

**ALASKA STATE LEGISLATURE**  
**SENATE JUDICIARY STANDING COMMITTEE**

February 21, 2014

1:16 p.m.

**MEMBERS PRESENT**

Senator John Coghill, Chair  
Senator Fred Dyson  
Senator Donald Olson

**MEMBERS ABSENT**

Senator Lesil McGuire, Vice Chair  
Senator Bill Wielechowski

**COMMITTEE CALENDAR**

SENATE BILL NO. 110

"An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency."

- MOVED CSSB 110(JUD) OUT OF COMMITTEE

SENATE BILL NO. 66

"An Act relating to imitation controlled substances; and providing for an effective date."

- HEARD & HELD

SENATE JOINT RESOLUTION NO. 21

Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council.

- HEARD & HELD

SENATE BILL NO. 136

"An Act relating to unmanned aircraft systems; and relating to images captured by an unmanned aircraft system."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 110

SHORT TITLE: RETURN OF SEIZED PROPERTY

SPONSOR(s): SENATOR(s) DYSON

01/22/14 (S) PREFILE RELEASED 1/10/14  
01/22/14 (S) READ THE FIRST TIME - REFERRALS  
01/22/14 (S) JUD  
02/19/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/19/14 (S) Heard & Held  
02/19/14 (S) MINUTE(JUD)  
02/21/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 66

SHORT TITLE: IMITATION CONTROLLED SUBSTANCE

SPONSOR(s): SENATOR(s) EGAN

02/27/13 (S) READ THE FIRST TIME - REFERRALS  
02/27/13 (S) JUD  
02/21/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SJR 21

SHORT TITLE: CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

SPONSOR(s): SENATOR(s) KELLY

02/10/14 (S) READ THE FIRST TIME - REFERRALS  
02/10/14 (S) JUD  
02/14/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/14/14 (S) Heard & Held  
02/14/14 (S) MINUTE(JUD)  
02/17/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)  
02/17/14 (S) Scheduled But Not Heard  
02/21/14 (S) JUD AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

CHUCK KOPP, Staff  
Senator Fred Dyson  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Explained the proposed amendment to SB 110 on behalf of the sponsor.

SENATOR DENNIS EGAN  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Sponsor of SB 66.

ALEDA BUS, Staff  
Senator Dennis Egan  
Juneau, Alaska

**POSITION STATEMENT:** Provided information related to SB 66.

LEE PHELPS, Drug Enforcement Officer  
Juneau Police Department  
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 66.

TRACEY WOLLENBERG, Attorney  
Public Defender Agency  
Department of Administration (DOA)  
Anchorage, Alaska

**POSITION STATEMENT:** Provided information relevant to SB 66.

RODNEY DIAL, Lieutenant  
Alaska State Troopers, Department of Public Safety (DPS)  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified that the department has no concerns with SB 66.

JORDAN SHILLING, Aide  
Senate Judiciary Committee  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Described the changes in the CS for SJR 21.

NANCY MEADE, General Counsel,  
Administrative Staff  
Alaska Court System  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 21.

BILL GORDON, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 21.

DAVID LANDRY, representing himself  
Anchorage, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 21.

JAMES CANNON, representing himself  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in opposition to SJR 21.

DEBORAH O'REGAN, Executive Director  
Alaska Bar Association

**POSITION STATEMENT:** Testified that she submitted written testimony relevant to SJR 21.

**ACTION NARRATIVE**

[1:32:15 PM](#)

**CHAIR JOHN COGHILL** called the Senate Judiciary Standing Committee meeting to order at 1:32 p.m. Present at the call to order were Senators Dyson, Olson, and Chair Coghill.

**SB 110-RETURN OF SEIZED PROPERTY**

[1:33:57 PM](#)

**CHAIR COGHILL** announced the consideration of SB 110. "An Act relating to the authority of the victims' advocate to request a hearing for the release to a crime victim under certain conditions of certain property in the custody of a law enforcement agency." This was the second hearing.

