

“A SYSTEM APPALLINGLY OUT OF BALANCE”: MORGAN V. STATE AND THE RIGHTS OF DEFENDANTS AND VICTIMS IN SEXUAL ASSAULT PROSECUTIONS

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ABSTRACT

In a series of three cases that culminate with Morgan v. State, Alaska’s courts established a unique protection for defendants in sexual assault cases. This protection, which allows such defendants to attack their victims in court with previous reports of sexual assault that did not result in prosecution, is not afforded to defendants in other cases and is based on a dubious “general principle” that the credibility of sexual assault victims has “special relevance.” The protection is problematic in several ways: it is grounded in erroneous stereotypes about the victims of sex crimes; it is detrimental to victims and the pursuit of truth; it is inconsistent with traditional rules of evidence; and it is unnecessary to protect the rights of defendants. For these reasons, this protection for defendants in sexual assault cases should be abrogated by legislative action as proposed herein.

INTRODUCTION

Alaska law currently permits accused rapists and child molesters to put the credibility of their victims on trial by presenting evidence that the victim, at some point in the past, may have made a false allegation of

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rape or sexual abuse of a child against another person. The law was established in a series of three cases exempting evidence about the credibility of rape victims from the general ban on propensity evidence. In the first two cases, *Covington v. State*¹ and *Johnson v. State*,² the Alaska Court of Appeals began to carve out the credibility exception without addressing the conflict with the Alaska Rules of Evidence. The third case, *Morgan v. State*,³ incorrectly cited *Covington* and cases from other jurisdictions in support of a non-existent general principle that the credibility of sexual assault and sexual abuse victims carries a “special relevance” that exempts it from the ordinary restrictions of the rules of evidence.⁴

The Court of Appeals established with these three cases a right for defendants accused of sex crimes that does not extend to other defendants. In doing so, it has limited the rights of sex crime victims in a manner that is unparalleled in the rights of victims of other crimes. Alaska’s Court of Appeals has perpetuated the common myth that false reports of sexual assault are a frequent occurrence and that the women who make them will do so again and again.⁵ The unnecessary and harmful protection created by the *Morgan* exception conflicts with the true general principles of evidentiary law, and must be changed.

This Article seeks to explain the evolution of the law in Alaska and

1. 703 P.2d 436 (Alaska Ct. App. 1985).

2. 889 P.2d 1076 (Alaska Ct. App. 1995).

3. 54 P.3d 332 (Alaska Ct. App. 2002).

4. *Id.* at 336. Specifically, the court characterized the Confrontation Clause rationale as follows:

[A] restatement of the principle that, in sexual assault prosecutions, a complaining witness’s prior false accusation of sexual assault can indeed have a special relevance—a relevance that removes this evidence from the normal ban on attacking a witness’s general character for honesty through the use of specific instances of dishonesty.

Id.

5. This Article focuses on female victims of sexual violence as a deliberate choice reflective of the epidemic of violence against women in Alaska. See *Intimate Partner Violence and Sexual Violence in the State of Alaska: Key Results from the 2010 Alaska Victimization Survey*, COUNCIL ON DOMESTIC VIOLENCE & SEXUAL ASSAULT (2010), http://justice.uaa.alaska.edu/research/2010/1004.avs_2010/1004.07a.statewide_summary.pdf (providing measures of intimate partner violence and sexual violence from survey of 871 adult women in Alaska). The choice of wording is not intended to diminish or overlook the painful and frequent victimization of men and boys. See generally Shanta R. Dube et al., *Long-Term Consequences of Childhood Sexual Abuse by Gender of Victim*, 28 AM. J. OF PREVENTATIVE MED. 430, 430–38 (2005) (finding approximately 16 percent of males were sexually abused by the age of 18). The changes sought in this Article are intended to benefit and protect all sexual assault victims, regardless of gender.

provide a useful recommendation for its amendment. Section I addresses the law as it existed prior to *Morgan*. Section II of this Article discusses the *Morgan* exception from the general ban on propensity evidence as it evolved from *Covington* and *Johnson* to *Morgan*. Section III contains an application of the exception in its current state to two factual examples, which highlights its practical failings. Section IV addresses defects in the exception's factual and legal underpinnings. Section V contains a proposal for legislative action to change the law, and Section VI concludes.

I. THE LAW PRIOR TO *MORGAN*

A. The General Ban on Using Prior Bad Acts to Prove Character Traits

Alaska Rule of Evidence 404(a) bars the admission of character evidence. Rule 404(a) states that, in general, “[e]vidence of a person’s character or a trait of character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion”⁶ There are three exceptions to this rule. First, evidence of a relevant character trait of a defendant can be admitted in a criminal prosecution.⁷ Second, evidence of a relevant character trait of a crime victim can be admitted if (1) the party seeking to admit it applies for an order of the court, (2) the court conducts a hearing outside of the presence of the jury to determine if the evidence is relevant and not unduly prejudicial or confusing, (3) the court issues an order that clearly identifies what evidence may be introduced and the nature of the questions that will be permitted, and (4) in a prosecution for sexual assault or attempted sexual assault, the victim’s conduct occurred less than a year before the date of the offense charged.⁸ Finally, evidence of a witness’s character may be admitted under Rules 607, 608, and 609.⁹ Unless these exceptions for defendants, victims, or witnesses are met, evidence of character traits is categorically excluded from the proceedings. In other words: character evidence is presumptively inadmissible unless the proponent establishes otherwise.

6. ALASKA R. EVID. 404(a).

7. *Id.* 404(a)(1).

8. *Id.* 404(a)(2). Evidence of a victim’s conduct in a sexual assault prosecution may be admitted if more than a year old if the proponent makes a persuasive showing that it is necessary. *Id.*

9. *Id.* 404(a)(3).

B. How to Prove a Character Trait

There is a difference between a “character trait” and the evidence that tends to prove or disprove the existence of a character trait.¹⁰ “The defendant is a violent person,” or “the witness is dishonest” are examples of relevant character traits. In and of themselves, these “traits” are not evidence; rather, they must be established by evidence. Rule 404(a), discussed above, establishes when and where a party may seek to prove a character trait, but the rule provides no guidance on how to establish or prove the existence of that trait. For such guidance one must look outside Rule 404(a) to Rules 404(b), 405, and 607 through 609.

