerful figure in Alaska politics. His brother Ron was superintendent of the Bering Straits School District, and his sister-in-law, Jan, sat on the state board of education. Hohman secured major capital construction projects in his election district in every state budget passed during the period. In 1980 the senator attempted to change the type of aircraft used by the state for firefighting. He wrote legislation specifying planes made by a Canadian manufacturer. Hohman sought support for his bill in the state House of Representatives.

After a discussion with Hohman about his bill and the senator's role in the matter, Anchorage representative Russ Meekins went to Attorney General Gross, indicating that Hohman had offered him a bribe. Gross asked Meekins if he would be willing to tape surreptitiously a future conversation with Hohman about the deal. Meekins declined the offer, but the state subsequently charged Hohman with bribery. Testimony at trial suggested that the bribe had been about

253 See "Mapco to Pay $95 million to State Agreement," September 2, 1994, A1; "Oil Royalty Case Settled," December 1, 1993, D5; "Tesoro Cuts 'Fair Deal' to Pay Oil-Royalty Debt," January 20, 1993, A1; "Risk of Royalty-Oil Too Great, State Says," April 15, 1992, B1; "Oil Fees Battle To Court," Apr. 13, 1992, B1; "Oil Company Settles Dispute with State," December 22, 1989, D2, *Anchorage Daily News.*

254 See the discussion in McBeath and Morehouse, *Alaska Politics and Government,* 160 ff.; *State v. DeMan,* 677 P. 2d 903.

$20,000-30,000. Hohman was convicted in December 1981.[255] As a consequence, the Senate expelled him. Chief Prosecutor Dan Hickey directed prosecution of the Hohman case for the department.

A year later, in November 1982, a grand jury indicted state Senator Ed Dankworth, a former head of the state troopers. Dankworth had learned that the Alyeska Pipeline Company wanted to sell a decommissioned pipeline construction camp. He purchased the camp for $900,000, and then tried to sell it to the State of Alaska for $3 million, attempting to add language to the state budget for that purpose. He was charged with conflict of interest. Dankworth was saved from prosecution when the Alaska Court of Appeals found that he could not be prosecuted for criminal conflict of interest because he had legislative immunity.[256] Chief Prosecutor Dan Hickey also directed the Dankworth case for the department.

In light of these two cases, Condon issued a formal opinion addressing conflicts of interest among state employees and legislators. He stressed that without enactment of an ethics law, state officers, employees, and legislators would be vulnerable to a variety of political and common law charges, and to judicial oversight. The legislature enacted a law on conflict of interest in 1984 and one on legislative ethics in 1986. The 1986 measure, however, generated considerable criticism for being too vague and too weak. In 1992, following another wave of scandals, the legislature strengthened the 1986 law somewhat, creating an ethics commission for review of complaints against legislators. A majority of the commission's members are not legislators.[257]

255 *Hohman v. State,* 669 P. 2d 1316 (1983).

256 *State v. Dankworth,* 672 P. 2d 148 (1983).

257 SLA 1992, ch. 127, sec. 18 (codified at AS 24.60.130); "Jacko Poses Acid Test on Ethics: Alaska 'Making History' as Senator Accused of Sexual Impropriety Faces Citizen-Led Panel," *Anchorage Daily News,* November 7, 1993, A1.

In another initiative, Condon called attention to a persistent nagging issue: prison overcrowding. In 1981 a class action known as the *Cleary* litigation was filed in the Alaska courts, challenging prison conditions.[258] While the case was in the courts, Condon warned that if the state did not relieve overcrowding, the courts would. One outcome of the *Cleary* case was a cap on the prison population. The problem has not yet been solved adequately.[259]

As chief prosecutor, Dan Hickey took a particular interest in the problems of sexual assault and child abuse. Under Hickey's leadership, and with Condon's cooperation, the criminal division began to provide increased police training for handling sexual crimes, and a multi-agency sex crime assault team was established. The division also turned its attention to the plight of sexual assault victims. Selected prosecutors in each office were given special training in handling sexual assault cases. The division also established a highly successful victim-witness assistance program, in which paralegals help people through the trauma of court proceedings. These efforts coincided with a new emphasis by the police regarding sexual offenses, and also with state funding of women's shelters and counseling programs. Today, over 20 percent of all Alaska prisoners are in jail for felony sex offenses.[260]

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258 See *Hertz v. Cleary*, 835 P. 2d 438 (1992) (tracing history of class action through Superior Court).

259 "'Major Crisis' Faces Corrections," *Anchorage Times*, November 20, 1982, A1; *Hertz*, 440.

260 Guaneli, "Criminal Division," 11.

THE IMPEACHMENT OF GOVERNOR WILLIAM SHEFFIELD

In 1982 Alaska voters elected Democrat Bill Sheffield their governor. Owner of a string of hotels in Alaska and head of Common Sense, a group of development-minded business people, Sheffield defeated popular former legislator Steve Cowper in the primary and then ran against Anchorage insurance salesman and former legislator Tom Fink, who had defeated former state senator Terry Miller in the primary. Both Cowper and Miller had been expected to win their elections. Sheffield campaigned on a platform of getting a businessman to Juneau to get control over the spending of state oil revenues.

The new governor wanted his own attorney general, and Condon left the administration to resume private practice in Anchorage. As a contracting attorney, however, Condon continued to represent the state in oil and gas litigation, particularly in the *Amerada Hess* case. In 1995, Governor Tony Knowles appointed Condon commissioner of the Department of Revenue.[261]

Condon's tenure as attorney general was important for the development of the department, and for the state. He continued his professional management of the office and, through its increased efficiency and attention to detail, helped to insure greater insulation against political changes in state government, leaving the office stronger than he found it. At the same time, he provided important advice on ethics, both for the legislature and for police and prosecutors. Above all, he strengthened the department's role and capacity in dealing with the oil industry productively on behalf of the state. He was one of the most significant people to hold the office.

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261 "Condon to Head Revenue," *Juneau Empire*, January 6, 1995, 1.

Sheffield chose former attorney general Norman C. Gorsuch to be his attorney general. Gorsuch had been very active in Democratic politics, had known Sheffield for many years, and had worked on his statewide election steering committee. Gorsuch considered himself a major policy advisor to the new governor.[262]

Soon after his inauguration, Sheffield made a trip to Washington, D.C., to confer with the Secretary of the Interior. On his return to Alaska, he stopped in Texas and visited oil company offices there to carry out fundraising to pay off campaign debts. In Alaska there was considerable criticism of the governor combining business and political fundraising on the same trip. Gorsuch accompanied the governor on the trip. He was needed in the Washington discussions, and he recalls that the governor more or less ordered him to accompany the entourage to Texas. Gorsuch says no state business was conducted in Texas but he warned the governor that such a trip would have the appearance of using public funds and public time to address private, political issues.

The trip helped to generate some highly vocal and visible opposition at Gorsuch's confirmation hearing. Representative Jerry Ward and well-known political activist Bruce Kendall, both of Anchorage, even approached long-time Anchorage attorney Senator Joe Josephson about recommending him to Sheffield as a replacement for Gorsuch. Josephson refused the offer.[263] Gorsuch thought that the governor's announced plans to cut capital expenditures also motivated some legislators to use the confirmation hearings as a vehicle to attempt to intimidate Sheffield. After a noisy debate Gorsuch was confirmed and began to address the work of the department.

Drawing on his background in natural resources and oil and gas litigation, Gorsuch led the negotiations with the oil industry over taxes and royalties. In addition, several other

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262 Norman Gorsuch Narrative II, unpublished manuscript, report prepared for Department of Law History Project, 1.

263 *Anchorage Times,* February 20, 1983, 6; personal communication, Joe Josephson, April 4,1997.

related issues demanded attention. ARCO did not agree that the state had the right to levy a tax on the transport of oil through a 27-mile pipeline from the Kuparuk field, adjacent to Prudhoe Bay, to the Trans-Alaska Pipeline. In addition, the state filed suit to halt federal lease sales in the National Petroleum Reserve - Alaska, but since no one bid on the leases, the question became moot. Alaska regarded the proposed lease sale as detrimental to the prospects for further exploration of state lands on the North Slope. At the same time, the state was exploring the possibility of a lease sale in Norton Sound on Alaska's west coast. Several villages sued to prevent such sales, but the court ruled that the state could go ahead. The state chose not to do so at that time, however.

In an ominous development, the U.S. Department of the Interior warned the state that if poaching on federal land was not curtailed, the federal government would take over the management of hunting and fishing, a responsibility normally left to the states. The warning arose because of new guarantees and restrictions provided in ANILCA. Navigable waterways also caused considerable trouble. ANILCA confirmed that the state would have ownership of waterways for which historic or present navigability could be demonstrated, while ownership of non-navigable waterways would pass to the Native corporations on whose land they flowed. Finally, the guarantee of Native subsistence in ANILCA concerned the state because the Alaska Constitution provides that the resources of the state belong to all residents equally. All of these issues generated ongoing discussion with the oil industry and the federal government. Most would not be resolved until after Gorsuch left office, and most of the oil and gas negotiations were handled by special outside counsel.

There were a number of incidents during Gorsuch's second term in the office that raised doubts about the integrity of government. Not long after Gorsuch's confirmation, charges surfaced in the press that state workers were being pressured to contribute to Sheffield's political campaign. Even before the administration took over, the press made much of a bizarre incident in which an Anchorage House member, Joe Flood, reported that he had worn a concealed tape recorder when talking to new Sheffield people in government, in case someone

should offer him a bribe for his activities in the legislature, such as a job offer for his wife or the like. The incident was embarrassing for the administration, although otherwise non-substantive. Then, the Bering Strait School District attempted to oust its superintendent, Ron Hohman, brother of convicted former state senator George Hohman. The state had no need to get involved in that issue, except to clarify what the rules and procedure for dismissal might be. However, press coverage of all of these incidents suggested an unease with government in the state.

The state did initially become involved in another matter that would discredit government. In 1984, the mayor of the North Slope Borough, Eugene Brower, was defeated in a reelection bid by George Ahmaogak. There had been rumors of corruption in municipal government in the borough, particularly in Barrow, and Ahmaogak ordered an audit of borough finances. Auditors found that millions of dollars in expenditures seemed undocumented, that many contracts seemed to be overvalued, and that two of Brower's highly paid consultants, Lew Dischner and Carl Mathisen, both long-time Democratic politicians, had arranged for a single Seattle firm, H. W. Blackstock, to supply most of the construction materials that came into the borough. When asked about the situation, Sheffield said he was not aware that any state funds were involved, but press analyses soon demonstrated that there were. Some analysts suggested that Gorsuch was dragging his feet in launching a full-scale investigation because Dischner, Mathisen, and others under suspicion were major Sheffield contributors.[264] Dan Hickey, chief prosecutor in the criminal division, quietly began an investigation of the circumstances in Barrow. Before he could complete it, however, events would overtake him, and the department. In the meantime, federal prosecutors would take over the North Slope investigation.

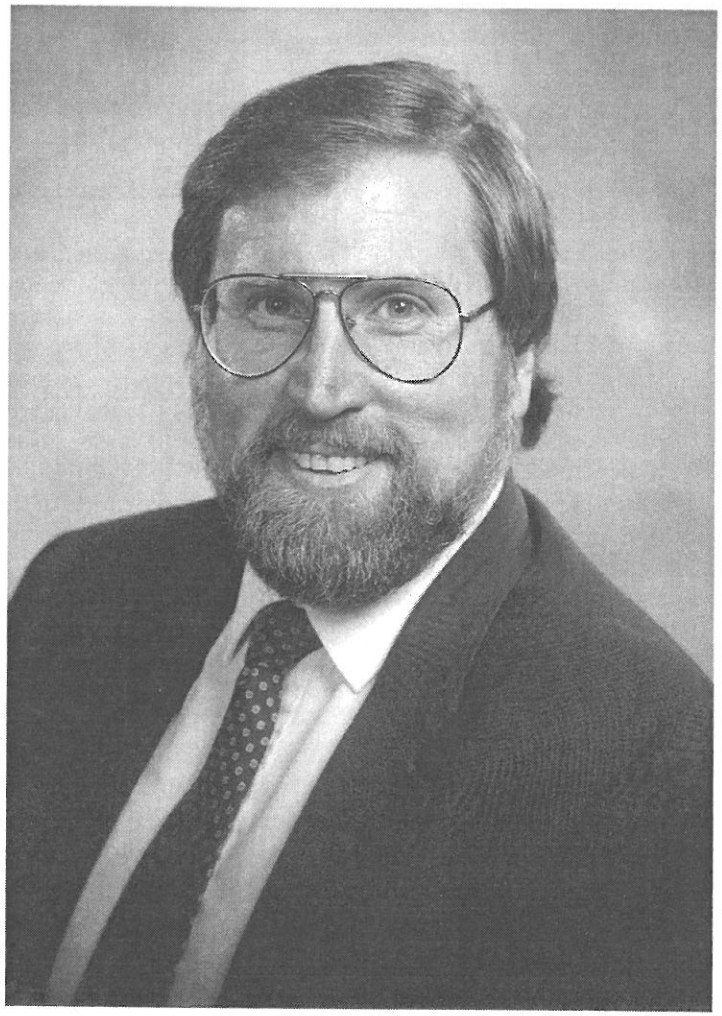
[264] Dischner had been commissioner of labor in the first Egan administration in 1959. See the discussion of the corruption and trial in John Strohmeyer, *Extreme Conditions: Big Oil and the Transformation of Alaska* (New York: Simon and Schuster, 1993), 123-150.

Gorsuch's term would be overshadowed and ultimately consumed by the investigation and attempted impeachment of Governor Sheffield in 1985. By the spring of that year, major questions had developed regarding a $9.1 million, ten-year state lease of a building in downtown Fairbanks for space for state offices. Quite some time before, employees of the Department of Administration, which handled such leases, had gone to Hickey with suggestions that they were being pressured by the governor's office to award the Fairbanks lease to a particular individual without an appropriate bid process. The governor's chief of staff, John Shively, had insisted that the area of downtown Fairbanks which would be acceptable to the state be drawn so tightly that only one building would qualify. A long-time Sheffield supporter and contributor, Lenny Arsenault, was a 2 percent owner of the building and represented a larger group which owned about 25 percent. Hickey began an investigation of the matter. Hickey impounded all the leasing records in the procurement office and upon review, launched a grand jury investigation.

Gorsuch reports that this matter had come to his attention long before Hickey convened the grand jury, that he had told the governor's office that such a lease should be handled by the Department of Administration, and that he had been assured that it would be. However, the issue came up again and, with Gorsuch's concurrence, Assistant Attorney General Jim Baldwin met with Shively. Both Baldwin and Gorsuch told Shively that if the "footprint" for the building, the area the state considered acceptable, was limited for no apparent reason, that would constitute a violation of the sole-source procurement statute. Shively indicated that Arsenault, who was general manager of the pipefitters' union, had been given a copy of the specifications for the building. Gorsuch suggested that while that was not illegal, it was certainly a breach of propriety. Gorsuch left thinking the matter had been laid to rest.[265]

What had most alarmed Hickey was the information that Arsenault had met with the governor about the lease. Arsenault

[265] Norman Gorsuch Interview II, Department of Law History Project, 20.



Norman C. Gorsuch, in his second term as attorney general, had to deal with a variety of incidents that raised doubts about the integrity of government.

had raised $92,000 for the governor's election bid, so the appearance of collusion was unmistakable. At that point Hickey advised Gorsuch that the state needed outside counsel. Hickey granted Shively immunity from prosecution to secure his testimony. Shively stated that he had been present when Arsenault and the governor discussed the lease, something he had previously denied. The governor, who testified twice, insisted that he could not recall or remember the meetings Shively described.

Reluctantly, Gorsuch agreed to appoint outside counsel. He brought in George Frampton, who had served as counsel during the Watergate investigation of Richard Nixon in 1973-74. After reviewing the transcript and talking to the grand jury, Frampton recommended that the jury issue a report that the governor had probably committed perjury. Hickey counseled the grand jury that they could indict the governor for perjury, or issue a report, in which they might, should they decide to do so, recommend the governor's impeachment.[266] The jurors issued a report, on July 2, 1985, in which they argued that the governor had violated the public trust and recommended that the state Senate consider impeaching him.[267]

Senate leaders called the legislature into special session. The Senate Rules Committee held hearings over a two-week period. Both the Senate and the governor hired former Watergate attorneys, Sam Dash for the Senate and Phillip Lacovera for the governor. The committee, with a majority of Republicans, concluded that no "clear and convincing evidence that Sheffield had committed an impeachable offense" had been presented.[268] Subsequently, the senators called for changes in the state's procurement procedures, and the court made a change in grand jury procedure, requiring that when a grand jury issues a

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[266] *McBierney and Associates v. State,* 753 P. 2d 1132 (1988).

[267] By the Alaska constitution, the state Senate has the power of impeachment, and the House conducts the trial.

[268] See the discussion in McBeath and Morehouse, *Alaska Politics and Government,* 174-175.

report, a judge will decide if the report should be released to the public.[269] In the meantime, Gorsuch recommended that the lease be voided because the process by which it was awarded had been tainted.

As soon as Gorsuch learned that Shively initially had not been fully forthcoming with him, Gorsuch says he knew he had to resign, for it was clear that he was not in the governor's confidence.[270] Commenting on how the matter evolved into an impeachment of the governor, Gorsuch suggested that had the governor noted his preference, but then allowed the Department of Administration to act without pressure, the same building might well have been chosen. The governor obviously wanted to try to accommodate his friend and supporter, but was insensitive to the bureaucracy. When a governor tries to force people to do something they consider to be legally questionable, Gorsuch averred, those people are going to be concerned about their jobs, and they are going to seek help.[271] Gorsuch feels the department conducted itself professionally and competently in all aspects of the Sheffield affair. Moreover, he rejects the suggestion that Dan Hickey was overzealous in pursuing the matter. The Watergate affair in the 1970s and the revelations of government misrepresentation associated with the Vietnam war, he suggests, may have helped to produce the climate in which the Department of Law investigated the Fairbanks lease, but, given the circumstances, he sees little else he or the chief prosecutor could have done. As the grand jury prepared its report, Gorsuch tendered his resignation and left state government.[272]

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269 AS 36.36 *et seq.*

270 Gorsuch II Interview, 26.

271 Gorsuch II Interview, 21.

272 Gorsuch later penned an article on the question of whether or not the attorney general should be elected in Alaska, arguing against the idea: "Alaska Attorney General: Elected or Appointed," *Alaska Public Affairs Journal,* 4 (Spring 1988): 37-43.

Governor Sheffield asked Harold M. Brown to replace Gorsuch. Brown had worked in the Massachusetts Attorney General's office and was recruited to Alaska by John Havelock in 1971. He served as district attorney in Ketchikan for two years, and then left to join a firm in that city. He had served as president of the Alaska Bar Association, and on its board of governors. Brown suggests that he was probably recommended for the post by Judge Thomas Stewart and Judge Victor Carlson. Sheffield interviewed him for the job before any news about the grand jury's report had reached the public. Brown arrived in Juneau three days after the report was released.[273]

Brown objected to Dan Hickey's continuing involvement with the impeachment proceeding.[274] Hickey was working with Dash to present evidence before the Senate. Brown thought that strict neutrality was the best way to preserve the integrity of the Department of Law; Hickey disagreed with that assessment. Both he and Gorsuch were called to testify before the Senate regarding their investigation of the lease matter and their counsel to the grand jury. Some time before he was called to testify, Hickey prepared a memorandum setting out his activities and his conclusions regarding the lease and the governor's involvement in it. Implications of impropriety or overzealous conduct by the Department of Law had emerged from the Senate proceeding, and Hickey sought to lay out a defense of the department's, and his own, role. He had shown the memorandum to Brown. The new attorney general thought strongly that to be seen as involved in the impeachment did not serve the department's interests. He particularly did not want Hickey's memorandum made public, something Hickey warned would probably happen in his testimony. Not surprisingly, then, Hickey did allude to the memorandum and, shortly after an

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273 Harold Brown Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1; Malinda Maher, "The Governor's Men," *Council,* XVI (January 1991): 1.

274 Gorsuch's resignation raised questions for the press regarding the Sheffield impeachment: *Alaska Economic Report,* X (June, 1985): 8.

Harold M. Brown took office in 1985 in the wake of the scandal that tainted the term of Governor Bill Sheffield.