[1:34:05 PM](#)

**SENATOR DYSON** moved to adopt Amendment 1, labeled 28-LS1033\A.1.

**CHAIR COGHILL** objected for an explanation.

**AMENDMENT 1**

OFFERED IN THE SENATE  
TO: SB 110

BY SENATOR DYSON

Page 1, line 8, following "section.":

Insert "If the victims' advocate requests a hearing under this subsection, the role of the victims' advocate in the hearing is limited to advocating for the return of the victim's property; the victims' advocate may not participate in the case as a party or an intervenor unless the court orders otherwise."

[1:34:40 PM](#)

**CHUCK KOPP**, Staff, Senator Fred Dyson, said it's the sponsor's understanding that the amendment language is agreeable to the Court System, the Office of Victims' Rights, and the Department of Law. It clarifies that OVR has the right to file a request

for a hearing to advocate for the return of a crime victim's property, but it does grant any broader role.

SENATOR DYSON added that this provides another avenue for the victims' advocate if the agency doesn't petition the court for the return of a property. He said Taylor Winston with the Office of Victims' Rights was available to answer any questions.

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CHAIR COGHILL found no questions. He removed his objection and Amendment 1 was adopted.

SENATOR DYSON moved to report SB 110, as amended, from committee with individual recommendations and attached fiscal note(s).

CHAIR COGHILL announced that without objection, CSSB 110(JUD) moved from the Senate Judiciary Committee.

### **SB 66-IMITATION CONTROLLED SUBSTANCE**

[1:37:27 PM](#)

CHAIR COGHILL announced the consideration of SB 66. "An Act relating to imitation controlled substances; and providing for an effective date." This was the first hearing

[1:37:49 PM](#)

SENATOR DENNIS EGAN, Alaska State Legislature, sponsor of SB 66, introduced the legislation paraphrasing the following sponsor statement: [Original punctuation provided.]

Senate Bill 66 makes it easier for law enforcement to crack down on drug dealers by making illegal any substance represented as a controlled substance. Drug dealers often rip off customers by selling them salt or sheet rock dust as meth, for example. When a drug dealer rips off a law enforcement officer during a sting operation, the officer can't make a charge because the substance doesn't contain a specific ingredient on the list of imitation controlled substances in statute.

The current definition of imitation controlled substances in AS 11.73.099(3) lists chemicals a substance must contain in order to be illegal. Senate Bill 66 changes the definition of an imitation controlled substance to more generally make illegal any substance made to look like an already illegal drug. By omitting specific chemicals from the definition, the change makes illegal a substance "that

is not a controlled substance and that, by dosage unit appearance (including color, shape, size, and markings) and by representations, would lead a reasonable person to believe that the substance is a controlled substance."

Senate Bill 66 will change our imitation controlled substance law to enable law enforcement officers to more effectively charge drug dealers in the State of Alaska.

[1:40:11 PM](#)

CHAIR COGHILL asked if removing all the specific references to controlled substances runs the risk that some of the more harmful drugs may no longer be illegal.

SENATOR EGAN replied the problem is that the law is too specific; the formulas can be changed just enough so they're no longer on the list of controlled substances and the police can't file a charge.

[1:41:23 PM](#)

ALEDA BUS, Staff, Senator Dennis Egan, added that things like ephedrine are still covered in a list of certain chemicals.

CHAIR COGHILL asked if violation of this law is a class C felony.

SENATOR EGAN acknowledged that concern was expressed about the severity of the penalty, and there was a committee substitute (CS) that reduces that penalty.

