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The Legislative Intent Behind SB 187 and SB 189; The Fear of Standing Up to Government Tyranny

On March 9, 2022, I was present at the Senate Judiciary Committee ("SJC") meeting when Vice Chair Mike Shower expressed concerns that SB 187 might be improperly used by Alaska prosecutors to "criminalize" people who shouldn't be. He said the statute might go too far. At the 2:03:08 mark of the video recording Vice Chair Shower stated for the record the legislative intent to be cautious because they didn't want to see people's lives ruined. He wanted to make sure the Department of Law didn't hurt citizens and respected both sides of the process.

Vice Chair Shower was the only senator on the Committee to express a strong desire to protect citizens from overzealous prosecutors. He referenced a "lot of internal debate" on this issue, but didn't elaborate whether that debate was among his staff or among the other SJC members. Regardless of who all discussed what, in the end the SJC didn't demonstrate the will to put in meaningful safeguards that are desperately imperative in both SB 187 and 189. In a nutshell, each senator failed to honor their oaths to uphold the Alaska Constitution and protect its citizens from government tyranny.

My comments are intended to supplement Vice Chair Shower's statements on March 9 and to document 1) the SJC's failure to allow testimony on specific instances of prosecutorial misconduct to rebut the representations made by the bills' Sponsor on the 9th; 2) a summary of 5 specific cases of prosecutorial misconduct outlined in a confidential, 11 page report provided to each member of the SJC prior to their unanimous voting of SB 187 through committee; and 3) the Department of Law's repeated refusal to acknowledge and remedy known instances where prosecutors have abused their power. My comments are derived from both my close observation and/or participation in five SJC meetings on these bills.

A good starting point on Alaska's legislative intent in sex crime bills is the legal brief written in a 2016 sexual assault case by a highly respected Officer of the Court with impeccable credentials. The Officer provided some valuable insight into what the senators were likely thinking when they passed SB 187 through their committee without any meaningful protection against false accusations of sexual assault.

The Officer wrote, <u>"Fear and revulsion stalks the legislative halls when the word "sex" or "sex offender" is mentioned</u>," and "<u>Politicians gain traction with their constituents for being 'tough on crime' by passing draconian laws targeting sex offenders</u>." (emphasis added)

In the 2016 case, the Officer accused Juneau prosecutors of "crossing over ethical and constitutional boundaries" in wanting to throw a young man (John Doe #1) in <u>jail for 55 years</u> for his participation in three sexual encounters with a younger girl during high school. Following a sighting in the high school gym, the girl had initiated contact with the boy through a dating app; they chatted about sex and agreed to meet for that purpose. She later told investigators she was just "trying to be cool" and was mad that authorities had found out about it 2 years later.

SB 187 and SB 189 came to the legislature through the Governor's office but according to later testimony to the SJC, was initiated by the Department of Law. John Skidmore, the Deputy Attorney General and a Juneau Assistant District Attorney ("ADA") each provided in-person testimony in support of the bills over the course of several meetings to consider the bill and its amendments.

The first SJC meeting I attended regarding these bills was on March 2. Most of that meeting was devoted to hearing invited testimony from Mr. Skidmore and others on SB 189. The ADA was in attendance. After the meeting Mr. Skidmore and a member of Vice Chair Shower's staff conferred for about 15 minutes while I waited.

When they were finished, Mr. Skidmore and the ADA started walking out of the Committee room. I introduced myself to Mr. Skidmore and asked if we could meet privately before he left town to discuss my concerns of "prosecutorial and judicial misconduct" in Juneau. He agreed and said he would call me.

Over 24 hours later Mr. Skidmore hadn't called me yet, so I sent him an email following up on his agreement to meet. To help him prepare for our meeting, I included documentation on the wrongful conviction of John Doe #2 by Juneau prosecutors. Included in that documentation was a statement of a decorated combat Veteran who served his country for 25 years, first in the Vietnam War and later in VIP Services. After serving his country, the Veteran and his wife arrived in SE to serve their community as a minister, educator, and intervenor in domestic violence situations.

The Veteran's statement contained observations that directly challenged the reasonableness of prosecutors in pursuing a sexual assault case that led to the conviction of John Doe #2 and a 50 year prison sentence.