Anchorage reporter called Brown's office to request a copy. Brown thought he had been manipulated and soon afterward he demanded Hickey's resignation, on the grounds of insubordination.[275] Hickey left the department at the end of September. In the interim, he wrote a separate letter to be included in his department personnel file explaining the circumstances of his leaving. Brown agreed with Hickey's commitment to honesty in government, but he felt Hickey's high profile jeopardized the department's neutrality, and hence its long-term effectiveness. Brown also thought that Hickey had taken an adversarial position in their professional relationship which made his further employment untenable. As he once put it, Hickey did not understand that he, Brown, was the attorney general, and Hickey was not.[276] Brown appointed Herbert Soll, a former public defender, in Hickey's place.

Dan Hickey had been in the Department since 1971 and had been chief prosecutor since 1975. His courage was legendary. He had undertaken the Hohman bribery prosecution and the Dankworth conflict of interest charge; he had helped guide work on the revision of the civil and criminal codes; he had helped to implement the plea bargaining ban; he had overseen much of the work of the district attorneys' offices at a time when crime rates were rising precipitously from the impact of oil money and population; he had assembled the state's response to questions about the Fairbanks office building lease and to the revelations of lying in the governor's office. He had helped to inspire federal investigation of the North Slope Borough scandal. His mark on the department was extraordinary, and indelible. Whether overzealous or not, caring deeply for the department and dedicated to the rule of law and respect for it, he had represented a visible pillar of credibility at a time when the credibility of government was being routinely assailed and eroded from within. Watergate had been about

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275 Harold Brown Interview, Department of Law History Project, 9-15.

276 Brown Narrative, 3.

whether or not politicians were entitled to a double standard in the name of order and in the name of governing. The people, through their repudiation of Richard Nixon and the aura of secrecy, arrogance, and deception in the White House and in the Pentagon, had said they were not. In Alaska, Hickey was committed to the same repudiation of corruption, arrogance and deception.[277]

Hickey was the true heir of John Rader and George Hayes and those of the earlier generation who were dedicated to the principle that the full honesty and integrity of government must be placed virtually above all other considerations in order that the citizenry might have faith in their government, so that the rule of law might prevail and be respected, and so that society should have that order which allows individual freedom and which guarantees stability and safety. Integrity, he believed, must take precedence over and must check politics and politicians, both inclined, he believed, toward a level of compromise that would undermine public confidence and, ultimately, public safety. He had not endeared himself to many politicians in Alaska by his pursuit of such thorough honesty. Many citizens celebrated his willingness to challenge the ethics of the state's most potent power brokers, but many others did not pay attention or, if they did, were skeptical that one or two trials would end political brokering. And the money that flowed so freely from state government did not encourage all citizens to inquire too closely into the circumstances of their good fortune.[278] Today few Alaska citizens recall the details of the Sheffield impeachment or remember the names Hohman and Dankworth, but all are heir to the legacy of courage and integrity which the Department of Law manifested in those matters.

Although in 1985 and 1986 a number of ongoing issues vied for Brown's attention as attorney general, including continuing oil and gas litigation and the implications of the

277 Dan Hickey Interview (by Carolyn Jones), Department of Law History Project, 33-34.

278 See the discussion in Strohmeyer, *Extreme Conditions*, 130 ff.

guarantee of subsistence resources in ANILCA, the state and the department soon had to contend with a new crisis of epic proportions. Responding to a minor national economic collapse, in 1986 the price of a barrel of oil dropped from above $20 to about $9. The impact on Alaska was staggering. State oil revenue fell precipitously with the decline in the wellhead value of the oil produced. The spending boom that had begun with pipeline construction in 1974 and the onset of production in 1977 swiftly lost its bonanza proportions. In the urban centers real estate values plummeted, and many people who could not make their mortgage payments simply walked away. For the first time since before World War II, the state experienced a net outmigration, 20,000 more people left in 1986-1987 than arrived.

The funding decrease brought near panic in state government. The governor told most state offices to reduce their expenditures by 10 percent. The burden was very difficult for the Department of Law because a large number of the department's attorneys had been paid for by other departments under reimbursable service agreements rather than being paid from the Department of Law annual appropriation from the state's general fund. Brown was concerned that the affected departments would make up their 10 percent simply by cutting the RSA attorneys, but managed to avoid this by persuading the legislature to transfer the RSA monies into the Department of Law. Within the department, Brown cut the pretrial diversion program, and severely cut back the consumer protection division. More significant, there were layoffs of attorneys, the first in years, and all remaining attorneys, including the attorney general, took a one-year 10 percent pay cut.[279] In all, Brown's measures preserved the department, and allowed it to continue most of its routine work. He regards this, along with keeping the department functioning effectively during the impeachment crisis, as his greatest accomplishment as attorney general, as well he should.[280]

279 Brown Interview, 17.

280 Brown Narrative, 4.

At about the same time, Brown terminated the state's investigation of North Slope Borough corruption, but released two department attorneys to work temporarily with the U.S. Attorney's office, which took over the case.[281] Brown did not make this decision because of the budget crisis, however. The relevant federal laws in place provided a better context for the prosecutions than did the state code, particularly given the interstate character of the crimes.

The department handled a number of significant cases during Brown's tenure. In 1986 the Alaska Supreme Court decided an important Native sovereignty case, *Native Village of Nenana v. State, Department of Health and Social Services.* [282] Faced with a Department of Health and Social Services decision to have a Native child declared in need of aid, the village asked the court to transfer the matter to tribal court. The Alaska Supreme Court held that the tribal court did not have jurisdiction because P.L. 280 had given Alaska exclusive jurisdiction over matters involving custody of Native children, absent approval by the U.S. Secretary of the Interior of the tribe's plan for handling such matters.[283] This was not, however, a final answer: the question of the extent of and limits to Native sovereignty continues to vex analysts.

With the economic downturn, local hire again became an important issue. The 1985 Alaska State Legislature passed a bill mandating that public contractors give employment preferences to Alaska residents,[284] but in 1986 the state supreme court struck

[281] The two, Peter Gamache and Karen Loeffler, were appointed special U.S. Attorneys for the duration of their work. In 1996 Karen Loeffler continued to serve in the U.S. Attorney's office.

[282] 722 P. 2d 219 (1986).

[283] P.L. 83-280, at 18 USCA 1162, was an outgrowth of the termination policy of the 1950s. It conferred jurisdiction on five states over civil "causes of action" and criminal "offenses" involving Indians in Indian country. Alaska was added in 1959.

[284] SLA 1985, ch. 69.

down the law.[285] The court decided that it established a discrimination within the meaning of the privileges and immunities clause of the U.S. Constitution. The legislature responded with a bill that targeted economically disadvantaged residents.[286]

The first cases on subsistence reached the courts during Brown's tenure. Before 1978 urban residents could engage in subsistence hunting and fishing and there was no statutory preference given to subsistence over sport or commercial fishing or sport hunting. Legislation enacted in 1978 defined a subsistence preference. Subsistence, previously defined as "personal use and not for sale or barter" became "customary and traditional uses . . . for direct personal or family consumption, and for customary trade, barter or sharing." The law itself did not establish an urban exclusion, but the fish and game board wrote the exclusion into the regulations. They did so in order to comply with the subsistence guarantee in ANILCA.[287]

The Alaska Supreme Court struck down the subsistence preference regulation, however, finding it inconsistent with legislative intent to provide guidelines for protection of subsistence fishing.[288] The legislature responded by passing a new law which explicitly established the rural preference, providing that one must reside in a rural area in order to participate in subsistence hunting and fishing activity.[289] This, too, the supreme court declared unconstitutional.[290] Further litigation would complicate still more the problem of rural

[285] *Robinson v. Francis,* 713 P. 2d 259.

[286] SLA 1986, ch. 33.

[287] Brown Narrative, 5-6.

[288] *Madison v. Alaska Department of Fish and Game,* 696 P. 2d 168 (1985).

[289] SLA 1986, ch. 22.

[290] *McDowell v. State,* 785 P. 2d 1 (1990).

preference and the federal government's trust obligation to Native inhabitants. Thus the federal government announced preparations to take over some management of fish and game resources, pending the state's compliance with federal stipulations, a matter still under negotiation in 1997.

Finally, regarding the work of the district attorneys, Brown relaxed the plea bargaining policy to permit a modified form of sentence bargaining. He permitted prosecutors to agree with a defendant to recommend a particular sentence if such sentence could be predicted with a fair degree of certainty, based on the statutes, case law, and the prosecutor's experience.

THE LEGACY OF THE *EXXON VALDEZ*

In 1986 Sheffield was defeated for reelection, losing to Steve Cowper in the Democratic primary. The impeachment apparently had discredited the governor sufficiently in the public's view that confidence in his ability to govern objectively was lost. Cowper, who had arrived in Fairbanks in 1968 and had a reputation as a reformer, went on to defeat former state senator Arliss Sturgulewski in the general election. Joe Vogler, running on the Alaska Independence Party ticket, received 5.5 percent of the vote. Shortly after the election, Cowper declared that "all bets are off," indicating that because of the recession following the oil price drop, whatever campaign promises he might have made would be superseded by emergency measures to cut the state budget.

Governor Cowper chose Grace Berg Schaible as his attorney general, the first, and so far the only, woman to serve in that office in Alaska.[291] She had been a private practitioner in Fairbanks, handling much business in rural Northwest Alaska; one of her clients was the North Slope Borough. She had also served as a member of the University of Alaska Board of Regents.[292]

Harold Brown resigned immediately after the election. He worked for a time for the Judicial Council and then returned

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[291] A life-long Alaskan, Schaible had attended law school at the urging of a family friend, Thomas Stewart, who was himself later appointed to the Superior Court bench in Juneau. At the time, Schaible was working as a legal secretary. Her decision thus reflects a non-traditional career path.

[292] Grace Berg Schaible Narrative, unpub. mss., report prepared for Department of Law History Project, 1. As the press referred to Ms. Berg Schaible by her married surname, Schaible, that practice is used here.

Grace Berg Schaible was the first woman attorney general of Alaska. Governor Steve Cowper appointed her shortly after his election in 1986. *Photo courtesy of Anchorage Daily News.*

to private practice, but in Anchorage not Ketchikan. The newly enacted ethics legislation prohibited persons leaving government from engaging in activities in support of the state in which they had been engaged while in state employ for a period of two years. There was little the attorney general had not been engaged in, if even peripherally, so reestablishing his practice took time. In 1996 Brown was appointed superior court judge in Kenai.

Many women in the department, and across Alaska, celebrated Schaible's appointment. As attorney general, she would provide more than symbolism on the issue of gender equality; she would wield considerable administrative and, perhaps, political power. Schaible, however, did not feel that being the first woman appointed to the office necessarily advanced the status or role of women in Alaska, although she thought it might have helped the confidence and credibility of women in the department. Partly this was a function of her character and personality. A naturally self-deprecating woman, she did not seek to bring attention to herself, and she did not use her office overtly to crusade for women's issues or status.

In addition, Schaible thought that in the aftermath of the Sheffield impeachment the work of the department would be best accomplished by reducing its public visibility. As a matter of operations, she left the running of the department to her deputy Ron Lorensen,[293] even though she saw herself as an office attorney, rather than a litigator or a policy adviser. She sought primarily to analyze the functioning of the department, improve its efficiency, and generally "to keep a low profile."[294]

However, not long after her appointment the new commissioner of transportation and public facilities, Ron "Rocky" Guitterez, charged that an assistant attorney general in the

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[293] Lorensen had served in the role of deputy attorney general from 1980, when Wilson Condon had been appointed attorney general.

[294] Grace Berg-Schaible Interview, Department of Law History Project, 5.

Department of Law, Linda Walton, had impugned his integrity when she made a statement that he had let a contract before giving it full and thorough review. The press printed Walton's remarks, speculating about similarities to the Sheffield affair over the leasing of office space in Fairbanks. Schaible remembers being irritated with Walton's public remarks for they did anything but deflect public attention from the department, but she also was sympathetic to Walton's situation, i.e., that she could not respond to Guitterez' charges. Schaible concluded later that Guitterez simply wanted an excuse to get out of state government.[295]

A crisis developed after the 1987 legislative session involving Senator John Sackett, a prominent Native leader from the middle Yukon. Juneau police had responded to an emergency call from Sackett's room in the Baranof Hotel. In some distress, he was transported to the hospital emergency room. En route, he made comments which suggested that he had taken an drug overdose. One person in the department thought to quash the information, but others prevailed in their determination to prosecute the case like any other. Schaible remembers becoming irritated that some department personnel sought to treat Sackett's case differently because he was a powerful politician. The press did print the information contained in the police report, and Sackett later was charged with cocaine possession. He was convicted and completed probation.

Schaible remembers also a department lapse regarding a decision by Anchorage Superior Court Judge Joan Katz. The issue was whether or not political candidates within one district could receive contributions from outside their districts. Initially Judge Katz ruled that such contributions would constitute a violation of campaign finance law, a remarkable departure from the normal practice of campaign financing in Alaska and in the nation. Later Judge Katz reversed that ruling. Schaible concluded that the judge wanted some clarification of the law from the Department of Law and criticized the attorneys involved when she perceived that the department had not

295 Schaible Interview, 9.

considered the matter seriously.[296] Schaible also was involved in work on the *Amerada Hess* royalties case, which would not be finally settled until 1995.

When she accepted the appointment, Schaible told Cowper she had just retired from many years of private practice, and she would hold the office for only two years. In 1989, perhaps somewhat to Schaible's chagrin, the governor honored her wish by appointing in her stead Douglas B. Baily. Schaible left the state immediately upon leaving office for long-planned, extended travel abroad. In 1995 she accepted appointment as a trustee of the Alaska Permanent Fund Corporation by Governor Tony Knowles; she was elected Chair of the Board that year and again in 1996.[297]

Douglas Baily came to Alaska in 1957 as a field geologist with the United States Geological Survey (USGS), just before the discovery of oil at mouth of the Swanson River on the Kenai Peninsula. Leaving the state to attend law school, he returned to serve as an assistant attorney general in the department, as an assistant district attorney in Anchorage, and then as U.S. Attorney in Anchorage from 1969 to 1971. He served briefly as an administrative assistant to Governor Hammond in 1974, after having been active in the election campaign.[298]

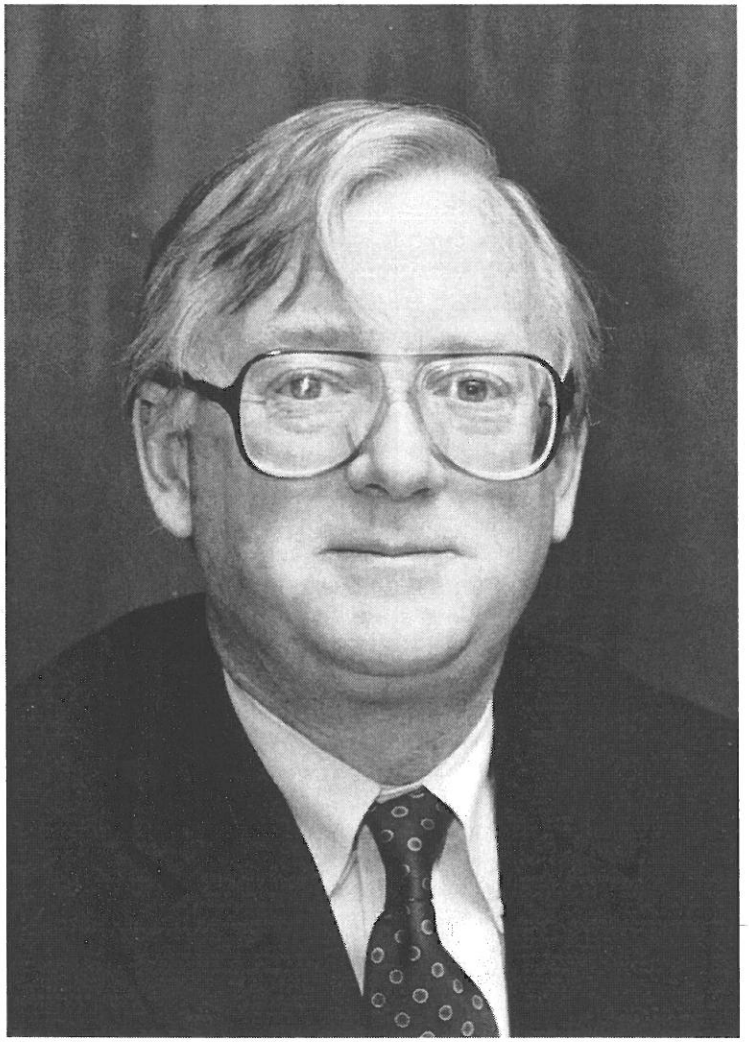
Baily retained Ron Lorensen as his deputy. Larry Weeks was in charge of the criminal division. When Weeks was later named to the superior court, Baily named Laurie Otto to head the division.

Two remarkable events framed the context for Baily's tenure as attorney general. At a morning press conference on March 24, 1989, Good Friday, two weeks after Baily was sworn in, Governor Cowper announced that he would not run for

296 Schaible Interview, 15-16.

297 In 1996, owing to her many generous grants of aid to a variety of organizations, Schaible was named Alaska Philanthropist of the Year.

298 Douglas Baily Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.



Douglas B. Baily, who succeeded Grace Schaible in 1989, was attorney general when the *Exxon Valdez* ran aground on March 24, 1989.

reelection. That same morning, the oil tanker *Exxon Valdez* struck and became impaled on a rock, Bligh Reef, while crossing Prince William Sound after leaving the Valdez terminal. Cowper's press conference had been scheduled a week earlier, and he could not have known at the time of his announcement the full extent of the *Exxon Valdez* tragedy. The tanker spilled 11 million gallons of oil into the Sound, the largest oil spill in North American history, fouling beaches, sea, and wilderness landscape hundreds of miles downstream in the Sound and along the southeast shore of the Kenai Peninsula. The *Exxon Valdez* spill and its aftermath would dominate Baily's term in office.

Cowper steered the state through the spill aftermath. He responded to the crisis quickly, early criticizing Exxon and other large oil companies whose spill precautions were inadequate. The state had been lax in monitoring spill contingency plans, a failing which Cowper acknowledged, but he also focused attention on the failed responsibilities of the tanker owner and the Alyeska Pipeline Service Company, which had repeatedly assured state leaders that tanker operations were safe. Cowper also criticized the U.S. Coast Guard for its casual oversight and late response.

Criticism of the accident focused on three areas. The first was the culpability of the tanker captain, Joseph Hazelwood, who failed tests for blood and urine alcohol level and had a history of alcoholism. A second was corporate greed and excess, manifest in the pipeline company's poor preparation and response as well as its prior decisions to reduce the number of crew members on its tankers. A third was the state and federal neglect. Initially, the federal government appeared reluctant to monitor Exxon's cleanup efforts effectively.

Soon after learning of the spill, Baily dispatched two attorneys with pollution experience to Valdez to work with the Departments of Fish and Game and Environmental Conservation and other agencies to assess the circumstances. By the third day, he had learned that Hazelwood had been given the blood and urine tests at 10 A.M. on the morning of the spill, about ten hours after the incident. At that point, Baily concluded there was reason for a criminal investigation and dispatched a third attorney to the site.

Ultimately, the state would try Hazelwood on several charges under the only statutes which were applicable, including operating a vehicle under the influence of alcohol and illegally discharging oil. He was acquitted of the alcohol charge.[299] The tanker captain was convicted of negligent discharge of oil.[300] Baily felt that the trials were appropriate because they sent a message that Alaska does not take the careless operation of oil vessels in its waters lightly.[301] Baily points out that Exxon provided counsel for Hazelwood even though the company had fired him soon after the spill. Baily believes the state's attempt to motivate closer monitoring of tanker and related production activity was damaged by the acquittals.

Baily also initiated civil litigation involving the *Exxon Valdez* matter, and the state took the lead on the civil side of the case, leaving the criminal prosecution of Exxon to the federal government because federal laws were more stringent. Baily and Governor Cowper twice met with the president and chairman of the board and general counsel of Exxon Corporation to try to work out the guidelines of a civil settlement.[302] They considered both the cleanup of the spill and civil fines. U.S. Justice Department representatives were not present at these meetings, partly because Exxon expressed distrust of the Bush administration, even though, Baily concluded, the administration initially intended to go easy on Exxon. Exxon found that the federal attorneys were "out of control," i.e., they were not consistent in their positions, which they changed without

299 *Hazelwood v. State,* 912 P. 2d 1266 (Alaska Ct. App. 1996).

