ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE
February 24, 2014
1:31 p.m.

MEMBERS PRESENT

Senator John Coghill, Chair
Senator Lesil McGuire, Vice Chair
Senator Fred Dyson
Senator Donald Olson
Senator Bill Wielechowski

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 108
"An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 171
"An Act relating to multidisciplinary child protection teams; and relating to investigation of child abuse or neglect."

- 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

PREVIOUS COMMITTEE ACTION

BILL: SB 108
SHORT TITLE: LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS
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, FIN
02/24/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 171
SHORT TITLE: MULTIDISCIPLINARY CHILD PROTECTION TEAMS
SPONSOR(s): SENATOR(s) COGHILL

02/12/14	(S)	READ THE FIRST TIME - REFERRALS
02/12/14	(S)	JUD
02/24/14	(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)
02/21/14	(S)	Heard & Held
02/21/14	(S)	MINUTE(JUD)
02/24/14	(S)	JUD AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

CHUCK KOPP, Staff
Senator Fred Dyson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced SB 108 on behalf of the sponsor.

RYNNIEVA MAAS, Staff
Senator John Coghill
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Introduced SB 171 on behalf of the sponsor.

JAN RUTHERDALE, Chair
Children's Justice Act Task Force
Juneau, Alaska
POSITION STATEMENT: Provided supporting testimony on SB 171.

SUZANNE DIPIETRO, Executive Director

Alaska Judicial Council
Alaska Court System
Anchorage, Alaska
POSITION STATEMENT: Testified on SJR 21 and described the duties and function of the Alaska Judicial Council.

FRITZ PETTYJOHN, representing himself
California
POSITION STATEMENT: Testified in support of SJR 21.

ALEXANDER O. BRYNER, representing himself
Anchorage, Alaska
POSITION STATEMENT: Testified on SJR 21 and urged caution in changing the composition of the Alaska Judicial Council.

ELAINE ANDREWS, representing herself
Anchorage, Alaska
POSITION STATEMENT: Testified in opposition to SJR 21.

MICHAEL PAULEY, Alaska Family Action (AFA)
Alaska Family Council (AFC)
POSITION STATEMENT: Testified in support of SJR 21.

TENA WILLIAMS, representing herself
Ketchikan, Alaska
POSITION STATEMENT: Testified in opposition to SJR 21.

ACTION NARRATIVE

1:31:37 PM
CHAIR JOHN COGHILL called the Senate Judiciary Standing Committee meeting to order at 1:31 p.m. Senators Wielechowski, Dyson, Olson, and Chair Coghill were present at the call to order.

SB 108-LIMIT PUBLIC ACCESS TO CRIMINAL RECORDS

1:32:46 PM
CHAIR COGHILL announced the consideration of SB 108. "An Act relating to the confidentiality of certain records of criminal cases; and providing for an effective date." This was the first hearing.

1:32:54 PM
SENATOR DYSON, sponsor of SB 108, informed the committee that this was one of several criminal justice issues he's worked on

for several years. The bill says that a person whose case never went to trial or one that resulted in acquittal would have their case removed from CourtView after 90 days. The records would still be available to attorneys and law enforcement, but would not be available to the public.

He reported that he's tried to get the last two attorneys general and the Department of Law to take on the task of updating the criminal justice code, but on this issue there had been no progress. He directed attention to a handout in the packet from the Alaska Justice Forum that talks about this issue.

CHAIR COGHILL recognized that Senator McGuire joined the committee.

1:37:23 PM
CHUCK KOPP, Staff, Senator Fred Dyson, introduced SB 108 speaking to the following sponsor statement: [Original punctuation provided.]

