

Early Juneau Judges – The Pioneers

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I. Intro.

Fifty years ago Alaska left behind almost one hundred years of second-class status as an American possession and joined the ranks of the American states. — **1** — Statehood marked the end of a decades-long fight for the right to self-determination in the former territory, and it was achieved against substantial odds.

The list of Alaskan grievances against territorial status was long, and many of the complaints are familiar to most Alaskans today: dominance of the Territory's economic and political affairs by the large Outside commercial interests—salmon packing, — **2** — minerals, and other resource extractive industries—lack of control over our internal affairs, no voting representation in Congress. But another deeply-held grievance concerned the judicial system, in which judges were appointed by officials in far-off Washington, DC. These judges, as political appointees, lacked independence, and were subject to dismissal if their decisions did not meet with the approval of the executive branch, the appointing authority. In addition, there were only four trial judges for the entire Territory, creating huge backlogs and long delays. — **3** — Also, there were no appellate judges in Alaska: Appeals were taken to the Ninth Circuit Court of Appeals in San Francisco. Finally, commissioners (the lower-court judges of that time) were dependent upon fines collected to pay for court expenses (and possibly salaries)! — **4** — It made for a judicial system out-of-touch with the people it served, non-responsive to them, horribly slow, inefficient, and expensive.

The story of the creation of the state court system — **5** — practically out of whole

cloth and in a breathtakingly short time—is what I'd like to talk about for a few moments today. And a big part of the story centers around three early Juneau pioneers: Tom Stewart, John Dimond, and Jim von der Heydt. — **6** — Tom Stewart's role in establishing the court system was multi-faceted: He set up the Constitutional Convention (1955); served as its Secretary, (1955-56); was a member of the Territorial House and first State Senate; served as the second Administrative Director of the Alaska Court System (1961-66); and as a superior court judge in Juneau (1966-81). — **7** — John Dimond was appointed to the first supreme court (1959) and worked on the multiple tasks necessary to create a court system, from the promulgation of Rules of Court and the establishment of administrative procedures, to the leasing of facilities, and the creation and securing of a budget. Nominally retiring in 1971, Justice Dimond would serve an additional dozen years as a senior justice, helping to bring the court system into the modern era. — **8** — Jim von der Heydt was appointed at statehood to serve as the first superior court judge in Juneau, where he served until his appointment to the federal district court, where he remains a senior judge to this day.

II. Thomas B. Stewart

Tom Stewart was born January 1, 1919, to Ben and Edna Stewart of Juneau. — **9** — Ben Stewart, after whom the tallest mountain on Douglas Island is named, was a towering figure himself: a territorial mine inspector, mayor of Juneau, and confidant of governors. Tom was educated in Juneau public schools, showing a patriotic bent at an early age when he and his younger sister posed as Uncle Sam and the Statue of Liberty on the 4th of July. — **10** — As a boy, he roamed all over the area: on and off the trails, on rivers and lakes, and in the mountains, becoming an expert skier. — **11** — Following graduation from Juneau High School, he earned his undergraduate degree at the University of Washington in 1941. In that year, he enlisted as a private in the Army, eventually attaining the rank of captain. — **12** — During World War II, he saw action in the Aleutians and in Italy with 10th Mountain Division. He earned a silver star and two bronze stars for valor — **13** — at the taking of Riva Ridge—the point at which the 10th Mountain Division broke through the Gothic Line,

breaking the 2-year stranglehold the German Army had had on the Italian peninsula.

After the war, from 1946-1950, Stewart earned degrees from the School of Advanced International Studies at Johns Hopkins and from the law school at Yale. He also studied Russian at Middlebury during the summer. Following school, he returned to Alaska in 1951 to clerk for Judge George Folta of the territorial court, then worked for three years as an Assistant Attorney General in the territorial A.G.'s office. (The other assistant A.G. was John Dimond.) In 1955, Stewart was elected to the House of Representatives, where he served as Chair of the Joint House-Senate Committee on Statehood and Federal Relations. — 14 — In that capacity, he was involved in planning Alaska's Constitutional Convention. At his own expense, he embarked on a six week trip across the country to locate the finest constitutional scholars and the best experts in the field of writing a constitution, to provide advice and guidance to the convention. Regarding that service, an article commemorating his 2005 Harley Award from the American Judicature Society, presented to him in Juneau by former U.S. Supreme Court Justice Sandra Day O'Connor — 15 — said this: "The Constitution crafted by convention delegates has stood the test of time, with certain articles heralded nationally and internationally as models to follow. Upon statehood in 1959, Alaska became one of the first states in the nation to adopt merit selection for judges under the Judiciary Article of its new constitution. — 16 — In 2000, the late Justice Jay A. Rabinowitz remarked that the choice of merit selection was "probably one of the great things that the Constitutional Convention did because, in my view, the Judiciary Article is a splendid example of foresight and incredibly skillful drafting — 17 — Now there are about thirty-five states that have some form of our system, and there isn't a single state that wouldn't want our system in full."