300 The Court of Appeals set aside this conviction on the grounds that the trial court gave an incorrect instruction on what constitutes the mental state for negligent discharge of oil. The Supreme Court reversed this decision, holding that the trial court was correct. The case is currently before the Court of Appeals on other issues.

301 Douglas Baily Interview, Department of Law History Project, 11.

302 Baily Interview, 14-15.

warning and notification. Baily also had reason to distrust the U.S. Justice Department. While Justice Department personnel repeatedly assured him of that agency's earnest commitment to a cleanup and settlement, he learned through internal memoranda leaked to him that in private they and White House advisors were in fact much less determined to hold Exxon to responsible action.[303] Ultimately, the federal court directed Exxon to pay $900 million into a trust fund to be administered by a joint federal-state trustee council and private plaintiffs were awarded $5 billion in punitive damages (although the case is still under appeal)..

Baily believes that the state achieved its long-term objectives in the aftermath of the spill. Despite the damage done by Hazelwood's acquittals, the image left by the state is one of responsibility and professionalism, which should help to mitigate against carelessness by oil shippers in the future.

As had many of his predecessors, Baily also became involved in settlement of the *Amerada Hess* royalties litigation. With Wilson Condon and other members of a negotiating team, Baily traveled to San Francisco for a mock trial presentation. Learning from that experience, the state altered its position somewhat and continued to pursue the settlement which was reached finally in 1995.

In matters other than oil, Baily became involved to a limited degree in the highly visible case of a high school teacher, "Satch" Carlson, a popular *Anchorage Daily News* columnist who was charged with sexual abuse of one of his students. Upon learning of the situation, the Anchorage School District attempted to keep the matter quiet and allow the teacher to retire. Alerted, the Anchorage police department obtained a search warrant, conducted a surprise search of school district offices, and took custody of a significant body of records.[304] A grand jury subsequently investigated the matter and issued a report. When it became apparent that state law did not

303 Baily Interview, 13-14.

304 O'Leary v. Superior Court, 816 P. 2d 163 (1991).

adequately apply to teachers who take advantage of students over the age of 15, the legislature changed the law on sexual abuse of minors and increased the penalties for those who take advantage of their positions of authority.[305]

The Carlson case was one of several that which led Baily to remove Anchorage district attorney Dwayne McConnell. The two had been unable to come to agreement regarding the degree of oversight the attorney general should have of the office. Baily was surprised by publicity about the Carlson case. Although he had previously established with his staff that he needed to be kept informed about critical activities, Baily first learned of the police search of the school district offices when he read about it in the paper one evening, just before getting a call from the governor about it. For Baily, that was the last straw.[306]

Baily himself received considerable publicity when the Anchorage district attorney's office decided not to prosecute an airport security guard who pursued a juvenile in a high-speed chase for forty miles along the Seward Highway south of Anchorage, culminating in a struggle during which the juvenile was fatally shot. The struggle took place in the dark and was not witnessed. Baily intervened personally to urge termination of the officer's employment on the grounds that he was not suited to the work. He concluded that there was no way the state could win a conviction under the circumstances.

Aside from the *Exxon Valdez* case, perhaps the most vexing matter Baily dealt with was subsistence. The state continued to struggle with the federal government over guarantees to Natives of adequate access to fish and game resources for subsistence purposes, and whether such guarantees can be mandated on the basis of ethnicity. At one point Natives on the Kenai Peninsula demanded an Indian subsistence fishery.[307] Baily argued that if distinctions were to be made,

305 SLA 1988, ch. 66.

306 Baily Interview, 22.

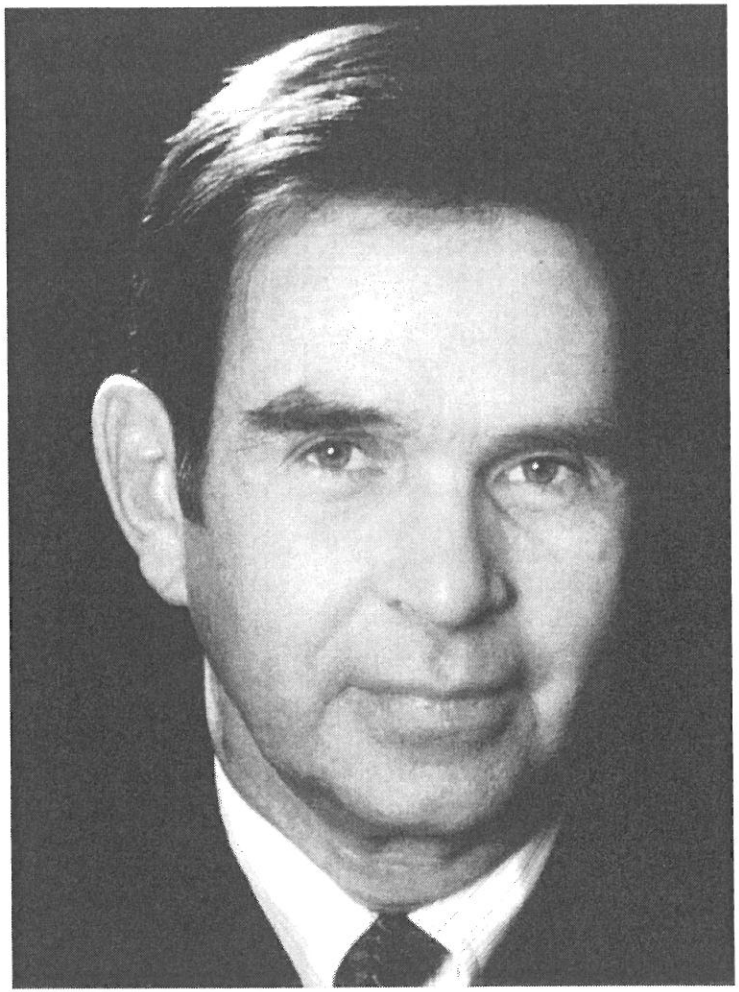
307 *State of Alaska v. Kenaitze Indian Tribe,* 894 P. 2d 632 (1995); *NARF Legal Review,* 19 (Winter/Spring 1994).

exclusion from subsistence use of resources must be made on some basis other than ethnicity, be it residence or some other criterion. By his interpretation, ANILCA did not mandate that ethnicity should be the criterion, a distinction which Baily believed would be socially damaging.

Baily considers his service as attorney general a success.

> I think it was a hell of a department. We were not in the hole. We were not limping. We hadn't brought the wrath of the public down upon us, only a few comments from the press from time to time. It was certainly a smooth transition.[308]

308 Baily Interview, 23.



Early in his second term as governor, Walter Hickel chose Charlie Cole of Fairbanks as his attorney general.

NEW ERA

In 1990, Walter Hickel again decided to run for governor. Hickel had been a candidate in every gubernatorial election in Alaska, primary or general, from 1966 to 1990, save the 1970 election when he was serving as U.S. Secretary of the Interior. The 1990 Republican primary was captured by Arliss Sturgulewski. However, at the last moment, candidates nominated by the Alaska Independence Party (AIP) stepped aside, and Hickel and his running mate, long-time Alaska politician Jack Coghill, ran on that ticket in the general election. In a three-way split, Hickel captured 39.5 percent of the vote, a thin margin, to win one of many close elections in Alaska's modern electoral history.[309]

Hickel campaigned on a platform of Alaska as the "owner state," i.e., that Alaskans, not the federal government, own the natural resources of the state and through development of those resources Alaskans can insure their freedom and prosperity. Soon after the election he made a number of highly partisan appointments, many at levels deeper in the state bureaucracy than any of his predecessors. Acting with his chief of staff, Max Hodel, the governor replaced commissioners, deputy commissioners, directors, and even clerks in the state elections office. Millett Keller, his commissioner of administration, made loyalty to the governor a principle of department activity. Hickel fired members of the State Board of Education and replaced fish and game board members who supported Native subsistence rights. Hickel also cut funding to the Alaska Women's Commission, the state Human Rights Commission, and the Alaska Public Offices Commission. He threatened to cut financing for public broadcasting, for social service grants, and to municipalities, though he did not follow through on the threat. Particularly ominous for the Department

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[309] The nominated AIP candidates were John Lindauer and Jerry Ward.

of Law was a list of about fifty assistant attorneys selected for dismissal.[310] This also failed to develop, but knowledge of such a list complicated relations between the governor's office and the department.

Hickel chose as his attorney general Charles E. ("Charlie") Cole, a well-known Fairbanks attorney who had been a sole practitioner there since 1955. Born in Yakima, Washington, Cole had come to Alaska from Stanford Law School. He had clerked for Judge Vernon Forbes before going into private practice.[311] Edgar Paul Boyko, who had remained a Hickel advisor and confidante, probably suggested Cole to the governor.[312] Although he had known Hickel, Cole had not worked on the governor's campaign and had not talked to Hickel about a possible appointment. There was some press speculation that Cole, known as an incisive litigator with a temper, would not work well in Juneau, particularly supervising the now nearly two hundred attorneys in the Department of Law. He had never had experience as an administrator, and some doubted his ability to head one of the largest departments in state government.

In Anchorage, Boyko added to concern over the new appointment. Boyko ran a radio call-in program in Anchorage and after the election, he used his show to criticize the department.[313] He charged that it was an entrenched bureaucracy beyond administration control, an entity unto itself, and one dedicated to liberal causes not supported by the citizenry, or Hickel. Boyko thought that if anyone could harness it to the administration's will, Cole would be the one.

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310 A copy of this list is in possession of the author.

311 Charles Cole Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.

312 Botelho Interview, 2. Boyko had prepared the list of assistant attorneys general selected for dismissal.

313 As host on the program, Boyko called himself "Alaska's Snow Tiger." Lieutenant Governor Jack Coghill was a frequent guest.

Initially there was considerable anxiety in the department over Cole's appointment because of his association with Hickel and Boyko and their negative public comments about the department. And the transition was not the easiest. Cole left much office administration to his deputy, Douglas Blankenship, who was uncertain about how to proceed. Only after an office reorganization, diplomatically orchestrated by Bruce Botelho and other assistant attorneys general, did the flow of office work proceed normally. Cole, obviously an able attorney and dedicated to the goals of the department, earned the respect of department personnel, particularly those people involved in gas and oil litigation with whom he worked closely. In regard to Hickel's announcement that he intended to fire many of the assistant attorneys general, going far deeper into the ranks of the department than any new administration had ever done before, Cole insisted that as head of the department all personnel decisions were his prerogative, not the governor's. And while Cole called for a desk audit of all the assistants in the department, in which each had to explain and justify his or her other duties, information that might have been used as the basis for major reassignments, in fact, the threatened purge of the department went no further than the request for information.[314] Cole believed in the independence of the Office of the Attorney General in litigation and settlement matters, for instance in pursuing resolution of tax and royalty matters with the oil industry and in working with the trustee council established to implement the *Exxon Valdez* settlement.

Cole retained Dean Guaneli as head of the criminal division, and appointed Douglas Blankenship as head of the civil division. Bruce Botelho later replaced Blankenship. Cheri Jacobus, a Hickel favorite, was appointed head of the department's Anchorage office.[315] Hickel wanted to file suits against the United States over what he regarded as violations of

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314 Charles Cole Interview, Department of Law History Project, 21.

315 *Alaska Outdoor Council News,* January-February, 1991, 2.

the 1958 statehood act, with its grant of 103 million acres in Alaska to the state, and its commitment of 90 percent of federal mineral royalties. Hickel thought that the 1965 land freeze and the subsequent Native claims settlement act, and the 1980 Alaska lands act (ANILCA) constituted a violation of the statehood act, which he regarded as a solemn compact, particularly because the act had been ratified by a vote of the Alaska citizenry. Had the Native and ANILCA lands not been closed to mineral entry, Hickel theorized, the 90 percent state share of federal royalties collected from 1965 to 1990 would have been $29 billion. Jacobus devoted a good part of her time in Anchorage to preparing the compact suits.[316]

Hickel also urged the appointment of a former campaign worker, Edward McNally, as district attorney in Anchorage. McNally moved permanently to Alaska in 1991, after the gubernatorial campaign. He had been a speech writer for President George Bush in Washington, D.C. Seeking to bring publicity to his appointment, McNally organized a public swearing-in ceremony in the Alaska Supreme Court chambers in Anchorage, the first such ceremony for a district attorney in state history. The governor made a speech and the press covered the event. This was a far cry from the low profile which Schaible had thought would best serve the office when she had been attorney general. McNally sought to direct the Anchorage office in a manner effectively independent of the department's coordination from Juneau and, as a consequence, Guaneli's relationship with him was not an easy one.

Cole himself had difficulty when he first took over the office because Hickel frequently conferred with Boyko rather than relying on Cole for legal and policy advice. As it happened, the Alaska Bar Association had undertaken an investigation of Boyko's partner, long-time Alaska attorney Robert Breeze. Breeze represented the Native village of Kotlik, and complaints from the village corporation and others had prompted the investigation. As a result of the investigation, criminal charges

316 Cole Interview, 5. The district court dismissed the suit in May, 1996, whereupon the state filed notice of appeal; the appellate court has denied the appeal.

were filed, and the matter was under active investigation when Cole was appointed. Cole explained to Hickel that his continuing association with Boyko would be both a political and a legal detriment. Acceding to this, Hickel cut off his communication with Boyko. In the meantime, Cole appointed a special prosecutor to handle the Breeze matter. This helped to distance the administration from the investigation, and from Boyko. It also confirmed the attorney general's power to appoint special prosecutors, a very significant development in the department's evolution.

Another criminal investigation clouded the early days of Hickel's administration. This one involved Lieutenant Governor Jack Coghill. When Hickel and Coghill decided to run on the Alaska Independence Party ticket in the 1990 election, they needed to formally change their voter registration from Republican. This they did shortly before the registration deadline but allegations were made that a witness's signature on the voter registration document was forged. Both the Alaska State Troopers and the Federal Bureau of Investigation examined the evidence, and an FBI handwriting expert noted inconsistencies with known signatures. However, the evidence was considered inadequate and that, together with the lack of a criminal motive, led to a decision to take no action.[317]

Cole advised the governor on another matter involving his close aides. Millett Keller and Lee Fisher let a contract from the Department of Revenue to Coopers and Lybrand, an accounting firm in which Fisher had a previous personal interest. The Department of Revenue withheld its internal review of the matter for two months. In particular, Keller and Fisher did not notify the attorney general of the possible impropriety or of the internal review. Keller and Fisher had to leave the administration as a result of the exposure of this incident.

Not long after his appointment Cole ordered an important change in the criminal justice system: he directed a reversal of the ban on plea bargaining. In 1991, the ban had been evaluated by the Judicial Council, which had found considerable disparity in some offices between the policy and the reality of

317 Guaneli, "Criminal Division," 15-16.

charging practices.[318] In large measure, the ban had been successful: police conducted better investigations, cases were screened more carefully than before the ban, lawyers (prosecutors, defense attorneys, and judges) were better prepared for trial, and the public's level of confidence in the sentencing process seemed high. The department designed new guidelines which Attorney General Bruce Botelho formally implemented in February 1994. Under the new policy, however, prosecutors were directed to continue to follow case screening and plea negotiations standards set out in the 1980 policy and to continue to refrain from "sentence bargaining."

The *Exxon Valdez* continued to dominate the activities of state government in 1990 and after. Cole remembers that for the first eight months of his term, he devoted much of his time to the matter. He especially spent a great deal of his time negotiating with Exxon over the proposed civil settlement. Initially the negotiating group agreed on a settlement of the civil damage claim of $900,000 million. This was in addition to the criminal fine and restitution, which totaled $100 million, that was agreed to by Exxon and the federal government.

The negotiated settlement was a major coup for Cole and the Hickel Administration and it was the first major public achievement for the governor. No one had expected a settlement so early, and there was an air of celebration about it, particularly for Cole, who had worked hard to bring the parties together and to generate a resolution of the various divisive issues.

But the celebration was short-lived. First, it generated considerable press criticism that the state had sold out to the oil industry, accepting far less than was warranted. Then came the official reaction. The federal court had to approve both the agreements. On April 24, 1991, Alaska District Judge H. Russell Holland rejected the criminal agreement, arguing that it was too small to impress the Exxon Corporation. The civil agreement included express provisions that any party could terminate it if the criminal plea agreement was disapproved and that either government could terminate the civil agreement if the thirty-day public comment period disclosed facts that made it

[318] Teresa White and John Kruse, *Alaska's Plea Bargaining Ban Reevaluated* (Anchorage: Alaska Judicial Council, 1991).

inappropriate or if the legislature failed to approve the agreement within fifteen days. The state House rejected the deal, despite Cole's lobbying efforts and his confidence that there were enough votes in the two chambers to approve it.[319] and the civil agreement was then terminated by Exxon and the state. In the face of criticism from legislators and the public that the settlement amount was too low, Cole argued that setting a monetary value on natural resources was extremely difficult because there were no precedents. The law of damages did not provide adequate models. He also expressed his concern that an Alaska jury might not be convinced by people without any Alaska experience or knowledge advancing theories on the value of Prince William Sound and its resources.

The negotiators revisited the issues and their arguments, and subsequently Holland accepted a new settlement of both the civil and criminal claims that was worth $1.025 billion. It should be noted that the $5 billion figure commonly mentioned in connection with settlement of the spill damages is the amount awarded to the private plaintiffs by the civil jury in the trial for punitive damages. This award is still under appeal.

The $900 million civil damages settlement, less reimbursements to the governments and a payment to Exxon for cleanup efforts, was put into a joint federal trust fund. A memorandum of agreement provided that the money would be managed by the designated trustees, who included, for the state, the Attorney General, the Commissioner of the Department of Environmental Conservation, and the Commissioner of the Department of Fish and Game. The three state and three federal trustees later established the Trustee Council to oversee expenditure of settlement funds and the three state trustees appointed themselves to the council. The council, according to the terms of the memorandum of agreement and the consent decree between the state and the U.S. government, is required to come to unanimous decisions. Cole felt that only with this rule could the council, with its three federal and three state members,

[319] Cole Interview, 15.

avoid fractional disputes and encourage the public's confidence. Cole served on the trustee council during all of his tenure as attorney general.

Cole is persuaded that the state's interests were well represented and well met by the Exxon settlement and the subsequent work of the trustee council, especially the habitat acquisition program, which he was instrumental in establishing. He points out that the council must work within very narrow parameters imposed by the Clean Water Act and that dispensing the fund within those parameters is a major challenge. In addition, the problem of valuation is a constant one that must be assessed for every dispersal of fund monies. Given the pressures and challenges, Cole asserts that the state has been well compensated for the tanker spill.

Cole also helped to negotiate a preliminary settlement on the question of a lands trust for mental health treatment in Alaska. In 1956, responding to a growing crisis resulting from the lack of a public mental health hospital in Alaska, Sen. Edith Green of Oregon had shepherded through Congress authorization and funds for an Alaska Psychiatric Institute.[320] Then, the statehood act provided that approximately a million acres of land in the state should be set aside as a trust for the support of mental health needs. The land could be sold to generate revenue or managed as the state might determine, but for the benefit of mental health patients. In 1978, however, the state legislature had redesignated these lands as a general trust, so that some of it could be used as parks, set aside as wildlife habitat, transferred to municipalities, or even sold to individuals. In 1982, critics of the legislative action filed a suit to force reversion of the lands to their original purpose. In 1985, the Alaska Supreme Court ruled that the trust should be reconstituted to match as nearly as possible the holdings that comprised the trust when the legislature had acted.[321]

320 70 U.S. Stat. 709.

321 *State v. Weiss*, 706 P. 2d 681 (1985).

In 1990, following various failed attempts at settlement, the plaintiffs obtained a preliminary injunction temporarily precluding the state from conveying any interest in mental health lands to any party, pending resolution of litigation or a court order. Cole worked with the attorneys representing the trust to achieve a settlement, and in 1991 they presented a settlement document to the court.[322] At the same time, the legislature accepted the settlement by law.[323] However, in 1993, Superior Court Judge Mary Greene of the superior court rejected the proposed settlement. A resolution had not been reached by the time Cole left office.

