

Witnessing the Alaska Gold Rush: Finding Mining History in Court Records

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This article proceeds from a supposition that mining history and mining historians can benefit from the sources and methods used by legal historians. To illustrate that point, it explores litigation about mining in Alaska, as it appeared in federal courts. This study makes no claim to be comprehensive, but rather, I hope, illuminates the intersection of mining and the law in a way that might encourage readers to explore further for themselves.

Mining history and the law have certainly been a fruitful combination before. Scholars such as Gordon Morris Bakken, Charles W. Miller, Jr., William T. Parry, and John Lacy, as well as the lawyers and historians of the Society of Mining Law Antiquarians, have directly investigated how the law shapes and is shaped by mining.¹

Other scholars have made legal sources an important part of their investigation of mining history. For example, Catherine Holder Spude's detailed work on saloons and prostitutes in mining frontier Alaska owes much to legal sources and considers the lives of her subjects, in part, with reference to the evolving legal framework of Skagway, Alaska.² My own examination of the use of maps and models by mining engineers draws partly on legal sources and recounts courtroom uses of these visual technologies.³ Also noteworthy is the occasional work of expert mining historians in environmental litigation.⁴

In this article, I hope to give readers a practical orientation to some of the sources and methods that all mining historians can use if they want to utilize legal history in their research. First we will examine the terminology and range of readily available legal history sources, followed by a look at a few revealing examples from the Alaska territorial era, and concluding with a short discussion of where mining historians can go to find interesting material themselves.

Cases as History

While legal historians understand that there are several distinct types of law, such as the statutory law that reflects the legislative intent behind successfully passed laws, and regulatory rule making by government agencies, which similarly bounds mining actions, the law addressed in this article is “case law”—that which comes as a result of judicial decisions. As the basic units of court action, cases can be important to historians in one of two ways. The first, which could be labeled a “legally important” case, is that the case provided an important resolution to a key point of law, which directly influenced the shape of subsequent cases and the actions of people.

For example, in American mining law we might see the Eureka-Richmond case, which decided that a lode, for the purposes of claiming such a thing under the mining law, was a “zone or belt of mineralized rock lying within boundaries clearly separating it from the neighboring rock,” as one such legally important case.⁵ (Outside mining law, most cases that are memorable to the public, such as *Miranda v. Arizona*⁶ or *Brown v. Board of Education*,⁷ would fit this “legally important” category.) Due to the legal principle of *stare decisis*, which says that, once settled, a decided legal issue becomes precedent for similar legal questions in the future, such “legally important” cases end up becoming a long-standing part of the tapestry of the law that impacts how miners and firms go about their business.

The second type of case could be thought of as “historically important” rather than “legally important.” This label could describe cases that are worth studying because they provide historians a window into the past. Cases of this sort may not have had an impact that reached much beyond the parties in the case, or perhaps, at best, the communities of the litigants. Their historical value may instead be derived from how the case captures and illustrates, through the ordinary operation of the law, cultural or social attitudes that

often become explicit in legal action, where violation of such norms is an upsetting of order that courts are intended to set right.⁸

“Historically important” cases might also be valuable not because of the lawsuit’s outcome, but because of the data that was gathered as a result of the initiation of the case. Testimony, transcripts, and documents in evidence were intended to serve a legal purpose, but these same things can end up illustrating, in close detail, aspects of everyday life that might not otherwise have been saved. Much like an ancient pack rat midden, where the indiscriminate gathering activities of a particular rodent can help present-day scientists study what flora were present in an area thousands of years before,⁹ the evidence-generating process for court cases can end up inadvertently saving details about everyday life of use to scholars many decades later.

Alaska and the Federal Courts

Legal history has much to say about the American West, mining history, and the history of Alaska specifically.

In his detailed, scholarly study of the Ninth Circuit Court of Appeals, which covers the states of Arizona, California, Nevada, Idaho, Montana, Oregon, Washington, Alaska, and Hawaii (along with Guam and the Pacific Islands), lawyer and historian David C. Frederick argued for the importance of scholarly attention to the legal history of this court. For one thing, the courts of appeals are excellent sites from which to study legal history, generally. “The experiences of the various circuit courts of appeals and district courts . . . can well document the change in legal culture that was occurring in the early twentieth century; these subaltern federal courts are a rich and largely untapped lode for legal historians.”¹⁰ Additionally, the circuit courts of appeals are historically interesting because so few of their holdings were ever appealed to the U.S. Supreme Court. In a practical sense, the circuit courts of appeals were

the highest body likely to review an appeal from a western court.¹¹

There was a close linkage between the West and the Ninth Circuit Court of Appeals in particular. As Frederick observed, “the West presented a range of problems and opportunities unmatched in diversity by any other circuit.”¹² The court and western society shaped each other—the problems important to the West appeared in court dockets, and decisions made in courtrooms shaped the actions of western people. In this context, it is no surprise that the appeals court was “animated” by questions pertaining to the development of the West.¹³ Moreover, since so much of the land in the West belongs to the federal government, questions about land use that might have been the province of state courts in other parts of the country ended up being issues decided by federal courts in the West, further highlighting the importance of the Ninth Circuit Court of Appeals.¹⁴

Federal courts also played an outsized role in the West for other reasons. Western mining corporations, such as those in Butte, Montana, frequently incorporated outside the state in which they operated. One of the reasons companies favored such a strategy was to be able to claim “diversity of jurisdiction” as a way to move their legal actions from state courts to federal courts (because federal courts had the authority to decide disputes across state lines). In a federal court, a mining company could expect to find a pro-development, corporation-friendly setting, and trial by experienced and educated judges rather than juries of the people. All of these were seen as reducing uncertainty and increasing the likelihood of a pro-corporation outcome in mining disputes.¹⁵

Alaska, in particular, was deeply shaped by the federal courts and by mining. Due to its remoteness and low white population, more than a decade passed between its acquisition by the United States in 1867 and the organization of even a rudimentary governmental system in 1884. Alaska was labeled a “district” rather than the more familiar “territory,” as the latter designation carried

more rights and privileges than federal authorities felt comfortable bestowing.