Alaska Rule of Evidence 404(b) establishes a strict bar on the use of specific prior instances of conduct for the sole purpose of proving a character trait. Specifically, Rule 404(b)(1) states:

Evidence of other crimes, wrongs, or acts is not admissible if the sole purpose for offering the evidence is to prove the character of a person in order to show that the person acted in conformity therewith. It is, however, admissible for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.¹¹

As with Rule 404(a), there are exceptions to this ban on propensity evidence. One of these exceptions is enumerated in the rule itself: evidence of specific prior bad acts is admissible to establish facts other than the character of a person. Others are enumerated in the subsections of Rule 404(b). These subsections allow the prosecutor, with certain restrictions and predicate requirements, to present evidence that the defendant committed similar acts in the past in prosecutions alleging (1) sexual assault or abuse of a minor,¹² (2) sexual assault or attempted

10. *See id.* 405 (establishing the methods of proving character). That such a rule exists demonstrates that the court considers the existence of character traits to be a separate and distinct piece of information or evidence from the opinions, actions, and observations that could be used to prove whether or not a person possesses such a trait.

11. *Id.* 404(b)(1).

12. *Id.* 404(b)(2). The rule states that:

In a prosecution for a crime involving a physical or sexual assault or abuse of a minor, evidence of other acts by the defendant toward the same or another child is admissible if admission of the evidence is not precluded by another rule of evidence and if the prior offenses (i) are similar to the offense charged; and (ii) were committed upon persons similar to the prosecuting witness.

Id.

sexual assault,¹³ and (3) crimes involving domestic violence.¹⁴ If evidence of specific prior acts does not fall within one of these exceptions, Rule 404(b) prevents its admission.

Another evidence rule, Rule 405, provides further guidance to a party seeking to prove a character trait. This rule provides that where evidence of a character trait is admissible under the other rules of evidence, the trait can be proved with opinion evidence or reputation evidence.¹⁵ Evidence of specific instances of conduct is only admissible on cross-examination,¹⁶ or where character or trait of character is an essential element of a charge, claim, or defense.¹⁷

The character of a witness is not an “essential element of a . . . defense” in all cases where a defendant could conceivably point to a witness or victim’s character in an effort to absolve himself of liability.¹⁸ Instead, the character of a witness is an essential element only in cases in which “a litigant must, as a matter of law, prove a person’s character in order to prevail.”¹⁹ Thus, for example, Rule 405 prohibits the admission of specific prior bad acts even for the sole purpose of proving character in a murder case to establish that the victim was the first aggressor, as a person’s “character for violence” is not an element of the crime of murder or of self-defense.²⁰ In such cases, the victim’s character for violence is relevant but the defendant may only prove it through reputation or opinion evidence.²¹ Character is only rarely an element, such as in defamation cases where the truth of statements about the plaintiff’s character is relevant to the statutory requirement that the

13. *Id.* 404(b)(3). The full text of this rule states that:

In a prosecution for a crime of sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible if the defendant relies on a defense of consent. In a prosecution for a crime of attempt to commit sexual assault in any degree, evidence of other sexual assaults or attempted sexual assaults by the defendant against the same or another person is admissible.

Id. This is a broader rule than 404(b)(2). *See supra*, note 12.

14. *Id.* 404(b)(4). *See generally* *Bingaman v. State*, 76 P.3d 398 (Alaska Ct. App. 2003) (discussing Alaska Rule of Evidence 404(b) in depth).

15. *Id.* 405(a).

16. *Id.*

17. *Id.* 405(b).

18. *Id.*

19. *Allen v. State*, 945 P.2d 1233, 1240 (Alaska Ct. App. 1997).

20. *Id.*

21. *Id.* The court was careful to add that specific instances of conduct may be admissible in such a case to prove a matter beyond the victim’s propensity for violence, like the reasonableness of the defendant’s belief that deadly force was necessary. *Id.* at 1241–42, *citing* *Amarok v. State*, 671 P.2d 882, 883–84 (Alaska Ct. App. 1983).

plaintiff establish the falsity of the defendant's statements.²² A witness's character for truthfulness or untruthfulness is no more an element of the crime of sexual assault or any defense to such a crime than it would be for any other type of crime.²³

Finally, Rule 404(a) points a proponent of character evidence directly to Rules 607 through 609. These rules provide that (1) anyone, including the party calling a witness, may impeach that witness or bolster that witness in response to that impeachment,²⁴ (2) credibility can be attacked by opinion evidence about truthful or untruthful character, but specific instances of conduct are not admissible except when offered on cross-examination of a witness who provided opinion as to another witness's character,²⁵ and (3) evidence of convictions is only admissible to prove dishonest conduct if the prior conviction is for a crime of dishonesty.²⁶ Of particular relevance to the question of a sexual assault victim's dishonesty is the second of these rules, Rule 608. Rule 608 states in full that:

If a witness testifies concerning the character for truthfulness or untruthfulness of a previous witness, the specific instances of conduct probative of the truthfulness or untruthfulness of the previous witness, may be inquired into on cross-examination. Evidence of other specific instances of the conduct of a witness offered for the purpose of attacking or supporting that witness's credibility is inadmissible unless such evidence is explicitly made admissible by these rules, by other rules promulgated by the Alaska Supreme Court or by enactment of the Alaska Legislature.²⁷

In other words, Rule 608 provides that specific instances of dishonesty are only admissible in limited circumstances, as illustrated by the following example: Witness A testifies as an eyewitness to a crime. Witness B, called by the defense, testifies that Witness A has a reputation for dishonesty. The prosecutor can (1) cross-examine Witness B with specific instances of Witness A's truthful behavior, or (2) call Witness C to say that Witness A has a reputation for truthfulness. If and only if the prosecutor chooses to call Witness C can the defendant's attorney present evidence of specific prior bad acts of Witness A's dishonesty, which he is permitted to do only because the prosecutor

22. ALASKA STAT. § 21.36.070 (2014).

23. *E.g.*, ALASKA STAT. §§ 11.41.410-11.41.445.

24. ALASKA R. EVID. 607.

25. *Id.* 608.

26. *Id.* 609.

27. *Id.* 608.

opened a door otherwise closed by Rule 608.