Hickel's campaign commitment to new economic development and to seizing control of the state's resources was manifest in an initiative by the Department of Transportation and Public Facilities to undertake work on the Cordova Road. This action generated intense public criticism and eventually a response from the federal government. The controversy had its origins deep in Alaska's past, in the gold rush era. In 1911 the Alaska Syndicate had opened the Copper River and Northwestern Railway between Cordova and Chitina on the Copper River, and then east sixty miles to the Kennecott copper mines in the Wrangell Mountains. When the mines closed in 1938, the Kennecott Copper Corporation took up the rails and moved them to Montana and Arizona. Construction of a highway along the abandoned right-of-way had been a high priority for developers ever since. However, environmental suits had prevented any road development, and the citizenry of the town of Cordova were consistently evenly divided on the issue of a connection to the state road system.

Hickel had long been an advocate of a Cordova road. Environmental protests to its development, he said during his campaign, were an example of the kind of "road block" that he intended either to clear out of the way, or ignore. In 1991, state Department of Transportation and Public Facilities personnel

322 Cole Interview, 24 -26.

323 SLA 1991, ch. 66.

authorized clearing the right-of-way as a preparatory step toward future construction, and soon bulldozers and other heavy equipment began work. Many Alaskans protested the disturbance of the road corridor and what they interpreted as the governor's heavy-handed determination, a determination others applauded. Among the critics were the state Parks Division and the U.S. Forest Service, which had jurisdiction over part of the right-of-way which had been included in the Wrangell National Forest as part of ANILCA. Another critic was the U.S. Army Corps of Engineers, which had the responsibility of implementing provisions of the Clean Water Act. When the bulldozers pushed soil and vegetation from the right-of-way into the Copper River, the Corps took action to stop the state's activity.

Cole had to advise the governor to abandon the Cordova road initiative. Cole appointed a special prosecutor to investigate Hickel's role in the affair and to assess the environmental impact of the work. No one was prosecuted as a result of the investigation. On reflection, Cole argues that it was not unusual for members of the administration to misinterpret the governor's words, if not his long-term intentions. While the governor might have said that he wanted the Cordova road built, Cole relates, he didn't necessarily mean immediately, or in flagrant disregard of the law or the consequences. He meant only that people should find out how it could be done, and then make it possible.[324] Cole also contends that the work was halted before substantial environmental damage was done.

Hickel ran into difficulty with a problem out of his personal history. Upon his return to Alaska after serving as Richard Nixon's Secretary of the Interior, Hickel had formed a business firm, Yukon-Pacific Corporation, to pursue construction of a natural gas pipeline from Prudhoe Bay to the Gulf of Alaska. Since the beginning of production at Prudhoe Bay, there has been no market for the gas which accompanies oil production. However, Hickel hoped that the world supply of gas would decline sufficiently to make Alaska gas attractive enough to develop. During the first months of his term, critics raised

[324] Cole Interview, 18.

questions about the governor holding stock in Yukon-Pacific while directing state policy toward the same objective, development of North Slope gas. The governor's personal attorney did not see a problem, but others did, and press criticism became intense. Hickel's aides told him the matter could possibly lead to an impeachment. As it happened, Cole was in Fairbanks when the crisis broke. Bruce Botelho, still an assistant attorney general, was called in to provide the department's legal counsel. Grasping the critical nature of the problem, Botelho provided a quick solution by suggesting that Hickel immediately divest himself of stock in the corporation, to protect both himself and the integrity of his office. The governor immediately followed this advice, which effectively eliminated the problem.[325] Later, Cole would appoint Botelho his deputy.

Cole resigned his office abruptly on January 5, 1994. He did not announce publicly his reasons for doing so, which led to considerable speculation in the press. In fact, he had threatened to resign several times before, and always for the same reason. Cole relates that he had experienced increasing frustration in his interaction with the governor's office. The governor's aides sometimes directed other department heads to undertake work which Cole thought was within the purview of his office, work which needed counsel and support from the Department of Law. Cole concluded that he could not work under such circumstances and submitted his resignation. Some of the governor's advisors counseled Hickel to accept it, which he did.[326] The independence and authority of the office were central to Cole's thinking, and he felt that he could not permit them to be subordinated to advisors in the governor's circle.

Cole expressed some disappointment at leaving earlier than he had planned. He had hoped to make progress on both subsistence and on Native sovereignty. Like most legal analysts in Alaska, he interpreted the Alaska Native Claims Settlement Act of 1971 to mean that Indian Country had been extinguished

[325] Botelho Interview, 5-9.

[326] Cole Interview, 28-29; Botelho Interview, 14-15.

Attorney General Charlie Cole, pictured here in 1993 with then Deputy Attorney General Bruce M. Botelho and former Governor Steve Cowper, resigned in January 1994 and was replaced as attorney general by Botelho. *Photo courtesy of Anchorage Daily News.*

in Alaska and that recognition of tribal status for Natives complicates the issue of Native autonomy.[327] He had hoped to bring people together for a major initiative on the combined issues. In the final analysis, Cole's lack of management experience may have complicated his leadership in the department. In running the department, he emphasized professionalism and a quality work product, and during his tenure the department returned to the efficiency and discipline which had been implemented by Wilson Condon. However, by the time Cole had succeeded in establishing the organization and management style he preferred, he had lost the confidence of the governor's closest aides and, as a result, the confidence of the governor himself.

Hickel selected Bruce M. Botelho as his second attorney general. A life-long Alaskan, Botelho had started with the Department of Law in 1976, after completing his law degree at Willamette University in Salem, Oregon. He had worked in the department continuously, except for a period as deputy commissioner of revenue in 1983-1986. He had been elected as mayor of Juneau in 1988, but did not seek reelection in 1991.[328] Hickel said that he selected Botelho partly because of his knowledge and experience in gas and oil litigation. Botelho had been involved with most of the state's tax and royalty litigation and negotiation with the industry. His appointment was something of a surprise because his personal views on some legal issues differed from Hickel's, for example on the death penalty and on abortion rights. However, Botelho had gained

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[327] On November 21, 1996, a three-judge panel of the Ninth Circuit Court of Appeals ruled that the village of Venetie is Indian country, overturning a lower court decision from Alaska and opening the question of whether or not ANCSA did extinguish Indian country in Alaska; *Alyeska Pipeline Service Co. v. Kluti Kaah Native Village of Copper Center,* 101 F. 3d 610 (9th Cir., 1996). The state asked for a review of the Ninth Circuit Court decision by the United States Supreme Court which heard oral arguments on December 10, 1997.

[328] Bruce Botelho Narrative, unpublished manuscript, report prepared for Department of Law History Project, 1.

Bruce M. Botelho, a career Department of Law attorney, was appointed attorney general by Governor Hickel, an Alaskan Independent, in early 1994. Governor Tony Knowles, a Democrat elected in November 1994, retained Botelho, making him the first attorney general in the state to serve under governors from two political parties.

the governor's confidence through his demonstrated ability to solve both legal and political challenges which the governor had faced during his first two years in office. Botelho named Elizabeth Shaw as civil deputy; Hickel insisted that Anchorage District Attorney Ed McNally be named head of the criminal division, and changed the title to deputy attorney general.

Oil and gas issues were a major focus during Botelho's first year as attorney general. Early in his tenure he announced an extension of the statute of limitations on the assessment of due taxes. The state's position was that the taxing power is analogous to filing a complaint in a civil matter, which can be amended even after the statute has run, provided it was properly filed initially. Botelho sought to clarify the matter through legislation. Understandably, the industry resisted an extension of the period during which an assessment of taxes might be declared. But despite industry opposition, Botelho mustered sufficient votes in the state Senate to pass a favorable bill. Alarmed, the industry conducted a major lobbying and publicity campaign against the legislation, which had not passed the House at the time of adjournment. For several reasons, however, the governor called a special session, and Botelho persuaded him to include the measure in the call. In a final, dramatic tally, opponents defeated the measure by three votes. The state may have lost considerable revenue as a result.

A question had arisen during Cole's tenure regarding where to place revenues from settlements with oil companies. By constitutional amendment, voters had created a special fund, called the Constitutional Budget Reserve, for special revenue sources. The reserve can be appropriated only by a three-fourths vote of the legislature. Litigation and negotiation had produced several major settlements in the early 1990s, and Cole had approved the placing of those revenues in the state general fund, where they could be spent by the majority in the legislature. In January 1994, however, the Alaska Supreme Court ruled against Cole's decision and directed the legislature to repay about $1 billion to the reserve fund.[329] The decision left

[329] *Hickel v. Halford,* 872 P. 2d 171 (1994).

the 1994 legislature with considerably less revenue to budget and forced greater cooperation between the majority and minority parties. Legislators had to use the budget reserve to meet all of the state's obligations, and majority party representatives did not constitute the required three-fourths vote.

1990 was a census year, and state leaders had to deal again with reapportionment. The governor developed a reapportionment plan that generated predictable legal challenges. The state supreme court upheld the trial court's finding that the governor's plan was invalid and violated the state constitution.[330] The 1992 election was eventually held under an interim plan. One major challenge came from Native groups, which had opposing views on how the sprawling bush regions should be divided among the rural districts. Six months before the primary election, the U.S. Department of Justice rejected the proposed plan on the grounds that it did not sufficiently guarantee that Native voting strength in one particular district would not be diluted by being combined with other elements in the district. Botelho played a central role in negotiations with the Justice Department to revise the plan. Despite leaving one Native group disappointed, the revised plan allowed the department to settle litigation filed by the Matanuska-Susitna Borough. By March 1994, a complete, revised redistricting plan had been implemented.

In his 1990 election campaign Hickel had made opposition to abortion a major campaign promise. While Cole was still attorney general, Hickel had ordered Commissioner of Health and Social Services Ted Mala to pursue changes in state regulations to restrict payment for abortions under the state's welfare program. The resulting change limited payments to situations of medical necessity documented by a physician. Predictably, the change ignited a storm of criticism; some press accounts suggested that the new regulations would exclude many women then currently receiving welfare benefits. Botelho negotiated a settlement which retained the amended regulations

330 *Hickel v. Southeast Conference,* 846 P. 2d 38 (1993).

while clarifying the definition of medical necessity. There seemed to be broad public support for the practice of documenting the medical necessity of abortions in Alaska if the definition of medical necessity included the well-being of the pregnant woman.[331]

Governor Hickel decided not to run for reelection, and in the 1994 general election former Anchorage mayor Tony Knowles, a Democrat, defeated Anchorage businessman Jim Campbell by about 500 votes. Results of the recount were not fully tabulated until shortly before the inauguration. Knowles' business partner and campaign manager Dave Rose asked Botelho to help with the transition. During the course of that work, Knowles and his aides came to appreciate both Botelho's institutional memory, and his obvious competence as a legal and policy advisor and negotiator. In addition, Botelho had worked with Knowles aide Jim Ayers, who had served as executive director of the *Exxon Valdez* Trustee Council in 1993 and 1994. Shortly before the inauguration, Knowles asked Botelho to stay on as attorney general. Botelho thus became the first attorney general to serve under governors of two different political parties. Botelho found himself philosophically more compatible with Knowles than with Hickel, but his effective service to Hickel had demonstrated Botelho's ability to depoliticize legal and policy discussions and his commitment to the interests of the state and citizens of Alaska rather than to a political philosophy or agenda.[332]

Shortly after the 1994 election Botelho played a major role in concluding a substantial settlement with BP Exploration (Alaska) for back taxes. BP agreed to pay the state $1.4 billion, the largest such settlement in state history. The money was deposited in the constitutional budget reserve. Then, in May 1995, the attorney general helped to broker a settlement with Executive Life Insurance Co. Allegations had been made that the company had not properly monitored the risks involved in its investments of money from the supplemental benefits retirement

331 Botelho Narrative, 7, 43 -44.

332 Botelho Interview, 24-25.

system for state employees. The state also reached a settlement with William M. Mercer Co. to require $30 million to be paid related to the Executive Life mismanagement. These monies were also invested in the budget reserve. As these funds came at a time when state budgets were decreasing due to the beginning decline of Prudhoe Bay production, they were considered very welcome by the legislature. At the same time, Botelho reorganized the Department of Law to minimize the impact of budget cutbacks and to maintain a comparable level of services to state agencies and the public.

In 1993 the U.S. Interior and Agriculture Departments moved to take over management of fish and game on federal lands in Alaska in order to ensure subsistence opportunities for Natives, consistent with the federal trust responsibility to them. The state responded by filing suits to challenge the federal authority to manage those lands, which had traditionally been managed by the state. Soon after his inauguration, however, Knowles announced that the state would abandon at least one of the suits, *Alaska v. Babbitt.* [333] Botelho judged that the case was not winnable and that pursuing it would constitute a squandering of state resources. At the same time, however, Botelho continued to pursue the $29 billion suit for recovery of uncollected federal royalty revenue.

Many legislators protested the vacating of the *Babbitt* suit, arguing, perhaps somewhat naively, that the state should not appear to surrender to federal power. Senator Robin Taylor of Wrangell went so far as to charge that Botelho had violated his solemn obligation to the state, and he scheduled new confirmation hearings for the attorney general. Knowles and Botelho took the position that Botelho had already been confirmed as attorney general and no further legislative action was required. In fact, no further hearings were held, and Botelho's confirmation was not in question.

Knowles also directed Botelho to drop the state's challenge to a 1993 list published by the Secretary of the Interior recognizing 226 Native tribes in Alaska. The federal recognition

[333] Botelho Narrative, 8-9; Botelho Interview, 39-40.

opened the opportunity for some villages to seek federal funding for certain projects and enhanced the self-governing and other rights of Indian organizations. This did not indicate a change in the state's position that ANCSA extinguished Indian Country in Alaska. The state continues to litigate specific challenges to the concept. However, the dismissal further exacerbated legislative concerns over the federal-state relationship. In June 1996, however, the Court of Federal Claims rejected the state's arguments in the $29 billion suit, finding that the statehood act did not obligate the federal government to develop Alaska lands and that therefore the ANCSA and ANILCA withdrawals did not constitute a breach of federal promise on the matter of federal mineral royalties.[334]

In 1996 an independent task force headed by the former chief deputy in the California attorney general's office reviewed the work of the Alaska Attorney General's office, an evaluation commissioned by the department. The evaluator, Nelson Kempsky, found a lack of focus in criminal justice policy, a legacy, perhaps, of an ambiguity of authority and responsibility between the criminal deputy and the district attorney in Anchorage where a majority of the criminal justice activity in the state is prosecuted. Attorneys general after Norman Gorsuch did not continue to use the designation chief prosecutor, and the role of the criminal deputy, as coordinator of activity or director of policy, had not always been consistent. Botelho moved quickly to implement recommendations included in the report.[335]

Alaska citizens perhaps came to understand more fully the implications of two major challenges to Botelho and Alaska in 1997: Native sovereignty and regulation of subsistence

[334] Botelho announced plans to appeal the case to the Ninth Circuit in hopes of achieving finality on the issue. In 1997 that court upheld the judgement of the claims court, noting that the district court judge's finding was complete and no further comment was necessary.

[335] Botelho Narrative, 11-12.

resources. The legal implications of the Venetie case[336] will probably be a matter of interpretation into the foreseeable future. In regard to subsistence, Native access to which is mandated in the Alaska lands act (ANILCA), despite wide-spread criticism,[337] in January 1998 members of the state legislature filed a suit in federal district court contesting the federal government's authority to take over management of fish and game on federal lands in Alaska. These cases demonstrate that broad inter-government constitutional issues continue to be as significant in Alaska as purely domestic legal problems, a circumstance which has characterized the work of the attorney general's office since statehood.

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336 See note 328.

337 *Anchorage Daily News,* January 21, 1998, B-6; remarks by Attorney General Bruce Botelho, Alaska Public Radio Network, "Alaska News Nightly," January 28, 1998.

CONCLUSION: A LIKE CAUSE

Perhaps more than any one else who has been attorney general, in addition to his personal and professional integrity, Botelho has brought to the office an extraordinary institutional memory and a thorough understanding of the continuity of the state's development. His long experience in the Department of Law, together with his broad perspective on the issues of governance, provides a historical context on matters which come before the department and helps to illuminate nuances and implications that otherwise might remain obscure. It also helps to establish authenticity. Only John Havelock brought as much breadth and depth of understanding to the position. Botelho's perspective facilitates his role as counsel, for it helps him better direct people's focus and energy on solutions, both legal and political, rather than on personality. It has also likely contributed to his strong commitment to the Department history project.

However, the office of attorney general is subject to the vicissitudes of the political process, both the quadrennial election of the governor and the personality and character of the governor and his or her aides. Although the department has in fact become a large bureaucracy, somewhat insulated from political pressure, the head of the department will always be subject to those pressures, as will the principal deputies.[338] The attorney general either will or will not be a policy confidante of the governor, and will establish priorities for the department somewhat accordingly. The attorney general serves at the pleasure of the governor, and a governor who chooses will have undue influence on the personnel of the department and on department policy. As a result, it is likely that whoever holds the office will sometime in his or her tenure experience conflicting influences, to protect the department's autonomy, on the one

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338 Schaible Interview, 7; Botelho Interview, 18-19.

hand, or to direct it in a policy direction compatible with the governor's notions of what it should be doing, on the other.

Despite such inhibitions on the independence of the office, only two former attorneys general support making the position should be elective (Edgar Paul Boyko, Donald Burr) and only one expresses reservations (Charlie Cole);[339] all the others argue that the greater independence of the office would create a dysfunctional competition within government that would not serve the best interests of governance, or the citizenry. As the memory of the statehood struggle fades from public memory, however, that view may change.

The broad parameters of governing Alaska will not change in the foreseeable future. Alaska's economy will continue to be based on resource extraction by absentee corporations, primarily gas and oil companies, and on substantial government spending. The federal government will continue to influence the context of Alaska's development through its ownership of public lands, of the maritime economic zone, and its trust relationship with Alaska Natives. Most of the non-Native population will continue to concentrate in the major urban centers along the railbelt and in the southeast panhandle. The nature of the office of the attorney general, therefore, is unlikely to change significantly. The department will continue to play a major role in ensuring that Alaska's laws address the needs of its citizens and are enforced in such a way as to do so effectively and equitably. The history of the department, and the people who have served in the office of attorney general, provides a record of integrity, commitment to public service, and dedication to the highest principles of democracy within which to pursue that work.

