

ALASKA STATE LEGISLATURE



REPRESENTATIVE LES GARA

September 24, 2008

Colonel Audie Holloway
Alaska State Troopers
5700 E. Tudor Road
Anchorage, Alaska 99507

Re: Potential Criminal Witness Tampering

Dear Colonel Holloway,

As you know, the Alaska Legislature's Legislative Council voted unanimously (eight Republicans and four Democrats) earlier this summer to proceed with a legislative investigation. We have hired former state prosecutor, and Office of Victims Rights Director Steve Branchflower, to investigate the facts and circumstances regarding the initial offer to transfer Department of Public Safety Commissioner Walt Monegan, and the ultimate decision to terminate him. Starting in late August, a number of witnesses who had agreed to testify have changed their position, and refused to proceed with this investigation. The Judiciary Committee has since issued subpoenas.

I am writing to refer information to you regarding Alaska's criminal witness tampering statutes for investigation. These statutes, Alaska Statute 11.56.540 & .545, prohibit any person from acting or attempting to "induce a witness to be absent from an official proceeding." Recent conduct in the current Legislative "Troopergate" investigation indicates certain persons may be in violation of this statute.

The statutes state that no person may advise or encourage a witness under subpoena "to be absent from an official proceeding." Under Alaska law [AS 11.81.900(41)], a legislative investigation for which a person has been subpoenaed is an "official proceeding." I am concerned that in an effort to impede this legislative investigation, persons have been advising or encouraging witnesses not to comply with subpoenas issued as part of this investigation in violation of these criminal statutes.

The evidence I am aware of is as follows. The Senate Judiciary Committee has a complete file of correspondence that may shed further light on this matter. Press accounts also contain potential witness statements. In short, a number of witnesses have recently changed their position on complying with the legislative investigation. It would appear they have been advised by third persons to refuse to comply with their subpoenas.

To date, three witnesses have refused to comply with subpoenas in this investigation. I believe they are: Administration staff Randy Ruaro and Ivy Frye, and Governor Palin's husband Todd. See attached Sept. 19, 2008 letter to Senator Green. I have no information that these persons have engaged in witness tampering. Seven more state employees have been subpoenaed for this Friday's legislative hearing before the Senate and House Judiciary Committees. There was an agreement that they would testify, and since then there has been indication that they may have changed their positions as well.

Here is the evidence I am aware of that raises concerns of witness tampering. I am not filing a complaint against any particular person, or alleging that a particular person has engaged in witness tampering. I do not possess that evidence.

Until August 29, no witness that I am aware of said they would refuse to comply with the Legislature's investigation. Governor Palin stated that she and her staff would comply, and prior to August 29 she had directed her staff to comply. See Attached Press clippings summary. A number of witnesses had provided statements to independent investigator Steve Branchflower.

Starting after August 29, certain staff for the McCain Campaign came to Alaska in an effort to block this investigation. There are rumors that upwards of 30 staffers have come to this state since that date. I do not know the roles of the various staff members. Campaign Representatives Ed O'Callaghan and Meghan Stapleton have held multiple press conferences in Anchorage to block the investigation.

Since then three witnesses have failed to comply with legislative subpoenas, and up to seven more may do the same this coming Friday. Something has caused, or in the words of the statute, may have "induced" these witnesses to change their position. I do not know whether it is advice from staff for the McCain campaign, state counsel, private counsel, or from others, or whether these witnesses may have done this independently of advice or suggestions from third persons. But it seems a witness would not risk the possible jail time that comes with the violations of a subpoena without advice of others. The latter seven subpoenas were issued because these witnesses failed to attend the last joint Judiciary Committee hearing voluntarily. See attached Sept. 19 letter to Senator Green.

The witnesses in this case are represented by private, state and possibly campaign counsel. I believe Mr. Ruaro is represented by state counsel, though this has become a murky area. It is unclear whether one of the counsel, Thomas Van Flein, is acting as state, campaign or private counsel. There seems to have been at least some contact between counsel for certain witnesses and at least one McCain campaign representative who seems to have been hired to stop the legislative investigation.

According to the attached September Newsweek article, Edward O'Callghan, a Washington attorney working for the McCain Campaign, has been working with at least one

attorney representing witnesses in this investigation, Thomas Van Flein. According to that article, Mr. O'Callaghan has been "advising Thomas Van Flein on this matter to the extent that it impacts on the national campaign." See attached Sept. 16, 2008 Newsweek article. He is quoted as saying he is also "helping out on legal strategy." Mr. Van Flein represents Governor Palin, who had previously agreed to comply with this legislative investigation. It has been represented that Mr. Van Flein represents Mr. Palin, and possibly others from the Governor's Office as well. I am not sure of the latter.

A number of letters between counsel for witnesses who have not shown for testimony, stating the position by certain counsel that witnesses will not comply with this legislative proceeding, are in the Legislative Council or Judiciary Committee files.

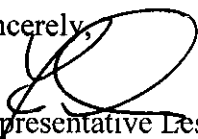
I do not know whether Mr. O'Callaghan, any private or state counsel, or any state or other campaign staff have acted or attempted to induce witnesses not to comply with their subpoenas. I do know witnesses have changed their positions on complying with this investigation after August 29, and that a number of people have been hired since August 29 to stop the investigation.