> SB 108 seeks to strengthen privacy and liberty interests of persons by designating *confidential* (as defined in Administrative Rule of Court 37.5) certain court records associated with dismissed and acquitted charges. SB 108 would make court records of a criminal case *confidential* if 90 days have elapsed from the date of acquittal or dismissal, and 1) the person was acquitted of all charges filed in the case; 2) all criminal charges against the person have been dismissed; or 3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.
>
> SB 108 does not pose any restriction to police and prosecution ability to access arrest records and charging documents. It does not remove information in the federal National Crime Information Center (NCIC) database, or in the Alaska Public Safety Information Network (APSIN) state database, and would not render information already in the public domain *confidential*. CourtView, the Alaska Trial Courts online publicly accessible database, provides exceptional access for persons seeking information on the status of criminal and civil cases, the nature of criminal charges filed against persons, and the final outcome of litigation. CourtView indefinitely shows arrest and charging

documents for persons who were never convicted or incarcerated, and is an unrestricted site allowing anyone to use the database to screen any person, for any reason. In spite of CourtView user warnings that a charge is not to be considered a conviction, this public posting of a person's name and charges has had significant deleterious effects on employment prospects, ability to find housing, and other professional and personal opportunities of many Alaskans.

By very definition, a person is not a criminal if acquitted at trial, or if their case is dismissed by the prosecution and not refiled in a timely manner. In American jurisprudence, we are all to be considered innocent until proven guilty. SB 108 strengthens this maxim of presumption of innocence by treating as *confidential* court records associated with dismissed and acquitted charges.

MR. KOPP provided the following sectional analysis:

Section 1
Amends AS 22.35 by adding a new section, AS 22.35.030. *Records concerning criminal cases resulting in acquittal or dismissal confidential*.
This section establishes that a court record of a criminal case is confidential if 90 days have elapsed from the date of acquittal or dismissal and (1) the person was acquitted of all charges filed in the case; (2) all charges against the person have been dismissed; or (3) the person was acquitted of some of the charges in the case, and the remaining charges were dismissed.

Section 2
Adds a new section to AS 22.35 which establishes the Applicability of the Act to criminal charges concluded on or after the effective date of the Act by dismissal or by acquittal of the defendant.

Section 3
Act takes effect July 1, 2014.

1:41:43 PM
SENATOR WIELECHOWSKI asked how this would work in the case of an appeal.

MR. KOPP replied the case information would be on CourtView during the entire appeal process.

SENATOR MCGUIRE summarized the case of Nancy Means. On Black Friday this 18-year-old young woman was out shopping with her friends who were age 17. When Ms. Means' car became disabled, she pulled to the side of the road to look for help. A police officer stopped and rather than giving assistance he proceeded to ask a series of questions. When the questions became invasive, Ms. Means asserted her constitutional rights and refused to answer any further questions. At that point, the officer administered a walking test and arrested her on suspicion of DUI. When Ms. Means was tested at the police station she blew a blood-alcohol-content of 0.00. Since this incident occurred, she's been fighting to get it expunged because the record says she was arrested on suspicion of DUI, regardless of the facts to the contrary.

SENATOR MCGUIRE asked if the bill would apply to Ms. Means' case because it's not really an acquittal or a dismissal.

MR. KOPP offered his belief that the bill would apply to Ms. Means because dismissals include those charges when the district attorney declines to issue an indictment.

1:45:08 PM
SENATOR MCGUIRE said she'd like that on the record, because she wanted these kinds of cases covered.

MR. KOPP reiterated his belief that the bill would apply in that sort of circumstance.

CHAIR COGHILL said he'd like that question answered definitively when the bill was brought forward again.

SENATOR DYSON expressed hope that if the Department of Law had any concerns with the bill that they'd agree to meet and discuss the matter before the next hearing.

SENATOR WIELECHOWSKI said he'd heard from many constituents who have had this problem and he appreciated that the sponsor was addressing it. He expressed interest in having a discussion about both sides of this issue, because this was impacting a lot of Alaskans in an adverse way.

1:48:11 PM

CHAIR COGHILL said the Court System and the Department of Law would be asked to speak to the bill in a subsequent hearing. He stated that he would hold SB 108 in committee for further consideration.

