

## HOLLOW OATHS, by David Ignell<sup>1</sup>

All lawyers and judges in Alaska are required to take an oath to uphold the Alaska Constitution and to improve the administration of justice. As one Southeast man found out the hard way, some top lawyers and judges within the Alaska Department of Law and the Alaska Court System break their oath with impunity. They usually get away with this because they administer the law themselves and are not accountable to the electorate. They belong to an exclusive club where membership buys them the expectation of “professional courtesy”.

These highly paid State employees don't give a damn about the Alaska Constitution and the civil rights of citizens. They show no remorse and when caught red-handed in their false oath, make no effort to atone for their sins. These lawyers and judges make well into six figures annually under the false banner of being “tough on crime.” Yet apparently they don't call it a crime when they break the law.

The Southeast man I'm referring to is Thomas Jack, Jr., from Hoonah. Ten years ago he was thrown in prison for a crime he didn't commit. He still has another 40 years behind bars if he can survive that long. Not only was Mr. Jack given a life sentence, but he was the only victim in the entire case. It's an outrage if the Alaska Constitution stands for anything anymore.

The only evidence against Mr. Jack was the wildly inconsistent and nonsensical allegations of a young girl in the foster care system and under considerable pressure. Her great grandmother thought the girl was being coached to lie. The girl claimed Mr. Jack sexually assaulted her almost every night for a month up to three hours at a time while Mrs. Jack and the accuser's sister slept nearby. Both Mrs. Jack and the girl's sister said there was no way anything inappropriate happened. Away from the pressure, Mr. Jack's accuser told other adults and friends that he never did anything inappropriate to her.

In order to convict Mr. Jack, a slew of crimes was committed against him including perjury, discrimination, unlawful recordings under false pretenses, and arrest without probable cause. But the most heinous crimes came from the powerful lawyers and judges within the Department of Law and the Alaska Court System who handled Mr. Jack's case. They were under oath to uphold the Alaska Constitution, but acted to shred Mr. Jack's copy of it into pieces.

The girl confessed to a Hoonah schoolteacher, a mandatory reporter of sexual abuse by law, that the allegations were false. The teacher documented the confession in a written report which was received by the girl's social workers at the Office of Children Services and then forwarded to the Juneau District Attorney. The DA didn't drop their case against Mr. Jack or even investigate the documented confession despite the social worker's concern the girl might be lying. Instead, the DA “misfiled” the report.

The DA broke the law and violated Mr. Jack's constitutional rights by not disclosing the confession to the first grand jury which indicted Mr. Jack on 21 counts of sexual abuse of a minor. The DA repeated this same crime several months later when they re-indicted Mr. Jack before a second grand jury on 7 reduced counts because of the ongoing problems with the girl's story. The DA broke yet another law when they withheld the teacher's report from Mr. Jack's lawyer for almost a year. The DA broke the Alaska Constitution three times and has never been held accountable.

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The lawyers were not yet done violating the Alaska Constitution, the next to go was Mr. Jack's right to a fair trial. After the first trial resulted in a hung jury, Mr. Jack was forced to take a new lawyer who was completely unprepared for the second trial. The new lawyer pleaded with Superior Court Judge Philip Pallenberg for a reasonable time to get ready, but Mr. Pallenberg refused. The judge knew he was forcing Mr. Jack into an unfair trial but tried to pin the blame on the new lawyer who could not have expected Mr. Pallenberg to behave so unreasonably.

The next constitutional right to fall was Mr. Jack's right to be tried by a jury of his peers. Mr. Jack is an Alaskan Native, yet none were on either jury. Several Alaskan Natives were randomly called as potential jurors, but most were dismissed by Mr. Pallenberg and the DA took care of the rest.

When village residents are tried in court, the Alaska Constitution requires that the jurors represent a fair cross section of that village. That didn't happen. Most, if not all, of the jurors resided in Juneau where many look down upon those living a subsistence lifestyle untethered to a cash society and materialism. The people on the juries who voted guilty likely perceived Mr. Jack and his witnesses negatively from their outward appearance in such a strange and hostile setting. They couldn't see all the goodness inside Mr. Jack, who was known to the accuser's great grandfather as "honest and upright" and a "very conscientious" man. Those jurors completely ignored a mountain of reasonable doubt that was created by not only the testimony of Mr. Jack's Alaskan Native witnesses, but also by the substantially inconsistent and non-sensical testimony of his accuser.

Years later, when Alaska's appellate judges finally got around to considering Mr. Jack's appeal, they protected their own membership. Three highly paid members of the Court of Appeals decided that none of this outrageous conduct violated the Alaska Constitution. Mr. Jack tried to appeal to the Alaska Supreme Court, but those judges weren't interested in hearing his case.