[1:43:27 PM](#)

LEE PHELPS, Drug Enforcement Officer, Juneau Police Department, Juneau, Alaska, stated that the imitation controlled substance law isn't used very often, but it would help if the definition wasn't so specific. He explained that in the past 2.5 years he's been part of more than 100 controlled buys and only three times was he sold anything that was not an imitation controlled substance. In some cases it was salt as methamphetamine or cooked down tootsie rolls as heroin, but because the crime lab didn't find any of the listed chemicals like ephedrine or pseudoephedrine there wasn't a crime. If the definition was changed to be any substance that is purported to be a controlled substance, a controlled buy of a pinch of salt for \$120 would fit under the imitation controlled substance law.

CHAIR COGHILL asked if intent would have to be proved if it was either an actual controlled substance or a representation.

OFFICER PHELPS said yes and the law also takes into account any statements that the person makes and the way the substance is packaged.

[1:45:27 PM](#)

SENATOR DYSON asked at what point the illegal sale might be prosecuted as fraud.

OFFICER PHELPS answered that in the instances when JPD was unable to charge under the imitation controlled substance law, they have charge the person with theft. That's a misdemeanor.

SENATOR DYSON observed that theft must include getting something of worth under false pretenses.

OFFICER PHELPS agreed and noted that it would be a class A misdemeanor if the sale was over \$50.

SENATOR DYSON asked if the defense has ever brought up the concept of mens rea [criminal intent].

OFFICER PHELPS said he didn't know.

SENATOR DYSON asked what heroin, good cocaine, and black oxycodone currently sell for in Juneau.

OFFICER PHELPS replied the street price for heroin is \$100 for 1/10 gram; for methamphetamine it's \$120 for 3/10 gram; for cocaine it's \$100 to \$120 a gram; and for oxycodone it depends on the strength of the pill.

SENATOR DYSON asked if people in Juneau smoke and shoot Oxycodone.

OFFICER PHELPS answered yes.

[1:50:38 PM](#)

CHAIR COGHILL asked Ms. Wollenberg for an explanation of charging under the imitation controlled substance law if AS 11.73.020 is repealed.

TRACEY WOLLENBERG, Attorney, Public Defender Agency, Department of Administration (DOA), explained that AS 11.73.020, deals only with the possession of those individual chemicals with the

intent to manufacture an imitation controlled substance. While that provision would be repealed, AS 11.73.010 would still prohibit manufacturing, delivering, or possessing the actual imitation controlled substance. That would be a class C felony.

Responding to a further question, Ms. Wollenberg said that by removing the individually listed chemical substances it broadens the definition of imitation controlled substance. The definition may also be vaguer because it will be subject to appearance and representations of the person as opposed to being tied to specific chemicals.

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SENATOR DYSON asked what her concerns would be to protect the defendant's rights if he/she was accused of misrepresenting sheetrock powder and selling it in baggies.

MS. WOLLENBERG replied one concern would be with the level of offense. She questioned whether it makes sense to charge someone who manufactures or delivers sheetrock at the same class C felony level as someone who possesses an actual controlled substance such as marijuana or cocaine. A defense attorney might also focus on what the representations were and if it was reasonable to think that the substance was marketed as a controlled substance. She opined that because the bill is a little broad, it could capture some things unintentionally and not grab the next substance that comes along.

[1:56:17 PM](#)

SENATOR DYSON said he can picture a defendant claiming he never intended to sell a drug, but rather to defraud the person of their money.

MS. WOLLENBERG agreed there is a question of what mens rea applies to the statute. For manufacture or delivery there would typically be a knowing mens rea, she said, and then the question is whether there is mens rea with regards to an imitation controlled substance or if it goes more to motive.

CHAIR COGHILL commented that a person can be charged with a misdemeanor for selling marijuana and a felony for selling oregano under this scenario.

MS. BUS stated that Legislative Legal looked at that and drafted an amendment to reduce the class of crime in that circumstance.

CHAIR COGHILL said the committee would consider that amendment at a subsequent hearing. He then asked Lieutenant Dial if he had any comments.