SB 171-MULTIDISCIPLINARY CHILD PROTECTION TEAMS

1:49:28 PM
CHAIR COGHILL announced the consideration of SB 171. "An Act relating to multidisciplinary child protection teams; and relating to investigation of child abuse or neglect." He noted that there was a work draft committee substitute (CS) and Ms. Moss would speak to it.

1:49:50 PM
RYNNIEVA MAAS, Staff, Senator John Coghill, introduced SB 171 on behalf of the sponsor. She spoke to the following sponsor statement:

> The Child Justice Act Task Force requested this legislation to clarify there are child abuse cases that may not involve the Office of Children's Services (OCS) and the law is gray on whether or not a multidisciplinary investigative team can function under state statute without the involvement of OCS.
>
> An example of such an investigation would be a case in which one parent sexually abused a child and the other parent discovers the situation, reports the sexual abuse, removes the child from physical contact of the other parent, and the offending parent is arrested.
>
> [Multi-disciplinary teams] MDT's do conduct such investigations currently but there is some disagreement about whether or not this is occurring within the boundaries of the law. SB 171 takes uncertainty away.

MS. MOSS reviewed the bill sections:

> **Section 1.** Current interpretation of this statute is the Office of Children's Services must establish a MDT, even though in many cases OCS is not involved with a child abuse case that involves sexual abuse. This section expands the ability to recruit a MDT to assist law enforcement in criminal investigations that involve an alleged crime against a child.

Sec. 2. This section was modified to clarify who is usually part of the MDT team and lists who can be invited to be on the MDT permanently or as needed for the particular matter in an investigation.

We have added a representative of an Indian tribe if applicable; not just someone familiar with ICWA as was the old language and have included in the list of invitees a representative from Division of Juvenile Justice.

Sec. 3. This section was modified to clarify other members of the MDT can refer cases to the MDT, not just OCS. It also updates the statute to provide that confidential records in a CINA case shall be provided to members of the MDT.

Sec. 4. Mandates monthly meetings.

Sec. 5. Cleanup language to clarify the goal is to avoid duplicative interviews.

Sec. 6. Clarifies investigations and interviews can be conducted by investigative agencies other than OCS.

CHAIR COGHILL highlighted that the legislature helped establish child advocacy centers where these multi-disciplinary teams work. The purpose of the bill is to ensure that a child is not re-traumatized, and these teams are the best way to achieve that goal.

MS. MOSS reported that these multi-disciplinary teams were established by statute in 1998 in House Bill 375. Then private citizen John Coghill waited for two days to testify on that piece of legislation and "it put the fire in his belly to run for office," she said.

CHAIR COGHILL agreed that was the genesis of his political career.

1:55:17 PM
JAN RUTHERDALE, Chair, Children's Justice Act Task Force, pointed out that there are two functions of the MDTs: 1) investigatory and 2) review of ongoing OCS cases. The bill clarifies that in those cases where OCS is not involved the protections of the statute still apply when law enforcement does

an investigation. In the second function, OCS may find it needs the assistance of a multi-disciplinary team after it has filed a petition that is working its way through court so they refer the case to a MDT. In another circumstance, there may be people on the MDT that are concerned about how a case is progressing and they may refer the case to the MDT.

CHAIR COGHILL commented that MDTs are able to break through the silos in the various departments that all have authority to deal with the child.

SENATOR DYSON said he worked very hard to introduce child advocacy centers and their genius is that they greatly reduce the impact on a child. They've resulted in better cases going forward.

1:59:02 PM
SENATOR DYSON moved to adopt work draft CS for SB 171, labeled 28-LS1416\U, as the working document.

CHAIR COGHILL found no objection and announced that Version U was adopted.

He announced that he would hold SB 171 in committee for further consideration.

