

THE ANATOMY OF AN UNJUST AND TRAGIC VERDICT IN JUNEAU, PART I

By David Ignell¹

(Part I of a week-long series taking an in-depth look at a Juneau jury's conviction of an innocent Hoonah resident 10 years ago, resulting in a 50 year prison sentence)

Juries Make Mistakes

Several years before he became a Juneau Superior Court Judge, Philip M. Pallenberg said, "As someone working in the legal system for a long time, jurors are human beings and human beings make mistakes. There is a high potential for innocent people to be executed under such a system." Mr. Pallenberg made this statement to the Alaska House Judiciary Committee in April 1999, testifying as a Public Defender against House Bill 75, Capital Punishment for Child Murder.

Indeed, just a few months later after Mr. Pallenberg's testimony, two Fairbanks juries and one Anchorage jury each separately made grave mistakes. The jurors in those three trials voted a collective 36 to 0 to convict four innocent Alaskan Natives charged with murdering a Fairbanks man in 1997. The four young men received prison sentences ranging from 38 to 60 years. Through community activism and the help of the Alaska Innocence Project, in 2015 they were exonerated and released from prison. They are now known as the Fairbanks Four. Each man lost 16 years of freedom to a flawed system.

Wrongful convictions are increasingly recognized as a serious problem throughout the United States. An online database called the National Registry of Exonerations sheds some light on the extent of our flawed criminal justice system. Maintained by three universities in Michigan and California, the Registry provides a summary of 2,640 cases where the accused were wrongfully convicted and later exonerated.

The Fairbanks Four are in the Registry, appearing beside the nationally known stories of Brian Banks, Walter McMillan, Kirk Bloodsworth, Steven Avery, and Gregory Kelley. McMillan and Bloodsworth were sentenced to death. All cases except for McMillan involved sexual assault charges. The jury got it wrong in these and the other 2,640 cases every single time.

The Registry numbers increase monthly, last month it was 2,625 cases. More than 23,500 years have been lost, an average of just under nine years for each innocent person to regain their freedom.

Tenth Anniversary of a Tragic Mistake

Another innocent Alaskan needs to be added to the National Registry of Exonerations. His name is Thomas Jack, Jr. of Hoonah, AK. He is a man of excellent character and always has been. He has always maintained his innocence. He turned down a plea bargain offer from the State that could have resulted in prison time as little as two years. Only an innocent man would do that.

July 21, 2020 will mark ten years to the day that Mr. Jack was convicted on charges of sexual assault of a minor. After the guilty verdict by a Juneau jury, Mr. Jack was taken from his family to spend the next 50 years in jail. Mr. Jack was 34 years old at the time. He was basically given a death sentence.

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Mr. Jack had been tried five months earlier, in February 2010 before a different Juneau jury. After both sides had presented their case, some jurors believed Mr. Jack was innocent while other jurors believed he was guilty. Neither side could budge the other's belief. After two days of deliberations the jury remained divided on all counts. Mr. Pallenberg polled the jurors to verify there was no possibility of a consensus and was forced to declare a mistrial.

No Evidence Except an Ever-Changing Story

The only evidence to support the charges of sexual assault was the ever-changing story of a 12 year old girl. During the first trial, Mr. Pallenberg twice acknowledged "substantial" and "numerous" inconsistencies in the girl's testimony. During the second trial the girl answered "I don't know" or "I don't remember" over 80 times to questions.

From the time the allegations first surfaced until Mr. Jack's conviction a year and a half later, the young girl never provided anyone with a narrative of the assaults. Standard protocols in sexual abuse cases were not followed by law enforcement even though they were specifically discussed beforehand. The initial police investigator and then the prosecutors fed her leading questions the entire way. Every time.

The young girl and her sister were previously foster children in the home of Mr. Jack and his wife. In one version of her story, the alleged sexual assaults occurred in the girl's bedroom on a nightly basis for five weeks up until the time the two sisters were placed into another foster home. The assaults were said to have started around 10pm and would last up to three hours if Mr. Jack's wife "fell asleep really fast" in the nearby master bedroom. Otherwise, the assaults would last about a half hour.

Mrs. Jack would later testify at trial that her husband was by her side in bed every night. After going to bed together, they would stay up watching TV. After about an hour of shows, he would go to sleep and she would continue watching TV. Independent of each other, both Mrs. Jack and the girl's sister said during that time frame the alleged victim usually slept in the same bed as her sister.

In later versions of the alleged victim's story, the frequency of the assaults changed from every night to just on school nights. The nightly assaults began the first of October then changed to mid-October. The extent and manner of the assaults changed continually. A specific type of assault occurred three times, then later "more than five times", then even later "maybe six" more times after the second time. In one version Mr. Jack used a prophylactic the second time, in a later version he used it the last time.

