

**ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE**

January 25, 2005
8:30 a.m.

MEMBERS PRESENT

Senator Ralph Seekins, Chair
Senator Charlie Huggins, Vice Chair
Senator Hollis French

MEMBERS ABSENT

Senator Gene Therriault
Senator Gretchen Guess

OTHER MEMBERS PRESENT

Representative Lesil McGuire
Representative Les Gara
Representative Max Gruenberg

COMMITTEE CALENDAR

Department of Law Overview: Robert Bundy Report

WITNESS REGISTER

Mr. Robert Bundy

ACTION NARRATIVE

CHAIR RALPH SEEKINS called the Senate Judiciary Standing Committee meeting to order at [8:30:56 AM](#). Senator Huggins and Chair Seekins were present. Chair Seekins announced that a 10:30 press conference would be held today in the Governor's Office at which the Bundy report will be presented. A question and answer period will be held afterward with the press. He anticipates the session to be complete by 12:30. Chair Seekins announced his intention to recess the Senate Judiciary Committee meeting and ask Mr. Bundy to appear before the committee when it reconvenes. He will attempt to get copies of the Bundy Report for members and has invited members of the House Judiciary Committee and other legislators to attend. Senator French joined the committee. Finally, Chair Seekins announced he has granted reprieve to DOL until tomorrow to give its review.

8:33:31 AM

CHAIR SEEKINS recessed the committee until the press conference was finished.

Department of Law Overview: Robert Bundy Report

1:07:44 PM

CHAIR SEEKINS reconvened the meeting. Senators Huggins, French and Chair Seekins were present. Representatives McGuire, Gara and Gruenberg were also attending. Although the meeting was not noticed as joint meeting, he invited the chair of the House Judiciary Committee and other legislators to participate, express opinions, or ask questions, but he asked that they give way to committee members.

1:09:15 PM

CHAIR SEEKINS welcomed Mr. Robert Bundy.

ROBERT BUNDY introduced himself.

THE FOLLOWING IS A VERBATIM TRANSCRIPT

CHAIR SEEKINS: I understand, Mr. Bundy, that you were retained by the Governor to look into the allegations, which were made about the conduct of the Attorney General. In general, when I ask you to tell us a little about that - when the Governor first approached you. Let's start there.

MR. BUNDY: Well, it was shortly after the first story appeared in the Anchorage Daily News. I was at home and I got a call from Jim Clark and he asked me if I had read the paper and I said I had and he wondered if I would be interested in taking on the investigation of whether or not there had been violation of any ethics law or other provision related to that. I thought about it for a few minutes and probably against my better judgment I said that I would, recognizing that I was probably going to end up just about where we are now. So, I agreed to do that. I frankly didn't realize there was going to be as much involved as there was, but I agreed to do it. So, we had to do an official state contract with the Office of the Governor. I don't represent the Governor; it's the Office of the Governor, so it's the state. I, then, had to work on the conflict of interest clearing with my firm. Finally did that and was able to proceed about a week later.

CHAIR SEEKINS: Did you meet with the Governor prior to...?

MR. BUNDY: He called me right after Jim Clark did the very next day and asked me about this. Of course, I told him that I needed to be assured that I was going to get the cooperation and I would provide him my best straightforward opinion and he could do what he pleased.

CHAIR SEEKINS: Did the Governor or Mr. Clark ever express to you whose idea this independent investigation was? Was it his? Was it the Attorney General's?

MR. BUNDY: I don't know whose it was.

[1:12:15 PM](#)

CHAIR SEEKINS: But your first contact was with Mr. Clark.

MR. BUNDY: Right.

CHAIR SEEKINS: Did the Governor or Mr. Clark ever indicate to you the reason that they were considering you for the position?

MR. BUNDY: Yes, obviously, I'm not of his political party. I was a Democratic appointee when I did have a political job as US Attorney. I am associated with organizations that are not friendly to the Governor's agenda on a number of issues. So, I suppose that he thought, well, here is somebody that nobody can say is in my camp politically.

[1:13:13 PM](#)

CHAIR SEEKINS: From your perspective; let's take a look at it this way. What made you feel that you were uniquely qualified to do this particular assignment?

MR. BUNDY: Well, I suppose as much as anybody else, I've conducted investigations for both the state and federal governments on white collar matters. I'm a member of the Ethics Committee of the Bar Association. I was chair of the Rule of Professional Conduct Committee of the Bar Association. I've done a lot of work with regard to white collar, both civil and criminal issues.

CHAIR SEEKINS: Did you discuss those qualifications with the Governor?

[1:13:58 PM](#)

MR. BUNDY: Yes, he asked me about that and I am sure that Mr. Clark already knew.

CHAIR SEEKINS: Okay, you say that you have been a member of organizations that oppose the Governor's political positions, so I assume that you are not a Republican?

MR. BUNDY: I am not.

[1:14:16 PM](#)

CHAIR SEEKINS: Have you ever had any employment or professional association or affiliation with the Governor or the Attorney General?

MR. BUNDY: I have never had any affiliation or association at all with the Governor. After I got into this, I discovered that in 1987 or '86 when Mr. Renkes was a law student, he clerked for half of a summer with a firm that I worked for then, Vogel and Gates. But I never worked with him, so I didn't recall him.

CHAIR SEEKINS: Let's talk about employment background. Can you give us just a history of your educational employment background? It doesn't have to be exhaustive.

[1:14:55 PM](#)

MR. BUNDY: Okay, I graduated from undergraduate, the University of Southern California, went to UC Berkeley Boalt Hall Law School - graduated in '71, took and passed the California Bar and then got offered a job in Alaska and thought that I would come up here for a year or two - went to work for Alaska Legal Services, worked with them until '74, lived in Nome and Kaiana, Alaska. Then became the DA in Nome from '75 - '78, moved to Anchorage - was Chief Assistant DA in Anchorage, worked for the AG's office in the Anti-trust Division and then went with Vogel and Gates, where I was for 10 years doing mostly civil litigation and then became US Attorney in 1994 and was that until 2001 and have been in private practice since then.

CHAIR SEEKINS: You said the US Attorney's position is a political position?

MR. BUNDY: It's nominated by the President and confirmed by the Senate. It's a Presidential appointment position.

CHAIR SEEKINS: Which President appointed you?

MR. BUNDY: President Clinton.

[1:16:24 PM](#)

CHAIR SEEKINS: Let's just talk a little bit about - I'm just trying to determine here for the benefit of all our members and for our record exactly where you are in terms of, there have been people that said well, who does he work for and I've said the same thing you did. It appears to me that he works for the people of the State of Alaska. How do we know that this man was not a crony of the Governor's and the Attorney General's. So, I'm just trying to establish just what your relationship is there.

MR. BUNDY: Well, my contract is with the State of Alaska - that's who I work for - it's the Office of the Governor. So, my client is the State of Alaska. I'd met the Governor before when I was US Attorney, because I had to talk to him from time to time, but other than that I never had anything to do with the Governor.

[1:17:13 PM](#)

CHAIR SEEKINS: In just reviewing the Alaska Public Offices Commission (APOC) filings just to see if we could determine ahead of time what political affiliation you might be, it appears that you may have contributed to the Governor's opponent in the last election. Is that true?

MR. BUNDY: Absolutely.

CHAIR SEEKINS: Any other organizations that you would have contributed there that may indicate where your philosophical...

MR. BUNDY: Well, I contribute to the Alaska Conservation Voters, I'm on the Board of Trustees of Alaska Conservation Foundation, I'm on the Board of Alaska Legal Services Corporation and I'm a Democrat and I contribute to Democrats.

CHAIR SEEKINS: I'm not going to condemn you for that. So, when you finally took the contract, or when you felt you had an agreement with the State of Alaska, what specifically did you feel your defined task was?

Let me interrupt for the record that Representative Gara is with us and Representative Coghill, the Majority Leader, for the House. Of course, I have already said that Chair McGuire from the House is with us. So, go ahead, sir.

MR. BUNDY: Well, it was to look into the matter of allegations that the Attorney General had through official action as a state Attorney General had used his position to benefit himself financially, that he violated the Ethics Code. That's what I understood having read the paper of what the substance of the allegations are.

[1:19:04 PM](#)

CHAIR SEEKINS: Now before you accepted that task and at any time thereafter, did you have any reason to believe that anyone in the administration wanted you to produce a report that was based on anything other than the facts of the matter and the law?

MR. BUNDY: Well, that's certainly what they told me and that's certainly what I asked them. And that's what I undertook to do.

CHAIR SEEKINS: In your opinion, you did just exactly that?

MR. BUNDE: I did do it the best I could.

[1:19:32 PM](#)

CHAIR SEEKINS: I was listening to part of the press conference today where you mentioned that you pursued this task in much the same manner you would have if you were acting as the US Attorney.

MR. BUNDY: Well, I mean, with some significant differences. But, I tried to do how you would do a typical investigation, which is gather the appropriate documents, organize them, review them and then use what you've learned from those to interview people and use the documents in the interview.

[1:20:05 PM](#)

CHAIR SEEKINS: Were you provided with all the documents, all the materials that you requested from the administration?

MR. BUNDY: Pretty much, with the one significant exception - that email account.

CHAIR SEEKINS: Could you please encapsulate that for us? I know you've already done it at the press conference.

MR. BUNDY: Well, we requested, of course, a number of documents from the Department of Law - and all of our document requests were electronic documents. We'd ask for all the emails. Well, after a couple of weeks in, we learned that there were a significant number of emails that were not available because they had been deleted. That occurred, I was told, on October 1, the day the story broke in the Daily News.

So, I got on a plane and arranged for a court reporter and interviewed Drew McDougal who is the Department of Law IT person and asked them what happened. He had filled out a slip that said I was requested to come to the Attorney General's office and he was having trouble deleting things from his trash basket in his email account. So, apparently what had happened was Mr. McDougal was asked to come up to the Attorney General's office, said that he had a bunch of emails in his trash thing that had been there for a long time and wanted to delete them and he couldn't do it for some reason. Mr. McDougal looked at the computer and figured out why he couldn't and went ahead and deleted the emails.

CHAIR SEEKINS: So you had to reconstruct some of that?

MR. BUNDY: Right. The emails - typically the way the Department of Law has their emails set up - is that they will get any email that comes into the inbox and stays there for 30 days. At the end of 30 days, it is automatically deleted into the trash receptacle part where you can retrieve it for seven days. At the end of seven days it's deleted completely from the system. Once a week the systems are all backed up with - at that time - a computer tape. And that is recycled every 30 days. In other words, you have 67 days maximum of an email in the system, but when Mr. Renkes took office and his computer was being set up and the technicians were up there explaining to him how it all worked and what could happen and this and that, he said he didn't want the automatic deletion feature in his computer. Since he was the boss, despite what everybody else had, he got to have the no deletion feature.

Well, that meant that all the emails that he had been getting over the years were either in his email or in his trash receptacle, because they otherwise didn't delete. Also, apparently, the Department of Law and maybe all the state has a setup where with your government computer you can arrange to

have your personal email downloaded onto your government computer and he had chosen to do that. So, he had all of his personal and his government emails on his account. That was all deleted unbeknownst, from what Mr. McDougal told me, to either himself or apparently Mr. Renkes. The IT people didn't realize this - was that the backup system that they were in the process of changing - it's a complicated story about software and whatnot - was not working. So, none of Renkes stuff had been backed up, which would have been still in existence had there been a backup and I would have gotten it. But, instead it wasn't backed up and it was gone.

CHAIR SEEKINS: Did you ever review a draft of your report with anyone in the administration prior to the final edition? Were you ever pressured by anyone in the administration to hurry your report, to get it out now for any reason?

MR. BUNDY: Well, I mean every once in a while I got a request of how's it coming, but never we need it now, because I said, well look, some of the things that caused problems were people's schedules. I had a specific plan about how I was going to go about talking to people and I wanted to keep some people towards the end. When that happens, they were off here or off there and I had other commitments, too. So, that took some time. I made that clear from the beginning that I was going to have to do it the way I thought was appropriate and that's the way it was and they recognized that. Nobody ever criticized me.

[1:24:33 PM](#)

CHAIR SEEKINS: Did you ever detect any foot dragging or any deliberate delay in hopes that you would file an incomplete report?

MR. BUNDY: No.

CHAIR SEEKINS: Questions on this particular aspect of what we've talked about so far? Members? Senator French.

[1:25:58 PM](#)

SENATOR HOLLIS FRENCH: Mr. Bundy hi, how are you today?

MR. BUNDY: Good.

SENATOR FRENCH: About the emails, about the deletion of the mails. This happened on the very same day that the Daily News

story broke. Did you determine whether the Attorney General had read that story before he ordered the deletion of the emails?

MR. BUNDY: I asked him about that and he said that he had not - that it happened in the morning and he didn't see the...but, that's what he said.

SENATOR FRENCH: Did that jibe with what the computer technician told you?

MR. BUNDY: The computer technician didn't tell me anything about that. As I recall, he said he went up there in the morning, did the thing, I mean he didn't talk to him about any of the issues or anything. He just did the computer technician stuff.

[1:26:41 PM](#)

SENATOR FRENCH: Do you know exactly what time it was you went up there?

MR. BUNDY: No, it's on a document, I think, I can't recall exactly.

SENATOR FRENCH: And you said it was a significant number that were deleted? Any idea how many there were?

MR. BUNDY: I have no idea, but there must have been thousands.

[1:27:02 PM](#)

SENATOR FRENCH: Had Mr. Renkes ever asked for that particular service before that day?

