

# SALMON, SAGE-BRUSH, AND SAFARIS: ALASKA'S TERRITORIAL JUDICIAL SYSTEM AND THE ADVENTURES OF THE FLOATING COURT, 1901-1915

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## ABSTRACT

*In the early twentieth century, Alaska remained a remote place with little in the way of a judicial presence. Congress's interest in Alaska's natural resources eventually led it to establish a federal judicial presence, first in areas of rich gold deposits, and later in areas of rich copper deposits. Because of the difficulty of transportation, however, even these courts were not enough to establish a wide-reaching judicial presence in the territory. With these difficulties in mind, several federal judges sent to Alaska took the courts on the road, riding circuit aboard United States Revenue Service ships. This Article, a legal history piece, tells the story of Alaska's floating court.*

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## INTRODUCTION

In the new Pacific America of the early twentieth century, few places were more remote than the fishing village of Dillingham, Alaska—a town comprised of a few dozen houses, a jail, an abandoned hospital, a brand-new school, and several thriving canneries in which hundreds of Chinese laborers built cans and pressed into them the flesh of fish.<sup>1</sup> The local Aglegmiut people, who had lived for centuries in lively log huts and for decades draped droves of salmon over drying racks next to decaying Russian buildings, were moving from a subsistence livelihood to a cash-based livelihood—principally earning a living by working for or trading with cannery managers.<sup>2</sup> There, over four hundred years after the discovery of America, and at the end of over a hundred years of life under the Constitution, the American frontier continued to outlive its famous obituary.<sup>3</sup>

Yet when Reverend Charles Price accompanied Judge Frederick Brown to Dillingham in 1914 as court crier and bailiff, he found a familiar form of majesty—the currency of all courts:

The court room was an old cannery building. In front of the Judge stood an old box table; the lawyer's bench consisted of two planks laid across trestles, and the jurors sat in chairs of

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1. *Floating Court Dispenses Justice from Port to Port*, N.Y. TIMES, Aug. 13, 1911 at SM9.

2. John Parker, *The Last of Yesterday: The History of Dillingham and Nushagak Bay 14* (1972) (unpublished manuscript on file with the Alaska Law Review).

3. See generally *id.*

every description. There was no dock for the prisoner, no outward sign of court regalia, but during the whole proceedings the silent dignity of a U.S. Court was felt by the throng that crowded the room.<sup>4</sup>

Price traveled with Alaska's "floating court," a court that traveled aboard U.S. Revenue Service cutters visiting the Aleutian Islands and Bristol Bay beginning in 1901 and regularly visited every year from 1910 to 1915 as part of its circuit out of Valdez, Alaska. Guided to these distant islands and peninsulas by Judges James Wickersham, Peter Overfield, Edward Cushman, Thomas Lyons, Robert Jennings, and Frederick Brown, the floating court processed victims of mental illness, took appeals from U.S. commissioners' courts, naturalized immigrants, and handled serious criminal matters. For the outlying communities, the floating court's annual visits deterred crime, reduced litigation costs, increased communication with federal representatives, and assured at least some level of governmental regulation. For the federal government, the floating court helped control transient workers at the fringes of American society, made some measure of justice accessible to victims and defendants, and provided a federal presence at the limits of the American empire. It was the only federal court in American history to be routinely held aboard a boat, and it was the only way that the law of the United States could extend to the distant peninsulas and islands of Alaska.<sup>5</sup>

Part I recounts how Congress set up the Alaska territorial judicial system while focusing on gold mining and ignoring some outlying communities, and how judges modified the existing system to provide coverage beyond Congress's priorities by taking the court aboard U.S. Revenue Service cutters. Part II examines the naturalization and criminal dockets of the floating court during its annual visits during the 1910s,

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4. Charles S. Price, *With the Floating Court to the Pribolof Islands*, LXIX HOME MISSIONARY SOC'Y 65, 73 (1915).

5. Claus-M. Naske, *Alaska's Floating Court*, 11 W. LEGAL HIST. 163, 183 (1998) [hereinafter Naske, *Alaska's Floating Court*]. Of course, courts had been held intermittently on boats since the dawn of the nation. See William W. Blume, *Territorial Courts and Law: Unifying Factors in the Development of American Legal Institutions*, 61 MICH. L. REV. 39, 91-95 (1962-63). In 1910, the clerk of the floating court estimated the travels saved the government more than eight thousand dollars in defendant and witness transportation costs. Witnesses were compensated one dollar per day and fifteen cents per mile traveled, an amount that added up quickly considering the distance from Valdez to Bristol Bay. Claus-M. Naske, *The Floating Court*, in A HISTORY OF THE ALASKA FEDERAL DISTRICT COURT SYSTEM, 1884-1959, AND THE CREATION OF THE STATE COURT SYSTEM 10 (1985) [hereinafter NASKE, HISTORY]; see also Order for Discharge and Payment of Detained Witnesses, September 4, 1913, United States v. Kazakoff (Criminal Case File 390).

including the court's emphasis on race and alcohol-related crimes. Part III discusses the floating court's voyages, including their apparent adventuresome purposes and the problems the judges faced in obtaining juries.

The floating court's trials and administration demonstrate more than the simple fact that the federal government tailored existing policies of territorial governance to overcome uniquely Alaska obstacles. Rather, the existence and destinations of the floating court and the decisions of its judges make plain the federal government's regulatory priorities and attitude toward the territory of Alaska and its foreign workers in the 1910s. The life of the floating court, from its birth to its death, illustrates that while the federal government could efficiently project judicial authority over long distances, that undertaking was not always a priority.<sup>6</sup> Lastly, quite apart from the priorities of the government, the annual journeys of the floating court were high adventures for the judges and other members of the court during which they maintained little formal court administration, relaxed substantive law and trial procedures, and relished the adventure.

Except where otherwise noted, original documents can be found at the National Archives and Records Administration of the Pacific Alaska Region in Anchorage, Alaska.<sup>7</sup>

## I. THE LEGAL GEOGRAPHY OF THE EARLY ALASKA TERRITORY

Alaska's territorial judicial system evolved dramatically from its initial bare-bones regulation of alcohol and whaling crews to its focused regulation of gold at the dawn of the twentieth century. In structuring Alaska's judicial system to focus on gold, Congress left certain important places, peoples, and resources essentially unregulated, even though it

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6. Other authors have explored the friction that geographical features, including simple distance, create for governmental authorities and how political control yields to geographical features. *See* GEOFFREY BLAINEY, *THE TYRANNY OF DISTANCE: HOW DISTANCE SHAPED AUSTRALIA'S HISTORY* 82 (1966); FERNAND BRAUDEL, *THE MEDITERRANEAN AND THE MEDITERRANEAN WORLD IN THE AGE OF PHILLIP II* 38-41 (Siân Reynolds trans., Harper & Row 1972) (1966); MICHAEL G. KAMMEN, *A ROPE OF SAND: THE COLONIAL AGENTS, BRITISH POLITICS, AND THE AMERICAN REVOLUTION 175* (1968).

7. These documents are drawn from several sources: General Correspondence of the Governor of Alaska, 1909-1958, No Record Group; U.S. District Court for the District of Alaska, Third Judicial Division (Anchorage, Alaska); Records of the District Courts of the United States, Record Group 21 (RG 21); United States District Court for the District of Alaska, Third Judicial Division (Valdez, AK); Records of the District Courts of the United States, Declarations of Intention, 1910-1923, Record Group 21 (RG 21); and Petitions for Naturalization, 1903-1944, Record Group 21 (RG 21).

had the capacity to administer justice much more evenly. To more properly administer justice throughout the territory, a series of adventuresome judges and court staff took an age-old judicial tradition to sea.

#### A. Filling the Legal Vacuum: 1867-1900

After the United States purchased Russian America by treaty in 1867, Congress extended federal laws regarding commerce, navigation, and customs to the region.<sup>8</sup> For nearly twenty years, the only laws applicable in Alaska, other than the Purchase Treaty itself, governed furs and alcohol.<sup>9</sup> The scant few pages of the Customs Act of 1868 regulated Alaska's fur trade and empowered the Secretary of the Treasury to enforce trade and liquor laws in Alaska using U.S. customs collectors aboard U.S. Revenue Service cutters.<sup>10</sup> Although the U.S. Army initially had a nominal presence at Sitka and Wrangell, the customs collectors were the federal government's only policing mechanism in Alaska after the Army left in 1877.<sup>11</sup> Anyone caught violating trade laws could be prosecuted in the federal courts in California, Oregon, or Washington, but that process was extraordinarily expensive and hence rare.<sup>12</sup>

In the Organic Act of 1884, Congress first established a federal district court for the judicial district of Alaska and made Oregon law applicable in Alaska.<sup>13</sup> Oregon law—governing contracts, torts, property, and criminal prosecutions—could have allowed people to order their lives without worrying about the capriciousness of local, semi-formal mob rule. Unfortunately, Alaska lacked the legal actors necessary to enable people to deal with their legal affairs, and Congress saw fit to establish only one judgeship in the district of Alaska in 1884.<sup>14</sup> The lack of judges rendered Oregon law ineffective.<sup>15</sup> Attorneys, too,

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8. Customs Act of 1868, ch. 278, 15 Stat. 240.

9. *Id.*

10. *Id.*

11. STEPHEN HAYCOX, ALASKA: AN AMERICAN COLONY 182–83 (2002).

12. Customs Act of 1868, ch. 278, 15 Stat. 240; PAMELA CRAVEZ, SEIZING THE FRONTIER: ALASKA'S TERRITORIAL LAWYERS 25 (1984); Erwin C. Surrency, *Sketches of the Establishment of the Federal Courts by States [jurisdiction] and Their Judges*, 212 F.R.D. 611, 625 (2003).

13. Organic Act of 1884, ch. 53, § 3, 23 Stat. 24.

14. *Id.* (establishing one district judgeship).

15. The Alaska territorial district court was not a standard U.S. district court. In some ways, the court was more powerful—Congress gave it the combined powers of a federal court and a state court. Yet, it was also more limited than a U.S. district court because, while U.S. district court judges had life tenure during good behavior, territorial judges in Alaska served at the pleasure of the President. Alaska Civil Code, ch. 786, §§ 4–5, 31 Stat. 322 (1900); see UNITED

were generally absent. Before 1884, there was no need for lawyers in Alaska because there was no civil law and, more importantly, no court. Judge James Wickersham, one of Alaska's first judges, jokingly described in his diary how in the town of Rampart, "[T]wo or three miners were trying to get into a lawsuit, but fortunately for them there were no lawyers . . . so they settled it."<sup>16</sup> Remoteness alone meant that judicial administration in these far-flung regions consisted largely of semi-organized self-help.

To fill the legal vacuum, many Alaskans recognized the rules and rulings of miners' meetings, which were held to try and punish offenders using the same types of procedures miners had used throughout the American West.<sup>17</sup> These meetings had some of the trappings of due process, i.e., elections, reasoned decisions, and legal forms. Accused parties, however, were not represented in these proceedings.

In the 1880s and early 1890s, before the Gold Rush, when miners were still just trickling into Alaska, another major industry—canning—brought in waves of immigrant workers. Canneries began large-scale operations in Alaska in 1882, and every subsequent year the cannery companies imported workers in May and returned them in the autumn. During the 1880s and 1890s, these companies continued building new canneries and drew increasing numbers of workers. In 1892, nearly 2500 Chinese workers arrived to work in the canneries; by the turn of the century, there were nearly 4000 arriving each year.<sup>18</sup> The labor force grew as the fish pack increased—from just over eight thousand pounds

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STATES CONST. ART. III, § 1; *Allen v. Myers*, 1 Alaska 114, 118–19 (D. Alaska 1902); *U.S. v. Powers*, 1 Alaska 180, 184 (D. Alaska 1901); DAVIS C. FREDERICK, *RUGGED JUSTICE: THE NINTH CIRCUIT COURT OF APPEALS AND THE AMERICAN WEST, 1891-1941*, at 83 (1994); WILLIAM R. HUNT, *NORTH OF 53: THE WILD DAYS OF THE ALASKA-YUKON MINING FRONTIER* 123 (1974). For an overview of territorial court system history, see Kermit L. Hall, *Hacks & Derelicts Revisited: American Territorial Judiciary, 1789-1959*, 12 W. HIST. Q. 273 (1981).