Apart from possible interference by certain campaign staff, it seems the law does not allow an attorney to induce or attempt to induce a witness to fail to show for a legislative subpoena. While I have respect for the Attorney General and do not believe he would violate the law, he or his staff may have information as to who has made statements encouraging the position that witnesses should not show up for their subpoenas.

What is clear is that certain witnesses have changed their positions on complying with this legislative investigation. I do not possess evidence as to who may have "induced" or "attempted to induce" witnesses to not show for their subpoenas. The witnesses, counsel and campaign staff are most likely to possess any evidence on that matter.

I hope you will consider investigating this matter. It does seem likely that people have acted to induce witnesses to fail to comply with subpoenas, and the state's interest in the enforcement of validly issued subpoenas is a serious matter.

Sincerely,



Representative Les Gara

(30) "identification document" means a paper, instrument, or other article used to establish the identity of a person; "identification document" includes a social security card, driver's license, non-driver's identification, birth certificate, passport, employee identification, or hunting or fishing license;

(31) "includes" means "includes but is not limited to";

(32) "incompetent person" means a person who is impaired by reason of mental illness or mental deficiency to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning that person;

(33) "intoxicated" means intoxicated from the use of a drug or alcohol;

(34) "law" includes statutes and regulations;

(35) "leased" includes "rented";

(36) "metal knuckles" means a device that consists of finger rings or guards made of a hard substance and designed, made, or adapted for inflicting serious physical injury or death by striking a person;

(37) "misdemeanor" means a crime for which a sentence of imprisonment for a term of more than one year may not be imposed;

(38) "nondeadly force" means force other than deadly force;

(39) "offense" means conduct for which a sentence of imprisonment or fine is authorized; an offense is either a crime or a violation;

(40) "official detention" means custody, arrest, surrender in lieu of arrest, or actual or constructive restraint under an order of a court in a criminal or juvenile proceeding, other than an order of conditional bail release;

(41) "official proceeding" means a proceeding heard before a legislative, judicial, administrative, or other governmental body or official authorized to hear evidence under oath;

(42) "omission" means a failure to perform an act for which a duty of performance is imposed by law;

(43) "organization" means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose;

(44) "peace officer" means a public servant vested by law with a duty to maintain public order or to make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders;

(45) "person" means a natural person and, when appropriate, an organization, government, or governmental instrumentality;

(46) "physical injury" means a physical pain or an impairment of physical condition;

(47) "police dog" means a dog used in police work under the control of a peace officer;

(48) "possess" means having physical possession or the exercise of dominion or control over property;

(49) "premises" means real property and any building;

(50) "propelled vehicle" means a device upon which or by which a person or property is or may be transported, and which is self-propelled, including automobiles, vessels, airplanes, motorcycles, snow machines, all-terrain vehicles, sailboats, and construction equipment;

(51) "property" means an article, substance, or thing of value, including money, tangible and intangible personal property including data or information stored in a computer program, system, or network, real property, an access device, a domestic pet or livestock regardless of value, choses-in-action, and evidence of debt or of contract; a commodity of a public utility such as gas, electricity, steam, or water constitutes property, but the supplying of such a commodity to premises from an outside source by means of wires, pipes, conduits, or other equipment is considered a rendition of a service rather than a sale or delivery of property;

(52) "public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement

or business, parks, places of assembly, apartment houses and other buildings, and residence;

(53) "public record" means a record, photograph, photographic file, motion picture, paper tape, punched card, or other form or characteristic, whether or not a transaction of official business of an agency, municipality, or other governmental body, as evidence of the organization's activities or other activities of the state; it also includes staff manuals and other documents;

(54) "public servant" means a person who does not include jurors;

(A) an officer or employee of the state, or a government agency, of the judiciary, and peace officer;

(B) a person acting in the direction of, or under the control of, the state, or another governmental body; it includes an employee of a governmental body;

(C) a person who serves in a position by legislative, judicial, executive, or political subdivision of the state;

(D) a person nominally acting in a capacity defined in (A);

(55) a "renunciation" means a whole or in part, by

(A) a belief that circumstances will render more difficult the apprehension of the defendant;

(B) a decision to postpone a criminal effort to another time or place;

(56) "serious physical injury" means

(A) physical injury that creates a substantial risk of death;

(B) physical injury that causes impairment of health, pain, or damage to an organ, or that unlawfully causes

(57) "services" includes communications services or other telecommunications services in hotels, restaurants, computer, computer time, or any part of a computer;

(58) "sexual contact" means

(A) the defendant's touching of the female breast; or

(i) knowingly causing contact with the victim's genitals, anus, or

(B) but "sexual contact" means

(i) that may reasonably be expected to result in child, interactions with

Collateral references. — Defenses to state obstruction of justice charge relating to interfering with criminal investigation or judicial proceeding. 87 ALR5th 597.

Sec. 11.56.520. Receiving a bribe by a witness or juror. (a) A person commits the crime of receiving a bribe by a witness or juror if the person solicits a benefit with the intent that, or accepts or agrees to accept a benefit upon an agreement or understanding that,

- (1) the person will be improperly influenced as a witness; or
 - (2) the person's vote, decision, opinion, or other action as a juror will be influenced.
- (b) Receiving a bribe by a witness or juror is a class B felony. (§ 6 ch 166 SLA 1978)

Sec. 11.56.540. Tampering with a witness in the first degree. (a) A person commits the crime of tampering with a witness in the first degree if the person knowingly induces or attempts to induce a witness to

- (1) testify falsely, offer misleading testimony, or unlawfully withhold testimony in an official proceeding; or
 - (2) be absent from a judicial proceeding to which the witness has been summoned.
- (b) Tampering with a witness in the first degree is a class C felony. (§ 6 ch 166 SLA 1978; am § 1 ch 122 SLA 1982)

NOTES TO DECISIONS

Scope of provisions. — In enacting the tampering with a witness statute, the legislature elected to extend its provisions only to witnesses who are formally summoned to appear. *State v. Jones*, 750 P.2d 828 (Alaska Ct. App. 1988).