339 Cole Interview, 31.

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Fairbanks
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APPENDIX A

ALASKA DEPARTMENT OF LAW ATTORNEYS, 1974-1998

John L. Rader	**1959 - 1960**
Jay Rabinowitz	Chief, Civil Division
George N. Hayes	Chief, Criminal Division
Gary Thurlow	Chief, Tax Division
Colver, Warren C.	Civil/Criminal
Taylor, Warren W.	Civil/Criminal

Ralph E. Moody	**1960 - 1962**
Gary Thurlow	Chief, Civil Division
George N. Hayes	Chief, Criminal Division
Asher, Jack O'Hair	Criminal
Benitz, Melvin D.	Civil
Bradley, Richard A.	Civil
Brammell, Billy G.	Civil
Erwin, Robert C.	Criminal
Gross, Avrum M.	Civil
Haaland, Dorothy Awes	Criminal
Havelock, John E.	Civil
Houston, Clyde C.	Criminal
Merbs, James C.	Criminal
Holmes, Michael M.	Civil
Opland, Robert N.	Criminal
Regan, Dickerson	Civil
Rudd, Joseph	Criminal
Schwalb, Norman L.	Civil
Soll, Herbert D.	Criminal
Staley, Howard P.	Criminal
Taylor, William	Criminal
Wanamaker, James N.	Civil

George N. Hayes — 1962 - 1964

John E. Havelock — Deputy Attorney General
Michael N. Hayes — Deputy Attorney General

Asher, Jack O'Hair	Criminal
Barker, Leroy J.	Civil
Brubaker, John K.	Civil
Carlson, Victor D.	Criminal
Craddick, Marrs A.	Criminal
Craske, Duane	Civil
Erwin, Robert C.	Criminal
Fenton, Thomas E.	Civil
Frank, Mary	Civil
Gross, Avrum M.	Civil
Haaland, Dorothy Awes	Civil/Criminal
Holmes, Michael M.	Civil
Houston, Clyde C.	Criminal
McGrath, Allen	Civil
McVeigh, Richard L.	Civil
Merbs, James C.	Criminal
Occhipinti, Constantine J.	Civil
Olson, Frank A.	Criminal
Opland, Robert N.	Civil/Criminal
Regan, Dickerson	Civil
Ruskin, David B.	Civil
Soll, Herbert D.	Criminal
Staley, Howard P.	Civil
Strouse, Donald E.	Civil
Vochoska, Virgil D.	Criminal
Wanamaker, James N.	Civil/Criminal

Warren C. Colver — 1964 - 1966

Michael M. Holmes — Deputy Attorney General

Asher, Jack O'Hair	Criminal
Baily, Douglas B.	Civil/Criminal

Bartlett, Lynn P.	Civil
Benesch, George L.	Civil
Birch, Ronald G.	Criminal
Brubaker, John K.	Civil/Criminal
Bushong, Gary A.	Civil
Carlson, Victor D.	Criminal
Christie, Reginald J.	Criminal
Crane, Fred D.	Criminal
Crews, Ralph G.	Civil
Curran, Thomas E.	Criminal
DeLisio, Stephen S.	Criminal
Devney, John L.	Criminal
Ditus, R. Stanley	Criminal
Fenton, Thomas E.	Criminal
Fleischer, Theodore E.	Civil
Flint, Robert B.	Civil
Fuld, William H.	Criminal
Glass, Norman P.	Civil
Haaland, Dorothy Awes	Civil/Criminal
Hodges, Jay	Criminal
Hoge, Andrew E.	Civil
Hurley, William J.	Criminal
Jeffries, Johnston	Criminal
Jones, Paul B.	Civil
Kane, Donald T.	Civil
Kerns, Richard P.	Civil
LaFollette, Mary	Civil
Lytle, Richard P.	Civil
McGrath, Allen	Criminal
Merson, Alan	Criminal
Opland, Robert N.	Criminal
Regan, Dickerson	Civil
Ruddy, William G.	Civil
Schulz, Thomas E.	Criminal
Soll, Herbert D.	Criminal
Strouse, Donald E.	Civil
Underwood, Jack	Criminal
Walters, Benjamin O.	Civil
Wanamaker, James N.	Criminal
Wardell, Thomas	Civil

Whittaker, Richard L.	Criminal
Wittemyer, John	Criminal

D. A. Burr — 1966 - 1967

Edward J. Reason — Deputy Attorney General

Baily, Douglas B.	Civil
Bartlett, Lynn P.	Criminal
Benesch, George L.	Civil
Birch, Ronald G.	Civil
Burke, Edmond W.	Civil/Criminal
Bushong, Gary A.	Civil
Crane, Fred D.	Criminal
Crews, Ralph G.	Civil
Curran, Thomas E.	Criminal
Gallagher, Russell J.	Criminal
Haaland, Dorothy Awes	Civil
Jones, Paul B.	Civil
Lytle, Richard P.	Civil
Opland, Robert N.	Criminal
Regan, Dickerson	Civil
Rowland, Mark C.	Criminal
Walters, Benjamin O.	Criminal
Wardell, Thomas	Civil
Wittemyer, John	Criminal

G. Kent Edwards — 1968 - 1970

Thomas M. Wardell — Deputy Attorney General

Agi, Louis E.	Civil
Backstrom, David C.	Civil
Baily, Douglas B.	Criminal
Balfe, Joseph D.	Criminal
Barker, Leroy J.	Criminal
Benesch, George L.	Civil

Brown, Keith E.	Criminal
Burke, Edmond W.	Criminal
Carlson, Lyle B.	Criminal
Christian, William T.	Criminal
Cowper, Stephen	Civil/Criminal
Crane, Fred D.	Criminal
Cranston, Charles K.	Civil
Debenham, Shirle A.	Civil
Eastaugh, Robert L.	Civil/Criminal
Edwards, B. Richard	Civil
Erwin, William E.	Civil
Felton, Richard R.	Criminal
Fraties, Gail R.	Criminal
Gallagher, Russell J.	Criminal
Garretson, Walter H.	Criminal
Garrison, William W.	Criminal
Gerety, Daniel A.	Criminal
Gibbs, Sanford M.	Civil
Goltz, Keith A.	Civil
Haaland, Dorothy Awes	Civil
Hartig, Robert L.	Civil
Hawley, William H.	Criminal
Horton, Hal R.	Civil
Jarvi, Kenneth O.	Criminal
Keever, Thomas F.	Criminal
Kerns, Richard P.	Civil
La Follett, Mary F.	Criminal
Levinson, Elinor B.	Criminal
Mahoney, Robert J.	Civil
Marvin, Dennis	Civil
McShea, Roger	Civil
Merriner, Charles M.	Civil
Morse, B. Mary	Criminal
Mulder, Russell	Civil
Nordale, Mary A.	Criminal
Norman, John K.	Civil
Page, Peter M.	Civil
Price, Robert E.	Civil
Rhodes, James D.	Civil
Richey, Kaye	Civil

Ripley, J. Justin	Criminal
Snow, Vernon L.	Civil
Spear, William	Civil
Spragg, Donna D.	Civil
Tobey, Harold W.	Criminal
Van Hoomissen, Gerald J.	Criminal
Wagstaff, Robert H.	Criminal
Walters, Benjamin O.	Criminal
Weidman, Carl E.	Civil
Whiting, H. Bixler	Criminal
Yandell, Robert K.	Criminal

John E. Havelock — 1970 - 1973

Norman C. Gorsuch — Deputy Attorney General

Agi, Louis E.	Civil/Criminal
Balfe, Joseph D.	Criminal
Beighle, Donald J.	Civil
Blanton, Thomas P.	Civil
Bosch, Peter J.	Criminal
Bradley, Richard A.	Civil
Brown, Harold M.	Criminal
Buckalaw, Seaborn J.	Criminal
Burke, Richard D.	Criminal
Carlson, Lyle R.	Criminal
Chandler, Catherine A.	Civil
Christian, William T.	Civil/Criminal
Clayton, Monroe N.	Criminal
Condon, Wilson L.	Civil
Council, William T.	Criminal
Cranston, Charles K.	Civil
Currall, Geoffrey G.	Criminal
Davis, Harry L.	Civil/Criminal
Downes, Robert B.	Criminal
Doyle, Anthony D.M.	Civil
Dunning, Stephen G.	Criminal
Eastaugh, Robert L.	Criminal
Edwards, B. Richard	Civil

Finn, Natalie K.	Civil
Frank, Kennith M.	Criminal
Garnett, Richard W.	Civil
Garrison, William W.	Criminal
Gibbs, Sanford M.	Civil
Glennon, Edith A.	Civil
Goltz, Keith A.	Criminal
Haaland, Dorothy Awes	Civil
Hackett, James M.	Criminal
Hartig, Robert L.	Civil
Hawley, William H.	Criminal
Hayes, James C.	Civil
Hellen, Olof K.	Civil
Hickey, Daniel W.	Civil
Holst, Henry L.	Civil
Howitt, Stanley	Civil
Jackman, David S.	Civil
Kerns, Richard P.	Civil
Lawner, Ivan	Civil
Luffberry, Jay R.	Criminal
Mackey, William L.	Criminal
Markham, Gerald W.	Civil
Mattson, Ronald C.	Criminal
McCain, Malcolm	Civil
Mellow, William G.	Criminal
Merriner, Charles M.	Criminal
Michalski, Peter A.	Civil
Middleton, Timothy G.	Civil
Nangle, Paul J.	Criminal
Norman, John K.	Civil
Page, Peter M.	Criminal
Papas, M. Gregory	Civil
Partnow, Peter C.	Civil
Pegues, Donna S.	Civil
Petersen, James F.	Civil
Peterson, Michael R.	Civil
Preston, Ray C.	Civil
Reeder, John A.	Civil
Reeves, James N.	Civil
Regan, Dickerson	Civil

Rhodes, James D.	Civil
Rice, Edmond J.	Criminal
Ripley, J. Justin	Criminal
Schlanger, Robert M.	Civil
Schroeder, Robert F.	Civil
Sheldon, George D.	Civil
Spragg, Donna D.	Civil
Stemp, D. Ralph	Civil
Vochoska, Virgil D.	Criminal
Wardell, Thomas M.	Criminal
Wickwire, Thomas R.	Civil
Williams, Gerald O.	Civil
Williams, L. Eugene	Criminal
Wunnicke, Esther C.	Civil
Yandell, Robert K.	Criminal

Norman C. Gorsuch
Michael R. Peterson

1973 - 1974
Deputy Attorney General

Agi, Louis E.	Criminal
Balfe, Joseph D.	Criminal
Bradley, Richard A.	Civil
Burke, Richard D.	Criminal
Chandler, Catherine A.	Criminal
Condon, Wilson L.	Civil
Currall, Geoffrey	Criminal
Davis, Harry L.	Criminal
Douglas, James E.	Civil
Doyle, Anthony D.M.	Civil
Dunning, Stephen G.	Criminal
Finn, Natalie K.	Criminal
Fischer, Stanley T.	Civil
Glennon, Edith A.	Civil
Haaland, Dorothy Awes	Civil
Hawley, William H.	Criminal
Hayes, James C.	Civil
Hickey, Daniel W.	Criminal
Howitt, Stanley	Civil

James, Dennis P.	Criminal
Keenan, Michael	Criminal
Kerns, Richard P.	Civil
Kopperud, Ross	Civil
Lawner, Ivan	Criminal
LeBlond, David T.	Civil
Luffberry, Jay R.	Criminal
Mackey, William L.	Criminal
Markham, Gerald W.	Civil
Mattson, Ronald C.	Criminal
McCain, Malcolm	Civil
Mellow, William G.	Civil
Merriner, Charles M.	Criminal
Messenger, John R.	Civil
Michalski, Peter A.	Criminal
Middleton, Timothy G.	Civil
Murphy, Eugene P.	Criminal
O'Connell, Theresa L.	Civil
Papas, M. Gregory	Civil
Partnow, Peter C.	Civil
Pegues, Donna S.	Civil
Peter, Richard L.	Civil
Peterson, Arthur H.	Civil
Reeves, James N.	Civil
Regan, Dickerson	Civil
Ripley, J. Justin	Criminal
Robinson, Arthur S.	Criminal
Schroeder, Robert F.	Civil
Sheldon, George D.	Civil
Talbot, Arthur D.	Criminal
Wardell, Thomas M.	Criminal
Weeks, Larry R.	Civil
Wickwire, Thomas R.	Civil
Williams, Gerald O.	Civil
Williams, L. Eugene	Criminal
Williams, Thomas K.	Civil

Avrum M. Gross — 1974 - 1980

Wilson L. Condon, Deputy Attorney General	Civil
Daniel W. Hickey, Deputy Attorney Genereal	Criminal
Anderson, Glen C.	Criminal
Argetsinger, Peter	Civil
Arnold, Elizabeth R.	Civil
Arruda, Michael	Civil
Ashburn, Mark E.	Civil
Balfe, Joseph D.	Criminal
Beckwith, Martha	Criminal
Berglund, James H.	Civil
Bergstrom, Thomas L.	Civil
Boness, Frederick H.	Civil
Botelho, Bruce M.	Civil
Bradley, Richard A.	Civil
Branchflower, Stephen E.	Criminal
Brecht, Julius J.	Civil
Brown, Michele D.	Civil
Bundy, Robert C.	Criminal
Bunyan, Wyanne S.	Civil
Burnham, Richard M.	Civil
Butterfield, Rhonda F.	Criminal
Call, Steven J.	Criminal
Carpeneti, Anne	Criminal
Coats, Robert	Civil
Cohen, Charles W.	Criminal
Connolly, Susan M.	Civil
Cook, William	Criminal
Council, William T.	Civil
Cummings, William F.	Civil
Currall, Geoffrey	Criminal
Curran, Harold J.	Civil
Cyrus, Eugene P.	Criminal
Davies, John	Civil
Davis, Harry L.	Criminal
Deenan, Michael	Criminal
Delbert, Susan M.	Criminal
Dell'Olio, Donna E.	Civil

Dodge-Ogawa, Abigail	Civil
Donohue, Joseph K.	Civil
Doogan, Jr., James P.	Criminal
Douglas, James E.	Criminal
Doyle, Anthony D.M.	Civil
Dunning, Stephen G.	Criminal
Edwards, George	Criminal
Ertischek, Mark A.	Civil
Finn, Natalie K.	Criminal
Fischer, Stanley T.	Civil
Froehlich, Peter B.	Civil
Fussner, Sarah E.	Civil
Gazaway, Hal P.	Civil
Gissberg, John G.	Civil
Glennon, Edith A.	Civil
Gould, James V.	Criminal
Guaneli, Dean J.	Criminal
Gullufsen, Patrick J.	Criminal
Haaland, Dorothy Awes	Civil
Hanley, James L.	Civil/Criminal
Hawley, Jr., William H.	Criminal
Haynes, Geoffrey	Civil
Hebbel, Douglas A.	Civil
Henry, Mary Anne	Criminal
Hickey, Daniel W.	Criminal
Higgins, Shelly J.	Civil
Horestski, Gayle A.	Criminal
Howitt, Stanley	Civil
Hutchings, Stephen H.	Criminal
Jahnke, Thomas M.	Civil/Criminal
James, Dennis P.	Criminal
Janidlo, Thom F.	Civil
Jenicek, Monica	Criminal
Johnson, Donald M.	Criminal
Johnson, Robert M.	Civil
Jones, Carolyn E.	Civil
Kauvar, Jane F.	Criminal
Keenan, Michael	Criminal
Kennedy, Elizabeth P.	Civil
Kerns, Richard P.	Civil

Kirkpatrick, Moira	Criminal
Koester, Thomas G.	Civil
Kopperud, Ross A.	Civil
Krumm, Victor C.	Criminal
Lawn, Eugene G.	Civil
Lawner, Ivan	Civil/Criminal
LeBlond, David T.	Civil
Linton, Jr., Leonard N.	Criminal
Lorensen, Ronald W.	Civil
Lowenfels, Jeffrey	Civil
Luffberry, Jay R.	Criminal
Ma, Louise F.	Civil
Mackey, William L.	Criminal
Mannheimer, David	Civil/Criminal
Markham, Gerald W.	Civil
Maynard, Robert M.	Civil
McCain, Malcolm	Civil
McGee, Jack B.	Civil
Meacham, Thomas E.	Civil
Mellow, William G.	Civil
Menendez, Louis J.	Criminal
Merriner, Charles M.	Criminal
Mertz, Douglas	Civil
Messenger, John R.	Civil
Michalski, Peter A.	Criminal
Mills, Martha	Civil
Miracle, Barbara	Civil
Murphree, Bill D.	Criminal
Murphy, Eugene P.	Criminal
Olsen, Randy M.	Criminal
Olson, Paul E.	Criminal
Olson, Eric	Civil
Papas, M. Gregory	Civil
Partnow, Peter C.	Civil
Pegues, Rodger W.	Civil
Peter, Richard L.	Civil
Peterson, Arthur H.	Civil
Peterson, Edward F.	Criminal
Petumenos, Timothy	Criminal
Pickering, Cynthia L.	Civil

Pope, Douglas R.	Civil
Preston, Ray C.	Civil
Prezyna, Ann	Civil
Ray, Richard J.	Criminal
Reeves, James N.	Civil
Regan, Dickerson	Civil
Ripley, Justin J.	Criminal
Robertson, Thomas H.	Civil
Ross, Elisabeth H.	Civil
Sagalkin, Sanford	Civil
Satterberg, William R.	Civil
Schmidt, George C.	Civil
Scukanec, John A.	Criminal
Sewright, Michael W.	Civil
Sheldon, George D.	Civil
Shimek, David	Criminal
Sipe, Connie J.	Civil
Spengler, Larri I.	Civil
Spengler, Teo	Civil
Stark, Michael J.	Civil/Criminal
Staton, Jr., Norman E.	Civil
Steinkruger, Niesje J.	Civil
Stephson, Amy	Civil
Stern, Barry J.	Criminal
Stewart, David C.	Criminal
Stoller, Robert E.	Civil
Svobodny, Richard A.	Civil/Criminal
Tennant, Bruce	Civil
Tennant, Richard B.	Civil
Thompson, Michael A.	Criminal
Tillinghast, Jonathan K.	Civil
Trygstad, Victor	Criminal
Turnbull, Thomas B.	Criminal
Vancil, Gary	Civil
Walsh, David J.	Criminal
Wardell, Thomas M.	Criminal
Weeks, Larry R.	Civil/Criminal
Wickwire, Thomas R.	Civil
Williams, L. Eugene	Criminal
Williams, Janis C.	Civil

Williams, Thomas K.	Civil
Wood, Mark I.	Criminal
Wood, Larry D.	Civil

Wilson L. Condon — 1980 - 1982

Ronald W. Lorensen, Deputy Attorney General

Adams, Charles	Criminal
Adams, Lauri J.	Civil
Antel, Helene	Criminal
Arruda, Michael	Civil
Ashburn, Mark E.	Civil
Ashton, Mary Ellen	Civil
Athens, E. John	Civil
Baldwin, James L.	Civil
Balfe, Joseph D.	Criminal
Baluzy, Susan J.	Criminal
Beckwith, Martha	Criminal
Berger, Josh	Criminal
Botelho, Bruce M.	Civil
Branchflower, Stephen E.	Criminal
Brown, Michele D.	Civil
Bundy, Robert C.	Civil/Criminal
Burke, Susan A.	Civil
Bush, Jeffrey	Civil
Butterfield, Rhonda F.	Criminal
Call, Steven J.	Criminal
Carpeneti, Anne	Criminal
Coats, Robert	Civil
Cole, Jeffrey W.	Civil
Cole, Stephanie J.	Civil
Colvin, Diane T.	Civil
Conheady, Patrick W.	Criminal
Cummings, William F.	Civil
Cyrus, Eugene P.	Criminal
Davis, Harry L.	Criminal
Davis, Laura L.	Civil
Delbert, Susan M.	Civil

Doogan, Jr., James P.	Criminal
Edwards, Donald W.	Civil
Edwards, George W.	Criminal
Emley, Sharon	Criminal
Evans, Robert A.	Civil
Figura, Mark L.	Civil
Finn, Natalie K.	Criminal
Fischer, Stanley	Civil
Forbes, Sarah	Criminal
Foster, Gary G.	Civil
Foster, Teresa L.	Criminal
Fox, Martha A.	Civil
Froehlich, Peter B.	Civil
Fussner, Sarah E.	Civil
Gaguine, John B.	Civil
Gazaway, Hal P.	Civil
Gissberg, John G.	Civil
Gould, James V.	Criminal
Greene, Meg	Civil
Gruenstein, Peter E.	Criminal
Guaneli, Dean J.	Criminal
Gullufsen, Patrick J.	Criminal
Hanley, James L	.Criminal
Hawley, Jr., William H.	Criminal
Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Higgins, Shelly J.	Civil
Hora, Cynthia	Criminal
Horetski, Gayle A.	Criminal
Hutchings, Stephen H.	Criminal
Jahnke, Thomas M.	Civil
Janidlo, Thomas F.	Civil
Jenicek, Monica	Criminal
Jones, Carol Barclay	Civil
Jones, Carolyn E.	Civil
Kavasharov, Sarah T.	Civil/Criminal
Kennedy, Elizabeth P.	Civil
Kerns, Richard P.	Civil
Koester, G. Thomas	Civil
Kolkhorst, Kathryn M.	Civil

Kopperud, Ross A.	Civil
Krumm, Victor C.	Criminal
Landau, Robert W.	Civil
Lawner, Ivan	Civil
LeBlond, David T.	Civil
Levy, Madeleine R.	Civil
Linton, Jr., Leonard M.	Criminal
Lowenfels, Jeffrey	Civil
Ludtke, Leslie J.	Civil
Ma, Louise F.	Civil
Mackey, William L.	Criminal
Maki, Richard	Criminal
Mannheimer, David	Criminal
Maynard, Robert M.	Civil
McClintock, Donald W.	Civil
McConnell, Dwayne W.	Criminal
McCracken, Sarah E.	Civil
McGee, Jack B.	Civil
McGuire, Kathleen	Civil
McLaughlin, Michael	Criminal
McLean, Susan S.	Criminal
Meacham, Thomas E.	Civil
Mellow, William G.	Civil
Menendez, Louis J.	Criminal
Merriner, Charles	Criminal
Mertz, Douglas K.	Civil
Michalski, Peter A.	Criminal
Miller, Thomas A.	Criminal
Mills, Martha T.	Civil
Miracle, Barbara	Civil
Monkman, Richard D.	Civil
Murphree, Bill D.	Criminal
Murphy, Eugene P	.Criminal
Neville, M. Francis	Civil
O'Connell, Mary-Margaret	Civil
Olsen, Dianne E.	Civil
Olsen, Randy M.	Criminal
Olson, Eric	Civil
Olson, Paul E.	Criminal
Otto, Laurie	Criminal

