



RECORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.

James O. Smith
Signature of Camera Operator

11/7/89
Date

ALASKA
COMM. ON
JUDICIAL
CONDUCT



Commission on Judicial
Conduct

303 K STREET
ANCHORAGE, ALASKA 99501
264-0528

LETTER OF TRANSMITTAL

TO: Honorable William Sheffield
Governor of the State of Alaska

Honorable Don Bennett
President of the Alaska Senate

Honorable Ben F. Grussendorf
Speaker of the Alaska House of Representatives

Honorable Jay A. Rabinowitz
Chief Justice
Alaska Supreme Court

Harry Branson
President, Alaska Bar Association

This 1985 Report of the Commission on Judicial Conduct is presented to you for your consideration and review. This report is tendered pursuant to Rule 25 of the Commission on Judicial Conduct.

DATED this 7th day of March, 1986.

COMMISSION ON JUDICIAL CONDUCT

FRANK FLAVIN
EXECUTIVE DIRECTOR

STATE OF ALASKA
COMMISSION ON JUDICIAL CONDUCT
1985 ANNUAL REPORT

Michael M. Holmes, Juneau, Clairperson
Attorney Member

S.J. Buckalew, Anchorage, Superior Court Judge
Judge Member

Milton Souter, Anchorage, Superior Court Judge
Judge Member

Elaine M. Andrews, Anchorage, District Court Judge
Judge Member

Bruce A. Bookman, Anchorage
Attorney Member

Marcus R. Clapp, Fairbanks
Attorney Member

Rev. Charles Dargan, Anchorage
Public Member

Georgianna Lincoln, Fairbanks
Public Member

Charles D. Weiler, Clear
Public Member

TABLE OF CONTENTS

Introduction	1
I. Jurisdiction of the Commission on Judicial Conduct	2
II. Commission Procedures	4
III. 1985 Activities	7
IV. Budget	12
V. 1986 Activities	15
Appendix A: Rules of Procedure for the Commission on Judicial Conduct	16

INTRODUCTION

Complaints from the public about the conduct of judges in Alaska are handled by the constitutionally created Alaska Commission on Judicial Conduct. The Commission provides an open channel for any individual who feels he or she has a legitimate complaint about the conduct of any state judge in Alaska.

In addition to reviewing complaints against judges, the commission helps promote compliance with established codes of conduct for judges. The Commission consists of nine members:

Three justices or judges of state courts elected by fellow justices and judges.

Three attorneys who have practiced law in Alaska at least 10 years. The attorneys are appointed by the Governor from nominations made by the Alaska Bar Association. The appointments must be confirmed by a majority of both houses of the state legislature meeting in joint session.

Three members of the public who are not attorneys, judges or retired judges. The public members are appointed by the governor and must be confirmed by a majority of both houses of the state legislature meeting in joint session.

I. JURISDICTION OF THE COMMISSION ON JUDICIAL CONDUCT

A. Judges Subject to Commission Jurisdiction

An accusation can be filed by a member of the public against a justice of the supreme court, a judge of the court of appeals, a superior court judge, or a district court judge.

Complaints against magistrates can be filed with Magistrate Services, Alaska Court System, 310 K Street, 2nd floor, Anchorage, Alaska 99501. These complaints will be referred to the presiding superior court judge for the applicable judicial district for investigation.

B. Types of Complaints Handled

MISCONDUCT: Alleged judicial misconduct can include but is not limited to:

Improper Courtroom Decorum:

- Improper consideration and treatment of attorneys, witnesses, and others
- Improper or eccentric bench conduct, such as sleeping or drunkenness.
- Persistent failure or refusal to dispose of judicial business promptly, enter orders, or cooperate in court administration.

Improper or Illegal Influence:

- Allowing family, social or political relationships to influence any judicial decision, making appointments or other matters relating to the administration of justice, such as transferring cases or reducing charges.
- Conflict of interest.
- Giving or receiving gifts, bribes, loans or favors.

Impropriety Off the Bench

- Misappropriation or misuse of public employees, property or funds
- Improper comments, accusations, associations, or connections.
- Interference with or influence on a pending or impending lawsuit.
- Lewd or corrupt personal life.
- Use of judicial position to extort or embezzle private funds.

Other Improper or Illegal Activities

- Conducting proceedings or engaging in discussions involving one side or in the interest of one party only.
- Interfering with the attorney-client relationship.
- Improper use of judicial authority.
- Bias.
- Improper campaign activities involving the judge or any political candidate.
- Abusing the prestige of the judicial office.

- Obstruction of justice, perjury, filing a false document.
- Criminal behavior.
- Failure to disqualify self.
- Ticket fixing.

PHYSICAL OR MENTAL DISABILITY: Physical or mental disability can include, but is not limited to:

- Alcohol or drug abuse
- Senility
- Serious physical illness
- Mental illness

II. COMMISSION PROCEDURES

A. Filing a Complaint

To file a complaint, persons may contact the Commission in person, by telephone (collect if long distance), or in writing at:

Alaska Commission on Judicial Conduct
Boney Memorial Court Building
303 K Street, Room 241
Anchorage, Alaska 99501
(907) 264-0528

B. Complaint Investigation

The Commission will review the accusation, a step which usually involves an interview by Commission staff with the person who filed the complaint. The person who has alleged misconduct must submit facts surrounding the incident to the Commission. No accusation will be decided solely on the basis of claims made by the complainant. All allegations will be thoroughly investigated.

The Commission has the authority to initiate its own inquiry into possible judicial misconduct.

After the initial inquiry, the Commission may dismiss the accusation or conduct a full investigation, including formal hearings. An accusation against a judge may be dismissed by the Commission at any time during the investigation, if the charge is found to be without merit.

Accusations filed with the Commission and all Commission inquiries, investigations and hearings are statutorily confidential. If the Commission finds that probable cause exists that a judge has committed an act or acts of misconduct a formal statement of charges is issued. The statement of charges is public information. The results of a Commission proceeding become public when Commission recommendations are announced by the Supreme Court or the Commission issues a public reprimand.

The Commission only has the power to investigate charges of judicial misconduct or disability. After a formal hearing, the Commission may by statute:

- Exonerate the judge of the charge or charges.
- Admonish the judge privately.
- Reprimand the judge publicly or privately.
- Recommend that the Supreme Court take one of the following actions against the judge:

Suspension
Removal
Retirement
Public Censure
Private Censure

The Commission does not have the authority to hear an appeal for judicial error, mistake, or other legal reasons for appeals; that being the role of the state's appellate courts.

The Commission cannot supervise any local court administration, and has no authority to evaluate judges for retention elections.

The Commission may not issue advisory opinions.

III. 1985 ACTIVITIES

A. Summary of Complaints

1. Complaint Filings

1985 Informational Requests	49
1985 Accusations Filed	89
1985 Total Inquiries	138
1984 Accusations Held Over	28
1983 Accusations Held Over	9
1985 Accusations Closed in 1985	50
1984 Accusations Closed in 1985	23
1983 Accusations Closed in 1985	5
Total Accusations Closed in 1985	78
1985 Accusations Pending 12/31/85	39
1984 Accusations Pending 12/31/85	5
1983 Accusations Pending 12/31/85	4
Total Accusations Pending 12/31/85	48
Accusations Pending 01/01/85	37
Accusations Received during 1985	89
Total Accusations Pending during 1985	126

2. Complaint Disposition

Breakdown of Closed Complaints

Not within Commission Jurisdiction	32
Appealable	15
Magistrate/Master	1
Attorney	12
Judge's conduct as an attorney	2
Other (court employee, corrections, etc)	10
Jurisdictional Complaints	
Complainant did not provide further information or withdrew complaint	6
Dismissed after brief investigation	10
Investigated more extensively, then dismissed	27
Judge informally counselled short of Admonishment	1
Judge resigned before/after formal charges filed	0
Judge retired before/after formal charges filed	1
Dismissed after formal hearing	0
Judge died before disposition made	0
Judge privately reprimanded by Commission	1
Judge publicly reprimanded by Commission	1

Judge privately censured by Supreme Court	0
Judge privately admonished by Commission	0
Judge publicly censured by Supreme Court	0
Judge suspended without pay as final sanction	0
Judge fined	0
Judge involuntarily retired	0
Judge removed from office	0
Dismissed after probable cause hearing	0
Dismissed because outside statute of limitations	1
Other	0

3. Comparison with Previous Years

Total Complaints Filed

1985	89
1984	109
1983	69
1982	88
1981	17
1980	18
1979	11
1978	13
1977	8
1976	8
1975	11

Total Complaints Closed

1985	78
1984	96
1983	76
1982	55
1981	17

4. Analysis

Complaint filings were 89, down from 109 in 1984. This resulted in part from a difference in the way the Commission handled informational inquiries. The majority of these were jurisdictional requiring analysis and investigation. The Commission offices were closed to the receipt of complaints from late March through May 1985 due to the exhaustion of budgeted funds. If the Commission offices had not been closed, the complaint filings for 1985 would have been higher.

Additionally, two accusations in 1985 proceeded to formal status, requiring a great deal of staff time in both of those cases.

B. Commission Meetings

The Commission conducted quarterly meetings in Anchorage (twice) and Juneau (once). The usual quarterly meeting scheduled in Fairbanks for July was not held, as the Commission met in late June in Anchorage to consider formal charges concerning a judge.

1985 Quarterly Meeting Locations

January 1985	Anchorage
April 1985	Juneau
June 1985	Anchorage
September 1985	Anchorage

C. Outreach

The Commission utilizes regular radio and television public service announcements, brochures and posters to notify the public of its existence and functioning.