[1:59:29 PM](#)

RODNEY DIAL, Lieutenant, Alaska State Troopers, Department of Public Safety (DPS), Ketchikan, Alaska, reported that the department has no concerns with SB 66, but he wanted to point out that this legislation would not affect the crime of delivery of an imitation controlled substance to a minor under AS 11.73.030, which is a class B felony. He also pointed out that theft in the third degree, which is a class A misdemeanor, is anything more than \$50 and less than \$500. Theft in the fourth degree is anything less than \$50 and that's a class B misdemeanor.

LIEUTENANT DIAL reported that public safety drug investigators routinely encounter substances that are portrayed as controlled substances, but they aren't listed in statute so an individual can't be charged. For example, sweetheart candy is purported to be OxyContin and melted brown sugar is purported to be heroin. The individual couldn't be charged in these cases.

SENATOR DYSON said he assumes in these situations that prosecutors have been reluctant to move forward with a case of fraud.

LIEUTENANT DIAL confirmed that was correct.

CHAIR COGHILL announced he would hold SB 66 in committee for further consideration.

[2:02:51 PM](#)

At ease

**SJR 21-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL**

[2:05:13 PM](#)

CHAIR COGHILL announced the consideration of SJR 21. "Proposing amendments to the Constitution of the State of Alaska to increase the number of members on the judicial council and relating to the initial terms of new members appointed to the judicial council." He noted this was the third hearing and there was a work draft committee substitute (CS).

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SENATOR DYSON moved to adopt the work draft CS for SJR 21, labeled 28-LS1364\N, as the working document.

CHAIR COGHILL objected for an explanation of the changes.

[2:06:23 PM](#)

JORDAN SHILLING, Aide, Senate Judiciary Committee, explained that Version N keeps the number of attorney members at three and raises the number of non-attorney members to six. The other changes are in Section 2; these make the transitional aspects conform to the change in seats.

CHAIR COGHILL noted the language now says a majority of the members participating in a vote.

CHAIR COGHILL removed his objection and Version N was adopted.

SENATOR OLSON asked if the sponsor agrees with the changes.

MR. SHILLING affirmed that he did agree.

[2:08:45 PM](#)

NANCY MEADE, General Counsel, Administrative Staff, Alaska Court System, Anchorage, Alaska, reminded the committee that the Court System rarely takes a position on legislation, and only opposes a bill that would directly impact a core function of the Court System or Judicial Branch. SJR 21 is one of those bills, which is why she is speaking in opposition to the resolution. She assured the committee that the Court doesn't take this step lightly, and that this is done only at the direction of the Alaska Supreme Court.

MS. MEADE explained that the Judicial Branch is made up of three entities: the Court System ("Court"), the Judicial Council ("Council"), and the Commission on Judicial Conduct. The Court System and the Council have separate authority, separate offices, separate employees, and separate administrators, but the Court System does depend on the work that the Council does. The Council screens judicial applicants for judgeships, which helps the Court keep top-notch judges and maintain the public trust and confidence in all the work the Court does. It is because of this interdependence that the Court is testifying on a resolution that affects the Judicial Council, she said.

MS. MEADE said that SJR 21 has the potential to significantly change the judicial screening and selection process even though it's been an effective process for over 50 years. Alaska has a

merit selection process, which is considered the gold standard in judicial selection if the goal is to have fair, impartial judges hearing and deciding disputes. She explained that merit selection means that judicial applicants are screened and chosen based on their legal knowledge; their skills like writing, organizing, and creating cogent arguments; their ability to identify flaws and nuances in people's arguments or reasoning; their judicial temperament; and their experience in public and private sector jobs. Because of the Council's focus on merit, the applicants that are most qualified to be a judge are forwarded to the governor for selection. The current makeup of the Council works; there have been no problems with judges that are involved in scandals or case decisions that are marked by corruption, she said.