MR. BUNDY: Not that I was ever able to determine.

SENATOR FRENCH: Did you think the deletion of those emails impeded your investigation in any way.

MR. BUNDY: Yes, I would have liked to have had them. We could have seen what they all said.

[1:27:34 PM](#)

REPRESENTATIVE LESIL MCGUIRE: Were you able, Mr. Bundy, my understanding was that you were able to replicate some of them?

MR. BUNDY: Well, most of the emails that I saw were multiple copies. These emails were copied to many people and so most of them went to Ida Yao, Margie Johnson, Patricia Eckhart, sometimes John Venners, sometimes a number of people. So, when I got the documents from the state, there were thousands of these emails and most of them were multiple copies of the same time emails, sometimes in long strings of emails with replies and forwards and this stuff where an email will print out as five or six pages of 15 emails through it all. So, most of the stuff of the communications that I saw were multiple parties involved. So, I imagined that everyone that was copied to him, as well as both the sender or the recipient, I had access to them. I got them from the other side. I did find, as I recall, I didn't really count them, but I did find a number that I got from various people to him that I did not get from him obviously because it had been deleted.

REPRESENTATIVE MCGUIRE: Just back to the types of emails that you would be looking for - there's the category you describe, which would be contact with those folks that might have knowledge of the KFX Taiwan contacts and maybe it would be emails between Mr. Renkes and his broker - these types of things. I'd like to hear any answer about what types of emails you were looking for. And secondly, when you conducted your interviews with these individuals, did they take an oath?

MR. BUNDY: Yes

REPRESENTATIVE MCGUIRE: And so, did you have the opportunity to walk through questions about the types of email exchanges they had had with Mr. Renkes?

MR. BUNDY: Well, yeah, I talked about - you know - what I saw in the things they provided me.

[1:29:51 PM](#)

REPRESENTATIVE MCGUIRE: And so, on the question of what types of emails, is it largely what I've described or were there other categories?

MR. BUNDY: Well, I mean, I was looking for anything that had anything to do with either the Republic of China discussions or KFX, Kanturk-type things. That's what I asked for from people. I didn't ask for every email they ever sent to anybody for anything. It all had to do with these topics. That's what I thought I got. I've got to be clear about this. There was no

subpoena. I didn't have subpoena power where if somebody didn't give me what I asked, where they would somehow be in contempt of a court or a regulatory body. But, I felt that people seemed to cooperate. Certainly, the state agencies lowered the boom on me in terms of volume of paper.

REPRESENTATIVE MCGUIRE: So, you were able to reconstruct?

MR. BUNDY: Yeah, the events I thought I was able to do that fairly well.

[1:31:01 PM](#)

CHAIR SEEKINS: Did you feel that you as completely as possible and substantively got all the documents that you needed in order to make your decision?

MR. BUNDY: Well, I thought so. Yes, that's the conclusion I came to after thinking about it for quite a while and looking at these things.

CHAIR SEEKINS: I heard this morning that you reviewed some 6,000 documents?

MR. BUNDY: Well, I think that's what the count was. We date-stamped everything that we got, of course. I think it was over 6,000 or more documents that came in.

CHAIR SEEKINS: Those documents, now, will they be forwarded to the personnel division?

MR. BUNDY: Only if they want them.

[1:31:38 PM](#)

CHAIR SEEKINS: Let the record show that Representative Gruenberg has joined us, also a member of the House Judiciary Committee.

SENATOR CHARLIE HUGGINS: Mr. Bundy, it appears we got off on talking about emails. When you look at the totality of your report and your findings and recommendations, but essentially the body and what it represents, did you see any emails that threw up the red flag that were generating some interest or inconsistency when you look at what you look at overall?

MR. BUNDY: I don't know quite what you mean. I tried to take all of the information that I had and put it into the context that I

had and put it into a context that I thought gave a realistic explanation of events. The relationship of the various parties to what was going on when I had an email that raised some questions in mind and I had the opportunity to interview the person, I'd ask them about it.

SENATOR HUGGINS: So, said another way, is it accurate to say that when you looked at emails and all the other evidence and you questioned your people that in the totality of that - that your comfort level that what is here today that we see in this report, is accurate and stands on its own merit?

MR. BUNDY: Well, yeah, with the caveat that there are some things I don't have, but I believed that I understood the relationships of the parties and the course of events that gave rise to the Taiwan Alaska Trade Agreement and the involvement of Kanturk, KFX, and the Attorney General with the documents I had. I would have thought it anomalous - I would have been very surprised to have - given everything else I knew - that there's an email that said something different from what I have put in this report.

[1:33:48 PM](#)

SENATOR HUGGINS: Did you see any evidence of all the things you looked at in totality that Mr. Renkes did anything that would be inconsistent with the normal duties he was assigned with this task?

MR. BUNDY: Well, in this task, no - this task being something that the attorney general typically doesn't do - this task being to act as a facilitator of this International Trade Agreement.

SENATOR HUGGINS: But, in that respect, he was assigned the task by the Governor - is that correct?

MR. BUNDY: Yes, that's what Margie Johnson says.

SENATOR HUGGINS: And when they ask if the Governor would have changed that, the Governor said he would have done roughly the same thing again. Is that roughly accurate?

MR. BUNDY: Yes.

[1:34:55 PM](#)

SENATOR HUGGINS: So, he was assigned the task and he performed the task in your estimation consistent with anyone that would have had the task?

MR. BUNDY: Well, perhaps, I mean the reason that the Governor chose him, it's my understanding, is he had special expertise in this area from the Senate Energy Committee. So, I suppose anybody with his background, I presume, would have behaved pretty much the same.

REPRESENTATIVE LES GARA: Thanks Mr. Bundy. I've also got some questions about the emails. Just as a professional matter I understand the deletion system over at the Attorney General's - the way I understand these deletion systems is you can delete everything out of your computer every so often, maybe every 30 days, the mainframe then backs up everything it can catch - so that if I get an email yesterday, I delete it today, if the backup doesn't happen for a certain number of days, it doesn't end up on the backup tape. Is that how...?

MR. BUNDY: The way this worked - my understanding - is that one day in every seven days the computer would back up - the backup system would back up whatever was on the server portion of your computer. Then that tape was kept until it was recycled for 30 days. So, when you delete something and it goes to your trash and it stays in trash for seven days, that sometime during that seven days it will be backed up to the backup system, which at that time was a tape system. Then they only had so many of these tapes. So they would recycle them every 30 days and write over them with new backup.

The reason that they did it was so that if your computer crashed some time during that 30 days, you could reconstruct everything that was on your computer and you wouldn't lose your work.

[1:36:09 PM](#)

REPRESENTATIVE GARA: So, let's say if you wanted to delete an email that you didn't want somebody else to see, if you deleted it and there was no backup, let's say it was one or two or three days old and it happened to be not one of those every seven day periods where the backup occurred, you could delete it out of your email system and out of your trash system. It may not have been picked up by the backup tape and then if it was picked up by the back up tape, you still had the hope that within the next 30 days even the backup tape wouldn't be there. Is that...?

MR. BUNDY: Well, as I understand it from McDougal that one of the problems Renkes was having is the computers were set up so that you could not manually empty your trash basket. It would just automatically empty every seven days, typically. So, they disabled the automatic emptying every seven days, but did not disable the thing that didn't allow the setting that didn't allow you to delete from the trash basket manually.

REPRESENTATIVE GARA: Isn't that what he called the computer tech person in for since he couldn't delete his emails? So, with the aid of the computer technician, he deletes all the emails that may have not been picked up by a backup tape over the last seven days.

[1:38:07 PM](#)

MR. BUNDY: But he didn't know when it would be backed up. It would have been backed up. Everything that was on there either would have been backed up in the inbox or in the trash at some time, if it had seven days. If it had been there less than seven days, then maybe you're right.

CHAIR SEEKINS: Let me focus that if I can. I'm not asking you to be an expert. I think I see where this is going, but I'm not positive. In my dealership, I can delete my emails, but the server also keeps a record of my emails for a certain period of time. Is that what happens here - the central server is keeping a copy of these or is it coming off of the individual...?

[1:38:50 PM](#)

MR. BUNDY: What it is is that, as I understand it, this is a network system - meaning that your stuff is generally kept except when you specifically put it on your own drive - it can be a C drive or whatever in your computer. If you put it on your network system, the server holds all your emails - are held in a centralized server, every seven days, whether that email is in your inbox or in the trash receptacle, every seven days that server for everybody is backed up on the same day.

CHAIR SEEKINS: And there wasn't any way that you could manually dump the trash on your account out of the server?

MR. BUNDY: Right. That's the way they have it set up.

CHAIR SEEKINS: Thank you.

MR. BUNDY: My understanding.

REPRESENTATIVE GARA: But that's what he had the technician do for him, though, right? It was dump the things that were on the server?

[1:39:45 PM](#)

MR. BUNDY: Right. Because he said look at - why is it that I thought I wasn't on the routine with everybody else. Why can't I dump my trash? The technician looked at it and first he couldn't figure it out and then he realized that the settings had been set so that he couldn't do it.

CHAIR SEEKINS: You said there was a document that requested this visit from the IT guy. Was that document to your recollection generated on October 1 or whatever that date was?

MR. BUNDY: I think that's right. The guy goes back when they try and keep track of what they do every day. So, he comes back and says this was my request; this is what I did and I don't know if he generated it immediately on coming back or later in the day. I have no idea.

[1:40:27 PM](#)

CHAIR SEEKINS: But if I'm going over it - you did say, though, that Attorney General Renkes said that request was put in prior to any knowledge of the Daily News report?

MR. BUNDY: That's what he told me.

REPRESENTATIVE GRUENBERG: Thank you, Mr. Chair, I apologize for being a few minutes late and then you may have already answered these questions. Did you look at any other computers that Mr. Renkes may have had to see if there were any other emails?

MR. BUNDY: I asked his counsel to provide me with printouts of his personal email and he did. Obviously I didn't have the authority to take custody of his computer and send it to a forensic computer person, but they said that these were the emails that were on his personal computer, and that's what I got.

[1:41:28 PM](#)

REPRESENTATIVE GRUENBERG: Did he have correspondence with Dale Anderson both at his personal computer and at his official computer?

MR. BUNDY: I just don't remember what particularly he had in terms of Dale Anderson. He didn't have much with Dale Anderson at all in terms of email.

REPRESENTATIVE GRUENBERG: Oh, he didn't?

MR. BUNDY: No.

REPRESENTATIVE GRUENBERG: Did Mr. Anderson have much on his computers?

MR. BUNDY: Mr. Anderson had virtually nothing - he said that he did not talk to Mr. Renkes very much. Mr. Renkes was hard to get hold of, didn't communicate with him much at all about...

1:42:0 PM

REPRESENTATIVE GRUENBERG: You said this morning in the press conference that he had told the Governor about his holdings.

CHAIR SEEKINS: But, we're talking particularly about missing emails at the moment. That's the topic. We don't want to get into the rest of it at this point. We're going to get to that.

REPRESENTATIVE GRUENBERG: Mr. Chairman, I'm sorry. On the day that the Daily News article came out, did he read the article and then order that the e-mails be deleted?

MR. BUNDY: He told me that he had not seen the article at the time the emails were deleted.

REPRESENTATIVE GRUENBERG: Was he aware of the article when he made that order?

MR. BUNDY: As I recall, he was not. I don't know.

REPRESENTATIVE GRUENBERG: Did you ask that?

MR. BUNDY: I don't know.

REPRESENTATIVE GRUENBERG: Do you remember whether you asked that question?

MR. BUNDY: I couldn't tell you; I'd have to look at the transcript.

REPRESENTATIVE GRUENBERG: Okay, you did have transcripts made of the depos[ition]?

MR. BUNDY: Yes sir.

REPRESENTATIVE GRUENBERG: Thank you.

CHAIR SEEKINS: Thank you. Any other questions on this topic?

[1:43:07 PM](#)

SENATOR FRENCH: Just in general, Mr. Chairman, are the depositions going to be available for our inspection?

MR. BUNDY: I've got 'em in my office. I got a letter from a lawyer representing the Personnel Board who asked that. So, I directed my staff to send it to him. So, as far as I know, he has them now.

[1:43:30 PM](#)

CHAIR SEEKINS: Thank you. Let's go on. I know at least at this point, I'm satisfied that you were not retained by the Governor to whitewash anything - that your bona fides, I would say, would indicate to me that you would provide - in fact it would scare me a little bit to have someone with your affiliation doing that, because there could be a possibility - but I'm not afraid of that. Let me put it that way. Because you could probably get greater notoriety among those who you associate with by finding that the Attorney General has really done something heinous than to find that he didn't. So, it satisfies me that there have been questions that I have been asked since this began as to who you are and whether there would be a slant or bias to your report. I'm satisfied with that. Are there any other questions on that - on the qualifications of Mr. Bundy to serve in this position in an independent manner?

[1:44:35 PM](#)

REPRESENTATIVE GRUENBERG: Thank you, Mr. Chair. Within the last few days, in the press, Mr. Bundy, you referred to the Governor as your client.

MR. BUNDY: That was probably just sloppy speaking.

CHAIR SEEKINS: You made that clear earlier that you were retained by the Office of the Governor.

MR. BUNDY: My contract is with the Office of the Governor.

1:45:08 PM

CHAIR SEEKINS: And for the record, we have Senator Gary Stevens, majority leader of the Senate with us, as well. Let's go on. This is a weighty report, and I listened to your very careful analysis in your press conference today and it certainly was detailed, and I don't want to get into all of those details, but in a nutshell, could you tell us what the conclusion of your report was?