Pegues, Rodger W.	Civil
Peterson, Arthur H.	Civil
Peterson, Edward F.	Criminal
Petumenos, Timothy	Criminal
Powers, Kenneth	Civil
Prezyna, Ann E.	Civil
Price, Robert E.	Civil
River, Eleanor C.	Civil
Robertson, Thomas H.	Civil
Ross, Elisabeth H.	Civil
Rothschild, Frank D.	Criminal
Rubenstein, Michael	Civil
Rubini, Jonathan	Civil
Rusch, Virginia	Civil
Satterberg, William R.	Civil
Schaefer, Geroge F.	Criminal
Schmidt, George C.	Civil
Scoccia, Linda	Civil
Scukanec, John A.	Criminal
Sewright, Michael W.	Civil
Shaw, Elizabeth	Civil
Sheley, Elizabeth	Criminal
Sipe, Connie J.	Civil
Snow, D. Rebecca	Civil
Spengler, Larri I.	Civil
Spengler, Teo	Civil
Stark, Michael J.	Criminal
Staton, Jr., Norman E.	Civil
Steinkruger, Niesje J.	Civil
Stephson, Amy	Civil
Stern, Barry J.	Criminal
Stewart, David C.	Criminal
Svobodny, Richard	Criminal
Tehan, Valerie	Criminal
Tennant, R. Bruce	Civil
Thie, Bonnie L.	Civil
Thompson, Michael A.	Criminal
Tillinghast, Jonathan K.	Civil
Turner, Shannon	Criminal
Urig, Susan L.	Civil

Vassar, Kenneth E.	Civil
Vogt, Deborah	Civil
Voigtlander, Gail T.	Criminal
Walton, Linda L.	Civil
Wardell, Thomas M.	Criminal
Weeks, Larry R.	Criminal
White, Michael N.	Criminal
Wickwire, Thomas M.	Civil
Williams, Janis C.	Civil
Wood, Larry D.	Civil
Wood, Mark I.	Criminal
Zervos, Larry C.	Criminal
Young, Clark L.	Civil

Norman C. Gorsuch — 1982 - 1985

Ronald W. Lorensen, Deputy Attorney General

Amendola, Gary I.	Civil
Anderson, Robert C.	Criminal
Andress, Judith L.	Civil
Antel, Helene M.	Criminal
Ashburn, Mark E.	Civil
Ashton, Mary Ellen	Civil
Athens, E. John	Civil
Babcock, Russell	Criminal
Bacon, Robert	Criminal
Baldwin, James L.	Civil
Balfe, Joseph D.	Criminal
Barnett, Iris S.	Civil
Barry, Elizabeth J.	Civil
Beckwith, Martha	Criminal
Berger, S. Joshua	Criminal
Bissell, Marcia H.	Civil
Blasco, Robert	Criminal
Bortnick, Alexander	Criminal
Botelho, Bruce M.	Civil
Branchflower, Stephen E.	Criminal
Brown, Michelle D.	Civil

Bundy, Robert C.	Criminal
Bush, Jeffrey W.	Civil
Butler, Rex L.	Civil
Butterfield, Rhonda	Criminal
Byington, Gwen E.	Criminal
Callahan, Jonathan H.	Criminal
Carey, Julie A.	Criminal
Carpeneti, Anne D.	Criminal
Cerro, Linda	Civil
Cole, Jeffrey	Criminal
Colvin, Diane T.	Civil
Conheady, Patrick W.	Criminal
Cox, Susan D.	Civil
Cummings, William F.	Civil
Cyrus, Eugene P.	Criminal
Davis, Donald Scott	Criminal
Davis, G. Scott	Criminal
Davis, Harry L.	Criminal
Davis, Laura L.	Civil
Delay, Lawrence	Civil
DeYoung, Jan H.	Civil
DiGangi, Joel D.	Civil
Doogan, Jr., James P.	Criminal
Ducey, Cynthia	Civil
Edwards, Donald W.	Civil
Edwards, George W.	Criminal
Ells, Mark L.	Criminal
Emley, Sharon	Criminal
Erb, Renee R.	Criminal
Erickson, Craig T.	Civil
Faitos, Ernest D.	Criminal
Figura, Mark L.	Civil
Finn, Natalie K.	Civil
Fischer, Stanley T.	Civil
Fisher, James E.	Criminal
Fitzgerald, Debra	Civil
Forbes, Sarah	Civil
Forsberg, Carl	Criminal
Foster, Gary G.	Civil
Fox, Martha A.	Civil

Frank, Michael S.	Civil
Fraties, Gail R.	Criminal
Froehlich, Peter B.	Civil
Gaguine, John B.	Criminal
Gamache, Peter C.	Criminal
Garrigues, Gayle	Criminal
Geldhof, Joseph W.	Civil
Goldman, Kenneth	Criminal
Gordon, Nancy R.	Civil
Gould, James V.	Criminal
Gouwens, Kay E. M.	Civil
Greenberg, Carol	Criminal
Gruenstein, Peter E.	Criminal
Groh, Clifford	Criminal
Guaneli, Dean J.	Criminal
Gullufsen, Patrick J.	Criminal
Gutierrez, Carmen L.	Civil
Hanley, James L.	Criminal
Hawley, Jr., William H.	Criminal
Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Higgins, Shelley J.	Civil
Hooper, Alan	Criminal
Hora, Cynthia	Criminal
Horetski, Gayle A.	Criminal
Howard, Deborah	Civil
Hutchkin, Michael	Civil
Hutchings, Stephen H.	Criminal
Ingaldson, William	Criminal
Jahnke, Thomas M.	Civil
Janidlo, Thomas F.	Civil
Joannides, Stephanie E.	Criminal
Jones, Carolyn E.	Civil
Kavasharov, Sarah T.	Civil
Kennedy, Elizabeth P.	Civil
Kerns, Richard P.	Civil
Knuth, Margot O.	Civil
Koester, G. Thomas	Civil
Kolkhorst, Kathryn M.	Civil
Kopperud, Ross A.	Civil

Krumm, Victor C.	Criminal
Lahti, Kai J.	Criminal
Landau, Robert W.	Civil
LeBlond, David T.	Civil
Levy, Madeleine R.	Civil
Linton, Jr., Leonard M.	Criminal
Liston, Angela	Civil
Loeffler, Karen L.	Civil
Lyle, Paul R.	Civil
Lynch, Ardith A.	Civil
Ma, Louise F.	Civil
Mackey, William L.	Criminal
Maki, Richard	Criminal
Malchick, Barbara L.	Civil
Mannheimer, David	Criminal
Maynard, Robert M.	Civil
Mayo, Steven	Criminal
McClintock, Donald W.	Civil
McConahy, Michael P.	Criminal
McConnell, Dwayne W.	Criminal
McCracken, Sarah E.	Civil
McDonagh, John A.	Civil
McGee, Jack B.	Civil
McGuire, Kathleen	Civil
McKinstry, Larry J.	Criminal
McLaughlin, Michael S.	Criminal
McLean, Susan S.	Criminal
Meacham, Thomas E.	Civil
Mellow, William G.	Civil
Menendez, Louis	Criminal
Merriner, Charles M.	Criminal
Mertz, Douglas K.	Civil
Michalski, Peter A.	Criminal
Miller, Thomas A.	Criminal
Mills, Martha T.	Civil
Mintz, Robert E.	Civil
Miracle, Barbara	Civil
Monkman, Richard D.	Civil
Morrissett, Steven H.	Criminal
Munson, Myra M.	Civil

Murphree, Bill D.	Criminal
Murphy, Eugene P.	Criminal
Nelson, Lisa B.	Criminal
Neville, M. Francis	Civil
O'Bannon, Linda	Civil
O'Bryant, Jeffrey A.	Criminal
O'Connell, Mary-Margaret	Criminal
Odland, marjorie	Civil
Olsen, Dianne E.	Civil
Olsen, Randy M.	Civil
Olson, Paul E.	Criminal
Otto, Lauri	Criminal
Peterson, Arthur H.	Civil
Peterson, Edward F.	Criminal
Petumenos, Timothy	Criminal
Porter, Steven R.	Civil
Powers, Kenneth C.	Civil
Prezyna, Ann E.	Civil
Ragle, Virginia B.	Civil
Richard, John M.	Civil
Richard, Maurice	Criminal
Robertson, Thomas H.	Civil
Roosa, Kenneth S.	Criminal
Rorick, Michael H.	Civil
Rothschild, Frank D.	Criminal
Rubini, Jonathan B.	Civil
Rusch, Virginia	Civil
Ruzo, Gregory	Civil
Schaefer, George F.	Criminal
Schmidt, George C.	Civil
Schuler, Bryan E.	Criminal
Scoccia, Linda	Civil
Scukanec, John A.	Criminal
Sewright, Michael W.	Civil
Shaw, Elizabeth	Civil
Sheley, Elizabeth	Criminal
Shields, Susan	Criminal
Simel, Nancy R.	Criminal
Sipe, Connie J.	Civil
Smith, Marlin D.	Criminal

Snow, D. Rebecca	Civil
Sobel, G. Scott	Civil
Spengler, Larri I.	Civil
Stahl, Paul S.	Civil
Stark, Michael J.	Criminal
Strandberg, Janalee	Civil
Strickland, Sheridan	Civil
Steffens, Claire	Criminal
Steinkruger, Niesje J.	Civil
Stewart, Janna L.	Criminal
Stewart, David C.	Criminal
Stillner, Walter	Civil
Stirling, Clark T.	Criminal
Svobodny, Richard	Criminal
Taylor-Welch, Karla	Criminal
Tehan, Valerie	Criminal
Tennant, R. Bruce	Civil
Thie, Bonnie L.	Civil
Thompson, G. Nanette	Civil
Todd, Richard J.	Civil
Travostino, Joan M.	Civil
Turner, Shannon	Criminal
Urig, Susan L.	Civil
Vacek, John	Criminal
VanBrocklin, Valerie	Criminal
Vasquez, Elizabeth	Civil
Vogt, Deborah	Civil
Voigtlander, Gail T.	Criminal
Wagner, Thomas E.	Civil
Walton, Linda L.	Civil
Wardell, Thomas M.	Criminal
Welch, Edward J.	Criminal
Wendl, Ernst	Criminal
Werner-Simon, Julie	Criminal
White, Michael N.	Criminal
Wood, Larry D.	Civil
Wood, Mark I.	Criminal
Worcester, Mark P.	Civil
Young, Kristen	Criminal
Zervos, Larry C.	Criminal

Harold M. Brown 1985 - 1986

Ronald W. Lorensen, Deputy Attorney General

Amendola, Gary	Civil
Anderson, Robert C.	Criminal
Andress, Judith L.	Civil
Athens, E. John	Civil
Babcock, Russell	Criminal
Bacon, Robert D.	Criminal
Baldwin, James L.	Civil
Barnett, Iris Sokolow	Civil
Barry, Elizabeth J.	Civil
Bissell, Marcia H.	Criminal
Blasco, Robert	Criminal
Bortnick, Alexander	Criminal
Branchflower, Stephen E.	Criminal
Brown, Michele D.	Civil
Bush, Jeffrey W.	Civil
Butterfield, Rhonda	Criminal
Callahan, Nathan A.	Criminal
Cole, Jeffrey	Criminal
Conheady, Patrick W.	Criminal
Cox, Susan D.	Civil
Crnich, Kimberly C.	Civil
Cummings, William F.	Civil
Cyrus, Eugene P.	Criminal
Davis, Donald S.	Civil
Davis, Harry L.	Criminal
Davis, Laura L.	Civil
Day, Timothy	Criminal
Delay, Lawrence	Civil
DeYoung, Jan H.	Civil
Doogan, Jr., James P.	Criminal
Ducey, Cynthia L.	Criminal
Edwards, George W.	Civil
Ells, Mark L.	Criminal
Emley, Sharon J.	Criminal
Erb, Renee R.	Criminal
Erickson, Craig T.	Civil
Estelle, William	Civil

Figura, Mark L.	Civil
Fischer, Stanley T.	Civil
Fisher, James E.	Criminal
Fitzgerald, Debra J.	Civil
Forsberg, Carl	Criminal
Foster, Gary G.	Civil
Frank, Michael S.	Civil
Fraties, Gail R.	Criminal
Froehlich, Peter B.	Civil
Gamache, Peter C.	Criminal
Garrigues, Gayle	Criminal
Geldhof, Joseph W.	Civil
Goldman, Kenneth J.	Criminal
Gordon, Nancy R.	Civil
Gould, James V.	Criminal
Gouwens, Kay E. M.	Civil
Groh, Jr., Clifford J.	Criminal
Gruenstein, Peter E.	Criminal
Guaneli, Dean J.	Criminal
Hanley, James L.	Criminal
Hawley, Jr., William H.	Criminal
Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Higgins, Shelley J.	Civil
Hood, Barbara	Civil
Hooper, Alan J.	Criminal
Hora, Cynthia	Criminal
Horetski, Gayle A.	Criminal
Hotchkin, Michael	Civil
Hutchings, Stephen H.	Criminal
Ingaldson, William	Criminal
Janidlo, Thomas F.	Civil
Joannides, Stephanie E.	Criminal
Jones, Carolyn E.	Civil
Kennedy, Elizabeth P.	Civil
Kerns, Richard P.	Civil
Knuth, Margot O.	Civil
Koester, G. Thomas	Civil
Kopperud, Ross A.	Civil
Krumm, Victor C.	Criminal

Lahti, Kai J.	Criminal
LeBlond, David T.	Civil
Levy, Madeleine R.	Civil
Linton, Jr., Leonard M.	Criminal
Liston, Angela A.	Criminal
Loeffler, Karen L.	Civil
Lyle, Paul R.	Civil
Lynch, Ardith A.	Civil
Mannheimer, David	Criminal
Maynard, Robert M.	Civil
McConahy, Michael P.	Criminal
McConnell, Dwayne W.	Criminal
McCracken, Sarah E.	Civil
McDonagh, John A.	Civil
McGee, Jack B.	Civil
McGuire, Kathleen	Civil
McKinstry, Larry A.	Criminal
McLaughlin, Michael S.	Criminal
McLean, Susan S.	Criminal
Mellow, William G.	Civil
Merriner, Charles M.	Criminal
Mertz, Douglas K.	Civil
Mills, Martha T.	Civil
Mintz, Robert E.	Civil
Monkman, Richard D.	Civil
Morrissett, Steven H.	Criminal
Munson, Myra M.	Civil
Murphree, Bill D.	Criminal
Murphy, Eugene P.	Criminal
Nelson, Lisa B.	Criminal
Nelson, Lance B.	Civil
Neville, M. Francis	Civil
O'Bannon, Linda M.	Civil
O'Bryant, Jeffrey A.	Criminal
Odland, Marjorie L.	Civil
Olsen, Randy M.	Civil
Olsen, Dianne E.	Civil
Peterson, Arthur H.	Civil
Porter, Steven R.	Civil
Powers, Kenneth C.	Civil

Prewitt, James F.	Criminal
Prezyna, Ann E.	Civil
Ragle, Virginia B.	Civil
Ray, Richard	Criminal
Razo, Gregory	Criminal
Richard, John M.	Civil
Richard, Maurice M.	Criminal
Roberson, Rhonda B.	Criminal
Roosa, Kenneth S.	Criminal
Rorick, Michael H.	Civil
Rubini, Jonathan B.	Civil
Rusch, Virginia	Civil
Sarafin, James A.	Civil
Schaeffer, George F.	Criminal
Schuler, Bryan E.	Criminal
Scoccia, Linda	Civil
Scukanec, John A.	Criminal
Sewright, Michael W.	Civil
Shaw, Elizabeth	Civil
Sheley, Elizabeth	Criminal
Sidell, Scott J.	Civil
Simel, Nancy R.	Criminal
Smith, Marlin D.	Criminal
Snow, D. Rebecca	Civil
Sobel, Scott G.	Criminal
Soll, Herbert	Criminal
Spengler, Larri I.	Civil
Stahl, Paul S.	Civil
Stark, Michael J.	Criminal
Stirling, Clark T.	Criminal
Strandberg, Janalee R.	Civil
Strickland, Sheridan	Civil
Sutliffe, Mary J.	Criminal
Svobodny, Richard	Criminal
Taylor-Welch, Karla J.	Criminal
Tennant, R. Bruce	Civil
Thie, Bonnie L.	Civil
Thompson, G. Nanette	Civil
Todd, Richard J.	Civil
Travostino, Joan M.	Civil

Turner, Shannon	Criminal
Urig, Susan L.	Civil
Vacek, John	Criminal
VanBrocklin, Valerie A.	Criminal
Vazquez, Elizabeth	Civil
Vogt, Deborah	Civil
Wagner, Thomas E.	Civil
Walton, Linda L.	Civil
Wardell, Thomas M.	Criminal
Wendl, Ernst	Criminal
Werner-Simon, Julie	Criminal
West, Stephen	Criminal
Williams, Teresa	Civil
Wood, Mark I.	Criminal
Worcester, Mark P.	Civil

Grace Berg Schaible — 1987 - 1989

Ronald W. Lorensen, Deputy Attorney General	Civil
Herbert D. Soll, Deputy Attorney General (1987)	Criminal
Larry R. Weeks, Deputy Attorney General (1988-89)	Criminal

Abramson, Bruce	Civil/Criminal
Amendola, Gary I.	Civil
Anderson, Robert C.	Criminal
Athens, John	Civil
Babcock, Russell	Criminal
Bacon, Robert	Criminal
Baldwin, James L.	Civil
Barnett, Iris Sokolow	Civil
Barry, Elizabeth J.	Civil
Basler, Pamela T.	Criminal
Behr, Deborah E.	Civil
Bissell, Marcia H.	Criminal
Blasco, Robert P.	Criminal
Bodick, John K.	Criminal
Botelho, Bruce M.	Civil
Branchflower, Stephen E.	Criminal
Brown, Michele D.	Civil

Bush, Jeffrey W.	Civil
Callahan, Nathan A.	Civil/Criminal
Cole, Brent R.	Criminal
Cole, Jeffrey	Criminal
Conheady, Patrick W.	Criminal
Coster, Julie T.	Civil
Cox, Susan D.	Civil
Crnich, Kimberly C.	Civil
Cummings, William F.	Civil
Curda, Dale O.	Criminal
Cyrus, Eugene P.	Criminal
Damrau, Mason	Civil
Davis, Donald S.	Civil
Davis, Harry L.	Criminal
Delay, Lawrence C.	Civil
DeYoung, Jan H.	Civil
Doogan, Jr., James P	.Criminal
Ducey, Cynthia L.	Criminal
Ells, Mark L.	Criminal
Emley, Sharon	Criminal
Erb, Renee R.	Criminal
Erickson, Craig T.	Civil
Estelle, William L.	Civil/Criminal
Fedor, Adrienne P.	Criminal
Figura, Mark L.	Civil
Forbes, James	Civil
Foster, Gary G.	Civil
Frank, Michael S.	Civil
Froehlich, Peter B.	Civil
Gamache, Peter C.	Criminal
Garrigues, Gayle L.	Criminal
Geldhof, Joseph W.	Civil
Goldman, Kenneth J.	Criminal
Gordon, Nancy R.	Civil
Gould, James V.	Criminal
Gouwens, Kay E. M.	Civil
Groh, Jr., Clifford J.	Criminal
Guaneli, Dean J.	Criminal
Hanley, James L.	Criminal
Hawley, Jr., William H.	Criminal

Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Hickerson, Elizabeth J.	Civil
Higgins, Shelley J.	Civil
Hood, Barbara J.	Civil
Hooper, Alan J.	Criminal
Hora, Cynthia	Criminal
Horetski, Gayle A.	Criminal
Hotchkin, Michael G.	Civil
Hutchings, Stephen H.	Civil
Ingaldson, William	Criminal
James, Joyce, M.	Civil
Janidlo, Thomas F.	Civil
Joannides, Stephanie E.	Criminal
Jones, Carolyn E.	Civil
Kantola, William W.	Civil/Criminal
Kennedy, Elizabeth P.	Civil
King, Nora	Civil
Knuth, Margot O.	Civil/Criminal
Koester, G. Thomas	Civil
Kopperud, Ross A.	Civil
Krumm, Victor C.	Criminal
LeBlond, David T.	Civil
Leonard, Cameron M.	Civil
Levy, Madeleine R.	Civil
Linton, Jr., Leonard M.	Criminal
Loeffler, Karen L.	Criminal
Lori, Beth A.	Criminal
Lyle, Paul R.	Civil
Lynch, Ardith A.	Civil
Mannheimer, David	Criminal
Marston, Erin B.	riminal
Maynard, Robert M.	Civil
McClure, Maurice M.	Criminal
McConnell, Dwayne W.	Criminal
McCracken, Sarah E.	Civil
McDonagh, John A.	Civil
McGee, Jack	Civil
McKinstry, Larry A.	Criminal
McLain, Josephine	Criminal