In 1959, Tom was elected to the first Alaska State Senate, where he served as Chair of the State Affairs Committee and a member of the Judiciary Committee. In the 1961 election, Tom at first appeared to have been re-elected by one vote, but he trailed by two votes upon a recount by the Elections Division. He decided not to request a full recount, instead accepting a position as the second Administrative Director of the Alaska Court

System. He held that position for five years, from 1961-66. Being the second administrative director of the brand new court system was a huge job: 5,000 cases — **18** — were transitioned immediately from the federal system, and the new state system was starting from nothing, as I'll discuss more fully when talking about John Dimond. In the early days, even furniture and supplies were in great demand, with one early magistrate on the Kenai reporting that he had to use a Blazo box for a bench. — **19** —

In 1966, Stewart left the top court administrative post to accept appointment by Governor Bill Egan to the superior court in Juneau — **20** — to replace Judge von der Heydt. That appointment would begin a sparkling judicial career, — **21** — lasting until 1981, during most of which period he served as the presiding judge of the 1st Judicial District. I was immensely fortunate to arrive in Juneau a few years after his appointment, and to spend almost a decade appearing in his court. I was even more honored years later to be appointed to succeed him on the superior court. He was everyone's ideal of a judge.

I'm happy to report that the Alaska Legislature, in recognition of Tom Stewart's monumental contributions to the State of Alaska, passed legislation during the 2009 session to name the former Scottish Rite Temple, which is in the process of being transformed into an annex to the State Capitol Building, the Thomas B. Stewart Legislative Office Building. The building is situated across the street from the Capitol and from the Dimond Courthouse, which is named, of course, for our next pioneer Juneau judge.

III. John H. Dimond — 22 —

John Dimond was born in Valdez, Alaska, on Christmas Day, 1918, the son of Alaska's delegate to Congress and later federal judge Anthony Dimond. Although many who came to know John Dimond only relatively later in life think of him as slim and even somewhat frail, as a youth in Valdez, he grew big and strong. Roger Connor, a colleague on the supreme court for many years, wrote this about John Dimond in a long piece in The Alaska Bar Rag: "One other anecdote has been related about John's size and strength as a

youth. Once in Valdez, in the 1930's, Bill Egan, later to become Alaska's first governor after statehood, was giving boxing lessons to some young fellows, including John Dimond and George Sullivan (later mayor of Anchorage). When John's turn to spar with Bill arrived, John with his first punch knocked Bill through a window and onto the ground outside. The lads inside waited for Bill Egan to reappear, but several minutes went by. When Bill finally came through the door he said, "OK boys, the lesson is over for today." After Anthony Dimond's election as delegate to Congress, John attended a school run by the Christian Brothers in D.C. and then St. John's Military Academy. — **23** —

John Dimond was extremely active as a young man, joining expeditions led by Father Hubbard, the "Glacier Priest," (after whom the Hubbard Glacier north of Yakutat is named). — **24** — He was also seriously burned in a boating accident — **25** — while helping to build the Shrine of St. Therese near Juneau, after fumes from gasoline that had leaked from a tank exploded. — **26** — After a hospital stay that lasted months and involved several skin grafts, he traveled to Catholic University, in Washington, D.C., for college, and graduated in 1941. In 1942, he joined the Army, completed OCS, and was commissioned a 2d lieutenant. — **27** — As a platoon leader (1st lieutenant), he saw action in three campaigns in the South Pacific, for which he received the Silver Star, the Bronze Star, the Purple Heart, the Asiatic Pacific Medal with two bronze stars, and the Philippine Liberation Service Medal with a bronze star. —**28**— One award citation he received includes the following description of his valor by O.W. Griswold, Major General, U.S. Army, Commanding:

For gallantry in action at Bougainville, Solomon Islands, on 13 March 1944. Upon learning that a carrying party had received a heavy concentration of enemy mortar fire resulting in several casualties, Lieutenant Dimond, without regard for his own safety, advanced 250 yards to assist the fallen men. While aiding a wounded soldier amidst bursting mortar shells, Lieutenant Dimond was

hit in both legs by shell fragments. although painfully wounded, he refused evacuation until all other casualties had been removed. Lieutenant Dimond's courageous action was an inspiration to his men, and exemplifies the highest traditions of gallant leadership."

When the war ended in 1945, John left the Army as a Captain. On the advice of Bob Bartlett, then Alaska's Delegate to Congress, he changed his study plans from mining to law, and enrolled in law school at Catholic University. After graduating in 1948, — **29** — he returned to Alaska. His employer, J. Gerald Williams, was elected Attorney General, and John joined him in Juneau. Soon Tom Stewart joined the staff, and they worked together until 1953. John left to open an office with his father, but the elder Dimond died suddenly and John returned to Juneau, first for three years in sole practice and then three years with the Faulkner Banfield firm.