During November 1985, the Commission's Executive Director met with complainants in Fairbanks by appointment following publication of his visit there.

The Commission's Executive Director met with the statewide judicial conference to discuss the functioning of the Commission.

D. Formal Proceedings

The Commission filed formal charges against two judges during 1985. The Commission issued a private reprimand in one case, and a public reprimand in the other.

E. Rules of Procedure

In 1985 the Commission amended its Rules of Procedure. The new rules are more informative and streamlined than the old rules. The Commission's Rules of Procedure are attached as Appendix A to this report.

F. Staffing and Office Hours

The Commission does not employ a full-time staff. Executive Director and legal assistant services are provided on a contractual basis by attorney and former Ombudsman Frank Flavin. Commission offices are staffed by legal assistant Jane Rosenquist from 9:00 a.m. until 12 noon on Mondays, Wednesdays and Fridays. The Commission accepts collect long-distance telephone calls.

IV. BUDGET

A. Budgetary Projections

It has proven difficult to project the budgetary needs of the Commission for two primary reasons:

1. The expanding public knowledge of the Commission's existence and functioning with commensurate increases in workload.
2. The impossibility of predicting when serious complaints requiring full disciplinary hearings and a large expenditure of funds may arise.

Until 1982, the existence and function of the Commission was unknown to most of the public. The Commission maintained a low profile and received and processed only a dozen or so complaints each year.

Since 1982, the number and seriousness of complaint filings has increased, demanding greater and greater expenditures to investigate accusations.

It is also impossible to predict when a complaint requiring a full disciplinary hearing may arise. When this occurs, procedural due process requires that the Commission retain an independent attorney to prosecute the case at the disciplinary hearing and potentially before the Supreme Court. As the Commission's budget is small (less than \$100,000 annually) the expense of proceeding with formal charges could conceivably exceed 50% of the Commission's entire budget.

To date, the Commission has operated on a total budget less than that required for a full-time experienced staff attorney. This situation cannot continue given the rapid increase in workload.

B. FY 85 Budget

Again in 1985, as was the case in 1984, the Commission was forced to close its office from March until May due to the exhaustion of its FY 85 budget. The \$71,200 appropriation proved inadequate to meet Commission expenditures due to the rise in complaint filings and the increase in the number of formal complaints and proceedings.

A supplemental appropriation of \$27,500 enabled the Commission to reopen in late May of 1985. The total Commission expenditures in 1985 were \$98,700.

C. FY 86 Budget

The Commission has been allocated \$69,900 for FY 86. This amount is \$28,800 less than the amount expended in FY 85, and \$1300 less than that budgeted for FY 85. Current projections indicate that these funds will be exhausted by April 1986, making a supplemental appropriation necessary if the Commission is to meet its statutory and constitutional obligations.

D. FY 87 Budget

The budget request for the Commission on Judicial Conduct is \$89,900, which is an increase of \$20,000 over that authorized in FY 86. It is to be noted that a supplemental appropriation of \$22,000 has been requested to keep the Commission office operational through June 1986.

The additional funding is requested to establish the Commission on a full-year basis. Due to the Constitutional Amendment changing the composition and name of the Commission in 1982 the Commission only operated six months in 1983. Since that date the Commission's authorized expenditures have been for less than a full year and supplemental appropriations have been necessary to provide a full year's funding. The requested budget of \$89,900 represents the actual cost of a full year of operation. The actual cost has remained quite consistent for the past three years.

V. 1986 ACTIVITIES

A. Commission Meetings

January 16, 1986	Anchorage
April 25, 1986	Anchorage
July 18, 1986	TBA
October, 1986	TBA

B. Outreach

In 1986, The Commission will continue distributing and broadcasting educational materials explaining its function. An attempt will also be made to communicate the Commission's functions and ethical/conduct standards and problem areas to the Alaska Judicial Council, Alaska Bar Association, and the various judicial conferences and meetings.

APPENDIX A

RULES OF PROCEDURE FOR THE COMMISSION ON JUDICIAL CONDUCT

TABLE OF CONTENTS

- RULE 1 ORGANIZATION OF COMMISSION**
- A. Meeting
 - B. Notice of Meetings
 - C. Officers
 - D. Commission Office
 - E. Quorum
 - F. Voting Requirements
 - G. Order of Business
- RULE 2 POWERS AND DUTIES OF THE COMMISSION**
- A. Annual Report
 - B. Appointment of Executive Director
 - C. Agents or Employees of Commission
- RULE 3 FINANCIAL ARRANGEMENTS FOR COMMISSION**
- A. Compensation Proscribed
 - B. Expenses Allowed
 - C. Authorization for Payments
 - D. Extraordinary Expenses
- RULE 4 DUTIES OF EXECUTIVE DIRECTOR**
- RULE 5 CONFIDENTIALITY OF COMMISSION PROCEEDINGS**
- A. Confidentiality
 - B. Disclosure
 - C. Information Concerning Insufficient Cause
- RULE 6 NOTICE**
- A. General
 - B. Dismissal
- RULE 7 INITIATION AND SCREENING**
- A. Initiation of Accusations
 - B. Screening of Accusations
- RULE 8 PRELIMINARY INVESTIGATION**
- A. Notice
 - B. Right to Counsel
 - C. Investigation
 - D. Subpoena
 - E. Dismissal
 - F. Stay

RULE 9 PROBABLE CAUSE

- A. Probable Cause Determination
- B. Findings and Report
- C. Disposition
- D. Informal Charges

RULE 10 FORMAL DISCIPLINARY HEARING

- A. Special Counsel
- B. Scheduling
- C. Discovery
- D. Factfinder
- E. Conduct of Hearing
- F. Evidence
- G. Amendment of Complaint
- H. Determination
- I. Extension of Time
- J. Hearing Additional Evidence

RULE 11 COMMISSION DECISION

- A. Recommendation
- B. Dissent
- C. No Disciplinary Recommendation
- D. Execution
- E. .Witness Fees

RULE 12 SUPREME COURT REVIEW

- A. Filing and Service
- B. Prompt Court Consideration
- C. Brief and Supplementary Filings

RULE 13 CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL DISABILITY

- A. Procedure
- B. Special Provisions

RULE 1 ORGANIZATION OF COMMISSION

A. Meetings

(1) **Annual.** There shall be one annual meeting on the third Friday in January of each year at the hour of 9:30 a.m. at Anchorage.

(2) **Regular.** Other meetings at designated locations may be held as needed on the third Friday of April, July and October except as otherwise ordered by the Commission.

(3) **Special.** Special meetings may be called by the chairperson or two members of the Commission.

B. Notice of Meetings

(1) **Public.** At least twenty (20) days prior to a Commission meeting, the Executive Director shall cause a notice to be placed in a newspaper of general circulation designated as most likely to give notice to the residents of the State of Alaska and may cause such notice to be published in other newspapers in Alaska. The notice shall clearly advise of the meeting of the Commission, specifying the date, time and place, and shall also state that anyone wishing to appear at the meeting must contact the Executive Director at the Commission office at least five (5) working days before the meeting so that the meeting agenda may include same. Notice of subject matter open to the public shall be stated in the meeting notice.

(2) **Members.** At least twenty (20) days prior to a Commission meeting, written notice of the meeting shall be mailed to each member of the Commission at his address as appears on the Commission records by first class mail. The notice, besides containing the date, time and place of the meeting, shall also include a meeting agenda, so far as it is established at the time of giving notice. Members may waive the giving of notice, such waiver to be in writing, signed by all members, and annexed to the minutes of such meeting.

C. Officers.

(1) **Chairperson.** There shall be a chairperson and a vice-chairperson elected at the annual meeting, who shall serve for a period of two years. The chairperson shall conduct the meetings, certify Commission recommendations and direct the preparation of meeting agendas, notices, reports, minutes and the keeping of Commission records. The Vice-chairperson shall act in the absence of the chairperson.

(2) **Secretary.** The chairperson shall appoint a secretary for the Commission, who need not be a member of the Commission. The secretary shall attend all meetings of the Commission, take roll, keep minutes, issue subpoenas, prepare, serve and publish

notices, and otherwise serve at the pleasure of the chairperson.

(3) **Executive Committee.** The chairperson may appoint an executive committee to perform matters of administration as from time to time are designated by the Commission.

D. Commission Office. The Commission may establish a permanent office in a building open to the public. The office may be open and staffed at announced hours.

E. Quorum. No official action may be taken by the Commission unless a quorum of at least a majority of the members serving on the Commission are present at the meeting.

F. Voting Requirements. Any act of the Commission requires a concurrence of a majority of the members serving on the Commission at the time the act is taken.

G. Order of Business. The order of business of the Commission shall be determined by the chairperson in advance of each meeting. The meetings shall be ordered to encourage attendance by the public, where confidential matters are not to be considered.

RULE 2 FUNCTIONING OF THE COMMISSION

A. Annual Report. Prior to the annual meeting, the Executive Director shall prepare an annual report of the Commission's activities for presentation at such meeting. Upon approval of the Commission, a copy of the annual report shall be forwarded to the Governor, President of the Senate, Speaker of the House, Chief Justice, the State Publications Distribution and Data Access Center and President of the Alaska Bar. This report shall be presented to the public.

B. Appointment of Executive Director. The Commission may appoint to serve at its pleasure an Executive Director who shall not serve in a judicial capacity.