SJR 21-CONST. AM: MEMBERSHIP OF JUDICIAL COUNCIL

2:00:29 PM
CHAIR COGHILL announced the consideration of SJR 21. "A resolution 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." This was the third hearing. [CSSJR 21, Version N, was before the committee.]

2:01:17 PM
SUZANNE DIPIETRO, Executive Director, Alaska Judicial Council, explained that the Judicial Council is involved in three areas of government in Article 4 of the Alaska Constitution. The first is to screen applicants for judgeships based on qualifications and forward at least two names to the governor for appointment. Then the Judicial Council evaluates the performance of sitting judges and provides that information to voters for use in retention elections. These functions work together as part of the merit selection system. The third responsibility is to conduct studies to improve the administration of justice.

Examples of these studies include the effectiveness of therapeutic courts, the child protection case processing system, the number and effectiveness of domestic violence protective orders, criminal sentencing, recidivism, and outcomes in felony case processing.

MS. DIPIETRO directed attention to the packet she provided that includes information about the current members of the Alaska Judicial Council all of whom serve staggered six-year terms. The current members are Ken Kreitzer from Juneau, Kathleen Tompkins-Miller from Fairbanks, Aimee Oravec from Fairbanks, Julie Willoughby from Juneau, James Torgerson from Anchorage, and Dave Parker from Wasilla.

She discussed the merit selection and retention process. The idea, which is enshrined in the constitution, is that a group of six citizens, chaired by the chief justice, screen applicants and then send the names to the governor who makes the appointments. Then the people are involved through a straight up or down popular vote on the retention of those judges that were selected. The founders thought that the balance between selection and retention was very important. The genius is that it provides a role for the executive, the legislative, the legal profession, and the public directly. She stressed that this was the gold standard in the nation for selecting judges.

2:05:17 PM
MS. DIPIETRO discussed the way that the merit selection system is implemented. When the Judicial Council is notified of a judicial vacancy, it sends out a press release and notice to all members of the Alaska Bar Association inviting them to apply. Applicants are given about a month to complete the lengthy application. It must include three professional and two character references, contact information for every legal and non-legal employer, legal and non-legal education, community service, Bar Association service, trials in the last five years with contact information for the judges and attorneys they worked with and against in those trials, and the type of practice. The Judicial Council also looks for grievances filed with the Bar Association, civil and criminal charges or lawsuits, credit reports, and moving violations. If the candidate is already a judge the Council looks at whether any discipline has been filed with the Judicial Conduct Commission. The investigation is exhaustive and comments are solicited from the public throughout the process. Having such a robust public component is unique in the country, she said.

MS. DIPIETRO explained that the Judicial Council then surveys Bar Association members, based on their direct professional experience, about the applicants. The questions center on specific areas known to correlate to being a good judge. Those are legal ability, temperament, integrity, fairness, and suitability of experience. The results of these surveys are public, which is also unique. She pointed out the Rule 8.2 of the Alaska Rules of Professional Conduct explicitly states that a lawyer shall not make a statement about the qualifications or integrity of a judicial candidate that the lawyer knows is false or is reckless. The need to be honest is stressed throughout the process and a violation of this rule could result in discipline, she said.

The survey results are published and the Judicial Council then sets a meeting date for each applicant in the place where the vacancy is located. The reason for this is to hear from the people in that location about what they think about the candidate and/or the qualities they thing the Judicial Council members should take into account when selecting a judge for their community. She highlighted that this was an important part of the process and one that is not necessarily replicated in other nominating commissions.

MS. DIPIETRO said the Council members generally receive more than 100 pages of information about each applicant before the meeting. Reports from members indicate that preparation time often takes longer than the interview itself. The interview process takes about 45 minutes and can be open to the public if the candidate requests that. After the interview, the Council undertakes a very deliberate and thorough process in which each member is called upon to speak to their impressions and views of each candidate.

2:12:11 PM
SENATOR WIELECHOWSKI asked if Alaska judges must be attorneys.