SJR 25 would unsettle the carefully considered balance between the non-attorney members who bring the general public's perspective on what to look for in a judicial candidate, and the attorney members who bring the lawyer's perspective on what to look for in a judicial candidate. It's the even balance that makes the Council work so well, Ms. Meade said.

MS. MEADE said she realizes that the CS changes the number of public members to six and maintains the three attorney members, but the Court's perspective is that this still is not a balance. Rather, the Court would like the Council to have the same number of attorney members as public members. The attorneys have a role in the discussion because they have direct experience with the applicant as another lawyer. They know about the applicant's legal knowledge, their writing skills, how they comport themselves in litigation, their integrity, and whether they have the respect of their peers. These are the things that attorneys who have worked with the attorney applicant have direct information about when they're having a discussion about an applicant. The public members bring an equally valid perspective. They know whether the person can connect with people, their character, how they relate to non-attorneys, and whether they can keep the public's respect. Both roles are important in the job of screening judicial applicants.

The current even balance that is set in the Alaska Constitution means that the discussion and decisions are focused on the merits and qualifications of the judicial applicants. Neither group can ignore the other's views because there has to be consensus among four members in order to have action. These groups have to work together, and they nearly always do through consensus, she said.

[2:15:08 PM](#)

MS. MEADE directed attention to a document in the packets and highlighted some of the facts about the votes over the 29 years from 1984 through 2013.

Total votes taken on judicial applicants	1,136
Number of votes that were unanimous:	704/1,136 or 62%
Number that were unanimous or "unanimous except for 1" vote:	920/1,136 or 81%
Number in which the Chief Justice voted, usually because of 3:3 tie	68/1,136 or 6%
Number in which CJ voted to send the name to the Governor for consideration:	51/68 or 75%
Number in which the vote was tied, with the attorneys and non-attorneys split:	15/1,136 1.3%
Number of those splits in which the CJ voted to send the name to the Governor for consideration:	7/15 or 46 %
Number of those splits in which the CJ voted with the attorneys, not with the public members:	10/15 or 75% of splits 10/1,136 or .8% of total
Number in which the vote was tied, with attorneys and non-attorneys split, and CJ's vote was with the attorneys not to send the name to the Governor for consideration:	8/1,136 .7% of total

MS. MEADE highlighted some of the facts about the votes over the four years from 2010 through 2013.

Total votes taken on judicial applicants:	201
Number of votes that were unanimous	110/201 or 55%
Number that were unanimous or "unanimous except for 1" vote:	151/201 or 75%
Number in which the Chief Justice voted, usually because of a 3:3 tie:	9/201 or 4.5%
Number of those in which CJ voted to send the name to the Governor for consideration:	4/9 or 44%
Number in which the vote was tied, with the attorneys and non-attorneys split:	7/201 or 3.5%
Number of those splits in which the CJ voted to send the name to the Governor for consideration:	2/7 or 28.5%
Number of those splits in which the CJ voted with the attorneys, not with the	6/7 or 86% of splits

public members: 6/201 or 3% of  
total  
Number in which the vote was tied, with 5/201 2.4% of  
attorneys and non-attorneys split, and CJ's total  
vote was with the attorneys not to send the  
name to the Governor for consideration:

MS. MEADE said that last statistic is probably what the sponsor last week was referring to as a trend, but she would suggest that those five individuals whose names weren't forwarded to the Governor were probably considered not to be qualified for the position for which they applied. She also noted that two of those applications were from the same individual and two different Chief Justices voted not to forward that applicant's name. But with such a small number, it's difficult to think that this should be addressed with something as dramatic as a constitutional amendment, she said.

[2:21:20 PM](#)

The data for the four years from 2006 through 2009 is similar and while it does show a slight bump in the last several years, the numbers are so small that it's hard to conclude that there is a problem that needs to be addressed. There's a lot of data but the facts don't provide evidence that something needs to be done. The [sponsor's] conclusion that the attorneys and non-attorneys are cliques or factions in most of their votes isn't borne out by the statistics that show that just 15 times over the last 29 years were the groups split 3:3.