C. Agents or Employees of Commission. The Commission is authorized to employ such persons as may be appropriate to carry out its function, including but not limited to attorneys, accountants, and investigators.

RULE 3 FINANCIAL ARRANGEMENTS FOR COMMISSION

A. Compensation Proscribed. The Commission members shall serve without compensation for their services.

B. Expenses Allowed. Commissioners shall be reimbursed for expenses necessarily incurred in the performance of their duties.

C. Authorization for Payments. Expenses of the Commission shall be authorized to be paid in accordance with the approved Commission budget.

D. Extraordinary Expenses. In the event of an unanticipated funding shortfall, the Commission shall not curtail the discharge of its constitutionally mandated operations, but shall authorize the Executive Director to seek a supplemental appropriation.

RULE 4 DUTIES OF EXECUTIVE DIRECTOR

The Commission shall prescribe the duties and responsibilities of the Executive Director, which may include the authority to:

- (1) Consider information from any source and receive allegations and complaints;
- (2) Make preliminary evaluations;
- (3) Screen complaints;
- (4) Conduct investigations;
- (5) Maintain and preserve the Commission's records, including all complaints, files and written dispositions;
- (6) Maintain statistics concerning the operation of the Commission and make them available to the Commission and to the court;
- (7) Prepare the Commission's budget for its approval and administer its funds;
- (8) Employ and supervise other members of the Commission's staff;
- (9) Prepare an annual report of the Commission's activities, and
- (10) Employ, with the approval of the Commission, special counsel, private investigators or other experts as necessary to investigate and process matters before the Commission and before the court, and
- (11) Issue subpoenas.

RULE 5 CONFIDENTIALITY OF COMMISSION PROCEEDINGS

A. Confidentiality. All proceedings, records, files, and reports of the Commission shall be confidential and no disclosure shall be made except as permitted by A.S.22.30.060.

B. In order to preserve public confidence in the administration of justice the Commission, in its discretion, may issue one or more announcements confirming or denying the existence of accusations before it, clarifying the procedural aspects, or explaining the right of a judge to a fair hearing when: 1) a judge has been charged pursuant to Rule 9c(4) of these Rules, or 2) the subject matter of a proceeding is generally known to the public.

C. In any instance where accusations against a judge have been considered by the Commission and it has been determined that there is no basis for the filing of the charges or for further proceedings before the Commission, the Commission may, at the request, or with the approval of the judge, issue an explanatory statement.

D. If a judge retires or resigns from judicial office following the filing of a Complaint pursuant to Rule 9c(4) of these Rules, the Commission may, in the interest of justice or to maintain confidence in the administration of justice, publicly release information concerning the investigation and proceedings.

E. Upon completion of an investigation or proceeding, the Commission shall disclose to the person filing an accusation against the judge that after an investigation of the charges the Commission (i) has found no basis for action against the judge, (ii) has taken an appropriate corrective action, the nature of which shall not be disclosed, or (iii) has filed a recommendation with the Supreme Court.

F. The Commission may, from time to time, issue press releases and other public statements explaining the nature of its jurisdiction, procedure for institution of accusations, limitations upon its powers and authority, and reports on the conduct of the affairs of the Commission, providing that such releases and reports shall not identify by name, position, or address the identity of any judge or other person involved in any inquiry before the Commission unless such disclosure is otherwise provided for in A.S.22.30.060 and these Rules.

RULE 6 NOTICE

A. General. Unless otherwise specified, notice when required by these rules shall be given by prepaid certified or registered mail, addressed to the judge.

B. Dismissal. The Executive Director shall furnish the Commission with a report of each dismissal at the next meeting following the dismissal. The complainants, if any, and the judge, if the judge has been given notice thereof, shall be informed, in writing, of the dismissal (pursuant to Rule 5E of these Rules) and that the dismissal will be reviewed by the Commission at its next meeting.

RULE 7 INITIATION AND SCREENING

A. Initiation of Accusations

(1) An accusation relating to the conduct or physical or mental disability of a judge may be initiated upon any reasonable basis, including complaints made by judges, lawyers, court personnel, or members of the general public.

(2) The Commission may on its own motion make inquiry with respect to whether a judge is guilty of misconduct in office or is physically or mentally disabled.

B. Screening of Accusations. The Executive Director based upon information received from any source concerning any matter within the Commission's jurisdiction, or upon receiving a statement alleging any such matter, shall make a determination as to whether the information or statement is jurisdictional and not frivolous.

If the Executive Director determines that the matter is not jurisdictional or is frivolous, the accusation shall be dismissed and the judge need not be notified of the accusation or the action taken by the Commission.

If the Executive Director determines that the matter does not meet any of the foregoing conditions the Executive Director shall make a preliminary investigation to determine what further action should be taken, if any, and whether formal proceedings should be instituted.

RULE 8 PRELIMINARY INVESTIGATION

A. Notice. If a preliminary investigation is undertaken, the judge shall be served with a notice of the investigation, the nature of the charge, and the name of the person making the statement, if any, or that the investigation is on the commission's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as the judge may choose.

B. Right to Counsel. The judge shall be entitled to counsel of the judge's own choice.

C. Investigation. Under guidelines approved by the Commission, the Executive Director shall determine whether there exists sufficient basis to proceed to a probable cause determination.

D. Subpoena. At any stage of the proceeding, the Commission shall be entitled to compel by subpoena the attendance and testimony of witnesses, including the judge, and the production of papers, books, accounts, documents and testimony relevant to the investigation or the proceeding. Upon receiving notice from the Commission as to the pendency of the proceeding, the judge shall be entitled to compel by subpoena the attendance and testimony of witnesses, and the production of papers, books, accounts, documents, and testimony relevant to the investigation or proceedings.

E. Dismissal. The Executive Director shall, pursuant to Rule 6 B of these Rules, dismiss all accusations for which a sufficient basis to proceed is not established.

F. Stay. If the Executive Director determines that a preliminary investigation may unduly disrupt or delay a pending court proceeding the Executive Director shall stay the investigation until the next regularly scheduled Commission meeting. The complainant(s), if any, and the judge, if the judge has been given notice of the accusation, shall be informed, in writing, of the stay, and that the stay will be reviewed by the Commission at its next meeting.

RULE 9 PROBABLE CAUSE

A. Probable Cause Determination. The Commission shall promptly consider the results of an investigation and evaluation conducted by the chairperson or Executive Director. If the Commission determines that there is probable cause to proceed, it shall comply with Rule 9C.

B. Findings and Report. The Executive Director shall prepare a written report containing the Commission's findings of fact and conclusions for each issue presented.

C. Disposition. The Commission shall dispose of the investigation in one of the following ways:

(1) If the Commission finds that there has been no misconduct, the Executive Director shall be instructed to send the judge and each complainant notice of dismissal pursuant to Rules 5E and 6B of these Rules.

(2)(a) If the Commission finds that there has been misconduct for which an admonishment or a private reprimand constitutes adequate discipline, the Commission may issue a notice of intended private admonishment or reprimand to the judge. The notice shall include the Findings and Report. The notice shall also inform the judge of the judge's right to an appearance before the Commission or a hearing pursuant to Rule 10 of these Rules, and in the case of a private reprimand, that a copy of the reprimand will be sent to the Supreme Court.

(b) Within fifteen (15) days after mailing of a notice of an intended private reprimand or admonishment, the judge may request either an appearance before the Commissioner a hearing pursuant to Rule 10 of these Rules, by filing a written demand therefor with the Commission. Thereupon the Commission may dismiss the complaint, make further investigation or may institute formal charges pursuant to Rules 9C(4) and 10 of these Rules, but shall not recommend the censure, suspension, retirement or removal of the judge unless substantial and serious new facts to justify such a recommendation are proved in the formal proceedings.

(3) If the Commission finds that there has been conduct that is or might be cause for discipline but for which an informal adjustment is appropriate, it may enter into a memorandum of understanding and agreement with the judge concerning the judge's future conduct or submission to professional treatment or counseling. The complainant shall be notified pursuant to Rules 5E

and 6B of these Rules that the matter has been

resolved. The Commission shall monitor any prescribed counseling.

(4) If the Commission finds, that there is probable cause to believe that there has been misconduct of a nature requiring formal disciplinary proceedings the chairperson or Executive Director shall cause the judge to be served with the report, a complaint containing the formal statement of the charges, the record of the probable cause determination, and all documents upon which the determination was based. The service upon the judge constitutes notice that a response must be filed within 20 (twenty) days.

D. Informal Charges. Rule 9C (2) & (3) constitute informal charges.

RULE 10 FORMAL DISCIPLINARY HEARING

A. Special Counsel. The Commission may appoint a special counsel to present the formal charges. The special counsel may conduct a further investigation.

B. Scheduling. The Commission shall, upon receipt of the judge's response to the complaint or upon the expiration of the time to answer, schedule a hearing not less than thirty (30) nor more than forty-five (45) days thereafter, unless continued for good cause shown. The judge and all counsel shall be notified promptly of the date, time and place of the hearing. The judge shall be given at least fifteen (15) days written notice by certified mail, return receipt requested at the judge's last known address. [Rev. 9-12-85].

C. Discovery. The judge and Commission shall be entitled to discovery in accordance with the Rules of Civil Procedure.

D. Factfinder. The formal hearing shall be conducted before a factfinder (which may be the entire Commission or a master) designated by the Chairperson. The master shall be either a judge of a court of record, current or retired, or a member of the State Bar. When the hearing is before the Commission, either the chairperson or another member appointed by the chairperson shall preside. No member of the Commission shall serve as master.

