

Memories of the Last Frontier: Interviewing Alaska's Territorial Lawyers

By Holly Suozzo



Every state bar has its legal legends. Chicago has Clarence Seward Darrow, a brilliant trial lawyer, who abandoned his corporate practice to defend individuals facing the death penalty and became one of the most famous criminal lawyers of all time and the current subject of a one-man play. Louisiana has Edward Bermudez, the chief justice of the Louisiana Supreme Court and an attorney known for his pride in his Creole heritage despite his fight for the Confederacy. In Wisconsin, one hears stories of judges and lawyers who traveled the circuit on foot—whether through muggy swamps or in snowshoes during blizzards—to deliver justice to towns throughout the state. Even though the stories surrounding great attorneys who have come before us abound, the lives of these legends have generally ended long before our own lives began.

However, in the great state of Alaska, its legal legends still thrive. Most of them are now in their 80s, and some of them are still quite active in the legal field as well as in the Alaska community. As a result, the ingenuity, tenacity, and independent spirit of these pioneers permeate Alaska's present-day legal culture. Nevertheless, it won't be long before Alaska's legal greats will live only in our memories, like the early legal giants in our sister states. Therefore, as Alaska celebrates 50 years of statehood, we set out to interview some of the attorneys practicing in Alaska when it achieved statehood and to document—if not to preserve—the essence that has become such a fundamental component of the identity of the Alaska bar.

One of the legal heavyweights of the mid-20th century in Alaska was Jack Asher, the state's first prosecuting at-

torney, who continues to practice law today in Illinois at the law firm of Asher, Smith and Isaf. Asher is an exuberant man, who easily and energetically retells the many stories of the decade or so that he spent in southern Alaska. In less than an hour after our interview began, Asher touched on a myriad of crazy Alaskan adventures he had both in and out of the courtroom. He recalls trying a case with a man who had burned down a house of ill repute in an effort to rob the jukebox, and also a case of a man who confessed to killing his brother only to have the trial interrupted by the arrival of the allegedly dead brother. Asher remembers the interactions he had with law enforcement agents and their efforts to track escaped criminals scattered throughout the wilderness. He also recalls the drinking and camaraderie he shared with both the Alaskan attorneys and the territorial police as well as the shenanigans that followed a moose hunt gone awry in the untamed Alaskan mountains.

While Asher has plenty of stories about the Wild West persona of territorial Alaska, he also remembers the opportunities that Alaska offered a new lawyer. Soon after graduating law school, Asher and his wife, Jane, embarked for Alaska, where he had been offered a job as an assistant territorial attorney general. At the time, the territorial attorney general had a mere staff of four: a chief assistant, two assistant attorneys general, and a law clerk. Immediately upon arriving at his new job, Asher was directed to draft a writ of certiorari for the U.S. Supreme Court. His supervisor gave Asher no direction, except for the telephone number of the opposing counsel in the case. Thankfully, the opposing counsel pointed Asher in the right direction, and the

new assistant attorney general filed his first pleading—a writ to the U.S. Supreme Court. Not only was Asher's writ granted, but the Supreme Court reversed the Ninth Circuit, and Alaska's attorney general's office was awarded a sorely needed financial victory during its transition from territory to statehood.

Young lawyers in Alaska are often told of the value of learning to sink or swim on their own—as Asher had to—instead of slowly wading into the field of law. Even today, Alaskan attorneys are quickly involved in court proceedings and are encouraged to interact with clients. As the same men and women who were thrown in the lion's den in the mid-1900s continue to train and mentor incoming attorneys, the expectation that young lawyers will take ownership of their training lives on.

Not only was Asher involved in the early legal system of the state of Alaska, but he also took part in the early political life of the state. Together with a Democratic engineer named Felix Toner, Asher and his wife were primarily responsible for drafting the first election procedures used in Alaska.

Like her spouse, Jane Asher was also a formidable figure during the early days of Alaska's statehood. She was hired by Alaska's first state legislature to draft the first statutes enacted by the state of Alaska. She was also hired as the "statute reviser," responsible for drafting all the bills considered by the state legislature. Jane Asher's role in Alaska's transition to statehood is a testament to the progressive outlook of the Alaska legal community and its ability to embrace talent, regardless of the gender in which it was showcased. Jane Asher has left the field of law and today runs a humane society in Illinois.