In 1959, Gov. Egan was tasked with appointing the first supreme court. Apparently forgiving the young John Dimond's knockout punch 25 years before, Gov. Egan appointed John Dimond to the supreme court. — **30** — The court was appointed in August, 1959, with the plan for a gradual transition of responsibility from the federal to the state system. (The Congressional Statehood Act provided that the federal court would remain an "interim" court with jurisdiction for not more than three years. The first state legislature had initially provided that the transition from federal to state court would take place in 1962, three years after statehood.) That plan was interrupted by the threat of a lawsuit challenging the federal courts' jurisdiction over cases in the new state. Alaska's first chief justice, Beull Nesbett, described the predicament in a letter read many years later at Justice Dimond's memorial service in 1985:

"Immediately after John Dimond and I were sworn in by Gov. Egan on Aug. 7, 1959, we met in a borrowed office in Juneau to commence planning the Alaska Court System. We had no

judges, no courtrooms, no offices or furniture, no rules of court, relatively limited funds and were faced with the immediate prospect of having to decide appeals as soon as activation occurred. Until the Alaska Court System was activated in February 1960 Justice Dimond worked night and day on almost every aspect of the organization with tremendous ability and utter selflessness.”

Chief Justice Nesbett might well have added that there were “no law books, or at least not enough,” to his list of shortages in 1959, as an item in the August 1960 Alaska Court System newsletter makes clear. — **30** — An editorial entitled “Let’s Get Up To Date” states:

“Would you look at a 1959 calendar to determine dates in 1960? Or follow a 1957 tide table to decide when to fish this year? Probably not, but SOME Alaska courts apparently still apply 1959 law, or older ones. At least slips have not been received from them indicating that their codes have been annotated. Bringing your codes up to date by marginal notations is a tedious and time-consuming task, but it is absolutely mandatory that only law currently in effect be applied.”

By December 1959, the Alaska Supreme Court issued its first opinion, in a decision written by John Dimond. The frenetic work of the court to organize a viable system in six months had paid off. It was lean and mean, as the list of the entire personnel of the ACS in 1960--comprising all of one page!--shows, but it was up to the task. — **32** —

IV. James von der Heydt — 33 —

Born in Miles City, Montana in 1919, Jim von der Heydt was fascinated by Alaska throughout his youth, and so he headed north shortly after graduating from Albion College in 1942. Arriving in Valdez, he obtained a construction job in the war effort, and he worked on building a steel bridge over the Nenana River near Tok. During the next few years he would also work on the Alcan Highway and at Marks Air Force Base in Nome. — **34** — He was eventually offered the job of Deputy US Marshall in Nome, where he served from 1945 to 1948. He was responsible for law enforcement in a region that spanned from Hooper Bay to Barter Island, and he traveled extensively by dog team, umiak (native skin boat), or bush plane—“whatever method was needed to get me where I had to go.” (Unfortunately, we have not been able to locate a picture of Judge von der Heydt mushing a dog team.) In 1948, he went to Northwestern Law School, — **35** — returning to Nome in 1951, serving briefly as US Commissioner, then US Attorney (until 1953), then in private practice until 1959. As the only private lawyer in town, he was assigned all the criminal appointments from the court. He served as Nome City Attorney for several years, and on the Board of Governors of the Alaska Bar Association, serving as its president in 1958-59. He was also elected to the last territorial House of Representatives in 1957.

With statehood, Gov. Egan — **36** — appointed von der Heydt to the superior court, one of only eight superior court judges throughout the new state. — **37** — All of the new superior court judges were sworn in together, in a joint session in Juneau, on Nov. 29, 1959. — **38** — The new judges promptly were sent to New Jersey for training, — **39** — a precursor to the National Judicial College training made available to new judges nowadays. Especially in the early years, all of the judges worked on planning for the new system. — **40** — Judge von der Heydt served the Alaska Court System as the superior court judge for Juneau for nearly seven years, helping guide the new state’s judicial system through a period of critical transition. — **41** — He was vigorous in attacking the backlog in Juneau. In 1965, President Lyndon Johnson appointed Judge von der Heydt to the federal district court in Alaska. — **42** — He has served the state, through his service to the federal District Court in Alaska, for more than four decades since then.

V. Conclusion

The achievements of — **43** — Tom Stewart, John Dimond, and Jim von der Heydt — in planning and helping create a new state constitution, in planning and executing a new state court system, and in implementing installation of that system in Juneau—were remarkable both for the breadth of their undertakings, the excellence of their work, and the speed with which their tasks were completed. I think that this brief look at the backgrounds of these remarkable men gives us some hint as to how they could achieve what they did: They were all grounded in practical experience, tested by either combat or challenging experiences in the real world before they attended law school, and they all brought these experiences to the task of building an entire judicial system from scratch. It is probably easy to take their work for granted, but we should not do so. Instead, we should remember that, rather than judges appointed for political reasons and beholden to the appointing authority, we now have judges who are independent and answerable only to the electorate in periodic retention elections. Instead of an understaffed system dependent on fines to pay court expenses, we now have an integrated and centralized system that is properly funded on a statewide basis. Instead of backlogs that date back decades, we have a system that tries cases in timely fashion. And instead of a system that requires litigants and their lawyers to go to San Francisco for an appeal, we hear appeals in all the major cities of the state on a regular basis.

With the work of people like Tom Stewart, John Dimond, and Jim von der Heydt, we have a very different, and much better system, than the one we abandoned in 1959. We owe a great debt to these early Juneau pioneers. I hope we pause for a moment today, fifty years after our admission to the Union, and acknowledge our debt to these giants.

Thank you.