Altogether nine judges employed by the Alaska Court System had the opportunity to uphold the Alaska Constitution and improve the administration of justice. All nine broke their oaths and upheld instead a blatant and most perverse miscarriage of justice. One of those was the current Chief Justice, Joel Bolger who this summer penned a letter acknowledging the historical discrimination and bias that Alaskan Natives such as Mr. Jack have endured. Yet when given an opportunity a few years back, Mr. Bolger did not bother to hear Mr. Jack's case and has ignored my efforts to inform him of this egregious injustice. In case you're reading this Mr. Bolger, a commitment to equal justice takes a lot more than words.

On the other hand, Alaskans who actually give a damn about the Alaska Constitution have a very serious problem on their hands. They can't elect their choices for judge and local prosecutor without a constitutional amendment. Alaska prosecutors and judges don't have to answer to you; they are primarily beholden to other lawyers who have their own political agendas.

Alaska is the only state in the Pacific Northwest region not to elect its judges. Washington, Oregon, Idaho, Montana and Nevada all determine their judges through nonpartisan elections where party affiliation does not need to be designated.

Judges in Alaska are spawned through a process that Ballotpedia refers to as Assisted Appointment (AA). The people in charge of this process call it a Merit System, but in Alaska that's a misnomer. Mr. Jack's woes demonstrate that AA is a more appropriate designation because our judicial system is chronically drunk on its unchecked power and desperately needs rehab.

All applicants are laundered through an organization called the Alaska Judicial Council. The AJC has 6 members serving six year terms of which 3 are lawyers selected by an organization of lawyers called the Alaska

Bar Association and the other 3 are handpicked by the governor. The deciding vote is another lawyer who sits on the Alaska Supreme Court, meaning just four unelected lawyers in Alaska always hold the power over who gets nominated to fill every judicial opening.

The AJC typically nominates two lawyers and submits their names to the Governor who has 45 days to select one of them. Voters have no choice until a few years later when the selected judge comes up for a retention vote. The AJC plays a crucial role in that process by undertaking a review that usually ends up with a recommendation to voters that the judge be retained. The voters can only vote “yes” or “no”; they can’t vote for another person. The result is a system where judges, especially those with political aspirations to advance further up the food chain, cater not to their constituents’ need for justice but the political persuasions of a privileged few. The AJC completely dominates the process.

Alaska is even more unique when it comes to prosecutors. We are one of only 3 states that appoints, not elects, its chief prosecutor. We don’t have much in common with the other two, Connecticut and New Jersey, particularly in terms of population density. Of all U.S. states, New Jersey is No. 1 on the list at 1210 people per square mile and Connecticut is No. 4 at 742 people per square mile.

No. 50 on the list? You guessed it. Alaska has 1 person per square mile. Nearest us is Wyoming at 6 people per square mile and Montana at 7 people per square mile. The citizens of those states and 45 others get to elect their top prosecutors. Montana does it by county; Wyoming does it by judicial district – 23 of them. In these states, prosecutors are held in check directly by their local constituents.

Why should Alaskans from Metlakatla to Barrow and all points in between those 1400 miles put up with having justice dispensed by a non-elected person sitting several hundred miles away in Anchorage? A year ago, I sent all the details of Mr. Jack’s case and the DA’s misconduct to Attorney General Kevin Clarkson and his top deputy in the criminal division, Paul Miovas. Apparently, I was in error to think these two lawyers might abide by their oaths and correct the wrongdoing in the Juneau DA office they oversaw from far away.

Mr. Clarkson completely ignored me. Perhaps he was too busy sending hundreds of unwanted text messages to a female State employee who wasn’t his wife. Mr. Miovas told me he reviewed my 60 page report with the specific details of the DA’s wrongdoing, but he felt “due process” was served and wasn’t going to do anything. He’s ignored me ever since and is now one of the applicants to the AJC for a vacancy on the Court of Appeals.

Imagine that. A lawyer who refuses to act when provided clear and convincing evidence that other lawyers he oversees have broken the Alaska Constitution putting an innocent man away in prison for life. Now Mr. Miovas wants to be in a position where he can apply his view of due process to your constitutional and civil rights.

About all you can do is file an objection to Mr. Miovas’ application, as I have done. But the AJC can simply disregard your input as they have done previously when grave concerns with Mr. Pallenberg were raised by others. There is very little transparency in the AJC selection process. They don’t share comments with the public and they handle their deliberations in private. Dissenters are isolated. Dirt is swept under the carpet.

The process of choosing judges and prosecutors must be changed to restore our civil liberties. Perhaps some Alaska legislators will get the ball rolling this upcoming session. In the meantime, let’s hope the privileged few make the view from Mr. Jack’s cell a top priority when they select their nominations for the Court of Appeals in November. Only those names with a proven track record of following their oath and protecting the Alaska Constitution should advance to the Governor’s desk. Those judges who don’t should not receive a recommendation from the AJC when they’re up next for retention.