McLaughlin, Michael S.	Criminal
McLean, Susan S.	Criminal
Mellow, William G.	Civil
Mentele, Peggy	Civil
Merriner, Charles M.	Criminal
Mertz, Douglas K.	Civil
Miller, Robert M.	Criminal
Mills, Martha T.	Civil
Mintz, Robert E.	Civil
Monkman, Richard D.	Civil
Morrissett, Steven H.	Criminal
Murphree, Bill D.	Criminal
Murphy, Eugene P.	Criminal
Nelson, Lance B.	Civil
Nelson, Lisa B.	Criminal
Neville, Francis M.	Civil
O'Bannon, Linda	Civil
O'Bryant, Jeffrey A.	Criminal
O'Gorman, Diane T.	Criminal
Odland, Marjorie L.	Civil
Olsen, Dianne E.	Civil
Olsen, Randy M.	Civil
Ottinger, James H.	Criminal
Parkes, Susan A.	Criminal
Peterson, Arthur H.	Civil
Pinkel, Mary B.	Civil
Porter, Steven R.	Civil
Powers, Kenneth C.	Civil
Preston, Ann M.	Criminal
Prewitt, Jr., J. Frank	Criminal
Ragle, Virginia B.	Civil
Ray, Richard J.	Criminal
Razo, Gregory	Criminal
Reep, Janine J.	Civil
Richard, Maurice M.	Criminal
Richard, John M.	Civil
Roberson, Rhonda B.	Criminal
Robson, Bonnie	Civil
Roosa, Kenneth S.	Criminal
Rusch, Virginia A.	Civil

Rutherdale, Jan A.	
Sarafin, James A.	Civil
Schuler, Bryan E.	Civil
Scukanec, John A.	Criminal
Sewright, Michael W.	Criminal
Shaw, Elizabeth	Civil
Sheley, Elizabeth	Civil
Sidell, Scott J.	Criminal
Simel, Nancy R.	Civil
Smith, Marlin D.	Criminal
Snow, D. Rebecca	Criminal
Soll, Herbert D.	Civil
Spengler, Larri I.	Criminal
Stahl, Paul S.	Civil
Stark, Michael J.	Civil
Stirling, Clark T.	Criminal
Stockler, Paul D.	Criminal
Strandberg, Janalee R.	Criminal
Strasbaugh, Kathleen	Civil
Sutliff, Mary Jane	Civil
Svobodny, Richard	Criminal
Tarleton, Paula A.	Criminal
Taylor, Robin A.	Criminal
Taylor-Welch, Karla J.	Civil
Tennant, R. Bruce	Criminal
Tillery, Craig	Civil
Todd, Richard J.	Civil
Toll, Ellen	Civil
Torgerson, James E.	Civil
Travostino, Joan M.	Criminal
Turner, Shannon	Civil
Tweten, Diane S.	Criminal
Urig, Susan L.	Civil
Vacek, John	Civil
VanBrocklin, Valerie A.	Criminal
Vazquez, Elizabeth	Criminal
Vogt, Deborah	Civil
Voigtlander, Gail T.	Civil
Wagner, Thomas E.	Civil
Walton, Linda L.	Civil
	Civil

Wardell, Thomas M.	Criminal
Weeks, Larry R.	Criminal
Wendl, Ernst	Criminal
West, Stephen R.	Criminal
White, Stephen M.	Civil
Williams, Teresa E.	Civil
Woelber, Tonja	Criminal
Wood, Mark I.	Criminal
Worcester, Mark P.	Civil

Douglas B. Baily — 1989 - 1990

Ronald W. Lorensen, Deputy Attorney General

Abramson, Bruce	Civil
Adams, Samuel D.	Criminal
Amendola, Gary I.	Civil
Athens, E. John	Civil
Bacon, Robert	Criminal
Bailey, Luann E.	Civil
Baldwin, James L.	Civil
Barry, Elizabeth J.	Civil
Basler, Pamela T.	Criminal
Behr, Deborah E.	Civil
Bissell, Marcia H.	Criminal
Bjorkquist, Brian	Civil
Bodick, John K.	Criminal
Bomengen, Kristen	Civil
Botelho, Bruce M.	Civil
Branch, Dan R.	Civil
Branchflower, Stephen E.	Criminal
Brewster, Daniel	Civil
Brown, Michele D.	Civil
Brown, Ray R.	Criminal
Callahan, Nathan A.	Criminal
Clark, Caremen E.	Criminal
Cole, Brent R.	Criminal
Cole, Jeffrey	Criminal
Cooper, Joseph	Civil

Coster, Julie T.	Civil
Cox, Susan D.	Civil
Crnich, Kimberly C.	Civil
Cummings, William F.	Civil
Curda, Dale O.	Criminal
Cyrus, Eugene P.	Criminal
Damrau, Mason	Civil
Davis, Donald S.	Civil
Davis, Harry L.	Criminal
Delay, Lawrence C.	Civil
DeVries, Steven	Civil
DeYoung, Jan H.	Civil
Doogan, Jr., James P.	Criminal
Ducey, Cynthia L.	Criminal
Ells, Mark E.	Criminal
Estelle, William L.	Criminal
Fedor, Adrienne P.	Criminal
Fikos, Terry A.	Criminal
Fitzgerald, Kevin T.	Criminal
Fitzpatrick, Lisa	Civil
Forbes, James	Civil
Frank, Michael S.	Civil
Froehlich, Peter B.	Civil
Funk, Ray	Civil
Gabay, Alexix N.	Civil
Gara, Leslie	Civil
Garrigues, Gayle L.	Criminal
Geldhof, Joseph W.	Civil
Goldman, Kenneth J.	Criminal
Gordon, Nancy R.	Civil
Guaneli, Dean J.	Criminal
Gustafson, Glenn M.	Civil
Haffner, Rosemary	Civil
Hanley, James L.	Criminal
Harris, Bonnie	Civil
Hatch,M. Leone	Civil
Hawley, Jr., William H.,	Criminal
Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Hickerson, Elizabeth J.	Civil

Higgins, Shelley J.	Civil
Hood, Barbara J.	Civil
Hooper, Alan J.	Criminal
Hora, Cynthia	Criminal
Hotchkin, Michael G.	Civil
Hutchings, Stephen H.	Civil
Ingaldson, William	Criminal
James, Joyce M.	Civil
Janidlo, Thomas F.	Civil
Joannides, Stephanie E.	Criminal
Jones, Carolyn E.	Civil
Kantola, William W.	Civil/Criminal
Kennedy, Elizabeth P.	Civil
Kerttula, Elizabeth J.	Civil
King, Nora	Civil
Klasen, James F.	Civil
Knudsen, Kristen	Civil
Knuth, Margot O.	Criminal
Koester, G. Thomas	Civil
Kopperud, Ross A.	Civil
LeBlond, David T.	Civil
Lembo, Bonnie	Criminal
Leonard, Cameron M.	Civil
Levy, Madeleline R.	Civil
Linton, Jr., Leonard M.	Criminal
Loeffler, Karen L.	Criminal
Losen, Randy M.	Civil
Lyle, Paul R.	Civil
Lynch, Ardith A.	Civil
Mannheimer, David	Criminal
Marston, Erin B.	Criminal
May, Marilyn	Civil
Maynard, Robert M.	Civil
McClure, Maurice M.	Criminal
McConnell, Dwayne W.	Criminal
McCoy, Kevin F.	Civil
McCracken, Sarah E.	Civil
McDonagh, John A.	Civil
McGee, Jack	Civil
McKinstry, Larry A.	Criminal

McLaughlin, Michael S.	Criminal
McQueen, Mindy H.	Criminal
Mellow, William G.	Civil
Menendez, Louis	Criminal
Mertz, Douglas K.	Civil
Mills, Martha T.	Civil
Mintz, Robert E.	Civil
Monkman, Richard D.	Civil
Morrissett, Steven H.	Criminal
Murphree, Bill M.	Criminal
Murphy, Eugene P.	Criminal
Nelson, Lance B.	Civil
Nelson, Lisa B.	Criminal
Neville, Francis M.	Civil
Odland, Marjorie L.	Civil
O'Bannon, Linda	Civil
O'Bryant, Jeffrey A.	Criminal
O'Gorman, Diane T.	Criminal
Olsen, Dianne E.	Civil
Olsen, Randy M.	Civil
Ottinger, James H.	Criminal
Otto, Laurie	Criminal
Parkes, Susan A.	Criminal
Peterson, Arthur H.	Civil
Pinkel, Mary B.	Civil
Porter, Steven R.	Civil
Powers, Kenneth C.	Civil
Ragle, Virginia B.	Civil
Ray, Richard J.	Criminal
Reep, Janine J.	Civil
Rhoades, Stephanie L.	Criminal
Roberson, Rhonda B.	Criminal
Roberts, R. Bruce	Criminal
Robertson, Alice Rafferty	Civil
Robson, Bonnie	Civil
Roosa, Kenneth S.	Criminal
Rusch, Virginia A.	Civil
Rutherdale, Jan A.	Civil
Saxby, Kevin M.	Civil
Scukanec, John A.	Criminal

Shaw, Elizabeth	Civil
Sheley, Elizabeth	Criminal
Simel, Nancy R.	Criminal
Smith, Marlin D.	Criminal
Snow, D. Rebecca	Civil
Soll, Herbert D.	Criminal
Spengler, Larri I.	Civil
Stahl, Paul S.	Civil
Stark, Michael J.	Criminal
Stockler, Paul D.	Criminal
Strasbaugh, Kathleen	Civil
Sutcliffe, J. Ronald	Civil
Svobodny, Richard	Criminal
Tan, Sen K.	Civil
Taylor, Robin A.	Civil
Taylor-Welch, Karla J.	Criminal
Tennant, R. Bruce	Civil
Tillery, Craig	Civil
Todd, Richard J.	Civil
Toll, Ellen	Civil
Torgerson, James E.	Criminal
Tostevin, Breck	Civil
Turner, Shannon D.	Criminal
Tweten, Diane S.	Civil
Urig, Susan L.	Civil
Vacek, John	Criminal
VanBrocklin, Valerie A.	Criminal
Vazquez, Elizabeth	Civil
Vermont, Venable	Civil
Voigtlander, Gail T.	Civil
Wagner, Thomas E.	Civil
Wallace, Stephen	Criminal
Walton, Linda L.	Civil
Wanamaker, James N.	Civil
Weeks, Larry R.	Criminal
West, Stephen R.	Criminal
White, Stephen M.	Civil
Williams, Teresa E.	Civil
Woelber, Tonja	Criminal
Wood, Mark I.	Criminal

Worcester, Mark P.	Civil
Zobel, Ron	Civil

Charles E. (Charlie) Cole 1991 - 1994

Douglas L. Blankenship, Deputy Attorney General, 1990-91
Bruce M. Botelho, Deputy Attorney General, 1992-94

Adams, Samuel D.	Criminal
Allen, Robert J.	Civil
Amendola, Gary I.	Civil
Athens, E. John	Civil
Baker, John T.	Civil
Baldwin, James L.	Civil
Barry, Elizabeth J.	Civil
Basler, Pamela T.	Criminal
Beardsley, Mary Ellen	Civil
Behr, Deborah E.	Civil
Berkowitz, Ethan A.	Criminal
Berry, David G.	Criminal
Bjorkquist, Brian	Civil
Blankenship, Douglas L.	Civil
Blasco, Barbara	Civil
Bodick, John K.	Criminal
Bomengen, Kristen F.	Civil
Bonner, William J.	Civil
Botelho, Bruce M.	Civil
Branch, Dan R.	Civil
Branchflower Stephen E.	Criminal
Brewster, Daniel	Civil
Brower, David L.	Criminal
Bryant, Julie E.	Civil
Bush, Jeffrey W.	Civil
Callahan, Nathan A.	Criminal
Cannon, Nancy J.	Civil
Cantor, James	Civil
Chaffin, Shelley K.	Criminal
ClarkWeeks, Carmen E.	Criminal
Cole, Brent R.	Criminal

Collins, Robert J.	Criminal
Colson, Jacqueline	Civil
Cooper, Jr., Daniel R.	Criminal
Coster, Julie T.	Civil
Coughlin, Patrick J.	Civil
Cox, Susan D.	Civil
Cummings, William F.	Civil
Cyrus, Eugene P.	Criminal
Dahl, Thomas H.	Civil
Damrau, Mason	Civil
Davis, Donald S.	Civil
Davis, Harry L.	Criminal
De La Hunt, Jill	Criminal
deGrazia, Lee Ann	Criminal
Delay, Lawrence C.	Civil
DeVries, Steven	Civil
Donaldson, Sheri L.	Criminal
Doogan, Jr., James P.	Criminal
Estelle, William L.	Criminal
Fayette, James J.	Criminal
Felix, Sarah J.	Civil
Feuer, Wendy S.	Civil
Fikes, Terry A.	Criminal
Fitzgerald, Kevin T.	Criminal
Fitzpatrick, Lisa	Civil
Forbes, James	Civil
Frank, Michael S.	Civil
Funk, Ray	Civil
Gabay, Alexis N.	Civil
Gaguine, John B.	Civil
Gamache, Peter C.	Criminal
Gara, Leslie	Civil
Garner, Max D.	Criminal
Garrigues, Gayle L.	Criminal
Gay, Sarah E.	Civil
Geldhof, Joseph W.	Civil
Gilson, Mary A.	Civil
Goldman, Kenneth J.	Criminal
Gordon, Nancy R.	Civil
Gouwens, Kay E. M.	Civil

Grace, Joanne M.	Civil
Griffin, John P.	Civil
Grummett, Dee Ann	Civil
Guaneli, Dean J.	Criminal
Gullufsen, Patrick	Civil
Gustafson, Glenn	Civil
Haffner, Rosemary	Civil
Hanley, James L.	Criminal
Hanley, Shannon D.	Criminal
Harris, Bonnie	Civil
Hatch, Leone	Civil
Hawley, Jr., William H.	Criminal
Henry, Mary Anne	Criminal
Herman, Barbara	Civil
Herren, Bernard M.	Criminal
Herren, Cynthia L.	Criminal
Hickerson, Elizabeth J.	Civil
Hora, Cynthia	Criminal
Illsley, Sharon A.	Criminal
Jacobus, Cheri L.	Civil
James, Will	Civil
James, Joyce M.	Civil
Joannides, Stephanie	Civil
Johannsen, Bonnie R.	Civil
Johnson, Eric A.	Criminal
Jones, Carolyn E.	Civil
Jones, David	Civil
Kennedy, Elizabeth P.	Civil
Kerttula, Elizabeth J.	Civil
Kesterson, Linda L.	Civil
Killip, Jeffrey T.	Civil
King, Nora	Civil
Kitchen, Donald R.	Criminal
Klasen, James	Civil
Knapp, David H.	Civil
Knudsen, Kristin	Civil
Knuth, Margot O.	Criminal
Kobayashi, Tina	Civil
Koester, G. Thomas	Civil
Kohout, Jenifer	Civil

Kopperud, Ross A.	Civil
Lambers, August G.	Criminal
Landry, Jeffrey	Civil
Latta, Leroy	Criminal
LeBlond, David T.	Civil
Lembo, Virginia B.	Criminal
Leonard, Cameron M.	Civil
Levesque, Joseph	Criminal
Levy, Janice Gregg	Civil
Levy, Madeleine R.	Civil
Linton, Jr., Leonard M.	Criminal
Lombardi, Susan H.	Criminal
Lorensen, Ronald W.	Civil
Lottridge, Douglas D.	Civil
Lukasik, Joan H.	Civil
Lundquist, Mary Ann	Civil
Lyle, Paul R.	Civil
Maki, Richard W.	Criminal
May, Marilyn	Civil
McClure, Maurice	Civil
McConnell, Dwayne W.	Civil
McCoy, Kevin	Civil
McCracken, Sarah E.	Civil
McDonagh, John A.	Civil
McGee, Jack	Civil
McKinnon, Joseph	Civil
McKinstry, Larry A.	Criminal
McNally, Edward E.	Criminal
McQueen, Mindy H.	Criminal
Meade, Nancy	Civil
Menendez, Louis J.	Criminal
Mertz, Douglas K.	Civil
Metcalfe, James	Criminal
Mills, Martha T.	Civil
Mintz, Robert E.	Civil
Morrissett, Steven H.	Criminal
Morse, Bill	Civil
Murphree, Bill M.	Criminal
Musick, Richard	Civil
Nauheim, Robert	Civil

Nelson, Lance B.	Civil
Nelson, Lisa	Civil
Neville, Francis M.	Civil
Nolan, Nancy	Civil
Novak, John J.	Criminal
O'Bannon, Linda	Civil
O'Bryant, Jeffrey A.	Criminal
O'Gorman, Diane T.	Criminal
Odland, Marjorie L.	Civil
Olsen, Dianne E.	Civil
Olsen, Randy M.	Civil
Ostrovsky, Larry	Civil
Otterson, J. Stefan	Civil
Ottinger, James H.	Criminal
Otto, Laurie H.	Criminal
Parker, Kyle	Civil
Parkes, Susan A.	Criminal
Parkinson, Douglas S.	Civil
Parris-Eastlake, Jacquelyn E.	Criminal
Pinkel, Mary B.	Civil
Powers, Kenneth C.	Civil
Ragle, Virginia B.	Civil
Ray, Richard J.	Criminal
Reep, Janine J.	Civil
Regan, Mark W.	Civil
Reges, Robert K.	Civil
Renschen, Audrey	Criminal
Rhoades, Stephanie L.	Criminal
Roberson, Rhonda	Civil
Robertson, Alice	Criminal
Rom, Roger B.	Criminal
Roosa, Kenneth	Civil
Rosenstein, Kenneth M.	Criminal
Royce, Robert	Civil
Rusch, Virginia A.	Civil
Rutherdale, Jan A.	Civil
Sansone, Marie G.	Civil
Saxby, Kevin	Civil
Scukanec, John A.	Criminal
Seyferth, Paul D.	Criminal

Shaw, Elizabeth	Civil
Simel, Nancy R.	Criminal
Slagle, Thomas J.	Civil
Slotnick, Stephan C.	Civil
Smith, Diane	Civil
Smith, Marlin D.	Criminal
Snow, D. Rebecca	Civil
Spengler, Larri I.	Civil
Spigelmyer, Terri	Civil
Stark, Michael J.	Criminal
Staten-Hayes, Kimberly	Criminal
Stebing, David G.	Civil
Steinberger, Toby Nancy	Civil
Steiner, John	Civil
Stockler, Paul D.	Criminal
Strasbaugh, Kathleen	Civil
Sullivan, Richard P.	Civil
Sutcliffe, J. Ronald	Civil/Criminal
Svobodny, Richard A.	Criminal
Swiderski, Alex	Civil
Tan, Sen K.	Civil
Taylor-Welch, Karla J.	Criminal
Terrell, Timothy W.	Criminal
Tillery, Craig	Civil
Todd, Richard J.	Civil
Toll, Ellen	Civil
Tostevin, Breck	Civil
Urig, Susan L.	Civil
Usera, Vincent L.	Civil
Vacek, John	Criminal
Valkavick, Helen	Criminal
VanBrocklin, Valerie A.	Criminal
Vazquez, Elizabeth	Civil
Vermont, Venable	Civil
Voigtlander, Gail T.	Civil
Wagner, Thomas E.	Civil/Criminal
Wallace, David R.	Criminal
Wallace, Stephen B.	Criminal
Walters, Jr., Benjamin O.	Criminal
Wanamaker, James	Civil

Ward, Bruce G.	Criminal
Weingartner, David	Civil/Criminal
Weinstein, Martin M.	Civil
West, Stephen R.	Criminal
Weyhrauch, LuAnn E.	Civil
White, Stephen M.	Civil
Wibker, Susan G.	Criminal
Williams, Teresa E.	Civil
Wilson, Thomas H.	Civil
Wood, Mark I.	Criminal
Worcester, Mark P.	Civil
Zobel, Ron	Civil

