

TRANSCRIPT OF KTUU
INTERVIEW OF JAHNA M. LINDEMUTH AND JOHN B. SKIDMORE

(Re: Justin Schneider)

September 25, 2018

TRANSCRIPTS ONLY
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September 25, 2018

(Pages 2 to 5)

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1 (Jill Burke KTUU.m4a)
2 00:00:00
3 **UNIDENTIFIED SPEAKER:** You probably know the drill, but
4 you're going to be looking right at Jill. I don't even exist
5 over here.
6 **MS. LINDEMUTH:** Okay.
7 **MS. BURKE:** Yeah.
8 **UNIDENTIFIED SPEAKER:** All right, I'm ready to begin.
9 **MS. BURKE:** You ready?
10 **UNIDENTIFIED SPEAKER:** Uh-huh.
11 JAHNA M. LINDEMUTH
12 was interviewed as follows:
13 **BY MS. BURKE:**
14 Q Okay, so if you could, tell me when you first learned of
15 the outcome in the Schneider case?
16 **A I think it was last Thursday night, so that -- it was that**
17 **day.**
18 Q And did you learn about it because of internally within
19 the Department of Law or through a news story?
20 **A Through -- initially through the Department of Law.**
21 Q Okay. And what was your reaction to learning about how
22 that -- how it ended up?
23 **A You know, I think like many Alaskans I was very concerned**
24 **about the outcome and the resolution of that particular**
25 **case. The -- you know, the issue is that the law is**

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1 **broken and needs to be fixed, and so I asked my folks to**
2 **immediately look at what we could do to fix that law, and**
3 **I spoke with Governor Walker about that on Friday and we**
4 **announced the legislation that we're going to fix that**
5 **particular loophole in the law.**
6 **I think we're all surprised that masturbating on**
7 **somebody is not a sex crime under Alaska law. It's**
8 **treated the same as spitting on somebody, and that is**
9 **the -- that's the crux of what needs to be fixed. It**
10 **needs to be treated as a sex crime with the higher**
11 **sentencing penalties, 2 to 12 years, and the required sex**
12 **offender treatment.**
13 Q So has it ever been a sex crime in Alaska?
14 **A You know, I will defer that to John. I don't believe**
15 **that's -- that it has ever been a sex crime in Alaska.**
16 Q Okay. And what about other states?
17 **A I expect that other states do treat that as a sex crime,**
18 **but the issue is that it doesn't in Alaska currently and**
19 **it should be, and so that's something that we're going to**
20 **fix during this next legislative session.**
21 Q Okay. And so is this just an amendment to an existing
22 law, adding it in as a subsection to something?
23 **A Yeah. We're going to change the definition of sexual**
24 **contact to include unwanted contact with semen.**
25 Q Okay. And had that been an element of the structure of

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1 the law under which Schneider was sentenced, would that
2 have changed the outcome in his case? Would he have done
3 some jail time; might he have had a different result?
4 **A So the -- you know, the issue is and why it's broken is**
5 **that under the current structure of the law the maximum**
6 **penalty that could be awarded was zero to two years.**
7 **Under -- once this law is changed and we fix the -- this**
8 **issue and treat it as a sex crime, the first -- the**
9 **penalty range for a first offense would be 2 to 12 years,**
10 **a much more serious result for this kind of conduct.**
11 Q What kind of response have you received personally from
12 the public as a result of this -- the outcome in this
13 case?
14 **A I've received emails and phone calls. I think our -- many**
15 **of those in Department of Law have also received emails**
16 **and phone calls and just citizens expressing their concern**
17 **and outrage over this result.**
18 **I'm also a member of the Alaska Criminal Justice**
19 **Commission. It was a topic of yesterday's meeting, and**
20 **there will be a sex offense workgroup that will look at**
21 **this loophole and other loopholes and recommend changes to**
22 **the legislature as well. But it is something that**
23 **Governor Walker is already committed to fixing.**
24 Q Are there already -- are there other loopholes that you
25 are presently aware of and what might those be?