MS. MEADE addressed the statements last week that people don't know much about what happens with judicial selections and the Judicial Council, and that when a process is mysterious people tend to assume the worst. She relayed that both the Court System and the Judicial Council have become more aware of this over the years and the judicial branch is making a concerted effort to do more outreach such as Supreme Court Live to help people understand more about what goes on. The hope is that more education and understanding will diminish the mystery.

MS. MEADE concluded her comments by stressing that the even balance has worked well, is important to the Court System, and maintains the merit selection of judges.

[2:24:45 PM](#)

SENATOR DYSON offered his view that just because there haven't been more split decisions doesn't get to the heart of the

problem. He asked if she would agree that almost no one has been appointed who hasn't had courtroom experience.

MS. MEADE replied it's fair to say that people who are appointed to a judgeship have at least appeared in court as a lawyer.

SENATOR DYSON responded that his point was that the lawyers on the Judicial Council would have little experience, if any, with an attorney general who didn't have any courtroom experience. He continued to say that people on his end of the political spectrum worry about attorneys on the Judicial Council who might believe that the Constitution needs judicial help to get updated as opposed to the strict constructionist view that it should be done through the rigorous process of amending the Constitution. He said he also worries about laypeople being overwhelmed by those with expertise to the point that it's not possible to compete on a level field. He said he didn't buy the presupposition that three and three puts Council members on the same level; the other consideration is valid to think about.

MS. MEADE responded that she's heard that all the public members on the Council have felt free to express their opinions. Speaking to the balance, she stressed the importance of having to get buy-in from someone on the other side so that one group's views aren't closed off.

SENATOR DYSON pointed out that the attorneys that are in practice and often in court already know the attorneys that are liable to get nominated, whereas the public members are ill equipped to have that same sort of information. It's a legitimate concern, he said.

MS. MEADE clarified that all the members receive voluminous materials on every applicant and do an in-person interview with each applicant. She disagreed that the public members would view themselves as handicapped in terms of receiving information about applicants.

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CHAIR COGHILL expressed hope that she wouldn't think that public members would be less thorough or fair than barred members.

MS. MEADE replied the Court is concerned about imbalance. If one group had a majority and didn't need to listen to the concerns and thoughts of the other group it would have the potential to be unfair.

CHAIR COGHILL offered his perspective that giving public members a little more say could bring a more vibrant discussion. He then asked about the ethical obligation of officers of the court in this area.

MS. MEADE replied officers of the court have an obligation in all their dealings to maintain a sense of integrity, honesty, and fairness. With respect to this process, that means that the attorneys are obligated to be honest in their votes based on the true qualifications of an applicant.

CHAIR COGHILL offered his perspective that as an outsider there appears to be collegial peer pressure. He added that he's heard it used that way at least four times in this committee and he believes that's outside the ethical bounds.

MS. MEADE clarified that the three attorney members are not judges, they can't work for the state, everyone they screen is an attorney, and the majority of the applicants are rejected as not the most qualified. She said it isn't the case that the lawyers vote to put up only the names of other lawyers because everyone who applies is a lawyer. They simply talk about the individual lawyer applicants with the private members so the professional courtesy argument doesn't enter.

[2:35:45 PM](#)

CHAIR COGHILL indicated he would ask the Council if there are protections for an attorney member who talks to a judicial applicant and then has to practice in front of that judge.

MS. MEADE said the Chief Justice has voted 15 times in the circumstance of a tie vote, but often and in recent years the majority of the votes were to say "no" on other sitting judges. It's not the case where the Chief Justice feels pressure to put the names of another judge forward to the Governor. The data shows that it happens the other way.

CHAIR COGHILL said he's hopes she wasn't saying that the public members would be particularly susceptible to scandal whereas the barred members would not.

MS. MEADE said she was trying to say that sitting judges are by and large scandal free which is an indication that the system has been working fairly well.