Considering these rules together, one might conclude that evidence of a sexual assault victim's previous false report of sexual assault would be inadmissible. While the victim's character for dishonesty is a relevant trait under Rule 404(a), it is not an element of the crime of sexual assault or any defense to it. Thus, Rules 404(b), 405, and 608 should operate to prevent the admission of specific prior acts of dishonesty, including evidence of prior false reports of sexual assault, unless and until the defendant attacks the victim's credibility with reputation evidence and the prosecutor elects to bolster the victim's credibility with reputation testimony by another witness. Under Alaska law in its present state, however, this is not the case.

II. THE *MORGAN* EXCEPTION TO THE RULES OF EVIDENCE

In 2002, the Alaska Court of Appeals held in *Morgan v. State*²⁸ that evidence of a sexual assault victim's prior false report of sexual assault was admissible at trial if the defendant proved by a preponderance of the evidence that "(1) the complaining witness made another accusation of sexual assault, (2) that this accusation was factually untrue, and (3) that the complaining witness knew that the accusation was untrue."²⁹ In doing so, the Court explicitly stated that it was categorically "remov[ing] this evidence from the normal ban on attacking a witness's general character for honesty through the use of specific instances of dishonesty."³⁰ Understanding this new rule, which is explicitly incompatible with the rest of the rules of evidence, requires a discussion of its history.

28. 54 P.3d 332 (Alaska Ct. App. 2002).

29. *Id.* at 333.

30. *Id.* at 335. This language, referring to a "normal ban on attacking a witness's general character for honesty," does not accurately describe the evidentiary ban on propensity evidence. As discussed previously, the "general ban" created by the rules prohibits parties from establishing evidence of a relevant character trait, like honesty or dishonesty, with specific instances of dishonesty. There *is* no ban on attacking a witness's general character for honesty through the use of specific instances of dishonesty. The situation the court describes—attacking one witness's general opinion that another witness is honest—is in fact the only time a party *can* present specific acts of dishonesty. ALASKA R. EVID. 608. As the discussion of the full opinion should make clear, this error should be understood to mean that the court was removing the evidence from the ordinary ban that *would* in fact be placed on it by the Rules of Evidence. *See supra*, Section I.B.

A. *Covington v. State*

The court first addressed the question of the admissibility of prior false reports of sexual assault or abuse in *Covington v. State*.³¹ Covington was charged with and convicted of sexually abusing his minor daughter.³² During voir dire of the witness, his daughter, D.C.O., admitted that she had previously accused her grandfather and another man named J.D. of sexual assault.³³ Covington argued that he should have been permitted to call the grandfather to establish that D.C.O. had made a false report, thereby challenging D.C.O.'s credibility. Specifically, he argued that exclusion of the grandfather's testimony violated his right to confrontation under the Sixth Amendment.³⁴ The State, however, argued that the testimony would have been irrelevant because past reports had no bearing on the truth of whether she had been assaulted on this occasion, and that admitting the evidence would simply be a "swearing contest" between D.C.O. and her grandfather.³⁵ The trial excluded the grandfather's testimony, and Covington appealed.³⁶

The court did not reverse the trial judge.³⁷ In its opinion, however, the court did not foreclose the possibility that other defendants with better evidence could admit such testimony or even that Covington himself could not do so on remand.³⁸ Specifically, the court stated that "[a] defendant who wishes to use [evidence of prior false reports of sexual assault] at trial must obtain a preliminary ruling from the trial court that it is admissible."³⁹ This determination requires "a showing out of the presence of the jury that the witness[']s prior allegations of sexual assault were false, as, for example, where the charges somehow had been disproved or where the witness had conceded their falsity."⁴⁰ The court held that Covington had not made this showing but "assume[d] that on remand Covington [would] be given a reasonable opportunity to attempt to show the falsity of the prior accusations."⁴¹ In finding this, the court did not articulate any legal basis for the holding. It merely found that other courts' rulings in similar cases were persuasive,

31. 703 P.2d 436 (Alaska Ct. App. 1985).

32. *Id.* at 438.

33. *Id.* at 441.

34. *Id.* at 442.

35. *Id.*

36. *Id.* at 441.

37. *Id.* at 442.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

without discussing the inconsistency of the holding with Evidence Rules 404, 405, and 607 through 609.⁴² The court failed to explain whether falsity establishes relevance but not admissibility, or whether falsity, once established, guarantees that the evidence will be admitted.

B. *Johnson v. State*

The issue remained untouched and unsettled for ten years. In 1995, the Court of Appeals issued its opinion in *Johnson v. State*,⁴³ which in some ways clarified *Covington* and in other ways served to further muddy the waters. In *Johnson*, trial testimony established that the victim, L.K., left a bar and hitchhiked home.⁴⁴ Defendants John and Russell Johnson stopped to offer her a ride. L.K. reported to police later that night that the Johnsons had raped her at gunpoint.⁴⁵ John testified at trial that he had consensual sex with L.K. and that Russell did not have any sexual contact with her at all.⁴⁶ The defendants sought to present evidence that L.K. had reported two similar sexual assaults in January 1979 and that these reports had not been substantiated or prosecuted because L.K. had not cooperated after her initial report.⁴⁷ They argued that this indicated the reports could be false and thus admissible under *Covington*.⁴⁸ The trial court refused to allow the defendants to introduce evidence, particularly the testimony of L.K., and of the falsity of the two prior assaults.⁴⁹ The Johnsons were both convicted and they appealed on the grounds, *inter alia*, that the trial court erred in preventing questioning on the prior reports.⁵⁰ In doing so, the Johnsons relied on Evidence Rule 404(a)(2), which allows evidence of a relevant character trait of a victim of a crime to be admitted after a hearing.⁵¹

The *Johnson* court affirmed the trial court's ruling on the evidence. The court held that the ruling in *Covington* "suggest[s] that evidence of past false reports of sexual assault may *under some circumstances* be admissible to discredit an alleged victim's current claims of sexual assault," but the court also concluded that "the proponent of such

42. *See id.* (holding that a majority of courts that have considered the issue have held that, at a minimum, a defendant must make a threshold showing that a report is false before it can be presented).

43. 889 P.2d 1076 (Alaska Ct. App. 1995).

44. *Id.* at 1078.

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. *Id.* at 1079.