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1 **A You know, we were already looking at the loopholes in the**
2 **sex offense laws and those are things that we do intend to**
3 **pursue, a package of fixes to our sex offense laws, and**
4 **those will be announced next Monday as part of the public**
5 **safety action plan update. So we're pulling all of the**
6 **actions that we're doing together and we'll make one big**
7 **announcement of the additional legislation that we're**
8 **seeking in the criminal justice field.**
9 Q Okay. So this is top of mind for a lot of folks, just
10 stressing to a lot of people, I think, that this was the
11 result. Are you aware of other cases where similar
12 results have occurred?
13 **A You know, I'm going to defer that to Mr. Skidmore, who is**
14 **more familiar with the result of other cases.**
15 Q Okay. So you feel good about this as a first step to try
16 to remedy a broken law.
17 **A Yeah. I was very concerned, the governor was very**
18 **concerned about the outcome in this particular case, and**
19 **there needs to be a fix to the law. It needs to be**
20 **treated as a sex offense.**
21 **MS. BURKE:** Okay. Do you have any questions, Kalin (ph)?
22 **UNIDENTIFIED SPEAKER:** Let me just get one more over the
23 shoulder.
24 Q The group that you met with yesterday, who's -- who are
25 members of that group?

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1 A The Alaska Criminal Justice Commission is made up of all
2 the different stakeholders in the system, and so the
3 public defender is part of it, the commissioner of Public
4 Safety, the commissioner of Corrections, several judges, a
5 representative of the Alaska Native Justice Foundation,
6 and then there's also a victims' representative, and, you
7 know, the victims' representative spoke very eloquently
8 about it. I -- you know, I think we can all imagine that
9 this could be our sister or our mother or could be
10 ourselves that face this issue, and so it's just very
11 important that we fix this loophole and that no one else
12 has to face this kind of sentencing, this kind of
13 behavior.

14 Q Okay. And Alaska Native Justice Foundation, the
15 victim -- you said a victim advocate was there or a
16 victims' representative?

17 A Yeah, so there's a designated member of the victims group
18 as part of the Alaska Criminal Justice Commission.

19 Q Okay.

20 MR. SKIDMORE: And I can get you the list.

21 MS. BURKE: Yeah, that would be great.

22 A That was Brenda Stanfill.

23 Q Oh, okay. I know who she is. Out of Fairbanks?

24 A Yes. She was the one that made the motion that we as a
25 commission recommend that the sex offense working group

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1 look at loopholes in the present law.

2 Q Okay.

3 A And not just this loophole, but others.

4 Q Is she with Interior Alaska Coalition for Non-Violent
5 Living? Okay.

6 A And it's Alaska Native Justice Center. It's not
7 foundation.

8 Q Oh, okay.

9 A Yeah.

10 MS. BURKE: All right. You ready?

11 UNIDENTIFIED SPEAKER: Yeah.

12 Q Okay. I that's everything we need unless there's more
13 that you want to say about kind of --

14 A No, I think that kind of got it as far as me. I think
15 that -- yeah, I think you had a few questions for
16 Mr. Skidmore and I think sort of the history of this
17 particular law you might ask about.

18 MS. BURKE: Okay. You're up.

19 00:07:08
20 (Setting up equipment)

21 00:08:53

22 JOHN B. SKIDMORE
23 was interviewed as follows:
24 BY MS. BURKE:
25 Q So if you could just say your first and last name for me

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1 and your title.

2 A Sure. It's John Skidmore, and I'm the director of the
3 Criminal Division of the Alaska Department of Law.

4 Q Okay. And so on your end of things did you -- were you
5 one of the people that signed off on this plea deal before
6 it was presented?

7 A No. The -- this particular resolution came to my
8 attention after the fact and I had an opportunity to
9 review it after the fact. I didn't have any involvement
10 prior.

11 Q Okay. Do you feel that it was a good resolution
12 giving -- given all of the factors involved in making
13 those kinds of decisions?

14 A I think the ultimate resolution is one that many of us in
15 the Department of Law, as well as citizens from across the
16 state, were very unhappy with the outcome. Unfortunately,
17 that outcome was constrained by the law. We have to
18 change the law to get a better outcome.

19 Q Right. And so I think one thing, you know, people have
20 been a little curious about is couldn't the judge have
21 kicked it back and said, no, we don't like this, this is
22 not strenuous enough?