16. JAMES WICKERSHAM, *OLD YUKON: TALES-TRAILS-TRIALS* 129–30, 372 (1938).

17. See, e.g., LAWRENCE M. FRIEDMAN, *A HISTORY OF AMERICAN LAW* 275 (1973); HUNT, *supra* note 15, at 20–21; Andrew P. Morriss, *Miners Law: Informal Law in Western Mining Camps*, in *LAW IN THE WESTERN UNITED STATES* 210 (Gordon M. Bakken ed., 2000); JIM LETHCOE & NANCY LETHCOE, *A HISTORY OF PRINCE WILLIAM SOUND* 60 (2d rev. ed. 2001) [hereinafter *PRINCE WILLIAM SOUND*]. Punishment itself was often limited by the remoteness of judicial administration or law enforcement. For example, because there was no jail in Copper City near Valdez, miners there could only free convicted criminals or subject them to corporal punishment. JIM LETHCOE, *VALDEZ GOLD RUSH TRAILS OF 1898-99*, at 21 (1997) [hereinafter *LETHCOE, VALDEZ GOLD RUSH*].

18. Andrew B. Lee, *The Chinese Cannery Employees in Alaska* 2–24 (July 1963) (unpublished manuscript, on file with the Alaska Law Review).

in 1878 to almost a million pounds in 1897.<sup>19</sup> Cannery management and Chinese tongs—communal societies—had a powerful influence on workers on voyages out of San Francisco and prevented U.S. authorities from getting involved with the Chinese workers, allowing extremely poor treatment to continue.<sup>20</sup> Thus, much like the miners, these thousands of seasonal workers went essentially unregulated by the U.S. government until the late 1890s:

Superintendants in those hard-fisted days could waste no worry over nice legal technicalities as to their jurisdiction in upholding peace and order among their employees. They were magistrate, judge and legislator over the lives of the several hundred cannery employees and fishermen. . . . Necessarily they ruled largely with a pike-pole in one hand and a belaying pin in the other. . . .<sup>21</sup>

During the late 1890s, however, the Yukon and Nome gold rushes brought thirty thousand people to Alaska.<sup>22</sup> Alaska still had only one judge at that time, M.C. Brown, and he was swamped with work.<sup>23</sup> Congress needed to establish a proper court system—and quickly. Thankfully, the same visions of a new frontier that attracted goldrushers also tempted some judges, attorneys, and professional court staff. There were plum positions in “Seward’s Icebox,” and many legal and judicial actors were ready, even eager, to travel to remote parts of Alaska for the chance to strike it rich or simply for sheer adventure. As a result, Alaska began filling with adventurous Americans, American industries, and the

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19. *Id.*

20. *Id.*; see also DONALD CRAIG MITCHELL, *SOLD AMERICAN: THE STORY OF ALASKA NATIVES AND THEIR LAND, 1867-1959* 118–21 (2003); STEVEN J. DINER, *A VERY DIFFERENT AGE: AMERICANS OF THE PROGRESSIVE ERA* 92 (1998). See generally Clare V. McKanna, *Chinese Tongs, Homicide and Justice in Nineteenth Century California*, 13 W. LEGAL HIST. 205 (2000). At its worst, the conditions for Chinese workers at Alaska canneries were little different than abject slavery. PRINCE WILLIAM SOUND, *supra* note 16, at 103–04. For example, when the *Star of Bengal*, an Alaska Packers Association vessel, wrecked on Coronation Island on its return voyage to San Francisco, 111 people died: 15 white crewmen and 67 Chinese, 26 Japanese, and 3 Filipino cannery workers. In its account, the front page of the Wrangell *Sentinel* listed the names of the white crewmen and quoted the captain, “We buried all the white men we could find.” Wesley Loy, *Shipwreck Jolted Alaska Salmon Industry*, ANCHORAGE DAILY NEWS, Dec. 2, 2008 at A1.

21. R.E. Robertson, John Law Sails to Bristol Bay 21 (unpublished manuscript).

22. James Ducker, *Gold Rushers North: A Census Study of the Yukon and Alaska Gold Rushes, 1896-1900*, in AN ALASKA ANTHOLOGY 207 (Stephen Haycox & Mary C. Mangusso eds., 1996).

23. WILLIAM R. HUNT, *DISTANT JUSTICE: POLICING THE ALASKAN FRONTIER* 68 (1987); see also Organic Act of 1884, ch. 53, §3, 23 Stat. 24 (1884); HAYCOX, *supra* note 11, at 190.

American legal system; it would only be a matter of time until Alaska would be wholly identified with the U.S.

### B. Congress Catches Gold Fever: 1900-1909

Congress responded to the Alaska Gold Rush by regulating gold and the people working to extract it. It enacted the Civil Code of Alaska on June 6, 1900.<sup>24</sup> The code split the Alaska judicial district into three divisions, each with its own judge and each headquartered in a location important to regulating gold. The first division was headquartered at Juneau, population 1300, because of its location near the Treadwell Mines.<sup>25</sup> The judgeship in the first division was a plum position that went to Judge M.C. Brown, already in residence in southeast Alaska. The second division was headquartered at Nome, population 12,000, because of its own golden sands.<sup>26</sup> This position was also a political plum, and Arthur Noyes' influential friend, and co-conspirator, Alexander Mackenzie, won him the position.<sup>27</sup> Finally, the third and largest division, a division that encompassed the Aleutians, the Alaska Peninsula, the Alaska Interior, and southcentral Alaska, was headquartered at Eagle, population 300, near the Canadian border to regulate shipments on the Yukon River.<sup>28</sup> Sparsely populated, the

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24. Generally, federal territorial court systems required territorial trial judges to gather as a territorial supreme court; under the Alaska Code, appeals for prize cases (cases involving the seizure of vessels or property at sea) and appeals involving constitutional questions went directly to the U.S. Supreme Court, and other appeals with more than \$500 at stake went to the Ninth Circuit Court of Appeals in California. Alaska Civil Code, ch. 786, §§ 4-5, 31 Stat. 322 (1900); see also Andrew P. Morriss, *Judicial Removal in Western States and Territories, in LAW IN THE WESTERN UNITED STATES* 88 (Gordon M. Bakken ed., 2000). None of the floating court's case files include a notice of appeal, and no individuals were tried twice in the 1910-1915 period. The only appeal this author identified is Fred Hardy's, discussed *infra* note 178.

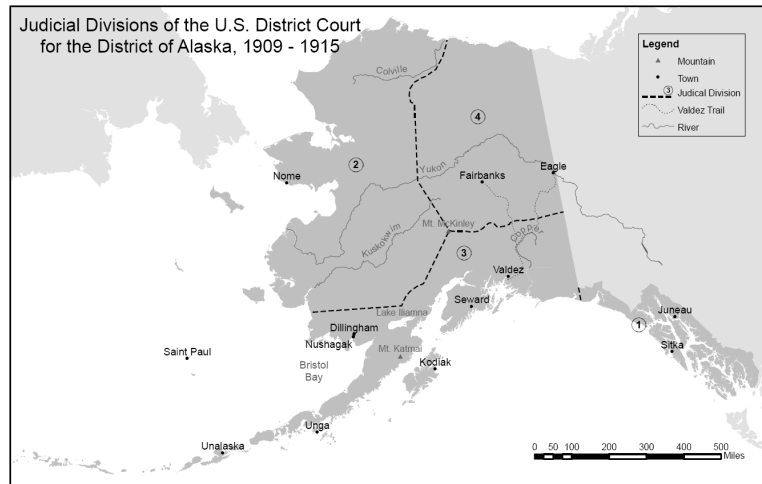
25. HAYCOX, *supra* note 11, at 187-90.

26. *Id.*

27. Noyes' criminal conspiracy in Nome was unprecedented in its scope, involving U.S. Senators, a political kingmaker, and probably top officials at the U.S. Department of Justice; it prompted the Ninth Circuit Court of Appeals to write that "the high-handed and grossly illegal proceedings initiated almost as soon as Judge Noyes and [Alexander] McKenzie had set foot on Alaskan territory at Nome . . . may be safely and fortunately said to have no parallel in the jurisprudence of this country." *Tornanses v. Melsing*, 106 F. 775, 789 (9th Cir. 1901); see Claus-M. Naske, *The Shaky Beginnings of Alaska's Judicial System*, 1 W. LEGAL HIST. 163, 199 (Summer-Fall 1988). The story of Judge Noyes and Alexander McKenzie, who seized mining claims subject to litigation and plundered them, is told in many places. See, e.g., HUNT, *supra* note 23, at 122-28; WICKERSHAM, *supra* note 16, at 337-61; William W. Morrow, *The Spoilers*, 4 CAL. L. REV. 89 (1916).

28. Alaska Civil Code, ch. 786, §§ 4-5, 31 Stat. 322 (1900).

division was the size of Texas, and had no roads. No plum here; this was a pit. Eagle was so far removed from the rest of the United States that it did not use U.S. currency until 1904, instead relying on gold dust and Canadian currency.<sup>29</sup> James Wickersham, trying to flee as far as possible from incessant political enemies in the new Washington State, won the appointment to the third division.<sup>30</sup>



Valdez, population 1100, did not draw Congress's immediate attention when judicial resources were allocated, despite the fact that Valdez was the intended gateway to the Interior's goldfields and was in desperate need of formal judicial administration. The hills near Valdez could not be mined efficiently for gold; instead, they held large deposits of copper—a metal that did not fit into the urgent nationwide debate over gold and silver.<sup>31</sup> Moreover, the Valdez trail into the Interior had a reputation as a "law and order" trail well-regulated by miners.<sup>32</sup> In reality, the Valdez trail only appeared to be well-regulated in comparison to the rampant criminal activities in Nome and Skagway. Judge Wickersham saw Valdez's urgent need for more steady judicial administration when he arrived there, aboard the floating court, on

29. HUNT, *supra* note 23, at 130.

30. Terrance Cole, *Rough Justice: The Courtroom Battles, Political Wars and Secret World of James Wickersham, the First Judge on the Yukon*, CLE #2008-036, Oct. 15, 2008.

31. WALTER LAFEBER, *THE NEW EMPIRE: AN INTERPRETATION OF AMERICAN EXPANSION, 1860-1898*, at 330-31 (1998).

32. PRINCE WILLIAM SOUND, *supra* note 17, at 57-61; ELIZABETH TOWER, *ICEBOUND EMPIRE: INDUSTRY AND POLITICS ON THE LAST FRONTIER* 68 (1998).

October 25, 1903.<sup>33</sup> During the short 1903 court term, Wickersham resolved several high-profile mining claims waiting on the docket and helped fill the power vacuum by validating local, informal laws.<sup>34</sup> Having seen the pressing need for a court in Valdez, Wickersham met with members of the Senate Subcommittee on Territories in 1904 and urged them to create a new judicial division headquartered at Valdez.<sup>35</sup>

Congress waited until 1909 to act on that recommendation.<sup>36</sup> During that time, Valdez faced several legal crises, including ongoing litigation over the largest copper deposits in the world and a management-led melee in Keystone Canyon between competing railroad construction crews—a battle that could have been prevented had a court been seated at Valdez to deal quickly with requests for injunctions.<sup>37</sup> Lawlessness, both organized and otherwise, created major problems for mining and railroad companies, especially after the Panic of 1907 dried up investment in the territory's railroads and unemployment skyrocketed.<sup>38</sup> In addition to facing organized violence and uncertainty over property rights, Valdez residents were swindled by silver-tongued charlatans, like Henry Reynolds, who took advantage of the lack of judicial authority and law enforcement.<sup>39</sup> Yet, despite nearly a decade of rampant and occasionally violent lawlessness, existing legal problems were likely not at the heart of Congress's action in 1909. Rather, Congress likely headquartered the new judicial division

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33. WICKERSHAM, *supra* note 16, at 423.