51. *Id.*

evidence bears the threshold burden of establishing the falsity of the past reports.”⁵² The court held that “the off chance of discovering falsehood did not vest the Johnsons with the right to demand that L.K. testify” about the prior reports.⁵³ The court rejected the Johnsons’ 404(a)(2) argument because such hearings only arise “when necessary” and are not to be used as a discovery tool.⁵⁴ Such hearings are only “necessary” where there is a “threshold showing of good cause—that is, upon proof of a colorable ground to believe that character evidence favorable to the defense actually does exist and will be disclosed by the requested examination.”⁵⁵ The court affirmed the trial court’s evidentiary ruling because the Johnsons failed to establish that there was a “likelihood, or even [a] possibility, of a recantation.”⁵⁶ The court never addressed the fact that while Rule 404(a)(2) establishes that a relevant character trait of a victim can be discussed at trial, Rules 404(b) and 405 state that specific instances of conduct cannot be used to establish the existence of that trait.

C. *Morgan v. State*

After *Covington* and *Johnson*, Rule 404 appeared to remain valid in cases involving the credibility of sexual assault cases. Neither case expressly repudiated the ban articulated in the evidence rules on admitting specific instances of conduct to prove character as expressed in the Rules of Evidence. Indeed, the *Johnson* court stated that per *Covington*, such evidence *may* be, but is not automatically, admissible.⁵⁷ An attorney seeking to reconcile the Rules of Evidence with these holdings could conclude that reports that are not provably false are, without question, irrelevant and thus inadmissible, but that provably false reports may be admitted for purposes consistent with Rules 404(b) and 607 through 609.

In 2002, however, the court issued a ruling in *Morgan v. State*⁵⁸ that unequivocally precluded this reading.⁵⁹ *Morgan* was tried for sexual assault and asked the trial judge to allow him to introduce the testimony of witnesses who were going to say that the victim had made previous

52. *Id.* at 1078 (emphasis added).

53. *Id.* at 1079.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Id.* at 1078.

58. 54 P.3d 332 (Alaska Ct. App. 2002).

59. *Id.* at 332–33.

false accusations of sexual assault against other men.⁶⁰ The trial court denied him the opportunity to do so, and Morgan was convicted.⁶¹

The Court of Appeals characterized the question before it as, “[w]hat exactly must a defendant prove when seeking to establish that an alleged sexual assault victim has made a prior false accusation of rape? And what is the burden of proof on this issue?”⁶² Summarizing its answer, the court mischaracterized its previous opinions, stating:

[W]e held [in those cases that evidence of prior false reports] is admissible if, as a foundational matter, the defendant establishes the falsity of the prior accusations. . . . If the trial judge concludes that, more likely than not, the complaining witness made a knowingly false accusation of sexual assault on another occasion, then the defendant will be permitted to present this evidence to the jury.⁶³

Ignored entirely was the *Johnson* court’s prior statement that “evidence of past false reports of sexual assault may *under some circumstances* be admissible to discredit an alleged victim’s current claims of sexual assault”⁶⁴ The *Morgan* court decided that the law had been clear for seventeen years, that in all circumstances, the evidence is admissible as long as falsity is established, and that the only uncertainty for practitioners was how much evidence the defendant needed to present to the court under 404(a)(2) before putting the victim on trial and shifting attention away from the defendant’s conduct.⁶⁵

The Court of Appeals recognized for the first time the conflict between this new rule and the Rules of Evidence:

[Other states’] decisions in this area focus on two potential legal impediments to a defendant’s right to introduce evidence of prior false accusations. The first impediment is the rule embodied in Alaska Evidence Rules 405 and 608: the prohibition against attacking a witness’s character for honesty by presenting proof of specific instances in which the witness has acted dishonestly. The second impediment is the rule that a party is not allowed to introduce extrinsic evidence to impeach a witness’s answers on cross-examination regarding collateral matters (such as the witness’s possible acts of dishonesty on

60. *Id.* at 333–34.

61. *Id.* at 340.

62. *Id.* at 333.

63. *Id.*

64. *Johnson v. State*, 889 P.2d 1076, 1078 (Alaska Ct. App. 1995) (emphasis added).

65. *Morgan*, 54 P.3d at 336.

other occasions).⁶⁶

The court dismissed the conflict quickly. It noted that courts in Texas, Oregon, and Kansas concluded that despite Rule 608, “the confrontation clause of the Constitution requires this kind of impeachment if the evidence of the complaining witness’s fabrication is strong enough.”⁶⁷ With this, the court asserted its holding:

We believe that this confrontation-clause rationale is, at its core, simply a restatement of the principle that, in sexual assault prosecutions, a complaining witness’s prior accusation of sexual assault can indeed have a special relevance—a relevance that removes this evidence from the normal ban on attacking a witness’s general character for honesty through the use of specific instances of dishonesty. . . . [I]f the defendant proves that a complaining witness has made prior false accusations of sexual assault . . . , the defendant is not limited to cross-examining the complaining witness concerning these prior accusations. Rather, the defendant can both cross-examine the complaining witness and present extrinsic evidence on this point.⁶⁸

This is the current state of the law in Alaska. This Article will explore its application to two hypothetical cases before critiquing the legal reasoning that supports the court’s holding.

III. THE CONSEQUENCES OF *MORGAN*: EXPLORING HYPOTHETICALS

A. Case Study One: Jane

Jane is a 30-year-old woman in 2015. In 2010, she went on a date with Allen, whom she knew prior. In 2011, she reported to police that Allen had sexually assaulted her during the date. When asked why she waited to tell someone, she replied that Allen had threatened her. Officers interviewed Allen, who admitted that he had sexual intercourse with Jane, but stated that it was consensual. There were no eyewitnesses. Because of the delay, there was no forensic evidence. The prosecutor declined to prosecute the case due to the lack of corroborating evidence.

In 2015, Jane went on a date with a man named Bob. In the early morning hours immediately following the date, Jane arrived at the

66. *Id.* at 335.

67. *Id.* at 336.

68. *Id.*

police station. Crying, Jane told officers that Bob had sexually assaulted her. She was transported to the hospital, where a Sexual Assault Nurse Examiner collected forensic evidence that proved Bob had engaged in sexual intercourse with Jane. When officers attempted to interview Bob, he declined to participate, as was his right. There were no other witnesses. The prosecutor charged Bob with sexual assault in the first degree. The defense attorney learned of Jane's 2011 report and sought to admit it as a prior false report. In requesting a hearing, the attorney proffered Allen as a witness to deny that he sexually assaulted Jane.