1:45:39 PM

MR. BUNDY: I know you can read for yourself the summary. When I came into the matter, because of a number of things that had been published in various areas, not only in the Alaska press, but in the Wall Street Journal and in various websites and whatnot. I thought that there might be some significant issue about whether Mr. Renkes had used his position in the state to manipulate things to his own financial advantage or had used the information that he had to manipulate his own stock trading. And so that was, of course, one of those things that I was very concerned about at the beginning. After having interviewed the people involved in this process, I became satisfied that I don't believe that what he did in this case was motivated by an intent to enrich himself personally. I believe that he knew, obviously he had the KFx stock, and that KFx company might potentially benefit from this Republic of China/Alaska trade agreement. I also became satisfied, of course, that he used state facilities and time, and took official action that was in the matter in which KFx might have some potential benefit, all of which are things that are forbidden by the Code of Ethics.

The Code of Ethics has a sort of a 'safe harbor' provision to account for the difficulty in balancing a person's public duties with their personal life that recognized in the Code of Ethics and that says that it's not a violation if the person's interest in the matter is insignificant, or is one held by a large class of people. Now, that caused me to look at, 'well what was his interest in the matter.' And what was the matter. The matter was, he was directed and did participate in this

Alaska/Taiwanese exchange, that they were trying to get some kind of a trade agreement.

[1:48:43 PM](#)

MR. BUNDY: That trade agreement, the idea for that whole thing, was not his. It originated with Governor Murkowski and the President of the Republic of China with whom Governor Murkowski had a long-standing relationship. The idea was to try and develop Alaska resources in this way and this was one of the ways that he was going to do it. So his interest in the matter was that the State of Alaska would conclude an agreement with the Republic of China that would allow then a company called Kanturk Partners to invest money in developing and establishing a coal mine and associated facilities that they would then license this KFx K-fuels process to process the coal to specifications that would meet the requirements of the Republic of China customers. This was a chain of events.

Unlike many ethics issues that you see in these kinds of things, you don't - it's usually, 'Is the state going to have a contract with this company, is the state going to grant this company money, is the state going to take some action that is going to have a direct benefit with the company?' Most of the time when you're looking at the ethics opinions of this state or others, that's what you see. This was a little more removed from that when I began to look carefully at the Ethics Act and decided what it is the Ethics Act said. And so when I identified, well the matter was a Republic of China's, and this is after virtually all of the factual investigation had been done, I sat down and said, 'All right, so what's what here?'

I began to look at that carefully and said, 'Well how significant within the meaning of this Ethics Act was his financial interest in the matter of the deal between the State of Alaska and the Republic of China?' I came to a conclusion that it wasn't very significant at all, because it was speculative, long range, and extremely indirect. And I thought from my own time, when I was a public officer, I had a portfolio of things managed by a financial manager, and I had to do a disclosure when they set all this stuff out and I made decisions about some fairly large companies, and I don't know, frankly, if maybe some of those companies, if I didn't have some stock in some of those companies. And I thought, 'That's why there's this insignificance.'

[1:51:23 PM](#)

MR. BUNDY: Now, where does this fall, where does Renkes fall on the continuum with KFx to somebody else that might just have a few shares of stock in something among their various retirement holdings? And I began to look at that, and I looked at other states, how do other states look at this? Some say if you hold more than a specific dollar amount in any company, you can't participate in a state decision involving that company. And those amounts range from \$5,000 to \$100,000 dollars from state to state. Now, our Ethics Act doesn't say anything about that. Other states look at it as a percentage of ownership. You can not participate as a, it's a conflict of interest for a state official, to participate in the state business with a company in which you own more than a percentage of a stock, and those range from 1 percent to 5 percent. Now Renkes owned .02 of 1 percent of KFx. So he was far below where other states could have allowed him to take action. The value of his stock changed over the course of the time from, I don't know, the low in the \$70,000s and the high in the \$120,000s dollars. So he was clearly significant under the states that have quantities except for a few times for a few states. I think Oregon is \$100,000. So there you are but there's nothing in the Ethics Act that said, 'What are you supposed to look at to decide, what is significant and insignificant?'

[1:53:15 PM](#)

MR. BUNDY: So there [were] no regulations passed by the Department Of Law to tell us what's significant and what's insignificant. And the only other source was the Alaska Attorney General ethics opinions, which, and we'll get to that later, when you're confronted with an ethics dilemma, you're supposed to get an ethics opinion to decide whether it's appropriate for you to act or not. The ethics opinions and the issues of ownership of quantum of stock - and there was only one that I found that talked about quantum - and that was an ethics opinion involving a Permanent Fund trustee. A Permanent Fund trustee's children owned shares in a Native Corporation. The Permanent Fund was going to buy a building that the Native Corporation was a general managing partner of the owner, although had a small interest, but had an \$8.1 million deed of trust that was going to be paid off if the (indisc) went through. The ethics opinion didn't say anything about how significant that was to the Native Corporation's assets or bottom line or prospects for dividends, or anything else. It simply said that since the children owned less than 1 percent of the shares of the Native Corporation that the interest was

diminimus and the trustee could participate in the decision to purchase the building.

[1:54:49 PM](#)

MR. BUNDY: And that opinion, in my view, could be read to establish a bright line, if somebody were an Alaska public official and looking for guidance, that the guidance would be that if you owned less than 1 percent, regardless of how important the transaction was to your company, regardless of how important it was to your own personal portfolio, 1 percent was the line that they decided to draw and that was it. I didn't read it quite that much of a bright line, I read it to say that the opinion simply didn't tell us about that, but it did say that they had considered the facts and decided that the transaction was of diminimus value.

So I thought, well okay, so how do we figure that out? I began to look at, well alright, so what is the value of this Republic of China transaction to the value of Renkes stock, both in terms of how much stock did he have in the company, what's the likelihood that there's going to be a big change in the value of the stock, of his interest in the stock, as a result of this? And what's the value to the company, which would result from this?

[1:56:08 PM](#)

MR. BUNDY: When I looked at KFx, I determined that KFx, the Alaska play for KFx, was like an afterthought. That KFx now, not Kanturk, but KFx was principally interested in trying to sell Powder River Basin coal in Wyoming and process it and sell it to power companies on the East Coast. And that was where they were putting their money and that's what they were doing. That they did not put any of their own money into anything having to do with this Alaska play, other than to send a couple of their technicians up to talk to the Taiwanese about how this would work. And they did, they actually didn't host, because the Taiwanese insisted on paying their own way, but they facilitated the Taiwanese to visit their plant in Wyoming to look and see how this stuff was going.

Other than that, KFx didn't really put any resources into this thing. Their resources were concentrated in Wyoming trying to get that coal together. Kanturk were the people that were putting resources into it. Kanturk is this investment-banking group. I think investment bank implies a large building or

something. This isn't that. It's some very wealthy individuals that have an idea that they're going to pool their money to invest in Asia/America business projects and it so happens that they had just included John Venners, who is one of the founders of KFx but who retained little interest in KFx, to be a small partner of Kanturk's because he had experience in this energy business.

[1:58:06 PM](#)

MR. BUNDY: They decided they were going to look to China to develop some business and they were starting a prospect of using this KFx. Kanturk was going to start something using licensed KFx technology to develop mainland China sub-bituminous coal into useable coal. Then Renkes called them and said, 'We're trying to set something up. Would you be interested in talking to the Chinese about this?' Governor Murkowski invited Venners to meet him down in Florida at a Governors convention of some kind and Venners allowed as how that Kanturk was interested and he would try and talk to his partners about whether they couldn't put something together. And that's my understanding about how this thing came about.

[1:58:48 PM](#)

CHAIR SEEKINS: And so, at this point, in your conclusion, saying that Kanturk was the major player, KFx, if I understood you this morning correctly, that their interest was in buying a licensing agreement with KFx to be able to process the water out of this coal prior to being shipped to the Republic of China.

[1:59:11 PM](#)

MR. BUNDY: KFx's interest was going to be a licensing agreement where they would license the technology to Kanturk to use in a processing plant that Kanturk was going to build.

CHAIR SEEKINS: Kanturk would operate that plant?

MR. BUNDY: Right. Part of the licensing agreement was that KFx had to provide them with technical assistance in doing that, in using the technology.

CHAIR SEEKINS: Right. And their ongoing reward for KFx would have been some kind of ongoing payment based on the use of the technology?

MR. BUNDY: Two things, one was an upfront agreement for a payment for the licensing fee, 50 percent. Fifty percent was going to be paid when the processing plant went online and then there was going to be a 5 percent, I believe, carried interest on the project afterwards.

[1:59:57 PM](#)

CHAIR SEEKINS: The partners in Kanturk, was Mr. Renkes ever a partner?

MR. BUNDY: No.

CHAIR SEEKINS: Was he ever an employee?

MR. BUNDY: No.

CHAIR SEEKINS: Would you characterize these people as wise investors, experienced in the area of investment and perhaps in speculation of....

MR. BUNDY: That I can't tell you. All I know is that they are extremely wealthy individuals who are involved in both Asia and in the United States.

CHAIR SEEKINS: And once again, can you recall who some of those people were, for us?

[2:00:38 PM](#)

MR. BUNDY: Mr. Chang - whose first name I can't remember - who is a chairman of the Taiwan Chamber of Commerce - had been a senator in the Taiwanese Legislature and had personal connections with President Chen - although he was in the opposite party. There was a guy named, I believe, Gerald Cassidy who's a principle in Cassidy and Associates, which is a large prominent lobbying organization in Washington D.C. There's a person named Rocky Robinson who owned, I don't know, scores of car dealerships in the East somewhere and others.

CHAIR SEEKINS: There's been some allegation that the Lt. Governor was a business partner at KFx.

MR. BUNDY: Lt. Governor?

CHAIR SEEKINS: I mean the Attorney General, I'm sorry. The Attorney General was a business partner at KFx.

2:01:41 PM

MR. BUNDY: No.

CHAIR SEEKINS: Did you ever find that?

MR. BUNDY: He had stock. And he was on the technical advisory board of KFx. Technical advisory board is an uncompensated group - and I've run into this in other organizations - that generally sort of start up companies will put together people and ask them to advise them about technical matters with the idea that 'Maybe we'll get some stock in it someday.' The technical advisory committee or board met once in 2000 or there about and apparently has never met again. That's what everybody tells me.

CHAIR SEEKINS: So it would not be correct to portray Attorney General Renkes as a long-time business partner at KFx.

MR. BUNDY: No.

2:02:47 PM

CHAIR SEEKINS: Thank you. So if I get you correctly, the Lt. Governor - these people at Kanturk were speculating as to whether the technology would be actually available and work. Do you know whether there was any communication with them or any due diligence with them in conversations between them and the people at KFx to see at what stage their technology is?

MR. BUNDY: Oh yes, they obviously knew each other quite well. I mean John Venners, who is a small interest holder in Kanturk, was one of the founders of KFx and had been. And also, Venners and Associates, I think is the name of his company or his firm in Washington D.C., lobbies on behalf of KFx. KFx has a real interest in federal legislation because in order to make their process economical, it's very helpful to have tax credits for processed coal and there were existing tax credits and there are new tax credits under the euphemistically called Jobs Creation Act of 2004.

2:04:07 PM

CHAIR SEEKINS: As a stockholder in KFx, when approximately did the Attorney General purchase his first shares in KFx?

MR. BUNDY: 2000.

CHAIR SEEKINS: And he divested them in...

MR. BUNDY: October of 2004.

CHAIR SEEKINS: I think earlier this morning you said he purchased them for about \$2 a share. What did they sell for when he divested himself of them?

MR. BUNDY: I think they sold for around \$7.

CHAIR SEEKINS: Over four years, more than doubled in price. Yes, tripled actually.

MR. BUNDY: Yes, more than tripled.

CHAIR SEEKINS: Not a bad investment.

MR. BUNDY: There's not?

CHAIR SEEKINS: I've not had many stocks that tripled in price in that timeframe so a wise investor would say, 'Hey, you did a - you hit a homerun on these.'

There have been some allegations as to the purchasing of these shares in the interim period of time.

[2:05:02 PM](#)

CHAIR SEEKINS: Allegations have been made that the attorney general went on a buying spree, so to speak, of KFx stock. Could you comment on that from your investigation?

MR. BUNDY: Well, first of all the shares that were purchased from - the 12,000 shares he purchased in 2000, just stayed in an account - one account - his retirement IRA sub account. The other shares were purchased by his broker/financial/whatever-you-deem-him, Mr. Anderson in the Solomon Smith Barney GPM account. Under the terms of the GPM account, the client does not decide what securities will be purchased. Only the broker decides. The client can give input to say there are certain kinds of things I don't want because I find them offensive - to note, tobacco for instance something like that. But as to the day-to-day decisions about which securities to purchase, that's up to the broker and that's in the agreement.

Mr. Anderson says that he never heard of KFx until Mr. Renkes came to him in late October to retain him - and he was going to take over the IRA SEP account from the Washington D.C. broker - and saw that there was KFx stock. Now Solomon Smith Barney won't let you hold securities in your accounts with them unless they pass certain muster. And so some of the stuff Renkes had did and some of it didn't. KFx passed muster so he was able to keep it in the Solomon Smith Barney account - the Asset One Account for his IRA account. But, Anderson said that he had to look at this and check it out. And he did his own independent research - which Solomon Smith Barney has facilities for them to do that. He decided that it was interesting; he had a good explanation about why it was good in my view. And there was a portion of Renkes' portfolio that was set aside by Anderson the way he had it set up for things that were both speculative and the energy field - either or I'm not sure exactly how it was set up. And he thought this might be a good thing to buy. So he did and he purchased - I don't recall - 1,100 shares, something like that.