This early government included just one federal judge, appointed by the president.¹⁶ In 1900, the number of federal judges was expanded to three, in response to the gold rush at Nome, and a fourth was added in 1909.¹⁷ Alaska was granted territorial status in 1912, but these federal judges remained the core of the judiciary in Alaska until statehood in 1959. Prior to statehood, all felonies in Alaska were federal felonies, and were tried in federal district courts (with the prospect of appeals, and consequently good documentation, to the Ninth Circuit).¹⁸ After 1959, Alaska established the typical local-state-federal court pattern.¹⁹

Mining was a formative influence in Alaska’s history. Even a casual perusal through one of the state’s fine comprehensive histories shows the pervasive effect of mining discoveries prompting Euro-American development.²⁰ Some developments had more lasting importance to the state’s history, of course. Lode mining for gold began at the famous Treadwell Mine in the 1880s, driving economic activity in Juneau and the surrounding area until its closure in the early 1920s.²¹ The rush to the Klondike, which got underway in earnest in 1897, brought large numbers of prospectors to Alaskan territory, which they generally had to cross before arriving in the Canadian diggings in the Yukon.

Many of the subsequent mining discoveries were made by miners initially attracted to Alaska during the Klondike period.²² In 1898, the strikes at Nome—made by the so-called “three lucky Swedes”—precipitated a rush of gold seekers and lawlessness to the Seward Peninsula.²³ (More on Nome in a moment.) Felix Pedro’s 1902 strike was responsible for the foundation of Fairbanks, and gold mining in the Tanana Valley remained significant for several decades.²⁴ The initial discovery in 1900 of the rich Bonanza copper claim eventually prompted the formation of the Alaska Syndicate and then the Kennecott Copper Com-

pany, both of which built extensive Alaskan infrastructure and created one of the giant twentieth century, worldwide mining firms, eventually outgrowing its Alaska roots altogether.²⁵ The Alaska Syndicate's efforts to secure coal leases on federal lands there also led to a major scandal about political influence peddling, the Ballinger-Pinchot Affair, which spurred the firing of conservation-minded Forest Service director Gifford Pinchot, and widened a split between Taft and Roosevelt supporters within the Republican Party that eventually led to Roosevelt's third party "Bull Moose" candidacy for the presidency in 1912.²⁶ Even a list as brief as this suggests the importance of mining to Alaska's history, and that in turn to the mining history of the United States.

The Law, Legal History, and History from Legal Documents

In this section, we will briefly discuss some of the types of sources that can be valuable in legal history analysis, and how these can be used to learn about mining history in Alaska.

Legal history often leans on published judicial opinions as its core of analysis.²⁷ These are what the judge in a particular case writes, to summarize the facts and the points of law that are at issue, and to explain the judge's reasoning and decision. These judicial opinions are frequently collected and published, or "reported," in volumes termed "reporters." This "reported" opinion thus becomes the official record of the case, complete with a citation that includes the volume and page of the reporter in which the case was published. For example, the U.S. Supreme Court case that established "Miranda rights" was *Miranda v. Arizona*, and the reporter citation is 384 U.S. 436.²⁸ Printed copies of cases can be found in the paper copies of reporters held by many libraries, in the commercial LexisNexis and Westlaw databases, as well as at some non-profit sites, such as CourtListener, FindLaw, and the Law Library of Congress.²⁹ So when people say they are going to

look up a case, they typically mean they are going to find the published opinion for that case in a reporter (or equivalent database).

But other, less common legal documents can also be found, and are often more revealing than the published opinions. These consist of transcripts, briefs, affidavits, and exhibits prepared to document the proceedings of a lower court for appealing a case to a higher court.³⁰ These documents drip with "legalese," sometimes even more than the published opinion, and they can be very long, but they can be worth the time it takes to find and use them because of the historical insights they can reveal.³¹

Commonly called "records and briefs," historians usually need to go to a government archive to find them. For example, records and briefs of the U.S. Supreme Court can be found in Washington, D.C., at the National Archives. Records and briefs from state courts can sometimes be found in state archives, and those from federal appellate and district courts are typically found in regional branches of the National Archives.³²

If we are lucky, these records and briefs might also have been saved by a law library near the court in question, and some of those holdings, in turn, have been made available digitally. For example, the records and briefs of the U.S. Supreme Court were collected by law libraries in Philadelphia and New York City after 1832. These collections were microfilmed in the 1970s, and then the microfilm set was in turn digitized and is available through a subscription database.³³

One such set of records and briefs pertains to cases from the Ninth Circuit Court of Appeals, which covers most of the West, including Alaska. These were saved by a law library in San Francisco and digitized by the Internet Archive, without an index; your author built a free digital history site called "9CHRIS" (<http://9chris.org>) to index them somewhat and make the documents more accessible. (There are more than 40,000 individual documents in this database, in about 3,300 bound volumes.) This indexing included devel-

oping a handful of key words to associate with each document, based on the frequency of the less-common words the documents contained. The top fifteen of these serve rather effectively to give a general sense of a document's contents.³⁴ A full-text search function is also available.

For the purposes of the present article, a somewhat unscientific sample was created by looking at all the cases in 9CHRIS in which one or more of the documents (such as a brief or a transcript) contained both the keywords "alaska" [*sic*] and "mining" in the top fifteen.³⁵ There were 286 documents matching both keywords, representing 160 cases in all.³⁶ These represent a period from the formation of the Ninth Circuit Court of Appeals in 1891 to just before Alaska's statehood in 1959. Undoubtedly gaps exist in the coverage, nonetheless these documents provide a big enough group of cases to be able to get a good sense of the potential of such court documents to shed light on Alaska's mining history. In the next sections, we will take a closer look at a few of these cases to get a glimpse of the kinds of historic treasures that might be found in these legal documents.³⁷

In re Noyes

Before exploring those cases, however, we must at least briefly acknowledge an important, well-known episode that did not end up in our more narrowly-defined keyword sample. The rich gold claims of Anvil Creek in the Nome District brought together mining law, Alaska, and the federal judiciary in an infamous episode of corruption that called into question the integrity of the federal judiciary, and the details are well captured in the records of the Ninth Circuit Court.