Evidence sufficient to support conviction. — Evidence was sufficient to support defendant's conviction for tampering with a witness by attempting to dissuade his wife from giving damaging testimony to the grand jury, where a witness testified that he was at defendant's house before the grand jury proceeding and heard defendant tell his wife to "plead the fifth" or

"break down and cry" instead of answering questions detrimental to defendant's case. *Bogess v. State*, 783 P.2d 1173 (Alaska Ct. App. 1989).

The evidence was sufficient to support defendant's conviction for first-degree witness tampering where he attempted to induce the witness to offer false or misleading testimony at an official proceeding by trying to persuade the potential witness to say that someone other than defendant had been driving the car. *Baker v. State*, 22 P.3d 493 (Alaska Ct. App. 2001).

Sentence held excessive. — See *Whitlow v. State*, 719 P.2d 267 (Alaska Ct. App. 1986).

Collateral references. — When statute of limitations begins to run on charge of obstructing justice or of conspiring to do so, 77 ALR3d 725.

Admissibility in criminal case, on issue of defendant's guilt, of evidence that third person has attempted to influence a witness not to testify or to testify falsely, 79 ALR3d 1156.

Validity, construction, and application of state stat-

utes imposing criminal penalties for influencing, intimidating, or tampering with witness, 8 ALR4th 769.

Validity, construction, and application of federal witness tampering statute, 18 U.S.C.A. § 1512(b). 183 ALR Fed. 611.

Construction and application of federal witness tampering statute, § 18 U.S.C.A. 1512(b). 185 ALR Fed. 1.

Sec. 11.56.545. Tampering with a witness in the second degree. (a) A person commits the crime of tampering with a witness in the second degree if the person knowingly induces or attempts to induce a witness to be absent from an official proceeding, other than a judicial proceeding, to which the witness has been summoned.

(b) Tampering with a witness in the second degree is a class A misdemeanor. (§ 2 ch 122 SLA 1982)

Collateral references. — Construction and application of federal witness tampering statute, 18 U.S.C.A. § 1512(b). 185 ALR Fed. 1.

Validity, construction, and application of federal witness tampering statute, 18 U.S.C.A. § 1512(b). 183 ALR Fed. 611.

Sec. 11.56.590. Jury tampering. (a) A person commits the crime of jury tampering if the person directly or indirectly communicates with a juror other than as permitted by the rules governing the official proceeding with intent to

- (1) influence the juror
- (2) otherwise affect the juror
- (b) Jury tampering

Constitutionality. — The statute is constitutionally overbroad, in violation of the First Amendment.

Sec. 11.56.600. Misconduct by a juror. (a) A person commits the crime of misconduct by a juror if, while engaged in any part of an official proceeding, the person for or against a party in the proceeding, official proceeding.

(b) Misconduct by a juror is a class B felony.

Sec. 11.56.610. Tampering with a witness in the second degree. (a) A person commits the crime of tampering with a witness in the second degree if the person knowingly

- (1) destroys, mutilates, or otherwise impairs any document, record, or other material with intent to impair its use in an official investigation;
 - (2) makes, presents, or disseminates any false or misleading information with intent to mislead a juror who is engaged in an official proceeding;
 - (3) prevents the prosecution from conducting an investigation by the use of any false or misleading information;
 - (4) does any act designed to obstruct the institution of an official proceeding.
- (b) Tampering with a witness in the second degree is a class C felony.

Opinions of attorney general. — An attorney general, operator of a motor vehicle who causes a motor vehicle accident, fails to render aid to the injured person, an act which is punishable under AS 28.35.060(c); the Alaska Supreme Court held that the incident and during the investigation, if an attorney contacts the trooper, the trooper has informed him that the

Construction. — In order to "remove" is not redundant, "removing" an object from the scene of an accident at any location where its evidence is produced, to some other place where its significance may not be detected. 185 ALR Fed. 1. P.2d 204 (Alaska Ct. App. 1999). A narrow interpretation of "conceal" is required in order to give the statute are inexplicably harsh and inconsistent with the legislature's intent. *Vigue v. State*, 185 ALR Fed. 1. (Alaska Ct. App. 1999).

Culpable mental state. — The Alaska witness tampering statute uses the terms "conceal" and "tamper" to define the actus reus of the crime. The proof of a culpable mental state is required. P.2d 204 (Alaska Ct. App. 1999).

Defense attorney's holiness. — While the statute prohibits the concealment of evidence, it does not require an affirmative act of

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
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Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

September 19, 2008

Dear Senator Green,

On September 12, 2008, the Senate Judiciary Committee authorized the issuance of fourteen subpoenas; thirteen were for witnesses and the last was for Mr. Frank Bailey's cell phone records. By your signature on those subpoenas, you concurred in that action, thus satisfying the statutory requirements of Alaska Statute 24.25.010(b). The purpose of the subpoenas was to assist Mr. Stephen Branchflower in his investigation into the events and circumstances surrounding the termination of former Public Safety Commissioner Walt Monegan.

