

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

By David Ignell⁶

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

Studies, Studies, and More Studies.

In 2002, the Alaska Advisory Committee to the U.S. Commission on Civil Rights published a detailed report addressing racial discrimination issues in Alaska. Titled *Racism's Frontier*, it can be read and downloaded online. Pages 1-11, 30, and 37-44 provide excellent insight into how an "upright, honest, and conscientious" Alaskan Native like Thomas Jack, Jr., could be arrested and convicted of charges he was completely innocent of.

Racism's Frontier came together after Anchorage youth had driven around the city and fired paintball guns at Alaskan Natives they targeted. One of the victims flagged down a police car, was arrested for disorderly conduct, and spent 10 days in jail. The perpetrators videotaped their assaults and the incident drew national outrage.

The incident motivated Governor Knowles to get involved in addressing Alaska's racism problem. Community forums were held in Anchorage. Problems were identified, solutions were recommended, and *Racism's Frontier* was published. Nothing changed.

It would have been easy back then to predict that *Racism's Frontier* would become another dusty book on a shelf filled with similar dusty books. Forum attendees had expressed frustration at the lack of any meaningful progress over many years. The problem of discrimination was being studied and restudied, findings and recommendations shared and released in report after report. Then forgotten.

Their frustration was spot on. The recommendations made in 2002 were not implemented. The system wasn't fixed in time to prevent Mr. Jack, an innocent Alaskan Native villager, from being sentenced to life behind bars.

But now we have much more than a report to show us what's wrong. We have a clearly innocent person of high integrity locked behind bars at Lemon Creek. His story illustrates the discrimination that *Racism's Frontier* identified. We have a real, living example of what it means to bear that discrimination for generation after generation.

Every night that Mr. Jack goes to sleep in his prison cell means we squandered another day supporting discrimination. Getting him out will mean we've started down the right path toward equality under the law. It will be an important monument that we have finally stopped kicking the can down the road and initiated action. It will give others desperate for hope that justice has finally appeared on the horizon.

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Pardon for Innocence.

The Alaska Governor has the power to free Mr. Jack immediately through a Pardon for Innocence. According to the United States Supreme Court, it's the preferred way of obtaining justice for a person that has been sent to jail for crimes that they are completely innocent of.

The preeminent study on wrongful convictions for the past 90 years is a book by Edwin Borchard titled "Convicting the Innocent." Mr. Borchard, a Yale Law School professor, analyzed dozens of wrongful conviction cases throughout the US. He found that overzealousness of police and prosecutors is the leading cause of wrongful convicts. The second leading cause is perjury. Both were heavy influences in Mr. Jack's case and why two juries made tragic mistakes, the first failing to acquit, the second convicting an innocent man.

Chief Justice Rehnquist of the US Supreme Court cited Mr. Borchard's book in a 1992 opinion called Herrera v. Collins. Mr. Rehnquist said that our judicial system is fallible, just as Mr. Pallenberg would echo seven years later. He said that executive pardons are deeply rooted in our Anglo tradition and are the history remedy for correcting miscarriages of justice where the judiciary has failed. A pardon for innocence was used to free the innocent person in 47 of the 65 cases that Mr. Borchard analyzed.

By going through Mr. Dunleavy, the decision of only a single person is needed to free Mr. Jack. It's not only the preferred way to corrective justice, it's by far the most expedient. As the chief executive of Alaska, it is fitting that the burden should fall on him. That's what good CEO's get paid for, to make tough but correct decisions.

The Need for Public Mobilization

Mr. Dunleavy's staff has known all the facts behind Mr. Jack's wrongful conviction for the past nine months. His Attorney General has known all the facts for even longer -- ten months. They've done nothing, likely because the number of people calling and writing the Governor's office hasn't been high enough yet.

Likewise, the staff of the Chief Justice of the Alaska Supreme Court has known all the facts behind Mr. Jack's wrongful conviction for nine months. He's done nothing. Tribal leaders have known these same facts for a similar amount of time. They've done nothing. Leadership has failed at all levels.

Justice will not be served until enough people mobilize. Mr. Dunleavy can order Mr. Jack released immediately. Call and write him today. Continue to follow-up with the governor until he has released Mr. Jack. Organize community groups to persuade Mr. Dunleavy to do the right thing.

Implementing All Those Studies

Once Mr. Jack is free, keep those community groups active and turn your focus on our legislators. Don't let those community groups fade away. Freedom and equality require constant work.