Put briefly, Alexander McKenzie, a Republican political rainmaker from North Dakota, conspired to manipulate the Alaska legal code as well as the federal judiciary to plunder the rich placer mines of Nome. The key was to call into question the legality of the earliest mining claims in Nome, which had been originally staked by non-Ameri-

cans. This was legal under the federal mining law. Claim jumpers subsequently over-staked the original mining claims, and argued in court that the jumpers' claims should be recognized because the original claims were invalid due to their locators' citizenship status—a thin pretense at best.

In 1900, McKenzie engineered the appointment of his friend, Arthur H. Noyes, as federal judge presiding over the Nome cases. At McKenzie's direction, Noyes immediately appointed a "receiver"—McKenzie himself—to possess and work the disputed claims. McKenzie set about stripping the mines as quickly as he could while they were under his control. The original owners protested to corrupt Judge Noyes, but unsurprisingly the jurist found no merit in their arguments and denied them the chance to appeal his decisions to the Circuit Court of Appeals.

Sensing no other route, the attorneys for the original claimants journeyed three thousand miles by steamship to San Francisco to personally plead directly to Judge William Morrow of the Ninth Circuit Court of Appeals. Morrow overruled Noyes and ordered the return of the disputed property to the original claimants, orders that were ignored upon their arrival in Alaska. The original claimants nearly came to violence with McKenzie's men. In October U.S. Marshals from San Francisco arrived to enforce the Ninth Circuit Court's order, and returned to California with McKenzie, under arrest for contempt of court. Noyes, McKenzie, and other co-conspirators were convicted of contempt in 1901-1902, though they received little punishment.

This dramatic and important series of events has been popularized in fictional form by novelist Rex Beach, whose 1906 account *The Spoilers* was adapted to film five times.³⁸ It also has been well told by a number of historians.³⁹ Some of the latter consulted the richly detailed transcripts of testimony in the contempt cases of Noyes and several co-conspirators, located in the Ninth Circuit archives. These voluminous records can also be seen online in the 9CHRIS system, for those in-

terested in delving into the details of this fascinating episode of justice on the mining frontier.⁴⁰

Erceg v. Fairbanks Exploration

While “spoilers” were people in the Nome corruption case, “spoil” might also be a byproduct of mining activity. In this sense, we can examine a case that featured the Fairbanks Exploration Company, a major gold dredging corporation that reshaped the landscape of interior Alaska during the twentieth century. The firm—often known simply as the F. E. Company—was a subsidiary of the United States Smelting and Refining Company, and began acquiring placer ground in the Fairbanks area in 1924, shortly after the completion of the Alaska Railroad to the city. By 1928, the F. E. Company began operating its huge dredges, supported by an equally impressive infrastructure of water pumps and ditches. The dredges would operate until 1964.⁴¹

The case starts with a miner named George Gartner, who had a group of claims on Goldstream and Queenie creeks in the Fairbanks District that he brought to patent in 1919.⁴² Goldstream Creek, when Gartner moved in, had banks sixteen to eighteen feet deep and the creek flowed with at least one thousand “miners’ inches” of water volume.⁴³ Gartner lived on the site, and built cabins, shafts, ditches, installed equipment including steam points, cut firewood, and carried on mining.

The F. E. Company arrived in the mid-1920s, constructing huge ditches and moving water around. F. E. gained control of the claims on Goldstream Creek above Gartner’s claims, and in the summer of 1925 it started to use “giants” or monitors to wash away the overburden prior to dredging the pay dirt. All that muck, some 150,000 cubic yards, flowed down the creek and eventually covered Gartner’s claims nearly completely to a depth of four to seven feet, making it impossible to access his buildings or mines, destroying his small ditches, filling in his shafts, and

filling in Goldstream Creek, meaning that the water previously contained by the creek spread out over Gartner’s claims, flooding them. Gartner objected.

The F. E. Company replied, first denying that any such specific damage had occurred, and then adding that, whatever damage might have somehow been done, if Gartner had been paying attention, he would have had ample time to move his personal property off the claims. So as far as the F. E. Company was concerned, if there was any damage to Gartner’s stuff, it was clearly negligence on Gartner’s part for not getting out of the way.⁴⁴

There was a twist, of course. Gartner could not monitor his claims because in 1927 he was adjudged insane and placed in an asylum in Oregon. Instead, his property was monitored by Mike Erceg, the duly appointed guardian, who was from Fairbanks and had worked in and around the mining industry for years.

The transcript from the trial sheds tremendous insight on the operations of the F. E. Company, the rapid ecological changes created by its operations, what its managers knew about the impacts of their operations on nearby land, and the methods used to estimate values of placer ground in Alaska. Given the importance of the F. E. Company to this area, these case materials offer a deep look at a portion of its operations in a legal context. And there is lots of material here—the transcript, in multiple volumes, is over eight hundred pages.

To wrap up the case: Ultimately, since Gartner was in an asylum, Erceg’s goal was simply to recover a fair price for the damage to Gartner’s claims. Erceg estimated the total lost value at about \$100,000; the F. E. Company thought it was about \$7,000, since it was obvious that the ground, covered in water and muck, was nearly worthless. The judge ultimately decided that Fairbanks Exploration owed Gartner \$30,000, satisfying neither side, and this decision was upheld on appeal.⁴⁵

Courtney et al. v. King et al.

A different case illustrates how legal documents could capture extensive detail about technology and life at the mines. In this case, the Russian Mining Company was sited on the No. 1 below Discovery claim on the Chatanika River, in the Fairbanks Recording District.⁴⁶ This was, based on the material record documented in the case, an underground drift mine, of the sort common in the Fairbanks area.

In such operations, “steam points” would be hammered into ancient, permanently frozen placer ground. Steam run through the points was injected into the surrounding ground to thaw it, permitting miners to move the dirt without blasting. Work typically proceeded with the seasons, with pay dirt from underground being excavated in the winter and stockpiled on the surface during the cold months, followed by washing the pay dirt and recovering the gold in the warmer months, once streams had thawed and provided the liquid water supply needed for sluicing.