34. The Alaska Civil Code did not provide clear rules on municipal incorporation or local lawmaking. Naske, *Alaska's Floating Court*, *supra* note 5 at 168. This issue would arise again in other places in the third division. *See* *Town of Seward v. Seward Water and Power Co.* (Civil Case File 408).

35. Naske, *Alaska's Floating Court*, *supra* note 5, at 168.

36. Act of March 3, 1909, 35 Stat. 839.

37. Elizabeth A. Tower, *Railroad Fever in Valdez, 1898–1907: An Account by George C. Hazelet*, 9 ALASKA HIST. 2, 42 (1994).

38. CLAUSS-M. NASKE & HERMAN SLOTNICK, ALASKA: A HISTORY OF THE 49TH STATE 90 (2d ed., 1987); *see, e.g.*, *Monahan v. Lynch*, 2 Alaska 132, 134 (D. Alaska 1903); *Copper River Mining Co. v. McClellan*, 2 Alaska 134, 134 (D. Alaska 1903); *In re Bruno Munro*, 1 Alaska 279, 280–81 (D. Alaska 1901). Many of these legal problems stemmed from the company structure of railroad and copper mining enterprises, which differed drastically from gold mining enterprises. Copper mining and railroad construction required large-scale operations, corporate investment, and large teams of employees—far different from gold mining, which was chiefly accomplished or attempted by solitary or small groups of miners. Copper mining and railroad construction company structures and employment patterns set the stage for management-led violence and competition. *See generally* CHARLES K. HYDE, COPPER FOR AMERICA: THE UNITED STATES COPPER INDUSTRY FROM COLONIAL TIMES TO THE 1990'S (1998).

39. Tower, *supra* note 37, at 42.

in Valdez because of the growing importance of copper.<sup>40</sup> In fact, because conservationists outside of Alaska, such as President Roosevelt and Gifford Pinchot, had already forced the territory into a period of conservation in 1908 to remedy what they saw as problems created by large companies in Alaska, legal troubles in Valdez had substantially subsided by 1909.<sup>41</sup>

Several other communities in Alaska also had the population and legal issues sufficient to merit a dedicated court system. These communities included the cannery villages of Bristol Bay and the Aleutian Islands. In addition to drawing U.S. citizens from the contiguous states, Alaska drew immigrant workers from Pacific nations to work in canneries.<sup>42</sup> Each season, the population of the cannery villages grew enormously. For example, only two hundred men resided in Bristol Bay throughout the year; but during the fishing seasons of the 1910s, 6500 men arrived each season to work at the twenty-one canneries there.<sup>43</sup> Although the workers had a wide variety of backgrounds, the majority of cannery workers were Chinese, partly because Chinese workers had a reputation as hard workers who accepted low wages and partly because Chinese contractors pressured for exclusion of non-Chinese workers.<sup>44</sup>

Interactions between groups of immigrant workers obviously did occur, but cannery management practices that segregated workers by

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40. HAYCOX, *supra* note 11, at 223–24. It is unclear why Congress selected Valdez, rather than Cordova, as the headquarters. Cordova economically outpaced Valdez in this era due to its influence under the Guggenheim-Morgan syndicate. PRINCE WILLIAM SOUND, *supra* note 17, at 93.

41. See Tower, *supra* note 37, at 42–43.

42. See generally Lee, *supra* note 18. This employment fits within a larger historical pattern of Chinese labor throughout the Pacific region. See generally JEAN HEFFER, THE UNITED STATES AND THE PACIFIC: HISTORY OF A FRONTIER, 11–46 (W. Donald Wilson trans., 2002). The canneries around Unga and Nushagak employed some local Alaska Natives. Ralph E. Robertson, Diary of Ralph Elliott Robertson: Things to Remember (1912) (unpublished, on file with the Alaska Law Review). However, cannery owners in Bristol Bay largely did not capitalize on local labor. White cannery managers, at least in Bristol Bay, had a clear prejudice against Alaska Natives working in the canneries themselves, although they welcomed fish caught by Alaska Native fishermen. *Id.*

43. Naske, *Alaska's Floating Court*, *supra* note 5, at 179.

44. CHRIS FRIDAY, ORGANIZING ASIAN AMERICAN LABOR, 1870-1942, at 95 (1994); Robertson, *supra* note 21, at 20. Chinese workers were also overrepresented in the Alaska canning industry because of anti-Chinese practices in the Alaska mining industry. Anti-Chinese violence and employment discrimination, although apparent throughout much of Alaska, was not as strong in the remote villages of Bristol Bay. The number of Chinese cannery workers was so large that Chinese workers represented a large plurality of all foreign-born residents of Alaska. See Ducker, *supra* note 22, at 212.

language or national origin severely limited these interactions.<sup>45</sup> Worker segregation generally included both living and working arrangements as well as accommodations aboard ships to Bristol Bay.<sup>46</sup> Often a lack of shared language dramatically cabined the lives of cannery workers; even those workers who spoke English could not communicate with many local Alaska Natives who spoke Russian, not English.<sup>47</sup>

The seasonal population booms in remote locations strained law enforcement and judicial administration. After 1909, when Congress created a new judicial division headquartered at Valdez, most of the division's cases arose in southcentral Alaska, where witnesses could easily travel to testify. But the new court also had to cover Bristol Bay, Unalaska, and the Pribilof Islands.<sup>48</sup> While there were some roads in Alaska, no road or trail connected the villages of Bristol Bay to the court's headquarters.<sup>49</sup> The same was true for railroads.<sup>50</sup> Thus, in an age

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45. Testimony of M. Ishu, July 1911, United States v. Demizu (Criminal Case File 280); Testimony of Ben Nomura, July 1910, United States v. Mizutani (Criminal Case File 226); Testimony of G.F. Alvarez, August 6, 1912, United States v. Flores (Criminal Case File 345); Confession of M. Tamara, August 6, 1915, United States v. Tamara (Criminal Case File 486); *see also* Lee, *supra* note 18, at 7.

46. *See, e.g.*, Lee, *supra* note 18, at 49. Such segregation was also common during this era in other forms of unskilled labor. *See* DINER, *supra* note 20, at 60, 72. But, there were exceptions, too, such as Petterson's Cannery on the Naknek River, where Japanese and Mexican workers labored and bunked together. *See* Confession of M. Tamara, August 6, 1915, United States v. Tamara (Criminal Case File 486).

47. *See* Naske, *Alaska's Floating Court*, *supra* note 5, at 181; Robertson, *supra* note 42.

48. In creating a new division, Congress split the third division into two divisions, and made the southern half, including the Aleutian Islands and Bristol Bay, part of the division headquartered at Valdez. The northern portion became the fourth division. *Commissioners and Recording Districts: Third Division Territory of Alaska* (Dec. 1, 1909), (Civil Case File 477, 2 of 2) (on file with the Alaska Law Review).

49. The lack of roads and rails was not for lack of effort, but simply because of the size and geography of Alaska. Indeed, the federal government's role in Alaska's development in the early twentieth century was similar to the earlier development of western territories in the contiguous United States. The federal government did not generally neglect Alaska, and met remoteness, continental size, difficult climate, and small population with commensurate efforts. The federal government, through the army, navy, and scientific expeditions by the Smithsonian, explored and mapped swaths of Alaska and began building trails as early as the 1870s. In the early twentieth century, Congress created the Alaska Road Commission, which used federal money to build roads connecting several towns in southcentral Alaska and the Interior. But distance, scale, and remoteness drove expenses up, and the federal government was only able to interconnect a small part of the territory by road. HAYCOX, *supra* note 11, at 218; PRINCE WILLIAM SOUND, *supra* note 17, at 37-49; MORGAN B. SHERWOOD, *EXPLORATION OF ALASKA, 1865-1900* (1992); Claus-M. Naske, *Some Attention, Little*

of railroads and automobiles, the federal government and private companies continued to rely on a network of steamships, cutters, and dogsleds to carry the mail, personnel, and goods in Alaska.

The steamboats of the Yukon and other Alaska rivers were humorously dubbed "an engine on a raft with \$11,000 worth of jig-saw work."<sup>51</sup> Manufactured, sent in parts, and then assembled by company men on site, the western steamboats combined a capacity for greater freight with lower per passenger construction costs but were not particularly sturdy.<sup>52</sup> U.S. Revenue Service cutters could reach locations such as Dillingham and Valdez more easily than they could reach division headquarters like Nome. In fact, vessels traveling to Nome would often stop in Valdez and pass by Dillingham and through Unalaska before arriving at Nome.<sup>53</sup> Trips to Eagle from the contiguous states, whether by steamboat up the Yukon or over the new Valdez trail, would pass near or through Valdez itself. Hence, issues like transportation and distance could not have governed the original decision to place courts at Nome and Eagle, and not at Dillingham and Valdez. The U.S. government, which defeated the tyranny of distance in most of the Pacific, allowed it to continue to reign in certain parts of Alaska.<sup>54</sup>

The organization of the Alaska judicial divisions reflected Congress's priorities in the territory and not the dictates of population or transportation. Because of those priorities, Valdez was a destination for itinerant judges in Alaska until 1910. For over a decade after thousands

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*Action: Vacillating Federal Efforts to Provide Territorial Alaska with Economic Base*, 26 W. HIST. QUARTERLY 36, 38–39 (1995).

50. Private investors, encouraged by shrewd marketing by the Seattle Chamber of Commerce, began to build railway and marine highway systems connecting Valdez and the Klondike to Seattle in an effort to make that city rival San Francisco as the commercial and financial center of the Pacific Coast. Indeed, Seattle's population increased by 88% in the late 1890s, in large part because of the welcome boom created by the well-crafted image of the gold rush. HUNT, *supra* note 15, at 30–31; TOWER, *supra* note 32, at 109. Tower, *supra* note 37, at 31–42. This successful marketing campaign touted Alaska's mineral resources and role in trade with Asia. But the distance to Alaska and especially to remote regions of it made private infrastructure just as costly as federally sponsored infrastructure. When New York bankers tried to build railroads from Valdez into the Interior and funded large-scale copper mining operations around Valdez, they could not control local management and many were utterly defrauded. Railroads extending from Valdez to Nome and under the Bering Sea to Siberia remained dreams in the clouds. Terrance Cole, *Promoting the Pacific Rim: The Alaska-Yukon-Pacific Exposition of 1909*, 6 ALASKA HIST. SOC'Y 1, 18, 21, 30 (1991); Tower, *supra* note 37, at 109.

51. LOUIS C. HUNDER, *STEAMBOATS ON THE WESTERN RIVERS* 62–63 (1949).

52. *Id.*

53. See HUNT, *supra* note 15, at 58.

54. HEFFER, *supra* note 42, at 127.

of workers landed on the icy beaches of Valdez in 1898, Congress failed to place a permanent court in Valdez to protect its people and help develop its rich nearby resources. When Congress finally recognized the value of resources near Valdez and reorganized the Alaska territorial courts to seat a judicial division at Valdez, the town became a center of judicial administration in the territory, dispatching judges on a floating circuit court.

### C. Riding and Floating Circuit

The tradition of a circuit court is an old one, dating back to the courts of assize in twelfth-century England.<sup>55</sup> According to English legal historian Frederic Maitland, "In the second year of Edward's reign some two thousand commissions of assize were issued. . . . [T]he practice seems to have been to divide England into four circuits and to send two justices of assize round each circuit."<sup>56</sup> By the mid-eighteenth century, the assize courts had evolved into a judicial pageant complete with trumpeters, javelin-men, ornate costumes, and even assize balls where parties at court would dance and seek favor from the big-wigs.<sup>57</sup>

In the early American republic, circuit riding was far less spectacular and quite burdensome for many judges. For example, Judge Kirby Benedict, chief justice of the New Mexico territory in the 1850s, had to ride circuit through a vast desert district that a later territorial legislature would publicly consider to be a punitive appointment.<sup>58</sup> He drank heavily, but it is unclear if he did so to deal with his judicial lot or, more likely, if the legislature dealt him his judicial lot because of his excesses.<sup>59</sup> Territorial legislatures often created and shaped "sage-brush" judicial districts and made appointments to them in order to punish specific judges.<sup>60</sup> But, despite its individual costs, circuit riding prudently saved money and kept the federal government in contact with local communities.<sup>61</sup> In the early twentieth century, many judges in the contiguous U.S. rode circuit by horseback, but the requirements of Alaska geography were different from other states and territories. Alaska was by itself continental in size with few roads and numerous

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55. FREDERICK POLLOCK & FREDERIC MAITLAND, *THE HISTORY OF ENGLISH LAW BEFORE THE TIME OF EDWARD I*, at 201 (2d ed. 1996).