Racism's Frontier points to systemic problems in Alaska's judiciary, legislative and executive branches. Just like in Mr. Jack's case, there is no equality under the law for most Alaskan Natives in the criminal justice system. Correcting those problems needs to start today but it will take time and money to unwind the systemic damage.

There are four primary shortfalls in the administration of justice that need to be immediately addressed by all three Alaska government branches. Each of these shortfalls played a vital factor in Mr. Jack's wrongful conviction. No more studies are needed. Action is all that is left.

Equality in Legal Representation

The first shortfall to overcome is ensuring adequate defense funding. Mr. Jack was convicted because his family was tapped out of their lifetime of savings. He was given an attorney at below market rates who had no time to prepare.

Had Mr. Jack been a wealthy man, he would have remained a free man. It's probable he wouldn't have even been charged. Law enforcement and the prosecution would have done a much better job investigating his case and recognized the charges were false. Adequate defense funding would have ensured justice. Valuable criminal justice resources would have been diverted to addressing crimes that actually occurred.

Racism's Frontier clearly identified this specific need twenty years ago. The report recognized that many Alaskan Natives are forced to rely on public legal assistance. It concluded, "this problem is compounded by the fact that legal defense services funded by the state and federal governments have been reduced over the years, while funding for prosecutors has remained steady, creating an imbalance overly emphasizing criminal punishment without sufficient defensive support."

This is exactly what happened in Mr. Jack's case. The prosecution had at their disposal at least four attorneys, a paralegal and their support staff. They had at least two Alaska State Troopers to investigate the case. They collaborated with the social worker and the GAL, another attorney, on the case. They didn't have to worry about withdrawing for lack of funding.

Going up against them was a sole practitioner and a single investigator. It's amazing these two individuals were able to hold their ground for a year and fight to a draw, a hung jury after the first trial. When they were forced to withdraw, Mr. Jack was given an overworked, non-local, attorney working for a fraction of the market rate.

The work of these attorneys did not go to waste though. They built a record. Two boxes of documents with OCS notes, transcripts, interviews and motions were generated. Those documents memorialized everything that happened and preserved the perceptions of many from Hoonah including the great grandfather and great grandmother.

Without all this documentation the true story of Mr. Jack's wrongful conviction may never have been published. Imagine how many other Alaskan Natives haven't been as fortunate. Establishing easy and convenient public access to court records is vital. For almost a year, Mr. Jack's court records have been held in Anchorage and have not been readily accessible in Southeast.

Hiring More Alaskan Natives

One of the first Alaskan Native women admitted to practice law in Alaska, Ella Anagie, participated in the forums. Racism's Frontier cited one of her important observations, which also goes to the heart of Mr. Jack's wrongful conviction: "There are no Native professionals in the Anchorage district attorney's office, the attorney general's office, the public defender's office or among social workers, child custody investigators, or judicial officers."

Page 30 of Racism's Frontier has a chart showing the percentages of minorities permanently employed by various State entities. The data is from 2001 and is statewide. In the Department of Law, just 4% of permanent employees were Alaskan Native, despite that minority group making up 19% of the state's population.

Mr. Jack was a victim of the reality that Ms. Anagie observed. The Juneau social service workers who dealt with Mr. & Mrs. Jack were all Caucasian – the social worker, the CASA, and the GAL. The Juneau investigators were all Caucasian – two AST investigators and the interviewers of the alleged victim and her sister. The Juneau prosecutors were all Caucasian. The Juneau judge was Caucasian. And the Juneau jury was mostly, if not all, Caucasian.

Juries Must Represent Villages

Part V yesterday addressed how Mr. Jack was not tried by jurors from his village. Racism's Frontier specifically addressed this crucial issue identified 50 years ago by the Alaska Supreme Court in Alvarado. Page 41 of the report stated, "rural defendants are not afforded the right to a jury of their peers; often the jury pool only includes individuals who reside within a 50-mile radius of the courtroom, eliminating residents of remote villages."

Fifty years ago, the Alaska Supreme Court unanimously overturned a conviction because the fundamental constitutional right of being tried by your peers was violated in an Anchorage courtroom. What has happened to the Alaska Supreme Court since then? Five years ago they refused to even hear Mr. Jack's appeal.

Last month in response to the George Floyd protests, the Alaska Supreme Court justices wrote a letter to the public. They acknowledged our justice system needs to do a better job in combatting discrimination in the Alaska Court System. But their strategy appears to be the same as it has always been – shuffle the burden off to commissions and forums.