Since that time, six of the witness subpoenas were served and seven were not. The subpoenas that were served commanded the witnesses to appear at 10:00 am today, September 19th, 2008, before the Judiciary Committee. Subpoenas were served on attorneys representing Mr. Frank Bailey, Ms. Ivy Frye, Mr. Todd Palin, Mr. Randy Ruaro, and Ms. Murlene Wilkes. By an agreement between Mr. Branchflower and Mr. Bailey's attorney, a copy of the sworn statement that Mr. Bailey gave to Mr. Thomas Van Flein has been given to Mr. Branchflower and will satisfy Mr. Bailey's obligation to comply with his subpoena. Mr. John Bitney was served personally by Mr. Branchflower and Mr. Bitney, accompanied by his attorney, elected to give a statement to Mr. Branchflower in his office, thus satisfying Mr. Bitney's obligation under his subpoena. The subpoena for Mr. Bailey's cell phone records was served on ACS, Inc., and that company has turned the records over to Mr. Branchflower. Finally, Ms. Wilkes, through her attorney, has agreed to give a statement to Mr. Branchflower this afternoon, thus satisfying her obligations under her subpoena.

Ms. Frye, Mr. Palin, and Mr. Ruaro, all having been served with subpoenas through their legal counsel, have neither given statements, nor appeared today in compliance with their subpoenas. Alaska Statute 24.25.030 sets out our procedure in this particular situation. The statute reads as follows: "If a witness neglects or refuses to obey a subpoena ... the senate or the house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary." Please consider this letter as satisfying the dictates of the statute.

Subpoenas were not served on Ms. Dianne Kiesel, Ms. Annette Kreitzer, Ms. Nicki Neal, Mr. Brad Thompson, Mr. Michael Nizich, Ms. Kris Perry and Ms. Janice Mason. The reason that those seven subpoenas were not served is because Mr. Branchflower relied on the written offer of cooperation that Assistant Attorney General Michael Barnhill issued in a letter to Senator Kim Elton dated September 9, 2008. Senator Elton accepted the offer in a letter sent to Mr. Barnhill on Friday, September 12, 2008, which was the same day the Senate Judiciary Committee issued its subpoenas. Mr. Barnhill spoke to Mr. Branchflower late that Friday afternoon, to begin scheduling depositions.

The next day, Saturday, September 13, 2008, Mr. Barnhill sent an e-mail to Mr. Branchflower, confirming the details of their phone conversation. The e-mail in relevant part reads as follows:

Steve - this shall confirm our phone conversation of late yesterday afternoon.

As a consequence of Sen. Elton's letter to me of 9/12/08, Law agrees that the depositions of the four Department of Administration employees, Annette Kreitzer, Dianne Kiesel, Nicki Neal and Brad Thompson, may proceed. Law appreciates the Legislative Council's willingness to agree with our interpretation of the laws governing confidential state employee personnel files as set forth in our letter of 9/9/08.

Each of these four individuals has confirmed that they wish to proceed with their deposition without service of a subpoena, and that they have elected to have representation from Law at their deposition. Law will provide that representation.

As I explained during our call, Tom van Flein requested on Friday (9/12) that the Department of Law resume representation of these employees in the Office of the Governor who have not sought private counsel. At this point, my understanding is those employees include Mike Nizich, Kris Perry and Janice Mason. When you return on Tuesday, please give me a call and I will report on the status of Law's representation of those employees within the Office of the Governor who have not secured private counsel and their availability for deposition.

That cooperation agreement was abrogated by the Tuesday, September 16, 2008, letter from Attorney General Talis Colberg. The Judiciary Committee's, and Mr. Branchflower's, reliance on the two written promises of the Department of Law is regrettable. Because the subpoenas were not served, there is no legal basis upon which to take any action today regarding them. The original, unserved subpoenas are still in the hands of Mr. Branchflower. He will begin the process of serving them on the seven remaining witnesses, with a return date of Friday, September 26, 2008.

Sincerely,

Senator Hollis French

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LLC

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September 18, 2008

Stephen Branchflower, Esq.

VIA EMAIL sebranchflower@gmail.com

Dear Steve:

On behalf of Todd Palin, and in response to the Senate Judiciary Committee Subpoena dated September 12, 2008 executed by Sen. French and Sen. Green, and accepted on Mr. Palin's behalf by me on September 12, 2008, please know the following:

We maintain our general objections that the Legislative Council investigation, besides being pursued for partisan purposes, is being conducted in violation of all accepted norms of due process. We further maintain our standing objection that the Legislative Council is acting unconstitutionally and in violation of the separation of powers. Nothing in this document shall constitute a waiver of any other applicable privilege or defense.