56. *Id.*

57. Douglas Hay et al., *Property, Authority, and the Criminal Law*, in *ALBION'S FATAL TREE: CRIME AND SOCIETY IN EIGHTEENTH CENTURY ENGLAND* 27-31 (1975).

58. FRIEDMAN, *supra* note 17, at 282.

59. *Id.*

60. Morriss, *supra* note 24, at 87.

61. See Joshua Glick, Comment, *On the Road: The Supreme Court and the History of Circuit Riding*, 24 *CARDOZO L. REV.* 1753, 1757-98 (2003).

islands—a place witheringly difficult to traverse and at times cripplingly cold. The remoteness of Alaska's towns and villages limited the court's ability to function in a central location by frustrating transportation of criminals, witnesses, and petitioners to court.<sup>62</sup> Ward McAllister, Jr., the first district court judge in Alaska, was unfortunately one of many poor judges to come to Alaska in its early territorial days.<sup>63</sup> McAllister was directed to hold court in Sitka and Wrangell and believed it utterly impossible to deal with legal problems in other locations. Hence, he did not even try, instead drawing his patronage salary, drinking, cavorting, and then moving on to the next opportunity.<sup>64</sup>

The Department of Justice attempted to address the remoteness of Alaska's villages by allowing judges to hold court on a boat.<sup>65</sup> The Alaska Civil Code allowed Alaska's courts to move depending on the needs of the court and the parties before it.<sup>66</sup> This was a continuation of the pattern of judicial administration in earlier territories and was critical to the court's functioning.<sup>67</sup> Fortunately, by the time Congress enacted the Alaska Civil Code, the Gold Rush had already fired the imaginations of many Americans, including members of the judiciary.<sup>68</sup> Some, like Judge Wickersham, made the very best of their sage-brush districts. In his first year in Alaska at Eagle, Wickersham was required to travel hundreds of miles by steamboat, dogsled, and foot.<sup>69</sup> In March 1901, both he and Judge M. C. Brown proposed using U.S. Revenue Service cutters to carry their respective courts to Unalaska, Bristol Bay, and Valdez to resolve important mining disputes that were both causing violence and discouraging investment.<sup>70</sup> On March 28, 1901, the Department of Justice approved Wickersham's request, and he

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62. Naske, *Alaska's Floating Court*, *supra* note 5, at 166–67.

63. Many scholars argue such judges moved throughout the American West, ill-prepared, ill-tempered, and unwilling to rough it in the legal and natural wilderness. FRIEDMAN, *supra* note 17, at 282. Others disagree. *See* Hall, *supra* note 15, at 279–85.

64. HUNT, *supra* note 23, at 18–19.

65. Surrency, *supra* note 12, at 625.

66. Alaska Civil Code, 31 Stat. 322, ch. 786, (1900).

67. *See generally* Glick, *supra* note 61, at 1757–98.

68. *See, e.g.,* Cole, *supra* note 50. These visions, crafted and cultivated by the Seattle Chamber of Commerce and popularized by novelists, depicted Alaska as a new frontier where vast riches could be won. *Id.*

69. *See generally* WICKERSHAM, *supra* note 16; FRIEDMAN, *supra* note 17, at 282.

70. WICKERSHAM, *supra* note 16, at 321–22; Letter from Acting Attorney Gen'l to the Sec'y of the Treasury, March 15, 1901; Letter from Acting Sec'y of the Treasury to Attorney Gen'l, March 13, 1901; Letter from Judge M.C. Brown to Attorney Gen'l, April 20, 1901.

embarked on the first floating court voyage to Unalaska and Valdez, part of his division but thousands of miles away.<sup>71</sup>

Judge Wickersham took a court aboard U.S. Revenue Service cutters in 1901 and 1903, but the floating court's regular calendars began in 1910, the year after Valdez became the headquarters of a new judicial district.<sup>72</sup> Although Valdez had suffered a decade of lawlessness, the establishment of a judicial division in 1909 was an overreaction to then-dwindling litigation.<sup>73</sup> Not until the copper industry underwent tremendous growth during World War I did legal wrangling in Valdez pick up again.<sup>74</sup> Hence, between 1909 and 1915, the new court in Valdez had little to do.

## II. THE CASES BEFORE THE FLOATING COURT, 1910-1915

With little litigation to worry about, some Alaska judges began to dream of adventure aboard the floating court. So each summer between 1910 and 1915, the Valdez court floated circuit to process criminal charges and to naturalize immigrants.<sup>75</sup> Housed in dilapidated laundry attics, abandoned canneries, schoolhouses, or occasionally simply on the vessel's deck, the floating court focused on the Bristol Bay precinct, although it did handle some matters in the Aleutian Islands and Unga precincts.<sup>76</sup> The proceedings themselves show a remarkable emphasis on race—in the parties that came before the court, how they came before the court, and how the court explicitly treated different people. Race could be a basis for mercy or suspicion, but it was almost uniformly part of the

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71. TRUMAN STROBRIDGE & DENNIS NOBLE, *ALASKA AND THE U.S. REVENUE CUTTER SERVICE 1867–1915*, at 108 (1999).

72. Act of March 3, 35 Stat. 839 (1909).

73. See Tower, *supra* note 37, at 42; see generally Tower, *supra* note 32.

74. PRINCE WILLIAM SOUND, *supra* note 17, at 94.

75. *Floating Court Dispenses Justice from Port to Port*, *supra* note 1, at SM9. The current study only deals with the criminal and naturalization matters before the floating court from 1910–1915. An exhaustive search of the civil case files of the third division of the district court of Alaska produced no instances of civil matters being brought before the floating court. According to Robertson's memoir, the court conducted no civil business. A complete list of archived floating court criminal cases from 1910–1915 can be found at Appendix A. A complete list of archived floating court naturalization cases from 1910–1915 can be found at Appendix B. Many cases and proceedings have evidently been lost; Ralph Robertson refers to many in his memoirs that have no official record. See generally R.E. Robertson, *The Law Mushes and Sails to Nome* (on file with the Alaska Law Review). Although court decisions were regularly collected and published in the Alaska Law Reporter, no cases decided only by the floating court were published.

76. See *infra* App. A.

deliberations.<sup>77</sup> The criminal proceedings also reveal an incredible emphasis on punishing alcohol production and sales, occasionally treating alcohol sales as seriously as homicide.<sup>78</sup> The naturalization proceedings show that, despite the fact that many immigrant workers had access to courts as defendants and complaining witnesses, only a select few had access to the court for immigration.<sup>79</sup>

#### A. The Naturalization Calendar

From the 1880s to the beginning of World War I, the United States drew in millions of new workers: nearly four million from Italy, over three million from Russia, one and a half million from both Scandinavia and Ireland, and two and a half million from Germany.<sup>80</sup> From 1906 to 1915 alone, the United States received 127,000 immigrants from Mexico, 125,000 from the West Indies, and over 500,000 from Canada.<sup>81</sup> The U.S. also received nearly 500,000 people from East Asia in the decades surrounding the turn of the century, despite Congress's formal exclusion of Chinese workers.<sup>82</sup>

In the first year of the floating court, Judge Cushman received the bulk of the petitions for naturalization that came before the floating court, suggesting that he handled a substantial backlog of petitions from individuals who could not make the trip to a division headquarters.<sup>83</sup> These petitions came from people living in places like Nushagak, Unga, and Sand Point. Although workers in Bristol Bay and the Aleutian Chain were originally from all over the world (especially China, Japan, the Philippines, and Mexico) nearly every one of the petitioners for naturalization was born in northern European countries like England, Germany, Sweden, Norway, Denmark, and Finland. The petitioners had many different occupations; they were carpenters, blacksmiths, fishermen, sailors, farmers, hunters, and miners. Cushman did

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77. This conclusion is based on the author's extensive review of the court dockets and cases.

78. Compare *United States v. Tamara* (one year sentence for manslaughter) (Criminal Case File 486) with *United States v. Foo Kaw* (one year sentence for selling a bottle of whiskey) (Criminal Case File 225).

79. This conclusion is based on the author's extensive review of the court dockets and cases.

80. MATHEW FRY JACOBSON, *BARBARIAN VIRTUES* 64 (2000).

81. *Id.*

82. *Id.* at 64, 81, 200–01. The Chinese were the only nationals specifically restricted until the late 1910s, when Congress explicitly began regulating immigration rates by race. *Id.*

83. The judges of the floating court ruled on some petitions that had been in the docket for years—in one case since 1890. See *Petition for Naturalization of Carl Malkeit*, July 21, 1910.

naturalize two cannery workers—one a cannery watchman, and one a part-time deckhand and cannery helper—but neither was a seasonal worker born in another Pacific nation. Only eight more petitions were filed over the next five years.<sup>84</sup> Each of these petitions was also from a person born in northern Europe.<sup>85</sup>

Strangely, the floating court seems to have heard no petitions from Asian nationals, despite the fact such petitions were made (though rarely granted) in other jurisdictions.<sup>86</sup> For example, Ah Yup, a Chinese man, petitioned for citizenship in California in 1878, arguing that his status was undetermined because the naturalization law in effect governed only people who were “white” or “of African descent.”<sup>87</sup> After Congress passed the Chinese Exclusion Act in 1882, Indians, Turks, Armenians, Filipinos, and Pacific Islanders all petitioned for citizenship.<sup>88</sup> In each case, the deliberating court considered whether the petitioner was “white.”<sup>89</sup> Apparently no seasonal workers from Asia petitioned for naturalization through the floating court.<sup>90</sup>

Perhaps the most remarkable absence from the floating court’s immigration docket concerned petitions from Alaska Natives and Creoles. Some Alaska Natives and Creoles were eligible to be citizens under the Dawes Act, which required Alaska Natives to renounce tribal ties and become independent landowners to acquire citizenship.<sup>91</sup> Additionally, some Alaska Natives and Creoles were eligible to be citizens under the Alaska Purchase Treaty, which declared that Alaska Natives considered “civilized” by Russia would become U.S. citizens.<sup>92</sup> Because the Alaska Purchase Treaty provided an independent path to citizenship, some Alaska Natives and Creoles could have claimed citizenship through the courts without fulfilling the arduous requirements outlined in the Dawes Act, the general route to U.S. citizenship for American Indians until 1924.<sup>93</sup> At least one Creole, John Minook, petitioned for U.S. citizenship in the Alaska territorial court

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84. *See infra* App. B.

85. *Id.*

86. For a good overview of Chinese immigration during the exclusion era, see generally ERIKA LEE, *AT AMERICA’S GATES: CHINESE IMMIGRATION DURING THE EXCLUSION ERA, 1882–1943* (2003).

87. JACOBSON, *supra* note 80, at 194–200.

88. *Id.*

89. *Id.*

90. *See* App. B.

91. *See generally* FREDERICK E. HOXIE, *A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880–1920* (1984).

92. Letter from U.S. Attorney for the District of Alaska to J.F. Strong, Governor, State of Alaska (May 28, 1913) (on file with the Alaska Law Review).

93. *See generally* HOXIE, *supra* note 91.

system and was declared a U.S. citizen.<sup>94</sup> His immigration case was sufficiently important that the U.S. attorney for the Alaska territory specifically indicated in subsequent official correspondence that some Alaska Natives and Creoles could be declared citizens by virtue of the terms of the Alaska Purchase Treaty alone.<sup>95</sup> Nonetheless, no one sought citizenship through that route before the floating court.