[2:07:44 PM](#)

MR. BUNDY: Over a space of - he was purchasing up equities because he had this big pile of cash that Mr. Renkes had given him when he sold his house in Virginia. He sold - it must have been a pretty nice house - and bought another house in Juneau and had \$750,000 left over. So that was what he went to Anderson with. He kept it in the bank for about a year and didn't do anything with it at all. And then he went to Anderson and said, 'Look, I need to start an investment program.' He checked with Anderson and said, 'Okay, I'll take the money that's in my IRA account now back in.' - which he put a bunch of stuff from his federal service in. If I'm going on too long, just tell me.

CHAIR SEEKINS: It's all right; go on.

MR. BUNDY: From his federal service in - the Thrift Savings Account as they call it - and rolled it over into this IRA and then, while he was in private practice he could invest up to \$25,000 a year in a tax deferred IRA. One year, the year 2000, he took his \$25,000 that he could have and he bought KFx stock with it and it was held in that brokerage account in his IRA - tax deferred. Anyway, he moved that to Solomon Smith Barney in Juneau, but he put that in one account - an Asset One Account - that he could have control over and could trade.

He took the balance, which was the proceeds from his house - \$750,000 - but I think about \$100,000 into a special, what they

call, scholars fund for his kids' college. Then took the rest and put it in this guided management account. Renkes said he did that because he didn't have the background or ability or time to devote to paying attention to making investments in the stock market and he felt like he was losing out because his money was sitting in the bank account and other people were making money in equities.

[2:09:58 PM](#)

MR. BUNDY: So he gave that to Anderson to invest and Anderson had all this cash and was buying up a certain portion of the portfolio in equities and he had an array of equities that he had identified: Some very safe, but with slow growth, small returns; some more speculative with the possibility of faster gains and through looking at this from the asset one account - KFx - he thought that KFx might fit into this other. Particularly since the overall portfolio price of the stock was so low because he'd bought most of it at \$2 and by then it was up to \$7.50 almost \$8. So he thought, well I could purchase this now and my research shows it on an up trend. I can purchase this now and it will average out at a very good dollar investment for the whole Renkes' portfolio and I'll look like a hero if it goes up. If goes down, then he still hasn't lost much on the KFx. This is how Anderson explained it to me.

So he decided to buy in - buy this stock and he bought it and he held it. He bought it at the time when KFx or Kanturk had never even been mentioned in any discussions about the Republic of China.

The only thing that had happened when he bought the first majority of this stock was that the Governor had gone to Taiwan and talked to the President and I don't even think the President of Taiwan had visited Alaska yet. But there had been no discussion at all or anything having to do with KFx or Kanturk or anything like that. That's when Anderson bought the KFx stock. Anderson then sold all 1,100 shares over a period of time at a profit. KFx was going up during this period of time. At a time when KFx was starting to be mentioned when the March delegation of Taiwanese were coming - or had come. He'd sold it over a period of time and there was actual discussion of KFx or Kanturk in some potential possible development deal. So, he sold it at just the time [that] if you were trying to use insider information you would have been buying.

[2:12:51 PM](#)

And then when the Taiwanese went back - this is how I saw it anyway - when the Taiwanese went back after March and were not very enthusiastic about Alaska coal because of the technical issues, the word began to come back in that regard. That's when Mr. Anderson chose to buy some more KFx stock. And he bought, I think, 500 more shares.

He bought 1,100, sold all 1,100 then later bought 500 more, but bought that at a much higher price. He'd sold it - 1,100. KFx went up, he bought some more and KFx went down and so when he finally sold it, he'd lost a couple thousand dollars on this several hundred shares.

CHAIR SEEKINS: If he was getting inside information, it wasn't very good inside information.

MR. BUNDY: It doesn't make any sense to me that that was the result of inside information.

CHAIR SEEKINS: Was there any activity in the IRA account with the KFx stock?

MR. BUNDY: No.

[2:13:41 PM](#)

CHAIR SEEKINS: So the only activity with KFx stock was in the GPM account and was there any indication of instructions from the Attorney General when to buy or sell or put any pressure on Mr. Anderson?

MR. BUNDY: Both of them said there was none and I didn't see any evidence of it.

CHAIR SEEKINS: Any indication of Anderson's knowledge of the KFx involvement in the pending ROC (Republic of China) deal?

MR. BUNDY: Anderson says he didn't know anything about it and from the timing of his purchases, I would have to credit him.

CHAIR SEEKINS: Is there any indication that Attorney General Renkes was acting as a day trader here in KFx stock? He was buying 100 shares in the morning, watching it that afternoon, seeing if he made a profit or not. Profit taking - nothing like that.

2:14:31 PM

MR. BUNDY: No.

CHAIR SEEKINS: Other questions on these topics. Members? Senator French.

SENATOR FRENCH: On that topic. Did you interview anybody besides Mr. Anderson at Smith Barney?

MR. BUNDY: No, I didn't.

SENATOR FRENCH: Did you take a look at the phone records between the Attorney General's phone records and Mr. Anderson's phone records?

MR. BUNDY: I saw the Attorney General's phone records and - such as they were, there aren't any. I mean there are no long distance calls, so there wouldn't be any. But in terms of 'While You Were Out' messages and - I don't remember whether there were any or not, there were a few in there, but Mr. Anderson said that he had - he was supposed to do quarterly reviews with each one of his clients and he had trouble getting Renkes to respond.

SENATOR FRENCH: When I said phone records I mean did you go to the phone company and try to subpoena the phone records?

MR. BUNDY: I don't have any subpoena power.

SENATOR FRENCH: Did you ask them?

MR. BUNDY: No, I didn't think there was any use in that.

SENATOR FRENCH: Mr. Renkes could have signed a consent that would have given you his phone records and Mr. Anderson could have signed a consent [form]. Did you ask for that?

MR. BUNDY: No, I didn't.

CHAIR SEEKINS: Other members? Representative Gara.

REPRESENTATIVE GARA: Certainly your analysis of the law and the Ethics Act is one plausible interpretation of the act. Assuming your interpretation is correct, that under the prong that says you had a finding that Mr. Renkes used state facilities knowing that use could benefit his interests. So that's the prong that says even if regardless of what your intentions are, if your

action as a state employee is such that you know it could benefit your interests then the question is, is it a significant interest?

And your finding was since it wasn't a significant interest there was no violation of that prong.

MR. BUNDY: No, no there's a slight - this is where it gets difficult because it's not if your interest is significant; it's if your financial interest in the matter is significant. That is if what happens in this matter could give you a not insignificant interest benefit in a not insignificant manner, your interest. So it's the participation. It's the matter that's the focus of the statute, not how much interest you have in some company.

REPRESENTATIVE GARA: Thank you for clarifying that. What I want to try and determine is whether or not we should all get together and consider amendments to the law.

MR. BUNDY: Absolutely.

[2:17:31 PM](#)

REPRESENTATIVE GARA: And I'm thinking of this as an example. You know in this case, Mr. Renkes' ownership of KFx stock, while \$100,000 worth was .02 percent of KFx's total outstanding stock and given the conduct that you found, you determined it was an insignificant interest in the matter that was involved in this activity. And what I'm thinking of is then, under this analysis, it would seem to me that if somebody owned .02 percent of, let's say, Conoco-Phillips stock, and I did some calculations and it's about \$15 million - it seems to me that this state, for example, is negotiating between many potential gas pipeline builders. One of them is Conoco. There are others. It seems to me we run the risk of saying that we have an ethics law that would allow somebody who we couldn't prove was trying to benefit themselves intentionally, that probably we can't prove. It seems to be we have a law that would allow somebody to own .02 percent of Conoco-Phillips outstanding stock, maybe \$15 million, that would allow them to be involved in policy-making as to who ends up getting the lucrative contract to build a gas pipeline in this state and that that arguably wouldn't violate the Ethics Act the way it is written right now because one of the factors, your best analysis is, is that the courts will look at as a relevant factor what the percentage is that somebody owns of a company's outstanding shares. That analysis, rather than the absolute

amount of stock the person owns. Do we run the risk that conduct like that might fall under the Ethics Act as well, and if we do, would you say that we should take another look at how our Ethics Act is written?

MR. BUNDY: First of all, I think you're right, that given the way it's written now, that is a plausible interpretation. I would take that a little farther and say, 'You have to analyze it farther but none-the-less, that attorney general's advisory opinion can be read that way and I think that that's wrong.' And I think that, in my opinion, and what I told the Governor was that something should be done about that. And that the ethics law either ought to be, the Legislature ought to take it up and change it and provide guidelines, a specific bright line so that everybody will know what is going on and get rid of that problem so that public officers can figure out what they're supposed to do. People that advise them can figure out what they're supposed to do. And the public knows what the deal is. Or there should be at least the Department of Law regulations implementing the current Ethics Act that set those standards, because the Department of Law has the authority to make those regulations.

CHAIR SEEKINS: I certainly agree that we have the authority to be able to do that, and whenever we can clarify and make things less ambiguous that we should. So I will take that under advice, that's good advice in my opinion.

[2:20:29 PM](#)

MR. BUNDY: Can I give you another example?

CHAIR SEEKINS: Sure, go ahead.

MR. BUNDY: Your legislative body Ethics Act says that you're not prohibited from acting on a matter in which a large group of people are similarly situated in, and then it goes on to say, in a profession, trade or occupation. Now, the Executive Branch Ethics Act, however, just says, 'A large group of similarly situated people,' which could be shareholders in a publicly traded company. And I looked at that and that was an interesting call, because it's a direct contrast to the Legislative Ethics Provision, passed by the Legislature. And so I think that you need to take a closer look at a number of provisions here to make sure that what Representative Gara was concerned about won't happen.

[2:21:32 PM](#)

CHAIR SEEKINS: Now, in that regard, I refer you to page 63 of your report. Your conclusion was that the attorney general did violate 39.52.210(a). Looks to me now, if I see the footnote that you set out, what the remedy, or the punishment would be from the Personnel department, if they also found the same thing. Is that correct?

MR. BUNDY: Yes.

CHAIR SEEKINS: Just for the record, could you go through those for us?

MR. BUNDY: If the Personnel Board determines a public employee has violated this chapter it (1) shall order the employee to stop engaging in any official action related to the violation, (2) May order divestiture, establishment of a blind trust, restitution, or forfeiture, and (3) may recommend that the employee's agency take disciplinary action, including dismissal.

CHAIR SEEKINS: And the person there that would take any disciplinary action would be the Governor in this case?

MR. BUNDY: Yes he's the only one.

CHAIR SEEKINS: The only one allowed to take that disciplinary action. Do you believe, at this point, that the Attorney General is engaging in any official action related to this violation?

MR. BUNDY: Well, it's my understanding that he's not.

[2:22:51 PM](#)

CHAIR SEEKINS: Or that, has he divested himself of all the offending shares, so to speak?

MR. BUNDY: Yes he did.

CHAIR SEEKINS: Did he make any profit on that?

Mr. Bundy: I set it out somewhere in here, I think at the end of the factual - he made profit, of course, on the 12,000 shares because when he sold it, it was about \$7.70, I think. So he made that, but he lost a couple thousand dollars on the 900 shares that Mr. Anderson had bought for him. And so I think I determined he made overall about \$56,000 profit on the matter.

CHAIR SEEKINS: Do you know what he did with that money?

MR. BUNDY: I'm told, and it's been represented to me, that he gave it to various charities.

[2:23:50 PM](#)

CHAIR SEEKINS: So at this point then, the Governor has a decision that he's going to make. I don't recall the Governor's comments this morning too clearly, I think he indicated to me that he was asking Representative Croft to withdraw the complaint, or he was going to, if I remember correctly. Other questions on this topic? Senator Huggins.

SENATOR HUGGINS: Mr. Bundy, when you set out in this sequence of our discussion, you said that, 'When you read in the media that you came to a conclusion that there was a high potential that, in this case, Mr. Renkes could have manipulated this system for his own financial advantage, did you see any indications that that took place?'

MR. BUNDY: Honestly, I did not.

SENATOR HUGGINS: And for what it's worth, I like to read the paper also, and particularly the piece on his investments. The conclusion I came to after reading the media accounts was, 'Oh my goodness, it's gotta be insider trading.' as I read those articles.

[2:25:08 PM](#)

SENATOR HUGGINS: But as I recall today, when you talked about his investment advisor who was Mr. Anderson, who in fact did the investment for him, that if you looked at when the investments happened during the timeframe in question, that Mr. Anderson in fact, did just the opposite of that, if you're insider trading, is that correct?

MR. BUNDY: The only thing I can say is that I didn't see any evidence that his trades were influenced by what was going on in the State of Alaska.

SENATOR FRENCH: I want to talk for just a second about the violation of 39.52.210. The failure to seek an opinion about whether or not what the attorney general was doing was all right. That's a violation of the Ethics Act, is it not?

MR. BUNDY: Not the Code of Ethics, but the Ethics Act.

SENATOR FRENCH: Correct.

[2:26:05 PM](#)

SENATOR FRENCH: In your view, when did that duty arise for the attorney general to go to the Governor and ask him, 'Is this okay if I keep doing this?'