Objections of Respondent Todd Palin To Subpoena Dated September 12, 2008

COMES NOW respondent Todd Palin and, through undersigned counsel, hereby objects to the subpoena issued by the Senate Judiciary Committee on September 12, 2008 ("Subpoena"), as follows:

1. Mr. Palin objects to the Subpoena on the ground that the Judiciary Committee lacks authority to issue subpoenas or otherwise investigate matters relating to the Office of the Governor, the Department of Administration, or the Department of Public Safety. Pursuant to Rule 20 of the Uniform Rules of the Alaska Legislature, the Judiciary Committee's jurisdiction is limited to "the programs and activities of the Alaska Court System and the Department of Law, and the legal and substantive review of bills referred to it for that purpose." Pursuant to Rule 20, the State Affairs Committee is the legislative committee with jurisdiction over the Office of the Governor, the Department of Administration, and the Department of Public Safety.
2. Mr. Palin objects to the Subpoena on the ground that the subject matter of the Governor's compliance with applicable ethics laws in terminating a public safety commissioner is within the exclusive jurisdiction of the Personnel Board. Pursuant to AS § 39.52.310(c),

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complaints alleging a violation of the Alaska Executive Branch Ethics Act “*shall be* referred to the personnel board.” (Emphasis added.) A proceeding was commenced before the Personnel Board on September 1, 2008, before the issuance of the Subpoena.

3. Mr. Palin objects to the Subpoena on the ground that the decision to appoint and terminate department heads is committed to the Governor’s discretion by the Alaska Constitution *see* Alaska Const. art. III, § 25, and may not be inquired into by the legislature under the separation of powers doctrine.

4. Mr. Palin objects to the Subpoena on the ground that the special counsel engaged by the Legislative Council to pursue the investigation of which the Subpoena is a part has a conflict of interest. On information and belief, former public safety commissioner Monegan was the supervisor of Special Counsel Branchflower’s spouse when both worked at the Anchorage Police Department. Ms. Branchflower publicly praised Mr. Monegan’s appointment as public safety commissioner. Special Counsel Branchflower functioned as Mr. Monegan’s attorney when Mr. Branchflower was a district attorney in Anchorage and Mr. Monegan was Anchorage police chief.

5. Mr. Palin objects to the Subpoena on the ground that the subject matter of the Subpoena is unconstitutionally vague in its request for information concerning the “circumstances and events surrounding the termination of former Public Safety Commissioner Walt Monegan and potential abuses of power and/or improper actions by members of the executive branch.” The Subpoena fails to provide Mr. Palin with fair notice of the meaning of “potential abuses of power” and “improper actions by members of the executive branch,” and thus violates the due process requirements of the Alaska and United States Constitutions. AK. CONST. Art. 1, Sec. 7.

6. Mr. Palin objects to the Subpoena to the extent it purports to request the production of documents. The motion pursuant to which the Subpoena was issued sought authority to subpoena the attendance of certain named individuals including Mr. Palin, but only sought authority to subpoena one category of documents – namely, the “cell phone records for Frank Bailey for the period of February 1, 2008 through March 31, 2008.” The motion pursuant to which the Subpoena was issued did not seek authority to subpoena documents from Mr. Palin, nor was any such authority granted.

7. Mr. Palin objects to the Subpoena on the ground that it is unconstitutionally vague in its request for the production of “any relevant material and proper books, papers, or documents” Because the investigation pursuant to which the Subpoena was issued is not governed by any complaint or other initiating document, and because the Subpoena fails to specify any other standard by which “relevance” or “propriety” could be determined, Mr. Palin has no way of ascertaining what is requested by this portion of the Subpoena.

8. Mr. Palin objects to the Subpoena on the ground that, consistent with the purpose of AS § 39.52.310(j)-(k), it violates principles of due process under the Alaska Constitution to proceed with an ethics investigation involving the Governor during a period in which she is involved in a campaign for public office.

9. Mr. Palin objects to the Subpoena on the ground that the Legislative Council lacked jurisdiction to authorize the investigation pursuant to which the Subpoena was issued.

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The Legislative Council's authority to conduct investigations is limited to investigations in support of its statutory purpose to assist the legislature in reviewing, assessing, drafting, and revising legislation and providing administrative services to the legislature in connection with the development of legislation. See AS §§ 24.20.010, 24.20.060(2).

10. Mr. Palin objects to the Subpoena on the ground that the "project director" of this investigation, Senate Judiciary Committee chairman Hollis French, has either engaged in impropriety or has created the appearance of impropriety by public statements appearing to prejudice the outcome of the investigation before it had even commenced. Mr. French has been quoted in the media as stating his belief that the results of the investigation would be "damaging" to the Governor's administration, could lead to "impeachment," and could result in an "October surprise." Such statements evidence a prejudgment of the merits that violates Article I, Section 7 of the Alaska Constitution -- a provision drafted in the wake of the abusive McCarthy investigations -- which provides that "the right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed."

11. Mr. Palin objects to the Subpoena on the ground that it is unduly burdensome. Mr. Palin has preexisting travel plans requiring him to be out of state on the return date of September 19, 2008. Moreover, because his spouse is her party's nominee for Vice President of the United States, his scheduling obligations over the next two months will make it virtually impossible for him to prepare for and present the testimony called for in the Subpoena at the specified location during that time period.

Dated: 9-18-08

By: 

THOMAS VAN FLEIN, Esq.

*Counsel for Respondent
Todd Palin*

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
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PHONE: (907) 465-2133
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September 16, 2008

The Honorable Hollis French, Chair
Senate Judiciary Committee
Alaska State Legislature
716 West Fourth Avenue, Suite 420
Anchorage, Alaska 99501-2133

Re: Executive Branch Subpoenas

Dear Senator French:

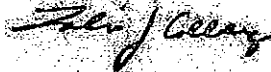
Your committee has subpoenaed certain employees of the executive branch of state government represented by the Office of the Attorney General. These persons serve within the exempt and partially exempt service at the will of their employer, the State of Alaska. As you know, the State Personnel Board has undertaken a separate ethics investigation into the same matter for which the subpoenas were issued. For this and other reasons, such as separation of powers, the Governor has declined to participate in the investigation initiated by the Legislative Council.