In the spring of 1912, the Russian Mining

Company faced fiscal trouble. In late April, it sold many of the mine’s fixtures and about two hundred cords of wood, cut into sixteen- and four-foot lengths, to C. H. Ward, but Ward let the company continue to use the equipment and burn the wood—probably trying to keep the operation from collapsing. During regular operations, this mine consumed about two and a half to three cords of wood per day, both in firing boilers and in using a little bit to support the underground workings.⁴⁷

However, the mine operation ran out of money and abruptly halted in June 1912, leaving workers unpaid and creditors unsatisfied. A group of workers filed liens against the remaining property of the mine, while creditors spurred civil authorities to seize the assets, and the legal case stemmed from the battle between those two groups for the rights to the remaining assets.

Because of the struggle over the remaining property, the court records left us a wonderfully detailed list of the property of the mine, including the wood lot, a boiler house, a mess house, and their contents, seized 11 June 1912:⁴⁸

One double cylinder hoist	Eight wheel barrows	One bread knife	Thirty six dinner plates
One 18 H. P. Boiler	Two dozen picks	One box candles	Eight meat knives
One carrier	Ten 10 ft points	One syrup cup	Thirty knives and forks
One bucket	Ten 12 ft points	15 lbs coffee	Thirty table spoons
One trolley cable	One horse harness and sleigh	One flour sieve	Twenty tea spoons
One hundred and twenty cords of wood	One hundred and forty five pounds fresh beef	Seven cans tomato catsup and Fifty pounds flour	Twelve soup bowls
Six shovels	Ten lbs coffee	3 cans beets	Thirty tea cups
Four picks	Five lbs Baking powder	5 lbs salt	Thirty saucers
Twelve feet pick steel	One lb. tea	Two large meat pots	Two large meat trays
Eight point hose	Six 1-gal cans apples	11 cans pumpkin	Fifteen pounds sugar
Ten feet 5-8 inch Iron	Eighteen cans tomatoes	One coffee pot	Twenty six pkgs corn starch
Eighteen feet 1 inch pipe	Fourteen cans beefs	28 cakes Armour’s white soap	Twenty seven cans cream
Four gals. Benzine oil	Twenty five lb. box dried apples	One tea pot	1/2 gal. molasses
Five gals. Red oil	3/4 box Ivory soap	Six cans olive oil	Five lbs split peas
One hack saw	Three sacks rolled oats	Two dish pans	One case bacon
One jack plane	Eighteen cans fig pudding	Seventeen cans tomatoes	Sixteen pcs bacon
One small hand drill	One hundred and fifty pounds Bayo beans	Two mixing pans	Forty pounds small white beans

Detailed inventories of this kind could be useful to historians and historic archeologists looking to reconstruct typical conditions in a Fairbanks drift mine. This transcript, like others mentioned here, is full of interesting details about the technology and work at this mine, as well as about the miners who operated it. For example, in the course of attempting to determine an accurate value for the hoist and other large machinery, expert witness testimony was heard from used equipment dealers in the Fairbanks District, who described the used mining equipment market as part of their testimony.

Women in Mining Society

It seems noteworthy and perhaps a bit surprising how many of the cases featured women listed as plaintiff or defendant. Of the 160 “Alaska mining” cases I examined, 21—just a tad over 13 percent—featured a recognizable woman’s first name somewhere in the title. Historians typically think of territorial Alaska as a male-oriented frontier, and of mining specifically as being dominated by men, even well into the statehood era.⁴⁹

At the time of Alaska’s early American development, women were only gradually gaining rights and participation in civil society at anything approaching rates comparable to men. Catherine Holder Spude, in her study of prostitution in Skagway, and Sally Zanjani, in her study of women prospectors, both show crucial exceptions and provide important studies to add nuance to this all-male stereotype of mining society.⁵⁰ In the cases that emerge from the records of the Ninth Circuit Court of Appeals, women play a wide variety of historical roles, both as bystanders as well as active participants.

Sometimes these women sought death benefits or workers’ compensation from a mining company. Alaska passed a workman’s compensation law in 1915.⁵¹ Catherine Crinus, Greek widow of Nick Crinus, tried to get the Alaska Treadwell Company to pay after Nick was killed by a falling

rock, but the company claimed a different subsidiary had actually employed the miner.⁵² Peter Rogulj, a miner in the Alaska Gastineau Mine near Juneau, was unmarried but supporting his dependent mother Mary when he was killed on 30 November 1915. She sued to collect his compensation.⁵³

Other times, as in the case of Elma McNaught, women were full participants in the mining excitement. McNaught was a Nome woman who bought mining claims, tromping the grounds personally and recording all the details in a book she kept for the purpose.⁵⁴ She entered the legal record as part of a lengthy trial after her ground was re-staked by other parties, she was “forcibly ejected” from the claim, and she sought—and was granted—an injunction to prevent the others from mining.⁵⁵

May Mugford

Another case featured a woman who was, she argued, directly affected by the actions of an Alaska mining company.

May Mugford was a thirty-year-old clerk at the Alaska-Treadwell Mines’ dry goods store, earning seventy dollars per month and supporting herself while living with her parents.⁵⁶ In August 1916, she went to an employee dance at the mine’s club house with her brother. At 11:30p.m., she and her friends were leaving when she fell through a large hole in the plank sidewalk, plunging twelve feet to the beach below, striking her head on an iron pipe, and getting knocked senseless.⁵⁷

Mugford argued that as a result of her fall she was completely disabled and unable to work to support herself. The company countered that it had not been negligent in repairing the sidewalk but that someone had been jumping on it with all of their weight to break it just before Mugford stepped there. Moreover, claimed the company, before the accident Mugford had “been ill and complaining both of her back and of headaches caused by a pronounced astigmatism of her eyes

and by female trouble.”⁵⁸

The rest of the case is terrifically revealing: It sheds light on the everyday lives of women in Alaska just after the turn of the twentieth century, shows the company and an injured individual trying to navigate legal conceptions of negligence and culpability, and also directly illuminates medical practices, both formal—such as the tonic of wine and arsenic that the company doctor injected into Mugford’s back with a hypodermic needle—as well as informal, such as Mugford’s visits to Miss Albrect, the masseuse. The transcript records tremendous detail about the functioning of the Treadwell Club, including what appear to be complete minutes of the governing board. (This evidence was necessary because one of the company’s arguments was that it wasn’t actually responsible for the sidewalk, but that the club, which was somehow a separate entity, was the responsible party.)