Mr. Bundy: In my view, it was probably March or before when KFx, when Kanturk said, 'We would be interested in pursuing and coming to Alaska and talking to the Taiwanese about our process, and what we might have to offer.' I think at that point it might have been wise to say, 'Either sell my KFx stock or tell the Governor that I have stock in KFx.' I think it would be appropriate to get an ethics determination before I proceed any further and involving them in this business.

[2:26:56 PM](#)

SENATOR FRENCH: I think you also said that Mr. Renkes did take official action, and then that might have benefited KFx.

MR. BUNDY: Yes

SENATOR FRENCH: So if I stood up and said, 'The Attorney General took official action that might have benefited KFx,' that would be a correct statement.

MR. BUNDY: Yes.

SENATOR FRENCH: And if somebody stood up and said, 'He did not take any official action that might have benefited KFx,' that would be false.

MR. BUNDY: I would disagree with that.

SENATOR FRENCH: The attorney general, in his statement to the press in October, said he did not take any official action that might have benefited KFx.

MR. BUNDY: No, that he believed, he said that he didn't. When he was asked to sign the MOU (memorandum of understanding), because the Taiwanese were concerned they didn't have anybody with sufficient stature to sign with Governor Murkowski, and so the Taiwanese floated the idea that Mr. Renkes instead would sign -

Mr. Renkes said, 'I won't, because of my relationship with KFx, I don't think it would be proper. I don't think I've taken any official action up to this point, but I think this would be official action and so I won't do it.' And that to me said that he recognized that there was an Ethics Act issue, Code of Ethics issue, and that's why I think he should have sought guidance.

[2:28:16 PM](#)

SENATOR FRENCH: A couple questions on KFx. Your report states that KFx was the only coal - and I don't think I've ever come across this word before in my life - it's 'beneficiation' process approaching commercial viability. How confident are you in that statement?

MR. BUNDY: Well, I asked Starky Wilson, I asked the Venners guys, I asked the Kanturk people, I looked on the web, I researched the tax credit legislation that was all the rage and discovered that, and of course there was this Ascencio report that was one of the early on things, and there's 55 of these things that are out there, but those are, I was satisfied at least to the extent that I thought I needed to be to determine this, that those were essentially processes that were designed to take advantage of the tax credit legislation rather than actually reduce moisture content. To get into the details of the technology of it is, you can't just take the moisture out because as soon as you expose it to the air again, it will fill up with moisture. And you've got to change the nature of the coal. Perhaps, Senator, I'm going much farther than you wanted to go on this, but it was fascinating. I kind of got interested in this and this is a different kind of process. The others were called, designated I think, in a lot of the press as 'spray and pray.' Which is, they would spray it with a substance that they said changed the chemical process of it and pray that the IRS allowed it for tax credit purposes and without really changing much in the coal at all. They used things like latex and various other things.

[2:30:28 PM](#)

SENATOR FRENCH: You've heard of Placer Dome mining?

MR. BUNDY: Yes

SENATOR FRENCH: And there's a Mr. Jim Chavez that worked for Placer Dome Mining. He said that Placer Dome was talking with another company, not KFx that has a proven process to dry high

moisture coal. He said KFx's technology just doesn't mesh with what we're doing. Did you ever learn from Mr. Chavez what company he was talking to?

MR. BUNDY: I learned from, yeah, it's called Black Hills Energy and they're licensed with KFx. So KFx is the center of the whole thing.

SENATOR FRENCH: I guess I'm stuck, and I guess a lot of folks are stuck in this 'insignificant issue'. That seems like the heart of your Code of Ethics finding, that there was no violation of a Code of Ethics finding. And partly your opinion relies on the old 1989 AG's opinion, Mr. Bothello's opinion, and partly relies on the actions that you saw the attorney general take. The old 1989 opinion points out that you can either have \$5000 worth of the business or 1 percent of the stock. And if you had anything less than that, you were not in violation. That's what the bylaws with the AG's opinion pointed to.

MR. BUNDY: Ok. Or?

SENATOR FRENCH: Right. Either \$5000 of a business or 1 percent or less of a stock - that was kind of where they drew the line. When you, and you pointed out that this was probably not a bright line, a source of bright line rule, I think most people looking at that would sort of, look at that in the alternative. They might think, if you have a stock, like a Native Corp stock, hard to value, not traded, you can't trade a Native corporation stock, you can't buy it or sell it. There's rules against that. You sort of have to go to the percentage valuation, but there's that \$5,000 number just right there next to it, admittedly talking about a business, did that....

[2:32:25 PM](#)

MR. BUNDY: There is no market for it. It's hard to value. How would you value it?

SENATOR FRENCH: A business?

MR. BUNDY: Well, the value of the stock.

SENATOR FRENCH: Right, exactly. They had to, by default, go to the percentage. In the old opinion because they just didn't have any other way to go. In this case you got a publicly traded stock, you can look to the value, it's not hard to figure out what the value is, you can talk about it quite a bit. It seems

like \$5000 is probably a number that most people can get their minds around. They understand the difference because, and I guess Representative Gara started to make this point, and the point I'm trying to make is that, if the rules say you can only have \$5,000 worth of a business and 1 percent of stock, that could produce some wild results.

MR. BUNDY: Of course it can. But see, the problem is that some other states have that. And I'm not sure that the fabric of society has rent because of that. But that wouldn't be my choice of a standard, by a long shot. But what we're talking about here is a retrospective look at what somebody else did given what the state of the law was at the time. And, as somebody that has done that for a living for a lot of years and understanding the consequences of that, I actually approached it with caution.

CHAIR SEEKINS: We're going to take a five-minute concentration renewal break, so we're on recess.

[2:46:02 PM](#)

SENATOR FRENCH: You mentioned in your report, Mr. Bundy, but I just want to see if I can get a tight answer on this, 'Who brought KFx to the attention of the state?'

MR. BUNDY: The relationship, and I use that word loosely, between KFx and it's principals, and Mr. Renkes and Governor Murkowski goes back to, as long ago as I think as to the late '80s or early 90s. I think it was in 1990 that Governor Murkowski actually visited the KFx, one of their first test places because they were one of the leaders in trying to get this tax credit put through so that they could get the spread that they needed between the bituminous coal and the sub-bituminous coal in Wyoming, that they could get their processing in there and make it economical, they needed a tax credit to do that, and so because Governor Murkowski was on the Senate energy committee, and Mr. Renkes was, at that time one of his newer staffers, who was assigned to that topic, for want of a better word, that they heard a lot about this and in fact, went out there and saw it with Senator somebody from Wyoming and Simpson or somebody like that. They went out and actually visited this plant, and as I recall, Ted Venners had actually invited Senator Murkowski. Ted Venners had some kind of a charitable thing going on and he invited Governor Murkowski to appear at this pheasant shoot or something, they were raising money for some charity and he did. And John Venners...

SENATOR FRENCH: That was in 2000, wasn't it?

2:48:30 PM

MR. BUNDY: It might have been. I'm not sure. And John Venners actually, when the Governor was in Taiwan in May of 2004, Governor had a breakfast meeting with Mr. Kang (ph), Mr. Chang, and a couple other high people in the Republic of China group, and Chang, being the Kanturk partners guy. John Venners was there and at that thing was the first time this idea of an agreement came up. Mr. Renkes wasn't there. Venners went back and drafted something as an outline of what an agreement, a letter of intent agreement between these governments, which would include Kanturk, in it, and dropped it off at the Governor's hotel with a 'Dear Frank' letter which, I thought, 'Wow he knew him well enough to write him as 'Dear Frank', and say 'Hope you have a nice trip back and here's what I think the thing should look like,' and that was really the genesis of this agreement that got passed around in Taiwan for quite a while before the Taiwanese ever sent a draft back.

So the question of who first had the idea, Mr. Renkes recalls that the Governor said, 'Well look, call all these people that you know at KFx, Venners guys, and find out if they're interested in coming up here and meeting with Taiwanese to try and show them that our coal can be saleable for them.' And so he did. Governor Murkowski does not remember that. He doesn't say it didn't happen, he just doesn't know. But then the next thing that happened was, I think in late December, or something like that, 2003, Governor Murkowski went to a Republican Governors meeting in Florida and Venner said that the Governor's office called him and asked him to meet the Governor down there briefly to talk about, because Venners had told Renkes that Kanturk might be interested in something like this. He'd check the principals. And so then Venners went down and said, 'Yes, they are interested in trying to put something together where they would develop a coal mine in Alaska under certain circumstances.' And that is my understanding of the series of events. Now, who came up with the bright idea to call the KFx guys, Mr. Renkes says it was the Governor, the Governor doesn't remember. My view is it could have been either one.

2:50:59 PM

SENATOR FRENCH: Did the close relationship between Kanturk and KFx ever concern you, the idea that many of the KFx stockholders were also Kanturk principals?

MR. BUNDY: Only in the sense that the companies were related, but my understanding of the financials of the thing is that Kanturk and the agreement Kanturk had with KFx is Kanturk was going to fund the project. They were prepared to put in whatever hundred million dollars that it was going to require to do this. But, of course, they only foresaw it as being able to use the - the only way that they saw it happening from their point of view - maybe somebody else would have seen it differently but, because they knew KFx was using the KFx technology, which they had invested in because they thought it worked, it was going to work. Recently KFx floated another \$48 million in capital, and got it subscribed to quickly because they seemed to be doing well on getting their technology together in Wyoming.

SENATOR FRENCH: Had they ever really though, commercialized their process?

MR. BUNDY: No.

[2:52:38 PM](#)

SENATOR FRENCH: That's something that troubles me about this. It seems like at one point - I know you've seen these documents - but at one point the attorney general says in a memorandum directly to the Governor, 'We are confident that Beluga coal can be processed by KFx to meet or exceed Thai power's technical specifications.' And I guess that statement concerns me because, having never commercialized its process, you wonder where that confidence comes from.

MR. BUNDY: Presumably it came from KFx. When I talked to them, I went to their office and I looked around and as near as I can tell, it's the real deal. I mean there are engineers working on things and there is all this stuff going on - and you can go to their website and see what they're building in Wyoming. But, they had put together a commercial enterprise with this Thermaltech Company, and if you read one side of the blogs in the financial pages, they'll say, 'This was a phony deal.' If you read another report from the financial analyst, they'll say that Thermaltech didn't work because that company lost money in other enterprises and didn't have the money. KFx had just licensed it, so to speak, to Thermaltech. It's a complicated series of events but apparently somebody thinks that the KFx stuff is going to work because they're putting an awful lot of money into it.

[2:54:07 PM](#)

CHAIR SEEKINS: Thank you Mr. Bundy. Obviously \$40 [million] some - what did you say, \$48 million?

MR. BUNDY: That's my recollection.

CHAIR SEEKINS: ...in venture capital felt that KFx was close to being viable or they wouldn't have put the money in there. But, I think - I had a conversation with one of the representatives from the Wyoming house that lives in Gillette, Wyoming, who was pretty sure that they were getting close to some kind of commercial viability as well and I thought that was kind of an interesting conversation that I had in Colorado Springs at the legislative academy, and looking into it, I found that even though they have not come up with a huge - that they aren't in the business of drying coal yet. Obviously somebody thinks that they're getting close to it.

So let me go back to some of the other questions having to do directly with Mr. Renkes' actions other than trying to speculate as to the viability of the product. We, and maybe I'm just going back over this again, but I just want to make very sure for the record, we have been told that the KFx stock was the most actively traded stock in Attorney General Renkes' account. So since the only one that had been traded in was the GPM account, I'm assuming that's what that statement meant. And we were told that he bought or sold KFx eleven times in the past year. And he was doing nothing but buying after March of '04 and in May he actually bought twice in the same day. So I'm assuming that we wouldn't, from what your information shows is that the buyer was not the attorney general, but was Mr. Anderson, is that correct?

MR. BUNDY: Yes.

CHAIR SEEKINS: So the Attorney General wasn't sitting there saying, 'Gee, if this coal deal goes through, I could make a bundle on this.' Is that a fair statement?

MR. BUNDY: Yes, I mean, that was my conclusion. I could not look at the pattern of trades and conclude that they were the result of direction from Mr. Renkes.

CHAIR SEEKINS: Other questions from members? Senator Huggins?

[2:57:02 PM](#)

SENATOR HUGGINS: As I look in 2004 and as I read your report, one of the things that was happening with the trading of delegations coming back and forth between the Republic of China and Alaska was one of the objectives was to have another visit to Alaska sometime in September of '04 with the objective of having the MOU. And I think most of us that have been around the Asians understand that would be a significant milestone as far as moving the MOU - would be a significant milestone as far as moving the business enterprise forward. I think that is relatively accurate - the MOU?

MR. BUNDY: I think so. I mean it's clear that the Taiwanese were interested in an agreement of some kind. And it seems to me that a moving animus was the President of China. That he wanted something done. And if it was going to be in coal, great; and if it was going to be in something else, it was going to be in something else. He wanted something done and so his people were getting pushed from the top down. There was some resistance from, my view, from the technical people who had to actually burn coal. But they were being pushed on from the top.

SENATOR HUGGINS: So the Republic of China, some people there in the hierarchy, appeared to have some enthusiasm about getting on with this.

MR. BUNDY: Yes, absolutely.

SENATOR HUGGINS: Which leads us to the part that I saw, that might potentially have some significance in just that it indicates that Ms. Yao, who is one of the intermediaries, one of the high-level intermediary in this case, was communicating with Attorney General Renkes. And your report says, 'Despite Ms. Yao's repeated urging, little progress was made by Mr. Renkes in drafting the letter.' And the letter is to get the delegation here, which would get the MOU, which, I guess if you interpreted this, my interpretation is that it didn't appear that Mr. Renkes saw any haste, quite frankly, was going quite slower than Mrs. Yao wanted, maybe the Chinese wanted, in the process, and it wasn't about making money, it wasn't about doing something because, 'we got to do it quickly because my buddies will gain or any of that sort of thing. Is that...?'