As state employees, our clients have taken an oath to uphold the Alaska Constitution and for that reason they respect the legislature's desire to carry out an investigation in support of its law-making powers. However, our clients are also loyal employees subject to the supervision of the Governor. Your subpoena places them in the difficult position of choosing either to support the Governor's decision to cooperate only with the Personnel Board investigation or to voluntarily comply with the subpoenas issued by the committee.

You can appreciate that this is an untenable position for our clients because the Governor has so strongly stated that the subpoenas issued by your committee are of questionable validity. Moreover, two lawsuits have been filed challenging the legitimacy of the investigation. On behalf of our clients, we respectfully ask that you withdraw the subpoenas directed to our clients and thereby relieve them from the circumstance of having to choose where their loyalties lie.

If the subpoenas are not withdrawn by the Senate Judiciary Committee, our clients will not appear in response to the subpoenas until either the Senate or the full legislature convenes to issue a resolution requiring their presence before the appropriate legislative committee.

Sincerely,



Talis J. Colberg
Attorney General

cc: Senator Kim Elton, Chair, Legislative Council
Senator Charlie Huggins
Senator Lesil McGuire
Senator Gene Therriault
Senator Bill Wielechowski
Senator Bettye Davis
Senate President Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Gary Wilken
Representative Nancy Dahlstrom
Representative John Coghill
Representative David Guttenberg
Speaker of the House John Harris
Representative Ralph Samuels
Representative Bill Stoltze
Representative Peggy Wilson
Stephen Branchflower

Palin Offered Cooperation with Investigation **Media/Press Release Quotes**

Lawmakers seek outside inquiry of Monegan firing - KTUU-TV – July 18, 2008:

Some lawmakers are asking for more answers to the reasons Palin had for firing Monegan. Palin, in Wasilla for the Governor's Picnic, said she would not fight such an effort to look into this matter by an independent investigator.

"We would never prohibit, or be less than enthusiastic about any kind of investigation. Let's deal in the facts, and you do that via investigation," Palin said.

Senate will look into Monegan firing - KTUU-TV – July 19, 2008:

While the governor said there is no need for an investigation from an outside investigator, she said she will answer any questions from lawmakers, media and the public.

Public Safety already headed in 'new direction,' some say - Anchorage Daily News - July 22, 2008:

The governor denies any wrongdoing, and says she welcomes any questions on the matter.

Palin under fire – Legislature appears poised to appoint investigator -Aftermath of Monegan Dismissal, Anchorage Daily News - July 22, 2008:

"I've said all along, hold me accountable," Palin told reporters in Juneau. "And I'm telling the truth when I say there was never pressure put on Commissioner Monegan."

Lawmakers move to investigate Monegan ouster, KTUU-TV – July 24, 2008:

The governor says she welcomes the investigation. "I have absolutely nothing to hide and am happy to answer any questions," she said. "I'm happy to answer any questions between now and when they do conduct an investigation also."

Gov. Palin said last weekend that she did not think an independent investigator was needed. "That being the route that they choose, then so be it," she said. "I'm happy to comply, to cooperate. I have absolutely nothing to hide. No problem with an independent investigation."

Hired help will probe Monegan dismissal - \$100,000: Legislators vote to have independent investigator look into controversial firing - Anchorage Daily News – July 29, 2008:

“The governor has said all along that she will fully cooperate with an investigation and her staff will cooperate as well,” Leighow said.

Branchflower to investigate in Monegan firing - KTUU-TV – August 1, 2008:

“I’ve heard (Branchflower’s) name, or course, over the years in Alaska,” Palin said. “I know he’s a prosecutor, probably a heavy duty prosecutor, and so that kind of puzzles us why we are going down that road when we are very, very open to answering any questions anybody has of me or administrators.”

PRESS RELEASE: GOVERNOR TO TURN OVER FINDINGS - Office of the Governor – August 13, 2008:

Governor Palin has directed all her staff to cooperate fully with Branchflower.

Palin administration cooperating with investigator - KTUU-TV – August 15, 2008:

Lawmakers had wanted to know if Steve Branchflower needed them to issue subpoenas to require witnesses to talk to him about Gov. Sarah Palin’s decision to fire Monegan and about the actions of her staffers. But State Sen. Hollis French says the meeting was cancelled because there’s no need for subpoenas at this point.

Palin aide Frank Bailey placed on administrative leave - KTUU-TV – August 19, 2008:

“We figured, if there is an investigation going on with an unknown outcome – we don’t know exactly what (special investigator) Mr. Branchflower is going to conclude – that Mr. Bailey just needed to step away from the situation, although be available to the investigator,” [Palin spokesman] McAllister said.

The governor’s office also says that Bailey will cooperate fully with the investigation.

Palin aide put on leave in firing flap, BAILEY: Official who made all inquiring about trooper taken “out of the mix.” - Anchorage Daily News – August 20, 2008:

Spokeswoman Sharon Leighow said that with Bailey still a state employee, Palin “can direct him to assist Mr. Branchflower, thereby fulfilling her pledge to Alaskans to cooperate fully with the investigation.”