If the factfinder is to be a master, the factfinder shall be selected from among a pool of those approved annually by the court.

E. Conduct of Hearing.

(1) At the time and place set for the hearing the Commission or master shall proceed with the hearing whether or not the judge has filed an answer or personally appears at the hearing.

(2) The failure of the judge to answer, to appear or to testify at the hearing shall not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, suspension or removal.

(3) The proceedings at the hearing shall be reported by electronic recording device in the same manner as proceedings are reported in a court of records.

(4) When the hearing is before the Commission, not less than five members shall be present when evidence is taken.

F. Evidence. The rules of evidence apply and all testimony shall be under oath. The chairperson, presiding member or master shall administer the oath, rule on the admissibility of evidence, and otherwise direct the manner and order of proceedings in the same manner as a judge of a court of record. The presiding officer is

authorized to issue subpoenas for attendance of witnesses called to testify or to produce books, papers, and other evidentiary matter. Commission attorneys or special counsel retained for the purpose, shall present the case to the factfinder. The judge whose conduct is in question shall be permitted to adduce evidence and produce and cross-examine witnesses. Facts justifying action shall be established by clear and convincing evidence.

G. Amendment of Complaint. By leave of the Commission or by consent of the judge, the formal charges may be amended after commencement of the public hearing to conform to proof or to set forth additional facts, whether occurring before or after commencement of the hearing if the judge and his counsel are given adequate time to prepare a response.

H. Determination. A fact finder other than the entire Commission shall, within sixty (60) days after the hearing, submit findings and recommendation, together with the record and transcript of proceedings, to the Commission for review and shall contemporaneously serve them upon the judge.

The judge, or Commission counsel, may submit written objections to the findings and recommendations of the factfinder within fifteen (15) days after receipt.

The findings, conclusions and accompanying materials, together with the objections, if any, shall be promptly reviewed by the Commission. The Commission may make independent findings of fact from the record or, if the entire Commission served as factfinder, the Executive Director shall prepare findings and recommendations for Commission approval.

If no statement of objections is filed within the time provided, the Commission may adopt, in whole or in part, the findings of the master without a hearing. If such statement proposes to modify or reject the findings of the master, the Commission shall give the judge and special counsel an opportunity to be heard orally before the Commission and written notice of the time and place of such hearing shall be mailed to the judge at least ten (10) days prior thereto.

I. Extension of Time. The chairman of the Commission may extend for periods not to exceed thirty (30) days in the aggregate the time for filing an answer, for the commencement of a hearing before the Commission, for the transmittal of the master's report to the Commission, and for filing a statement of objections to the report of the master. The master may similarly extend the time for the commencement of a hearing. Additional continuances may be granted upon serious illness or other similar, extraordinary circumstances.

J. Hearing Additional Evidence. The Commission may provide for the taking of additional evidence by order at any time while the matter is pending before it. The order shall set the time and place of the hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge at least ten (10) days prior to the date of the hearing. The hearing of additional evidence shall be before the master or the Commission and the proceedings therein shall be in conformance with this rule.

RULE 11 COMMISSION DECISION

A. Recommendation. Any recommendations for discipline shall be made pursuant to A.S.22.30.011(d).

B. Private Reprimand. In lieu of a recommendation to the Supreme Court the Commission may issue a private reprimand pursuant to A.S.22.30.011(d)(3), (e) and (f).

C. Dissent. If a member or members of the Commission dissent from a recommendation as to discipline, a minority recommendation shall be transmitted with the majority recommendation to the court. The recommendation for discipline may include any one or more of the sanctions provided for in A.S.22.30.011(d).

D. No Disciplinary Recommendation. If a majority of the members of the Commission recommend no discipline, the case shall be dismissed.

E. Execution. The recommendation and findings of the Commission shall be signed by the chairperson and presiding member and may be signed by other members, either concurring or dissenting in the recommendation or findings.

F. Witness Fees. All witnesses shall receive fees and expenses in the statutorily allowable amount. Expenses of witnesses shall be borne by the party calling them, unless:

(1) Physical or mental disability of the judge is in issue, in which case the Commission shall reimburse the judge for the reasonable expenses of the witnesses whose testimony related to the disability; or

(2) The judge is exonerated of the charges, and the Commission determines that the imposition of costs and expert witness fees would work a financial hardship or injustice upon the judge and order that those fees be reimbursed.

RULE 12 SUPREME COURT REVIEW

A. Filing and Service. The Commission shall file its report, record findings and recommendations with the court and shall serve copies thereof upon the judge no later than thirty (30) days after the report of the factfinder is submitted. On application by the Commission, the court may direct the withholding of a recommendation regarding discipline pending the determination of other specified matters.

B. Prompt Court Consideration. The Commission shall request the clerk of the court to docket any Commission matter for expedited consideration.

C. Brief and Supplementary Filings. Any petition or brief submitted by the judge or the Commission shall be filed in accordance with the appellate rules.

**RULE 13 CASES INVOLVING ALLEGATIONS OF MENTAL OR PHYSICAL
DISABILITY**

A. Procedure. In considering allegations of mental or physical disability, the Commission shall, insofar as applicable and except as provided in Paragraph B, follow procedures established by these rules.

B. Special Provisions.

(1) If in a matter relating to mental or physical disability the judge is not represented by counsel, the Commission shall appoint an attorney to represent the judge at public expense.

(2) If a complaint or statement of allegation involves the mental or physical health of the judge, a denial of the alleged disability or condition shall constitute a waiver of medical privilege and the judge shall be required to produce his or her medical records.

(3) In the event of a waiver of medical privileges, the judge shall be deemed to have consented to an examination by a qualified medical practitioner designated by the Commission. The report of the medical practitioner shall be furnished to the Commission and the judge.

(4) The Commission shall bear the costs of the proceedings.

1 IN THE SENATE

BY RODEY

2 SENATE BILL NO.

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the duties of the Commission on
7 Judicial Conduct."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 22.30.011(f) is amended to read:

10 (f) If the commission decides to reprimand a judge privately,
11 the commission shall forward the reprimand to the judge. A copy of
12 the reprimand shall be sent to the chief justice of the supreme court
13 and to the judicial council. A private reprimand is confidential.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Bremson

NON-ATTORNEY MEMBERS
Mary Jane Fate
Hilbert J. Henrickson, M.D.
Renee Murray

February 3, 1986

ATTORNEY MEMBERS
James B. Bradley
James D. Gilmore
Barbara L. Schumann

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

Senator Patrick Rodey
Chairman
Senate Judiciary Committee
P.O. Box V
State Capitol
Juneau, Alaska 99811

Dear Senator Rodey:

The Alaska Judicial Council and the Commission on Judicial Conduct, to assist the Judicial Council in its evaluation of judges up for retention, seek to amend Sec. 2. AS 22.30.011(f). The proposed amendment would allow private reprimands to be provided to the Judicial Council by the Commission on Judicial Conduct, enabling the Council to make informed recommendations on questions of judicial retention.

Proposed that Sec. 2. AS 22.30.011(f) be amended to read:

If the commission decides to reprimand a judge privately, the commission shall forward the reprimand to the judge. A copy of the reprimand shall be sent to the chief justice of the supreme court and to the judicial council. A private reprimand is confidential.

Thank you for your assistance. If I can provide any additional information, please do not hesitate to write or call.

SINCERELY,

MARLA N. GREENSTEIN
STAFF ATTORNEY

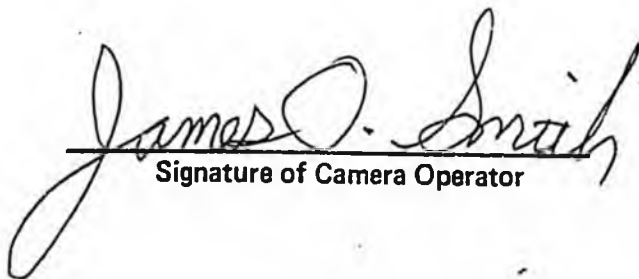
MG/jz

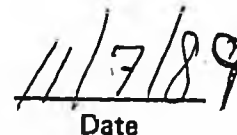


REGORDS CERTIFICATION



I, the undersigned, an employee of the State of Alaska, do hereby certify that the microfilm images on this microform are accurate reproductions of the original records of the State of Alaska as accumulated during the regular course of business, and that it is the established policy and practice of this State to microfilm its records and to dispose of the original records after microfilm reproductions have been made.


Signature of Camera Operator


Date

ALASKA
JUDICIAL
COUNCIL

ALASKA STATE LEGISLATURE
SENATE JUDICIARY COMMITTEE

SENATOR PATRICK RODEY, CHAIRMAN
SENATOR TIM KELLY, VICE-CHAIR
SENATOR JAN FAIKS
SENATOR RICK HALFORD
SENATOR ROBERT ZIEGLER, SR.



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3717

March 18, 1986

Mr. Frances L. Bremson
Executive Director
Alaska Judicial Council
1031 W. 4th Ave., Suite 301
Anchorage, AK 99501

RE: Judicial Council Grand Jury Report

Dear Mr. Bremson:

The Senate Judiciary Committee has reviewed and discussed the Judicial Council's draft report on grand jury reform and concluded that at this time no further work on the study is necessary. Given that the current legislative session is halfway concluded and we are in an election year, it does not appear prudent for the legislature to request the Judicial Council to undertake any further work on the study. Perhaps next session's legislature will seek to complete the work you have initiated.