MS. DIPIETRO replied a magistrate judge is not required to be an attorney.

SENATOR WIELECHOWSKI asked if most superior court judges and superior court justices are attorneys.

MS. DIPIETRO replied all state supreme court, superior court, and district court judges must be attorneys.

SENATOR WIELECHOWSKI asked if there was a correlation between higher Bar Association scores and those who are ultimately nominated.

MS. DIPIETRO affirmed that applicant with a score of 3.5 or higher is statistically more likely to be nominated.

SENATOR WIELECHOWSKI asked if there was an analysis to determine whether or not those who have higher survey ratings ultimately have higher performance evaluation ratings when they stand for retention.

MS. DIPIETRO affirmed that that higher bar survey scores during the selection process correlate to higher scores in the judicial evaluation process.

SENATOR WIELECHOWSKI asked if there is a correlation between writing samples and higher retention scores.

MS. DIPIETRO affirmed that having a writing sample that is scored as excellent is more closely correlated with higher retention scores than those who had lower writing scores.

CHAIR COGHILL asked what those scores are based on.

MS. DIPIETRO relayed that they're based on grammar, syntax, clarity of ideas, conciseness, and quality of legal analysis.

CHAIR COGHILL asked if it would be akin to English teachers grading English papers.

MS. DIPIETRO answered yes.

CHAIR COGHILL asked if it's an elitist process in the sense that only certain people will have their writing samples scored.

MS. DIPIETRO explained that the staff member who administers the writing sample does the assessment, but the Council members also have copies of the writing samples so they're able to agree or disagree with the assessment.

2:16:41 PM
MS. DIPIETRO directed attention to handout materials showing data on selection votes: about 81 percent of the time the votes are either unanimous or nearly unanimous; splits between attorney and non-attorney members occurred only 15 times in 1,136 votes, less than two percent of the time; the chief

justice votes just six percent of the time; when the chief justice does vote he/she has voted yes to forward the name in question to the governor 75 percent of the time; in about 73 percent of all judicial selections, the Council has forwarded more than two names to the governor; and many of the instances in which the Council forwards fewer names occurs in vacancies in small rural areas that have just two applicants.

MS. DIPIETRO said that while it's accurate that there have been five chief justice votes in the last two years, that data out of context doesn't take into consideration that there have been a lot more votes in the past few years. She directed attention to a chart showing that the percentage of chief justice votes compared to total votes hasn't varied very much. In fact, the chief justice voting rate in the past two years has been around four percent, which is less than the historical average of six percent, she said.

MS. DIPIETRO said she wasn't taking a position on SJR 21 because the Judicial Council hadn't met to talk about that, but she thought it was important to remember the concerns that were voiced during the Constitutional Convention when the founders decided on the merit selection system. She cited the following excerpts from the minutes of the Constitutional Convention:

> The theory is you have a select group. The lawyers know who are good and they know who are bad. The laymen represent in substance the public.
>
> The whole theory plan is that in substance a select professional group, licensed by the state can best determine the qualifications of their brothers. The intent of the Missouri plan was in substance to give a predominance of the vote to professional men who knew the foibles, the defects, and the qualifications of their brothers. It is unquestionably true that in every trade and in every profession, the men who know their brother careerists the best are the men engaged in the same type of occupation.

MS. DIPIETRO said the theory was to have an equal balance of public and lay members. Names are submitted to the governor so there is executive branch participation, and then the public participates directly in the retention vote.

2:21:07 PM

MS. DIPIETRO concluded her comments giving information about how other states address this issue. About 38 other states use judicial nominating commissions and 18 of those states have an equal number of attorney and non-attorney members. A few states have more non-attorney members as SJR 21 proposes, but those states typically have a restriction on the total number of members that can be a member of a particular political party. For example, Arizona has 10 non-attorney members on its judicial nominating commission, but only five of them can be of the same political party. There are five attorney members and only three can be of the same political party. The states that have imbalance try to impose balance through other mechanisms, she said.