In the late 1800s and early 1900s, Alaska was a recently-acquired territory teeming with immigrant workers and populated with Alaska Natives and Creoles acculturated to varying degrees by Russia. Congress had to determine what the nation's relationship would be with both Alaska's immigrant workers and its territorial residents. In many ways, these two questions are the same side of two different coins. The President and U.S. Senate made provisions to make citizens of "civilized" people within the new territory, much as they had in other cases, such as the Treaty of Guadalupe-Hidalgo.<sup>96</sup> The U.S. thus recognized, if not home-rule during the tutelage of territorial status, then at least the capacity of some individuals within the territory to become American citizens. Contrary to the apparent promises made in the Alaska Purchase Treaty, however, very few Alaska Natives became U.S. citizens under its terms, and none through the actions of the floating court.<sup>97</sup> And, contrary to trends in the contiguous U.S., no Asian nationals even filed for naturalization before the floating court.

## B. The Criminal Calendar

In addition to naturalization proceedings, the floating court handled criminal matters, which largely reflected alcohol-fueled violence by men on the frontier. The new arrivals were overwhelmingly male because little aside from marital ties could bring women to Alaska, and few men were married.<sup>98</sup> With so many young men of different backgrounds working under grueling conditions with no roots in the community or strong police authority, violence was a common occurrence. The floating court's criminal calendar typically included

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94. *In re* Naturalization of John Minook, 2 Alaska 200 (1904).

95. Letter from U.S. Attorney for the Dist. of Alaska, *supra* note 92.

96. *See generally* RICHARD GRISWOLD DEL CASTILLO, *THE TREATY OF GUADALUPE HIDALGO: A LEGACY OF CONFLICT 189-90* (1990).

97. *See generally* JACOBSON, *supra* note 80. The U.S. did not always place these provisions for citizenship within acquisition treaties. For example, in the Treaty of Paris in which the U.S. obtained Puerto Rico from Spain in 1898, Congress was empowered to determine the civil rights and political status of the individuals in the ceded territory. *Id.* at 43.

98. Ducker, *supra* note 22, at 209.

murders, assaults, and illegal provision of liquor.<sup>99</sup> This docket contrasted markedly with previous law enforcement in the area, such as the Bering Sea patrols, which focused only on fishing and trade violations as well as sex crimes involving sailors and Alaska Native women.<sup>100</sup>

Sometimes, accidents resulted in serious criminal charges. For example, Judge Brown's final case on the floating court was a manslaughter trial, *United States v. Tarama*,<sup>101</sup> in which a cannery worker killed a co-worker during horseplay.<sup>102</sup> According to the defendant M. Tarama's statement, his co-worker shouted and threw something at him, and he lost control and threw a can back at him.<sup>103</sup> Unfortunately, when Tarama threw the can clenched in his right glove, he not only threw the can, but the hard glove and a pair of scissors attached to the glove.<sup>104</sup> Within twenty minutes, Tarasaku Satake, Tarama's good friend, was dead.<sup>105</sup> After Tarama pleaded for mercy from the court, the jury returned a guilty verdict for manslaughter, not murder, and Brown sentenced him to one year in jail in Valdez.<sup>106</sup>

More often than not, alcohol was the basis or a contributing factor to the crime charged. Half of Judge Cushman's cases concerned infractions of territorial alcohol laws.<sup>107</sup> In two different cases, Cushman sentenced defendants convicted of "Unlawfully Making and Fermenting Mash, Wort, and Wash Fit for Distillation and the Production of Spirits or Alcohol" to six months in jail and a five hundred dollar fine, the minimum punishment allowed under the statute.<sup>108</sup> Cushman felt these mandatory minimums were excessive and sought to adjust them through the Revenue Service.<sup>109</sup> These cases arose out of home-brew production at Unalaska, far from the canneries at Bristol Bay,<sup>110</sup> but serious alcohol offenses occurred at the canneries as well. The most

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99. See *infra* App. A.

100. See Walter Noble Burns, *Uncle Sam's "Floating Court,"* WIDE WORLD MAG., Undated.

101. *United States v. Tarama*, Aug. 6, 1915, (Criminal Case File 486).

102. Confession of M. Tarama, *supra* note 45.

103. *Id.*

104. *Id.*

105. *Id.*

106. Judgment and Sentence, Aug. 7, 1915, *United States v. Tarama* (Criminal Case File 486).

107. See *infra* App. A.

108. Indictment, July 19, 1910, *United States v. Serebuekoff* (Criminal Case File 219); Indictment, July 20, 1910, *United States v. Sebelin* (Criminal Case File 223).

109. NASKE, HISTORY, *supra* note 5, at 7.

110. Judgment and Sentence, Aug. 7, 1915, *United States v. Tarama* (Criminal Case File 486).

serious alcohol infraction concerned the sale of whiskey to two Alaska Native men by a Chinese cannery worker, Foo Kaw. Foo was sentenced to one year in prison for selling a single bottle of whiskey for one dollar.<sup>111</sup> Cushman did not seem to have the same misgivings about punishing Foo as he did about punishing the Alaska Native brewers. Perhaps Judge Cushman sought to make an example of Foo—Chinese workers often sold “sam shu,” a form of gin, to Alaska Natives near the canneries.<sup>112</sup> Alcohol was a larger problem at the canneries than in more remote areas because it fostered violence among the young male cannery workers.

Given the explicitly racial criteria of immigration decisions during the era and the prevailing mores of many judges, race inevitably became a factor in decisions concerning interracial violence. For example, Judge Jennings’s only surviving noteworthy case involved an Aleut defendant named Ganka Kazakoff who shot and killed a white man at Cold Bay.<sup>113</sup> Although he was indicted for murder, Kazakoff was allowed to plead guilty to manslaughter instead because he was “of a low order of mentality” and easily frightened into a panic, which, according to the judge, prevented him from forming the malice necessary to commit murder.<sup>114</sup> Although Jennings could have left the matter at that, he explained, through racist condescension, his decision to give Kazakoff a relatively lenient sentence:

In the mind of an ordinary white boy of his age, the circumstances might not and probably would not, have produced such a degree of fear and desperation, but it must be remembered that the ordinary white boy of his age has behind him generations of ancestors of intelligence and training and is schooled in the habits of self-control and respect for life. . . . [Kazakoff] comes of a subject race and has had no training in the true appreciation of events. . . . It would be very unjust to apply to him the standards of a civilization with which he is not acquainted.<sup>115</sup>

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111. Judgment, July 22, 1910, *United States v. Foo Kaw* (Criminal Case File 225).

112. CHRIS FRIDAY, *ORGANIZING ASIAN AMERICAN LABOR: THE PACIFIC COAST CANNED-SALMON INDUSTRY, 1870-1942*, at 80 (1994). It is unclear whether the companies paid for the criminal defense of their employees in Alaska, as was their practice elsewhere. GORDON MORRIS BAKKEN, *LAW IN THE WESTERN UNITED STATES* 473 (2000).

113. Statement of Court on Sentencing Defendant, August 6, 1913, *United States v. Kazakoff* (Criminal Case File 390).

114. *Id.*

115. *Id.* Even a cursory review of Jennings’s later published opinions shows he often framed his decisions in reference to race. In *Harkrader v. Reed*, Jennings

Certainly, Jennings was not the only judge with racist views, but the explicitly racial bases for his decisions put him in a class by himself.

Because U.S. commissioners dealt with minor offenses, the floating court handled only the most serious criminal proceedings. Hence, the floating court's cases exemplify some of the worst aspects of life at canneries in Alaska during the early 1910s. The trials often involved numerous witnesses and translators. For example, W.C. Taylor, charged with forcible rape, offered two defenses in his trial: (1) he was not present at the alleged time and place of the crime; and (2) that the complaining witness, Mrs. Hans Hydahl, was "a person of immoral character, and ha[d] a reputation in the community wherein she reside[d] of being a prostitute and a common drunkard."<sup>116</sup> To establish these defenses, he needed alibi witnesses and members of the community to testify about Hydahl's reputation. Although it is unclear which defense was successful, Taylor was acquitted of the charge.<sup>117</sup>

Only one year earlier, K. Demizu was accused of killing H. Mori in a Japanese bunkhouse; because of segregated housing, the only witnesses were other Japanese workers.<sup>118</sup> Remarkably, Judge Lyons allowed one eyewitness, F. Tamura, both to testify as to his own observations and to translate the testimony of all the other eyewitnesses.<sup>119</sup> Lyons offered no explanation for this strange arrangement and, not surprisingly, the descriptions of the witnesses were quite consistent.<sup>120</sup> Demizu was found guilty of manslaughter and sentenced to ten years in federal prison in Washington State.<sup>121</sup> Elsewhere, the floating court hired translators, as the court system generally did when operating in division headquarters.<sup>122</sup>

These types of cases—serious and involving many witnesses—demonstrate the importance of the floating court. Without the floating

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discounted the testimony of two witnesses because, "[b]eing of the same race to which the plaintiff's mother belonged, and so related to the plaintiff . . . they cannot be said to be disinterested witnesses." 5 Alaska 668, 672 (D. Alaska 1917).

116. Testimony of O.A. Tucker, August 2, 1912, United States v. Taylor (Criminal Case File 349).

117. Order Discharging Defendant, August 8, 1912, United States v. Taylor (Criminal Case File 349).

118. United States v. Demizu (Criminal Case File 280); Arraignment, July 1911, United States v. Demizu (Criminal Case File 280); Testimony of M. Ishu, July 1911, United States v. Demizu (Criminal Case File 280); Testimony of F. Tamura, July 1911, United States v. Demizu (Criminal Case File 280).

119. *Id.*

120. *Id.*

121. *Id.*

122. See, e.g., HUNT, *supra* note 23, at 33. In Unalaska, a court interpreter spoke three languages to assist the court in its proceedings. *Floating Court Dispenses Justice from Port to Port*, *supra* note 1, at SM9.

court, the government would have been forced to pay numerous witnesses to come to Valdez and might have been forced to detain immigrant workers, preventing them from leaving Alaska in the off-season. Of course, crime did not stop when the floating court ceased its annual voyages to the canneries around Bristol Bay. In 1916, there was a new round of crimes: murders, assaults, arson, larcenies, and liquor violations. But once there was no floating court, defendants and witnesses alike were forced to travel far away to Valdez so cases could be fully prosecuted.

### III. ADVENTURES IN JUDICIAL ADMINISTRATION

When Judge Wickersham recounted in his memoir the feeling of becoming a judge in the Alaska territory, he wrote:

The honor and responsibility of aiding in founding American courts of justice in a vast new territory was accepted in the spirit that my forefathers shouldered their rifles in 1776 to aid in establishing the independence of the Colonies. . . . We quickly packed our personal belongings, tucked my judicial commission and an unbound copy of the newly-printed Alaska codes in a grip sack, and were ready to carry the Law into the unknown wilderness.<sup>123</sup>

Wickersham and other judges successfully maintained majesty in distant regions of a remote territory without the full formality of court administration or traditional trial procedures;<sup>124</sup> such administrative and legal formality quickly fell away once the judges boarded the floating court along with prosecutors, defense attorneys, clerks, bailiffs, criers, marshals, secretaries, and sometimes juries.<sup>125</sup> Perhaps the judges were even more eager to rusticate in the new territory than to set up judicial missions, as epitomized by the fact that Judge Overfield's original proposal for a floating court did not even include defense attorneys.<sup>126</sup>

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123. WICKERSHAM, *supra* note 16, at 3. Wickersham's great-great-grandfather, James Wickersham I, fought in the Revolutionary War. EVANGELINE ATWOOD, *FRONTIER POLITICS: ALASKA'S JAMES WICKERSHAM* 4 (1979).

124. *See, e.g.*, Robertson, *supra* note 21, at 13.

125. Joe Ulmer, *Progress of Aviation in Alaska*, 14 *CORDOVA DAILY TIMES: ALL-ALASKA REVIEW FOR 1928*, 20 (Dec. 15, 1928).