Thank you for your time and attention to this project.

Very truly yours,

Patrick M. Rodey, Chairman
Senate Judiciary Committee

February 25, 1986

Mr. Frances Bremson
Executive Director
Alaska Judicial Council
1041 Wl 4th Avenue, Suite 301
Anchorage, Alaska 99501

Re: Judicial Council Study of the Investigative Grand Jury
in Alaska.

Dear Mr. Bremson:

As expressed in comments of several legislators attending the Judicial Council's February 13, 1986, presentation of its draft study on the "Investigative Grand Jury in Alaska," the Senate Judiciary Committee believes the draft report is excessively narrow in its focus and conclusory in its evaluation. The Committee would like the final report to encompass significantly more than just the reporting function of an investigative grand jury. Greater emphasis on the true investigative and charging functions of that body is appropriate. Rather than a survey of the law and procedures of other jurisdictions, we envision an

evaluation of potential alternatives and specific recommendations for adoption in Alaska.

In that regard, I refer you to the substance of Senate Resolution 5 amended, which requested the Judicial Council to provide recommendations to assure the effective and proper use of the grand jury investigative power with sufficient safeguards to prevent abuse and assure basic fairness. The Resolution further requested the Judicial Council to consider a possible constitutional amendment to strengthen the grand jury system consistent with due process and standards established through publications such as the National Institute of Justice's Grand Jury Reform: A Review of Key Issues, 1983.

I further refer you to my letter of August 27, 1985, in which I transmitted the Senate's unanimous desire to have the Judicial Council study both substantive and procedural reform of the Alaska grand jury system. In that letter, I delineated a number of potential areas for the Judicial Council's investigation, which areas I would like to review at this time.

Specifically, I suggested that the Judicial Council examine the scope of prosecutorial discretion in presenting evidence to the grand jury, as well as the treatment and presentation of exculpatory evidence available to the

prosecutor. In the aftermath of the Sheffield grand jury proceedings, the Senate was also concerned about the unauthorized disclosure of grand jury deliberations prior to a final decision by that body. I thus requested the Council to provide specific recommendations on that issue.

The Senate Judiciary Committee is also extremely concerned about basic due process rights for all grand jury witnesses, and requests your views on reforming the grand jury process to provide for notice of the right to counsel, the privilege against self-incrimination, the risks of perjury and status as a target witness. Additional due process concerns center on the appropriate use of grand jury reports or presentments and call for an analysis of the right of a witness to review and challenge the content of this report in a judicial forum prior to public dissemination.

At this time, we would also like to suggest that you consider formulating a set of instructions for grand juries to use in determining whether to issue an indictment. Conformity and consistency in these rules for all Alaska grand juries appears to be a laudable goal.

In addition, and as expressly stated in Senate Resolution 5 amended, we believe that the National Institute of Justice's 1983 Grand Jury Study provides a comprehensive

overview of many of the issues of greatest concern to the Senate. We therefore urge you to consult this study and evaluate the proposals set forth therein for possible use in Alaska.

Comments by attendees at the February 13 presentation highlighted additional areas of investigation by the Judicial Council. The balance of power among the judge, prosecutor and grand jury comes immediately to mind, as does the possible shift to indictment by information rather than through the grand jury process, or use of a probable cause hearing. The issues addressed in Appendix B of the draft report also might more appropriately be considered in the body of the final report.

In conclusion, let me reiterate that we seek specific recommendations from the Judicial Council addressing our concerns. These recommendations may take the form of possible statutory changes or constitutional amendments.

Of course, if you have any questions or would like to discuss these proposed areas of investigation in further detail, please do not hesitate to call upon us.

Very truly yours,

Patrick M. Rodey, Chairman
Senate Judiciary Committee

Introduced: 8/5/85

1 IN THE SENATE

BY V.FISCHER

2 SENATE RESOLUTION NO. 5 am

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SPECIAL SESSION

5 Requesting Judicial Council recommenda-
6 tions on grand jury investigative pro-
7 cedures.

8 BE IT RESOLVED BY THE SENATE:

9 WHEREAS Section 9 of Article IV of the Constitution of the State of
10 Alaska provides:

11 The judicial council shall conduct studies for improvement
12 of the administration of justice, and make reports and
13 recommendations to the supreme court and to the legisla-
14 ture at intervals of not more than two years. The judicial
15 council shall perform other duties assigned by law; and

16 WHEREAS Section 8 of Article I of the Constitution of the State of
17 Alaska provides in relevant part:

18 The power of grand juries to investigate and make recommen-
19 dations concerning the public welfare or safety shall never
20 be suspended; and

21 WHEREAS the strengthening of the grand jury procedures is vital as
22 both a sword and a shield since as a sword it is the terror of criminals
23 and as a shield it is the protection of the innocent against unjust prose-
24 cution; and

25 WHEREAS the federal government and many states have defined investiga-
26 tive powers and procedures of grand juries; and

27 WHEREAS under the constitutional mandate the Judicial Council is the
28 appropriate body to study the investigative power of the grand jury and
29 make recommendations to the supreme court and the legislature concerning
S

1 procedures involved in use of that power;

2 IT RESOLVED that the Senate respectfully requests the Judicial
3 Council to study use of the power of the grand jury to investigate and make
4 recommendations and that the council make recommendations to the supreme
5 court and the legislature to assure effective and proper use of that power
6 with effective safeguards to prevent abuse and assure basic fairness; and
7 be it

8 FURTHER RESOLVED that the Senate respectfully requests the Judicial
9 Council to consider a possible amendment to the State Constitution for
10 presentation to the voters for ratification concerning the need to
11 strengthen the grand jury system consistent with due process and standards
12 established through publications including but not limited to materials
13 published by the National Institute of Justice, United States Department of
14 Justice, Grand Jury Reform: A Review of Key Issues, 1983.

15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
S

Judicial Panel Reports Flaws In Alaska's Grand Jury System

by Joe LaRocca

"That which we call a rose,
By any other name would smell as
sweet."

Shakespeare
Romeo and Juliet

Contrary to assertions by its critics and the Alaska news media, the draft report issued last week by the Alaska Judicial Council clearly indicted Alaska's grand jury system and process and, by implication, the state grand jury which recommended impeachment proceedings last summer against Gov. Bill Sheffield for his and an aide's role in the awarding of a \$9 million sole source lease contract for a state office building in Fairbanks to a Fairbanks firm with political ties to the governor.

During last week's meeting between the Judicial Council and the legislature's joint judiciary committees, at which the draft report was released, and afterwards, several legislators scolded the council and its ex officio chairman, State Supreme Court Justice Jay Rabinowitz, for its failure to include specific recommendations pinpointing the blame for what some believe to be misguided actions by the state prosecutor and the grand jury which precipitated the unwarranted and costly impeachment proceedings.

At the conclusion of the sensational impeachment hearings, which were televised live, statewide, and received widespread coverage by the national news media, the state Senate fully exonerated the governor of any wrongdoing, but asked the Judicial Council "to study the use of the power of the grand jury to investigate, and make recommendations to the supreme court and the legislature to assure effective and proper use of that power with effective safeguards to prevent abuse and assure basic fairness."

The legislature also asked the Judicial Council - which is charged by the state constitution with conducting studies "for the improvement of the administration of justice" - to consider "possible amendment to the State Constitution...concerning the need to strengthen the grand jury process."

And while several legislators castigated the council for failing to fulfill their expectations, the conspicuous absence of explicit verbiage overtly labeled "recommendations" fails to disguise the fact that the council's draft report fairly bristles with implicit recommendations under other names which betray sweeping deficiencies in the state's grand jury process, susceptible to remedy by apt legislation without impinging upon the grand jury's constitutional power in Alaska "to investigate and make recommendations concerning the public

welfare or safety."

DUE PROCESS

The council's draft report says, for example, that "Even without constitutional amendment...a number of procedures could be adopted that could provide for:

- greater due process protection of individuals named or referred to in reports;
- judicial review of reports, and
- standards for publication and dissemination" of reports.

The draft report adds: "Basic fairness and constitutional due process may require that unindicted individuals named in grand jury reports be provided with certain protections not currently required by Alaska law." And it adds that "Unindicted individuals named in at least three Alaska grand jury investigative reports lacked a forum or mechanism through which to respond."

While the council's report does not specifically identify Gov. Sheffield's case as one of the three, there can be little question that he was an "unindicted individual" who "lacked a forum or mechanism through which to respond" (short of impeachment proceedings), and that he was thereby deprived of "basic fairness and constitutional due process."

The report points out that in many other jurisdictions, the governor would have been afforded, prior to publication, the right to:

- review the report;

- present further testimony to the grand jury;

- move to expunge certain portions of the report;

- a closed hearing re appeal;

- a fair trial (as opposed to a politically-charged impeachment not subject to the rules of evidence), and

- review the grand jury transcript.

JUDICIAL REVIEW

The Judicial Council's draft report also points out that while no guidelines or statutes exist in Alaska providing standards for judicial review of grand jury reports, guidelines for such review in other jurisdictions have been routinely developed which are designed to protect the due process rights of persons identified in grand jury reports.

For example, the draft report says, after reviewing a grand jury's report, courts in other jurisdictions have the authority to call for further testimony, refer the report back to the grand jury for amendment consistent with the court's findings, to expunge certain portions - or all - of the report, or to hold closed hearings.