Ultimately, the jury found for May Mugford and awarded her \$13,500 in damages, which seemed excessive to both the Alaska-Treadwell and the judge.⁵⁹ On appeal to the Ninth Circuit, however, the court affirmed the verdict in favor of Mugford.⁶⁰

Rose Rickard and Nellie Thompson

Another case, finally decided in the 1930s, had its roots in the early years of Fairbanks mining. In August 1902, A. W. Howes located Creek placer claim No. 6 above Discovery on Cleary Creek, in the Fairbanks District. In March 1906, Jesse Noble bought the undivided lower quarter of the claim, and then a little more than a year later, in October 1907, he sold his part of the claim to his wife, Nellie Noble. (Nellie had independent access to money, and her sisters were also involved in the bank in Dome City where they lived.) Jesse promised, as part of the sale, that as long as Nellie held the claim, Jesse would make sure that the annual assessment work was done, either by doing it himself or by paying for it to be done.

In discussing whether this bargain had actually been struck, District Court Judge E. Coke Hill revealed much about the social knowledge that both men and women in territorial Alaska would have been expected to have about mining. He wrote:

[T]here is nothing inconsistent about it. She had received undivided interests in unpatented mining claims; she was married to defendant Noble and to become a mother within approximately a month; she was giving up a claim for cash earned by her against a bank and accepting for that claim interests in mining locations of uncertain value; and *she had lived in a mining community at least long enough to know of the danger of losing her interests in those claims if the assessment work was not done on them.* [Emphasis added.] Therefore it seems perfectly natural that before consenting to accept these interests she should take into consideration the necessity of assessment work and the further fact that she would probably not thereafter be in a position to earn money, and it is perfectly natural that her then husband, the defendant Noble, should have agreed as she says he did to keep up that work until the ground was sold. I, therefore, find that he did so agree.⁶¹

It began to get sticky in 1910, when Nellie secured a divorce from Jesse, then, in November 1911, married a businessman from Fairbanks, becoming Nellie Thompson. Jesse Noble continued to do assessment work on the claims to keep them valid, which included Nellie Thompson’s quarter. In 1928, Noble bought the other three-quarters of the claim at an estate sale.

Suddenly, in 1931, Jesse Noble believed that the work he had been doing to maintain the rest of the claim could not possibly have applied to the quarter of it owned by Nellie Thompson. By an

astounding coincidence, Noble's "closest neighbor and admittedly his housekeeper at times," Rose Rickard, just happened to be in the neighborhood of the claim—two miles over a mountain from where she lived—and re-staked a new claim overtop of Thompson's portion, claiming it was open ground.⁶²

Nellie Thompson sued and won, and was affirmed by the Circuit Court.⁶³ In many ways, this was a fairly ordinary Alaska mining case involving staking and re-staking of placer ground. The distinction here, as put by Thompson's lawyer in his brief, was that "[t]here were two women in the case, between whom there was no love lost,"⁶⁴ and that distinction gives historians a peek into men, women, and societal understanding of mining in 1930s Alaska.

Legal Sources and Mining Historians

Through examining the case study of Alaska, this article has suggested the potential for using legal sources, especially unpublished transcripts and briefs, to learn about the history of mining and mining societies. Although limited in many ways, these invaluable court records can sometimes capture detail about both ordinary and extraordinary people in the past that might not exist anywhere else. In particular, this essay has shown some of the types of records from federal court proceedings in the American West, within the jurisdiction of the Ninth Circuit Court of Appeals, that might be found in the 9CHRIS database.

How might mining historians look for relevant legal sources to incorporate into their own work? As with any body of sources, the nuances of research might seem infinite, but it is straightforward to begin a search either by looking for a particular case or by beginning with a topic.⁶⁵ In either scenario, the procedure will vary somewhat depending on the date and location the case was heard.

To begin with a case, researchers can search for likely candidates using CourtListener.com,

LexisNexis, or similar sites. If one relevant case is found, others that cited it might also be located by using CourtListener or specialized databases from LexisNexis or WestLaw. Each of these services offers a different level of completeness in its collection of published opinions. It may be helpful to think about the jurisdiction or jurisdictions that might have the types of cases being sought. For example, in most states, "ordinary" criminal activity—such as theft, trespass, or murder—is heard in state courts, while more specialized cases—such as those involving patents or cross-boundary lawsuits—are frequently heard in federal courts. The location of both published and unpublished court records will depend on the court location and type.⁶⁶

Once the researcher has found a published case, the "docket" number, as well as the names of the parties, can be used to try to find records and briefs from the case.⁶⁷ One helpful thing is that, for pre-1925 cases, the U.S. Supreme Court will have records and briefs from many cases that it did not actually hear, and thus the "collecting" procedure of the appellate process can work in the historian's favor by increasing the likelihood that the case records can be found conveniently.⁶⁸

If research begins instead with a topic, rather than a specific case, it makes sense to proceed straight to digital collections of records and briefs, such as 9CHRIS, the Making of Modern Law: Supreme Court Records and Briefs database, or Lexis and Westlaw.⁶⁹ Once a relevant-looking brief or transcript is found, it will generally be necessary to use the case name and docket number to see if the case was taken up by the court and actually given a trial, as the briefs alone will not say how the case was resolved.

Once the researcher has a case and docket number, even if records and briefs for the case cannot be located in one of the online services, the option remains to access the transcripts the old-fashioned way, by going to the appropriate archive and looking at the originals.

No matter the means of access, however, the

historical potential of unpublished materials from court proceedings is substantial. Particularly with the advent of new databases to ease the search, mining historians can learn much about the technology and social relationships of mining communities by examining these valuable records.