126. This was an oversight remedied by Judge Cushman, who realized there were no licensed attorneys in Bristol Bay and funded defense counsel, perhaps Alaska's first public defender. Naske, *Alaska's Floating Court*, *supra* note 5, at 170. The defense counsel received a small salary from the court itself, and occasionally "passed the hat" to friends and family of the accused. Robertson, *supra* note 21, at 27.

### A. The Rusticating Court Party

Judge Wickersham's voyage on the first floating court in 1901 set a precedent of adventure despite being cut short by trouble in Nome, which forced him to steam there from Unalaska instead of continuing his journey.<sup>127</sup> In contrast to the burden of circuit riding in other parts of the nation and at other times, the opportunity of exploring the farthest reaches of the Alaska territory caused judges in Alaska to clamor for the chance to float circuit. In 1901, Judges Wickersham and Brown requested that the Revenue Service cutter *Rush* be available to take a court to remote islands and peninsulas in western Alaska.<sup>128</sup> The journeys involved more than just legal work for the judges. After the first trial in Unalaska, there were several dances and at least the most dashing of the court party enjoyed the company of "quite graceful" Unalaska belles.<sup>129</sup> Wickersham himself provided the whiskey.<sup>130</sup> The wilderness counted for something too; Alaska had already been a regular tourist destination for twenty years, since the steamship *Dakota* began the Inland Passage Tour in 1882.<sup>131</sup> In the summer of 1890 alone, over five thousand tourists made the trip.<sup>132</sup>

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127. WICKERSHAM, *supra* note 16, at 323–24.

128. *Id.* at 321–22; *see also* Letter from Acting Attorney Gen'l to the Sec'y of the Treasury, Mar. 15, 1901; Letter from Acting Sec'y of the Treasury to Attorney Gen'l, Mar. 13, 1901; Letter from Judge M.C. Brown to Attorney Gen'l, April 20, 1901; Letter from Melville Cox Brown, Skagway, AK, to Philander C. Knox, U.S. Attorney Gen'l, Apr. 20, 1901, M720 "Alaska File" of the Office of the Sec'y of the Treasury, 1868–1903, 25 rolls. DP; STROBRIDGE & NOBLE, *supra* note 71, at 108; Letter from J.R. Richards, Acting Attorney Gen'l, to Lyman J. Gage, Sec'y of the Treasury, May 6, 1901, M720 "Alaska File" of the Office of the Sec'y of the Treasury, 1868–1903, 25 rolls. DP; Letter from Acting Sec'y of the Treasury, to Philander C. Knox, U.S. Attorney General, Mar. 13, 1901, M720 "Alaska File" of the Office of the Sec'y of the Treasury, 1868–1903, 25 rolls. DP. The *Rush* was originally built as a 140-foot steam-powered schooner, but was radically refitted and lengthened in 1885 to 175 feet. D. CANNEY, U.S. COAST GUARD AND REVENUE SERVICE CUTTERS, 1790–1935, at 47 (1995).

129. James Wickersham, Diaries, 54–56 (unpublished diary, on file with the Alaska Law Review). Indeed, Wickersham's diary in parts echoes mid-eighteenth century assize courts, and suggests his journey was motivated at least as much by whiskey and women than his memorialized motivation of judicial missionary work. *Compare id.* with WICKERSHAM, *supra* note 16.

130. Interestingly, Wickersham attempted to get governmental reimbursement for the whiskey under a program that repaid federal employees for provision of subsistence to destitute Alaskans. Despite the program's generosity, it would not reimburse for "bottle[s] of subsistence." ATWOOD, *supra* note 123, at 69.

131. MITCHELL, *supra* note 20, at 126.

132. *Id.*

In 1909, Judge Peter S. Overfield proposed that a Revenue Service cutter be used as a floating court for the 1910 term.<sup>133</sup> Overfield liked Valdez and was well respected there.<sup>134</sup> Before the floating court could begin the term, however, Overfield was transferred and his replacement at Valdez, Judge Edward E. Cushman, took the voyage.<sup>135</sup> Cushman departed from Valdez on July 2, 1910 aboard the *Rush*. During his voyage, Cushman held court in Unalaska, where he was surprised to find the town's jail had neither locks, bars, nor reliable guards.<sup>136</sup> The captain of the *Rush* recommended a remedy: converting a "practically completed" sternwheeler steamer that had been rusting on the beach for a dozen years into a jail.<sup>137</sup> After Unalaska, Cushman headed to the canneries of Bristol Bay by mid-July and returned to Valdez on August 13, having traveled over 3700 miles.<sup>138</sup> The floating court had left before the work season was over, and several more cases arose after its departure, indicating that the court's calendar was not directly tailored to the cannery's work calendar.<sup>139</sup>

In summer 1911, Judge Lyons, in the first division, and Judge Cushman, in the third division, exchanged calendars so that Lyons could take the floating court aboard the *Thetis*.<sup>140</sup> He brought along a court party that included Ralph E. Robertson, who later became an attorney and practiced in Alaska from 1916 to 1959, eventually becoming mayor of Juneau, president of the Juneau school board, and a delegate to the Alaska constitutional convention. The floating court stopped first at Kodiak, where official business was minimal—a few routine naturalization proceedings—and the court party explored Wood Island

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133. Naske, *Alaska's Floating Court*, *supra* note 5, at 166.

134. Commissioners and Recording Districts, Dec. 1, 1909, p. 12 (Civil Case File 477, 2 of 2) (on file with the Alaska Law Review).

135. Naske, *Alaska's Floating Court*, *supra* note 5, at 169.

136. NASKE, HISTORY, *supra* note 5, at 8.

137. *Id.*

138. Naske, *Alaska's Floating Court*, *supra* note 5, at 171–72.

139. *See id.*; *see also* Order for Discharge and Payment of Detained Witnesses, September 4, 1913, United States v. Kazakoff (Criminal Case File 390).

140. Naske, *Alaska's Floating Court*, *supra* note 5, at 175. The *Thetis* was a former Dundee whaler and sealer that had been built in 1881 and had patrolled the Bering Sea since 1899. By the 1910s, the *Thetis* alternated between patrolling bird sanctuaries in the Hawaiian Islands and operating in the Bering Sea and the Gulf of Alaska. At nearly 190 feet, she was much larger than the *Rush*, which helped the cramped court party. CANNERY, *supra* note 128, at 57. In his memoirs, Ralph Robertson described the ship creaking "with age like an old man with ossified joints climbing a stair. Nor was she a race-horse . . . [b]ut, a white winged gull, gliding through the air, had no more grace and beauty than she when her white sails, full rigged, bellowsed before the breath of a spanking breeze." Robertson, *supra* note 21, at 2.

and enjoyed a dance in the schoolhouse every evening.<sup>141</sup> At the next stop, Unga, there was more dancing, more drinking, and more eating, and no more active a docket than in Kodiak.<sup>142</sup> At Dutch Harbor, there were boat races, hikes, and baseball games among the crew and court party.<sup>143</sup> Despite the fact that the local Alaska Commercial Company provided a spread missing “nothing from caviar to cheese,” one of the crew or court party stole several watermelons from a neighboring vessel in the harbor.<sup>144</sup> With the taste of stolen watermelon still on their lips, the court sentenced two young Aleut boys to jail for “breaking and entering” and enjoyed again the “inevitable dance.”<sup>145</sup> On the return voyage, the court party took time to stalk and kill trophy caribou and brown bears on Unimak Island.<sup>146</sup> The court then, in the space of a single day, held hearings to indict, arraign, try, convict, and sentence a Japanese cannery worker on Unga to life imprisonment.<sup>147</sup>

Despite terrible seasickness in rough water, Lyons enjoyed the trip immensely and was convinced that it should be made an annual event.<sup>148</sup> He was elated when he was selected to take the floating court to the Bristol Bay canneries for the 1912 season on his way to Nome, and his second trip on the floating court was another unabashed adventure. In the middle of the summer of 1912, Judge Lyons and his court staff, which again included court reporter Ralph Robertson, left Juneau, stopped at Valdez, steamed up Cook Inlet, and crossed overland to Iliamna Village.<sup>149</sup> They then proceeded over Iliamna Lake and down the Kvichak River to Naknek and from there to Nushagak.<sup>150</sup> Decades later, Robertson made this second voyage another chapter in his memoirs. His observations of local flora and fauna are particularly interesting because Robertson crossed overland by Mount Iliamna only five weeks after the largest volcanic eruption of the twentieth century had occurred at nearby Mount Katmai.<sup>151</sup> Robertson noted that there was still an

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141. Robertson, *supra* note 21, at 6.

142. *Id.* at 7.

143. *Id.* at 11.

144. *Id.* at 12.

145. *Id.*

146. *Id.* at 33.

147. *Id.* at 38.

148. Naske, *Alaska's Floating Court*, *supra* note 5, at 175.

149. Robertson, *supra* note 42, at July 18, 1912.

150. *Id.*

151. Robertson was miles from the site of the eruption but still encountered six inches of ash, which limited the number of flies, mosquitoes, and birds the party encountered. See NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, KATMAI NAT'L PARK AND PRESERVE, WITNESS: FIRSTHAND ACCOUNTS OF THE LARGEST VOLCANIC ERUPTION IN THE TWENTIETH CENTURY (2004). Although the Katmai eruption destroyed the Alaska Native village of Katmai, it killed few people.

abundance of salmon running in the water, despite its milky, ashen appearance.<sup>152</sup> The court party, which had no judicial business in Iliamna, toured the vicinity of the eruption, a destination just starting to appear on the itineraries of adventurers worldwide.<sup>153</sup>

On May 6, 1913, Judge Robert W. Jennings replaced Judge Lyons.<sup>154</sup> Jennings took the floating court on a different route, sailing west on the *Thetis* to Unalaska.<sup>155</sup> From there, he sailed to Nushagak on July 31 and returned to Unalaska on August 12, again leaving before the canning season was over in Bristol Bay.<sup>156</sup> He departed Unalaska for the year on August 23, when he sailed to Unga and then returned to Valdez.<sup>157</sup>

In 1914, Frederick M. Brown, a Valdez lawyer appointed to the bench in 1913, took control of the floating court from Judge Jennings.<sup>158</sup> Judge Brown returned to the adventuresome spirit heralded by Judge Lyons, taking a complicated path motivated more by wanderlust than judicial economy. He steamed aboard the *McCulloch* to Knik, on the Valdez side of the Alaska Peninsula, and directed the marshals and clerks to cross overland, pass through Iliamna, and meet him at the canneries on Bristol Bay.<sup>159</sup> The putative reason for this directive was to

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Most people near Mt. Katmai were fishing at the time of the eruption and were relatively safe. Letter from the Sec'y of the Interior, to Walter E. Clark, Governor of Alaska (Aug. 9, 1918) (on file with the Alaska Law Review); Letter from Walter E. Clark, Governor of Alaska, to the Sec'y of the Interior (July 2, 1912) (on file with the Alaska Law Review).

152. Robertson, *supra* note 42, at July 19–20, 1912. He described the teeming schools:

A wide, blood-red colored current, just off shore, marked their passage. The countless hordes were in such dense ranks that, as they passed close to the little point of land, a rather good sized rock, heaved out into the water at the outer edge of their swimming column, would frighten them into crowding and showing of their fellow until many of those nearest the shore perforce would flop out of the water and up onto dry land.

Robertson, *supra* note 75, at 87.

153. NAT'L PARK SERV., U.S. DEP'T OF THE INTERIOR, KATMAI NAT'L PARK AND PRESERVE, *supra* note 151.

154. Judge Cushman in the third division was also replaced that year by Frederick B. Brown on June 17, 1913. Surrency, *supra* note 12, at 627.

155. 1914 U.S. REVENUE-CUTTER SERV. ANN. REP. 184–85.