The Judicial Council's report also asserts that "Policy decisions need to be made regarding publication and dissemination of reports and access to grand jury records on which reports are based." And its wide-ranging study of practices in other jurisdictions led to its conclusion that, as a general rule, and in the absence of statutes, "a grand jury has no right

to file a report reflecting on the character or conduct of public officers or citizens unless the report is accompanied or followed by an indictment."

It also found that when the grand jury does not find evidence to warrant an indictment (as in the governor's case) "the practice...has been to issue a report to the court summarizing the findings and conclusions of the investigation." Says the council's draft report: "It has been held in most jurisdictions that the power to report is not co-extensive with the power to investigate. The chief criticism of grand jury reports," it says, "is the potential violation of an individual's right not to be publicly condemned for wrongdoing without the due process established by law, including the right to be heard. When an individual indictment is issued," it adds, "an individual has the opportunity to present his or her case at trial. When a grand jury issues a report accusing an individual of wrongdoing, that individual has no guaranteed means for response."

The report quotes copiously from the minutes of the first state constitutional convention in 1956 pertaining to the drafting of the section on grand juries. One extensive quotation attributed to Delegate Seaborn J. Buckalew, Jr. fastens with uncanny accuracy and prophetic foresight upon the precise issues which were raised 30 years later in conjunction with the state grand jury's damning report on Gov. Sheffield.

It came during the discussion of a proposed amendment which would give grand juries sweeping powers to investigate and "make recommendations concerning...a public health and welfare." In that context, Buckalew's comments deserve unabridged recitation. He said:

"From my first impression and my prime objection to this particular amendment is that I think and feel certain it will open the door, for example, the grand jury might have under investigation the conduct of some particular public office, for example the governor, or any public official, the local tax collector. They don't have enough evidence to return an indictment but this would give them the power to blast him good and hard, and I think it would lead to all kinds of trouble, and I think it is an unheard of provision.

"The recommendation of the Committee provided that the grand jury could investigate, they could return indictments, but it certainly did not give them the privilege more or less to defame somebody if they did not have quite enough action for a (true) bill. Under this they could discredit him completely, and he would have no way of answering.

"He might be able to come back and get the report of the grand jury stricken from the records of the court, but the damage would be done. I think it is extremely dangerous because a citizen would not have any protection. Once it was published, the only thing he could do would be then



State Senator John Suckett criticizes the Judicial Council's report on the grand jury system for its failure to pinpoint blame in last year's impeachment proceedings.

(Continued on page 6)

Highway 'Slush Fund'

(Continued from page 6)

seems to stem from the lack of an updated HEWCF policies and procedures manual."

The audit report notes that as part of its operating function, the capital working fund has 38 maintenance shops and more than 60 fuel depots statewide to service the state fleet, which are regionalized.

Under the program, the working capital fund managers procure fleet vehicles for the state and charge the various agencies for their use, maintenance and eventual replacement. The legislature annually appropriates to the agencies monies they request in their budgets to pay the charges assessed by the capital working fund.

According to the audit report, "charges to other departments and agencies for services provided by such a Fund are normally intended to recoup the cost of services and are not generally designed to produce any significant profits or cash balances."

In their report, the auditors recommended that starting this fiscal year:

- the working capital fund's vehicle replacement function should be scrapped and all state agencies required to budget for their replacement vehicles as they would for any other needed item;

- state fleet maintenance would remain with the DOT-PP, but use of its maintenance shops would be at the option of the agency users, and

- the current cash balance of some \$40 million should be transferred to the general fund where it would be available for appropriation for other essential purposes.

While Rep. Pignalberi, who has taken the lead in trying to reform the working capital fund, generally agrees with the auditors' findings, he thinks their recommendations go too far. So he is drafting proposed amendments to the two bills introduced by the Legislative Budget and Audit Committee which together would abolish the fund, and transfer the balance to the general fund.

He fears that requiring the agencies to fight for vehicular and equipment replacement in competition with other state programs and projects in the highly-charged political arena of the legislature could lead to political decisions that would gut those agencies or regions without political clout.

Pignalberi's amendments would shift the vehicle replacement function to the Department of Administration's Division of General Services and Supply, which he feels has the administrative expertise needed to handle it, at the same time stripping DOT-PP of its cumbersome new and spare parts inventory, and encouraging agencies to privatize vehicle repairs

by using services which are commercially available, as many of them are already doing.

What, one might ask, does DOT-PP think of all this? Not much. While Commissioner Knapp concurs with some of the auditors' findings and conclusions, he takes strong exception to their recommendations, which he says are ill-advised. Knapp said in a letter responding to the audit report: "We strongly disagree with your main recommendation and, if implemented, we feel it will move this State backwards many years in the equipment field."

Knapp said his department has already made a number of improvements in the operation of the working capital fund, with others soon forthcoming. As for the fund's unseemly cash surplus, Knapp pointed out that the legislature has the power at any time to transfer any or all of it into the general fund for other uses, and has in the past done so.

But Pignalberi is not persuaded. While he concedes that Knapp has made some needed improvements, he's convinced that the capital working fund is beyond redemption in DOT-PP's hands, and needs a major overhaul.

Grand Jury Illegally Granted Immunity to Impeachment Witness

The Judicial Council report on The Investigative Grand Jury in Alaska reveals in an obscure footnote that the grand jury which recommended impeachment proceedings against Gov. Bill Sheffield last year illegally granted what is known as "transactional immunity" to one of the key witnesses in the investigation, his chief of staff, John Shively.

Transactional immunity protects the immunized witness against prosecution for any of the transactions or occurrences that are the subject of the compelled testimony. Alaska law, the report says, offers only what is known as "use immunity," which forbids later use against the witness of either the evidence he or she has been forced to give, or new evidence derived from it.

Under the grant of transactional immunity, Shively told the grand jury that he had destroyed a copy of lease documents bearing the governor's initials (thus suggesting that Sheffield had seen and would have been aware of them), and that he (Shively) had lied to investigators about his own knowledge of them.

According to the council report, use immunity is not as broad as transactional immunity, which is "argued by some to be the only workable approach. In practice," the report says, "transactional immunity has been granted to some witnesses in Alaska."

Flaws in Grand Jury System

(Continued from page 3)



Justice Jay Rabinowitz, ex officio chairman of the Alaska Judicial Council

come in and ask the court to strike portions of it. For that reason, I would object to it."

But Buckalew's objection was overridden in favor of the view of another delegate lacking his vision, who responded: "They do not necessarily have to defame any individual or mention him by name."

FEDERAL LAW

The council's report points out that even the federal Organized Crime Act of 1970 "provides an opportunity for named individuals to respond (to grand jury reports), requires that a report be served upon each person named in it and given 20 days to file and answer, and that the response shall become an appendix to the report.

Says the draft report: "Federal courts have carved out and continue to carve out exceptions to the grand jury's reporting power to protect basic fairness and the rights of individuals. Most federal courts have held that a grand jury has no authority to issue a report that accuses an undicted individual of an indictable offense, with some exceptions made for reports criticizing federal public officials."

Here are more of the relevant findings contained in the Judicial Council's draft report which reflect due process protections found elsewhere, but not in Alaska's grand jury process:

- In California, a comment in a grand jury report which refers to an undicted individual is not privileged, and such individuals have the right to sue grand juries for libel;

- In Georgia, an accused public official has the right to testify before the grand jury at the conclusion of the state's evidence, and is not

subject to cross-examination. The accused and his or her counsel have the right to be present during the presentation of all evidence;

- A California court has held that although no state law specifically authorizes judicial review of grand jury reports, a limited review is implicit in the enactment of statutory limits on investigatory and reporting authority, and confirmed by a common law decision which recognizes the propriety of court review. It added that the court's "sole function in this realm lies in its power to prevent the filing of an illegal report."

At last Friday's Judicial Council meeting with the Joint Judiciary Committees, State Sen. John Sackett, R-Ruby, asked members of the council and its staff why they had narrowed the scope of the study to cover only the grand jury's investigative and reporting functions, failed to examine the topic more broadly, and ignored the Senate's request for specific recommendations.

Francis Bremson, the council's executive director replied that time and budget constraints, along with the council's effort to submit its report to the legislature during the current legislative session, led to its decision to issue a draft report as soon as possible. He said the council plans to circulate the draft report for comment before finalizing it.

Sackett said that the Senate had placed neither time nor budgetary restrictions on its request for the grand jury study, and he and other legislators asked whether specific recommendations would be forthcoming in the final report. Sackett was one of the senators who, during the special impeachment session last summer, were highly critical of the chief prosecutor's office, the judicial branch and the grand jury for their roles in recommending impeachment proceedings against the governor.

Both Bremson and Justice Rabinowitz, the council's ex officio chairman, said they felt the group might agree to expand the report and include specific recommendations in the final version, but that could take more time and money. Rabinowitz told Sackett, however, that he did not feel it was appropriate for the council to review and judge the prosecutor's and grand jury's performance in the governor's case.

The veteran justice later told the Capital Reporter that he met with Senate Judiciary Committee Chairman Pat Rodey, D-Anchorage, after the council meeting, and they agreed to ask the Senate for additional funds to complete the report - including concrete recommendations - before the end of the session in mid-May, and to expand it to include a study of the grand jury's important "charging" function, as well as the role of the state prosecutor and judges in the grand jury system. The second phase of the report, Rabinowitz said, would be completed and submitted to the legislature next year.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

SJ

2-13-86

SECRET

THE INVESTIGATIVE GRAND JURY IN ALASKA

EXECUTIVE SUMMARY

Alaska Judicial Council

February, 1986

EXECUTIVE SUMMARY

THE INVESTIGATIVE GRAND JURY IN ALASKA

Introduction

On August 5, 1985, following the conclusion of its deliberations into the matter of issuing articles of impeachment against Governor William J. Sheffield, as had been recommended by a Juneau grand jury, the Alaska Senate adopted S. Res. 5 am calling upon the Alaska Judicial Council to "study use of the power of the grand jury to investigate and make recommendations..." and "...to consider a possible amendment to the State Constitution." In response to that request, the Judicial Council undertook to identify both the weaknesses of the existing system and alternatives adopted by other jurisdictions or recommended by national organizations that Alaska might consider in addressing such weaknesses.