A trial court, applying *Morgan*, would almost certainly have to conduct a hearing. All three cases in the *Morgan* trilogy indicate that a defendant has a right, on proffer of some credible evidence that goes beyond mere speculation or curiosity, to attempt to meet his burden under *Morgan*—a foundational showing he will probably satisfy by proffering Allen's testimony. Thus, even though Jane *was* raped in both 2010 *and* in 2015, she will now be forced to confront both of her rapists in court to defend her integrity against an attack that the rules of evidence would clearly not otherwise permit.

Applying the *Morgan* test, it is not clear whether Bob will be able to meet his burden at the *Morgan* hearing because no case has defined what quantum of evidence is necessary to establish that a false report occurred. Bob will likely argue that the report is probably false because Allen says he did not do it and the prosecutor declined to prosecute the case. The FBI and International Association of Chiefs of Police have issued guidelines stating that the following factors do not constitute a false report: (1) insufficient evidence, (2) delayed reporting, (3) non-cooperation, and (4) inconsistencies in the victim's statement.⁶⁹ Under the guidelines, "[t]he determination that a report of sexual assault is false can be made only if the evidence establishes that no crime was committed or attempted."⁷⁰ Under these guidelines, Bob should not be able to meet his burden because it should be virtually impossible for a court to find Allen, who has a vested interest in denying that he sexually assaulted Jane, credible. The court in *Covington*, however, stated that in precisely these circumstances—where the determination of a false report was based on a swearing contest between the D.C.O. and her grandfather—the defendant should have a chance to establish that the

69. *False Reporting*, NAT'L SEXUAL VIOLENCE RES. CTR. 3 (2012), http://www.nsvrc.org/sites/default/files/Publications_NSVRC_Overview_False-Reporting.pdf.

70. *Investigating Sexual Assaults*, IACP NAT'L LAW ENF'T POL'Y CTR 12-13 (2005), http://www.ncdsv.org/images/IACP_InvestigatingSAConceptsIssuesPaper_7-2005.pdf.

D.C.O. is not telling the truth.⁷¹ This result implies that the Court of Appeals believes that under such circumstances the defendant could actually meet his burden. Jane faces no protections from what should be an unnecessary evidentiary hearing, and *Covington* leaves open the possibility that Bob will prevail.

B. Case Study Two: Mary

Like Jane, Mary is a 30-year-old woman in 2015. In 2010, she went on a date with a man named Charlie, and in 2011, she reported to officers that Charlie raped her on that date. Charlie admitted to sexual intercourse with Mary, but said it was consensual. Before the prosecutor decided whether to accept the case, Mary called his office and recanted, stating she made the report up. She asked the prosecutor to drop the case, which the prosecutor did.

In 2015, Mary went on a date with David. Later that night, she showed up at the police station crying, and reported that David had sexually assaulted her. The officers attempted to interview David. He declined, as was his right, but the officers noticed that David had scratches that appeared to be consistent with defensive wounds on his arms and face. There were five eyewitnesses who unanimously and reliably identified David as the man who forced himself on Mary on the night in question as she fought against him. Forensic evidence collected by a Sexual Assault Nurse Examiner confirmed that David had sexual intercourse with Mary, and Mary's fingernail swabs and David's DNA (validly collected pursuant to a search warrant) indicated that Mary was the one who scratched David's arms and face. The prosecutor charged David with sexual assault in the first degree. As in Jane's case, the defense attorney sought to admit evidence of Mary's 2011 report and recantation. He proffered David, Mary, and a paralegal from the prosecutor's office as conditional rebuttal witnesses in case Mary denies her prior recantation.

Under *Morgan* and its predecessors, Mary's prior report would almost certainly be admissible because she recanted. Recantation is the only evidence of falsity specifically identified and endorsed in any of the cases.⁷² This disregards, however, that sexual assault victims can, and often do, recant for a number of reasons. Oregon's Sexual Assault Task

71. *Covington v. State*, 703 P.2d 436, 441-42 (Alaska Ct. App. 1985).

72. See *Johnson v. State*, 889 P.2d 1076, 1079 (Alaska Ct. App. 1995) (discussing the "likelihood or even the possibility of recantation"); *Covington*, 703 P.2d at 441-42 (Alaska Ct. App. 1985) (discussing when a witness had "conceded their falsity").

Force, for example, specifically exempts recantation from the definition of false reporting because “[r]ecantations are routinely used by victims to disengage the criminal justice system response and are therefore NOT, by themselves, indicative of false reports.”⁷³ In other words, a sexual assault victim may wish for a variety of reasons not to continue participating in the criminal justice response, which can be lengthy, embarrassing, and difficult. Rules like Alaska’s, which permit an invasive and normally impermissible inquiry into what may be a traumatic personal history, only add to the difficulties sexual assault victims face.

An additional defect in *Morgan* is highlighted by Mary’s case. *Morgan* does not require a balancing test or an inquiry by the court into whether the victim’s credibility is a question of particular relevance in the case. Its unambiguous language requiring that “[i]f the trial judge concludes that, more likely than not, the complaining witness made a knowingly false accusation of sexual assault on another occasion, then the defendant will be permitted to present this evidence to the jury” allows the presentation of this evidence in *any* case where the defendant makes the required showing.⁷⁴ In Mary’s 2015 case, she told officers she was sexually assaulted. There was physical evidence confirming that David engaged in sexual penetration with Mary. There were multiple eyewitnesses who identified David. David himself had scratches on his arms and face. Mary’s credibility in this fact pattern is at most a collateral issue, but the court will nevertheless likely be required to indulge the defendant in his presentation of the 2011 report under the holding in *Morgan*, permitting an invasive inquiry of dubious utility into her character in front of the jury. The balancing test required by Rule 403 probably does not prevent this inquiry, as the cases above would give any trial court good reason to conclude that the Court of Appeals has already determined that this type of evidence is adequately relevant and probative regardless of its prejudicial effect.⁷⁵

IV. A FURTHER CRITIQUE OF THE *MORGAN* HOLDING

The preceding sections present a discussion of the practical

73. *False Allegations, Recantations, and Unfounding in the Context of Sexual Assault*, OR. SEXUAL ASSAULT TASK FORCE 1 (2011), <http://oregonsatf.org/wp-content/uploads/2011/02/Position-Paper-False-Alleg3.pdf>.

