
NOTES

THE REPORTORIAL POWER OF THE ALASKA GRAND JURY

*The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended.*¹

I. INTRODUCTION

The extent of the power of Alaska grand juries to issue recommendations concerning specific public officials was brought into focus when, on July 1, 1985, a Juneau grand jury issued a report recommending that the Alaska Senate commence impeachment proceedings against Governor William Sheffield.² Although the grand jury elected not to indict the governor formally, it prepared a report alleging that

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1. ALASKA CONST. art. I, § 8. ALASKA STAT. § 12.40.030 (1984) provides in pertinent part: "The grand jury shall have the power to investigate and make recommendations concerning the public welfare or safety."

2. On April 24, 1985, a Juneau grand jury commenced an investigation into circumstances surrounding the state's lease of 32,000 square feet of office space from the Fifth Avenue Center in Fairbanks. Report of the Grand Jury Concerning the Investigation Conducted into the Fairbanks Consolidated State Office Lease with the Fifth Avenue Center at 1 (July 1, 1985) [hereinafter Report of the Grand Jury]. The grand jury directed its attention to the role of Governor Sheffield and some of his staff members in the procurement process for the consolidation of state office space in Fairbanks. *Id.* at 2-3. The governor testified before the grand jury. *Id.* at 14. On July 2, 1985, the grand jury released its findings to the Superior Court of the First Judicial District of Juneau. The grand jury alleged that with the governor's approval certain staff members had pressured the Department of Administration to change bid specification for the office space so that only the Fifth Avenue Center could meet the specifications. *Id.* at 7-10. The grand jury found that the governor intervened for the purpose of doing a favor to a political supporter, who was part owner of the Fifth Avenue Center. *Id.* at 8. The grand jury also implied that the governor had lied in his testimony. *Id.* at 14. The grand jury did not indict the governor or any of his staff, however. Instead, the grand jury chose to issue a report which recommended, *inter alia*, that the senate be called into special session to consider commencing impeachment proceedings against Governor Sheffield. *Id.* at 18. The superior court that impanelled the grand jury accepted the report for public filing after an *ex parte* proceeding with the prosecutors who conducted the grand jury investigation. ALASKA JUDICIAL COUNCIL, THE INVESTIGATIVE GRAND JURY IN ALASKA at 8 (Draft Report, Feb. 1986). Impeachment proceedings ensued. The senate, however, voted not to impeach the governor. N.Y. Times, Aug. 6, 1985, at A11, col. 1.

would have to be attached to the report before its publication. To prepare such an answer, however, takes time. New York allows the public official twenty days to prepare an answer.²⁰⁸ There is a strong argument that a delay of this length "suspends" the grand jury's power by reducing the effectiveness of the recommendation. The framers intended that this power be used to protect Alaska's citizens.²⁰⁹ Grand jury reports concern conditions inimical to the public welfare. Where such conditions exist, a lengthy delay to allow a criticized official to answer the allegations may further harm the public interest by delaying corrective action.

4. *Pre-publication Factual Review by the Trial Court.* Some states use pre-publication factual review of a report by the court impanelling the grand jury to ensure that false reports are not publicized. New York requires that the trial court suppress a report critical of an individual unless the court finds that the report is supported by a preponderance of the evidence.²¹⁰ New Jersey requires "conclusive" proof of allegations in a report criticizing a public official.²¹¹ Adopting one of these standards in Alaska would raise significant constitutional questions. Of course, the framers of the Alaska Constitution did not intend that there be false or misleading recommendations. However, granting the grand jury the power to investigate and make recommendations implies that the *grand jury* should be the body that evaluates the evidence disclosed by the investigation. Allowing a trial judge to reweigh that evidence and perhaps to suppress the recommendation would usurp the grand jury's power. It would appear that such a level of review would contravene the suspension clause.

A somewhat lesser standard of review, however, should pass constitutional muster. Florida allows its courts to suppress reports that lack a factual basis in the record of the grand jury proceeding.²¹² This standard does not require reweighing the evidence but merely involves determining whether the facts in the record support the grand jury's conclusions and recommendations.²¹³ The wording of article I, section 8 in fact suggests such a standard. The section links the grand jury's investigating and reporting powers. It does not empower the grand jury to make recommendations in the abstract or based upon speculation. The grand jury must base its recommendation upon the

208. N.Y. CRIM. PROC. LAW § 190.85(3) (McKinney 1982).

209. PROCEEDINGS OF THE ALASKA CONSTITUTIONAL CONVENTION 1405.

210. N.Y. CRIM. PROC. LAW § 190.85(2)(a) (McKinney 1982).

211. N.J. R. CRIM. P. 3: 6-9(c) (1986).

212. Miami Herald Publishing Co. v. Marko, 352 So. 2d 518, 521 (Fla. 1977).

213. See Appeal of Untreiner, 391 So. 2d 272, 274-75 (Fla. Dist. Ct. App. 1980).