During the course of the study, the possible need for additional due process protections, including right to counsel and right to notice, was suggested. However, Alaska judges and attorneys interviewed during this study cited the grand jury's reporting function as the area most in need of attention. Thus, the report that follows focuses upon the reporting power of the investigative grand jury, including the due process, judicial review, and report publication implications of the exercise of this power.

I. The Constitutional Power to Investigate and Make Recommendations.

Art. I, § 8 of the Alaska Constitution states:

"The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."

"Public welfare or safety" has been interpreted very broadly and includes concerns with public order, health, or morals. Black's Law Dictionary defines general welfare as "the government's concern for the health, peace, morals, and safety of its citizens." "Suspend" is defined in case law and by Black's as "to cause to cease for a time; to postpone; to stay, delay or hinder." In other words, the Alaska Constitution gives grand juries the power to investigate crime and make recommendations addressing virtually all types of public concern. This broad general power can never be tested or delayed.

Recommendation Power

Because grand jury recommendations are limited only by the requirement that they concern public safety and welfare, grand jury reports in Alaska may name names, recommend referral to governmental or non-governmental bodies, allege unlawful conduct and be published whether or not accompanied by indictments. The limitations on report content that exist in other states and the federal system are much more restrictive grants of constitutional and statutory authority. The adoption of comparable limitations in Alaska would require constitutional amendment to restrict the subject matter of investigations, to limit the purposes of reports, or to otherwise effectively suspend the recommendation power of the grand jury.

Even without constitutional amendment, however, a number of procedures could be adopted that could provide for: greater due process protection of individuals named or referred to in reports; judicial review of reports; and standards for publication and dissemination of reports.

A. Due Process: Protection of Individuals Named or Referred to in Reports. Basic fairness and constitutional due process may require that unindicted individuals named in grand jury reports be provided with certain protections not currently required by Alaska law. Unindicted individuals named in at least three Alaska grand jury investigative reports lacked a forum or mechanism through which to respond to such criticisms.

In other jurisdictions, the following rights have been recognized to be part of due process:

1. The right to review the report prior to collection (Florida, New York, New Jersey);
2. The right to present further testimony to the ears of the grand jury (U.S., New York, New Jersey);
3. The right to submit a written response (U.S., New York, New Jersey);
4. The right to move to expunge certain portions of reports (Florida, ABA);
5. The right to in camera hearing and/or appeal (New York, New Jersey);
6. The right to sue grand jury for libel (California);
7. The right to a fair trial or hearing (U.S., New York); and
8. The right to review the grand jury transcript (New Jersey).

B. Judicial Review

No guidelines, statutes or case law exist in Alaska providing standards for judicial review of grand jury reports. Other than the constitutional requirement that the report address some aspect of "the public welfare or safety", judges have no additional guidance in reviewing the subject matter of reports, the circumstances under which a report should be issued, and the court's obligation to limit or control the dissemination of such reports.

In other jurisdictions, guidelines for judicial review have been developed. Typically, such guidelines provide that the judge records prior to publication for compliance with one or more of the following criteria:

1. The subject matter is within the jurisdictional scope (U.S., New York, Florida, California, Washington, Colorado);
2. All persons identified in such reports have been protected (U.S., New York, New Jersey, Florida, Colorado, ABA);
3. The findings of the report are based upon facts revealed during the course of the investigation (U.S., New Jersey, Florida, California);
4. Findings are supported by evidence presented during the investigation (U.S., New York);
5. Release of the report will not prejudice pending trials (U.S., New York, Washington);

6. Release of the report will not compromise the grand jury's assurance of confidentiality to witnesses (California); and
7. Release of the report would be consistent with the public interest (New York, Washington, ABA).

After review of the report, courts have the authority to:

1. Call for further testimony (U.S., New Jersey);

2. Seal the report (U.S., New York, Florida, California);

3. Return the report back to the grand jury for comment consistent with the court's findings (New Jersey);

4. Include certain portions of all of the reports (New Jersey, Florida, Missouri, etc.);

5. Review any reply submitted and possibly exchange portions (U.S., ABA); and

6. Hold in camera hearings (U.S., New Jersey, ABA).

7. Publication and Dissemination of Reports

Policy decisions also need to be made regarding publication and dissemination of reports and access to the grand jury records on which reports are based. Should all grand jury reports be made

public and filed as public records, or should the decision to publish depend upon whether or not a report is accompanied by an indictment, or a named party has been held to answer? If a report critical of an individual can be published unaccompanied by an indictment, should the record be destroyed, sealed or preserved? Should the grand jury or the court or both have the authority to determine to whom and for what purposes reports may be issued? Should a report be issued for purposes of exoneration?

Solutions to some of these problems have been developed in other jurisdictions: New York and New Jersey authorize transmittal reports critical of public officials to appropriate disciplinary agencies and California permit publication of reports as to certain persons arrested. The Federal courts in the watergate case allowed dissemination of a grand jury investigative report provided the receiving agency guaranteed that the report would remain confidential and where the report:

1. drew no mandatory conclusions;
2. focused on a named individual or a specific act and provided a forum in which to respond;
3. was not a substitute for indictments where indictments might properly have issued;
4. contained no recommendations, advice or statements that infringed on the prerogatives of other branches of government; and
5. rendered no moral or social judgments.

The solutions to these publication and dissemination problems will depend, to a large extent, on the alternatives adopted for protection of persons named in grand jury reports and for defining the appropriate scope of judicial review.



alaska judicial council

1031 W. Fourth Avenue, Suite 301, Anchorage, Alaska 99501 (907) 279-2526

EXECUTIVE DIRECTOR
Francis L. Bremson

NON-ATTORNEY MEMBERS
Mary Jane Fate
Hilbert J. Henrickson, M.D.
Renee Murray

ATTORNEY MEMBERS
James B. Bradley
James D. Gilmore
Barbara L. Schuhmann

CHAIRMAN, EX OFFICIO
Jay A. Rabinowitz
Chief Justice
Supreme Court

D R A F T

THE INVESTIGATIVE GRAND JURY IN ALASKA

FINAL REPORT

Alaska Judicial Council

February, 1986

GRAND JURY STUDY PROJECT STAFF

Francis L. Bremson, Director

Mary A. Kancewick, Special Counsel
and Principal Author

Teresa W. Carns, Research Associate

Marla N. Greenstein, Research Associate

Sheila R. Vonesh, Secretary

Josefa M. Zywna, Secretary

THE INVESTIGATIVE GRAND JURY IN ALASKA

Alaska Judicial Council

CHAIRMAN

Jay A. Rabinowitz
Chief Justice

ATTORNEY MEMBERS

James B. Bradley
James D. Gilmore
Barbara Schuhmann

NON-ATTORNEY MEMBERS

Mary Jane Fate
Hilbert J. Henrickson, M.D.
Renee Murray

COUNCIL STAFF

Francis L. Bremson, Executive Director
Teresa W. Carns, Senior Staff Associate
Marla N. Greenstein, Staff Attorney
Sheila R. Vonesh, Executive Secretary
Josefa M. Zywna, Executive Secretary
Cynthia L. Felton, Research Intern

TABLE OF CONTENTS

Executive Summary 1

Chapter 1 Introduction 8

 1.1 Background 8

 1.2 Scope and Methodology. 9

Chapter 2 History of the Grand Jury and Its
 Investigative and Reporting Powers 12

 2.1 History of Investigative Grand jury. 12

 2.1.1 Pre-Revolution. 12

 2.1.2 Federal Grand Juries. 16

 2.1.3 State Grand Juries. 17

 2.2 History of Grand Jury Reform 19

Chapter 3 The Investigative Powers and the Reporting Powers. . . 22

 3.1 Investigative Power. 23

 3.1.1 Source of Investigative Power in Alaska 23

 3.1.2 Scope of Investigative Powers
 as Exercised in Alaska. 32

 3.1.3 Scope of Investigative Power at the
 Federal Level and in Other States 35

 3.1.4 Initiation of Investigation 39

 3.2 Grand Jury Power to Issue Reports. 42

 3.2.1 Source of Reporting Power in Alaska 42

 3.2.2 Scope of Reporting Power
 as Exercised in Alaska. 44

 3.2.3 Reporting Powers of the Federal
 Government and Other States 48

TABLE OF CONTENTS (CONTINUED)

Chapter 4 The Reporting Power: Procedural Limitations 54

 4.1 Due Process: Protection of Individuals

 Named or Referred to in Reports. 54

 4.2 Judicial Review. 58

 4.3 Publication and Dissemination of Reports 65

Footnotes 69

Appendix A Senate Resolution Requesting

 Study & Recommendations A.1

Appendix B Additional Issues B.1

D R A F T

THE INVESTIGATIVE GRAND JURY IN ALASKA

EXECUTIVE SUMMARY

Alaska Judicial Council

February, 1986

EXECUTIVE SUMMARY

THE INVESTIGATIVE GRAND JURY IN ALASKA

Introduction

On August 5, 1985, following the conclusion of its deliberations into the matter of issuing articles of impeachment against Governor William J. Sheffield, as had been recommended by a Juneau grand jury, the Alaska Senate adopted S. Res. 5 am calling upon the Alaska Judicial Council to "study use of the power of the grand jury to investigate and make recommendations..." and "...to consider a possible amendment to the State Constitution." In response to that request, the Judicial Council undertook to identify both the weaknesses of the existing system and alternatives adopted by other jurisdictions or recommended by national organizations that Alaska might consider in addressing such weaknesses.