[2:59:22 PM](#)

MR. BUNDY: Well, if you read Mrs. Yao's e-mails, you can see that she is kind of an unusual person, is very active and aggressive, and she saw this as, from I gather from her emails

and from when I interviewed her over the phone, that she wanted to get on with this and one of the things is, and Mr. Venners was pushing on her too, to get things done. So she was working a lot directly with Mr. Venners completely - with Mr. Renkes completely out of that loop. And at one time, the Secretary General who became Senior Advisor Kahn, was clearly trying to get things moving and so she was talking to them. My understanding is that she would periodically check in with them or sometimes they would call her, 'Where's the letter from Governor Murkowski?' Or she would call them and say, 'What's going on, where's the letter from Governor Murkowski?' Then she would send an email saying, 'We're still waiting for the letter from Governor Murkowski.' That's what I meant to say on that.

SENATOR HUGGINS: But the bottom line and the result was that, in your words, despite Mrs. Yao's repeated urging, that she didn't get any response out of Mr. Renkes in producing a letter.

MR. BUNDY: It took some time.

SENATOR HUGGINS: Right, right. Ok. Thank you.

[3:01:17 PM](#)

CHAIR SEEKINS: Representative Gara.

REPRESENTATIVE GARA: Mr. Bundy, a lot of what's in the reports is a lot of - and a lot of what people have been talking about in the press lately, on both sides is to me - almost a side issue. In the end, to me, if KFx is this great technology, the best technology out there and is the only way to get this Alaska coal to market, then I think it's much more appropriate for people to be promoting KFx as the way to do this. If, on the other hand, KFx is not the most appropriate technology and there might be others out there, yet KFx is being promoted, then I've got really big questions.

And I'm wondering if you notice this, because sometimes when people make inconsistent statements, sometimes it means nothing, and sometimes it means something big and it raises a red flag. In the beginning when the story first broke on October 1, according to the Daily News - now, the Daily News could have said it wrong - but according to the Daily News, Renkes said Taiwan and KFx had a relationship that predated him becoming attorney general. He did not bring the two parties together, nor did he encourage KFx to come to Alaska. So the story breaks that Greg Renkes might have some stock dealings with this company.

According to the Daily News, Mr. Renkes says, 'I didn't bring these parties together, I didn't bring KFx to Alaska on this deal.'

In your findings, you say, you go on through page 12 through 14, you say that the state is talking with the Republic of China, and then you say, 'During this time, Mr. Renkes was communicating with John Venners, and Kanturk Partners' managing director, David Fu. Mr. Fu was directed and aided by Kanturk partners principal, Mr. Chang Pen Sao, and drafting a letter for signature by Mr. Renkes, extolling the virtues of K-fuel which Mr. Venners and Mr. Fu hoped that Mr. Renkes would forward to Secretary General Kang. Did you notice this or does this trouble you at all that on October 1, the statement by Mr. Renkes is saying, 'I did not bring KFx into this deal.'" - and then your findings is that he actually seems to have brought KFx into this deal?

[3:03:41 PM](#)

MR. BUNDY: My understanding of what happened was that Mr. Chang is a large principal in Kanturk partners. He's also a major force in Taiwan of one kind or another - economic and political. And I don't want to overstate that, but he's President of the Taiwan Chamber of Commerce, he's a former Senator. I don't have any evidence that I saw in the documents that Mr. Chang was promoting KFx technology to the Taiwanese - for instance, saying, 'Buy Wyoming coal because we can process this sub-bituminous coal into stuff that you can use so you ought to buy it from Wyoming - the big giant mines in Wyoming.' Whether that was going on, I have no idea. I didn't see any evidence of it; put it that way. In my view, I am not aware, I saw no evidence that anybody in KFx was trying to work the Taiwan angle to purchase coal from anywhere. I just didn't see any evidence of it.

REPRESENTATIVE GARA: Maybe I didn't say that clearly and this is the part that concerns me. In your memo, my understanding of your memo is that on page 14, you found that Mr. Renkes was involved in bringing the K-fuel process to the attention of the Taiwanese. That in drafting a letter for signature by Mr. Renkes extolling the virtues of K-fuel, which Mr. Renkes would then forward. So it seems to me...

MR. BUNDY: I believe that to be true.

REPRESENTATIVE GARA: Isn't that inconsistent, if the Daily News is correct, with Mr. Renkes' statement?

CHAIR SEEKINS: We're not going to ask you to testify as to the veracity of the news story.

MR. BUNDY: Yes, it does sound inconsistent to me.

CHAIR SEEKINS: I'm not going to use that as our standard of measure today.

[3:06:00 PM](#)

REPRESENTATIVE GARA: Does that raise a red flag to you about whether or not people have been truthful to you?

MR. BUNDY: It does in the sense that what I discovered when I started talking to David Fu, who is Taiwanese, who is the Managing Director of Kanturk, that they have tremendous contacts. So it might have been that Venners might have even told Mr. Renkes that, 'Yeah, we're working in China already' because he was over there trying to do a mainland China deal. The only thing I can say is that, yes that does sound inconsistent, yes I would be concerned if I - and I did not focus on that when I talked to Mr. Renkes regrettably - but nonetheless it doesn't seem to change the basics of what was actually going on and whose interests were actually being forwarded by Mr. Renkes in the things that I saw that he actually did.

CHAIR SEEKINS: Thank you, any further questions at the moment on this subject? Representative Gruenberg.

[3:07:16 PM](#)

REPRESENTATIVE GRUENBERG: Thank you Mr. Chair. It strikes me as the phrase that the financial interest in the matter must be significant. Both the question of what the financial interest in the 'matter' is and what the word 'significant' means were very key in your legal analysis of this issue, is that correct?

MR. BUNDY: Yes.

REPRESENTATIVE GRUENBERG: And if the Legislature were significant to include - say - a dollar amount, a percentage of the persons overall holdings and the percentage of the interest in the industry or whatever it was, the company itself, any of

those three, if the threshold were met. Would that provide greatest protection to the public, do you think?

MR. BUNDY: Well it sounds like that would cover the map about the kinds of things you have to worry about. Basically, doesn't it come down to 'Is somebody who is a public servant going to throw a decision one way or the other based on their own interest?'

REPRESENTATIVE GRUENBERG: It would seem that way to me.

MR. BUNDY: And what the executive branch Ethics Act tries to do, in my view, is try and set up some general guidelines for that and hope it works. It seems to me that what some other states have done instead is do what you have suggested in one way or another.

[3:08:51 PM](#)

MR. BUNDY: And if we're going to avoid this kind of a problem in the future it seems to me that is probably something that the legislature or the Department of Law, through the regulatory process ought to seriously consider.

REPRESENTATIVE GRUENBERG: That's the definition of what 'significant' would be. But the term 'what the matter' is - it seems to me that rather than saying the matter is the trade deal with China, the real issue is the effect upon the ownership interest in the company. It's like, if we're dealing with the Challenger spacecraft and there was an allegation of wrongdoing on the part of somebody, the question wouldn't be whether you had an interest in the trip to the moon or the space station, if it was interest in Morton Thiokol, that made the O-ring, or, the question is, specifically, your interest in the commercial aspect of how this will affect the price of the stock, the value of the stock.

MR. BUNDY: If what you do - if you do A or you do B - decide A or decide B is going to make you money in some significant way, and these things usually come up, from what I've seen, in a situation which the public officer is asked to deal or make direct decisions, promulgate rules, do whatever that directly affect some interest, some company to approve a lease, issue a grant, promulgate a regulation that is going to have a direct effect on somebody. And what this is not very good at doing, is dealing with the indirect effects of these kinds of things and trying to say 'Well, what is the significance in an indirect

way' and the only way that the other states have been able to do that is to say 'Well, if some company is going to be involved in this and if you own a certain dollar amount or percentage, you can't participate.'

REPRESENTATIVE GRUENBERG: So that would be the definition of the term of the word 'matter.' In your report, the area that talks in terms of an appearance of an impropriety - that's around page 37 - 'The Code of Ethics prohibits specifically and exclusively efforts on the part of the public officer directed to obtaining a benefit.' That's at the top of page 37. 'Unlike other ethical rules applicable in another context, such as the Code of Judicial Conduct' - canon 2 - 'The Ethics Act doesn't prohibit activity that creates merely an appearance of impropriety. Instead, to violate the Ethics Act, the public officer must take action that is actually improper that is intended to benefit the officers own interest.' And then you cite the regulation that specifically says that. Before I get to the legal question, I have a factual question, 'Did you check and see whether either the Governor or any of his family or Renkes' family had any interest in KFx?'

MR. BUNDY: I think I asked the Governor and he said no.

[3:12:59 PM](#)

REPRESENTATIVE GRUENBERG: Did you ask Mr. Renkes if any of his family had any interest?

MR. BUNDY: No, I didn't. I just looked at what he had.

REPRESENTATIVE GRUENBERG: Back to the legal question. We have such a much larger executive branch than we've had 10-15-20 years ago. And now we have people in there like these new administrative law judges, and we have, and I guess the attorney general is the cabinet officer most closely associated with the judiciary and the legal system. Do you think people in certain positions, because as I was mentioning, these new administrative law judges do not have to file financial disclosures, do you believe that some people like the attorney general specifically, maybe some other officials, should be required to avoid even the appearance of an impropriety? I'm talking about amending the law.

MR. BUNDY: That is certainly the case for judges as you just said. And I would think that an administrative law judge ought to follow at least as applicable in the administrative context,

the canons of judicial conduct. I realize there is no law that requires them to do that right now, but it sounds like a pretty good idea to me. As regards to high level government officials, that is a tough call because I don't know what exactly the debates were on the executive branch Ethics Act. But on Ethics Acts that's always the tension between what am I giving up to become a public servant verses what the public ought to have a right to expect. And the appearance of impropriety can exist in a lot of ways in which no reasonable person, when they look into the fact, would decide there was any actual impropriety. The act itself as it stands now, in a way, tries to deal with that by saying 'Look, before you weigh into anything that somebody might think is improper, you must get a third party determination.' That's what I've said is what the Attorney General should have done and didn't do. That, in a way, is appearance of impropriety standard.

[3:15:41 PM](#)

CHAIR SEEKINS: What is the kick-off point here? When I realize that there could be an appearance?

MR. BUNDY: I've said that it can't be when you realize it. It has to be when a reasonable public officer would have realized it. Now, what does that mean?

CHAIR SEEKINS: That's tough.

MR. BUNDY: It means probably when I own stock in a company that can benefit from something I do.

CHAIR SEEKINS: And I think we'll get into how we're going to treat administrative law judges at another time. But I think, let's go on with what I have in front of us today. Max, go ahead.

[3:16:12 PM](#)

REPRESENTATIVE GRUENBERG: You were the federal counterpart to the attorney general for a number of years. You were the United States Attorney for this state.

MR. BUNDY: Yes, for the District of Alaska.

REPRESENTATIVE Gruenberg: Yes. Are US Attorneys held to a standard of conduct? Is there some kind of an ethical code US attorneys have to follow?

MR. BUNDY: There is.

REPRESENTATIVE GRUENBERG: Would you be willing to provide that to the members here?

MR. BUNDY: Sure.

CHAIR SEEKINS: Oh sure, but not today.

[3:16:53 PM](#)

CHAIR SEEKINS: I'm just making that clear. Other questions from members on point here?

REPRESENTATIVE GRUENBERG: I'll ask one. Are you aware of any general standard of code conduct for attorneys general?

MR. BUNDY: No. I didn't think that there was one. Maybe there is, I never looked at it.

REPRESENTATIVE GRUENBERG: I was just wondering if, what is it called, the National Conference of Attorneys General have?...

MR. BUNDY: National Association of Attorneys General, they might, but I doubt it, because I think that most attorneys general would be covered by their own state Ethics Act.

[3:17:34 PM](#)

CHAIR SEEKINS: Mr. Bundy, you mentioned the Asencio report earlier. Could you help us out by putting the appearance of that report and the context of it in juxtaposition to when the first report was made in the Anchorage Daily News?

MR. BUNDY: As I recall, Asencio picked up the 88C filing of KFx that it had entered into a letter of intent with Kanturk. Asencio has a reputation over the years as a short seller, meaning that they'll agree to buy, they'll borrow stock and agree to return it at a certain price, hope it goes down, and they can buy it then and return it. They'll borrow it, sell it, agree to return it at a certain time in the future and when that time in the future occurs, they're hoping it goes down so that they can then buy it then and replace the stock that they borrowed, so to speak. Supposedly, Asencio is quite a short seller. Anyway, it was after that came out, Asencio did its research back in the SEC filings of KFx and discovered the

relationship between Kanturk and KFx and put some information on the Internet which was picked up by a Wall Street journalist columnist who then wrote a column who said 'Look at this, this looks bad.' That is my understanding.

CHAIR SEEKINS: You know how close after the Asencio report was out there that the Daily News started reporting the matter?

MR. BUNDY: I think it was pretty close in time.

CHAIR SEEKINS: Within a day or two maybe?

MR. BUNDY: Could be.

[3:19:52 PM](#)

CHAIR SEEKINS: I've been told that it was very close and that it was very close in context to the Asencio report as well, but did you ever have a chance to review those two?