74. *Morgan v. State*, 54 P.3d 332, 333 (Alaska Ct. App. 2002).

75. Rule 403 states that “evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” ALASKA R. EVID. 403.

problems highlighted in the application of *Morgan*, but there are a number of other additional deficiencies in the opinion. First, the court in *Morgan* placed undue weight on the reliability of evidence of alleged false reports, and erroneously concluded that such evidence was substantially more probative than prejudicial or misleading. Second, the out-of-state cases the court cited for the general principle that sexual assault victims' credibility is a matter of "special relevance" do not all stand for that proposition. One of them, in fact, specifically *rejects* that premise.⁷⁶ Third, the Confrontation Clause does not require admission of this type of evidence. Finally, the holding violates the Alaska Constitution's protections for victims.

A. Disregarding Evidence on Prior False Reports of Sexual Assault

The *Morgan* court implicitly concluded that evidence that a victim has allegedly made a prior false report of sexual assault is both relevant and substantially more probative than prejudicial.⁷⁷ Evidence Rule 402 provides that relevant evidence is admissible unless otherwise stated, and Rule 403 establishes that relevant evidence should be excluded if it may cause unfair prejudice, confuse the issues, or mislead the jury.⁷⁸ The court did not explicitly analyze evidence of prior alleged false reports against Rules 402 and 403, but by holding that such evidence is admissible, the court necessarily concluded that these reports comply with those rules. In other words, the court concluded that evidence that a victim has falsely reported a rape on a prior occasion tends to show that the victim was not raped on the occasion in question. The court also concluded that evidence of a prior false allegation has a tendency to show that the current allegation is also false, and that this tendency is so strong and so reliable that there is only minimal danger that a jury could be confused or misled.⁷⁹ This is simply not the case.

The first error the court made is in concluding that a victim's recantation of a prior report of sexual assault is relevant as a false report.⁸⁰ A survey of methodologically rigorous research found

76. *Lopez v. State*, 18 S.W.3d 220, 225 (Tex. Crim. App. 2000) (declining to create a special exception to the Rules of Evidence for sex offenses).

77. *See Morgan*, 54 P.3d at 333 (placing only a preponderance of the evidence burden upon a defendant to show that it is more likely than not that a previous sexual assault allegation was more likely false than not before allowing the defendant to present evidence of a previous false allegation in the current case).

78. ALASKA R. EVID. 402.

79. ALASKA R. EVID. 401-403 (if such evidence is admitted, a judge must necessarily have determined that its probative value is not "outweighed by the danger of unfair prejudice").

80. *Johnson v. State*, 889 P.2d 1076, 1079 (Alaska Ct. App. 1995); *Covington*

adequate evidence to determine that a report is false in only around two to eight percent of cases.⁸¹ By contrast, recantation is extremely common among both child and adult sexual assault victims.⁸² This significant difference indicates that recantation is not at all synonymous with false reporting. Many signs that defendants will argue are indications of a false report—inconsistencies in statements, recanting, delayed reports, etc.—are in fact signs that a victim simply does not wish to participate in the criminal justice system, and should not be used by courts to establish any fact beyond that.⁸³ The Court of Appeals in *Covington, Johnson*, and *Morgan* erred in giving heavy weight to victim recantations.

Not only did the *Morgan* court err in concluding that recantations are relevant, it erred in its conclusion that evidence of false reports would be helpful to the jury determining criminal liability in a subsequent case. The public at large consistently overestimates the prevalence of false reporting.⁸⁴ Thus it is likely that jurors, hearing evidence that a victim has recanted on a prior occasion, are likely to inaccurately conclude that the victim has made a prior false report (which as we have seen is unlikely) and that she must be making a false report at the present time as well (which is also unlikely). This ill-informed “gut feeling” among jurors could sway them toward a conclusion that, in all likelihood, is not based in fact. This is an unacceptable risk of prejudice that should not have been tolerated by the *Morgan* court.

B. Inapplicability of the “Special Relevance” Principle

In support of its holding in *Morgan*, the Court of Appeals opined that there exists a general principle that the credibility of sexual assault victims has a “special relevance” in sexual assault cases. The court cited

v. State, 703 P.2d 436, 441–42 (Alaska Ct. App. 1985).

81. Kimberly A. Longsway et al., *False Reports: Moving Beyond the Issue to Successfully Investigate and Prosecute Non-Stranger Sexual Assault*, THE VOICE 2 (2009), http://ndaa.org/pdf/the_voice_vol_3_no_1_2009.pdf. See also Dara Lind, *What we know about false rape allegations*, VOX (June 1, 2015), <http://www.vox.com/2015/6/1/8687479/lie-rape-statistics> (discussing the rationale behind these reports).

82. See Melissa Hamilton, *Judicial Discourses Involving Domestic Violence and Expert Testimony* 123–29 (May 2006) (unpublished Ph.D. dissertation, The University of Texas at Austin) (on file with University of Texas Libraries) (noting that the frequency of recanting by domestic violence victims is a common theme in expert testimony); L.C. Malloy et al., *Filial Dependency and Recantation of Child Sexual Abuse Allegations*, 46 J. ACAD. CHILD & ADOLESCENT PSYCHIATRY 162–70 (explaining that over 23 percent of child sexual assault victims recant).

83. Longsway, *supra* note 81, at 4.

84. *Id.* at 3.

opinions from Oregon, Kansas, and Texas in support of this conclusion.⁸⁵ However, *Lopez v. State*,⁸⁶ a Texas opinion cited by the court, does not actually stand for this general principle.⁸⁷ In fact, the Texas court specifically rejected the principle in a passage that cites *Covington v. State* as an example of the incoherent reasoning behind the principle. This passage, on which this Article could not seek to improve, is quoted here at length:

Other states have held that the Confrontation Clause requires creating a special exception for sexual offenses to allow admission of prior false accusations of abuse by the complainant despite evidentiary bars.⁸⁸ But the rationale behind these opinions is not at all clear. Some recurring themes are that sex offenses are somehow unique because (1) they are easily charged and difficult to disprove; (2) there are usually no witnesses to the offense, so the credibility of the complainant and defendant are more critical issues; and (3) the nature of the charge is apt to arouse sympathy and create bias. *None of these rationales persuades us to create an across-the-board exception to the Rules of Evidence for sex offenses.*