23 A So whenever a judge is evaluating an agreement, it's
24 called a Criminal Rule 11 agreement or a Rule 11
25 agreement, and really their discretion is to decide to

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1 accept or to reject. And that's done based on whether or
2 not the sentence that the parties are proposing is within
3 the confines of what the law allows and whether or not the
4 judge believes that that's appropriate given what the law
5 says. And that's really, again, the heart of the issue
6 here, is both the judge and the prosecutor were
7 constrained by what the law allowed. Clearly, the law is
8 broken and it needs to be fixed.

9 Q And what did the law allow for in this case?

10 A In this case he was convicted of the highest offense
11 possible, which is assault in the second degree, and the
12 sentencing range was zero to two years.

13 Q And so some of the things I've heard, and you can just
14 address them as I raise them, is that, you know, he
15 strangled a woman. Why was that allowed to go down to a
16 basic assault?

17 A It's actually not going down to a basic assault. We
18 changed the laws in Alaska a number of years ago to make
19 strangulation specifically a felony crime. The
20 legislature at that time chose to make strangulation an
21 assault in the second degree. We amended definitions to
22 ensure strangulation cases would be dealt with as a
23 felony, but that's separate from something like an
24 attempted murder, for instance, is one of the things I've
25 heard about.

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<p>1 Q Right.</p> <p>2 A An attempted murder has a specific intent to kill, and our</p> <p>3 legislature chose to say placing your hands or any other</p> <p>4 object around someone's throat and cutting off their</p> <p>5 ability to breathe would be an assault in the second</p> <p>6 degree.</p> <p>7 Q Okay. And I think there are -- you know, there's some</p> <p>8 other pressures on a resolution in a case, you know,</p> <p>9 pieces of the process that the public's not always in</p> <p>10 control of, that the prosecutor and defense attorney are</p> <p>11 not in control of. For example, whether a victim is</p> <p>12 present or not to answer to the allegations she's making</p> <p>13 against somebody or he's making against somebody, right,</p> <p>14 to be cross-examined.</p> <p>15 A So I never describe it as a victim having to answer to</p> <p>16 allegations.</p> <p>17 Q Yeah.</p> <p>18 A That's not the way it works. A victim is given the</p> <p>19 opportunity to participate and to be heard in a case, and</p> <p>20 certainly the victim in this case, that lady was someone</p> <p>21 that our office had been in contact with throughout most</p> <p>22 of the case. Unfortunately, towards the end of the case</p> <p>23 our contact with her was more sporadic and we were having</p> <p>24 difficulty in communicating with her.</p> <p>25 We wanted her to be present during sentencing. We</p>	<p>1 critical pieces to a case that cannot be presented.</p> <p>2 You know, I tried a case a number of years ago; it</p> <p>3 was a man that set his wife on fire. We had to bring the</p> <p>4 wife into the courtroom, though she didn't want to be</p> <p>5 there and didn't want to participate, and we had to spend</p> <p>6 hours asking her questions about what statements she had</p> <p>7 previously made so we could introduce those prior</p> <p>8 statements. If we hadn't have done that, we may not have</p> <p>9 been able to present any of the information that she had</p> <p>10 conveyed to other people.</p> <p>11 Q Uh-huh. So knowing that, then a plea agreement that kind</p> <p>12 of resolves all of the elements of concern is a good</p> <p>13 outcome. I think that you had -- you have a statement on</p> <p>14 the Department of Law website that talks about how even</p> <p>15 though he wasn't being accused of a sex crime, he still</p> <p>16 had to go to sex offender treatment as part of that</p> <p>17 agreement.</p> <p>18 A The first I would say is I would not characterize this as</p> <p>19 a good outcome. None of us are happy with the outcome</p> <p>20 that occurred here. The way I describe it is that this</p> <p>21 was one of the better outcomes that we could achieve,</p> <p>22 given the problem with the laws. That's why we have to</p> <p>23 change the laws. That's why we have to fix them.</p> <p>24 You're correct, we would not have been able to have</p> <p>25 sex offender treatment ordered but for the agreement that</p>
<p>Page 11</p> <p>1 were unable to get in touch with her to provide her the</p> <p>2 information about the hearing. It would have been far</p> <p>3 preferable to have her there. That wasn't a choice that</p> <p>4 we made. It was an unfortunate circumstance. It would</p> <p>5 have been better if she could be there.</p> <p>6 Q Did she know that this was the resolution that the</p> <p>7 Department of Law was proposing?</p> <p>8 A Again, we had lost touch with her, and so at the time that</p> <p>9 we began to consider resolutions we were not able to get</p> <p>10 in touch with her about those things. That's one of the</p> <p>11 things that we always try to do, is to talk with victims</p> <p>12 before any resolution is proposed or agreed upon with the</p> <p>13 defendant.</p> <p>14 Q Does it make it more -- I guess what I'm trying to ask,</p> <p>15 and maybe not very well, is it's -- is it more difficult</p> <p>16 to prosecute a case when you don't have the availability</p> <p>17 of a victim to be present for the proceedings?</p> <p>18 A In prosecuting a case we are always required to look at</p> <p>19 what's the evidence that we have available to present at</p> <p>20 trial. That evidence includes what witnesses are</p> <p>21 available, what can those witnesses say, what's the</p> <p>22 physical evidence we have, et cetera, et cetera. If you</p> <p>23 don't have a witness available, that violates</p> <p>24 confrontation clauses of the United States Constitution,</p> <p>25 and so without a victim available there are oftentimes</p>	<p>Page 13</p> <p>1 we made. If we had gone to trial and convicted</p> <p>2 Mr. Schneider, the Court would not have had the legal</p> <p>3 authority to require sex offender treatment. So that was</p> <p>4 one of the aspects that was important to us in this</p> <p>5 resolution, was to ensure that his conduct that was</p> <p>6 clearly sexual in nature had the result of sex offender</p> <p>7 treatment to address that deviant behavior.</p> <p>8 Q But not on the -- he doesn't have to register on the</p> <p>9 registry, correct?</p> <p>10 A Again, the sex offender registry is controlled by statute</p> <p>11 and currently our statutes would not require the conduct</p> <p>12 that Mr. Schneider engaged in to register as a sex</p> <p>13 offender. That's one of the aspects that we need to</p> <p>14 change in the laws. Those are the proposals that are</p> <p>15 going to be addressed by what the governor and the</p> <p>16 attorney general are recommending for new legislation.</p> <p>17 Q Okay. And the history of this law, the attorney general</p> <p>18 had mentioned that you might have some information.</p> <p>19 A The -- there are different crimes that you're talking</p> <p>20 about in this context. Part of it's strangulation, but</p> <p>21 the part that I want to focus on is the conduct that was</p> <p>22 more of a sexual nature for the defendant in this case.</p> <p>23 And the way that law started, it was a law that was</p> <p>24 enacted back in 2006 and then amended in 2010, and when</p> <p>25 they originally -- they, the legislature -- originally</p>