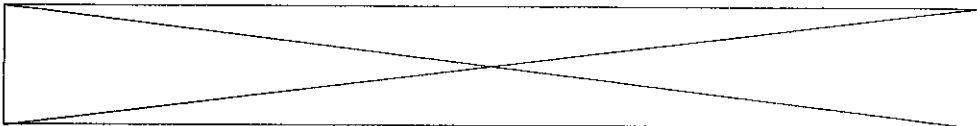
Re: Governor Palin and Trooper Investigation - McCain Campaign Press Release – August 30, 2008:

Governor Palin is an open book on this – she did nothing wrong and has nothing to hide. As a reformer and a leader on ethics reform, she has been happy to cooperate fully in the inquiry of this matter.

Attorney challenges Monegan firing inquiry – Anchorage Daily News – September 2, 2008:

He [Governor Palin's Lawyer Mr. Van Flein] said the governor's office welcomes the inquiry and will cooperate.

Palin has made repeated public statements that she'll cooperate, and that hasn't changed at this point, Van Flein says.



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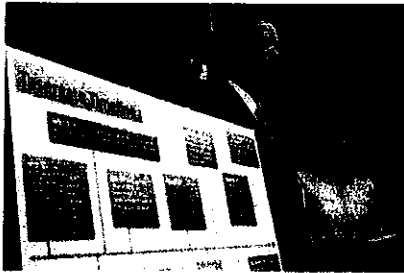
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Can He Stop 'Troopergate'?

A McCain lawyer scrambles to block a Palin ethics inquiry.

By [Michael Isikoff](#) | Newsweek Web Exclusive
Sep 16, 2008 | Updated: 7:15 p.m. ET Sep 16, 2008

Lawyer O'Callaghan, of the McCain camp, is trying to block the Troopergate investigation.

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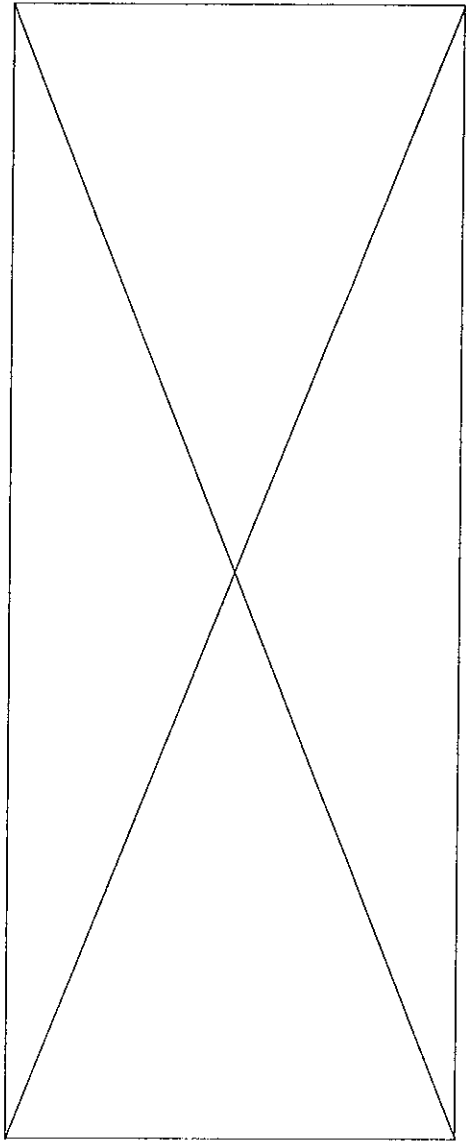
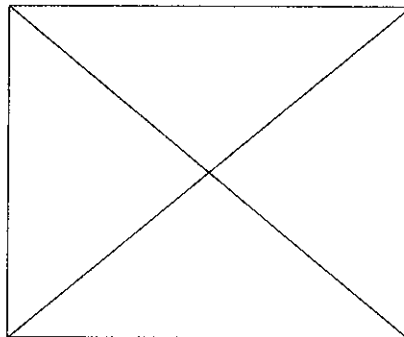
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A former top Justice Department prosecutor now working for [John McCain's](#) presidential campaign has been helping to direct an aggressive legal strategy aimed at shutting down a pre-election ethics investigation into [Alaska Gov. Sarah Palin](#).

The growing role of [Edward O'Callaghan](#), who until six weeks ago served as co-chief of the terrorism and national security unit of the U.S. attorney's office in New York, illustrates just how seriously the McCain campaign is taking the so-called "troopergate" inquiry into Palin's firing last summer of [Walt Monegan](#), Alaska's Public Safety Commissioner.

O'Callaghan emerged publicly for the first time this week when he told reporters at a McCain campaign press conference, in Anchorage, that Palin is "unlikely to cooperate" with an Alaskan legislative inquiry into Monegan's firing because it had been "tainted" by politics. That new stand appeared to directly contradict a previous vow, expressed by her official gubernatorial spokesman on July 28, that Palin "will fully cooperate" with an investigation into the matter.

But O'Callaghan (who resigned from the U.S. attorney's office at the end of July to join the McCain campaign) is doing more than just public relations when it comes to "troopergate." He told NEWSWEEK that he and another McCain campaign lawyer (whom he declined to identify) are serving as legal "consultants" to Thomas Van Flein, the Anchorage lawyer who at state expense is representing Palin and her office in the inquiry. "We are advising Thomas Van Flein on this matter to the extent that it impacts on the national campaign," he said. "I'm helping out on legal strategy." A McCain spokesman said Wednesday



that, while Van Flein was originally hired last month by the Alaska Department of Law to represent Palin and her office, that arrangement has been changed over the past week and he is now being paid only by Palin and her husband — not state funds. He has not billed the state for his work, the spokesman said.