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Notes:

1. Gordon Morris Bakken, "American Mining Law and the Environment: The Western Experience," *Western Legal History* 1, no. 2 (1988): 211-36; Gordon Morris Bakken, *The Mining Law of 1872: Past, Politics, and Prospects* (Albuquerque: University of New Mexico Press, 2008); Charles W. Miller, Jr., *Stake Your Claim! The Tale of America's Enduring Mining Laws* (Tucson, AZ: Westernlore Press, 1991); William T. Parry, *All Veins, Lodes, and Ledges Throughout Their Entire Depth: Geology and the Apex Law in Utah Mines* (Salt Lake City: University of Utah Press, 2004). John Lacy is trained as a lawyer, rather than a historian, and has published about mining law in the literature of both fields. The Society of Mining Law Antiquarians has published its occasional newsletter, *Dips, Angles, and Spurs* since 1976, see: <http://mininglawhistory.org> (accessed 28 July 2017).
2. Catherine Holder Spude, *Saloons, Prostitutes, and Temperance in Alaska Territory* (Norman: University of Oklahoma Press, 2015).
3. Eric C. Nystrom, *Seeing Underground: Maps, Models, and Mining Engineering in America* (Reno: University of Nevada Press, 2014).
4. Historians serving as expert witnesses rarely get to publish directly on their work; one welcome exception is Fredric L. Quivik, "Of Tailings, Superfund Litigation, and Historians as Experts: *U.S. v. ASARCO, et. al.* (The Bunker Hill Case in Idaho). *The Historian* 26, no. 1 (Win. 2004): 81-104.
5. *Eureka Consolidated Mining Co. v. Richmond Mining Co. of Nevada*, 4 Sawyer 302, quote at 4 Sawyer 312. Also see: Rossiter W. Raymond, "The Eureka-Richmond Case," *Transactions of the American Institute of Mining Engineers* 6 (1878): 371-93; Eric Nystrom, "Any Zone or Belt of Mineralized Rock? The Eureka-Richmond Case and the Making of Western Mining Law" (paper presented at the Mining History Association's annual conference, Deadwood, SD, 9 June 2018).
6. *Miranda v. Arizona*, 384 U.S. 436 (1966), decided that persons accused of crimes had to be informed of their rights, including a right to remain silent until securing the help of counsel.
7. *Brown v. Board of Education*, 347 U.S. 483 (1954), ruled that segregation was unconstitutional.
8. Among many examples, see: Spude, *Saloons, Prostitutes, and Temperance*; for an example that uses extensive court records in an online database, see: Clive Emsley, Tim Hitchcock, and Robert Shoemaker, "Gender in the Proceedings," Old Bailey Proceedings Online (www.oldbaileyonline.org, version 6.0, 17 Apr. 2011, accessed 1 Dec. 2018).
9. See: Julio L. Betancourt, Thomas R. Van Devender, and Paul S. Martin (eds.), *Packrat Middens: The Last 40,000 Years of Biotic Change* (Tucson: University of Arizona Press, 2016).
10. David C. Frederick, *Rugged Justice: The Ninth Circuit Court of Appeals and the American West, 1891-1941* (Berkeley: University of California Press, 1994), 6.
11. Frederick, *Rugged Justice*, 6.
12. Frederick, *Rugged Justice*, 4.
13. Frederick, *Rugged Justice*, 7.
14. Frederick, *Rugged Justice*, 6.
15. Frederick, *Rugged Justice*, 103-4.
16. Claus-M. Naske and Herman E. Slotnick, *Alaska: A History of the 49th State*, 2nd ed. (Norman: University of Oklahoma Press, 1987), 73; Claus-M. Naske, "The Shaky Beginnings of Alaska's Judicial System," *Western Legal History* 1, no. 2 (1988): 163-7.
17. See a list of judges and years served in Appendix C, Naske and Slotnick, *Alaska: A History*, 294.
18. William R. Hunt, *Distant Justice: Policing the Alaskan Frontier* (Norman: University of Oklahoma Press, 1987), xi.
19. Stephen Haycox and Claus-M. Naske, "A New Face": Implementing Law in the New State of Alaska, 1958-1960," *Western Legal History* 11, no. 1 (1998): 1-21; also see the excellent recent two-part bibliography of Alaska legal history: W. Clinton "Buck" Sterling, "Sources of Alaska Legal History: An Annotated