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1 looked at passing this law what they were focused on was
2 inmate behavior related to Department of Corrections
3 employees. The law talks about blood, saliva, feces,
4 urine, semen, all of those sorts of bodily fluids being
5 flung at another person as being very offensive behavior.
6 Nothing that was sexual in nature, but very offensive.
7 And so it was created as the crime of harassment.
8 I don't believe that anyone in the legislature nor
9 anyone else that was involved in creating that law
10 contemplated this particular set of circumstances or
11 facts. And so it's one of those things that we often
12 describe as an unintended consequence. No one intended
13 for what is clearly deviant sexual behavior not to be
14 categorized as a sex offense. They were thinking about
15 different conduct at the time they enacted the law.
16 Q All right. Had this gone to trial and had he been found
17 guilty, how might the sentence have been different?
18 A The charges that were against Mr. Schneider, first, the
19 kidnapping, if a jury had convicted him of that -- and I
20 don't believe that they would have been allowed to because
21 I believe a judge would have dismissed that charge,
22 because the law said the facts that we had would not have
23 supported a kidnapping conviction. So right off the bat
24 that charge is not available.
25 If he had been convicted of the highest charge

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1 available after trial, it would have been the same as this
2 resolution, which was an assault in the second degree.
3 The sentence the Court would have been authorized to
4 evaluate was zero to two years, but the Court would not
5 have been able to impose sex offender treatment. The
6 Court would not have been able to impose registration on a
7 sex offender.
8 It would have been essentially left with the same
9 things. The credit for time served on electronic
10 monitoring is, again, a statutory creature, and the Court
11 would have been required to do that. So the outcome,
12 unfortunately, may not have looked very different from the
13 end result of this plea agreement.
14 Q Why would kidnapping have been -- why -- what was the
15 problem with the kidnapping charge?
16 A Kidnapping is a complicated offense that oftentimes people
17 misunderstand. Kidnapping requires some sort of
18 restraint, and our cases, our Court of Appeals and our
19 Supreme Court have told us that that restraint has to look
20 like a -- in a very particular way. So the restraint that
21 occurs to commit the particular sexual offense or the
22 assault itself does not qualify. It has to be something
23 far greater than that.
24 And this was something that, you know, prosecutors
25 charge initially, and then when we sit down and talk with