The investigation revolves around allegations that Palin fired Monegan, the state's top cop, because he rebuffed intense pressure from the governor and her aides to dismiss Mike Wooten, a state trooper involved in a messy custody battle with Palin's sister. Critics, including Monegan himself, have accused Palin of being obsessed over the Wooten matter—sending him repeated e-mails about it—in an attempt to use her public office to settle a private score.

But Palin, while acknowledging her chagrin that Wooten was still on the state police force (she told ABC's Charlie Gibson last week that the trooper was engaged in "dangerous and illegal activities" and had "threatened to kill my dad") has said she never directly told Monegan to fire the trooper. Palin and her lawyers have also said that she had other reasons for firing Monegan, including a dispute over the state public-safety budget and actions her lawyers have depicted as "insubordination." (Wooten has denied Palin's charges that he threatened her family and contended he has already been appropriately disciplined for his wrongdoings—including Taser-ing his 10-year old stepson—as a state trooper.)

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Posted By: mccain supporter @ 09/22/2008 3:58:20 PM

Comment: According to some Democratic supporters, domestic violence must be okay if the victims are Republican. Monegan???s argument that the case had been investigated by his predecessor and therefore his hands were tied holds no weight because often internal police investigations and discipline go nowhere.

There is likely no merit in the Monegan ethics complaint against Governor Sarah Palin and Sarah Palin should not have to wait until her sister disappeared before she intervened. Even if there was any merit to the complaint one could argue convincingly that it would have been prudent for her to intervene in this case given the recent publicity regarding the disappearance and death respectively of the last two wives of former and now retired Police Sergeant Drew Peterson in Bolingbrook Illinois a Chicago suburb, the Crandon Wisconsin apartment homecoming party shooting deaths of six young adults including the former girlfriend of a 20-year-old Crandon Wisconsin deputy and Crandon police officer Tyler Peterson who took his own life last October before his apprehension, the death of the nine-month pregnant girlfriend of convicted former Ohio police officer Bobby Cutts whose two year old son broke the case with the statement that mommy is in the rug, and the pending murder trial of Pennsylvania State Trooper and homicide investigator Kevin Foley for the stabbing murder of the soon to be dentist ex-husband of his live-in girlfriend that occurred two days before the effective date of the final divorce decree.

Posted By: mccain supporter @ 09/22/2008 3:57:32 PM

Comment: Also just last week, a former Sergeant of Lafayette Ga Police Department police officer and estranged husband of a 911 dispatcher who disappeared in March 2007 was arrested and charged in the Georgia woman's murder even though her body has never been found. Sarah Palin should not have to wait until her sister disappeared before she intervened in the trooper case. In the Foley case, Pennsylvania Trooper Kevin Foley lived with the estranged wife of a dentist who was viciously stabbed to death and thrown through the window of his own home less than two years ago. Pennsylvania State Trooper Foley specialized in homicide investigations and allegedly had been quoted as repeatedly stating in a State Police barracks break room in front of other State Troopers and supervisors as wishing that the dentist ex-husband would be killed in a car wreck or would otherwise die. Reportedly, his fellow state troopers did not take his threats seriously although they told him to stop making the threats against the now deceased dentist. Remember also in the Drew Peterson case, there were 18 eighteen separate domestic disturbance calls to the Drew Peterson residence outside Chicago.

Posted By: mccain supporter @ 09/22/2008 3:56:55 PM

Comment: In the eighteen separate domestic disturbance calls to his home, Drew Peterson was never arrested or charged by his fellow officers with whom he worked. The only person ever charged by his fellow officers in all of Petersons domestic violence cases was his now deceased former third wife. Any investigation into the conduct of her ex-brother-in-law trooper by his own department, the Alaska State Police and Public Safety Commissioner, should have been viewed with the same skepticism as the eighteen separate investigations into the conduct of Drew Peterson by his fellow officers. It clearly can be argued that the prudent course of action was for Governor Sarah Palin to intervene given the almost near universal blue wall of silence that often prevents investigation of police misconduct by their fellow officers, superiors, and even other outside law enforcement agencies.

It is no coincidence that the original revelations of police misconduct from the Rodney King beating to CBS News Katie

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Couric recent expose on corruption in Chicago City Police drug task force involves independent third party actual video camera documentation of misconduct produced by non-police sources and includes separate incidents of beating up of innocent bar patrons and a female bartender by the officers involved. Chicago Police Officer Keith Herrera has gone public and admitted his involvement. A Chicago Police officer implicated was audiotaped conspiring to murder his fellow officers to prevent further investigation of wrongdoing that included multiple and systematic thefts of drugs and money from drug dealers and falsification of police reports and sworn affidavits. The revelation of misconduct did not come from so-called good officers coming forward to report on the misconduct of their co-worker fellow officers. Only when there is independent non-police produced videotape footage documenting police misconduct or dead bodies happen to turn up as in the Atlanta wrongful drug bust and shooting murder of a 92 year old grandmother Kathryn Johnston in her own home, does a successful investigation and prosecution go forward.

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