"I expected the charges against [John Doe #2] would be dropped as soon as [the accuser's] allegations had been properly investigated. I never expected [his] case to go to trial and can't imagine how he could be convicted in a fair trial by an impartial jury." (emphasis added)

"I recall that when [the prosecutor] figured out who I was, she stopped asking me questions and that didn't sit well with me. In my view, prosecutors are obligated to follow the truth regardless of the result it leads to." (emphasis added)

Unbelievably, on the morning of the 4th Mr. Skidmore sent me a reply saying he had reviewed my materials and didn't find my claims credible. He wasn't going to meet with me.

Three hours after receiving this email, I testified to the SJC about the abuse of power by Juneau prosecutors in alleged sex crimes. In the few minutes given to me by the Chair, I was able to provide mostly general and conclusory statements, except for the specific testimony of a Grand Juror in the case of John Doe #3, summarized below. My testimony specifically appealed to the senators' Oath to protect the Constitution, the Bill of Rights, and our individual freedoms from government tyranny. I spoke to how State officials can compromise laws and ethics to advance their careers.

Following my public testimony, Sen. Hughes and Sen. Shower approached me independently and requested my assistance in passing acceptable legislation, which I agreed to do. I submitted detailed comments on SB 189 to Vice Chair Shower's staff before noon on Monday the 7th. A favorable response was quickly received from his staff.

Because of the substantial time I had put into reviewing SB 189 and drafting detailed comments, I was unable to personally attend the continued hearings on the 7th but watched online instead. The senators spent very little time on SB 187 and SB 189 and the Chair indicated that amendments would be forthcoming. I was hopeful my comments had been well received by all the members of the SJC and the

amendments they were working on would seek to protect innocent citizens from overzealous prosecutors pursuing false accusations.

I was back in the Committee room on the 9th when the hearings on SB 187 reconvened. The issue of prosecutorial reasonableness was a central focus of Vice Chair Shower during the meeting. The ADA was present on behalf of the bill's Sponsor and made representations throughout her responses to Vice Chair Shower that were false in my opinion. At the 1:51:24 mark of the video she said, "if a defendant said something like that we would always look at what else happened….we would always have to look at what else happened." (emphasis added)

At the 2:06:04 mark the ADA talked about corroborating evidence, "We're talking about proving something beyond a reasonable doubt. Could we do it on the testimony of the victim and not other corroborating evidence? Probably not. We probably could not meet the reasonable doubt standard by doing that….although I will tell you that is exactly how we behave. That is exactly how we screen cases, we look for corroborating evidence." (emphasis added)

Chair Holland congratulated the ADA on her "great closing statement." I was stunned at what was going down. Following the hearing I spoke with the staff member from the Vice Chair's office, and the Senator soon joined our discussion in the hallway. The Vice Chair's attitude towards me seemed different than on prior conversations following Committee meetings -- like someone or something had caused him to pull back on his willingness to work with me. As I tried to understand what was happening, he said his effort to read their intent into the record would be sufficient ammo for those later charged under false accusations. I strongly disagreed. I left with the impression that Fear had once again reared its ugly head and gotten the best of Vice Chair Shower and the other members of the Committee.

On Thursday morning, I began writing a letter to give to the senators prior to the next scheduled meeting on Friday afternoon, March 11. The letter had two stated purposes: 1) to address the representations made by the ADA on March 9; and 2) to give the Senators more detail supporting the conclusory statements I was forced to make in the few minutes given to me on March 4. Because some of the information was sensitive, my letter requested a closed hearing be scheduled at which this specific evidence could be provided.

My letter also requested the SJC to consider an amendment to SB 187 that would level out the playing field in evaluating allegations. The letter described how the grand jury procedure wasn't working to protect citizens -- how in the Juneau cases, important exonerating evidence wasn't disclosed by prosecutors to grand jurors as required by the Constitution. The evidence cited to in my letter came from extremely credible sources – the Officer's brief in John Doe #1, the Veteran's statement in John Doe #2, sworn testimony of a Grand Juror in John Doe #3, and a 15 page sworn affidavit by a State social worker, notarized by a Guardian Ad Litem in John Doe #4 and Jane Doe #1.