An Unusual Memo

In an unusual memo to the file, a District Attorney (DA) staff member documented their inability to verify dates and the extent of the sexual assaults in meeting with the alleged victim just before she appeared before the first grand jury. The timing of that memo is most odd. It was dated almost six months *after* the meeting took place. Perhaps an excuse for prosecutorial misconduct was being documented for the future.

The first grand jury indictment was 21 counts. Because of the changing story the DA went back to the grand jury eight months later and reduced the indictment to 7 counts. After more changes in the girl's testimony during the first trial, Mr. Pallenberg allowed the DA to change the indictment yet again.

Two days before the documented meeting between the alleged victim and the DA, the young girl had approached a Hoonah teacher after class and told her the allegations concerning Mr. Jack weren't true.

The teacher notified school authorities and documented the admission in a letter that was received by the DA the day before that meeting and the grand jury indictment.

Motivations to Lie

The DA knew the girl had substantial motivation to lie about Mr. Jack. Even before receiving the teacher's letter, the DA knew the girl had previously told her social worker that Mr. Jack had never done anything inappropriate to her.

When the allegations surfaced, another State agency, the Office of Children Services (OCS) was in the middle of a three-way custody dispute over the young girl and her sister. OCS knew that at least one, and perhaps both, of the competing families would greatly benefit by encouraging false allegations. Even OCS benefitted in the custody dispute by pushing the allegations. The DA completely ignored these motivations and at trial fought hard to keep the jury from hearing them.

The alleged victim's great grandmother believed that Mr. Jack was innocent. She confronted him after a church service and demanded to know the truth. She believed him. She worried that someone was coaching her great granddaughter to lie.

An Unprepared Attorney

Two months before the second trial, Mr. Jack's attorney withdrew from his case because the family couldn't come up with \$60,000 needed for another retainer. Mr. Jack's parents had already exhausted all their life savings and the equity in their Hoonah home just to get through the first trial.

After substantial difficulty, the State of Alaska found an out of town attorney willing to represent Mr. Jack at the second trial for about 1/10 of the cost. By then the trial was set to start less than a month away. He requested a three-month extension of the trial date to get ready, but Mr. Pallenberg denied it.

The new attorney was completely unprepared. He called only 4 witnesses instead of the 12 called by the first attorney. His witnesses were on the stand for a combined one hour, including the time used for cross-examination. In the first trial, Mr. Jack's 12 witnesses had been on the stand for over six hours.

Inexplicably, the new attorney did not call Mr. Jack's wife to testify. She had been on the witness stand for almost two and a half hours in the first trial and was an excellent witness. She gave her husband a solid alibi during the time of the alleged crime and provided effective testimony to counter events the State was trying to twist out of context. The prosecutor had cross examined her for an hour but was unsuccessful in undermining her credibility.

The new attorney was forced to play a losing hand. He gambled Mr. Jack's freedom primarily on two witnesses who testified the alleged victim told them nothing bad had happened between Mr. Jack and her. If the new attorney was in a rush to get through Mr. Jack's witnesses, it was certainly understandable. Concurrent with Mr. Jack's trial he was handling another case in Juneau before Mr. Pallenberg. He also had less than a week to be back in Anchorage for the start of another trial.

The Reasonable Doubt That Wasn't

Even though it was a risky gamble, the testimony of the two witnesses, combined with the alleged victim's continually inconsistent story, should have been sufficient reasonable doubt to prevent the DA

from meeting its burden of proof. Tragically, the new attorney's strategy caused by a severe time crunch didn't pan out. After deliberations spanning 3 days, the second jury voted guilty.

The State's ability to convince the second jury that Mr. Jack was guilty "beyond a reasonable doubt" is certainly troubling. But the State's decision to charge Mr. Jack with a crime is even more troubling.

Mr. Jack is a Tlingit Alaskan Native and up until his arrest had lived his entire life in Hoonah. He had an excellent reputation in the small village, went to church with his family at least twice a week, and didn't drink alcohol or use drugs. His oldest sister, who holds a Masters in Social Work degree perhaps summed it up when she wrote, "Thomas was a 'win' for a new prosecutor, and yet another 'native boy' from a village they thought 'probably' did it."

Tip of the Iceberg

The following in-depth analysis of Mr. Jack's arrest and ultimate conviction reveals the sins of Alaska's criminal justice system in terms of racial injustice. Sadly, his story represents the proverbial tip of the iceberg. A substantial mass of injustice lies below the surface, out of view.

The failure of the State to live up to its obligations to ensure the constitutional rights of Alaskan Native residents the past 60 years has been thoroughly documented many times. Multiple sources have spoken of other stories in Alaska similar to Mr. Jack's.

I hope this story will compel people to speak up for Mr. Jack's exoneration. I pray a majority of Alaskans will finally begin to see things for what they are and realize they can no longer be silent accomplices to a systemic breakdown. Immediate corrective action is needed. We need to quit kicking the can down the road.

(Part II will address important facts the jury never got to hear -- Mr. Jack's excellent character and the girl's behavior in the new home that led to a pregnancy scare that may have been of critical importance in a custody battle)