During the course of the study, the possible need for additional due process protections, including right to counsel and right to notice, was suggested. However, Alaska judges and attorneys interviewed during this study cited the the grand jury's reporting function as the area most in need of attention. Thus, the report that follows focuses upon the reporting power of the investigative grand jury, including the due process, judicial review, and report publication implications of the exercise of this power.

I. The Constitutional Power to Investigate and Make Recommendations.

Art. I, § 8 of the Alaska Constitution states:

"The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended."

"Public welfare or safety" has been interpreted very broadly and includes concerns with public order, health, or morals. Black's Law Dictionary defines general welfare as "the government's concern for the health, peace, morals, and safety of its citizens." "Suspend" is defined in case law and by Black's as "to cause to cease for a time; to postpone; to stay, delay or hinder." In other words, the Alaska Constitution gives grand juries the power to investigate into and make recommendations addressing virtually anything of public concern. This broad general power can never be hindered or delayed.

II. The Reporting Power

Because grand jury recommendations are limited only by the requirement that they concern "public safety and welfare", grand jury reports in Alaska may name names, recommend referral to governmental or non-governmental bodies, allege indictable conduct and be published whether or not accompanied by indictments. The limitations on report content that exist in other states and the federal system are based on far more restrictive grants of constitutional and statutory authority. The adoption of comparable limitations in Alaska would require constitutional amendment to restrict the subject matter of investigations, to limit the purposes of reports, or to otherwise effectively suspend the recommendation power of the grand jury.

Even without constitutional amendment, however, a number of procedures could be adopted that could provide for: greater due process protection of individuals named or referred to in reports; judicial review of reports; and standards for publication and dissemination of reports.

A. Due Process: Protection of Individuals Named or Referred to in Reports. Basic fairness and constitutional due process may require that unindicted individuals named in grand jury reports be provided with certain protections not currently required by Alaska law. Unindicted individuals named in at least three Alaska grand jury investigative reports lacked a forum or mechanism through which to respond to such criticisms.

In other jurisdictions, the following rights have been recognized to be part of due process:

1. The right to review the report prior to publication (Florida, New York, New Jersey);
2. The right to present further testimony to the judge or the grand jury (U.S., New York, New Jersey);
3. The right to submit a written response (U.S., New York, New Jersey);
4. The right to move to expunge certain portions of reports (Florida, ABA);
5. The right to in camera hearing and/or appeal (New York, New Jersey);
6. The right to sue grand jury for libel (California);
7. The right to a fair trial or hearing (U.S., New York); and
8. The right to review the grand jury transcript (New Jersey).

B. Judicial Review

No guidelines, statutes or case law exist in Alaska providing standards for judicial review of grand jury reports. Other than the constitutional requirement that the report address some aspect of "the public welfare or safety", judges have no additional guidance in reviewing the subject matter of reports, the circumstances under which a report should be issued, and the court's obligation to limit or control the dissemination of such reports.

In other jurisdictions, guidelines for judicial review have been developed. Typically, such guidelines provide that the judge review reports prior to publication for compliance with one or a combination of the following criteria:

1. The purpose or subject matter is within the statutory or constitutional scope (U.S., New York, Florida, California, Washington, Missouri, Colorado);
2. The rights of persons identified in such reports have been protected (U.S., New York, New Jersey, Florida, Colorado, ABA);
3. The findings of the report are based upon facts revealed during the course of the investigation (U.S., New Jersey, Florida, California);
4. Findings are supported by evidence presented during the investigation (U.S., New York);
5. Release of the report will not prejudice pending trials (U.S., New York, Washington);

6. Release of the report will not compromise the grand jury's assurance of confidentiality to witnesses (California); and
7. Release of the report would be consistent with the public interest (New York, Washington, ABA).

After review of the report, courts have the authority to:

1. Call for further testimony (U.S., New Jersey);
2. Seal the report (U.S., New York, Florida, California);
3. Refer the report back to the grand jury for amendment consistent with the court's findings (U.S., New Jersey);
4. Expunge certain portions or all of the report (New Jersey, Florida, Missouri, ABA);
5. Review any reply submitted and possibly expunge portions (U.S., ABA); and
6. Hold in camera hearings (U.S., New Jersey, ABA).

C. Publication and Dissemination of Reports

Policy decisions also need to be made regarding publication and dissemination of reports and access to the grand jury record on which reports are based. Should all grand jury reports be made

public and filed as public records, or should the decision to publish depend upon whether or not a report is accompanied by an indictment, or a named party has been held to answer? If a report critical of an individual can be published unaccompanied by an indictment, should the record be destroyed, sealed or preserved? Should the grand jury or the court or both have the authority to determine to whom and for what purposes reports may be issued? Should a report be issued for purposes of exoneration?

Solutions to some of these problems have been developed in other jurisdictions: New York and New Jersey authorize transmittal of reports critical of public officials to appropriate disciplinary bodies. Colorado and California permit publication of reports to exonerate persons investigated. The federal courts in the Watergate case found limited dissemination of a grand jury investigative report appropriate where the receiving agency guaranteed that the report would remain confidential and where the report:

1. drew no accusatory conclusions;
2. deprived no named individual of an official forum in which to respond;
3. was not a substitute for indictments where indictments might properly have issued;
4. contained no recommendations, advice or statements that infringed on the prerogatives of other branches of government; and
5. rendered no moral or social judgments.

The solutions to these publication and dissemination problems will depend, to a large extent, on the alternatives adopted for protection of persons named in grand jury reports and for defining the appropriate scope of judicial review.

CHAPTER 1

INTRODUCTION

CHAPTER 1
INTRODUCTION

1.1 Background

This study has been prompted by questions arising from a recent Juneau grand jury's investigation of alleged improprieties in the state's leasing procedures in Fairbanks. The investigation, initiated by the Criminal Division of the Department of Law, focused on the alleged involvement of the Governor's Chief of Staff and the Governor himself in the award of a state office lease by the Department of Administration. During the course of the investigation, the chief prosecutor hired as outside counsel a Washington, D.C. attorney who had once served as an assistant U.S. Attorney during the Watergate investigation. Prior to the conclusion of the grand jury's deliberations, information based on confidential grand jury log notes was reported in the media.

After considering the variety of choices of actions which the chief prosecutor and outside counsel explained were available to them, the grand jury opted to issue a report and not to issue indictments. The report criticized both the Governor's job performance and the "candor" of his testimony before the grand jury. The report recommended, among other measures, that the Alaska Senate consider impeachment proceedings. The report included verbatim testimony of the Governor's Chief of Staff, who had been granted transactional immunity. The report also quoted extensively from the testimony of the Governor to establish his "lack of candor." The report was submitted to the court with the request that it be made public, along with a brief prepared by the prosecutors to support that request. No other parties participated in the hearing on this request. The court granted the grand jury's request and the report, calling for the Senate to initiate impeachment proceedings, was made public.

During the course of the Senate Rules Committee's deliberation, a number of questions arose regarding the appropriate role and function of investigative grand juries. As a result of these questions, the Alaska Senate requested that the Alaska Judicial Council study the "use of the power of the grand jury to investigate and make recommendations," and "make recommendations to the supreme court and the legislature to assure effective and proper use of that power with effective safeguards to prevent abuse and assure basic fairness."¹ Because the Alaska Constitution states: "The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended,"² the Senate also asked the Judicial Council "to consider a possible amendment to the State Constitution concerning the need to strengthen the grand jury system consistent with due process and standards" such as those being developed nationally.³

1.2 Scope and Methodology.

In response to this request, the Council saw its responsibility as identifying potential problem areas in the investigative grand jury process and of recommending solutions or alternative solutions to such problems. Following a preliminary review of the literature, the Council decided to focus its attention on two general areas--the power to investigate and the power to make recommendations (reports). Issues unrelated to the reporting function were generally treated as falling outside the scope of analysis. To the extent such issues were defined and analyzed, however, they are presented in Appendix B, which is intended to serve primarily as a resource for future research efforts.

Once the scope had been defined, the Council identified the following key issues to address during the course of the study:

1. What subjects may be investigated?

2. How are investigations initiated?
3. Can grand juries issue reports?
 - A. Under what circumstances?
 - B. What can be included or precluded?
 - C. What protections are and can be provided for persons or institutions named in reports?
 - D. Are reports public?
 - E. What guidelines are needed for judicial review of grand jury reports and reporting procedures?

The Council then:

1. Documented law and practice in Alaska;
2. Identified potential problems and abuses through:
 - A. Interviews with judges, attorneys and former grand jurors;
 - B. Analysis of grand jury investigative reports, transcripts and case law; and
 - C. Review of grand jury reform literature;
3. Reviewed approaches to such problems developed in other jurisdictions or recommended by national grand jury reform organizations, to identify appropriate solutions.

These findings are presented as follows:

- Ch. 2 History of the Grand Jury and the grand jury reform movement;