156. *Id.*

157. *Id.*

158. Surrency, *supra* note 12, at 627. Naske, *Alaska's Floating Court*, *supra* note 5, at 179. Since the *Thetis* had retired to Hawaiian waters, Brown used the *McCulloch*, a larger and more modern ship than the *Thetis*. The *McCulloch* was nearly 220 feet long—the largest cutter built to date—and had protected storeships as part of Admiral Dewey's fleet at Manila Bay. In 1917, she collided with a steamer off the coast of California and was lost. CANNEY, *supra* note 128, at 55–56.

159. NASKE, HISTORY, *supra* note 5, at 14–16.

allow lawyers more time to prepare cases before he arrived,<sup>160</sup> but it simply gave the marshals and clerks a fantastic journey through the wilderness. In the meantime, Judge Brown headed to Unga to process a single case of assault.<sup>161</sup> There were not enough men to make a grand jury there, so the court sent the case to Dillingham in anticipation of the arrival of the marshals and clerks.<sup>162</sup> Judge Brown then went to Unalaska to process cases, but the defendants retained private counsel and were granted a continuance.<sup>163</sup> In the meantime, although Judge Brown could not find a sufficient number of men to try a criminal case, he found both time and men enough to take him on a whale hunt, resulting in a seventy-five-foot, eighty-ton kill.<sup>164</sup> Brown wound up transferring the remaining cases to the fall term of the court at Seward, and then he steamed to Dillingham to process local cases and indict the man from Unga.<sup>165</sup> In Dillingham, the court actually got to work, dealing with a host of cases involving arson, murder, assault, and sale of opium, before returning to Unga to hear the one case to arise from there, and perhaps to conduct naturalization proceedings.<sup>166</sup> The floating court then tried to travel to the Pribilof Islands to investigate growing liquor problems, but was unable to hold a term of court there due to lack of time.<sup>167</sup>

## B. Exhausting and Importing the Venire

As Judge Brown discovered, it was difficult to impanel a jury in places like Unga or Unalaska. Even in Bristol Bay, jury selection presented challenges, often exhausting the venire, even when the court actively pressed citizens into jury duty. Where juries could be impaneled, often grand and petit juries were unwilling to honestly judge the facts for political, social, or just plain venal reasons.

Jurors for Demizu's trial at Nushagak were drawn from the two hundred men who lived year-round near Bristol Bay. Because the court had so many trials in 1911, half of the twelve jurors who considered Demizu's fate also sat to consider the evidence against Walter Whiten,

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160. *Id.*

161. *Id.* at 15.

162. *Id.*

163. *Id.* at 15–16.

164. Price, *supra* note 4, at 74.

165. NASKE, HISTORY, *supra* note 5, at 15–16.

166. Correspondence between court members and the Department of Justice seems to indicate that the court undertook numerous petitions at Unga, but no such records of these proceedings were found at the National Archives. *See id.* at 16 n.22.

167. *Id.* at 15–16.

accused of setting the sailing ship *Tacoma* on fire.<sup>168</sup> *Whiten*, the penultimate case of the 1911 floating court season, exhausted the regular panel of petit jurors, and Judge Lyons ordered a special venire, directing the deputy marshal to simply go into the community and tag jurors.<sup>169</sup> It is unclear what rule Judge Lyons used to determine when a jury panel was exhausted; many jurors served on multiple cases in the same year. In *Whiten*, ten of the originally-selected jurors had heard other criminal trials within the last month, and the trial was the fourth in a month for three of them.<sup>170</sup>

In small communities throughout early twentieth-century Alaska, it was often impossible to find twelve qualified jurors. When the first district court judge arrived in Alaska, it was difficult to find enough qualified jurors even in Sitka, the former Russian colonial capital, because qualifications based on race, gender, age, language, and citizenship quickly drained the jury pool.<sup>171</sup> This difficulty meant that the court occasionally fudged qualifications to assure that a jury could be impaneled. In Nushagak, the voir dire of jurors never delved into legal residency because most cannery superintendents, foremen, or clerks could not have sworn under oath that they were legal Alaska residents.<sup>172</sup> It also meant that qualified jurors sometimes evaluated the same case as both grand and petit jurors, indicting the accused and then passing a verdict.<sup>173</sup>

Judge Wickersham attempted to solve both these problems in 1901 when he discovered that a suitable jury could not be drawn at Unalaska because it was populated primarily by Aleuts, who could not serve on juries at the time.<sup>174</sup> Wickersham impaneled thirty-four jurors at Nome and transported them 750 miles to Unalaska.<sup>175</sup> This could have been jury duty at its worst, but fortunately the weather was pleasant and Wickersham was a good host.<sup>176</sup>

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168. See *United States v. Demizu*, July 1911 (Criminal Case File 280).

169. Robertson, *supra* note 21, at 25.

170. Naske, *Alaska's Floating Court*, *supra* note 5, at 179.

171. *Id.* at 181.

172. Robertson, *supra* note 21, at 25.

173. Wickersham, *supra* note 129, at 17–18. Motivated in part by the judges' inability to seat a sufficient number of jurors, Congress adopted legislation in 1900 shrinking the required size of a jury in Alaska. Under the Civil Code of Alaska, trials for misdemeanors could be held before a jury of six persons. Alaska Civil Code, § 171, ch. 786, § 171, 31 Stat. 358 (1900); Naske, *Alaska's Floating Court*, *supra* note 5, at 181; see also *Rassmussen v. United States*, 197 U.S. 516 (1904).

174. Wickersham, *supra* note 129, at 49, 54; WICKERSHAM, *supra* note 16, at 324.

175. WICKERSHAM, *supra* note 16, at 326–35.

176. See ATWOOD, *supra* note 123, at 69.

In the case that took Wickersham to Unalaska, Fred Hardy stood accused of murdering three miners on nearby Unimak Island.<sup>177</sup> Hardy's defense—that another man, George Aston, had committed the murders—was dramatically contested by one witness, an old Aleut man whom Wickersham described as a man with the facial expression of a “decrepit idiot” who “smelled like an Eskimo fish-camp on a summer's day” and “dressed in ragged skin garments of years standing.”<sup>178</sup> The old Aleut man contradicted Hardy and said Aston was on another island when the murders occurred.<sup>179</sup> When asked how he could be certain Hardy was wrong about where Aston was at the time of the murder, the old Aleut man replied, “me lote it in me log.”<sup>180</sup> The defense attorney, doubting the witness, confronted him, “So you can write, can you; well come over here and let the jury see you write.”<sup>181</sup> The old Aleut man put pen to paper and with a grin of satisfaction wrote his name in clear Russian letters.<sup>182</sup> After a trial of four days, the jury returned a guilty verdict.<sup>183</sup>

Not all juries took their task as seriously as the thirty-four men from Nome. Often, even where juries could be impaneled, there were still substantial problems with them, chiefly jury nullification. Juries often nullified charges because they believed the law to be unjust. For example, many juries nullified charges of alcohol production or sales because many Alaska residents considered moonshining to be a birthright.<sup>184</sup> Even charges for violent offenses were sometimes nullified, occasionally as a statement against the judiciary itself.<sup>185</sup> Jury nullifications also happened for less political reasons. Racial prejudice was a persistent problem when white jurors stood in judgment over white defendants accused of crimes against Alaska Natives; juries often nullified charges in such cases.<sup>186</sup> Finally, individual jurors were

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177. WICKERSHAM, *supra* note 16, at 326–35.

178. *Id.* at 334; *see also* Wickersham, *supra* note 129, at 54.

179. WICKERSHAM, *supra* note 16, at 334.

180. *Id.*

181. *Id.* at 335.

182. *Id.*

183. *Id.*; Wickersham, *supra* note 128, at 54. Hardy received the death penalty and was hanged the next year in Nome after the appeals court failed to reverse his conviction. It was the first legal execution in the Yukon basin. WICKERSHAM, *supra* note 16, at 336; Naske, *supra* note 27, at 197.

184. *See* NASKE, HISTORY, *supra* note 5, at 7.

185. When Wickersham replaced Noyes in September 1901, a jury of miners nullified charges brought against other miners who had rioted violently in response to judicial corruption. HUNT, *supra* note 15, at 130; Surrency, *supra* note 12, at 625.

186. HUNT, *supra* note 23, at 301–02.

sometimes corrupted, pressured, or concerned about retribution after the judge left town.<sup>187</sup>

Jury tampering was another major problem, resulting in some people being tried without juries at all. For example, in *U.S. v. Richards*,<sup>188</sup> Wickersham tried U.S. marshal Frank Richards without a jury for contempt of court for tampering with a jury.<sup>189</sup> Richards demanded a jury and believed Wickersham was acting on a personal vendetta; Richards had publicized the fact that Wickersham had been charged with criminal seduction in Washington several years earlier.<sup>190</sup> Richards believed Wickersham should be disqualified from judging him and demanded a new trial.<sup>191</sup> But Wickersham refused to grant the new trial, declaring:

In this division, where the court is cut off from the outside world for nine months, where no change of venue could be made available during that time, the court would be at the mercy of one who treated its authority with contempt if such a false and malicious statement should be held sufficient to rob the trial judge of jurisdiction.<sup>192</sup>

While Richards's accusation might have forced a judge to recuse himself in other places, Wickersham refused to sit with folded hands.<sup>193</sup> The remoteness of the court thus played a critical role in Wickersham's determination of the power of the court, and perhaps in his decision to convict Richards—a decision later held to be a legal mistake.<sup>194</sup> On September 21, 1903, the Ninth Circuit Court of Appeals overturned the jury-tampering conviction, citing "a total failure of evidence to sustain that branch of the charges."<sup>195</sup>

Jury problems certainly had consequences for criminal defendants—to help solve these problems, the floating court in later years regularly used its own crew as jurors when it stopped in small

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187. FRIEDMAN, *supra* note 17, at 277; HUNT, *supra* note 15, at 130; Wickersham, *supra* note 129, at 99, 301–02.

188. 1 Alaska 613 (D. Alaska 1901), *rev'd*, Richards v. United States, 126 F. 105 (9th Cir. 1903).

189. *See id.* at 620.

190. HUNT, *supra* note 23, at 323.

191. *Richards*, 1 Alaska at 620.

192. *Id.*

193. *Id.*

194. Richards v. United States, 126 F. 105, 110 (9th Cir. 1903).

195. *Id.* Wickersham received word of the reversal on the same day his wife arrived to visit him in Valdez. With a single underline, Wickersham noted the return of his wife, whom he had not seen fifteen months, "Mrs. W. came." The big news that day was underlined twice, "Circuit Court of Appeals reversed the Richards case—evidence not sufficient." Wickersham, *supra* note 129, at 159.

villages.<sup>196</sup> But jury problems might have even had consequences for the court itself. Recall that on Judge Brown's first voyage in 1914 on the floating court, he took a complicated and inefficient route, sending half his court party on an overland jaunt. Because of the difficulties he faced seating juries, his diversions might just have spelled the end of the floating court. An Assistant U.S. Attorney, William Whittlesey, was aboard for the trip and was generally dissatisfied with the court's needless travel to Unalaska and Unga.<sup>197</sup> He advocated trimming the route of the floating court, limiting it to annual trips to Bristol Bay, where he thought the court had the most deterrent effect and operated economically.<sup>198</sup> The next year, with copper production peaking near Valdez, the floating court had an abbreviated schedule in line with Whittlesey's advice. In 1916, it did not run at all.<sup>199</sup>

### CONCLUSION

In 1898, after thirty years of American ownership, Alaska still sorely lacked judges and law. But by 1900, within just a few years of the gold strikes, Congress set up the courts necessary to control specific parts of America's northernmost territory. Congress positioned these courts strategically to regulate gold development on the beaches of Nome, in the Treadwell Mines near Juneau, and on the Yukon River at Eagle to tax vessels floating down from the Klondike. Unfortunately for many Alaskans, Congress's strategy did not immediately include regulating locations rich in other goods, such as Valdez, the proposed principal port for the "All-American" route to the gold fields of the Alaska Interior, which should have hosted a regular court because it had a thriving population, burgeoning legal wrangling, and openly violent conflict over nearby copper mining claims and railroad construction.<sup>200</sup> Congress missed the importance of copper and focused exclusively on

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196. *Floating Court Dispenses Justice from Port to Port*, *supra* note 1.