Although the Ashers left the state of Alaska to return to their hometown in Illinois, some of the lawyers who practiced in Alaska when it first became a state continue to do so today. One such lawyer is Kenneth Atkinson, who, at the age of 83, practices law at Atkinson, Conway & Gagnon in Anchorage. Atkinson's adventurous spirit took hold when he arrived in Alaska as a 22-year-old in July 1948. After his arrival, he tried his hand at salmon fishing on the Kenai Peninsula in the southcentral part of Alaska and settled into a cabin on a remote lake in the area, a few hours' drive from Anchorage. There were two other cabins on the lake: one owned by Shem and Billy Pete, Native Alaskans; and the other owned by two of the most pre-eminent attorneys of the time, Stanley McCutcheon and Buell Nesbett. Nesbett was later to become the first chief justice of the Alaska Supreme Court.

Atkinson recalls these men and their stalwart appetites for the outdoors, good conversation, and alcohol. In exchange for digging a well, Atkinson and his friend moved into the larger and more convenient cabin owned by McCutcheon and Nesbett. The owners would come to the cabin on the weekends with "gallon jugs of whiskey and steaks" for all. Atkinson remembers fondly drinking a bit too much whiskey one evening and retreating to his down sleeping bag, which had some holes in it, while the other men continued chatting. In the middle of the night, Nesbett, who was a large, burly man, picked Atkinson up—sleeping

bag and all, with feathers flying—and sat him down so that the future chief justice could continue to give Atkinson advice on life and the law.

Atkinson speaks freely about his peers' accomplishments as well as their gregarious personalities. However, he is much more hesitant to discuss his own place in Alaska's legal history. Soon after beginning his career as a lawyer in Alaska, Atkinson entered a law partnership with George McLaughlin, a well-known and beloved attorney in Anchorage, who went on to chair the Judiciary Committee of Alaska's Constitutional Convention. McLaughlin died of a heart attack before he reached the age of 50. Atkinson continued practicing law in the private sector, eventually becoming a partner at Atkinson, Conway & Gagnon, which remains one of the oldest and most respected law firms in Alaska. Today Atkinson is an active member of the Anchorage community, not only continuing his practice but also embracing the outdoors by cycling and skiing across hundreds of miles each year.

Another lawyer who practiced during territorial times and early statehood in Alaska was a colleague of Kenneth Atkinson, Russ Arnett, who also seems to thrive in the Alaska wild. Arnett came to Alaska on the advice of a current federal judge, James von der Heydt, who went to law school with Arnett and regaled him with stories of von der Heydt's time as a truck driver and a deputy marshal in Nome. Arnett was enamored with the descriptions and decided to head up to Alaska after graduating from law school. During his first few years in Alaska, Arnett worked as a dockworker and served as a U.S. commissioner. Because Alaska was a territory, U.S. commissioners were appointed to deal with various legal issues that came up throughout Alaska. These commissioners, who were not usually attorneys, often found themselves acting as judge, jury, and lawyer on various legal issues. Arnett also recalls traveling to Kodiak, where he would step off the ferry and be bombarded by individuals who had various legal problems. As a result, Arnett found himself practicing law off the cuff in an effort to provide legal representation to a population that had only spotty access to lawyers.

Although Arnett warmly recalls his days as Kodiak's de facto attorney and his first introduction to the law of the frontier as a U.S. commissioner, his primary focus during our interview centered on the difficulty of practicing law without an established and fully functioning court system. In the mid-20th century, only a handful of federal judges had been appointed to the territory of Alaska despite the vibrant economy and social life that existed in all Alaskan towns. For the most part, Alaskan communities had "sanctioned" prostitution and gambling, and alcohol was a free-flowing libation enjoyed by many. There was a surprising sense of openness among Alaska's residents and an interesting kaleidoscope of different nationalities and backgrounds. As early as the 1950s, women were active members of the community, often taking on professional and political roles that may not have been accepted as widely in the lower 48 states. These women were unique in their own right, taking up hunting and fishing with their male counterparts and, for some, going so far as to

support prostitution—even if only as a way to keep the rough Alaskan men away from their daughters. Alaska's Native population also actively engaged with new immigrants to Alaska, despite notable discrimination against the Alaska Native population by both the immigrants to Alaska and the territorial government. Alaska was also a treasure trove of natural resources, where discoveries of gold and fishing windfalls were commonplace. The whirlwind of activity and interaction throughout Alaska brought with it crime and disputes. Tension between the settlers and the Native Alaskans created additional legal challenges.