- Bibliography, Part I," *Law Library Journal* 110, no. 3 (Sum. 2018): 333-402; W. Clinton "Buck" Sterling, "Sources of Alaska Legal History: An Annotated Bibliography, Part II," *Law Library Journal* 110, no. 4 (Fall 2018): 477-538.
20. See: Virginia Doyle Heiner, "Alaska Mining History: A Source Document," *University of Alaska Museum, History and Archaeology Series* 17 (July 1977). Though dated, it is very comprehensive.
 21. Naske and Slotnick, *Alaska: A History*, 69-71; Sheila Kelly, *Treadwell Gold: An Alaska Saga of Riches and Ruin* (Fairbanks: University of Alaska Press, 2010).
 22. Naske and Slotnick, *Alaska: A History*, 77-8; Kathryn Morse, *The Nature of Gold: An Environmental History of the Klondike Gold Rush* (Seattle: University of Washington Press, 2003).
 23. Naske and Slotnick, *Alaska: A History*, 79-80; Terrence Cole, *Nome: City of the Golden Beaches* (Anchorage: Alaska Geographic Society, 1984).
 24. Naske and Slotnick, *Alaska: A History*, 81-4; Terrence Cole, *E. T. Barnette: The Strange Story of the Man Who Founded Fairbanks* (Anchorage: Alaska Northwest Publishing Company, 1981).
 25. Charles Caldwell Hawley, *A Kennecott Story: Three Mines, Four Men, and One Hundred Years, 1897-1997* (Salt Lake City: University of Utah Press, 2014), 50-7, 71-5; Melody Webb Grauman, "Kennecott: Alaskan Origins of a Copper Empire, 1900-1938," *Western Historical Quarterly* 9, no. 2 (April 1978): 197-211.
 26. Taft and Roosevelt split the Republican vote, resulting in the election of Democrat Woodrow Wilson. Naske and Slotnick, *Alaska: A History*, 92-3; Herman Slotnick, "The Ballinger-Pinchot Affair in Alaska," *Journal of the West* 10, no. 2 (April 1971); Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (New York: Oxford University Press, 2003), 337-47; 164-9; James Penick, Jr., *Progressive Politics and Conservation: The Ballinger-Pinchot Affair* (Chicago: University of Chicago Press, 1968).
 27. David L. McFadden, "Legal Research for Historians," *Western Legal History* 10, nos. 1 and 2 (1997): 3-30, is a very helpful overview that concentrates on published case decisions.
 28. This is the famous warning issued by police officers during an arrest that begins: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. . . ." <http://www.mirandawarning.org/whatareyourmirandarights.html>
 29. LexisNexis and WestLaw are subscription-only services, usually available only through law schools or academic libraries. FindLaw and CourtListener are free sites with copies of court cases: <http://www.findlaw.com> and <http://www.courtlistener.com> respectively. Other sites also offer free copies of published cases for particular courts or time ranges, such as Justia: <https://www.justia.com> and the Law Library of Congress: <http://www.loc.gov/law>
 30. Margaret A. Leary, "The Case of the Disappearing Briefs: A Study in Preservation Strategy," *Law Library Journal* 85 (1993): 357-83.
 31. I mean this point both in terms of revealing historical insights whose value lies beyond understanding the legal outcome of the case (as I am attempting to address in this paper), as well as illuminating the precise legal process. An example of using briefs and transcripts for the latter is my analysis of the *Jim Butler Tonopah Mining Co. vs. West End Consolidated* case; see: Nystrom, *Seeing Underground*, 149-191; Eric Nystrom, "Brilliant Contingency of Legal Talent and Mining Experts': A Tonopah Apex Lawsuit, 1914-1918," *Nevada Historical Society Quarterly* 54 (2011): 101-25.
 32. Larisa K. Miller, "From Courtroom to Research Room: Studying the West in Federal Court Records," *Western Legal History* 10, nos. 1 and 2 (1997): 31-58. U.S. Supreme Court records and briefs can be found in Record Group 267 of the National Archives, Washington, D.C. As an example of state-level briefs and transcripts, those from the Nevada State Supreme Court prior to 1937, held by the Nevada State Library and Archives, have been microfilmed as *Nevada Supreme Court Decisions, 1861-1937* (Carson City: Nevada State Library and Archives, 1971-1972), 409 reels. The records and briefs for the Ninth Circuit Court of Appeals are in Record Group 276.10, held at the San Francisco office of the National Archives, in San Bruno, CA (<https://www.archives.gov/research/guide-fed-records/groups/276.html>). The records of the federal district courts in Alaska are held in Record Group 21 at the Seattle office of the National Archives (<https://www.archives.gov/seattle/finding-aids/district-courts-records>). Also see: *Guide to Research in Federal Judicial History* ([Washington, D.C.:] Federal Judicial Center, Federal Judicial History Office, 2010), (<https://www.fjc.gov/sites/default/files/2012/GuideResHist.pdf>).
 33. The database is "Making of Modern Law: U.S. Supreme Court Records and Briefs, 1832-1978," offered by Gale/Cengage Learning (<http://galenet.galegroup.com/servlet/SCRB>), (institutional login required).
 34. The documents' full text can also be searched on a page-by-page level, using <http://search.9chris.org> (beta version, 2018). The index filters out the most common terms (e.g. "an," "the," "case," "lawyer," "court," etc.) to zero in on those popular, but slightly less-common words that would, one hopes, be the ones that distinguished any particular document from others. Thus the filtered-out terms include very popular English words that would be found in quantity in any English document, as well as popular "legalese" words that would similarly be found in quantity