- First, sex offenses are not any easier to charge or any more difficult to disprove than any other case. In fact, often it is just the opposite. . . . [I]t is often extremely difficult for the victim to come forward. And these offenses are no more difficult to disprove than any other accusation. . . .
- Credibility of the witnesses is no more important in sex offenses than in any other case. Any case can involve a swearing match between two witnesses: an assault in which the defendant and the victim are alone and the defendant threatens the victim with imminent bodily injury; a kidnapping in which the defendant restrains the victim in an isolated location and the victim eventually escapes. . . . [T]he complainant's and the defendant's credibility are no more critical issues in sex offense cases than in any other type of case.
- Any emotions associated with sex offenses *are all the more reason to prevent admission of prior false accusations by the victim. . . . [V]ictims of a sexual offense. . . are regarded differently from the "ordinary" victim. No other victim of any offense is so likely to be accused of*

85. *Morgan v. State*, 54 P.3d 332, 336 (Alaska Ct. App. 2002).

86. 18 S.W.3d 220 (Tex. Crim. App. 2000).

87. *Id.* at 225 (declining to create a special exception to the Rules of Evidence for sex offenses).

88. Citing, *inter alia*, *Covington v. State*, 703 P.2d 436 (Alaska Ct. App. 1985).

fabricating, fantasizing, or "asking for it." The increased emotional level associated with sexual offenses is all the more reason to refuse to allow the jury to be additionally confused by collateral acts of misconduct by a witness. Indeed, that is the entire purpose behind Rule 608(b).

Legal commentators have also recognized the peculiarity of the sex-offense exception recognized in other states. Professors Goode, Wellborn, and Sharlot point out that this rule "cannot be easily squared with the dictates of Rule 608(b). Typically the probative value of such evidence flows from the inference it raises as to the complainant's propensity to make false claims – precisely the type of inference proscribed by Rule 608(b)."

We agree. . . . As the Ohio Court has pointed out, "the mere fact that an alleged rape victim made prior false allegations does not automatically mean that she is fabricating the present charge." *Prior false allegations of abuse "do not tend to prove or disprove any of the elements of rape."*

So the out-of-state cases recognizing a "sexual offense" exception rely on nothing but generalizations, and the generalizations are just not true in every case. It makes no sense to say that certain factors will always be present in a case involving a sexual offense but will never be present in a case involving a different type of offense.⁸⁹

This excerpt explains clearly and succinctly why the *Morgan* court erred in relying on a general principle that credibility has a "special relevance" in these cases. It establishes that the principle is based on absolutely no evidence, empirical or even anecdotal.⁹⁰ It explains that the *Morgan* decision gives defendants the right to present evidence that is, as the Texas court noted, marginally valuable and very prejudicial, inflammatory, and confusing; prior false allegations are minimally relevant to establish behavior in the current case and they can inflame the passions of jurors who are already notoriously hesitant to convict.⁹¹ Finally, it demonstrates by its existence that the *Morgan* court assertion that the principle is broadly accepted is erroneous.

89. *Lopez v. State*, 18 S.W.3d 220, 223–25 (Tex. Crim. App. 2000) (emphasis added) (quoting GOODE, WELLBORN & SHARLOT, TEXAS PRACTICE: GUIDE TO THE TEXAS RULES OF EVIDENCE: CIVIL AND CRIMINAL § 608.1 (1998); *State v. Boggs*, 588 N.E.2d 813, 816–17 (Ohio 1992)).

90. *Id.*

91. *Id.*

C. The Confrontation Clause Does Not Require the Admission of this Evidence

The Court of Appeals created the *Morgan* exception on the theory that in all sexual assault cases victim credibility has a “special relevance” and that, because of this special relevance, trial courts must admit evidence that tends to show prior false reports of sexual assault. This approach, however, is not consistent with case law on the Confrontation Clause. In *Davis v. Alaska*,⁹² the United States Supreme Court held that cross-examination on specific instances of prior conduct was necessary in order to show the existence of possible bias and prejudice, but that the Confrontation Clause does not confer a right to impeach the general credibility of a witness through cross-examination on specific prior bad acts in every case.⁹³ Applying this holding in *Boggs v. Collins*,⁹⁴ a case where the trial court refused to allow a defendant to cross-examine a rape victim about an alleged prior false accusation of rape, the Sixth Circuit Court of Appeals found that the defendant may be permitted to do so only “when [evidence of a prior false report] reveals witness bias or prejudice, but not when it is aimed solely to diminish a witness’s general credibility.”⁹⁵ In other words, federal courts have concluded that the Confrontation Clause does not, in fact, require admission of prior false reports of sexual assault in all cases, and have explicitly rejected the notion that the Confrontation Clause permits use of such evidence to attack general credibility.

Under these holdings, the *Morgan* exception is not necessary because Rule 404(b) already satisfies the intent of the Confrontation Clause. The rule prohibits use of specific prior acts to prove general character, including general credibility, but it allows admission of specific prior acts for other purposes, including, but not limited to, proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.⁹⁶ This is precisely how the *Boggs* court applied the Confrontation Clause when it determined that “bias or prejudice” could justify admission of evidence otherwise prohibited. The *Morgan* court, then, created a redundant protection for defendants at a great cost to sexual assault victims based on a flawed interpretation of the Confrontation Clause.

92. 415 U.S. 308 (1974).

93. *Id.* at 321 (Stewart, J., concurring).

94. 226 F.3d 728 (6th Cir. 2000).

95. *Id.* at 736–37.

