

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

By David Ignell⁵

An Unintended Consequence?

2010 may have been the worst year in Alaska's history since its days of vigilante justice for an innocent man to stand trial for allegedly sexually assaulting a minor. In December of 2009, Gov. Sean Parnell announced he was going to wipe out the "epidemic" of sexual assault and domestic violence over the next 10 years. The Attorney General warned that Alaska had become the last state that a person accused of sexual assault would want to be tried in.

An "Alaskans Choose Respect" public relations campaign was launched. It was extensive and aggressive and had heavy bipartisan support. Gov. Parnell's cabinet members were sent out throughout the state for speeches and interviews by reporters and talk show hosts. TV ads were filmed and broadcast. One of Mr. Parnell's opponents in the Republican primary took issue with one of the ads.

The governor's office worked with ANDVSA to partner with agencies, native organizations, schools, private businesses and volunteers. Rallies, marches, potlatches, and candlelight vigils were held throughout Alaska. Gov. Parnell was highly visible in the campaign and with his wife, led a large number of marchers through the streets of downtown Juneau.

It was the expressed goal of the campaign to "stigmatize" these crimes. The concept of "stigma" incorporates three main elements: prejudicial attitudes, insufficient knowledge, and discriminatory behavior. These core elements may explain why so many jurors were unable to find any reasonable doubt in the substantial amount of favorable testimony in Mr. Jack's favor. Did the widespread and bipartisan public relations campaign to root out an epidemic have the unintended consequence of prejudicing the public against those accused of sexual assault, especially when minors were involved?

Guilty Until Proven Innocent?

In trying to understand the logic behind Mr. Jack's wrongful conviction, what makes the most sense is that the burden of proof had subtly shifted. The presumption of innocence that our entire legal system is based upon was only an illusion. In response to an epidemic, Mr. Jack was presumed guilty when he walked into the courtroom.

It makes sense that Mr. Jack had to prove his innocence to both juries. It was virtually impossible to prove the girl was lying, especially with so many one-sided rulings by Mr. Pallenberg that obscured the truth. Mr. Jack was somehow able to prove his innocence to some of the jurors in the first trial when he had prepared counsel and several witnesses. He was unable to do that in the second trial with unprepared counsel and just a few witnesses.

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Another Constitutional Right Denied

An accused person is always entitled to a jury of his or her peers. The Alaska Supreme Court has ruled that when an Alaskan Native is accused of committing a crime in a village, the jury should represent a cross section of the village where the alleged crime occurred. In Alvarado v. State, the Supreme Court overturned a conviction of a Chignik resident by an Anchorage jury that did not fairly represent the villagers.

In a unanimous decision, Chief Justice Boney cited the views of the former Executive Director of the Alaska Human Rights Commission. The director had said instances of discrimination against Alaskan Natives are frequent, especially those from villages, who are generally regarded as a distinct subculture. He felt that most urban Alaskans are generally unaware and ignorant of the way of life in Alaska Native towns and villages. "They are not sensitive to the vast culture differences which exist between their own way of life and that of the villages."

Hoonah is less than 100 miles from Juneau, but they have vast cultural differences. In the 2010 census, Hoonah's population of 760 was 41 times smaller than Juneau's – roughly the same ratio as Bend OR is to Los Angeles. Racially, 60% of Hoonah residents were Alaskan Native compared to 12% in Juneau. Economically, the median household income in Hoonah was \$39,000 compared to \$62,000 in Juneau.

Hoonah's culture revolves around a subsistence lifestyle, harvesting food from the ocean and the forest. Future success of the village is dependent on maintaining a sustainable balance between humans and the environment.

Juneau's culture revolves around a government lifestyle and harvesting tax royalties. Future success of the city is dependent on finding new non-renewable revenue sources to replace dwindling oil reserves which replaced dwindling mining resources.

No Alaskan Natives on Either Jury

Inexplicably, there wasn't a single Alaskan Native on either of the two juries that decided Mr. Jack's fate in the two trials. There wasn't anyone on the jury that could recognize important cultural differences such as Mr. Jack's failure to "adamantly deny" deceptive and vague hints.

There weren't people on the jury who would understand that Mr. Jack had been taught not to challenge authority and not to look people in the eye. That in order to solve new problems he must carefully and patiently consider many variables and not jump to conclusions.

There weren't people on the jury that could understand how difficult it might have been for some of his witnesses, Alaskan Native women from Hoonah, to testify. Based on the manner in which the testimony of these women was disregarded, it has to be asked if they were regarded as equals.

Compounding the problem of having no Alaskan Natives on the juries, was the lack of people from Hoonah. Caucasians from the village had a much better chance of understanding Mr. Jack's cultural differences than Caucasians from a government town.

The Caucasians in Hoonah would also have better understood that in a small village with small houses, it's hard to keep secrets. Sexual offenders are either generally known or there are at least whisperers.

The absence of any evidence or unusual observations over a long foster care placement should be a reliable indicator of innocence.

Weeding Out Jurors

The jury that convicted Mr. Jack wasn't even a fair cross section of Juneau. Prospective jurors may have been randomly drawn but the final 14 were carefully selected. Of the first 25 names drawn, only 5 ended up on the jury, an 80% rejection rate.

Altogether, 59 potential jurors were called up for questioning. The selection process took more than 12 hours over 2 days. So many jurors were called that the clerk's transcript does not identify the last juror called for questioning and not excused.

The prosecution weeded out 8 prospective jurors and the defense 10, but Mr. Pallenberg was by far the most active. The judge excused 22 prospective jurors. 12 of those jurors were taken into Mr. Pallenberg's chambers for questioning before they were dismissed.

No Alaskan Natives and Younger Women

6 of the 13 known selected jurors (46%) were males under the age of 32. Of the 58 known potential jurors, this age group represented only 12%. Only one male in this age group didn't make the final cut. Was this age group targeted because they might more likely connect with the prosecutor, someone who grew up in Juneau and was close to their age? Or were they targeted because they might be less discerning about the numerous inconsistencies in the girl's story?

Only 3 of the 13 known selected jurors (23%) were women. The youngest was 48 years old. However, 43% of the prospective jurors questioned were women. It was Mr. Pallenberg who was mostly responsible for this statistical anomaly. 13 of the 22 people he excused were women, compared to 4 by the defense and 2 by the prosecution.

Several Alaskan Natives were among the 59 jurors questioned. Mr. Pallenberg dismissed all of them except for one who was soon dismissed by the DA.

Other anomalies raise questions. An older Alaskan Native gentleman said he grew up with Mr. Jack's aunts and uncles, so Mr. Pallenberg dismissed him. Another prospective juror said she worked with Mr. Jack's cousin; she was brought into the judge's chambers for further questioning and was also dismissed.

On the other hand, a prospective juror said he was the brother in law to a person on the DA's witness list. This potential witness had been involved in the law enforcement interviews of the alleged victim and her sister. He was not brought into Mr. Pallenberg's chambers for private questioning nor was he excused by the judge. It appears he ended up on the jury and voted guilty.

Different Race, Different Treatment

One of the Alaskan Natives prospective jurors that Mr. Pallenberg questioned privately had pled guilty to a misdemeanor in 2007. He was excused.

A Caucasian prospective juror about the same age had also pled guilty to a similar misdemeanor in 2008. He was not privately questioned by Mr. Pallenberg and was not excused. It appears he too ended up on the jury and voted guilty.

(Part VI will address the longevity of the problems identified in Mr. Jack's wrongful conviction and finally taking action to resolve them).