CHAIR COGHILL stated agreement with the focus of SJR 21 which is to try to find a better regional balance with public members.

SENATOR DYSON asked if anybody had correlated the two different schemes to the crime rates and recidivism rates or cases overturned on appeal.

MS. DIPIETRO said she didn't know.

2:23:19 PM
CHAIR COGHILL opened public testimony.

2:23:49 PM
FRITZ PETTYJOHN, representing himself, said he's been a member of the Alaska Bar Association for 30 years, and he's never understood why the Bar Association is given such control over a branch of government. He disputed that Bar surveys are a good way to measure merit and cited examples to illustrate that personal opinions and politics get involved. He offered his opinion that the judicial system has a bias in favor of its own power and it sets up a conflict with other branches of government. He relayed that he's been a resident of the state of California for 13 years and because he's still a member of the Alaska Bar Association he is able to vote on judicial applicants, but non-attorney residents of Alaska can't vote on them. He concluded his comments stating that while lawyers have a role to play, the decisions should be made by members of the public.

SENATOR OLSON asked why he didn't bring the issue forward in the 70s and 80s when he was a member of the legislature.

MR. PETTYJOHN replied he would have done it if he thought he could have gotten a two-thirds vote.

2:27:45 PM
ALEXANDER O. BRYNER, representing himself, Anchorage, Alaska, said he had an extensive history as an attorney and judge in Alaska and he believes that Alaska has a flagship system of judicial selection. It can be improved, but it's based on constitutional principles that the founders adopted carefully and with full knowledge of what they were doing, he said. The intent was to move away from the territorial system of judicial selection that resulted in judges who were beholden to vested interests that didn't reflect the interests in Alaska. He stressed that the system has worked well over time and that nothing is broken that needs a constitutional fix.

JUSTICE BRYNER said he agrees that there is a need to increase public participation in the process, but that it can be structured within the existing system. He concluded that enlarging the body of public members would be difficult logistically.

2:38:18 PM
ELAINE ANDREWS, representing herself, Anchorage, Alaska, said she is a retired superior court judge testifying in opposition to SJR 21. She relayed that in the past she has worked for the Judicial Council that screens judges, served as a judge, and sat in judgment on other judges as a member of the Judicial Conduct Commission. From this unique perspective she can say that Alaska has the finest judiciary in the country and that the merit selection process works because it is not driven by partisan politics. She stressed that the system does not need to be changed, but conceded that the manner in which it is implemented may need more attention from those who justifiably speak for more diverse public input.

JUDGE ANDREWS pointed out that the founding fathers thought that the public members could be valuable in the merit evaluation, but should not be given the deciding vote in a tie situation. The tie-breaking vote was given to the chief justice who historically has cast his/her vote a comparatively small number of times. In the rare instances that the chief justice breaks a tie, she said it's important to remember that that chief justice was selected by the governor who was elected by the people.

She further pointed out that the governor is given considerable political sway in the judicial selection process. The governor

selects the public members and the governor gets to make a political selection among the most meritorious of the candidates. She said the public is involved throughout the process through the public members on the Council, solicitation of input from the public on the candidates, public hearings where the public is invited, and - if the candidates so choose - the public can attend their interview by the Council. She offered her belief that Alaska gives its citizens more information on judicial candidates and judges than any other state in the country.