96. See ALASKA R. EVID. 404(b)(1) (delineating purposes for which evidence may be submitted).

D. The Holding Violates the Alaska Constitution's Protections for Victims

Finally, the court's holding in *Morgan* violates victims' rights under the Alaska Constitution. In Article I, § 24, the Alaska Constitution provides that crime victims have "the right to be treated with dignity, respect, and fairness during all phases of the criminal and juvenile justice process" ⁹⁷ A Utah case interpreting a similar provision in the Utah Constitution explained the purpose of this constitutional right thusly:

'Victims who do survive their attack, and are brave enough to come forward, turn to their government expecting it to . . . protect the innocent Without the cooperation of victims and witnesses in reporting and testifying about crime, it is impossible in a free society to hold criminals accountable. When victims come forward to perform this vital service, however, they find little protection. They discover instead that they will be treated as appendages of a system appallingly out of balance. They learn that somewhere along the way the system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and defendants, treating victims with institutionalized disinterest.' . . . Utah law now recognizes that victims have fared poorly in the criminal justice system and that they are to be more involved in the process of punishing the acts of which they became unwilling participants.⁹⁸

This passage is an example of what truly should be a general principle, particularly in states like Alaska where protections for victims are explicit in the constitution—that the rights, interests, and dignity of crime victims should be balanced against, rather than subordinated to, those of criminal defendants. Such provisions recognize that constitutional protections that exist to prevent unjust imprisonment of innocent defendants should not be extended so far that bona fide crime victims are unjustly harmed. Ideally, this would require courts to balance the interests of victims against the interests of defendants when

97. ALASKA CONST. art. I, § 24 (1959).

98. *State v. Blake*, 63 P.3d 56, 60 (Utah 2002) (quoting President's Task Force on Victims of Crime, Final Report, iv (1982)). See also Paul Cassell, *Balancing the Scales of Justice: The Case for and the Effects of Utah's Victims' Rights Amendment*, 1994 UTAH L. REV. 1373, 1379 (1994) (quoting President's Task Force on Victims of Crime, Final Report, iv (1982)).

extending the protections of the constitution.

The *Morgan* court applied no such balancing test and in doing so undermined the purpose of Alaska's constitution.⁹⁹ As the Texas court explained, evidence of prior false reports—even if it is accurate—has the potential to be inflammatory and confusing for jurors.¹⁰⁰ A single prior instance where a victim made an allegedly false report, unlike admissible opinion testimony that a crime victim is a dishonest person, is minimally probative of the truth or falsity of the charges in a current case. Thus, the evidence has minimal legitimate value in helping jurors establish the truth. The evidence has substantial illegitimate value, however, to a defendant who wishes to prevent a trial by embarrassing the victim, threatening to call the victim a liar in court, and shifting the focus of the allegations from the defendant's recent misconduct to the victim's past conduct. Because allowing the admission of prior allegedly false reports by sexual assault victims provides the defendant only minimally legitimate benefit at significant risk of unjust harm to a victim, the court in *Morgan* created an unconstitutional exception to the Alaska Rules of Evidence.

V. A PETITION FOR CHANGE

The law must be changed—and quickly. *Morgan* provides criminal defendants with a legally indefensible weapon with which to attack their victims, and does not help courts or juries determine the truth. It serves no just purpose, and yet has the potential to cause significant additional harm to a vulnerable group of people.

The following proposed legislation, if adopted, would be ideal given the concerns outlined in this Article:

The Legislature, having found that the credibility of sexual assault or sexual abuse victims is not a matter of special relevance in prosecutions for sexual assault, sexual abuse, attempted sexual assault, or attempted sexual abuse, hereby passes the following:

- (a) In prosecutions for the crimes of sexual assault in any degree, sexual abuse of a minor in any degree, unlawful exploitation of a minor, or an attempt to commit any of these crimes, evidence that the complaining witness has made a prior report of sexual

99. See *Morgan v. State*, 54 P.3d 332, 336 (Alaska Ct. App. 2002) (asserting the proper burden without mentioning a balancing approach).

100. *Lopez v. State*, 18 S.W.3d 220, 224 (Tex. Crim. App. 2000). See Longsway, *supra* note 81.

assault in any degree, sexual abuse of a minor in any degree, or unlawful exploitation of a minor in any degree may not be admitted nor may reference be made to it in the presence of the jury except as provided in this section.

- (b) When the defendant seeks to admit the evidence for any purpose, the defendant shall apply for an order of the court not later than five days before the trial or at a later time as the court may, for good cause shown, permit.
- (c) After the application is made, the court shall conduct a hearing in camera to determine the admissibility of the evidence. The evidence shall only be deemed admissible if the court finds that evidence offered by the defendant is relevant, that the probative value of the evidence offered is not outweighed by the probability that its admission will create undue prejudice, confusion of the issues, or unwarranted invasion of the privacy of the complaining witness, that the evidence otherwise complies with all laws, regulations, and rules governing the admission of evidence, and that the defendant has proved by clear and convincing evidence that:
 - 1) the complaining witness has made a prior report of sexual assault;
 - 2) the report was false; and
 - 3) the complaining witness knew the report was false.
- (d) A prior report of sexual assault in any degree, sexual abuse of a minor in any degree, unlawful exploitation of a minor in any degree, or an attempt to commit any of these crimes is "false" for purposes of this section if the evidence presented to the court establishes that the incident reported did not, in fact, occur. Recantation, delayed report, non-cooperation with law enforcement, and/or lack of evidence corroborating the complaining witness's prior report are not adequate to establish that a report is false under this section.
- (e) Evidence otherwise admissible under this section shall not be admitted if the prior report was made more than five years before the date of the present offense.
- (f) In this section "complaining witness" means the alleged victim of the crime charged, the prosecution of which is subject to this section.

This statutory language, which is based in part on the wording and procedures of Alaska's rape shield law,¹⁰¹ should not be necessary. In the absence of the decision in *Morgan* the rules of evidence operate to establish that (1) evidence of a prior false report is not relevant and thus not admissible unless it is provably false and (2) even if it is held to be relevant, it is not admissible because it is a specific prior bad act unless certain conditions provided for in the rules of evidence have been met. After *Morgan*, however, the preamble stating the Legislature's purpose is necessary to limit the court's ability to overturn the law on the basis of the reasoning in that case, and the specific language of the statute is needed to eliminate the exception and return the credibility of sexual assault and sexual abuse victims to the realm of the rules of evidence.

VI. CONCLUSION

Sexual assault and sexual abuse victims in Alaska are afforded little protection from court-sanctioned embarrassment, harassment, or persecution by their assailants. The law in *Morgan* perpetuates the "system appallingly out of balance," decried in *State v. Blake*, and shows that Alaska's "system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it."¹⁰² This wrong can be easily righted, however, and it is my hope that practitioners, legislators, and judicial officers will heed the call in this Article and take action to protect the rights of victims in Alaska.

101. ALASKA STAT. § 12.45.045.

102. *Blake*, 63 P.3d at 60.