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1 our appellate division and look at those cases we
2 recognize, okay, we're not going to be able to establish
3 that particular crime, and that was the case in this
4 situation. We would not have been successful in
5 establishing a kidnapping charge.
6 Q Another thing that people are talking about and I think
7 outraged about is there's a perception that Native women
8 who are victims of sexual assaults don't receive justice,
9 that there's disparate treatment within the criminal
10 justice system for Alaska Native male offenders versus
11 white male offenders. How do you respond to those
12 concerns that are heightened and exacerbated by this
13 outcome?
14 A Well, the first thing that I would say is that, clearly,
15 Alaska has a very high rate of victimization of women for
16 sexual assault and domestic violence. That is something
17 that Alaska has been battling for a number of years and we
18 continue to battle it. And it's just a fact that,
19 unfortunately, within those victimizations we also see
20 that Native women have been victimized more, and that's a
21 problem. That's a problem that needs to be fixed.
22 But in this case the outcome wouldn't have been any
23 different because the outcome is controlled by the law,
24 not by anyone's ethnicity. It's about the law, and the
25 law needs to be changed so that we can get better outcomes

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1 for women, and especially for Native women.
2 Q And from your experience, or even maybe data you have
3 access to, what about, you know, had this been a -- an
4 Alaska Native defendant as opposed to a non-Native
5 defendant? Do you feel that this would have had a
6 different outcome or the same?
7 A The law would have been the same, so the outcome would
8 have been the same.
9 Q Okay. Anything else on the Schneider case or the
10 loopholes within the legal system that you feel are worth
11 mentioning or that we haven't covered that you think I
12 should be thinking about or aware of?
13 A I can only tell you that we try to be very diligent in
14 reviewing the laws and looking for any loopholes that
15 exist, and we try to address them year in and year out.
16 But, you know, this was one that was not something that
17 had been foreseen. This was not something that anyone had
18 anticipated, but now that it's come to our attention we
19 clearly want to fix it.
20 MS. BURKE: Kalin, did you -- anything come to mind for
21 you?
22 UNIDENTIFIED SPEAKER: Yeah. Let me switch these real
23 quick.
24 BY UNIDENTIFIED SPEAKER:
25 Q One question is, and you can just keep looking right at

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1 Jill and --

2 MS. BURKE: Yes.

3 Q But are you surprised when we're hearing facts about
4 reactions in this case? Has there been reaction like this
5 before, public reaction?

6 A I completely understand the public outrage at the outcome
7 here because the law didn't allow us to get a better
8 outcome, but the public's not focused on the law. The
9 public's focused on the outcome and that outcome needs to
10 be different in the future, which is why we need to change
11 the law.

12 Have we seen concerns in the past? Yes. Have we
13 seen concerns that rise to this level? I don't know that
14 I can recall one in the past that rose to this level, and
15 I hope that that public outcry results in getting a better
16 system so it doesn't happen again.

17 MS. BURKE: I think I'm good, Kalin --

18 UNIDENTIFIED SPEAKER: I have no more questions.

19 MS. BURKE: -- unless there's more that you need. Yeah.

20 And that -- I know how to find both of you by email or phone if
21 we need to touch base. I'm sure there'll be --

22 (End of recording)

23 00:23:34

24 /

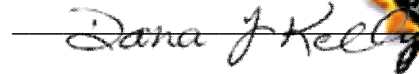
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TRANSCRIBER'S CERTIFICATE

I, Dana J. Kelly, Certified Electronic Transcriber, hereby certify:

That the foregoing pages numbered 2 through 18 are a true, accurate and complete transcript of an interview transcribed to the best of my knowledge and ability from an electronic sound recording provided to me by the Department of Law.

DATED: October 30, 2018.



Dana J. Kelly

Dana J. Kelly

AAERT No. CET-172