In the letter, its Chief Justice wrote, "we look forward to continued progress from the work of our Fairness and Access Commission." Continued progress? The Commission was formed back in 1995. In 2002, Racism's Frontier said that after studying racial and ethnic bias in the state court system for several years, the Commission had made 13 recommendations to be implemented. 20 years later, Alaskan Natives like Mr. Jack are still waiting.

The Alaska Supreme Court needs to recognize that the buck stops with them and they have failed us. The studies and the recommendations already exist. They need to stop kicking the can down the road and take action. They need to immediately implement the recommendations in Racism's Frontier. They need to carefully review cases like Mr. Jack's and overturn more wrongful convictions of the innocent.

Recognizing Cultural Differences

Alaska's prison population contains a much higher percentage of Alaskan Natives than their representation in the general population. When Racism's Frontier was published, Alaskan Natives made up 36% percent of those incarcerated despite making up only 19% of the general population. At that time Alaska inmates were predominately young males (93%). When correctly viewed through these lens, the disparity is even worse. Alaskan Native adult males made up only 7% of the general population but 33% of Correction's population.

Racism's Frontier says this statistical anomaly is because Natives are treated differently throughout the justice system, not because they commit more crimes. A huge factor in this different treatment is the lack of cross-cultural understanding and acceptance. "Cultural norms influence behavior, which puts Alaska Natives at a disadvantage in a system that is neither flexible nor sensitive to other perspectives. For instance, because of their non-adversarial approach to interaction and deference to authority, there is an increased likelihood that Native Alaskans will readily admit to a crime rather than fight, obey an attorney's suggestion to accept a plea bargain offer, and exhibit passivity before a jury."

Closely related to these cultural norms of deference and passivity is the trait of not speaking out and deferring to authority while trying to understand something. Part II of this story discussed how this trait contributed significantly to Mr. Jack's wrongful conviction. In the secretly recorded conversations, Mr. Jack was fed a story filled with lies and deception that made no sense whatsoever. At the same time, the State put an extreme burden on him – one of the daughters he still loved needed counseling. They compounded the difficulty by using the social worker who he trusted.

The State manipulated Mr. Jack's cultural differences by misleading the juries that he did not "adamantly deny" the charges. They even told the juries about all the pauses in his responses to questions while he was trying to wade through all the deception. Mr. Jack was only trying to process things while trying to respect authority. He was thinking as he had been taught to think from an early age.

Some Alaskan Native leaders have observed that because of the problems illustrated by Mr. Jack's wrongful conviction, other Alaskan Natives are now teaching their kids to be more confrontational and challenge authority. These leaders perceive that this reaction to injustice further erodes their culture.

Abolishing Apartheid

A Tlingit participant in the 2002 forum commented, "Apartheid is a very real thing here in Alaska. It runs deep, it's covert, it's different than outright killing but the net affects are the same."

Racism's Frontier concluded that many lawmakers and other individuals in positions of power are in a state of denial about the existence of civil rights concerns. To blame them would be to point the finger in the wrong direction. We are responsible. We hold the power to change this denial.

It is incumbent that civil rights organizations, political organizations, tribal organizations, domestic violence and sexual assault shelters, religious organizations, and individuals who care about justice and equality find a way to come together and finally resolve racism's frontier. Alaska Natives do not have the political power to resolve these challenges by themselves.

Mr. Dunleavy holds the power in his pen to signal that Alaska is finally ready to begin providing its people with liberty and justice for *all*. Freeing Mr. Jack immediately is an important first step on the way to changing Racism's Frontier.

"Wooch.een"

This winter, 40 Hoonah residents braved near zero temperatures to attend a meeting on one day's notice. These people came together to discuss the plight of a man they still remembered from ten years ago as full of integrity and having a heart of empathy for others. A Tlingit clan leader rose a few times during the meeting and exhorted the group to pull together. "Wooch.een" he said.

Within two months after the clan leader spoke these words the soul of our nation was rocked to its very core. First by the epidemic of covid-19. Second by the epidemic of discrimination. When we are in a state of denial, our problems don't go away. They fester and become more acute. They must be resolved.

The Tlingit cultural concept of "wooch.een" was born of necessity. When a group of people needed to reach a certain destination in their canoes, sometimes they encountered headwinds, strong currents, and dangerous waves. To survive they had to pull their paddles together in unison through the frigid waters.

Today we are faced with the crisis of discrimination. Not only in Alaska but in our nation. To arrive at our destination safely, we must pull together to overcome political headwinds and dangerous currents. Alaska has a unique opportunity to show leadership by example to a nation that needs it desperately. In the Tlingit way.

Wooch.een.