MR. BUNDY: I've certainly reviewed the Daily News report and the Asencio report was one of the first things I looked at.

CHAIR SEEKINS: When we look at the entities involved again, just let me see if I understand correctly. There is KFx, which is a publicly traded company, and they are the developers of the technology. They are not in the coal business. So they are not a coal company of any kind. They are not trying to buy or sell coal; they are just trying to process it and take sub-bituminous coal and convert it into the same BTU rating as bituminous coal.

MR. BUNDY: That's not exactly right because I think they do have holdings in a mine in Wyoming. They may have some interest in a mine in Wyoming.

CHAIR SEEKINS: But they were not the company that was trying to develop the Beluga coalfields.

MR. BUNDY: They didn't own the Beluga coal. No.

[3:20:54 PM](#)

CHAIR SEEKINS: Who was the company that was actually trying to buy and sell the coal then and process it in the meantime?

MR. BUNDY: The idea was going to be Kanturk was going to be the entity that was going to cut a deal with the owners of the coal

- be it Placer Dome or Bass Hunt Interests - and then they were going to buy the coal, process it at Chuitna Beluga, and then sell it. They were going to be the sellers to the potentially the Taiwanese. They were also looking at the Japanese and the Koreans and other...

CHAIR SEEKINS: Did you also call them an investment bank?

MR. BUNDY: That's what they call themselves.

CHAIR SEEKINS: They call themselves that. But in effect, they were acting as buyers and sellers of coal.

MR. BUNDY: That's what they proposed to do.

CHAIR SEEKINS: And they entered into agreement with KFx to license the technology to be able to process the coal and if it worked, they'd have a saleable product.

MR. BUNDY: Right.

CHAIR SEEKINS: Okay.

[3:22:03 PM](#)

CHAIR SEEKINS: And that memorandum of understanding with Taiwan was 'We'll buy this coal, but only if it meets this standard on the spot market for two years or something.'

MR. BUNDY: Well, it had to meet their standards and it had to be at a competitive price.

CHAIR SEEKINS: Right. So does Kanturk still exist?

MR. BUNDY: Yes.

CHAIR SEEKINS: Are they still working on this project?

MR. BUNDY: Yes.

CHAIR SEEKINS: Has anybody indicated that they don't have the financial where-with-all to be able to do it?

MR. BUNDY: They claim to have it.

[3:22:40 PM](#)

CHAIR SEEKINS: So you'd think, pretty good company still? You wouldn't say this is a bank that just stinks, would you?

MR. BUNDY: I wouldn't, although, with a caveat that they are not a publicly traded company so they don't file reports, but the principals seem to be people of some substance.

CHAIR SEEKINS: So, then it would appear if you were in a position where you were trying to do some kind of evaluation, based on what you know today, as to whether or not this was a proposal that the State of Alaska should pursue, trying to market this coal, with using what you may believe to be close to commercial viable technology to be able to do so, if you were in the Executive office of the State of Alaska, would you try to pursue that goal?

MR. BUNDY: If I were in the executive office of the State of Alaska, probably a lot of things would be done differently. But, I came to the conclusion, which I think - I didn't write it down here - but it informs what I said, that had Mr. Renkes been involved or not involved, that the process would have turned out the same.

[3:24:05 PM](#)

CHAIR SEEKINS: Would Mr. Renkes, would you have said that if he knew that this technology was out there, if he didn't bring it into the mix, if he did, would that have been negligent on his part?

MR. BUNDY: I don't know about that, but certainly it wouldn't have been consistent with what he knew the Governor wanted done, which was try and figure out a way to develop this coal.

CHAIR SEEKINS: So his boss said 'Look, I know you. I know your involvement, you've been with me for years, you were with me on the energy committee in the US Senate, I know of your ability to be able to negotiate things, and I'm putting you in charge of trying to get this deal done so we can sell Alaska coal to Taiwan.'

MR. BUNDY: Well, I'm not sure that those words were said, but I got the strong indication from the Governor, from Mr. Renkes, and from Margie Johnson, that that's what they believed to be the case.

[3:25:01 PM](#)

CHAIR SEEKINS: And I'm totally paraphrasing. I hope you understand that too. I'm not trying to make any quotes out there. So would you think, then, that it would be wise for the attorney general, knowing what you know today, to say 'Hey, danger here. Danger. This is a snake oil deal here, keep away from it.'

MR. BUNDY: From the State of Alaska's point of view, I don't see, if you assume that the goal you want to achieve is to develop that resource over there with an open pit coal mine, that this deal with the Republic of China, with the idea that the Republic isn't going to buy it probably unless it's processed, the State of Alaska, there's no downside to the State of Alaska on that. If you assume that that's the way you want to go.

CHAIR SEEKINS: What financial commitment would the State of Alaska have had in this deal if it came together?

MR. BUNDY: They didn't have any other than the time and effort of state employees and keeping all these people talking to each other.

[3:26:19 PM](#)

CHAIR SEEKINS: So other than trying to promote the eventual conclusion of a sale of a coal to a willing buyer, the state didn't have any money at risk?

MR. BUNDY: I don't think so.

SENATOR FRENCH: On that point Mr....

CHAIR SEEKINS: Go ahead Senator French.

SENATOR FRENCH: The MOU pledged the state to not only help the permit processing, but also with infrastructure development.

MR. BUNDY: Right. And that was one of the things that Mr. Renkes pointed out, that he made sure of putting into this that, this would not be in any way subject to all of the laws in place, at the time, that it was a non-binding agreement. That nobody could be sued for not performing and that the original Kang draft said 'We want you to do all of these things.' And the Renkes draft that came back said that we would do this so long as they were consistent with the laws of the state and of the United States.

In other words, whatever processes that needed to go through to get this done, they would have to be gone through. There was no shortcuts here. So, it was a statement of intent - that we'll try and help.

CHAIR SEEKINS: And that pretty much is standard fare if we're opening the Pogo mine, if we're opening someplace else, that the state would say 'In order to develop this very valuable resource, we do understand that we do have some responsibility to help develop infrastructure to do that in the future but you're not committed to it. We aren't putting any money on the line, we aren't signing any blank checks.'

MR. BUNDY: There were no blank checks signed, it was simply that 'We want this to happen and we'll try and do from our side what we can to make it happen if you guys do on your side. Have your people buy the coal. We think it's a good thing.'

CHAIR SEEKINS: And the administration cannot allocate funds to build infrastructure. That would be a legislative function.

MR. BUNDY: I suppose it would.

CHAIR SEEKINS: Thank you. Other questions on this these points? Representative Gara, did you have your question?

[3:28:18 PM](#)

REPRESENTATIVE GARA: Here's something that has also always concerned me about this deal, and I don't know if I'm right or wrong, and it goes back to if KFx really was the best technology then more power to everybody, great, and if it wasn't, then why wasn't anybody else ever brought in. And so, during your review, tell me what you found. My understanding is, and this has always raised a question for me, that the Governor and the attorney general went straight to KFx. They were like 'We're going to get the Taiwanese delegation in touch with KFx. That's the product.' And in those early negotiations, my understanding is, they didn't bring the coal industry in, they didn't bring anybody in from the coal companies to say 'Which product do you think is best?' They just went straight to KFx. And I always wondered whether that short-circuited the whole review process as to whether or not there might have been a better company than KFx in the minds of the coal company. Did it ever strike you as odd that the coal owners weren't involved?

MR. BUNDY: It did. And it struck me as odd for a different reason. I think the coal companies weren't convinced that any technology was appropriate. They didn't want to get involved in trying to beneficiate their coal at all. They just wanted to sell it to somebody - the people that actually owned the resource, the leaseholders. But it was equally clear to me that Taiwan was going to be dragged kicking and screaming - the technical people - into this thing. And this was a promotion to try and get a deal for Alaska coal, and I think a lot of it was, 'KFX says they've got this thing, nobody else says that they can do this for us. Let's push it and get it rolling. It sounds like a great deal. We can have an MOU and it'll look good.'

CHAIR SEEKINS: Questions at this point?

[3:31:16 PM](#)

CHAIR SEEKINS: Let me just get into the complexity of the case that you had to look at here. I mean I'm impressed with the amount of work and research that you did. Did you do this mostly by yourself or did you have other people help you?

MR. BUNDY: I had a paralegal who handled the documents and set up interviews and this and that - so court reporters and things. I had her looking on the Net all the time for the latest action on all of these blogs that exist in the financial world that I had no idea of before. I had an associate, a second or third year associate, lawyer work on some of the background on the ethics acts in other places and whatnot. And finally at the very end, I called out the troops. I asked a Jonna Lindamuth to work with me, who's a young partner in our office, and I have a lot of respect for her legal skills so she and I worked on this final report together.

CHAIR SEEKINS: In doing it - if you were to take a scale one to ten and say one is simple routine case. Ten is an extremely complicated case - lots of research, lots of inter-tie, lots of stuff that was very mind bending. Where would you place this case in terms of that effort?

MR. BUNDY: Well, in terms of just sheer numbers of transactions, this isn't the end of world. In terms of shadings of what happened in the relationships among people and people's motives for saying what they said and doing what they did and trying to get to what the actual facts and motivations were, this is difficult. If I were a prosecutor, I would start out very enthusiastic as an investigator of this case thinking that I had

a good case. And as I investigated it farther and farther, I would become less enthusiastic until, finally, as I concluded, I wouldn't bring the case.

CHAIR SEEKINS: I wanted to bring to your attention one memorandum that I'm sure that you have. It was dated June 14, 2004, to the Governor from Attorney General Renkes. I wonder if your staff could give that to Mr. Bundy?

MR. BUNDY: What's this again?

CHAIR SEEKINS: It's a memorandum that was probably part of your body of research. I just wanted you to take a look at it as follow up.

MR. BUNDY: Okay.

CHAIR SEEKINS: In looking at that memorandum, would the content of that memorandum lead you to believe that there was a cut and dried case against the Attorney General for conflict of interest of violation of ethics laws?

[3:34:40 PM](#)

MR. BUNDY: Well, not in itself no. I mean the crux of the matter was whether or not in promoting or participating in this trade agreement trying to work out a sale of processed coal whether his own share holding in KFx were involved. One of the things that - I did receive a brief from Mr. Renkes' attorney and one of the arguments that they made was that, well, he never really tried to benefit KFx. In fact, what he did was restrain what KFx was trying to do or Kanturk was trying to do to get the state further involved. My conclusion was that it didn't matter. If you're a state official and if you have a significant interest - potential financial interest in the matter - you shouldn't participate.

[3:35:31 PM](#)

CHAIR SEEKINS: Senator French, go ahead.

SENATOR FRENCH: On that memorandum, since you brought it up, while you have it in front of you, there're a couple of sentences I'd like to ask you about. At the end of second paragraph the Attorney General writes, 'It is important that Mr. Kang's departure from this position does not cause the Alaska Taiwan coal development project to lose momentum.' And then

under the request paragraph he says, in order to advance the Alaska Taiwan coal development, we need a commitment etc. And then he goes on to say later in that paragraph, 'We are confident that Beluga coal can be processed by KFX to meet or exceed Thai power's technical specifications.' Now this is an official action, is it not?

MR. BUNDY: Yes, it's a briefing memo for the Governor.

SENATOR FRENCH: It's an official action and if you just changed one fact, the size of his investment. If he had say 1 percent of KFX stock, you would find this to be him violating the Ethics Act?

MR. BUNDY: Well, it would be a different issue.

SENATOR FRENCH: It would be a totally different issue and in your memo - in your conclusion you state that it's a close question.

MR. BUNDY: If he would have had one percent, he would have owned many thousands of shares.

SENATOR FRENCH: Right, right and in your analysis it was the fact that his investment was insignificant that led you to your conclusion.

MR. BUNDY: Yes.

SENATOR FRENCH: But if you change that fact, then you change the result of your opinion of this memorandum.

MR. BUNDY: Well, yes I think that's fair.

CHAIR SEEKINS: I guess there. Does this memorandum alone prove beyond a reasonable doubt that the attorney general violated the state Ethics Act?

MR. BUNDY: Well no, it doesn't prove anything.

CHAIR SEEKINS: Thank you. Other questions? I want to make sure that the members have opportunity here. Representative Gara.

[3:37:28 PM](#)

REPRESENTATIVE GARA: Mr. Chair, I haven't seen that memo and maybe I'm misheard something, but is that Mr. Renkes saying to

the Governor that he's confident that the KFx technology will work? And if that's the case, in your evaluation of this whole process, is it your understanding that very few people share that confidence in KFx other than Mr. Renkes? Or do you think...

MR. BUNDY: Oh, no, no. What I'm saying is that the coal company people had not really been all that excited about developing a mine based upon process technology. They thought - they weren't sure, they didn't know, but the KFx and the Kanturk people were sure of this and had invested a tremendous amount of money in that process because they believed it was economical and technologically sound. That was one of the things that was striking is about how much money these people have invested in this process that they're building in Wyoming.

CHAIR SEEKINS: And venture capitalists were willing to put another \$48 million in just not too long ago.

MR. BUNDY: Right, I mean they - and they obviously had - the Venners' guys themselves had obviously invested a lot of their own money in this thing over the years.

CHAIR SEEKINS: So there's somewhere people with money believe that this technology's going to prove out.

MR. BUNDY: Yes and they've got technical stuff this thick. I mean they have lots of engineers working for them and all of that.

CHAIR SEEKINS: Questions, other questions. Representative McGuire.