JUDGE ANDREWS expressed concern that SJR 21 was a poorly veiled attempt by a narrow outside money interest to try to hijack the Alaska judiciary for its own purposes. She said that a recent lawsuit claiming that the Judicial Council selection and retention practices violated the U.S. Constitution was thrown out, but SJR 21 was essentially that lawsuit reformulated. She suggested the committee look to see who was funding the lobbyists pushing this legislation. She emphasized that her interest is in having fair and impartial courts that are made up of the best lawyers that can be found for each position. The Judicial Council has always delivered on the promise to give only the names of the highest caliber to the governor who then can select on any basis he/she chooses. She said she's been in Alaska long enough to see administrations dominated by either republicans or democrats, but the courts have always remained outside the partisan, political battles. SJR 21 attempts to change that balance and throws the court into a political stew in violation of the wisdom of the constitutional drafters. She urged the committee members to follow their oath of office to uphold and defend the Alaska Constitution, because SJR 21 does neither.

2:47:54 PM
MICHAEL PAULEY, Alaska Family Action (AFA), explained that AFA was the legislative advocacy arm of the Alaska Family Council (AFC). He said that AFC supports the goal of SJR 21 to increase public involvement in the process by which judges in Alaska are selected, evaluated, and retained. He cited other states that vary widely in the number of persons who serve on judicial nominating commissions to illustrate that the original proposal in SJR 21 to have a 16 member Judicial Council was hardly radical or untried and that the proposed 10-member council was mainstream.

MR. PAULEY said that AFC believes that the most important issue that SJR 21 addresses is the proportional representation between

those who represent the Alaska Bar Association versus those who represent the general public. He argued that the system wasn't balanced because the attorneys on the Council represent just one half of one percent of the population of the state, whereas the three public members represent the other 731,000 Alaskans who are served by the court system. He said this system shifts enormous power away from the general public and concentrates it in the hands of those who make a living practicing law in front of judges.

He opined that adding more public members would provide a valuable check on the ability of Bar Association members to vote as a block to prevent clearly qualified judicial applicants from being nominated for the governor's consideration. He discussed the tie votes in the last two years and pointed out that tie votes on supreme court candidates weren't that rare. He said that two of the five seats on the Alaska Supreme Court were filled by a process where the attorney members and the chief justice voted as a block to overrule the unanimous choice of the public members, and the public doesn't know why because the deliberations occurred behind closed doors.

MR. PAULEY said that one reason that AFC believes that SJR 21 is good public policy is that it will make those kinds of tie votes rare if not impossible. A larger commission with an odd number of regular voting members is statistically less likely to experience tie votes. He described the language in Section 1.2 as the most important words in the Alaska Constitution and opined that SJR 21 was consistent with that constitutional heritage.

2:54:10 PM
TENA WILLIAMS, representing herself, Ketchikan, Alaska, testified in opposition to SJR 21. She relayed that she served on the Judicial Council for six years and found that the system works well. She said she believes that adding three more public members would bring imbalance and increase the likelihood of factions and divisions that could derail the Council's effectiveness with reverberating consequences. She said that despite what some fear, her experience was that there weren't major divisions between attorney and public members. She stressed that Council members vote their conscience on every applicant and maintained that was never any vote trading or effort to create alliances during her tenure. She said the Judicial Council was designed to keep politics out of the process, and she fears that weighting the membership in favor of governor appointees would introduce partisan politics. This

would have a damaging effect on the quality of the state's judiciary because the best applicants wouldn't necessarily be nominated, just the best-connected.

MS. WILLIAMS stated that during her six-year tenure the Council always acted carefully and deliberately when it made decisions. Each member had an opportunity to ask questions of each applicant and offer their thoughts to the full Council after each interview. Each member had an equal voice. She worried that that might not be the case if the balance is shifted in favor of more executive appointees.

CHAIR COGHILL asked Ms. Williams to submit her comments in writing.

MS. WILLIAMS concluded her comments stating her opposition to changing the makeup of the Judicial Council. She agreed with both Elaine Andrews and Alexander Bryner that there may be room for change, but that SJR 21 wasn't the right way to do it.

2:59:37 PM
CHAIR COGHILL held SJR 21 in committee for further consideration.

3:00:06 PM
There being no further business to come before the committee, Chair Coghill adjourned the meeting at 3:00 p.m.