197. Naske, *Alaska's Floating Court*, *supra* note 5, at 181.

198. *Id.*

199. The trimming of the floating court's route was probably in response to Whittlesey's advice but may also have simply reflected the Attorney General's accurate prediction that burgeoning legal issues over the construction of the Alaska railroad would occupy the court's time in Valdez. *Id.*; NASKE, HISTORY, *supra* note 5, at 17-18. Decades later, the floating court would return, making its last voyage in the late 1950s. For a colorful rendition of that last voyage, see JAMES CHENOWETH, DOWN DARKNESS WIDE: U.S. MARSHALS AND THE LAST FRONTIER (2003).

200. The "All-American" route was especially sought after because "on entering Canadian territory, the American prospector was required to pay duty on his entire outfit." LETHCOE, VALDEZ GOLD RUSH TRAILS OF 1898-99, *supra* note 17, at 5.

gold.<sup>201</sup> It was only after copper eclipsed gold in importance that Congress gave Valdez, with its nearby copper mines, a regular court.

This form of federal expansion into Alaska exemplified the trade expansion, rather than settlement expansion, that dominated American thought in the late nineteenth and early twentieth centuries.<sup>202</sup> That goal was perhaps most avidly espoused by William Seward, who orchestrated the purchase of Alaska: "Multiply your ships, and send them forth to the East. The nation that draws the most materials and provisions from the earth, and fabricates the most, and sells the most of productions and fabrics to foreign nations must be, and will be, the great power of the earth."<sup>203</sup> For decades, Alaska was merely a flank protecting trade between California and East Asia,<sup>204</sup> but American expansion in Alaska was ultimately a fulfillment of Seward's dual vision of the colony as a vast trove of tradable resources and a U.S.-Asia drawbridge for Chinese workers.<sup>205</sup>

In 1900, Congress gave the Alaska territory a legal system whose purpose and structure matched that dual vision. As Alaska attorney and historian Pamela Cravez noted, "Alaska's legal system evolved not from within its borders but from without."<sup>206</sup> And because the Alaska legal system was "borrowed" from the federal government, the Alaska legal system was not substantially out of step with the overarching purposes of those who held power over it.<sup>207</sup> In short, the Department of Justice allowed the judges of the floating court to help colonize remote regions of Alaska by establishing formal law among rural and transient workers, familiarizing court personnel with remote areas, and making at least some measure of justice more accessible to those who could not afford to travel to the third division's headquarters in Valdez.<sup>208</sup> These functions were in no way unique—on the contrary, they are the very purpose of territorial circuit courts generally.<sup>209</sup>

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201. LAFEBER, *supra* note 31, at 28–29.

202. *Id.* at 69; JACOBSON, *supra* note 80, at 7.

203. JACOBSON, *supra* note 80, at 21.

204. LAFEBER, *supra* note 31, at 28–29.

205. *Id.* at 408; JACOBSON, *supra* note 80, at 28.

206. PAMELA CRAVEZ, *SEIZING THE FRONTIER: ALASKA'S TERRITORIAL LAWYERS* 7–8 (1984).

207. *See generally* ALAN WATSON, *SOCIETY AND LEGAL CHANGE* 98–111 (2d ed. 2001). This pattern is strikingly different from that observed by Alexis de Toqueville in his 1830s interviews with Mississippi Valley attorneys. *See* GEORGE WILSON PIERSON, *TOCQUEVILLE & BEAUMONT IN AMERICA* 567 (1938); *see also* Andrew P. Morris, *Codification of the Law in the West*, in *LAW IN THE WESTERN UNITED STATES* 53 (Gordon Morris Bakken ed., 2000).

208. Naske, *Alaska's Floating Court*, *supra* note 5, at 183.

209. *See* Glick, *supra* note 61, at 1757–98.

Nor was the Alaska legal system's structure substantially out of step with the models of territorial justice that preceded it. As a frontier region in the early twentieth century, Alaska presented particular difficulties to Congress.<sup>210</sup> In the 1880s and 1890s, when the inconvenience for litigants and costs of transporting witnesses ballooned, prosecutors were prevented from bringing minor cases to court in many districts.<sup>211</sup> Robertson's memoir describes how this problem looked in Bristol Bay:

Those who sweated to pack the salmon . . . wanted the country cleared of law violators. They eagerly cooperated with the court. And, if by chance they had witnessed the crime, they had no desire to be dragged off to Valdez to testify. Then, they would miss southbound passage on the cannery ships at the close of the fishing season. They might be detained in Valdez several months. If they were local residents, attendance upon the court in Valdez as witnesses would necessitate either their remaining in Valdez all winter or else returning overland to Bristol Bay after winter set in, and, too late to set out a trap-line.<sup>212</sup>

To combat these problems, the federal government used circuit riding to save money, administer justice, and maintain contact with local populations.

The Alaska Code allowed for courts to move within their division—to ride circuit—but Alaska's geography and climate demanded unique solutions to problems of judicial administration. Alaska judges responded to these challenges by adapting the centuries-old tradition of riding circuit to carry law to far-flung areas. When the federal government finally responded to the growing importance of resources near Valdez in 1909 and reorganized the Alaska territorial courts to seat a court at Valdez, the court immediately began to regularly send out judicial envoys to even more remote places in Alaska like Unalaska, Unga, Bristol Bay, and St. Paul. The third division of the district court of Alaska protected foreign cannery workers and fur sealers by holding

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210. John Phillip Reid, *Introduction: The Layers of Western Legal History, in LAW IN THE WESTERN UNITED STATES* 5 (Gordon Morris Bakken ed., 2000.); see also Blume, *supra* note 5, at 93–94. Lawrence Friedman has observed that “Western legal history is ‘frontier’ history basically, that is, not the history of a fixed region, but rather of a borderland, and a moving borderland at that.” Lawrence M. Friedman, *The Law Between the States: Some Thoughts on Southern Legal History, in AMBIVALENT LEGACY: A LEGAL HISTORY OF THE SOUTH* 30 (D. Bodenhamer & J. Ely eds. 1984).

211. Surrency, *supra* note 12, at 616–17.

212. Robertson, *supra* note 21, at 26.

trials and punishing the convicted. Remarkably, despite the fact that thousands of Chinese, Japanese, Filipino, and Mexican laborers came to Alaska to work in the canneries, not one petitioned the floating court for naturalization; however, the floating court at least made it possible for some immigrants to become citizens who otherwise would not have been able to afford to do so.<sup>213</sup> The floating court was thus a unique response to the same structural problems present in the federal court system throughout the country and the country's past and, in at least this way, the Alaska legal system came to reflect not just the conventions of the contiguous U.S. and its territories, but the necessities of the Last Frontier.

What is remarkable about the floating court, in addition to its choice of transportation mode, is its illustration of the sometimes-conflicting priorities of the federal government and federal actors within the Alaska territory. The birth and death of the floating court in the 1910s underscores Congress's focus on resource development rather than individual justice at the edges of Alaska.<sup>214</sup> Congress did not establish the floating court to respond to the needs of Alaska; rather, Congress only established a court in Valdez after it became clear that copper had become more important than gold and legal problems in Valdez had largely calmed. The floating court was subsequently born of the judges' own initiative after a quiet Valdez left judges with little to do but seek out adventure. For the judges and court parties, the floating court was a series of high adventures into a frontier that survived Frederick Jackson Turner's famous obituary. On these adventures, the judges of the floating court used majesty, the traditional currency of courts, but did not scrupulously honor procedural formalities. In the end, it was the Department of Justice—not the judges—that kept the floating court in port as soon as copper and railroad labor claims in Valdez became relevant to international events in Europe. The floating court would return again in the 1930s and 1950s, but its itinerant nature meant local trials and naturalizations depended on the priorities of the federal government, which seemed to change with the tides, making a remote area of the Alaska territory like Bristol Bay remain for decades as a *presqu'île* of the American judicial system.

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213. Compare Petition for Naturalization of Edward Pearson, June 24, 1909, and Petition for Naturalization of Frederick Driffield, October 16, 1908 with Petition for Naturalization of Andrew Hanson, March 21, 1908.

214. See JAMES WILLARD HURST, LAW AND THE CONDITIONS OF FREEDOM 3–32 (1956).

**APPENDIX A: ARCHIVAL RECORDS OF FLOATING COURT  
CRIMINAL CASES, 1910-1915**

**Cushman, 1910**

Case Name	Place	Charge
Mizutani	Nushagak	Murder
Yamamoto	Nushagak	Assault
Foo	Nushagak	Liquor provision
Kayo	Unga	Assault
Serebuekoff	Unalaska	Mash-making
Sebelin	Unalaska	Mash-making

**Lyons, 1911**

Case Name	Place	Charge
Kelly	Kodiak	Liquor provision
Krukof	Unalaska	Larceny
Shimada	Unga	Murder
Whiting	Nushagak	Arson
Sun	Nushagak	Assault
Williams	Nushagak	Assault
Demizu	Nushagak	Murder

**Lyons, 1912**

Case Name	Place	Charge
Castillo	Nushagak	Murder
Flores	Nushagak	Murder
Tragomene	Nushagak	Murder
Taylor	Nushagak	Rape

**Jennings, 1913**

Case Name	Place	Charge
Kazakoff	Nushagak	Murder
Duck	Nushagak	Liquor provision
Ulloa	Nushagak	Assault
Greer	Nushagak	Assault

**Brown, 1914**

Case Name	Place	Charge
Gundersen	Unga	Assault
Sasqueta	Nushagak	Arson
Cano	Nushagak	Assault
Motomura	Nushagak	Murder
Sing	Nushagak	Opium sales

**Brown, 1915**

Case Name	Place	Charge
Nesen	Naknek	Liquor provision
Semakansky	Naknek	Liquor provision
Tarama	Naknek	Murder

**APPENDIX B: ARCHIVAL RECORDS OF FLOATING COURT  
NATURALIZATIONS, 1910-1915**

**Cushman, 1910**

<b>Name</b>	<b>Location of Birth</b>	<b>Home During Declaration or Naturalization</b>
Peter Nelson	Sweden	Nushagak
Alexander McLean	Australia	Nushagak
Joseph Lyons	Ireland	Unga
Berut Veklem	Norway	Unga
John Johnson	Finland	Unga
Peter Nielson	Denmark	Sanak
John Porter	At sea, England	Sanak
Emil Mobeck	Denmark	Sanak
Max Hardies	Germany	Unga
Emil Wilson	Norway	Sand Point
Fredrik Pomion	Germany	Unga
Otto Skoog	Finland	Sand Point
Martin Zachrisson	Sweden	Unga
Ross Baye	Denmark	Unga
Edvar Teger	Norway	Unga
Carl Anderson	Sweden	Unga
Charles Woberg	Sweden	Unga
George Nelson	Norway	Sand Point
Aleck Wilson	Finland	Unga
Siguard Topgranson	Denmark	Unga
Edwin Larson	Norway	Unga
Charles Blom	Sweden	Unga
Seward Brandal	Norway	Chignik
Frederick Paulsen	Norway	Nushagak

**Lyons, 1911**

<b>Name</b>	<b>Location of Birth</b>	<b>Home During Declaration or Naturalization</b>
August Lindstrom	Sweden	Nushagak
Ernest Sandborg	Sweden	Nushagak
Hans Hoidahl	Norway	Nushagak
William Hurley	England	Snag Point
Carl Malkeit	Germany	Choggiung

**Lyons, 1912: No Records Located****Jennings, 1913**

<b>Name</b>	<b>Location of Birth</b>	<b>Home During Declaration or Naturalization</b>
Otto Larson	Sweden	Snag Point

**Brown, 1914: No Records Located****Brown, 1915**

<b>Name</b>	<b>Location of Birth</b>	<b>Home During Declaration or Naturalization</b>
Nels Larson	Norway	Katalla
Carl Sundling	Sweden	Katalla