[3:39:17 PM](#)

REPRESENTATIVE MCGUIRE: A little bit different line of questioning but this is - out of all of this, this is the part that we'll be left with as policy makers. Is the part of your opinion that does say that Mr. Renkes should have requested an opinion regarding his involvement, the ethics of his involvement, in writing? And my concern and I'm referencing the special order that Senator French had offered on the floor and one of the interesting parts that you got into was the fact that disclosure isn't a defense of conflict of interest, and that it's simply not enough that the attorney general disclosed his investment and went forward. But what's interesting is that at the end, what we're left with is, in point of fact, that if he

had done that properly, there wouldn't have been any violation of the Ethics Code.

MR. BUNDY: It's more than that. It's not just disclosure; it's disclosure and determination. I've got an interest here that you need to know about. Here's what it is. This is how I believe it relates to this matter. That's why I think that there is an issue. I need somebody else to determine this and typically when that happens for almost all state employees is it goes to the Attorney General's office and an assistant Attorney General who is assigned to these things writes an ethics opinion and says either you can go forward or you shouldn't go forward. And that's what didn't happen here.

[3:40:51 PM](#)

REPRESENTATIVE MCGUIRE: And then just looking at it though in terms of the practical side, how would this have really played out? I think you've alluded to it earlier, but clearly there were conversations that went on between the Governor and the attorney general regarding his expertise, the fact that the Governor wanted him to participate because of his past energy committee experience and knowledge of the process. All parties seemed aware so had the attorney general gone through that formal process and had it written out, would the result have been any different?

MR. BUNDY: Well, I'm not sure for a couple reasons. Number one, the result would have been different at least in this respect, there would have been a record of the consideration of the matter before it was taken so that the public could see that process. Second, my guess is that, confronted with this difficult question in the Ethics Act, would the Governor have just made the decision? My guess is, and I don't know, that he may well have said I'm going to send this to outside counsel for an opinion to make sure that the public is satisfied. Because typically for everybody else, it's the attorney general who does the opinion, but that can't happen here. So it would be to outside counsel and then you would have a process of disclosure, consideration, and resolution. And that would be transparent to the public.

REPRESENTATIVE MCGUIRE: In wrapping up, I just think that's the part that you will be left with to wrestle with to make sure those guidelines are laid out clearly in a way that people can understand. It becomes a little bit circular in that if the ultimate decision that you've made was made in Mr. Renkes' mind,

that he knew that he had an interest, but he didn't believe it to be significant, at what point does that duty arise to go ahead and identify a potential conflict of interest? You see my point. There is a bit of circularity.

MR. BUNDY: I know that's a difficult one. The only thing I could come up with was an objective, reasonable, public official standard. In this case, that's not really applicable because it's clear that Mr. Renkes identified this as an ethical issue himself. Not on the terms of significance, but in terms of official action. He didn't believe he had taken any official action so he thought about it and just resolved it in one way that I think was wrong.

CHAIR SEEKINS: Representative Gruenberg.

[3:43:40 PM](#)

REPRESENTATIVE GRUENBERG: Thank you Mr. Chair. I'm going back to what I see as a core issue here, which is the appearance of impropriety and your report relies upon this regulation cited in footnote 7, on page 37, of your report. It's 9 AAC 52.010, which states 'An appearance of impropriety does not establish that an ethical violation exists.' However, the text of the act talks several times - and I'm referring for example to AS 39.52.110(a) - the first sentence - 'The Legislature reaffirms that each public officer holds office as a public trust.' And looking up above - 39.52.110(a)(3) - 'Holding public office or employment is a public trust.' - and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.

I'm wondering from the plain text of the act itself, how did people reach the conclusion that it is not a violation to - in a situation involving particularly a high placed public official - have a significant appearance of an impropriety?

(Senator Green and Representative Anderson both arrive)

MR. BUNDY: Well I think from the - I can't answer that question about what they thought when they passed this regulation.

REPRESENTATIVE GRUENBERG: Well what I'm wondering from a legal sense Mr. Chair is whether, in fact, that regulation may be improper and a violation of the act itself. Because as you know, a regulation can be struck down if it violates the underlying legislation. I'm wondering if that goes too far.

MR. BUNDY: It might. When you look at what the overall statements of the Act are, and then look at what their specific prohibitions are though, it seems to be at least arguably consistent and entitled to what we call chevron deference under the agency administering the act is given deference in construing it.

REPRESENTATIVE GRUENBERG: But that, Mr. Chair, under the laws of this state is a sliding scale depending upon whether the court retains expertise in this area. And I would be hard pressed to say the judges in courts of law do not retain a high level of expertise in determining what's ethical.

[3:46:49 PM](#)

CHAIR SEEKINS: I will bet, Representative Gruenberg, that we'll get into this discussion as time goes forward in this session.

MR. BUNDY: The Governor has asked me this afternoon to come up with something consistent with my recommendation on legislation or regulation.

CHAIR SEEKINS: That's good. I appreciate that. I appreciate you're being here and spending this time with us this afternoon. I know it's been long and somewhat repetitive, but I'd like to ask you just an opinion question at the moment. I heard the Governor say that he was asking Representative Croft to withdraw his complaint with the personnel board. Would you make that same recommendation based on the facts and the law?

MR. BUNDY: I just have to say Representative Croft has the right to make the complaint and that should be his decision.

CHAIR SEEKINS: That's good. Representative McGuire.

REPRESENTATIVE MCGUIRE: Along the same lines. Is it clear to you in any of your research of the Ethics Code or any of the ethics opinions - it sounds as though there weren't many - as to the penalties that are laid out for the personnel board? In terms of breaching the Ethics Act itself, which aspects of the Ethics Act are more serious than others? And I'm sorry to ask it in such a complicated way, but on the most serious question of whether or not the attorney general violated his duties by engaging in conduct that benefited him personally, you ruled against it. But on the second question where you asked if he should have informed the Governor of that conflict you said yes. So in some

sense he did break the Ethics Code - not as to the larger question, but as to the lower question. Do you have any sense from any of your ethics reading as to whether or not penalties should be lesser in that case or more?

MR. BUNDY: Well in the case of the Ethics Act, it's no-harm-no-foul because of that statute. But obviously it seems to me that a violation of a procedural requirement that did not actually result in a violation of the Ethics Act is less serious than an actual violation of the Ethics Act. I'm not saying that failure to abide by the procedural requirements couldn't have avoided all of this stuff that we've gone through here. But, none-the-less, I think most people would agree that it's not as serious as a substantive violation of the Code of Ethics.

REPRESENTATIVE MCGUIRE: So for example the penalty of impeachment.

[3:50:01 PM](#)

MR. BUNDY: I don't know anything about what grounds the attorney general might be impeached on. I couldn't - that's far beyond my ability to opine.

REPRESENTATIVE MCGUIRE: But the impeachment is one of the penalties that is set out as far as the Personnel board's recommendations that can be made.

MR. BUNDY: Well, the attorney general, I think, only can be - he serves at the pleasure of the Governor so the Governor could - I don't know that impeachment even applies. I just assumed that if the Governor wanted to fire any of his commissioners that he could do it in the drop of a hat. And if he wanted to talk to them, he could talk to them and if he wanted to woodshed them he could woodshed and if he wanted to admonish them he could admonish them. He's the boss.

REPRESENTATIVE MCGUIRE: In wrapping up, do you think that firing the Attorney General for violating a procedural duty he had under the Ethics Act would, in your opinion, be severe?

MR. BUNDY: Well yes, it's the most severe penalty.

CHAIR SEEKINS: If I'm correct, you said as a prosecutor, you would have been enthusiastic. Your enthusiasm waning at the end, you wouldn't have pursued it, is that...?

MR. BUNDY: That's how I feel.

CHAIR SEEKINS: That gives me a good indication as to - you know, you as a student of the law, and as a prosecutor in the past - saying how serious that offense might be - procedurally, in fact, but not substantive.

MR. BUNDY: And my comments about the prosecution were for the substantive offense not procedural.

CHAIR SEEKINS: And our biggest problem is we don't have a definition for significance or substantive in our statute so that's where our problem comes in.

MR. BUNDY: That needs to be done.

CHAIR SEEKINS: If we choose to address that to be able to help avoid these kinds of proceedings in the future. Other questions? I'd like the record to, first of all, indicate that Representative Anderson is here; Senator Green is in the audience.

Representative Gruenberg.

[3:51:57 PM](#)

REPRESENTATIVE GRUENBERG: Thank you Mr. Chair. There's a direct analogy, is there not, between the duty to disclose in this setting and the duty of lawyer to disclose a conflict of interest? There are some cases on that in this state. For example, a case called Cummings v. Sea Lion Corporation. The corporate attorney had a duty to the corporation to disclose the fact that he stood to profit from the success of the corporation with which another corporation became a limited partner. And there can be very serious allegations - I'm sorry - very serious consequences to the attorney when the attorney - and the AG of course is an attorney - where the attorney fails to disclose. One of which is they're disqualified and the whole firm may be disqualified from a particular litigation. And there can be various ethical actions - disciplinary actions - taken against the attorney for failure to disclose. Isn't that true?

MR. BUNDY: That's true. Disclosure isn't the issue here - it's consultation. The disclosure was made in various public forums. Typically in a conflict situation, a lawyer has to disclose the conflict and consult with the client about it.

REPRESENTATIVE GRUENBERG: But isn't it true that there was an oral disclosure, but an oral disclosure is ineffective disclosure because it has to be in writing? Isn't that the case?

MR. BUNDY: Well, I mean, the disclosure of the ownership of the stock was made many, many times in writing.

[3:53:44 PM](#)

REPRESENTATIVE GRUENBERG: I was under the impression that he had told the Governor orally, but there was no written...

MR. BUNDY: Well, I mean, in terms of APOC reports, in terms of the Permanent Fund...

REPRESENTATIVE GRUENBERG: I'm talking about a direct...

[3:54:13 PM](#)

MR. BUNDY: ...A direct disclosure - I don't believe - the Governor does not remember that happening.

REPRESENTATIVE GRUENBERG: And that's the purpose for a writing is it not?

MR. BUNDY: Exactly.

REPRESENTATIVE GRUENBERG: Thank you.

CHAIR SEEKINS: Thank you Representative Gruenberg. Senator Huggins.

SENATOR HUGGINS: Thank you Mr. Chair. Number one - Mr. Bundy, I would like to thank you for your work - what I would characterize as a very fair and quality report. And my counterparts here, I would say thank you for not practicing too much law since I'm in a minority here not being a lawyer with our Chair. To that extent though, has there been anything that you would think that would further clarify, shed light on, or is mandatory for you to say that for one reason or another hasn't come out today thus far?

MR. BUNDY: I can't remember everything I've said today so I just don't know what it would be. It's just about worn me out.

CHAIR SEEKINS: Well I tell you. I guess I can't be too harsh on the Governor for having forgotten conversations. I swear he's

forgotten a couple of ours between him and me, and my wife says that I'm guilty of the same thing with her all the time, that I forgot what I said. And she's nodding her head in the back of the room. But I think, in summary I guess, if I had been the Governor, and I'm not, if were Governor Murkowski and I wanted to get this coal deal done, and I understand what I do in my own private business when I do that - I get the most qualified person in my business to be able to handle the subject matter at hand whether it's the parts manager, the service manager, or the sales manager. The guy with the experience is the guy that I want in the lead and at the point.

CHAIR SEEKINS: I think it was good policy for the Governor to say 'I know you. I know you're involved, and I know your background. I trust you. Go get this thing done.' And he probably would have said 'Oh by the way, if you have any conflicts because of what you know and who you know, make sure we discuss those before you go too far here.' That's probably the difference between business risk and political risk. I know that I can tell my people - this is what I want done and they don't have to tell me whether or not their son is involved in something or someone else in their family is. And on the political side, we have to balance that and sometimes that's difficult for us all because we have an objective in mind and it makes it - probably every one of us has violated something having to do with disclosure or something that we've forgot - we didn't remember at the time - we forgot a deadline and we went over it. I mean we're all probably guilty of some kind of technical violation of the code or the law on a regular basis. The difference between this one and those are that we may have caught them ourselves or sometimes somebody else caught us and we got our hands slapped because we forgot. I've been there.

CHAIR SEEKINS: I appreciate the fact that the Governor and the administration is trying to develop the natural resources of the state to help us pay the bills one way or the other. You put jobs in there for our children and for our grandchildren and be able to try and be on the cutting edge of technology as long as it does work and we have some commercial viability to it. And so I appreciate the fact that he put who he thought his most qualified person was on this project to try to carry it out.

CHAIR SEEKINS: I don't appreciate the fact that there was a technical violation because it's cost all of us a great deal of time and effort and money. So I'm not happy about that. I for one am not willing to say that this technical violation would even bring me to the point of discussing impeachment of the

attorney general for this. I think the discipline for this lies in the hands of the Governor and we'll all judge him based on how he metes out that discipline. And I would not think that it's up to this body to determine what that discipline should be so I'm willing to do that.

CHAIR SEEKINS: I really do appreciate the time you took on this and I know the time frame - some of our members were a little impatient. Some thought you were not going to get it here till Halloween and we were willing to wait and I think that I - by taking a look at the final product, I'm very impressed how it's put together. I was able, as a non-attorney, to follow it and bring it through. It was meaty, it was not wordy, I congratulate you for your effort and I want to thank you as Chairman of this committee for being here today and testifying with us. Anyone else have a closing statement prior to the time we let Mr. Bundy go?

CHAIR SEEKINS: I do appreciate very much your being here. With that, the Judiciary Committee is adjourned - [3:58:58 PM](#).