Bruce M. Botelho — 1994 - present

Elizabeth Shaw, Deputy Attorney General, 1994-95 — Civil
Barbara J. Ritchie, Deputy Attorney General, 1995 to present — Civil
Edward E. McNally, Deputy Attorney General, 1994-95 — Criminal
Laurie H. Otto, Deputy Attorney General, 1995-97 — Criminal
Cynthia Cooper, Deputy Attorney General, 1997 to present — Criminal

Aarseth, Eric	Criminal
Adams, Lauri	Civil
Adams, Samuel D.	Criminal
Anderson, Signe	Civil
Athens, E. John	Civil
Atwood, Nathaniel	Civil
Bachman, Adrienne	Criminal
Bailie, Patricia	Civil
Baker, John	Civil
Baldwin, James	Civil
Barnhill, Michael	Civil
Barry, David	Criminal
Barry, Elizabeth	Civil
Bauer, David A.	Criminal
Beardsley, Mary Ellen	Civil

Behr, Deborah	Civil
Bell, Ryan	Criminal
Benedetto, James	Criminal
Bjorkquist, Brian	Civil
Black, Craig	Civil
Blankenship, Douglas	Civil
Bodick, John K.	Criminal
Bomengen, Kristen	Civil
Bottger, Laura	Civil
Brady, Kevin	Criminal
Branch, Dan R.	Civil
Branchflower, Stephen	Criminal
Brewster, Daniel	Civil
Briggs, Robert	Civil
Brower, David	Criminal
Bryant, Julienne	Civil
Burglin, David V.	Criminal
Butterfield, Rhonda	Civil
Cantor, James	Civil
Carpeneti, Anne D.	Criminal
Carson, Connie	Civil
Chenowith, John B.	Civil
Chleborad, Terisia	Civil
Chung, Jo Ann M.	Civil
Clark, Brian K.	Criminal
Collins, Robert	Criminal
Colson, Jacqueline	Civil
Conway, Myles	Civil
Cooper, Cynthia [Hora]	Criminal
Cooper, Daniel	Criminal
Coster, Julia	Civil
Couglin, Patrick	Civil
Cox, Susan D.	Civil
Cummings, William F.	Civil
Cyrus, Eugene	Criminal
Dahl, Thomas H.	Civil
Damrau, Mason	Civil
Daniels, Susan	Civil
Daugherty, Steven	Civil
Davis, D. Scott	Civil

Davis, Harry L.	Criminal
DeVries, Steven	Civil
DeYoung, Jan H.	Civil
Dickson, Leslie N.	Criminal
Donley, Kevin L.	Criminal
Doogan, James P.	Criminal
Erb, Renee'	Criminal
Estelle, William	Criminal
Fayette, James	Criminal
Felix, Sarah	Civil
Fikes, Terry	Criminal
Fischer, Mary E.	Criminal
Fisher, Gregory	Criminal
Fitzgerald, Kevin	Criminal
Forbes, James	Civil
French, Hollis S.	Criminal
Funk, Ray	Civil
Gaguine, John	Civil
Gamache, Peter	Civil
Gardner, Douglas	Civil
Garner, Max D.	Criminal
Garrigues, Gayle	Criminal
Gatlin, Thomas A.	Criminal
Gehrig, Sara	Criminal
Gilson, Mary	Civil
Goldman, Kenneth J.	Criminal
Goodman, Gordan G.	Criminal
Gordon, Nancy J.	Civil
Grace, Joanne	Civil
Gray, J. Michael	Criminal
Greenberg, Deborah	Criminal
Griffin, John	Civil
Grummett, DeeAnn	Civil
Guaneli, Dean J.	Criminal
Guarino, Gary	Civil
Gullufsen, Patrick	Civil
Gurton, Amy S.	Criminal
Gustafson, Glenn	Civil
Haffner, R. Poke	Civil
Haffner, Rosemary	Civil

Hanley, James	Criminal
Hanley, Shannon D.	Criminal
Hartnell, Pamela	Civil
Harris, Bonnie	Civil
Hatch, Leone	Civil
Hawley, William	Criminal
Henry, Mary Anne	Criminal
Herren, Bernard M.	Criminal
Herren, Cynthia	Criminal
Hickerson, Elizabeth	Civil
Hodges, Jay	Criminal
Horetski, Gayle	Civil
Illsley, Sharon	Criminal
Joannides, Stephanie	Civil
Johnson, Eric	Criminal
Jones, Carolyn	Civil
Jones, David	Civil
Kalytiak, Roman J.	Criminal
Kamm, Marilyn J.	Criminal
Kennedy, Christopher	Civil
Kerttula, Elizabeth	Civil
Kesterson, Linda	Civil
Killip, Jeffery	Civil
King, Nora	Civil
Kirsch, Lisa M.	Civil
Kitchen, Donald	Criminal
Knapp, David	Civil
Knudsen, Kristen	Civil
Knuth, Margot	Criminal
Kobayashi, Tina	Civil
Kohout, Jenifer	Civil
Kopperud, Ross	Civil
Kossler, Douglas H.	Criminal
Landry, Jeffrey	Civil
Latta, Leroy	Civil
Laufer, Keith	Civil
Lembo, V. Bonnie	Criminal
Leonard, Cameron	Civil
Levy, Janice Gregg	Civil
Levy, Madeline	Civil

Linton, Leonard	Criminal
Lisankie, Paul F.	Civil
Lottridge, Douglas	Civil
Lundquist, Mary Ann	Civil
Lyle, Paul	Civil
Maki, Richard	Criminal
Mattern, Scott	Criminal
May, Marilyn	Civil
McClure, Maurice	Civil
McConnell, Dwayne	Criminal
McDannel, Marcelle K.	Criminal
McKinney, Linda	Civil
McKinnon, Joseph	Civil
McLean, Susan S.	Criminal
McQueen, Mindy	Criminal
Meade, Nancy	Civil
Metcalfe, James K.	Criminal
Mintz, Robert	Civil
Moberly, Philip	Criminal
Morse, William F.	Civil
Murphree, Bill	Criminal
Nauheim, Robert	Civil
Nelson, Lance	Civil
Nelson, Lisa	Civil
Nolan, Nancy	Civil
Novak, John	Criminal
O'Bannon, Linda	Civil
O'Bryant, Jeffrey	Criminal
O'Fallon, Shannon	Civil
O'Gorman, Diane	Criminal
Oechsli, Camille	Civil
Olsen, Dianne	Civil
Olsen, Randy	Civil
Ostrovsky, Larry	Civil
Otterson, Stefan	Civil
Parker, Michael	Civil
Parkes, Susan	Civil
Parris-Eastlake, Jacquelyn	Criminal
Paterson, Susan	Civil
Piepers, Mary S.	Criminal

Ragle, Virginia	Civil
Ray, Richard	Criminal
Reep, Janine	Civil
Reeves, Phillip	Civil
Reges, Robert	Civil
Renschen, Audrey	Criminal
Ritchie, Barbara J. [Blasco]	Civil
Roberts, R. Bruce	Criminal
Rom, Rober B.	Criminal
Rosenstein, Kenneth	Criminal
Royce, Robert	Civil
Rusch, Virginia	Civil
Rutherdale, Jan	Civil
Sansone, Marie	Civil
Saxby, Kevin	Civil
Schindler, Cathy	Civil
Schultz, Martin	Civil
Schwartz, Daveed	Civil
Scott, KeriAnn	Criminal
Scukanec, John	Criminal
Sehl, Shaun M.	Civil
Sherwood, Todd	Criminal
Simel, Nancy	Criminal
Skidmore, John B.	Criminal
Slagle, Thomas	Civil
Slotnick, Steven	Civil
Slusser, Joseph S.	Criminal
Smith, Diane	Civil
Smith, Jack W.	Criminal
Smith, Marlin	Criminal
Snow, D. Rebecca	Civil
Stark, Michael J.	Criminal
Stebing, David	Civil
Steinberger, Toby Nancy	Civil
Steiner, John	Civil
Stephens, Trevor	Criminal
Strasbaugh, Kathleen	Civil
Sullivan, Jr., Richard	Civil
Sutcliffe, Ronald	Criminal
Svobodny, Richard A.	Criminal

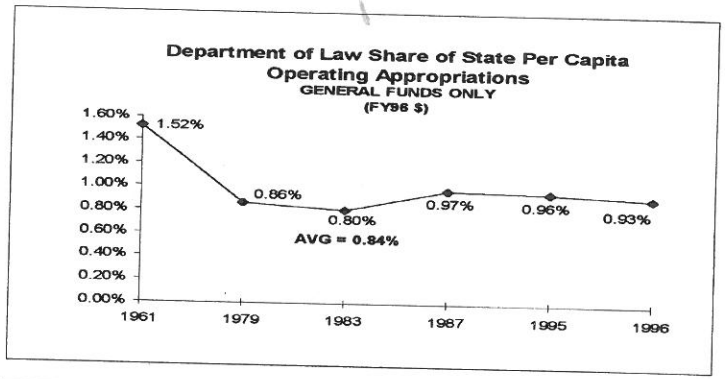
Swiderski, Alex	Civil
Swiderski, Kathryn	Civil
Tan, Sen K	Civil
Taylor, Brenda	Criminal
Taylor-Welch, Karla	Civil
Terrell, Timothy	Criminal
Thompson, G. Nanette	Civil
Tillery, Craig	Civil
Todd, Richard	Civil
Toll, Ellen	Civil
Tostevin, Breck	Civil
Truitt, Kenneth	Civil
Twitty, Kurt C.	Criminal
Urig, Susan	Civil
Usera, Vincent	Civil
Vacek, John	Criminal
Valcarce, Jim	Criminal
Valkavich, Helen	Criminal
Vallort, Joseph	Criminal
Vandor, Marjorie [Odland]	Civil
Vazquez, Elizabeth	Civil
Vermont, Venable	Civil
Vogt, Deborah	Civil
Voigtlander, Gail T.	Civil
Wagner, Thomas	Criminal
Wallace, David R.	Criminal
Wallace, Stephen B.	Criminal
Wallingford, Jayne	Criminal
Ward, Bruce	Criminal
Weaver, Steven	Civil
Weingartner, David	Civil
Weinstein, Martin	Civil
Wendlandt, Diane	Civil
West, Stephen	Criminal
White, Stephen	Civil
Wibker, Susan	Criminal
Williams, Teresa	Civil
Wilson, Henry	Civil
Wolfe, John W.	Criminal
Worthington, James	Civil

Wrona, Joseph	Criminal
Zobel, Ronald	Civil

APPENDIX B

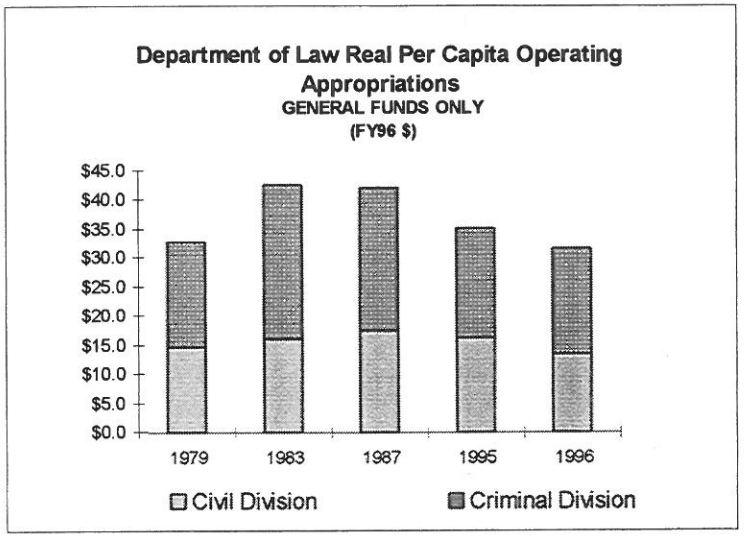
DEPARTMENT OF LAW OPERATING BUDGET HISTORY

The Department of Law's operating budget[a] has remained relatively stable since statehood as a percentage of the state's real[b] per capita general fund (GF) operating budget. The department's share of the state's GF operating budget was highest in FY61, at 1.52 percent. With the growth of the young state, the department's annual per capita spending showed a steady increase in real dollars. However, as a percentage of total state GF operating spending, the department's budget actually declined slightly .



a For comparison purposes, extraordinary special appropriations and special appropriations for outside counsel are eliminated from DOLaw totals. Judgments and claims are special appropriations to fund opposing party legal fees and settlements. These appropriations vary widely from year to year. Oil and Gas Litigation contractual costs of ourside counsel and experts are funded through special appropriations, the size of which severely skew the data when included and do not accurately depict in-house day-to-day legal work. The same applies to the special appropriations for the Exxon Valdez oil spill litigation in FY90-FY94. All portions of these appropriations that fund activities outside the department's normal day-to-day activities have therefore been excluded from this analysis.

b Adjusted for inflation, FY 96 dollars.



FY79 is generally viewed as the beginning of oil revenue's effect on state government. By then, per capita GF spending by the Department of Law was $33 per Alaskan, and 0.86 percent of the total state GF operating budget. Real per capita GF spending for the department continued to increase until FY83, to $43 per Alaskan, and then declineD to $32 in FY96, or less than FY79. The Department of Law's average share of total state GF operating spending from FY61 through FY96 was 0.84 percent.

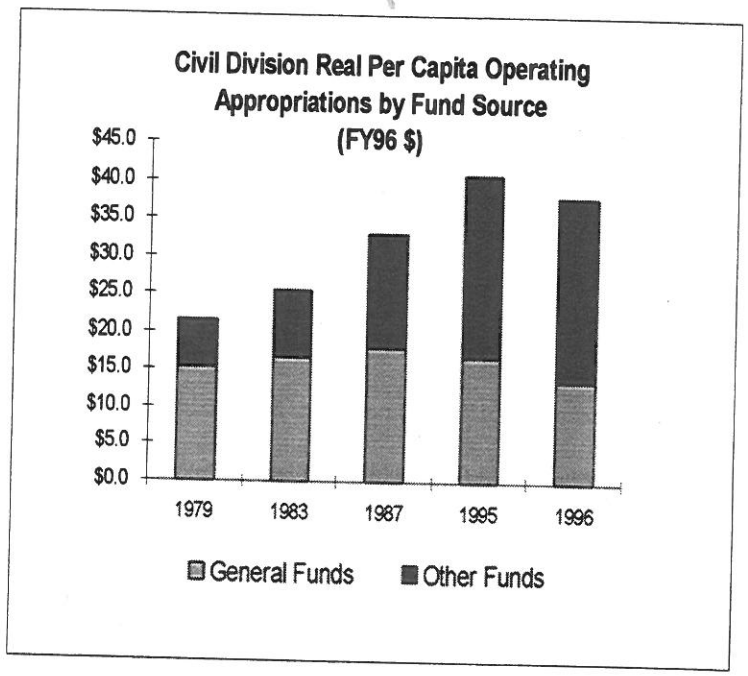
In FY72, the first year that the Criminal and Civil Divisions were budgeted as separate components, the Criminal Division's real GF per capita spending level was $11 per Alaskan. Real per capita spending for criminal prosecution increased to $18 in FY79, and to its highest point, $27 per Alaskan, in FY83. By FY96, per capita spending had declined back to $18.

Criminal prosecution is a growth industry. Division case statistics for FY86 indicate 3,419 new felonies were referred to the division's offices. In FY95, there were over new 4,712 felony referrals, and an estimated 5,026 in FY96.[c] The increase in felony

c Criminal Division case statistics provided 8/1/96.

referrals is likely due to heightened police activity and more and stronger criminal laws, as well as demographics.

The Civil Division budget grew at a faster rate than that of the Criminal Division, even though its per capita GF appropriation levels remained relatively static. The trend was increasingly to fund civil lawyers indirectly through interagency contracts with other state entities rather than by direct appropriation of unrestricted general funds to the Department of Law. The size of the division increased during the 1980s and 1990s, from 51 authorized attorney positions in FY79 to 131.5 in FY96. The division's caseload increased about the same amount, 160 percent, during this same period of time.[d]



[d] Cases Acive at Year End statistics from Civil Division annual case management reports.

Growth in civil litigation was the result of a number of factors, including a larger state population, economic concerns, an increased number of state government programs fueled by state oil and gas revenues, and federal mandates.

For example, since FY79 new Civil Division sections have been created to:

- litigate disputes over oil and gas tax, royalty, and pipeline tariff issues;
- defend the state against an increasing number of personal injury cases;
- represent the state as a landowner in environmental defense cases and enforce relatively new environmental clean-up laws enacted as a result of the *Exxon Valdez* oil spill;
- respond to disputes with the federal government regarding ANILCA; and
- respond to recent federal mandates related to the AFDC program and child support enforcement.

APPENDIX C

Poetry in Motion — A True Story

The new assistant attorney general was hard at work, when in stormed Juneau District Attorney (now Superior Court Judge) Larry Weeks.

"I need an opposition to a motion, and quick."

"Yes, sir." stammered the young lawyer.

"I've got this lousy marijuana case that's several years old. The guy pleads guilty, and gets a SIS — you know what that is, don't you? A suspended imposition of sentence. Now he's got the gall to appeal. And being Mr. Nice Guy, I didn't oppose five — count 'em — five motions for extension of time. So what do I get in return? A 63-page brief! The transcipt of the proceedings aren't even that long. This is outrageous."

"But Appellate Rule 11(b)(4) limits opening briefs to 50 pages, sir, and 20 pages for reply briefs," proudly explained the youthful barrister.

"Yeah, yeah, I know. They've filed a motion to accept an overlength brief. I want to oppose it. You write it. I'll sign it. But it has to be *good*. I want it to be pure poetry."

"I'll do my best, sir."

"Make it so."

Quite a literal youth, and eager to please, Dean Guaneli set to work. His memorandum in opposition to filing of overlength brief is set out in full:

Ode to Appellate Rule 11(b)(4)

There was the Alaska High Court,
Which expounded on contract and tort.
Briefs must be thrifty.
Pages "may not exceed fifty",
Plus twenty more for appellant's retort.

Comes now appellant in the case below,
Struggling with an overlength brief in tow.
The transcript was short
So why this treatise in court?
Who knows how the reply brief will grow.

We waited with patience, it must be conceded,
'Til a forthright "guilty" was finally well-pleaded
An SIS was his due,
But we haven't a clue,
Why such a long brief is needed.

1976 was the date of the crime,
The case continued by counsel, for reasons sublime.
And the state wasn't miffed
When he took the fifth,
Not Fifth Amendment but, extension of time.

The rules of the court, like the state laws compiled,
Need occasional enforcement, with censure quite mild.
Thus the state moves to strike,
Any thirteen you like,
Of the sixty-three pages now filed.

January 16, 1979

Motion to file overlength brief denied.
Chilton v. State, 611 P.2d 53 (Alaska 1980) (search ruled illegal; two justices dissenting).

IN THE SUPREME COURT FOR THE STATE OF ALASKA

ERIC CHILTON,

Appellant,

v.

STATE OF ALASKA,

Appellee.

MEMORANDUM IN OPPOSITION TO FILING OF OVERLENGTH BRIEF

No. 4148

ODE TO APPELLATE RULE 11(b)(4)

There was the Alaska High Court
Which expounded on contract and tort
Please make your briefs thrifty
Pages "may not exceed 50"
Plus 20 more for appellant's retort.

Comes now the defendant in the case below,
Struggling with an overlength brief in tow.
The transcript was short,
So why this treatise in court?
Who knows how the reply brief will grow?

We waited with patience, it must be conceded,
'Til a forthright "guilty" was finally well-pleaded.
An SIS was his due,
But we haven't a clue,
Why such a long brief is needed.

1976 was the date of the crime,
The case continued by defendant for reasons sublime.
And the state wasn't miffed
When he took the Fifth
Not Fifth Amendment but, extension of time.

The rules of the court, like the state laws compiled,
Need occasional enforcement, with censure quite mild.
Thus the state moves to strike
Any thirteen you like
Of the sixty-three pages now filed.

Respectfully submitted this 16th day of January, 1979.

AVRUM M. GROSS
ATTORNEY GENERAL

DANIEL W. HICKEY
CHIEF PROSECUTOR

By: /s/
Larry R. Weeks
District Attorney

DEPARTMENT OF LAW - CRIMINAL DIVISION
ATTORNEY GENERAL, STATE OF ALASKA
P. O. BOX KC, JUNEAU, ALASKA 99811
PHONE: (907) 465-3428

Alaska Department of Law
P.O. Box 110300
Juneau, Alaska 99811-0300