In John Doe #2, besides the observations of the Veteran, I discussed how the OCS and the DA possessed, prior to the grand jury indictment, written evidence of an unsolicited confession by the accuser to a teacher, by law a Mandatory Reporter, that the allegations were not true. Not only did the Juneau prosecutors proceed with the charges, they did not disclose the confession to the grand jury and did not turn over the letter to defense counsel for 11 months, all in violation of the Constitution.

In John Doe #3, the Grand Juror gave sworn testimony that 30 minutes after voting to indict the accused man, he observed the accuser and a witness engaging in behavior that suggested they had been "gaming

the system." He overheard the accuser on the phone bragging to someone that "If you want to get rid of someone you don't want around, accuse them of rape, take them to the grand jury and it will be all said and done."

The Grand Juror later went back to the courthouse to tell the clerk he wanted to change his vote to indict John Doe #3. He was taken into a courtroom where he told his story to a Juneau judge and prosecutor. He was then told he could leave and was never contacted again; he was not given an opportunity to change his vote to indict John Doe #3. The prosecutors knew that in the prior year the accuser had filed 2-3 reports of sexual assault against different men and then abandoned those claims. DNA evidence collected from both John Doe #3 and his accuser supported the Grand Juror's testimony. Regardless, the Juneau prosecutors continued to pursue the case and ultimately won a conviction.

John Doe #4 involved a young man charged with statutory rape of a younger girl. The prosecutors apparently failed to tell the grand jury a few important things: That the State knew this young man had been in a relationship with the girl since he was 14 years old. That State social workers knew about the situation before he turned 16 yet did nothing. That the State waited until the boy turned 18 and then charged him with statutory rape, the first date of offense being his 16th birthday. There was even more.

Jane Doe #1 was the mother of the victim in John Doe #4. The State social workers knew the adult mother was having sex with John Doe #4 inside her home when he was 15 (I cited additional evidence to the senators that the statutory rape against the boy started when he was 14). The State social workers also knew that other people in the area were angry because the woman was luring other boys into her home and having sex with them. To my knowledge, the State let all this go and never prosecuted the mother, choosing instead to go after the boy when he turned 18! He has now been in prison most of his adult life.

The letter ended up being 11 pages. I was still editing it when time ran out; I sent via email to the senators about ½ hour prior to the meeting. Wanting to make sure they had it in hand prior to making a decision, I walked over two hard copies to the Capital and hand delivered them to Chair Holland; I asked him to give the other copy to Vice Chair Shower.

Sen. Myer told me his staff had printed out the letter; he was reviewing it as I was talking to Chair Holland. I also had a chance to speak with Sen. Kiehl and Sen. Hughes on their way into the meeting. I pleaded with the senators to delay their vote on SB 187 until a closed hearing could be held. They didn't. They passed the bill through committee on the 11th by unanimous vote without even raising any of my concerns on the record.

On March 17 I sent an email to the 5 senators on the SJC, giving them a final opportunity to reconsider their vote on SB 187 and granting my request for a closed hearing to present the confidential evidence. Trying to appeal to their faith in God through biblically based religions, I even referenced Amos Chapter 5 in the Old Testament which talks extensively about God's warnings to leaders who disregard justice – a very common theme throughout the OT.

Even that didn't work. None of the senators have responded as of today.

We have an important election coming up in November. If any politicians try to win your vote by using the Bible or the Constitution as a prop don't believe their words alone. Focus on what they actually *do* and whether they actually follow what's *inside* those documents. Both the Bible and the Constitution

support the notion of “liberty and justice for all.” I’ll be voting for Justice when it’s my turn at the ballot box. I hope you do too.

If you vote for a politician who hasn’t proven through his actions a strong commitment to the basic principles embodied in our Allegiance, then you are putting both yourself and your children’s liberty at risk. Don’t kid yourself it could never happen to you if you’re known in the community as “honest and upright” and your family has sufficient financial resources to hire an excellent attorney.

Just ask John Doe #2 how things worked out for him when he was falsely accused without a shred of corroborating evidence and a ton of exculpatory evidence including the observations of a decorated Veteran and a confession from the accuser that the allegations were false. You can find John Doe #2 in Goose Creek Correctional Center. He still has 28 years to serve on his sentence.

Thank you,

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