- in any legal document of this type but that do not distinguish it from other legal documents.
35. This is, of course, not the only way to create a cache of documents in 9CHRIS, and indeed, this double-keyword search is likely to be overly restrictive. An alternate, much more expansive method would include using the full-text search to identify all documents containing at least one page with both words.
 36. There are a total of nearly 670 documents in these 160 identified cases. All numbers are correct as of December 2018. As the volumes in 9CHRIS are hand-corrected, other presently-undetected documents may be uncovered, so while the list is reliable it may not be exhaustive.
 37. The entire list mentioned may be found at: <http://9chris.org/akmining>
 38. Rex E. Beach, *The Spoilers* (New York: A. L. Burt Company, 1906). The films with the same title appeared in 1914, 1923, 1930, 1942, and 1955. The 1930 version featured Gary Cooper, and the 1942 production starred Marlene Dietrich and John Wayne. Wayne returned to the subject farcically in 1960 in *North to Alaska*. (See: www.imdb.com.)
 39. Frederick, *Rugged Justice*, 78-97; Hunt, *Distant Justice*, 104-22; Claus-M. Naske, "The Shaky Beginnings of Alaska's Judicial System," *Western Legal History* 1, no. 2 (1988): 198-202; Cole, *Nome*. Also see the account from the Ninth Circuit judge whose order eventually halted the plunder: William W. Morrow, "The Spoilers," *California Law Review* 4, no. 2 (1916): 89-113. For Nome generally, see: Preston Jones, *Empire's Edge: American Society in Nome, Alaska, 1898-1934* (Fairbanks: University of Alaska Press, 2007).
 40. In the Matter of Arthur H. Noyes, Thomas J. Geary, Joseph K. Wood, C. A. S. Frost, 9th Circuit Court of Appeals dockets 701, 702, 703, 744 (1901); "Index to Transcript of Proceedings and Testimony," 9CHRIS ID: v0153-7; "Transcript of Proceedings and Testimony," v. 1-12, 9CHRIS IDs (respectively): v0153-33, v0153-293, v0154-7, v0154-267, v0155-7, v0155-269, v0156-7, v0156-269, v0157-7, v0157-265, v0158-7, v0158-269; "Opinions and Judgment," 9CHRIS ID: v0158-497; all available through <http://9chris.org>.
 41. "The FE Company," in Ch. 9 "The Progress of Mining," in: William R. Hunt, *Golden Places: The History of Alaska-Yukon Mining, with Particular Reference to Alaska's National Parks* (Anchorage: National Park Service, Alaska Region, 1990); Clark C. Spence, *The Northern Gold Fleet: Twentieth-Century Gold Dredging in Alaska* (Urbana: University of Illinois Press, 1996); "Fairbanks Exploration Co. Building a Fitting Monument," *Daily News-Miner* (Fairbanks), 3 Oct. 2010.
 42. "Transcript of Record, v. 1," *Mike Erceg et al. v. Fairbanks Exploration Company*, 9th Circuit Court of Appeals docket 8107 (1936), 9CHRIS ID: v2040-5, <http://9chris.org/volumes/v2040/v2040-5/>, reported as 95 F.2d 850; 305 U.S. 615, cert. denied.
 43. "Transcript of Record," *Mike Erceg, et al. v. Fairbanks Exploration Company*, 9th Circuit Court of Appeals docket 8107 (1936), 9CHRIS ID: v2040-815, <http://9chris.org/volumes/v2040/v2040-815/>, p. 4.
 44. "Transcript," *Erceg v. Fairbanks Exploration*, 9CHRIS ID: v2040-815, 15.
 45. *Erceg v. Fairbanks Exploration*, 95 F.2d 850 (9th Cir. 1938), *passim* (<https://www.courtlistener.com/opinion/1563242/erceg-v-fairbanks-exploration-co/>).
 46. "Transcript of Record," *R. M. Courtney and H. K. Love v. Tom P. King and Baptiste Serafino*, 9th Circuit Court of Appeals docket 2427 (1914), 9CHRIS ID: v0903-407, <http://9chris.org/volumes/v0903/v0903-407/>, *passim*; workers, represented by King et al., won in district court and were affirmed by the 9th Circuit in 220 F. 112.
 47. "Transcript," *Courtney and Love v. King and Serafino*, 9CHRIS ID: v0903-407, 50-1.
 48. "Transcript," *Courtney and Love v. King and Serafino*, 9CHRIS ID: v0903-407, 3-5. Note that the exact list is repeated with some elements missing in later parts of the trial. Some of the perishables (such as the fresh beef) were sold, and other items seem not to have been of economic interest later, but the lists were substantially similar.
 49. Naske and Slotnick, *Alaska: A History*, 298-9.
 50. Spude, *Saloons, Prostitutes, and Temperance, passim*; Sally Zanjani, *A Mine of Her Own: Women Prospectors in the American West, 1850-1950* (Lincoln: University of Nebraska Press, 1997), *passim*.
 51. On the Alaska workman's compensation law, see: "Transcript of Record," *Mary Rogulj v. Alaska Gastineau Mining Company*, 9th Circuit Court of Appeals docket 3942 (1922), 9CHRIS ID: v1330-299, <http://9chris.org/volumes/v1330/v1330-299/>, p. 2.
 52. "Transcript of Record," *Alaska Treadwell Gold Mining Company v. Mistress Catharine Crinus*, 9th Circuit Court of Appeals docket 3212 (1918), 9CHRIS ID: v1182-517, <http://9chris.org/volumes/v1182/v1182-517/>.
 53. "Transcript," *Rogulj v. Alaska Gastineau*, 9CHRIS ID: v1330-299.
 54. "Transcript of Record," *F. H. Waskey and Joseph M. Crabtree v. Elma McNaught and Otto Halla*, 9th Circuit Court of Appeals docket 1517 (1907), 9CHRIS ID: v0445-366, <http://9chris.org/volumes/v0445/v0445-366/>.
 55. *Waskey et al. v. McNaught et al.*, 163 F. 929 (9th Cir. 1908).
 56. "Transcript of Record," *Alaska Treadwell Gold Mining Company v. May Mugford*, 9th Circuit Court of Appeals docket 3492 (1920), 9CHRIS ID: v1264-5, <http://9chris.org/volumes/v1264/v1264-5/>, p. 16.

57. "Transcript," *Alaska Treadwell v. Mugford*, 9CHRIS ID: v1264-5, 2-5.
58. "Transcript," *Alaska Treadwell v. Mugford*, 9CHRIS ID: v1264-5, 10-11.
59. "Transcript," *Alaska Treadwell v. Mugford*, 9CHRIS ID: v1264-5, 396.
60. *Alaska Treadwell Gold Mining Company v. May Mugford*, 270 F. 753 (9th Cir. 1921).
61. "Transcript of Record," *Rose Rickard v. Nellie Thompson*, 9th Circuit Court of Appeals docket 7303 (1933), 9CHRIS ID: v1808-5, <http://9chris.org/volumes/v1808/v1808-5/>, p. 70-1.
62. "Transcript," *Rickard v. Thompson*, 9CHRIS ID: v1808-5, 77-8.
63. *Rickard v. Thompson*, 72 F.2d 807 (9th Cir. 1934).
64. "Brief of Appellee," *Rose Rickard v. Nellie Thompson*, 9th Circuit Court of Appeals docket 7303 (1934), 9CHRIS ID: v1808-151, <http://9chris.org/volumes/v1808/v1808-151/>, p. 1.
65. David L. McFadden, "Legal Research for Historians," *Western Legal History* 10, nos. 1 and 2 (1997): 3-30. A law librarian in the state that is of interest can be an invaluable source of advice and may be able to recommend a compilation of sources or legal history for that particular state or jurisdiction that can, in turn, lead to other sources.
66. This is often straightforward—for example, one would expect to find proceedings from state courts held by that state's designated government archives. In contrast, in the federal cases mentioned here, those from federal courts in Alaska have records in Seattle for the district court level, and in San Francisco for the appellate records. Additionally, if jurisdictional boundaries are changed, it is common, but not iron-clad, that the records remain where they were. This would raise a researcher's suspicion, for example, that appellate records from federal circuit courts in Colorado might be found in the National Archives in Kansas City (with other records of the 8th Circuit) for appellate cases heard before the formation of the 10th Circuit in 1929 (the records of which are at the National Archives in Denver).
67. These may be found in the databases mentioned or hunted down in paper form in the archives. A very helpful guide for the latter is: Michael Whiteman and Peter Scott Campbell, *A Union List of Appellate Court Records and Briefs: Federal and State*, 2nd ed. (Getzville, NY: William S. Hein & Co., 2017).
68. The "Judges Bill" passed in 1925 allowed the Supreme Court to be much more selective about cases it chose to review. See: <http://blog.legalsolutions.thomsonreuters.com/legal-research/today-in-1925-the-judges-bill-limits-the-supreme-courts-mandatory-jurisdiction/> (accessed 16 June 2017).
69. <http://9chris.org>; <http://galenet.galegroup.com/servlet/SCRB> (institutional login required); https://www.supremecourt.gov/oral_arguments/brief-source.aspx (accessed 16 June 2017) notes that many can be found on Lexis and Westlaw for the post-1930s period.