Alaska's territorial courts simply could not accommodate the constant need for legal representation and dispute resolution. Anchorage, where Arnett was practicing, had only one appointed judge who had to hear hundreds—if not thousands—of cases. Many plaintiffs would give up hope of getting any relief and abandon their cases, as well as their lawyers, in despair. Criminal defendants would be stuck in limbo as they waited for their cases to go to trial. It was the inadequacy of the territorial court system that Arnett believes led many to support statehood for Alaska. The promise of an Alaskan court system that would provide a reliable way to dispense justice was extremely appealing to the general public. Moreover, the territorial judges' views often clashed with the mind-set of the members of the Alaska bar, who were fierce advocates for their clients and often brilliant lawyers, but who were also born in the days of the last frontier—often with whiskey bottles in their desk drawers and memories of jobs where they worked alongside the longshoremen and fishermen they represented.

Finally, after Alaska achieved statehood, the governor appointed the first chief justice of the Alaska court, Buell Nesbitt. Nesbitt, who was a good friend of both Russ Arnett and Kenneth Atkinson, was reportedly a brilliant lawyer and a military hero known for his strong will. Despite the importance of his appointment, Judge Nesbitt and the two other judges appointed to the Alaska Supreme Court still did not equate to a full state court system, and the attorneys continued to struggle with the lack of judicial relief in a flooded court system. It was not until much later and after a long hard fight by the Alaska bar that Alaska's state courts came into existence and the lawyers in the state could finally guarantee their clients proper access to the judicial system.

Not only were Alaska's attorneys during the push toward statehood pioneers of the Alaska legal system, but they also helped shape the cultural birth of the state of Alaska. Daniel Cuddy, one of the most pre-eminent members of Alaska's business and financial community, today is the president of the First National Bank of Alaska, a bank worth approximately \$2.6 billion. Even though Cuddy has the sophistication and charm one would expect of a bank president, the independent Alaskan spirit is unmistakable as he describes both his childhood and the lessons he passed on to his children.

Cuddy was born in Valdez, Alaska, in 1921 and moved with his family to Anchorage in 1933. Soon after arriving, he began working in a cannery. At the age of 17, Cuddy

was promoted to the position of can loft supervisor of the cannery. He used the money from that position to pay his way through college. While he was in high school, he also ran a trapline, and his earnings from that venture helped fund his education. After college and World War II, Cuddy went to law school at the University of Washington. He dropped out after a year and came back to Alaska to work as a law clerk. Ultimately, he decided to take the apprenticeship route to joining the bar—a practice accepted in Alaska at that time. Cuddy passed the bar in the late 1940s and practiced law for only five years. Despite his short tenure in the practice of law, he remembers the characters and zealous litigators beside whom he practiced, including Wendell Kay, a partner in his father's law firm who was known for his excellent and colorful litigation skills.

Perhaps one of the most revealing anecdotes told by Cuddy is not about his legal feats but, rather, about his interaction with four of his daughters during the days after oil was discovered in Prudhoe Bay.

The pipeline was going on in those days, and I wanted them to work, so I knew an Oily and the Oily said he'd hire them in Prudhoe Bay. So I took the Oily out to dinner and I asked him what the girls would be doing and he said "well they'd be driving a pickup truck." How much money would they be making? "Oh probably \$3,000," which was good money. My wife asked if they'd be safe. And the Oily said, "Oh if they're good girls; they probably will come back as good girls." Well, that was the end of that! So I took them gold mining—we operated a gold mine up at Cache Creek ... and the girls operated it for three years. Just the four girls—running bulldozers, giants, cleaning out the sluice box; they did very well too. That was a good experience for them.

Cuddy's determination to infuse his daughters with the same independent and can-do mind-set that he developed at such a young age exemplifies the impact all the early legal pioneers still bring to the great state of Alaska. These living legends teach young lawyers the importance of dignity in the practice of law while creating an atmosphere of openness and opportunity and challenging today's attorneys to carry on their legacy. **TFL**

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