[2:38:42 PM](#)

BILL GORDON, representing himself, Fairbanks, Alaska, urged caution in putting forward an amendment to the Alaska Constitution when the current system is working well. He said Alaska enjoys the best judiciary in the nation and the reputation is well deserved. He provided his background that included a six-year term as a non-attorney member of the Judicial Council, and the current Governor's appointee as a non-attorney member of the Alaska Bar Association, which is the body that selects the attorney members to the Judicial Council. From this broad perspective on the selection of judges in the state, he encouraged the legislature not to take lightly the process that is working very well today.

He submitted that the process that the Judicial Council uses encourages input and allows the public many opportunities to affect the nomination of judicial applicants. He described the Judicial Council as the de facto human resources department for the judiciary that follows a strict public process in reviewing applicants. He stressed that the Council members dedicate incredible amounts of time to accomplish this task.

MR. GORDON said the characterization of the deliberations of the Council as a dance between weighing the interests of the non-attorney members against those of the bar couldn't be farther from the truth. His experience is that the six attorney members he served with were Alaskans first. They are also members of the public and happen to have valuable legal experience. Any aspersion that they were there to promote their professional gain was nonsense, and not to have them equally represented on the Council would be shortsighted, he said.

The Council records will show that the attorney members and non-attorney members vote very similarly, and this is particularly true on the "yes" votes to pass a name on to the governor, he said. On the rare occasion when there is a division, it's probably on a vote regarding candidates that don't quite qualify as the best of the panel.

MR. GORDON observed that increasing the membership on the Council by 50 percent, as the CS proposes, would make a difficult process much more cumbersome and may even lead to a drop in the quality and quantity of applicants. It certainly would increase the costs. He suggested the committee consider changing the makeup to two attorneys and four public members if, in fact, the purpose is to give non-attorney members leverage equal to twice the voice of their attorney counterparts. At

least the process wouldn't be affected and the costs wouldn't increase, he said.

MR. GORDON concluded that in his 40 years of experience with the judicial selection process, he was confident that the system was not in need of changes. Any change should be supported by facts and offer a clear and defined purpose. Any proposal advocating additional costs and inefficiency should clearly define a problem severely in need of fix. SJR 21 does not meet these standards and should not pass from committee.

[2:50:19 PM](#)

CHAIR COGHILL thanked Mr. Gordon for his service.

[2:51:11 PM](#)

DAVID LANDRY, representing himself, Anchorage, Alaska, testified in opposition to SJR 21. He described the legislation as a solution in search of a problem. The concerns expressed by the sponsor don't rise to the level of needing a constitutional amendment, he said. The statistics indicate that that the system is working well. He urged the committee to hold SJR 21 in committee.

[2:53:09 PM](#)

JAMES CANNON, representing himself, Fairbanks, Alaska, said he was a licensed attorney who served for six years on the Judicial Council and he believes the system works very well. He described the composition as having a bit of genius, and urged the committee to read the minutes from the Constitutional Convention about why the Council was made up this way. The purpose was to get to the Governor the best candidates. The founders of the constitution understood that the governor was one of two people elected by the whole people of the state of Alaska. If politics were important, the governor had a limited means of imposing that through the people that he/she nominated to the Judicial Council. "This amendment would throw that out of whack," he said.

MR. CANNON said he served on the Council with three Chief Justices and, in his experience, they usually voted with the public members. He urged the committee to hold SCR 21 in committee.

DEBORAH O'REGAN, Executive Director, Alaska Bar Association, noted that she submitted written testimony about the process.

CHAIR COGHILL said he would distribute it to committee members.

2:59:50 PM

CHAIR COGHILL announced he would hold SJR 21 in committee for further consideration.

3:00:32 PM

There being no further business to come before the committee, Chair Coghill adjourned the Senate Judiciary Standing Committee meeting at 3:00 p.m.